

**FEDERAL TAXPAYER I.D. NO. 86-6000252**

**BOND REGISTRAR, TRANSFER AGENT AND PAYING AGENT CONTRACT FOR BONDS OF THE CITY OF MESA, ARIZONA**

This Bond Registrar, Transfer Agent and Paying Agent Contract dated as of \_\_\_\_\_ 1, 2012 (the “*Contract*”), is made and entered into between the **CITY OF MESA, ARIZONA** (hereinafter called the “*City*”), and **U.S. BANK NATIONAL ASSOCIATION**, Phoenix, Arizona (hereinafter called the “*Bank*”), and witnesseth as follows:

The City will issue its City of Mesa, Arizona, Utility Systems Revenue Bonds, Series 2012 (the “*Bonds*”) in the aggregate principal amount of \$67,300,000. The Mayor and Council (the “*Council*”) of the City have determined that the services of a bond registrar, transfer agent and paying agent are necessary and in the best interests of the City. Initially, the Bonds will be issued in book-entry-only form through The Depository Trust Company (“*DTC*”) and, so long as the book-entry-only system is in effect the Bonds will be registered in the name of Cede & Co., the nominee name of DTC.

The Bank desires to perform registrar, transfer agent and paying agent services during the life of Bonds.

For and in consideration of the mutual promises, covenants, conditions and Contracts hereinafter set forth, the parties do agree as follows:

1. **Services.** The Bank hereby agrees to provide the following services:

A. Bond registrar services which shall include, but not be limited to (1) initial authenticating and verifying the Bonds; (2) keeping registration books sufficient to comply with Section 149 of the Internal Revenue Code of 1986, as amended (the “*Code*”); (3) recording transfers of ownership of the Bonds promptly as such transfers occur; (4) protecting against double or overissuance; (5) authenticating new Bonds prepared for issuance to transferees of original and subsequent purchasers; and (6) informing the City of the need for additional printings of the Bonds should the forms printed prior to initial delivery prove inadequate.

B. Transfer agent services which shall include, but not be limited to, (1) receiving and verifying all Bonds tendered for transfer; (2) preparing new Bonds for delivery to transferees and delivering same either by delivery or by mail, as the case may be; (3) destroying Bonds submitted for transfer; and (4) providing proper information for recordation in the registration books.

C. Paying agent services which shall include, but not be limited to, (1) providing a billing to the City at least thirty (30) days prior to a Bond interest payment date setting forth the amount of principal and interest due on such date; (2) preparing, executing, wiring or mailing all interest payments to each registered owner of the Bonds one (1) business day prior to the scheduled payment date or as soon as money for payment of such interest has

been transferred to the paying agent but in no event (unless sufficient funds to make such payments have not been received by the Bank) later than the time established by DTC, on the date such payments are due; (3) verifying all matured Bonds upon their surrender; (4) paying all principal and premium, if any, due upon the Bonds as they are properly surrendered therefor to the Bank; (5) preparing a semiannual reconciliation showing all principal and interest paid during the period and providing copies thereof to the City; (6) inventorying all cancelled checks, or microfilm proof of such checks for six (6) years after payment; and (7) making proof of such payments available to the City or any owner or former owner.

2. **Record Date.** The “*Record Date*” for the payment of interest will be the fifteenth (15th) day of the month preceding an interest payment date. Normal transfer activities will continue after the Record Date but the interest payment on a particular Bond will be mailed to the registered owners of Bonds as shown on the books of the Bank on the close of business on the Record Date. Principal (and premium, if any) shall be paid only on surrender of the particular Bond at or after its maturity or prior redemption date, if applicable.

3. **Redemption Notices.** The Bank agrees to provide certain notices to the Bond owners as required to be provided by the Bank in, and upon being provided with a copy of, the resolution of the City approving the issuance, sale and delivery of the Bonds. So long as the Bonds are held under the Book-Entry-Only System, notices of redemption will be sent to DTC, in the manner required by DTC. If the Book-Entry-Only System is discontinued, notice of redemption of any Bond will be mailed to the registered owner of the Bond or Bonds being redeemed at the address shown on the bond register maintained by the registrar not more than sixty (60) nor less than thirty (30) days prior to the date set for redemption. Failure to properly give notice of redemption shall not affect the redemption of any Bond for which notice was properly given. Notice of redemption may be sent to any securities depository by mail, facsimile transmission, wire transmission or any other means of transmission of the notice generally accepted by the respective securities depository. Notice of any redemption will also be sent to the Municipal Securities Rulemaking Board (the “*MSRB*”), currently through the MSRB’s Electronic Municipal Market Access system (“*EMMA*”), in the manner required by the MSRB, but no defect in said further notice or record nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as prescribed above.

Notice of redemption shall be sent by first class mail or electronically to any depository institution which is a registered owner, such that the notice of redemption is received not less than two (2) days prior to the date of general release to the public. The Bank agrees to send a duplicate notice of redemption by first class mail to any registered owner who has not submitted Bonds for redemption within thirty (30) days after the date set for redemption.

Each redemption notice must contain, at a minimum, the complete official name of the issue with series designation, CUSIP number, certificate numbers, amount of each Bond called (for partial calls), date of issue, interest rate, maturity date, publication date (date of release to the general public, or the date of general mailing of notices to Bond owners and information services), redemption date, redemption price, redemption agent and the name and address of the place where Bonds are to be tendered, including the name and phone number of

the contact person. Such redemption notices may contain a statement that no representation is made as to the accuracy of the CUSIP numbers printed therein or on the Bonds.

4. **Issuance and Transfer of Bonds.** The Bank will issue the Bonds to registered owners, require the Bonds to be surrendered and cancelled and new Bonds issued upon transfer, and maintain a set of registration books showing the names and addresses of the owners from time to time of the Bonds. The Bank shall promptly record in the registration books all changes in ownership of the Bonds.

5. **Payment Deposit.** The City will transfer immediately available funds to the Bank no later than one (1) business day prior to or, if agreed to by the parties hereto, on the date on which the interest, principal and premium payments (if any) are due on the Bonds, but in no event later than the time established by DTC, on the date such payments are due. The Bank shall not be responsible for payments to Bond owners from any source other than moneys transferred, or caused to be transferred, to it by the City.

6. **Collateral.** The Bank shall collateralize the funds on deposit at the Bank in accordance with A.R.S. §§ 35-323 and 35-491.

7. **Turnaround Time.** The Bank will comply with the three business day turnaround time required by Securities and Exchange Commission Rule 17Ad-2 on routine transfer items.

8. **Fee Schedule; Initial Fee.** For its services under this Contract, the City will pay the Bank in accordance with the fee schedule set forth in the attached *Exhibit A*, which is incorporated herein by reference. The fee for the Bank's initial services hereunder and services to be rendered until June 30, 2012 is \$\_\_\_\_\_ and shall be billed by the Bank to the City after closing and paid by the City after the initial delivery of the Bonds solely from proceeds of the Bonds. Subsequent payments shall be made in accordance with this Contract.

9. **Costs and Expenses.** The City hereby agrees to pay all costs and expenses of the Bank pursuant hereto. If, for any reason, the amounts the City agrees to pay herein may not be paid from the annual tax levy for debt service on the Bonds, such costs shall be paid by the City from any funds lawfully available therefor and the City agrees to take all actions necessary to budget for and authorize expenditure of such amounts.

10. **Fees for Services in Subsequent Fiscal Years.** The Bank will bill the City prior to June 1, 2012, and prior to each June 1 thereafter.

11. **Hold Harmless.** The Bank shall indemnify and hold harmless the City, its Mayor and Council, the Senior Executive Manager and all boards, commissions, officials, officers and employees of the City, individually and collectively, from the Bank's failure to perform to its standard of care as herein stated.

12. **Standard of Care Required.** In the absence of bad faith on its part in the performance of its services under this Contract, the Bank shall not be liable for any action taken

or omitted to be taken by it in good faith and believed by it to be authorized hereby or within the rights and powers conferred upon it hereunder, nor for action taken or omitted to be taken by it in good faith and in accordance with advice of counsel, and shall not be liable for any mistakes of fact or error of judgment or for any actions or omissions of any kind unless caused by its own willful misconduct or negligence.

13. **Entire Contract.** This Contract and *Exhibit A* attached hereto contain the entire understanding of the parties with respect to the subject matter hereof, and no waiver, alteration or modification of any of the provisions hereof, shall be binding unless in writing and signed by a duly authorized representative of all parties hereto.

14. **Amendment.** The City and the Bank reserve the right to amend any individual service set forth herein or all of the services upon providing a sixty (60) day prior written notice. Any corporation, association or agency into which the Bank may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from such conversion, sale merger, consolidation or transfer to which it is a party, *ipso facto*, shall be and become successor registrar, transfer agent and paying agent under this Contract and vested with all or the same rights, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

15. **Resignation or Replacement.** The Bank may resign or the City may replace the Bank as registrar, transfer agent and paying agent at any time by giving thirty (30) days' written notice of resignation or replacement to the City or to the Bank, as applicable. The resignation shall take effect upon the appointment of a successor registrar, transfer agent and paying agent. A successor registrar, transfer agent and paying agent will be appointed by the City; provided, that if a successor registrar, transfer agent and paying agent is not so appointed within ten (10) days after a notice of resignation is received by the City, the Bank may apply to any court of competent jurisdiction to appoint a successor registrar, transfer agent and paying agent. Any resignation or replacement of the Bank pursuant to this Section shall be without cost to the City.

In the event the Bank resigns or is replaced, the City reserves the right to appoint a successor registrar, transfer agent and paying agent who may qualify pursuant to A.R.S. § 35-491, et seq., or any subsequent statute pertaining to the registration, transfer and payment of bonds. In such event the provisions hereof with respect to payment by the City shall remain in full force and effect, but the Senior Executive Manager shall then be authorized to use the funds collected for payment of the costs and expenses of the Bank hereunder, provided that the Bank shall have been paid its fees and expenses due and owing to it, to pay the successor registrar, transfer agent and paying agent or as reimbursement if the Senior Executive Manager acts as registrar, transfer agent and paying agent.

16. **Reports to Arizona Department of Revenue.** The Bank shall make such reports to the Arizona Department of Revenue (the "*Department*") pertaining to the retirement of

any Bonds and of all payments of interest thereon within 30 days of a request therefor, from the City or its agents to comply with the requirements of the Department pursuant to A.R.S. § 35-502.

17. **Form of Records.** The Bank's records shall be kept in compliance with standards as have been or may be issued from time to time by the Securities and Exchange Commission, the Municipal Securities Rulemaking Board of the United States, the requirements of the Code and any other securities industry standard. Bank shall retain such records in accordance with the applicable record keeping standard of the Internal Revenue Service. In lieu of destruction and immediately prior to the date the Bank would destroy any Bondholder or Bond payment records maintained by the Bank pursuant to this Contract, such records shall be provided to the City.

18. **Advice of Counsel and Special Consultants.** When the Bank deems it necessary or reasonable, it may apply to Gust Rosenfeld P.L.C. or such other law firm or attorney approved by the City for instructions or advice. Any fees and costs incurred shall be added to the next fiscal year's fees, costs and expenses to be paid to the Bank.

19. **Examination of Records.** The City, or its duly authorized agents may examine the records relating to the Bonds at the office of the Bank where such records are kept at reasonable times as agreed upon with the Bank and such records shall be subject to audit from time to time at the request of the City, the Bank or the Auditor General of the State of Arizona (the "State").

20. **Payment of Unclaimed Amounts.** In the event any check for payment of interest on a Bond is returned to the Bank unendorsed or is not presented for payment within two (2) years from its payment date, or any Bond is not presented for payment of principal at the maturity or redemption date, if applicable, if funds sufficient to pay such interest or principal due upon such Bond shall have been made available to the Bank for the benefit of the owner thereof, it shall be the duty of the Bank to hold such funds, without liability for interest thereon, for the benefit of the owner of such Bond who shall thereafter be restricted exclusively to such funds for any claim of whatever nature relating to such Bond or amounts due thereunder. The Bank's obligation to hold such funds shall continue for two years and six months (subject to applicable escheat or unclaimed property law) following the date on which such interest or principal payment became due, whether at maturity or at the date fixed for redemption, or otherwise, at which time the Bank shall surrender such unclaimed funds so held to the City, whereupon any claim of whatever nature by the owner of such Bond arising under such Bond shall be made upon the City and shall be subject to the provisions of applicable law.

21. **Invalid Provisions.** If any provision hereof is held to be illegal, invalid or unenforceable under present or future laws, this Contract shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Contract; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision.

22. **Mutilated, Lost or Destroyed Bonds.** With respect to Bonds which are mutilated, lost or destroyed, the Bank shall cause to be executed and delivered a new Bond of like date and tenor in exchange and substitution for and upon the cancellation of such mutilated Bond or in lieu of and in substitution for such Bond lost or destroyed, upon the registered owner's paying the reasonable expenses and charges in connection therewith and, in the case of any Bond destroyed or lost, filing by the registered owner with the Bank and the City of evidence satisfactory to the Bank and the City that such Bond was destroyed or lost, and furnishing the Bank and the City with a sufficient indemnity bond pursuant to A.R.S. § 47-8405.

23. **Conflict of Interest.** Each party gives notice to the other parties that A.R.S. § 38-511 provides that the State, its political subdivisions or any department or agency of either, may within three (3) years after its execution cancel any contract without penalty or further obligation made by the State, its political subdivisions or any of the departments or agencies of either, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State, its political subdivisions or any of the departments or agencies of either, is at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

24. **Covenants.** The City has agreed in its authorizing resolution to take all necessary actions required to preserve the tax-exempt status of the Bonds. Such actions may require the calculation of amounts of arbitrage rebate which may be due and owing to the United States. The calculation of such rebate amount may be performed by an individual or firm qualified to perform such calculations and who or which may be selected and paid by the City. If the City does not retain a consultant to do the required calculations concerning arbitrage rebate and if, in the sole discretion of the City, a rebate calculation is required to permit interest on the City's Bonds to be and remain exempt from gross income for federal income tax purposes, the City may include, in addition to all other bills payable under this Contract, the costs and expenses and fees of an arbitrage consultant. The City may contract with a consultant to perform such arbitrage calculations as are necessary to meet the requirements of the Code. All fees, costs and expenses so paid may be deducted from moneys of the City or from tax levies made to pay the interest on the Bonds. Such costs, fees and expenses shall be considered as interest payable on the Bonds. This Contract shall be full authority to the City to cause to be levied and collected such amounts as may be necessary to make all rebates to the United States of America.

25. **Levy for Expenses.** Except for the initial fiscal year's costs and expenses, all costs and expenses incurred with respect to services for registration, transfer and payment of the Bonds and, if applicable, for costs and expenses in connection with the calculation of arbitrage rebate shall be treated as interest on the Bonds and the City agrees to include the same in the taxes levied for interest debt service during each of the ensuing fiscal years.

26. **Waiver of Trial by Jury.** Each party hereto hereby agrees not to elect a trial by jury of any issue triable of right by jury, and waives any right to trial by jury fully to the extent that any such right shall now or hereafter exist with regard to this Contract, or any claim, counterclaim or other action arising in connection herewith. This waiver of right to trial by jury is given knowingly and voluntarily by each party, and is intended to encompass individually

each instance and each issue as to which the right to a trial by jury would otherwise accrue.

27. **Governing Law.** The Contract is governed by the laws of the State.

28. **Transfer Expenses.** The transferor of any Bond will be responsible for all fees and costs relating to such transfer of ownership.

29. **E-verify requirements.** To the extent applicable under A.R.S. § 41-4401, the Bank and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Bank's, or its subcontractor's, breach of the above-mentioned warranty shall be deemed a material breach of the Contract and may result in the termination of the Contract by the City. The City retains the legal right to randomly inspect the papers and records of the Bank and its subcontractors who work on the Contract to ensure that the Bank and its subcontractors are complying with the above-mentioned warranty.

The Bank and its subcontractors warrant to keep the papers and records open for random inspection by the City during normal business hours. The Bank and its subcontractors shall cooperate with the City's random inspections including granting the City entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

30. **Scrutinized Business Operations.** Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, the Bank certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in A.R.S. §§ 35-391 or 35-393, as applicable. If the City determines that the Bank submitted a false certification, the City may impose remedies as provided by law including terminating this Contract.

This Contract is dated and effective as of \_\_\_\_\_, 2012.

**CITY OF MESA, ARIZONA**

By \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Clerk

**U.S. BANK NATIONAL ASSOCIATION,**  
as Bank

By \_\_\_\_\_  
Authorized Representative

Attach as Exhibit A the fee schedule of the Bank.