

## RESOLUTION NO. 12107

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, ARIZONA, AUTHORIZING THE SALE, EXECUTION AND DELIVERY OF UTILITY SYSTEMS REVENUE OBLIGATIONS, SERIES 2023, TO FINANCE THE COSTS OF ACQUIRING IMPROVEMENTS TO THE CITY'S UTILITY SYSTEMS AND TO PAY RELATED COSTS OF DELIVERY; APPROVING THE FORM AND AUTHORIZING THE COMPLETION, SIGNING AND DELIVERY OF AN INSTALLMENT PURCHASE AGREEMENT, A TRUST AGREEMENT, A PURCHASE CONTRACT, AS APPLICABLE, AND A CONTINUING DISCLOSURE UNDERTAKING IN CONNECTION THEREWITH; PROVIDING FOR THE CITY TO PAY INSTALLMENT PAYMENTS FROM PLEDGED REVENUES OF THE CITY'S UTILITY SYSTEMS TO FINANCE THE PURCHASE OF THE IMPROVEMENTS; APPOINTING A TRUSTEE FOR THE SERIES 2023 OBLIGATIONS; DELEGATING THE AUTHORITY TO APPROVE CERTAIN MATTERS WITH RESPECT TO THE SERIES 2023 OBLIGATIONS; DELEGATING THE AUTHORITY TO APPROVE AND DEEM FINAL A FORM OF OFFICIAL STATEMENT; AND RATIFYING ALL ACTIONS TAKEN AND TO BE TAKEN WITH RESPECT TO THE SERIES 2023 OBLIGATIONS IN FURTHERANCE OF THIS RESOLUTION; AND DECLARING AN EMERGENCY.

**WHEREAS**, pursuant to Title 9, Chapter 5, Article 2 of the Arizona Revised Statutes, as amended, the City of Mesa, Arizona (the "*City*"), is authorized to construct, purchase, acquire, own and maintain its water, wastewater, electrical, natural gas and solid waste systems (collectively, the "*System*"); and

**WHEREAS**, pursuant to Resolution No. 6362, passed and adopted by the City Council of the City (the "*City Council*") on July 29, 1991 (as thereafter amended and supplemented, the "*Master Bond Resolution*"), and Title 9, Chapter 5, Article 3 of the Arizona Revised Statutes, as amended, the City has authorized the sale and issuance of various series of its utility systems revenue bonds and utility systems revenue refunding bonds, and has authorized loans with the Water Infrastructure Finance Authority of Arizona (collectively, the "*Utility Bonds*"); and

**WHEREAS**, for purposes of making improvements, additions, extensions, replacements or repairs to the System, the Master Bond Resolution provides for the application of certain revenues of the System to the payment of obligations junior in lien to the Utility Bonds; and

**WHEREAS**, the City previously authorized the execution and delivery of the (i) Installment Purchase Agreement, dated as of June 1, 2021 (the "*2021 Purchase Agreement*"), in connection with the execution and delivery of the Utility Systems Revenue Obligations, Series 2021, (ii) Installment Purchase Agreement, dated as of June 1, 2022 (the "*2022 Purchase Agreement*"), in connection with the execution and delivery of the Utility Systems Revenue

Obligations, Series 2022A and Utility Systems Revenue Obligations, Taxable Series 2022B and (iii) Installment Purchase Agreement, dated as of August 1, 2022 (the “*2022C Purchase Agreement*”), in connection with the execution and delivery of the Utility Systems Revenue Refunding Obligations, Series 2022C (the 2022C Purchase Agreement, collectively with the 2021 Purchase Agreement and the 2022 Purchase Agreement, the “*Parity Obligations*”); and

**WHEREAS**, the City Council hereby finds and determines that it is desirable and necessary and in the best interests of the City that obligations be incurred and sold, and the proceeds thereof be used to acquire, construct, and improve additions, extensions, replacements or repairs to the System (the “*Series 2023 Projects*”); and

**WHEREAS**, therefore, the City Council has determined to cause the execution and delivery of an Installment Purchase Agreement, to be dated as of the first day of the month in which the hereinafter described Series 2023 Obligations are dated (the “*Installment Purchase Agreement*”), in substantially the form now on file with the City Clerk, by which the City will agree to purchase the Series 2023 Projects; and

**WHEREAS**, the acquisition of the Series 2023 Projects will be financed through the sale and execution and delivery of securities, in one or more tax-exempt and/or taxable series (the “*Series 2023 Obligations*”), representing proportionate interests in the Installment Purchase Agreement pursuant to, and secured by, a Trust Agreement, to be dated as of the date of the Installment Purchase Agreement (the “*Trust Agreement*”), by and between the City and UMB Bank, n.a., as trustee (including any successor thereto, the “*Trustee*”), in substantially the form now on file with the City Clerk; and

**WHEREAS**, the firm of Hilltop Securities Inc. will serve as the City’s financial advisor (the “*Financial Advisor*”) with respect to the sale of the Series 2023 Obligations; and

**WHEREAS**, the City Council (i) may solicit sealed proposals for the purchase of the Series 2023 Obligations pursuant to a Notice Inviting Proposals For Purchase Of Obligations (the “*Notice*”), and (ii) may receive proposals from underwriting firms to serve in the capacity of the underwriter of the Series 2023 Obligations (the “*Underwriter*”), and the City Council hereby authorizes the Authorized Representatives (as defined herein), with the advice of the Financial Advisor, to determine whether the Series 2023 Obligations will be sold pursuant to the Notice or sold by the Underwriter, in each case in accordance with the provisions of this Resolution; and

**WHEREAS**, there have been presented to the City Council at the meeting at which this Resolution is being adopted the proposed forms of: (1) the Installment Purchase Agreement; (2) the Trust Agreement; (3) a Continuing Disclosure Undertaking, to be dated the date of delivery of the Series 2023 Obligations (the “*Undertaking*”), from the City necessary for purposes of Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the “*Rule*”); and (4) the Preliminary Official Statement, to be dated the date of the dissemination thereof (the “*Preliminary Official Statement*”), relating to the Series 2023 Obligations, which, as to be revised after the sale of the Series 2023 Obligations, shall constitute the Official Statement (as defined herein), to be dated the date of sale of the Series 2023 Obligations, relating to the Series 2023 Obligations; and

**WHEREAS**, by this Resolution the City Council authorizes the execution and delivery of the Installment Purchase Agreement, the Trust Agreement, the Purchase Contract (as defined herein), as applicable, and other necessary documents, the execution and delivery of the Series 2023 Obligations by the Trustee, and the sale and delivery of the Series 2023 Obligations to the Underwriter or purchaser, as applicable; and

**WHEREAS**, the City has the requisite power and authority to execute and deliver the Installment Purchase Agreement and to cause the sale, execution and delivery of the Series 2023 Obligations, and all acts, conditions and things required by the Constitution and laws of the State of Arizona (the “*State*”) and the requirements of the City to happen, exist and be performed precedent to and in the adoption of this Resolution have happened, exist and been performed as so required to make the Installment Purchase Agreement a valid and binding limited, special obligation of the City;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:**

**Section 1. Authorization and Terms.**

A. For the purpose of providing funds to finance the Series 2023 Projects and to pay the costs of execution and delivery of the Series 2023 Obligations, the Trustee is hereby authorized and directed to execute and deliver the Series 2023 Obligations, the Installment Purchase Agreement, the Trust Agreement and any other necessary agreement, certificate or instrument to accomplish the purposes in this Resolution.

B. The Mayor and any member of the City Council, the City Manager, the Deputy City Manager and Chief Financial Officer of the City or the designees of any of them (collectively, the “*Authorized Representatives*”) are each hereby authorized and directed to determine on behalf of the City: (1) the dated date of the Series 2023 Obligations and whether the Series 2023 Obligations will be sold in one or more series; (2) the total aggregate principal amount of the Series 2023 Obligations which are to be executed and delivered but not to exceed the aggregate principal amount of \$205,000,000; (3) whether all or any portion of the Series 2023 Obligations will be sold on a taxable basis; (4) the dates on which interest on the Series 2023 Obligations is to be payable and the interest rates per annum the Series 2023 Obligations are to bear; (5) the dates the Series 2023 Obligations are to mature (but not later than July 1, 2050), the principal amounts to mature on such dates and the provisions for redemption thereof in advance of such dates; (6) whether the Series 2023 Obligations will be sold pursuant to the Notice or sold by the Underwriter, the entity or entities to serve as Underwriter, if applicable, and the sales date, sales price and other sales terms of the Series 2023 Obligations (including for underwriter’s compensation, original issue discount and original issue premium); and (7) the provision for credit enhancement, if any, for the Series 2023 Obligations; provided, however, that such determinations must result in a yield for federal income tax purposes with respect to the Series 2023 Obligations of not to exceed six percent (6.00%). The interest rates per annum each maturity of the Series 2023 Obligations are to bear and the dates for payment of such interest (the “*interest payment dates*”) and the sales price at which the Series 2023 Obligations are to be sold shall be determined as prescribed (i) in the Notice if the Series 2023 Obligations are sold pursuant to the Notice, or (ii)

in the Purchase Contract if the Series 2023 Obligations are sold by the Underwriter.

C. The Authorized Representatives, upon consultation with the Financial Advisor, are authorized to determine on behalf of the City whether the purchase of an insurance policy securing payment of the Series 2023 Obligations would be advantageous to the City or the terms of the financing represented by the Series 2023 Obligations. The Authorized Representatives are authorized to negotiate with and secure such an insurance policy from one or more institutions, with the premium for such insurance policy to be payable from proceeds of the Series 2023 Obligations or otherwise. The Authorized Representatives are authorized to execute and deliver any instruments or documents necessary in connection with the purchase of any such insurance policy, including those making provision for the repayment of amounts advanced by the institutions issuing such insurance policy.

D. The Authorized Representatives are each hereby further authorized, consistent with this Resolution, to execute, and the City Clerk is hereby authorized to attest, as applicable, the Installment Purchase Agreement, the Trust Agreement, the Undertaking, and the Purchase Contract, if applicable, and which are hereby approved, with such additions, deletions and modifications as are consistent with this Resolution and as shall be approved by those Authorized Representatives executing and delivering the same on behalf of the City, and such approval shall be evidenced by the execution and delivery thereof.

E. The series designations of the Series 2023 Obligations may change if the Series 2023 Obligations are not sold in calendar year 2023. The Series 2023 Obligations shall include such additions, deletions and modifications consistent with this Resolution as shall be approved by the officers of the Trustee, and such approval shall be evidenced by the execution and delivery of the Series 2023 Obligations by the Trustee.

## **Section 2. Acceptance of Proposals.**

A. Subject to the discretion delegated by Section 1.B. hereof, the Authorized Representatives are hereby authorized to prepare and finalize matters in the Notice including by making modifications, completions or changes of, or supplements to, the Notice and to determine how the Notice is to be disseminated, and the Series 2023 Obligations are hereby ordered to be offered for public sale by the City on the date and at the hour to be set forth in the Notice. The proposal of the purchaser of the Series 2023 Obligations pursuant to the Notice which results in the lowest true interest cost to the City with respect to the Series 2023 Obligations and, in all respects, complies with the terms of the Notice and this Resolution, shall be accepted. Such acceptance shall be evidenced by the award pursuant to the Notice. The City may reject all bids submitted pursuant to the Notice.

B. Subject to the discretion delegated by Section 1.B. hereof, the Authorized Representatives are hereby authorized to select the Underwriter and accept a proposal of the Underwriter for the purchase of the Series 2023 Obligations which satisfies the terms and conditions of this Resolution on behalf of the City, and the Series 2023 Obligations are hereby ordered to be sold to the Underwriter in accordance with the terms of an Obligation Purchase Agreement, to be dated the date of the sale of the Series 2023 Obligations (the “*Purchase Contract*”), in form and substance that is similar to obligation purchase agreements previously

entered into by the City and otherwise reasonably satisfactory to the Authorized Representatives, the Financial Advisor and Greenberg Traurig, LLP, special counsel to the City with respect to the execution and delivery of the Series 2023 Obligations (“*Special Counsel*”). The Authorized Representatives are hereby authorized to execute and deliver the Purchase Contract, for and on behalf of the City, in a form satisfactory to the Authorized Representatives, the Financial Advisor and Special Counsel, and such execution and delivery by the Authorized Representatives shall indicate the approval thereof on behalf of the City by the Authorized Representatives.

C. The Authorized Representatives are hereby requested to cause the Series 2023 Obligations to be delivered to the purchaser of the Series 2023 Obligations pursuant to the Notice upon receipt of payment therefor and satisfaction of the other conditions for delivery thereof in accordance with the terms of the sale provided in the Notice or to the Underwriter upon receipt of payment therefor and satisfaction of the other conditions for delivery thereof in accordance with the terms of the sale provided in the Purchase Contract.

D. The Authorized Representatives are hereby authorized to select, and execute and deliver contracts with, appropriate professionals including, without limitation, the Financial Advisor and Special Counsel, to provide professional services related to the sale, execution and delivery of the Series 2023 Obligations, and to provide for such other matters including, without limitation, credit enhancement, as are necessary in order to accomplish the purposes of this Resolution; and

E. The fees, costs and expenses with respect to the foregoing shall be paid from proceeds of the sale of the Series 2023 Obligations or any other legally available moneys of the City. The Deputy City Manager and Chief Financial Officer of the City is hereby authorized and directed to receive and expend such funds as necessary to accomplish the purposes of this Resolution, including payment of the installment payments due from the City under the Installment Purchase Agreement related to debt service on the Series 2023 Obligations.

### **Section 3. Execution and Delivery of Documents and Obligations.**

A. The Authorized Representatives are each hereby authorized and directed to determine on behalf of the City and then to take any action, make any modification of documents, enter into any agreements, make any elections or certifications and pay any delivery costs necessary to provide for the sale, execution and delivery of the Series 2023 Obligations, and, to comply with the requirements of the Internal Revenue Code of 1986, as amended, and the terms of the Series 2023 Obligations and any agreements related thereto, including causing the Series 2023 Obligations to be executed and delivered in multiple series, to the extent consistent with this Resolution.

B. The Authorized Representatives are each hereby authorized, consistent with this Resolution, to execute, and the City Clerk is hereby authorized to attest, as applicable, the Installment Purchase Agreement, the Trust Agreement, the Purchase Contract, as applicable, and the Undertaking, which are hereby approved, with such additions, deletions and modifications as are consistent with this Resolution and as shall be approved by those Authorized Representatives executing and delivering the same on behalf of the City, and such approval shall be evidenced by the execution and delivery thereof.

**Section 4. Limited, Special Obligation; Pledge of System Revenues Junior in Lien to Utility Bonds and on a Parity with Parity Obligations.** The Installment Purchase Agreement shall be a limited, special obligation of the City, payable only from certain revenues of the System pursuant to, and as described in, the Installment Purchase Agreement (the “*Pledged Revenues*”), and shall never constitute a general obligation of the City or a pledge of *ad valorem* taxes by the City. The Series 2023 Obligations shall not constitute an indebtedness or general obligation of the City within the meaning of any State Constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the City or be a charge against the City’s general credit or a charge against the general credit or the taxing powers of the State or any political subdivision thereof. The Installment Purchase Agreement shall be secured by a pledge of and lien on Pledged Revenues of the System on a basis that is junior in lien to the Utility Bonds until the Utility Bonds are no longer “Outstanding” as such term is defined in the Master Bond Resolution, and is on a parity with the pledge of and lien on Pledged Revenues of the System securing the 2021 Purchase Agreement, the 2022 Purchase Agreement and the 2022C Purchase Agreement pertaining to the Parity Obligations.

**Section 5. Official Statement.** The preparation of the Preliminary Official Statement, in substantially the form now on file with the City Clerk, to be used in connection with the sale of the Series 2023 Obligations is hereby authorized and approved and its distribution and use in connection with the offering and sale of the Series 2023 Obligations is hereby authorized and approved. The Preliminary Official Statement may be deemed “final” for all purposes of the Rule. The City will cause a final official statement (the “*Official Statement*”) in substantially the form of the Preliminary Official Statement but with insertions and omissions permitted by the Rule to be prepared and distributed with the Series 2023 Obligations in accordance with the Rule. The Authorized Representatives are each hereby authorized to approve, execute and deliver the Official Statement on behalf of the City and the execution by any such representative of the City shall be deemed conclusive evidence of such approval. If necessary, the Authorized Representatives are each hereby authorized and directed to execute and deliver, on behalf of the City, such certificates, documents or supplements pertaining to the accuracy of the Preliminary Official Statement and the Official Statement and any amendments thereto.

**Section 6. Trustee.** The City hereby appoints UMB Bank, n.a., as Trustee pursuant to the Trust Agreement and authorizes and directs the Trustee to take any and all action necessary in connection with the execution and delivery of the Installment Purchase Agreement, the Trust Agreement and the Purchase Contract, and the sale, execution and delivery of the Series 2023 Obligations and further authorizes and directs the Trustee to enter into such additional agreements as may be reasonable for the administration of the trusts so held. The City may appoint a successor trustee in accordance with the Trust Agreement, and, if the City desires to appoint another trustee prior the sale, execution and delivery of the Series 2023 Obligations, any such appointment may be done without further approval of the City Council.

**Section 7. Resolution Irrepealable.** After any of the Series 2023 Obligations are delivered by the Trustee to the Underwriter or purchaser, as applicable, thereof upon receipt of payment therefor, this Resolution shall be and remain irrepealable until the Series 2023 Obligations and the interest and premium, if any, thereon shall have been fully paid, cancelled and

discharged in accordance with the Trust Agreement.

**Section 8. Ratification of Actions.** All actions of the officers, officials, employees and agents of the City which conform to the purposes and intent of this Resolution and which further the sale, execution and delivery of the Series 2023 Obligations as contemplated by this Resolution whether heretofore or hereafter taken are hereby ratified, confirmed and approved. The proper officers, officials, employees and agents of the City are hereby authorized and directed to do all such acts and things and to execute and deliver all such documents on behalf of the City as may be necessary to carry out the terms and intent of this Resolution.

**Section 9. Severability.** If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid, illegal or unenforceable, the invalidity, illegality or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining portions of this Resolution. The City Council hereby declares that it would have adopted this Resolution and each and every other section, paragraph, clause or provision hereof and authorized the sale, execution and delivery of the Series 2023 Obligations pursuant hereto irrespective of the fact that any one or more sections, paragraphs, clauses or provisions may be held to be invalid, illegal or unenforceable.

**Section 10. Waiver of Inconsistency.** All orders, resolutions and ordinances or parts thereof inconsistent herewith are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any order, resolution or ordinance or any part thereof.

**Section 11. Emergency Clause.** The immediate operation of the provisions of this Resolution is necessary for the preservation of the public peace, health and safety, particularly to immediately sell the Series 2023 Obligations to secure the best, available economic terms therefor, and an emergency is hereby declared to exist, and this Resolution will be in full force and effect from and after its passage by the City Council and it is hereby excepted from the referendum provisions of the Constitution and laws of the State of Arizona. After any of the Series 2023 Obligations are delivered by the Trustee to the Underwriter or purchaser, as applicable, and upon receipt of payment therefor, this Resolution shall be and remain irrevocable until the Series 2023 Obligations and the interest and premium, if any, thereon shall have been fully paid, cancelled and discharged.

[Signature Page to Follow]

**PASSED AND ADOPTED** by the City Council of the City of Mesa, Arizona, this  
16th day of October, 2023.

---

Mayor

**ATTEST:**

---

City Clerk

**APPROVED AS TO FORM:**

---

Greenberg Traurig, LLP, Special Counsel



### **CERTIFICATION**

I, Holly Moseley, the duly appointed City Clerk of the City of Mesa, Arizona, do hereby certify that the above and foregoing resolution was duly passed by the City Council of the City of Mesa, Arizona, at a regular meeting held on October 16, 2023, and that a quorum was present thereat and that the vote thereon was \_\_\_\_ ayes and \_\_\_\_ nays; \_\_\_\_ did not vote or were absent.

DATED: October 16, 2023.

---

City Clerk