

## RESOLUTION NO. 12106

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, ARIZONA, AUTHORIZING THE ISSUANCE AND SALE OF CITY OF MESA, ARIZONA, GENERAL OBLIGATION BONDS, SERIES 2023; DELEGATING THE AUTHORITY TO APPROVE CERTAIN MATTERS WITH RESPECT TO THE BONDS; PROVIDING FOR THE ANNUAL LEVY OF A TAX FOR THE PAYMENT OF THE BONDS; APPOINTING A BOND REGISTRAR, TRANSFER AGENT AND PAYING AGENT FOR THE BONDS; APPROVING THE FORM OF CERTAIN DOCUMENTS AND AUTHORIZING THE COMPLETION, EXECUTION AND DELIVERY THEREOF; DELEGATING THE AUTHORITY TO APPROVE AND DEEM FINAL A FORM OF OFFICIAL STATEMENT; RATIFYING ALL ACTIONS TAKEN AND TO BE TAKEN WITH RESPECT TO THE BONDS IN FURTHERANCE OF THIS RESOLUTION; AND AUTHORIZING ANY NECESSARY BUDGET TRANSFERS RELATED TO THE BONDS AND THE PROJECTS FINANCED THEREBY.

**WHEREAS**, pursuant to Title 35, Chapter 3, Articles 3, Arizona Revised Statutes, as amended, and this resolution, the City of Mesa, Arizona (the “*City*”) now desires to issue and sell City of Mesa, Arizona General Obligation Bonds, Series 2023 (the “*Bonds*”) in an aggregate principal amount not to exceed \$90,000,000 for the purposes and according to the terms as set forth in this resolution; and

**WHEREAS**, pursuant to special bond elections held in and for the City on November 6, 2018 and November 3, 2020 (together, the “*Election*”), the issuance of the Bonds has been approved; and

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

**WHEREAS**, the City Council of the City (the “*City Council*”) (i) may solicit sealed proposals for the purchase of the Bonds pursuant to a Notice Inviting Proposals For Purchase Of Bonds (the “*Notice*”), and (ii) may receive proposals from underwriting firms to serve in the capacity of the underwriter of the Bonds (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 Bonds 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**, all acts, conditions and things required by the Constitution and laws of the State of Arizona to happen, exist and be performed precedent to and in the adoption of this resolution have happened, exist and have been performed as so required in order to make this resolution a valid and binding instrument for the security of the Bonds authorized herein;

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

**Section 1. Authorization.**

A. For the purpose of providing funds to make certain of the acquisitions and public improvements authorized by the qualified electors of the City at the Election, and to pay the costs of issuance of the Bonds, there is hereby authorized to be issued and sold not to exceed \$90,000,000 aggregate principal amount of the Bonds in accordance with this resolution and applicable law.

B. The Mayor and any member of the City Council, the Deputy City Manager and Chief Financial Officer of the City or the designees of any of them (collectively, the “*Authorized Representatives*”) are hereby authorized and directed to determine on behalf of the City and, if applicable, to include in the Notice: (1) the dated date and total principal amount of the Bonds and whether the Bonds will be sold in one or more series (but not to exceed \$90,000,000 in aggregate principal amount); (2) the amounts of the Bonds to be allocated to each of the purposes authorized by the Elections; (3) the final principal and maturity schedule of the Bonds (but none of the Bonds to mature later than July 1, 2048); (4) the provisions for redemption in advance of maturity of the Bonds; (5) whether the Bonds will be sold pursuant to the Notice or sold by the Underwriter, the entity to serve as Underwriter, if applicable, and the sales date, sales price and other sales terms of the Bonds (including for underwriter’s compensation, original issue discount and original issue premium); (6) whether all or any portion of the Bonds will be sold on a taxable basis, and (7) the provision for credit enhancement, if any, for the Bonds; provided, however, that such determinations must result in a yield for federal income tax purposes with respect to the Bonds of not to exceed six percent (6.00%). The interest rates per annum each maturity of the Bonds are to bear and the dates for payment of such interest (the “*Interest Payment Dates*”) and the sales price at which the Bonds are to be sold shall be determined as prescribed (i) in the Notice if the Bonds are sold pursuant to the Notice, and (ii) in the hereinafter defined Bond Purchase Agreement if the Bonds are sold by the Underwriter.

C. The series designation of the Bonds may change if the Bonds are not sold in calendar year 2023, if all or a portion of the Bonds are sold on a taxable basis, or as otherwise approved by the Authorized Representatives.

**Section 2. Terms.**

A. Bonds. The Bonds shall be dated the date of their initial authentication and delivery and issued in the denomination of \$5,000 of principal amount each or integral multiples thereof and only in fully registered form.

The Bonds are expected to be initially issued in fully registered book-entry-only form in amounts equal to the respective year’s maturity amount. If the book-entry-only system (the “*Book-Entry-Only System*”) as described in the Letter of Representations (as defined herein) is discontinued, the Bonds will be in the denominations of \$5,000 of principal each or integral multiples thereof.

B. Book-Entry-Only System. So long as the Bonds are administered under the Book-Entry-Only System, periodic principal and interest payments shall be paid to Cede & Co. or its registered assigns in “same-day funds” no later than the time established by The Depository Trust Company (“DTC”) on each Interest Payment Date (or in accordance with then-existing arrangements between the City and DTC). The City has previously entered into an agreement (the “*Letter of Representations*”) with DTC in connection with the issuance of the City’s bonds, including the Bonds, and, while the Letter of Representations is in effect, the procedures established therein shall apply to the Bonds.

C. Registration. If the Book-Entry-Only System is discontinued, the Registrar’s (as defined herein) registration books shall show the registered owners of the Bonds (the owner or owners of the Bonds as shown on the Registrar’s registration books shall be referred to individually as “*Owner*” or collectively as “*Owners*”). While the Bonds are subject to the Book-Entry-Only System, the Bonds shall be registered in the name of Cede & Co., or its registered assigns. The Bonds will be administered by the Registrar in a manner which assures against double issuance and provides a system of transfer of ownership on the books of the Registrar in the manner set forth in the Bonds. The City recognizes that Section 149(a) of the Internal Revenue Code of 1986, as amended (the “*Code*”), requires the Bonds to be issued and to remain in fully registered form in order that interest thereon is exempt from federal income taxation under laws in force at the time the Bonds are delivered. The City agrees that it will not take any action to permit the Bonds to be issued in, or converted into, bearer or coupon form.

D. Payment. The principal and premium, if any, and interest on the Bonds will be payable in lawful money of the United States of America. So long as the Bonds are held under the Book-Entry-Only System, all payments of principal, interest and premium, if any, shall be paid to DTC in accordance with the City’s arrangements with DTC. If the Book-Entry-Only System is discontinued, interest on the Bonds will be payable on each Interest Payment Date by the Paying Agent (as defined herein) by check (unless the Owner of the Bonds is eligible for payment by wire transfer) mailed to the Owner thereof at such Owner’s address as shown on the registration books maintained by the Registrar as of the close of business of the Registrar on the Record Date (as defined herein).

If the Book-Entry-Only System is discontinued, principal of the Bonds will be payable, when due, only upon presentation and surrender of the Bond at the designated corporate trust office of the Paying Agent. If the Book-Entry-Only System is discontinued, upon written request made not less than twenty (20) days prior to an Interest Payment Date by an Owner of at least \$1,000,000 in principal amount of Bonds then outstanding, all payments of interest and, if adequate provision for surrender is made, principal and premium, if any, shall be paid by wire transfer in immediately available funds to an account within the United States of America designated by such Owner.

Notwithstanding any other provision of this resolution, payment of principal of and interest on any Bond that is held by a securities depository or Bonds subject to a Book-Entry-Only System may be paid by the Paying Agent by wire transfer in “same-day funds”.

E. Other Terms. The Bonds shall have such additional terms and provisions as are set forth in substantially the form of the Bond attached hereto as Exhibit A and shall be sold under the terms and conditions set forth in the Bond Purchase Agreement or Notice, as applicable.

F. Defeasance. Any Bond or portion thereof in authorized denominations shall be deemed paid and defeased and thereafter shall have no claim on ad valorem taxes levied on taxable property in the City (i) if there is deposited with a bank or comparable financial institution, in trust, moneys or obligations issued by or guaranteed by the United States government (“*Defeasance Obligations*”) or both which, with the moneys so deposited and the maturing principal of and interest on such Defeasance Obligations, if any, will be sufficient, as evidenced by a certificate or report of an accountant, to pay the principal of and interest and any premium on such Bond or portion thereof as the same matures, comes due or becomes payable upon prior redemption and (ii) if such defeased Bond or portion thereof is to be redeemed, notice of such redemption has been given in accordance with provisions hereof or the City has submitted to the Registrar and the Paying Agent instructions expressed to be irrevocable as to the date upon which such Bond or portion thereof is to be redeemed and as to the giving of notice of such redemption. If the maturing principal of the Defeasance Obligations or other moneys, or both, is sufficient to pay the principal of, premium, if any, and interest on such Bond or portion thereof as the same matures, comes due or becomes payable upon prior redemption, a certificate or report of an accountant shall not be required. Bonds the payment of which has been provided for in accordance with this section shall no longer be deemed payable or outstanding hereunder and thereafter such Bonds shall be entitled to payment only from the moneys or Defeasance Obligations deposited to provide for the payment of such Bonds.

### **Section 3. Prior Redemption.**

A. Prior Redemption. The Bonds may be subject to optional and mandatory redemption as determined by the Authorized Representatives and as set forth in the Notice or the Bond Purchase Agreement, as applicable. Whenever Bonds subject to mandatory redemption are redeemed (other than pursuant to mandatory redemption) or are delivered to the Registrar for cancellation, the principal amount of the Bonds so retired shall satisfy and be credited against the mandatory redemption requirements for such Bonds for such years as the City may direct.

B. Notice of Redemption. 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 Owners of the Bond or Bonds being redeemed at the address shown on the bond registration books maintained by the Registrar not more than sixty (60) nor less than thirty (30) days prior to the date set for redemption. 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. Neither the failure of any Owner to receive a notice of redemption nor any defect in a notice of redemption will affect the validity of the proceedings for redemption of Bonds as to which proper notice of redemption was given.

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, in the manner required by the MSRB, but no defect in said further notice or record nor any failure

to give all or a 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.

If the moneys for the payment of the redemption price and accrued interest are not held in separate accounts by the City, an escrow trustee or the Paying Agent prior to sending the notice of redemption, such redemption will be conditional on such moneys being so held on or prior to the date set for redemption and if not so held by such date the redemption shall be cancelled and be of no force and effect. The notice of redemption will describe the conditional nature of the redemption.

C. Effect of Call for Redemption. On the date designated for redemption by notice given as herein provided, the Bonds so called for redemption shall become and be due and payable at the redemption price provided for redemption of such Bonds on such date, and, if moneys for payment of the redemption price are held in separate accounts by the City, an escrow trustee or the Paying Agent, interest on such Bonds or portions of Bonds so called for redemption shall cease to accrue, such Bonds shall cease to be entitled to any benefit or security hereunder and the Owners of such Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof and such Bonds shall be deemed paid and no longer outstanding.

D. Redemption of Less Than All of a Bond. The City may redeem an amount which is included in a Bond in the denomination equal to or in excess of, but divisible by, \$5,000. In that event, if the Book-Entry-Only System is discontinued, the Owner shall submit the Bond for partial redemption and the Paying Agent shall make such partial payment and the Registrar shall cause to be issued a new Bond in a principal amount equal to the unpaid amount remaining on such Bond after the redemption to be authenticated and delivered to the Owner thereof.

**Section 4. Security.** For the purpose of paying the principal of, interest on, premium (if any) on early redemption and costs of administration of the registration and payment of, the Bonds, there shall be levied on all the taxable property in the City a continuing, direct, annual, ad valorem tax sufficient to pay all such principal, interest, premium and administration costs on the Bonds as the same becomes due, such taxes to be levied, assessed and collected at the same time and in the same manner as other taxes are levied, assessed and collected. The proceeds of the taxes shall be kept in a special fund of the City (the “*Debt Service Fund*”) and shall be used only for the payment of principal, interest, premium, if any, or costs of administration as above-stated.

**Section 5. Use of Proceeds.** The proceeds from the sale of the Bonds shall be set aside and used by the City for the following purposes in the following estimated amounts:

<u>Amount</u>	<u>Election</u>	<u>Purpose</u>	<u>Debt Limit</u>
\$20,040,000	2018	Public Safety Improvements	20%
46,090,000	2018	Parks and Recreation Improvements	20
5,010,000	2018	Library Improvements	6
18,035,000	2020	Streets & Transportation Improvements	20

The Bonds will be charged against the 6% and 20% debt limits (Article 9, Section 8, Arizona Constitution) as shown above. Notwithstanding the foregoing, upon finalizing the Bond Purchase Agreement or Notice, as applicable, as contemplated herein, and if necessary, the Authorized Representatives are authorized to change the amounts and use of proceeds set forth above to accurately reflect the final terms of the Bonds and the intended uses of the proceeds by the City. Any such changes shall be certified in a certificate or certificates signed by an Authorized Representative. Further, the Authorized Representative in such certificate shall allocate such amounts and purposes to the maturities of the Bonds. The moneys for each separate purpose as stated above or as set forth in a certificate of the Authorized Representative as to the use of proceeds shall be applied and used solely for the respective purpose set forth in the respective ballot question submitted to the qualified electors of the City at the Election.

The Bonds allocated for each purpose will mature in the amounts and in the years determined to be in the best interests of the City as shown in such certificate executed and delivered by an Authorized Representative.

Any premium received from the sale of the Bonds shall be used for the purpose set forth above and to pay the Underwriters' compensation and any other costs of issuance lawfully payable from such premium. If net premium received from the sale of the Bonds is used for the purposes set forth above, such use of net premium shall be in accordance with A.R.S. § 35-457.

**Section 6. Form of Bonds.** Pursuant to A.R.S. § 35-491, a fully registered bond form is hereby adopted. The Bonds are expected to be initially issued in fully registered book-entry-only form and, so long as the Book-Entry-Only System is in effect, the Bonds shall be in substantially the form attached hereto as Exhibit A and incorporated by reference herein, with such necessary and appropriate omissions, insertions and variations as are permitted or required hereby or by the Bond Purchase Agreement or Notice, as applicable, and approved by those officers executing the Bonds; execution thereof by such officers shall constitute conclusive evidence of such approval. If the Book-Entry-Only System is discontinued, the form of the Bonds shall be adjusted to accommodate the requirements of non-book-entry bonds.

The Bonds may have notations, legends or endorsements required by law, securities exchange rule or usage. Each Bond shall show both the date of its issue and the date of such Bond's authentication and registration. The Bonds are prohibited from being converted to coupon or bearer form without the consent of the City Council and approval of Bond Counsel (as defined herein).

**Section 7. Acceptance of Proposals.**

A. Notice. 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 Bonds 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 Bonds pursuant to the Notice which results in the lowest true interest cost to the City with respect to the Bonds 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.

B. Bond Purchase Agreement. 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 Bonds which satisfies the terms and conditions of this resolution on behalf of the City, and the Bonds are hereby ordered to be sold to the Underwriter in accordance with the terms of a Bond Purchase Agreement, to be dated the date of the sale of the Bonds (the “*Bond Purchase Agreement*”), in form and substance that is similar to bond purchase agreements previously entered into by the City and otherwise reasonably satisfactory to the Authorized Representatives, the Financial Advisor and Bond Counsel. The Authorized Representatives are hereby authorized to execute and deliver the Bond Purchase Agreement, for and on behalf of the City, in a form satisfactory to the Authorized Representatives, the Financial Advisor and Bond 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. Delivery of Bonds. The Authorized Representatives are hereby requested to cause the Bonds to be delivered to the purchaser of the Bonds 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. The Authorized Representatives are hereby requested to cause the Bonds to be delivered 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 Bond Purchase Agreement.

### **Section 8. Execution of Bonds and Other Documents.**

A. Bonds. The Bonds shall be executed for and on behalf of the City by the Mayor and attested by the City Clerk by their manual or facsimile signatures and the City seal may be either photographically, mechanically or manually imprinted, affixed or reproduced on the Bonds. If the signatures are affixed or imprinted by facsimile, the Mayor and the City Clerk shall execute a certificate adopting as their signatures the facsimile signatures appearing on the Bonds. If an officer whose signature is on a Bond no longer holds that office at the time the Bond is authenticated and registered, such Bond shall nevertheless be valid. A Bond shall not be valid or binding until authenticated by the manual signature of an authorized representative of the Registrar. The signature of the authorized representative of the Registrar shall be conclusive evidence that such Bond has been authenticated and issued pursuant to this resolution.

B. Registrar Contract. The form of a bond registrar, transfer agent and paying agent contract in substantially the form now on file with the City Clerk concerning the duties of the Registrar and the Paying Agent for the Bonds is hereby approved and the Mayor, the City Clerk, or the Deputy City Manager and Chief Financial Officer is each hereby authorized and directed to execute, and attest, as applicable, such contract on behalf of the City with such necessary and appropriate omissions, insertions and variations as are permitted or required hereby and approved by those officers executing the documents and cause such respective contract to be delivered. Execution by any such officer shall constitute conclusive evidence of such approval.

C. Continuing Disclosure Undertaking. The form of a continuing disclosure undertaking in substantially the form now on file with the City Clerk is hereby approved. The Mayor, the City Clerk, or the Deputy City Manager and Chief Financial Officer is each hereby authorized and directed to prepare, execute, attest, as applicable, and deliver such continuing disclosure undertaking on behalf of the City.

D. Official Statement. The preparation of a preliminary official statement, in substantially the form now on file with the City Clerk, to be used in connection with the sale of the Bonds is hereby authorized and approved and its distribution by the Underwriter or initial purchaser of the Bonds is hereby authorized and approved. Such preliminary official statement is approved and may be deemed “final” for all purposes of Section 240.15c2-12, General Rules and Regulations, Securities Exchange Act of 1934, as amended (the “Rule”), by the Mayor or the Deputy City Manager and Chief Financial Officer. The City will cause a final official statement (the “Official Statement”) in substantially the form of the preliminary official statement referred to above but with insertions and omissions permitted by the Rule to be prepared and distributed with the Bonds in accordance with the Rule. The Mayor or the Deputy City Manager and Chief Financial Officer is each hereby authorized to approve, execute and deliver the Official Statement on behalf of the City and the execution by either such officer shall be deemed conclusive evidence of such approval. The preliminary official statement and the Official Statement may be prepared in conjunction with, and may be part of the same document as, the preliminary official statement and the official statement for any other bonds which may be issued by the City.

E. Other Documents. The Mayor, Vice Mayor, City Manager, Assistant City Manager, Deputy City Manager and Chief Financial Officer and City Clerk of the City are each hereby authorized to execute, attest, as applicable, and deliver such other documents and certificates necessary for the consummation of the transactions contemplated in this resolution.

F. Authority. In the event the Mayor, any member of the City Council, or any officer of the City is unavailable or unable to discharge any obligation or duty with respect hereto, including the approval, execution or attestation of the Bonds or other documents, then any member of the City Council may act in the capacity of such officer for the purpose of discharging such obligation or duty.

**Section 9. Mutilated, Lost or Destroyed Bonds.** In case any Bond becomes mutilated or destroyed or lost, the Registrar 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 the mutilated Bond or in lieu of and in substitution for the Bond destroyed or lost, upon the Owner’s paying the reasonable expenses and charges of the City and the Registrar in connection therewith and, in the case of the Bond destroyed or lost, filing with the City and the Registrar evidence satisfactory to the City and the Registrar that such Bond was destroyed or lost, and furnishing the City and the Registrar with a sufficient indemnity bond pursuant to A.R.S. § 47-8405.

**Section 10. Registrar and Paying Agent.** The City will maintain an office or agency where Bonds may be presented for registration or transfer (the “Registrar”) and an office or agency where Bonds may be presented for payment (the “Paying Agent”). The City may appoint one or more co-registrars or one or more additional paying agents. The Registrar and the Paying



Agent may make reasonable rules and set reasonable requirements for their respective functions with respect to the Owners of the Bonds.

Initially, UMB Bank, n.a., Phoenix, Arizona, will act as, and is hereby appointed as, both the Registrar and the Paying Agent with respect to the Bonds. Any entity into which either or both of the Registrar and the Paying Agent is merged or consolidated shall continue as the Registrar and the Paying Agent hereunder without notice to the Owners of the Bonds or any further action by the City. The City may change the Registrar or the Paying Agent without notice to or consent of Owners of the Bonds and the City may act in any such capacity.

Each Paying Agent shall be required to agree in writing that the Paying Agent will hold in trust for the benefit of the Owners of the Bonds all moneys held by the Paying Agent for the payment of principal of and interest and any premium on the Bonds.

The Registrar may appoint an authenticating agent acceptable to the City to authenticate Bonds. An authenticating agent may authenticate Bonds whenever the Registrar may do so. Each reference in this resolution to authentication by the Registrar includes authentication by an authenticating agent acting on behalf and in the name of the Registrar and subject to the Registrar's direction.

The Registrar shall keep separate registration books for the Bonds, which will show the Owners of the Bonds and any transfer of the Bonds. So long as the Book-Entry-Only System is in effect, no transfer of the Bonds shall occur. If the Book-Entry-Only System is discontinued and Bonds are presented to the Registrar or a co-registrar with a request to register transfer, the Registrar shall register the transfer on the registration books if its requirements for transfer are met and shall authenticate and deliver one or more Bonds registered in the name of the transferee of the same principal amount, maturity and rate of interest as the surrendered Bonds. All transfer fees and costs shall be paid by the transferor.

The "*Record Date*" for the Bonds shall be the fifteenth (15th) day of the month in the month preceding an Interest Payment Date. The Registrar may, but shall not be required to, transfer or exchange any Bonds during the period commencing on the Record Date to and including the respective Interest Payment Date. If the Registrar transfers or exchanges Bonds within the period referred to above, interest on such Bonds shall be paid to the person who was the Owner at the close of business of the Registrar on the Record Date as if such transfer or exchange had not occurred.

The Registrar shall authenticate Bonds for original issue not to exceed \$90,000,000 in aggregate principal amount upon the written request of the Deputy City Manager and Chief Financial Officer. The aggregate principal amount of Bonds outstanding at any time may not exceed this amount except for replacement Bonds as to which the requirements of the Registrar and the City are met.

**Section 11. Resolution a Contract.** This resolution shall constitute a contract between the City and the Owners and shall not be repealed or amended in any manner which would impair, impede or lessen the rights of the Owners of the Bonds then outstanding. The performance

by the City Council of the obligations in this resolution, the Bonds and the other agreements listed in Section 8 of this resolution is hereby authorized and approved.

**Section 12. 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 issuance and sale of the Bonds 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 13. Bond Insurance or Credit Enhancement.** The Authorized Representatives are hereby authorized to expend or cause to be expended Bond proceeds to purchase bond insurance or other credit enhancements for the Bonds if deemed to be in the City's best interest, upon consultation with the City's Financial Advisor.

**Section 14. Qualified Tax-Exempt Obligations.** The Bonds are not "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code.

**Section 15. Tax Covenants.**

A. (1) As provided in further detail in the Certificate Relating To Federal Tax Matters to be delivered upon the initial delivery of the Bonds (the "*Tax Certificate*"), the City shall not make or direct the making of any investment or other use of the proceeds of any Bonds which would cause such Bonds to be "arbitrage bonds" as that term is defined in Section 148 (or any successor provisions thereto) of the Code, or "private activity bonds" as that term is defined in Section 141 of the Code, and shall comply with the requirements of the Code sections and the regulations promulgated thereunder (the "*Regulations*") throughout the term of the Bonds. In consideration of the purchase and acceptance of the Bonds by such holders from time to time and of retaining such exclusion and as authorized by Title 35, Chapter 3, Article 7, Arizona Revised Statutes, the City Council covenants, and the appropriate officials of the City are hereby directed, to take all action required to maintain such exclusion or to refrain from taking any action prohibited by the Code which would adversely affect in any respect such exclusion.

(2) The City shall be the owner of the facilities financed with the proceeds of the sale of the Bonds (the "*Facilities*") for federal income tax purposes. Except as otherwise advised in an opinion of an attorney or firm of attorneys of nationally recognized standing in the field of law relating to municipal bonds selected by the City ("*Bond Counsel*"), the City shall not enter into (i) any management or service contract with any entity other than a governmental entity for the operation of any portion of the Facilities unless the management or service contract complies with the requirement of such authority as may control at the time, or (ii) any lease or other arrangement with any entity other than a governmental entity that gives such entity special legal entitlements with respect to any portion of the Facilities. Also, the payment of principal and interest with respect to the Bonds shall not be guaranteed (in whole or in part) by the United States or any agency or instrumentality of the United States. The proceeds of the Bonds, or amounts treated as proceeds of the Bonds, shall not be invested (directly or indirectly) in federally insured deposits or accounts, except to the extent such proceeds (i) may be so invested

for an initial temporary period until needed for the purpose for which the Bonds are being issued, (ii) may be so used in making investments of a bona fide debt service fund or (iii) may be invested in obligations issued by the United States Treasury.

(3) The procedures and covenants contained in any arbitrage rebate provision or separate agreement executed in connection with the issuance of the Bonds, including in the Tax Certificate, shall be complied with for so long as compliance is necessary in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds.

B. (1) The City shall take all necessary and desirable steps, as determined by the City Council, to comply with the requirements hereunder in order to ensure that interest on the Bonds is excluded from gross income for federal income tax purposes under the Code; provided, however, compliance with any such requirement shall not be required in the event the City receives an opinion of Bond Counsel that either (i) compliance with such requirement is not required to maintain the exclusion from gross income of interest on the Bonds, or (ii) compliance with some other requirement will meet the requirements of the Code. In the event the City receives such opinion of Bond Counsel, this resolution shall be amended to conform to the requirements set forth in such opinion.

(2) If for any reason any requirement hereunder is not complied with, the City Council shall take all necessary and desirable steps, as determined by the City, to correct such noncompliance within a reasonable period of time after such noncompliance is discovered or should have been discovered with the exercise of reasonable diligence and the City shall pay any required interest or penalty under Regulations section 1.148-3(h).

C. The City has adopted post-issuance tax compliance procedures, with which the City shall comply.

D. With respect to the Bonds herein authorized to be sold, the City or Bond Counsel is authorized to execute and file on behalf of the City information reporting returns and to file or deliver such other information as may be required by Section 149(e) of the Code.

E. The City Council hereby authorizes the Deputy City Manager and Chief Financial Officer, or his designee, to represent and act for the City in all matters pertaining to the City's tax-exempt bonds, as may be necessary to comply, on a continuing basis, with the Internal Revenue Service, Securities Exchange Commission and other governmental entities' requests, reporting requirements and post-issuance compliance policies and matters.

**Section 16. Severability.** If any section, paragraph, subdivision, sentence, clause or phrase of this resolution is for any reason held to be illegal, invalid or unenforceable, such decision will not affect the validity of the remaining portions of this resolution. The City Council hereby declares that this resolution would have been adopted with each and every other section, paragraph, subdivision, sentence, clause or phrase hereof and authorized the issuance of the Bonds pursuant hereto irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of this resolution may be held illegal, invalid or unenforceable.

**Section 17.** **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 18.** **Budget Transfer Authorization.** Pursuant to this resolution any budget transfers necessary related to the sale, issuance and delivery of the Bonds and initial debt service of the Bonds are hereby authorized and approved.

[Signature Page to Follow]

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

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Mayor

**ATTEST:**

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City Clerk

**APPROVED AS TO FORM:**

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Greenberg Traurig, LLP Bond Counsel

Exhibit A: Bond Form

**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: \_\_\_\_\_, 2023.

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City Clerk

**EXHIBIT A**

(Form of Book-Entry-Only Bond)

Number: R-\_\_\_\_\_

Denomination: \$ \_\_\_\_\_

Unless this bond is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to the registrar (or any successor registrar) for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), any transfer, pledge, or other use hereof for value or otherwise by or to any person is wrongful inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

**CITY OF MESA, ARIZONA  
GENERAL OBLIGATION BOND,  
SERIES 2023**

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Original Dated Date</u>	CUSIP
_____%	July 1, 20__	_____, 2023	590485 ____

Registered Owner: CEDE & CO.

Principal Amount: \_\_\_\_\_ AND NO/100 DOLLARS (\$ \_\_\_\_\_ .00)

**CITY OF MESA, ARIZONA** (the “City”), for value received, hereby promises to pay to the registered owner identified above, or registered assigns as provided herein, on the maturity date set forth above, the principal amount set forth above, and to pay interest on the unpaid principal amount at the interest rate shown above.

Interest is payable on January 1 and July 1 of each year commencing \_\_\_\_ 1, 20\_\_, and will accrue from the most recent date to which interest has been paid, or, if no interest has been paid, from the original dated date set forth above. Interest will be computed on the basis of a year comprised of 360 days consisting of twelve (12) months of thirty (30) days each.

Principal of and interest on this bond are payable in lawful money of the United States of America. Interest payments and principal payments that are part of periodic principal and interest payments shall be received by Cede & Co., as nominee of DTC, or its registered assigns in same-day funds no later than the time established by DTC on each interest or principal payment date (or in accordance with existing arrangements between the City and DTC). The “Record Date” for the bonds shall be as of the fifteenth (15th) day of the month in the month preceding an interest payment date.

[INSERT REDEMPTION FEATURES HERE, IF APPLICABLE]

It is hereby certified and recited that all conditions, acts and things required by the Constitution and laws of the State of Arizona to exist, to occur and to be performed precedent to and in the issuance of this bond exist, have occurred and have been performed and that the series of bonds of which this is one, together with all other indebtedness of the City, is within every debt and other limit prescribed by the Constitution and laws of the State of Arizona, and that due provision has been made for the levy and collection of a continuing, direct, annual, ad valorem tax upon all of the taxable property in the City for the payment of this bond and of the interest hereon as each becomes due.

This bond is one of a series of general obligation bonds in the aggregate principal amount of \$\_\_\_\_\_,000 (the “*Bonds*”) of like tenor except as to amount, maturity date, redemption provisions, interest rate and number, issued by the City to provide funds to make those certain acquisitions and public improvements approved by a majority vote of qualified electors voting at elections duly called and held in and for the City, pursuant to a resolution of the City Council of the City duly passed and adopted prior to the issuance hereof (the “*Resolution*”) and pursuant to the Constitution and laws of the State of Arizona relative to the issuance and sale of general obligation bonds, and all amendments thereto, and all other laws of the State of Arizona thereunto enabling.

For the purpose of paying the principal of, interest on and costs of administration of the registration and payment of this bond, there shall be levied on all taxable property in the City a continuing, direct, annual, ad valorem tax sufficient to pay all such principal, interest and administration costs of and on this bond as the same become due, such taxes to be levied, assessed and collected at the same time and in the same manner as other taxes of the City are levied, assessed and collected.

Pursuant to the Resolution, payment of all or any part of the Bonds may be provided for by the irrevocable deposit, in trust, of moneys or obligations issued or guaranteed by the United States of America (“*Defeasance Obligations*”) or both, which, with the maturity principal of and interest on such Defeasance Obligations, if any, will be sufficient, as evidenced by a certificate of an accountant, to pay when due the principal or redemption price of an interest on such Bonds. Any Bonds so provided for will no longer be outstanding under the Resolution or payable from ad valorem taxes on taxable property in the City, and the owners of such Bonds shall thereafter be entitled to payment only from the amounts and Defeasance Obligations deposited in trust.

The registrar or the paying agent may be changed by the City without notice.

So long as the book-entry-only system is in effect, this bond is non-transferable. If the book-entry-only system is discontinued, this bond is transferable by the registered owner in person or by attorney duly authorized in writing at the designated office of the registrar, which on the original issue date is the corporate trust office of UMB Bank, n.a., Phoenix, Arizona, upon surrender and cancellation of this bond. Bonds of this issue will be issued only in fully registered form in the denomination of \$5,000 of principal or integral multiples in excess thereof.

The City, the registrar and the paying agent may treat the registered owner of this bond as the absolute owner for the purpose of receiving principal and interest and for all other purposes and none of them shall be affected by any notice to the contrary.



The City has caused this bond to be executed by its Mayor and attested by its City Clerk, which signatures may be facsimile signatures and the City seal may be photographically, mechanically or manually imprinted, affixed or reproduced on this bond. This bond is not valid or binding upon the City without the manually affixed signature of an authorized representative of the registrar. This bond is prohibited from being issued in coupon or bearer form without the consent of the City and the occurrence of certain other conditions.

**CITY OF MESA, ARIZONA**

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

DATED: \_\_\_\_\_, 2023.

**AUTHENTICATION CERTIFICATE**

This bond is one of the City of Mesa, Arizona, General Obligation Bonds, Series 2023, described in the Resolution.

UMB BANK, N.A., as Registrar

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

DATED: \_\_\_\_\_, 2023.

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(INSERT INSURANCE STATEMENT HERE, IF APPLICABLE)  
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**FORM OF ASSIGNMENT**

The following abbreviations, when used in the inscription on the face of this bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM – as tenants in common	UNIF GIFT/TRANS MIN ACT-_____Custodian_____
TEN ENT – as tenants by the entireties	(Cust) (Minor)
JT TEN – as joint tenants with right of survivorship and not as tenants in common	under Uniform Gifts/Transfers to Minors Act_____ (State)

Additional abbreviations may also be used though not in list above.

**ASSIGNMENT**

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
(Name and Address of Transferee)  
the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_, attorney to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated \_\_\_\_\_

\_\_\_\_\_  
Note: The signature(s) on this assignment must correspond with the name(s) as written on the within registered bond in every particular without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

\_\_\_\_\_  
Firm or Bank

\_\_\_\_\_  
Authorized Signature

Signature guarantee should be made by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other program acceptable to the Registrar.

**ALL FEES AND TRANSFER COSTS SHALL BE PAID BY THE TRANSFEROR**