

RESOLUTION NO. 10698

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA PROVIDING FOR THE ISSUANCE AND SALE OF TRANSPORTATION PROJECT ADVANCEMENT NOTES IN ONE OR MORE SERIES; MAKING A PLEDGE OF EXCISE TAXES AND REPAYMENTS TO THE REPAYMENT OF THE NOTES; APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF A TRUST AGREEMENT, CONTINUING DISCLOSURE CERTIFICATE AND NOTE PURCHASE AGREEMENT; AND APPROVING AN OFFICIAL STATEMENT.

WHEREAS, the City of Mesa, Arizona (the "City"), is a political subdivision organized and existing under the laws of the State of Arizona; and

WHEREAS, pursuant to A.R.S. Sections 9-500.17, 11-952, 28-7692, and City Charter Article I, Section 103, as amended, the City may enter into agreements with the City of Phoenix, Arizona ("Phoenix"), Valley Metro Rail, Inc. ("VMR"), and the Maricopa Association of Governments ("MAG") for the acceleration of the right-of-way acquisition, light rail vehicle acquisition, and the design and construction of transportation projects as defined in A.R.S. Sections 9-500.17 and 28-7691, as amended, by advancing funds to Phoenix, the designated grant recipient under A.R.S. Sections 28-7691 through 28-7697, inclusive, for such purpose; and

WHEREAS, the City Council of the City (the "City Council"), upon due consideration and investigation, has found and determined that it is advisable and necessary for the welfare of the City and its citizens to accelerate the design and construction of the 1.9 mile light rail transit extension on Main Street from Mesa Drive to Gilbert Road and the acquisition of right-of-way and light rail vehicles related to such light rail transit extension (the "Project") by advancing funds to Phoenix pursuant to an Amended and Restated Transportation Project Advance Agreement by and among the City, Phoenix, VMR, and MAG (as amended or supplemented, the "TPAA") and does determine that the advancement of the principal amount not to exceed \$100,000,000 for the Project is currently feasible (such advances are collectively referred to herein as the "Advance"); and

WHEREAS, the City, Phoenix, VMR, and MAG may add additional transportation improvements to the TPAA or enter into one or more additional intergovernmental agreements for advancing funds by the City to Phoenix for additional transportation improvements (provided they are transportation projects as defined in A.R.S. Sections 9-500.17 and 28-7691, as amended) shall be deemed part of the Project for all purposes hereof and such additional agreements shall be deemed part of the TPAA for all purposes hereof; and

WHEREAS, Phoenix is the future recipient of federal Surface Transportation Program ("STP") funds and Congestion Mitigation and Air Quality Improvement Program ("CMAQ") funds pursuant to a grant agreement with the Federal Transit Administration, and is obligated to repay Mesa for the Advance pursuant to the Grant Payment Schedule as defined and described in the TPAA (such repayments are referred to herein as the "Repayments"); and

WHEREAS, the Project is a transportation project as defined in A.R.S. Sections 9-500.17 and 28-7691, as amended; and

WHEREAS, the City is authorized to borrow money to fund the Advance and to pledge certain revenues to the repayment of any such borrowing; and

WHEREAS, the City Council hereby determines that it is advisable and necessary that revenue notes in one or more series in the principal amount of not to exceed \$100,000,000 Transportation Project Advancement Notes (the "Notes") be issued for the purpose of accelerating the Project and funding the Advance pursuant to the TPAA; and

WHEREAS, the Notes will be issued pursuant to a Trust Agreement (the "Trust Agreement") between the City and a trustee (the "Trustee"), who is a bank or trust company authorized to do trust business in the State of Arizona to be selected by the City pursuant to Section 8 herein; and

WHEREAS, the City will pledge the Excise Taxes (as defined herein) to the repayment of principal and interest on the Notes and if, and to the extent received from Phoenix, will pledge the Repayments to the repayment of principal on the Notes; and

WHEREAS, the City may issue additional bonds or obligations on a parity with the Notes with respect to the Excise Taxes ("Parity Obligations") or with respect to both the Excise Taxes and the Repayments (the "Parity Repayment Notes"); and

WHEREAS, a proposal in the form of a Note Purchase Agreement (the "Note Purchase Agreement") will be received from RBC Capital Markets, LLC, Merrill Lynch, Pierce, Fenner & Smith, Incorporated, and Barclays Capital Inc., or financial institutions who may be selected by the City in the event any of the aforementioned financial institutions are unable to perform (the "Original Purchasers of the Notes"), for the purchase of the Notes, and the City desires that the Notes be sold through negotiation to the Original Purchasers of the Notes, within and by the parameters set forth in this resolution, on such terms as may hereafter be approved by the City Manager or the Chief Financial Officer; and

WHEREAS, proposed forms of the following documents have been filed with the City Clerk for this meeting:

- (i) the proposed form of the Trust Agreement ("Trust Agreement");
- (ii) the proposed form of the Note Purchase Agreement;
- (iii) the proposed form of the Continuing Disclosure Certificate (the "Continuing Disclosure Certificate"); and
- (iv) the proposed form of a preliminary form of the Official Statement relating to the Notes (the "Preliminary Official Statement").

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 Notes authorized herein;

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

Section 1. Project Financing. It is hereby found and determined that the financing of the Project at fixed interest rates pursuant to the terms of the Trust Agreement and the Note Purchase Agreement is in the best interest of and in furtherance of the purposes of the City and in the public interest.

Section 2. Approval and Terms. Within and by the parameters set forth in this resolution, the City hereby approves the execution and delivery of the Notes, as hereinafter described, by the Trustee. The Notes shall be executed in the aggregate principal amount of not to exceed \$100,000,000 comprised of one or more series to finance the Project. The series designation of the Notes will be determined based on the calendar year in which the Notes are sold. The Notes shall be in the denomination of \$5,000 or any integral multiples thereof, shall be dated their date of delivery, or such later date as may be set forth in the Trust Agreement, and shall bear interest from such date payable on the dates provided in the Trust Agreement, and shall be fully registered without coupons as provided in the Trust Agreement. The Notes shall bear interest at the rates per annum set forth in the Trust Agreement and the Note Purchase Agreement and shall mature on July 1 in some or all of the years 2018 through and including 2026. The yield on the Notes for federal tax purposes shall not exceed 8% per annum.

The forms, series designation, terms, interest rates, dated date, interest payment dates, maturity dates, maturity amounts, optional, and mandatory redemption provisions, if any, and other provisions of the Notes and the provisions for the signatures, authentication, payment, registration, transfer, exchange, redemption, and number shall be as set forth in the Trust Agreement.

Section 3. Award. The Notes are hereby awarded to the Original Purchasers of the Notes pursuant to this resolution and the Note Purchase Agreement, as completed and finalized as of the sale date of the Notes. If RBC Capital Markets, LLC, Merrill Lynch, Pierce, Fenner & Smith, Incorporated, or Barclays Capital Inc. is unable to purchase the Notes, the City Manager or the Chief Financial Officer is authorized to receive proposals from, and to select, one or more financial institutions to purchase the Notes.

Section 4. Approval of Documents. The Mayor, any member of the City Council, the City Manager, or the Chief Financial Officer is authorized and directed to determine and approve the interest rates, dated dates, interest payment dates, maturity dates, maturity amounts, purchase price, optional and mandatory redemption provisions, if any, and any provisions necessary in connection with the purchase of credit enhancement pursuant to Section 5 hereof, and cause the same to be set forth in the documents. The form, terms, and provisions of the Trust Agreement, the Note Purchase Agreement, and the Continuing Disclosure Certificate, in substantially the form of such documents (including the Notes and other exhibits thereto) presented at this meeting are hereby approved, with such final provisions, insertions, deletions, and changes as shall be approved by the Mayor, any member of the City Council, the City

Manager, or the Chief Financial Officer, the execution of each such document being conclusive evidence of such approval, and the Mayor, any member of the City Council, the City Manager, or the Chief Financial Officer are hereby authorized and directed to execute and deliver, where applicable, or approve, and the City Clerk is authorized and directed to attest where applicable, the Trust Agreement, the Note Purchase Agreement, and the Continuing Disclosure Certificate and to take all action to carry out and comply with the terms of such documents.

Section 5. Obligation Insurance. The Mayor, any member of the City Council, the City Manager, or the Chief Financial Officer are hereby authorized and directed to purchase municipal bond insurance, surety bonds, or other credit enhancement as may be deemed appropriate and beneficial, to pay or cause to be paid all premiums attendant thereto and to enter into any obligations or agreements on behalf of the City to repay amounts paid thereon by the providers thereof.

Section 6. Official Statement. The Preliminary Official Statement is deemed "final" for all purposes of Section 240.15c2-12, General Rules and Regulations, Securities Exchange Act of 1934, and is hereby authorized and approved in substantially the form presented at this meeting, as revised to reflect changes between the date of this resolution and the sale date of the Notes, and the distribution of the Preliminary Official Statement is hereby authorized and approved. The City will cause a final official statement (the "Official Statement") in substantially the form of the Preliminary Official Statement (with such aforementioned changes) to be prepared and distributed with the Notes upon initial issuance. The Mayor, any member of the City Council, the City Manager, or the Chief Financial Officer of the City is authorized to approve, execute, and deliver the Official Statement on behalf of the City and the execution by such officer shall be deemed conclusive evidence of such approval. The City authorizes the use by the Original Purchasers of the Notes of copies of the Preliminary Official Statement and the Official Statement in connection with the public offering and sale of the Notes.

Section 7. Authorized Signatures. The Mayor is authorized to issue, sell, and deliver, and the Clerk to attest, by manual signature, the Notes.

Section 8. Selection of Trustee; Trustee Action. The City Manager or the Chief Financial Officer is authorized to receive proposals to act as Trustee from banks authorized to engage in trust business in the State of Arizona. Based on the proposals received, the City Manager or the Chief Financial Officer shall select the Trustee. The City hereby requests the Trustee to take any and all action necessary in connection with the execution and delivery of the Trust Agreement, and the execution, delivery, and sale of the Notes and further authorizes and directs the Trustee and any trustees for any obligations on a parity with the Notes to enter into such agreements as may be reasonable for the administration of the trusts so held.

Section 9. Security. The Notes are payable as to both principal and interest solely from (i) an assignment of all repayment of the funds advanced by the City to the Phoenix if, as and when received by the City from the Phoenix and held on deposit in the Advance Account (as defined in the Trust Agreement), and (ii) a pledge of, and lien on, all of the City's unrestricted excise, transaction, franchise, privilege and business taxes, state shared sales and income taxes, state shared vehicle license taxes, fees for licenses and permits, fines, forfeitures and state revenue sharing that are validly imposed by the City or contributed, allocated or paid to the City and not

earmarked by the contributor or the City for a contrary or inconsistent purpose ("Excise Taxes"). Excise Taxes shall not include excise taxes collected and paid to the City under (a) the .25% transaction privilege (sales) and use tax approved by the voters of the City on May 19, 1998 the use of which is restricted to health, safety and other quality of life uses (b) the .30% transaction privilege (sales) and use tax approved by the voters of the City on May 16, 2006 the use of which is restricted to street projects in the City, or (c) any other similar tax restricted as to its use. Excise Taxes shall not include the voter approved (March 10, 2009) allocation of the 3% transient occupancy tax proceeds generated at the Gaylord Hotel and Convention Center site, when built, the use of which will be used for the promotion of tourism in the City.

Section 10. Pledge of Excise Taxes and Protection of Lien on Excise Taxes.

The City shall pledge its Excise Taxes to the amounts to come due under the Trust Agreement. The Trustee and the City will not make or create or suffer to be made or created any assignment or lien having priority or preference over the assignment and lien hereof upon the interests in the Excise Taxes granted under the Trust Agreement or any part thereof. The Trustee and the City will not issue or incur any obligations the payment of which is secured by an equal claim on or interest in Excise Taxes pledged under the Trust Agreement for the Notes except (a) in lieu of, or upon transfer of registration or exchange of, any Note as provided in the Trust Agreement; and (b) additional Notes or Parity Obligations. No Obligation (as defined in the Trust Agreement) with a subordinate lien on Excise Taxes may be accelerated so long as any Note is Outstanding. The pledge of Excise Taxes is on a parity with the existing pledges of Excise Taxes (the "Existing Parity Obligations") as described in the Trust Agreement.

Section 11. Covenant to Levy and Collect. The City shall impose and collect Excise Taxes in each fiscal year in an amount equal to not less than two (2) times the total debt service requirements of the Notes and Parity Obligations for such fiscal year (the "Rate Covenant"). If the City is unable to meet the Rate Covenant in any fiscal year, it shall either impose new Excise Taxes or other City taxes or fees or increase the rates of the Excise Taxes currently imposed in order that (i) the City's Excise Taxes receipts will be sufficient to meet all current year debt service requirements under the Trust Agreement, and (ii) the current year's receipts will be reasonably calculated to attain the Rate Covenant.

Section 12. Parity Obligations. The City reserves the right to issue Parity Obligations payable from and secured by an equal lien on the Excise Taxes with the Notes herein authorized and for the purpose or purposes as specified by law, but no such Parity Obligations shall be issued unless all of the conditions set forth in the Trust Agreement are met.

Section 13. Pledge of Repayments; Protection of Lien on Repayments; Parity Repayment Notes. The City hereby pledges to the payments to come due under the Trust Agreement the Repayments if, as and when received from Phoenix as described in the Trust Agreement. The Trustee and the City will not make or create or suffer to be made or created any assignment or lien having priority or preference over the assignment and lien hereof upon the interests in the Repayments granted hereby or any part thereof. The Trustee and the City will not issue or incur any obligations the payment of which is secured by an equal claim on or interest in the Repayments pledged hereunder except in lieu of, or upon transfer of registration or exchange of, any Notes as provided herein and except for Parity Repayment Notes. The City reserves the right to issue Parity Repayment Notes secured on a parity with the Notes and all outstanding

Parity Repayment Notes with respect to the lien of Excise Taxes and secured also by the Repayments, for the purpose of funding additional Advances or to refund prior Notes or Parity Repayment Notes, and to pay the costs of issuance with respect to such Parity Repayment Notes; but no such additional Parity Repayment Notes shall be issued unless all of the conditions set forth in the Trust Agreement are met.

Section 14. Use of Proceeds. The Notes are being issued for the purpose of making the Advance for the acceleration of the Project.

Section 15. Resolution a Contract. This resolution shall constitute a contract between the City and the registered owners of the Notes and shall not be repealed or amended in any manner which would impair, impede, or lessen the rights of the registered owners of the Notes then outstanding.

Section 16. Execution of Documents. The Mayor, the Clerk, the City Manager, and the Chief Financial Officer and the other officers of the City, on behalf of the City, are each hereby authorized and directed, without further order of the City Council, to execute and deliver such certificates, proceedings and agreements as may be necessary or convenient to be executed and delivered on behalf of the City, to evidence compliance with, or further the purposes of, all the terms and conditions of this resolution and the consummation of the transactions contemplated by the Preliminary Official Statement.

Section 17. 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 Mayor and Council hereby declare that the City would have adopted this resolution and each and every other section, paragraph, subdivision, sentence, clause, or phrase hereof and authorized the issuance of the Notes 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 18. Ratification of Actions. All actions of the officers and agents of the City which conform to the purposes and intent of this resolution and which further the issuance and sale of the Notes as contemplated by this resolution whether heretofore or hereafter taken shall be and are hereby ratified, confirmed, and approved. The proper officers 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.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, on October 19, 2015.

ATTEST:



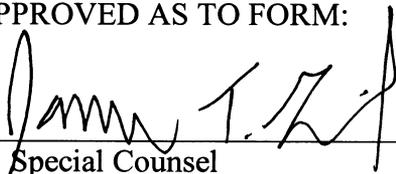
Vice-Mayor



City Clerk



APPROVED AS TO FORM:



Special Counsel

CERTIFICATION

I, Dee Ann Mickelsen, the duly appointed and acting Clerk of the City of Mesa, Maricopa County, Arizona, do hereby certify that the above and foregoing Resolution No. 10698 was duly passed by the City Council of the City of Mesa, Arizona, at a regular meeting held on October 19, 2015, and the vote was 4 aye's and 0 nay's and that the Mayor and ^{Vice-}3 Council Members were present thereat.

DATED October 19, 2015.

Dee Ann Mickelsen
City Clerk