

**RESOLUTION NO. 10202**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AGREEMENT, A TRUST AGREEMENT, A CONTINUING DISCLOSURE CERTIFICATE, AND AN OBLIGATION PURCHASE CONTRACT AND APPROVING AN OFFICIAL STATEMENT; APPROVING THE SALE AND EXECUTION AND DELIVERY OF EXCISE TAX REVENUE OBLIGATIONS, SERIES 2013 EVIDENCING A PROPORTIONATE INTEREST OF THE OWNERS THEREOF IN THE PURCHASE AGREEMENT; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Mesa, Arizona (the "City") desires to finance the acquisition, construction and installation of (i) a new Major League Baseball spring training complex for the initial use by the Chicago Cubs, and (ii) improvements to the City's Hohokam Stadium and practice facilities for the initial use by the Oakland Athletics for spring training purposes (collectively, the "Project"), through the execution and delivery of not to exceed \$101,500,000 Excise Tax Revenue Obligations, Series 2013, (the "Series 2013 Obligations"), which will be dated the date of their initial delivery, by U.S. Bank National Association, as Trustee (the "Trustee") pursuant to a Trust Agreement (the "Trust Agreement") between the Trustee and the City, and evidence a proportionate interest of the owners thereof in a Purchase Agreement (the "Purchase Agreement") between the Trustee and the City; and

**WHEREAS**, a proposal in the form of an Obligation Purchase Contract (the "Obligation Purchase Contract") has been received from Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Company and RBC Capital Markets, LLC (the "Original Purchasers") for the purchase of the Series 2013 Obligations; and

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

- (i) the Purchase Agreement;
- (ii) the Trust Agreement;
- (iii) the Obligation Purchase Contract;
- (iv) the Continuing Disclosure Certificate (the "Continuing Disclosure Certificate") and
- (v) the proposed form of a preliminary form of the Official Statement relating to the Series 2013 Obligations (the "Preliminary Official Statement");

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, THAT:**

**Section 1. Project Financing.** It is hereby found and determined that the financing of the Project pursuant to the terms of the Purchase Agreement, the Trust Agreement and the Obligation Purchase Contract 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.** The City hereby approves the execution and delivery of the Series 2013 Obligations, as hereinafter described, by the Trustee. The Series 2013 Obligations shall be executed in the aggregate principal amount of not to exceed \$101,500,000 to finance the Project. The Series 2013 Obligations 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 Series 2013 Obligations shall bear interest at the rates per annum set forth in the Trust Agreement and the Obligation Purchase Contract, but in no event shall any rate exceed 6.00% per annum. The Series 2013 Obligations shall mature on July 1 in some or all of the years 2021 through and including 2033. The yield on the Series 2013 Obligations as calculated for federal tax purposes shall not exceed 6.00%.

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 Series 2013 Obligations 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 Series 2013 Obligations are hereby awarded to the Original Purchasers pursuant to the Obligation Purchase Contract.

**Section 4. Approval of Documents.** The Mayor, any member of the City Council and the Senior Executive Manager is authorized and directed to, subject to the parameters set forth in this resolution, 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 Purchase Agreement, the Trust Agreement, the Obligation Purchase Contract and the Continuing Disclosure Certificate, in substantially the form of such documents (including the form of the Series 2013 Obligations 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 and the Senior Executive Manager the execution of each such document being conclusive evidence of such approval, and the Mayor, any member of the City Council and the Senior Executive Manager and the Clerk are hereby authorized and directed to execute and deliver, where applicable, or approve the Purchase Agreement, the Trust Agreement, the Obligation Purchase Contract 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 Senior Executive Manager and Clerk are hereby authorized and directed to purchase municipal bond insurance, surety bonds or other credit enhancement as may be deemed appropriate and beneficial to the City by the Senior Executive Manager, 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, 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 to be prepared and distributed with the Series 2013 Obligations upon initial delivery. The Mayor, any member of the City Council and the Senior Executive Manager 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 copies of the Preliminary Official Statement and the Official Statement in connection with the public offering and sale of the Series 2013 Obligations.

**Section 7. Trustee.** The City hereby appoints U.S. Bank National Association as trustee under the Trust Agreement and authorized and directs the Trustee to take any and all action necessary in connection with the execution and delivery of the Purchase Agreement, the Trust Agreement, the Obligation Purchase Contract, and the execution, delivery and sale of the Series 2013 Obligations and further authorizes and directs the Trustee and any trustees for any obligations on a parity with the Series 2013 Obligations to enter into such agreements as may be reasonable for the administration of the trusts so held.

**Section 8. Pledge of Excise Taxes.** Pursuant to the Purchase Agreement and the Trust Agreement, the City shall pledge its unrestricted excise, transaction, franchise, privilege and business taxes, state shared sales and income taxes, state shared vehicle license taxes, fees for license 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 (collectively, “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. The City’s obligation to make the payments under the Purchase Agreement or the Trust Agreement does not constitute an obligation of the City or the State of Arizona, or any of its political subdivisions, for which the City or the State of Arizona, or any of its political subdivisions, is obligated to levy or pledge any form of ad valorem property taxation nor does the obligation to make any payments under the

Purchase Agreement or the Trust Agreement constitute an indebtedness of the City or of the State of Arizona or any of its political subdivisions within the meaning of the Constitution of the State of Arizona or otherwise. 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 9. Continuation of Excise Tax; Rate Covenant.** Pursuant to the Purchase Agreement, the City will covenant and agree that the Excise Taxes which it presently imposes will continue to be imposed in each fiscal year so that the amount of Excise Taxes, all within and for such fiscal year, shall be equal to at least two (2) times the total of the all Debt Service requirements for all outstanding Series 2013 Obligations and other Outstanding Parity Obligations (as defined in the Trust Agreement) payable during such fiscal year. The City further covenants and agrees that if such receipts for any such fiscal year shall not equal two (2) times such Debt Service for the current fiscal year, City will promptly impose new taxes of the type included within the definition of "Excise Taxes" or other City taxes or fees, or increase the rates for the Excise Taxes currently imposed in order that (i) the current receipts will be sufficient to meet such all such requirements under the Trust Agreement and (ii) the current year's receipts will be reasonably calculated to attain the level as required above for the succeeding fiscal year's Debt Service requirements of the Series 2013 Obligations and Parity Obligations. For the purpose of this pledge, Debt Service will be determined as set forth in the Purchase Agreement.

**Section 10. Resolution Irrepealable.** After any of the Series 2013 Obligations are delivered by the Trustee to the Original Purchaser thereof upon receipt of payment therefor, this resolution shall be and remain irrepealable until the Series 2013 Obligations and the interest and premium, if any, thereon shall have been fully paid and discharged.

**Section 11. Execution of Documents.** The Mayor, the Clerk, the Senior Executive Manager and the other officers of the City, on behalf of the City, are each hereby authorized and directed, without further order of the Mayor and 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, the Trust Agreement, the Purchase Agreement, the Obligation Purchase Contract, the Continuing Disclosure Certificate and the consummation of the transactions contemplated by the Preliminary Official Statement.

**Section 12. 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 sale and execution and delivery of the Series 2013 Obligations as contemplated by this resolution whether heretofore or hereafter taken 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.

**Section 13. Severability.** If any section, paragraph, clause or phrase of this resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or phrase shall not affect any of the remaining provisions of this resolution.

**Section 14. Waiver.** 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 15. Emergency Clause.** The exigencies of the municipal bond market, and the need for an immediate sale and early closing to secure the most favorable interest rates on the Series 2013 Obligations require that the Series 2013 Obligations be issued and delivered as soon as possible. The immediate operation of the provisions of this Resolution is necessary for the preservation of the public peace, health and safety 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 Mayor and the City Council and it is hereby excepted from the referendum provisions of the Constitution.

**PASSED, ADOPTED AND APPROVED** by the Mayor and Council of the City of Mesa, Maricopa County, Arizona, on this 18<sup>th</sup> day of March, 2013.

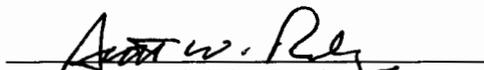
  
\_\_\_\_\_  
Mayor

ATTEST:

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



APPROVED AS TO FORM:

  
\_\_\_\_\_  
Special Counsel

### CERTIFICATION

I, Dee Ann Mickelsen, hereby certify that the foregoing Resolution No. 10202 was duly passed and adopted by the Mayor and Council of the City of Mesa, Arizona, at a meeting held on March 18, 2013, and the vote was 7 aye's and 0 nay's and that the Mayor and 6 Council members were present thereat.

DATED: March 18, 2013

  
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Interim Clerk, City of Mesa, Arizona