

RESOLUTION NO. _____

RESOLUTION PROVIDING FOR THE ISSUANCE AND SALE OF \$20,000,000 AGGREGATE PRINCIPAL AMOUNT OF HIGHWAY PROJECT ADVANCEMENT NOTES, SERIES 2009; MAKING A PLEDGE OF EXCISE TAXES AND REPAYMENTS TO THE REPAYMENT OF THE NOTES; ACCEPTING A PROPOSAL FOR THE PURCHASE OF THE SERIES 2009 NOTES; APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF A TRUST AGREEMENT; APPROVING THE DISTRIBUTION OF AN OFFICIAL STATEMENT IN CONNECTION WITH THE ISSUANCE AND SALE OF THE SERIES 2009 NOTES HEREIN AUTHORIZED; RATIFYING THE ACTIONS OF CITY OFFICERS AND AGENTS CONCERNING THE SERIES 2009 NOTES AND THE DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT PERTAINING TO THE SERIES 2009 NOTES; AND PROVIDING CERTAIN TERMS, COVENANTS AND PROVISIONS REGARDING THE SERIES 2009 NOTES AND DECLARING AN EMERGENCY.

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

WHEREAS, pursuant to A.R.S. Sections 9-500.17, 11-952, 28-7677 and City Charter Article I, Section 103, as amended, the City may enter into agreements with the State of Arizona, acting through the Arizona Department of Transportation ("ADOT") for the acceleration of right-of-way acquisition and the design of eligible highway projects as defined in A.R.S. Sections 9-500.17 and 28-7671, as amended, and highway projects as defined in A.R.S. Section 28-7681, as amended, by advancing funds to ADOT 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 acquisition of necessary right-of-way and the design of highway improvements to State Route 802 between State Route 202L and Ellsworth Road in the City (the "Project") by advancing funds to ADOT (each advance a "City Advance") pursuant to an Intergovernmental Agreement by and between the City, ADOT and the Maricopa Association of Governments ("MAG") (as amended or supplemented, the "IGA") and does determine that the advancement of the principal amount not to exceed \$45,000,000 for the Project is currently feasible (such portion of the advancement is referred to herein as the "City Advance"); and

WHEREAS, the City, ADOT and MAG may add additional highway improvements to the IGA or enter into one or more additional intergovernmental agreements for advancing funds by the City to ADOT for highway improvements and such additional improvements (provided they are eligible highway projects as defined in A.R.S. Sections 9-500.17 and 28-7671, as amended, and highway projects as defined in A.R.S. Section 28-7681, as amended) shall be deemed part of the Project for all purposes hereof and such additional agreements shall be deemed part of the IGA for all purposes hereof; and

WHEREAS, ADOT is obligated to repay the City Advance and any other City Advance as described in the IGA (such repayments are referred to herein as the "Repayments");

and

WHEREAS, the Project is an eligible highway project as defined in A.R.S. Sections 9-500.17 and 28-7671, as amended, and a highway project as defined in A.R.S. Section 28-7681, as amended; 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 \$45,000,000 (the "Notes") be issued for the purpose of funding the City Advance; and

WHEREAS, the City expects to sell the Notes in two separate series. The first series, the Series 2009 Notes, will be issued in a principal amount not to exceed \$20,000,000 (the "Series 2009 Notes"). The City anticipates selling the second series of Notes in May, 2010.

WHEREAS, the Notes will be issued pursuant to a Trust Agreement (the "Trust Agreement") between U.S. Bank National Association (the "Trustee") and the City; 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 ADOT, 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, 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 Series 2009 Notes authorized herein;

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

Section 1. Advance and Financing Approved. It is hereby found and determined that making the City Advance and the financing of the City Advance and costs related thereto pursuant to the terms of the Trust Agreement is in the best interest of and in furtherance of the purposes of the City and in the public interest.

Section 2. Issuance of the Series 2009 Notes and Terms.

A. The Series 2009 Notes hereby authorized to be issued shall be designated City of Mesa, Arizona Highway Project Advancement Notes, Series 2009 (the "*Series 2009 Notes*"). The Series 2009 Notes in the aggregate principal amount of \$20,000,000 are hereby authorized to be issued and delivered to the Purchaser set out in Section 9 of this Resolution. The Series 2009 Notes will mature on July 1 in the year and amount and will bear interest at the rate as follows:

<u>Maturity Date</u> <u>(July 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
2015	\$20,000,000	___%

The times and amounts of the advancement of the City Advance, the forms, terms, interest payment dates, provisions for redemption, and other provisions of the Series 2009 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. Security. The Series 2009 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 State of Arizona if, as and when received by the City from the State of Arizona and held on deposit in the 2009 Advancement Fund (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 a political subdivision or contributed, allocated or paid to the political subdivision and not earmarked by the contributor or the political subdivision 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 4. 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 any obligations the payment of which is secured by an equal claim on or interest in Excise Taxes pledged under the Trust Agreement except (a) in lieu of, or upon transfer of registration or exchange of, any Series 2009 Note as provided in the Trust Agreement; and (b) Parity Obligations. No Obligation with a subordinate lien on Excise Taxes may be accelerated so long as any Note is Outstanding.

Section 5. 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 Series 2009 Notes 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 6. Additional Obligations. The City reserves the right to issue additional notes, bonds or obligations payable from and secured by an equal lien on the Excise Taxes with the Series 2009 Notes herein authorized and for the purpose or purposes as specified by law, but no such additional notes shall be issued unless all of the conditions set forth in the Trust Agreement are met.

Section 7. 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 ADOT 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 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 Series 2009 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 Series 2009 Notes and all Parity Obligations with respect to the lien of Excise Taxes and secured also by the Repayments, for the purpose of funding additional City Advances (as defined in the Trust Agreement) 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 8. Use of Proceeds. The Series 2009 Notes are being issued for the purpose of providing funds to the ADOT for the acceleration of right-of-way acquisition and design of highway improvements to State Route 802 between State Route 202L to Ellsworth Road in the City.

Section 9. Acceptance of Final Bid. The bid of _____ (the "*Purchaser*"), which is on file with the City Clerk, is hereby accepted as the lowest net interest cost to the City and the Series 2009 Notes are hereby ordered sold to such purchaser in accordance with the terms of such bid and the terms and conditions of the Notice Inviting Bids for the Purchase of Series 2009 Notes.

The Deputy City Manager is hereby authorized and directed to cause the Series 2009 Notes to be delivered to or upon the order of the purchaser upon receipt of payment therefor and satisfaction of the other conditions for delivery thereof in accordance with the terms of the sale.

Section 10. Trustee. Initially, U.S. Bank National Association, Phoenix, Arizona, will act as, and is hereby designated as, the Trustee with respect to the Series 2009 Notes. Any entity into which the Trustee is merged or consolidated shall continue as the Trustee hereunder without notice to the owners of Series 2009 Notes or any further action by the City. The City may change the Trustee without notice to or consent of owners of the Series 2009 Notes and the City may act in any such capacity.

The Trust Agreement in substantially the form on file with the Clerk is hereby approved and the Mayor, any other member of the City Council or the Deputy City Manager is authorized to approve the final rate, interest payment dates, maturity date, maturity amount, any redemption terms, and any other deletions, additions or modifications to the Trust Agreement, the execution of the Trust Agreement and such other documents being conclusive evidence of such approval, and the Mayor, any other member of the City Council or the Deputy City Manager are hereby authorized and directed to execute and deliver, where applicable, or approve the Trust Agreement and such other documents.

The Trustee shall authenticate Series 2009 Notes for original issue up to \$20,000,000 in aggregate principal amount upon the written request of the Deputy City Manager. The aggregate principal amount of Series 2009 Notes outstanding at any time may not exceed that amount except for replacement Series 2009 Notes as to which the requirements of the Trustee and the City are met.

The City Council hereby requests the Trustee to take any and all action necessary in connection with the execution, delivery or receipt, as applicable, of the Trust Agreement and the execution, delivery and sale of the Series 2009 Notes.

Section 11. Official Statement. The preparation, completion, use and distribution of the Preliminary Official Statement dated October 21, 2009 (the "*Preliminary Official Statement*"), pertaining to the original issuance of the Series 2009 Notes in the form now on file with the City Clerk is approved as a "deemed final" official statement (excepting permitted omissions), by the City as of its date for purposes of Securities and Exchange Commission Rule 15c2-12 (the "*Disclosure Rule*"). Either the Mayor or the Deputy City Manager is hereby authorized to certify or represent that the Official Statement is "final" for purposes of the Disclosure Rule. Such approval of the Preliminary Official Statement by either the Mayor or Deputy City Manager shall constitute the approval and designation by the City of the Preliminary Official Statement as a deemed final Official Statement for all purposes of the Disclosure Rule. Either the Mayor or Deputy City Manager is authorized on the City's behalf to complete a final official statement to be dated on or about the date hereof, and in substantially the form of the Preliminary Official Statement (the "*Final Official Statement*"). (The Preliminary Official Statement and the Final Official Statement are collectively referred to herein as the "*Official Statement*".) The Final Official Statement shall contain such modifications, changes and supplements as either the Mayor or Deputy City Manager shall approve or authorize as necessary to make true and accurate the information contained therein. Either the Mayor or Deputy City Manager is hereby authorized to execute and deliver to the Purchaser the Final Official Statement.

Either the Mayor or Deputy City Manager is further authorized to use and distribute, or authorize the use and distribution of, the Final Official Statement and supplements

thereto concerning the original issuance of the Series 2009 Notes as may in the Mayor's or Deputy City Manager's judgment be necessary or appropriate.

The Mayor, City Clerk or Deputy City Manager is also authorized to sign and deliver, on the City's behalf and in their official capacities, such certificates concerning the accuracy of the Final Official Statement and any amendment thereto as may, in their judgment, be necessary or appropriate.

Section 12. Continuing Disclosure Undertaking. In order to comply with the provisions of the Disclosure Rule, the Deputy City Manager is hereby authorized and directed to prepare, execute and deliver on behalf of the City a written undertaking or agreement for the benefit of the owners of the Series 2009 Notes. The written undertaking or agreement shall contain such terms and provisions as are necessary to comply with the Disclosure Rule including, but not limited to (i) an agreement to provide the Municipal Securities Rulemaking Board's (the "MSRB") Electronic Municipal Market Access System ("EMMA") the financial information or operating data presented in the Final Official Statement as determined by the Deputy City Manager and the annual audited financial statements of the City and (ii) an agreement to provide material events disclosure to the MSRB's EMMA.

Section 13. Resolution a Contract. This resolution shall constitute a contract between the City and the registered owners of the Series 2009 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 Series 2009 Notes then outstanding.

Section 14. Officers Authorized. The Mayor, any other member of the City Council, City Attorney, or the Deputy City Manager, and any other person authorized by the Mayor, any other member of the City Council, City Attorney, or the Deputy City Manager, 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 Official Statement. In the event that the Mayor is unavailable, any other member of the City Council may discharge the duties of Mayor hereunder.

Section 15. 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 Series 2009 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 16. 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 Series 2009 Notes as contemplated by this resolution whether heretofore or hereafter taken shall be and are hereby ratified, confirmed and approved. Any change made in the

Notice Inviting Proposals for the Purchase of Series 2009 Notes which do not conform to the prior order of this Mayor and Council are hereby ratified. 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 17. Qualified Tax-Exempt Obligations. The Series 2009 Notes are not "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code.

Section 18. 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 2009 Notes require that the Series 2009 Notes 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 Council and it is hereby excepted from the referendum provisions of the Constitution.

PASSED AND ADOPTED by the Mayor and Council of the City of Mesa, Arizona, on October 29, 2009.

ATTEST:

Mayor

City Clerk

APPROVED AS TO FORM:

Bond Counsel

CERTIFICATION

I, Linda Crocker, the duly appointed and acting Clerk of the City of Mesa, Arizona, do hereby certify that the above and foregoing Resolution No. _____ was duly passed by the City Council of the City of Mesa, Arizona, at a regular meeting held on October 29, 2009, and the vote was ____ aye's and ____ nay's and that the Mayor and ____ Council Members were present thereat.

DATED: October 29, 2009.

City Clerk