

INTERGOVERNMENTAL AGREEMENT NO. _____
BETWEEN
THE CITY OF PHOENIX
AND
THE CITY OF MESA
FOR ADMINISTRATION OF
WATER – USE IT WISELY™ ADVERTISING MATERIALS AND CAMPAIGN

This Intergovernmental Agreement (“Agreement”) is made and entered into this _____ day of _____, 2017, pursuant to Arizona Revised Statutes (A.R.S.) §11-952 *et seq.*, between the City of Phoenix (“Phoenix”), and the City of Mesa (“Mesa”). These entities are also collectively referred to in this Agreement as the “Parties.”

RECITALS

WHEREAS, Mesa is authorized by City Charter, Article 1, Section 103, to enter into this Agreement; and

WHEREAS, Phoenix is authorized by City Charter, Chapter 2, Section 2 to enter into this Agreement; and

WHEREAS, Mesa is party to agreements for advertising services with Park&Co (“Park”), an Arizona corporation, which led to the development of the **Water – Use It Wisely™** Advertising Materials and Campaign; and

WHEREAS, pursuant to the agreements with Park, Mesa has the perpetual right to use, publicly display, reproduce in the same or other mediums, and modify the Advertising Materials, both within and outside the State of Arizona, as well as the right to authorize other persons, governments, corporations, or other entities located in Arizona the right to use, publicly display, reproduce in the same or other mediums, and modify the Advertising Materials, provided that such third party use of the Advertising Materials is limited to areas within Arizona, subject to limitations by virtue of the rights of third parties where applicable; and

WHEREAS, Phoenix and Mesa are partners and have participated in the water conservation messaging media Campaign using the **Water – Use It Wisely™** Advertising Materials which focuses on the Regional Campaign Area; and

WHEREAS, Phoenix and Mesa, in addition to the other partners, receive substantial benefit from cooperative administration related to the Campaign, including reduced costs derived from consolidating billing, increased leverage with electronic and print media providers, improved efficiency, and increased dissemination and effectiveness of the Campaign; and

WHEREAS, Phoenix and Mesa desire to enter into this Intergovernmental Agreement whereby Phoenix will provide Mesa with funds for the Campaign, and Mesa will act as lead agent in allocating and administering the payment of such funds, which will benefit Phoenix, Mesa and the Campaign;

NOW, THEREFORE, the Parties, in consideration of the mutual covenants and promises contained in this Agreement and other good and valuable consideration, the Parties agree to the following Terms & Conditions:

TERMS & CONDITIONS

1. DEFINITIONS

“Account Services” means costs incurred for the purpose of managing Campaign accounts and Campaign administration.

“Advertising Materials” means “**Water – Use It Wisely™**” related print, broadcast, website, collateral and other marketing pieces developed for the purpose of advertising the Campaign.

“Authorized Representative” shall mean the representatives of Phoenix and Mesa appointed pursuant to Section 10 to administer certain provisions of this Agreement.

“Campaign” means the water conservation media activities supported by the Arizona **Water – Use It Wisely™** public and private sector partners within the greater Phoenix metropolitan area, including the Cities of Phoenix and Mesa (“Regional Campaign Area”).

“Direct Advertising Costs” means Campaign costs directly allocable to print and broadcast media. Direct Advertising Costs do not include costs incurred for the actual development of Advertising Materials such as television or radio spots.

2. RESPONSIBILITIES OF BOTH PARTIES

- 2.1 Both parties through their Authorized Representatives shall adopt and accept an Annual **Water – Use It Wisely™** Implementation Plan (AIP) prior to June 30 each year. Each AIP shall, at a minimum, identify the proposed budget and campaign directives to be implemented during the following fiscal year.
- 2.2 The AIP for the Fiscal Year 2017-2018 is attached hereto and incorporated herein as **Exhibit A** and is hereby accepted upon the effective date of this Agreement.

3. RESPONSIBILITIES OF PHOENIX

- 3.1 Upon acceptance of each AIP by its Authorized Representative, Phoenix agrees to provide to Mesa an annual contribution in an amount not to exceed \$142,500 (“Phoenix Contribution”) each fiscal year for the term of this Agreement.
- 3.2 Phoenix shall remit payment of the Phoenix Contribution no later than September 15 each year, or within 30 days of receipt of each invoice submitted by Mesa in accordance to the provisions of Section 4.1.
- 3.3 Phoenix shall further continue to participate and provide direction to the Campaign.

4. RESPONSIBILITIES OF MESA

- 4.1 Upon acceptance of each AIP Mesa, through its Authorized Representative, shall submit to Phoenix an invoice for the Phoenix Contribution.
- 4.2 Mesa, through its Authorized Representative, will act as lead agent in allocating and administering the payment of the Phoenix Contribution in accordance with the AIP.
- 4.3 Mesa, through its Authorized Representative, shall provide Phoenix an annual itemized fiscal year expense report on or before August 1st. The expense report shall, at a minimum, clearly indicate for each expenditure that included allocations from the Phoenix Contribution to the Campaign; the amount of money expended, and the purpose of the expenditure. Thereafter, Phoenix shall have 15 days to provide Mesa notice of any exceptions to the report and request an audit thereof.

If such notice and request is not received, the report shall be deemed in proper form.

4.4 At the end of each fiscal year, any unexpended Phoenix Contribution funds shall be applied toward and incorporated into the AIP of the following year.

4.5 Upon the expiration or termination of this Agreement, Mesa shall return any unexpended and unallocated Phoenix Contribution funds to Phoenix within 30 days.

5. **Water – Use It Wisely™ ADVERTISING MATERIALS**

To the extent permitted by law, and subject to the limitations set forth in the Agreement between Mesa and Park dated November 2, 1999 attached hereto and incorporated herein as ***Exhibit B***, during the term of this Agreement and surviving for a period of five (5) years thereafter, Phoenix shall have a nonexclusive authorization from Mesa to use, to publicly display, and reproduce in the same or other mediums, and, subject to approval by Mesa's Authorized Representative, which will not be unreasonably withheld, to modify any Advertising Materials, which right shall be limited to areas within the State of Arizona.

6. **CLAIMS AGAINST PHOENIX - INDEMNIFICATION**

To the extent permitted by law, Mesa agrees to indemnify and hold harmless Phoenix and its elected or appointed officials, agents, boards, commissions, employees and representatives, from all suits, including attorney's fees and cost of litigation, actions, loss, damage, expense, cost or claims of any character or any nature arising out of or in connection with any negligent act or willful misconduct of Mesa, its agents or employees, and of any subconsultant, its agents and employees, in the course of the performance or non-performance of any work under the provisions of this Agreement which results directly or indirectly in the injury to, or death of any person or persons, and or damage to property, or arising out of the failure of Mesa or those acting under Mesa to conform to any statute, ordinance, regulation, law or court decree.

7. **CLAIMS AGAINST MESA – INDEMNIFICATION**

To the extent permitted by law, Phoenix agrees to indemnify and hold harmless Mesa

and its elected or appointed officials, agents, boards, commissions, employees and representatives, from all suits, including attorney's fees and cost of litigation, actions, loss, damage, expense, cost or claims of any character or any nature arising out of or in connection with any negligent act or willful misconduct of Phoenix, its agents or employees, and of any subconsultant, its agents and employees, in the course of the performance or non-performance of any work under the provisions of this Agreement which results directly or indirectly in the injury to, or death of any person or persons, and or damage to property, or arising out of the failure of Phoenix or those acting under Phoenix to conform to any statute, ordinance, regulation, law or court decree.

8. AUDIT/RECORDS

Each party reserves the right at reasonable times to inspect the other party's books and records related to this Agreement. All records pertaining to this Agreement shall be kept by the Parties on a generally accepted accounting basis for a period of three (3) years following termination of the Agreement.

9. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the Parties and their successors. Neither Party may assign its rights or obligations under this Agreement.

10. AUTHORIZED REPRESENTATIVES AND NOTICES

Mesa and Phoenix shall each appoint an Authorized Representative to administer the provisions of this Agreement, and notify each other of those appointments. All decisions required to be made by the Authorized Representative shall be in writing. Each party shall notify the other party to this Agreement of any change in the identity of its Authorized Representative. The initial Authorized Representatives are designated below:

To: City of Mesa
Ms. Donna DiFrancesco
Conservation Coordinator
Environmental Management & Sustainability Department
300 E 6th Street
P. O. Box 1466
Mesa, AZ 85211
Telephone: (480) 644-3334
Fax: (480) 644-4774
Email: donna.difrancesco@mesaaz.gov

City of Phoenix
Mr. Christian Delgado
Water Resource Specialist
Water Services Department
200 W. Washington Street, 9th Floor
Phoenix, AZ 85003
Telephone: (602) 534-5814
Fax: (602) 534-4849
Email: christian.delgado@phoenix.gov

11. GOVERNING LAW; FORUM; VENUE

This Agreement is executed and delivered in the State of Arizona, and the substantive laws of the State of Arizona (without reference to choice of law principles) shall govern their interpretation and enforcement. Any action brought to interpret or enforce any provision of this Agreement that cannot be administratively resolved, or otherwise related to or arising from this Agreement, shall be commenced and maintained in the Superior Court of the State of Arizona, Maricopa County, and each of the parties, to the extent permitted by law, consents to jurisdiction and venue in such courts for such purposes.

12. MODIFICATION

This Agreement contains the entire understanding between the Parties. Any amendment or modification of this Agreement shall be in writing and effective upon proper signature of the Parties.

13. CONFLICT OF INTEREST

This Agreement is subject to cancellation by either Party pursuant to A.R.S. § 38-511.

14. SEVERABILITY

In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not affect the validity or enforceability of any other provision hereof.

15. IMMIGRATION; E-VERIFY

To the extent provisions of A.R.S. § 41-4401 are applicable, all Parties warrant to each Party that they will comply with all Federal Immigration laws and regulations that relate

to their employees and that each now complies with the E-Verify Program under A.R.S. § 23-214(A). A breach of this warranty will be considered a material breach of this Agreement and may subject the breaching party to penalties up to and including termination of this Agreement. All of the Parties retain the legal right to inspect the papers of any employee who works pursuant to this Agreement or any related subcontract to ensure compliance with the warranty given above. Any Party may conduct a random verification of the employment records of any other Party to ensure compliance with this warranty. A Party will not be considered in material breach of this Agreement if it establishes that it has complied with the employment verification provisions prescribed by 8 USCA s1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A). The provisions of this Section must be included in any contract either Party enters into with any and all of its contractors or subcontractors who provide services under this Agreement.

16. NONDISCRIMINATION

The Parties to this Agreement shall comply with all applicable provisions of state and federal non-discrimination laws and regulations including, but not limited to Executive Order 75-5, as modified by Executive Order 99-4, which mandates that all persons, regardless of race, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunities and all other federal and state employment and educational opportunity laws, rules and regulations, including the Americans with Disabilities Act; provided however, an Indian Community is subject to 25 USC § 450e(c). No Party shall engage in any form of illegal discrimination.

17. EFFECTIVE DATE AND TERM OF AGREEMENT

This Agreement shall become effective when it has been signed by the parties and shall expire on June 30, 2022. By mutual written consent of the Parties, the Agreement may be extended for one term of five years.

18. TERMINATION OF AGREEMENT

This Agreement may be terminated either by mutual consent of the parties or by either party giving the other party 30 calendar days' advance written notice of termination of the Agreement.

19. ADDITIONAL PROVISIONS

19.1 The waiver of any breach of this Agreement shall not be deemed to amend this Agreement and shall not constitute waiver of any other subsequent breach.

19.2 Upon execution, this Agreement shall be recorded with the appropriate City Clerk and a copy shall be forwarded to each Party.

19.3 Headings are for convenience and shall not affect interpretation.

(REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

THE CITY OF PHOENIX
a municipal corporation
Ed Zuercher, City Manager

THE CITY OF MESA
a municipal corporation
Chris Brady, City Manager

By: _____

By: _____

ATTEST:

ATTEST:

City Clerk

City Clerk

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with the requirements of Arizona Revised Statutes § 11-952(D), each of the undersigned attorneys acknowledge: (1) that they have reviewed the above Agreement on behalf of their respective clients; and, (2) that, as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

Attorney for City of Mesa

Attorney for City of Phoenix



2017-2018 Fiscal Year
Annual **Water – Use It Wisely™** Implementation Plan

| <u>Campaign Directive</u> | <u>Phoenix Contribution</u> |
|--|-----------------------------|
| Account Services and Planning | \$ 13,000 |
| Website Maintenance/Improvements | \$ 7,000 |
| Social Media Implementation (Facebook, Twitter, blogs) | \$ 45,500 |
| Media Purchases (television, radio) | \$ 71,000 |
| Campaign Marketing (memberships, promotion) | \$ 6,000 |
| TOTAL | \$142,500 |

This AIP is in accordance with the Intergovernmental Agreement between the City of Phoenix and the City of Mesa for Administration of Water—Use It Wisely™ advertising and materials campaign.

Accepted by Authorized City Representatives:

Aug. 2, 2017

Donna DiFrancesco
City of Mesa

Date

8/2/17

Christian Delgado
City of Phoenix

Agreement To
Provide Advertising Services
Between
City of Mesa and Park & Co.

COPY

This Agreement is entered into on the 2 day of November, 1999, by and between the City of Mesa, an Arizona municipal corporation ("City" or "Mesa"), and Park & Co., an Arizona corporation ("Park").

Section 1. Definitions

- 1.1 Act. The term "Act" shall mean the Copyright Act of 1976, as amended.
- 1.2 Advertising Materials. The term "Advertising Materials," as used in this Agreement shall mean all materials prepared under this Agreement, including, without limitation, print, broadcast, website, collateral and other marketing pieces, to advertise the Advertising Product.
- 1.3 Advertising Product. The term "Advertising Product," as used in this Agreement shall mean a water conservation media campaign, including, without limitation, all Advertising Materials.

Section 2. Services

- 2.1 General. Park shall have the responsibility of developing, planning and preparing, with respect to the Advertising Product, an advertising program and Advertising Materials.
- 2.2 Nature of Services. Park shall perform the following services in connection with the developing, planning and preparing of the Advertising Product.
- (a) Study the Advertising Product.
 - (b) Analyze the present and potential market for the Advertising Product.
 - (c) Create, prepare and submit to City for approval, advertising ideas and programs.
 - (d) Employ, on behalf of City, Park's knowledge of available media and means that can be effectively used to advertise the Advertising Product.
 - (e) Prepare and submit to City, for approval, estimates of costs of the recommended advertising programs.
 - (f) Write, design, illustrate or otherwise prepare the Advertising Materials, including advertisements and commercials to be broadcast or other appropriate forms of City's message.
- 2.3 Specific Projects.
- (a) The services set forth in Section 2.2, above shall be performed on a project by project basis. Except as provided 2.3(b), Park shall submit a written estimate for each project to Mesa for its approval. The estimate shall include, without limitation, a description of the services to be performed, a list of all projected costs included in the project and a notification of any third party rights which must be obtained in connection with the project. Park shall not be authorized to

perform work on any such project until after Mesa authorizes such work by signing the written estimate. The terms of each such executed estimate shall be incorporated into this Agreement with this reference.

(b) Mesa hereby authorizes Park to perform the work set forth in the estimate, attached hereto as Exhibit A, and with this reference incorporated herein. Mesa further authorizes and ratifies the work performed by Park for the project of developing the conceptual plan of advertising ideas and programs, including, without limitation, the branding sessions.

2.4 Additional Services. If authorized in an addendum to this Agreement, executed by both parties, Park shall perform the following additional services in connection with the placing of advertising for the Advertising Product:

(a) Order the space, time or other means to be used for advertising the Advertising Product, endeavoring to secure the most advantageous rates available.

(b) Properly incorporate the message in mechanical or other form and forward it with proper instructions for the fulfillment of the order.

(c) Check and verify insertions, displays, broadcasts or other means used, to such degree as is usually performed by agencies.

(d) Audit invoices for space, time, material preparation and services.

Section 3. Compensation

3.1 Conceptual Plan. As compensation for the development of the conceptual plan of advertising ideas and programs, including, without limitation, the branding sessions, Mesa shall pay to Park ten thousand dollars (\$10,000). Park hereby acknowledges and agrees that Mesa has paid said amount in full prior to the date of this Agreement.

3.2 Initial Photography. As compensation for photography of the initial 12 items to be used in the Advertising Materials, as further described in the estimate attached hereto as Exhibit A, Mesa shall pay to Park fifteen thousand dollars (\$15,000).

3.3 Additional Projects. Compensation for all additional projects shall be as set forth in the executed estimate authorizing such work.

Section 4. Commitments to Third Parties

4.1 Purchases. All purchases of materials and services under this Agreement shall be subject to the prior written approval of Mesa. Any rights to such materials and services, if and to the extent acquired, shall vest in Mesa.

4.2 Standards for Purchases. Park, in purchasing any materials or services under this Agreement, shall exercise due care in selecting suppliers and shall make every effort to obtain the lowest price for the desired quality of materials or services. Wherever possible, Park shall obtain competitive bids. In no event shall Park purchase any materials or services from any supplier which is a subsidiary or affiliated company or which is known to Park to be owned or controlled by any of the directors or officers of Park, without making full disclosure to Mesa of any such relationship.

4.3 Discounts. If at any time Park shall obtain discounts or rebates from any supplier, whether based on volume or work given to such supplier by Park or for any other reason, then and in such event, Park shall remit to Mesa within a reasonable time after Park's receipt of such discount or rebate, such proportion thereof as the volume of work given by Park to such supplier on Mesa's behalf bears to the total volume of work given by Park to such supplier from all of Park's clients during the pertinent period to which the discount or rebate is applicable.

4.4 Cancellations. If Mesa shall direct Park to cancel or terminate any previously authorized purchase or project, Park shall promptly take all appropriate action, provided that Mesa shall hold Park harmless with respect to any costs incurred by Park as a result of such cancellation or termination.

Section 5. Indemnification

5.1 Indemnification. Park shall defend, indemnify, and hold harmless Mesa, its Mayor and Council, appointed boards and Commissions, Departments, officials, officers, employees, and agents, individually and collectively, from and against all losses, expenses (including attorney fees), damages, claims, charges, actions or other liabilities of any kind ("Liability"), including, without limitation, Liability for libel, slander, piracy, plagiarism, invasion of privacy, or infringement of copyright, trademark or other intellectual property rights, resulting from or arising out of materials or services provided or prepared under this Agreement, except to the extent that any such Liability arises out of materials or services supplied by Mesa to Park.

Section 6. Insurance

6.1 Insurance. Throughout the term of this Agreement, Artist shall procure and maintain, at its own cost and expense, the following insurance coverages from an insurance carrier approved by Mesa:

(a) Advertising Agency Liability Policy, with limits of not less than \$1,000,000 per occurrence.

6.2 Additional Insureds. Advertising Agency Liability Policy shall name Mesa, its departments, boards, commissions, council members, officials, officers, agents, and employees as additional insureds.

6.3 Special Items. Each insurance policy shall provide the following: (i) the policies cannot be cancelled or substantially modified until and unless ten (10) business days written notice is received by Mesa; (ii) the insurance company shall have no recourse against Mesa for payment of any premium or for assessments under any form of policy; and (iii) the policies are intended as primary coverage for Mesa and that any insurance or self-insurance maintained by Mesa shall apply in excess of the insurance provided by these policies.

6.4 Certificates on File. Certificates of the required insurance coverage shall be furnished to Mesa upon execution of this Agreement and shall be kept current at all times.

Section 7. Term of Agreement, Termination

7.1 Term. The term of this Agreement shall begin on October 1, 1999 and shall continue in full force and effect until terminated by either party upon written notice of such intention given ninety (90) days in advance.

7.2 Termination Under A.R.S. 38-511. Mesa may terminate this Agreement pursuant to A.R.S. 38-511, which states that termination may occur if an employee of Mesa becomes an employee of or consultant to

Artist during the term of this Agreement. Such termination shall be effective upon Artist's receipt of written notice of the termination.

7.3 Termination for Non-appropriation. Mesa is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. In the event that an appropriation is not granted and funds are not otherwise legally available to pay the monies due or to become due under this Agreement, this Agreement shall terminate, without penalty, on the last day of the fiscal period for which funds were legally available.

7.4 Rights Upon Termination.

(a) Upon termination of this Agreement, Park shall transfer, assign and make available to Mesa or Mesa's representative all property and materials, including, without limitation, Advertising Materials in Park's possession or control belonging to Mesa or paid for by Mesa, subject, however, to any rights of third parties of which Park has informed Mesa. Park further agrees to give all reasonable cooperation toward transferring, with the approval of third parties in interest, all contracts and other arrangements with advertising media or others for advertising space, facilities and talent, and other materials yet to be used, and all rights and claims thereto and therein, upon being duly released from the obligation thereof. Mesa agrees and acknowledges that talent contracts with members of certain labor unions or guilds generally cannot be assigned except to signatories to the collective bargaining agreements governing their services rendered by such talent.

(b) Upon termination, no rights or liabilities shall arise out of this relationship, regardless of any plans which may have been made for future advertising, except that any uncancellable contracts made on Mesa's authorization and still existing at termination hereof, which contracts were not or could not be assigned by Park to Mesa or someone designated by Mesa, shall be carried to completion by Park and paid for by Mesa in accordance with this Agreement.

Section 8. Ownership

8.1 Advertising Materials.

(a) All Advertising Materials accepted by Mesa for use in advertising under this Agreement shall be the property of Mesa.

(b) Park shall retain any and all rights Park may have under the Act, or any other intangible property rights in the Advertising Materials, except for the right to use or publicly display the Advertising Materials, or any portion thereof, in the State of Arizona. Park hereby transfers its rights under the Act, and any other intangible property rights, to use or publicly display the Advertising Materials, or any portion thereof, in Arizona. Park reserves the right to resell the Advertising Materials to other persons, governments, corporations, or other entities located outside of Arizona, provided that the use of such Advertising Materials is limited to areas outside of Arizona. Mesa's right to use or publicly display the Advertising Materials in the State of Arizona, or authorize others to do the same, shall be exclusive.

(c) Park hereby grants to City the perpetual right to use, publicly display, reproduce in the same or other mediums, and modify the Advertising Materials, both within and outside of the State of Arizona. Park further grants City the right to authorize other persons, governments, corporations, or other entities located in Arizona the right to use, publicly display, reproduce in the same or other mediums, and modify the Advertising Materials, provided that third party use of such Advertising Materials is limited to areas within Arizona.

(d) Notwithstanding the provisions of this Section 8, Mesa acknowledges and agrees that there may be limitations on the use materials by virtue of the rights of third parties. Park shall notify Mesa of such third parties rights in the written estimate of work, as described in 2.3(a) of this Agreement.

Section 9. Miscellaneous

9.1 Inspection of Books. Park agrees that any and all contracts, correspondence, books, accounts, and other sources of information relating to its performance under this Agreement shall be available for inspection at Park's office by a Mesa authorized representative.

9.2 Engravings. Park shall not be responsible for the return of engravings after their use in publications, unless Mesa requests their return before they are sent to such publications.

9.3 Governing Law. This Agreement shall be interpreted in accordance with the laws of the State of Arizona.

9.4 Confidential Information. Artist agrees that Artist will not disclose directly or indirectly to, or use for the benefit of any third party any secret or confidential information or data acquired by virtue of its relationship with Mesa, without the prior written approval of Mesa or its successor in interest. Confidential information shall include, without limitation, information which concerns the personal, financial, or other affairs of Mesa.

9.5 Assignability. Park shall not assign or otherwise transfer this Agreement or any of its rights or duties under this Agreement, nor pledge or mortgage this Agreement without first obtaining the written consent of Mesa. Any assignment, transfer, pledge, or mortgage of this Agreement by Artist or by operation of law shall be void.

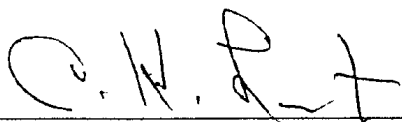
9.6 Entire Agreement, Amendments. This Agreement represents the entire Agreement between the parties with respect to the work to be performed hereunder and supersedes all prior understandings, agreements, and representations. This Agreement may not be amended except through a writing signed by both parties.

9.7 Surviving Provisions. The obligations under Section 5 (Indemnification), Section 7.4 (Rights Upon Termination), Section 8 (Ownership), and Section 9 (Miscellaneous) shall survive expiration or other termination of this Agreement.

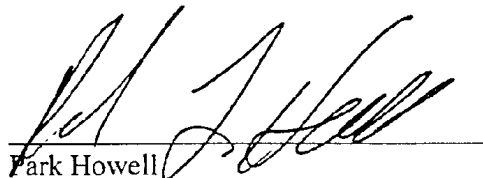
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

City of Mesa

Park & Co.



C.K. Luster
City Manager



Park Howell
President

EXHIBIT A



October 26, 1999

City of Mesa Water Conservation Department

"There are a Number of Ways to Save Water."
Public Information Campaign

4144 North 44th Street
Suite A-2
Phoenix, AZ 85018

602 957.7323
fax 957.6333
parkandco.com

Initial Photography Scope of Work

For \$15,000, the City of Mesa (the client) is purchasing the lifetime rights for the state of Arizona (see contract) to use of the following list of photographs which represents our initial photography needs as discussed with the client. The final device photographed may vary from the list following prior approval from the client.

| <u>Message</u> | <u>Device</u> |
|--|---------------------------------|
| 1. Fix leaking toilets | Food coloring |
| 2. Take shorter showers | Clock |
| 3. Fix leaking faucets | Ears |
| 4. Desert plants | Plant |
| 5. Sweep patios & driveways | Push broom |
| 6. Use a nozzle for your hose | Nozzle |
| 7. Adjust lawn sprinklers | Calendar |
| 8. Wash full loads | Overflowing stacks of dishes |
| 9. Don't throw garbage in toilet | Wastebasket |
| 10. Turn off water when brushing or shaving | Toothbrush |
| 11. Pay attention to your water consumption | Water meter or Water bill |
| 12. Low-flow shower head | Bar of soap |

Park&Co will retain possession of the photo transparencies for production use as long as the company is agency-of-record for the client. Upon termination of the client/agency relationship, Park&Co will surrender all photo transparencies to the City of Mesa.

**ATTACHMENT 1
TO EXHIBIT A**

City of Mesa

Agreement for Use of Photographs

This Agreement is made and entered into this 28 day of October 1999, by and between the City of Mesa, an Arizona Municipal Corporation ("Mesa" or "City"), whose address is P.O. Box 1466, Mesa Arizona 85211-1466 and Bill McKellar, an individual ("Photographer"), whose address is 1003 E. SAEMAN ST.
PHOENIX, AZ. 85006

Recitals:

- A. City is purchasing the rights to twelve (12) photographs taken by photographer as part of City's water conservation media campaign ("Photographs").
- B. City and Photographer desire to enter into this Agreement to authorize and govern the use of the Photographs.

Agreement:

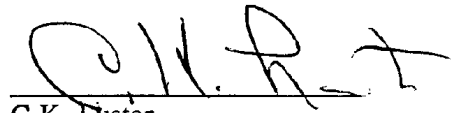
1. Reservation of Rights. Photographer shall retain all rights it may have under the Copyright Act of 1976, as amended, (the "Act") in the Photographs.
2. Grant of License. Photographer hereby grants to the City the perpetual, unlimited, right to use, reproduce in the same or other mediums, modify and publicly display the Photographs. Such rights shall include, without limitation, the right to use final prints or reproductions for the City's advertising and promotion campaigns, for display and for educational purposes, in, as way of example and not limitation, billboards, pamphlets, catalogues, websites, annual reports, and television or video media. The right to publicly display the Photographs is granted only for display within the State of Arizona; provided, however, that the display of the Photographs on a City website shall be deemed to be a public display within the State of Arizona.
3. Exclusive License. Except as provided in this Section 3, the right to publicly display the Photographs within the State of Arizona, granted to City in Section 2 above, shall be exclusive. The display of the Photographs on a website for a person, government, corporation, or other entity located within the State of Arizona shall be deemed to be a public display within the State of Arizona. Photographer shall have the right to authorize the public display of the Photographs outside the State of Arizona, and such right shall included the right to authorize use on a website for a person, government, corporation, or other entity not located within the State of Arizona.
4. Use Other than by City. City shall have the right to authorize other persons, governments, corporations, or other entities located in Arizona to exercise the rights granted to City in Section 2 of this Agreement. The right to publicly display the Photographs within the State of

Arizona shall include, without limitation, the right for such persons, governments, corporations, or other entities located in Arizona to display the Photographs on their websites.

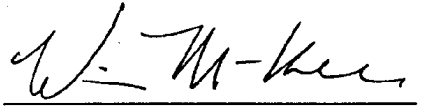
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

City of Mesa:

Photographer:

A handwritten signature in black ink, appearing to read "C.K. Luster", written over a horizontal line.

C.K. Luster
City Manager

A handwritten signature in black ink, appearing to read "Bill McKeller", written over a horizontal line.

Bill McKeller