

**STATE OF ARIZONA
DEPARTMENT OF WATER RESOURCES
1110 West Washington Street
Phoenix, Arizona 85007**

This Agreement is entered into by **CITY OF MESA** ("MESA"), and the **DIRECTOR** of the **ARIZONA DEPARTMENT OF WATER RESOURCES** ("DEPARTMENT"), pursuant to A.R.S. § 11-952.

This document, including the General Provisions, Special Provisions, Scope of Service, and any attachments, shall constitute the entire agreement between the parties and supersedes all other understandings, oral or written.

Service: Water - Use It Wisely (WUIW)

Term: Effective through September 30, 2021

Amount: \$100,000 (Phoenix AMA Water Management Assistance Program Fund – Installment)

The parties hereto agree to carry out the Provisions of this Agreement.

CITY OF MESA

ARIZONA DEPARTMENT OF WATER RESOURCES

Signature of Authorized Individual Date

Christopher J. Brady

Typed Name

City Manager

Typed Title

Signature of Authorized Individual Date

Thomas Buschatzke

Typed Name

Director

Typed Title

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THIS AGREEMENT CONSISTS OF:

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GENERAL PROVISIONS

1. GENERAL REQUIREMENTS:

- 1.1. This Agreement shall be interpreted in accordance with Arizona law.
- 1.2. The parties shall obtain and maintain all licenses, permits and authority necessary to perform their obligations pursuant to this Agreement, and shall comply with all applicable state, federal and local laws, including but not limited to those regarding unemployment insurance, disability insurance and worker's compensation. This Agreement does not relieve either party from any obligation or responsibility imposed upon it by law.
- 1.3. Neither party shall be considered an officer, employee or agent of the other. No monitoring or supervisory responsibility over the other party's activities arises on the part of the other arises or as a result of, or pursuant to, this Agreement other than as expressly provided herein.
- 1.4. In this Agreement, Special Provisions alter the General Provisions. If the Special Provisions conflict with the General Provisions, the Special Provisions shall govern. If the Scope of Services conflicts with either the Special Provisions or the General Provisions, the terms of the Scope of Services shall govern.
- 1.5. The provisions of this Agreement are severable to the extent that if any provision is held unenforceable under applicable law, the remaining provisions of the Agreement shall remain in effect.

2. BOOKS, RECORDS AND INSPECTION:

All books, accounts, reports, files and other records relating to the Agreement shall be subject at all reasonable times to inspection and audit by the State of Arizona and the Department for five (5) years after completion of the Agreement. Such records shall be produced at such state offices as are designated by the State of Arizona and the Department.

3. INDEMNIFICATION:

Each party to this Agreement is independently responsible in the event of its own negligence. Neither party agrees to indemnify the other party.

4. RESOLUTION OF DIFFERENCES:

- 4.1. The parties agree to resolve all conflicts to the maximum extent possible through cooperation and coordination of the respective party's staff. If staff is unable to resolve any dispute, it shall be submitted for resolution to the Department of Water Resources' Water Planning Division Assistant Director.
- 4.2. Disputes arising out of this Agreement are subject to arbitration to the extent required by A.R.S. § 12-133 and § 12-1518. Disputes not subject to arbitration are subject to the jurisdiction of the Maricopa County Superior Court.
- 4.3. The waiver of any breach or default of any of the provisions of this Agreement shall not be construed as a waiver of any succeeding breach of the same or other provisions; nor shall any delay or omission on the part of either Party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other Party.

5. TERMINATION:

- 5.1. Each party shall have the right to terminate this Agreement in whole or in part, with or without cause, by providing the other party written notice of termination, effective fifteen (15) calendar days subsequent to the mailing by certified mail of such Notice Termination. If the termination is partial, the parties shall continue to perform those portions of this Agreement which have not been terminated.

GENERAL PROVISIONS

5.2. In the event of Termination as provided in subsection 5.1:

5.2.1. The Department shall pay Mesa its reasonable actual costs for work in progress as determined by generally accepted accounting principles and practices.

5.2.2. If any Payments have been made on an advance basis, Mesa shall return any unexpended monies within fifteen (15) calendar days of receipt of Notice of Termination.

5.2.3. Mesa shall deliver to the Department all work in progress, and any completed documents, programs, data and other information or deliverables as described in this Agreement.

5.3. The Department or the State of Arizona may cancel this Agreement without penalty or further obligation pursuant to A.R.S. § 38-511, which provides for cancellations of any contract made by the State, its political subdivisions, or any of the departments or agencies of either if any persons significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party of the contract with respect to the subject matter of the contract.

5.4. In the event of cancellation under Section 5.3 of this Agreement or if the term of the Agreement expires Mesa shall receive or return Payment as established in Section 5.2.2.

5.5. In the event that the parties mutually agree to terminate a portion of the Agreement, Mesa shall continue to perform this Agreement to the extent not terminated under the provisions of this Section and receive or return Payment as established in Section 5.2.2.

6. NON-DISCRIMINATION:

The parties shall comply with the State Executive Order No. 75-5, as amended by State Executive Order No. 2009-9, and all other applicable Federal and State laws, rules and regulation, including the Americans with Disabilities Act.

7. PAYMENTS:

7.1. Payments made by the Department to Mesa pursuant to this Agreement are conditioned upon the availability to the Department of monies authorized for expenditure in the manner and for the purpose provided herein. The Department shall not be liable for any purchases entered into by Mesa in anticipation of such funding.

7.2. Payments are conditioned upon receipt of an applicable, accurate and complete invoice prepared by Mesa in accordance with Mesa normal format and customary documentation. In the event of any conflict between this Agreement and any invoice, this Agreement shall prevail.

7.3. If Mesa is determined by the Department to be in default in the performance of any obligation under this Agreement, the Department may, at its option and in addition to other available remedies, either adjust the amount of payment or withhold payment until satisfactory resolution of the default.

7.4. The Department may, at its option, withhold payment until receipt of all final reports or documents or until completion of a financial audit.

8. RECOUPMENT OF PAYMENTS:

Mesa shall immediately reimburse all monies not spent in accordance with the terms of this Agreement.

9. NOTICES:

GENERAL PROVISIONS

Whenever notice is required pursuant to this Agreement, such notice shall be in writing and shall be directed to the persons and addresses specified in the Scope of Services or to such other persons and/or addresses as either party may designate to the other party in writing. Notice shall be delivered in person or by certified mail, return receipt requested.

10. AMENDMENTS:

Amendments to this Agreement shall not be effective unless in writing and signed by all parties.

11. SUBCONTRACTS:

Proposals to subcontract any task or work described in this Agreement must be approved by the Department prior to execution. Any subcontractor shall comply with the terms and conditions of the provisions of this Agreement.

12. WAIVERS:

Neither Mesa nor the Department shall waive or modify any condition or requirement contained in or made a part of this Agreement without a written amendment signed by the parties. The waiver of any breach or default of any of the provisions of this Agreement shall not be construed as a waiver of any succeeding breach of the same or other provisions.

13. DELIVERABLES:

Upon receipt of a Deliverable, the Department shall have a reasonable period of time, not to exceed 45 days, to review the Deliverable. If the Department identifies deficiencies in the Deliverable, the Department shall provide Mesa written comments and shall establish a time period by which the identified deficiencies shall be corrected. If the deficiencies are not corrected within this time frame, the Department reserves the right to terminate the Agreement immediately upon sending written notice of such termination.

14. REPORTS, INFORMATION AND DATA:

Ownership of all reports, information, data, computer data elements and software prepared by Mesa in performance of this Agreement shall vest jointly in the parties. Subject to applicable State and Federal laws and regulations, the parties shall have full and complete rights to reproduce, duplicate, disclose and otherwise use all such information. In doing so, each party shall give credit for the contribution of the others.

SCOPE OF SERVICES

A. PURPOSE:

The purpose of this project is to provide support for Water-Use It Wisely, Arizona's largest water conservation campaign, with water conservation and efficiency tips for Arizonans in the Phoenix Active Management Area.

B. EFFECTIVE DATE:

This Agreement shall become effective upon the date it is executed by all parties.

C. TERM:

This Agreement shall be effective through September 30, 2021

D. NOTICES, CORRESPONDENCE AND REPORTS:

1. Notices, correspondence, reports and payments from the Department to Mesa shall be sent to:

Technical Administrator:

Donna DiFrancesco, Conservation Coordinator
City of Mesa Environmental Management & Sustainability Department
PO Box 1466, Mesa, AZ 85211
Email: donna.difrancesco@mesaaz.gov
Phone: 480-644-3334

2. Notices, correspondence and reports from Mesa to the Department shall be sent to:

Contract Officer:

Scott Selin
Arizona Department of Water Resources
1110 West Washington Street, Suite 310
Phoenix, AZ 85007
Email: sdselin@azwater.gov
Phone: (602) 771-8508

3. Any invoices, technical reports and inquiries regarding the technical aspects of this Agreement should be made to:

Technical Administrator:

Melissa Sikes
Arizona Department of Water Resources
1110 W. Washington St., Ste. 310
Phoenix, AZ 85007
Email: msikes@azwater.gov
Phone: (602) 771-8449

E. PAYMENT:

The maximum amount of monies to be expended by the Department pursuant to this Agreement is \$100,000. Payments will be made in accordance with the Payment Schedule on Page 7 and are subject to receipt and approval of all

SCOPE OF SERVICES

Deliverables. Mesa shall submit an invoice to the Technical Administrator for approval. The invoice shall be itemized in sufficient detail to justify payment for services performed in accordance with the tasks listed.

F. INTRODUCTION:

Water – Use It Wisely partner communities work together to provide effective messages to use with water conservation outreach. By acting regionally, partners benefit significantly as campaign monies are consolidated and used directly to purchase media space or time, bolstering the campaign's effectiveness, unifying the message and providing greater marketing possibilities for sponsorship. Partners include the cities of Mesa, Phoenix, Scottsdale, Tempe, Peoria, Chandler, Glendale, Avondale, Surprise, Queen Creek, Buckeye, Goodyear, El Mirage and Fountain Hills, as well as the Arizona Municipal Water Users Association, Global Water Resources, EPCOR Water, Central Arizona Project and Salt River Project.

G. SCOPE OF WORK:

By providing the mentioned funds, ADWR gains the ability to participate in the Monthly WUIW Steering Committee Meetings and the Quarterly Regional Partners Meetings, as well as to use any and all of WUIW campaign and marketing resources and tools.

H. SCHEDULE OF DELIVERABLES AND PAYMENTS:

DELIVERABLES	DUE DATE(S)	PAYMENTS
WUIW 2019 Year-end Campaign Report	October 31 st , 2019	\$50,000
WUIW 2020 Year-end Campaign Report	August 31 st , 2020	\$50,000
TOTAL AMOUNT		\$100,000

LEGAL DETERMINATION

The attached Agreement between the Arizona Department of Water Resources and the City of Mesa has been reviewed by the undersigned attorneys, who have determined that said Agreement is in proper form and is within the powers and authority of those parties represented by the undersigned.

Dated this _____ day of _____, 2019

Arizona Department of Water Resources

By: _____
Kelly Brown, Deputy Counsel

Dated this _____ day of _____, 2019

City of Mesa

By: _____
Counsel