

MEMORANDUM OF UNDERSTANDING
TO INVESTIGATE A REGIONAL
ADVANCED WATER PURIFICATION FACILITY STUDY
AMONG THE CITY OF PHOENIX, CITY OF MESA, TOWN OF GILBERT,
CITY OF TOLLESON, CITY OF GLENDALE, CITY OF EL MIRAGE,
CITY OF GOODYEAR, CITY OF PEORIA, CITY OF SCOTTSDALE,
CITY OF TEMPE, AND EPCOR WATER ARIZONA, INC.

_____, 2023

1. PARTIES:

This memorandum of understanding (“MOU”) to support a Regional Advanced Water Purification Facility (“AWPF”) Study is entered into by the City of Phoenix (“Phoenix”), the City of Mesa (“Mesa”), Town of Gilbert (“Gilbert”), City of Tolleson (“Tolleson”), City of Glendale (“Glendale”), City of El Mirage (“El Mirage”), City of Goodyear (“Goodyear”), City of Peoria (“Peoria”), City of Scottsdale (“Scottsdale”), City of Tempe (“Tempe”), and, EPCOR Water Arizona, Inc. (“EPCOR”) (individually “Party” and collectively “Parties”).

2. BACKGROUND AND PURPOSE:

- a. The Parties to this MOU are municipal water providers serving clean, safe, and reliable water supplies to their customers within the State of Arizona.
- b. Serving populations that reside in the Sonoran Desert, the Parties have long recognized the importance of resilient water supplies, and the Parties have supported and financially contributed to the development of water supplies, planning years and decades before the need for such supplies, resulting in a lengthy history of reliable water supplies and economic growth.
- c. The Parties have supported and complied with Arizona’s innovative groundwater management laws, with their emphasis on water conservation, which support has led to the reduction of the Parties’ gallons per capita per day water consumption rate and to the Parties’ ability to serve significantly greater populations today with less water than was used thirty years ago. The Parties have also supported the

State's Assured Water Supply program as sound policy, as a protection to their residents, and as an important economic development tool.

- d. In spite of the Parties' efforts, stresses on the Parties' available water supplies continue, most notably the Colorado River water available through the Central Arizona Project.
- e. The Parties recognize that one of the most significant and reliable water supplies readily available in the State is uncommitted wastewater, and that current advanced water purification technology, as well as the regulatory environment, has now advanced so as to allow that water to be treated for safe direct use.
- f. The 91st Avenue Wastewater Treatment Plant ("91st Ave. WWTP") is the largest wastewater treatment plant in the State. It is owned by the Cities of Glendale, Mesa, Phoenix, Scottsdale, and Tempe ("91st Ave. Cities"). The 91st Ave WWTP currently produces significant supplies of uncommitted wastewater, which may legally be used by the 91st Ave. Cities in accordance with *Arizona Pub. Serv. Co. v. Long*, 160 Ariz. 429, 773 P.2d 988 (1989). Thus, the 91st Ave. WWTP is a likely location for an advanced water purification facility ("AWPF").
- g. The Parties recognize that Parties other than the 91st Ave. Cities may be benefitted by an AWPF through exchange, contractual arrangements, and other water management tools.
- i. The purpose of this MOU includes all of the following:
 - i. To express support for advanced water purification as an important water source for the future well-being of the Parties' customers.
 - ii. To describe the cooperative efforts and roles and responsibilities of the Parties leading to a Regional Advanced Water Purification Facility Financing Study ("Financing Study") and Project Plan.
 - iii. To develop a Cost Share Agreement to finance that Financing Study and Project Plan ("Cost Share Agreement").
 - iv. To explore funding opportunities to finance the Feasibility Study, such as federal funding or grant monies.

- v. To explore potential governance structures for an AWPf.
- vi. To explore water management tools and other arrangements that would extend the benefits of a 91st Ave. AWPf to the maximum extent possible among municipal water providers in the region and State.

3. TERM AND TERMINATION:

- a. This MOU will become effective upon its execution by Phoenix and at least two other municipal water providers. The MOU will become effective for each additional Party listed above when that Party executes it. Additional municipal water providers may be added as Parties, as set out in Section 8, without re-execution or amendment of the MOU by the current Parties.
- b. A Party may voluntarily withdraw from the MOU by providing notice to the other Parties in accordance with Section 9.
- c. This MOU will terminate upon the earliest occurrence of any of the following: (i) execution of the Cost Share Agreement; (ii) voluntary withdrawal from this MOU by Phoenix; (iii) if fewer than three parties remain as participants to the MOU; or (iv) July 1, 2027.

4. OBLIGATIONS OF THIS MOU:

- a. This MOU is a nonbinding expression of intent by the Parties.
- b. The Parties intend to act voluntarily and cooperatively to accomplish the purposes of this MOU.
- c. No Party is obligated by this MOU to contribute financially toward the Feasibility Study or the actual construction, operation or maintenance of an advanced water purification facility. This MOU imposes no financial obligation on any Party except for the contribution of staff time for its Authorized Representative and any other staff that a Party chooses to make available for the purposes of this MOU.
- d. Each Party recognizes that participating in this MOU does not guarantee to it any right to participate in or receive water from an advanced water purification facility

or to otherwise obtain a right to water or a water supply in the future. Nothing in this MOU is intended to alter any Party's existing contractual rights, duties or obligations or any Party's existing rights to water, including and expressly under, but not limited to, *Arizona Pub. Serv. Co. v. Long*, 160 Ariz. 429, 773 P.2d 988 (1989).

5. RESPONSIBILITIES:

a. Mutual Responsibilities:

- i. The Parties will work cooperatively to accomplish the objectives of the Steering Committee as set forth in Section 7(c).
- ii. The Parties will work cooperatively to inform stakeholders, elected officials, the public, and the Parties' respective customers of the importance, safety, and reliability of water made available through advanced water purification.

b. Phoenix Responsibilities:

- i. Phoenix will serve as chair of the Steering Committee and undertake the other actions assigned to Phoenix by this MOU.
- ii. Phoenix, in consultation with the Steering Committee, will begin efforts to procure the expertise necessary to conduct the Feasibility Study in accordance with Arizona law with an objective of executing agreements with the procured entities in conjunction with the execution of the Cost Share Agreement.

6. AUTHORIZED REPRESENTATIVES AND STEERING COMMITTEE:

- a. Within thirty (30) days after execution of this MOU, the Parties shall each designate in writing to the other Parties an Authorized Representative and an Alternate to administer this MOU on behalf of the designating party.
- b. The Authorized Representatives of the Parties constitute the Steering Committee for the activities set out by this MOU.

- c. Written notice of a change of an Authorized Representative or Alternate must be provided within thirty (30) days of such change. The Alternate may act only in the absence of the Authorized Representative. Neither the Authorized Representatives nor the Alternates have authority to amend, modify, or supplement this MOU.

7. STEERING COMMITTEE:

- a. Phoenix will serve as chair of the Steering Committee and will provide administrative and technical support for the Steering Committee. Other Parties may voluntarily provide technical and other information to the Steering Committee as warranted.
- b. The Steering Committee will meet regularly as determined by the Chair in consultation with the Parties.
- c. The Steering Committee will undertake all of the following actions:
 - i. Develop a Cost Share Agreement for the Funding Study with an objective of execution in January, 2024. The Cost Share Agreement will describe how costs of the Funding Study for an AWPf will be allocated among the entities agreeing to share those costs.
 - ii. Research potential governance structures for an AWPf.
 - iii. Research funding opportunities for the Program through federal funding, grants, and other available monies.
 - iv. Research water management tools and other arrangements that would potentially allow entities other than the 91st Ave. Cities to benefit from a 91st Ave. AWPf.
 - v. Provide information to stakeholders, elected officials, the public, and the Parties' customers regarding the importance, safety, and reliability of water made available through advanced water purification.
 - vi. Collaborate on efforts to procure the necessary expertise to conduct the further studies.

8. ADDITION AND WITHDRAWAL OF PARTICIPATING ENTITIES:

- a. Any Party may voluntarily withdraw from this MOU by providing thirty (30) days written notice to the other Parties as provided in Paragraph 9.
- b. Additional Parties may be added to this MOU by the written concurrence of Phoenix and at least two other Parties.

9 ADDRESSES FOR COMMUNICATIONS:

- a. All communications under this MOU shall be addressed to the contacts as set forth in Exhibit A. In the event Parties are added to this MOU as described in Subparagraph 8(b), the Steering Committee shall update Exhibit A accordingly.
- b. The Parties may change the addressee or address to which communications or copies are to be sent by giving notice of such change of addressee.

[signatures on the following pages]

10. SIGNATURES:

IN WITNESS WHEREOF, this MOU was executed by the Parties.

CITY OF PHOENIX, ARIZONA,
a municipal corporation

ATTEST:

JEFFREY BARTON, City Manager

City Clerk, City of Phoenix

By: _____
Troy Hayes
Director, Water Services Department

APPROVED AS TO FORM:
JULIE M. KRIEGH, City Attorney

By: _____
Name: _____
Title: _____

#2377313

CITY OF MESA

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

TOWN OF GILBERT

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF TOLLESON

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF GLENDALE

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF EL MIRAGE

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF GOODYEAR

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

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Name: _____

Title: _____

CITY OF PEORIA

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM

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Name: _____
Title: _____

CITY OF SCOTTSDALE

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APPROVED AS TO FORM

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Name: _____
Title: _____

CITY OF TEMPE

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

EPCOR WATER ARIZONA, INC.

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

Exhibit A

Contact List

<u>Party</u>	<u>Contact Address</u>
City of Phoenix	
City of Mesa	
Town of Gilbert	
City of Tolleson	
City of Glendale	
City of El Mirage	
City of Goodyear	
City of Scottsdale	
City of Tempe	
Epcor Water Arizona, Inc.	