

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF PEORIA
AND
THE CITY OF MESA
FOR ADMINISTRATION OF
WATER-USE IT WISELY™ ADVERTISING MATERIALS AND CAMPAIGN**

This Intergovernmental Agreement (the “Agreement”) is entered into this ___ day of August, 2023 (the “Effective Date”) pursuant to Arizona Revised Statutes (“A.R.S.”) §11-952 et seq., between the City of Peoria, an Arizona municipal corporation (“Peoria”) and the City of Mesa, an Arizona municipal corporation (“Mesa”). Peoria and Mesa are referred to herein individually as “Party” or collectively as the “Parties”.

RECITALS

WHEREAS, Peoria is authorized by Article 1, Section 3 of the Peoria City Charter to enter into this Agreement; and

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

WHEREAS, Mesa is party to agreements for advertising services with Hackett Advertising Public Relations Company Interactive, LLC, an Arizona Limited Liability Company (“HAPI”), which led to the development of the current **WATER-USE IT WISELY™** Advertising Materials and Campaign brand; and

WHEREAS, pursuant to the agreements with HAPI, 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, Peoria and Mesa, 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, Peoria and Mesa, in addition to the other partners, will 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, the Parties desire to enter into this Agreement whereby Peoria will provide Mesa funds for the Campaign, and Mesa will act as lead agent in allocating and administering the payment of such funds, which will benefit Peoria, Mesa and the Campaign; and

THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

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 Peoria and Mesa appointed pursuant to Section 8 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 Peoria and Mesa (“Regional Campaign Area”).

“Direct Advertising Costs” mean 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 PEORIA**

2.1. Peoria agrees to provide Mesa an annual contribution in an amount not to exceed \$40,000 (“Peoria Contribution”) each fiscal year (July 1 to June 30) for the Term of this Agreement.

2.2. Peoria shall remit payment of the Peoria Contribution upon the earlier of September 15 each year, or within thirty (30) days of receipt of each invoice submitted by Mesa in accordance with the provisions of Section 3.1. The obligation to make payments, which accrued during the Term of this Agreement, shall survive its termination or expiration.

2.3. Peoria shall continue to participate and provide input to the Campaign during the term of this Agreement but agrees that Mesa shall be the lead agent for the Campaign and have sole final authority over Campaign decisions.

3. **RESPONSIBILITIES OF MESA**

3.1. Mesa, through its Authorized Representative, shall submit to Peoria an invoice for the Peoria Contribution.

3.2. Mesa, through its Authorized Representative, will act as lead agent in allocating and administering the payment of the Peoria Contribution to be used for the purposes of the Water – Use It Wisely™ Campaign.

3.3. Mesa, through its Authorized Representative, shall provide Peoria an annual itemized fiscal year expense report on or before August 1st. The expense report shall, at a minimum, indicate for each expenditure that included allocations from the Peoria Contribution to the Campaign; the amount of money expended, and the purpose of the expenditure. Thereafter, Peoria shall have fifteen (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.

3.4 At the end of each fiscal year, any unexpended Peoria Contribution funds shall be applied toward the contribution of funds for the following year.

3.5 Upon the expiration or termination of this Agreement, Mesa shall return any unexpended Peoria Contribution funds to Peoria within thirty (30) days except that Mesa may apply the unexpended funds to the extent necessary to satisfy any Peoria obligation which accrued prior to the expiration or termination.

4. 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 HAPI signed March 13, 2019, attached hereto and incorporated herein as **Exhibit A**, during the Term of this Agreement and surviving for a period of five (5) years thereafter, Peoria 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, all which shall be limited to areas within the State of Arizona.

5. INDEMNIFICATION

Each Party (as “Indemnitor”) agrees to indemnify, defend, and hold harmless the other Party and its elected officials, officers, agents, boards, commissions, employees and representatives (as “Indemnatee”) from and against any and all third party claims, losses, liability, costs, or expenses (including reasonable attorney’s fees) (hereinafter collectively referred to as “Claims”) to the extent resulting from grossly negligent act or omission or the willful misconduct of the Indemnitor, its agents, employees, officials, or officers, in the course of conducting work or, where work is required, failing to conduct any work under the provisions of this Agreement which results in the injury to, or death of any person or persons, and/or damage to property.

6. 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 the same accounting basis generally used by the Party for a period of three

(3) years following termination of the Agreement.

7. AUTHORIZED REPRESENTATIVES AND NOTICES

Peoria and Mesa 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
Donna DiFrancesco
Conservation Coordinator
Environmental & Sustainability Department
300 E. 6h Street
P.O. Box 1466
Mesa, AZ 85211
Telephone: 480-644-3334
Fax: 480-644-4774
Email: donna.difrancesco@mesaaz.gov

City of Peoria
Victoria Caster
Water Conservation and Sustainability Coordinator
Water Services Department
9875 N. 85th Ave.
Peoria, AZ 85345
Telephone: 623-773-8450
Email: victoria.caster@peoriaaz.gov

Copy to:

City of Peoria
City Attorney's Office
8401 West Monroe Street
Peoria, AZ 85345
Telephone: 623-773-7330
City.attorney@peoriaaz.gov

8. CONFLICT OF INTEREST

The requirements of A.R.S. § 38-511 apply to this Agreement. Either Party may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of either Party is, at any time while this Agreement or any extension is in effect, an employee or agent of the other Party with respect to the subject matter of this Agreement.

9. NON-DISCRIMINATION

Both Parties shall comply with Executive Order 2009-9, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable state and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. Both Parties shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

10. COMPLIANCE REQUIREMENTS FOR A.R.S. § 41-4401—IMMIGRATION LAWS AND E-VERIFY REQUIREMENT

12.1. Both Parties warrant compliance with all Federal immigration laws and regulations relating to employees and warrant their compliance with Section A.R.S. § 23-214, Subsection A, which reads: “After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.”

12.2. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract and the other Party may be subject to penalties up to and including termination of the Agreement.

12.3. Both Parties retain the legal right to inspect the papers of any employee who works on the Agreement to ensure that the other Party or any contractor or subcontractor is complying with the warranty under paragraph 14(a).

11. APPLICABLE LAW

This Agreement shall be construed in accordance with the laws of the State of Arizona and venue for any dispute under this Agreement shall be in Maricopa County.

12. LEGAL OBLIGATIONS

This Agreement does not relieve either Party of any obligation or responsibility imposed upon it by law.

13. ARBITRATION

The Parties to this Agreement agree to resolve all disputes arising out of or relating to this Agreement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. §12-1518 except as may be required by other applicable statutes.

14. WAIVER AND MODIFICATION

None of the provisions of the Agreement may be waived, changed or altered except in writing signed by both Parties.

15. 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.

16. EFFECTIVE DATE AND TERM OF AGREEMENT

This Agreement shall commence upon the Effective Date set forth herein and will remain in full force and effect for five (5) years (“Term”). The Term may be extended for one successive five (5) year period upon mutual written consent of the Parties.

17. TERMINATION OF AGREEMENT

This Agreement may be terminated either by mutual consent of the Parties or by either Party giving the other Party thirty (30) calendar days’ advance written notice of termination of the Agreement.

18. ASSIGNMENT

No right or interest in this Agreement shall be assigned or delegated by a Party to this Agreement without prior written permission of the other Party. This Agreement shall be binding upon the Parties and their successors.

19. ENTIRE AGREEMENT; NO WAIVER

This Agreement is intended by the undersigned Parties as the final expression of their agreement and is intended to be the complete and exclusive statement of the terms of the agreement between the Parties. No course of prior dealings between the Parties and no usage in the trade shall be relevant to supplement or explain any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing Party has knowledge of the nature of the performance and the opportunity to object. Any delay or failure to exercise or enforce any right, power, privilege, or remedy under this Agreement by a Party may not be deemed a waiver, release, or modification of the requirements of this Agreement or any of its terms or provisions by that Party. The rule of interpretation against a contract’s drafter shall not apply to this Agreement.

20. APPROPRIATION

The Parties understand that the continuation of this Agreement is subject to the budget of the Parties providing for the associated expenditures. The Parties cannot assure that the funding for this Agreement will be approved in the future. In such event, either Party may terminate this Agreement.

21. HEADINGS

Headings are for convenience and shall not affect interpretation of the terms of this

In witness whereof, the Parties hereto have executed this Agreement on the date written below:

CITY OF PEORIA

CITY OF MESA

Henry Darwin
City Manager

Chris Brady
City Manager

ATTEST:

ATTEST:

Lori Dyckman
City Clerk

Holly Moseley
City Clerk

ATTORNEY APPROVAL FOR THE CITY OF PEORIA

The foregoing Agreement has been reviewed pursuant to A.R.S. § 11-952, as amended, by undersigned Counsel, who has determined that it is in proper form and within the powers and authority granted to the Peoria City Council under the laws of the State of Arizona.

Emily Jurmu, City Attorney Date

ATTORNEY APPROVAL FOR THE CITY OF MESA

The foregoing Agreement has been reviewed pursuant to A.R.S. § 11-952, as amended, by undersigned Counsel, who has determined that it is in proper form and within the powers and authority granted to the Mesa City Council under the laws of the State of Arizona.

Adam J Schwartz, Assistant City Attorney Date

EXHIBIT A