

RESOLUTION NO. 5533

AUTHORIZING THE CITY OF CHANDLER TO ENTER INTO AN AGREEMENT TO SHARE COSTS FOR THE FEASIBILITY STUDY OF BARTLETT DAM MODIFICATION ALTERNATIVES AMONG VARIOUS PARTICIPATING ENTITIES AND SALT RIVER AGRICULTURAL IMPROVEMENT AND POWER DISTRICT IN THE AMOUNT OF \$400,000.

WHEREAS, the City of Chandler receives a portion of its water supply from the Salt River Federal Reclamation Project (the "Project"), which includes Bartlett and Horseshoe reservoirs on the Verde River (the "Verde Reservoirs"); and

WHEREAS, the Salt River Agricultural Improvement District (Salt River Project or "SRP") operates the Project under an agreement with the United States Department of the Interior's Bureau of Reclamation ("Reclamation"); and

WHEREAS, Reclamation and SRP conducted a Verde Reservoirs Sediment Mitigation Study to investigate options to restore capacity lost in the Verde Reservoirs due to sediment accumulation; and

WHEREAS, Reclamation has issued a report recommending that it initiate a feasibility study to determine the technical, environmental, economic, and financial feasibility of implementing modifications to Bartlett Dam; and

WHEREAS, if implemented, the proposed modifications to Bartlett Dam may benefit Chandler and other entities utilizing water from the Project by improving management of the water supplies of the Verde River, reducing reliance on groundwater, and improving central Arizona's ability to manage extended droughts and shortages created by climate change impacts on the Colorado, Salt, and Verde River watersheds; and

WHEREAS, Chandler, along with the cities of Phoenix, Avondale, Buckeye, El Mirage, Glendale, Goodyear, Mesa, Peoria, Scottsdale, Surprise, Tempe, the Towns of Gilbert and Queen Creek, Arizona Water Company, EPCOR USA, Inc., Apache Junction Water District, Buckeye Water Conservation and Drainage District, Central Arizona Groundwater Replenishment District, Roosevelt Water Conservation District, and the Fort McDowell Yavapai Nation (the "Participating Entities") has been asked to enter into a cost sharing agreement with SRP to cover the estimated \$5 million nonfederal cost share for the feasibility study; and

WHEREAS, Chandler's share of the cost of the study would be \$100,000 per year for four years, which may enable Chandler to benefit from any modifications to Bartlett Dam that are implemented after the study.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona, as follows:

Section 1. The City of Chandler is authorized to enter into the Agreement to Share Costs for the Feasibility Study of Bartlett Dam Modification Alternatives Among Various Participating Entities and Salt River Agricultural Improvement and Power District in the form attached hereto as Exhibit "A" (the "Agreement").

Section 2. The Mayor is authorized to sign this Resolution directing the Director of Public Works & Utilities to execute the Agreement on behalf of the City of Chandler.

PASSED AND ADOPTED by the City Council of Chandler, Arizona, this ____ day of December, 2021.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 5533 was duly passed and adopted by the Chandler City Council at a regular meeting held on the ____ day of December, 2021, at which a quorum was present.

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY



Exhibit "A"

Agreement to Share Costs for the Feasibility Study of Bartlett Dam Modification Alternatives
Among Various Participating Entities and
Salt River Agricultural Improvement and Power District

**AGREEMENT TO SHARE COSTS FOR THE FEASIBILITY STUDY OF BARTLETT DAM
MODIFICATION ALTERNATIVES
AMONG COST-SHARE PARTNERS
AND
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

1. PARTIES:

This Agreement to Share Costs for the Feasibility Study of Bartlett Dam Modification Alternatives ("Agreement"), entered into this ____ day of _____, 2021 is by and among those entities listed in Exhibit A ("Cost-Share Partners") and the Salt River Project Agricultural Improvement and Power District ("SRP"). SRP and the Cost-Share Partners are referred to collectively as "Parties" and individually as "Party".

2. RECITALS:

This Agreement is made with regard to the following:

- 2.1. The Salt River Valley Water Users' Association ("Association") and Salt River Project Agricultural Improvement and Power District ("District") operate the Salt River Federal Reclamation Project, including Bartlett and Horseshoe reservoirs on Verde River, and have rights to storage of waters of the Verde River. The City of Phoenix has a stored water right resulting from construction of spillway gates at Horseshoe Dam. As of 2012, SRP estimates that Horseshoe Reservoir had lost 45,749 AF of conservation capacity to sedimentation that is shared between the Association and District and the City of Phoenix.
- 2.2. The United States Department of the Interior's Bureau of Reclamation ("Reclamation"), in partnership with SRP, conducted the Verde Reservoirs Sediment Mitigation Study to investigate options to restore capacity lost in SRP's Verde River reservoirs due to sediment accumulation, which impacts critical water supplies for central Arizona.
- 2.3. Reclamation issued a draft Verde Reservoirs Sediment Mitigation Study Appraisal Report ("Draft Appraisal Report") in May 2021 recommending that Reclamation:
 - 2.3.1. Seek/confirm authority to initiate a feasibility study to determine the technical, environmental, economic, and financial feasibility of implementing one of two Bartlett Dam modification alternatives to enable

central Arizona to adapt water management to changing climate conditions (“Bartlett Dam Modification Feasibility Study”);

- 2.3.2. Address topics identified in the Verde Reservoirs Sediment Mitigation Study during the feasibility study process; and
 - 2.3.3. Develop cost-share agreements between Reclamation and potential beneficiaries for completing the Bartlett Dam Modification Feasibility Study.
- 2.4. The Parties support Reclamation’s recommendations in the Draft Appraisal Report and the initiation of the Bartlett Dam Modification Feasibility Study to further evaluate alternatives for modification of Bartlett Dam to improve management of water supplies of the Verde River, reduce reliance on groundwater, and help position central Arizona to manage extended droughts and shortages created by climate change impacts on the Colorado, Salt, and Verde River watersheds.
 - 2.5. SRP and various participating entities signed a memorandum of understanding (“SRP-Participating Entities MOU”) attached hereto as Exhibit B to describe the cooperative efforts and roles and responsibilities of those parties related to supporting Reclamation in completing the Bartlett Dam Modification Feasibility Study including the development and execution of a cost-share agreement and the formation of a steering committee (“Steering Committee,” as described in Paragraph 10) to provide timely and effective feedback and guidance to support Reclamation in achieving the milestones necessary to complete the Bartlett Dam Modification Feasibility Study. This Agreement is the cost-share agreement described in Paragraph 5 of the MOU.
 - 2.6. SRP and the Fort McDowell Yavapai Nation signed a memorandum of understanding (“SRP-FMYN MOU”) attached hereto as Exhibit C to describe the cooperative efforts and roles and responsibilities of SRP and the Fort McDowell Yavapai Nation related to supporting Reclamation in completing the Bartlett Dam Modification Feasibility Study including the development and execution of a cost-share agreement and participation in the Steering Committee to provide timely and effective feedback and guidance to support Reclamation in achieving the milestones necessary to complete the Bartlett Dam Modification Feasibility Study.
 - 2.7. SRP and Reclamation have signed or will sign a cost-share agreement (“SRP-Reclamation Cost-Share Agreement”) as a mechanism to provide the non-federal cost share required for completing the Bartlett Dam Modification Feasibility

Study, including the funds collected under this Agreement, for completing the Bartlett Dam Modification Feasibility Study.

3. AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants herein set forth and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

4. INCORPORATION OF RECITALS:

The recitals listed above are hereby incorporated into and expressly made part of this Agreement.

5. SCOPE:

This Agreement sets terms and conditions for (1) the estimated annual costs the Parties expect to pay in support of the Bartlett Dam Modification Feasibility Study, (2) how the costs will be shared among the Parties, (3) the process to remit payment, (4) the process for formation of and participation in the Steering Committee, and (5) the process for voluntary departure, removal, and addition of Cost-Share Partners and Steering Committee Members.

6. EFFECTIVE DATE AND TERM OF AGREEMENT:

- 6.1. For SRP and City of Phoenix, this Agreement is effective and binding upon the execution by SRP and City of Phoenix. For any Party other than SRP and City of Phoenix, this Agreement is effective and binding upon execution by that Party. This Agreement remains effective until terminated as provided in Subparagraphs 6.2 or 6.3.
- 6.2. This Agreement terminates when both of the following have occurred: (1) a final Bartlett Dam Modification Feasibility Study is issued by Reclamation, and (2) when all funds required to be transferred under this agreement are transferred from the Cost-Share Partners to SRP or refunded to the Cost-Share Partners as provided in Paragraph 12.
- 6.3. This Agreement may terminate as provided in this Subparagraph 6.3 in the event that Reclamation determines it will not proceed with the Bartlett Dam Modification Feasibility Study. In such an event, SRP shall meet and confer with the Cost-Share Partners on such determination and whether the Parties have

exhausted their reasonable options to support Reclamation in proceeding with a Bartlett Dam Modification Feasibility Study. After such meeting, SRP may terminate this Agreement by providing written notice to the Cost-Share Partners of such termination. In such an event, this Agreement will terminate when both of the following have occurred: (1) SRP sends the written notice of termination under this Subparagraph 6.3 and (2) all appropriate payments and refunds have been issued.

7. ADMINISTRATIVE REPRESENTATIVES:

Within thirty (30) calendar days after execution of this Agreement, each Party shall designate in writing to the other Parties or by electronic mail with read receipt to the other Parties, an Administrative Representative and an Administrative Alternate to administer this Agreement on behalf of the designating Party. Written notice of a change of an Administrative Representative or Administrative Alternate shall be provided within thirty (30) calendar days of such change. The Administrative Alternate shall act only in the absence of the Administrative Representative. Neither the Administrative Representatives nor the Administrative Alternates shall have authority to amend, modify, or supplement this Agreement. Decisions of the Administrative Representatives pursuant to this Agreement shall be in writing and signed by them.

8. ESTIMATED COSTS:

- 8.1. The Parties plan to contribute funding towards the estimated nonfederal share of costs ("Nonfederal Cost-Share Estimate") for the Bartlett Dam Modification Feasibility Study. The initial Nonfederal Cost-Share Estimate is \$5,000,000. The Nonfederal Cost-Share Estimate may increase or decrease based on federal appropriations and as project plans are developed.
- 8.2. With respect to issues related to the estimated costs for funding the Bartlett Dam Modification Feasibility Study the Parties shall convene the Steering Committee on an annual basis ("Annual Cost Assessment Meeting") to discuss and assess such issues. At the Annual Cost Assessment Meeting, the Parties shall make determinations on issues including but not limited to: (1) adjustment of the Nonfederal Cost-Share Estimate, (2) identification of federal funding availability, and (3) the annual contribution level of each Party ("Annual Contribution Level"). SRP will notify the Steering Committee of any identified change in total project cost that exceeds ten percent of the then-budgeted project cost at the next scheduled Steering Committee meeting.

- 8.3. At the Annual Cost Assessment Meeting, SRP shall present updates to the Steering Committee regarding: (1) information relevant to the Nonfederal Cost-Share Estimate, (2) availability of federal funding, and (3) anticipated adjustments to the Annual Contribution Level of each Party. These updates will be provided based on information and analysis developed by SRP in consultation with Reclamation. Prior to the Annual Cost Assessment Meeting, SRP shall develop and send for approval of the Steering Committee a report for the Annual Cost Assessment Meeting ("Annual Cost Assessment Report"). The Annual Cost Assessment Report will include: (1) the proposed Nonfederal Cost-Share Estimate and (2) the proposed Annual Contribution Levels of each Party for the following year. Consistent with Subparagraph 9.5, Fort McDowell Yavapai Nation and Buckeye Water Conservation and Drainage District will not be required to contribute any funding under this Agreement. The Steering Committee may vote on such approval of the Annual Cost Assessment Report at the Annual Cost Assessment Meeting but shall do so no later than thirty (30) calendar days after such Annual Cost Assessment Meeting.
- 8.4. Each Party shall contribute an annual amount equal to its Annual Contribution Level and remit payment for its Annual Contribution Level as described in Paragraph 12. The Annual Contribution Level as defined in this Agreement includes the option for a Party to elect to budget and appropriate the full amount of \$400,000 to participate in this Agreement as a Voting Member at the time of the Effective Date of the Agreement for that Party. Payment will be made pursuant to Section 12 of this Agreement. The Parties' Annual Contribution Levels are summarized in Exhibit D. The Steering Committee shall update Exhibit D in accordance with the Annual Cost Assessment Report upon approval of the Annual Cost Assessment Report by the Steering Committee. In the event that the Nonfederal Cost-Share increases above a total of \$1,250,000 in any one year, or is projected to be above a total of \$5,000,000 for the entire study, the Parties shall discuss whether to incur such increased costs at the next Annual Cost Assessment Meeting. If the Steering Committee agrees to incur such increased costs, each Party will seek any necessary spending authority or appropriations for any increase in its then-current Annual Contribution Level. In the event that spending authority is not granted, or funds are not appropriated beyond the amounts necessary to fulfill a Party's then-current Annual Contribution Level, a Party has the right to terminate this Agreement without obligation for the increased Annual Contribution Level. However, the terminating Party shall comply with Subparagraph 11.1 with regard to its then-current Annual Contribution Level.

9. PARTIES' COST SHARE CONTRIBUTIONS:

- 9.1. SRP's initial Annual Contribution Level shall be \$250,000.
- 9.2. City of Phoenix's initial Annual Contribution Level shall be \$150,000.
- 9.3. The initial Annual Contribution Levels are identified in Exhibit D. Unless otherwise stated in Exhibit D, a Party with an initial Annual Contribution Level of \$100,000 or greater will be a voting member of the Steering Committee ("Voting Member") with respect to decisions that the Steering Committee makes related to the Bartlett Dam Modification Feasibility Study. Voting Members commit to supporting the Bartlett Dam Modification Feasibility Study to completion at the Annual Contribution Level identified in Exhibit D but not to exceed a period of four years. If the Bartlett Dam Modification Feasibility Study exceeds four years, the Parties shall convene the Steering Committee to discuss contribution towards the nonfederal portion of funding required for completion. The Annual Contribution Level as defined in this Agreement includes the option for a Party to elect to budget and appropriate the full amount of \$400,000 to participate in this Agreement as a Voting Member at the time of the Effective Date of the Agreement for that Party. Payment will be made pursuant to Section 12 of this Agreement.
- 9.4. Unless otherwise stated in Exhibit D, a Party with an initial Annual Contribution Level of \$30,000 will be a nonvoting member of the Steering Committee ("Nonvoting Member").
- 9.5. The Fort McDowell Yavapai Nation, as a federally recognized tribe with a direct interest in water stored in Bartlett Reservoir, will be a Voting Member of the Steering Committee irrespective of its Annual Contribution Level. Buckeye Water Conservation and Drainage District will be a Voting Member of the Steering Committee irrespective of its Annual Contribution Level due to its interest under the stipulation between Buckeye Irrigation Company and Salt River Valley Water Users' Association entered September 7, 1944.
- 9.6. As described in Subparagraph 8.2, Annual Contribution Levels may be adjusted at the Annual Cost Assessment Meeting based on the Nonfederal Cost-Share Estimate as described in Subparagraph 8.1. Adjustments to Annual Contribution Levels will be made in proportion to the initial Annual Contribution Levels and will increase or decrease in proportion to the Nonfederal Cost-Share Estimate. Except as provided under circumstances noted in Subparagraph 11.3, the standing of each Party as a Voting Member or Nonvoting Member of the Steering Committee

is established by each Party's initial Annual Contribution Level, as described in Subparagraphs 9.3 and 9.4, and will not be impacted by adjustments made under Subparagraph 8.2, Subparagraph 8.4, or this Subparagraph 9.6.

10. STEERING COMMITTEE:

- 10.1. Within thirty (30) calendar days after execution of this Agreement, each Party shall designate in writing or electronic mail with read receipt to SRP a representative to serve on the Steering Committee ("Steering Committee Representative") and an alternate to serve on the Steering Committee ("Steering Committee Alternate"). Written notice of a change of a Steering Committee Representative or Steering Committee Alternate shall be provided within thirty (30) calendar days of such change. The Steering Committee Alternate shall act only in the absence of the Steering Committee Representative. Unless otherwise authorized by the Steering Committee, each Party shall ensure that only its Steering Committee Representative or Steering Committee Alternate participates in meetings of the Steering Committee. Steering Committee Representatives and Steering Committee Alternates are expected to be individuals with senior positions within the organizational structure of each Party, such as director-level positions, and may be the same or different from the Administrative Representatives and Administrative Alternates identified in Paragraph 7.
- 10.2. The Parties shall convene the Steering Committee within thirty (30) calendar days after this Agreement is effective as provided in Subparagraph 6.1 and develop roles, responsibilities, meeting schedules, and other guidelines to govern the Steering Committee within sixty (60) calendar days after this Agreement is effective as provided in Subparagraph 6.1.
- 10.3. The Steering Committee shall be responsible for developing criteria for assessing the need of any potential beneficiary to obtain a right to use a portion of the water to be stored in the new conservation storage capacity created from the modifications at Bartlett Dam. The new conservation storage capacity includes the volume of water above the combined original constructed capacity of both Horseshoe and Bartlett Reservoirs including the capacity added by installation of the Horseshoe Dam spillway gates ("New Conservation Capacity"). The criteria shall be developed and approved by the Steering Committee during development of feasibility cost estimates and designs of dam facilities required for the Bartlett Dam Modification Feasibility Study and may be similar to those identified in Exhibit E.

- 10.4. The Steering Committee shall be responsible for developing the preferred allocation of available New Conservation Capacity among potential project beneficiaries using the criteria for assessing need identified in Subparagraph 10.3 to provide to Reclamation for study purposes.
- 10.5. Nothing contained in this Agreement shall be construed as to (1) create any right to new or existing capacity in Bartlett or Horseshoe Reservoirs or (2) alter any existing rights to water stored in Bartlett or Horseshoe Reservoirs in a modified Bartlett Dam if a project to modify Bartlett Dam is constructed.
- 10.6. SRP shall chair the Steering Committee and all Steering Committee decisions will be made by majority vote of the Voting Members described in Subparagraph 9.3 with the exception of issues identified in Subparagraph 11.2. The votes of all Voting Members will be of equal weight. In the event of an even split during a Steering Committee vote, SRP shall act as the tie-breaking vote.

11. VOLUNTARY DEPARTURE; REMOVAL; AND ADDITION OF PARTIES, COST SHARE PARTNERS, AND STEERING COMMITTEE MEMBERS

- 11.1. A Party that no longer wishes to be a Party to this Agreement and participate in the Steering Committee may leave by giving the other Parties thirty (30) calendar days written notice under Paragraph 15 ("Voluntary Departure"). Parties that voluntarily depart this Agreement and Steering Committee under this Subparagraph 11.1 shall not be refunded any previous financial contributions. Any Voting Member that voluntarily departs this Agreement and Steering Committee shall pay the remaining balance that would be due based on that Voting Member's Annual Contribution Level for the period of time required to support completion of the Bartlett Dam Modification Feasibility Study but not to exceed a period of four years. The remaining balance will be based on the number of months projected to remain on the Bartlett Dam Modification Feasibility Study, multiplied by the Party's initial Annual Contribution Level, not to exceed a total of four years from the start of the non-federal contributions for the feasibility study. Upon the Voluntary Departure of a Party to this Agreement under this Subparagraph 11.1, the SRP shall update Exhibits A, D, and F accordingly.
- 11.2. The Steering Committee may remove a Party from the Agreement and membership on the Steering Committee if the Voting Members of the Steering Committee determine by a vote of at least 2/3 of Voting Members that the Party is not acting in good faith or otherwise unnecessarily interfering with making progress towards completion of the Bartlett Dam Modification Feasibility Study.

Any Party that is removed from the Agreement and the Steering Committee under this Subparagraph 11.2 shall not be refunded any previous financial contributions. Upon removing a Party to this Agreement under this Subparagraph 11.2, the SRP shall update Exhibits A, D, and F accordingly.

- 11.3. The Steering Committee, by majority vote of the Steering Committee, may add a Party to the Agreement as a Voting or Nonvoting member of the Steering Committee upon request from an entity to support the Bartlett Dam Modification Feasibility Study. Prior to adding a Party to the Agreement and Steering Committee, the Steering Committee shall determine the Annual Contribution Level of the entity to be added in a manner consistent with Paragraphs 8 and 9, provided that, the Steering Committee will not unreasonably withhold a participant's ability to join the Steering Committee if that participant is willing to work in good faith and bring appropriate resources in support of the goals of the Bartlett Dam Modification Feasibility Study. Upon adding a Party to this Agreement under this Subparagraph 11.3, the SRP shall update Exhibits A, D, and F accordingly. Should a Party be added to the Steering Committee as a Voting Member, that Party shall pay the Annual Contribution Level identified in Subparagraph 9.3 for the time period between the Steering Committee's inception and the Party's addition. Should an existing Nonvoting Member become a Voting Member, that Party will be responsible for paying the difference between their actual contributions and the Annual Contribution Level identified in 9.3 for the time period between the Steering Committee's inception and the Party becoming a Voting Member. Any new Voting Member or Nonvoting Member becoming a Voting Member will be subject to all conditions as outlined in Subparagraph 11.1

12. PAYMENT:

- 12.1. SRP shall invoice each Party at its initial Annual Contribution Level as identified in Exhibit D within 90 days of execution of this Agreement.
- 12.2. Following approval of the Annual Cost Assessment Report by the Steering Committee, SRP shall invoice the Cost-Share Partners in the amounts identified in the Annual Cost Assessment Report. The Cost-Share Partners shall pay such invoices within thirty (30) calendar days after SRP sends such invoices. SRP shall remit payments made under Paragraph 12 to Reclamation or consultants as contributions towards the nonfederal portion of costs for the Bartlett Dam Modification Feasibility Study under the SRP-Reclamation Cost-Share Agreement. In the event that funds paid to SRP will not be remitted to Reclamation or

consultants, SRP shall refund the Cost-Share Partners for any amount paid to SRP under Paragraph 12 that will not be remitted to Reclamation or consultants.

- 12.3. Any invoices not paid when due shall be delinquent and shall bear interest at the Wall Street Journal Prime Rate, on the date the invoice was due plus 5% (Wall Street Journal Prime Rate plus 5%) per annum from the date when the bill was due until the bill is paid in full (including any accrued interest). In the event the Wall Street Journal no longer publishes the Wall Street Journal Prime Rate, a majority of the Administrative Representatives shall select an appropriate substitute.
- 12.4. In the event any portion of any bill is disputed, to the extent the disputing Party has the legal authority to pay, the disputed amount shall be paid under protest when due and shall be accompanied by a written statement indicating the basis for the protest. If the protest is found to be valid, the Cost-Share Partners shall be refunded any overpayment plus interest, accrued at the rate set forth in Subparagraph 12.3, prorated by days from the date payment was credited to the Cost-Share Partners to the date the refund check is mailed.
- 12.5. In the event that this Agreement is terminated under Subparagraph 6.3, SRP shall refund the Cost-Share Partners for any amount paid to SRP under Paragraph 12 that will not be remitted to Reclamation or consultants for services approved prior to termination of this Agreement.

13. DISPUTE RESOLUTION; RECORDS INSPECTION; CHOICE OF LAW:

- 13.1. Any dispute under this Agreement shall first be submitted to the Steering Committee for resolution. The Steering Committee shall make all reasonable efforts to resolve the dispute. If the matter cannot be resolved by the Parties' authorized representatives, any Party may submit the matter to the SRP General Manager and the Party's chief operating officer. If the matter cannot be resolved by the SRP General Manager and the Party's chief operating officer, any Party may bring suit upon the matter, provided however, that it is expressly agreed that the venue shall only be in Maricopa County Superior Court or its successor court.
- 13.2. This Agreement shall be governed and construed in accordance with the laws of the State of Arizona and any applicable federal law. In the event a dispute arises wherein the Fort McDowell Yavapai Nation is a party, the Parties agree the venue will be in a court of competent jurisdiction other than Tribal court.

13.3. In the event of any future dispute or action arising under this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs incurred therein, including expert witness fees.

13.4. Pending the resolution of a dispute, the Parties shall proceed, to the extent legally permissible, in a manner consistent with this Agreement, and shall make payments required in accordance with the applicable provisions of this Agreement. Amounts paid by a Party under Paragraph 12 during the pendency of such dispute shall be subject to refund and adjustment upon a final resolution of any dispute involving an amount due.

14. UNCONTROLLABLE FORCES:

No Party shall be considered to be in default in the performance of any of its obligations hereunder if failure of performance is due to an uncontrollable force. The term "uncontrollable force" shall mean any cause beyond the control of the party affected, including but not limited to failure of facilities, flood, earthquake, tornado, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, and action or nonaction by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority or the electorate, labor or material shortage, sabotage and restraint by court order or public authority, which by exercise of due diligence and foresight such party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing herein shall be construed so as to require any Party to settle any strike or labor dispute in which it is involved. Any party rendered able to fulfill any obligation hereunder by reason of an uncontrollable force shall exercise due diligence to remove such inability.

15. NOTICE; CHANGE OF NAME OR ADDRESS:

15.1. All notices, requests, demands, and other communications under this Agreement shall be in writing or by electronic mail with read receipt and shall be deemed to have been received either when delivered or on the fifth business day following mailing, by registered or certified mail, postage prepaid, return receipt requested, whichever is earlier, addressed as set forth in Exhibit F.

15.2. Any Party may change the addressee or address to which communications or copies are to be sent by giving notice of such change under Subparagraph 15.1.

16. SEVERABILITY:

Should any part of this Agreement be declared, in a final decision by a court or tribunal of competent jurisdiction, to be unconstitutional, invalid, or beyond the authority of a Party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect and reformed, provided that the remainder of this Agreement, absent the excised portion, can be reasonably interpreted to give effect to the intentions of the Parties.

17. WAIVER:

The failure of any Party to insist on any one or more instances upon strict performance of any of the obligations of the other pursuant to this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of the performance of any such obligation or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

18. BINDING AGREEMENT:

All of the provisions of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their heirs, successors and assigns; provided, however, that no Party shall assign its rights and obligations under this Agreement to another entity without the written consent of the other Parties. Such consent to assignment shall not, however, be unreasonably withheld, conditioned, or delayed.

19. NO THIRD-PARTY BENEFICIARIES:

This Agreement is solely for the benefit of the Parties and does not create nor shall it be construed to create rights to any third party. No third party may enforce the terms and conditions of this Agreement.

20. NO PARTNERSHIP AND NO JOINT VENTURE:

Nothing contained in this Agreement shall be construed as creating a partnership or joint venture between the Parties hereto. The covenants, obligations, and liabilities contained in this Agreement are intended to be several and not joint or collective, and nothing contained herein shall be construed to create an association, joint venture, agency, trust, or partnership, or to impose a trust or partnership covenant, obligation, fiduciary duty, or liability between the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities as provided herein.

21. AUTHORITY:

The undersigned representative of each Party certifies that he or she is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this Agreement and to legally bind the Party to it.

22. CONFLICT OF INTEREST:

Pursuant to A.R.S. § 38-511, a Party who is a political subdivision of the State 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 a Party is, at any time while this Agreement is in effect, an employee of another Party in any capacity, or a consultant to another Party with respect to the subject matter of this Agreement. The cancellation shall be effective when written notice is received unless the notice specifies a later time.

23. ENTIRE AGREEMENT; MODIFICATION; COUNTERPARTS:

The terms, covenants and conditions of this Agreement constitute the entire Agreement between the Parties, and no understandings or obligations not herein expressly set forth shall be binding upon them. This Agreement may not be modified or amended in any manner unless in writing and signed by the Parties. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[signatures on the following pages]

IN WITNESS WHEREOF, this Agreement was executed by the Parties and is effective on the date described in Subparagraph 6.1 of this Agreement.

**SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT**

By: _____

Name: David C. Roberts

Title: Associate General Manager
Water Resources

APPROVED AS TO FORM

By: _____

Name: Patrick B. Sigl

Title: Supervising Attorney, Environment, Land
& Water Rights

CITY OF CHANDLER

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

By: _____ *gw*

Name: Jenny J. Winkler

Title: Asst. City Attorney

**AGREEMENT TO SHARE COSTS FOR THE FEASIBILITY STUDY OF BARTLETT DAM
MODIFICATION ALTERNATIVES
AMONG COST-SHARE PARTNERS
AND
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

EXHIBIT A

COST-SHARE PARTNERS

Arizona Water Company	City Goodyear
Apache Junction Water Utility Community Facilities District dba Apache Junction Water District	City of Glendale
City of Avondale	City of Mesa
City of Buckeye	City Peoria
Buckeye Water Conservation and Drainage District	City of Phoenix
Central Arizona Groundwater Replenishment District	Town of Queen Creek
City of Chandler	Roosevelt Water Conservation District
City of El Mirage	City of Scottsdale
EPCOR, USA, Inc.	City of Surprise
Fort McDowell Yavapai Nation	City of Tempe
Town of Gilbert	

**AGREEMENT TO SHARE COSTS FOR THE FEASIBILITY STUDY OF BARTLETT DAM
MODIFICATION ALTERNATIVES
AMONG COST-SHARE PARTNERS
AND
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

EXHIBIT B

**MEMORANDUM OF UNDERSTANDING TO SUPPORT THE BARTLETT DAM MODIFICATION
FEASIBILITY STUDY AMONG VARIOUS PARTICIPATING ENTITIES AND SALT RIVER PROJECT
AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

MEMORANDUM OF UNDERSTANDING
TO SUPPORT THE BARTLETT DAM MODIFICATION FEASIBILITY STUDY
AMONG VARIOUS PARTICIPATING ENTITIES,
SALT RIVER VALLEY WATER USERS' ASSOCIATION,
AND
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

August 31, 2021

1. PARTIES:

This nonbinding memorandum of understanding (“MOU”) to support the Bartlett Dam Modification Feasibility Study is entered into by those entities listed in the Contact List of Exhibit A (“Participating Entities”), the Salt River Valley Water Users' Association (“Association”), and the Salt River Project Agricultural Improvement and Power District (“District”). The Association and District are referred to collectively as “SRP.” SRP and the Participating Entities are referred to collectively as “Parties.”

2. BACKGROUND AND PURPOSE:

- a. The United States Department of the Interior’s Bureau of Reclamation (“Reclamation”), in partnership with SRP, conducted an appraisal level investigation called the Verde Reservoirs Sediment Mitigation Study to evaluate options to restore capacity lost in SRP’s Verde River reservoirs due to sediment accumulation, which impacts critical water supplies for central Arizona.
- b. Reclamation issued a draft report entitled “Verde Reservoirs Sediment Mitigation Study Appraisal Report” in May 2021 (“Draft Appraisal Report”) recommending that Reclamation:
 - i. Seek/confirm authority to initiate a feasibility study to determine the technical, environmental, economic, and financial feasibility of implementing one of two Bartlett Dam modification alternatives to enable central Arizona to adapt water management to changing climate conditions (“Bartlett Dam Modification Feasibility Study”);

- ii. Address topics identified in the Verde Reservoirs Sediment Mitigation Study during the feasibility study process; and
 - iii. Develop cost-share agreements necessary to support the successful completion of the Bartlett Dam Modification Feasibility Study.
- c. Reclamation is expected to release a final appraisal report by the end of calendar year 2021. The Parties support Reclamation's recommendations as identified in Subparagraph 2(b) and the initiation of the Bartlett Dam Modification Feasibility Study to further evaluate alternatives for modification of Bartlett Dam to improve management of water supplies of the Verde River, reduce the reliance on groundwater, and help position central Arizona to manage extended droughts and shortages created by climate change impacts on the Colorado, Salt, and Verde River watersheds.
- d. The purpose of this MOU is to describe the cooperative efforts and roles and responsibilities of the Parties related to supporting Reclamation in completing the Bartlett Dam Modification Feasibility Study as recommended in the Draft Appraisal Report. As described below, included in those cooperative efforts is the formation and participation in a steering committee as described in Paragraph 5(d) ("Steering Committee"), and development of the following agreements: (1) a cost-share agreement among the Participating Entities and SRP as described in Paragraph 5(a) ("Nonfederal Participating Entities Cost-Share Agreement"), and (2) the development of a cost-share agreement among SRP and Reclamation as described in Paragraph 4(b)(i) ("SRP-Reclamation Cost-Share Agreement").

3. TERM AND TERMINATION:

- a. This MOU will become effective upon execution by the Parties and, unless terminated under Subparagraph 3(b), will remain in effect until Reclamation issues a final report for the Bartlett Dam Modification Feasibility Study.
- b. This MOU will terminate in the event that Reclamation issues a final Verde Reservoirs Sediment Mitigation Study Appraisal Report that does not include a recommendation to study the feasibility of Bartlett Dam modification alternatives.
- c. This MOU and the provisions of this MOU may only be modified upon mutual written consent of the Parties.

4. RESPONSIBILITIES:

a. Mutual Responsibilities:

- i. The Parties will work cooperatively to develop the Nonfederal Participating Entities Cost-Share Agreement.
- ii. The Parties will work cooperatively to form and participate in the Steering Committee that is identified in Subparagraph 5(d) and will be further described by the Nonfederal Participating Entities Cost-Share Agreement.
- iii. The Parties will support and assist Reclamation to conduct the Bartlett Dam Modification Feasibility Study in the event that Reclamation has/obtains authority to conduct this study as identified in the recommendations noted in Subparagraph 2(b). This support and assistance is expected to include funding of the Bartlett Dam Modification Feasibility Study by some or all of the Participating Entities, as will be specified by the Nonfederal Participating Entities Cost-Share Agreement. The Parties will provide data and information relevant to analyses that may include but are not limited to assessments of hydrology and climate change, demand for use of water supplies, environmental and cultural resources, economics, engineering, dam safety and flood control, and recreation.

b. SRP Responsibilities:

- i. SRP will work with Reclamation to develop the SRP-Reclamation Cost-Share Agreement as a mechanism for SRP to pay the nonfederal cost-share required for completing the Bartlett Dam Modification Feasibility Study in the event that Reclamation has/obtains authority to conduct this study, including the funds collected under the Nonfederal Participating Entities Cost-Share Agreement, for completing the Bartlett Dam Modification Feasibility Study.
- ii. SRP will consult with the Participating Entities on substantive decisions related to Reclamation developing a plan of study for the Bartlett Dam Modification Feasibility Study while it finalizes the Draft Appraisal Report.

SRP will be the single point of contact with Reclamation on behalf of the Parties and will lead communications with Reclamation related to the Bartlett Dam Modification Feasibility Study until the Nonfederal Participating Entities Cost-Share Agreement is executed.

iii. SRP will serve as chair of the Steering Committee.

c. Participating Entities Responsibilities:

- i. Participating Entities will provide relevant data, information, opinions, and analyses related to the Bartlett Dam Modification Feasibility Study as reasonably requested by SRP or Reclamation in the event that Reclamation has/obtains authority to conduct the Bartlett Dam Modification Feasibility Study.
- ii. Participating Entities will serve on the Steering Committee as appropriate to engage in collaboration and coordination with SRP to support Reclamation's completion of the Bartlett Dam Modification Feasibility Study as will be further defined in the Nonfederal Participating Entities Cost-Share Agreement.
- iii. Participating Entities will coordinate and collaborate with SRP in efforts to communicate information related to the Bartlett Dam Modification Feasibility Study with elected officials and other relevant stakeholders on the project.

5. DEVELOPMENT OF THE NONFEDERAL PARTICIPATING ENTITIES COST-SHARE AGREEMENT:

- a. The Parties will collaborate to develop the Nonfederal Participating Entities Cost-Share Agreement with a goal of execution in Fall 2021. The Nonfederal Participating Entities Cost-Share Agreement will describe how nonfederal costs will be allocated among SRP and any Participating Entities agreeing to share those costs to provide nonfederal funding to Reclamation and any appropriate contractors to conduct the Bartlett Dam Modification Feasibility Study in the event that Reclamation has/obtains authority to conduct this study.

- b. As part of the process to develop the Nonfederal Participating Entities Cost-Share Agreement, SRP and any Participating Entities agreeing to share the nonfederal costs will collaborate to determine the relative shares of the non-federal cost contribution in support of the Bartlett Dam Modification Feasibility Study in the event that Reclamation has/obtains authority to conduct this study as recommended in the Draft Appraisal Report. The Parties understand that any cost-share contribution under the Nonfederal Participating Entities Cost-Share Agreement does not guarantee capacity in a future Modified Bartlett Dam in the event such a facility is constructed.
- c. The Nonfederal Participating Entities Cost-Share Agreement will be among SRP and any Participating Entities agreeing to share the nonfederal costs and will require those Participating Entities to submit funds to SRP for SRP to remit such funds to any necessary contractors or to Reclamation through the separate Reclamation-SRP Cost-Share Agreement.
- d. As part of the Nonfederal Participating Entities Cost-Share Agreement, the Parties will establish the Steering Committee chaired by SRP to provide timely and effective feedback and guidance to support Reclamation and any necessary contractors in achieving the milestones necessary to complete the Bartlett Dam Modification Feasibility Study in the event that Reclamation has/obtains authority to conduct this study and to facilitate coordination in communications with elected officials and other relevant stakeholders.

6. AUTHORIZED REPRESENTATIVES:

Within thirty (30) days after execution of this MOU, SRP and each Participating Entity shall designate in writing to the other Parties an Authorized Representative and an Alternate to administer this MOU on behalf of the designating party. Written notice of a change of an Authorized Representative or Alternate shall be provided within thirty (30) days of such change. The Alternate shall act only in the absence of the Authorized Representative. Neither the Authorized Representatives nor the Alternates shall have authority to amend, modify, or supplement this MOU. Agreements of the Authorized Representatives pursuant to this MOU shall be in writing and signed by them.

7. ADDITION AND WITHDRAWAL OF PARTICIPATING ENTITIES:

- a. Any Participating Entity may voluntarily withdraw from this MOU by providing thirty (30) days written notice to the other Parties as provided in Paragraph 8.
- b. Additional Participating Entities may be added to this MOU by the Steering Committee. Such additional Participating Entities may or may not (1) be parties to the Nonfederal Participating Entities Cost-Share Agreement, or (2) participate in the Steering Committee.

8. ADDRESSES FOR COMMUNICATIONS:

- a. All notices and communications under this MOU shall be addressed to the contacts set forth in Exhibit A. In the event Participating Entities are added to this MOU by the Steering Committee as described in Subparagraph 7(b), the Authorized Representatives shall update Exhibit A accordingly and distribute the updated Exhibit A to all of the Parties.
- 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]

9. **SIGNATURES:**

IN WITNESS WHEREOF, this MOU was executed by the Parties on the date first hereinabove written.

**SALT RIVER VALLEY WATER USERS'
ASSOCIATION**

By: 

Name: David C. Roberts

Title: Associate General Manager
Water Resources

APPROVED AS TO FORM

By: 

Name: Patrick B. Sigl

Title: Supervising Attorney, Environment, Land
& Water Rights

**SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT**

By: 

Name: David C. Roberts

Title: Associate General Manager
Water Resources

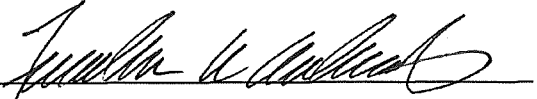
APPROVED AS TO FORM

By: 

Name: Patrick B. Sigl

Title: Supervising Attorney, Environment, Land
& Water Rights

ARIZONA WATER COMPANY

By: 

Name: Fredrick K. Schneider

DA000792

Title: President

APPROVED AS TO FORM

By: 

Name: E. Robert Spear

Title: Vice President and General Counsel

CITY OF APACHE JUNCTION

By: 

Name: Michael Loggins

Title: Water District Director

APPROVED AS TO FORM

By:  8-19-21

Name: R. Joel Stern

Title: District Counsel

[PARTICIPATING ENTITY]

By: *Cherlene Penilla*
Cherlene Penilla (Aug 5, 2021 10:41 PDT)
Name: for Charles A. Montoya
Title: City Manager

APPROVED AS TO FORM

By: *Nicholle Harris*
Nicholle Harris (Aug 4, 2021 17:46 PDT)
Name: Nicholle Harris
Title: City Attorney

ATTEST: *Linda Mendenhall*
Linda Mendenhall (Aug 5, 2021 10:44 PDT)



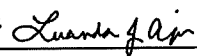
**CITY OF BUCKEYE, an Arizona municipal
Corporation,**

By: 

Name: Eric W. Orsborn

Title: Mayor

ATTEST

By: 

Name: Lucinda J. Aja

Title: City Clerk

APPROVED AS TO FORM:

Shiela B. Schmidt

Name: Shiela B. Schmidt

Title: City Attorney

**BUCKEYE WATER CONSERVATION AND
DRAINAGE DISTRICT**

By: Noel Carter

Name: Noel Carter

Title: General Manager

APPROVED AS TO FORM

By: Michael Pearce

Name: Michael Pearce

Title: District Attorney, Water Rights

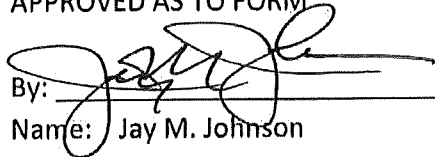
**CENTRAL ARIZONA WATER CONSERVATION
DISTRICT**

By: _____

Name: Theodore C. Cooke, D.B.A.

Title: General Manager

APPROVED AS TO FORM

By: _____

Name: Jay M. Johnson

Title: General Counsel

CITY OF CHANDLER

By: _____

John Khudson

Director, Public Works & Utilities

APPROVED AS TO FORM

By: _____

Jenny J. Winkler

Assistant City Attorney

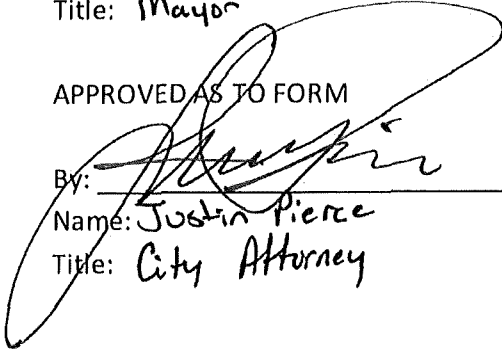
CITY OF EL MIRAGE

By: 

Name: Alexis Hermosillo

Title: Mayor

APPROVED AS TO FORM

By: 

Name: Justin Pierce

Title: City Attorney

EPCOR USA, INC.

By: J. D. Gysel

Name: Joe Gysel

Title: President

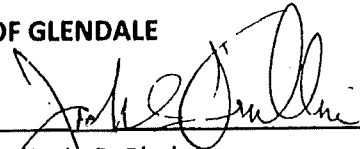
APPROVED AS TO FORM

By: D. H. C.

Name: Dan Holwerda

Title: Associate General Counsel

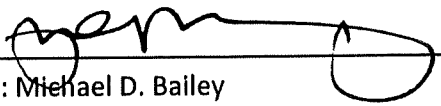
CITY OF GLENDALE

By: 

^{FOR}
Name: Kevin R. Phelps

Title: City Manager

APPROVED AS TO FORM

By: 

Name: Michael D. Bailey

Title: City Attorney

ATTEST:

By: 

Name: Julie K. Bower

(SEAL)

Title: City Clerk

CITY OF GOODYEAR

By: _____

Name: Julie Karins

Title: City Manager

APPROVED AS TO FORM

By: _____

Name: Roric Massey

Title: City Attorney

CITY OF MESA

By: 

Name: Jake West

Title: Water Resources Department Director

CITY OF PEORIA

By: [Signature]
Name: Katie Gregory
Title: Deputy City Manager

APPROVED AS TO FORM

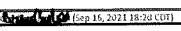
By: [Signature]
Name: Vanessa Hickman
Title: City Attorney

ATTEST

By: [Signature]
Name: Rhonda Germino
Title: City Clerk



City of Phoenix

By:  _____
(Sep 15, 2021 18:29 CDT)

Name: Cynthia Campbell _____

Title: Water Resources Management Advisor

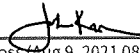
APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

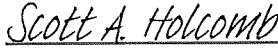
TOWN OF QUEEN CREEK

By: 
By: John Kross (Aug 9, 2021 08:40 PDT)

Name: John Kross

Title: Town Manager

APPROVED AS TO FORM


By: Scott A. Holcomb (Aug 10, 2021 10:13 PDT)

Name: Scott Holcomb

Title: Town Attorney

Roosevelt Water Conservation District

By: 

Name: Shane M. Leonard

Title: General Manager

APPROVED AS TO FORM

By: _____

Name: _____

Title: _____

CITY OF SCOTTSDALE

By: 

Name: DAVID D. ORTEGA

Title: MAYOR OF SCOTTSDALE

APPROVED AS TO FORM

By: 

Name: Janis L. Bladine

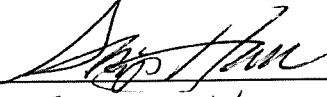
Title: Jr. Asst. City Attorney

ATTEST



CITY CLERK

CITY OF SURPRISE

By: 

Name: Skip Hall

Title: Mayor

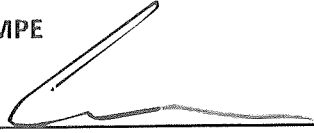
APPROVED AS TO FORM

By: 

Name: Robert Wingo

Title: City Attorney

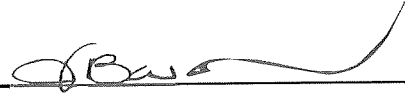
CITY OF TEMPE

By: 

Name: Corey D. Woods

Title: Mayor

APPROVED AS TO FORM

By: 

Name: Judith R. Baumann

Title: City Attorney

MEMORANDUM OF UNDERSTANDING

**TO SUPPORT THE BARTLETT DAM MODIFICATION FEASIBILITY STUDY
AMONG VARIOUS PARTICIPATING ENTITIES,
SALT RIVER VALLEY WATER USERS' ASSOCIATION,
AND
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

Exhibit A

Parties Contact List

Table 1 – Parties

Arizona Water Company	City of Glendale
City of Apache Junction	City of Mesa
City of Avondale	City of Peoria
City of Buckeye	City of Phoenix
Buckeye Water Conservation and Drainage District	Town of Queen Creek
Central Arizona Groundwater Replenishment District	Roosevelt Water Conservation District
City of Chandler	Salt River Valley Water Users' Association
City of El Mirage	Salt River Project Agricultural Improvement and Power District
EPCOR, USA, Inc.	City of Surprise
Town of Gilbert	City of Tempe
City of Goodyear	

Table 2 – Contacts

Party	Contact
Arizona Water Company	Arizona Water Company c/o President 3805 N. Black Canyon Highway Phoenix, AZ 85015 <u>Copy to:</u> Terri Sue Rossi, Water Resources Manager Arizona Water Company 3805 N. Black Canyon Highway Phoenix, AZ 85015
City of Apache Junction	City of Apache Junction c/o Michael Loggins 300 E. Superstition Blvd. Apache Junction, AZ 85119 <u>Copy to:</u> Bryant Powell 300 E. Superstition Blvd. Apache Junction, AZ 85119
City of Avondale	
City of Buckeye	Alisha Solano, Water Resources Director 21749 W. Yuma Road, Suite 107 Buckeye, AZ 85326 <u>Copy to:</u> Sheila B. Schmidt, City Attorney Gust Rosenfeld 1 East Washington, Suite 1600 Phoenix, AZ 85004 sschmidt@gustlaw.com

Table 2 – Contacts

Party	Contact
Buckeye Water Conservation and Drainage District	
Central Arizona Groundwater Replenishment District	Theodore C. Cooke, General Manager Central Arizona Water Conservation District P.O. Box 43020 Phoenix, AZ 85080-3020 <u>Copy to:</u> Chris Brooks, Senior Analyst Laura Grignano, Manager Central Arizona Groundwater Replenishment District P.O. Box 43020 Phoenix, AZ 85080-3020
City of Chandler	John Knudson, Director, Public Works & Utilities City of Chandler P.O. Box 4008, MS 403 Chandler, AZ 85244-4008 <u>Copy to:</u> Kelly Schwab, City Attorney City of Chandler P.O. Box 4008, MS 602 Chandler, AZ 85244-4008
City of El Mirage	

Table 2 – Contacts

Party	Contact
EPCOR USA, Inc.	EPCOR USA, Inc c/o Joe Gysel President 2355 W. Pinnacle Peak Road, Suite 300 Phoenix, AZ 85027 <u>Copy to:</u> EPCOR USA, Inc c/o General Counsel 2355 W. Pinnacle Peak Road, Suite 300 Phoenix, AZ 85027
Town of Gilbert	
City of Goodyear	
City of Glendale	City of Glendale c/o City Clerk-Julie K. Bower 5850 W. Glendale Ave. Glendale, AZ 85301 <u>Copy to:</u> City of Glendale Drew Swieczkowski 7070 W. Northern Ave. Glendale, AZ 85303

Table 2 – Contacts

Party	Contact
City of Mesa	City of Mesa c/o City Manager's Office P.O. Box 1466 Mesa, Arizona 85211-1466 <u>Copy to:</u> Brian Draper Water Resources Advisor City of Mesa P.O. Box 1466 Mesa, Arizona 85211-1466
City of Peoria	
City of Phoenix	
Town of Queen Creek	John Kross Paul Gardner 22358 S. Ellsworth Road Queen Creek, AZ 85142
Roosevelt Water Conservation District	

Table 2 – Contacts

Party	Contact
Salt River Valley Water Users' Association And Salt River Project Agricultural Improvement and Power District	Salt River Project c/o Corporate Secretary P.O. Box 52025 Phoenix, AZ 85072-2205 <u>Copy to:</u> Ronald J. Klawitter Water System Projects Principal Salt River Project P.O. Box 52025 Phoenix, AZ 85072-2205
City of Scottsdale	City of Scottsdale – Scottsdale Water c/o Executive Director 9312 N. 94 th Street Scottsdale, AZ 85258 <u>Copy to:</u> City of Scottsdale – City Attorney 3939 N. Drinkwater Blvd. Scottsdale, AZ 85251
City of Surprise	
City of Tempe	

**AGREEMENT TO SHARE COSTS FOR THE FEASIBILITY STUDY OF BARTLETT DAM
MODIFICATION ALTERNATIVES
AMONG COST-SHARE PARTNERS
AND
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

EXHIBIT C

**MEMORANDUM OF UNDERSTANDING TO SUPPORT THE BARTLETT DAM MODIFICATION
FEASIBILITY STUDY AMONG THE FORT MCDOWELL YAVAPAI NATION AND SALT RIVER
PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

MEMORANDUM OF UNDERSTANDING
TO SUPPORT THE BARTLETT DAM MODIFICATION FEASIBILITY STUDY
BETWEEN FORT MCDOWELL YAVAPAI NATION,
SALT RIVER VALLEY WATER USERS' ASSOCIATION,
AND
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

October 12, 2021

1. PARTIES:

This nonbinding memorandum of understanding ("MOU") to support the Bartlett Dam Modification Feasibility Study is entered into by the Fort McDowell Yavapai Nation ("Nation"), the Salt River Valley Water Users' Association ("Association"), and the Salt River Project Agricultural Improvement and Power District ("District"). The Association and District are referred to collectively as "SRP." SRP and the Nation are referred to collectively as "Parties."

2. BACKGROUND AND PURPOSE:

- a. The United States Department of the Interior's Bureau of Reclamation ("Reclamation"), in partnership with SRP, conducted an appraisal level investigation called the Verde Reservoirs Sediment Mitigation Study to evaluate options to restore capacity lost in SRP's Verde River reservoirs due to sediment accumulation, which impacts critical water supplies for central Arizona.
- b. Reclamation issued a draft report entitled "Verde Reservoirs Sediment Mitigation Study Appraisal Report" in May 2021 ("Draft Appraisal Report"), the Executive Summary is attached to this MOU as Exhibit A, recommending that Reclamation:
 - i. Seek/confirm authority to initiate a feasibility study to determine the technical, environmental, economic, and financial feasibility of implementing one of two Bartlett Dam modification alternatives to enable central Arizona to adapt water management to changing climate conditions ("Bartlett Dam Modification Feasibility Study");

- ii. Address topics identified in the Verde Reservoirs Sediment Mitigation Study during the feasibility study process; and
 - iii. Develop cost-share agreements necessary to support the successful completion of the Bartlett Dam Modification Feasibility Study.
- c. Reclamation is expected to release a final appraisal report by the end of calendar year 2021. The Parties support Reclamation's recommendations as identified in Subparagraph 2(b) and the initiation of the Bartlett Dam Modification Feasibility Study to further evaluate alternatives for modification of Bartlett Dam to improve management of water supplies of the Verde River, reduce the reliance on groundwater, and help position central Arizona to manage extended droughts and shortages created by climate change impacts on the Colorado, Salt, and Verde River watersheds.
- d. The purpose of this MOU is to describe the cooperative efforts and roles and responsibilities of the Parties related to supporting Reclamation in completing the Bartlett Dam Modification Feasibility Study as recommended in the Draft Appraisal Report. As described below, included in those cooperative efforts is the formation and participation in a steering committee as described in Paragraph 5(d) ("Steering Committee"), and development of the following agreements: (1) a cost-share agreement as described in Paragraph 5(a) ("Nonfederal Participating Entities Cost-Share Agreement"), and (2) a cost-share agreement among SRP and Reclamation as described in Paragraph 4(b)(i) ("SRP-Reclamation Cost-Share Agreement").
- e. SRP has executed, or will be executing, a similar nonbinding MOU to Support the Bartlett Dam Modification Feasibility Study with some or all of the following entities: Arizona Water Company, Buckeye Water Conservation and Drainage District, Central Arizona Groundwater Replenishment District, City of Apache Junction, City of Avondale, City of Buckeye, City of Chandler, Town of Gilbert, City of El Mirage, City of Glendale, City of Goodyear, City of Mesa, City of Peoria, City of Phoenix, City of Scottsdale, City of Surprise, City of Tempe, EPCOR, Roosevelt Water Conservation District and Town of Queen Creek. The listed entities will be referred to as ("Participating Entities").

3. TERM AND TERMINATION:

- a. This MOU will become effective upon execution by the Parties and, unless terminated under Subparagraph 3(b), will remain in effect until Reclamation issues a final report for the Bartlett Dam Modification Feasibility Study.
- b. This MOU will terminate in the event that Reclamation issues a final Verde Reservoirs Sediment Mitigation Study Appraisal Report that does not include a recommendation to study the feasibility of Bartlett Dam modification alternatives.
- c. This MOU and the provisions of this MOU may only be modified upon mutual written consent of the Parties.

4. RESPONSIBILITIES:

- a. Mutual Responsibilities:
 - i. The Nation will work cooperatively together with the Participating Entities and SRP to develop the Nonfederal Participating Entities Cost-Share Agreement although the Parties agree that the Nation will not be required to contribute any funding towards the Bartlett Dam Modification Feasibility Study.
 - ii. The Nation will work cooperatively with the Participating Entities and SRP to form and participate in the Steering Committee that is identified in Subparagraph 5(d) and will be further described by the Nonfederal Participating Entities Cost-Share Agreement.
 - iii. The Parties will support and assist Reclamation to conduct the Bartlett Dam Modification Feasibility Study in the event that Reclamation has/obtains authority to conduct this study as identified in the recommendations noted in Subparagraph 2(b). This support and assistance is expected to include funding of the Bartlett Dam Modification Feasibility Study by some or all of the Participating Entities, as will be specified by the Nonfederal Participating Entities Cost-Share Agreement. The Parties may provide data and information relevant to analyses that may include but are not limited to assessments of hydrology and climate change, demand for use of water supplies, environmental and cultural

resources, economics, engineering, dam safety and flood control, and recreation.

b. SRP Responsibilities:

- i. SRP will work with Reclamation to develop the SRP-Reclamation Cost-Share Agreement as a mechanism for SRP to pay the nonfederal cost-share required for completing the Bartlett Dam Modification Feasibility Study in the event that Reclamation has/obtains authority to conduct this study, including the funds collected under the Nonfederal Participating Entities Cost-Share Agreement, for completing the Bartlett Dam Modification Feasibility Study.
- ii. SRP will communicate with the Nation on a regular basis on all substantive decisions related to Reclamation developing a plan of study for the Bartlett Dam Modification Feasibility Study while it finalizes the Draft Appraisal Report.
- iii. SRP will serve as chair of the Steering Committee.

c. The Nation's Responsibilities:

- i. The Nation may provide relevant data, information, opinions, and analyses related to the Bartlett Dam Modification Feasibility Study as reasonably requested by SRP or Reclamation in the event that Reclamation has/obtains authority to conduct the Bartlett Dam Modification Feasibility Study.
- ii. The Nation will serve on the Steering Committee as appropriate to engage in collaboration and coordination with SRP to support Reclamation's completion of the Bartlett Dam Modification Feasibility Study as will be further defined in the Nonfederal Participating Entities Cost-Share Agreement.
- iii. The Nation may coordinate and collaborate with SRP in efforts to communicate information related to the Bartlett Dam Modification Feasibility Study with elected officials and other relevant stakeholders on the project.

- iv. Nothing in this MOU prevents the Nation from consulting with Reclamation on a formal or informal basis on any matter, including regarding the Bartlett Dam Modification Feasibility Study.

5. DEVELOPMENT OF THE NONFEDERAL PARTICIPATING ENTITIES COST-SHARE AGREEMENT:

- a. The Nation will collaborate with the other Participating Entities and SRP to develop the Nonfederal Participating Entities Cost-Share Agreement with a goal of execution in Fall 2021. The Nonfederal Participating Entities Cost-Share Agreement will describe how nonfederal costs will be allocated among SRP and any entities agreeing to share those costs to provide nonfederal funding to Reclamation and any appropriate contractors to conduct the Bartlett Dam Modification Feasibility Study in the event that Reclamation has/obtains authority to conduct this study.
- b. As part of the process to develop the Nonfederal Participating Entities Cost-Share Agreement, SRP and any entities agreeing to share the nonfederal costs will collaborate to determine the relative shares of the non-federal cost contribution in support of the Bartlett Dam Modification Feasibility Study in the event that Reclamation has/obtains authority to conduct this study as recommended in the Draft Appraisal Report. The Parties understand that any cost-share contribution under the Nonfederal Participating Entities Cost-Share Agreement does not guarantee capacity in a future Modified Bartlett Dam in the event such a facility is constructed.
- c. The Nation recognizes that the Nonfederal Participating Entities Cost-Share Agreement will be among SRP and any entity agreeing to share the nonfederal costs and will require those entities to submit funds to SRP for SRP to remit such funds to any necessary contractors or to Reclamation through the separate Reclamation-SRP Cost-Share Agreement.
- d. As part of the Nonfederal Participating Entities Cost-Share Agreement, the Participating Entities and the Parties will establish the Steering Committee chaired by SRP to provide timely and effective feedback and guidance to support Reclamation and any necessary contractors in achieving the milestones necessary to complete the Bartlett Dam Modification Feasibility Study in the event that

Reclamation has/obtains authority to conduct this study and to facilitate coordination in communications with elected officials and other relevant stakeholders.

- e. The Nation reserves the right to consult with Reclamation regarding cost-sharing for the Bartlett Dam Modification Feasibility Study.

6. AUTHORIZED REPRESENTATIVES

Within thirty (30) days after execution of this MOU, SRP and the Nation shall designate in writing an Authorized Representative and an Alternate to administer this MOU on behalf of the designating party. Written notice of a change of an Authorized Representative or Alternate shall be provided within thirty (30) days of such change. The Alternate shall act only in the absence of the Authorized Representative. Neither the Authorized Representatives nor the Alternates shall have authority to amend, modify, or supplement this MOU. Agreements of the Authorized Representatives pursuant to this MOU shall be in writing and signed by them.

7. ADDITION AND WITHDRAWAL OF PARTICIPATING ENTITIES:

- a. SRP or the Nation may voluntarily withdraw from this MOU by providing thirty (30) days written notice to the other Party as provided in Paragraph 8.

8. ADDRESSES FOR COMMUNICATIONS:

- a. All notices and communications under this MOU shall be addressed to the following addresses:

If to SRP:

Salt River Project
c/o Corporate Secretary
P.O. Box 52025
Phoenix, AZ 85072-2205

with a copy to:

Ronald J. Klawitter
Water System Projects Principal

Salt River Project
P.O. Box 52025
Phoenix, AZ 85072-2205

If to Fort McDowell Yavapai Nation:

Fort McDowell Yavapai nation
c/o Office of the President
PO Box 17779
Fountain Hills, AZ 85269

with a copy to:

Fort McDowell Yavapai Nation
Office of General Counsel
PO Box 17779
Fountain Hills, AZ 85269

- 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]

9. SIGNATURES:

IN WITNESS WHEREOF, this MOU was executed by the Parties on the date first hereinabove written.

**SALT RIVER VALLEY WATER USERS'
ASSOCIATION**

By: David C. Roberts

Name: David C. Roberts

Title: Associate General Manager
Water Resources

APPROVED AS TO FORM

By: Patrick B. Sigl

Name: Patrick B. Sigl

Title: Supervising Attorney, Environment, Land
& Water Rights

**SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT**

By: David C. Roberts

Name: David C. Roberts

Title: Associate General Manager
Water Resources

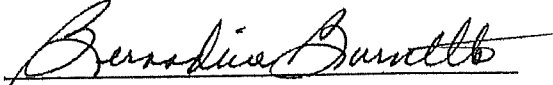
APPROVED AS TO FORM

By: Patrick B. Sigl

Name: Patrick B. Sigl

Title: Supervising Attorney, Environment, Land
& Water Rights

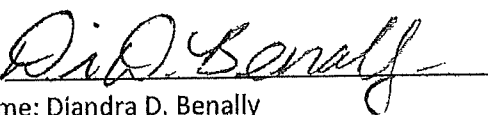
FORT MCDOWELL YAVAPAI NATION

By: 

Name: Bernadine Burnette

Title: President

APPROVED AS TO FORM

By: 

Name: Diandra D. Benally

Title: General Counsel

**AGREEMENT TO SHARE COSTS FOR THE FEASIBILITY STUDY OF BARTLETT DAM
MODIFICATION ALTERNATIVES
AMONG COST-SHARE PARTNERS
AND SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

**EXHIBIT D
ANNUAL CONTRIBUTION LEVELS***

Party	Annual Contribution to Nonfederal Cost- Share 2022	Annual Contribution to Nonfederal Cost-Share 2023	Annual Contribution to Nonfederal Cost-Share 2024	Annual Contribution to Nonfederal Cost-Share 2025
Arizona Water Company				
Water Utility Community Facilities District (Apache Junction Water District)				
City of Avondale				
City of Buckeye				
Buckeye Water Conservation and Drainage District**				
Central Arizona Groundwater Replenishment District				
City of Chandler				
City of El Mirage				
EPCOR USA, Inc.				
Fort McDowell Yavapai Nation**				
Town of Gilbert				
City of Glendale				
City of Goodyear				
City of Mesa				
City of Peoria				
City of Phoenix				
Town of Queen Creek				
Roosevelt Water Conservation District				
City of Scottsdale				
SRP				
City of Surprise				
City of Tempe				

* The Annual Contribution Level as defined in this Agreement includes the option for a Party to elect to budget and appropriate the full amount of \$400,000 to participate in this Agreement as a Voting Member at the time of the Effective Date of the Agreement for that Party. Payment will be made pursuant to Section 12 of this Agreement.

** These Parties are Voting Members of the Steering Committee irrespective of their Annual Contribution Levels.

**AGREEMENT TO SHARE COSTS FOR THE FEASIBILITY STUDY OF BARTLETT DAM
MODIFICATION ALTERNATIVES
AMONG COST-SHARE PARTNERS
AND
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

EXHIBIT E

POTENTIAL CRITERIA FOR ASSESSING NEED FOR WATER

The parties ("Parties") to the Agreement to Share Costs Associated with the Feasibility Study of Bartlett Dam Modification Alternatives Among Cost-Share Partners and Salt River Project Agricultural Improvement and Power District ("Agreement") will work together to develop criteria for evaluating the need of interested parties in gaining access to new conservation storage capacity and associated water supplies made possible by construction of a modified Bartlett Dam. The steering committee established by the Agreement ("Steering Committee") will develop the evaluation criteria that will be used to determine a beneficiary's extent and urgency of need. The following provides examples of the type of information and criteria that the Steering Committee may consider when developing the criteria.

The Steering Committee may consider criteria similar to the following to evaluate if a beneficiary should be recommended for gaining access to water supplies provided by any new conservation storage space added on the Verde River as a result of potential modifications to Bartlett Dam:

- Whether a reduction in non-renewable groundwater use would result from access to the supplies
- Whether access to the supplies would result in increase in the physical availability of water in areas without current access to renewable water supplies
- Whether a beneficiary interested in gaining access to supplies is able to demonstrate or outline a plan (with reasonable investment, agreement, or exchange) to directly use, store and recover, or replenish groundwater with the supplies in a manner consistent with water management goals of the AMA in which the beneficiary operates and existing law
- Whether access to water supplies made possible aids in meeting demands of existing water providers on an identified time horizon to-be determined by the Steering Committee
- Whether access to water supplies aids in mitigating effects of shortages from other supplies in causing service disruptions to existing customers
- Whether access to water supplies would help resolve an immediate, short term or long-term need.

Information that may be Considered to Evaluate Participant's Need:

- Applicable ADWR approved Designations of Assured Water Supply, ADWR approved groundwater modeling in support of a Physical Availability Determination, and ADWR approved Certificates of Assured Water Supply
- Annual Water Withdrawal and Use Reports
- Community Water System Annual Reports
- System Water Plans/Water, Wastewater, Water Resource Master Plans modeled and completed by each MOU Partner within identified time horizon during the feasibility study process to-be determined by Steering Committee
- Other data and information as identified by the Steering Committee

**AGREEMENT TO SHARE COSTS FOR THE FEASIBILITY STUDY OF BARTLETT DAM
MODIFICATION ALTERNATIVES
AMONG COST-SHARE PARTNERS
AND
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

EXHIBIT F

CONTACT LIST

Party	Contact
Arizona Water Company	Arizona Water Company c/o President 3805 N. Black Canyon Highway Phoenix, AZ 85015 <u>Copy to:</u> Terri Sue Rossi, Water Resources Manager Arizona Water Company 3805 N. Black Canyon Highway Phoenix, AZ 85015
Water Utility Community Facilities District (Apache Junction Water District)	Water Utility Community Facilities District (dba Apache Junction Water District c/o Michael Loggins 300 E. Superstition Blvd. Apache Junction, AZ 85119 <u>Copy to:</u> Bryant Powell 300 E. Superstition Blvd. Apache Junction, AZ 85119
City of Avondale	

Party	Contact
City of Buckeye	Alisha Solano, Water Resources Director 21749 W. Yuma Road, Suite 107 Buckeye, AZ 85326 <u>Copy to:</u> Sheila B. Schmidt, City Attorney Gust Rosenfeld 1 East Washington, Suite 1600 Phoenix, AZ 85004 sschmidt@gustlaw.com
Buckeye Water Conservation and Drainage District	
Central Arizona Groundwater Replenishment District	Theodore C. Cooke, General Manager Central Arizona Water Conservation District P.O. Box 43020 Phoenix, AZ 85080-3020 <u>Copy to:</u> Chris Brooks, Senior Analyst Laura Grignano, Manager Central Arizona Groundwater Replenishment District P.O. Box 43020 Phoenix, AZ 85080-3020

Party	Contact
City of Chandler	John Knudson, Director, Public Works & Utilities City of Chandler P.O. Box 4008, MS 403 Chandler, AZ 85244-4008 <u>Copy to:</u> Kelly Schwab, City Attorney City of Chandler P.O. Box 4008, MS 602 Chandler, AZ 85244-4008
City of El Mirage	
EPCOR USA, Inc.	EPCOR USA, Inc c/o Joe Gysel President 2355 W. Pinnacle Peak Road, Suite 300 Phoenix, AZ 85027 <u>Copy to:</u> EPCOR USA, Inc c/o General Counsel 2355 W. Pinnacle Peak Road, Suite 300 Phoenix, AZ 85027
Ff. McDowell Yavapai Nation	
Town of Gilbert	Town of Gilbert c/o Town Manager 50 E. Civic Center Drive Gilbert, AZ 85296

Party	Contact
	<u>Copy to:</u> Town of Gilbert Lauren Hixson 50 E. Civic Center Drive Gilbert, AZ 85296
City of Goodyear	
City of Glendale	City of Glendale c/o City Clerk-Julie K. Bower 5850 W. Glendale Ave. Glendale, AZ 85301 <u>Copy to:</u> City of Glendale Drew Swieczkowski 7070 W. Northern Ave. Glendale, AZ 85303
City of Mesa	City of Mesa c/o City Manager's Office P.O. Box 1466 Mesa, Arizona 85211-1466 <u>Copy to:</u> Brian Draper Water Resources Advisor City of Mesa P.O. Box 1466 Mesa, Arizona 85211-1466
City of Peoria	City of Peoria c/o City Attorney's Office P.O. Box 4038 Peoria, AZ 85380-4038

Party	Contact
	<u>Copy to:</u> City of Peoria c/o Water Services Director 8401 W Monroe St Peoria, AZ 85345-6560
City of Phoenix	City of Phoenix Water Services Department 200 West Washington, 9th Floor Phoenix, AZ 85003 Attn: Water Services Director Copy to: City of Phoenix Law Department 200 West Washington, 13th Floor Phoenix, AZ 85003 Attn: City Attorney
Town of Queen Creek	John Kross Paul Gardner 22358 S. Ellsworth Road Queen Creek, AZ 85142 <u>Copy to:</u> _____ _____ _____ _____
Roosevelt Water Conservation District	

Party	Contact
Salt River Project Agricultural Improvement and Power District	Salt River Project c/o Corporate Secretary P.O. Box 52025 Phoenix, AZ 85072-2205 <u>Copy to:</u> Ronald J. Klawitter Water System Projects Principal Salt River Project P.O. Box 52025 Phoenix, AZ 85072-2205
City of Scottsdale	City of Scottsdale – Scottsdale Water c/o Executive Director 9312 N. 94th Street Scottsdale, AZ 85258 <u>Copy to:</u> City of Scottsdale – City Attorney 3939 N. Drinkwater Blvd. Scottsdale, AZ 85251
City of Surprise	
City of Tempe	