

**AGREEMENT
REGARDING COLLABORATIVE EFFORTS TO ACCEPT MUNICIPAL BRACKISH
WATER INTO THE WATER RECLAMATION SUPPLY SYSTEM PIPELINE**

This Agreement Regarding Collaborative Efforts to Accept Municipal Brackish Water into the Water Reclamation Supply System Pipeline (~~"WRSS"~~) (hereinafter referred to as this "Agreement"), is executed by and between Arizona Public Service Company ("APS"), the City of Buckeye, a municipal corporation formed under the laws of Arizona ("Buckeye"), and the City of Goodyear, a municipal corporation formed under the laws of Arizona ("Goodyear") and made effective ~~as of~~ 4th, August, 2022 (the "Effective Date"). Buckeye and Goodyear are sometimes referred to individually as "Municipal Party" and collectively as the "Municipalities" and APS, Buckeye and Goodyear are sometimes referred to individually as "Party" and collectively as "Parties."

RECITALS

- A. WHEREAS, Palo Verde Generating Stations ("PVGS") is a nuclear power plant, co-owned by APS, Salt River Project Agricultural Improvement & Power District, El Paso Electric Company, Southern California Edison Corporation, Public Service Company of New Mexico, Southern California Public Power Authority, and Los Angeles Department of Water & Power (the "Participants");
- B. WHEREAS, PVGS has Nuclear Regulatory Commission approved operating licenses for nuclear Units 1, 2, and 3 which expire in 2045, 2046, and 2047 respectively;
- C. WHEREAS, PVGS uses cooling water from municipal effluent delivered via the PVGS's ~~WRSS~~ water reclamation supply system pipeline ("WRSS") that runs through the municipal boundaries of Goodyear and Buckeye; the water is delivered to the PVGS Water Resources Facility ("WRF") where it is treated, stored, used for cooling and discharged into evaporation ponds;
- ~~D.~~ D. WHEREAS, APS also provides cooling water from its WRF to the Redhawk Power-~~D.~~ Generation Station ("Redhawk");
- E. WHEREAS, the WRSS supply pipeline is accessible from Goodyear's existing and/or future water treatment and reclamation facilities and will be accessible from Buckeye's existing and/or future water treatment and reclamation facilities;
- F. WHEREAS, APS is the ~~Operating Agent~~ operating agent of PVGS, including the WRSS and WRF, which operates for the benefit of the Participants;
- G. WHEREAS, because of the rising costs of effluent being used as cooling water, APS is interested in pursuing alternative sources of cooling water;
- H. WHEREAS, Buckeye and Goodyear seek a method to dispose of the reject stream from reverse osmosis treatment of groundwater and Goodyear seeks a method to dispose of some or all of water discharged from cooling towers of industrial users operating in Goodyear ~~(~~ (collectively with the reject stream water, "Brackish Water") into the ~~WRSS-Pipeline~~, which conveys water from the 91st Avenue Wastewater Treatment facility to the PVGS WRF for use as cooling water;

- I. WHEREAS, the Brackish Water generated by Goodyear is expected to have various constituents that are not treatable by the Goodyear water treatment and reclamation facilities, including but not limited to ~~Total-Dissolved-Solids~~total dissolved solids ("TDS"), which will be used as an aggregate indicator for the various constituents and is representative of the water quality;
- J. WHEREAS, the Brackish Water generated by Buckeye is expected to have various constituents that are not treatable by the Buckeye water treatment and reclamation facilities, including but not limited to ~~Total-Dissolved-Solids~~ ("TDS")TDS, which will be used as an aggregate indicator for the various constituents and is representative of the water quality;
- K. WHEREAS, it is expected that Brackish Water from Goodyear will have TDS levels ranging between 6,000 and 8,000 mg/l;
- L. WHEREAS, it is expected that Brackish Water from Buckeye will have TDS levels ranging between 9,000 and 15,000 mg/l;
- M. WHEREAS water introduced by industrial users will not have a TDS exceeding that of the municipality in which the industrial user resides;
- N. WHEREAS neither the municipalities nor any industrial users ~~may~~will be permitted to introduce water with hazardous materials that would cause PVGS to exceed the levels allowed in the applicable PVGS governmental authorization, including licenses and permits;
- O. WHEREAS, a preliminary analysis of using Brackish Water to supplement cooling water at PVGS was undertaken, which produced a report issued on October 28, 2021, titled "Brine Management Report";
- P. WHEREAS, the Brine Management Report (a) articulated viable technology options ~~and; (2) provided a~~ comparative cost analysis, that demonstrated the feasibility and identified some adverse impacts, of using Brackish Water as a source of cooling water for PVGS; and (c) provided broad estimated capital and operations and maintenance costs of improvements that would need to be made to the WRSS and WRF for Brackish Water to be used as a source of cooling water for PVGS;
- Q. WHEREAS, the Parties desire to retain one or more consulting firms (each a "Service Provider"), for the purposes of completing the Work (as defined below) in furtherance of identifying mutually beneficial solutions using existing infrastructure operated by APS that provides APS an alternative source of cooling water for PVGS, and the Municipalities an alternative means for disposing of ~~their~~ Brackish Water;
- R. WHEREAS, APS has agreed to engage a Service Provider to prepare the project cost estimates, to be the sole counterparty to each Service Provider for those service contracts, and to utilize the funds discussed herein to pay the invoiced costs of preparing the designs and project cost estimates;

S. WHEREAS, prior to negotiating a definitive agreement for the full-scale implementation of the solution identified in the Brine Management Study, APS desires to conduct a pilot test to alleviate concerns regarding the impact of the enhanced evaporation equipment on air quality and ability to effectively control drift of salts, and to ensure that this preferred technology can treat the projected Brackish Water flows without impacting PVGS's air quality permit status with reasonable compensatory measures and associated costs for control of drift;

S.T. WHEREAS, Goodyear's intent is to convey up to 1.7 million gallons per day (mgd) of Brackish Water through the WRSS by mid-2024 ("Goodyear's Initial Flows");

T.U. WHEREAS, subject to PVGS operational margins and design limitations, Goodyear's intent is to convey an additional up to 1.6 mgd of Brackish Water through the WRSS such that at full build-out, Goodyear will be delivering up to 3.3 mgd of Brackish Water thorough the WRSS ("Goodyear's Build-Out Flows");

U.V. WHEREAS, Buckeye's intent, subject to PVGS operational margins and design limitations, is to convey up to 0.5 mgd of Brackish Water through the WRSS initially ("Buckeye's Initial Flows") and additional flows after that;

V.W. WHEREAS PVGS cannot accept water deliveries to the WRSS during WRSS or WRF outages;

W.X. WHEREAS, the Parties envision that the project will be conducted in phases, which shall not be interpreted as a definitive schedule or timeline for preparing the project cost estimates or otherwise implementing the projects envisioned therein:

- a. The first phase will consist of an enhanced evaporation pilot test and associated analysis, developing designs and equipment sizing, and further refinement of the project costs to enable the negotiation of a final agreement as set forth in more detail below;
- b. The second phase will include: the final system design; the procurement of enhanced evaporation equipment; and the construction and installation of such equipment and the required infrastructure (pipelines and power supplies) to accommodate the initial project flows of Brackish Water from Buckeye and Goodyear;
- c. Future phases to allow increased flows of Brackish Water from the Municipalities may consist of installing increased capacity to possibly include water recovery equipment, such as a ~~Mechanical Vapor Recompression~~mechanical vapor recompression ("MVR") system and/or a reverse osmosis system or other appropriate technology and associated construction activities; and
- d. Given the critical nature of the system in terms of continued operation of PVGS, full system redundancy is required, with sufficient infrastructure, to account for premature equipment failure and/or downtimes, flow variations and weather events. The design of the system during the first phase and the completion of the design during the second phase⁷ will include the equipment and infrastructure needed

for full-system redundancy, and the second phase will include the-

procurement of necessary equipment and the installation and construction of all equipment and infrastructure needed to provide for full-system redundancy.

~~X~~.Y. WHEREAS, it is envisioned that the future phases described in Recital X, which may include a combination of technologies, would be negotiated separately based on the actual longevity of equipment, the Municipalities' projections of demand, and the possibility that additional municipalities may want to also participate; and

~~Y~~.Z. WHEREAS, it is agreed that higher fidelity cost estimates, on the order of Level 3 or better per Association for the Advancement of Cost Engineering ("AACE"), are required to inform detailed contract negotiations. This Agreement addresses the procurement of and payment for the development of designs and project cost estimates. It also addresses the implementation of the pilot test and emissions analysis to inform future permitting actions and other compensatory measures necessary to complete future phases and inform future contract negotiations. This Agreement does not otherwise cover any work or activities other than the ~~work~~Work and activities described below.

I. AGREEMENT

NOW, THEREFORE, in consideration of the above-referenced Recitals and the covenants and agreements set forth ~~below, including without limitation the Terms and Conditions provided below and the Attachments contained herein~~in this Agreement and any attachments hereto, the Parties agree as follows:

1. APS shall provide the following in connection with this Agreement (collectively the ~~"Work"~~:
"Work"):
 - a. Project Management: APS shall select and retain the Service Providers and provide overall project management of Design Development as described in Section 2 below, development of the project cost estimates, and development and execution of the pilot testing and airborne release analysis. APS shall also coordinate with Redhawk to ensure design concepts are executable and compatible with its operational needs.
 - b. Procurement of Goods and Services: APS will procure the necessary services and equipment to complete the Design Development set forth in Section 2 below, provide the project cost estimates for Phase 2 of the project as described in Recital ~~U~~X, install equipment needed for the pilot test, and undertake airborne release analysis.
 - c. Pilot Testing: In coordination with the Service Provider, APS will develop a protocol for and implement a pilot test that will seek to confirm equipment reliability and longevity, equipment operation and maintenance costs, and material compatibility with the evaporation pond water. The pilot test will use available sources of electrical power.
2. Design Development. The designs will include at least the following:

- a. A conceptual site plan to include both enhanced evaporation and recovery of water with a system such as MVR to treat up to 3.3 mgd of Brackish water from Goodyear-("Goodyear's Build-Out Flows") and to treat Buckeye's anticipated flows of Brackish Water at build-out, which amounts shall be provided to APS within thirty (30) days of the effective date of this Agreement. The deliverable shall be a conceptual site plan to include a recovered water pipeline return to two Unit cooling tower systems;
 - a.b. A design for collecting and pumping excess Redhawk blowdown water to the PVGS evaporation ponds. The deliverable shall include bid set drawings and specifications. If this pipeline solution would violate PVGS' permits, alternative solutions will need to be explored and may be outside the scope of this Agreement;
 - b.c. A design to provide sufficient electrical power for hybrid treatment, to treat up to 3.3 mgd of Brackish Water from Goodyear ("Goodyear's Build-Out Flows") and to treat Buckeye's anticipated build-out flows, which amounts shall be provided to APS within thirty (30) days of the effective date of this Agreement, including recovery and enhanced evaporation which the Parties may undertake in the future. The deliverable shall include bid set drawings and specifications;
 - c.d. A design to reconnect the existing Goodyear interface to the WRSS and to provide a second connection to the WRSS – deliverable includes bid set drawings and specifications;
 - d.e. A design to provide an interface connection between Buckeye's future reverse osmosis facility and the WRSS – deliverable includes bid set drawings and specifications; and
 - e.f. An equipment purchase specification for enhanced evaporation equipment required to accommodate 1.7 mgd of Brackish Water from Goodyear (Goodyear's Initial Flows) and to accommodate 0.5 mgd of Brackish Water from Buckeye (Buckeye's Initial Flows").
- ~~1.3.~~ 1.3. ~~Payment of Invoices.~~ APS shall invoice the Municipalities for the actual cost of the Work as it is incurred. The invoice shall split the costs between the Municipalities equally. Notwithstanding the foregoing, if either Buckeye or Goodyear ~~terminate the~~ terminates its participation in this Agreement pursuant to Section 11, APS shall invoice the remaining Municipal Party 100% of the actual cost of the Work performed after the termination. The Parties agree that the Terms and Conditions ~~provided below~~ shall govern the performance of ~~any and all~~ Work, ~~cost reimbursement, payment, or other activities contemplated or governed by this Agreement.~~
- ~~2.4.~~ 2.4. ~~Commitment to~~ Future Agreement. APS agrees that if the pilot test confirms that improvements can be made to the WRSS and WRF to accommodate the use of Brackish Water as cooling water for PVGS without identifying reasonably unacceptable or significant, unexpected conditions, APS will enter into good faith negotiations for a long-term agreement, not to exceed the life of operating licenses for the PVGS operating units, with each ~~Municipality~~ Municipal Party that requests an agreement, to allow the Municipal Party

or Municipalities to distribute Brackish Water into the WRSS for use as cooling water for PVGS. The agreement(s) will be on mutually acceptable terms, but will include a requirement that the Municipalities fund the costs of the improvements to the WRF and WRSS needed for each to deliver their respective Brackish Water to the WRSS; to pay an access fee for use of the WRF and WRSS; to pay ~~Operating~~operating and ~~Maintenance-Costs~~maintenance costs to cover APS's additional costs of operating the systems and the maintenance, repair, and periodic replacement of the systems improvements; and to commit to deliver agreed-upon amounts of Brackish Water to the WRSS. If agreed to, the long-term agreement shall provide for periodic modifications to the ~~Operating~~operating and ~~Maintenance-Costs~~maintenance costs, which shall be based on documented costs provided by APS. If agreed to, the long-term agreement shall also provide for contingencies should unexpected impacts to the WRSS or WRF beyond what was identified in the brine study be encountered following placing the system in--service. If no reasonably unacceptable or significant, unexpected conditions were identified and APS declines to enter into good faith negotiations for the long-term agreement referenced above, APS agrees (a)to reimburse each ~~municipality~~Municipal Party for the costs it incurred under this Agreement, less the value of the intellectual property, which may be ~~reimbursed~~refunded if the license to the intellectual property is terminated, in accordance with Section 10, ~~Intellectual Property~~, below, and (b) to not accept reject streams from reverse osmosis treatment of groundwater or any other streams of water from any third party for a period of three (3) years following the Effective Date. The Parties agree that the remedy prescribed by this Section 4 shall be the Municipalities' sole and exclusive remedy for APS's refusal to enter into good faith negotiations for the long-term agreement described herein. This provision shall survive the expiration ~~or earlier termination~~ of this Agreement, ~~unless this Agreement is terminated for cause.~~

3.5. --Third Parties. The longterm agreement, if entered into by the Parties, will also provide that APS will not accept reject streams from reverse osmosis treatment of groundwater or any other streams of water from other entities ("Additional Brine Owners") if doing so will result in Goodyear not being able to deliver up to 3.3 mgd of Brackish Water into the WRSS (Goodyear's Build-Out Flows) and/or Buckeye's anticipated flows of Brackish Water at build-out, which amounts shall be provided to APS within ~~Thirty~~thirty (30) days of the effective date of this Agreement. This provision shall survive the expiration ~~or earlier termination~~ of this Agreement ~~unless this Agreement is terminated for cause.~~

4.6. --Entry Fee. APS shall not allow ~~-Additional -Brine -Owners -from -delivering to~~ deliver reject streams from reverse osmosis treatment of groundwater or ~~-other~~ streams of water into the WRSS unless each Additional Brine Owner pays an Entry Fee, as defined below, and APS shall not enter into any such agreement with any Additional Brine Owner until (a) the Work under this Agreement has been completed and APS has been fully paid for such ~~work.~~Work, or (b) this Agreement has been terminated by the Municipalities under Section 11(b) or by APS under Section 11(c). The Entry Fee is to be determined using the formula below:

Entry Fee = P/N

P = the total costs invoiced under this Agreement

N = 2 + the number of Additional Brine Owners that have contracted to begin delivering water into the WRSS

APS will then divide the Entry Fee equally between the Municipalities and any

Additional Brine Owners that have contracted to begin delivering water into the WRSS.

So, for example, if the total cost invoiced under this agreement is \$1.2 million, the first Additional Brine Owner's Entry Fee will be calculated as follows:

Entry Fee = $1,200,000 / (2+1)$ So the Entry Fee for each party (Goodyear, Buckeye and the Additional Brine Owner) = \$400,000 and APS will ~~deliver~~ reimburse \$200,000 to Goodyear and \$200,000 to Buckeye.

This provision shall survive the expiration or earlier termination of this Agreement, ~~unless this Agreement is terminated for cause.~~ by the Municipalities under Section 11(b) or by APS under Section 11(c).

II. TERMS AND CONDITIONS

~~5.7.~~ Term.

This Agreement shall have a term that commences upon the Effective Date and expires upon completion of the Work (estimated to be within twelve (12) months of the Effective Date of this Agreement), the dissemination to the Parties of the work product produced, including all reports and all information and/or conclusions specific to such Parties, and full satisfaction of the Municipalities' payment obligations hereunder.

~~6.8.~~ Price and Payment.

- a. As long as they are Parties to this Agreement, the Municipalities are jointly and severally liable for reimbursing APS the full costs incurred by APS under this Agreement. APS represents that it will not accept double recovery for any of the Work performed under this Agreement. Except as otherwise provided in the Agreement, the Municipalities will each pay 50% of the actual cost of the Work. The total cost of the Work under this Agreement shall not exceed \$2,000,000. In the case that the total cost of Work is expected to exceed \$2,000,000, APS will obtain approval from the Municipalities before proceeding with the Work.
- b. Estimated Price of Goods and Services. Price estimates are provided in Attachment A, and the total cost of the Work under the Agreement is estimated to be \$1,650,000.
- c. Invoicing. APS shall submit invoices to the Municipalities billing each ~~Municipality~~ Municipal Party 50% of the cost of the Work performed. Such invoices shall contain: (A) a reference to this Agreement; (B) a description of the goods and services covered by the invoice; and (C) any reasonable documentation including, but not limited to, invoices provided to APS by the Service Provider. Invoices must be submitted to:

City of Goodyear

Accounts Payable
1900 No. Civic Square
Goodyear, AZ 85395

City of Buckeye
Water Resources Accounts Payable-
21749 W. Yuma Road, Suite 107
Buckeye, AZ 85326

- d. Payment Terms. The Municipalities shall pay amounts due to APS within thirty (30) days following the receipt of an invoice. Such payments shall be submitted to:

Arizona Public Service Company
P.O. Box 53920 Sta. 9996
Phoenix, AZ 85072-3920

~~7.9.~~ Confidentiality.

- a. Duty of Non-Disclosure. The confidentiality and non-disclosure obligations and rights of the Parties pursuant to this Agreement are set forth in the Confidentiality & Non-Disclosure Agreement attached hereto as Exhibit B, which is hereby incorporated by reference as if part of this Agreement ~~by reference~~.
- b. Use of APS's Name. Neither the Municipalities nor any personnel, employee, or other agent of the Municipalities shall use APS's name, trademarks, facility names, or photographs of APS property in any marketing materials, customer lists, or other public documents or publicly accessible locations, without APS's prior written consent, which may be withheld by APS in its sole discretion.

~~8.10.~~ Intellectual Property.

- a. Pre-existing Intellectual Property. Rights to any and all intellectual property conceived, authored, made, or reduced to practice by ~~either~~any Party prior to performing under this Agreement, are and will remain that Party's property.
- b. New Intellectual Property. Copies of all reports, data, or final documentation generated as a result of this Agreement or otherwise provided or assigned to APS by the Service Provider (the "Intellectual Property") shall be provided to the Municipalities. APS shall have ownership rights to the results of any reports, data, or final documentation generated as a result of this Agreement or otherwise provided or assigned to APS by the Service Provider as works for hire (the "Intellectual Property"). Upon payment in full of all amounts due under this Agreement by the Municipalities, APS will grant a paid-in-full, non-exclusive, non-sublicensable, and non-transferrable license to the Intellectual Property to the Municipalities ~~while the Municipalities are delivering Brackish Waters to the WRSS pursuant to the future agreements contemplated by this Agreement in Section 4 and~~

~~Recital X.~~ If APS refuses to enter into good faith negotiations for the long-term agreements as set forth in Section 4 above and/or future agreements as contemplated by Recital X, each ~~Municipality can~~ Municipal Party may, at ~~their~~ its sole discretion, ~~maintain~~ retain the license ~~permanently~~ and use the Intellectual Property for the use of its own brackish water treatment system, or ~~upon the mutual agreement of APS and the relevant municipality,~~ terminate the license and return the Intellectual Property, and upon receipt thereof, APS shall pay a license ~~termination~~ refund fee to ~~that municipality,~~ not to exceed the value of the design work, which the Parties agree is equal to such Municipal Party of \$300,000 (three hundred thousand dollars). For the avoidance of doubt, one ~~municipality~~ Municipal Party may choose to terminate its license and the other may maintain its license. This provision shall survive the expiration ~~or earlier termination~~ of this Agreement, ~~unless this Agreement is terminated for convenience.~~ Termination.

~~9. Termination.~~

a. Payment Obligation Following Termination. Termination by either Buckeye or Goodyear will not obviate the terminating Party's obligation to pay for services already rendered by APS or ~~the~~ any Service Provider prior to the Termination.

~~a.b.~~ Termination for Convenience. Each Party may terminate this Agreement for convenience upon thirty (30) days' prior written notice to the non-terminating Parties. The Termination will become effective on the 30th day after the notice is received by the non-terminating Parties unless expressly set for a later date in the notice. In the event that either ~~Municipality~~ Municipal Party terminates this Agreement for convenience, APS will invoice the terminating Party for Work performed prior to the Termination not previously invoiced. In the event APS terminates this Agreement for convenience, APS shall as the Municipalities' sole and exclusive remedy for such termination, reimburse the Municipalities ~~all of the money~~ invoiced amounts each paid APS under this Agreement.

~~b.c.~~ Termination for Cause. In the event of a material breach of this Agreement, the non-breaching Parties may terminate this Agreement as to the breaching Party if such breach continues uncured for a period of forty-five (45) days following receipt of written notice from the non-breaching Parties.

11. Designated Representative and Notice.

~~10. Designated Representative and Notice.~~

All communications relating to the day-to-day activities under this Agreement shall be between the designated representatives, specified below. Any other notices required under this Agreement will be sent to the individuals identified below, by email and certified mail, return receipt requested. Notices will be effective on the date the certified mail is delivered.

If to APS:

Arizona Public Service Company
Attn: Brad Berles, General Manager, Water Resources
5871 S. Wintersburg Rd., MS 7602
Tonopah, AZ 85354

With a copy to:
Arizona Public Service Company
Attn: General Counsel
400 North Fifth Street, MS 8695
Phoenix, AZ 85004

If to City of Goodyear:

City of Goodyear
Attn: City Manager
1900 No. Civic Square
Goodyear, AZ 85395

With a copy to:
City of Goodyear
Attn: Director of Public Works ~~4980 So. 157th Avenue Goodyear, AZ 85395~~

and

With a copy to:
City of Goodyear
Attn: City Attorney
1900 No. Civic Square
Goodyear, AZ 85395

If to City of Buckeye:

City of Buckeye
Attn: City Manager
530 East Monroe Avenue
Buckeye, AZ 85326

With a copy to:
City of Buckeye
Attn: Water Resources Director
21749 West Yuma Road, Suite 107
Buckeye, AZ 85326

and

With a copy to:
Gust Rosenfeld, P.L.C.
Attn: Shiela B. Schmidt
One East Washington Street, Suite 1600
Phoenix, AZ 85004

Designated Representatives:

~~For APS — Brad Berles~~
~~General Manager, Palo Verde Water Resources~~
~~5871 South Wintersburg Road,~~
~~Tonopah, AZ 85354, M.S. 7602~~
~~623.393.6607~~

~~For Goodyear — Barbara Chappell~~
~~Deputy Public Works Director~~
~~4980 S. 157th Avenue~~
~~Goodyear, AZ 85338~~

~~For Buckeye — Terry Lowe, Director~~
~~Water Resources Department, City of Buckeye~~
~~tlowe@buckeyeaz.gov~~

For APS - Brad Berles
General Manager, Palo Verde Water Resources
5871 South Wintersburg Road,
Tonopah, AZ 85354, M.S. 7602
623.393.6607

For Goodyear – Barbara Chappell
Deputy Public Works Director
4980 S. 157th Avenue
Goodyear, AZ 85338

For Buckeye – Terry Lowe, Director
Water Resources Department, City of Buckeye
tlowe@buckeyeaz.gov

~~11.12.~~ Entire Agreement, Amendments.

Except as otherwise stated herein, this Agreement constitutes the entire-

agreement of the Parties with respect to its subject matter, supersedes all prior agreements, and may not be amended except in writing signed by an authorized

representative of each Party. Also incorporated by reference herein are the following attachments:

- Attachment A (Estimated Costs)
- Attachment B (Confidentiality & Non-Disclosure

Agreement) ~~14~~13. Indemnification.

Except as provided herein, and to the extent permitted by law, the Municipalities agree to indemnify, defend, and hold APS harmless against any liabilities APS incurs to the Service Provider(s) that arise from, are alleged to have arisen from, or are related to APS' role as project manager for the Work under this Agreement, so long as any underlying action or failure to act was within the scope of the obligations and authority of APS under this Agreement, or otherwise taken or not taken in the reasonable and good faith belief that such action or failure to act was in accordance with APS' obligations and authority under this Agreement or otherwise in the best interests of the Municipalities (the "Indemnification"). The Indemnification provided herein does not apply to any liability or claims arising from, alleged to have arisen from, or that are related to any of the following: (i) a loss of service; (ii) damage to any APS equipment and/or APS Facility; (iii) damage to any ~~Red Hawk~~Redhawk equipment and/or ~~Red Hawk~~Redhawk facility; and (iv) any breach of the contract between APS and any Service Provider, unless that breach was caused, in whole or in part, by any action of the Municipalities that the Municipalities knew, or should have known, could cause the breach. This indemnity shall include reasonable costs of defense, including reasonable attorneys' fees, of any such claim. Each of the Parties shall provide prompt notice of any claim subject to Indemnification hereunder, but failure to give such prompt notice shall not be a defense to any indemnification obligation under this Agreement, except to the extent that any Party can prove actual prejudice from such delay.

~~15~~14. Miscellaneous.

- a. No Joint Venture. Nothing in this Agreement shall constitute or be construed to be or to create a partnership or joint venture relationship between the Parties. No Party shall make any statement or take any action that is inconsistent with the provisions of this Section. It is understood and agreed that the management and control of the contracts between APS and the Service Provider shall remain, at all times, under the exclusive control of those entities.
- b. No Waiver. No statement, course of conduct, course of dealing, or other action will be construed as a waiver. Any waiver must be in writing and signed by the Party granting the waiver.
- c. Assignment. The Municipalities will not assign its rights or delegate its duties under this Agreement without the prior written consent of APS, which APS may withhold at its sole discretion. Any assignment or delegation by the Municipalities in breach of this provision is void.

d. Limitation of Liability. No Party will be liable to another Party for any indirect, consequential, special, or punitive damages or lost profits in connection with this Agreement. The foregoing notwithstanding, to the extent that one Party is entitled to indemnification from the other Party in connection with a third-party claim, any damage awarded to the third party (direct, consequential, or otherwise), will be deemed to be direct damages of the indemnified Party, for which the indemnifying Party will be liable.

e. Survival of Obligations and Liabilities. Termination or expiration of this Agreement shall not relieve ~~either~~any Party of any obligation that expressly or by implication survives termination or expiration, including but not limited to: Indemnification, Limitation of Liability, ~~Intellectual Property~~,Confidentiality, Governing Law, Dispute Resolution, and Attorneys' Fees.

~~d.f.~~f. Third-Party Beneficiaries. Except as specifically provided for below, this Agreement does not create any rights exercisable by any third party.

~~e.g.~~g. Participants as Third-Party Beneficiaries. When entering into this Agreement on behalf of the Participants, APS is acting as the Participants' agent. All benefits, rights, and remedies of APS under this Agreement, including those pertaining to indemnity, confidentiality, insurance, and ownership, will also inure to the benefit of the Participants.

~~f.h.~~h. Governing Law. This Agreement shall be governed by and interpreted under Arizona law, without regard to any conflict of laws provision. Any legal suit, action, or proceeding arising directly or indirectly out of this Agreement shall be initiated in state or federal court in Maricopa County, Arizona. The Municipalities voluntarily waive their claims of sovereign or governmental immunity from claims and liabilities arising under this Agreement to the extent permitted under law.

~~g.i.~~i. Dispute Resolution. In the event of a dispute, a representative of each Party to the dispute who has the authority to resolve the dispute will meet within fourteen (14) days after either Party gives the other Party written notice of the dispute. The Parties to the dispute shall use their best efforts to resolve the dispute. If the Parties do not reach a resolution within thirty (30) days following the first meeting of the Parties, either Party may pursue arbitration or litigation. Notwithstanding the foregoing, either Party may bring an immediate suit for breach of the confidentiality obligations of this Agreement. If a dispute becomes the subject of litigation, each Party waives its right to a jury trial.

~~h.j.~~j. Attorneys' Fees. The prevailing Party in any proceeding will be entitled to recover its reasonable attorneys' fees and associated costs and expenses.

~~i.k.~~k. Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, the rest of this Agreement shall remain in full force and effect.

l. Interpretation. This Agreement shall be interpreted without regard to factors such as the Party who prepared it or the relative bargaining

power of the Parties.

a.m. Counterparts. This Agreement may be executed using two or more counterparts, each of which shall be deemed an original but all of which together constitute one and the same Agreement. This Agreement shall be deemed executed and delivered upon the exchange of executed scanned signature pages transmitted by electronic mail.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered as of the Effective Date.

**ARIZONA PUBLIC SERVICE
COMPANY**

CITY OF GOODYEAR

SIGNATURE: _____

Wiser, Terry

NAME: _____

~~TITLE:-~~ _____

Digitally signed by

Wiser, Terry

L(Z08356)

SIGNATURE: _____

Julie Karins, City Manager

TITLE L(Z08356)

Date: 2022.08.04

06:17:33 -07'00'

CITY OF BUCKEYE

SIGNATURE: _____

Eric. W. Orsborn, Mayor

ATTEST City of Goodyear

Darcie McCracken, City Clerk

APPROVED AS TO FORM:

Roric Massey, City Attorney

ATTEST City of Buckeye

Lucinda J. Aja, City Clerk

APPROVED AS TO FORM:

Gust Rosenfeld P.L.C.,
City Attorneys

**"ATTACHMENT A"
TO
AGREEMENT**

Estimated Costs

Estimated Costs Item	Likely Entity	Estimate
Conceptual Designs	WaterWorks	\$ 497,803
Project Management & Eng	Internal	\$ 150,110
Pilot Test (equipment)	Minetek	\$ 510,721
Pilot Test (installation)	DZ	\$ 140,000
Pilot Test (installation)	Tiffany	\$ 35,000
Survey/analysis airborne release	Trinity Consult.	\$ 80,000
Permitting Costs	APS	\$ 20,000
Other Pilot Test Costs	Maintenance	\$ 16,000
Contingency	14%	\$ 200,366
Total		\$ 1,650,000

"ATTACHMENT B" ~~TO~~
TO
AGREEMENT

Confidentiality & Non-Disclosure Agreement

Confidentiality & Non-Disclosure Agreement

~~Confidentiality & Non-Disclosure Agreement~~

This Confidentiality & Non-Disclosure Agreement ("Agreement"), effective as of 4th August, 2022 is between Arizona Public Service Company, an Arizona corporation ("APS"), in its capacity as co-owner and operating agent for Palo Verde Generating Station ("PVGS"), the City of Goodyear ("Goodyear"), a municipal corporation formed under the laws of the state of Arizona, and the City of Buckeye ("Buckeye"), a municipal corporation formed under the laws of the state of Arizona. The parties to this Agreement may be referred to individually as a "Party" and collectively as the "Parties."

Unless specifically set forth herein, all capitalized terms will have the same definition as provided in the Agreement Regarding Collaborative Efforts to Accept Municipal Brackish Water into the Water Reclamation Supply System Pipeline (the "Project Agreement") to which this Agreement is attached as Attachment B.

The Parties desire to retain one or more Service Providers for the purposes of completing the Work (in furtherance of mutually beneficial solutions using existing infrastructure operated by APS that provides APS an alternative source of cooling water for Palo Verde Generating Station, and the Municipalities an alternative means for disposing of their Brackish Water (the "Purpose"). In furtherance of the Purpose, the Parties may acquire new or disclose existing confidential, trade secret, and proprietary information to one another and to one or more of the Service Providers. APS will be disclosing certain confidential and/or proprietary information relating to this Purpose and Service Provider will gather data related to this Purpose, both at PVGS and at wastewater treatment facilities owned or controlled by Goodyear or Buckeye (collectively, the "Confidential Information").

Therefore, in reliance on the commitments and obligations set forth herein, the parties agree as follows:

1. This Agreement governs Confidential Information disclosed or gathered by the Parties or Service Providers about the facilities owned or controlled by the Parties, consistent with the Purpose, following the Effective Date and until this Agreement is terminated through express written mutual consent of all of the Parties to this Agreement. The Parties may disclose one another's Confidential Information to the Service Providers in writing, orally, visually, or in any other manner that is not amenable to writing, and as such is covered by the disclosure restrictions provided in this Agreement. Confidential Information may also be gathered by the Parties and the Service Provider through engineering field studies, laboratory analysis, or other measures, and as such is covered by the disclosure restrictions provided in this Agreement. The information, data, and analyses contained in any preliminary, draft, or final report, or other results of the Work shall be considered trade secret, proprietary, and confidential information, and as such shall be considered Confidential Information for the purposes of this Agreement.
2. No Party will use⁷ or disclose to any third party⁴ except by express written authorization from a disclosing Party, any Confidential Information in any manner except for the Purpose, and will require that its employees and agents who have access to such Confidential Information maintain such information as strictly confidential subject to the same restrictions imposed by this Agreement. By way of example, but not limitation, no Party shall be allowed to use Confidential Information in connection with any patent application, for any commercial purpose, or for the benefit of any third party. All of the Parties' obligations regarding any Confidential Information received pursuant to this Agreement shall survive until such time as this Agreement is terminated through the mutual express written consent of the Parties to this Agreement.

3. A Party's obligations under paragraph 2 will not apply if the Party can show, with clear and-
~~3.~~ convincing written evidence, that the Confidential Information received hereunder:
- a) was already known to said Party prior to the time of first disclosure pursuant to the Purpose;
or
 - b) at the time of disclosure, the information is in the public domain, or after the date of the disclosure, lawfully becomes a part of the public domain other than through breach of this Agreement by a given Party; or
 - c) is received in good faith, without any obligation of confidentiality from a third party having a legal right to disclose the same; or
 - d) is independently developed by a given Party by individuals without otherwise having access to such Confidential Information.
4. A Party's obligations under paragraph 2 will not apply under the following circumstances:
- a) the Party is subject to Arizona's public records law and has received a request for public records under Arizona State Law that would apply to Confidential Information, provided however, the Party in question promptly notifies the other Parties of the request in advance of such disclosure to allow such Parties to file for a protective order with a court of competent jurisdiction. If the Party receiving a request for public records has not received evidence that a request for a protective order was filed with a court of competent jurisdiction within 30 days of the date of such notice, the Party that received the public records request shall disclose only that Confidential Information necessary to comply with said public records request. If a request for a protective order is filed, the Party will not release the records requested until ordered to do so by the court or until the case is dismissed; or
 - b) with regard to disclosure to a legal or regulatory authority, such disclosure is required to be disclosed by a given Party pursuant to a legally enforceable order, law, subpoena, or other regulation ("Order"), provided, however, that the Party in question promptly notifies the other Parties in advance of such disclosure and discloses only that Confidential Information necessary to comply with said Order.
5. ALL INFORMATION FROM THE PARTIES IS PROVIDED, OR THAT IS GATHERED BY THE SERVICE PROVIDER, "AS IS" AND WITHOUT WARRANTY, REPRESENTATION, OR GUARANTEE OF ANY SORT, EXPRESSED OR IMPLIED.
6. This Agreement will not be construed to create any obligation on the part of any Party hereto to retain the other Party's services or to compensate the other Party in any manner, except as may be set forth by a separate written agreement duly executed by authorized representatives of the Parties hereto.

7. Any provision regarding confidentiality is limited to the extent necessary to comply with the provisions of Arizona law. Any provision regarding confidentiality is limited to the extent necessary to comply with Arizona law, subject to the restrictions in paragraph 4(a) and 4(b) of this Agreement.
8. This Agreement constitutes the entire understanding between the Parties relating to the subject matter hereof, and no amendment or modification to this Agreement shall be valid or binding upon the parties unless made in writing and signed by each party, except that in the case of a conflict between this Agreement and the Project Agreement, the terms of the Project Agreement will govern. This Agreement may be executed in counterparts, each of which shall be deemed an original. Electronically transmitted and imaged copy signatures will be fully binding and effective for all purposes.
- ~~8.9.~~ This Agreement shall be effective upon the latest date of execution by all Parties to the Agreement, and shall expire three years from, either the completion of the Work or the completion of any water treatment projects that result therefrom, if any, whichever is later, unless terminated earlier through mutual written amendment to this Agreement.

*** *Signature page to follow* ***

CITY OF BUCKEYE, an Arizona municipal corporation By: _____ Name: _____ Title: _____ Date: _____ _____	CITY OF GOODYEAR, an Arizona municipal corporation By: _____ Name: _____ Title: _____ Date: _____ _____
ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation By: Name: Title: <u>Wiser, Terry</u> <u>Digitally signed by Wiser, Terry</u> <u>L(Z08356)</u> <u>Date: 2022.08.04</u> <u>L(Z08356) 06:21:25 -07'00'</u> _____	

APPROVED AS TO FORM:

Goodyear City Attorney

APPROVED AS TO FORM:

Buckeye City Attorney

ATTEST:

Goodyear City Clerk

ATTEST:

Buckeye City Clerk