Public Notice Pursuant to A.R.S. § 38-431.02

ARIZONA MUNICIPAL WATER USERS ASSOCIATION
BOARD OF DIRECTORS

MEETING NOTICE AND AGENDA

Thursday, June 22, 2017 – 10:00 a.m.
(NOTE CHANGE IN TIME)

Arizona Municipal Water Users Association
Board Conference Room
3003 North Central Avenue, Suite 1550
Phoenix, Arizona 85012

A. Call to Order

B. General Business—Items for Discussion and Possible Action

1. Approval of the Minutes from the May 25, 2017 Meeting

2. Schedule Next Meeting Date: Thursday, August 31, 2017, 11:00 a.m.*

3. Water Quality Standard for Non-Project Water under the System Use Agreement

4. Status of the Governor’s Water Augmentation Council

5. Approval of AMWUA Communications Services Agreement

6. Approval of Smartscape Program Agreements with the Arizona Department of Water Resources and with the University of Arizona

C. Executive Director’s Report

D. Future Agenda Items

E. Adjournment

*The July 27th AMWUA Board of Directors meeting has been cancelled.

The order of the agenda may be altered or changed by the AMWUA Board of Directors.

More information about AMWUA public meetings is available in the AMWUA office, online at www.amwua.org under the Public Meetings tab, or by request.
BOARD OF DIRECTORS
MEETING MINUTES
May 25, 2017

VOTING MEMBERS PRESENT

Councilwoman Thelda Williams, President, Phoenix
Mayor Cathy Carlat, Peoria
Councilmember Eddie Cook, Gilbert
Councilmember Pat Dennis, Avondale
Councilmember Lauren Kuby, Tempe, via teleconference
Mayor Jim Lane, Scottsdale
Councilmember René Lopez, Chandler
Councilmember Kevin Thompson, Mesa
Councilmember Bart Turner, Glendale

VOTING MEMBERS NOT PRESENT – EXCUSED

Councilmember Joanne Osborne, Goodyear

OTHERS PRESENT

Gretchen Baumgardner, Tempe  Brett Fleck, AMWUA  Katosha Nakai, CAWCD
Cindy Blackmore, Avondale  Sara Gerlitz, Phoenix  Diana Piña, AMWUA
Jessica Blazina, Avondale  Mark Holmes, Goodyear  Don Sehorn, DPS CPA
Gregg Capps, Chandler  Lacey James, Avondale  Javier Setovich, Goodyear
Briana Cortinas, Peoria  Sam Jaskolski, AMWUA  Richard Siegel, SRP
Brian Draper, Mesa  Elisa Klein, Scottsdale  Warren Tenney, AMWUA
Alan Dulaney, Peoria  Pat Kossan, AMWUA  Carol Ward-Morris, AMWUA

A. Call to Order

Councilwoman Williams called the meeting to order at 11:02 a.m.

B. General Business – Items for Discussion and Possible Action

1. Approval of the Minutes from the April 27, 2017 Meeting

Upon a motion by Councilmember Lopez and a second by Mayor Carlat, the AMWUA Board of Directors unanimously approved the minutes from the April 27, 2017 meeting.
2. **Schedule Next Meeting Date: Thursday, June 22, 2017, 10:00 a.m., at the AMWUA office**

   The next regular meeting of the AMWUA Board of Directors was scheduled for Thursday, June 22, 2017, at 10:00 a.m., at the AMWUA office, which reflects a change in time.

   The order of the agenda was altered.

4. **AMWUA Financial Statements through Third Quarter Ending March 2017**

   Mr. Tenney reported that the AMWUA Management Board recommended to accept the third quarter financial statements as presented at their May 10, 2017 meeting. No questions or concerns were risen.

   Upon a motion by Mayor Carlat and a second by Councilmember Dennis, the AMWUA Board of Directors unanimously accepted the AMWUA financial statements through third quarter ending March 2017 as presented.

5. **AMWUA Fiscal Year 2018 Draft Budget**

   Councilwoman William stated that the Fiscal Year 2018 Draft Budget did not have any changes from the Fiscal Year 2018 Preliminary Draft Budget, which was reviewed by the AMWUA Board of Directors at their April 27, 2017 meeting. No questions or concerns were risen.

   Upon a motion by Councilmember Cook and a second by Mayor Carlat, the AMWUA Board of Directors unanimously approved to adopt the Fiscal Year 2018 Draft Budget as presented.

6. **CAWCD Water Storage Tax**

   Mr. Tenney stated that this presentation, which was postponed at the April AMWUA Board meeting, looks specifically at the Central Arizona Water Conservation District’s (CAWCD) 4-cent water storage tax. He said the water storage tax’s authorized uses have changed over time, so it is important to have a mutual understanding about the tax to best allow AMWUA to advocate for an effective use of these tax revenues. Based on the discussion at the April meeting regarding CAWCD taxes, the AMWUA Board of Directors voted for AMWUA to advocate for the 10-cent general ad valorem tax and the 4-cent water storage tax to continue to be used to support CAWCD federal debt repayment.

   Mr. Fleck stated that CAWCD’s water storage tax is a 4-cent ad valorem property tax that fluctuates annually because it is tied to property values. He said property owners within the Central Arizona Project (CAP) service area, Maricopa, Pinal, and Pima Counties, pay the water storage tax. There are currently three authorized uses for the
tax: 1) federal debt repayment, 2) Annual Operation and Maintenance (OM&R) of CAP, and 3) the Arizona Water Banking Fund, which can only be used in the county where it was collected.

Over time, the authorized uses of the water storage tax have changed. Mr. Fleck said the water storage tax was established in 1990 to fund state demonstration projects and expanded in 1994 to authorize use for CAWCD repayment and annual OM&R costs. The water storage tax began to be assessed in Pinal County in 1994 as well. He stated that it changed again in 1996 to include funding authority for storing water through the Arizona Water Banking Authority (AWBA). In 2003, the CAWCD Board passed a resolution in order to protect water storage tax funds from legislative sweeps and has chosen to repeat this measure in each following resolution. Mr. Fleck stated that in 2010, the CAWCD Board broadened the language of its annual resolution to include use for any annual OM&R costs, not just for water storage activities. The first major non-storage use of surplus water storage tax funds occurred in 2013 when water rates were set lower than cost; $45 million was used to replenish its strategic reserves and to avoid unbudgeted annual reconciliation costs to subcontractors. He said in 2015, the Legislature passed a bill extending the tax authorization until 2029 and Proposition 117 took effect, limiting ad valorem tax growth and consequently lowering the amount of tax that would have been collected.

Today, $114 million has accrued from Maricopa County. AMWUA’s members should have a voice in spending those funds because AMWUA ratepayers make up 84% of the tax payers in Maricopa. Mr. Fleck said money is accruing in Maricopa primarily because of an imbalance between money being collected in each county and the relative size of AWBA’s M&I firming goals. Through 2015, 88.8% of Maricopa’s firming goal has been achieved.

Mr. Fleck said of the $114 million, $68 million was collected from inception through Tax Year 2009 and is authorized for use to defray annual OM&R for water storage through AWBA. The remaining $46 million collected from Tax Years 2010 to 2015 is designated for use in federal repayment or annual OM&R.

Tax authorization for the water storage tax will decrease to 3-cents in tax year 2025 through its expiration in 2029. Mr. Fleck said the tax revenues for 2017 are estimated to be $19 million, $15 million of which would come from Maricopa County. He continued to say that much of the near-term collections in Pima and Pinal Counties are needed to meet AWBA’s M&I firming goals in each perspective county. Maricopa County will have more flexibility to use its balance because it is closer to reaching its M&I firming goal.

Mr. Fleck said there are several considerations to keep in mind when utilizing these funds: reaching Maricopa’s M&I firming goal should be a priority; it may not be beneficial to use all of the funds because excess water may become available in the future; and a plan is needed for the accumulated balance and ongoing collections. He
also stated that it is important for AMWUA to be engaged in discussions on how to best use the accumulated balance and ongoing receipts to benefit CAWCD, particularly subcontractors in Maricopa County.

Councilmember Lopez questioned the shared benefits of the tax and how the annual resolutions work. Mr. Fleck clarified that when the tax is collected and used in Maricopa County, it is not tied to a particular subcontractor. The benefit goes to all of Maricopa subcontractors. Ms. Ferris explained the resolution is supposed to decide how the 4-cent tax is to be used in that year. If it is not designated for CAWCD annual OM&R, then it is supposed to be used for the Water Bank. CAWCD began holding those funds when the Legislature swept the Bank’s funds. CAWCD started to have broader language for the resolution so it is less clear of how that money was to be used in the year in which it was collected. This has caused for a large amount to be accumulated. The State budget included $200,000 for the Auditor General to do an audit of CAWCD. Mr. Fleck added that the key is how the resolution earmarks the money for that year.

Mayor Carlat questioned if the designation per year in the resolution has become more general rather than specifying. Mr. Tenney said yes, particularly since 2010. Councilmember Lopez questioned if that means money collected prior to 2010 are designated more specifically for the Water Bank. Mr. Fleck said yes, the resolution was more specific.

Councilmember Thompson asked what was last year’s increase in CAP rates. Mr. Fleck said it was an increase to the capital charges due to the financial structural deficit issue. Councilmember Thompson said if citizens are paying a tax to defray the cost but then we absorb a rate increase, which increases the rates on our customers, it could be viewed as a double taxation scenario. Mr. Fleck said until the taxes and rates are effectively structured, that is what is happening. Funds need to be used to balance rates. Mr. Tenney noted this is why last month the Board voted for AMWUA to advocate for taxes to be used to support federal debt repayment to be discussed on the table and it shouldn’t be solely dependent upon the capital charge component.

Mayor Lane said he could appreciate the worry about funds being swept but it seems to now be a retention issue. He questioned if the audit of CAWCD could be related to this. Mr. Tenney said he assumed the Auditor General would look at this issue.

Councilmember Cook said when CAP was wanting to extend the 4-cent tax, they pitched various needs they had but it does not sound like it has been used for those purposes. Mr. Tenney said there is a lot of focus on large future expenses they anticipated such as with NGS. The Finance Audit Power Committee plans to revisit CAWCD’s tax and rate policies. Mr. Fleck added that part of the reason for no movement on how to use the accumulated funds is because some members have been lukewarm about how to apply Maricopa-generated tax dollars because those uses could also be beneficial outside of Maricopa County.
Councilmember Lopez questioned if OM&R and aging infrastructure cannot be paid for by other accounts. Mr. Fleck said they are prepared to deal with those issues, it is just a matter of what the increase will look like with the use of those funds.

Councilmember Dennis asked how much money is put into the account annually. Mr. Fleck said in 2015 it was roughly $15 million. The amount in the accumulated funds has gone down some because it has been used by the Water Bank to purchase long-term storage credits. Once Maricopa County’s firming goal is met, money will continue to go up with the property rates. Money will continue to accrue for no real benefit unless it is decided to use the money for all three counties within the CAWCD service area.

Ms. Ferris noted that part of the problem is that the 4-cent tax has to be levied across all of the counties, so they cannot stop levying in Maricopa County and continue in Pinal and Pima counties.

Councilmember Lopez asked if some CAWCD Board members believe that the benefit should only go to Maricopa County users and so the only option available is to do banking and recovery since anything else will also benefit others. Mr. Fleck said that is the case.

7. Presentation of Paper on Reclaimed Water Issues

Mr. Tenney introduced this presentation as an overview of AMWUA’s paper on issues related to reclaimed water. He said this paper provides an opportunity for discussion and for AMWUA to collaborate with others in the water community, particularly the Southern Arizona Water Users Association (SAWUA).

Mr. Tenney stated that AMWUA’s paper on reclaimed water focuses on three issues that are being looked at by the Governor’s Water Augmentation Council (GWAC) and relevant committees: Terminology, the 2025 sunset for obtaining storage credits with reclaimed water, and streambed “managed” recharge. He noted that AMWUA wrote this paper to engage the GWAC as it considers the future of water reuse in the State. This is important because the reuse of water is vital to ensuring Arizona continues its legacy of innovative water planning.

Mr. Tenney stated that Arizona’s statutes use different terms to refer to reclaimed water. This is an issue because as new innovative technologies allow for new uses of water, such as direct potable reuse, it will be crucial to effectively manage messaging to the media and public. He said AMWUA staff proposes the use of a unified term in statute to aid in this objective. He noted that AMWUA is not proposing a specific term, but feels uniformity of messaging is important.
Mr. Tenney stated that under current state statute, water users in Arizona will not be able to accrue long-term storage credits for reclaimed water beginning in 2025. He said this sunset creates uncertainty for water users and impacts planning for future projects. He noted that ADWR’s 2014 Strategic Vision recommended that the 2025 sunset either be extended or eliminated because of its importance to water policy in the state.

Mr. Tenney stated that under Arizona law, an entity can put water in an ADWR-designated stretch of a dry riverbed and earn long-term storage credits for infiltrated water. He said that due to a legislative compromise in the early 1990s, reclaimed water only accrues 50 percent credit when recharged in managed streambed projects. Renewable supplies, such as Colorado River water delivered by CAP, receive the full amount of credits for water recharged.

Mr. Tenney said dry riverbeds are generally favorable for water infiltration, although infiltration rates between different managed projects can vary widely. He then discussed observations from recharge activities in the Santa Cruz River, where infiltration rates increased drastically when the water was of higher quality. Regarding hydrology and accounting, he said ADWR accounting is different than a regular storage basin; ADWR’s accounting methods ensure that all water that enters or leaves a managed recharge project is accounted for, including by means of evapotranspiration.

Mr. Tenney said the paper also identifies considerations relating to managed recharge including the multi-purpose benefits of managed recharge; recharge and recovery distance; and the recovery of stored water.

Mr. Tenney stated that managed recharge only occurs in the Phoenix AMA with CAP water, so the 50 percent cut to the aquifer does not currently affect water users here; however, it does affect the Tucson AMA. He said the Tucson AMA is affected because there are wastewater treatment plants that discharge into two managed recharge projects in the Santa Cruz River near Tucson. Entities including the Town of Marana, the City of Tucson, Metro Water District, and the Bureau of Reclamation are impacted by the 50 percent cut. He noted that the Bureau of Reclamation is most affected because it has rights to most of this water and has strategically chosen to recharge this water and sell the credits in order to fund its obligations under the Southern Arizona Water Settlement Act. The Bureau of Reclamation uses the funds from the sale of credits to finance the delivery of CAP water to the Tohono O’odham Nation. Mr. Tenney said the 50 percent cut to the aquifer is viewed as lost money by the Bureau of Reclamation, and it is important for the agency to gain more value for this water because it anticipates the fund used to meet its obligations to the tribe will deplete within four to five years.

Mr. Tenney stated that the Recycled Water Committee of the GWAC discussed these issues at their meeting on Monday, where AMWUA’s paper was distributed and acknowledged for helping to frame the issues. He said the Committee decided to recommend to the full Council that the 2025 sunset for long-term storage credits for
effluent at any recharge project should be removed and that managed streambed recharge with effluent should receive the same percentage of credits that Colorado River water does. AMWUA will continue to work with the GWAC to vet these issues. He also said AMWUA will need to coordinate with SAWUA and other water users throughout the State as these issues proceed through the GWAC.

In response to a question from Mayor Carlat, Mr. Tenney confirmed that removing the 2025 sunset would have to be done through a legislative change. He also said AMWUA does not currently have a position on these issues, but wants to continue the conversation and will keep the Management Board and Board of Directors up to date on any new developments.

3. 2017 Legislative Update

Mr. Tenney reported that during the 2017 legislative session, AMWUA worked to increase its presence and to be a resource, including by organizing the water reception in February and avoiding any negative water legislation directly impacting its members.

Mr. Tenney highlighted key bills that AMWUA weighed in on: HB 2010, HB 2112, HB 2143, HB 2179, SB 1309, SB 1280, and HJR 2002, as well as AMWUA’s support for ADWR’s budget increase.

Mr. Aarons seconded Mr. Tenney’s thoughts regarding the importance of AMWUA watching 32 bills this legislative session, 20 of which were raised to a priority level. He emphasized the value of AMWUA hosting the legislative forum and the water reception and the effect those events had on raising awareness about AMWUA as a resource. He also noted that based on statistics of bills voted on on the floor, many were not voted on a partisan basis.

Mayor Lane commented that it is interesting to be reminded that many bills are voted on in a nonpartisan way. He also stated that he found the Speaker’s procedural changes progressive, particularly with strikers having to be germane to the original bill. Mr. Aarons agreed with Mayor Lane and noted that having the Speaker of the House and President of the Senate from the same legislative district, as was the case this year, made a difference.

C. Executive Director’s Report

Mr. Tenney stated that CAWCD and the Bureau of Reclamation approved the System Use Agreement earlier this year but still need to address water quality issues relating to wheeling non-project water through the CAP canal. He said AMWUA has initiated discussions with CAWCD and Reclamation staffs to better understand their positions regarding water quality standards because these decisions will impact AMWUA. Mr. Tenney noted that the issue has risen in priority due to CAWCD’s announcement last week
that a task force comprised of CAWCD Board members will be looking at water quality issues with a goal of recommending a water quality standard for non-project water to the Bureau of Reclamation. The task force will hold four meetings between now and September. Mr. Tenney said the task force will be asking for comments and proposals, which provides AMWUA with an opportunity to share its expertise on water quality issues, permitting, regulations, and treatment. AMWUA will keep the Management Board and Board of Directors informed on this issue as it develops.

Councilwoman Williams asked who serves on the CAWCD water quality task force. Mr. Tenney said Terry Goddard, Alex Arboleda, Rob Lewis, Ben Graff, Pam Pickard, Jim Hartdegen, and Mark Taylor are on the task force.

Mr. Tenney said ADWR is working on their revised Drought Contingency Plan (DCP) Plus that would include adaptability and reducing the probability for shortage, and they hope to present it by the end of June.

Mr. Tenney reported that the lobbying effort, including coordinated letter-writing efforts to the Environmental Protection Agency (EPA) Administrator and Congressional representatives, continues to keep WaterSense alive within the EPA’s budget. He said the lobbying effort will increase as Congress begins to work on the budget.

D. Future Agenda Items

There were no requests for future agenda items.

E. Adjournment

Councilwoman Williams adjourned the meeting at 12:10 p.m.
AGENDA ITEM #3

BOARD OF DIRECTORS
INFORMATION SUMMARY
June 22, 2017

Water Quality Standard for Non-Project Water under the System Use Agreement

STRATEGIC PLAN REFERENCE

Objectives – Prepare for Impacts of Drought & Shortage; Minimize Financial Impacts
Collaboration – Central Arizona Project; Bureau of Reclamation

SUMMARY

Earlier this year, the Central Arizona Water Conservation District (CAWCD) and the Bureau of Reclamation approved the System Use Agreement. This agreement allows the wheeling of non-project water through the Central Arizona Project (CAP) canal. One issue that was not addressed in the System Use Agreement was water quality standards. As a result, CAWCD and the Bureau of Reclamation still need to address issues relating to water quality of wheeled non-project water.

CAWCD initiated a Water Quality Standards Task Force comprised of CAWCD Board members. The task force’s goal is to recommend to the Bureau of Reclamation a water quality standard for non-project water. The task force first met on May 24th and then again on June 6th. The purpose of the May 24th meeting was to introduce the task force to legal and operational issues relating to water quality and wheeling. At the June 6th meeting, the task force heard presentations from CAP water users, including water quality experts from municipalities that have treatment plants treating Colorado River water. This meeting was an opportunity for cities and other water users to share their expertise on water quality issues, permitting, regulations, and treatment. It also allowed water users to articulate how the quality of water in the canal impacts downstream treatment processes.

The task force has requested proposals for a water quality standard to be presented at its August 17th meeting. Another meeting in September is supposed to wrap up the process and recommend a water quality standard.

In late May, AMWUA facilitated a meeting among the municipal representatives that were invited to present on June 6th to assist with coordinating the messaging of the presentations. Working together on water quality standards will be beneficial in the long run if municipalities can develop support behind one proposal.
Staff will give a summary of the June 6th meeting of the CAWCD Water Quality Standards Task Force and the related activities pertaining to developing a standard for non-project water.

This presentation was also shared with the AMWUA Management Board at its June 14th meeting.

**RECOMMENDATION**

The AMWUA Board of Directors is encouraged to ask questions and provide feedback regarding developing the water quality standard for non-project water in the CAP canal.
Status of the Governor’s Water Augmentation Council

STRATEGIC PLAN REFERENCE

Objectives – Prepare for Impacts of Drought & Shortage; Augment Supplies; Elevate the Benefit of Water Reuse; Minimize Financial Impacts
Collaboration – Legislature; Arizona Department of Water Resources; Salt River Project; Central Arizona Project; Water Community

SUMMARY

In October 2015, Governor Ducey launched his water planning initiative for the State. Building on the 2014 Strategic Vision for Water Supply Sustainability Report, the Arizona Water Initiative has two tracks: the Planning Area process, which identifies issues within the Arizona Department of Water Resources’ (ADWR) 22 planning areas; and the Governor’s Water Augmentation Council, which investigates long-term water augmentation strategies, funding options, and infrastructure needs to secure water supplies for Arizona’s future. The Governor’s Water Augmentation Council has 30 members, including AMWUA’s Executive Director Warren Tenney.

The Governor’s Water Augmentation Council has become more active as a result of the formation of four committees: Desalination, Recycled Water, Long-term Augmentation, and Finance. These committees have had regular meetings and have been advancing the objectives of the Council. AMWUA has been attending and participating in these committee meetings.

The Desalination Committee, chaired by Bob Lotts, is evaluating the feasibility of a brackish desalination project in different areas of the State. As the work of the Committee progresses, it then will collaborate with local and regional stakeholders within the identified project area. The goal is to identify a project or two by the end of the year that could be moved forward since it is estimated that any desalination project would likely take ten years to get up and running.

The Recycled Water Committee, chaired by John Kmiec, is looking at how to advance recycled water as a key resource for augmenting supplies. The Committee is discussing potential recommendations to the full Council. These include support for the Arizona Department of Environment Quality (ADEQ) ending the prohibition on direct potable reuse; reevaluating the 50 percent accrual of long-term storage credits for recharging effluent in managed recharge
facilities; evaluating the statutes related to a 2025 sunset clause for the ability to create long-term credits from effluent; and discussing the potential of changing the term ‘effluent’ to ‘recycled water’.

The Long-Term Augmentation Committee, chaired by Maureen George, is looking at the long-view of augmentation opportunities. It has been considering which Planning Areas have the greatest supply and demand imbalances. The intent is then to make a budget proposal for a request for proposal (RFP) that analyzes a portfolio of statewide augmentation options. Once a draft product is received, local area meetings would be held to review the proposed portfolio before final completion.

The Finance Committee, chaired by Sandy Fabritz, is working to identify financing barriers for water augmentation projects; propose general funding options; and propose funding options for specific projects identified by other committees.

As the committees develop their proposals, they will be presented to the full Governor’s Water Augmentation Council for consideration.

This presentation was also shared with the AMWUA Management Board at the June 14th meeting.

**RECOMMENDATION**

The AMWUA Board of Directors is encouraged to ask questions and provide feedback regarding the recent activities of the Governor’s Water Augmentation Council and its committees.
AMWUA Communications Services Agreement

STRATEGIC PLAN REFERENCE

Objectives – Advocate for Solutions
Operational Principles – Excel as an Expert and Resource

SUMMARY

In 2013, the AMWUA Board of Directors approved the development of marketing and public relations initiatives to promote the successes of the AMWUA members. This involved creating a blog on current water issues, establishing a robust social media presence, enhancing other media visibility, enhancing and coordinating messaging, and collaborating with AMWUA partners.

It was concluded that this effort would best be led by a person or firm who could be hired on a consultant basis. A selection process was established and the communications contract was awarded to Pat Kossan. Ms. Kossan is a freelance writer and previously taught at the Walter Cronkite School of Journalism.

At the March 23, 2017 meeting, Ms. Kossan gave the AMWUA Board an overview of AMWUA’s efforts in 2016 to improve our communications efforts. With Ms. Kossan’s efforts, AMWUA has expanded its audience through its website, weekly blog, and social media. The approach for successfully increasing our audience has involved collaboration among our members, consistent messages, finding opportunities to widen our audience, and embracing more fully the media. This approach is continuing this year.

Ms. Kossan has an annual agreement with AMWUA, which is due for renewal. The Fiscal Year 2018 budget includes $40,000 for Ms. Kossan’s services, which is the same amount as the last two years. She will continue to work twenty hours per week and continue to interact with AMWUA staff and member staffs to begin to target key messages, coordinate messaging, develop articles and blogs for the AMWUA website, craft news stories, and tweet about AMWUA’s efforts.
RECOMMENDATION

Based on the increased, positive exposure AMWUA has received through Ms. Kossan’s efforts, it is recommended that AMWUA continue its communications service agreement. The AMWUA Board of Directors authorizes the AMWUA Executive Director to enter into an agreement for communications services with Pat Kossan in the amount of $40,000 through June 30, 2018.
Recommend Approval of Smartscape Program Agreements with the Arizona Department of Water Resources and with the University of Arizona

SUMMARY

Smartscape is a comprehensive training program that instructs landscape professionals in the design, installation, irrigation, and maintenance of low-water-use landscapes. The need for efficient water use, the regulatory environment, methods of landscape water conservation, and the principles of Xeriscape are key components of the program. The program was developed collaboratively by AMWUA, Tucson Water, the University of Arizona Cooperative Extension, the Arizona Nursery Association, the Arizona Landscape Contractors Association, and industry representatives. AMWUA has coordinated and funded Smartscape in the Phoenix area since the program’s inception in 1994. It is one of AMWUA’s flagship programs and remains a high priority for AMWUA’s Conservation Committee.

Around 1,480 landscape professionals have completed the 20-hour Smartscape 101 workshop series in the Phoenix area. Hundreds more have participated in the 15-hour Smartscape Advanced Irrigation training course and supplemental educational opportunities. These professionals influence both commercial and residential outdoor water use through their practices and the information they transmit to their colleagues and customers daily.

Smartscape supports AMWUA members in their efforts to increase water use efficiency, extending existing supplies, reducing future water demand, and preparing for potential shortage restrictions. The program is accepted as a best management practice (BMP) under the Modified Non-Per Capita Conservation Program, assisting the members to comply with the requirements of the ADWR Management Plan.
Since 2009, AMWUA has contracted with the University of Arizona to administer the Smartscape program through the Maricopa County Cooperative Extension. Each agreement has been for a period of two years to provide stability for the staff hired to coordinate the program. The current agreement expires on June 30, 2017.

The proposed agreement with the University secures full-time implementation of the program for FY18 and FY19 at an annual cost of $60,000. AMWUA will provide $30,000 each year for the program.

Through an existing intergovernmental agreement between AMWUA and ADWR, ADWR will match AMWUA’s annual contribution to the program from Water Management Assistance Program funds, as they did in FY14 through FY17.

AMWUA funding for year one of the contract will be paid from the current FY17 Regional Conservation Program budget. Funding for year two will be provided from the FY18 Regional Conservation Program budget, part of the AMWUA operating budget approved by the AMWUA Board of Directors in May 2017.

RECOMMENDATION

The Management Board recommends that the AMWUA Board of Directors approve the Executive Director’s ability to enter into an intergovernmental agreement with ADWR for program funding and into an agreement between AMWUA and the University of Arizona for implementation of the Smartscape program.

ATTACHMENTS

- **Attachment A** – Intergovernmental Agreement between AMWUA and ADWR for Smartscape program funding
- **Attachment B** – Agreement between AMWUA and the University of Arizona for implementation of the Smartscape program
STATE OF ARIZONA  
DEPARTMENT OF WATER RESOURCES  
1110 West Washington St. Ste. 310  
Phoenix, Arizona 85007

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

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

Service: Smartscape Program Expansion in the Phoenix AMA

Term: Effective through July 31, 2019

Amount: Not to exceed $60,000 (Phoenix AMA Augmentation and Conservation Assistance Fund – Installment)

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

ARIZONA MUNICIPAL WATER USERS ASSN  
ARIZONA DEPARTMENT OF WATER RESOURCES

Signature of Authorized Individual  Date  
Warren Tenney  
Typed Name  
Executive Director  
Typed Title  

Signature of Authorized Individual  Date  
Tom Buschatzke  
Typed Name  
Director  
Typed Title

THIS AGREEMENT CONSISTS OF:
<table>
<thead>
<tr>
<th>Section</th>
<th>Page No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. COVER PAGE</td>
<td>1</td>
</tr>
<tr>
<td>2. CONTENTS PAGE</td>
<td>2</td>
</tr>
<tr>
<td>3. GENERAL PROVISIONS</td>
<td>3</td>
</tr>
<tr>
<td>4. SPECIAL PROVISIONS</td>
<td>6</td>
</tr>
<tr>
<td>5. SCOPE OF SERVICES</td>
<td></td>
</tr>
<tr>
<td>A. Purpose</td>
<td>7</td>
</tr>
<tr>
<td>B. Effective Date</td>
<td>7</td>
</tr>
<tr>
<td>C. Term</td>
<td>7</td>
</tr>
<tr>
<td>D. Notices, Correspondence and Reports</td>
<td>7</td>
</tr>
<tr>
<td>E. Payment</td>
<td>8</td>
</tr>
<tr>
<td>F. Introduction</td>
<td>8</td>
</tr>
<tr>
<td>G. Scope of Work</td>
<td>8</td>
</tr>
<tr>
<td>H. Schedule of Deliverables and Payments</td>
<td>9</td>
</tr>
<tr>
<td>6. LEGAL DETERMINATION</td>
<td>10</td>
</tr>
</tbody>
</table>
1. GENERAL REQUIREMENTS:

1.1. This Agreement shall be interpreted in accordance with Arizona law.

1.2. The parties shall obtain and maintain all licenses, permits and authority necessary to perform their obligations pursuant to this Agreement, and shall comply with all applicable state, federal and local laws, including but not limited to those regarding unemployment insurance, disability insurance and worker’s compensation. This Agreement does not relieve either party from any obligation or responsibility imposed upon it by law.

1.3. Neither party shall be considered an officer, employee or agent of the other. No monitoring or supervisory responsibility over the other party’s activities arises on the part of the other arises or as a result of, or pursuant to, this Agreement other than as expressly provided herein.

1.4. In this Agreement, Special Provisions alter the General Provisions. If the Special Provisions conflict with the General Provisions, the Special Provisions shall govern. If the Scope of Services conflicts with either the Special Provisions or the General Provisions, the terms of the Scope of Services shall govern.

1.5. The provisions of this Agreement are severable to the extent that if any provision is held unenforceable under applicable law, the remaining provisions of the Agreement shall remain in effect.

2. BOOKS, RECORDS AND INSPECTION:

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

3. INDEMNIFICATION:

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

4. RESOLUTION OF DIFFERENCES:

4.1. The parties agree to resolve all conflicts to the maximum extent possible through cooperation and coordination of the respective party’s staff. If staff is unable to resolve any dispute, it shall be submitted for resolution to the Department of Water Resources’ Water Planning Division Assistant Director.

4.2. Disputes arising out of this Agreement are subject to arbitration to the extent required by A.R.S. §12-133 and §12-1518. Disputes not subject to arbitration are subject to the jurisdiction of the Maricopa County Superior Court.

4.3. The waiver of any breach or default of any of the provisions of this Agreement shall not be construed as a waiver of any succeeding breach of the same or other provisions; nor shall any delay or omission on the part of either Party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other Party.

5. TERMINATION:

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

5.2. In the event of Termination as provided in subsection 5.1:
5.2.1. The Department shall pay AMWUA its reasonable actual costs for work in progress as determined by generally accepted accounting principles and practices.

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

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

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

5.4. In the event of cancellation under Section 5.3 of this Agreement or if the term of the Agreement expires, AMWUA shall receive or return Payment as established in Section 5.2.

5.5. In the event that the parties mutually agree to terminate a portion of the Agreement, AMWUA shall continue to perform this Agreement to the extent not terminated under the provisions of this Section and receive or return Payment as established in Section 5.2.

6. NON-DISCRIMINATION:

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

7. PAYMENTS:

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

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

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

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

8. RECOUPMENT OF PAYMENTS:

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

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

10. AMENDMENTS:

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

11. SUBCONTRACTS:

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

12. WAIVERS:

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

13. DELIVERABLES:

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

14. REPORTS, INFORMATION AND DATA:

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

15. DEPARTMENT ACKNOWLEDGEMENT:

AMWA shall ensure that the Department is acknowledged in all news releases, brochures, websites or other publicity or print pieces funded by the Department through this agreement by specifying that the project is funded, supported or made possible by funds from the Department. The name of the Department and its logo must appear in a conspicuous location and be large enough to be easily legible. If space is limited, the Department logo alone may be used.
None
A. PURPOSE:

The purpose of this project is to provide support for the expansion of the Smartscape Professional Landscape Training Program in the Phoenix Active Management Area (AMA). This will allow the University of Arizona, Maricopa County Extension Office (the Extension Office) to increase the Smartscape Coordinator from a half-time to a full-time position so that necessary planning, implementation and evaluation can be accomplished.

B. EFFECTIVE DATE:

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

C. TERM:

This Agreement shall be effective through July 31, 2019.

D. NOTICES, CORRESPONDENCE AND REPORTS:

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

   Program Manager:
   Carol M. Ward-Morris
   Arizona Municipal Water Users Association
   3003 North Central Avenue, Suite 1550
   Phoenix, AZ 85012
   Phone: (602) 248-8482
   Email: cwardmorris@amwua.org

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

   Contract Officer:
   Marie Horn
   Arizona Department of Water Resources
   1110 W. Washington St. Ste. 310
   Phoenix, AZ 85007
   Phone: (602) 771-8509
   Fax: (602) 771-8686

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

   Technical Administrator:
   Einav Henenson
   Arizona Department of Water Resources
   1110 W. Washington St. Ste. 310
   Phoenix, AZ 85007
   Phone: (602) 771-8608
   Fax: (602) 771-8690
   Email: ehenenson@azwater.gov

E. PAYMENT:
The maximum amount of monies to be expended by the Department pursuant to this Agreement is $60,000. All monies shall come from the Phoenix AMA Augmentation and Conservation Assistance Fund established pursuant to A.R.S. § 45-615(1). Payments will be made in accordance with the Payment Schedule on Page 8 and are subject to receipt and approval of all Deliverables. AMWUA shall submit invoices to the Technical Administrator for approval. The invoices shall be itemized in sufficient detail to justify payment for services performed in accordance with the tasks listed.

F. INTRODUCTION:

The purpose of the Smartscape program is to instruct landscape professionals in the metro Phoenix and Tucson areas in the fundamentals of design, installation, irrigation, and maintenance of low-water-use landscapes. Class participants include property managers, landscape maintenance and installation personnel, nursery personnel, landscape architects and designers, and other allied professionals who are responsible for urban landscapes.

Matching the funds provided by AMWUA will allow the Smartscape coordinator position in the Phoenix metropolitan area to be increased from half-time to full time so that necessary planning, implementation and evaluation can be accomplished. A full-time coordinator is needed to expand training opportunities, enable robust analysis of program effectiveness and impacts, help build partnerships and efficiencies, increase promotion, and ensure the program continues to evolve to meet the needs of the community and a full-time position is more likely to attract and retain qualified applicants.

G. SCOPE OF WORK:

AMWUA shall perform the following:

Task 1: AMWUA shall enter into a Service Agreement with the U of A in which AMWUA shall agree to pay the sum of $60,000 to the U of A for the purpose of allowing the Extension Office, to implement and expand the Smartscape Program in the Phoenix AMA. The Service Agreement shall require the following of the Extension Office:

- The FTE hired to implement the Smartscape Program in the Phoenix AMA is employed solely for that purpose.
- The Extension Office will develop a plan for program assessment, improvements, expansion, and evaluation.
- The Extension Office will acknowledge the Department in all news releases, brochures, websites or other publicity or print pieces funded by the Department through this agreement by specifying that the project is funded, supported or made possible by funds from the Department. The name of the Department and its logo must appear in a conspicuous location and be large enough to be easily legible. If space is limited, the Department logo alone may be used.

Deliverable: AMWUA shall submit documentation that a Coordinator has been retained and a copy of the Agreement with the U of A to the Technical Administrator by July 31, 2017.

Task 2: Prepare and submit Bi-Annual Progress Reports that include summaries of the work accomplished and copies of relevant deliverables as specified in the agreement between AMWUA and the U of A.

Deliverables: AMWUA shall submit copies of the Bi-Annual Progress Reports to the Department’s Technical Administrator according to the schedule listed below.
H. SCHEDULE OF DELIVERABLES AND PAYMENTS:

<table>
<thead>
<tr>
<th>DELIVERABLES</th>
<th>DUE DATE(S)</th>
<th>PAYMENTS (Not to exceed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Submit documentation as described in Task 1</td>
<td>July 31, 2017</td>
<td>$30,000</td>
</tr>
<tr>
<td>Submit Bi-Annual Progress Reports</td>
<td></td>
<td></td>
</tr>
<tr>
<td>July 2017 to January 2018</td>
<td>February 28, 2018</td>
<td>$20,000</td>
</tr>
<tr>
<td>February 2018 to June 2018</td>
<td>July 31, 2018</td>
<td>$6,000</td>
</tr>
<tr>
<td>July 2018 to January 2019</td>
<td>February 28, 2019</td>
<td>$2,000</td>
</tr>
<tr>
<td>February 2019 to June 2019</td>
<td>July 31, 2019</td>
<td>$2,000</td>
</tr>
<tr>
<td>TOTAL AMOUNT</td>
<td></td>
<td>$60,000</td>
</tr>
</tbody>
</table>

The attached Agreement between the Arizona Department of Water Resources and the Arizona Municipal Water Users
SCOPE OF SERVICES

Association has been reviewed by the undersigned attorney’s, who have determined that said Agreement is in proper form and is within the powers and authority of those parties represented by the undersigned.

Dated this ______ day of ________, 2017

Arizona Department of Water Resources

By: ______________________________
Counsel

Dated this ______ day of ________, 2017

Arizona Municipal Water Users Association

By: ______________________________
Counsel
This Agreement is made as of this ___ day of ______________, 2017 between the Arizona Board of Regents (ABOR) for The University of Arizona (UNIVERSITY) and the Arizona Municipal Water Users Association, (SPONSOR) a non-profit corporation having a principal place of business at 3003 N. Central Avenue, Suite 1550, Phoenix, AZ 85012, and also known as the Party or Parties.

WHEREAS, SPONSOR desires UNIVERSITY to perform certain services for a project entitled Smartscape ("Project"), and is willing to provide funds for such Project; and

WHEREAS, UNIVERSITY is willing to undertake such Project, and to provide such resources as may be necessary.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, SPONSOR and UNIVERSITY agree as follows:

1. **Project Director**
The Project will be under the supervision and direction of: Dr. Edward C. Martin, a UNIVERSITY employee in Cooperative Extension, Maricopa County.

2. **Billing and Payment**
The SPONSOR will provide UNIVERSITY the sum of $60,000 per fiscal year. The budget and payment schedule are in Exhibit A. This agreement type is:

   X FIXED PRICE

Invoices will be sent to the following address of the SPONSOR:

   Arizona Municipal Water Users Association  
   3003 North Central Avenue, Suite 1550  
   Phoenix, Arizona 85012

Payment by SPONSOR shall be made within 30 days of receipt of invoices from UNIVERSITY. Checks shall be made payable only to The University of Arizona, and shall identify this Agreement or a UNIVERSITY invoice. Checks should NOT be made payable to or identify individuals. Payments shall be sent to the following addresses:

   **If sent by US Mail:**
   The University of Arizona  
   Sponsored Projects Services/Bursar  
   ACCT #4208730  
   1303 E University Blvd, Box 3  
   Tucson, Arizona 85719-0521
If sent by overnight delivery service:
University of Arizona Bursar’s Office
888 N Euclid, Room 104
Tucson AZ, 85719
(520) 621-1998

University of Arizona EIN number is 74-2652689.

3. **Scope of Work and Deliverables**
The UNIVERSITY will be responsible for the following activities, which will be conducted through the Cooperative Extension office, Maricopa County:

A. Training Implementation and Curriculum Refinement
   - Implement a minimum of two 20-hour Smartscape workshop series per fiscal year utilizing established curriculum and local experts to present the workshops.
   - Review and report on the feasibility of a third 20-hour Smartscape workshop.
   - Implement a minimum of one Advanced Smartscape: Irrigation workshop series each fiscal year.
   - Review and revise Smartscape curriculum, content, and materials of training series every November and May, integrating current research-based University of Arizona, industry, and municipal documents.
   - Identify additional educational needs of clientele and offer a minimum of one additional course per year if applicable.
   - Explore and offer a minimum of one Smartscape class per year in Spanish.
   - Update the “How-to Guide” for Smartscape Program implementation every November and May.

B. Promotion of Smartscape Training and Landscape Professionals
   - Develop a comprehensive database of attendees (past and present) by December 31, 2017, that can be queried for information to be used for evaluation, reporting, and promotion (including integration with the new Smartscape website).
   - Develop methodology and update attendee database every November and May.
   - Maintain the present Smartscape website and social media sites, including links to AMWUA and ADWR, as well as the most current landscape industry and water conservation publications.
   - Provide input and content for the development of a new Smartscape website.
   - Promote Smartscape training opportunities to landscape professionals, coordinating promotional efforts with AMWUA and industry organizations, to ensure that the industry is aware of the training opportunities and that attendance is maximized.
     - Utilize strategic plan and investigate additional avenues to reach new professionals and companies that have not previously been involved with Smartscape.
     - Investigate the use of advertising alternatives for Smartscape.
• Continue to provide information on local and national opportunities for landscape training and certification, along with IPM and drought updates through a monthly newsletter. The first newsletter should be delivered by December 2017 or earlier.
• Coordinate with AMWUA to include developing materials, information, and displays to educate consumers regarding Smartscape.
• Develop Smartscape promotional materials in Spanish.
• Develop a public promotion effort to encourage the hiring of trained landscape professionals. This should be done in cooperation with AMWUA and landscape professional entities (e.g., ACLP, ANA) and other interested partners.
• Participate in public events and conferences such as the Home & Garden Shows, SHADE, and the Water Smart Innovations Conference.

C. Statewide Coordination
• Coordinate efforts with other County Extension offices in order to ensure statewide program consistency. This may include defining a structure for other offices to be able to customize the program for their region while maintaining curriculum consistency and the integrity of the training and marketing.

D. Quantifying Smartscape Impacts
• Investigate methods to describe the impacts and value of the Smartscape program.

Contract Oversight

The SPONSOR will have the authority to review the program of work and materials to ensure that the program continues to meet the objectives of the SPONSOR.

Deliverables

Biannual reports of contract activities will be completed by the UNIVERSITY and submitted to the SPONSOR no later than January 30th and June 30th each year during the term of Agreement. Reports will include summaries of ongoing contract activities—including but not limited to trainings, overall course evaluations, promotion, and coordination.

Term of Agreement

This Agreement shall commence on the date of execution of the Agreement and continue through June 30, 2019. The Period of Performance may be extended upon the mutual agreement of both parties.

4. Use of Facilities
Insofar as the facilities of UNIVERSITY permit, UNIVERSITY will furnish facilities and such other equipment as may be reasonably required to perform this Agreement.
5. **Property Administration**
Upon termination of this Agreement, any equipment, material, or supplies remaining in stock will become the property of UNIVERSITY.

6. **Insurance and Liability**
The UNIVERSITY maintains general liability insurance and workmen's compensation coverage as required by state law and pertinent federal laws and regulations. In the event SPONSOR undertakes to perform any work on the Project on the premises of UNIVERSITY, then SPONSOR shall give assurances to UNIVERSITY of SPONSOR's adequate general liability insurance and workmen's compensation coverage. It is understood, however, that neither party to this Agreement is the agent of the other and neither is liable for the wrongful acts or negligence of the other.

7. **Reports**
After the Scope of Work is fully performed, and within the time period specified in the Scope of Work, UNIVERSITY will submit to the SPONSOR a detailed technical report of the activities carried out, as required. It is understood, however, that UNIVERSITY shall not be restricted from publishing the results of this Project. When the results of the Project are published, UNIVERSITY agrees to acknowledge the support received from the SPONSOR.

8. **Confidential Information**
SPONSOR and UNIVERSITY may choose, from time to time, in connection with work contemplated under this Agreement, to disclose confidential information to each other. All such disclosures must be in writing and marked as Confidential Information. The Parties will use reasonable efforts to prevent the disclosure to unauthorized third parties of any Confidential Information of the other Party and will use such information only for the purposes of this Agreement, and for three (3) years after the termination of this Agreement; provided that the receiving Party's obligations hereunder shall not apply to information that:

   a. is already in the receiving Party's possession at the time of disclosure; or,

   b. is or later becomes part of the public domain through no fault of the receiving Party; or,

   c. is received from a third party with no duty of confidentiality to the disclosing party; or,

   d. was developed independently by the receiving party prior to disclosure; or,

   e. is required to be disclosed by law or regulation.

Any information that is transmitted orally or visually, in order to be protected hereunder, shall be identified as such by the disclosing party at the time of disclosure, and identified in writing to the receiving party, as Confidential Information, within thirty (30) days after such oral or visual disclosure.
9. **Intellectual Property Rights**
Title to any trade secrets, inventions, developments, or discoveries, works of authorship, whether patentable or not (collectively referred to as "Intellectual Property"), resulting directly from the Scope of Work, shall be allocated according to applicable employment contracts and U.S. Patent Law (Title 35 U.S. Code) and U.S. Copyright Law (Title 17 U.S. Code) in effect at the time the Intellectual Property was created. For that Intellectual Property determined to be solely owned by UNIVERSITY, the SPONSOR is granted an option to negotiate a license, on reasonable terms, to such Intellectual Property, such option to be exercised within six (6) months of notification of the Intellectual Property. For that Intellectual Property determined to be jointly owned by SPONSOR and UNIVERSITY, an exclusive option is provided to SPONSOR to negotiate for an exclusive license, on reasonable terms, to UNIVERSITY's rights, such option to be exercised within six (6) months of notification of the Intellectual Property. For that Intellectual Property determined to be solely owned by SPONSOR, UNIVERSITY shall claim no rights. SPONSOR is granted a non-exclusive license, for internal use only, to all original works developed within the Scope of Work for which UNIVERSITY owns the copyright.

10. **Termination**
UNIVERSITY may terminate this Agreement at any time upon thirty (30) days written notice to SPONSOR, if: (a) cost-reimbursement, funding for the Project is fully expended in accordance with the scope of work and deliverables; or (b) performance of the Project is completed; or (c) circumstances beyond its control preclude continuation of the Project, in which case, University shall refund to SPONSOR any unexpended funding for the Project as of the termination date. SPONSOR may terminate this Agreement at any time upon ninety (90) days written notice to UNIVERSITY, if circumstances beyond its control preclude continuation of the Project. In the event that either Party shall commit any breach of or default in any of the terms or conditions of this Agreement, and also shall fail to remedy such default or breach within ninety (90) days after receipt of written notice thereof from the other Party hereto, the Party giving notice may, at its option and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending notice of termination in writing to the other Party to such effect, and such termination shall be effective as of the date of the receipt of such notice. The defaulting Party shall be responsible for all costs and expenses associated with the termination, and shall reimburse the non-defaulting Party for such.

11. **Arbitration**
In the event of a dispute hereunder that involves the sum of Fifty Thousand Dollars ($50,000) or less, in money damages only, exclusive of interest, costs and attorneys' fees, the parties will submit the matter to binding arbitration pursuant to the Arizona Arbitration Act, ARS 12-1501, et seq., (the "Act") whose rules shall govern the interpretation, enforcement and proceedings pursuant to this paragraph. Except as otherwise provided in the Act, the decision of the arbitrator(s) shall be final and binding upon the parties.

12. **Conflict of Interest**
This Agreement is subject to the provisions of A.R.S. § 38-511 regarding Conflict of Interest. The State of Arizona may cancel this Agreement if any person significantly involved in negotiating, drafting, securing or obtaining this Agreement for or on behalf of the Arizona Board of Regents
becomes an employee in any capacity of any other party or a consultant to any other party with reference to the subject matter of this Agreement while the Agreement or any extension thereof is in effect.

13. **State Obligation**
The Parties recognize that the performance by the Arizona Board of Regents on behalf of The University of Arizona may be dependent upon the appropriation of funds by the State Legislature of Arizona. Should the Legislature fail to appropriate the necessary funds or if the UNIVERSITY's appropriation is reduced during the fiscal year, the Board of Regents may reduce the scope of the agreement or cancel the agreement without further duty or obligation. The Board agrees to notify the SPONSOR as soon as reasonably possible after the unavailability of said funds comes to the Board's attention.

14. **Notices**
Notices shall be in writing and deemed effective when sent, postage prepaid to:

**SPONSOR:**

Arizona Municipal Water Users Association  
3003 North Central Avenue, Suite 1550  
Phoenix, Arizona 85012

**UNIVERSITY:**

*For U.S. Postal Service:*

SPONSORED PROJECTS SERVICES  
PO BOX 210158  
TUCSON AZ 85721-0158

*For Fed Ex, UPS or other expedited delivery:*

SPONSORED PROJECTS SERVICES  
888 N EUCLID AVE RM 510  
TUCSON AZ 85719-4824  
Phone (520) 626-6000

15. **General Provisions.**

a. **Compliance**
The Parties agree to comply with the provisions of applicable State and Federal regulations governing Equal Employment Opportunity and Non-discrimination and Immigration.

b. **Non-competition**
This Project shall not involve competition with local business units that generally offer similar goods and services.
c. **Independence**  
Permission to use UNIVERSITY facilities and other resources under this Agreement does not constitute endorsement by the UNIVERSITY of the SPONSOR's views or objectives.

d. **Audit**  
It is understood that if the ultimate source of at least a portion of the SPONSOR's funds for this project is Federal, this Agreement is subject to Federal Audit.

e. **Entire Understanding**  
This Agreement embodies the entire understanding of the Parties and supersedes any other agreement or understanding between the Parties relating to the subject matter hereof.

f. **Waiver, Amendment, Modification**  
No waiver, amendment or modification of this Agreement shall be valid or binding unless written and signed by the Parties. Waiver by either Party of any breach or default of any clause of this Agreement by the other Party shall not operate as a waiver of any previous or future default or breach of the same or different clause of this Agreement.

g. **Assignment**  
This Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent will not be unreasonably withheld; provided that this Agreement shall be binding upon and inure to each Party's respective successors in interest.

h. **Choice of Law**  
This Agreement shall be interpreted pursuant to the laws of the State of Arizona. Any arbitration or litigation between the Parties shall be conducted in Pima County, Arizona, and SPONSOR hereby submits to venue and jurisdiction in Pima County, Arizona.

i. **Severability**  
If any provision of this Agreement is held void or unenforceable, the remaining provisions shall nevertheless be effective, the intent being to effectuate this Agreement to the fullest extent possible.

j. **Independent Contractors**  
The Parties are deemed independent contractors and may not bind the other, except as provided for herein or authorized in writing by the other Party.

The Arizona Board of Regents for and on behalf of  
The University of Arizona:

By: ___________________________          Date: _______________________
Arizona Municipal Water Users Association:

By: ___________________________       Date: ______________________
Name: ___________________________
Title: ___________________________

I have read this Agreement, and understand the obligations placed on me and my laboratory and other UNIVERSITY employees under my supervision, and agree to be bound by it.

____________________________________
PRINCIPAL INVESTIGATOR

Date: ______________________________
Exhibits:  A. Budget and Payments

The following budget represents the anticipated costs and funding for conducting the Scope of Work pursuant to this Agreement.

<table>
<thead>
<tr>
<th>Program Year</th>
<th>Program Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>07/01/2017-06/30/2018</td>
<td>$60,000</td>
</tr>
<tr>
<td>07/01/2018-06/30/2019</td>
<td>$60,000</td>
</tr>
</tbody>
</table>

The anticipated dates and amounts of payments are as follows:

<table>
<thead>
<tr>
<th>DATE</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>6/30/2017</td>
<td>$60,000</td>
</tr>
<tr>
<td>6/30/2018</td>
<td>$60,000</td>
</tr>
</tbody>
</table>

TOTAL $120,000