

**ARIZONA STATE UNIVERSITY
AND
CITY OF MARICOPA
MASTER INTERGOVERNMENTAL AGREEMENT**

This Master Intergovernmental Agreement ("Agreement") is entered into this ____ day of _____, **2018** (the "Effective Date") by and between the City of Maricopa, a municipal corporation duly organized and existing under the laws of the State of Arizona and having its principal place of business at 39700 W. Civic Center Plaza, Maricopa, AZ 85138 ("Client"), and The Arizona Board of Regents for and on behalf of Arizona State University ("ASU"), a body corporate under the State of Arizona, having its administrative offices at 660 S. Mill Avenue, Centerpoint Suite 312, Tempe, AZ 85281, and its National Center of Excellence for Smart Innovations, (hereinafter the Client and ASU are sometimes jointly referred to as the "Parties" and individually as a "Party").

RECITALS

A. The Parties share a common interest in advancing pavements evaluation; performing sampling, characterizations, and testing plans on asphalt mixtures; developing road maintenance programs and assessing technical needs for public works and engineering.

B. The Parties are authorized to enter into this Agreement pursuant to Arizona Revised Statutes ("A.R.S.") §§ 11-951 through 11-954, which provide that public agencies may enter into intergovernmental agreements for the provision of services or for joint or cooperative action. Client is also authorized to enter into this Agreement pursuant to the City of Maricopa Code and by action of its City Council and has authorized the undersigned to execute this Agreement on behalf of the Client.

C. Accordingly, the Parties desire to enter into this Agreement, which provides for a collaboration in which the Parties share their expertise, knowledge, and resources.

D. This Agreement sets forth the overarching terms and conditions that will govern individual tasks undertaken by ASU from time to time as agreed to by the Parties in separate scopes of work ("Services") each to be funded through individual task agreements (each a "Task Agreement"). The Services will include a wide array of research, development, education, and solution services to more effectively manage resources and create economic value.

E. ASU is empowered by A.R.S. §§15-1625, *et seq.*, to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of ASU. ASU and its National Center of Excellence for Smart Innovations has the capability, facilities and equipment to provide the Services to Client.

F. The performance of the Services is consistent, compatible, and beneficial to the role and mission of ASU to provide educational experiences for students and to encourage and support research and related educational activities.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein, the receipt and

sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Scope of Work.** ASU will use reasonable efforts to provide the Services requested by Client from time to time in accordance with separately issued Task Agreements. The Services will be provided under the direction and supervision of the ASU contact named in the Task Agreement. The Parties agree that ASU will have discretion to involve its students in the conduct and performance of the Services. To the extent there are any conflicts between the provisions of any Task Agreement and this Agreement, the terms of this Agreement will control.

2. **Scheduling Services.**

2.1 The scheduling of the Services will be arranged to avoid conflict with ASU's educational and research programs. ASU will control the scheduling of such Services but will use reasonable efforts to meet the timelines established by Client.

2.2 ASU shall provide Dr. Kamil Elias Kaloush as Principal Investigator to coordinate work under this Agreement.

3. **Term and Termination.**

3.1 This Agreement will commence on the Effective Date and continue for a period of five (5) years commencing, unless earlier terminated as provided herein.

3.2 Either Party may terminate this Agreement at any time by giving the other Party not less than thirty (30) days prior written notice. If this Agreement is terminated by Client, Client will remain responsible for payment to ASU for all Services performed through the date of termination and for reimbursement to ASU of all non-cancelable commitments incurred in the performance of the Services.

3.3 This Agreement may be modified or extended at any time by mutual written consent of the Parties. Any changes or amendments to this Agreement must have prior written approval of the Parties and be executed by authorized officials of both Parties.

4. **Compensation and Invoicing.**

4.1 Client will pay ASU for the Services performed under this Agreement on a cost reimbursement basis. ASU will perform Services up to the total funded amount set forth in a Task Agreement with no obligation to incur costs or perform Services beyond the funded amount, unless authorized under a duly executed modification. Client is under no obligation to pay ASU for costs incurred in excess of the total funded amount under this Agreement. Rebudgeting of categories is allowed within 10% of the total budget. Any excess re-budgeting requires prior written approval from the Client.

4.2 Client will remit the amount due for Services rendered under Task Agreements upon receipt of invoices from ASU issued monthly for the duration of the period of performance. Invoices are due and payable within 30 days.

Please send checks or paper remittance advices to:

Arizona State University

Office for Research and Sponsored Projects Administration
Attn: Grant & Contract Accounting
P.O. Box 876011, Tempe, AZ 85287-6011

For overnight courier, please send to:

Office for Research & Sponsored Projects Administration
Arizona State University
Centerpoint, Suite 310
660 S. Mill Avenue
Tempe, AZ 85281

Wire transfers should be sent to:

Account #: 235335739
ACH (Within USA only) Routing No.: 122101706
Swift Code: BOFAUS3N
Bank Name: Bank of America
Acct Name: Arizona State University Federal Depository Account

Questions should be directed to the person issuing the invoice or to cashmanagement@asu.edu.

Invoices will be submitted to:

Name: Rob Dolson
Rob.Dolson@maricopa-az.gov
Title: Streets Maintenance Supervisor, Public Works
City of Maricopa
39700 W. Civic Center Plaza
Maricopa, AZ 85138
Phone: 520-316-6946

4.3 ASU reserves the right to discontinue the Services if Client fails to make payments when due. In the event of non-payment, ASU may terminate all further work on the Services and seek full payment from Client for all work performed and all expenses incurred including allocable costs, pursuant to the termination clause of this Agreement including the collection of payment.

5. **No Warranty.** ASU neither makes nor will be deemed to have made any representation or warranty whatsoever (express or implied) regarding any outcome obtained or deliverable delivered hereunder including any outcome desired by Client. Any decision regarding safety, applicability, marketability, effectiveness for any purpose, or other use or disposition of said outcome will be the sole responsibility of Client and/or its assigns and licensees.

6. **No University Endorsements.** In no event will Client (or its successors, employees, agents and contractors) state or imply in any publication, advertisement or other medium that ASU has approved, endorsed or tested any product or service. In no event will ASU's performance of any Services hereunder be considered a test of the effectiveness or the basis for any endorsement of a product or service.

7. **Use of Names or Logos.** Neither Party will use any names, service marks, trademarks, trade names, logos or other identifying names, domain names or identifying marks of the other Party ("Marks"), or the name of any representative or employee of the other Party in any sales promotion work or advertising, or any form of publicity, without the prior written permission of the Party that owns the Marks in each instance. Use of any Party's Marks must comply with the owning Party's requirements, including using the "®" indication of a registered trademark where applicable.

8. **Similar Research; Publications.** Nothing in this Agreement will be construed to limit the freedom of ASU or of its researchers from engaging in similar services made under other grants, contracts or agreements with parties other than Client.

Client recognizes that under ASU policy, the results of work performed under this Agreement must be publishable. Client agrees that ASU and its employees and students engaged in work under this Agreement will be free to present and/or publish the results and methods of such work at symposia, professional meetings and other venues, and in journals, theses, dissertations and other documents of their own choosing. Upon written request by Client, ASU will furnish copies of proposed manuscripts to Client for review prior to publication. If Client determines that confidential or proprietary information is inadvertently disclosed in the proposed manuscript, Client will notify ASU. In no event will ASU delay publication for more than thirty (30) days from receipt by Client of such manuscript for review. In the event a patent application is being filed, ASU will allow ninety (90) days from the date Client first received said manuscript for the patent application to be filed.

11. **Independent Contractor.** Each Party is an independent contractor and is independent of the other Party. Under no circumstances will any employees of one Party be deemed the employees of the other Party for any purpose. This Agreement does not create a partnership, joint venture or agency relationship between the Parties of any kind or nature. This Agreement does not create any fiduciary or other obligation between the Parties, except for those obligations expressly and specifically set forth herein. Neither Party will have any right, power, or authority under this Agreement to act as a legal representative of the other Party, and neither Party will have any power to obligate or bind the other or to make any representations, express or implied, on behalf of or in the name of the other in any manner or for any purpose whatsoever contrary to the provisions of this Agreement. Each Party acknowledges that the relationship of the parties hereunder is non-exclusive.

12. **Notices.** All notices, requests, demands and other communications hereunder will be deemed to have been duly given if the same shall be in writing and be delivered (a) personally, (b) by registered or certified mail, postage prepaid, or (c) by overnight delivery service and addressed to the recipient's address set forth below, with courtesy copy sent to email addresses.

For ASU: Office for Research and Sponsored Projects Administration
660 S. Mill Avenue, Centerpoint Suite 312
Tempe, AZ 85281
Attention: Heather Clark, Director, Pre-Award Services, Research Operations
Phone: 480-965-1427
Email: ASU.Awards@asu.edu
Copy to: Kaloush@asu.edu

For City: City of Maricopa
Attention: Bill Fay

39700 W. Civic Center Plaza
Maricopa, Arizona 85138
(520) 316-6944

Copy to: Bill.Fay@maricopa-az.gov

Either Party may change its address for notices or other contact details by giving written notice to the other Party in accordance with this Section. The Parties agree to acknowledge in writing the receipt of any written demand, notice, report, request or other communication under this Section that is delivered in person.

13. **Force Majeure.**

13.1 No liability will result from the delay in performance or nonperformance caused by force majeure or circumstances beyond the reasonable control of the Party affected, including, but not limited to, acts of God, fire, flood, substantial snowstorm, war, terrorism, embargo, any United States or foreign government regulation, direction or request, accident, strike or other labor dispute or labor trouble, or any failure or delay of any transportation, power or communications system or any other or similar cause beyond that Party's reasonable control.

13.2 The Party which is so prevented from performing will give prompt notice to the other Party of the occurrence of such event of force majeure, the expected duration of such condition and the steps which it is taking to correct such condition. This Agreement may be terminated by either Party by written notice upon the occurrence of such event of force majeure which results in a delay of performance hereunder exceeding thirty (30) days.

14. **Applicable Law.** Any dispute regarding or arising under this Agreement, or the interpretation of this Agreement, will be subject to and resolved in accordance with the laws of the State of Arizona, without regard to its conflicts of laws principles.

15. **Dispute Resolution.** In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the Parties hereto will use their reasonable efforts to settle the dispute, claim, question, or disagreement. To this effect, they will consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. As required by A.R.S. §12-1518, the Parties agree to make use of arbitration in disputes that are subject to mandatory arbitration pursuant to A.R.S. §12-133.

16. **Assignment.** Neither Party will assign or transfer any interest in this Agreement without the prior written approval of the other Party. Any attempted assignment in violation of this provision will be null and void. Subject to the foregoing, this Agreement will be binding upon the permitted successors and permitted assigns or other permitted transferees of the Parties.

17. **Recitals and Exhibits.** All recitals herein, and all exhibits attached hereto (including each Scope of Work hereunder) and referred to herein, are integral and material parts of this Agreement.

18. **Severability.** If any provision of this Agreement shall for any reason be found invalid, illegal, unenforceable, or in conflict with any valid controlling law: (a) such provision will be separated from this Agreement; (b) such invalidity, illegality, unenforceability, or conflict will not affect any other provision

hereof; and (c) this Agreement will be interpreted and construed as if such provision, to the extent the same shall have been held invalid, illegal, unenforceable, or in conflict, had never been contained herein.

19. **Waiver.** The waiver of a breach hereunder may be effected only by a writing signed by the waiving Party and will not constitute, or be held to be, a waiver of any other or subsequent breach or to affect in any way the effectiveness or enforceability of the provision in question.

20. **Modification.** Any modification or amendment of this Agreement hereunder will be effective only if made in writing and signed by both Parties.

21. **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended or will be construed to confer upon any person or entity, other than the Parties and their respective successors and assigns permitted by this Agreement, any right, remedy or claim under or by reason of this Agreement.

22. **Entire Agreement.** This Agreement along with its Exhibits constitutes and embodies the full and complete understanding between the Parties concerning the subject matter of this Agreement and supersedes any and all prior understandings, agreements, representations, and warranties, express or implied, written or oral, between the Parties concerning the subject matter of this Agreement.

23. **Nondiscrimination.** The Parties will comply with all applicable local, state, and federal laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. **If applicable, the Parties will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

24. **Conflict of Interest.** Each Party's participation in this Agreement is subject to A.R.S. § 38-511, which provides that this Agreement may be cancelled if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of ASU or Client is, at any time while this Agreement or any extension thereof is in effect, an employee or agent of the other party to this Agreement in any capacity or a consultant to any other party with respect to the subject matter of this Agreement.

25. **Failure of Legislature to Appropriate.** In accordance with A.R.S. § 35-154, if either Party's performance under this Agreement depends upon the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, then the affected Party may provide written notice of this to the other Party and cancel this Agreement without further obligation except as provided in Section 3.2 hereof.

The Parties recognize that this Agreement depends on a grant of federal funding and/or appropriation of funds by the Client. If the grant funding or City-appropriated funding is eliminated or reduced during the fiscal year, Client may reduce the scope of a Task Agreement, if appropriate, or cancel this

Agreement without further duty or obligation. Client agrees to notify ASU as soon as reasonably possible after Client knows of the loss of funds.

26. **Liability.** Each Party (as “indemnitor”) agrees to indemnify, defend, and hold harmless the other Party (as “indemnitee”) from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney fees) (hereinafter collectively referred to as “claims”) arising out of bodily injury to any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitees, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or authorized volunteers.

ASU is a public institution and, as such, any indemnification, liability limitation, release or hold harmless provision set forth in this Agreement will be limited as required by Arizona law, including without limitation Article 9, Sections 5 and 7 of the Arizona Constitution and A.R.S. §§ 35-154 and 41-621. Therefore, notwithstanding any other provision of this Agreement, ASU’s liability under any claim for indemnification arising under this Agreement is limited to claims for property damage, personal injury, or death to the extent caused by acts or omissions of ASU.

27. **Insurance.**

Each Party is insured pursuant to A.R.S. § 41-621.

28. **Tobacco-Free University.** ASU is a tobacco-free university. For details, visit www.asu.edu/tobaccofree.

29. **Weapons, Explosive Devices and Fireworks.** ASU prohibits the use, possession, display or storage of any weapon, explosive device or fireworks on all land and buildings owned, leased, or under the control of ASU or its affiliated or related entities, in all ASU residential facilities (whether managed by ASU or another entity), in all ASU vehicles, and at all ASU or ASU affiliate sponsored events and activities, except as provided in A.R.S. § 12-781 or unless written permission is given by the Chief of the ASU Police Department or a designated representative. Notification by Client to all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of Client (“Client Parties”) of this policy is a condition and requirement of this Agreement. Client further agrees to enforce this contractual requirement against all Client Parties. ASU’s policy may be accessed through the following web page: <http://www.asu.edu/aad/manuals/pdp/pdp201-05.html>.

30. **Records.** To the extent required by A.R.S. § 35-214, the Parties agree to retain all records relating to this Agreement and to make those records available at all reasonable times for inspection and audit by one another or the Auditor General of the State of Arizona during the term of this Agreement and for a period of five (5) years after the completion of this Agreement. The records shall be provided at Arizona State University, Tempe, Arizona, or another location mutually agreed by the Parties.

31. **Authorized Presence (Legal Worker) Requirements.** As required by A.R.S. §41-4401, the Parties are prohibited from awarding a contract to any contractor who fails, or whose subcontractors / subrecipients fail, to comply with A.R.S. § 23-214-A. Each Party warrants that it complies with applicable federal immigration laws and regulations that relate to its employees, that it will, as applicable or required under § 23-214(A), verify, through the e-verify program as jointly administered by the U.S.

Department of Homeland Security and the Social Security Administration or any of its successor programs, the employment eligibility of each employee hired to work on this Agreement, and that it will, as applicable or required under A.R.S. § 23-214(A), require its subcontractors and sub-subcontractors to provide the same warranties to each Party.

A breach of the foregoing warranty shall be deemed a material breach of this Agreement. In addition to the legal rights and remedies available to each Party hereunder and under the common law, in the event of such a breach, the non-breaching Party shall have the right to terminate this Agreement. Upon reasonable request, each Party shall have the right to inspect the papers of each contractor, subcontractor or any employee of either who performs work hereunder for the purpose of ensuring that the contractor or subcontractor is in compliance with the warranty set forth in this provision.

32. Confidential Information.

32.1 Client and ASU may choose, from time to time, in connection with the Services contemplated under this Agreement, to disclose confidential information to each other ("Confidential Information"). All such disclosures must be in writing and marked as Confidential Information. Each Party 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. All obligations under this Section will expire three (3) years after the Effective Date.

32.2 Exceptions: Notwithstanding the foregoing, the receiving Party's obligations hereunder will not apply to information that:

- (1) is already in the receiving Party's possession at the time of disclosure; or,
- (2) is or later becomes part of the public domain through no fault of the receiving Party; or,
- (3) is received in good faith from a third party with no duty of confidentiality to the disclosing Party; or,
- (4) was developed independently by the receiving Party prior to disclosure; or,
- (5) is required to be disclosed by the receiving Party pursuant to a legally enforceable order, law, subpoena, or other regulation ("Order"), provided, however, that the receiving Party promptly notifies the disclosing Party in advance of such disclosure and discloses only that information necessary to comply with said Order.

ASU reserves the right to refuse acceptance of such Confidential Information which is not required for the purposes of this Agreement.

32.3 Nothing in this Agreement will be construed to convey to either Party any right, title or interest in any Confidential Information provided by the other Party or any right, title or interest in any intellectual property of the Parties, including but not limited to, processes, copyrights or patents. No license to the receiving Party under any trademark, patent or copyright is either granted or implied by the conveying of Confidential Information to the receiving Party.

32.4 Notwithstanding any other provision of this Agreement to the contrary, the Parties acknowledge that each Party is subject to A.R.S. §§ 39-121 through 39-127. Any provision regarding confidentiality is limited to the extent necessary to comply with the provisions of Arizona law.

33. Counterparts. This Agreement may be executed in one or more counterparts, each of which will

be deemed an original, but all of which taken together will constitute one and the same instrument, and photocopy, facsimile, electronic and other copies will have the same effect for all purposes as an ink-signed original.

[SIGNATURES ON NEXT PAGE.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the respective dates entered below.

CITY OF MARICOPA

**THE ARIZONA BOARD OF REGENTS
FOR AND ON BEHALF OF
ARIZONA STATE UNIVERSITY**

By: _____

By: _____

Name: _____

Name: Heather Clark

Title: _____

Title: Director, Pre-Award Services

Date: _____

Date: _____

IGA DETERMINATION – ASU

This Agreement, which is an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952 by the undersigned, who has determined that it is in the proper form and is within the power and authority granted under the laws of the State of Arizona to those parties to the Agreement represented by legal counsel for the Arizona Board of Regents.

APPROVED AS TO FORM:

Associate General Counsel, Arizona State University

IGA DETERMINATION – CITY OF MARICOPA

This Agreement, which is an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952 by the undersigned, who has determined that it is in the proper form and is within the power and authority granted under the laws of the State of Arizona to those parties to the Agreement represented by the City of Maricopa's Attorney.

APPROVED AS TO FORM:

City Attorney, City of Maricopa