

**Intergovernmental Agreement
between the City of Phoenix and the Arizona Board of Regents,
on behalf of the Arizona State University,
for the Providing Services for
Transportation Engineering Projects
and Related Education and Employment**

This Intergovernmental Agreement (“IGA”) is entered into by and between the Arizona Board of Regents, on behalf of the Arizona State University (“University”), and the City of Phoenix (“City”), pursuant to Arizona Revised Statutes A.R.S. § 11-952.

Recitals

- A. The City and the University may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-952.
- B. The University has qualified engineers, researchers, and other project personnel (“Qualified Personnel”) and engineering students (“Students”) who are familiar, are becoming familiar, or are in the need to become familiar with transportation engineering, design, construction, materials, processes, maintenance, operations, and related research.
- C. The University wishes to make its Qualified Personnel and Students available to the City on an as needed basis to address or help address the City’s needs through a specific project or providing opportunities for engineering work.
- D. The City recognizes the importance of allowing Students the opportunity to access engineering work experience as a part of their learning experience.
- E. The City recognizes the importance that University research and engineering services can offer to improve processes and approaches that save resources or improve the allocation of resources.
- F. The City acknowledges the University’s vital role in providing well educated and degreed engineers to the City, County, State and Nation. The City recognizes that its greatest opportunity to enabling access to this source of engineers either as direct employees, employees for other agencies, or through private firms, is to collaborate with the University, including through IGAs like this.

Agreement

NOW THEREFORE, City and University, pursuant to the above, and in consideration of the matters and things hereinafter set forth, do mutually agree as follows:

1. Definitions.

- a. Project: any transportation project involving design, construction, maintenance, operations or research.
- b. Project Services: The design, project management, materials testing, and research services related to the design, construction, maintenance, operations, and administration of Projects.
- c. Director: As to the City, the Director of the City's Street Transportation Department. As to University, the Director or Designee of the Contract & Research Support Program.
- d. Project Service Agreement: A specific agreement between the City and the University for the provision of Project Services for a particular Project, in substantially the form depicted in attached **Exhibit A**.
- e. Other Agreement: An agreement between the City, the University, and/or Student for other types of services that are specific to a particular task, project, learning opportunity or exchange of some sort that is consistent with purpose of this IGA.
- f. Engineering Work: Any form of work activity that involves the direct or indirect application of applied science and math to the study, design, construction, maintenance and operations of roads and streets and related infrastructure.

2. **Purpose.** The purpose of this IGA is to set forth the responsibilities of the parties regarding the provision of Project Services, other services or engineering work by the University to the City on an as-needed and as-available basis. For those services involving a Project Service Agreement, this may include reimbursement of incurred costs for the Project Services either directly or indirectly through another party. Other services may or may not include provision for reimbursement. Additionally, this IGA sets forth an understanding between the City and the University to collaborate to find opportunities on which to make this happen when it is mutually beneficial. Project services and engineering work may take the following forms:

Project

- The University provides faculty or administrators to perform research and/or engineering services to the City.
- The University provides and supervises student interns for the City project services, either unpaid or paid directly by the University through Project Service Agreements.
- The University provides like project services to another third party who are providing services either directly to the City or for another agency or party the City has an interest in or with (e.g. a local Consultant Engineering firm performing services to the City on a City funded project).

Internship, Work Shadow and Employment

- The City will, if funding is available and the positions are needed, establish and maintain paid student internships available and competitively recruit them from the University.
- The City, if the need arises, and if funding is available and the positions are needed, will appoint paid student interns to support the work of the City. The City, if possible, will provide unpaid work shadow opportunities to students if requested by the University to do so.
- The City will, if funding is available and the positions are needed, establish and maintain full-time entry level engineering positions and notify the University of any available positions.
- The University will evaluate and provide qualified student interns to volunteer for the City to do work or participate in a project.
- Internship and Work Shadow arrangements may require a separate written agreement between the parties and the student.

Other opportunities may arise; this specific list is not meant to be a limiting list of what can be accomplished under this IGA.

3. Project Service Agreements.

- a. By this IGA, the City delegates to its Director or Director's designee, and the University delegates to its Contract & Research Support Program Director or Director's designee, the authority to negotiate, execute, modify, and terminate any Project Service Agreement or Other Agreement in accordance with the terms and conditions of this IGA.
- b. Either party's Director or Director's designee may request that the parties enter into a Project Service Agreement. Upon a request, the parties' Director or Director's designee will review the request and, if mutually desirable, meet to discuss it.
- c. In the event the Director or Director's designee disagree on any element of a proposed Project Service Agreement, the element in dispute may be submitted to the Street Transportation Director and the University's Senior Vice President for Research for resolution.
- d. Any proposed Project Service Agreement shall be in writing, in substantially the form attached as **Exhibit A**, and shall include, at a minimum:
 - i. The term of the Project Service Agreement, which may neither exceed five (5) years nor may extend beyond the term of this IGA.
 - ii. A description of the Project Services that the University will provide to the City under the Project Service Agreement.

- iii. The specific responsibilities of the City and University with respect to the Project. If any Project is federally funded, it will include the federal flowdown terms and conditions applicable to University, and any required certifications or affidavits to be signed by University.
 - iv. An estimate of the cost of Project Services, if applicable, for the Project that is the subject of the Project Service Agreement. The estimate is for budgetary scheduling and is not a contractual guarantee, a cost ceiling, or an “upset limit.”
 - v. Billing rates and the method for calculating payment, if applicable, to the other party. The billing rates may be reviewed periodically during the term of the Project Service Agreement, and parties, through their Director/Principal, may agree in writing to revise the rates to reflect actual costs.
 - vi. A designated representative of the City, if applicable, to receive invoices from the University and to approve the invoices for payment.
 - vii. A schedule for paying invoices, if applicable, which shall provide that payment is due no later than 30 days after receipt of an invoice.
- e. Each Project Service Agreement shall be signed by the Authorized Signatory of each Party with the express authority or delegation to execute such documents on behalf of their respective Party.
- f. Any amendment to a Project Service Agreement must be in writing and signed by the Director for each party.
- g. Either party’s Director may terminate a Project Service Agreement at any time by providing the other party with written notice of such termination. After a Project Service Agreement is terminated, the City’s obligation to the University shall be limited to payment for services rendered before termination, including any non-cancelable obligations incurred by University prior to City’s termination.
- 4. Execution of Projects Subject to Project Service Agreements.** After a Project Service Agreement is executed, the University shall perform the Project Services specified in the Project Service Agreement for the City. Personnel from the University shall be paired up with their counterparts in the City for coordination purposes. Coordination shall include regular meetings and interaction between corresponding personnel at all levels for each assignment.

5. Responsibilities of the parties.

The City shall be responsible for:

- a. Decision making authority over the Project.
- b. Approving and processing all design documents, studies, contract documents, change orders, progress payments, and final acceptance of the Project Services completed.

- c. Upon review and approval of invoices, paying the University in accordance with a schedule set forth in the Project Service Agreement.
- d. Evaluating, at its discretion, the Project Services provided by the University and to verify that the Project Services are completed in accordance with the Project Service Agreement.
- e. Providing, whenever possible, opportunities for Students to gain engineering work experience through a variety of methods that are enabled by this IGA, and provide evaluation of each University Student's progress, in a format and at such times as directed by the University. Areas of evaluation may include, but are not limited to: professionalism, ability to give and receive feedback effectively, adherence to engineering standards, and competence.
- f. Provide all applicable written City policies, regulations and directives to University Students and Faculty, and instruct University of facility safety procedures and operations. The City will provide University with at least the same safety training it provides to its regular employees working under similar conditions. The City may relieve any University Student or Faculty from further participation if, in its sole discretion, it believes that such University Student or Faculty has violated City policies, regulations and/or directives. The City shall notify the University Director immediately, and follow up such action in writing.

The University shall be responsible for:

- a. Identifying and developing recommendations with respect to the Project Services, and sharing those recommendations with the City.
- b. Establishing a list of overhead charges/rates for Project Services as required in Section 3.
- c. Providing sufficient Qualified Personnel to perform or supervise the Project Services with the necessary care, skill, and diligence.
- d. Preparing invoices (in the form approved by the City) for submission to the City. The University shall approve, sign, and forward billing documents to the City's designated representative for approval and payment.
- e. Provide the City with the University program objectives, and/or desired learning experiences in advance of the University Students' placement, and provide the City with appropriate instruction in supervision of and completing the evaluation forms for the University Students;
- f. Schedule, through the University Director or Designee, to confer at regular intervals, but no less than annually, with the City to discuss the learning experience, instruction, supervision and evaluation of University Students.

6. Change Orders/Amendments.

- a. Change Orders/Amendments to any Project Service Agreement shall be approved in writing by the City prior to implementation unless the changes are deemed to be of an emergency nature, or due to unforeseen conditions or other circumstances, or could cause extra cost to the City if not done immediately. In the event of such conditions, the University

may execute the necessary changes with verbal approval of the City's designated representative and provide a written notification of the changes to the City within three (3) working days of the discovery, if a change order/amendment is deemed to be necessary.

b. All amendments to this IGA shall be in writing signed by the authorized signatories of both parties prior to the implementation of the amended terms.

7. Financing.

a. The City shall pay the cost of all Project Services rendered by the University under all Project Service Agreements.

b. The City makes no commitment to fund any project unless such funds can be made available to do so either through the normal budget, grant or appropriation of bond funds. However, if a project is funded the City's reimbursement to the University, shall not exceed a total of \$500,000.00 (approximately \$100,000 per year) under all Project Service Agreements during the term of this IGA. This total amount of \$500,000.00 may be adjusted by mutual agreement between the City and the University during the five (5) year term of this IGA or for term extension(s) as indicated in Section 9.

d. Each party shall establish a job cost account to identify and track all costs of Project Services associated with each Project Service Agreement.

e. In the case of dispute on reimbursement of invoices/billings for Project Services rendered, the dispute shall be escalated to the Director of each party for resolution on request of either party's designated representative. In the event the Directors for either party disagree on any element of the invoices/billings, or fail to take action within 10 days of the request, the element in dispute shall be submitted to the City Administrator and the University's Senior Vice President for Research for resolution on request of either Director. If the dispute is submitted to the City Administrator and the University's Senior Vice President for Research but they are unable to resolve the dispute, or fail to take action within 10 days of a request, the parties may pursue any remedies provided by law.

8. Other Uses for this IGA. This IGA may also be used for other similar professional services that are mutually agreed upon by both parties and by the express approval of both Directors.

9. Ownership of Information. Ownership of intellectual property developed during the course of this Agreement, if any, shall be established by application of U. S. Patent Law (Title 35 U. S. Code) and U.S. Copyright Law (Title 17 U.S. Code) and employment contracts of the developer(s), subject to any rights of the Federal Government, if federally funded. All materials produced by University in the performance of this IGA, including but not limited to reports, estimates, drawings, plans, computations, data, software, etc. may be used by City for any non-commercial purpose. University shall have the right to use its materials, without restriction or limitation, for non-commercial purposes including for the purposes of research, education, and publication or presentation in academic journals or symposia. Any such publication or presentation will be provided to City at least thirty (30) days in advance of such proposed publication or public presentation. The City shall have thirty (30) days after receipt of said copies to object to such proposed public dissemination; in which event University

shall refrain from making such publication or presentation for a maximum of ninety (90) days from the date of receipt of such objection in order for the City to take appropriate measures to protect confidential information. Any publication or presentation will acknowledge the funding support of the City and any other third party funding source, with the disclaimer that such acknowledgment does not represent the opinions or views of the City or of the third party.

9. Term and Termination.

- a. Term.* The initial term of this IGA shall begin on the date this IGA is executed by the last party to sign it, and shall be effective for a period of five (5) years from the date of such recordation. Upon completion of the initial five (5) year term, this IGA may be renewed for an additional five (5) year term by written amendment approved and signed by the parties.
- b. Termination.* This IGA may be terminated under the following circumstances:
 - i. For Convenience.* At any time either party to this IGA may terminate this IGA by providing to the other party written notice of such termination at least sixty (60) calendar days prior to the termination date. Such termination shall not relieve either party from those liabilities or costs incurred or obligated prior to the termination date.
 - ii. For Cause.* A party may terminate this IGA for material breach of the IGA by the other party. Prior to any termination under this paragraph, the party allegedly in default shall be given written notice by the other party of the nature of the alleged default. The party said to be in default shall have forty-five (45) calendar days to cure the default. If the default is not cured within that time, the other party may terminate this IGA. Any such termination shall not relieve either party from liabilities or costs already incurred or obligated under this IGA.
 - iii. For Failure to Appropriate Sufficient Funds.* Any Project Service Agreement or Other Agreement entered into pursuant to this IGA shall automatically terminate or be delayed if, for any reason, the City or University fails to appropriate sufficient funds to fund the project or activity that is the subject of the Project Service Agreement or Other Agreement. The project can restart if funds become available and both parties agree to restarting the project.
 - iv. For Conflict of Interest.* This IGA may be terminated for a conflict of interest as set forth in A.R.S. § 38-511, the relevant portions of which are hereby incorporated by reference.

- 10. Limitation of Liability.** The City shall have full responsibility for all claims, costs, or damages arising out of the City's project, however the City reserves the right to proceed against the University in the event the City determines that the University shares some liability for any claim, cost or damage arising from the project. Each party (as "Indemnitor") agrees to defend, indemnify, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any

person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

11. Insurance. Each party will be responsible to carry adequate insurance to cover their respective liability arising as a result of their performance under this IGA. When requested, a party shall provide the other party with proof of its worker's compensation, automobile, accident, property damage, and liability coverage or program of self-insurance.

12. Workers Compensation. An employee of either party shall be deemed to be an employee of both public agencies while performing pursuant to this IGA for purposes of A.R.S. § 23-1022 and the Arizona Workers Compensation laws. The primary employer shall be solely liable for any workers compensation benefits which may accrue. Each party shall post a notice pursuant to the provisions of A.R.S. § 23-906 in substantially the following form:

All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers compensation.

13. Inspection and Audit. The City may perform an inspection of any Project or an audit of the University's Project books and records at any time in order to verify that monies spent on the Project were done so in accordance with this IGA. If a Project Agreement is funded by a third party, that third party is also entitled to perform such inspection or audit as necessary, including by the Comptroller General of the United States for any federally funded services.

14. Construction of IGA.

a. *Entire Agreement.* This instrument constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein.

b. *Amendment.* This IGA shall not be modified, amended, altered or changed except by written agreement signed by the parties.

c. *Construction and interpretation.* All provisions of this IGA shall be construed to be consistent with the intention of the parties as expressed in the recitals hereof.

d. *Captions and headings.* The headings used in this IGA are for convenience only and are not intended to affect the meaning of any provision of this IGA.

e. *Severability.* In the event that any provision of this IGA or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application which can be given effect without the invalid or void provision or application, and to this extent the provisions of the IGA are severable. In the event that any provision of this IGA is declared invalid or void, the parties agree to meet

promptly upon request of the other party in an attempt to reach an agreement on a substitute provision.

- 16. No Joint Venture.** It is not intended by this IGA to, and nothing contained in this IGA shall be construed to, create any partnership or joint venture between the parties. No party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.
- 17. No Third Party Beneficiaries.** Nothing in this IGA is intended to create duties or obligations to or rights in third parties not party to this IGA. The basic purpose of this IGA is to help enable benefit to the citizens of Phoenix and the State of Arizona.
- 18. Compliance with Laws.** The parties shall comply with all applicable federal, state and local laws, rules, regulations, standards and executive orders, without limitation to those designated within this IGA.
 - a. *Anti-Discrimination.* The provisions of A.R.S. § 41-1463 and Executive Order 2009-09 issued by the Governor of the State of Arizona, which amended Executive Order 75-5 and superseded Executive Order 99-4, are incorporated by this reference as a part of this IGA as if set forth in full herein.
 - b. *Americans with Disabilities Act.* This IGA is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
 - c. *Legal Arizona Workers Act Compliance.* Each party warrants to the other that it will, at all times during the term of this IGA, comply with all federal immigration laws applicable to the warranting party's employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together, the "State and Federal Immigration Laws"). Each party further agrees to ensure that each contractor who performs work associated with any Project subject to this IGA (i) complies with the State and Federal Immigration Laws, and (ii) ensures that any subcontractor who performs work for the contractor complies with the State and Federal Immigration Laws.

Each party shall further require that each contractor who performs work on a Project subject to this IGA advises each subcontractor of the party's rights, and the subcontractor's obligations, with respect to this subsection, by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to subcontractor's employees, and with the requirements of A.R.S. § 23-214(A). Subcontractor further agrees that [City or University] may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

Any breach of the warranty of compliance with the State and Federal Immigration Laws by either party, by that party's contractor on a Project subject to this IGA, or by a subcontractor of that party's contractor on a Project subject to this IGA shall be deemed to be a material breach of this IGA subjecting the breaching party to penalties up to and including suspension or termination of this IGA. A party in breach of the warranty of compliance with State and Federal Immigration Laws shall further be liable to the other party for any additional costs attributable directly or indirectly to remedial action under this subsection.

Either party may, at any time, inspect the books and records of the other party in order to verify the other party's compliance with the State and Federal Immigration Laws.

- 19. Waiver.** Waiver by any party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 20. Force Majeure.** A party shall not be in default under this IGA if it does not fulfill any of its obligations under this IGA because it is prevented or delayed in doing so by reason of uncontrollable forces. The term "uncontrollable forces" shall mean, for the purpose of this IGA, any cause beyond the control of the party affected, including but not limited to failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the parties, order of any government officer or court (excluding orders promulgated by the parties themselves), and declared local, state or national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.
- 21. Notification.** All notices or demands upon any party to this IGA shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

Arizona State University:
Contract & Research Support Program
ADDRESS??

City of Phoenix:
Raymond Dovalina, Director
Street Transportation Department
200 W. Washington Street, 5th Floor
Phoenix, AZ 85003

Either party may, by written notice to the other, designate a different person or address for the receipt of notices under this IGA.

Any written notice under this IGA shall be deemed delivered and received on the date of delivery, if delivered by hand, or three business days after the date of mailing, if sent by mail.

22. Remedies. Either party may pursue any remedies provided by law for the breach of this IGA. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this IGA. The Parties acknowledge that disputes arising from this Agreement may be subject to arbitration in accordance with applicable law and court rules.

In Witness Whereof, City of Phoenix has caused this IGA to be executed by the Chair of the City of Phoenix Board of Supervisors and attested to by the Clerk of the Board, and the Arizona Board of Regents, on behalf of The Arizona State University has caused this IGA to be executed by the University's Contract & Research Support Program.

CITY OF PHOENIX:

XXXXXXXX, City Council Chair

Date

ATTEST:

XXXXXXXX, City Clerk

Date

The foregoing IGA between the City of Phoenix and The Arizona Board of Regents, Arizona State University has been approved as to content and is hereby recommended by the undersigned.

Raymond Dovalina, P.E., Director
Street Transportation Department

Date

ATTORNEY CERTIFICATION

The foregoing IGA by and between the City of Phoenix and the Arizona Board of Regents, Arizona State University has been reviewed pursuant to A.R.S. § 11-952 by the undersigned who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the City of Phoenix.

XXXXXXXXXX, City Attorney

Date

ARIZONA BOARD OF REGENTS, ARIZONA STATE UNIVERSITY:

Name:
Title:
Contract & Research Support Program

Date

ATTORNEY CERTIFICATION

The foregoing IGA by and between the City of Phoenix and the Arizona State University has been reviewed pursuant to A.R.S. § 11-952 by the undersigned who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to Arizona Board of Regents on behalf of the Arizona State University.

Name:
Title:
Associate General Counsel

Date

**Intergovernmental Agreement
between the City of Phoenix and the Arizona Board of Regents,
on behalf of the Northern Arizona University,
for the Providing Services for
Transportation Engineering Projects
and Related Education and Employment**

This Intergovernmental Agreement (“IGA”) is entered into by and between the Arizona Board of Regents, on behalf of the Northern Arizona University (“University”), and the City of Phoenix (“City”), pursuant to Arizona Revised Statutes A.R.S. § 11-952.

Recitals

- A. The City and the University may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-952.
- B. The University has qualified engineers, researchers, and other project personnel (“Qualified Personnel”) and engineering students (“Students”) who are familiar, are becoming familiar, or are in the need to become familiar with transportation engineering, design, construction, materials, processes, maintenance, operations, and related research.
- C. The University wishes to make its Qualified Personnel and Students available to the City on an as needed basis to address or help address the City’s needs through a specific project or providing opportunities for engineering work.
- D. The City recognizes the importance of allowing Students the opportunity to access engineering work experience as a part of their learning experience.
- E. The City recognizes the importance that University research and engineering services can offer to improve processes and approaches that save resources or improve the allocation of resources.
- F. The City acknowledges the University’s vital role in providing well educated and degreed engineers to the City, County, State and Nation. The City recognizes that its greatest opportunity to enabling access to this source of engineers either as direct employees, employees for other agencies, or through private firms, is to collaborate with the University, including through IGAs like this.

Agreement

NOW THEREFORE, City and University, pursuant to the above, and in consideration of the matters and things hereinafter set forth, do mutually agree as follows:

1. Definitions.

- a. Project: any transportation project involving design, construction, maintenance, operations or research.
- b. Project Services: The design, project management, materials testing, and research services related to the design, construction, maintenance, operations, and administration of Projects.
- c. Director: As to the City, the Director of the City's Street Transportation Department. As to University, the Director or Designee of the Contract & Research Support Program.
- d. Project Service Agreement: A specific agreement between the City and the University for the provision of Project Services for a particular Project, in substantially the form depicted in attached **Exhibit A**.
- e. Other Agreement: An agreement between the City, the University, and/or Student for other types of services that are specific to a particular task, project, learning opportunity or exchange of some sort that is consistent with purpose of this IGA.
- f. Engineering Work: Any form of work activity that involves the direct or indirect application of applied science and math to the study, design, construction, maintenance and operations of roads and streets and related infrastructure.

2. **Purpose.** The purpose of this IGA is to set forth the responsibilities of the parties regarding the provision of Project Services, other services or engineering work by the University to the City on an as-needed and as-available basis. For those services involving a Project Service Agreement, this may include reimbursement of incurred costs for the Project Services either directly or indirectly through another party. Other services may or may not include provision for reimbursement. Additionally, this IGA sets forth an understanding between the City and the University to collaborate to find opportunities on which to make this happen when it is mutually beneficial. Project services and engineering work may take the following forms:

Project

- The University provides faculty or administrators to perform research and/or engineering services to the City.
- The University provides and supervises student interns for the City project services, either unpaid or paid directly by the University through Project Service Agreements.
- The University provides like project services to another third party who are providing services either directly to the City or for another agency or party the City has an interest in or with (e.g. a local Consultant Engineering firm performing services to the City on a City funded project).

Internship, Work Shadow and Employment

- The City will, if funding is available and the positions are needed, establish and maintain paid student internships available and competitively recruit them from the University.
- The City, if the need arises, and if funding is available and the positions are needed, will appoint paid student interns to support the work of the City. The City, if possible, will provide unpaid work shadow opportunities to students if requested by the University to do so.
- The City will, if funding is available and the positions are needed, establish and maintain full-time entry level engineering positions and notify the University of any available positions.
- The University will evaluate and provide qualified student interns to volunteer for the City to do work or participate in a project.
- Internship and Work Shadow arrangements may require a separate written agreement between the parties and the student.

Other opportunities may arise; this specific list is not meant to be a limiting list of what can be accomplished under this IGA.

3. Project Service Agreements.

- a. By this IGA, the City delegates to its Director or Director's designee, and the University delegates to its Contract & Research Support Program Director or Director's designee, the authority to negotiate, execute, modify, and terminate any Project Service Agreement or Other Agreement in accordance with the terms and conditions of this IGA.
- b. Either party's Director or Director's designee may request that the parties enter into a Project Service Agreement. Upon a request, the parties' Director or Director's designee will review the request and, if mutually desirable, meet to discuss it.
- c. In the event the Director or Director's designee disagree on any element of a proposed Project Service Agreement, the element in dispute may be submitted to the Street Transportation Director and the University's Senior Vice President for Research for resolution.
- d. Any proposed Project Service Agreement shall be in writing, in substantially the form attached as **Exhibit A**, and shall include, at a minimum:
 - i. The term of the Project Service Agreement, which may neither exceed five (5) years nor may extend beyond the term of this IGA.
 - ii. A description of the Project Services that the University will provide to the City under the Project Service Agreement.

- iii. The specific responsibilities of the City and University with respect to the Project. If any Project is federally funded, it will include the federal flowdown terms and conditions applicable to University, and any required certifications or affidavits to be signed by University.
 - iv. An estimate of the cost of Project Services, if applicable, for the Project that is the subject of the Project Service Agreement. The estimate is for budgetary scheduling and is not a contractual guarantee, a cost ceiling, or an “upset limit.”
 - v. Billing rates and the method for calculating payment, if applicable, to the other party. The billing rates may be reviewed periodically during the term of the Project Service Agreement, and parties, through their Director/Principal, may agree in writing to revise the rates to reflect actual costs.
 - vi. A designated representative of the City, if applicable, to receive invoices from the University and to approve the invoices for payment.
 - vii. A schedule for paying invoices, if applicable, which shall provide that payment is due no later than 30 days after receipt of an invoice.
- e. Each Project Service Agreement shall be signed by the Authorized Signatory of each Party with the express authority or delegation to execute such documents on behalf of their respective Party.
- f. Any amendment to a Project Service Agreement must be in writing and signed by the Director for each party.
- g. Either party’s Director may terminate a Project Service Agreement at any time by providing the other party with written notice of such termination. After a Project Service Agreement is terminated, the City’s obligation to the University shall be limited to payment for services rendered before termination, including any non-cancelable obligations incurred by University prior to City’s termination.
- 4. Execution of Projects Subject to Project Service Agreements.** After a Project Service Agreement is executed, the University shall perform the Project Services specified in the Project Service Agreement for the City. Personnel from the University shall be paired up with their counterparts in the City for coordination purposes. Coordination shall include regular meetings and interaction between corresponding personnel at all levels for each assignment.

5. Responsibilities of the parties.

The City shall be responsible for:

- a. Decision making authority over the Project.
- b. Approving and processing all design documents, studies, contract documents, change orders, progress payments, and final acceptance of the Project Services completed.

- c. Upon review and approval of invoices, paying the University in accordance with a schedule set forth in the Project Service Agreement.
- d. Evaluating, at its discretion, the Project Services provided by the University and to verify that the Project Services are completed in accordance with the Project Service Agreement.
- e. Providing, whenever possible, opportunities for Students to gain engineering work experience through a variety of methods that are enabled by this IGA, and provide evaluation of each University Student's progress, in a format and at such times as directed by the University. Areas of evaluation may include, but are not limited to: professionalism, ability to give and receive feedback effectively, adherence to engineering standards, and competence.
- f. Provide all applicable written City policies, regulations and directives to University Students and Faculty, and instruct University of facility safety procedures and operations. The City will provide University with at least the same safety training it provides to its regular employees working under similar conditions. The City may relieve any University Student or Faculty from further participation if, in its sole discretion, it believes that such University Student or Faculty has violated City policies, regulations and/or directives. The City shall notify the University Director immediately, and follow up such action in writing.

The University shall be responsible for:

- a. Identifying and developing recommendations with respect to the Project Services, and sharing those recommendations with the City.
- b. Establishing a list of overhead charges/rates for Project Services as required in Section 3.
- c. Providing sufficient Qualified Personnel to perform or supervise the Project Services with the necessary care, skill, and diligence.
- d. Preparing invoices (in the form approved by the City) for submission to the City. The University shall approve, sign, and forward billing documents to the City's designated representative for approval and payment.
- e. Provide the City with the University program objectives, and/or desired learning experiences in advance of the University Students' placement, and provide the City with appropriate instruction in supervision of and completing the evaluation forms for the University Students;
- f. Schedule, through the University Director or Designee, to confer at regular intervals, but no less than annually, with the City to discuss the learning experience, instruction, supervision and evaluation of University Students.

6. Change Orders/Amendments.

- a. Change Orders/Amendments to any Project Service Agreement shall be approved in writing by the City prior to implementation unless the changes are deemed to be of an emergency nature, or due to unforeseen conditions or other circumstances, or could cause extra cost to the City if not done immediately. In the event of such conditions, the University

may execute the necessary changes with verbal approval of the City's designated representative and provide a written notification of the changes to the City within three (3) working days of the discovery, if a change order/amendment is deemed to be necessary.

b. All amendments to this IGA shall be in writing signed by the authorized signatories of both parties prior to the implementation of the amended terms.

7. Financing.

a. The City shall pay the cost of all Project Services rendered by the University under all Project Service Agreements.

b. The City makes no commitment to fund any project unless such funds can be made available to do so either through the normal budget, grant or appropriation of bond funds. However, if a project is funded the City's reimbursement to the University, shall not exceed a total of \$500,000.00 (approximately \$100,000 per year) under all Project Service Agreements during the term of this IGA. This total amount of \$500,000.00 may be adjusted by mutual agreement between the City and the University during the five (5) year term of this IGA or for term extension(s) as indicated in Section 9.

d. Each party shall establish a job cost account to identify and track all costs of Project Services associated with each Project Service Agreement.

e. In the case of dispute on reimbursement of invoices/billings for Project Services rendered, the dispute shall be escalated to the Director of each party for resolution on request of either party's designated representative. In the event the Directors for either party disagree on any element of the invoices/billings, or fail to take action within 10 days of the request, the element in dispute shall be submitted to the City Administrator and the University's Senior Vice President for Research for resolution on request of either Director. If the dispute is submitted to the City Administrator and the University's Senior Vice President for Research but they are unable to resolve the dispute, or fail to take action within 10 days of a request, the parties may pursue any remedies provided by law.

8. Other Uses for this IGA. This IGA may also be used for other similar professional services that are mutually agreed upon by both parties and by the express approval of both Directors.

9. Ownership of Information. Ownership of intellectual property developed during the course of this Agreement, if any, shall be established by application of U. S. Patent Law (Title 35 U. S. Code) and U.S. Copyright Law (Title 17 U.S. Code) and employment contracts of the developer(s), subject to any rights of the Federal Government, if federally funded. All materials produced by University in the performance of this IGA, including but not limited to reports, estimates, drawings, plans, computations, data, software, etc. may be used by City for any non-commercial purpose. University shall have the right to use its materials, without restriction or limitation, for non-commercial purposes including for the purposes of research, education, and publication or presentation in academic journals or symposia. Any such publication or presentation will be provided to City at least thirty (30) days in advance of such proposed publication or public presentation. The City shall have thirty (30) days after receipt of said copies to object to such proposed public dissemination; in which event University

shall refrain from making such publication or presentation for a maximum of ninety (90) days from the date of receipt of such objection in order for the City to take appropriate measures to protect confidential information. Any publication or presentation will acknowledge the funding support of the City and any other third party funding source, with the disclaimer that such acknowledgment does not represent the opinions or views of the City or of the third party.

9. Term and Termination.

- c. Term.* The initial term of this IGA shall begin on the date this IGA is executed by the last party to sign it, and shall be effective for a period of five (5) years from the date of such recordation. Upon completion of the initial five (5) year term, this IGA may be renewed for an additional five (5) year term by written amendment approved and signed by the parties.
- d. Termination.* This IGA may be terminated under the following circumstances:
 - i. For Convenience.* At any time either party to this IGA may terminate this IGA by providing to the other party written notice of such termination at least sixty (60) calendar days prior to the termination date. Such termination shall not relieve either party from those liabilities or costs incurred or obligated prior to the termination date.
 - ii. For Cause.* A party may terminate this IGA for material breach of the IGA by the other party. Prior to any termination under this paragraph, the party allegedly in default shall be given written notice by the other party of the nature of the alleged default. The party said to be in default shall have forty-five (45) calendar days to cure the default. If the default is not cured within that time, the other party may terminate this IGA. Any such termination shall not relieve either party from liabilities or costs already incurred or obligated under this IGA.
 - iii. For Failure to Appropriate Sufficient Funds.* Any Project Service Agreement or Other Agreement entered into pursuant to this IGA shall automatically terminate or be delayed if, for any reason, the City or University fails to appropriate sufficient funds to fund the project or activity that is the subject of the Project Service Agreement or Other Agreement. The project can restart if funds become available and both parties agree to restarting the project.
 - iv. For Conflict of Interest.* This IGA may be terminated for a conflict of interest as set forth in A.R.S. § 38-511, the relevant portions of which are hereby incorporated by reference.

- 10. Limitation of Liability.** The City shall have full responsibility for all claims, costs, or damages arising out of the City's project, however the City reserves the right to proceed against the University in the event the City determines that the University shares some liability for any claim, cost or damage arising from the project. Each party (as "Indemnitor") agrees to defend, indemnify, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any

person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

11. Insurance. Each party will be responsible to carry adequate insurance to cover their respective liability arising as a result of their performance under this IGA. When requested, a party shall provide the other party with proof of its worker's compensation, automobile, accident, property damage, and liability coverage or program of self-insurance.

12. Workers Compensation. An employee of either party shall be deemed to be an employee of both public agencies while performing pursuant to this IGA for purposes of A.R.S. § 23-1022 and the Arizona Workers Compensation laws. The primary employer shall be solely liable for any workers compensation benefits which may accrue. Each party shall post a notice pursuant to the provisions of A.R.S. § 23-906 in substantially the following form:

All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers compensation.

13. Inspection and Audit. The City may perform an inspection of any Project or an audit of the University's Project books and records at any time in order to verify that monies spent on the Project were done so in accordance with this IGA. If a Project Agreement is funded by a third party, that third party is also entitled to perform such inspection or audit as necessary, including by the Comptroller General of the United States for any federally funded services.

14. Construction of IGA.

a. *Entire Agreement.* This instrument constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein.

b. *Amendment.* This IGA shall not be modified, amended, altered or changed except by written agreement signed by the parties.

c. *Construction and interpretation.* All provisions of this IGA shall be construed to be consistent with the intention of the parties as expressed in the recitals hereof.

d. *Captions and headings.* The headings used in this IGA are for convenience only and are not intended to affect the meaning of any provision of this IGA.

e. *Severability.* In the event that any provision of this IGA or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application which can be given effect without the invalid or void provision or application, and to this extent the provisions of the IGA are severable. In the event that any provision of this IGA is declared invalid or void, the parties agree to meet

promptly upon request of the other party in an attempt to reach an agreement on a substitute provision.

- 16. No Joint Venture.** It is not intended by this IGA to, and nothing contained in this IGA shall be construed to, create any partnership or joint venture between the parties. No party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.
- 17. No Third Party Beneficiaries.** Nothing in this IGA is intended to create duties or obligations to or rights in third parties not party to this IGA. The basic purpose of this IGA is to help enable benefit to the citizens of Phoenix and the State of Arizona.
- 18. Compliance with Laws.** The parties shall comply with all applicable federal, state and local laws, rules, regulations, standards and executive orders, without limitation to those designated within this IGA.
 - a. *Anti-Discrimination.* The provisions of A.R.S. § 41-1463 and Executive Order 2009-09 issued by the Governor of the State of Arizona, which amended Executive Order 75-5 and superseded Executive Order 99-4, are incorporated by this reference as a part of this IGA as if set forth in full herein.
 - b. *Americans with Disabilities Act.* This IGA is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
 - c. *Legal Arizona Workers Act Compliance.* Each party warrants to the other that it will, at all times during the term of this IGA, comply with all federal immigration laws applicable to the warranting party's employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together, the "State and Federal Immigration Laws"). Each party further agrees to ensure that each contractor who performs work associated with any Project subject to this IGA (i) complies with the State and Federal Immigration Laws, and (ii) ensures that any subcontractor who performs work for the contractor complies with the State and Federal Immigration Laws.

Each party shall further require that each contractor who performs work on a Project subject to this IGA advises each subcontractor of the party's rights, and the subcontractor's obligations, with respect to this subsection, by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to subcontractor's employees, and with the requirements of A.R.S. § 23-214(A). Subcontractor further agrees that [City or University] may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

Any breach of the warranty of compliance with the State and Federal Immigration Laws by either party, by that party's contractor on a Project subject to this IGA, or by a subcontractor of that party's contractor on a Project subject to this IGA shall be deemed to be a material breach of this IGA subjecting the breaching party to penalties up to and including suspension or termination of this IGA. A party in breach of the warranty of compliance with State and Federal Immigration Laws shall further be liable to the other party for any additional costs attributable directly or indirectly to remedial action under this subsection.

Either party may, at any time, inspect the books and records of the other party in order to verify the other party's compliance with the State and Federal Immigration Laws.

- 19. Waiver.** Waiver by any party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 20. Force Majeure.** A party shall not be in default under this IGA if it does not fulfill any of its obligations under this IGA because it is prevented or delayed in doing so by reason of uncontrollable forces. The term "uncontrollable forces" shall mean, for the purpose of this IGA, any cause beyond the control of the party affected, including but not limited to failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the parties, order of any government officer or court (excluding orders promulgated by the parties themselves), and declared local, state or national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.
- 21. Notification.** All notices or demands upon any party to this IGA shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

Northern Arizona University:
Contract & Research Support Program
ADDRESS??

City of Phoenix:
Raymond Dovalina, Director
Street Transportation Department
200 W. Washington Street, 5th Floor
Phoenix, AZ 85003

Either party may, by written notice to the other, designate a different person or address for the receipt of notices under this IGA.

Any written notice under this IGA shall be deemed delivered and received on the date of delivery, if delivered by hand, or three business days after the date of mailing, if sent by mail.

22. Remedies. Either party may pursue any remedies provided by law for the breach of this IGA. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this IGA. The Parties acknowledge that disputes arising from this Agreement may be subject to arbitration in accordance with applicable law and court rules.

In Witness Whereof, City of Phoenix has caused this IGA to be executed by the Chair of the City of Phoenix Board of Supervisors and attested to by the Clerk of the Board, and the Arizona Board of Regents, on behalf of Northern Arizona University has caused this IGA to be executed by the University's Contract & Research Support Program.

CITY OF PHOENIX:

XXXXXXXX, City Council Chair

Date

ATTEST:

XXXXXXXX, City Clerk

Date

The foregoing IGA between the City of Phoenix and The Arizona Board of Regents, Northern Arizona University has been approved as to content and is hereby recommended by the undersigned.

Raymond Dovalina, P.E., Director
Street Transportation Department

Date

ATTORNEY CERTIFICATION

The foregoing IGA by and between the City of Phoenix and the Arizona Board of Regents, Northern Arizona University has been reviewed pursuant to A.R.S. § 11-952 by the undersigned who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the City of Phoenix.

XXXXXXXXXX, City Attorney

Date

ARIZONA BOARD OF REGENTS, NORTHERN ARIZONA UNIVERSITY:

Name:
Title:
Contract & Research Support Program

Date

ATTORNEY CERTIFICATION

The foregoing IGA by and between the City of Phoenix and the Northern Arizona University has been reviewed pursuant to A.R.S. § 11-952 by the undersigned who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to Arizona Board of Regents on behalf of the Northern Arizona University.

Name:
Title:
Associate General Counsel

Date

**Intergovernmental Agreement
between the City of Phoenix and the Arizona Board of Regents,
on behalf of the University of Arizona,
for the Providing Services for
Transportation Engineering Projects
and Related Education and Employment**

This Intergovernmental Agreement (“IGA”) is entered into by and between the Arizona Board of Regents, on behalf of the University of Arizona (“University”), and the City of Phoenix (“City”), pursuant to Arizona Revised Statutes A.R.S. § 11-952.

Recitals

- G. The City and the University may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-952.
- H. The University has qualified engineers, researchers, and other project personnel (“Qualified Personnel”) and engineering students (“Students”) who are familiar, are becoming familiar, or are in the need to become familiar with transportation engineering, design, construction, materials, processes, maintenance, operations, and related research.
- I. The University wishes to make its Qualified Personnel and Students available to the City on an as needed basis to address or help address the City’s needs through a specific project or providing opportunities for engineering work.
- J. The City recognizes the importance of allowing Students the opportunity to access engineering work experience as a part of their learning experience.
- K. The City recognizes the importance that University research and engineering services can offer to improve processes and approaches that save resources or improve the allocation of resources.
- L. The City acknowledges the University’s vital role in providing well educated and degreed engineers to the City, County, State and Nation. The City recognizes that its greatest opportunity to enabling access to this source of engineers either as direct employees, employees for other agencies, or through private firms, is to collaborate with the University, including through IGAs like this.

Agreement

NOW THEREFORE, City and University, pursuant to the above, and in consideration of the matters and things hereinafter set forth, do mutually agree as follows:

1. Definitions.

- a. Project: any transportation project involving design, construction, maintenance, operations or research.
- b. Project Services: The design, project management, materials testing, and research services related to the design, construction, maintenance, operations, and administration of Projects.
- c. Director: As to the City, the Director of the City's Street Transportation Department. As to University, the Director or Designee of the Contract & Research Support Program.
- d. Project Service Agreement: A specific agreement between the City and the University for the provision of Project Services for a particular Project, in substantially the form depicted in attached **Exhibit A**.
- e. Other Agreement: An agreement between the City, the University, and/or Student for other types of services that are specific to a particular task, project, learning opportunity or exchange of some sort that is consistent with purpose of this IGA.
- f. Engineering Work: Any form of work activity that involves the direct or indirect application of applied science and math to the study, design, construction, maintenance and operations of roads and streets and related infrastructure.

2. **Purpose.** The purpose of this IGA is to set forth the responsibilities of the parties regarding the provision of Project Services, other services or engineering work by the University to the City on an as-needed and as-available basis. For those services involving a Project Service Agreement, this may include reimbursement of incurred costs for the Project Services either directly or indirectly through another party. Other services may or may not include provision for reimbursement. Additionally, this IGA sets forth an understanding between the City and the University to collaborate to find opportunities on which to make this happen when it is mutually beneficial. Project services and engineering work may take the following forms:

Project

- The University provides faculty or administrators to perform research and/or engineering services to the City.
- The University provides and supervises student interns for the City project services, either unpaid or paid directly by the University through Project Service Agreements.
- The University provides like project services to another third party who are providing services either directly to the City or for another agency or party the City has an interest in or with (e.g. a local Consultant Engineering firm performing services to the City on a City funded project).

Internship, Work Shadow and Employment

- The City will, if funding is available and the positions are needed, establish and maintain paid student internships available and competitively recruit them from the University.
- The City, if the need arises, and if funding is available and the positions are needed, will appoint paid student interns to support the work of the City. The City, if possible, will provide unpaid work shadow opportunities to students if requested by the University to do so.
- The City will, if funding is available and the positions are needed, establish and maintain full-time entry level engineering positions and notify the University of any available positions.
- The University will evaluate and provide qualified student interns to volunteer for the City to do work or participate in a project.
- Internship and Work Shadow arrangements may require a separate written agreement between the parties and the student.

Other opportunities may arise; this specific list is not meant to be a limiting list of what can be accomplished under this IGA.

3. Project Service Agreements.

- a. By this IGA, the City delegates to its Director or Director's designee, and the University delegates to its Contract & Research Support Program Director or Director's designee, the authority to negotiate, execute, modify, and terminate any Project Service Agreement or Other Agreement in accordance with the terms and conditions of this IGA.
- b. Either party's Director or Director's designee may request that the parties enter into a Project Service Agreement. Upon a request, the parties' Director or Director's designee will review the request and, if mutually desirable, meet to discuss it.
- c. In the event the Director or Director's designee disagree on any element of a proposed Project Service Agreement, the element in dispute may be submitted to the Street Transportation Director and the University's Senior Vice President for Research for resolution.
- d. Any proposed Project Service Agreement shall be in writing, in substantially the form attached as **Exhibit A**, and shall include, at a minimum:
 - i. The term of the Project Service Agreement, which may neither exceed five (5) years nor may extend beyond the term of this IGA.
 - ii. A description of the Project Services that the University will provide to the City under the Project Service Agreement.

- iii. The specific responsibilities of the City and University with respect to the Project. If any Project is federally funded, it will include the federal flowdown terms and conditions applicable to University, and any required certifications or affidavits to be signed by University.
 - iv. An estimate of the cost of Project Services, if applicable, for the Project that is the subject of the Project Service Agreement. The estimate is for budgetary scheduling and is not a contractual guarantee, a cost ceiling, or an “upset limit.”
 - v. Billing rates and the method for calculating payment, if applicable, to the other party. The billing rates may be reviewed periodically during the term of the Project Service Agreement, and parties, through their Director/Principal, may agree in writing to revise the rates to reflect actual costs.
 - vi. A designated representative of the City, if applicable, to receive invoices from the University and to approve the invoices for payment.
 - vii. A schedule for paying invoices, if applicable, which shall provide that payment is due no later than 30 days after receipt of an invoice.
- e. Each Project Service Agreement shall be signed by the Authorized Signatory of each Party with the express authority or delegation to execute such documents on behalf of their respective Party.
- f. Any amendment to a Project Service Agreement must be in writing and signed by the Director for each party.
- g. Either party’s Director may terminate a Project Service Agreement at any time by providing the other party with written notice of such termination. After a Project Service Agreement is terminated, the City’s obligation to the University shall be limited to payment for services rendered before termination, including any non-cancelable obligations incurred by University prior to City’s termination.
- 4. Execution of Projects Subject to Project Service Agreements.** After a Project Service Agreement is executed, the University shall perform the Project Services specified in the Project Service Agreement for the City. Personnel from the University shall be paired up with their counterparts in the City for coordination purposes. Coordination shall include regular meetings and interaction between corresponding personnel at all levels for each assignment.

5. Responsibilities of the parties.

The City shall be responsible for:

- g. Decision making authority over the Project.
- h. Approving and processing all design documents, studies, contract documents, change orders, progress payments, and final acceptance of the Project Services completed.

- i. Upon review and approval of invoices, paying the University in accordance with a schedule set forth in the Project Service Agreement.
- j. Evaluating, at its discretion, the Project Services provided by the University and to verify that the Project Services are completed in accordance with the Project Service Agreement.
- k. Providing, whenever possible, opportunities for Students to gain engineering work experience through a variety of methods that are enabled by this IGA, and provide evaluation of each University Student's progress, in a format and at such times as directed by the University. Areas of evaluation may include, but are not limited to: professionalism, ability to give and receive feedback effectively, adherence to engineering standards, and competence.
- l. Provide all applicable written City policies, regulations and directives to University Students and Faculty, and instruct University of facility safety procedures and operations. The City will provide University with at least the same safety training it provides to its regular employees working under similar conditions. The City may relieve any University Student or Faculty from further participation if, in its sole discretion, it believes that such University Student or Faculty has violated City policies, regulations and/or directives. The City shall notify the University Director immediately, and follow up such action in writing.

The University shall be responsible for:

- g. Identifying and developing recommendations with respect to the Project Services, and sharing those recommendations with the City.
- h. Establishing a list of overhead charges/rates for Project Services as required in Section 3.
- i. Providing sufficient Qualified Personnel to perform or supervise the Project Services with the necessary care, skill, and diligence.
- j. Preparing invoices (in the form approved by the City) for submission to the City. The University shall approve, sign, and forward billing documents to the City's designated representative for approval and payment.
- k. Provide the City with the University program objectives, and/or desired learning experiences in advance of the University Students' placement, and provide the City with appropriate instruction in supervision of and completing the evaluation forms for the University Students;
- l. Schedule, through the University Director or Designee, to confer at regular intervals, but no less than annually, with the City to discuss the learning experience, instruction, supervision and evaluation of University Students.

6. Change Orders/Amendments.

- a. Change Orders/Amendments to any Project Service Agreement shall be approved in writing by the City prior to implementation unless the changes are deemed to be of an emergency nature, or due to unforeseen conditions or other circumstances, or could cause extra cost to the City if not done immediately. In the event of such conditions, the University

may execute the necessary changes with verbal approval of the City's designated representative and provide a written notification of the changes to the City within three (3) working days of the discovery, if a change order/amendment is deemed to be necessary.

b. All amendments to this IGA shall be in writing signed by the authorized signatories of both parties prior to the implementation of the amended terms.

7. Financing.

a. The City shall pay the cost of all Project Services rendered by the University under all Project Service Agreements.

b. The City makes no commitment to fund any project unless such funds can be made available to do so either through the normal budget, grant or appropriation of bond funds. However, if a project is funded the City's reimbursement to the University, shall not exceed a total of \$500,000.00 (approximately \$100,000 per year) under all Project Service Agreements during the term of this IGA. This total amount of \$500,000.00 may be adjusted by mutual agreement between the City and the University during the five (5) year term of this IGA or for term extension(s) as indicated in Section 9.

d. Each party shall establish a job cost account to identify and track all costs of Project Services associated with each Project Service Agreement.

e. In the case of dispute on reimbursement of invoices/billings for Project Services rendered, the dispute shall be escalated to the Director of each party for resolution on request of either party's designated representative. In the event the Directors for either party disagree on any element of the invoices/billings, or fail to take action within 10 days of the request, the element in dispute shall be submitted to the City Administrator and the University's Senior Vice President for Research for resolution on request of either Director. If the dispute is submitted to the City Administrator and the University's Senior Vice President for Research but they are unable to resolve the dispute, or fail to take action within 10 days of a request, the parties may pursue any remedies provided by law.

8. Other Uses for this IGA. This IGA may also be used for other similar professional services that are mutually agreed upon by both parties and by the express approval of both Directors.

9. Ownership of Information. Ownership of intellectual property developed during the course of this Agreement, if any, shall be established by application of U. S. Patent Law (Title 35 U. S. Code) and U.S. Copyright Law (Title 17 U.S. Code) and employment contracts of the developer(s), subject to any rights of the Federal Government, if federally funded. All materials produced by University in the performance of this IGA, including but not limited to reports, estimates, drawings, plans, computations, data, software, etc. may be used by City for any non-commercial purpose. University shall have the right to use its materials, without restriction or limitation, for non-commercial purposes including for the purposes of research, education, and publication or presentation in academic journals or symposia. Any such publication or presentation will be provided to City at least thirty (30) days in advance of such proposed publication or public presentation. The City shall have thirty (30) days after receipt of said copies to object to such proposed public dissemination; in which event University

shall refrain from making such publication or presentation for a maximum of ninety (90) days from the date of receipt of such objection in order for the City to take appropriate measures to protect confidential information. Any publication or presentation will acknowledge the funding support of the City and any other third party funding source, with the disclaimer that such acknowledgment does not represent the opinions or views of the City or of the third party.

9. Term and Termination.

- e. Term.* The initial term of this IGA shall begin on the date this IGA is executed by the last party to sign it, and shall be effective for a period of five (5) years from the date of such recordation. Upon completion of the initial five (5) year term, this IGA may be renewed for an additional five (5) year term by written amendment approved and signed by the parties.
- f. Termination.* This IGA may be terminated under the following circumstances:
 - i. For Convenience. At any time either party to this IGA may terminate this IGA by providing to the other party written notice of such termination at least sixty (60) calendar days prior to the termination date. Such termination shall not relieve either party from those liabilities or costs incurred or obligated prior to the termination date.
 - ii. For Cause. A party may terminate this IGA for material breach of the IGA by the other party. Prior to any termination under this paragraph, the party allegedly in default shall be given written notice by the other party of the nature of the alleged default. The party said to be in default shall have forty-five (45) calendar days to cure the default. If the default is not cured within that time, the other party may terminate this IGA. Any such termination shall not relieve either party from liabilities or costs already incurred or obligated under this IGA.
 - iii. For Failure to Appropriate Sufficient Funds. Any Project Service Agreement or Other Agreement entered into pursuant to this IGA shall automatically terminate or be delayed if, for any reason, the City or University fails to appropriate sufficient funds to fund the project or activity that is the subject of the Project Service Agreement or Other Agreement. The project can restart if funds become available and both parties agree to restarting the project.
 - iv. For Conflict of Interest. This IGA may be terminated for a conflict of interest as set forth in A.R.S. § 38-511, the relevant portions of which are hereby incorporated by reference.

- 10. Limitation of Liability.** The City shall have full responsibility for all claims, costs, or damages arising out of the City's project, however the City reserves the right to proceed against the University in the event the City determines that the University shares some liability for any claim, cost or damage arising from the project. Each party (as "Indemnitor") agrees to defend, indemnify, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any

person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

11. Insurance. Each party will be responsible to carry adequate insurance to cover their respective liability arising as a result of their performance under this IGA. When requested, a party shall provide the other party with proof of its worker's compensation, automobile, accident, property damage, and liability coverage or program of self-insurance.

12. Workers Compensation. An employee of either party shall be deemed to be an employee of both public agencies while performing pursuant to this IGA for purposes of A.R.S. § 23-1022 and the Arizona Workers Compensation laws. The primary employer shall be solely liable for any workers compensation benefits which may accrue. Each party shall post a notice pursuant to the provisions of A.R.S. § 23-906 in substantially the following form:

All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers compensation.

13. Inspection and Audit. The City may perform an inspection of any Project or an audit of the University's Project books and records at any time in order to verify that monies spent on the Project were done so in accordance with this IGA. If a Project Agreement is funded by a third party, that third party is also entitled to perform such inspection or audit as necessary, including by the Comptroller General of the United States for any federally funded services.

14. Construction of IGA.

a. *Entire Agreement.* This instrument constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein.

b. *Amendment.* This IGA shall not be modified, amended, altered or changed except by written agreement signed by the parties.

c. *Construction and interpretation.* All provisions of this IGA shall be construed to be consistent with the intention of the parties as expressed in the recitals hereof.

d. *Captions and headings.* The headings used in this IGA are for convenience only and are not intended to affect the meaning of any provision of this IGA.

e. *Severability.* In the event that any provision of this IGA or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application which can be given effect without the invalid or void provision or application, and to this extent the provisions of the IGA are severable. In the event that any provision of this IGA is declared invalid or void, the parties agree to meet

promptly upon request of the other party in an attempt to reach an agreement on a substitute provision.

16. No Joint Venture. It is not intended by this IGA to, and nothing contained in this IGA shall be construed to, create any partnership or joint venture between the parties. No party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.

17. No Third Party Beneficiaries. Nothing in this IGA is intended to create duties or obligations to or rights in third parties not party to this IGA. The basic purpose of this IGA is to help enable benefit to the citizens of Phoenix and the State of Arizona.

18. Compliance with Laws. The parties shall comply with all applicable federal, state and local laws, rules, regulations, standards and executive orders, without limitation to those designated within this IGA.

- a. *Anti-Discrimination.* The provisions of A.R.S. § 41-1463 and Executive Order 2009-09 issued by the Governor of the State of Arizona, which amended Executive Order 75-5 and superseded Executive Order 99-4, are incorporated by this reference as a part of this IGA as if set forth in full herein.
- b. *Americans with Disabilities Act.* This IGA is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
- c. *Legal Arizona Workers Act Compliance.* Each party warrants to the other that it will, at all times during the term of this IGA, comply with all federal immigration laws applicable to the warranting party's employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together, the "State and Federal Immigration Laws"). Each party further agrees to ensure that each contractor who performs work associated with any Project subject to this IGA (i) complies with the State and Federal Immigration Laws, and (ii) ensures that any subcontractor who performs work for the contractor complies with the State and Federal Immigration Laws.

Each party shall further require that each contractor who performs work on a Project subject to this IGA advises each subcontractor of the party's rights, and the subcontractor's obligations, with respect to this subsection, by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to subcontractor's employees, and with the requirements of A.R.S. § 23-214(A). Subcontractor further agrees that [City or University] may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

Any breach of the warranty of compliance with the State and Federal Immigration Laws by either party, by that party's contractor on a Project subject to this IGA, or by a subcontractor of that party's contractor on a Project subject to this IGA shall be deemed to be a material breach of this IGA subjecting the breaching party to penalties up to and including suspension or termination of this IGA. A party in breach of the warranty of compliance with State and Federal Immigration Laws shall further be liable to the other party for any additional costs attributable directly or indirectly to remedial action under this subsection.

Either party may, at any time, inspect the books and records of the other party in order to verify the other party's compliance with the State and Federal Immigration Laws.

- 19. Waiver.** Waiver by any party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 20. Force Majeure.** A party shall not be in default under this IGA if it does not fulfill any of its obligations under this IGA because it is prevented or delayed in doing so by reason of uncontrollable forces. The term "uncontrollable forces" shall mean, for the purpose of this IGA, any cause beyond the control of the party affected, including but not limited to failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the parties, order of any government officer or court (excluding orders promulgated by the parties themselves), and declared local, state or national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.
- 21. Notification.** All notices or demands upon any party to this IGA shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

The University of Arizona:
Contract & Research Support Program
P.O. Box 210158, Room 515
Tucson, AZ 85721-0158

City of Phoenix:
Raymond Dovalina, Director
Street Transportation Department
200 W. Washington Street, 5th Floor
Phoenix, AZ 85003

Either party may, by written notice to the other, designate a different person or address for the receipt of notices under this IGA.

Any written notice under this IGA shall be deemed delivered and received on the date of delivery, if delivered by hand, or three business days after the date of mailing, if sent by mail.

22. Remedies. Either party may pursue any remedies provided by law for the breach of this IGA. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this IGA. The Parties acknowledge that disputes arising from this Agreement may be subject to arbitration in accordance with applicable law and court rules.

In Witness Whereof, City of Phoenix has caused this IGA to be executed by the Chair of the City of Phoenix Board of Supervisors and attested to by the Clerk of the Board, and the Arizona Board of Regents, on behalf of The University of Arizona has caused this IGA to be executed by the University's Contract & Research Support Program.

CITY OF PHOENIX:

XXXXXXXX, City Council Chair

Date

ATTEST:

XXXXXXXX, City Clerk

Date

The foregoing IGA between the City of Phoenix and The Arizona Board of Regents, University of Arizona has been approved as to content and is hereby recommended by the undersigned.

Maria Hyatt, Director (Acting)
Street Transportation Department

Date

ATTORNEY CERTIFICATION

The foregoing IGA by and between the City of Phoenix and the Arizona Board of Regents, University of Arizona has been reviewed pursuant to A.R.S. § 11-952 by the undersigned who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the City of Phoenix.

XXXXXXXXXX, City Attorney

Date

ARIZONA BOARD OF REGENTS, UNIVERSITY OF ARIZONA:

Name:
Title:
Contract & Research Support Program

Date

ATTORNEY CERTIFICATION

The foregoing IGA by and between the City of Phoenix and the University of Arizona has been reviewed pursuant to A.R.S. § 11-952 by the undersigned who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to Arizona Board of Regents on behalf of the University of Arizona.

Name:
Title:
Associate General Counsel

Date