

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF MESA AND Arizona State University
FOR
INFORMATION TECHNOLOGY AND RELATED SERVICES**

This intergovernmental agreement ("Agreement") is made and entered into this ____ day of ____, 2020 ("Execution Date"), by and between the City of Mesa, a municipal corporation of the State of Arizona ("Mesa") and ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of ARIZONA STATE UNIVERSITY, ("ASU"). Mesa and ASU are each a "Party" and collectively, they constitute the "Parties."

RECITALS:

WHEREAS, Mesa and ASU own and operate information technology consisting, in part, of data and information, infrastructure and equipment (including, without limitation, fiber optic cable and conduits), and hardware and software (collectively, "IT"), to provide services and carry out their respective missions;

WHEREAS, Mesa and ASU may periodically purchase IT and related services to install, operate and maintain their IT infrastructure;

WHEREAS, Mesa and ASU wish to enter into this Agreement for the cooperative use of Mesa and ASU IT and purchase of IT and related services to reduce their operations and capital costs;

WHEREAS, ASU is authorized to enter into contracts under A.R.S. Section 15-1625 and 11-952. The City is authorized to enter into this contract under A.R.S. Section 11-952

NOW, THEREFORE, in consideration of the promises, mutual covenants, and agreements contained herein, the sufficiency of which the Parties agree, the Parties agree as follows:

AGREEMENT:

Section 1. Term and Termination of Agreement

1.1 Term. This Agreement shall be for a term of ten (10) years beginning on the Execution Date, unless terminated by either Party or extended as provided herein ("Term").

1.2 Termination.

1.2.1 Termination For Convenience. Mesa or ASU may terminate this Agreement by delivering written notice to the other Party. Such

termination must be received by the other party at least six (6) months prior to the date of termination.

1.2.2 Non-Appropriation. If either Party's performance under this Agreement depends upon an appropriation of funds by their respective governing bodies, and if either Party's governing body fails to appropriate the funds necessary for performance, the affected Party may provide written notice of this failure to the other Party and cancel this Agreement. Such written notice shall specify the effective date of cancellation. The Parties shall endeavor to give the other Party as much advance notice as possible of a cancellation for non-appropriation.

1.2.3 Conflict of Interest. This Agreement shall be subject to cancellation for conflict of interest pursuant to A.R.S. §38-511.

1.3 Extension. This Agreement may be extended by the parties by mutual written agreement of the Parties. Such notice of intention ("Notice of Intention to Extend") to extend this Agreement must be provided to the other Party not less than thirty (30) days prior to expiration of the Term. If both Parties agree to extend the Term of this Agreement, the Parties will confirm such extension by a written amendment to this Agreement amending the Term. The Notice of Intention to Extend must contain the proposed extension term. If the Notice of Intention to Extend is not received by either Party, this Agreement will automatically terminate at the end of the Term without further notice.

1.4 Post-Termination.

1.4.1 Upon termination of this Agreement, each Party shall continue to own (i) all IT that the Party owned prior to this Agreement and shared with the other Party during the term of this Agreement, and (ii) all IT that was acquired by such Party pursuant to this Agreement and a Supplemental Agreement.

1.4.2 In the event that either Party has developed what is commonly referred to as "add ons", enhancements or improvements to that Party's own IT (individually and collectively, the "Add ons"), such Party shall possess all ownership rights to such Add ons and the other Party agrees that it shall not attempt to exercise any rights at law, equity or the like, claiming any ownership interest in or financial remuneration or damages related to or coming from the Add ons. In the event a Party has developed Add ons to the other Party's IT, Party that developed the Add ons shall possess all ownership rights to such Add ons and the other Party agrees that it shall not attempt to exercise any rights at law, equity or the like, claiming any ownership interest in or financial remuneration or damages related to or coming from the Add ons. Upon request by the other Party, the

Party claiming ownership of any Add ons, shall produce commercially reasonable documentation to substantiate such claims of ownership. After production of such commercially reasonable documentation, if the Parties still disagree as to ownership of the Add ons, the Parties shall retain a mutually agreeable arbitrator who has substantiated intellectual property legal dispute experience to render a binding decision upon the Parties regarding ownership of the Add ons in dispute.

- 1.4.3 Upon termination of this Agreement, the Party that owns IT that is shared with the other Party shall cooperate with and give adequate time for the other Party to acquire a suitable replacement, remove any shared portion including system or application, and/or work with the other Party to create and implement an action plan for the successful separation for the IT that will no longer be available to it. During the post-termination period, the Party that owns the IT will allow the other Party to continue to use the IT as necessary to carry on its operations and protect its stored electronic data and such Party expressly waives any rights, causes of action, damages or the like at law or in equity against the Party that does not own the IT for any allegations arising from the continued use, including but not limited to breach of contract; patent, copyright or trademark infringement or any damages alleged to have arisen therefrom .

Section 2. Joint Acquisition and Use of Surplus IT and Related Services

- 2.1 Mesa and ASU may jointly acquire or use their IT and related-services to the extent that either or both have IT or related-services available to share with the other Party. Mesa and ASU agree that they will explore and, if feasible, may acquire IT and related services for the subsequent IT activities. Such activities shall be confirmed in a writing signed by both Parties. The following are listed as examples only and are not intended to limit the potential IT or related services contemplated by this Agreement.

- 2.1.1 Cooperative purchasing of IT and related services.
- 2.1.2 Joint use of IT facilities and cooperative location of equipment.
- 2.1.3 Joint installation and use of connectivity and communications equipment, such as fiber optic cable.
- 2.1.4 Cooperative or shared services such as maintenance of equipment.
- 2.1.5 Joint utilization of systems or applications.
- 2.1.6 Shared research and development of IT and its cost-efficient use.
- 2.1.7 Shared staff resources.

- 2.1.8 Cooperative or shared support including the potential creation of operating procedures.

Section 3. Supplemental Agreements

- 3.1 For each joint activity, Mesa and ASU will enter into a Supplemental Agreement, which shall be governed by and incorporate by reference all terms and conditions of this Agreement and use either Exhibit A – IT Service Task Order, or Exhibit B – IT Shared Infrastructure Agreement attached hereto.
- 3.2 Supplemental Agreements that will require expenditures by either Party will include a budget, manner of financing, and allocation of anticipated costs to the Parties. A Party shall not be obligated to pay costs in excess of its anticipated allocation without its written approval.
- 3.3 Supplemental Agreements that contemplate acquisition of IT will specify which Party will own the IT equipment during the term of this Agreement and after termination of this Agreement and whether a Party will be entitled to financial compensation if, after contributing to the acquisition of IT, the Party will lose ownership or use of the IT after termination of this Agreement.
- 3.4 All Supplemental Agreements made pursuant hereto will specify the obligations of each Party and make reference to this Agreement. Depending on the nature of the obligations undertaken in a Supplemental Agreement, the Supplemental Agreement may require approval of the Mesa City Council or the ASU Board of Regents.
- 3.5 IT activities for shared services may be documented with an IT Service Task Order that incorporates the provisions in Exhibit A.
- 3.6 IT activities for shared use of IT equipment may be documented with an IT Shared Infrastructure Agreement that incorporates the provisions in Exhibit B.
- 3.7 If the Parties enter into a joint activity that involves access to confidential information, the Supplement Agreement concerning such joint activity will contain provisions to protect confidential information from disclosure or dissemination.

Section 4. Joint IT Activity Project Management and Records

- 4.1 Management. For each joint IT activity, Mesa and ASU will manage the project according to the following procedures:
- 4.1.1 Mesa and ASU shall designate in writing one person as the project leader, who will be an employee of Mesa or ASU and will be responsible for compliance with all procedures for the project

(including any applicable public procurement requirements) ("Project Leader"). Any subsequent changes in the Project Leader must be submitted in writing to the other Party, prior to effectuating a change in Project Leader.

- 4.1.2 The employer of the Project Leader will act as fiscal agent for the project.
 - 4.1.3 The Project Leader shall schedule periodic meetings to review progress of the project and any other project matters with representatives of the Parties.
 - 4.1.4 The Project Leader shall secure approval of the Parties including governing body approval(s), if necessary, for any expenditure in excess of the budget and for cost that varies from the allocation of costs specified in any Supplemental Agreement, as defined herein.
 - 4.1.5 The Project Leader shall create and deliver to the Parties a periodic report that tracks the project's performance and financial status of the project for both Parties' use. The report should contain all relevant project information, such as the project's scope, timeline, budget, including allocation of costs between the Parties, and current status of the project.
 - 4.1.6 The Project Leader shall annually create and deliver to the Parties an annual report summarizing the project, including a financial statement and expense report.
 - 4.1.7 When the project has ended, the Project Leader shall create and deliver to the Parties for approval a final report. The final report shall include a financial statement with a summary of allocated costs between the Parties and the disposition of all IT equipment and other assets. The project will end when the Parties indicate their approval of the final report.
- 4.2 Records. To the extent required by ARS §35-214, each Party shall retain all records relating to this Agreement. Either Party, or its audit representatives, shall have the right at any reasonable time to inspect, copy, and audit the records, invoices, and their source documents. Said records shall be available for each Party's inspection and audit for a period of five years following the expiration, termination, or cancellation of this Agreement.

Section 5. Indemnification and Insurance

- 5.1 **Indemnification.** To the extent permitted by law, each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnatee') 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 of 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 volunteers.

5.2 **Indemnification and Liability Limitations.** Because ASU is a public institution, any indemnification, liability limitation, releases, or hold harmless provisions are limited as required by Arizona law, including Article 9, Sections 5 and 7 of the Arizona Constitution and ARS §§ 35-154 and 41-621. ASU's liability under any claim for indemnification is limited to claims for property damage, personal injury, or death to the extent caused by acts or omissions of ASU.

5.3 **Insurance.** Each Party, at its cost, shall maintain comprehensive general liability insurance with limits of not less than \$2,000,000 per occurrence, insuring against all liability of said Party and its authorized representatives arising out of and in connection with said Party's use or occupancy of the facilities. Said insurance shall include broad form contractual liability covering, without limitation, the liability assumed under the indemnification provisions of this Agreement. If the policy is to be written with an annual aggregate limit, that limit shall be not less than \$2,000,000. All insurance policies shall provide that the policies cannot be canceled, not renewed, or limited in scope of coverage or limits until and unless thirty (30) calendar days' prior notice is given to the other Party.

Professional Liability (Errors and Omissions Liability). If the Supplier will provide ASU Services under the Agreement, the Policy will include professional liability coverage as follows:

- Each Claim \$1,000,000
- Annual Aggregate \$2,000,000

a. If the professional liability insurance required by the Agreement is written on a claims-made basis, Supplier warrants that any retroactive date under the policy will precede the effective date of the Agreement; and that either continuous coverage will be maintained, or an extended discovery period will be exercised for 2 years beginning at the time work under the Agreement is completed.

b. Policy will cover professional misconduct for those positions defined in the scope of work of the Agreement.

5.4 **Self-Insurance.** Notwithstanding the provisions of Section 5.2, the obligations of Mesa and ASU, with respect to the insurance specified in this Section 5, may be satisfied by the existence of a self-insurance program

containing the same coverage and elements specified herein with respect to third Party insurance.

- 5.5 Worker's Compensation. Each Party shall maintain worker's compensation insurance as required by statute and employer's liability insurance in an amount not less than \$1,000,000 per occurrence, which may consist of self-insurance.

Section 6. Notices

- 6.1 Notices. All notices given, or to be given, by either Party to the other shall be given in writing, (i) by registered or certified mail, (ii) or overnight carrier (e.g. Federal Express) and shall be addressed to the Parties at the addresses hereinafter set forth, or at such other address as the Parties may designate by written notice. All notices if sent by certified or registered mail shall be deemed received upon actual receipt or (3) business days after deposit in the United States mail; if sent via overnight carrier, receipt shall be deemed effective (1) day after the sending thereof. Notices shall be addressed as follows:

To Mesa:

Joseph Sugihara
Assistant CIO
City of Mesa - ITD
City of Mesa
P.O. Box 1466
Mesa AZ 85211-1466

To ASU:

Sr. Director
Network Communications
Arizona State University
1551 S. Rural Rd.
Tempe, AZ 85287

Section 7. General Provisions

- 7.1 Compliance with Federal and State Immigration Laws. Each Party agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA), as amended, in performance under this Agreement and to permit the other Party or its agents to inspect personnel records to verify such compliance. The Parties shall ensure and keep appropriate records to demonstrate that all employees have a legal right to live and work in the United States.

Under the provisions of A.R.S. §41-4401, as amended, each Party hereby warrants to the other that it and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all federal immigration laws and regulations that relate to their employees and A.R.S. §23-214(A), as amended, (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Agreement and shall subject the breaching Party to penalties

up to and including termination of this Agreement at the sole discretion of the non-breaching Party.

Each Party retains the legal right to inspect the papers of the other Party or Subcontractor employee who works on this Agreement to ensure that the other Party or its Subcontractor is complying with the Contractor Immigration Warranty. Each Party agrees to assist the other Party in regard to any such inspections.

Either Party may, at its sole discretion, conduct random verification of the employment records of the other Party and any of Subcontractors to ensure compliance with Contractor Immigration Warranty. Each Party agrees to assist the other Party in regard to any random verification performed.

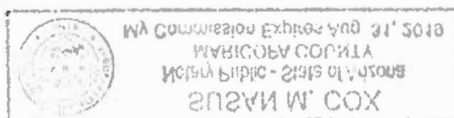
Neither Party nor any of its Subcontractors shall be deemed to have materially breached the Contractor Immigration Warranty if the Party or its Subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214, Subsection A, as amended,

- 7.2 Entire Agreement, Amendments. This Agreement represents the entire Agreement of the Parties with respect to its subject matter. This Agreement shall not be changed, modified, or rescinded, except through a writing signed by both Parties.
- 7.3 Governing Law, Forum. This Agreement will be governed by the laws of the State of Arizona, both as to interpretation and performance. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement, or any provision thereof, will be instituted only in the courts of the State of Arizona.
- 7.4 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 shall use their reasonable efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall 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. Notice is provided of Sections 12-1518 and 12-133, Arizona Revised Statutes.
- 7.5 Headings Not Controlling. Headings used in this Agreement are intended for convenience or reference only and shall not control or affect the meaning or construction of any provision of this Agreement.
- 7.6 Severability. In the event any term or provision of this Agreement is held to be invalid or unenforceable, the validity of the other provisions shall not be affected, and the Agreement shall be construed and enforced as if it did not

contain the particular term or provision that is deemed to be invalid or unenforceable.

- 7.7 Nondiscrimination. Mesa and ASU agree to comply with all provisions of applicable federal, state, and local laws related to nondiscrimination, equal employment opportunity, and the Americans with Disabilities Act.
- 7.8 No Assignment. Neither Party shall assign or otherwise transfer this Agreement or its rights or duties hereunder without the prior written consent of the other Party. Any such assignment or other transfer, either voluntary or by operation of law, shall be void.
- 7.9 Approval by Parties. Before this Agreement shall become effective and binding upon the Parties, the appropriate governing authorities of each Party must approve it. In the event that such appropriate authority fails or refuses to approve this Agreement, it shall be null and void with no effect whatsoever.
- 7.10 Surviving Provisions. The obligations under Section 5.1 (Indemnification), Section 7.2 (Entire Agreement, Amendments), Section 7.3 (Governing Law, Forum), Section 7.4 (Headings Not Controlling), Section 7.5 (Severability), this Section 7.9 (Surviving Provisions), and any other Section, which reasonably should survive, shall survive expiration or other termination of this Agreement.
- 7.11 Force Majeure. Either Party shall be excused for delay or failure to perform its obligations under this Agreement, in whole or in part, when and to the extent that such delay or failure is a result of causes beyond the control and without the fault or negligence of the Party unable to perform. Such causes include, without limitation, acts of God, acts of the public enemy, acts of the United States government, fires, floods, epidemics, quarantine restrictions, or embargoes.

(Signatures on the following page)



IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written above.

City of Mesa

ARIZONA BOARD OF REGENTS for and
on behalf of ARIZONA STATE UNIVERSITY

By: _____
Christopher J. Brady
Its: City Manager

DocuSigned by:
By: Lev Gonick
A3301254F370498
Lev Gonick
Its: ASU CIO

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this, the ____ day of _____, 20____, before me, Christopher J. Brady, City Manager of the City of Mesa, executed the foregoing document for the purpose therein confirmed.

Notary Public

My Commission Expires:

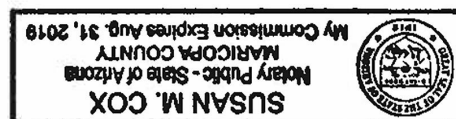
STATE OF ARIZONA)
) ss.
County of Maricopa)

On this, the 24 day of June, 2019, before me, Lev Gonick, Chief Information Officer, for Arizona Board of Regents for and on behalf of Arizona State University, executed the foregoing document for the purpose therein confirmed.

Susan M. Cox
Notary Public

My Commission Expires:

August 31, 2019



ASU ATTORNEY DETERMINATION

The intergovernmental agreement between the City of Mesa, Arizona, and ASU, entitled Information Technology and Related Services, has been reviewed pursuant to A.R.S. § 11-952 by the undersigned ASU attorney 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 Party to the Agreement represented by the ASU attorney.

DATED this 25th day of June, 2019



Arizona State University Attorney

CITY ATTORNEY DETERMINATION

The intergovernmental agreement between the City of Mesa, Arizona, and ASU, entitled Information Technology and Related Services, has been reviewed pursuant to A.R.S. § 11-952 by the undersigned City of Mesa attorney 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 both Parties to the Agreement represented by the City of Mesa attorney.

DATED this ____ day of _____, 2019

City of Mesa Attorney

EXHIBIT A
SERVICE TASK ORDER #_____

This Service Task Order #1 to that certain Intergovernmental Agreement, between the City of Mesa ("City") and , Arizona State University, a political subdivision of the State of Arizona ("ASU") ("University") ("Participating Parties") dated as of _____, 2019 ("IGA"), is made and entered into as of _____, 20__ by and between the Participating Parties. In accordance with the terms and conditions of the IGA, this Task Order authorizes performance of the Services described below.

1. Description of Services.

Professional Services, in support of the City, and ASU, as set forth in the attached Scope of Work ("SOW"), and incorporated herein by this reference.

2. Performance Schedule.

From _____, 20__ to _____, 20__.

3. Location(s) Where Services are Performed.

4. Background Security Check Required?

___ Yes ___ No (if "No", access shall be escorted)

5. Materials and/or Supplies Provided by Contractor.

As set forth in SOW.

6. Billing Frequency.

___ Monthly ___ Bi-weekly ___ Other (upon successful completion of each phase)

7. Task Order Fee – Fixed Fee.

Fee for equipment and materials: \$_____, as set forth in the SOW.

8. Authorized Contractor Expenses.

The Task Order Fee, set forth in item 7 hereof, includes all costs associated with the Services under this Task Order, including without limitation, expenses incurred during such work. Accordingly, neither party shall be entitled to reimbursement for any expenses incurred as a result of the Services performed hereunder.

EXHIBIT B
SHARED INFRASTRUCTURE AGREEMENT

This Shared Infrastructure Agreement ("Agreement") is made and entered into as of _____, 20__ by and between the City of Mesa, an Arizona municipal corporation, ("City") and Arizona State University, a political subdivision of the State of Arizona ("ASU") ("University") pursuant to that certain Intergovernmental Agreement, between the City and District, dated as of _____, 2019 ("IGA") as amended and restated. In accordance with the terms and conditions of the IGA, this Agreement authorizes the sharing of information technology infrastructure as described below.

1. RESPONSIBILITIES AND OBLIGATIONS OF THE PARTIES.

1.1. The Parties agree to jointly utilize certain facilities located in/at _____ as more particularly described in Exhibit _____.

1.2. City hereby:

1.2.1. Grants ASU use of _____ for _____ commencing on and ending _____.

1.2.2. Retains ownership of any and all portion of _____ that it originally installed and paid for.

Nothing in this Agreement shall be construed to convey ownership of any portion of City's network to ASU.

1.3. ASU hereby:

1.3.1. Grants City use of ASU's network for _____ time period.

1.3.2. Retains ownership of any and all portion of _____ that it originally installed and paid for.

Nothing in this Agreement shall be construed to convey ownership of any portion of the ASU's network to City.

1.4. Additional Documents. The Parties agree to execute any and all documents necessary to carry out the purposes of this Agreement, including but not limited to documents evidencing the granting of easements providing construction access and the exchange of rights for the installation and maintenance which is the subject of this Agreement. All the parties may create and agree upon procedures necessary to accompany this Agreement to maximize operational effectiveness.

1.5. Construction Access. All work on any party's property shall be coordinated with that party's staff prior to the start of construction. Security access procedures will apply.

1.6. The terms and provisions of the IGA shall remain in full force and effect, which shall survive the execution of this Shared Agreement.

2. MANNER OF FINANCING AGREEMENT. Each party to this Agreement shall have the separate and independent responsibility of budgeting for and funding its own participation in this Agreement.

3. DURATION AND TERMINATION

3.1. Duration of Agreement: This Agreement shall be in effect upon execution by all Parties to this Agreement and shall continue for 10 years or until this Agreement is terminated pursuant to this section 3, whichever occurs first.

3.2. Termination on Notice: Either Party may terminate its participation in this Agreement for any or no reason by providing at least one hundred twenty (120) days written notice to the non-terminating party or parties of the intention to terminate. Such termination shall be effective one hundred twenty (120) days after the date the termination notice is issued to the other parties. Such termination shall not invalidate any executed easement that provides for the long-term use of a party's conduit system.

3.3. Termination for Cause: In the event of a material breach of any of the provisions of this Agreement, the non-defaulting party or parties may terminate this Agreement by delivering written notice to the defaulting party specifically stating the nature of the breach. Upon being served with such notice, the defaulting party or parties shall have sixty (60) days from the date of the notice in which to cure said breach. If said breach has not been cured within this sixty (60) day time period after delivery of notice of the breach, the party providing notice may terminate its respective participation in this Agreement without any further action.

4. Continuation of Agreement. If any party's participation in this Agreement terminates, all rights and duties under this Agreement shall continue in full force and effect with respect to the remaining parties to this Agreement without further action.

CITY OF MESA, ARIZONA BOARD OF REGENTS for and
an Arizona municipal corporation On behalf of ARIZONA STATE UNIVERSITY

By: _____
Its: _____

By: _____
Its: _____

