

*Agreement whereby two or more public agencies [Cities, Counties, School Districts] of the State of Arizona may contract with each other provided that such contracts are authorized by the governing bodies of each agency and that the contracts are executed in accordance with Arizona law (Arizona Revised Statutes 11-951). All IGA's require OGC signature*

## **INTERGOVERNMENTAL AGREEMENT**

ASU Reference No. FP16436

City Reference No.

**THIS INTERGOVERNMENTAL AGREEMENT** ("Agreement") is made and entered into by and between:

The City of Mesa, an incorporated municipality in the State of Arizona ("City"), and the Arizona Board of Regents for and on behalf of Arizona State University ("ASU"), an institution of higher learning established by the laws of the State of Arizona, having a place of business at 660 S. Mill Ave., Tempe, AZ 85281. City and ASU may be individually referred to in this Agreement as "Party" or collectively as "Parties."

ASU is the recipient of the referenced award (DE-FOA-001908) for support of a sponsored research project entitled "Membrane Carbonation for 100% Efficient Delivery of Industrial Carbon Dioxide (CO<sub>2</sub>) Gases"; and City has proposed to assist ASU in the accomplishment of this project, specifically, through an analysis of the potential cultivation of microalgae from anaerobic digester (AD) biogas at the City's Northwest Water Reclamation Plant (NWWRP).

**WHEREAS**, City and ASU desire to collaborate as described in the scope of work attached hereto and incorporated herein as Exhibit A (the "Project"), the Project contemplated by this Agreement is of mutual interest to City and ASU and furthers the educational, scholarship and research objectives of ASU as a nonprofit, tax-exempt, educational institution. The Project furthers the interests of City as the operator of wastewater treatment facilities.

**WHEREAS**, the Parties are authorized to enter into this Agreement with one another pursuant to Arizona Revised Statutes ("A.R.S") § 11-952 and other statutes.

**WHEREAS**, City is also authorized to enter into this Agreement pursuant to Section 204 of the Mesa City Charter.

**WHEREAS**, The Arizona Board of Regents (ABOR) is authorized to enter into agreements by the Arizona legislature (A.R.S. § 15-1625.B)

**NOW, THEREFORE**, in reliance on the commitments and obligations set forth herein, and with the intention of being legally bound hereby, the Parties agree as follows:

**EFFECTIVE DATE.** This Agreement will be effective as of the date of the last signature below.

**SCOPE OF WORK.** The parties will use reasonable efforts to perform the services and deliver any reports or other items specified in **Exhibit A**.

**KEY PERSONNEL.** ASU will provide Bruce Rittmann, as Principal Investigator ("PI") for work contemplated and performed under this Agreement.

City will provide Tom Sheber as City's contact person(s) and contributor for support provided by City as contemplated under this Agreement for the Project.

**PERIOD OF PERFORMANCE.** This Agreement will begin on May 30, 2019 and will terminate on Dec 31, 2021. This Agreement may be modified or extended at any time by mutual written consent of both Parties.

**COMPENSATION.** There will be no monetary compensation exchanged between the Parties. City will provide the resources specified in the Scope of Work as in-kind contributions toward the Project's cost share requirements, with an estimated value of \$22,392. ASU will provide a manuscript or report of results at no additional cost to City, and the Parties will further exchange a limited license for use as set forth below.

**PUBLICATIONS.** City recognizes that under ASU policy the results of work performed under this Agreement must be publishable and agrees that ASU and its employees engaged in work under this Agreement will be free to present at symposia or professional meetings, and to publish in journals, theses or dissertations, or otherwise of their own choosing, methods and results of the work performed under this Agreement. Upon written request by City, copies of proposed presentations, journals, or manuscripts ("Manuscripts") will be furnished to City for review prior to publication. In no event will ASU delay publication for more than thirty (30) days from date of submittal of Manuscript for City review. Notwithstanding the preceding, ASU agrees that it shall not in any presentation or publication state or imply that City supports, endorses, or approves the methods or results of the work performed under this Agreement except as agreed to in advance in writing by City.

**NOTICES.** All official notices, by either party, required or permitted under this Agreement will be in writing and will be given by personal delivery against receipt (including private courier such as FedEx), email with "Read Receipt" or certified U.S. Mail, return receipt requested. All notices will be sent to the addresses below or such other addresses as the parties may specify in the same manner. Notices will be deemed to have been given and received on the date of actual receipt or on the date receipt was refused. Courtesy email copy of any notice is requested to be sent to the PI. Addresses are as follows:

For ASU: Office for Research & Sponsored Projects Administration  
Arizona State University  
P.O. Box 876011  
Tempe, Arizona 85287-6011  
e-mail: [asu.awards@asu.edu](mailto:asu.awards@asu.edu)  
cc: [Rittmann@asu.edu](mailto:Rittmann@asu.edu)

For City: Jake West, Director  
City of Mesa  
Water Resources Department  
640 N. Mesa Drive

Mesa, Arizona 85201  
e-mail: [Jake.West@mesaaz.gov](mailto:Jake.West@mesaaz.gov)

With copy to: Scott Bouchie, Director  
City of Mesa  
Environmental Management and Sustainability Department  
730 N. Mesa Drive  
Mesa, Arizona 85201  
e-mail: [Scott.Bouchie@mesaaz.gov](mailto:Scott.Bouchie@mesaaz.gov)

**CONFIDENTIALITY.** The parties may, at their discretion, and in connection with the Project, disclose their respective proprietary or confidential information ("Confidential Information") to each other. To be protected hereunder, Confidential Information must be marked confidential if disclosed in written or other tangible form. If Confidential Information is disclosed orally or visually, Confidential Information must be identified as confidential at the time of disclosure and reduced to writing, marked confidential, and transmitted to the receiving party within thirty (30) days of the initial disclosure.

Except as otherwise specifically provided herein, nothing in this Agreement will be construed to convey to either party any right, title, or interest in any Confidential Information provided by the other party or any right, title, or interest in any intellectual property of the parties, including but not limited to, processes, copyrights, or patents. Except as otherwise specifically provided herein, no license to the receiving party under any trademark, patent, or copyright is either granted or implied by the conveying of Confidential Information to the receiving party.

The receiving party will not use, or disclose to any third party, Confidential Information of the disclosing party in any manner except for the purposes of this Agreement, and will require that its employees and agents (in the case of ASU, including employees of Skysong Innovations, LLC ("SI")) who have access to such information maintain the same in strict confidence subject to the same restrictions. By way of example, but not limitation, the receiving party will not use Confidential Information of the disclosing party in connection with any patent application, for any commercial purpose, or for the benefit of any third party.

The parties will use reasonable efforts to prevent the disclosure to unauthorized third parties of any Confidential Information of the other party and will use such information only for the purposes of this Agreement. The receiving party's obligations with respect to Confidential Information will survive for three (3) years after the termination of this Agreement; provided that the receiving party's obligations hereunder will not apply if the receiving party can show, with convincing written evidence that the Confidential Information of the disclosing party received under this Agreement:

- a) was already known to the receiving party prior to the time of first disclosure; or
- b) at the time of disclosure is in the public domain, or after the date of the disclosure, lawfully becomes a part of the public domain other than through breach of this Agreement by the receiving party; or

- c) is received in good faith, without any obligation of confidentiality from a third party having a legal right to disclose the same; or
- d) is independently developed by the receiving party by individuals without access to such information; or
- e) is required to be disclosed by the receiving party pursuant to a public records request or legally enforceable order, law, subpoena, or other regulation ("Order"), provided, however, that the receiving party (i) promptly notifies the other party in advance of such disclosure so that such party may have an opportunity to take appropriate action to maintain confidential handling of such information, and (ii) discloses only such information as is necessary to comply with said Order. Each Party understands that, as a political subdivision of the State of Arizona, the other may be subject to certain disclosure requirements under the Arizona public records law (A.R.S. § 39-101, et seq.).

Each Party retains the right to refuse acceptance of any Confidential Information that is not required for the purposes of this Agreement.

Notwithstanding any other provision of this Agreement to the contrary, the Parties acknowledge that they are each subject to Arizona Revised Statutes (A.R.S.) §§ 39-121 through 39-127 regarding public records. Any provision regarding confidentiality is limited to the extent necessary to comply with Arizona law.

**INTELLECTUAL PROPERTY. General.** Subject to any obligations to the United States Government pursuant to the provisions of 35 U.S.C. sections 200-212 and applicable regulations of Chapter 37 of the Code of Federal Regulations:

- a) Intellectual Property resulting from the performance of the Project and created solely by legal inventors or authors who are ASU employees will be owned by ASU ("ASU IP") and managed through SI.
- b) Intellectual Property resulting from the performance of the Project and created solely by legal inventors or authors who are City's employees will be owned by City ("City IP").
- c) Intellectual Property resulting from the performance of the Project and created jointly by legal inventors who are ASU's employees and City's employees will be owned jointly by ASU, managed by SI, and City ("Joint IP").
- d) ASU and City shall each retain ownership of all intellectual property and materials owned by each of them prior to the Effective Date.
- e) "Intellectual Property" means any inventions, discoveries, concepts, methods, processes, data, copyrights, computer programs and related documentation, works of authorship fixed in a medium of expression, or mask works, whether or not

patentable, copyrightable or subject to mask work rights or other similar statutory rights, as well as applications for any such rights.

Patent Applications. Patent applications will be filed by SI on behalf of ASU on ASU IP and Joint IP.

Both parties acknowledge and agree that the resulting Intellectual Property from the Project can be used to further their proprietary efforts. To the extent necessary to complete the Scope of Work and thereafter the City grants ASU a perpetual, fully paid up, non-exclusive, non-sublicensable, irrevocable, non-assignable right to use City IP for research, education, and in furtherance of the public service mission of ASU, and ASU grants the City a perpetual, fully paid up, non-exclusive, non-sublicensable, irrevocable, non-assignable right to use ASU IP for its water treatment purposes at water treatment plants operated by the City.

**ENTIRE AGREEMENT; AMENDMENTS; COUNTERPARTS.** This Agreement constitutes the entire understanding between the Parties relating to the subject matter hereof, and supersedes any other agreement or understanding between the parties. No amendment or modification to this Agreement will be valid or binding upon the Parties unless made in writing and signed by each party. This Agreement may be executed in counterparts, each of which will be deemed an original. The Parties agree that should any part of this Agreement be held to be invalid or void, the remainder of the Agreement will remain in full force and effect and will be binding upon the Parties. Electronically transmitted and imaged copy signatures will be fully binding and effective for all purposes.

**WAIVERS.** No waiver of this Agreement will be valid or binding unless written and signed by the Parties. Waiver by either party of any breach or default of any clause of this Agreement by the other party will not operate as a waiver of any previous or future default or breach of the same or different clause of this Agreement.

**ASSIGNMENT.** Neither party may transfer or assign this Agreement or any of other party's rights or obligations hereunder, directly or indirectly, or by operation of law, without that party's prior written consent, and any attempt to the contrary will be void.

**GOVERNING LAW AND VENUE.** This Agreement will be governed by the laws of the State of Arizona without regard to any conflicts of laws principles. ASU's obligations are subject to the regulations/policies of the Arizona Board of Regents. Any proceeding arising out of or relating to this Agreement will be conducted in Maricopa County, Arizona. Each party consents to such jurisdiction, and waives any objection it may have to venue or convenience of forum.

**FAILURE TO APPROPRIATE.** In accordance with ARS § 35-154, if ASU's performance under this Agreement depends on the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, then ASU may provide written notice of this to City and cancel this Agreement without further obligation of ASU. Appropriation is a legislative act and is beyond the control of ASU. City's expenditures, debts, obligations and liabilities are also limited to budgeted purposes in

accordance with Arizona law, including the Arizona State Constitution and A.R.S. § 42-17106.

**CONFLICT OF INTEREST.** If within three (3) years after the execution of this Agreement, either Party hires as an employee or agent any representative of the other Party who was significantly involved in negotiating, securing, drafting, or creating this Agreement, this Agreement may be cancelled as provided in Arizona Revised Statutes (ARS) § 38-511.

**RELATIONSHIP OF THE PARTIES.** No party, or person acting on behalf of a Party, shall be considered the agent, or employee of any other party. Neither ASU nor City personnel will, by virtue of this Agreement, be entitled or eligible, to participate in any benefits or privileges given or extended by the other party to its employees.

**USE OF INFORMATION.** All information is provided by the Parties "as-is" and without warranty, representation, or guarantee of any sort, expressed or implied, including but not limited to, any warranty of freedom from infringement of any patent or other intellectual property rights of third parties. Each Party will use the information in compliance with all laws and governmental regulations.

**TERMINATION.** Either party may at any time terminate this Agreement by giving the other party not less than thirty (30) days prior written notice.

**DISPUTE RESOLUTION.** In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the Parties hereto will use their reasonable efforts to settle the dispute, claim, question, or disagreement. To this effect, they will consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. The parties acknowledge that disputes arising from this Agreement may be subject to non-binding arbitration in accordance with applicable state law and court rules.

**INSURANCE.** ASU maintains general liability insurance and worker's compensation coverage as required by state law and pertinent federal laws and regulations under the State of Arizona Risk Management Plan.

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

**ADVERTISING, PUBLICITY, NAMES AND MARKS.** Neither Party will do any of the following, without, in each case, the other's prior written consent: (i) use any names,

service marks, trademarks, trade names, logos, or other identifying names, domain names, or identifying marks, including online, advertising, or promotional purposes; (ii) issue a press release or public statement regarding this Agreement, except for documents used for internal consumption; or (iii) represent or imply any endorsement or support of any product or service in any public or private communication. The City agrees that any permitted use of ASU Marks must comply with ASU's requirements, including using the ® indication of a registered mark.

**LIABILITY.** Each party will be responsible for the acts and omissions of itself and its officers, agents, and employees acting in authorized governmental or proprietary capacities and in the course and scope of employment or authorization. Neither party agrees to indemnify the other under this Agreement.

The Parties shall comply with all applicable federal, state, and local laws, regulations, and ordinances.

In no event, whether based upon contract, indemnity, warranty, tort (including negligence), strict liability or otherwise will either Party be liable to the other party for indirect, incidental, consequential, special, punitive or exemplary damages arising out of any breach of this Agreement (even if such Party has been advised of or could have reasonably foreseen the possibility of such damages).

Notwithstanding any other provision of this Agreement, ASU acknowledges that to the extent called for in the Scope of Work, City hereby provides a limited license for ASU personnel to enter the City's wastewater treatment facilities. ASU further agrees and acknowledges that the wastewater treatment facilities are not open to the public and involve inherently dangerous activities including but not limited to the storage of hazardous chemicals, and ASU hereby assumes the risk of entry, and any dangerous or defective conditions or passive negligence by City associated with such entry.

**ENTIRETY OF AGREEMENT.** This Agreement constitutes the entire understanding between the parties relating to the subject matter hereof, and no amendment or modification to this Agreement shall be valid or binding upon the parties unless made in writing and signed by each party. This Agreement may be executed in counterparts, each of which shall be deemed an original. Electronically transmitted and imaged copy signatures will be fully binding and effective for all purposes.

**\*\*SIGNATURE PAGE FOLLOWS\*\***

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

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

**City (The City of Mesa)**

By: 

By: \_\_\_\_\_

Name: Jessica Robins

Name: \_\_\_\_\_

Title: Assistant Director

Title: \_\_\_\_\_

Date: June 5, 2020

Date: \_\_\_\_\_

**IGA DETERMINATION – ASU**

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

APPROVED AS TO FORM:

 6.5.2020

Office of General Counsel for Arizona State University

**IGA DETERMINATION – CITY**

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City's Attorney



## **EXHIBIT A**

### **Scope of Work**

On June 18, 2018, City sent its letter to the Review Panel for the U.S. Department of Energy regarding Efficient Carbon Utilization in Algal Systems, DE-FOA-001908, whereby the City expresses its support and commitment to the "Membrane Carbonation for 100% Efficient Delivery of Industrial CO<sub>2</sub> Gases" project (the "Project"), to be led by Investigator and ASU (the "2018 Letter"). City expressed its particular support for the Project due to the synergies that could be created and the beneficial uses at wastewater treatment facilities of methane produced through algae cultivation from digester biogas in its proprietary efforts (the "Purpose"). Such uses could include revenue generation from pipeline quality renewable natural gas, onsite power generation, the potential use of high carbon content algae biomass as replacement for methanol currently used in liquid phase processing, and potential added carbon feedstock to the anaerobic digesters to promote additional biogas production (the "Beneficial Uses").

City commits participation to advance the goals of the Project in the following ways:

1. Provide data regarding biogas production and wastewater treatment. City commits 16 hours per year for 3 team members to provide the ASU team with biogas production data, wastewater treatment data and other data to facilitate techno-economic and life cycle analysis of the CO<sub>2</sub> delivery technology and feasibility for co-locating microalgae cultivation within the City's NWWRP.
2. Research feedback and biannual meetings with ASU. City commits 24 hours of time for 4 team members twice per year to review progress reports prepared by the ASU team and attend meetings with ASU and provide a perspective of large-scale wastewater treatment and AD biogas production.
3. Review uses of onsite carbon sources. City commits 20 hours per year from 3 people to review how biomass generated onsite could be utilized beneficially within our wastewater treatment and energy production processes.
4. Biogas samples and storage containers. City commits 20 hours per year of time from an operator and to provide the ASU team access to retrieve at least 55,000 of biogas for testing at ASU, including compressing the biogas from 80 psig as stored at the City's NWWRP up to 200 psig for transport to ASU facilities. Collection and transportation of the biogas shall be performed by ASU research staff, with City NWWRP operations staff providing coordination to facilitate such collection by ASU.

The above resources will be provided to the Project as in-kind contributions toward the Project's cost share requirements, with an estimated value of \$22,392. Notwithstanding the preceding, ASU agrees and acknowledges that the above resources and access to the City's NWWRP are subject to, and may be limited by, the recent and ongoing COVID-19 pandemic.

In exchange for the above contributions, and in addition to such consideration as is provided in the Agreement, ASU will inform City of any research or experimental results related to use or evaluation of the City contributions by providing a manuscript or report describing the results of the Project within sixty (60) days after completion. Additionally, ASU will

provide the City with a copy of any document it publishes concerning the Project and, in such publications, will acknowledge as scientifically appropriate the cooperative Project support provided by the City. Notwithstanding the preceding, in no event will ASU state or imply in any publication, advertisement or other medium that the City itself has approved, or endorsed the Project, except as agreed to in advance in writing by City.

Neither Party shall have any further obligations under this Scope of Work to perform any additional tasks or work on the Project, including but not limited to the cultivation of microalgae at the NWWRP. Any additional tasks must be the subject of an additional written understanding between the Parties, commitment to which shall be within the sole and absolute discretion of each Party, and no obligation to negotiate or perform additional work or tasks arises hereunder.