

INTERGOVERNMENTAL AGREEMENT
between
CITY OF CHANDLER
and
THE ARIZONA BOARD OF REGENTS FOR AND ON BEHALF OF ARIZONA STATE UNIVERSITY

This Intergovernmental Agreement ("IGA"), dated this __ day of _____, 2023, is entered into by and between the Arizona Board of Regents for and on behalf of Arizona State University, ("ASU"), and the City of Chandler, a municipal corporation organized and existing under the laws of the State of Arizona ("Collaborator") pursuant to Arizona Revised Statutes 11-952.

I. GENERAL PRINCIPLES

Collaborator governs a city that is located in Maricopa County, and provides services to its residents as mandated by the city code, and Arizona State law.

ASU is a state-funded educational unit dedicated to teaching and applying sustainability principles to local, regional, and global challenges.

The Project Cities Program, a project of ASU, delivers sustainability research, education, and solutions with practical, measurable and meaningful impact. It is a university-community partnership in which ASU students, in designated courses, work directly with a local community partner on community identified sustainability-related challenges, policies, and issues. Students from multiple disciplines research difficult problems and propose innovative solutions that enable the community partner to make informed decisions and improve its progress toward a better future.

The Parties will collaborate on experiential learning projects for students that bring fresh perspectives to challenges within the jurisdiction of the City of Chandler.

II. AREAS OF POTENTIAL COLLABORATION

ASU and Collaborator will work together to explore opportunities for collaborative activities including, for example and without limitation: co-creating implementation frameworks or solution pathways for environmental, economic and social improvement projects. Collaborator's intent is to focus on research projects that are aligned with strategic objectives, initiatives, or existing programs.

III. COOPERATIVE PROJECTS AND COMPENSATION

Each cooperative project undertaken by the Parties hereunder will be mutually agreed upon in writing with a "**Scope of Work Statement**", that addresses information pertaining to the specific area of study and shall include the scope of work, duration, cost, deliverables, and other necessary items to be addressed for cooperative activities. Each Scope of Work Statement shall be approved by the Collaborator's City Manager or designee and will be bound to the terms of

this Agreement. All funds will be paid in United States Dollars based upon a defined payment schedule outlined in each Scope of Work Statement.

Each Party acknowledges that it is not using, nor will it use in the future, any broker with respect to any transaction entered into between ASU and Collaborator pursuant to this IGA without the written consent of the other Party.

For each project undertaken by the Parties, ASU will manage the client relationship, write the proposal, provide resources, develop the necessary partnerships, and manage the activities of the team.

IV. DISCLAIMER

Nothing in this IGA constitutes a grant, express or implied, by either Party to the other of any license or rights whatsoever to the intellectual property of a Party that may exist at the time this IGA is entered. No Party makes any representations or warranties, expressed or implied, regarding any information shared, or its performance, under this IGA, including but not limited to any warranty of the merchantability, use or fitness for any particular purpose of any research results and any warranty against infringement of any intellectual property rights.

Each Party will be responsible for its own actions and those of its employees under this IGA.

V. TERM AND TERMINATION

This IGA is non-exclusive and shall be effective on the date first set forth above ("Effective Date"), and shall survive for 5 years from the Effective Date. The Parties may modify or extend this Agreement at any time by mutual written consent; Collaborator's consent must be duly authorized by its City Council. Either Party may terminate this Agreement at any time by giving the other Party not less than thirty (30) days prior written notice. Upon termination of this IGA and by request of a Party, each Party shall promptly return (or destroy at the request of each Party and subject to Arizona Public Records Law) any and all proprietary information provided by the other Party.

VI. GENERAL

1. **Independent Contractors.** Each Party is an independent contractor and is independent of the other Party. This IGA does not create a partnership, joint venture or agency relationship of any kind between the Parties. This IGA does not create any fiduciary or other obligation between the Parties. Neither Party shall have any right, power or authority under this IGA to act as a legal representative of the other Party, and neither Party shall have any right or authority to bind or obligate the other or make any representation or warranty on behalf of the other. Under no circumstances shall any employees of one Party be deemed the employees of the other Party for any purpose. Each Party is responsible for the direction and compensation of its employees. Each Party acknowledges that the relationship of the Parties hereunder is non-exclusive.

2. **Complete Agreement.** This IGA is a complete and exclusive statement of the agreement between the Parties, which supersedes all prior or concurrent proposals and understandings in any language, whether oral or written, and all other communications, in any language, between the Parties relating to the subject matter of this IGA. Such communications include but are not limited to in person conversations, telephone exchanges including any messages received or not received, email or other electronic transmissions including instant messaging services or fax, letters, memoranda, etc.
3. **Endorsement.** Neither Party shall imply the endorsement of the other or use publicly for publicity, promotion or otherwise, any logo, name, trade name, service mark or trademark (including music and colors) of the other Party, or any simulation, abbreviation, or adaptation of the same, or the name of any employee or agent of the other Party, without the other Party's prior written, express consent.
4. **No Authority.** Any person from or agent of ASU providing services under this IGA will have no authority to negotiate any agreements for the Collaborator, to incur any obligations or expenses on behalf of the Collaborator, or to act in any other manner on behalf of the Collaborator or in its name. Such person from or agent of ASU will not provide, and are not engaged or authorized by the Collaborator to provide, legal advice or services, notwithstanding that one or more may be trained as lawyers.
5. **Confidential Information.** In order to provide support to the Collaborator as described in the Scope of Work Statement/s, individuals from ASU may need to participate in internal discussions among Collaborator employees, and view non-public internal Collaborator documents and written communications pertaining to ASU's services ("Confidential Information"). In order to be protected hereunder, all 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 ASU within thirty (30) days of the initial disclosure. ASU will protect Confidential Information to prevent unauthorized disclosure or publication of the Confidential Information by using the same degree of care, but no less than a reasonable degree of care that ASU uses to protect its own confidential information of a like nature.

Non-Disclosure of Confidential Information. ASU's obligations regarding the disclosure of Confidential Information received pursuant to collaborative projects under this Agreement survive for six (6) years from the Effective Date. Except as provided in the "Other Disclosure Provisions" paragraph below, ASU shall agree to (i) hold the Confidential Information in confidence, and (ii) not at any time divulge, disclose, or communicate the Confidential Information to anyone other than Collaborator employees except as authorized

by the Collaborator, or use the Confidential Information for any purpose other than in connection with the ASU's services under this Agreement.

Other Disclosure Provisions. The "Non-Disclosure of Confidential Information" paragraph above does not apply to ASU with respect to Confidential Information that (a) was in the ASU's possession before the effective date of the Scope of Work Statement/s; (b) is or becomes a matter of public knowledge or publicly available through no fault of ASU; (c) is disclosed by ASU with the prior written approval of a duly authorized representative of the Collaborator; (d) is received in good faith, without any obligation of confidentiality from a third party having a legal right to disclose the same; or (e) is independently developed by ASU by individuals without access to such information. In addition, ASU may disclose Confidential Information if such information is required to be disclosed by any law, rule, regulation, judicial or administrative process or applicable professional standards, provided that, to the extent permitted by applicable law or regulation, ASU notifies the Collaborator prior to any such required disclosure.

ALL INFORMATION IS PROVIDED "AS IS" AND WITHOUT WARRANTY, REPRESENTATION, OR GUARANTEE OF ANY SORT, EXPRESSED OR IMPLIED.

Nothing in this Agreement will be construed to convey to either party any right, title or interest in any confidential information provided by the other party or any right, title or interest in any intellectual property of the parties, including but not limited to, processes, copyrights or patents. No license to the receiving party under any trademark, patent or copyright is either granted or implied by the conveying of confidential information to the receiving party. Neither party will use any service marks, trademarks, logos or other marks of the other party without the express written approval of the other party.

Notice is hereby provided that ASU is a public institution under the State of Arizona, and as such, is subject to 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.

6. **Publication Rights and Publicity.**

- a. Use. ASU and any person from ASU who works on the project shall have the right to use, publish, and present publicly any findings and data based on or derived from the Created Materials or work performed under the Scope of Work Statements; provided that no Confidential Information (as defined above) shall be disclosed in such publications or presentations. ASU shall provide the Collaborator with an opportunity to review any such materials at least 30 days prior to submission for publication or presentation for the purpose of identifying any Confidential Information that is contained therein which should be removed; the Collaborator shall perform such review within 30 days of receipt. Publications

and presentations by ASU of general conclusions about ASU's initiatives drawn from work with multiple jurisdictions and publications or presentations that summarize publicly available information about the Collaborator's initiatives do not have to be submitted for review.

- b. **Publicity.** Neither the Collaborator nor ASU may issue a press release or other public announcement about ASU's services under this Agreement or Scope of Work Statements, nor may either use any name, trademark or insignia of the other party (or of any school, department or unit of the other party) for promotional purposes or any other purposes in connection with the Agreement, without the prior written approval of the other party.
7. **Title IX Obligation.** Title IX protects individuals from discrimination based on sex, including sexual harassment. Students will be receiving academic credit for the applied project experience with Collaborator. ASU fosters a learning and working environment built on respect and free of sexual harassment. ASU has provided collaborator additional Title IX Guidance materials that explain all parties' obligations related to providing a safe learning environment for students. Collaborator is committed to maintaining a workplace free from sexual harassment, and Collaborator's own workplace policies prohibit discrimination or harassment - including sexual harassment - because of an individual's protected status.

ASU's Title IX Guidance is available at <http://links.asu.edu/PC TitleIXGuidance>.

VII. STATE OF ARIZONA PROVISIONS

1. **Nondiscrimination.** The Parties will 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.S(a) and 60-741.S(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.
2. **Conflict of Interest.** In accordance with Arizona Revised Statutes ("A.R.S.") § 38-511, either ASU or the Collaborator may cancel this Agreement within three years after the execution of this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of ASU or on behalf of the Collaborator, at any time while this Agreement or any extension

thereof is in effect, is an employee or agent of any other party to this Agreement in any capacity or a consultant to any other party with respect to the subject matter of this Agreement.

3. **Arbitration in Superior Court.** As required by A.R.S. § 12-1518, the Parties agree to make use of arbitration in all contracts that are subject to mandatory arbitration pursuant to rules adopted under A.R.S. § 12-133.
4. **Failure of Legislature to appropriate.** In accordance with A.R.S. § 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 Collaborator and cancel this Agreement without further obligation of ASU. Appropriation is a legislative act and is beyond the control of ASU or the Collaborator.
5. **ASU Names and Marks.** Neither party will use any names, service marks, trademarks, trade names, logos, or other identifying names, domain names, or identifying marks of the other party, without in each case, the prior written consent of the other party. Collaborator's use of any ASU Marks must comply with ASU's requirements including using the ® indication of a registered trademark where applicable.
6. **Student Educational Records.** Student educational records are protected by the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g ("FERPA"). Collaborator will comply with FERPA and will not access or make any disclosures of student educational records to third parties without prior notice to and consent from ASU or as otherwise provided by law. If this Agreement contains a scope of work or any provision that requires or permits Collaborator to access or release any student records, then, for purposes of this Agreement only, ASU hereby designates Collaborator as a "school official" for ASU under FERPA, as that term is used in FERPA and its implementing regulations. As such, Collaborator will comply with FERPA and will not make any disclosures of ASU students' educational records to third parties without prior notice to, and consent from, ASU or as otherwise permitted by law. In addition, any access or disclosures of student educational records made by Collaborator or its employees and agents must comply with ASU's definition of legitimate educational purpose, which definition can be found at: SSM 107-01: Release of Student Information ([http://www.asu.edu/aad/manuals/ssm/ssml 07-01.html](http://www.asu.edu/aad/manuals/ssm/ssml%20107-01.html)). If Collaborator violates the terms of this section, Collaborator will immediately provide notice of the violation to ASU.
7. **Intellectual Property Ownership**

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" 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.
- b) ASU and Collaborator shall each retain ownership of all Intellectual Property and materials owned by each of them prior to the Effective Date.
- c) 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 Skysong Innovations, LLC ("SI").
- d) Intellectual Property resulting from the performance of the Project and created solely by legal inventors or authors who are Collaborator's employees will be owned by Collaborator ("Collaborator IP").
- e) Intellectual Property resulting from the performance of the Project and created jointly by legal inventors who are ASU's employees and Collaborator's employees will be owned jointly by ASU, managed by SI, and Collaborator ("Joint IP").
- f) ASU and Collaborator shall each retain ownership of all intellectual property and materials owned by each of them prior to the Effective Date.
- g) ASU hereby grants to the Collaborator a fully paid, royalty-free, non-exclusive, license to use, reproduce, distribute, modify, and transmit Intellectual Property resulting from the performance of the cooperative projects, or portions thereof in any media now known or hereafter developed for government purposes.

Patent Applications. Patent applications will be filed by SI on behalf of ASU on ASU IP and Joint IP. Collaborator may, at any time, request SI to file a patent application on ASU IP or Joint IP. If such a request is made, Collaborator agrees to reimburse SI for all patent costs plus a 15% patent administration charge. In addition, Collaborator has the right to review all filings and office actions related to the patent applications, provided, however, that in an emergency when immediate action is needed to protect ASU IP or Joint IP, documents may be filed prior to review by the Collaborator and in such event, telephone or facsimile notice shall be given promptly by SI or SI's counsel of such action. SI will use reasonable efforts to avoid emergency situations in cases where they have control over the timing of steps involved in protecting ASU IP or Joint IP.

Option. In consideration of Collaborator's support of this Project and to the extent that SI has a right to grant such license, Collaborator shall be entitled to an option to negotiate a royalty-bearing license to ASU IP and/or ASU's interest in Joint IP, so long as

Collaborator agrees to reimburse SI for all patent costs plus a 15% patent administration charge during the term of the option. Failure to reimburse SI's patent costs plus a 15% patent administration charge will result in termination of the option.

- a) Collaborator must exercise the option in writing to SI within thirty (30) days of SI's notification to Collaborator of any invention/discovery or within thirty (30) days of the termination of the Project, whichever occurs sooner.
- b) A license must be negotiated in good faith within three (3) months of Collaborator's written notification that it wishes to exercise the option. Said license shall contain reasonable terms that are standard in the industry for the ASU IP and/or ASU's interest in Joint IP, shall require diligent performance by Collaborator for the timely commercial development and marketing of such ASU IP and/or ASU's interest in Joint IP, and shall include Collaborator's obligation to reimburse SI's patent costs plus a 15% patent administration charge for all inventions subject to the license.

Disclosure. Collaborator shall retain all invention disclosures submitted by ASU or SI in confidence and use its best efforts to prevent disclosure to third parties. Collaborator shall be relieved of this obligation only when this information becomes publicly available through no fault of Collaborator.

- 8. **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 hereunder 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 waives any objection it may now or hereafter have to venue or to convenience of forum.
- 9. **Indemnification.** Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnities, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.
- 10. **Counterparts.** This IGA may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument, and photocopy, facsimile, electronic and other copies shall have the same effect for all purposes as an ink-signed original.

****SIGNATURE PAGE FOLLOWS****

IN WITNESS WHEREOF, The Parties have caused this IGA to be executed by their duly authorized representatives as of the Effective Date.

CITY OF CHANDLER, an Arizona municipal corporation

Date:

ATTEST:

(SEAL)

CITY OF CHANDLER COUNSEL

The foregoing IGA by and between the City of Chandler 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 those parties to the Agreement represented by the City of Chandler's attorney.

Name: Kelly Schwab
Title: City Attorney

DMG

Date:

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

By: _____

Name: Kristy Macdonald

Title: Assistant Director, Research Operations

Date: _____

GLOBAL INSTITUTE OF SUSTAINABILITY AND INNOVATION

By: _____

Name: Anne Reichman

Title: Director, Sustainable Cities Network & Project Cities

Date: _____

ATTORNEY CERTIFICATION

The foregoing IGA by and between the Collaborator 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 those parties to the Agreement represented by Legal Counsel for Arizona State University.

Name:

Date:

Title:

Associate General Counsel