

## **INTERGOVERNMENTAL AGREEMENT**

### **Flagstaff Flood Mapping Program Between Arizona Board of Regents for and on behalf of University of Arizona and the City of Flagstaff**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the CITY OF FLAGSTAFF, a municipal corporation of the State of Arizona (“City”), and the ARIZONA BOARD OF REGENTS, a body corporate with perpetual succession pursuant to the laws of the State of Arizona, for and on behalf of University of Arizona, a public institution of higher education (“University”). In the Agreement, the City and the University may be referred to individually as a party or collectively as parties.

#### **RECITALS:**

WHEREAS, the City has authority to enter into this Agreement pursuant to Arizona Revised Statutes (“A.R.S.”) § 11-952 and the Flagstaff City Charter, Article I, Section 3; and

WHEREAS, the University has authority to enter into this Agreement pursuant to A.R.S. §§ 11-952 and 15-1625; and

WHEREAS, the City seeks to collaborate with the Arizona Geological Survey Center for Natural Hazards (“AZGS”), a department within the University, to receive scientific reports regarding the geomorphic conditions following flooding events. Geomorphic data informs change in flood frequency, flood risk, scour and aggregation potential, calibration or verification of hydraulic models that helps the City design detention basins or sediment retention structures; and

WHEREAS, the AZGS is Arizona’s leading geologic investigations agency with expertise in geomorphology and the documentation and monitoring of natural disasters. The AZGS is positioned to execute disaster assessment teams quickly and effectively and provide scientific reports regarding their findings; and

WHEREAS, the AZGS is funded by multiple federal agencies including the United States Forest Service, including conducting separate post-Museum Fire geomorphic monitoring on forest service lands, and being involved in the Bureau of Land Management Joint Fire Science Project Quantified Wildfire Risk Assessment where AZGS has been separately engaged to assess and quantify post-flooding and debris flow hazards and uncertainties downstream of a forest boundary; and

WHEREAS, the parties intend to develop and deliver a targeted Flagstaff Flood Mapping Program where the AZGS will provide the City scientific reports that will inform data-driven decisions related to flooding mitigation and improvements.

#### **AGREEMENT:**

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties agree as follows:

**PURPOSE:**

The purpose of this Agreement is to identify the roles and responsibilities of the City and AZGS, related to the preparation of scientific reports stemming from the Flagstaff Flood Mapping Program.

**TERM AND TERMINATION:**

This Agreement will begin upon full execution and continue for five (5) years (“Initial Term”). At the end of the Initial Term, the parties will determine if an extended period of time is needed to gather information regarding the composition of the program and may enter into an amendment to renew the Agreement for one (1) additional five (5) years (“Renewal Term”). The Initial Term and Renewal Term, if exercised, will cover the duration of the pilot program period. At the end of the pilot program period, the parties will determine whether or not to enter into an agreement for a long-term program which will establish the specific responsibilities, costs and payment obligations between the parties.

Notwithstanding the foregoing, either party may terminate this Agreement for convenience by providing the other party ninety (90) days’ prior written notice.

**RESPONSIBILITIES:**

City shall:

1. Provide funding in an amount not-to-exceed fifty-thousand dollars (**\$50,000**) per fiscal year on a reimbursement basis for AZGS to conduct professional geomorphic research and create reports regarding post-flooding and debris flow hazards in City of Flagstaff watersheds.
2. Contact AZGS upon the occurrence of flood-events and request that AZGS conduct professional geomorphic research at identified field sites.
3. Analyze the professional geomorphic reports created by AZGS to ensure that the data collected is effective at informing preparedness, mitigation, and improvement efforts.

University shall:

1. Coordinate with the City to identify field sites to conduct the professional geomorphic research regarding post-flooding and debris flow hazards in City of Flagstaff watersheds.
2. Deploy AZGS staff to identified field sites, within a reasonable amount of time from the flood-event, to conduct the geomorphic research regarding post-flooding and debris flow hazards.
3. Provide professional geomorphic reports regarding post-flooding and debris flow hazards in the identified field sites, including:
  - a. Recommendations for drainages that are more responsive to potential flood events;

- b. Recommendations of designs for detention basins or sediment retention structures;
  - c. Creation of a map of incision and aggradation reaches, inundation extents and descriptions of deposits and interpreted flow types;
  - d. Documentation of undisturbed deposits focusing on areas within the City (description of in-place deposits including estimates of grain size, sorting, matrix- vs clast-supported, thickness, and flow type – flood, or hyperconcentrated debris flows); and
  - e. Collection of deposit samples for lab analysis (particle size distribution).
4. Meet with City staff to discuss the findings of the professional geomorphic reports.

**INVOICE:**

The University and/or AZGS will provide a separate invoice documenting the professional geomorphic research, reports and meetings with City staff conducted by AZGS for each identified field site. The invoice will identify the field site where the post-flooding and debris flow hazards research was conducted. The City will make payment within thirty (30) days of receipt of the invoice for satisfactory materials and/or services.

**PERSONNEL:**

Except for the purposes of A.R.S. § 23-1022(D), personnel of either party will not for any other purpose be considered employees or agents of the other party. Each party assumes full responsibility for the actions of its personnel while performing activities and services under this Agreement, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including but not limited to withholding of income taxes and social security), workers’ compensation and disability benefits.

**DATA AND RECORDS:**

1. **Research Results.** City and University agree that, in exchange for paying the Costs of Research, City may use the results of the research (“Research Results”) for any purpose, but may not publish Research Results prior to Principal Investigator’s publication of Research Results. The University retains ownership of the Research Results, and the right to publish as set forth in Subsection 3. Any Research Result which also constitutes an Invention as set forth Subsection 2 below is considered an Invention, and is subject to the terms set forth in Subsection 2 below.
2. **Intellectual Property.** University will retain the entire right, title and interest throughout the world to any patentable invention made by University in the performance of work under this Agreement (“Invention”). University will promptly disclose Invention(s) to City. University grants to City a non-exclusive right to use Invention(s) for internal research purposes. Upon the timely request of the City, University shall enter into good faith negotiations with the City for a commercial license to Invention(s). If no license is executed within four (4) months of University’s disclosure of an Invention to City, University will be free of any further obligation to City with respect to a commercial license to that

Invention.

3. **Publication.** Notwithstanding anything to the contrary in this Agreement, the University and its employees have the right, at their discretion, to release information or to publish any data, writings, or material resulting from the Research Project, including Research Results and Intellectual Property, and to use it in any way for its educational and research purposes. The University will furnish the City with a copy of any proposed publication in advance of the proposed publication date and grant the City thirty (30) days for review and comment. Within this period, the City may request the University, in writing, to delay such publication for a maximum of an additional (60) days in order to protect the potential patentability of any invention described therein. Such delay will not, however, be imposed on the filing of any student thesis or dissertation. City's failure to object to a publication or presentation within the sixty (60) day period above will be deemed acceptance by City.

#### **INSURANCE AND INDEMNIFICATION:**

1. The University and/or AZGS shall maintain adequate professional liability insurance and general liability insurance (through the Arizona Department of Administration Risk Management Division, which is a self-insurance program) to cover any professional liability and/or general liability arising from the performance of the professional geomorphic observations and documentation of flooding events and/or the acts and omissions of the University and/or AZGS employees, agents and/or students participating in the Flagstaff Flood Mapping Program. The University and/or AZGS shall not be responsible for maintaining insurance coverage for liability arising from the acts and omissions of City employees or agents.
2. The City shall maintain adequate insurance (which may include a bona fide self-insurance program) to cover any liability arising from the acts and omissions of City employees or agents participating in the Flagstaff Flood Mapping Program. The City shall not be responsible for maintaining insurance coverage for professional liability and/or general liability arising from the acts and omissions of University and/or AZGS employees, agents and/or students.
3. 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'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, indemnitor's officer, officials, agents, employees, volunteers, or students.

#### **NON-APPROPRIATION:**

If the City's performance under this Agreement depends upon the appropriation of funds by the City Council or the University's performance under this Agreement depends upon the appropriation of funds by the Arizona Legislature, and if the City Council or the Arizona Legislature, respectively, fails to appropriate the funds necessary for performance, then either the

City or the University may provide written notice to the other party and immediately cancel this Agreement without further obligation of either party. Appropriation is a legislative act and is beyond the control of the parties.

**RECORD INSPECTION AND RETENTION:**

The parties agree to retain all books, accounts, reports, files and other records relating to the Agreement and to make such records available at all reasonable times for inspection and audit by the University or Auditor General of the State of Arizona, or their agents, during the term of and for a period of five (5) years after completion of this Agreement.

**CONFLICT OF INTEREST:**

In accordance with A.R.S. § 38-511, this Agreement may be cancelled for conflict of interest within three (3) years after its execution, without penalty or further liability.

**NON-DISCRIMINATION:**

The parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, non-discrimination, including the Americans with Disabilities Act, sexual orientation, or gender identity or expression.

**THIRD PARTY BENEFICIARIES:**

This Agreement is intended for the exclusive benefit of the parties hereto. Nothing herein is intended to create any rights or responsibilities to third parties.

**ASSIGNMENT:**

Neither party shall have the right to assign this Agreement without prior written consent of the other party.

**MANNER OF FINANCING:**

Each party to this Agreement shall be responsible for its own costs and budgeting for performance of their respective obligations.

**DISPUTES AND ARBITRATION:**

In the event of a dispute between the parties to this Agreement, the parties shall attempt to resolve the disagreement on an informal, good faith basis. If that fails, pursuant to A.R.S. § 12-1518, the parties acknowledge and agree that they may be required to make use of mandatory arbitration of any legal action that is filed in the Arizona Superior Court concerning a controversy arising out of this Agreement if required by A.R.S. § 12-133.

**RELATIONSHIP AND USE OF MARKS:**

Except as otherwise agreed in writing, the parties acknowledge that the relationship created by this Agreement is limited to activities related to the Flagstaff Flood Mapping Program. Neither party

shall make any representations stating or implying the parties engage in broader transactions or that a party is otherwise associated with the other without first obtaining express written permission from the other party. In addition, neither party shall use any trade name, trademark, service mark, logo, domain name, nor any other distinctive brand feature owned or used by the other party without its express written authorization.

**NOTICES:**

To City of Flagstaff:

City Manager  
City of Flagstaff  
211 W. Aspen Ave.  
Flagstaff, AZ 86001

with copy to:

Ed Schenk  
Flagstaff Stormwater Manager  
City of Flagstaff  
2323 N. Walgreens Street  
Flagstaff, AZ 86004  
edward.schenk@flagstaffaz.gov

To University of Arizona:

Sponsored Projects Services  
University of Arizona  
P.O. Box 210158, Room 515  
Tucson, AZ 85721-0158

with a copy to:

Ann Youberg, Ph.D.  
Senior Research Scientist  
Arizona Geological Survey  
University of Arizona College of Science  
1955 E. Sixth Street  
P.O. Box 210184  
Tucson, AZ 85721  
ayouberg@arizona.edu

**COUNTERPARTS:**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

**AMENDMENTS AND RELATED AGREEMENTS:**

This Agreement constitutes the entire agreement of the parties relating to the subject matter hereof as of the date of execution. All amendments or modifications of this Agreement shall be in writing and approved by the parties.

*[Signatures on Following Page]*

IN WITNESS WHEREOF, the parties hereto have set forth their hands, through representatives duly so authorized, the day and date first above written.

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

\_\_\_\_\_  
Mark A. Drury, Contracts Manager  
Sponsored Projects & Contracting Services

\_\_\_\_\_  
Date

The undersigned has determined that the foregoing Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Arizona Board of Regents.

\_\_\_\_\_  
Josh Estavillo, Associate General Counsel

\_\_\_\_\_  
Date

**CITY OF FLAGSTAFF**

\_\_\_\_\_  
Paul Deasy, Mayor

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
City Clerk

The undersigned has determined that the foregoing Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the City of Flagstaff.

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date