

**ARIZONA STATE UNIVERSITY
SERVICES AGREEMENT**

C2015-158

This Services Agreement ("Agreement") is entered into this 30th day of July, 2015 (the "Effective Date") by and between the City of Tempe ("Client") having its principal place of business at 120 E 5th St. Tempe, AZ 85281, and The Arizona Board of Regents for and on behalf of Arizona State University and its GIS Services ("ASU").

RECITALS

- A. Client desires to engage ASU to perform certain services as Client may require from time to time (the "Services") and described in each scope of work (each, a "Scope of Work") agreed to by the parties in the form set forth on Exhibit A hereto which is incorporated herein by this reference.
- B. ASU's GIS Services has the capability, facilities and equipment to provide the Services to Client.
- C. The performance of the Services is consistent, compatible, and beneficial to the role and mission of ASU to provide educational experiences for students and to encourage and support research and related educational activities.

AGREEMENT

1. Scope of Work. ASU's GIS Services will use reasonable efforts to provide the Services requested by Client from time to time. The Services will be provided under the direction and supervision of the ASU contact named in the Scope of Work. The parties agree that ASU will have discretion to involve its students in the conduct and performance of the Services. To the extent there are any conflicts between the provisions of any Scope of Work and this Agreement, the terms of this Agreement will control. ASU's performance of the Services and its obligations under this Agreement are subject to and governed by the regulations and policies of the Arizona Board of Regents.
2. Scheduling Services. The scheduling of the Services will be arranged to avoid conflict with ASU's educational and research programs. ASU will control the scheduling of such Services but will try to meet the timelines established by Client.
3. Term and Termination.
 - 3.1 The term of this Agreement will be eighteen (18) months commencing on the Effective Date and will terminate as provided herein. The parties may modify or extend this Agreement at any time by mutual written consent.
 - 3.2 Either party may terminate this Agreement at any time by giving the other party not less than thirty (30) days prior written notice. If this Agreement is terminated by Client, Client will remain responsible for payment to ASU for all Services performed through the date of termination and for reimbursement to ASU of all non-cancelable commitments incurred in the performance of the Services. Upon termination, property purchased in furtherance of this Agreement will remain the property of the purchasing party, unless expressly specified otherwise.

Last Updated: January 15, 2015

4. Compensation and Invoicing.

4.1 Client will pay ASU for the Services performed under this Agreement in accordance with the rate schedule set forth in the applicable Scope of Work. Client acknowledges and agrees that rates are subject to change from time to time but that rates set forth on a Scope of Work will not change while work thereunder is in progress. Client will remit the amount of the contract price due for Services rendered under this Agreement upon receipt of invoices from ASU issued monthly for the duration of the period of performance. Invoices are due and payable within 30 days. ASU will send invoices to the Client contact identified in the Scope of Work or communicated to GIS Services by Client. Client will send checks or paper remittance advices to the payment address set forth in the Scope of Work or communicated by the GIS Services to Client. Questions regarding invoices should be directed to the ASU contact identified in the Scope of Work.

4.2 ASU reserves the right to discontinue the Services if Client fails to make payments when due. In the event of non-payment, ASU may terminate all further work on the Services and seek full payment from Client for all work performed and all expenses incurred including allocable costs, pursuant to the termination clause of this Agreement including the collection of payment. Should it become necessary for ASU to commence collection proceedings or retain an attorney to enforce any of the terms of this Agreement, Client will pay all attorneys' fees and the costs of collection incurred by ASU.

5. No Warranty. ASU neither makes nor will be deemed to have made any representation or warranty whatsoever (express or implied) regarding any outcome obtained or deliverable delivered hereunder including any outcome desired by Client. Any decision regarding safety, applicability, marketability, effectiveness for any purpose, or other use or disposition of said outcome will be the sole responsibility of Client and/or its permitted assigns and licensees.

6. No University Endorsements. In no event will Client (or its successors, employees, agents and contractors) state or imply in any publication, advertisement or other medium that ASU has approved, endorsed or tested any product or service. In no event will ASU's performance of any Services hereunder be considered a test of the effectiveness or the basis for any endorsement of a product or service.

7. Use of Names or Logos. 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 ("Marks"), or the name of any representative or employee of the other party in any sales promotion work or advertising, or any form of publicity, without the prior written permission of the party that owns the Marks in each instance. Use of any party's Marks must comply with the owning party's requirements, including using the "®" indication of a registered trademark where applicable.

8. Similar Research. Nothing in this Agreement will be construed to limit the freedom of ASU or of its researchers from engaging in similar services made under other grants, contracts or agreements with parties other than Client.

9. Export Controls. Client will notify ASU in writing if any technological information or data provided to ASU under this Agreement is subject to export controls under U.S. law or if technological information or data that Client is requesting ASU to produce during the course of work under this Agreement is expected to be subject to such controls. Client will notify ASU of the applicable export

controls (for example, Commerce Control List designations, reasons for control, countries for which an export license is required). ASU will have the right to decline export controlled information or tasks requiring production of such information.

10. **Independent Contractor.** Each party is an independent contractor and is independent of the other party. Under no circumstances will any employees of one party be deemed the employees of the other party for any purpose. This Agreement does not create a partnership, joint venture or agency relationship between the parties of any kind or nature. This Agreement does not create any fiduciary or other obligation between the parties, except for those obligations expressly and specifically set forth herein. Neither party will have any right, power, or authority under this Agreement to act as a legal representative of the other party, and neither party will have any power to obligate or bind the other or to make any representations, express or implied, on behalf of or in the name of the other in any manner or for any purpose whatsoever contrary to the provisions of this Agreement. Each party acknowledges that the relationship of the parties hereunder is non-exclusive.

11. **Notices.** All notices, requests, demands and other communications hereunder will be deemed to have been duly given if the same shall be in writing and be delivered (a) personally, (b) by registered or certified mail, postage prepaid, (c) by facsimile transmission, with a copy by regular mail or (d) by overnight delivery service and addressed to the recipient's address set forth in the Scope of Work.

Either party may change its address for notices or other contact details by giving written notice to the other party in accordance with this Section. The parties agree to acknowledge in writing the receipt of any written demand, notice, report, request or other communication under this Section that is delivered in person.

12. **Force Majeure.**

12.1 No liability will result from the delay in performance or nonperformance caused by force majeure or circumstances beyond the reasonable control of the party affected, including, but not limited to, acts of God, fire, flood, substantial snowstorm, war, terrorism, embargo, any United States or foreign government regulation, direction or request, accident, strike or other labor dispute or labor trouble, or any failure or delay of any transportation, power or communications system or any other or similar cause beyond that party's reasonable control.

12.2 The party which is so prevented from performing will give prompt notice to the other party of the occurrence of such event of force majeure, the expected duration of such condition and the steps which it is taking to correct such condition. This Agreement may be terminated by either party by written notice upon the occurrence of such event of force majeure which results in a delay of performance hereunder exceeding thirty (30) days.

13. **Applicable Law.** Any dispute regarding or arising under this Agreement, or the interpretation of this Agreement, will be subject to and resolved in accordance with the laws of the State of Arizona, without regard to its conflicts of laws principles.

14. **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. In the event of litigation, as required by Arizona Revised Statutes ("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.

15. **Assignment.** Neither party will assign or transfer any interest in this Agreement without the prior written approval of the other party. Any attempted assignment in violation of this provision will be null and void. Subject to the foregoing, this Agreement will be binding upon the permitted successors and permitted assigns or other permitted transferees of the parties.

16. **Recitals and Exhibits.** All recitals herein, and all exhibits attached hereto (including each Scope of Work hereunder) and referred to herein, are integral and material parts of this Agreement.

17. **Severability.** If any provision of this Agreement shall for any reason be found invalid, illegal, unenforceable, or in conflict with any valid controlling law: (a) such provision will be separated from this Agreement; (b) such invalidity, illegality, unenforceability, or conflict will not affect any other provision hereof; and (c) this Agreement will be interpreted and construed as if such provision, to the extent the same shall have been held invalid, illegal, unenforceable, or in conflict, had never been contained herein.

18. **Waiver.** The waiver of a breach hereunder may be effected only by a writing signed by the waiving party and will not constitute, or be held to be, a waiver of any other or subsequent breach or to affect in any way the effectiveness or enforceability of the provision in question.

19. **Modification.** Any modification or amendment of this Agreement or any Scope of Work hereunder will be effective only if made in writing and signed by both parties.

20. **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended or will be construed to confer upon any person or entity, other than the parties and their respective successors and assigns permitted by this Agreement, any right, remedy or claim under or by reason of this Agreement.

21. **Merger and Integration.** This Agreement contains the entire understanding between the parties concerning the subject matter of this Agreement and supersedes any and all prior understandings, agreements, representations, and warranties, express or implied, written or oral, between the parties concerning the subject matter of this Agreement.

22. **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. 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.

23. **Conflict of Interest.** In accordance with A.R.S. § 38-511, ASU 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, 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.

24. **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 Client and cancel this Agreement without further obligation of ASU. Appropriation is a legislative act and is beyond the control of ASU.

The parties agree that Sections 25, 26, 27 and 28 will apply in the event Client and its employees are present on the ASU campus or use ASU equipment.

25. **Liability.** Client will conduct its activities in a careful and safe manner. As a material part of the consideration to ASU, Client agrees to assume all risk of damage to and loss or theft of Client's property while at ASU, damage to ASU space, and injury or death to persons related to Client's use of property, use or occupancy of the space in, upon, or about the space from any cause, and Client waives all claims against ASU. Client further agrees to indemnify and hold harmless Arizona State University, the Arizona Board of Regents, the State of Arizona and their officers, regents, agents and employees, against all claims, suits, liabilities, costs, damages and expenses (including reasonable attorneys' fees) arising out of or in connection with: (i) Client's use of property, use or occupancy of the space, or any activity or thing done, performed or suffered by Client, its agents, its employees, licensees, invitees or persons attending or participating in Client's activities and use of property and in or about the space; or (ii) any loss, injury, death or damage to persons, property, or the space on or about the space by reason of any act, omission or negligence of Client, or any of its agents, contractors, employees, licensees, or invitees; or (iii) any breach or default in the performance of any obligation on Client's part to be performed under the terms of this Agreement. Client's indemnity obligations will not extend to any liability to the extent caused by the negligence of ASU or its agents or employees. Client's obligations and liabilities under this Section will survive the expiration or early termination of this Agreement.

26. **Insurance.** Client, at its expense, agrees to procure and maintain during the term of this Agreement a policy of commercial general liability insurance in an amount of not less than One Million Dollars (\$1,000,000), single limit, Two Million Dollars (\$2,000,000), general aggregate, against claims for bodily injury, death and property damage occurring in connection with Client's use of property and space at ASU. All insurance required pursuant to this Section must name the Arizona Board of Regents, Arizona State University, and the State of Arizona as additional insureds and must contain a waiver of subrogation against the Arizona Board of Regents, Arizona State University, and the State of Arizona. Client agrees to procure and maintain Workers' Compensation insurance with statutory limits unless exempt under A.R.S. §23-901 and executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

27. **Tobacco-Free University.** ASU is a tobacco-free university. For details, visit www.asu.edu/tobaccofree.

28. **Weapons, Explosive Devices and Fireworks.** ASU prohibits the use, possession, display or storage of any weapon, explosive device or fireworks on all land and buildings owned, leased, or under

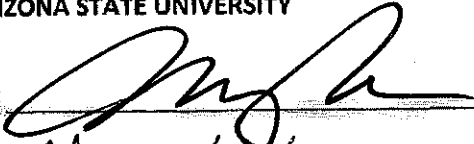
the control of ASU or its affiliated or related entities, in all ASU residential facilities (whether managed by ASU or another entity), in all ASU vehicles, and at all ASU or ASU affiliate sponsored events and activities, except as provided in A.R.S. §12-781 or unless written permission is given by the Chief of the ASU Police Department or a designated representative. Notification by Client to all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of Client ("Client Parties") of this policy is a condition and requirement of this Agreement. Client further agrees to enforce this contractual requirement against all Client Parties. ASU's policy may be accessed through the following web page: <http://www.asu.edu/aad/manuals/pdp/pdp201-05.html>.

29. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument, and photocopy, facsimile, electronic and other copies will have the same effect for all purposes as an ink-signed original.

[SIGNATURES ON NEXT PAGE.]

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

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

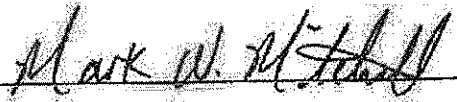
By: 

Name: MARK J. SEALE

Title: INTERIM UNIVERSITY PROVOST

Date: 8/18/15

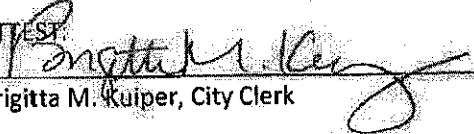
CITY OF TEMPE

By: 

Name: Mark W. Mitchell

Title: Mayor

Date: July 30, 2015

ATTEST

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:


Judith R. Baumann, City Attorney

EXHIBIT A
TO MASTER SERVICES AGREEMENT
C2015-158.1

Form of Scope of Work

This Scope of Work, dated July 30, 2015, is issued pursuant to, made part of, and governed by the Master Services Agreement, dated July 30, 2015 ("Master Agreement"), by and between the City of Tempe ("Client") having its principal place of business at 120 E 5th St. Tempe, AZ 85281, and The Arizona Board of Regents for and on behalf of Arizona State University and its GIS Services ("ASU").

1. Contact Details.

Point of Contact for ASU:
Attention: Shea Lemar
Arizona State University
P.O. Box 874602
Tempe, Arizona 85287-4602

Point of Contact for Client:
Attention: Stephanie Deitrick
120 E 5th St.
Tempe, Arizona 85281

2. Scope of Work.

Objective:

ASU GIS Services will work with City of Tempe staff to contribute to the expansion of the Strategic Planning Analysis & Research Center's (SPARC) GIS. This work will include helping SPARC to obtain, store, edit and access the GIS data they need in a functional system; helping to integrate the SPARC GIS with the enterprise GIS at the City of Tempe; helping to make data (maps) available to the public at an appropriate level. Specifically, ASU GIS Services will be involved in the following processes.

Expand Data on the Local Database

SPARC is using a non-optimal system to bring in data that it needs to work with, analyze and map. ASU GIS Services will work with staff to investigate the current data, develop SQL server and SDE database design, load data into SQL/SDE from Versadex, automate data imports from Versadex into SPARC SQL and SDE, import required existing geodatabases into SQL/SDE, confirm Bair exports continue to work, work with IT staff to spec a server and integrate that server into the Tempe system and set up user authentication on the system.

Integration of SPARC GIS with Tempe Enterprise GIS

ASU GIS Services will work with SPARC, IT and Enterprise GIS staff to ensure that the new SPARC GIS integrates with the enterprise GIS system and is able to pass data back and forth as required.

Map Publishing

ASU GIS Services will help to set up a system that allows SPARC personnel to publish data to its target users via a mapping application.

3. Rate Schedule.

The project will begin on Effective Date of the agreement and will continue until Scope of Work is completed or hours are used, whichever comes first. The City will only be billed for hours that are used toward this project.

ASU billing cycle is set to invoice the 15th of each month. If fewer than 10 hours of work was completed in one or more months, the work will be billed cumulatively on the following months invoice.

Maximum Contract Amount:

GIS Services	430 hrs @ \$125	\$ 53,750
Total		\$ 53,750

ASU Payment Address:

Attention: Amy Kuhns
CLAS Research Technical Services
Arizona State University
P.O. Box 876505
Tempe, Arizona 85287-6505

The following Sections 4 and 5 will apply in the event Client and its employees are present on the ASU campus or use ASU equipment.

4. Required Training. Client understands that a person must be certified to use GIS Services equipment. Training of any employee or agent of a Client who does not meet certification requirements may be arranged through the GIS Services Manager. GIS Services reserves the right to charge an additional fee for training services.

5. Data Processing. Client will be given access to data processing facilities and reasonable amounts of data processing may be carried out by ASU personnel. Client will be provided with network access to data processing facility including workstations and full use of legally accessible software. Remote operation may be arranged for some projects allowing the results to be delivered by e-mail. Personalized instruction in advanced characterization techniques can be made available for a fee at ASU and, in some cases, at the Client's site. Project reports can be made available on request. [Modify as appropriate.]

IN WITNESS WHEREOF, the parties have executed this Scope of Work as of the date first set forth above.

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

By: 

Name: Mark S. Searle

Title: Interim University Provost

Date: August 18, 2015

CITY OF TEMPE

By: 

Name: Mark W. Mitchell


Title: Mayor

Date: July 30, 2015

ATTEST


Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:


Judith R. Baumann, City Attorney