REIMBURSEMENT AGREEMENT

C2019-__

THIS REIMBURSEMENT AGREEMENT (the "Agreement"), dated for reference purposes only as of _____ day of ______________, 20 19 effective as of the date of the last signatory hereto (the “Effective Date”), is made by and between THE ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University ("ASU"), and THE CITY OF TEMPE, a municipal corporation organized under the laws of the State of Arizona (the "City").

RECITALS

A. ASU and the City desire to enhance the streetscape on University Drive between College Avenue and Veterans Way to slow the speeds of vehicular traffic and improve the safety of pedestrians and bicyclists, including ASU students, employees, and visitors.

B. To enhance the streetscape and improve the safety of pedestrians and bicyclists, including ASU students, employees, and visitors, the City and ASU have agreed to the design and construction of medians and landscaping on University Drive between College Avenue and Veterans Way (the “University Drive Median Islands Project”).

C. ASU and the City wish to enter into this Agreement to memorialize ASU's agreement to reimburse the City for all costs and expenses exceeding $100,000 of the University Drive Median Islands Project as set forth below.

NOW THEREFORE, the parties agree as follows:

AGREEMENT

1. University Drive Median Islands Project. The City shall procure, retain, and supervise all necessary consultants and contractors for the University Drive Median Islands Project using a proper public procurement process and shall comply with any applicable advertisement and notification provisions of A.R.S. §§ 34-101 et seq. The City must design and construct the University Drive Median Islands Project in accordance with these and all other applicable laws.

2. Project Expenses. The City and ASU have endeavored to reach a mutually satisfactory agreement concerning the cost of the University Drive Median Islands Project as described herein. The City shall pay all costs and expenses related to the University Drive Median Islands Project (“Project Expenses”) and, upon payment of all expenses, ASU shall pay the City as detailed in Section 3 of this Agreement. Project Expenses shall include all reasonable costs, expenses, fees, and charges incurred and actually paid by the City to contractors,
engineers, surveyors, governmental agencies, construction managers, and other third parties for materials, labor, design, engineering, surveying, site excavation and preparation, payment and performance bonds, general conditions and fees, and other costs and expenses reasonably necessary for completion of the University Drive Median Islands Project. Project Expenses are currently estimated at $750,500.

3. **Reimbursement.** As detailed in Section 2 of this Agreement, the City shall pay all Project Expenses related to the University Drive Median Islands Project. Upon payment of all Project Expenses, the City will submit to ASU a request for reimbursement. The City will contribute and be responsible for the first $100,000 of the Project Expenses. ASU shall then reimburse the City for all expenses reasonably incurred by the City exceeding $100,000, up to $750,500, for a total contribution by ASU of up to $650,500. In the event that the total Project Expenses exceed $750,500, ASU agrees to further reimburse the City fifty percent (50%) of all Project Expenses reasonably incurred by the City that exceed $750,500 (the “ASU Reimbursement”). The City shall retain all invoices and other evidence of payment and make the same available for review by ASU. The City shall not request any reimbursement or payment for costs that are not solely allocable to the University Drive Median Islands Project, and ASU shall have the right to review and audit the City’s records and accounts to verify that all expenditures have been accurately allocated and that the Project was properly procured pursuant to the requirements of Section 1 of this Agreement. The ASU Reimbursement shall be made in one disbursement in accordance with ASU’s normal practices for payment for construction costs upon submission of such evidence and completion of work and lien waivers as ASU may require. ASU shall review and approve the City’s request for reimbursement within 30 days of receiving such request.

4. **Conflict of Interest.** Pursuant to Arizona law, rules, and regulations, no member, official, or employee of the City or ASU shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. This Agreement is subject to A.R.S. § 38-511.

5. **Governing Law.** This Agreement shall be governed by, construed, and enforced under the laws of the State of Arizona.

6. **Notices.** Notices will be in writing and will be given by personal delivery, or certified mail, return receipt requested. Notices will be delivered or addressed to the applicable party at the addresses set forth below or at such other address or number as a party may designate in writing:

   To ASU: Arizona State University
   Attn: Executive Vice President,
   Treasurer and Chief Financial Officer

   For Delivery by Mail:
   P.O. Box 877505
Tempe, AZ  85287-7505

For Delivery at:
300 E. University Drive, Suite 320
Tempe, AZ  85281

With a mandatory copy to:  Arizona State University  
Attn:  Assistance Vice President for University Real Estate Development

For Delivery by Mail:  
P.O. Box 877908
Tempe, AZ  85287-3909

For Delivery at:  
80 E. Rio Salado Parkway, Suite 513
Tempe, AZ  85281

And to:  Arizona State University  
Attn:  Senior Vice President and General Counsel

For Delivery by Mail:  
P.O. Box 877405
Tempe, AZ  85287-3908

For Delivery at:  
300 E. University Drive, Suite 335
Tempe, AZ  85281

To City:  City of Tempe  
Attn:  City Manager’s Office  
31 East 5th Street
Tempe, AZ  85281

With a copy to:  City of Tempe  
Attn:  City Attorney’s Office  
31 East 5th Street
Tempe, AZ  85281

The date notice is deemed to have been given, received, and become effective will be (i) the date on which the notice is delivered or refused, if notice is given by personal delivery or certified mail, or (ii) the date of actual receipt.
7. **Waiver.** No waiver by either party of any breach of any of the terms, covenants, or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant, or condition herein contained.

8. **Severability.** In the event that any phrase, clause, sentence, paragraph, section, article, or other portion of this Agreement shall become illegal, null, or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null, or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law, provided that the overall intent of the parties is not materially vitiated by such severability.

9. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations, and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

10. **Attorneys’ Fees.** In the event of any actual litigation between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorneys’ fees, which shall be determined by the court and not by the jury.

11. **Amendment.** This Agreement may only be amended by an instrument in writing executed by all the parties.

12. **Adoption by Mayor and Council; Authority to Execute Minor Amendments.** This Agreement is subject to adoption by the City’s Mayor and City Council. Upon execution of this Agreement, the Mayor and Council authorize the Engineering and Transportation Director of the City to sign other documents or amendments of this Agreement as may be necessary to effectuate this Agreement and further authorize the Engineering and Transportation Director to act upon any other matters not presently contemplated but which may arise and require the City’s action in order to effectuate the purpose of this Agreement.

13. **Benefit and Binding Effect.** This Agreement and all provisions hereunder shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns. In the event of assignment of this Agreement by ASU, provided that the assignee has provided the City with its name, address, and designated representative, and further provided that the assignee has assumed the rights, liabilities, and obligations of ASU under this Agreement pursuant to a written instrument (a true and correct copy of which shall be provided to the City), the assignor shall be released from any obligations or liabilities arising under this Agreement based upon events occurring after the date of assignment.

14. **Termination; Release.** Upon ASU reimbursing the City for the ASU Reimbursement in full, this Agreement shall automatically terminate and be of no further force or effect, and the parties hereto agree to mutually execute and record a release of this Agreement.
15. **Nondiscrimination.** The parties will comply with all applicable laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act.

16. **Arbitration.** The parties agree to arbitrate disputes filed in Arizona Superior Court that are subject to mandatory arbitration pursuant to ARS § 12-133. ARS § 12-1518 requires this provision in all ASU contracts.

17. **Failure of Legislature 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 the City and cancel this Agreement without further obligation of ASU. Appropriation is a legislative act and is beyond the control of ASU.

[Signatures on Following Pages]
[Signature Page to Reimbursement Agreement]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in the manner and by the individuals herein indicated.

CITY:

CITY OF TEMPE, a municipal corporation

By: __________________________________
    Name: __________________________________
    Its: __________________________________

STATE OF ARIZONA       )
) ss.                  |
COUNTY OF MARICOPA     )

SUBSCRIBED AND SWORN to before me this ____ day of __________, 2019.

_____________________________________
Notary Public

My Commission Expires:
[Continuation Signature Page to Reimbursement Agreement]

**ASU:**

THE ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University

By: ________________________________
Name: ______________________________
Its: ________________________________

STATE OF ARIZONA )
COUNTY OF MARICOPA )

SUBSCRIBED AND SWORN to before me this ___ day of __________, 2019 by ____________________, the ____________________ of THE ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University.

___________________________________
Notary Public

My Commission Expires: