

**FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT
(ACCELERATOR BUSINESSES)
AND CANCELLATION AGREEMENT**

THIS FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT (ACCELERATOR BUSINESSES) AND CANCELLATION AGREEMENT (this "**First Amendment**" and this "**Agreement**") is entered into as of _____, 2017 (the "**Effective Date**"), by and between the ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University ("**University**"), and the CITY OF MESA, an Arizona municipal corporation (the "**City**"). University and City are collectively referred to herein as the "**Parties**," or individually as the "**Party**."

RECITALS:

A. On March 25, 2013, the Parties entered into an Intergovernmental Agreement (Accelerator Businesses) ("**IGA**") designed to allow the Parties to collaborate to provide University students, faculty, researchers and staff and the private sector opportunities to collaborate on innovative ideas for development of new technologies into marketable products, thereby enriching the student and faculty educational experiences and fostering new businesses vital to Arizona's future. These activities provide educational experiences to the Universities students and create job opportunities for residents of the City and surrounding areas which result in increased tax revenues and improved economic conditions. The IGA described the Parties' endeavor as a business accelerator.

B. The City located and recruited businesses for the Project (as defined in the IGA) and the University granted licenses to such businesses to occupy space in the Building (as defined in the IGA), as more particularly described in the IGA.

C. The Parties now wish to amend the IGA to allow for and effect the immediate cancellation of the IGA.

D. The Parties have the authority to enter into this IGA pursuant to ARS § 11-952.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the mutual promises set forth in this First Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties state, confirm and agree as follows:

The Parties agree to amend the IGA as follows:

1. Amended Provision. Provision No. 6.1 of the IGA shall be changed to read as follows:

6. Termination.

6.1 Termination for No Cause. Either Party may terminate this IGA for no cause upon giving the other Party twelve (12) month's written notice pursuant to Section 8.2 of this IGA. **THE PARTIES MAY ALSO TERMINATE THIS IGA FOR NO CAUSE BY EXECUTING**

AN AMENDMENT AND CANCELLATION AGREEMENT. ON THE DATE THAT THE PARTIES ENTER INTO SUCH AN AMENDMENT AND CANCELLATION AGREEMENT, THIS IGA SHALL BECOME IMMEDIATELY NULL AND VOID, AND THE PARTIES SHALL HAVE NO FURTHER OBLIGATIONS HEREUNDER, OTHER THAN WITH RESPECT TO ANY COVENANTS HEREIN WHICH THIS IGA PROVIDES SHALL SURVIVE SUCH TERMINATION OR CANCELLATION.

2. No Continuing Obligations. The Parties represent and warrant to each other that there are no existing License Agreements (as defined in Section 1.4 of the IGA) and that no Accelerator Businesses (as defined in said Section 1.4) are occupying or have any right to occupy any part of the Building. The City confirms that as of the Effective Date it has no further right to use any space within the Building. The Parties acknowledge and agree that there are no outstanding payments to be made by the City to University or by University to the City, as applicable, under the IGA, including but not limited to the City's Proportionate Share (as defined in Section 3.9.1 of the IGA), the Operating Costs (as defined in Section 3.9.2 of the IGA), Utilities for the Project (as defined in Section 3.9.3 of the IGA), Monthly License Fees or Program Operation Costs (as each such phrase is defined in Section 3.9.6 of the IGA), or Accelerator Program Fee (as defined in Section 3.11 of the IGA). The provisions of this Paragraph 2 shall survive the termination and cancellation of the IGA.
3. Removal of City Property; Restoration of Building. The City shall have fifteen (15) business days following the Effective Date to remove any personal property of the City located within the Building, including but not limited to any furniture, cubicles, equipment and/or telephones and any alterations or improvements made by the City to the Building (including but not limited to signage), and to repair any damage caused by such removal. Any trade fixtures, personal property, or other improvements or alterations not so removed shall be deemed abandoned, and title thereto shall vest solely in University, without payment of any nature to City. The provisions of this Paragraph 3 shall survive the termination and cancellation of the IGA.
4. Definitions. All capitalized words and phrases used in this First Amendment shall have the same meanings as set forth in the IGA, unless a different definition is set forth in this First Amendment.
5. Severability. In the event any term or provision of this First Amendment is held to be invalid or unenforceable, the validity of the other provisions shall not be affected, and this First Amendment shall be construed and enforced as if it did not contain the particular term or provision that is deemed to be invalid or unenforceable.
6. Governing Law, Venue, and Jurisdiction. This First Amendment shall be governed by the laws of the state of Arizona. A Party may only bring any action related to a dispute arising out of this First Amendment or the IGA in a court of appropriate venue and jurisdiction in Maricopa County, State of Arizona.
7. Statutory Notice Requirement. The Parties acknowledge that this First Amendment is subject to the provisions of A.R.S. § 38-511.

8. Incorporation of Recitals. The recitals set forth herein are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.
9. Merger. The remaining provisions of the IGA not affected by this First Amendment shall remain the same and continue in full force and effect.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have executed this FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT (ACCELERATOR BUSINESSES) AND CANCELLATION AGREEMENT on the date first set forth above:

"CITY"

CITY OF MESA, an Arizona municipal corporation

By: _____
Its: CITY MANAGER

Date Signed: _____

ATTEST:

DeeAnn Mickelsen, City Clerk

APPROVED AS TO FORM:

Pursuant to A.R.S. § 11-952, legal counsel for the City has determined that this Intergovernmental Agreement is in the proper form and within the powers and authority granted under the laws of the State of Arizona.

James N. Smith, City Attorney

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Signature Page Continued

"UNIVERSITY"

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

By: _____

Name: _____

Title: _____

Date Signed: _____

APPROVED AS TO FORM:

Pursuant to A.R.S. § 11-952, legal counsel for the University
has determined that this Intergovernmental Agreement is in
the proper form and within the powers and authority granted
under the laws of the State of Arizona.

M. Maureen Anders, Associate General Counsel
Arizona State University