

**AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF MESA, ARIZONA
AND
THE ARIZONA BOARD OF REGENTS**

This Amended and Restated Intergovernmental Agreement (“Agreement”) is made to be effective as of _____, 2024 (the “Effective Date”) between the City of Mesa, Arizona, an Arizona municipal corporation (“City”), and the Arizona Board of Regents, a body corporate, for and on behalf of Arizona State University (“ASU”). City and ASU may each be referred to in this Agreement as a “Party,” or collectively as the “Parties.”

RECITALS

As background to this Agreement, the Parties recite, state, and acknowledge the following, each of which is a material term and provision of this Agreement:

- A. As part of its downtown redevelopment and revitalization, and the creation of its innovation district and innovation studios, City has encouraged and promoted the presence of post-secondary education uses and facilities.
- B. ASU is a comprehensive public research university and, in connection with its mission as a leader in academic excellence and accessibility, desires to locate, develop, operate, maintain, and potentially construct certain post-secondary education facilities, as well as related developments, in downtown Mesa that support and enhance post-secondary education uses and facilities (each individually an “ASU Facility” and collectively, “ASU Facilities”).
- C. Both City and ASU recognize and acknowledge the benefit to each arising from the location, development, operation, and maintenance of ASU Facilities in downtown Mesa.
- D. To that end, the Parties entered into an Intergovernmental Agreement dated March 1, 2018 (“2018 IGA”) related to the potential development of up to three (3) phases of ASU Facilities in downtown Mesa (each a “Phase”), as well as the improvement of a City building located at 59 E. 1st Street for use by the Parties as the “Mesa’s Innovation Studios”. For the purposes of this Agreement, any reference to the “2018 IGA” shall include that certain document titled the “First Amendment to Intergovernmental Agreement Between the City of Mesa, Arizona and the Arizona Board of Regents” dated September 26, 2023 executed by the Parties.
- E. The Parties agree that, in accordance with the requirements of the 2018 IGA: (i) construction for the first Phase of the ASU Facilities development (known as “Phase I”) located at 50 N. Centennial Way (“Phase I Building”), including the public greenspace commonly known as the “Plaza at Mesa City Center”, and all related Public Infrastructure (as that term is defined in Section 1 below), is complete; (ii) ASU entered

- into the required lease for Phase I with City (“Phase I Lease”) pursuant to which ASU now operates the Phase I Building as educational facilities known as the “ASU Media and Immersive eXperience (MIX) Center”; and (iii) the building located at 59 E. 1st Street was improved and is occupied by both Parties as the “Studios at Mesa City Center.”
- F. Following the completion of Phase I, the Parties recognized that the requirements and Party responsibilities in the 2018 IGA for the construction, development, and operation of the ASU Facilities identified as “Phase II” and “Phase III” in the 2018 IGA required modification, including eliminating the phasing concept and modifying the properties available for development by the Parties.
 - G. Therefore, the Parties desire to enter into this Agreement as an amendment and restatement of the 2018 IGA designed solely to set forth the new understanding between the Parties for the potential future use and development of property located within the City Center (as that term is defined below), and other related matters as specifically set forth in this Agreement.
 - H. The Parties are authorized to enter into this Agreement by the provisions of A.R.S. § 11-951, *et seq.*

AGREEMENTS

1. Definitions: In this Agreement, unless a different meaning clearly appears from the context, the below words and phrases shall be construed as defined in this Section. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The use of the term “shall” in this Agreement means a mandatory act or obligation. The term “including” means “including but not limited to” or “including without limitation.” Any reference to a law or regulation means such law or regulation as amended or replaced.
 - a. “51-55 E. Main Street” means as defined in Section 4(a)(ii).
 - b. “2018 IGA” means as defined in Recital D.
 - c. “Academic Programming” means as defined in Section 8(a).
 - d. “Additional Location” means as defined in Section 3(d).
 - e. “Agreement” means as defined on Page 1.
 - f. “ASU” means as defined on Page 1.
 - g. “ASU Development” means as defined in Section 9(b).
 - h. “ASU Facility” and “ASU Facilities” means as defined in Recital B.
 - i. “ASU Facility Documents” means as defined in Section 6(a).

- j. “ASU Ownership Triggering Event” means as defined in Section 10(a)(iv)(1).
- k. “Authorized Signatory” means as defined in Section 6(c)(iii).
- l. “Board of Regents” means the Arizona Board of Regents, a body corporate.
- m. “Business Day(s)” means Monday through Friday, excluding any such dates that are legal holidays in the State of Arizona. If any day on which performance is due hereunder occurs on a day that is not a Business Day, then the day for such performance shall occur on the next occurring Business Day.
- n. “City” means as defined on Page 1.
- o. “City Center” means as defined in Section 3 and as depicted in **Exhibit A**.
- p. “City Election” means as defined in Section 3(c).
- q. “City-Owned Property” means real property and/or improvements owned by City located in or near the City Center.
- r. “City Ownership Rights” means as defined in Section 3(b).
- s. “City Contribution” means as defined in Section 9(a)(i).
- t. “Concept Plan” means as defined in Section 12.
- u. “Developing Party” means the Party responsible for the development and construction of a Potential Development Site who, unless otherwise specified in Section 10(a)(i), shall be solely responsible for the management, including payment of costs and expenses (which may be reimbursed in whole or in part subject to the Initial Project Budget) for the development and construction of the ASU Facilities on the Potential Development Site.
- v. “Development & Operation Requirements” means as defined in Section 8(a).
- w. “Development Determination Period” means as defined in Section 6(a).
- x. “Effective Date” means as defined on Page 1.
- y. “Event of Default” means as defined in Section 21.
- z. “Financing” means as defined in Section 15.
- aa. “Former Council Chambers” means as defined in Section 4(a)(i).
- bb. “Initial Project Budget” means as defined in Section 14(a).
- cc. “Joint Development” means as defined in Section 9(a).

- dd. “Manager” means as defined in Section 7(b) of **Exhibit C**.
- ee. “Minimum Requirements” means as defined in Section 5(a).
- ff. “Negotiation Period” means as defined in Section 5(c).
- gg. “Other Party’s Marks” means as defined in Section 9 of **Exhibit D**.
- hh. “Partner Locations” means as defined in Section 4(a).
- ii. “Party” and “Parties” means as defined on Page 1.
- jj. “Permitted Title Exceptions” means as defined in Section 15(b).
- kk. “Phase” means as defined in Recital D.
- ll. “Phase I” means as defined in Recital E.
- mm. “Phase I Building” means as defined in Recital E, and specifically does not include the underlying real property on which the Phase I Building is located.
- nn. “Phase I Lease” means as defined in Recital E.
- oo. “Phase II” means as defined in Recital F.
- pp. “Phase III” means as defined in Recital F.
- qq. “Plaza at Mesa City Center” means as defined in Section 13(b) and as depicted in **Exhibit E**.
- rr. “Potential Development Site(s)” means as defined in Section 3(a), as more fully described in Section 3(c) and Section 3(d), and are generally depicted in **Exhibit A** and **Exhibit B**.
- ss. “Prohibited Use(s)” means, as it relates to a specific property, such use(s) as may be designated by the Parties in the applicable license, lease or Site Lease for such property as prohibited uses.
- tt. “Public Infrastructure” means all utilities, water lines, sewer lines, chilled water lines, streets, sidewalks, streetlights, streetscape, parks and other public open space and landscape within the City Center that are reasonably necessary to support the ASU Facilities.
- uu. “Representative” means as defined in Section 25.
- vv. “Required Site 2 Parking Spaces” means as defined in Section 6(a)(ii).
- ww. “R&R Account” means as defined in Section 6(a) of **Exhibit C**.

- xx. “Site 1”, “Site 2” and “Site 3” mean as defined in Section 3.
- yy. “Site Lease” means as defined in Section 11.
- zz. “Studios at Mesa City Center” means as defined in Recital E.
- aaa. “Studios License” means as defined in Section 2(b).
- bbb. “Term” means as defined in Section 7.
- ccc. “Term Extension Event” means as defined in Section 1 of **Exhibit C**.

2. Purpose of Agreement; Phase I and Mesa Innovation Studios:

- a. Purpose: As set forth in the Recitals, the purpose of this Agreement is to be an amendment and restatement of the 2018 IGA specifically to amend and replace the Parties’ understanding as it relates to certain future use and development of property within the City Center.
- b. Impact on Phase I & Mesa Innovation Studios: The Parties acknowledge that the requirements relating to the Phase I development in the 2018 IGA were met, including the Parties entering into the Phase I Lease and a license for the use by ASU of the Studios at Mesa City Center (“Studios License”) which now each govern the relationship of ASU and City for the Phase I Building and Studios at Mesa City Center, respectively. Therefore, the terms and conditions of this Agreement do not apply to or modify the requirements or understanding of the Parties in the 2018 IGA as they relate to Phase I or the Studios at Mesa City Center. As of the Effective Date, the 2018 IGA is terminated as it relates to Phase I and the Studios at Mesa City Center except that those terms and conditions pertaining to Phase I or the Studios at Mesa City Center, which are necessary or appropriate to interpret and enforce, will survive termination. In all matters set forth in the 2018 IGA that are not related to Phase I or the Studios at Mesa City Center, this Agreement supersedes and replaces the 2018 IGA in its entirety, including those matters pertaining to Phase II, Phase III, and the future development of ASU Facilities by the Parties within the City Center.
- c. Phase I Building Ownership:
 - i. Transfer of Ownership of Phase I Building: Notwithstanding the foregoing in Subsections (a) and (b), and notwithstanding Section 22 [Title to Improvements] of the Phase I Lease, the Parties intend that ownership of the Phase I Building is to be treated in a similar manner as the improvements for a Joint Development that are described in Section 10(a)(iv) of this Agreement in which, following an ASU Ownership Triggering Event, City will transfer to ASU its ownership rights in the Phase I Building for the remainder of the term of the Phase I Lease, free and clear of all liens and encumbrances but for those agreed to by the Parties (except that no financial liens or encumbrances will be permitted).

- ii. Conditions on Transfer: City's obligation to transfer to ASU its ownership rights in the Phase I Building shall be conditioned upon: (i) ASU being in compliance with, and not having an uncured default of, the Phase I Lease at the time of the ASU Ownership Triggering Event; and (ii) ASU providing City, in writing, with a lease or other agreement in a form acceptable to City and ASU, that is nonrevocable, and allows City use, occupancy, and access to the improvements in the same manner as City was entitled to at the time of the ASU Ownership Triggering Event.
 - iii. Transfer Back to City: Following the expiration or earlier termination of the Phase I Lease, ASU will transfer the ownership of the Phase I Building back to City, free and clear of all liens and encumbrances but for those agreed to by the Parties (except that no financial liens or encumbrances will be permitted).
 - iv. Additional Transfer Considerations: For the purposes of clarity, the Parties acknowledge that the transfer of ownership of the Phase I Building shall: (i) only occur in accordance with applicable law, including statutes and regulations related to any municipal bond financing for the Phase I Building; (ii) not be in violation of any Financing used to develop the Phase I Building; (iii) not include the underlying real property on which the Phase I Building is located, which at all times shall remain owned solely by City; and (iv) require the execution of documents reasonably necessary for the transfer of the Phase I Building and, in the case of transfer to ASU from City, an amendment to the Phase I Lease or execution of a new Phase I Lease in the form of a ground lease that reflects the transfer in ownership of the Phase I Building; provided, however, that the terms of such reasonably necessary documents and Phase I Lease amendment or new ground lease shall be subject to the approval of the City Council and the Board of Regents, respectively, each at their sole and absolute discretion.
- 3. City Center Potential Development Sites: Within the specific area of downtown Mesa depicted in **Exhibit A** ("City Center"), City has identified three (3) sites of real property that are appropriate for, and may support, the potential development of ASU Facilities (the "Potential Development Site(s)"). The general location of the Potential Development Sites is shown in **Exhibit A** and **Exhibit B**, with each of the Potential Development Sites being separately identified in the Exhibits as "Site 1", "Site 2", and "Site 3". The Parties recognize that the Potential Development Sites are not described by metes and bounds in the Exhibits, as the Exhibits are meant only as a point of reference. Should a Potential Development Site be selected for development (see Section 6 below), the Parties will agree upon the legal description of the actual location. The Parties agree that the development of a Potential Development Site may include, as mutually agreed to by the Parties, either renovating the site as an adaptive reuse project or redeveloping the site as a new development project. For further clarification, the Potential Development Sites are located at the following addresses in the City Center:
 - a. Site 1 (Post Office): 135 N. Center Street, including the adjoining parking lots.

- b. Site 2 (Mesa Public Library Parking Lot): Only the parking lot for 64 E. 1st Street; the municipal library building and any real property or improvements not constituting the parking lot that are located on the same parcel as the parking lot are specifically excluded as being a part of Site 2 and are not available for use or development as ASU Facilities.
 - c. Site 3 (Municipal Building): 55 N. Center Street (only the building at the southeast corner of E. 1st Street and N. Center Street, parking lot, and adjoining open green space – any other real property or improvements located on the same parcel are specifically excluded as being a part of Site 3).
 - d. Additional Location(s) for Potential Development Sites: At ASU’s request, the Parties will reasonably consider other City-Owned Property in or near the City Center as additional Potential Development Sites for ASU Facilities (“Additional Location”). If the Parties agree to the inclusion of an additional City Owned Property as an Additional Location, **Exhibit A** and **Exhibit B** shall be administratively modified to include the Additional Location in this Agreement and the site will be deemed a Potential Development Site as that term is used herein; provided, however, that the use of any City-Owned Property for a Potential Development Site shall be approved or denied by the City Council, at its sole and absolute discretion.
4. City Center Partner Locations:
- a. Identified Partner Locations: In addition to the Potential Development Sites within the City Center, the City has identified two (2) City-Owned Properties (see **Exhibit A** and **Exhibit B**) that would support (i) use by ASU as ASU Facilities or a use directly related to ASU Facilities, and/or (ii) use by the City or a third party for its/their own purposes (collectively, the “Partner Locations”). The Parties recognize that the Partner Locations are not described by metes and bounds in the Exhibits, as the Exhibits are meant only as a point of reference. Should a metes and bounds description be necessary for the development or improvement of a Partner Location, the Parties will agree upon the legal description of the actual location. The Partner Locations are further described as follows:
 - i. Former Council Chambers (57 E. 1st Street). Construction is scheduled to be complete in late 2024 of a new City Council chamber that will be incorporated into the City Plaza building located at 20 E. Main Street and, with the opening of the new chamber, the building located at 57 E. 1st Street that currently houses the City Council Chambers will become vacant (“Former Council Chambers”).
 - ii. 51-55 E. Main Street. Situated along Main Street, adjacent to the Mesa Arts Center campus, is the building known as 51-55 E. Main Street that extends across two (2) real property parcels in downtown Mesa (“51-55 E. Main Street”).

- b. Requirements for Partner Locations: In order to continue to provide and support facilities for educational purposes in downtown Mesa, the City agrees to allow ASU the opportunity for the use or occupancy of all or part of the Partner Locations subject to the following conditions, requirements, and limitations related to such use or occupancy, development/improvements, operation, maintenance, repair, and programming for each location:
 - i. Former Council Chambers:
 - 1. Use and Occupancy:
 - a. Intent: It is the intent of the Parties that the Former Council Chambers will be jointly used and occupied by City and ASU; to that end, City will enter into a non-exclusive license with ASU for the use of the Former Council Chambers which will be memorialized by a license between the Parties, the terms of which will be at each Party's sole and absolute discretion, which shall include use restrictions, the amount of the licensing fee, and a requirement that ASU shall not be permitted to sublicense any portion of the Former Council Chambers.
 - b. City Election to Lease; Rights of ASU: If at any time the City elects to lease all or a portion of the Former Council Chambers, City will first offer ASU the opportunity to lease the space as set forth in this Subsection (b). Before entering into a lease with a third party, the City shall first provide a written notice to ASU offering ASU the opportunity to enter into a lease with respect to such space on terms and conditions that are substantially similar to those applicable to a Site Lease for a Joint Development of a Potential Development Site, including those terms set forth in **Exhibit C**; provided, however, that ASU will have no right to enter into any subleases with respect to the space it leases in the Former Council Chamber, but it will have the right to enter into sublicenses on conditions consistent with those provided in Section 3(c) of **Exhibit C** with respect to Potential Development Sites. ASU shall provide written notice to the City within ninety (90) days (the "**Election Period**") following receipt of such notice indicating whether ASU will enter into a Site Lease with respect to such space, which notice shall be subject to Board of Regents approval, in its sole and absolute discretion. If ASU elects not to enter into a lease for the space or fails to provide written notice of its election within the Election Period, or if ASU exercises such election and if the Board of Regents thereafter fails to authorize ASU to enter into such lease, the City shall thereafter be free to lease the Former Council Chambers to a third party. Upon the cessation of the City's negotiations with a third party that does not result in a

lease of the Former Council Chambers, the foregoing right of first offer granted to ASU will be revived with respect to any future elections by the City to lease the Former Council Chambers to a third party. For the purposes of clarity, this Subsection: (i) does not apply to the licensing of any portion of the Former Council Chambers by the City to a third party; and (ii) for any lease City enters into with a third party in accordance with the terms of this Subsection, City is not required to utilize the same terms and conditions as would be in a Site Lease with ASU.

- c. Non-Leased Portion: For any portion of the Former Council Chambers not leased to a third party or ASU, then ASU shall have a non-exclusive right to use all or part of such portion of the Former Council Chambers as evidenced by a non-exclusive license under the same terms as conditions as the license agreement described in Subsection 4(b)(i)(1)(a) above.
2. Development/Improvements: Improvements shall be made to the Former Council Chambers at City's sole cost and expense, and at City's sole and absolute discretion, including the budget for the improvements; provided, however, City will coordinate and consult with ASU on the design of improvements to the Former Council Chambers so that the improvements will support the operational and programming needs of ASU.
3. Operation, Maintenance, and Repair: The cost and responsibility of operation (including utilities and janitorial services), maintenance, and repair will be: (i) agreed to by the Parties, each at their sole and absolute discretion; (ii) evidenced in writing; and (iii) determined based on a Party's proportional use and occupancy of the property, unless otherwise agreed to by the Parties.
4. Programming: Except as provided in the next sentence, City and ASU will agree upon, and ASU shall provide at its sole cost and expense, programming at the Former Council Chambers that directly supports ASU's Academic Programming. To ensure ASU's use of the Former Council Chambers continues as intended by the Parties, ASU will offer Academic Programming at the Former Council Chambers unless: (i) the building is not useable by ASU for any Academic Programming based upon a commercial reasonableness standard; or (ii) as otherwise agreed to in writing by the Parties.

ii. 51-55 E. Main Street:

1. Use and Occupancy: Exclusive tenancy by ASU of designated portions of 51-55 E. Main Street and a non-exclusive license for use by ASU of certain common areas of the property, that will be evidenced by a lease between the Parties, the terms of which will be at each Party's sole and absolute discretion and will include, at a minimum the following provisions: (a) the amount of the rental fee and (b) the subleasing and sublicensing rights of the Parties. Notwithstanding the foregoing in this Subsection (1), should City agree to 51-55 E. Main Street being developed as a Potential Development Site, rather than a Partner Location (see Subsection (2)(b) below), then the tenancy and license requirements for 51-55 E. Main Street in this Subsection, including the ability of ASU to sublicense or sublease, will be governed by Subsections 10(a)(ii) or 10(b)(ii), as applicable. Additional information related to the use, occupancy, and development of 51-55 E. Main Street as a Potential Development Site is set forth in Subsection 2(b) below.
2. Development/Improvements:
 - a. City Development: The City is currently developing a concept for the redevelopment of 51-55 E. Main Street into an architecturally significant high-rise building designed to accommodate first-floor retail, office, institutional, and residential uses, which would be developed at City's sole cost and expense, and at City's sole and absolute discretion, including the budget for the redevelopment; provided, however, City will coordinate and consult with ASU on the design of improvements to the areas of the property that are subject to the exclusive use of ASU to ensure such areas are designed and constructed in a manner that supports the operational and programming needs of ASU.
 - b. Joint Development or ASU Development: Notwithstanding the foregoing in Subsection (a), by an agreement of the Parties, City may allow, at City's sole and absolute discretion as evidenced in writing, 51-55 E. Main Street to be developed as a Potential Development Site that is either a Joint Development or ASU Development, so long as the development proposal is consistent with the City's vision for development. Should 51-55 E. Main Street be developed as a Joint Development or ASU Development, then 51-55 E. Main Street shall no longer be a Partner Location under this Agreement, but will instead be a Potential Development Site subject to the applicable requirements for a Joint Development or an ASU Development set forth herein,

including: (i) having a Development Determination Period (see Section 6(a)(v) below for requirements specific to 51-55 E. Main Street); (ii) meeting Development & Operation Requirements and Academic Programming requirements (see Section 8); (iii) each Party meeting their responsibilities for a Joint Development or an ASU Development, as applicable (see Section 9 and Section 10); (iv) having a Concept Plan (see Section 12 below); and (v) the Parties will agree to certain restrictions on the types of third party tenants and licensees and/or their use of 51-55 E. Main Street, which shall include that for the term of ASU's lease/license of the Potential Development Site, no portion of 51-55 E. Main Street may be leased/licensed to any college, university or institution of higher learning other than ASU, unless otherwise agreed to by ASU in its sole and absolute discretion (see Section 10).

3. Operation, Maintenance, and Repair: The cost and responsibility of operation (including utilities and janitorial services), maintenance, and repair will be: (i) agreed to by the Parties, each at their sole and absolute discretion; (ii) evidenced in writing; and (iii) determined based on a Party's proportional use and occupancy of the property, unless otherwise agreed to by the Parties.
 4. Programming: City and ASU will agree upon, and ASU shall provide at its sole cost and expense, Academic Programming at 51-55 E. Main Street that will meet the same requirements for Academic Programming for a Potential Development Site section forth in Subsection 8(b), that will be incorporated into ASU's lease. To ensure ASU's use of 51-55 E. Main Street continues as intended by the Parties, ASU will offer programming that directly supports ASU's Academic Programming at 51-55 E. Main Street unless: (i) the building is not useable by ASU for any Academic Programming based upon a commercial reasonableness standard; or (ii) as otherwise agreed to in writing by the Parties.
 5. Signage. The Parties agree that during the term of any lease between City and ASU for any portion of 51-55 E. Main Street, City will not permit any new exterior signage (other than that existing on the Effective Date) on 51-55 E. Main Street of any college, university or institution of higher learning other than ASU, unless otherwise agreed to by ASU in its sole and absolute discretion.
- iii. Occupancy and Use of Partner Locations by City and Third-Parties: ASU specifically acknowledges that City shall have the right to the occupancy and use of both Partner Locations for City's own purposes, and City may also allow third parties to use or occupy the Partner Locations via the terms

of a lease or license agreement; provided, however, that City will: (1) not lease or license any portion of the Former Council Chambers for the exclusive use of a third party except as permitted by Section 4(b)(i)(1)(b); and (2) work with ASU in the determination of how the Partner Locations may be used in a manner that supports the educational goals of ASU, but allows use of the locations by City and third-parties. Notwithstanding the foregoing, City specifically acknowledges that if ASU enters into a lease for the Former Council Chambers as permitted by Section 4(b)(i)(1)(a), then City will not use or occupy the Former Council Chamber in a manner in violation of the Prohibited Uses set forth in lease, and provided further the City will work with ASU in the determination of how the Former Council Chambers may be used in a manner that supports the educational goals of ASU, but allows use of the Former Council Chamber by City and third-parties.

- c. Revenue from Partner Locations: Except as otherwise permitted in Section 18 relative to parking revenue, all revenue generated at or from Partner Locations, including the City's licensing to third parties, shall be the sole and exclusive property of City so long as the project is developed solely from City funding. For the purpose of clarity, if 51-55 E. Main Street is converted to a Potential Development Site in accordance with Section 4(b)(ii)(2)(b), that is developed as either a Joint Development or ASU Development, then Section 18 and Section 19(c) will control revenue sharing of the location.
5. City Ownership Rights; Limitation on Further Encumbrances: As of the Effective Date, all the Potential Development Sites and Partner Locations are City-Owned Property and City maintains all rights of ownership allowed by law, including the rights of possession, control, exclusion, disposition, and enjoyment (collectively, "City Ownership Rights"), except for those rights that may be held by third parties which may be evidenced in the official records of Maricopa County or in an agreement with the City (e.g., right of tenancy through a lease). The Parties specifically acknowledge that Site 1 is the subject of a third-party lease for a post office, the term of which does not expire until May 31, 2025, and that it is the intent of the City Council that a post office remain as a component of Site 1; therefore, the Parties agree they will work in good faith on a plan for Site 1 that would allow for Site 1 to be used as an ASU Facility and as a retail post office. City further agrees that during the applicable Development Determination Period for each Potential Development Site, the City will not encumber the Potential Development Site with any leases, licenses, occupancy agreements, use rights or otherwise that would defeat the intent of this Agreement by prohibiting the location from being developed as a Potential Development Site. The Parties agree that this Agreement is not intended to, shall not be interpreted to, and does not: (i) give ASU any ownership, tenancy, or possession rights, including that no rights are granted herein to ASU for a right of first refusal or option to purchase or lease any City-Owned Property; and (ii) place or impose a lien, encumbrance, burden or similar constraint on any City-Owned Property.

6. Development Determination:

- a. Periods of Time for Determination; ASU Facility Documents: The Parties shall have the time periods set forth in this Subsection (a) to complete all the following as it pertains to a Potential Development Site (with respect to each Potential Development Site, a “Development Determination Period”): (A) mutually make a determination whether to develop the Potential Development Site; (B) agree upon whether the site will be a Joint Development or ASU Development (see Section 9); (C) agree upon a Concept Plan (Section 12) and an Initial Project Budget (Section 14) for the development of the Potential Development Site; and (D) enter into and fully execute the applicable documents for the development of the Potential Development Site which shall include, at a minimum, the Site Lease (see Section 11 for requirements related to a Site Lease) and, as reasonably determined by the Parties, a development agreement (collectively, the “ASU Facility Documents”).
- i. Site 1 (Post Office): The Development Determination Period for Site 1 begins on the Effective Date and expires on June 1, 2025. The ASU Facility Documents for Site 1, which must be fully executed by the end of the Site 1 Development Determination Period, will include, at a minimum, requirements in the Site Lease that: (a) the construction for the project must be complete within five (5) years of the effective date of the Site Lease, which completion will be evidenced by the issuance of a final certificate of occupancy for the development; (ii) if requested by City, at its sole and absolute discretion, the ground floor of any development will include a retail component for use by, at a minimum, the U.S. Postal Service; and (iii) for a Joint Development of Site 1, language related to the requirements in Section 10(a)(iv) limiting the transfer of ownership of the improvements for a post office.
- ii. Site 2 (Mesa Public Library Parking Lot): The Development Determination Period for Site 2 begins on the Effective Date and expires ten (10) years later. The ASU Facility Documents for Site 2, which must be fully executed by the end of the Site 2 Development Determination Period, will include a requirement in the Site Lease that the equivalent number of public parking and City employee parking spaces that exist at Site 2 as of the Effective Date (the “Required Site 2 Parking Spaces”) shall remain at Site 2 or be relocated to an alternative location in close proximity to Site 2, as mutually agreed to by the Parties. If the Required Site 2 Parking Spaces are located on Site 2 or at such other location owned by ASU, then the Required Site 2 Parking Spaces will be maintained and repaired by ASU, at ASU’s sole cost and expense. If the Required Site 2 Parking Spaces are located at an agreed upon alternative location on City-Owned Property, then City shall maintain and repair, at its sole cost and expense, the Required Site 2 Parking Spaces. At all times, City shall have the right to determine the use of the Required Site 2 Parking Spaces, whether by City, a third-party, or the general public, at its sole and absolute discretion. City and ASU will negotiate any sharing of revenue from the Required Site 2 Parking Spaces as an element of the

Site Lease. The Development Determination Period for Site 2 may be extended for a period of five (5) years if, prior to the expiration of the Site 2 Development Determination Period: (a) Site 1, Site 3, or an Additional Location that is added as a Potential Development Site is developed as ASU Facilities, with construction completed as evidenced by the issuance of a final certificate of occupancy; or (b) 51-55 E. Main Street is developed as a Potential Development Site by ASU as an ASU Development in accordance with Section 4(b)(ii)(2)(b) above. The maximum number of extensions of the Site 2 Development Determination Period will be three (3) extensions, providing for a total possible extension of the period up to fifteen (15) years, and a total maximum Development Determination Period of twenty-five (25) years.

- iii. Site 3 (Municipal Building): The Development Determination Period for Site 3 will begin on the date City notifies ASU that Site 3 is, or will be by a date certain, vacant and available for use, and, from the date of the notice, the Site 3 Development Determination Period will continue for two (2) years. The ASU Facility Documents for Site 3, which must be fully executed by the end of the Site 3 Development Determination Period, will include, at a minimum, a requirement that the construction for the project must be complete within four (4) years of the effective date of the Site Lease for Site 3, which completion will be evidenced by the issuance of a final certificate of occupancy for the project.
 - iv. Additional Locations: The Development Determination Period for any Additional Location will begin on the date the Additional Location becomes a Potential Development Site and will continue until the expiration or earlier termination of this Agreement.
 - v. 51-55 E. Main Street as a Potential Development Site: If 51-55 E. Main Street is converted to a Potential Development Site in accordance with Section 4(b)(ii)(2)(b), the Development Determination Period for 51-55 E. Main Street begins on the date the Parties agree, in accordance with this Agreement, to convert the Site from a Partner Location to a Potential Development Site and expires five (5) years thereafter. The ASU Facility Documents for 51-55 E. Main Street, which must be fully executed by the end of the 51-55 E. Main Street Development Determination Period, will include, at a minimum, requirements in the Site Lease that: (a) the construction for the project must be completed within an agreed upon time of the effective date of the Site Lease for 51-55 E. Main Street, which completion will be evidenced by the issuance of a final certificate of occupancy for the development; and (ii) nonrevocable use and occupancy rights for City.
- b. Limitations on Use and Development by City During Development Determination Process: During the applicable Development Determination Period for a Potential Development Site, the City will not permit any sale or transfer to a third-party or

the development of the applicable Potential Development Site, unless otherwise contemplated herein, until the earlier to occur of (i) the expiration of the applicable Development Determination Period, or (ii) the removal of a Potential Development Site as set forth in Subsection (c) below.

- c. Removal of Potential Development Site: A Potential Development Site shall no longer be available for use or development as an ASU Facility under any of the below circumstances and, without further act of either Party, the applicable City-Owned Property constituting the Potential Development Site shall no longer be subject to the terms and conditions of this Agreement.
 - i. At the expiration of the applicable Development Determination Period.
 - ii. Following written notice provided by ASU to City that ASU will no longer seek the development and use of the Potential Development Site as an ASU Facility.
 - iii. Following a request submitted by City and approved by ASU in which City requests that a Potential Development Site be removed. City shall submit all such requests in writing to the addresses for notice in Section 24 below and ASU shall answer such request within ninety (90) days of notice of the request by City. ASU will review any such request in good faith and may deny the request for reasonable grounds; provided, however, that should ASU deny the request, the denial shall be provided to City in a writing that sets forth the reasonable grounds for such denial, which writing shall be signed by the person who then holds either of the following positions at ASU, as such titles may be amended from time to time (the “Authorized Signatory”): (i) President or (ii) the person who is the Executive Vice President, Treasurer and Chief Financial Officer. If ASU does not provide a response signed by an Authorized Signatory to City within such ninety (90) day period, City shall provide one additional written notice to ASU, which shall contain prominent language that the notice is a SECOND NOTICE and that failure to respond within fifteen (15) days from the second notice shall result in ASU being deemed to have approved the City’s request to remove the Potential Development Site.
 - iv. Condemnation of more than fifty percent (50%) of the area constituting the real property or improvements for the Potential Development Site by any third-party governmental authority. For clarity, if less than fifty percent (50%) of the real property or improvements is condemned by a third-party governmental authority, the Parties acknowledge that any portion of the Potential Development Site condemned by the third-party shall not be considered a portion of the Potential Development Site as described in this Agreement as City would no longer be the owner of that portion of the location.

- v. Based upon termination of the Agreement in accordance with the requirements of Section 20.
- 7. Term: The term of this Agreement will begin on the Effective Date and end on the earlier of either (a) the expiration of all the Development Determination Periods, or (b) twenty-five (25) years from the Effective Date ("Term").
- 8. Minimum Requirements:
 - a. General: In addition to other required document terms referred to in this Agreement, for the purpose of assuring the success of ASU's mission and the development of the City Center, the ASU Facility Documents applicable to a Potential Development Site will include the following as mutually agreed to by the Parties: (i) requirements for the development, operation, and maintenance of the facilities, including staffing minimums ("Development & Operation Requirements"); and (ii) requirements for the minimum academic programming offered by ASU at the location, including the minimum number of faculty and staff and the frequency of the academic programming offered ("Academic Programming").
 - b. Requirements: The Academic Programming offered by ASU at each Potential Development Site will be provided at ASU's sole cost and expense. ASU may only replace or remove successful Academic Programming for a specific Potential Development Site after consultation by ASU's Provost or President with the City Manager not less than six (6) months prior to the replacement or removal of the program. What constitutes successful Academic Programming is to be determined by ASU in its reasonable discretion, looking at the past and future expected enrollment of students and other relevant factors. The replacement or removal of any Academic Programming shall not affect ASU's obligation for providing the minimum number of students and faculty agreed to by the Parties with respect to the Academic Programming requirements. To satisfy the minimum Academic Programming requirements, students and faculty will use the applicable Potential Development Site during the academic semesters mutually agreed to by the Parties in the applicable Site Lease, and staff may use the same year-round to satisfy the Development & Operation Requirements. For purposes of the Academic Programming requirements: (i) the minimum number of students shall be calculated as the number of students enrolled in courses or participating in course-related or research activities conducted at the applicable Potential Development Site during the course of an academic year; and (ii) the minimum number of faculty shall be calculated as the number of faculty who have teaching, research or other responsibilities that are conducted at the applicable Potential Development Site. For the Development & Operation Requirements, the minimum number of staff shall be calculated as the number of staff based primarily at the applicable Potential Development Site.
 - c. Maximum Term for Requirements: Notwithstanding anything to the contrary contained herein, for each Potential Development Site, the Development &

Operation Requirements and Academic Programming requirements must be maintained throughout the term of the Site Lease for the ASU Facility, whether or not the building improvements are owned by City or ASU, and the requirements shall only expire upon the expiration or earlier termination of the applicable Site Lease.

9. Joint Development & ASU Development: As set forth more fully below, the development and construction of ASU Facilities on any Potential Development Site may be completed either jointly, by ASU and City, or solely by ASU. The development of Potential Development Sites may occur in any order, and development and completion of any single Potential Development Site does not require the development of any other Potential Development Site(s).
 - a. Joint Development: If City and ASU determine they will jointly develop a Potential Development Site (“Joint Development”), such development will be subject to the approval of City and ASU, each in its sole and absolute discretion. City and ASU will only consider the development of a specific Potential Development Site for Joint Development subject to reasonable time limitations on the completion of development and after the following requirements are met:
 - i. The Parties will identify and mutually agree on the Potential Development Site, adequate funding sources to cover the costs of the development of the project on the Potential Development Site (see Section 14 and Section 15 for more information), and the proportion of the total funding to be provided by each Party which, for City shall be a flat amount of funding City will contribute that will serve as the maximum amount of funds City will provide for the development and construction of the Potential Development Site (“City Contribution”), and all of the remainder of the funding for the Potential Development Site will come from ASU, except that the City Contribution may be increased as set forth in Section 14(b).
 - ii. The cost and responsibility of operation (including utilities and janitorial services), maintenance, and repair for the Joint Development on the Potential Development Site will be: (i) agreed to by the Parties, each at their sole and absolute discretion; (ii) evidenced in writing; and (iii) determined based on a Party’s proportional use and occupancy of the property, unless otherwise agreed to by the Parties.
 - iii. The Parties must agree to the terms of the ASU Facility Documents for the Potential Development Site, including a Site Lease which will include those applicable terms set forth in **Exhibit C**.
 - b. ASU Development: If, after consultation between the Parties, City and ASU determine not to carry out the Joint Development of a Potential Development Site, then ASU may proceed with the development of the Potential Development Site (“ASU Development”) subject to reasonable time limitations on the completion of construction and only after all the following requirements are met:

- i. ASU, acting in good faith, agrees in writing to bear full responsibility for the development and construction of the Potential Development Site, and to not unreasonably condition or delay the development of the applicable Potential Development Site. The cost and responsibility of operation (including utilities and janitorial services), maintenance and repair for the ASU Development on the Potential Development Site will be: (i) agreed to by the Parties, each at their sole and absolute discretion; (ii) evidenced in writing; and (iii) determined based on a Party's proportional use and occupancy of the property, unless otherwise agreed to by the Parties. Notwithstanding the foregoing, any decision related to the Potential Development Site that is made by the Board of Regents, including those related to the ASU Facility Documents, shall not be subject to this Subsection (b)(i) and shall be approved or denied at the Board of Regent's sole and absolute discretion.
 - ii. City, acting in good faith, agrees in writing, to not unreasonably condition or delay the development of the applicable Potential Development Site; notwithstanding the foregoing, any decision related to the Potential Development Site that is made by the City Council, including those related to the ASU Facility Documents, shall not be subject to this Subsection (b)(ii) and shall be approved or denied at the City Council's sole and absolute discretion.
 - iii. The Parties agree upon the terms and conditions of the ASU Facility Documents for the Potential Development Site, including a Site Lease which will include those applicable terms set forth in **Exhibit C**.
- 10. Site Development, Construction, Ownership and Use: For each Joint Development and ASU Development, the development and construction for the Potential Development Site, the ownership of the real property and improvements for the Potential Development Site, and the relationship between the Parties for the occupancy or use of the Potential Development Site is set forth in this Section 10.
 - a. Joint Development: For a Joint Development on a Potential Development Site:
 - i. Developing Party: City is the Developing Party and funding for the project shall come from the contributions of both Parties, with the maximum amount of funding from City being the amount of the City Contribution, based on the Initial Project Budget and any modifications thereto.
 - ii. Occupancy & Use: ASU shall enter into a Site Lease with City for the occupancy and use of all or a portion of the property. City shall maintain occupancy and use rights to the property that will be evidenced in the Site Lease and subject to the requirements set forth in Section 3(b)(i) of **Exhibit C**, including that City will have the first right of use, occupancy and lease for the first (ground) floor of 51-55 E. Main Street if it is developed as a Potential Development Site that is a Joint Development. The

Parties will agree to certain restrictions on the types of third-party tenants and licensees and/or their use, which shall include that for the term of ASU's Site Lease the Potential Development Site shall not be leased/licensed to any college, university, or institution of higher learning other than ASU, unless otherwise agreed to by ASU in its sole and absolute discretion. ASU will not be permitted to sublease any portion of a Joint Development without the prior written approval of City. ASU will be permitted to sublicense any portion of a Joint Development without the prior written approval of the City so long as the use is not a Prohibited Use. Notwithstanding the foregoing, if the 51-55 E. Main Street Partner Site is converted to a Potential Development Site and City does not use, occupy, or lease the first (ground) floor, ASU cannot sublease or sublicense the first (ground) floor without the City's prior approval which will be given at the City's sole and absolute discretion.

- iii. Ownership of Real Property; 51-55 E. Main Street Exception: City shall own the real property at the Potential Development Site; provided, however, if 51-55 E. Main Street becomes a Potential Development Site that is a Joint Development, then City may transfer or sell its ownership rights of the real property to ASU upon such terms and conditions agreed to by the Parties, each in their reasonable discretion. For the purposes of clarity, the Parties acknowledge that the transfer or sale of ownership of the 51-55 E. Main Street shall: (i) only occur in accordance with applicable law, including statutes and regulations related to any municipal bond financing; and (ii) require the execution of documents reasonably necessary for the transfer of the real property and the terms of such necessary documents shall be subject to the approval of the City Council and the Board of Regents, respectively, each at their sole and absolute discretion.
- iv. Ownership of Improvements:
 - 1. City Ownership: City shall own the improvements on a Joint Development until an "ASU Ownership Triggering Event", which is defined as the later of (a) the repayment and release of all municipal bond financing related to the development of the site, if any, or (b) thirty (30) years.
 - 2. Transfer of Ownership of Building: Following an ASU Ownership Triggering Event, City will transfer to ASU its ownership rights in the improvements on the real property for the remainder of the term of the Site Lease, free and clear of all liens and encumbrances but for those agreed to by the Parties (except that no financial liens or encumbrances will be permitted).
 - 3. Conditions on Transfer: City's obligation to transfer to ASU its ownership rights in the improvements shall be conditioned upon ASU being in compliance with the Site Lease at the time of the ASU

Ownership Triggering Event, and the Parties executing a lease or other agreement in a form acceptable to City and ASU, that is nonrevocable, allowing City use, occupancy, and access to the improvements in the same manner as City was entitled to at the time of the ASU Ownership Triggering Event. City shall not be required to transfer ownership of the improvements to ASU until the conditions in this Subsection (3) are met.

4. Transfer Back to City: Following the expiration or earlier termination of the Site Lease, ASU will transfer the ownership of the improvements back to City, free and clear of all liens and encumbrances but for those agreed to by the Parties (except that no financial liens or encumbrances will be permitted).
5. Additional Transfer Considerations: For the purposes of clarity, the Parties acknowledge that the transfer of ownership of the improvements shall: (i) only occur in accordance with applicable law, including statutes and regulations related to any municipal bond financing for the improvements; (ii) not include the underlying real property on which the improvements are located, which at all times shall remain owned solely by City; and (iii) require the execution of documents reasonably necessary for the transfer of the improvements and, in the case of transfer to ASU from City, an amendment to the Site Lease or execution of a new ground lease to reflect the transfer in ownership, provided, however, that the terms of such necessary documents shall be subject to the approval of the City Council and the Board of Regents, respectively, each at their sole and absolute discretion.
6. Exception for Site 1 (Post Office): Unless otherwise agreed to by the Parties, each at their sole and absolute discretion, if at the time of an ASU Ownership Triggering Event, the U.S. Postal Service or other federal agency or its representative has a lease or license with City for the operation of a post office at Site 1, then the portion of the Site 1 improvements used for or by the post office shall not transfer to ASU and shall remain the property and under the ownership and control of City until such time as a post office is no longer operated at the location or such other time as may be agreed to by the Parties.

b. ASU Development: For an ASU Development on a Potential Development Site:

- i. Developing Party: ASU is the Developing Party, and ASU shall be solely responsible for the funding of all costs and expenses related to the development and construction of the project.

- ii. Occupancy & Use: ASU shall enter into a Site Lease with City in the form of a ground lease of the real property. City shall have nonrevocable occupancy and use rights to the property, as evidenced in the Site Lease and subject to the requirements set forth in Section 3(b)(ii) of **Exhibit C**. Except as provided in the following notwithstanding clause, ASU will be permitted to sublease and sublicense any portion of the ASU Facilities that are the subject of a Site Lease for a Potential Development Site that is an ASU Development without the City's prior written consent so long as the use is not a Prohibited Use. Notwithstanding the foregoing, if the 51-55 E. Main Street Partner Site is converted to a Potential Development Site, the City's prior written approval shall be required for any subleases or sublicenses of space located on the first (ground) floor of such building, which is given or withheld at City's reasonable discretion. For the term of ASU's Site Lease the Potential Development Site shall not be leased/licensed to any college, university or institution of higher learning other than ASU, unless otherwise agreed to by ASU in its sole and absolute discretion. ASU will be permitted to sublicense any portion of a Joint Development without the prior written approval of the City so long as the use is not a Prohibited Use.

- iii. Ownership of Real Property: City shall own the real property at the Potential Development Site; provided, however, if 51-55 E. Main Street becomes a Potential Development Site that is an ASU Development, then City shall transfer or sell its ownership rights of the real property to ASU upon such terms and conditions agreed to by the Parties, each in their reasonable discretion. For the purposes of clarity, the Parties acknowledge that the transfer or sale of ownership of the 51-55 E. Main Street shall: (i) only occur in accordance with applicable law; and (ii) require the execution of documents reasonably necessary for the transfer of the real property and the terms of such necessary documents shall be subject to the approval of the City Council and the Board of Regents, respectively, each at their sole and absolute discretion.

- iv. Ownership of Improvements:
 - 1. ASU Ownership: ASU shall own the improvements during the term of the Site Lease.

 - 2. Transfer of Ownership to City: Following the expiration or earlier termination of the Site Lease, ASU will transfer the ownership of the improvements to City, free and clear of all liens and encumbrances but for those agreed to by the Parties (except that no financial liens or encumbrances will be permitted).

 - 3. Transfer Considerations: For the purposes of clarity, the Parties acknowledge that the transfer of ownership of the improvements to City shall: (i) only occur in accordance with applicable law; (ii) not

include the underlying real property on which the improvements are located, as the real property will not be owned by ASU and is owned solely by City; and (iii) require the execution of documents necessary for the transfer of the improvements, provided, however, that the terms of such necessary documents shall be subject to the approval of the City Council and the Board of Regents, respectively, each at their sole and absolute discretion.

- c. Exception: ASU Ownership of Real Property & Improvements. Notwithstanding the foregoing in Subsection (10)(b)(iv), if the City agrees to sell or otherwise transfer to ASU 51-55 E. Main Street pursuant to Subsections 10(a)(iii) or 10(b)(iii), then ASU will also own the improvements, and ASU shall offer the opportunity for City to enter into a lease with ASU related to City's use and occupancy of a portion of 51-55 E. Main Street, the terms of which will be agreed upon by the Parties, each at their reasonable discretion, prior to the sale or transfer of the property to ASU.
11. Leasing of a Potential Development Site (Site Lease): Subject to the prior authorization and approval of the terms and conditions by the governing body of each Party, which is given or withheld by each at its sole and absolute discretion, the Parties will enter into a lease for the real property for each Potential Development Site and the improvements for certain Potential Development Sites, as applicable pursuant to the terms herein, with City as "lessor" or "landlord" and ASU as "lessee" or "tenant" (a "Site Lease"). It is the intent of the Parties that: (i) each Site Lease be negotiated by the Parties within a reasonable time during the applicable Development Determination Period; (ii) the Site Lease be subject to mutual acceptability and commercial reasonableness, including that the design and construction of the development is completed in a commercially reasonable time frame; (iii) those applicable additional terms and conditions to the lease set forth in **Exhibit C** are included in the Site Lease and the Parties will negotiate such other terms for the Site Lease as necessary, including those events of default material to the Site Lease that, if uncured, allow for the remedy of termination by City; and (iv) the financial costs related to the applicable Potential Development Site shall be individually negotiated and commensurate with the space.
 12. Concept Plan: The Parties will prepare a separate conceptual development plan for each Potential Development Site that will be consistent and support the applicable Development & Operation Requirements and Academic Programming requirements agreed to by the Parties ("Concept Plan"). For a Joint Development, the Parties will agree on the procurement of the architectural design firm, and the Parties will evenly split the cost of the applicable Concept Plan with such funds provided by the City being calculated towards the City Contribution for the Potential Development Site. For an ASU Development, ASU shall be responsible, in consultation with the City, for procuring the architectural design firm for the applicable Concept Plan, and ASU shall be solely responsible for all costs of the Concept Plan. Each Concept Plan will be subject to review and approval by the Parties and is intended to incorporate the following elements:

- a. Preliminary identification of the specific uses of the pertinent portion of the facilities;
 - b. Elements that address building massing, height and exterior treatments (including materials, color, and architectural style);
 - c. Conceptual design standards and guidelines that ensure consistency with the other ASU Facilities; and
 - d. Conceptual plans for applicable civic space, streetscape, landscape, parking (if applicable), and pedestrian connections specific to the Potential Development Site.
13. Public Infrastructure and City Center Plaza: The Parties will agree upon the Public Infrastructure reasonably necessary to support a Joint Development or ASU Development as follows:
- a. ASU shall identify and submit to City for its review and approval, proposed Public Infrastructure necessary to support the applicable Joint Development or ASU Development.
 - b. As a part of the development and construction of Phase I, City developed and now operates and maintains a public open space as a plaza within the City Center that is used as a City park, open to the general public for its use and enjoyment (commonly known as the “Plaza at Mesa City Center”). As a part of the Public Infrastructure for the applicable Joint Development or ASU Development, the Parties shall consider the construction of additional public open space or an expansion of the current open space, each in their respective reasonable discretions. The open space currently located at the Plaza Mesa City Center is depicted on **Exhibit B**, and the Parties agree that such open space may change in the future, subject to agreement of the Parties, each exercising their respective reasonable discretion (except that both Parties acknowledge that a decision of their respective governing bodies related to the Public Infrastructure is at the sole and absolute discretion of the governing body for the respective Party).
 - c. A budget for design and completion of the Public Infrastructure for each applicable Joint Development and ASU Development shall be established and prepared by City at City’s sole cost and expense prior to any design and construction of Public Infrastructure, and such budget shall be subject to ASU’s reasonable approval. (See Section 14 for more information on budgets.)
 - d. The location and cost of design and construction of the Public Infrastructure shall be determined as a part of the negotiation of the ASU Facility Documents for the applicable Potential Development Site and will be as mutually agreed to between the Parties, each acting in good faith and using its respective reasonable judgment (except that both Parties acknowledge that a decision of their respective governing bodies related to the cost of the Public Infrastructure is at the sole and absolute discretion of the governing body for the respective Party). If City contributes to

the cost of design and construction of the Public Infrastructure, such contribution will be calculated towards the City Contribution for the Potential Development Site.

14. Budget:

- a. Initial Project Budget: Prior to the design (including the Concept Plan) or engineering of any Potential Development Site to be developed as a Joint Development, or at such other time as may be mutually agreed to between the Parties, the Parties shall agree to an initial project budget for the design and construction of the applicable Joint Development and the related Public Infrastructure (the “Initial Project Budget”), each acting in good faith and using its respective reasonable judgment (except that both Parties acknowledge that a decision of their respective governing bodies related to the Initial Project Budget is at the sole and absolute discretion of the governing body for the respective Party). If the Parties, after good faith attempts, are not able to agree to an Initial Project Budget, either Party upon written notice may terminate this Agreement as it relates to the applicable Potential Development Site in accordance with Section 20. The Initial Project Budget will identify (i) the total design, construction, and development costs, and (ii) the amount of the City Contribution for the development and construction of the Potential Development Site, with the remainder of the necessary funding for the project coming from ASU.
- b. Modifications: Except as set forth below, after approval by both Parties of an Initial Project Budget for a Joint Development, neither Party shall be obligated to agree to a modification of the budget requiring the Party to expend an amount greater than its required amount in the approved Initial Project Budget, unless such Party, in its sole and absolute discretion, agrees to the change in writing. An approval of a change in the Initial Project Budget requiring a Party to expend additional funds may be conditioned on reimbursement or cost sharing of the additional amounts by the other Party, provided that such reimbursement or cost sharing is subject to the other Party’s approval, in its sole and absolute discretion. Notwithstanding the foregoing, after the Parties have agreed upon an Initial Project Budget, unless otherwise agreed to by the Parties, the following shall apply to adjustments to the Initial Project Budget which require a Party to contribute or expend more funds to the development and construction related to a Joint Development:
 - i. If the increase to the Initial Budget for a Joint Development is based upon a request or need of City, City shall be solely responsible for the entire cost of the increase and the City Contribution to the project shall be increased proportionately to the amount of the increase to the Initial Budget necessitated by City’s request or need.
 - ii. If the increase to the Initial Budget for a Joint Development is based upon a request or need of ASU, ASU shall be solely responsible for the entire cost of the increase.

- iii. If the increase to the Initial Budget for a Joint Development is for any other reason, including for a general cost escalation based on inflation, the Parties may agree on a cost sharing of the increase to the Initial Budget; provided, however, that in the event any such cost sharing will result in an increase to the City Contribution, City staff will act in good faith to recommend a reasonable allocation of the increased cost between the Parties. Notwithstanding the foregoing, ASU acknowledges that the increase in the City Contribution must be approved by the City Council, at its sole and absolute discretion, and, should the City Council not approve the increase to the City Contribution, ASU shall be solely responsible for the payment of the additional funds for development and construction; provided that in such event, the Parties will value engineer the project to decrease the cost escalations.
- 15. Financing: The financing for each Potential Development Site or the Partner Location, including related Public Infrastructure and other City Center improvements (collectively, “Financing”), such as the amount of any Financing and any debt service, shall be determined by the applicable Party, at the Party’s sole and absolute discretion; provided that the parameters for the responsibility for the Financing for the costs and expenses of a Potential Development Site or a Partner Location, shall be in accordance with this Agreement. City and ASU will agree to a Financing structure on a case-by-case basis for a Potential Development Site, which may include obtaining Financing through municipal bond financing at the City’s sole and absolute discretion and in accordance with applicable law. Nothing herein shall be deemed to require City to seek municipal bond financing for any Potential Development Site or Partner Location, or the related Public Infrastructure or other City Center improvements.
- 16. Student or Faculty Housing: The Parties acknowledge that, although student and faculty housing may be desired in the future, no student or faculty housing is included in the ASU Facilities, and the Parties are not obligated under this Agreement to provide student or faculty housing; provided, however, that, at the sole and absolute discretion of each Party, the Parties may agree that the following locations may be developed, in whole or in part, to accommodate student or faculty housing: (i) Site 2 (Mesa Public Library Parking Lot), and (ii) 51-55 E. Main Street (whether as a Potential Development Site or Partner Location) but student or faculty housing at 51-55 E. Main Street may only be provided in conjunction with a mixed-use building. Notwithstanding the foregoing, the Parties will work in good faith to address issues related to student and faculty housing,
- 17. Development of the City Center: City may develop and redevelop the remaining portions of City Center that are not identified herein as a Potential Development Site or Partner Location, in City’s sole and absolute discretion; provided however, City will provide ASU with an opportunity to review and comment on any City Center non-ASU related development.
- 18. Parking: ASU and City will collaborate on providing parking to serve both ASU-generated parking demand and replacement parking for spaces eliminated from the City Center area to accommodate development of the ASU Facilities located within the City Center;

however, it is not intended that each Potential Development Site or Partner Location will provide student, faculty or staff parking except that the locations may accommodate disabled parking and certain limited parking as requested by ASU and agreed to by the Parties. The inclusion of parking at a Potential Development Site or Partner Location to accommodate the use by ASU will be agreed to by the Parties on a case-by-case basis. For a Partner Location or a Potential Development Site that is a Joint Development, parking shall be controlled by City and all revenues from parking, from any source, shall be the sole property of City except, and notwithstanding any other language herein, if City, at its sole and absolute discretion, elects to allow ASU to operate, maintain, and repair the parking for a Joint Development or a Partner Location, then the parking revenues shall be shared by ASU and City, based on terms agreed to by ASU and City, each at their reasonable discretion, which may include taking into account each Party's expenses directly related to constructing, operating and maintaining the parking facilities. For a Potential Development Site that is an ASU Development: (i) all revenues from parking managed by ASU shall be the sole property of ASU and, in ASU's sole discretion, any participating private developer; and (ii) all revenues from parking managed by City shall be the sole property of City.

19. Additional Provisions, including Other (Non-Parking) Revenues and Fund Sources:

- a. Non-City Center Development by ASU: Revenue from any ASU Facilities that are (i) not a Potential Development Site or Partner Location, or (ii) for which the operations are not financed (in whole or in part) by City, not constructed within the City Center, or not constructed on other City-Owned Property, shall be the sole property of ASU and, in ASU's sole discretion, any participating private developer.
- b. Non-ASU Facilities Development by City: The terms and conditions of this Agreement govern the development in the City Center of ASU Facilities on Potential Development Sites and the use, lease or license by ASU of Partner Locations; any other development on City-Owned Property is not governed by this Agreement and all revenue from such facilities and operations shall be the sole and exclusive property of City and, in City's sole discretion, any participating developer.
- c. Non-Parking Revenue from Joint Development or ASU Development: Revenue from any ASU Facilities that are constructed as an ASU Development on a Potential Development Site shall be the sole property of ASU and, in ASU's sole discretion, any participating private developer. The sharing of revenue from any ASU Facilities that are constructed as a Joint Development on a Potential Development Site shall be determined by the Parties as a part of the negotiation of the ASU Facility Documents for the location, with the Parties taking into account the proportion each Party contributes to the total cost of the construction, renovation, operation, or maintenance. The net revenues from such Joint Development will be shared during the term of the applicable Site Lease. Notwithstanding the foregoing, the revenues from parking at a Potential Development Site shall be governed by Section 6(a)(ii) and Section 18, and revenues from parking at a Partner Location shall be governed by Section 18.

- d. Community Outreach: ASU agrees to pursue through legislative advocacy and community outreach, the identification of alternative revenue streams, gifting, etc. to assist with development of the City Center. Funds from these activities shall be utilized to further program development, to further development of City Center facilities, or to reduce the level of debt incurred by, or financial participation required from, City.
 - e. Fund Raising and Naming Rights: The Parties shall engage in fund raising for the ASU Facilities located on or to be located on a Potential Development Site to support academic programs and capital costs for such ASU Facilities. The Parties will agree in each applicable Site Lease, or in separate agreements related to the use or occupancy of a Potential Development Site, on a case-by-case basis, on how revenue from fund raising for capital costs (other than for fixtures, furniture, and equipment -- "FF&E") and entire building naming rights will be split between the Parties; provided, however, that all such generated funds shall be used on the City Center or ASU Facilities in a manner reasonably agreed to by the Parties. ASU shall have the right to grant entire building naming rights for a Potential Development Site, subject to prior consultation with City, provided that ASU shall make the final determination with respect to such naming; and further provided that no such name shall include language which is offensive to accepted standards of decency or which includes any Arizona geographic names or the names of Arizona municipalities (other than Mesa) without the prior written approval of City, not to be unreasonably withheld. Notwithstanding the foregoing, the Parties recognize that donations must be applied in accordance with the expressed intent of donors, provided that neither Party will direct donors to restrict or specify donations in a way to thwart the intent of the Parties that all proceeds of fund raising relating to the ASU Facilities will be used for the City Center or ASU Facilities.
 - f. City Services. To the extent City provides such services, during the term of any Site Lease for a Potential Development Site, ASU agrees that it will contract for and use all City of Mesa services including City's electric, natural gas, water, wastewater and solid waste; provided ASU will only be obligated to use City's solid waste services if (i) the services offered by City are similar to services provided to other ASU developments, (ii) City pricing is commercially reasonable compared to pricing offered by market alternatives, and (iii) City can provide services reasonably consistent with ASU's goals related to sustainability.
20. Termination of Agreement: In the event the Parties, exercising good faith and reasonable discretion, do not agree on the development of a Potential Development Site, budget for a Joint Development, ASU Facility Documents for a Potential Development Site, terms of a use or license agreement for a Partner Location, or if termination is otherwise expressly permitted herein, either Party may elect to terminate this Agreement with respect to the affected Potential Development Site or Partner Location. If this Agreement is terminated in whole or in part pursuant to this Section, each Party will bear its own expenses incurred in connection with this Agreement.

21. Disputes and Default:

- a. Event of Default: The failure by either Party to comply with or perform any obligation set forth in this Agreement will constitute an event of default (“Event of Default”) under this Agreement.
- b. Notice of Default: A non-defaulting Party shall give written notice of default to the Party in default specifying the default. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.
- c. Remedies: Upon the occurrence of any Event of Default not cured within ninety (90) days of notice, in addition to and not in lieu of any right or remedy available at law, in equity, by statute or under this Agreement, the non-defaulting Party may, if it so elects following mediation as provided in Subsection (d) below, terminate this Agreement by giving written notice of termination to the defaulting Party.
- d. Mediation: Should a dispute arise between the Parties under this Agreement that they cannot resolve between themselves, or should there be a claim of default by one Party against the other, such unresolved disputes or contested claims of default shall be presented to a third party independent mediator for resolution. To begin the mediation process, a Party may provide notice to the other Party for a request for mediation. The mediator shall be mutually selected by the Parties as soon as practicable after one of the Parties receives notice from the other Party asking for mediation. The mediation shall proceed promptly, and the mediator shall make findings and recommendations concerning the dispute or contested claim of default. No recommendations shall be binding on either Party. Mediation under this Section 21(d) shall occur prior to the initiation of any arbitration or legal proceeding. Failure of a Party to (i) respond to a request to begin meditation within ninety (90) days of notice of the request, or (ii) diligently proceed with mediation in accordance with the requirements of this Subsection (d), shall entitle the other Party to declare the mediation requirements of this Subsection (d) met and to move forward with other available rights and remedies for a dispute allowed pursuant to the terms of this Agreement.
- e. Cumulative Rights and Remedies: The rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by such defaulting Party.

22. Cooperation: ASU and City agree they will reasonably cooperate with each other to accomplish the objectives of this Agreement including the sharing and participating in each other’s requests for proposals where practical and permitted by law.

23. Right of Cancellation: The Parties hereto acknowledge that this Agreement is subject to cancellation by the Parties pursuant to the provisions of ARS § 38-511.

24. Delivery, Procedure of Notices and Communications: All notices, consent or other communication under this Agreement shall be in writing and either delivered in person, deposited in the United States mail as certified mail with postage prepaid, or deposited with any commercial courier or express service and addressed as follows:

To ASU: Arizona State University
Attn: Senior Vice President and University Planner

Delivery Address
300 East University Drive, Ste. 410
Tempe, AZ 85281-2061

Mailing Address
PO Box 877705
Tempe, AZ 85287-7705

With a required copy to: Arizona State University
Attn: Senior Vice President and General Counsel

Delivery Address:
300 E. University Drive, Ste. 335
Tempe, AZ 85281-2061

Mailing Address
PO Box 877405
Tempe, AZ 85287-7405

To City: City of Mesa
Attn: City Manager

Delivery Address
20 East Main Street
Mesa, Arizona 85211

Mailing Address
P.O. Box 1466
Mesa, Arizona 85211

With a required copy to: City of Mesa
Attn: City Attorney

Delivery Address
20 East Main Street
Mesa, Arizona 85211

Mailing Address
P.O. Box 1466
Mesa, Arizona 85211

Notice shall be deemed received at the time it is personally served, on the second (2nd) day after its deposit with any commercial courier or express service or, if mailed, five (5) Business Days after the notice is deposited in the United States mail as above provided. Any time period stated in a notice shall be computed from the time the notice is deemed received. Either Party may change its mailing address or the person to receive notice by notifying the other Party as provided in this Section.

25. Authorized Representatives: The following persons (each, a “Representative”) are authorized to act on behalf of their respective Parties in making or obtaining decisions regarding this Agreement unless otherwise prohibited by law, resolution, or direction of the governing body for the respective Party. Such Representative may be changed from time-to-time by giving the other Party written notice.
 - a. City: City’s Representative is City Manager (or designee).
 - b. ASU: ASU’s Representative is Senior Vice President and University Planner.
26. Effective Date: This Agreement shall become effective on the Effective Date set forth on Page 1.
27. Force Majeure: Failure by either Party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay. Any delay in the completion of construction of a Potential Development Site will automatically grant a comparable extension to ASU with respect to ASU’s responsibilities with respect to the Development & Operation Requirements and Academic Programming, taking into account academic calendars.
28. Legal Authorization: Attached hereto and incorporated herein is the written determination of each Party’s legal counsel pursuant to A.R.S. §11-952(D) that the Parties are authorized under the laws of Arizona to enter into this Agreement and that the Agreement is in proper form.
29. Standard for Agreements and Consents: Whenever this Agreement requires the Parties to give their consent or to agree on a matter, unless a different standard is expressly provided herein, the Parties will each act in good faith and exercise their respective reasonable judgment in reaching such agreement or granting such consent, not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, although the recommendation of the staff of City or ASU, respectively, may be subject to this Section, any approval or decision of the City Council or Board of Regents related to the Potential Development Sites, Partner Locations, or this Agreement, whether or not specifically referenced herein, shall be at the sole and absolute discretion of the City Council or Board of Regents, respectively, and the terms of this Agreement are not intended to bind or limit the decision making authority of either governing body.

30. Subleasing and Sublicensing. The Parties acknowledge that the ability to sublicense and sublease to third parties at the Potential Development Sites or Partner Locations is materially important to each Party to ensure that the use and occupancy of each location, once developed, is in line with the purpose and intent of this Agreement. In addition to requirements related to sublease and sublicense herein, except as it pertains to the approval by City of the subleasing or sublicensing of the first (ground) floor of 51-55 E. Main Street, when a prior written approval of a Party is required herein with respect to a sublease or a sublicense, the Parties agree that the granting Party's approval shall be limited to reviewing and approving only the following matters relative to the sublease or sublicense: (i) sublessee or sublicensee identity, (ii) confirming the use is not a Prohibited Use, and (iii) confirming the duration of the sublease expires or may be terminated on or before the term of the applicable lease or license. For the purposes of clarification:
- a. The terms "sublicense" and "sublease" as used in this Agreement do not include temporary, intermittent use by third-party users of space (e.g. third parties reserving space for an event). Uses that in the aggregate total a period of less than one year shall be considered temporary, intermittent uses.
 - b. Sublicense of property common areas will be non-exclusive and may only be done as a part of a valid sublease or sublicense.
 - c. The Prohibited Uses set forth in a Potential Development Site or Partner Location lease, Site Lease, or license are applicable to the use of the property by each Party and any third party.
 - d. Any sublease or sublicense in violation of this Agreement is void.
31. Entire Agreement: This Agreement embodies the entire understanding of the Parties related to the development of the Potential Development Sites and supersedes any other agreement or understanding between the Parties relating to the potential development of Phase II and Phase III, including superseding the language from the 2018 IGA.
32. Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
33. Nondiscrimination: The Parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act, and affirmative action.
34. Recitals and Exhibits: The Recitals and Exhibits to this Agreement, including the Supplemental Terms and Conditions attached as **Exhibit D**, are hereby incorporated into this Agreement as though fully set forth herein.

[Signature Pages Following]

IN WITNESS WHEREOF, the Parties have caused this Amended and Restated Intergovernmental Agreement to be executed by their duly authorized representatives on the date first set forth above.

CITY OF MESA, an Arizona
municipal corporation

ARIZONA BOARD OF REGENTS, A BODY
CORPORATE, FOR AND ON BEHALF OF
ARIZONA STATE UNIVERSITY

By: _____
Christopher J. Brady
City Manager

By: _____
Richard Stanley
Senior Vice President and
University Planner

ATTEST:

City Clerk

The foregoing Amended and Restated Intergovernmental Agreement has been reviewed pursuant to Arizona Revised Statutes § 11-952, as amended, by the undersigned attorney who has determined that it is in proper form and within the power and authority granted to ASU under the laws of the State of Arizona.

M. Maureen Anders
Associate General Counsel
Arizona State University

Date Signed

The foregoing Amended and Restated Intergovernmental Agreement has been reviewed pursuant to Arizona Revised Statutes § 11-952, as amended, by the undersigned attorney who has determined that it is in proper form and within the power and authority granted to the City of Mesa under the laws of the State of Arizona.

City Attorney

Date Signed

EXHIBIT A

DEPICTION OF CITY CENTER, POTENTIAL DEVELOPMENT SITES,
AND PARTNER LOCATIONS

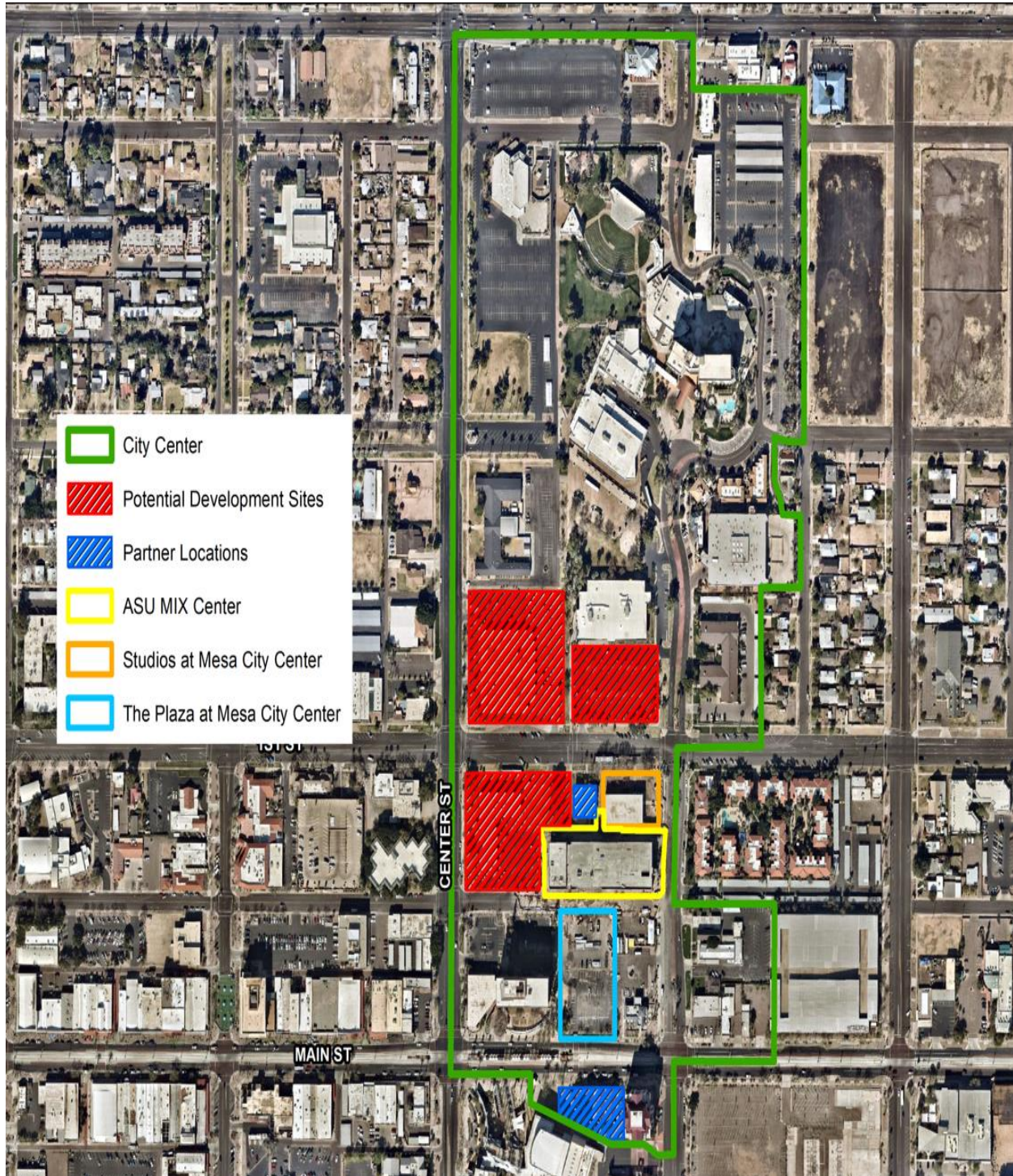


EXHIBIT B
POTENTIAL DEVELOPMENT SITES AND PARTNER LOCATIONS DETAILS

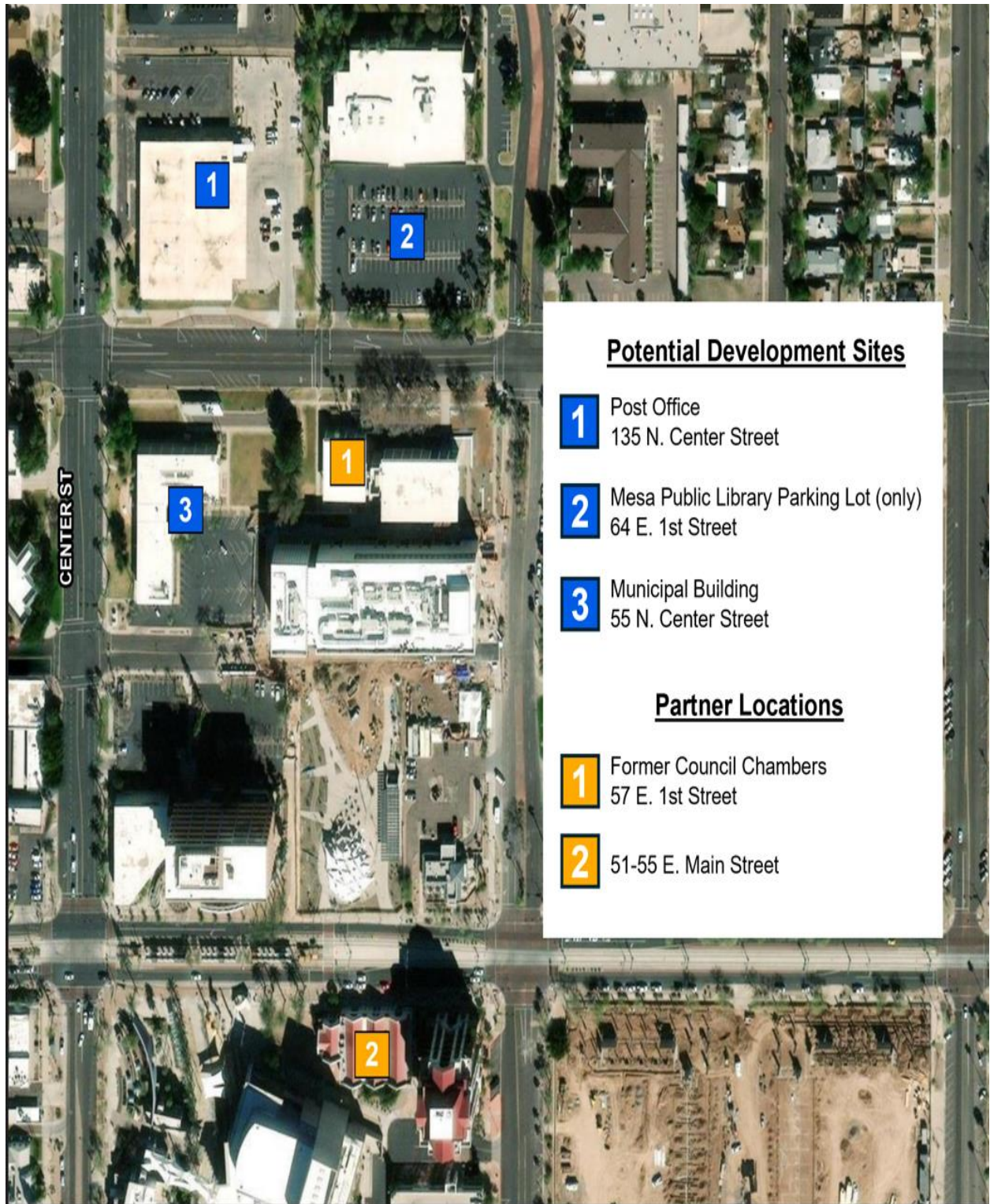


EXHIBIT C
ADDITIONAL TERMS AND PROVISIONS OF SITE LEASES

1. Term of Site Leases: With respect to Site Leases required by the foregoing Agreement for a Joint Development or ASU Development of ASU Facilities on a Potential Development Site, the Parties agree that the initial lease term for each such Site Lease will be for ninety-nine (99) years, unless sooner terminated in accordance with the Site Lease, and subject to the following extension: at any time after the first seventy-five (75) years of a Site Lease Term, if ASU, at its sole cost and expense, replaces the ASU Facilities in their entirety or expends funds for certain capital improvements agreed to by the Parties in the applicable Site Lease that are in connection with the rebuilding or improving of any portion of the specific ASU Facility, (a “Term Extension Event”), then the applicable term of the Site Lease will be automatically extended to include a term equal to the useful life of the replaced ASU Facilities or the replaced or rebuilt capital improvements, as applicable. Each time a Term Extension Event occurs, the Parties will promptly enter into an administrative amendment to the Site Lease to confirm the extended term triggered by the applicable Term Extension Event. The total of all Term Extension Events allowed under this Section 1 shall not extend the term of the Site Lease for a period greater than an additional ninety-nine (99) years. For the purposes of this Section 1:
 - a. The term “useful life” shall be a reasonable estimate, agreed to by the Parties, of how long a capital improvement can be expected to be usable before it requires replacement.
 - b. The term “capital improvement” refers to any addition or alteration to real property that meets all three of the below conditions, and specifically does not include FF&E (furniture, fixtures, and equipment), but specifically does include building systems and equipment that meet the below conditions (by way of example, but not of limitation, heating, ventilation and air conditioning systems and electrical systems):
 - i. It substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property.
 - ii. It becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself.
 - iii. It is intended to become a permanent installation.
2. Site Lease Rent. The amount of the rent to be paid by ASU to City pursuant to each Site Lease will be determined on a case-by-case basis. Rent will be paid in advance, on an annual basis, with no proration of such rent for partial years.
3. Retail or Commercial Subleases and Sublicenses: ASU has unique experience in subleasing space within its facilities to retail, commercial and other third-party tenants. The following apply to Potential Development Sites.
 - a. ASU Subleasing.

- i. Joint Development. Subleasing for a retail or commercial use by ASU of any portion of ASU Facilities that are the subject of a Site Lease for a Potential Development Site that is a Joint Development requires the prior approval in writing of City. Notwithstanding the foregoing, if 51-55 E. Main Street is developed as a Joint Development Potential Development Site, and City does not use, occupy, or lease the first (ground) floor, ASU cannot sublease the first (ground) floor without the City's prior written approval which will be given at the City's sole and absolute discretion.
 - ii. ASU Development. Subleasing by ASU for a retail or commercial use of any portion of ASU Facilities that are the subject of a Site Lease for a Potential Development Site that is an ASU Development will be permitted without the prior written consent of City so long as the use is not a Prohibited Use, except that for 51-55 E. Main Street, a sublease of the first (ground) floor of the property requires the City's prior, written, reasonable consent.
- b. City Subleasing or Sublicensing.
 - i. Joint Development. Should ASU choose, within a reasonable period of time following commencement of a Site Lease, to not occupy or sublease any portion of the ASU Facilities that are the subject of the Site Lease for a Potential Development Site that is a Joint Development, that are designed for retail or commercial purposes and are located on the first (ground) floor of a multi-story building, ASU shall notify the City and the City shall thereafter have the authority to lease or sublease, as the case may be, such first (ground) floor retail or commercial space at its sole and absolute discretion, but City shall consult with ASU about any potential subtenants or licensees prior to entering into any sublease or license, and provided further that: (1) City shall not lease or sublease to any parties if the permitted use under such lease or sublease would either be a Prohibited Use or result in a violation of any exclusive right ASU has granted to another party, which such exclusive rights require the prior written approval of City at its sole and absolute discretion; and (2) City shall not lease or sublease to any college, university or institution of higher learning other than ASU. Notwithstanding the foregoing, the Parties acknowledge that City will have the first right of use, occupancy and lease for the first (ground) floor of 51-55 E. Main Street if it is developed as a Potential Development Site that is a Joint Development, and the City agrees, without prior consult with ASU, that it will meet the requirements set forth in clauses (1) and (2) above for any sublease or license with any potential subtenants or licensees.
 - ii. ASU Development. For a Potential Development Site that is an ASU Development, City shall get the prior written approval of ASU to sublease or sublicense such space, and any such sublease or sublicense shall be subject to the requirements set forth in Subsection (1) and (2) in the preceding Subsection (b)(i). ASU shall have the right, in its sole discretion,

to recapture any such space on the expiration or termination of the term of the lease, sublease or sublicense entered into by the City.

- c. ASU Sublicensing. Sublicensing by ASU for a retail or commercial use of any portion of ASU Facilities that are the subject of a Site Lease for a Potential Development Site that is a Joint Development or an ASU Development will be permitted without the prior written consent of City so long as the use is not a Prohibited Use, except that for 51-55 E. Main Street, when City does not use, occupy, or lease the first (ground) floor, a sublicense of the first (ground) floor of the property by ASU: (a) for a Joint Development requires the City's prior written approval which will be given at the City's sole and absolute discretion; and (b) for an ASU Development, ASU will obtain City's prior, written, reasonable consent.
4. Rent Assignment for Retail or Commercial Leases on Joint Development Projects: To help repay the indebtedness and reduce expenditures for the City Center, City may require ASU to execute assignments of rent to City on all existing and future retail or commercial space subleases within an ASU Facilities on a Potential Development Site developed as a Joint Development for first thirty (30) years of the term of the applicable Site Lease. The terms of such rent assignments will be agreed to by the Parties and may include an assignment of rents that is net of reasonable tenant improvement costs, leasing commissions, management, operating and maintenance costs associated with the renting of the retail or commercial space.
5. Renewal and Replacement Reserve Fund Account for Joint Development:
 - a. Establishment: At the commencement of a Site Lease term for a Joint Development, City and ASU will establish at a mutually acceptable financial institution a Renewal and Replacement reserve fund account (herein referred to as the "R&R Account") for the benefit of City and ASU for each building subject to the Site Lease. The purpose of the R&R Account shall be to accumulate a reserve fund to ensure that funds will be available in the future for capital improvements, which is defined as those improvements necessary to maintain the condition of the ASU Facilities developed as a Joint Development that cost in excess of \$50,000 with a useful life of at least five (5) years. An R&R Account shall only be required for a Joint Development, not an ASU Development, and is only required for so long as City is the owner of the building(s). If the building(s) (e.g. improvements) are transferred to ASU in accordance with the requirements of the Agreement, the R&R Account for the applicable Potential Development Site will no longer be required, and the requirements of this Section shall no longer apply.
 - b. Funding: ASU shall make annual payments to the R&R Account at the rate of \$2 dollars per square foot of the building area for each Joint Development building subject to a Site Lease for all areas included in the Site Lease (but not on the land area that is not occupied by a building), or as otherwise mutually agreed upon by the Parties. The amount of the R&R Account shall be increased every ten (10) years in an amount equal to inflation as represented by the escalation factor for the preceding ten (10) years in the U.S. Consumer Price Index for Urban Wage Earners

and Clerical Workers (CPI-W) or such other, similar consumer price index established by the United States Bureau of Labor Statistics. For the avoidance of doubt, the Parties agree that no R&R Account payments are required of ASU with respect to an ASU Development.

- c. Improvements and Funding: A schedule of improvements to be funded by the R&R Account and the adequacy of the R&R Account funding levels for the ASU Facilities developed on a Potential Development Site as a Joint Development shall be agreed upon by both Parties annually within thirty (30) days of each anniversary date of the establishment of the R&R Account. The withdrawal of funds from the R&R Account shall require the written authorization of both City and ASU; provided, however, in a deemed emergency by either City or ASU, either Party shall have the right to unilaterally withdraw funds for the emergency purpose.
- d. Term of R&R Account: The R&R Account shall continue in existence for the term of the Site Lease. Upon expiration or termination of the term of the Site Lease other than for the uncured default by ASU, the balance of the R&R Account shall be paid to ASU.

6. City Center Operations:

- a. Property Manager: ASU shall be solely responsible for property management, which shall include the operation and maintenance of all interior and exterior maintenance of the ASU Facilities.
- b. Facilities Manager: City shall provide a facilities manager(s) ("Manager") to oversee the condition and use of the City Center facilities, and to monitor compliance with the property management requirements for the ASU Facilities with respect to projects that are Joint Development projects; specifically excluding ASU Development projects and Partner Locations. The Manager may be an employee of City whose responsibilities include (but may not be limited to) the City Center. The Manager shall be funded from the R&R Account; but if the Manager is a City employee who also manages other property as a part of their regular job duties, there shall be an equitable determination as to what portion of such employee's cost shall be funded by the R&R Account and the remainder shall be funded by City. ASU acknowledges, that if the Manager is a City employee, ASU will have no right to the supervision, oversight, or direction of the Manager as the Manager will be solely and exclusively an employee of the City of Mesa, and not under the direction or control of ASU.
- c. Operations and Maintenance Costs: Except as otherwise provided in Sections 4(b), 6(a), 9(a) and 9(b) of the foregoing Agreement, ASU shall be responsible for all costs associated with the operations and maintenance of the ASU Facilities including all utilities and any contractor services such as janitorial, landscaping, internal building and building access security, etc.

- d. Operations and Maintenance Protocol: ASU and City shall jointly develop operations and maintenance protocols for any ASU Facilities constructed as a Joint Development.
 - e. Operations and Maintenance Manuals: City shall provide all operations and maintenance manuals and schedules of preventative maintenance for all building equipment and systems for the ASU Facilities for systems for which the City has such manuals and schedules.
7. Security: ASU and City will jointly develop a security plan for the City Center which will include ASU's sole responsibility for providing building security for the ASU Facilities.
8. Property Inspections and Notice:
- a. Inspection: City shall have the right to enter into property leased pursuant to a Site Lease at reasonable times upon twenty-four (24) hours' advance notice (except in the case of an emergency and other restrictions based on the uses of the Premises) for the purpose of inspecting the property.
 - b. Damage Notice: ASU shall notify City as soon as is reasonably possible of any damage (in whole or in part) to any City-Owned Property or improvements that are located on City-Owned Property, or the interference with the use thereof as a result of fire, flood, building, or utility system failure.
 - c. Service Records: ASU and the Manager shall maintain and provide to City annually and upon request, all service records with respect to property subject to Site Leases reflecting preventative maintenance, repair or replacement of building infrastructure, equipment and systems.
9. Accounting and Auditing:
- ASU shall keep and maintain complete and detailed records affecting amounts payable to City under this Agreement and each Party agrees to maintain complete and detailed accounting records and vouchers evidencing all costs, receipts, payments and any other matter of accounting associated with its respective performance under this Agreement in accordance with generally accepted accounting principles. Each Party, or its respective audit representative, shall have the right at any reasonable time to inspect, copy and audit the accounting records, vouchers and their source documents which are related to costs, receipts and payments and other matters relating to this Agreement.
10. Default by ASU:
- City's sole remedies for an uncured breach or default of any Site Lease by ASU shall be:
- a. at any time while bonds issued in connection with the financing remain unpaid and outstanding (but in no event more than thirty (30) years from the commencement of occupancy for the applicable Potential Development Site), specific performance; or

- b. at any other time after the bonds issued in connection with the Financing have been paid and are no longer outstanding:
 - i. to terminate the applicable Site Lease; or
 - ii. to seek any remedies available at law or in equity.

For the purposes of this Section of the Site Lease, specific performance of the Site Lease shall mean the enforcement of all of ASU's obligations under the Site Lease, including the funding of the R&R Account for a Joint Development, operations and maintenance (including Development & Operations Requirements), operation of programs (including Academic Programming, and maintenance of levels of students, faculty, and staff as required by the applicable Site Lease. The Parties acknowledge and agree that: (i) the remedies for an uncured breach or default as to Site Lease for a Joint Development may be subject to further negotiations as set forth in the applicable Site Leases; and (ii) a termination of a Site Lease shall require ASU to transfer the ownership rights of the improvements to City in accordance with the requirements of the Agreement (which will be specifically set forth in the Site Lease.

11. Default by City:

ASU's sole remedies for an uncured breach or default of any Site Lease by City shall be:

- a. at any time while the bonds issued in connection with the financing remain unpaid and outstanding (but in no event more than thirty (30) years from the commencement of occupancy for the applicable Potential Development Site), specific performance; or
- b. at any time after the bonds issued in connection with the Financing are paid and not outstanding:
 - i. to terminate the applicable Site Lease; or
 - ii. to seek any remedies available at law or in equity.

For the purposes of the Site Lease, specific performance of the Site Lease in this Section shall mean the enforcement of all of City's obligations under the Site Lease. The Parties acknowledge and agree that: (i) the remedies for an uncured breach or default as to a Site Lease for a Joint Development may be subject to further negotiations as set forth in the applicable Site Leases; and (ii) a termination of a Site Lease shall require ASU to transfer the ownership rights of the improvements to City in accordance with the requirements of the Agreement (which will be specifically set forth in the Site Lease.

12. The Supplemental Terms and Conditions attached to the foregoing Agreement as **Exhibit D** will be materially incorporated into the Site Leases.

EXHIBIT D

SUPPLEMENTAL TERMS AND CONDITIONS

To the extent any provisions of the Agreement to which this Exhibit is attached (“**Agreement**”) conflict with any of the provisions of this Exhibit, the provisions of this Exhibit will control. References to this “**Agreement**” include the Agreement and this Exhibit. All provisions of the Agreement that anticipate performance after the termination of the Agreement, and all provisions necessary or appropriate to interpret and enforce such provisions, will survive termination of the Agreement. Capitalized terms used herein without definition shall have the meanings set forth in the Agreement.

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.
2. **Conflict of Interest.** If within three (3) years after the execution of this Agreement, a Party hires as an employee or agent of the other Party who was significantly involved in negotiating, securing, drafting, or creating this Agreement, then the other Party may cancel this Agreement as provided in Arizona Revised Statutes (“**A.R.S.**”) § 38-511. Notice is also given of A.R.S. §§ 41-2517 and 41-753.
3. **Arbitration in Superior Court.** If required by A.R.S. § 12-1518, the Parties agree to make use of arbitration in disputes that are subject to mandatory arbitration pursuant to A.R.S. § 12-133.
4. **Records.** To the extent required by A.R.S. § 35-214, each Party will retain all records relating to this Agreement. Each Party will make those records available at all reasonable times for inspection and audit by the other Party or the Auditor General of the State of Arizona during the term of this Agreement and for a period of five years after the completion of this Agreement. The records will be provided at a mutually agreeable location.
5. **Failure of Legislature to Appropriate.** Notice is given of A.R.S. § 35-154.
6. **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.
7. **Public Records.** The Parties are subject to, and must comply with, public records laws—A.R.S. §§ 39-121 through 39-127.
8. **Indemnification and Liability Limitations.** ASU’s liability under any claim for indemnification in this Agreement is limited to claims for property damage, personal injury, or death to the extent caused by acts or omissions of ASU. City’s liability under any claim for indemnification in this Agreement is limited to claims for property damage, personal injury, or death to the extent caused by acts or omissions of City.

9. **Advertising, Publicity, Names and Marks.** A Party will not do any of the following, without, in each case, the other Party's prior written consent: (i) use any names, service marks, trademarks, trade names, logos, or other identifying names, domain names, or identifying marks of the other Party ("**Other Party's Marks**"), for any reason including online, advertising, or promotional purposes; (ii) issue a press release or public statement regarding this Agreement; or (iii) represent or imply any endorsement or support by the other Party of any product or service in any public or private communication. Any permitted use of any of the Other Party's Marks must comply with the other Party's requirements, including using the ® indication of a registered trademark where applicable.

10. **Tobacco-Free University.** Within the Premises, ASU is tobacco-free. For details visit www.asu.edu/tobaccofree.

11. **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. Any proceeding arising out of or relating to this Agreement will be conducted in Maricopa County, Arizona. Each Party consents to such jurisdiction, and waives any objection it may now or hereafter have to venue or to convenience of forum.

[END OF EXHIBIT]