

INTERGOVERNMENTAL AGREEMENT

BETWEEN

THE CITY OF MESA, ARIZONA,

AND

THE ARIZONA BOARD OF REGENTS

This Intergovernmental Agreement ("Agreement") is made to be effective as of _____, 2018 (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"). Each of City and ASU may 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 ("Mesa Innovation Studios"), City has been encouraging and promoting 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 and maintain certain post-secondary education facilities in downtown Mesa as described in this Agreement ("ASU Facilities").
- C. City has located areas within its City Center area ("City Center") that are appropriate for, and will support, the ASU Facilities.
- D. Both City and ASU recognize and acknowledge the benefit to each arising from the location, development, operation and maintenance of the ASU Facilities at the City Center.
- E. The Parties previously entered into an Intergovernmental Agreement dated June 9, 2016 related to the development of the City Center (Maricopa County Recorder Document No. 2016-0439048) ("2016 IGA") which the Parties agree is terminated upon execution of this Agreement.
- F. The Parties are authorized to enter into this Agreement by the provisions of ARS § 11-951, *et seq.*

AGREEMENTS

1. Identified Property: City and ASU have identified potential building sites for the ASU Facilities within the City Center, depicted on the attached Exhibit A.
2. Property Ownership: City shall own all land and improvements for the ASU Facilities developed and constructed and which are leased to ASU as further provided in this Agreement except for the ASU Developed Facilities (as defined herein) which shall be owned by ASU.
3. Financing: The financing for the ASU Facilities, Public Infrastructure (as defined herein) and other City Center improvements (collectively, but specifically excluding the financing of the ASU Developed Facilities, “Financing”), including the amount of any Financing, and any debt service shall be determined by City in its sole discretion. City will seek to obtain Financing for the ASU Facilities, Public Infrastructure, and other City Center improvements through municipal bond financing; however, if City is unable to obtain such Financing, either Party may terminate this Agreement in accordance with Section 14. For any financing done on a tax-exempt basis, the bond financing documents and Lease will contain appropriate covenants and agreements from all necessary parties that to the extent practicable pursuant to state law, they will make such certifications and elections that may be required or permitted by law and will comply with all federal laws in effect upon issuance and thereafter adopted which apply to the tax-exempt bonds and which exempt the interest on any such bonds from gross income for federal income tax purposes.
4. Minimum Required Programs; Development Phases:
 - a. Phase I. In the first phase of the development of the ASU Facilities (“Phase I”), City will develop the ASU Facilities and City Center improvements identified in Exhibit B and Exhibit B-1. Upon completion and occupancy ASU shall offer the minimum required programs (or activities, events or courses associated with or related to such programs) set forth in Exhibit B (“Minimum Requirements”) including, but not limited to: Digital and Sensory Technology, Performing and Media Arts, and Entrepreneurial Support. The Minimum Requirements as set forth in Exhibit B include responsibilities for ASU to have a minimum number of students and faculty/staff and to perform the other requirements more fully described in Exhibit B for the purposes of assuring the success of ASU’s mission and of the Mesa Innovation Studios.
 - b. Phase II and Phase III. City and ASU agree that a second phase of the development of the ASU Facilities (“Phase II”) and a third phase of the development of the ASU Facilities (“Phase III”) may proceed if all the requirements set forth in subsections (i) and (ii) of this Section 4(b) are met. For the development of Phase II and/or Phase III, ASU shall provide expansions of the Minimum Requirements as set forth in Exhibit B.

- i. Development by City. The development of Phase II or Phase III will be subject to the approval of City and ASU, each in their sole discretion; this approval will be evidenced through an amendment to the Lease or other evidence as otherwise allowed by the Lease. City will only consider the development of Phase II or Phase III subject to reasonable time limitations and only after the occurrence of both of the following events: five (5) new private developments or redevelopments are opened in downtown Mesa within five (5) years of the issuance of the certificate of occupancy for Phase I; and City and ASU have identified and mutually agreed upon adequate funding sources to cover the costs of the development of Phase II and/or Phase III. City and ASU may choose to develop Phase III prior to or without developing Phase II.
- ii. Development by ASU. If City elects not to develop Phase II or Phase III of the ASU Facilities, ASU may proceed with the development of either or both Phase II and Phase III (also referred to as “ASU Developed Facilities”), it being understood that ASU may choose to develop Phase III prior to or without development of Phase II, so long as for each development Phase: (1) ASU provides City with notice of its election to proceed with the development of the applicable Phase and such election is no later than five (5) years after the issuance of the certificate of occupancy for all of the facilities of the previous applicable Phase; (2) ASU funds the development of Phase II/III, namely, the obligations of City to develop and construct the Building , as defined and set forth in Exhibit B for Phase II or III, as applicable; (3) City concurs with the development of Phase II/III; and (4) the development meets all applicable conditions set forth in the Lease, including that the design and construction of the development is completed in a commercially reasonable timeframe.
- c. Program Requirements. ASU may only replace or remove a successful minimum required program for any phase of development after consultation by ASU’s Provost or President with the City’s Manager not less than six (6) months prior to such replacement or removal. What constitutes a successful program 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 program shall not affect ASU’s obligation for providing the minimum number of students and faculty as set forth in the attached Exhibit B. All dates in this Agreement are subject to *force majeure*; and any delay in delivering the ASU Facilities will automatically grant a comparable extension to ASU with respect to its required performance under this Agreement, taking into account academic calendars. Students and faculty will use the ASU Facilities during all academic semesters and staff may use the ASU Facilities year-round. For purposes

of Section 4, the 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 ASU Facilities during the course of an academic year. The number of faculty shall be calculated as the number of faculty who have teaching, research or other responsibilities that are conducted at the ASU Facilities. The number of staff shall be calculated as the number of staff based primarily at the ASU Facilities.

5. City Center Master Plan and Design Guidelines: The Parties will prepare a master plan for the City Center (“City Center Master Plan”), and related budget, that plans Phases I, II and III (and such future phase or phases as the Parties may agree) consistent with the phasing attached as Exhibit B. The Parties agree the size, height, and location of the buildings shown on Exhibit B-1 are subject to change as part of the master-planning for the City Center Master Plan. The City Center Master Plan will be subject to approval by the Parties and will incorporate the following elements:
- a. Preliminary identification of the specific uses of the ASU Facilities;
 - b. Conceptual plans for civic space, streetscape, landscape, parking, pedestrian connections, etc.;
 - c. Elements that address building massing, height and exterior treatments (including materials, color, and architectural style);
 - d. City Center Design Standards and Guidelines; and
 - e. City shall be responsible, with the participation of ASU, for procuring the designer for the City Center Master Plan, and City shall be solely responsible for all such costs.

All Phases must be consistent with the City Center Master Plan and may be the subject of one or more amendments to the City Center Master Plan as mutually agreed by the Parties.

6. Public Infrastructure and City Center Plaza: The Parties will prepare a Public Infrastructure Plan (“Public Infrastructure Plan”) consistent with the City Center Master Plan.
- a. “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.
 - b. ASU shall identify and submit to City for its review and approval, proposed Public Infrastructure necessary to support the ASU Facilities.
 - c. A budget for design and completion of the Public Infrastructure shall be established by City prior to any design and construction of Public Infrastructure, which budget shall be subject to ASU’s reasonable approval.
 - d. The cost of design and construction of the Public Infrastructure in accordance with the Public Infrastructure Plan and budget shall be the sole responsibility of City.

- e. City shall develop, operate, and maintain public open space within the City Center in accordance with the Public Infrastructure Plan; provided, the open space will be developed as a City park open to the general public for its use and enjoyment.

7. Building Development:

- a. The Party developing the applicable Building shall be responsible, with the participation of the other Party, for procuring the services of architectural design firms for the design of the ASU Facilities, which design shall be subject to review and approval by the Parties and consistent with ASU's Design Standards for such facilities and City's City Center Design Standards (collectively, the "Design Standards"); provided, however, such review and approval (including any ASU Design Standards and City Center Design Standards) shall not increase the budget for the ASU Facilities previously approved by the Parties.
- b. An initial budget for the design and construction of the ASU Facilities shall be established and subject to approval by City and ASU prior to the design of the first phase of the ASU Facilities (see Section 8 below). The Parties shall revise and update the budget throughout the design and construction; but the Party developing the applicable Building shall not be obligated to agree to a budget modification or to expend an amount greater than the approved budget unless the Party developing the applicable Building, in its sole discretion, agrees to in writing.
- c. The Party developing the applicable Building shall be responsible, with the participation of the other Party, for procuring and managing the design and construction of the ASU Facilities, and such developing Party shall be solely responsible for such costs.

8. Initial Project Budget: Prior to designing or engineering of the Public Infrastructure and ASU Facilities for Phase I, or at such other time as may be mutually agreed to between the Parties, the Parties shall agree to an initial project budget (the "Initial Project Budget") for the design and construction of the Public Infrastructure and ASU Facilities. 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 in accordance with Section 14. After approval of the Initial Project Budget by both Parties, City shall not be obligated to expend an amount greater than the approved Initial Project Budget on the Public Infrastructure and ASU Facilities unless City, in its sole and absolute discretion, agrees to such a change in writing; and such approval may be conditioned on reimbursement or cost sharing of such additional amounts by ASU, provided that such reimbursement or cost sharing is subject to ASU's approval in its sole and absolute discretion.

9. Student Housing: The Parties acknowledge that, although student and faculty housing may be desired in the future, no student or faculty housing will be included in the ASU Facilities, and the Parties are not obligated under this Agreement to provide student or faculty housing. Notwithstanding the foregoing, the Parties will work in good faith to address issues related to student and faculty housing.

10. Development within the City Center: If Phase II or Phase III is not developed by City or ASU, City may develop and redevelop the City Center, other than the facilities and the premises of Phase I, in City's sole discretion; provided however, City will provide ASU with an opportunity to review and comment on any non-ASU development within that portion of the City Center north of Main Street. ASU may redevelop the ASU Facilities in a manner consistent with the City Center Master Plan.

11. Leasing of the ASU Facilities: ASU, subject to the prior authorization of the Arizona Board of Regents, will enter into a lease ("Lease") with City for the ASU Facilities. The Lease shall incorporate the material provisions of this Agreement and contain other terms and conditions that are mutually acceptable and commercially reasonable; provided however, the Lease shall include the following:
 - a. The term of the Lease ("Term") shall be ninety-nine (99) years.
 - b. A schedule for the completion of Phase I (and any other phases that the Parties may agree), any other required dates for performance, and any other requirements before the commencement of any future phases.
 - c. ASU shall make a payment of rent ("Rent"): (i) in the amount of \$100,000.00 per year, together with any applicable taxes, and annually thereafter, subject to a reasonable inflationary or other agreed upon adjustment; and (ii) an annual reimbursement ("Reimbursement") of the prorated salary (including benefits) of the City's Facility Manager(s) (or managers) (see Exhibit C, Section 4). The first payment of Rent shall be made upon the later to occur of either ASU's possession of Building A or completion of public space in City Center in accordance with the Public Infrastructure Plan. City shall use the Rent monies to reduce City's Operation and Maintenance costs and/or Financing costs for the City Center. The Reimbursement shall be made from the R&R Account (as defined in Subsection 11(j) below).
 - d. ASU shall pay and be solely responsible for all furniture, fixtures, and equipment in the ASU Facilities for the entire Term.
 - e. ASU shall pay and be solely responsible for all costs for the operation and maintenance of the ASU Facilities for the entire Term.
 - f. ASU shall pay and be solely responsible for all upgrades to tenant improvements that exceed the agreed upon Design Standards or the Initial Project Budget, such as smart building technology, advanced building sciences, and similar.
 - g. ASU shall develop, and be solely responsible for paying all costs, for functional programming, and operating requirements for the ASU Facilities.
 - h. ASU will work in good faith to provide ASU scholarship opportunities for Mesa residents.

- i. ASU shall pay and be solely responsible for obtaining and maintaining insurance coverage satisfactory to City, as specified in the Lease. The Parties agree that insurance provided pursuant to ARS § 41-621 shall satisfy such insurance coverage.
 - j. Regardless of the sufficiency of the Renewal and Replacement (“R&R”) Account (as set forth in Exhibit C), ASU shall pay and be solely responsible for all maintenance and replacement of the ASU Facilities, including any capital expenditures related thereto, for the entire Term. The Lease will include provisions for extending the Term of the Lease in the event that ASU replaces a building or expends significant amounts (as provided in the Lease) for capital improvements, with the extended Term of the Lease not being less than the life of the added capital improvements.
 - k. ASU shall have unfettered access to the leased space within the ASU Facilities (the “Premises”) during the Term.
 - l. If ASU is not utilizing portions of the ASU Facilities, ASU will reasonably determine if such space can be made available to third party, non-profit educational institutions that have locations in the City of Mesa at reasonable rental rates.
 - m. As future phases of the ASU Facilities are built out in accordance with this Agreement, those phases will be annexed into the Lease or the Parties may agree to separate leases for such phases, subject in each case to prior authorization of the Arizona Board of Regents.
 - n. The Lease will include, *inter alia*, the terms and provisions included in Exhibit C, except as may be mutually modified by ASU and City in the final Lease agreement, and terms and provisions consistent with Exhibit D.
12. Parking on City-Owned Property: No student or ASU staff parking will be provided at the City Center or be included in the ASU Facilities; provided however, the City Center Master Plan will accommodate disabled parking and certain limited parking requested by ASU and agreed to by the Parties. 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. If City elects to allow ASU to operate and maintain City-developed parking, all of ASU’s revenues (net of ASU’s expenses directly related to operating and maintaining the parking facilities) derived from such parking shall be provided to City, and City shall use such revenue for City Center related costs.
13. Other Revenues and Fund Sources:
 - a. Non-City Center Development by ASU: Revenue from any ASU Facilities and operations not financed by City and not constructed within the City Center or other City-owned real property, shall be the sole property of ASU and any participating private developer.

- b. Non-ASU Facilities Development by City: Any development, other than the ASU Facilities, constructed within the City Center or other City-owned real property, shall be on such terms and conditions as City may require in its sole discretion and all revenue from such facilities and operations shall be the sole property of City and any participating private developer.
- c. 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 and/or financial participation required from City.
- d. Fund Raising and Naming Rights: The Parties shall engage in fund raising for the ASU Facilities to support academic programs and capital costs. The Parties will agree in the Lease, or in separate agreements on a case-by-case basis, on how revenue from fund raising for capital costs (other than for FF&E) and entire building naming rights will be split between the Parties; provided, however, that all such funds shall be used on the City Center and ASU Facilities. ASU shall have the right to grant entire building naming rights, 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 and ASU Facilities.

14. Termination of Agreement:

In the event (i) the Parties do not agree on each of the City Center Master Plan and budget, the Public Infrastructure Plan and budget, the Design Guidelines and overall Initial Project Budget; or (ii) by on or before July 1, 2019, City, for any reason, does not obtain or notifies ASU that it is unable to obtain Financing in an amount sufficient for the completion of Phase I, either Party may elect to terminate this Agreement. If this Agreement is terminated pursuant to this Section 14, each Party will bear its own expenses incurred in connection with this Agreement.

15. 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 nondefaulting 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 nondefaulting Party may, if it so elects following mediation as provided 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. 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 paragraph shall occur prior to the initiation of any arbitration or legal proceeding.
 - 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.
16. **Cooperation:** ASU and City agree that 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.
17. **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.
18. **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, certified mail and postage prepaid, or deposited with any commercial courier or express service and addressed as follows:

ASU:	Arizona State University Attn: Senior Vice President and University Planner 300 East University Drive, Ste. 410 PO Box 877705 (USPS mail only) Tempe, AZ 85287-7705
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With a required copy to: The Office of General Counsel
Arizona State University
300 East University Drive, Ste. 335
PO Box 877405 (USPS mail only)
Tempe, AZ 85287-7405

To City: City of Mesa
Attn: City Manager
20 East Main Street
P.O. Box 1466 (USPS mail only)
Mesa, Arizona 85211

With a required copy to: City of Mesa
Attn: City Attorney
20 East Main Street
P.O. Box 1466 (USPS mail only)
Mesa, Arizona 85211

Notice shall be deemed received at the time it is personally served, on the second 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, fax number or the person to receive notice by notifying the other Party as provided in this Section 18.

19. 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. 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.
20. Effective Date: This Agreement shall become effective on the Effective Date set forth above.
21. Legal Authorization: Attached hereto and incorporated herein is the written determination of each Party’s legal counsel pursuant to ARS §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.
22. Entire Agreement: This Agreement embodies the entire understanding of the Parties and supersedes any other agreement or understanding between the Parties relating to the subject matter.

23. 2016 IGA Termination: The Parties agree that, as of the Effective Date, the 2016 IGA is terminated and of no force and effect.
24. 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.
25. 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.
26. 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.
27. Term: The term of this Agreement will be five (5) years from the Effective Date, subject to automatic renewal for an additional five (5) years for each of Phase II or Phase III if the Parties elect to pursue any of Phases II or III (for a total possible term of fifteen (15) years from the Effective Date), unless earlier terminated by either Party pursuant to Section 14.

[Signature Pages Following]

IN WITNESS WHEREOF, the Parties have caused this 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 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.

ASU Attorney

Date

The foregoing 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

Exhibit A
Depiction of City Center



Exhibit B

City's and ASU's Minimum Requirements

Phase I

City Responsibilities:

1. Design and construction of approximately 110,000 to 125,000 square feet in Building A (as generally depicted in Exhibit B-1). The final location, size, and height of Building A will be established in the City Center Master Plan.
2. Design and redevelopment of approximately 6,000 to 12,500 square feet in Building D (as generally depicted in Exhibit B-1) for use as Mesa's Innovation Studios.
3. Public Infrastructure, including an approximately two-acre public open space. Final location and the extent of the public open space will be established in the City Center Master Plan.

ASU Responsibilities:

1. Described Academic Programs*
2. 750 minimum students**
3. 40 minimum faculty and staff**
4. FF&E: \$10 million (Building A)*
5. Operations & Maintenance (O&M): \$1.3 million per year
6. 25 film or other public ASU events scheduled per year to be held at the Mesa Innovation Studios or City Center
7. 15 businesses enrolled annually in entrepreneurial programs
8. 20 public entrepreneurial innovation events to be held per year at the Mesa Innovation Studios or City Center
9. Identifying at least one (1) ASU staff member to serve on the committee on the development of an innovation district and the Mesa Innovation Studios

*within one (1) year following issuance of the certificate of occupancy for Phase I

**within five (5) years of issuance of certificate of occupancy for Phase I

Phase II

City Responsibilities:

Development and construction of approximately 60,000 to 75,000 square feet in Building B, as generally depicted in Exhibit B-1, and associated Public Infrastructure, subject to time limits and schedules set forth in the Lease. Final location, size, and height of Building B will be established in the City Center Master Plan.

ASU Responsibilities:

(A) Continuation and expansion of existing Academic Programs, entrepreneurial support, film and ASU events, and entrepreneurial/innovation events, and/or (B) addition of new Academic Programs that provide for the following minimum number of students and faculty at the ASU Facilities and the other responsibilities described below:

1. 1,500 minimum students (total, including Phase I)*
2. 150 minimum faculty and staff (total, including Phase I)*
3. FF&E: \$3.8 million (Building B)*
4. Operations & Maintenance (O&M): \$1.7 million per year (total Phase I & Phase II)
5. 45 film and/or other public ASU events held per year at the Mesa Innovation Studios or City Center (total, including Phase I)
6. 15 businesses enrolled annually in entrepreneurial programs (total, including Phase I)
7. 20 public entrepreneurial innovation events per year held at the Mesa Innovation Studios or City Center (total, including Phase I)
8. Identifying at least one (1) ASU staff member to serve on the committee on the development of an innovation district and the Mesa Innovation Studios

*within three (3) years after issuance of certificate of occupancy for Phase II

Phase III

City Responsibilities:

Development and construction of approximately 50,000 to 65,000 square foot Building C, as generally depicted in Exhibit B-1, and associated Public Infrastructure, subject to time limits and schedules set forth in the Lease. Final location, size, and height of Building B will be established in the City Center Master Plan.

ASU Responsibilities:

(A) Continuation and expansion of existing Academic Programs, entrepreneurial support, film and ASU events, and entrepreneurial/innovation events, and/or (B) addition of new Academic Programs that provide for the following minimum number of students and faculty at the ASU Facilities and the other responsibilities described below:

1. 2,000 minimum students (total, including Phase I and II)*
2. 200 minimum faculty and staff (total, including Phase I and II)*
3. FF&E as agreed to in the Lease (Building C)
4. Operations & Maintenance (O&M) as agreed to in the Lease (total Phase I, II, and III)
5. 45 film and/or other public ASU events scheduled/year within the Innovation Studios or City Center (total, including Phase I & Phase II)
6. 15 businesses enrolled/year in entrepreneurial programs (total, including Phase I & Phase II)
7. 20 public entrepreneurial innovation events scheduled/year within the Innovation Studios or City Center (total, including Phase I & Phase II)
8. Identifying at least one (1) ASU staff member to serve on the committee on the development of an innovation district and the Mesa Innovation Studios

*within three (3) years after issuance of certificate of occupancy for Phase III

Exhibit B-1

Depiction of ASU Facilities

MESA CITY CENTER

- BUILDING A**
Building Area: 100,000-125,000 sf
No. of Floors: 5 stories
- BUILDING B – OPTIONAL FUTURE**
Building Area: 60,000-75,000 sf
No. of Floors: 5 stories
- BUILDING C – OPTIONAL FUTURE**
Building Area: 50,000-65,000 sf
No. of Floors: 4 stories
- BUILDING D – INNOVATION STUDIOS**
Building Area: 18,800 sf
No. of Floors: 2 – Existing IT Bldg.

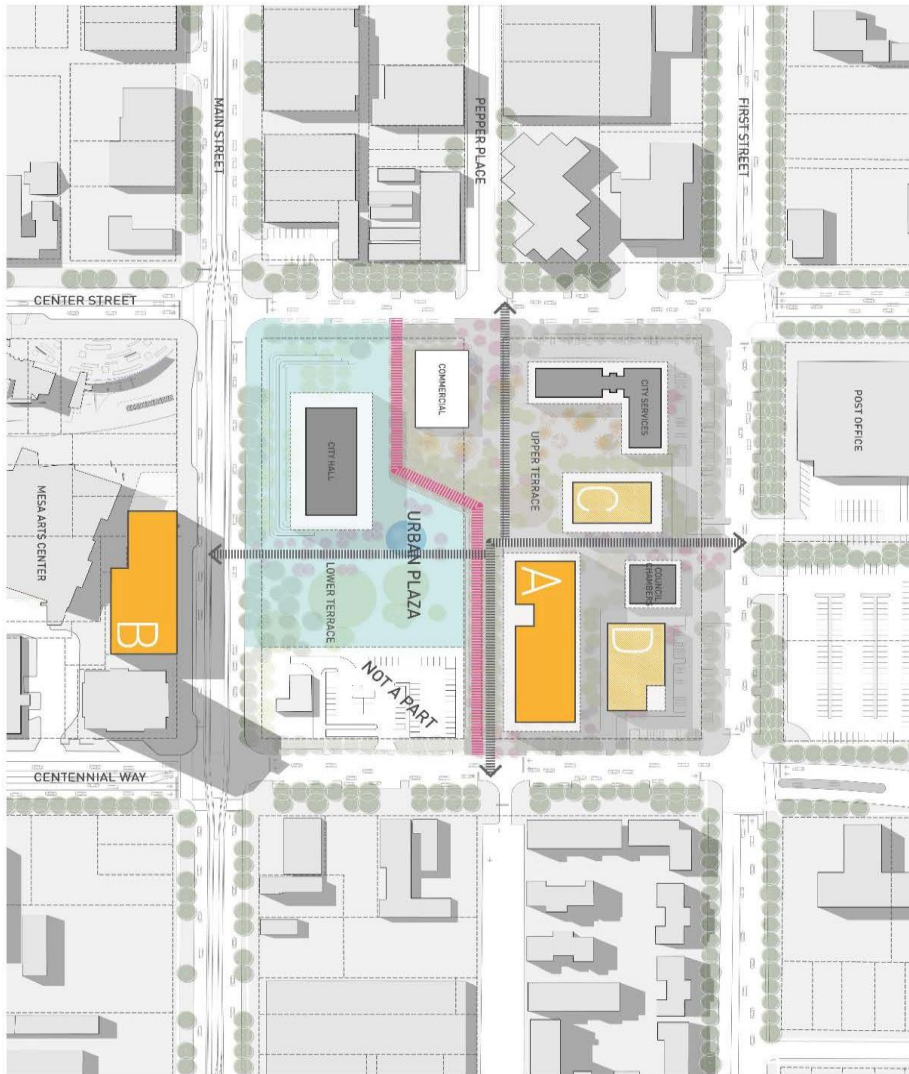


Exhibit C

Additional Terms and Provisions of Lease

1. Retail Subleases: ASU has unique experience in subleasing space within its facilities to retail and other third-party tenants. City is willing to delegate to ASU the ability to sublease all retail space within the Premises subject to certain restrictions and requirements of consent. ASU shall have the right to sublease any retail property within the ASU Facilities; provided, however, with respect to the first floor of Building B as depicted in Exhibit B-1 of the IGA, City shall have the right to designate such space for retail, restaurant, food preparation or other commercial use and the sole and exclusive right to approve any subtenant of such space. Unless otherwise provided in the Lease, all subtenants will be required to pay for and be solely responsible for the tenant improvements within their subleased premises. If ASU determines, in its sole discretion, not to engage in subleasing space within the Premises, ASU shall provide notice to City and return all subleasing rights and responsibilities to City.
2. Rent Assignment: In order to help repay the indebtedness and reduce expenditures for the City Center, ASU shall execute assignments of rent to City on all existing and future retail or commercial space leases within the property set forth on Exhibit A of the IGA for the Term. Such assignments of rent shall be net of reasonable management, operating and maintenance, and tenant improvement costs associated with the renting of the retail or commercial space. The Parties acknowledge and agree that the rent assignment as to ASU Developed Facilities is subject to further negotiations and will be set forth in the Lease.
3. Renewal and Replacement Reserve Fund Account:
 - a. Establishment: At the commencement of the Term, City and ASU will establish a Renewal & Replacement reserve fund account (herein referred to as the "R&R Account") for the benefit of City and ASU, at a mutually acceptable financial institution for each Building. 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, defined as those improvements necessary to maintain the condition of the ASU Facilities (excluding the ASU Developed Facilities) and that cost in excess of \$50,000 with a useful life of at least five (5) years. Unless specifically set forth in this Lease, the R&R Account as used in this Lease shall not include the ASU Developed Facilities.
 - b. Funding: ASU shall make annual payments to the R&R Account at the rate of \$2 dollars per square foot (or as otherwise mutually agreed upon) for all

areas included in the Lease except for ASU Developed Facilities for which no R&R Account payments are required of ASU.

- 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 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. Upon expiration or termination of the Term other than for the default by ASU, the balance of the R&R Account shall be paid to ASU.
4. 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. 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 available proceeds in the R&R Account; but if the Manager is a City employee who also manages other property, there shall be an equitable determination as to what portion of such employee’s cost shall be funded by the R&R Account.
 - c. **Operations and Maintenance Costs:** 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 the ASU Facilities.
 - 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 that are received by City.

5. 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.

6. Property Inspections and Notice:

- a. Inspection: City shall have the right to enter into leased and subleased property owned by City 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 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 property manager shall maintain and provide to City annually and upon request, all service records reflecting preventative maintenance, repair or replacement of building infrastructure, equipment and systems.

7. 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.

8. Default by ASU:

City's sole remedies for an uncured breach or default of the 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 Phase/Building) 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 lease; or
 - ii. to seek any remedies available at law or in equity.

For the purposes of this Section of the Lease, specific performance of the Lease shall mean the enforcement of all of ASU's obligations under the Lease, including, but not limited to, the maintenance of programs and levels of students, faculty and staff. The Parties acknowledge and agree that the remedies for an uncured breach or default as to ASU Developed Facilities is subject to further negotiations and will be set forth in the Lease.

9. Default by City:

ASU's sole remedies for an uncured breach or default of the 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 Phase/Building), specific performance of the Lease; or
- b. at any time after the bonds issued in connection with the Financing are paid and not outstanding:
 - i. to terminate the lease; or
 - ii. to seek any remedies available at law or in equity.

For the purposes of the Lease, specific performance of the Lease in this Section shall mean the enforcement of all of City's obligations under the Lease. The Parties acknowledge and agree that the remedies for an uncured breach or default as to ASU Developed Facilities is subject to further negotiations and will be set forth in the Lease.

EXHIBIT D

SUPPLEMENTAL TERMS AND CONDITIONS

To the extent any provisions of the Agreement to which this Exhibit is attached ("**the 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 ("**ARS**") § 38-511. Notice is also given of ARS §§ 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 ARS § 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 ARS § 35-154.

6. **Weapons, Explosive Devices and Fireworks.** Within the Premises, 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 ARS § 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—ARS §§ 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]