

FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF MESA, ARIZONA
AND
THE ARIZONA BOARD OF REGENTS

This First Amendment to Intergovernmental Agreement (“First Amendment”) is made to be effective as of _____, 2023 (the “First Amendment 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 First Amendment as a “Party,” or collectively as the “Parties.”

RECITALS

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

- A. City and ASU entered into that certain "Intergovernmental Agreement Between the City of Mesa, Arizona, and the Arizona Board of Regents" dated and effective as of March 1, 2018 (the “IGA” and the “Agreement”) related to the potential development, operation and maintenance of post-secondary education facilities in downtown Mesa that included the option of the development of the facilities in three phases (Phase I, II, and III, each a “Phase”). The Parties acknowledge that the Effective Date of the IGA is March 1, 2018.
- B. There exists a perceived conflict in the language related to the timing and requirements of the development of Phase II/III in the IGA and the Term of the IGA (as defined in the IGA); specifically, the timing of events in Section 4 of the IGA required for the consideration by City of the development of Phase II or Phase III are outside the initial Term of the IGA as defined in the IGA.
- C. City and ASU exchanged a letter dated March 1, 2023 (the “March Letter”), relative to the IGA, acknowledging the perceived conflict described in Recital B and providing for a proposed solution. The Parties intend that this First Amendment replace and supersede the March Letter.
- D. The Phase I certificate of occupancy was issued on June 24, 2022, and ASU programming at Phase I began in the fall of 2022.
- E. To remedy the perceived conflict and clarify the original intent of the Parties that the initial Term of the IGA was to allow the Parties a five-year period after the issuance of the certificate of occupancy for Phase I to elect to develop Phase II/III, the Parties desire to amend the language related to the Term of the IGA as provided in this First Amendment.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Term. Section 27 of the IGA is amended as follows (**bold and underlined text** reflects added language, ~~strikethrough~~ text reflects struck language):

“27. Term: The term of this Agreement will ~~be~~ **begin on the Effective Date and end on June 24, 2027** (five (5) years ~~from the Effective Date~~ **after the issuance of the certificate of occupancy for Phase I.** **The term of this Agreement is** 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.”
2. Severability. In the event any term or provision of this First Amendment is held to be invalid or unenforceable, the validity of the other provisions shall not be affected, and this First Amendment shall be construed and enforced as if it did not contain the particular term or provision that is deemed to be invalid or unenforceable.
3. Governing Law, Venue, and Jurisdiction. This First Amendment shall be governed by the laws of Arizona. A party shall bring any action related to a dispute arising out of this First Amendment in a court of appropriate venue and jurisdiction in Maricopa County, State of Arizona.
4. Incorporation of Recitals & Exhibits. The recitals set forth herein and the attached exhibit(s) are acknowledged by the parties to be true and correct and are incorporated herein by this reference.
5. Effect of Amendment. In the event of any inconsistencies between this First Amendment and the IGA, the terms of this First Amendment shall govern. This First Amendment replaces and supersedes the March Letter, which from and after this date is terminated and of no further force or effect. Any terms not defined in this First Amendment shall have the same meaning as used in the IGA. The IGA, as amended, is hereby reinstated, ratified, and affirmed by the Parties and shall remain in full force and effect.
6. Counterparts: This First Amendment 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.

(SIGNATURE PAGES FOLLOW)

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed by their duly authorized representatives as of the First Amendment Effective Date.

CITY OF MESA, an Arizona
municipal corporation

By: _____
Christopher J. Brady
City Manager

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 the City of Mesa under the laws of the State of Arizona.

City Attorney

Date

[SIGNATURES CONTINUED ON NEXT PAGE]

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SIGNATURE PAGE CONTINUED

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

By: _____
Richard Stanley
Senior Vice President and
University Planner

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.

M. Maureen Anders, Associate
General Counsel, Arizona State
University

Date Signed