



City Council Report

Date: August 28, 2023
To: City Council
Through: Chris Brady, City Manager
From: Jeff McVay, Manager of Downtown Transformation
Subject: First Amendment to the Intergovernmental Agreement between the Arizona Board of Regents for and on behalf of Arizona State University and the City of Mesa for the development, operation, and maintenance of educational facilities in downtown Mesa. (*Council District 4*)

PURPOSE AND RECOMMENDATION

This report transmits the First Amendment to the Intergovernmental Agreement (IGA) with Arizona State University (ASU) for the development, operation, and maintenance of higher education facilities on City owned land located at the northeast corner of Center and Main Streets (referred to as "Mesa City Center"). The First Amendment to the IGA is proposed to resolve a perceived conflict related to the timing and requirements of the development of future phases of ASU at Mesa City Center.

City Council is being asked to consider a resolution directing and authorizing the City Manager to enter into the First Amendment to the IGA. Staff is recommending approval of the resolution.

BACKGROUND

The current IGA, dated and effective as of March 1, 2018, established the City's and ASU's agreement and responsibilities related to the potential development, operation, and maintenance of post-secondary education facilities in downtown Mesa. Consistent with the IGA, the City completed design and construction of 1) Phase I of the ASU facilities, a 118,000 square foot ASU facility commonly known the ASU Media and Immersive eXperience (MIX) Center, 2) the Studios at Mesa City Center, and 3) the Plaza at Mesa City Center. Consistent with the IGA, ASU is meeting its responsibilities for Phase I.

The current IGA further anticipates a Phase II and Phase III of the ASU facilities and establishes the City's and ASU's responsibilities for each of those phases. Section 4 of the IGA states that a second or third phase of the ASU facilities may proceed only after the occurrence of both of the following events:

1. Five new private developments or redevelopments are opened in downtown Mesa within five years of the issuance of the Certificate of Occupancy (CoO) for Phase I of the ASU facilities.
2. City and ASU have identified and mutually agreed upon funding to cover the cost of a future phase, if City is participating in the development, **or** ASU has provided City with written notice of its election to proceed with development of a future phase, without the participation of the City.

Based on the above conditions precedent to developing Phase II/III of ASU facilities described above, ASU, with or without City participation, would have until June 24, 2027 to elect to move forward with a Phase II/III. However, Section 27 of the IGA establishes a term that requires ASU to elect to pursue a Phase II/III within five years of the Effective Date of the IGA, which election ASU would have to had to made by March 1, 2023.

DISCUSSION

To remedy the perceived conflict between the requirements to proceed with a Phase II/III and the term, and to clarify the original intent of the City and ASU, the proposed First Amendment to the IGA sets the initial term of the IGA as five years from the issuance of the CoO for Phase I, which CoO was issued on June 24, 2022. Should ASU elect to pursue a second phase before June 24, 2027, the term of the IGA would be automatically renewed for an additional five years. A second automatic renewal of five years would occur upon ASU's election to pursue a third phase within five years of the second phase (for a total possible IGA term of 15 years from the Effective Date).

Alternatives

1. ***APPROVAL OF THE PROPOSED FIRST AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT, AS ATTACHED***
Preferred alternative
2. ***SPECIFY CHANGES TO THE FIRST AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT***
Council could direct staff to make changes Prior to final approval.
3. ***DENY APPROVAL OF THE FIRST AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT***
Denial would have the effect of terminating the existing IGA, as ASU did not elect to pursue a Phase II/III by March 1, 2023.

Fiscal Impact

No fiscal impact

Coordinated With

Negotiation of the First Amendment to the Intergovernmental Agreement has been coordinated with ASU, City Manager's Office, and City Attorney's Office.