



City Council Report

Date: July 8, 2024
To: City Council
Through: Chris Brady, City Manager
From: Jeff McVay, Manager of Downtown Transformation
Subject: An Amended and Restated 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, with terms that allow for the sale, transfer, lease, and license of City real property and improvements. (*Council District 4*)

PURPOSE AND RECOMMENDATION

This report transmits an Amended and Restated Intergovernmental Agreement (IGA) with Arizona State University (ASU) for the development, operation, and maintenance of higher education facilities on City-owned land generally located east of Center Street, between Main Street and University Drive (referred to as “City Center”) (Exhibit A). Following completion of Phase I of ASU at Mesa City Center, the City and ASU recognized that the requirements and responsibilities included in the existing IGA, approved in 2018, required modification, including eliminating the original phasing concept and modifying the sites available for development of ASU facilities (ASU Facilities). The proposed IGA establishes the commitments of ASU and City for the future development of additional ASU Facilities in City Center.

The existing IGA contemplated up to three phases of development, with the first phase of ASU at Mesa City Center as a five-story building. Through design, it became evident that the film, media, and advanced technology programming planned for the 118,000 SF ASU Media and Immersive eXperience Center (MIX Center), required a larger footprint in a three-story building. With the larger footprint, a location identified for an optional future phase in the current IGA was no longer viable for an ASU Facility as previously contemplated. Additionally, the City recently completed a feasibility study for redevelopment of 51-55 E. Main. The current IGA identifies that site as a future location for an ASU Facility, but this is modified in the proposed IGA to reflect the City’s vision for the site.

City Council is being asked to consider a resolution directing and authorizing the City Manager to enter into the amended and restated IGA described in this report. Staff is recommending approval of the resolution.

BACKGROUND AND DISCUSSION

The proposed IGA includes provisions related to future ownership of the ASU MIX Center improvements, identifies three Potential Development Sites for future ASU Facilities, identifies two Partner Locations where ASU may be part of a City-owned facility, and establishes timelines and obligations for each site, as well as general provisions applicable to the sites. A summary of the key terms of the proposed IGA is provided below.

Phase I ASU at Mesa City Center (MIX Center)

1. All obligations related to academic programming, non-academic programming, minimum student and faculty numbers, and building operation and maintenance remain as included in the current IGA and Lease Agreement.
2. ASU and City agree to negotiate an amended lease or other agreements that provide ASU the opportunity to own the Phase I improvements following the later of
 - (a) the retirement of all municipal bond debt associated with development of site, or
 - (b) 30 years.
 - i. City would retain ownership of the real property.
 - ii. Ownership of the improvements will revert to the City following the expiration or earlier termination of the lease agreement.

Potential Development Sites

Three City-owned properties in City Center are identified as Potential Development Sites that may support the development of ASU Facilities. The locations are noted below and shown on Exhibit B. Each site would have a Development Determination Period that will serve as the time for the City and ASU to make certain decisions surrounding development, including whether the location will be a Joint Development (jointly developed by City and ASU) or an ASU Development (ASU developed site).

Terms applicable to all Potential Development Sites

1. During the Development Determination Period, City and ASU must:
 - a. Mutually determine whether to develop the site.
 - b. Agree if the site is a Joint Development or ASU Development.
 - i. If a Joint Development, City is the developing party, responsible for managing the design and construction of the project, but both parties will contribute to the funding.
 - ii. If ASU Development, ASU is the developing party, responsible for managing the design and construction of the project, and ASU is responsible for funding the development and construction.
 - c. Agree upon a conceptual plan.
 - d. If a Joint Development, agree upon an initial project budget for development of the site, including adequate funding and proportion of funding.
 - e. Negotiate and enter into all documents necessary for development of the site which shall include, at a minimum, a site lease and possibly a development agreement.
 - i. Includes academic programming requirements and minimum student, faculty, and staff of ASU.
 - ii. Includes operation and maintenance obligations of City and ASU.

2. During the Development Determination Period, City will not encumber a Potential Development Site in a manner that would defeat the intent of the IGA.
3. Following the later of 30 years or the retirement of any municipal bond debt, ASU will take ownership of the building improvements, subject to being in compliance with the Site Lease and entering into a Lease or other agreement that provides City non-revocable use and access rights that existed in the Site Lease. City retains ownership of the land.
4. Site leases will be negotiated separately, but will include the following terms:
 - a. Initial term of 99-years.
 - i. After year 75 of the site lease, ASU investment in either a replacement of the facilities or significant capital improvements to the building will extend the term of the lease by the useful life of the replacement or capital improvement.
 - ii. Maximum amount of extension is 99 years.
 - b. Rent amount will be determined on a case-by-case basis.
 - c. ASU will be responsible for any commercial or retail subleases. City approval is required for subleases in Joint Development projects. City may require retail rents to be assigned to the City.
 - d. Establishment of a Reserve and Replacement Fund.

Site 1 – Post Office (135 N. Center Street)

1. Acknowledgement that site is subject to a third-party lease until May 31, 2025 and following expiration of the third-party lease, the intent of City and ASU is that a retail post office remain as a component of any future development for an ASU Facility.
2. Development Determination Period ends on June 1, 2025.
3. Construction of the project must be complete within five years of the effective date of the lease.
4. While the Postal Service has a lease or license with the City for operation of a post office, the City shall retain ownership of the portion of the building used by the post office (as may be modified through development of the site).

Site 2 – Mesa Public Library Parking Lot (64 E. 1st Street)

1. The Development Determination Period begins on the Effective Date of the IGA and expires 10 years later.
 - a. The Development Determination Period can be extended by five years, up to three times, with completion of construction of each Potential Development Site.
 - b. To extend, the additional Potential Development Sites must be completed prior to the end of the Site 2 Development Determination Period.
2. Deadline for completion of construction for the project will be negotiated through the lease.
3. Development will require a solution for replacement of public parking displaced by the project.

Site 3 – Municipal Building (55 N. Center Street)

1. The Development Determination Period begins on the date City notifies ASU the site will, by a date certain, be available and expires two years later.
2. Construction of the project must be complete within four years of the effective date of the lease.

51-55 E. Main Street

As explained below, 51-55 E. Main Street is a Partner Location, but it can be converted to a Potential Development Site.

Additional Locations

The IGA contemplates that additional locations in the City Center could be added as Potential Development Sites under the IGA based on mutual agreement of City and ASU.

Partner Locations (refer to Exhibit B)

Two City-owned properties in City Center have been identified as Partner Locations that would support joint use by ASU, as well as use by the City and third parties. The locations are noted below and shown on Exhibit B. Partner locations differ from Potential Development Sites in that, ownership of Partner Locations would be retained by the City and designed and developed for joint use by the City, ASU, and potential third parties, rather than designed and developed as an ASU Facility.

Site 1 – Former Council Chambers (57 E. 1st Street)

1. City and ASU may jointly use the building as negotiated through a License Agreement.
2. City will make and pay for improvements and will consult with ASU in development of improvement plans.
3. ASU's use will directly support ASU's academic programming.
4. If City chooses to lease all or a portion of the building, ASU will be provided with first option to lease.

Site 2 – 51-55 E. Main Street

1. As a Partner Location: City is in the process of evaluating the redevelopment of the property. If City develops the property as a Partner Location, it would be at City's cost and expense and, the City will provide ASU with designated portions of the property for its exclusive use, with lease terms to be negotiated, and will consult with ASU on the design of the improvements.
2. As a Potential Development Site: If City elects to convert 51-55 E. Main to a Potential Development Site, the general terms for a Potential Development Site will apply, with the following inclusions:
 - a. To be converted, City will be given nonrevocable use and occupancy rights.
 - b. The Development Determination Period begins on the Effective Date of the agreement between City and ASU to convert the site to a Potential Development Site and expires five years later.
 - c. If the City and ASU agree to develop the site as a Joint Development, the City may choose to transfer or sell its ownership in the real property to ASU.
 - i. ASU will provide City with first right to lease all or a portion of the first floor. If City does not elect to lease all or a portion of the first floor, ASU's leasing requires the City approval.
 - d. If the City and ASU agree to develop the site as an ASU Development, the City shall transfer or sell its ownership rights in the real property to ASU.
 - i. ASU's leasing of the first floor requires City's approval.
 - e. Whether a Joint Development or ASU Development, the site will be developed consistent with the City's vision for the development.

Additional Terms

1. The IGA term is the earlier of 1) the expiration of all Development Determination Periods, or 2) 25 years.
2. City and ASU will consider expansion of the Plaza at Mesa City Center as part of each Potential Development Site.
3. Parking will be considered and included in projects on a case-by-case basis.
 - a. If a Partner Location or Joint Development, any parking revenues will be the property of the City unless City allows ASU to operate/maintain the parking, then City and ASU will agree upon share of revenue.
 - b. If an ASU Development, any parking revenues will go to the party managing the parking.
4. Except under certain circumstances where cost may be shared or divided (ex: if a third-party occupies a portion of the space), ASU will be responsible for all operations and maintenance costs of ASU Facilities.
5. ASU will use all City utilities, including Solid Waste, unless the solid waste service available from the City does not meet ASU's goals related to sustainability.
6. City and ASU will jointly develop a security plan for each ASU Facility.

ALTERNATIVES

1. Approval of the Amended and Restated Intergovernmental Agreement, as attached. (Preferred alternative)
2. Specify Changes to the Amended and Restated Intergovernmental Agreement (Council may direct staff to make changes to the IGA prior to final approval).
3. Deny approval of the Amended and Restated Intergovernmental Agreement, and the current 2018 agreement terms and conditions will remain in effect.

FISCAL IMPACT

None at this time.

COORDINATED WITH

Negotiation of the Intergovernmental Agreement has been coordinated by the Offices of the City Manager and City Attorney.

Exhibit A To the Council Report

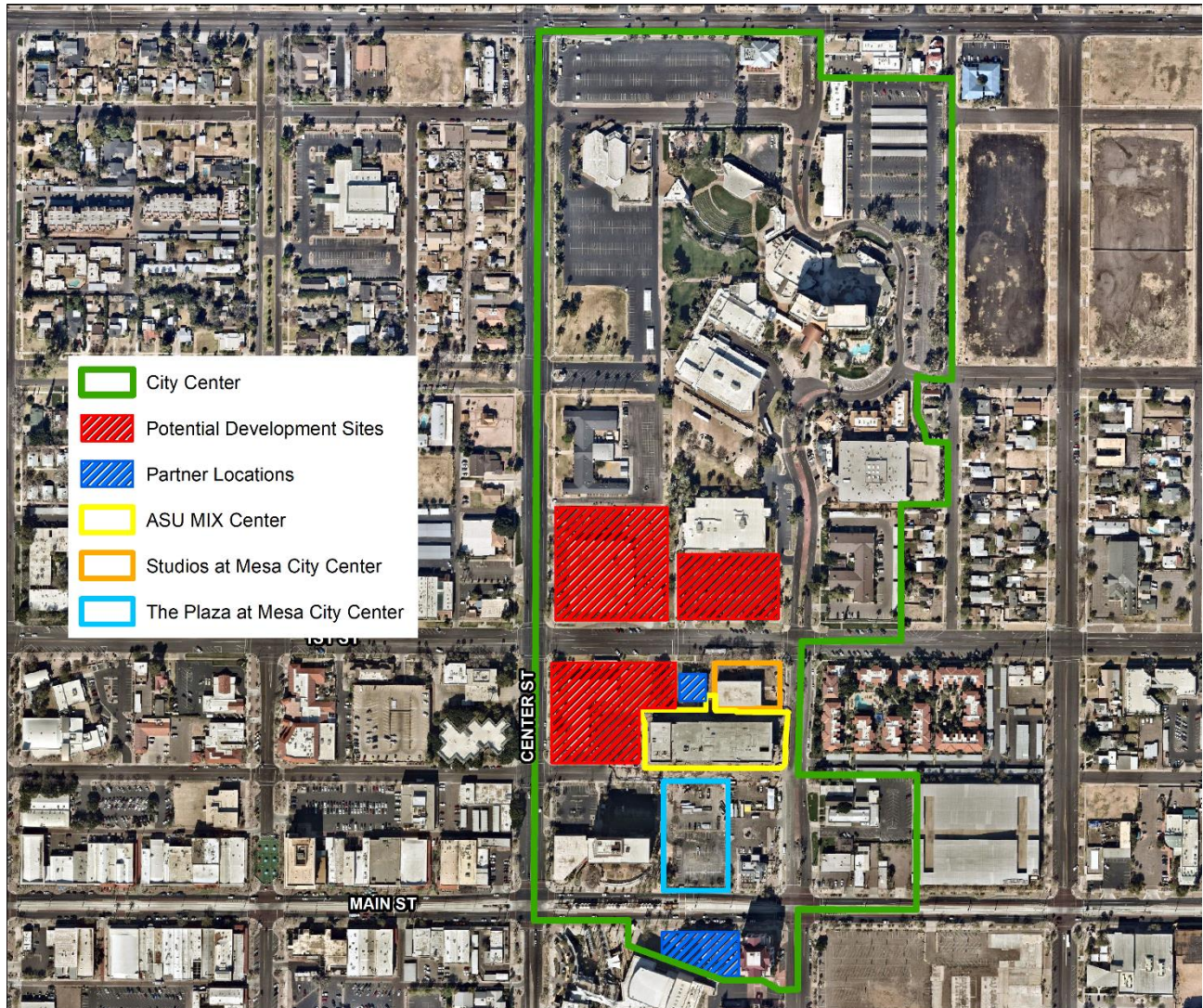


Exhibit B To the Council Report

