Exhibit B

Intergovernmental Agreement

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF CHANDLER, ARIZONA
AND
THE CITY OF PHOENIX, ARIZONA

This Intergovernmental Agreement ("Agreement") is entered into this _____ day of __________, 2021 by and between the City of Chandler, Arizona, a municipal corporation ("Chandler") and the City of Phoenix, Arizona, a municipal corporation ("Phoenix").

I. RECITALS:

A. Pursuant to A.R.S. §11-952, as amended, Chandler is empowered to enter into this intergovernmental agreement and has, by resolution, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, authorized the undersigned to execute this Agreement on behalf of Chandler.

B. Pursuant to A.R.S. §11-952, as amended, Phoenix is empowered to enter into this intergovernmental agreement and has, by resolution, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference, authorized the undersigned to execute this Agreement on behalf of Phoenix.

C. Phoenix has received a Grant (Board Order 185, dated March 25, 1982) from the Foreign-Trade Zones Board (the "Board") to establish FTZ No. 75, and the alternative site framework format for FTZ No. 75 was approved by the Board in a notice published on October 20, 2010 in 75 Fed. Reg. 64708.

D. Chandler does not have a grant of authority to establish a new Foreign-Trade Zone.

E. Concurrently with the approval of this Agreement, the Chandler City Council voted to approve a usage-driven site as part of FTZ No. 75 for Viavi Solutions Inc. ("Viavi").

F. Viavi is under contract to purchase certain real property within the City of Chandler located at 3455 South McQueen Road, Chandler, AZ 85286 and desires to have such real property designated as a usage-driven site (the "Zone Site"). The Zone Site is more specifically described in the Development Agreement referenced in Section 2.3 below.

G. Chandler desires to assist Viavi in obtaining approval from the Board to establish, operate, and maintain a usage-driven site at the Zone Site.

H. Phoenix is willing to submit an application to the Board on behalf of Viavi (the "Application") for a minor boundary modification to establish, operate, and maintain a usage-driven site at the Zone Site to demonstrate its interest in a cooperative regional effort to encourage the retention and expansion of business in the greater metropolitan area.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained and described herein, the parties agree as follows:

II. AGREEMENTS:

1. PURPOSE

1.1 The purpose of this Agreement is to memorialize Chandler's and Phoenix's agreement to work together to assist Viavi in its efforts to have the Zone Site designated as a usage-driven site and to assure Phoenix that the establishment, operation, and maintenance of a usage-driven site at the Zone Site, including any unsuccessful efforts made in respect thereto, shall be accomplished without any cost or liability whatsoever to Phoenix.

2. CHANDLER RESPONSIBILITIES

2.1 To facilitate the negotiation and execution of a Foreign-Trade Zone Operating Agreement ("Operating Agreement") between the City of Phoenix and Viavi.

2.2 To perform research, lobbying, or other support activities as required to expedite the Application process.

2.3 To provide in a development agreement with Viavi ("Development Agreement") that, unless previously agreed to by Chandler pursuant to the Development Agreement, Viavi shall not seek or obtain property tax classification under Arizona Revised Statutes § 42-12006(2) for the real property and improvements at the Zone Site. Nothing in this section prevents Viavi from seeking personal property tax classification under Arizona Revised Statutes § 42-12006(2) for all manufacturing equipment installed at the Zone Site.

2.4 To notify Phoenix if Chandler desires that Phoenix enforce its right to terminate the Operating Agreement and seek revocation of Viavi's usage-driven site, after notice and a 30-day cure period (or longer period as is reasonable in the event that Viavi chooses to appeal the reclassification as provided for in the Development Agreement), if any one or more of the following occurs without prior approval of Chandler pursuant to a development agreement:

a. Viavi, in breach of the Development Agreement and Operating Agreement, seeks or obtains property tax classification under A.R.S. § 42-12006(2) for the real property at the Zone Site; or

b. Such reclassification is made regardless of the lack of a request by Viavi and Viavi refuses to either seek a revision to the classification or to provide for a corresponding payment to Chandler compensating for the reduction to tax revenue as agreed in the Development Agreement; or

c. Viavi otherwise materially breaches the Development Agreement.

2.5 To notify Phoenix if Chandler desires that Phoenix enforce its right to seek revocation of Viavi's personal property tax classification under Arizona Revised Statutes § 42-12006(2) for all manufacturing equipment or other personal property installed at the Zone Site if Viavi, after notice and a 30-day cure period (or longer period as is reasonable in the event that Viavi chooses to appeal the reclassification as provided for in the Development Agreement) fails to maintain its corporate headquarters in Chandler during the duration of the Development Agreement. Chandler will provide Phoenix with a letter stating its desire to rescind support along with a copy of the Development Agreement to be provided to the Maricopa County Assessor's Office.

2.6 To take all action requested by Phoenix related to the enforcement of the provisions referred to in Sections 2.4 and 2.5, above, and to indemnify, defend, and hold Phoenix, its departments, agents, officers, or employees harmless from and against any loss, expense, damage, or claim resulting from or arising out of the performance or enforcement of any condition in the Operating Agreement as required under Section 3.4, below.

3. PHOENIX RESPONSIBILITIES

3.1 To conduct its operations in good faith with Viavi.

3.2 After filing the Application for the Viavi Zone Site, to enter into an Operating Agreement with Viavi for the operation of the Zone Site.

3.3 To provide in the Operating Agreement that Viavi shall be responsible for all costs related to the Zone Site that are incurred by Phoenix and/or Chandler.

3.4 To provide in the Operating Agreement that Phoenix may terminate the Operating Agreement and seek revocation of Viavi's usage-driven site if Phoenix is advised by Chandler that Viavi has sought or obtained real property tax classification under A.R.S. §42-12006(2) for the Zone Site without prior approval of Chandler pursuant to a Development Agreement.

3.5 To provide in the Operating Agreement that Phoenix may seek revocation of Viavi's personal property tax classification under Arizona Revised Statutes § 42-12006(2) if Phoenix is advised by Chandler that Viavi has failed to maintain its corporate headquarters in Chandler.

4. ADDITIONAL AGREEMENTS

4.1 The Parties acknowledge that 15 C.F.R §400.49 provides for monitoring and reviews of foreign trade zone operations and activity. Section 400.49(c) provides that the Board or the Commerce Department's Assistant Secretary for Import Administration may restrict or prohibit zone activity that it finds is no longer in the public interest and, pursuant to 14 C.F.R. § 400.61, the Board has the authority to revoke a grant of authority to operate a zone, for cause.

4.2 Chandler and Viavi have determined that if Viavi seeks or otherwise obtains real property tax classification under Arizona Revised Statutes § 42-12006(2) for the Zone Site, such action would be in violation of the Development Agreement between Viavi and Chandler and would be detrimental to the public interest. Nothing in this section prevents Viavi from seeking personal property tax classification under Arizona Revised Statutes § 42-12006(2) for all manufacturing equipment installed at the Zone Site.

5. **INDEMNIFICATION**

5.1 To the extent permitted by law, each party will indemnify and save the other party harmless, including any of the parties' departments, agencies, officers, employees, elected officials or agents, from and against all loss, expense, damage, or claim of any nature whatsoever which is caused by any activity, condition, or event arising out of the performance or non-performance by the indemnifying party of any of the provisions of this Agreement.

5.2 Each party, in all instances, shall be indemnified against all liability, losses, and damages of any nature for or on account of any injuries or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or non-performance of this Agreement by the other party, except such injury or damage as shall have been occasioned by the negligence of that other party. The damages incurred by the other party, their department, agencies, officers, employees, elected officers, or agents shall include in the event of any action, court costs, expenses for litigation, and reasonable attorneys' fees.

6. **DURATION**

6.1 Term. The term of this Agreement shall begin on the date executed and approved by both parties and shall remain in effect for the same term as the Operating Agreement, unless terminated sooner pursuant to the terms of this Agreement.

7. **GENERAL PROVISIONS**

7.1 Conflict of Interest. This Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

7.2 Immigration Law Compliance Warranty. As required by A.R.S. § 41-4401, each party hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Each party further warrants that after hiring an employee, it verifies the employment eligibility of the employee through the E-Verify program. If either party uses any subcontractors in performance of the Agreement, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Agreement subject to penalties up to and including termination. A party shall not be deemed in material breach if it and/or its subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). Each party retains the legal right to inspect the papers of the other party and/or its subcontractor engaged in performance of this Agreement to ensure that the other party and/or its subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the parties may modify this paragraph consistent with state law.

7.3 Notices. All notices, demands and communications given or to be given, by either party to the other, shall be given in writing, by certified mail or email with confirmation of receipt, and shall be addressed to the parties at the addresses hereinafter set forth, or at such other address as the parties may by written notice hereafter designate. All notices shall be deemed received upon actual receipt or three (3) business days after deposit in the United States mail, whichever date is earlier. Notices shall be addressed as follows:

Phoenix:

Director
Community and Economic Development Department
200 West Washington Street, 20th Floor
Phoenix, Arizona 85003-1611

and

City Clerk
City of Phoenix
200 West Washington Street, 15th Floor
Phoenix, Arizona 85003-1611

Chandler:

City Manager
City of Chandler
175 South Arizona Avenue
Chandler, Arizona 85225

and

City Attorney
City of Chandler
175 South Arizona Avenue
Chandler, Arizona 85225

7.4 Construction. Paragraph headings and captions appearing with this Agreement are for convenient reference only and in no respect define, limit or describe the scope or intent of this Agreement or the provisions of such sections.

7.5 Binding Effect. All terms, provisions and conditions hereof shall be binding upon and inure to the benefit of all parties hereto and their respective heirs, personal representatives, successors and assigns.

7.6 Severability. In the event any term or provision of this Agreement is held to be invalid or unenforceable, the validity of the other provisions shall not be affected, and the Agreement shall be construed and enforced as if it did not contain the particular term or provision that is deemed to be invalid or unenforceable.

7.7 Governing Law. This Agreement will be governed by the laws of the State of Arizona, both as to interpretation and performance.

7.8 Modification. This Agreement may be modified only by mutual written agreement of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

FOR CHANDLER:	FOR PHOENIX: ED ZUERCHER, CITY MANAGER
______________________________ By: Kevin Hartke Mayor	______________________________ By: Christine Mackay, Director Community & Economic Development
Date:________________________	Date:__________________________
ATTEST: ______________________________	ATTEST: ______________________________

ATTORNEY DETERMINATION

In accordance with the requirements of A.R.S. § 11-952(D), each of the undersigned attorneys acknowledge that (1) they have reviewed the above Agreement on behalf of their respective client(s) and (2) as to their respective client(s) only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

______________________________	______________________________
Kelly Schwab TA	By: Deryck R. Lavelle
City Attorney, City of Chandler	Assistant Chief Counsel, City of Phoenix
Date: ______________________	Date: ____________________

RESOLUTION 21870

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SUBMIT ALL FUTURE APPLICATIONS TO THE FOREIGN-TRADE ZONE BOARD OF THE U.S. DEPARTMENT OF COMMERCE TO STREAMLINE THE FOREIGN-TRADE ZONE APPLICATION PROCESS AND PROVIDE A MORE EFFICIENT DELIVERY OF SERVICE FOR APPLICANTS NOT REQUESTING PROPERTY TAX RECLASSIFICATION FOR FOREIGN-TRADE ZONE PROPERTY LOCATED WITHIN THE CITY OF PHOENIX; FURTHER AUTHORIZING TO ENTER INTO FOREIGN-TRADE ZONE OPERATIONS AGREEMENTS AND ANY OTHER NECESSARY DOCUMENTATION WITH FURTURE APPLICANTS; AND FURTHER AUTHORIZING THE CITY TREASURER TO ACCEPT FUNDS.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. That the City Manager or his designee is hereby authorized on behalf of the City of Phoenix, as Grantee of Foreign Trade Zone (FTZ) No. 75, to submit all future applications to the Foreign-Trade Zone Board of the U.S. Department of Commerce to streamline the FTZ application process and provide a more efficient delivery of service for applicants not requesting property tax reclassification for FTZ property located within the City of Phoenix. If property tax reclassification for activated FTZ pursuant to Arizona law (A.R.S. 42-12006) is requested for any site within the City of Phoenix boundaries, a request will be placed on a City Council meeting agenda for consideration and authorization. Each new contract term will be 20 years unless the FTZ designation terminates sooner.

SECTION 2. That the City Manager or his designee is hereby authorized to enter into a FTZ Operations Agreement (Agreement), and any other necessary agreements or documents with future applicants.

SECTION 3. The City Treasurer is authorized to accept funds for the purposes of this Ordinance.

PASSED by the Council of the City of Phoenix this 21st day of October, 2020.

MAYOR

ATTEST:

Denise Archibald, City Clerk

APPROVED AS TO FORM:
Cris Meyer, City Attorney

BY: Julie Kriegh (Oct 16, 2020 15:41 PDT)
Julie Kriegh, Chief Assistant City Attorney DRL
DRL

REVIEWED BY:

Ed Zuercher, City Manager

DRL:rb:**LF20-2376**:10/21/20:2214952_1