

When recorded, return to:

City Clerk
City of Chandler
P. O. Box 4008, Mail Stop 606
Chandler, AZ 85244-4008

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF CHANDLER
AND
THE UNIVERSITY OF ARIZONA**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into this _____ day of _____, 2022 ("**Effective Date**"), by and between the CITY OF CHANDLER, an Arizona municipal corporation ("**City**"), and the ARIZONA BOARD OF REGENTS, a political subdivision of the State of Arizona, for and on behalf of the University of Arizona ("**University**"). City and University are referred to collectively in this Agreement as "Parties" and each may be referred to individually as a "Party."

RECITALS

A. Arizona Revised Statutes §§ 11-951 through 11-954 authorize City and University to enter into this Agreement.

B. The Chandler City Council has passed and adopted a resolution authorizing the Mayor of the City of Chandler to execute this Agreement on behalf of City.

C. The President of the University has authority to execute this Agreement pursuant to Arizona Board of Regents Policy 3-103.

D. University intends to lease and improve at least 10,000 square feet of office space at a property in Chandler known as The Johnathan located at 55 North Arizona Place (the "**Property**") for classrooms and administrative offices (the "**Chandler Center**").

E. University intends to occupy the Property and operate the Chandler Center for a period of at least five years. For purposes of this Agreement, "occupy" means performing tenant improvements and, following completion of tenant improvements, actively and continuously conducting classroom and administrative activities, whether in-person or remote, from at least

10,000 square feet of office space at the Property. "Occupy" does not include subleasing space to another person or entity.

F. In exchange for the public benefits to be provided in this Agreement, City intends to reimburse University for up to \$1 million in tenant improvement costs, relocation, and rent expenditures associated with University's leasing and buildout of the Property in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and representations set forth in this Agreement, including without limitation the Recitals, City and University agree as follows.

AGREEMENT

1. Lease. No later than 90 days after the Effective Date, University will enter into a lease for at least 10,000 square feet of office space at the Property for a term of at least five years.

2. Capital Investment. University agrees to invest at least \$1 million in tenant improvement costs, relocation, and rent expenditures associated with the build out and occupancy of the Property. University will complete its build out of the Property and occupy the Property no later than 365 days after the Effective Date.

3. Discounted Tuition for City Employees. University agrees to discount tuition for City employees at a 10% rate who enroll in classes at the Chandler Center throughout the term of this Agreement. University will work with City's Human Resources Division to promote the discounted tuition rate for City employees.

4. Community Engagement. Throughout the term of this Agreement, University agrees to participate annually in the Chandler Innovation Fair or similar event organized by the City or its subcontractors for the purpose of introducing Chandler youth to locally offered, science and technology-based programs such as applied computing, cyber operations, intelligence and information operations, and similar science and technology-based programs. University will also host at least six open houses, educational, and/or athletic events per year at the Chandler Center to promote University programs to Chandler residents. City will assist with the promotion of these events through City's social media and other platforms.

5. Annual Certification. Within 365 days after the University completes its build out and begins occupying the Property (the "University Lease Commencement Date"), and annually thereafter for the remainder of the term of this Agreement, University shall submit a written Annual Certification attesting to the following:

5.1 University has leased and occupied at least 10,000 square feet of office space at the Property for the last 12 months; and

5.2 University has incurred at least \$1 million in tenant improvement costs, relocation, and rent expenditures associated with the build out and occupancy of the Property; and

5.3 The number of City employees enrolled in programs at the Chandler Center and the total value of the discounted tuition provided to those employees during the last 12 months; and

5.4 University has participated in the Chandler Innovation Fair, or a similar event organized by City or its subcontractors during the past 12 months; and

5.5 University has hosted at least six open houses, educational, and/or athletic events at the Chandler Center to promote University programs to Chandler residents during the past 12 months.

6. Reimbursements. Within 30 days of City's receipt of University's Annual Certification, City shall accept or object to the Annual Certification. If City accepts the Annual Certification, City shall reimburse University the sum of \$200,000 within 30 days of City's acceptance, but in no event earlier than July 1st of any given year. City shall reimburse University for its tenant improvement costs, relocation, and rent expenditures up to a maximum of \$1 million in annual increments of \$200,000 over a period of five years, if University has met all the requirements of this Agreement and submitted its Annual Certification to that effect. In no event shall City's total reimbursement exceed the amount of University's Capital Investment as provided in Section 2 above. If City object to the Annual Certification, City shall provide University with a letter detailing the reasons for City's objection within 30 days after receiving the Annual Certification. University will either provide further information supporting its entitlement to reimbursement or otherwise revise its Annual Certification to the satisfaction of City. City shall review and either accept or object to the revised Annual Certification within 30 days of receipt. If accepted, City shall reimburse University within 30 days of the date City received the revised Annual Certification. If the City rejects the revised Annual Certification, the Parties may perform in accordance with the foregoing until the Annual Certification is accepted by City, or either Party may declare an event of non-compliance and proceed under Section 11.

7. Compliance with City Code and Design Standards. Other than as expressly provided in this Agreement or by laws of general application, University shall comply with all applicable requirements for submission and approval of a site plan under Chapter 48 of the Chandler City Code, shall obtain appropriate City permits for all work that it intends to undertake on the Property, and shall perform such work in compliance with applicable Chandler City Code requirements and technical design manuals. The Parties acknowledge that University is exempt from zoning and land use requirements under Chapter 35 of the Chandler City Code.

8. Term. The term of this Agreement shall commence on the Effective Date and shall continue until the 5th Anniversary of the University Lease Commencement Date.

9. Early Termination. Should University cease to occupy the Chandler Center at any time during the term of this Agreement, this Agreement shall immediately terminate, and no further reimbursement will be due and owing under this Agreement.

10. Notices. Unless otherwise specifically provided in this Agreement, or unless written notice of a change of address has been previously given under this Section 10, all notices, demands or other communication given hereunder shall be in writing and shall be deemed to have

been duly delivered upon (A) personal delivery, (B) delivery by a recognized overnight courier (e.g., Federal Express, United Parcel Service) for next business day delivery, or (C) as of the fifth business day after mailing by United States certified mail, postage prepaid, addressed as follows:

To City: Economic Development Director
City of Chandler
P. O. Box 4008
Mail Stop 416
Chandler, AZ 85244-4008
Phone: (480) 782-3030

With a copy to: Chandler City Attorney
P.O. Box 4008
Mail Stop 602
Chandler, AZ 85244-4008
Phone: (480) 782-4640

To University: Director, PDC Real Estate
220 W. Sixth Street
PO Box 210300
Tucson, AZ 85721
Phone: (520) 621-3775

With a copy to: Office of General Counsel
University of Arizona
1401 E. University Blvd, Admin 103
PO Box 21006
Tucson, AZ 85721

11. Disputes. Arizona law shall govern this Agreement and any dispute arising out of this Agreement.

11.1 City and University agree that they will attempt to resolve any dispute through nonbinding mediation before a mediator selected jointly by them. If City and University cannot agree upon the selection of a mediator, they may request that the presiding judge of the Maricopa County Superior Court appoint a mediator. The cost of any such mediation shall be divided equally between the Parties. The mediator shall not have the right to award punitive damages. The results of the mediation shall be nonbinding, and any Party shall have the right to pursue all legal and equitable remedies available to it 30 days after conclusion of the mediation, subject to any extensions agreed to by the Parties in writing.

11.2 The Parties agree that the statute of limitations applicable to any litigation commenced under this Agreement shall be tolled during the period beginning with a request by either Party for mediation until 30 days after the conclusion of the mediation (or the Party's refusal to participate in mediation), subject to any extensions agreed to by the Parties in writing.

12. Assignment. This IGA is not subject to assignment by either Party.

13. Additional Matters.

13.1 This Agreement shall be governed by and construed under the laws of the State of Arizona. This Agreement is subject to the provisions of A.R.S. § 38-511. This Agreement shall be deemed made and entered into in Maricopa County, Arizona.

13.2 City and University each believe that the execution, delivery, and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any applicable constitutional provision, law, regulation, code, or charter), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed Agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to perform all such acts as reasonably requested by the other Party from time to time and to execute all amendments, instruments, and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

13.3 The failure of any Party to exercise any right, power, or remedy given to it under this Agreement, or to insist upon strict compliance with it, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach, nor a waiver by either Party of its rights at any time to require exact and strict compliance with all of the terms of this Agreement.

13.4 This Agreement constitutes the entire Agreement between City and University with respect to its subject matter, and all agreements, oral or written, entered into prior to this Agreement are revoked and superseded by this Agreement. This Agreement may not be changed, modified, or amended, except in writing, signed by all Parties, and any attempt at oral modification of this Agreement shall be void and of no effect. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

13.5 In the event of any dispute between the Parties in connection with this Agreement, the Party prevailing in such action or proceeding (excluding mediation) shall be entitled to recover from the other Party all of its costs and fees, including reasonable attorneys' fees; provided, however, that no such awarded amount shall be payable until (A) the court in question has made a finding that one or the other Party is the "prevailing party" in such proceeding, and (B) a final order of judgment is entered by a court of competent jurisdiction for which any time for appeal has expired without appeal, or where applicable, the mandate of an appellate court of competent jurisdiction shall issue.

13.6 Any action brought to interpret, enforce, or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in

and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action except in accordance with the terms of this Section 12.6.

13.7 It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between City and University. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization, or corporation not a Party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.

13.8 Attached to this Agreement and incorporated by reference is the written determination of each Party's legal counsel that each Party is authorized under the laws of the State of Arizona to enter into this Agreement and that the Agreement is in proper form.

13.9 City shall record a fully-executed copy of this Agreement in the Office of the Maricopa County Recorder.

IN WITNESS WHEREOF, the Parties have executed this Agreement on this ____ day of _____, 2022.

CITY OF CHANDLER, an Arizona
municipal corporation

By _____
Mayor Kevin Hartke

ATTEST:

By _____
City Clerk

**ARIZONA BOARD OF REGENTS for
and on behalf of THE UNIVERSITY OF
ARIZONA**

By *Lisa N. Rubmey*
SVP for Business Affairs & CFO

ATTEST:

By _____
Clerk of the Board

APPROVAL OF THE CHANDLER CITY ATTORNEY

Pursuant to Arizona Revised Statutes § 11-951 through § 11-954, I have reviewed the foregoing intergovernmental agreement between Chandler Unified School University No. 80 and the City of Chandler and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the University to enter into this Agreement.

DATED this _____ day of _____, 2022.

Kelly Y. Schwab
Chandler City Attorney

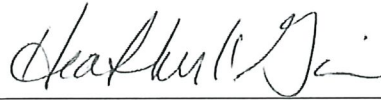
gw

APPROVAL OF UNIVERSITY COUNSEL

Pursuant to Arizona Revised Statutes § 11-951 through § 11-954, I have reviewed the foregoing intergovernmental agreement between the Arizona Board of Regents for and on behalf of the University of Arizona and the City of Chandler and declare this Agreement to be in proper form and within the powers and authority granted to the University under the laws of the State of Arizona.

No opinion is expressed as to the authority of the City to enter into this Agreement.

DATED this 8th day of February, 2022.

A handwritten signature in black ink, appearing to read "Heather B. G...", is written over a horizontal line.

Counsel for the Arizona Board of Regents
on behalf of the University of Arizona