INTERGOVERNMENTAL AGREEMENT
BETWEEN
CITY OF CHANDLER, ARIZONA
AND
ARIZONA BOARD OF REGENTS FOR AND ON BEHALF OF ARIZONA STATE UNIVERSITY
FOR
DELIVERY OF INCUBATOR AND ECOSYSTEM BUILDING SERVICES

This Intergovernmental Agreement ("Agreement") is entered into July 1, 2023, by and between the City of Chandler, an Arizona municipal corporation (the "City"), and the Arizona Board of Regents, a body corporate, for and on behalf of Arizona State University ("ASU"). The City and ASU are sometimes jointly referred to as the "Parties" and individually as a "Party."

RECITALS

A. Arizona Revised Statutes ("A.R.S.") §§ 11-951 through 11-954 provide that public agencies may enter into intergovernmental agreements for the provision of services or for joint or cooperative action.

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 the City.

C. ASU is authorized by A.R.S. §§ 15-1625 *et seq.* to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of ASU.

D. The City leases to ASU the ASU Chandler Innovation Center ("ACIC") located at 249 East Chicago Street, in Chandler, Arizona, pursuant to that certain lease dated May 28, 2013, as amended.

E. The City proposes to engage ASU to provide incubator and ecosystem building services for the benefit of the public at the ACIC as more fully described in Exhibit A, which is attached to and made a part of this Agreement by this reference.

F. ASU is ready, willing, and able to provide the services described in Exhibit A for the compensation and fees set forth and as described in Exhibit B, which is attached to and made a part of this Agreement by this reference.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained in this Agreement and other good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

1. **Term and Termination**.

1.1 The term of this Agreement will be one (1) year commencing on July 1, 2023 ("Effective Date"), unless sooner terminated in accordance with the provisions of this Agreement. The City and ASU may mutually agree to extend the Agreement for up to four (4) additional terms of one year each, or portions thereof.

1.2 Either Party may terminate this Agreement at any time by giving the other Party not less than thirty (30) days prior written notice. If this Agreement is terminated by the City, the City will remain responsible for payment to ASU for all services performed through the date of termination and for reimbursement to ASU of all non-cancelable commitments incurred in the performance of the Services.

2. **ASU Responsibilities**.

2.1 ASU will provide incubator and ecosystem building services at the ACIC as defined and further prescribed in Exhibit A (the "Services").

2.2 ASU will work diligently and make reasonable efforts to meet the Performance Measures set forth in Exhibit C, which will be used by the City, in part, to assess ASU's effectiveness in providing the Services, without waiving the enforceability of any of the other terms of this Agreement.

2.3 ASU will provide the City with quarterly and annual reports as further described in Exhibit A.

3. **City Responsibilities**.

3.1 Support ASU in raising the visibility of incubator and ecosystem building services at the ACIC, highlight and publicize key events and announcements, and utilize a broad range of communication vehicles at its disposal.

3.2 Provide opportunities for ASU to participate at City-sponsored programs/events related to technology and entrepreneurship, such as the annual Chandler Innovation Fair.

3.3 Coordinate any press releases or social media announcements with ASU regarding this Agreement / the incubator and ecosystem building services available to the public per this Agreement.

4. **Compensation and Invoicing**.

4.1 Unless amended in writing by the Parties, ASU's compensation and fees as more fully described in Exhibit B for performance of the Services approved and accepted by the City under this Agreement must not exceed $275,000 annually. No additional charges, outside of the approved services budget set forth in Exhibit B, will be eligible for payment unless approved in writing by the Parties. On a monthly basis, ASU will submit requests for payment for services approved and accepted during the previous billing period and provide any detail/narrative of the work accomplished.

4.2 The City will make payment for approved and accepted services within 30 days of the City's receipt of the request for payment. ASU bears all responsibility and liability for any and all tax obligations that result from ASU's performance under this Agreement.

5. Notices. All notices or demands upon any Party to this Agreement, and any change in contact information, will be in writing and delivered electronically, in person, or by mail, addressed as follows:

To City of Chandler: Economic Development Director City of Chandler P.O. Box 4008 Mail Stop 416 Chandler, AZ 85244-4008 Phone: (480) 782-3030	To ASU: Arizona State University Attn: Executive Director, J. Orin Edson Entrepreneurship + Innovation Institute Via Personal Delivery or Overnight Courier Service: 1475 N. Scottsdale Rd. Scottsdale, AZ 85257 Via U.S. Mail: P.O. Box 879908 Tempe, AZ 85287-9908 With a copy to: Arizona State University Attn: Senior Vice President and General Counsel Via Personal Delivery or Overnight Courier Service: 300 E. University Dr., Suite 335 Tempe, AZ 85281-2061 Via U.S. Mail: P.O. Box 877405 Tempe, AZ 85287-7405 Email: ogcmail@asu.edu

6. Indemnification. Each Party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other Party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or authorized volunteers.

ASU is a public institution and, as such, any indemnification, liability limitation, release or hold harmless provision set forth in this Agreement will be limited as required by Arizona law, including without limitation Article 9, Sections 5 and 7 of the Arizona Constitution and A.R.S. §§ 35-154 and 41-621.

7. Subcontracting. ASU will not employ, contract with, or use the services of any consultant, special contractor(s), or other third parties (collectively, "Subcontractor") in connection with the performance of its obligations under this Agreement without the prior written consent of the City. ASU will inform the City in writing of the name, proposed service to be rendered, and compensation of Subcontractor, and of any interest ASU may have in the proposed Subcontractor. ASU will ensure that Subcontractor agrees to the City's standard indemnity and insurance requirements for professional services. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

8. Data Confidentiality and Security. Personal identifying information, protected health information, financial account information, proprietary client information, or restricted City information (together "Confidential Information"), whether electronic format or hard copy, must be secured and protected at all times by ASU and any Subcontractor. At a minimum, ASU must encrypt or password-protect electronic files containing Confidential Information. This includes data saved to laptop computers, computerized devices, or removable storage devices. To be protected hereunder, Confidential Information must be marked confidential if disclosed in written or other tangible form. If Confidential Information is disclosed orally or visually, Confidential Information must be identified as confidential at the time of disclosure and reduced to writing, marked confidential, and transmitted to ASU within thirty (30) days of the initial disclosure.

Nothing in this agreement will be construed to convey to ASU any right, title or interest in any Confidential Information provided by the City or any right, title or interest in any intellectual property of the City, including but not limited to, processes, copyrights or patents. No license to ASU under any trademark, patent or copyright is either granted or implied by the conveying of Confidential Information to ASU.

ASU will not use, or disclose to any third party, Confidential Information of the City in any manner except for the purposes of this Agreement, and will require that its employees and agents (in the case of ASU, including employees of Skysong Innovations, LLC ("SI")) who have access to such information maintain the same strict restrictions. By way of example, but not limitation, ASU will not use Confidential Information of the City in connection with any patent application, for any commercial purpose, or for the benefit of any third party.

ASU will use reasonable efforts to prevent the disclosure to unauthorized third parties of any Confidential Information of the City and will use such information only for the purposes of this Agreement. ASU's obligation will survive for three (3) years after the termination of this Agreement; provided that ASU's obligations hereunder will not apply if ASU can show with convincing written evidence that the Confidential Information of the City received under this Agreement:

A) Was already known to ASU prior to the time of first disclosure; or
B) At the time of disclosure is in the public domain, or after disclosure, lawfully becomes part of the public domain other than through a breach of this Agreement by ASU; or
C) Is received in good faith without any obligation of confidentiality from a third party having a legal right to disclose the same; or
D) Is independently developed by ASU by individuals without access to such information; or
E) Is required to be disclosed by ASU pursuant to a legally enforceable order, law , subpoena, or other regulation ("Order"), provided, however that ASU notifies the City in advance of such disclosure and discloses only that information necessary to comply with said Order.

ASU retains the right to refuse acceptance of any Confidential Information that is not required for the purpose of this Agreement.

Notwithstanding any other provision of this Agreement to the contrary, ASU as a public institution, is subject to Arizona Revised Statutes (A.R.S.) §§ 39-121 through 39-127 regarding public records. Any provision regarding confidentiality is limited to the extent necessary to comply with Arizona law.

When any Confidential Information, regardless of its format, is no longer necessary or subject to federal or state retention requirements, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed. If Confidential Information collected or obtained by ASU or its Subcontractor in connection with this Agreement is believed to have been compromised, ASU or its Subcontractor must immediately notify the City contact. ASU agrees that the requirements of this Section must be incorporated into all subcontracts entered into by ASU for performance of the Services. It is further agreed that a violation of this Section may cause irreparable harm and City may seek injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice. The obligations of ASU or its Subcontractor under this Section will survive the termination of this Agreement.

9. <u>Rights in Data</u>. City shall have the use of data and reports resulting from this Agreement without additional cost or other restriction except as may be established by law or applicable regulation. Subject to the foregoing, each Party shall supply to the other Party, upon request, any available information that is relevant to this Agreement and to the performance thereunder.

10. <u>Nondiscrimination and Compliance with Laws</u>. The Parties will comply with all applicable state and federal laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. If applicable, the Parties will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

11. Cancellation for Conflict of Interest. No official, officer, or employee of either Party will have a direct or indirect interest in this Agreement, nor participate in decisions relating to the Agreement as prohibited by law. The Parties hereto acknowledge that this Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

12. Service Marks and Trademarks. As required by the Services, ASU shall ensure that all marketing materials created for the program clearly communicate that it is sponsored by the City. Except for the foregoing, neither Party will use any service marks, trademarks, trade names, logos, or other identifying names or marks of the other Party without the express, prior, written approval of the other Party. The use of any names or marks must comply with the requirements of the Party that owns the mark, including using the "®" indication of a registered trademark.

13. Cancellation for Nonappropriation of Funds. The Parties recognize that this Agreement depends upon appropriation of funds by the City. If the City fails to appropriate the necessary funds, or if the appropriation is reduced during the term of the Agreement, the City may reduce the scope of this Agreement if appropriate or cancel this Agreement without further duty or obligation. The City will notify ASU as soon as reasonably possible after the City knows of a loss of funds. In accordance with A.R.S. § 35-154, if ASU's performance under this Agreement depends on the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, then ASU may provide written notice of this to the City and cancel this Agreement without further duty or obligation of ASU. Appropriation is a legislative act and is beyond the control of ASU.

14. Arbitration. Per A.R.S. § 12-1518, the Parties agree to arbitrate disputes filed in Arizona Superior Court that are subject to mandatory arbitration pursuant to A.R.S. § 12-133.

15. Legal Worker Requirements. The Parties will comply with the applicable requirements of A.R.S. §41-4401.

16. No Israel Boycott or Forced Labor of Ethnic Uyghurs. The Parties will ensure that all contractors comply with the applicable requirements of A.R.S. § 35-393.01 and A.R.S. § 35-394.

17. Records. ASU will maintain complete, timely and accurate records of its activities and work under this Agreement. ASU agrees to retain all records relating to this Agreement for a period of five years after the termination of this Agreement, and to make all such records available for inspection and audit by the City or its representative upon reasonable advance notice and during normal business hours during the term of this Agreement.

18. Relationship of the Parties; Similar Services. Each Party is an independent contractor and is independent of the other Party. Under no circumstances will any employees of one Party be deemed the employees of the other Party for any purpose. This Agreement does not create a partnership, joint venture, or agency relationship between the Parties of any kind or nature. This Agreement does not create any fiduciary or other obligation between the Parties, except for those obligations expressly and specifically set forth herein. Neither Party will have any right, power, or authority under this Agreement to act as a legal representative of the other Party. Neither Party will have any power to obligate or bind the other or to make any representations, express or implied, on behalf of or in the name of the other in any manner or for any purpose whatsoever contrary to the provisions of this Agreement. ASU students are not deemed to be employees of the City by virtue of this Agreement. Each Party acknowledges that the relationship of the parties hereunder is non-exclusive.

19. Entire Agreement; Severability. This Agreement contains the entire understanding between the Parties concerning the subject matter of this Agreement and supersedes any and all prior understandings, agreements, representations, and warranties, express or implied, written or oral, between the Parties concerning the subject matter of this Agreement. The Parties agree that should any part of this Agreement be held to be invalid or void, the remainder of the Agreement will remain in full force and effect and will be binding upon the Parties.

20. Amendments and Waivers. No waiver, amendment or modification of this Agreement will be valid or binding unless written and signed by the Parties. Waiver by either Party of any breach or default of any clause of this Agreement by the other Party will not operate as a waiver of any previous or future default or breach of the same or different clause of this Agreement.

21. Assignment. Neither Party will assign or transfer any interest in this Agreement without the prior written approval of the other Party. Any attempted assignment in violation of this provision will be null and void. Subject to the foregoing, this Agreement will be binding upon the permitted successors and permitted assigns or other permitted transferees of the Parties.

22. Governing Law; Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Arizona, without regard to its conflict of laws principles. Any proceeding arising out of or relating to this Agreement will be conducted in Maricopa County, Arizona. Each Party waives any objection it may now or hereafter have to venue or to convenience of forum.

23. Force Majeure. Neither Party will be liable for failure to perform any obligation under this Agreement if such failure is directly caused by a Force Majeure Event. A "Force Majeure Event" means an event or circumstance that is beyond the reasonable control and without the fault or negligence of the Party impacted, and that could not have been prevented by the reasonable diligence of the Party but expressly excludes a Party's payment obligations under this Agreement. Without in any way limiting the foregoing, a Force Majeure Event may include, but is not restricted to, acts of God or of a public enemy, acts of the Government in either its sovereign or contractual capacity, war, riots, fires, floods, epidemics or pandemics, mass health issues or disease, quarantine restrictions, strikes or labor difficulties, civil tumult, freight embargoes, natural disasters, unusually severe weather, a failure or disruption of utilities or critical electronic systems, acts of terrorism, mass shootings or other emergencies that may disrupt the operations of a campus or facility.

24. <u>No Third-Party Beneficiaries</u>. Nothing in this Agreement, express or implied, is intended or will be construed to confer upon any person or entity, other than the Parties and their respective successors and assigns permitted by this Agreement, any right, remedy, or claim under or by reason of this Agreement.

25. <u>Recitals and Exhibits</u>. All recitals herein, and all exhibits attached hereto and referred to herein, are integral and material parts of this Agreement.

26. <u>Counterparts</u>. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument, and photocopy, facsimile, electronic and other copies will have the same effect for all purposes as an ink-signed original.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date written above.

City of Chandler

By ______________________________
Kevin Hartke
Mayor

ATTESTED TO:

____
City Clerk

Arizona Board of Regents for and on behalf of Arizona State University

By ______________________________
Sally C. Morton
Executive Vice President
ASU Knowledge Enterprise

INTERGOVERNMENTAL AGREEMENT DETERMINATION

This Intergovernmental Agreement between the City of Chandler and the Arizona Board of Regents, for and on behalf of Arizona State University, has been reviewed pursuant to A.R.S. § 11-952 by the undersigned, who have determined that it is in the proper form and is within the power and authority granted under the laws of the State of Arizona.

APPROVED AS TO FORM:

____
City Attorney

APPROVED AS TO FORM:

Nicole O. Colyer
____
Office of General Counsel,
Arizona State University

EXHIBIT A
SCOPE OF SERVICES

The Contractor will develop a program and a method of delivering incubator and ecosystem-building services. ASU Edson E+I activities and deliverables include:

Facility Management

- Maintain office space at the ASU Chandler Innovation Center to provide a location for business incubation/acceleration and co-working activities.
- Provide access to a co-working area for companies and individual entrepreneurs that offers space and access to standard office resources, such as high-speed internet, copy machines, video conference infrastructure, and printers.
- Provide staff to manage the facility and tenants during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, except on designated City holidays.
- Track client usage and requests to ensure onsite staffing and program hours meet client needs.
- Develop and implement an application and escalation process for ventures that wish to license a private office.

Client Recruitment & Development

- Recruit technology-enabled ventures into the Chandler Endeavor entrepreneurial ecosystem.
- Develop and implement an onboarding process with screening for clustered support tracks.
- Manage client onboarding, including execution of agreements and communication of program rules and requirements, for both resident and non-resident clients.
- Provide regular venture development support, to be delivered by ASU staff and mentors.
- Develop custom venture incubation programming that aligns with local needs and strengths through Chandler Endeavor.
- Assess clients' growth and advancement through programming.
- Analyze program timing and delivery methods to determine client interest levels and value.
- Encourage long-term engagement in the ecosystem and leadership in future development.
- Encourage clients to remain in Chandler after program participation and scaling. ASU Edson E+I will work collaboratively with the City's Economic Development Division to establish a process to retain clients in the community.

Events: ASU Edson E+I is expected to host entrepreneurial programming and events, including:

- Outreach events for clients, mentors, community members, and investors.
- Monthly connectivity events with diverse learning modalities.
- Founder meet ups to encourage peer to peer learning and accountability.
- Large ecosystem-wide community convening.

Entrepreneurial Ecosystem Building

- Recruit targeted industry mentors and technical support providers who will commit time to support Chandler Endeavor ventures.
- ASU Edson E+I is to host quarterly advocacy roundtables with a group of six to nine key stakeholders to discuss program strategy and outcomes. In addition to a designated representative from the City, there should be at least one member from each of the following groups: small business banking, angel investing, venture capital, business consulting, and small business owners. Members must be approved by the City.
- Work with ventures to create an engagement strategy to advance their individual venture while providing leadership and support to other community founders.
- Develop partnerships (Arizona State University, University of Arizona, Maricopa SBDC, Chandler Chamber of Commerce, #yesphx, Arizona Tech Investors, Arizona Founders Fund, and other groups) to support client recruitment and enhance delivery of programs, services and events.
- Work with university-wide resources to provide access to specialty equipment, researchers, student support and internship opportunities.

Strategic Plan & Marketing Activities

- A comprehensive ecosystem assessment will be conducted in the initial year of programming, outlining recommendations for the further development of the Chandler entrepreneurial ecosystem. Strategy and future iterations of the program will align with the findings of the assessment and serve as a guidepost for other partners engaging in the ecosystem.
- Create and maintain a dedicated program webpage with information on business incubation/acceleration services, co-working services, events, news, and how to become a client.
- Promote the program on social media, including Facebook, Twitter, and LinkedIn.
- Engage at local, regional and global events that promote Chandler Endeavor and the City of Chandler as a leader in innovative entrepreneurial ecosystem building support.
- Ensure all marketing materials created for the program clearly communicate that it is sponsored by the City of Chandler.

Reporting: ASU Edson E+I is expected to provide the following reports to the City's Economic Development Division:

- Quarterly reports on program milestones, traction, lessons learned, success stories, and the established performance measures shown in Exhibit C of this agreement.
- An annual report on how the program has helped cluster cohort and private space user ventures raise capital, generate revenue, and create job opportunities (employment, internships, contractors).
- An annual report on the diversity of founders engaged in the program with the goal of program participants being an accurate reflection of the diversity of Chandler.
- A bi-annual connectivity survey that measures the overall advancement of the connectivity of the ecosystem.

EXHIBIT B
FEE SCHEDULE

The fee below is inclusive of all costs associated with performance of services described in the Scope of Work.

Incubator and Ecosystem-Building Management Services Year One	**$22,916.67 per month, inclusive**

EXHIBIT C
PERFORMANCE MEASURES

The performance targets below shall be used to evaluate and report progress on Contractor's performance of services described in the Scope of Work:

Annual Performance Measure	**FY 23-24 Targets**
Total people engaged in the Chandler Endeavor ecosystem (unique innovators engaged in connectivity events, email signups, one on one wayfinding assessments, collaboration co-working space users)	1,000
Ventures engaged in Cluster Cohorts (in-depth mentoring, founder accountability meetings and industry-specific resources in six-month cohort tracks) Venture (Fall 2023) - 6 Accelerate (Spring 2024) – 6	12 The specific names of ventures to be listed per cohort.
Total number of ventures given access to private office space	6
Average Net Promoter Score for all ASU Edson E+I initiated programming[1]	60%
Chandler ecosystem Connectivity Score[2]	TBD

1. Net Promoter Score is a customer satisfaction metric to measure the quality of an experience for an individual based on a single survey question asking participants to rate the likelihood that they would recommend the program to a friend or colleague. A score of 100% indicates that all participants surveyed would enthusiastically promote the program. Industry average for educational training is 60%.

2. The Connectivity Score is a metric used to assess the strength and density of entrepreneurial networks within a community. It is obtained through an annual survey that measures how many entrepreneurs individuals can identify or know within their community. The survey is distributed widely in the Chandler community to establish a baseline score.

   The objective would be to see an increase in the overall Connectivity Score each year, which serves as an indicator of the broader impact of a program or initiative on the community. The underlying premise is based on ecosystem building theory, which suggests that communities with robust networks of entrepreneurs are more resilient and capable of fostering a diverse range of successful ventures. This, in turn, leads to a higher quality of life and sustainable economic impact over time.

   For instance, a Connectivity Score of 9.4 would indicate that, on average, entrepreneurs in the broader community are acquainted with or have connections to nine other entrepreneurs. This score demonstrates a relatively low entrepreneurial network within the community. By actively working to increase this score, the aim is to enhance collaboration, knowledge sharing, and support among entrepreneurs, thereby promoting economic growth and community development.