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City Clerk
211 W. Aspen Avenue
Flagstaff, Arizona 86001

**FIRST AMENDMENT TO
INTERGOVERNMENTAL AGREEMENT**

Related to Consolidation of University Campus and Road Projects

THIS FIRST AMENDMENT is entered into this ____ day of _____, 2023 by and between CITY OF FLAGSTAFF, a municipal corporation of the state of Arizona (“CITY”) and ARIZONA BOARD OF REGENTS, a body corporate with perpetual succession pursuant to the laws of the State of Arizona, for and on behalf of Northern Arizona University, a public institution of higher education (hereinafter the Arizona Board of Regents shall be referred to as “UNIVERSITY”), and amends that Intergovernmental Agreement entered into by the parties on July 5, 2017 (the “Agreement”).

RECITALS:

WHEREAS, the purpose of the Agreement and this Amendment is to provide for real property transactions between the parties wherein valuable consideration is, has or will be exchanged in order to build a better community; and

WHEREAS, on March 7, 2023 CITY adopted Ordinance No. 2023-04 which authorizes the exchange of properties of substantially equal value with UNIVERSITY;

AGREEMENT:

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties agree to amend the Agreement as follows:

Paragraph 1 of the Agreement (additions shown as underlined text, deletions shown as stricken):

TERM

This Agreement shall commence on August 15, 2017 and continue for a period of twenty-
(20) ~~ten (10)~~ years, unless sooner terminated as provided herein. This Agreement may be renewed or extended by mutual agreement of the parties.

Paragraph 7 of the Agreement is amended by adding a new subsection d to read as follows:

- d. UNIVERSITY owns property along either side of Lone Tree Road between Pine Knoll Drive and Zuni Drive. CITY desires to expand the width of Lone Tree Road in this stretch in Fiscal Years 2026-2027 & 2027-2028. The parties will meet and negotiate in good faith to determine how CITY needs for expansion of Lone Tree Road can be achieved through purchase or exchange of property of substantially equal value. A map showing this area is attached hereto as Exhibit 1. The parties understand that in

accordance with ABOR policy, UNIVERSITY may be required to seek approval from ABOR for any agreed upon real property transaction.

Paragraph 8 of the Agreement is amended by adding a new subsection d to read as follows:

- d. As contemplated by the IGA, CITY entered into a Development Agreement with German Dobson CVS, LLC, dated September 18, 2017 which was recorded on September 19, 2017 in the official records of the Coconino County Recorder, **Docket No. 3796197**. The developer did not proceed with development. The developer sold the property encumbered by the Development Agreement to the Arizona Board of Regents, and title was transferred by Special Warranty Deed and recorded on December 12, 2018 in the **Docket No. 3831701**. The CITY agrees to cancel the Development Agreement.

Section 10 is deleted in its entirety and replaced with the following:

10. MISCELLANEOUS AND ADDITIONAL PROJECT TRANSACTIONS

10.1 PINE KNOLL DRIVE – STREETLIGHTS AND SIDEWALK

A sidewalk/streetlight project from the Southeast corner of San Francisco Street and Pine Knoll Dr. to the Southwest corner of Pine Knoll Dr and Lone Tree was completed in the summer of 2016 and this Agreement memorializes the parties' responsibilities. See Exhibit M, overview map.

- a. UNIVERSITY is responsible for maintenance of the sidewalk and landscaping in the CITY right of way.
- b. CITY is responsible for maintenance of CITY-owned poles and lamps.
- c. CITY is responsible for paying energy costs for poles and lamps.

10.2 ADOT WORK ADJACENT TO MCCONNELL DRIVE – TRANSFER OF SEWER EASEMENT TO CITY

UNIVERSITY granted a Sewer Easement to CITY within Coconino County Assessor Parcel No. 103-24-005R, in exchange for payment of fair market value of \$3,187.50. The Sewer Easement is recorded on July 26, 2022 in the records of the Coconino County Recorder, instrument **Docket No. 3955891**. This easement was necessitated by an Arizona Department of Transportation (“ADOT”) project along Milton Avenue/State Route 89A. ADOT is reimbursing CITY the cost of the Sewer Easement. This section is to memorialize this transaction.

10.3 STUDENT ATHLETE HIGH PERFORMANCE CENTER – TRANSFER OF WATER AND SEWER EASEMENT TO UNIVERSITY

CITY granted a Water and Sewer Easement to UNIVERSITY within Coconino County Assessor Parcel No. 103-18-003A. The easement area is approximately 3,071 square feet.

The existing utility mains are owned and maintained by UNIVERSITY in this area. The Water and Sewer Easement is recorded on December 9, 2020 in the records of the Coconino County Recorder, **Docket No. 3897980**. This section is to memorialize this transaction.

10.4 ABANDONED PUBLIC RIGHT-OF-WAY ON HOSKINS AVENUE AT FOUNTAINE STREET – TRANSFER OF TITLE TO UNIVERSITY

Pursuant to Ordinance No. 2022-31 CITY abandoned approximately 5,237 square feet of public right-of-way at the northwest corner of Fontaine Street and Hoskins Avenue (“Hoskins Avenue Parcel”). CITY retained a 20’ wide strip of Hoskins Avenue for public utilities and a future FUTS trail. The Hoskins Avenue Parcel is located adjacent to UNIVERSITY owned parcels, Coconino County Assessor Parcel No. 104-02-064 (a residential lot), and Parcel No. 103-05-003.

- a. CITY will grant fee simple title to the Hoskins Avenue Parcel to UNIVERSITY. The form of Special Warranty Deed along with a legal description and map of the property to be conveyed are attached hereto as Exhibit 2.

10.5 UNIVERSITY DRIVE–TRANSFER OF TITLE TO CITY, IMPROVEMENTS

UNIVERSITY owns University Drive east of Milton Road/Highway 89A, Coconino County Assessor Parcel No. 103-22-003A. University Drive serves as a public access to adjacent commercial properties and as an entrance way into the NAU Campus.

CITY desires to make road improvements to University Drive to meet City standards, and to construct a bicycle and pedestrian underpass under Milton Road/Highway 89A, as part of the Beulah Extension/University Realignment Project. It is anticipated the improvements will benefit both the public and NAU students crossing Milton Road.

CITY is willing to assume ownership of University Drive from the NAU Campus to Milton Road, which consists of 86,068 square feet of area (“the University Drive Parcel”).

- a. UNIVERSITY shall grant fee simple title to CITY for the University Drive Parcel on or before April 10, 2023 by Special Warranty Deed. A form of Specialty Warranty Deed along with the legal description and map of the property to be transferred are attached hereto as Exhibit 3.
- b. UNIVERSITY shall grant a drainage easement to CITY for an area on Coconino County Assessor Parcel No. 103-18-001, approximately 1,173 square feet in area (“University Drive Drainage”). A sample form of drainage easement with attached legal description and map are attached hereto as Exhibit 4.
- c. UNIVERSITY shall grant a drainage easement to CITY for an area on Coconino County Assessor Parcel No. 103-19-001B, approximately 882 square feet in area (“the

Drainage Inlet”). A sample form of drainage easement with attached legal description and map are attached hereto as Exhibit 5.

- d. CITY at its expense will be responsible for design and construction of the Beulah Extension/University Realignment Project; provided, however, UNIVERSITY may elect to participate in the costs. CITY will assume responsibility for ongoing maintenance of University Drive Parcel as public right-of-way, except for snow plowing.
- e. UNIVERSITY at its expense shall be responsible for snow plowing the University Drive Parcel until such time as the CITY agrees in writing to assume snow plowing operations or UNIVERSITY no longer has funding to perform snowplowing service on the NAU Campus in Flagstaff. The CITY and UNIVERSITY shall enter into a separate operational agreement for snow plowing. CITY shall indemnify and hold UNIVERSITY harmless from any claims related to performance under this provision except claims directly associated with acts or omissions of UNIVERSITY employees. This clause shall survive termination or expiration of the IGA.

Paragraph 19 is amended to read as follows (additions shown as underlined text, deletions shown as stricken):

19. AMENDMENTS AND RELATED AGREEMENTS

This Agreement constitutes the entire agreement of the parties relating to the subject matter hereof as of the date of execution. This Agreement is conceptual in nature. All amendments or modifications of the Agreement shall be in writing and approved by the parties. The parties may agree to more specific development agreements, real estate purchase contracts, ~~deed related~~ and other documents referencing this Agreement. Legal counsel for CITY and UNIVERSITY shall have authority to approve the final forms of deeds and easements and approve minor modifications to any forms attached to this Agreement.

A new Paragraph 20 is added to the Agreement, to read as follows:

20. COMPLETED TRANSACTIONS.

The parties have completed the following transfers of property interests pursuant to the Agreement, paragraphs 3, 4, 7, all recorded on November 14, 2017 in the official records of the Coconino County Recorder:

- a. Easement for Public Utilities granted by Arizona Board of Regents on behalf of Northern Arizona University for a portion of Humphreys Street, a portion of Dupont Avenue, a 16’ alley in block 158 of the Normal School Addition subdivision and a portion of Ellery Avenue, dated 11/8/17. **Docket No. 3801245.**

- b. Special Warranty Deed granted by Arizona Board of Regents on behalf of Northern Arizona University for a parcel of land adjacent to Lone Tree Road (adjoining to a 75 feet westerly of Lone Tree Road), dated 10/12/17. **Docket No. 3801249.**
- c. Coconino County Combination/Split Request Form APN 103-18-004A, for right-of-way to include as part of Lone Tree Road. **Docket No. 3801248.**
- d. Ordinance No. 2017-20 authorizing abandonment and conveyance of public right-of-way in a portion of Humphreys Street, alley under Drury Inn, alley under High Country Conference Center, a portion of Verde Street to Arizona Board of Regents in exchange for property of substantially equal value, dated 6/20/17. **Docket No. 3801242.**
- e. Special Warranty Deed granted by City of Flagstaff to Arizona Board of Regents on behalf of Northern Arizona University for a portion of Humphreys Street as shown in Instrument No. 3494098 of the Coconino County Recorder, dated 8/28/17, a portion of North-South 16' alley of Block 139 and a portion of East-West 16' alley of Block 140. **Docket No. 3801243.**
- f. Easement for Public Utilities granted by Arizona Board of Regents on behalf of Northern Arizona University for a portion of University Drive, dated 11/8/17. **Docket No. 3801247.**
- g. Special Warranty Deed granted by City of Flagstaff to Arizona Board of Regents on behalf of Northern Arizona University for a portion of the right-of-way for Verde Street, dated 8/28/17. **Docket No. 3801246.**
- h. Easement for Ingress and Egress (Humphreys St) granted by Arizona Board of Regents on behalf of Northern Arizona University for real property located along Humphreys Street south of Butler Avenue, dated 11/8/17. **Docket No. 3801244.**

All other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have set forth their hands, through representatives duly so authorized, the date and date first above written.

NORTHERN ARIZONA UNIVERSITY

José Luis Cruz Rivera, President

Approved as to form:

General Counsel

CITY OF FLAGSTAFF

Becky Daggett, Mayor

Approved as to form:

City Attorney

Attachments:

- Exhibit 1 Lone Tree Road map, showing areas where land is needed (Pine Knoll to Zuni)
- Exhibit 2 Special Warranty Deed, with legal description and map (Hoskins Avenue Parcel)
- Exhibit 3 Special Warranty Deed, with legal description and map (University Drive Parcel)
- Exhibit 4 Drainage Easement, with legal description and map (University Drive Drainage)
- Exhibit 5 Drainage Easement, with legal description and map (Drainage Inlet)