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APR 24 2014



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MEMORANDUM MUNICIPAL UTILITIES - MEMO NO. MUA14-036

DATE: April 10, 2014

TO: MAYOR AND COUNCIL

THRU: RICH DLUGAS, CITY MANAGER *RD*
 MARSHA REED, ASSISTANT CITY MANAGER *MR*
 DAVE SIEGEL, MUNICIPAL UTILITIES DIRECTOR *DS*
 JOHN KNUDSON, UTILITIES ENGINEERING MANAGER *[Signature]*
 DOUG TOY, WATER REGULATORY AFFAIRS MANAGER *[Signature]*

FROM: VICTORIA SHARP, WATER SYSTEM OPERATIONS SUPERINTENDENT *VJS*

SUBJECT: RESOLUTION NO. 4723 AUTHORIZING THE INDUSTRY/UNIVERSITY
 COOPERATIVE RESEARCH CENTER MEMBERSHIP AGREEMENT
 BETWEEN THE ARIZONA BOARD OF REGENTS FOR AND ON BEHALF
 OF ARIZONA STATE UNIVERSITY AND THE CITY OF CHANDLER

RECOMMENDATION:

Staff recommends City Council adopt Resolution No. 4723 authorizing the Mayor to execute the Industry/University Cooperative Research Center Membership Agreement between the Arizona Board of Regents, for and on behalf of Arizona State University, and the City of Chandler, in an amount not to exceed \$15,000, per year.

BACKGROUND:

In 2009, Arizona State University partnered with Temple University and the University of Arizona to establish the Water and Environmental Technology Center (WET). WET's mission is to develop technologies and methods to better manage contaminants in water supplies. WET is funded by private and public entities. WET has completed studies on water treatment, sustainability, reuse, recharge, forest fire impacts on water quality, taste and odor causing compounds in the canal system, and personal care products in source water.

In 2011, the City of Chandler joined WET as a non-member participant. WET non-member participants are only allowed limited access to minimal final reports. If the City upgrades its status to a "Member", the City will become a voting member on the WET

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Board, receive full access to all ongoing research, and the ability to review unpublished reports.

The initial membership term is July 1, 2014, to June 30, 2015. As part of the agreement, the City's membership automatically renews, for three one-year terms. The City may cancel its annual renewal by providing a 90-day written notice prior to the termination date.

FINANCIAL IMPLICATIONS:

Cost: \$15,000
Savings: N/A
Fund Source: N/A

<u>Acct. No.:</u>	<u>Fund Name:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Amount:</u>
605.3830.5810.0.0	Water Operating	Subscriptions and Memberships	No	\$15,000

PROPOSED MOTION:

Move City Council adopt Resolution No. 4723 authorizing the Mayor to execute the Industry/University Cooperative Research Center Membership Agreement between the Arizona Board of Regents, for and on behalf of Arizona State University, and the City of Chandler, in an amount not to exceed \$15,000, per year.

Attachments: Resolution No. 4723
WET Center Membership Agreement

RESOLUTION NO. 4723

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE INDUSTRY/UNIVERSITY COOPERATIVE RESEARCH CENTER MEMBERSHIP AGREEMENT BETWEEN THE ARIZONA BOARD OF REGENTS FOR AND ON BEHALF OF ARIZONA STATE UNIVERSITY AND THE CITY OF CHANDLER, ARIZONA

WHEREAS, Arizona State University (“University”) and the City of Chandler (“City”) desire to support an Industry/University Cooperative Research Center for a Water, Environmental and Technology Center (the “Center”) to maintain a mechanism whereby the University environment can be used to study the monitoring, maintenance and improvement of water quality through consideration of certain topics; and

WHEREAS, pursuant to the “National Science Foundation Water Environmental and Technology Center (WET) Prospectus and Bylaws” the City of Chandler wants to enter this intergovernmental agreement and become a member of the Center.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Chandler, Arizona, as follows:

Section 1. That the City Mayor is authorized to sign the *Industry/University Cooperative Research Center Membership, Water, Environmental and Technology Center Agreement Between the Arizona Board of Regents for and on Behalf of Arizona State University and the City of Chandler, Arizona*.

Section 2. That the various City officers and employees are hereby authorized and directed to perform all acts necessary to give effect to this Resolution.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this _____ day of _____, 2014.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

CITY ATTORNEY *CH*

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4723 was duly passed and adopted by the City Council of the City of Chandler, Arizona at a regular meeting held on the ____ day of _____, 2014, and that a quorum was present thereat.

City Clerk

**Industry/University Cooperative Research Center
Membership Agreement
Water, Environmental and Technology Center**

This Membership Agreement (this "Agreement") is made this 1st day of July 2014 ("7/1/14") by and between the Arizona Board of Regents for and on behalf of Arizona State University ("UNIVERSITY") and City of Chandler, an Arizona corporation which operates a municipal utility, having a place of business at 1475 East Pecos Road, Chandler, AZ 85244 ("MEMBER").

WHEREAS, the parties to this Agreement have joined together to support an Industry/University Cooperative Research Center ("IUCRC") for a **Water, Environmental and Technology Center** ("WET") (hereinafter called "CENTER") to maintain a mechanism whereby the UNIVERSITY environment can be used to perform research to study the monitoring, maintenance and improvement of water quality through consideration of the levels, fate, transport, toxicity, removal, prevention, analytical methods, sensors, forensic studies and other related topics.

WHEREAS, the pursuant to the "National Science Foundation Water Environmental and Technology Center (WET) Prospectus and Bylaws" (the "Bylaws"), a copy of which are attached hereto as Exhibit 1 and form a part of this Agreement, MEMBER is entering into this Agreement to become a member of the CENTER.

The parties hereby agree as follows:

A. CENTER DIRECTOR. CENTER will be operated by the UNIVERSITY under the leadership of the Director, Dr. Morteza Abbaszadegan.

B. MEMBERSHIP ELIGIBILITY. Any organization, including a parent company or its majority-owned subsidiaries, or any federal research and development laboratory, or any Government-owned contractor-operated laboratory, or any not-for-profit research and development organization, or any State or federal regulatory body may become a member of the CENTER, consistent with applicable State and Federal laws and statutes. Non-U.S. corporations with research or manufacturing facilities in the U.S. are also eligible for membership.

C. MEMBERSHIP FEES. MEMBER agrees to contribute the annual membership fee, upon execution of this Agreement and on each anniversary of the Effective Date, in support of the CENTER and thereby becomes a member. This Agreement is effective for the commencing on the Effective Date for a one year term ending June 30, 2015, which Agreement shall be extended automatically, if not terminated upon 90-day notice prior to any termination date or as set forth in Section P, for three one-year terms: July 1, 2015 through June 30, 2016; July 1, 2016 through June 30, 2017; and July 1, 2017 through June 30, 2018. The Agreement may be extended thereafter annually for four additional one year terms.

Because research of the type to be done by the CENTER takes time, and research results may not be obvious immediately, MEMBER should join the CENTER with the intention of remaining a fee paying member for at least four years. MEMBER may upgrade to the next membership level at any time during the four year period. MEMBER may terminate this Agreement by giving UNIVERSITY a 90 day written notice prior to the termination date. Should MEMBER exercise its termination option and said termination date occurs prior to the end of the year through which MEMBER has made its contribution, UNIVERSITY shall not be obligated to refund any portion of the contribution. The membership fees and levels are:

- (1) Full Membership: \$30,000 annually and receives 100 votes in Industrial Advisory Board.
- (2) Associate Membership: \$15,000 annually and receives 50 votes in Industrial Advisory Board.
- (3) Associate Membership: \$10,000 annually and receives 33 votes in Industrial Advisory Board.
- (4) Affiliate Membership: \$3,000 annually and receives 10 votes in Industrial Advisory Board.

The City of Chandler shall be an Associate Member and contribute \$15,000 annually and receive 50 votes in the Industrial Advisory Board.

Checks from MEMBER are to be made payable to "Arizona State University" and mailed to:

Arizona State University
ATTN: Award Management Team
PO Box 876011
Tempe, AZ 85287-6011

Wire transfers should be sent to:

Account#235335739
ABA Routing#: 122101706
Swift Code: BOFAUS3N
Bank Name: Bank of America
Acct Name: ASU Federal Cash Deposit

Questions should be directed to the person issuing the invoice or to cashmanagement@asu.edu.

D. INDUSTRIAL ADVISORY BOARD. There is an Industrial Advisory Board (IAB) composed of one representative from each MEMBER organization. The IAB makes recommendations on (a) the research projects to be carried out by the CENTER (b) the allocation of resources to these research projects, and (c) changes in the Bylaws. The operation of the IAB is specified in the Bylaws. The number of votes each MEMBER has on the IAB is determined by the membership level of the MEMBER.

E. PUBLICATION. The results of CENTER research will be made equally available to all MEMBERS. UNIVERSITY reserves the right to publish in scientific or engineering journals the results of any research as submitted in the final deliverable of each funded project. Prior to publication, MEMBER shall have the right to review any paper or presentation containing results of the research conducted during MEMBER's period of membership in the CENTER. MEMBER may request a delay in publication for a period not to exceed sixty (60) days from the date of submission to MEMBER. Said request for delay shall only be made in order to remove or approve any identified MEMBER confidential information or permit the filing of a patent application on any invention or discovery made by or at the CENTER and disclosed within the proposed publication. MEMBER shall make said request in writing and include a justification therefore within 45 days from the date the proposed publication was transmitted to MEMBER. Should the proposed publication be a student thesis or dissertation, MEMBER hereby agrees to complete all reviews of material contained therein and to cooperate with any necessary patent application procedures evolving therefrom in such a manner as not to impede the students' completing their requirements for graduation or completion of a degree.

F. INTELLECTUAL PROPERTY

If new intellectual property is developed by research at the CENTER with funding provided under this Agreement, the following terms and conditions shall apply;

1. Except as provided by Subsection F2, title to all inventions conceived or first actually reduced to practice in the course of research conducted by or at the CENTER, and all patents thereon ("Subject Patents"), shall vest in the UNIVERSITY. To the extent title to any such invention vests in MEMBER, MEMBER agrees to assign and hereby assigns all of its right, title, and interest in such invention to UNIVERSITY.
2. If at least one inventor is an employee or agent of MEMBER and at least one inventor is an employee, student, agent or staff member of the UNIVERSITY, then title to such inventions and patents thereon ("Joint Patents") shall vest jointly in the UNIVERSITY and MEMBER. UNIVERSITY and MEMBER shall have free and unrestricted rights to use and grant licenses to any Joint Patents without restriction in time and without obligation to account to or compensate the other party.

3. Any such invention made which utilized support from NSF or other federal sponsors shall be subject to the terms and conditions of the sponsoring agreement providing the federal funds used in the development of said invention.
4. Subject to F7 below, at MEMBER's request, UNIVERSITY agrees to grant to MEMBER, who is a member of the CENTER at the time a project is commenced by the CENTER, a worldwide, non-exclusive, irrevocable, royalty free, without the right to sublicense, license under Subject Patent(s) arising out of the project to make, have made, import, use, offer for sale or sell MEMBER products that practice the Subject Patent(s).
5. A MEMBER shall not have any rights to inventions from projects that are commenced prior to becoming a MEMBER unless agreed to in writing by the IAB.
6. MEMBER shall have the option to negotiate a revenue-bearing nonexclusive license that shall include the right for MEMBER to sublicense such Subject Patent(s) to others. The option period shall begin on the Effective Date and continue until the earlier of (i) 45 days after expiration or termination of this Agreement or (ii) six (6) months from formal disclosure to MEMBER of a Subject Patent.
7. If UNIVERSITY has sole title to the invention per F1 above, MEMBER may request an exclusive license in such invention. If MEMBER is the only MEMBER of the CENTER interested in a license for a Subject Patent then, subject to government rights and the internal use rights of other MEMBERS of the CENTER, UNIVERSITY agrees to negotiate in good faith, mutually agreeable terms within three months of the request for a license. During this three month period, UNIVERSITY will not negotiate with any non-MEMBER of the CENTER.
8. Any licenses granted hereunder shall be subject to (i) any limitations imposed by law or the terms of any applicable government grant, contract or cooperative agreement, (ii) applicable requirements of 35 U.S.C. Sections 200 Et seq., and implementing regulations and policies; and (iii) the policies and rules of the Arizona Board of Regents and Arizona State University.
9. MEMBER acknowledges that UNIVERSITY intends to grant non-exclusive licenses to Subject Patent(s) for any and all purposes to any non-sponsoring third party.

H. PATENT PROSECUTION

UNIVERSITY shall direct and control patent prosecution for all inventions created at the CENTER unless otherwise agreed in writing. If MEMBER or CENTER members request that a patent be applied for on an invention, expenses incurred by UNIVERSITY in drafting, filing, prosecuting and maintaining such patent application and patents issuing therefrom, shall be paid for by the MEMBER(s) requesting the patent application filing. UNIVERSITY shall direct its counsel to provide such MEMBER(s) copies of all relevant documentation, so that MEMBER(s) may be informed and apprised of the continuing prosecution and other status of such patent applications. UNIVERSITY shall use reasonable judgment in implementing reasonable requests made by such MEMBER(s) with regard to the preparation, filing, prosecution and/or maintenance of the patent applications and or patents.

I. COPYRIGHTS

1. Title in software and other copyrightable material developed by or at CENTER while MEMBER is a member of the CENTER shall vest in UNIVERSITY. To the extent title to any such software or other copyrightable material vests in MEMBER, MEMBER agrees to assign and hereby assigns all of its right, title, and interest in such software and other copyrightable material to UNIVERSITY.
2. MEMBER is hereby granted an irrevocable, nonexclusive, royalty free license to obtain a copy, to make copies, the right to make derivative works, and the right to publish and publically perform the copyrightable materials after publication of the research by the UNIVERSITY.
3. This copyright license includes the right to sublicense affiliates, in accordance with applicable state and federal laws.
4. MEMBER shall have the option to negotiate a revenue-bearing nonexclusive copyright license that shall include the right for MEMBER to sublicense such copyrightable material to others. The option period shall begin on the Effective Date and continue until the earlier of (i) 45 days after expiration or termination of this Agreement or (ii) six (6) months from formal disclosure to MEMBER of the copyrightable material.
5. Any licenses granted hereunder shall be subject to (i) any limitations imposed by law or the terms of any applicable government grant, contract or cooperative agreement, (ii) applicable

requirements of 17 U.S.C., and implementing regulations and policies; and (iii) the policies and rules of the Arizona Board of Regents and Arizona State University.

6. MEMBER acknowledges that UNIVERSITY intends to grant non-exclusive licenses to the copyrightable material for any and all purposes to any non-sponsoring third party.

J. DISPUTES

In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the parties hereto shall use their reasonable efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. Notice is provided of Sections 12-1518 and 12-133, Arizona Revised Statutes.

K. NONDISCRIMINATION

The parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act, and affirmative action.

L. NOTICES

All notices under this Agreement given by either party to the other shall be in writing and shall be sent by U.S. Postal Service, first class, facsimile or e-mail. Addresses are as follows:

For ASU: WET Center, Director
 Arizona State University
 P.O. Box 5306
 Tempe, AZ 85287-5306

With copy to: Arizona State University – SkySong
 Office of Industry Research and Collaborations
 1475 N. Scottsdale Road, Suite 200
 Scottsdale, Arizona 85257-3538
 Attn: Manager Corporate Research Affairs
 Fax: 480-884-1984

For MEMBER: Member Name: City of Chandler
 Address 1475 East Pecos Road
 Address Chandler, AZ 85244
 Attn: Victoria Sharp
 Phone: (480) 782-3628
 Fax: (480) 782-3630
 Email: victoria.sharp@chandleraz.gov

M. NEWS RELEASE

Neither party shall use the other party's name in any news releases, publicity, advertising or other promotional material without first having the proposed use approved in writing by the other party. The parties agree to negotiate in good faith regarding joint press releases and joint advertising opportunities regarding this Agreement and the relationship it creates.

N. INDEPENDENT CONTRACTORS

Nothing in this Agreement creates any partnership, joint venture, or agency relationship between the parties. Neither party has any authority to enter into agreements of any kind on behalf of the other party or to bind or obligate the other party in any manner to any third party.

O. ASSIGNMENT

Neither party may assign any rights hereunder without the express, written, prior consent of both parties.

P. CANCELLATION FOR NONAPPROPRIATIONS

The parties recognize that performance by UNIVERSITY depends upon appropriation of funds by the State Legislature of Arizona. If the Legislature fails to appropriate the necessary funds, or if UNIVERSITY's appropriation is reduced during the fiscal year, the Arizona Board of Regents (ABOR) may reduce the scope of this Agreement if appropriate or cancel this Agreement without further duty or obligation. UNIVERSITY agrees to notify MEMBER as soon as reasonably possible after it learns of the loss of funds.

The parties recognize that performance by MEMBER City of Chandler depends upon appropriation of funds by the Chandler City Council. If the Chandler City Council fails to appropriate the necessary funds, or if the appropriation by the Chandler City Council is reduced during the fiscal year, the MEMBER, City of Chandler, may cancel or reduce its participation status in this Agreement without further duty or obligation. MEMBER agrees to inform University as soon as reasonably possible after it learns of the loss of the funds.

If ABOR cancels this Agreement, UNIVERSITY will refund MEMBER for any unused amount MEMBER has paid, less non-cancellable commitments. If this Agreement is reduced in scope, UNIVERSITY will refund MEMBER's contribution proportional to the reduction in scope of this Agreement, or other mutually agreed upon amount.

Q. FORCE MAJURE

No party shall be liable for any failure to perform its obligations under this Agreement where such failure results from any act of nature or other cause beyond such party's reasonable control.

R. CONFLICT OF INTEREST

This Agreement is subject to Section 38-511, Arizona Revised Statutes. This Agreement may be canceled if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of UNIVERSITY is an employee, consultant, or agent of any other party to this Agreement.

S. INDEMNIFICATION

Neither party will assume any liability for the actions or omissions of the other party. Neither party will be liable for any direct, consequential, or other damages suffered by either party, resulting from the use of any invention, intellectual property or product developed in the course of research conducted by or at the CENTER.

T. WARRANTY

Neither party makes any warranties, expressed or implied, as to any matter whatsoever, including without limitation, the condition, originality, or accuracy of any member confidential information and invention(s) or product(s), whether tangible or intangible, conceived, discovered, or developed under this Agreement; or the ownership, merchantability, or fitness for a particular purpose of any such member confidential information and any invention or product derived from the research conducted by or at the CENTER.

U. LAW

This Agreement is made under and shall be construed and enforced in accordance with the laws of the State of Arizona.

V. APPOINTMENT OF AUTHORIZED REPRESENTATIVE BY MEMBER.

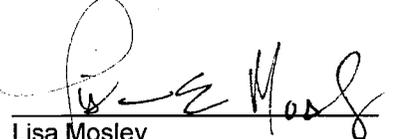
MEMBER shall appoint an Authorized Representative, who shall have authority to vote on behalf of MEMBER, City of Chandler. The Authorized Representative shall be authorized to cast the votes of the MEMBER based on its voting rights as set forth in the Bylaws. The City of Chandler Municipal Utility Director may appoint subsequent Authorized Representatives as needed, by written notice to University.

W. ENTIRE AGREEMENT

The provisions contained herein constitute the entire agreement and supersede all previous communications or representations, either verbal or written, between the parties hereto with respect to subject material hereof. This Agreement may not be changed, altered, or supplemented except by written amendment signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representative.

**ARIZONA BOARD OF REGENTS,
FOR AND ON BEHALF OF
ARIZONA STATE UNIVERSITY**



Lisa Mosley
Executive Director, Research Ops.
Date: 3/28/14

**MEMBER
CITY OF CHANDLER**

Title: _____
Date: _____

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY *CH for*