



MEMORANDUM

DATE: SEPTEMBER 11, 2014
TO: MAYOR AND COUNCIL
THRU: RICH DLUGAS, CITY MANAGER *RD*
DEBRA STAPLETON, HUMAN RESOURCES DIRECTOR *JAS*
FROM: RAE LYNN NIELSEN, BENEFITS & LABOR RELATIONS ADMINISTRATOR *RN*
SUBJECT: RESOLUTION NO. 4787 AUTHORIZING THE EXECUTION OF AMENDMENT NUMBER THREE (#3) TO THE AFFILIATION AGREEMENT BETWEEN THE ARIZONA BOARD OF REGENTS FOR AND ON BEHALF OF ARIZONA STATE UNIVERSITY AND THE CITY OF CHANDLER, ARIZONA

RECOMMENDATION:

Staff recommends Council adopt Resolution No. 4787 authorizing the Mayor to execute amendment number three (#3) to the affiliation agreement between the Arizona Board of Regents for and on behalf of Arizona State University and the City of Chandler, Arizona; and authorizing the City Manager or designee to add or delete University programs listed on Exhibit A as necessary to meet the needs of the parties without requiring a resolution amendment before the three (3) year renewal cycle term.

BACKGROUND/DISCUSSION:

On August 27, 2009 the City of Chandler Council passed Resolution No. 4322 approving the Affiliation Agreement between Arizona State University and the City of Chandler. Exhibit A of the initial agreement lists university programs eligible to take part in the program. The term of the initial agreement was three years, renewable on a year-to-year basis. The initial term ended September 4, 2012. Resolution No. 4622 amendment number one (#1) extended the term through September 2, 2013. Resolution No. 4705 amendment number two (#2) extended the term through September 11, 2014.

September 11, 2014

Several City departments utilize this agreement to provide an educational experience for students at Arizona State University. As a result, the affiliated programs (Exhibit A) have been expanded since the original agreement in 2009. Exhibit A includes 17 programs in which 16 have been approved through prior resolutions. The addition of the School of Politics and Global Studies (SPGS) is being requested through this amendment.

Resolution No. 4787 will amend the Affiliation Agreement between Arizona State University and the City of Chandler and will allow for a renewal term of a three (3) year cycle. In addition, it will authorize the City Manager or designee to add or delete University programs listed on Exhibit A as necessary to meet the needs of the parties without requiring a resolution amendment before the three (3) year renewal cycle term.

FINANCIAL IMPLICATIONS: None.

PROPOSED MOTION: Adopt Resolution No. 4787 authorizing the Mayor to execute amendment number three (#3) to the affiliation agreement between the Arizona Board of Regents for and on behalf of Arizona State University and the City of Chandler, Arizona; and authorizing the City Manager or designee to add or delete University programs listed on Exhibit A as necessary to meet the needs of the parties without requiring a resolution amendment before the three (3) year renewal cycle term.

Attachments:

1. Resolution No. 4787
2. Amendment Number Three (#3) to the Affiliation Agreement
3. Exhibit A-List of University Programs

RESOLUTION NO. 4787

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE AMENDMENT NUMBER THREE TO THE AFFILIATION 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 provide educational opportunities for students of the University by gaining experience relevant to their field of study in a work environment at the City; and

WHEREAS, through Resolution No. 4322, approved on August 27, 2009, the Chandler City Council approved the *Affiliation Agreement Between the Arizona Board of Regents for and on Behalf of Arizona State University and the City of Chandler, Arizona* (“*Affiliation Agreement*”) and subsequently approved Amendment No.’s 1 and 2 to that agreement extending the Affiliation Agreement for additional one (1) year terms through September 11, 2014; and

WHEREAS, the City of Chandler wants to amend the Affiliation Agreement to increase the renewal periods from one (1) year to three (3) years and to authorize the addition of programs to Exhibit A.

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

Section 1. The *Affiliation Agreement Between the Arizona Board of Regents for and on Behalf of Arizona State University and the City of Chandler, Arizona* is hereby amended as follows:

1. PARAGRAPH 1 of the *Affiliation Agreement* is hereby amended as follows:

Term. The term of this Agreement shall be for three years, commencing on the Effective Date. This Agreement may be renewed for additional three year terms (“Renewal Term”) on or before the date that is three years from the Effective Date and on or before each subsequent three year anniversary of any Renewal Term by written agreement of the parties. The parties may revise or modify this Agreement only by a written amendment signed by both parties.

2. PARAGRAPH 2 of the *Affiliation Agreement* is hereby amended as follows:

General Terms.

2.1 The purpose of this Agreement is to establish an affiliation between the University and the Agency to provide an educational experience for students and interns enrolled in University's programs listed on Exhibit A of this Agreement, which may be amended from time to time by the Agency City Manager or his/her designee to add or delete University programs as necessary to meet the needs of the parties without requiring Agency City Council approval.

3. EXHIBIT A of the *Affiliation Agreement* is hereby amended by adding the following to the end of Exhibit A:

17. School of Politics and Global Studies (SPGS)

Section 2. That the City Mayor is authorized to sign *Amendment Number Three to the Affiliation Agreement Between the Arizona Board of Regents for and on Behalf of Arizona State University and the City of Chandler, Arizona.*

Section 3. 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 

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4787 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

**AFFILIATION AGREEMENT
ARIZONA STATE UNIVERSITY
and
CITY OF CHANDLER**

This Affiliation Agreement is entered into as of _____, 2014 (the “Effective Date”), between the ARIZONA BOARD OF REGENTS for and on behalf of ARIZONA STATE UNIVERSITY (the “University”) and CITY OF CHANDLER (the “Agency”).

1. Term. The term of this Agreement shall be for three years, commencing on the Effective Date. This Agreement may be renewed for additional three year terms (“Renewal Term”) on or before the date that is three years from the Effective Date and on or before each subsequent three year anniversary of any Renewal Term by written agreement of the parties. The parties may revise or modify this Agreement only by a written amendment signed by both parties.

2. General Terms.
 - 2.1 The purpose of this Agreement is to establish an affiliation between the University and the Agency to provide an educational experience for students and interns enrolled in University’s programs listed on Exhibit A of this Agreement, which may be amended from time to time by the Agency City Manager or his/her designee, with approval from the University, to add or delete University programs as necessary to meet the needs of the parties without requiring Agency City Council approval.
 - 2.2 The University and the Agency will agree on a schedule for student participation at the Agency.
 - 2.3 The student’s participation should complement the service and educational activities of the Agency. Students will not be used in lieu of professional or staff personnel and will be under the supervision of an Agency representative.
 - 2.4 Each student is expected to perform with high standards at all times and comply with all written policies and regulations of the appropriate department of the Agency.
 - 2.5 Either the Agency or the University may require withdrawal or dismissal from participation at the Agency of any student whose performance record or conduct does not justify continuance.
 - 2.6 Neither the University nor the Agency is obligated to provide for the student’s transportation to and from the Agency or for health insurance for the student.

2.7 A meeting or telephone conference between representatives of the University and the Agency will occur at least once each semester to evaluate the educational program and review this Agreement.

2.8 Statements of performance objectives for this educational experience will be the joint responsibility of University and Agency personnel.

2.9 Each student must adhere to the Agency's established dress and performance standards.

3. Agency's Obligations.

3.1 The Agency agrees to appoint an Educational Coordinator who is responsible for the educational activities of University students participating under this Agreement.

3.2 The Agency agrees to submit to the University an evaluation of each student's progress based upon established goals and performance. The format for the evaluation is established by the University in consultation with the Agency. The University shall submit a proposed format for this evaluation not later than two weeks after the beginning of the semester in which any student to be evaluated is participating in any program with the Agency. Within two weeks of the University submission of the proposed evaluation format, the parties shall agree upon a final format. If the Agency does not comment on the proposed evaluation format within this two week time period, it will be deemed final.

3.3 The Agency is responsible for the acts and omissions of its employees and agents and must maintain adequate insurance (which may include a bona fide self-insurance program) to cover any liability arising from the acts and omissions of the Agency's employees and agents. The Agency is not responsible for maintaining insurance to cover liability arising from the acts and omissions of the employees and agents of the University. University students are not deemed to be employees of Agency by virtue of this Agreement.

3.4 Nothing in this Agreement is intended to modify, impair, destroy or otherwise affect any common law or statutory right to indemnity or contribution that the University may have against the Agency by reason of any act or omission of the Agency or the Agency's employees and agents.

3.5 Participating faculty, student and administrative personnel shall be responsible for providing their own health insurance. Agency will provide the level of emergency care to participating faculty, student and administrative personnel as it would provide to its own employees. The faculty, student and administrative personnel shall be individually responsible for any charges thus generated.

4. University's Obligations.

4.1 The University will provide an administrative framework and a teaching faculty adequate in number, qualifications and competence to develop and carry forward its instruction and supervision.

4.2 The University will be responsible for developing and carrying out procedures for student selection and admission.

4.3 The University will designate a University representative to coordinate scheduling, provide course information and objectives, and assist in advising students.

4.4 The University is responsible for the acts and omissions of its employees and agents and maintains insurance coverage through the State of Arizona's Risk Management Division self-insurance program to cover liabilities arising from the acts and omissions of the University's employees, students, and agents participating under this Agreement. The University is not responsible for maintaining insurance coverage for liability arising from the acts and omissions of the Agency's employees and agents.

4.5 The University shall submit the proposed format for the evaluation of each student's progress as set forth in Paragraph 3.2 above.

5. State of Arizona Provisions.

5.1 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.

5.2 Conflict of Interest. The Agency's and ASU's participation in this Agreement is subject to Section 38-511 of the Arizona Revised Statutes which provides that this Agreement may be cancelled if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of such party is, at any time while this Agreement or any extension thereof is in effect, an employee or agent of the other party to this Agreement in any capacity or a consultant to any other party with respect to the subject matter of this Agreement.

5.3 Notice of Arbitration Statutes. As required by Sections 12-133 and 12-1518 of the Arizona Revised Statutes, notice is provided that the parties to this Agreement will be required to make use of mandatory arbitration of any legal action that is filed in the Arizona superior court concerning a controversy arising out of this Agreement if (1) the court finds or the parties agree that the amount in controversy does not exceed the jurisdictional limit established by rule of that court for mandatory arbitration, or (2) this agreement is a public works contract and the amount in controversy is less than one hundred thousand dollars (\$100,000).

5.4 Arizona Law. This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

5.5 Jurisdiction and Venue. The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.

5.6 Fees and Costs. Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent (10%) of the damages awarded the prevailing party unless the non-prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.

5.7 Failure of Legislature or Agency to appropriate. If University's or Agency's performance under this Agreement depends upon the appropriation of funds, pursuant to Arizona state law, and if there is a failure to appropriate the funds necessary for performance, then such party may provide written notice of this to the other party and cancel this Agreement without further obligation.

5.8 Student Educational Records. The University and Agency recognize that student educational records are protected by the federal Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g). Agency agrees to comply with FERPA and to not make any disclosures of student educational records to third parties without prior notice to and consent from the University or as otherwise provided by law.

5.9 Representations Regarding Relationship and Use of University Marks. Except as otherwise agreed in writing, Agency acknowledges that its relationship with University is limited to the student internship or placement program contemplated herein. Agency shall not make any representations stating or implying that the parties engage in broader transactions or that University is otherwise associated with Agency without first obtaining express written permission from University. In addition, Agency shall not use any trade name, trademark, service mark, logo, domain name, and any other distinctive brand feature owned or used by University without prior written authorization by University.

6. Miscellaneous.

6.1 Each party shall be responsible for its and its agents' negligence, actions and omissions.

6.2 The relationship existing between the University and Agency under this Agreement is not that of a joint venture or partnership, but is an independent contractor relationship; neither shall be the agent of the other.

6.3.1 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's fees) (hereinafter collectively referred to as "claims") arising out of the negligent performance of this Agreement, 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 volunteers.

6.3.2 Indemnification Limitations. Any other provision of this Agreement to the contrary notwithstanding, the parties acknowledge that ASU and the City of Chandler are public institutions and any indemnification or hold harmless provisions provided by them are limited as required by State law, including without limitation Article 9, Section 7 of the Arizona Constitution and Sections 35-154 and 41-621, Arizona Revised Statutes. ASU's liability under any claim for indemnification is limited to claims for property damage, personal injury, death, or copyright or patent infringement damages caused by acts or omissions of ASU employees or Students.

6.4 Nothing in this Agreement is intended to modify, impair, destroy or otherwise affect any common law or statutory right to indemnity or contribution that the Parties may have against each other by reason of any act or omission by the University, the Facility or their employees and agents.

6.5 Cost of Training Program. Each party shall pay all its own costs associated with its participation in the training program. No monetary compensation shall be exchanged under this Agreement and there shall be no charge for use of Agency facilities or participation by Agency personnel pursuant to this Agreement.

6.6 Neither party shall have the right to assign this Agreement without the prior written consent of the other party.

6.7 This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. No prior or contemporaneous agreement or understanding will be effective. This Agreement shall be governed by the laws of Arizona, the courts of which state shall have jurisdiction over its subject matter.

6.8 All notices or other communications by either party to the other hereunder shall be in writing and shall be deemed properly delivered (i) when received by the party; or (ii) three (3) days after deposit in the United States mail of such notice or communication to the parties entitled thereto, registered or certified mail, postage repaid, to the parties at the following address:

If to Agency:

Debra Stapleton
Human Resources Director
City of Chandler
P.O. Box 4008 Mail Stop 703
Chandler, AZ 85244

If to University:

Office of the Provost
Arizona State University
300 E. University Drive
PO Box 877805
Tempe, AZ 85287-7805

6.8 The individuals signing below on behalf of the parties hereby represent and warrant that they are duly authorized to execute and deliver this Agreement on behalf of the parties, and that this Agreement is binding upon the parties in accordance with its terms.

CITY OF CHANDLER

UNIVERSITY

By: _____
MAYOR

THE ARIZONA BOARD OF REGENTS
acting for and on behalf of
ARIZONA STATE UNIVERSITY

By: Robert E. Page, Jr.
Robert E. Page, Jr.
Title: University Provost

APPROVED AS TO FORM:

City Attorney km By: km

ATTEST:

City Clerk

SEAL

EXHIBIT A

List of University Programs

1. Arizona State University West – College of Accounting
2. College of Letters and Sciences
3. College of Liberal Arts and Sciences – School of Justice and Social Inquiry and School of Interdisciplinary Studies
4. College of Nursing and Health Care Innovation
5. College of Public Programs – School of Social Work
6. Herberger Institute for Design and the Arts
7. Ira A. Fulton School of Engineering
8. School for Business and Technology
9. School of Geographical Sciences and Urban Planning
10. School of Planning – Planning and Environmental Planning
11. School of Public Affairs
12. W.P. Carey School of Business
13. Walter Cronkite School of Journalism
14. School of Sustainability
15. College of Health Solutions
16. College of Public Programs – Criminal Justice Program
17. School of Politics and Global Studies (SPGS)