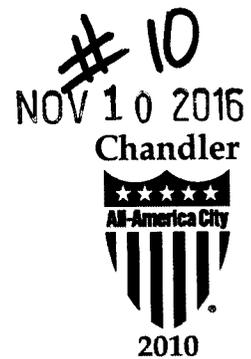




Chandler • Arizona
Where Values Make The Difference



MEMORANDUM

Economic Development - Council Memo No. ED17-011

DATE: NOVEMBER 10, 2016

TO: MAYOR AND CITY COUNCIL

THRU: MARSHA REED, CITY MANAGER *MR*
MICAHA MIRANDA, ECONOMIC DEVELOPMENT DIRECTOR *MM*

FROM: MICHAEL WINER, ECONOMIC DEVELOPMENT SPECIALIST *MW*

SUBJECT: RESOLUTION NO. 5009 AUTHORIZING A MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE CITY OF CHANDLER AND THE ARIZONA BOARD OF REGENTS, A BODY CORPORATE FOR AND ON BEHALF OF ARIZONA STATE UNIVERSITY, FOR THE PREMISES AT 249 EAST CHICAGO STREET REGARDING HOSTING OF ENTREPRENEURIAL DEVELOPMENT, BUSINESS INCUBATION, AND COMMUNITY CO-WORKING ACTIVITIES IN THE LEASED PREMISES.

RECOMMENDATION: Staff recommends City Council pass and adopt Resolution No. 5009 authorizing a memorandum of understanding by and between the City of Chandler and the Arizona Board of Regents, a body corporate for and on behalf of Arizona State University, for the premises at 249 East Chicago Street regarding hosting of entrepreneurial development, business incubation, and community co-working activities in the leased premises.

BACKGROUND/DISCUSSION: This item is related to Ordinance No. 4728, which staff has also submitted for City Council consideration. In March 2012, the City of Chandler and the Arizona Board of Regents entered into a lease for approximately 33,000 square feet of City-owned space at 249 East Chicago Street for the purposes of Arizona State University (ASU) establishing its ASU Chandler Innovation Center (ACIC) in the premises. Since opening ACIC in January 2014, ASU has used the space to provide engineering and technology-based education, and has also licensed space to TechShop for its makerspace.

City staff and ASU are now interested in partnering to expand the scope of ACIC by integrating the City's Innovations incubator program (Innovations) and community co-working space within ACIC, establishing the location as a hub for entrepreneurial development programming and services in Chandler. This concept was originally presented for discussion and feedback at the July 26, 2016, Community and Neighborhood Services and Economic Development Subcommittee meeting where staff was directed to proceed.

City staff and ASU have drafted a memorandum of understanding (MOU) which clearly identifies roles and responsibilities of each party as they relate to the partnership under consideration. The City will deliver entrepreneurial programming and services at ACIC through the Innovations program and management agreement with Northern Arizona Technology and Business Incubator Inc., dba Northern Arizona Center for Entrepreneurship and Technology (NACET). ASU will execute license agreements with NACET and Innovations clients to provide incubator space and access to shared spaces (e.g. community co-working spaces and conference rooms). The City, ASU, and NACET will also work together to grow a robust entrepreneurial ecosystem through regular hosting of workshops, seminars, and other special events for the community.

FINANCIAL IMPLICATIONS: Existing budget appropriation from the Innovations cost center (1590) for Fiscal Year 2016-17 will be used to cover potential costs associated with transitioning Innovations to ACIC.

PROPOSED MOTION: Move City Council pass and adopt Resolution No. 5009 authorizing a memorandum of understanding by and between the City of Chandler and the Arizona Board of Regents, a body corporate for and on behalf of Arizona State University, for the premises at 249 East Chicago Street regarding hosting of entrepreneurial development, business incubation, and community co-working activities in the leased premises.

Attachments: Resolution No. 5009
Memorandum of Understanding

RESOLUTION NO. 5009

A RESOLUTION OF THE CITY OF CHANDLER, ARIZONA, AUTHORIZING A MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE CITY OF CHANDLER AND THE ARIZONA BOARD OF REGENTS, A BODY CORPORATE FOR AND ON BEHALF OF ARIZONA STATE UNIVERSITY, FOR THE PREMISES AT 249 EAST CHICAGO STREET REGARDING HOSTING OF ENTREPRENEURIAL DEVELOPMENT, BUSINESS INCUBATION, AND COMMUNITY CO-WORKING ACTIVITIES IN THE LEASED PREMISES.

WHEREAS, the mission of the City's Innovations incubator program ("Innovations") is to build a city-wide incubator and entrepreneurial development program that supports and elevates all aspects of the entrepreneurial ecosystem to diversify the employment base and drive business and job growth in Chandler; and

WHEREAS, the mission of Arizona State University's Office of Entrepreneurship + Innovation is to support regional economic growth by fostering an entrepreneurial and innovative culture in all students, faculty, and units across Arizona State University ("ASU") and in local communities; and

WHEREAS, the City and the Arizona Board of Regents, a body corporate, for and on behalf of ASU, entered into a Lease for the premises at 249 East Chicago Street in Chandler, Arizona, dated March 8, 2012 via Ordinance No. 4356 ("Lease"); and

WHEREAS, the City revised the Lease terms on April 25, 2013 via Ordinance No. 4448; and

WHEREAS, ASU established its ASU Chandler Innovation Center ("ACIC") in the leased premises where it provides engineering and technology-based education, and engages in other permitted uses pursuant to the Lease; and

WHEREAS, the City and ASU now wish to partner to expand the scope of ACIC by integrating the City's Innovations incubator program and community co-working space within ACIC, establishing the location as a hub for entrepreneurial development programming and services in Chandler; and

WHEREAS, the City of Chandler and ASU wish to enter into a memorandum of understanding to clearly identify roles and responsibilities of each party as they relate to the above partnership ("MOU").

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

Section 1. The City is authorized to enter into a MOU with the Arizona Board of Regents in substantially the form attached hereto as Exhibit A.

Section 2. The Mayor of the City of Chandler, Arizona is hereby authorized to execute the MOU and related documents upon their approval as to form by the Chandler City Attorney.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this ____ day of _____, 2016.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 5009 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the ____ day of _____, 2016 and that a quorum was present thereat.

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY *GRH*

**MEMORANDUM OF UNDERSTANDING
FOR ASU-CHANDLER INNOVATION CENTER**

This Memorandum of Understanding for ASU-Chandler Innovation Center (“**MOU**”) is made and entered into as of _____, 2016 (the “**Effective Date**”) 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**”) (collectively, the “**Parties**”, and individually, a “**Party**”).

RECITALS:

A. The mission of the City’s Innovations incubator program (the “**City's Innovations Program**”) is to build a city-wide incubator and entrepreneurial development program that supports and elevates all aspects of the entrepreneurial ecosystem to diversify the employment base and drive business and job growth in Chandler; and

B. The mission of ASU’s Office of Entrepreneurship + Innovation is to support regional economic growth by fostering an entrepreneurial and innovative culture in all students, faculty, and units across ASU and in local communities; and

C. The City and ASU wish to collaborate to further these missions by integrating the City’s Innovations Program within a portion of ASU’s Chandler Innovation Center located at 249 East Chicago Street, Chandler, Arizona, and by permitting ASU to utilize portions of the Building to facilitate ASU's innovations and entrepreneurial development programs, as more particularly described herein, thereby establishing this site as a hub for entrepreneurial development programming and services in Chandler (collectively, the “**ASU-Chandler Innovations Program**”).

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this MOU, the City and ASU agree as follows:

1. Recitals. The foregoing recitals are incorporated herein.
2. Background and Related Agreements.

2.1. Lease. The City and ASU are parties to that certain Lease (Chicago Street Yard) dated May 28, 2013, as evidenced by that certain Memorandum of Lease (Chicago Street Yard) dated May 28, 2013 and recorded May 29, 2013 at Instrument No. 2013-0487377 in the official records of the Recorder's Office for Maricopa County, Arizona (the “**Lease**”), by which the City leased to ASU and ASU leased from the City a building located at 249 East Chicago Street, Chandler, Arizona, as more particularly described in the Lease (the “**Premises Building**”). The Parties wish to use a portion of the Premises Building, as more specifically set forth herein, for development of the ASU-Chandler Innovations Program. Contemporaneously herewith the City and ASU will enter into an amendment to the Lease to expand the “**Permitted Use**”, as defined in the Lease, to include the uses contemplated herein.

2.2. Management Agreement. The City and Northern Arizona Technology and Business Incubator, Inc., an Arizona non-profit corporation doing business as NACET (“**NACET**”) are parties to that certain City of Chandler Services Agreement, Management of Innovations Incubator Agreement No.: CM5-918-3561, dated September 28, 2015, as amended by that certain Amendment dated September 29, 2016, true and complete copies of which have been provided to ASU (collectively, the “**Management Agreement**”), in which NACET agrees to provide certain services to the City to develop a program and a method of delivering incubator services to qualified businesses and companies identified and provided to

the City through the deliverables NACET agreed to perform pursuant to the Management Agreement (collectively referred to herein as the "**Incubators**" and singularly as an "**Incubator**"). The Management Agreement provides that the City may terminate it, among other reasons, for the City's sole convenience with thirty (30) days' written notice.

2.3. City-NACET-Incubator Leases. To facilitate the ASU-Chandler Innovations Program, the City desires that NACET and the Incubators be allowed to license space within the Premises Building on the terms and conditions set forth herein and in License Agreements, as described below.

3. Term.

3.1. Commencement. This MOU will commence upon the execution by each of the Parties hereto and by NACET.

3.2. Expiration/Termination. This MOU will expire and terminate, and be of no further force or effect (other than with respect to any provision hereof that provides it will survive termination) on the earlier to occur of the following:

3.2.1. On October 30, 2018; provided, however that if the City and ASU extend the term of the Lease, the Parties, each in their respective sole and absolute discretion, may elect to extend the initial term of this MOU for successive one (1) year periods, so long as the initial term and any extended term of this MOU do not exceed either: (i) a total term of five (5) years, or (ii) the term of the Lease, as the same may be extended by the City and ASU. The Parties may exercise such election to extend the term of this MOU by signing and exchanging a letter extension agreement on or before the then current expiration date of the term of this MOU.

3.2.2. Notwithstanding anything herein to the contrary, this MOU will terminate, if not terminated earlier, on any termination of the Lease.

3.2.3. Each of City and ASU reserve the right to terminate this MOU or any part hereof for their respective sole convenience upon ninety (90) days' prior written notice to the other Party.

3.2.4. This MOU will terminate at any time that the Management Agreement is terminated or that the City provides notice to ASU that NACET is in default under the Management Agreement and has not cured such default within any applicable cure period set forth in the Management Agreement.

If this MOU is terminated as permitted by either Section 3.2.3 or 3.2.4, ASU will have the right, in its sole discretion, to terminate (i) any then existing Licenses Agreement between ASU and NACET concurrently with the termination of this MOU, and (ii) any then existing Licenses Agreements with any of the Incubators by providing thirty (30) days' prior written notice to the affected Incubators.

4. ASU Responsibilities.

4.1. License Agreement Forms. ASU has developed and provided to the City and NACET the forms of license agreements (collectively, the "**License Agreement**") approved by ASU for use by NACET and/or any of the Qualified Incubators accepted by ASU for using space within the Premises Building. ASU reserves the right to revise the License Agreement from time to time.

4.2. NACET License Agreement. Promptly following the execution and delivery of this MOU by the City and NACET's execution and delivery to ASU of the License Agreement presented by

ASU to NACET, ASU will execute and deliver to NACET a License Agreement. Such License Agreement will permit NACET to use space within the Premises Building in a location mutually agreed between ASU and NACET for the purposes and subject to the conditions set forth in the License Agreement.

4.3. Incubator Space. During the term of this MOU, ASU will make available up to Three Thousand Five Hundred (3,500) square feet of space within that portion of the Premises Building more particularly identified on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "**Incubator Space**") for the non-exclusive use by Incubators who have been qualified by NACET pursuant to the requirements of the Management Agreement, provided, however, that ASU retains the right, in its sole and absolute discretion, to reject any Incubator that ASU believes would not be compatible with ASU's mission. Incubators presented to ASU by the City or NACET as being qualified pursuant to the requirements of the Management Agreement that are accepted by ASU are collectively referred to herein "**Qualified Incubators**" and singularly as a "**Qualified Incubator**". The location of such Incubator Space is subject to change from time to time as determined by ASU in its sole discretion. ASU and the City will work together to establish an appropriate access system to the Incubator Space.

4.4. Incubator License Agreements. ASU will execute and deliver a License Agreement to a Qualified Incubator promptly following such Qualified Incubator's execution and delivery of the License Agreement to ASU.

4.5. Use of Additional Space. The applicable License Agreements will provide that NACET and the Qualified Incubators will (i) have the use of certain open areas within the Premises Building to be utilized as a collaborative workspace by ASU students, NACET and the Qualified Incubators, and (ii) have access to conference rooms and classrooms through a reservation system controlled by ASU.

4.6. Cooperate to Develop ASU-Chandler Innovations Program. ASU will work with the City to continue to grow a robust entrepreneurial ecosystem including regular hosting of workshops, seminars, and other special events for the community.

5. City Responsibilities.

5.1. City Deliverables. The City will deliver entrepreneurial development programming and services to the ASU-Chandler Innovations Program through the City's Innovations Program and through working with NACET pursuant to the Management Agreement. The City will manage Incubator intake, onboarding, and client management through the City's Management Agreement with NACET.

5.2. Management Agreement Performance. The City will use good faith efforts to cause NACET to timely perform its obligations under the Management Agreement and to timely provide the deliverables required thereunder. The City will promptly provide written notice to ASU at any time that NACET is not performing its obligations under the Management Agreement and when the Management Agreement expires or is earlier terminated. The City will not amend the Management Agreement without consulting with ASU in advance of such amendment, and will promptly provide to ASU signed copies of any amendments to the Management Agreement.

5.3. Cooperate to Develop ASU-Chandler Innovations Program. The City will work with ASU to continue to grow a robust entrepreneurial ecosystem including regular hosting of workshops, seminars, and other special events for the community.

6. Notice. Any notice, demand, request, consent, approvals or other communication which may be or is required to be given under this MOU shall be in writing and shall be deemed given when (i)

personally served or delivered, or (ii) sent by overnight courier, with request for next business day delivery, or (iii) two (2) business days after the date of mailing when sent by United States registered or certified mail, postage prepaid, return receipt requested, and addressed: (a) if to City, at the address specified below; and (b) if to ASU, at the addresses specified below. Any notice or demand to be given by any Party hereto may be given by legal counsel for such Party. Counsel for the Parties may give simultaneous notice hereunder to the opposing Party and its counsel. Either Party may designate another notice address for such Party by providing notice in accordance with this **Section 6**.

CITY: **CITY OF CHANDLER**
Economic Development Office
Attn: Micah Miranda, Economic Development Director

Delivery Address:
175 S. Arizona Ave., 5th Floor
Chandler, Arizona 85225

Mailing Address:
P.O. Box 4008, Mail Stop 416
Chandler, Arizona 85244-4008

and Chandler City Attorney's Office
Delivery Address:
175 S. Arizona Ave., 2nd Floor
Chandler, Arizona 85225
Mailing Address:
P.O. Box 4008, Mail Stop 602
Chandler, Arizona 85244-4008

ASU: **ARIZONA BOARD OF REGENTS**
c/o Arizona State University
Attn: Office of University Real Estate Development

Delivery Address:
80 East Rio Salado Drive, Suite 513F
Tempe, AZ 85281-9106

Mailing Address:
PO Box 873908
Tempe, AZ 85287-3908

and **ARIZONA STATE UNIVERSITY**
ASU OFFICE OF KNOWLEDGE ENTERPRISE DEVELOPMENT
Attn: Associate Vice President, Entrepreneurship + Innovation

Delivery Address:
300 East University Drive, Suite 310
Tempe, AZ 85281

Mailing Address:
P.O. Box 877205
Tempe, AZ 85287-7205

and **ARIZONA STATE UNIVERSITY**
OFFICE OF GENERAL COUNSEL
Delivery Address:
300 East University Drive, Suite 335
Tempe, AZ 85281-2061
Mailing Address:
P.O. Box 877405
Tempe, AZ 85287-7405

7. Government to Government Indemnification.

7.1. Indemnification. To the extent permitted by law, each Party (as “**indemnitor**”) agrees to indemnify, defend, and hold harmless the other Party (as “**indemnitee**”) for, from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney’s fees, expert witness fees and other costs of suit) (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 volunteers.

7.2. Indemnification Survives. The provisions of this **Section 7** shall survive termination of this MOU.

8. Miscellaneous.

8.1. Entire Agreement; Amendments. This MOU constitutes the entire understanding of the Parties and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein. No term or provision hereof may be amended, modified, changed, waived, discharged or terminated unless the same is in writing executed by both Parties hereto.

8.2. No Waiver. Any waiver by any of the Parties hereto of any breach of this MOU or of any right of any Party shall not constitute a waiver of any other breach or of any other right.

8.3. Binding Effect. The covenants and conditions contained herein inure to the benefit of and are binding upon the successors and assigns of the Parties hereto.

8.4. 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.

8.5. Conflict of Interest. Each Party acknowledges that the other has the right as provided in Arizona Revised Statutes (“**A.R.S.**”) § 38-511 to cancel this MOU if, while this MOU or any extension is in effect, any person significantly involved in negotiating, drafting or securing this MOU on behalf of a Party is (i) an employee or agent of the other Party in any capacity, or (ii) a consultant to the other Party with respect to the subject matter of this MOU. Notice is also given of A.R.S. §§ 41-2517 and 41-753.

8.6. Arbitration in Superior Court. As required by A.R.S. § 12-1518, the Parties agree to make use of arbitration in disputes that are subject to mandatory arbitration pursuant to A.R.S. § 12-133.

8.7. Records. To the extent required by A.R.S. § 35-214, the City and NACET (jointly and severally, “**Entity**”) will retain all records relating to this MOU. Entity will make those records available at all reasonable times for inspection and audit by ASU or the Auditor General of the State of Arizona

during the term of this MOU and for a period of five (5) years after the completion of this MOU. The records will be provided at Arizona State University, Tempe, Arizona, or another location designated by ASU on reasonable notice to Entity.

8.8. Failure of Legislature to appropriate. In accordance with A.R.S. § 35-154, if ASU's performance under this MOU depends on the appropriation of funds by the Arizona Legislature, and if the Arizona Legislature fails to appropriate the funds necessary for performance, then ASU may provide written notice of this to Entity and cancel this MOU without further obligation of ASU. Appropriation is a legislative act and is beyond the control of ASU.

8.9. Governing Law. This MOU is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona.

8.10. Severability. If any provision of this MOU is declared invalid, or illegal or unenforceable, that provision shall be severed from the MOU, and the remaining provisions shall otherwise remain in full force and effect.

8.11. Headings. The headings used in this MOU are inserted for reference purposes only and do not affect the interpretation of the terms and conditions hereof.

8.12. Good Standing Authority. Each of the Parties represents and warrants to the other that it is duly formed and validly existing under the laws of Arizona and that the individual(s) executing this MOU on behalf of their respective Party is authorized and empowered to bind the Party on whose behalf each such individual is signing.

8.13. Independent Contractor. ASU is an independent contractor under the MOU. The MOU does not create a principal/agent relationship between the Parties and neither Party is hereby authorized to incur costs, expenses or other obligations on behalf of the other Party.

8.14. Counterparts. This MOU may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one instrument. The delivery of an executed copy of this MOU by electronic transmission in electronic format (for example, "pdf" or "tif") will have the same force and effect as the delivery of a signed original.

[SEE NEXT PAGE FOR SIGNATURES]

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding for ASU-Chandler Innovation Center by signing their names below.

CITY:

CITY OF CHANDLER, an Arizona municipal corporation

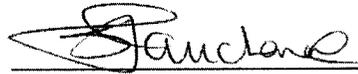
ASU:

ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of **Arizona State University**

By: _____

Name: _____

Title: _____

By: 

Name: S. PANCHANANATHAN

Title: EVP & CRIO

APPROVED AS TO FORM:

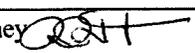
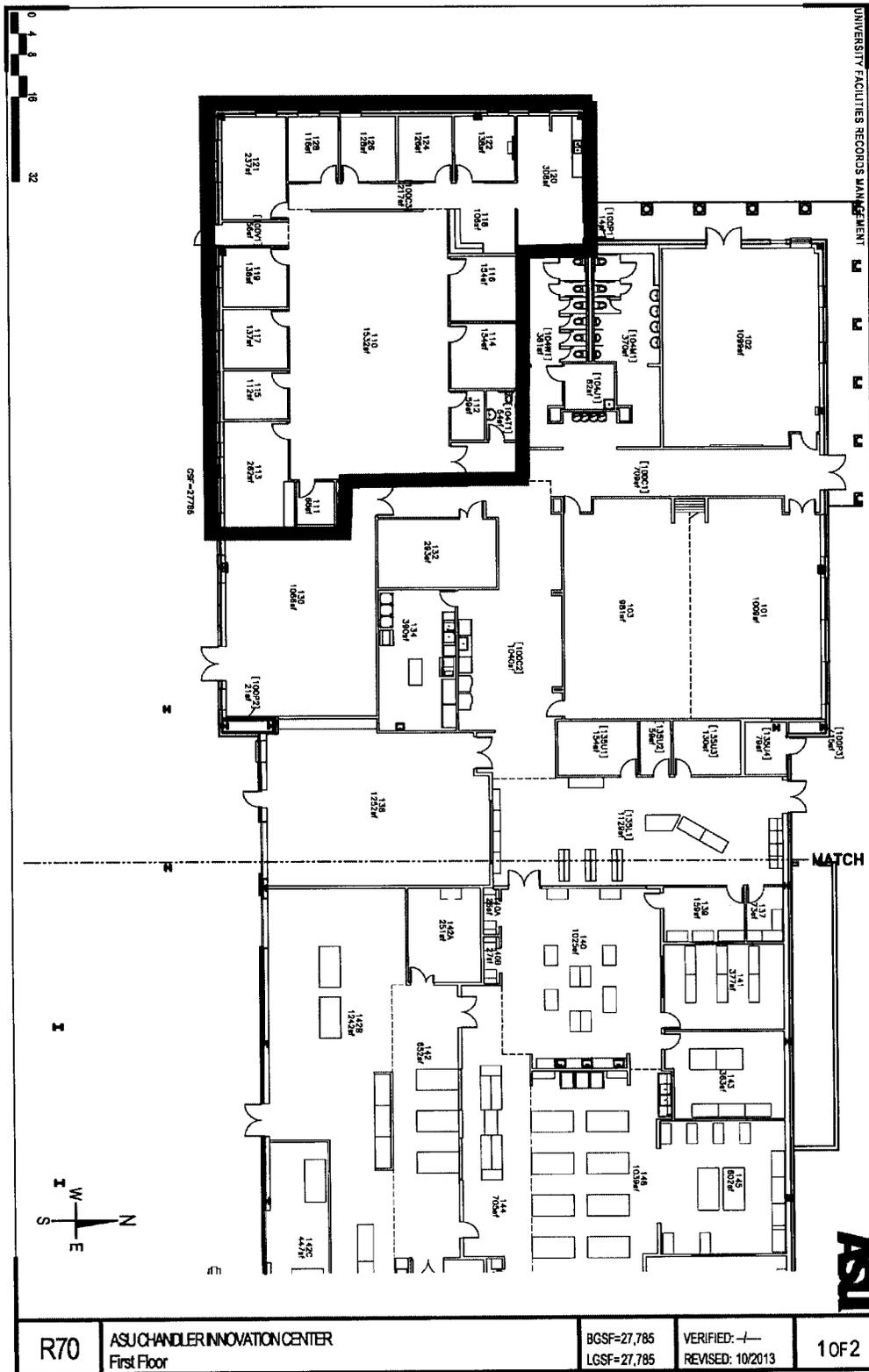
City Attorney 

EXHIBIT "A"
SITE MAP DEPICTING INCUBATOR SPACE
 (See area surrounded by dark bolded line)



R70	ASU CHANDLER INNOVATION CENTER First Floor	BGSF=27,785 LGSF=27,785	VERIFIED: <input checked="" type="checkbox"/> REVISED: 10/2013	10F2
-----	---	----------------------------	---	------