

**MEMORANDUM**

**Economic Development - Council Memo No. ED17-010**

**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:** INTRODUCTION OF ORDINANCE NO. 4728 AUTHORIZING A FIRST AMENDMENT TO THE LEASE 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.

RECOMMENDATION: Staff recommends City Council introduce and tentatively adopt Ordinance No. 4728 authorizing a first amendment to the lease 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.

BACKGROUND/DISCUSSION: 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, has licensed space to TechShop for its makerspace, and has engaged in other permitted uses in accordance with the terms of its lease with the City.

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.

In order to proceed with this partnership, the City's lease with ASU must be amended to incorporate the planned activities of business incubation and community co-working as

permitted uses. City staff has included an amended lease agreement in this request to City Council.

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 introduce and tentatively adopt Ordinance No. 4728 authorizing a first amendment to the lease 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.

Attachments: Ordinance No. 4728  
First Amendment to Lease Agreement

**ORDINANCE NO. 4728**

**AN ORDINANCE OF THE CITY OF CHANDLER, ARIZONA, AUTHORIZING A FIRST AMENDMENT TO THE LEASE 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.**

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 ("Lease") via Ordinance No. 4356; and

WHEREAS, the City revised the terms of the Lease Agreement 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 and ASU therefore wish to amend the Lease to permit hosting of entrepreneurial development, business incubation, and community co-working activities.

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

Section 1. The City is authorized to enter into a First Amendment to the Lease 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 revised Lease and related documents upon their approval as to form by the Chandler City Attorney.

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this \_\_\_\_ day of \_\_\_\_\_, 2016.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this \_\_\_\_ day of \_\_\_\_\_, 2016.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY *RR*

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4728 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

**FIRST AMENDMENT TO LEASE AGREEMENT  
(Chicago Street Yard)**

This First Amendment to Lease Agreement (Chicago Street Yard) (the "**Amendment**") is entered into as of \_\_\_\_\_, 2016 (the "**Effective Date**"), by and between the CITY OF CHANDLER, an Arizona municipal corporation ("**Landlord**"), and the ARIZONA BOARD OF REGENTS, a body corporate, for and on behalf of Arizona State University ("**Tenant**"). Landlord and Tenant shall be referred to in this Agreement collectively as the "parties" and individually as the "party".

**RECITALS**

A. Landlord and Tenant are parties to that certain Lease (Chicago Street Yard) dated May 28, 2013 (the "**Lease**"), 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, by which Landlord leased to Tenant, and Tenant leased from the premises located 249 East Chicago Street, in Chandler, Arizona, together with a non-exclusive license coupled with an interest to use those off-Premises municipal parking facilities designated and suitable for public vehicular parking that are located near and about the Premises, as further defined in the Lease (the "**Premises**").

B. Landlord and Tenant are parties to that certain Confirmation of Commencement, Lease Agreement (Chicago Street Yard), dated November 7, 2013, which the parties agreed that the initial five (5) year term of the Lease commenced on October 31, 2013, and shall terminate at 11:59 p.m. Arizona time, on October 30, 2018, and that such initial five (5) year term may be extended by Tenant's exercise of any renewal option granted in the Lease (the "**Term**").

C. Concurrently herewith Landlord and Tenant are entering into that certain Memorandum of Understanding for ASU-Chandler Innovation Center (the "**MOU**") in which the parties agree to collaborate to further their respective missions by integrating the City's Innovations Program (as described in the MOU) within a portion of the Premises, as more particularly described in the MOU, and by permitting Tenant to utilize portions of the Premises to facilitate Tenant's innovations and entrepreneurial development programs, thereby establishing the site as a hub for providing entrepreneurial development programming and services supporting each party's mission (collectively, the "**ASU-Chandler Innovations Program**").

D. To facilitate the ASU-Chandler Innovations Program, the parties desire to amend the Lease as more particularly set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual covenants hereafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Amendments. The Lease is amended as follows.

1.1. Section 7.1, PERMITTED USE, of the Lease, is deleted in its entirety and is replaced with the following:

7.1 PERMITTED USE. The Premises shall be used and occupied as follows (each a “**Permitted Use**”), and for no other purpose whatsoever without the prior written consent of Landlord, which may be withheld in Landlord’s sole discretion:

(A) The Premises may be used and occupied by Tenant, Tenant Affiliates and/or Tenant Partners solely for the purpose of (i) providing public educational and professional training leading to professional and/or advanced degrees or certifications, especially in, but not limited to, the fields of science, math and technology, (ii) providing instruction in the use of tools, machinery and/or equipment that advance the user's knowledge or use of such tools, machinery and/or equipment, (iii) permitting users to use and/or acquire tools, machinery and/or equipment and related published materials to design, engineer, fabricate, create and/or build components for the users' projects, (iv) permitting users to access and utilize community co-working spaces, and (v) other ancillary uses in support of or in advancement of the preceding uses, including but not limited to general office uses.

(B) Tenant is hereby authorized to allow portions of the Premises to be used and occupied by parties who Landlord or Tenant identify as providing entrepreneurial development programming and services that support their respective missions, including, but not limited to: (i) incubator businesses and companies that satisfy the requirements set forth in the MOU, (ii) any management entity who performs management services necessary to identify, provide and develop incubator businesses, (iii) any management entity who performs services necessary to manage community co-working space and related activities, and (iv) incubator businesses and companies that are identified by Tenant as participants in Tenant's innovations and entrepreneurial development programs (collectively, the "**Incubators**").

1.2. Section 10.2, PERMITTED TRANSFERS, is hereby amended to provide that a "Permitted Transfer," as defined therein, includes Tenant's right to sublease, license or otherwise provide space to Incubators, so long as such Incubators are complying with the Permitted Use.

2. General Provisions. Except as amended and modified by this Amendment, all of the terms, covenants, conditions and agreements of the Lease shall remain in full force and effect. In the event of any conflict between the Lease and the provisions of this Amendment, this Amendment shall control. The Recitals set forth above are incorporated in this Amendment as though fully set forth herein. Unless the context clearly indicates otherwise, capitalized terms used in this Amendment and not otherwise defined shall have the meanings set forth in the Lease.

3. Counterparts. This Amendment may be executed in one or more counterparts; each such counterpart shall be deemed an original. Execution and delivery of this Amendment by portable document format (“**PDF**”) copy bearing the PDF signature of any party hereto shall constitute a valid and binding execution and delivery of this Amendment by such party. Such PDF copies shall constitute enforceable original documents.

4. Authority. The individuals signing below on behalf of Landlord and Tenant represent and warrant that they are duly authorized to execute and bind the party for whom they are signing with respect to this Amendment.

5. Binding Effect. This Amendment shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the Landlord and Tenant have duly executed this First Amendment to Lease Agreement (Chicago Street Yard) as of the Effective Date set forth above.

**LANDLORD:**

**CITY OF CHANDLER**, an Arizona municipal corporation

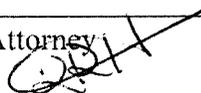
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Name: \_\_\_\_\_

Title: \_\_\_\_\_

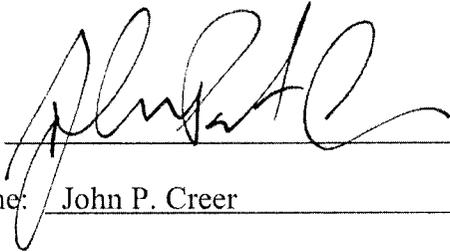
APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



**TENANT:**

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

By:  \_\_\_\_\_

Name: John P. Creer

Title: Assistant Vice President for University  
University Real Estate Development