

AUG 27 2009



Chandler • Arizona
Where Values Make The Difference

MEMORANDUM

DATE: August 27, 2009

TO: Mayor and Council

THRU: W. Mark Pentz, City Manager
Rich Dlugas, Assistant City Manager (RD)

FROM: Debra Stapleton, Human Resources Director (JAS)

SUBJECT: Arizona State University Affiliation Agreement

RECOMMENDATION:

Approve Resolution No. 4322 executing the affiliation agreement between Arizona State University and the City of Chandler.

DISCUSSION:

Several City Departments offer internships to students from Arizona State University on both a paid and unpaid basis. Historically, Departments worked directly with the school resulting in separate agreements with the University each time an intern was hired. The City's Law Department suggested developing one agreement with the University and the University agreed.

This agreement will simplify the sponsorship of interns by various Departments and ensure that both the City and the University have an understanding of its responsibilities regarding this affiliation.

MOTION:

Approve Resolution No. 4322 executing the affiliation agreement between Arizona State University and the City of Chandler.

RESOLUTION NO. 4322

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE 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, it is in the best interests of the City to enter this *Affiliation Agreement Between the Arizona Board of Regents for and on Behalf of Arizona State University and the City of Chandler, Arizona.*

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 *Affiliation Agreement Between the Arizona Board of Regents 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 _____, 2009.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

CITY ATTORNEY

CH for

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4322 was duly passed and adopted by the City Council of the City of Chandler, Arizona at a regular meeting held on the ____ day of _____, 2009, 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 _____, 2009 (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 on a year-to-year basis 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.

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 Contractor recognize that student educational records are protected by the federal Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g). FERPA permits disclosure of student "educational records" to "school officials" that have a "legitimate educational interest" in the information. (For definitions of quoted terms, see ASU Policy USI 107-01: Release of Student Information.) The federal Family Compliance Office has recognized that institutions can designate other entities, including vendors and consultants, as "other school officials." Designated representatives of Contractor will be designated as "other school officials" for purposes of this Agreement. No designated representative of the Contractor shall disclose student educational records it receives under this agreement to any third party, except with the prior written consent of the student or as permitted by law. Any disclosures made by the Contractor will comply with the University's definition of "legitimate educational interest." Contractor agrees and warrants that it shall use student educational records solely to accomplish its obligations under this agreement and solely in a manner and for purposes consistent with the terms and conditions of this agreement and University policies and procedures. Contractor agrees and warrants that it shall not make any disclosures of student educational records without prior notice to and consent from the University. If any designated representative discloses or misuses any educational record, the University and/or Contractor will take appropriate action against the designated representative that is similar to action ASU would take against one of its employees who disclosed or misused the educational records of its students.

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. 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.

UNIVERSITY

AGENCY

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

CITY OF CHANDLER

By:  _____

By: _____

Printed: Elizabeth D. Capaldi

Printed: _____

Title: Executive Vice President and
Provost of the University

Title: _____

APPROVED AS TO FORM


CITY ATTORNEY

Last revised: March 2009

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