

**INTERGOVERNMENTAL AGREEMENT FOR THE IMPOSITION,
COLLECTION AND PAYMENT OF CERTAIN ASSESSMENTS
BETWEEN
THE ASU ATHLETIC FACILITIES DISTRICT
AND
MARICOPA COUNTY, ARIZONA
AND
THE ARIZONA BOARD OF REGENTS
FOR AND ON BEHALF OF ARIZONA STATE UNIVERSITY**

THIS INTERGOVERNMENTAL AGREEMENT (this “**Agreement**”) is made and entered into as of June 22, 2022, by and between the ASU Athletic Facilities District, a county stadium district established under Arizona Revised Statutes Title 48, Chapter 26 (the “**District**”), Maricopa County, a political subdivision of the State of Arizona (the “**County**”), and the Arizona Board of Regents (“**ABOR**”) for and on behalf of Arizona State University (“**ASU**”). The District, the County and ASU are referred to hereinafter individually as a “**Party**” or collectively as the “**Parties**.”

RECITALS

- A. This Agreement is authorized by ARIZ. REV. STAT. §§ 11-952, 15-1625(B), 48-4203, 48-4204, and 48-4235.
- B. By Resolution No. C-20-12-017-M-00, the County approved the organization of the District pursuant to the provisions of ARIZ. REV. STAT. Title 48, Chapter 26 (the “**Act**”).
- C. Pursuant to the Act, ASU and the County entered into that certain Intergovernmental Agreement effective November 15, 2011 for the purposes of establishing the Board of Directors for the District (the “**District Board**”) and such other matters as ASU and the County deemed appropriate (the “**Enabling IGA**”).
- D. Pursuant to the Act, ASU and the District have entered into an intergovernmental agreement dated as of July 1, 2012 (the “**District IGA**”) setting forth the relationship of the District as it pertains to the administration of District powers and authority over certain real property owned by ABOR (the “**ABOR Property**”) and located within the boundaries of the District.
- E. Pursuant to the Act, the Enabling IGA, and the District IGA, the Parties have determined that an intergovernmental agreement is necessary to provide for the establishment, collection and enforcement of the assessments authorized under the Act, the Enabling IGA, and the District IGA (the “**Assessment**” or “**Assessments**”). The Assessments shall provide a funding mechanism for the construction, reconstruction, furnishing, maintenance, and improvement (the “**Improvements**”) of existing intercollegiate athletic facilities of ASU (the “**Athletic Facilities**”), including utilities, roads, parking areas or buildings necessary for full use of the athletic facilities, and for other expenses incurred for the benefit of the District.

- F. The Parties each desire to enter into this Agreement for the purposes of establishing (i) the procedures by which the District shall calculate and impose Assessments for each parcel of ABOR Property located in the District, and leased by ASU, or its designee, to a lessee for retail, office, residential rental or other commercial uses, including any property leased, subleased, or assigned for such uses (the “**Prime Commercial Lessee**”) to fund Improvements or other permitted uses pursuant to law, (ii) the petition process by which Prime Commercial Lessees can protest the hereinafter defined Valuation, (iii) the enforcement procedures to be used in the event a Prime Commercial Lessee fails to pay the Assessments when due, and (iv) other matters deemed necessary and appropriate by the Parties.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Assessments.

The Parties agree and acknowledge that pursuant to statute, the District has a duty to, and shall impose and cause to be collected an Assessment to be calculated by the District on an annual basis (the “**Annual Assessment**”) upon each Prime Commercial Lessee of ABOR Property located within the District in the manner and in an amount to be calculated pursuant to ARIZ. REV. STAT. § 48-4235, as and if amended. An Assessment begins upon the commencement of a Prime Commercial Lease and ends upon the expiration of the Prime Commercial Lease. The Maricopa County Treasurer (as *ex officio* Treasurer of the District) (the “**Treasurer**”) shall collect the Annual Assessment from each Prime Commercial Lessee.

The Annual Assessment shall be billed at such intervals as the District may direct. The Treasurer shall regularly deposit all collected Assessments in the District fund known as the ASU Athletic Facilities District Fund (the “**AFD Fund**”), established pursuant to ARIZ. REV. STAT. § 48-4235(C) and the District IGA, said AFD Fund to be held by the Treasurer.

2. Determination of Annual Assessments.

The Parties agree and acknowledge that the Maricopa County Assessor (the “**Assessor**”) has certain statutory and constitutional responsibilities to determine the value of real property in the County, and the District has certain statutory responsibilities to determine the Annual Assessment. The District shall consult with the Assessor in determining the value of ABOR Property leased to Prime Commercial Lessees and take the Assessor’s value into consideration when determining each Annual Assessment, but shall not be bound by such valuation. The District shall determine the Annual Assessments as follows:

- a. For all ABOR Property leased to a Prime Commercial Lessee, the District shall determine the classification, full cash value (the “**Valuation**”), and limited property value of each parcel of real property leased to a Prime Commercial Lessee based on the Prime Commercial Lessee’s use of the real property in

accordance with ARIZ. REV. STAT. §§ 42-12001, *et seq.*, 42-13002, *et seq.*, and 48-4235(B)(1), each as and if amended.

- b. The District shall determine an assessed valuation for each parcel by applying the appropriate assessment percentage for such classification of property as prescribed by ARIZ. REV. STAT. § 42-15001, *et seq.*, as and if amended, to the limited property value determined in paragraph 2(a) above.
- c. The District shall multiply the assessed valuation determined pursuant to paragraph 2(b) above by a rate per one hundred dollars (the “**District Assessment Rate**”) to be established by the District, but in no event shall such rate exceed the composite of the real property tax rates levied for that year by all taxing jurisdictions in which the parcel of ABOR Property is located, as prescribed by ARIZ. REV. STAT. § 48-4235(B)(3), as and if amended. The Treasurer shall promptly provide to ASU and the District a schedule of the applicable real property tax rates at such time that the rates are fixed and determined by the Treasurer pursuant to ARIZ. REV. STAT. § 42-17151(A)(3), as and if amended.
- d. The District Board shall meet at least annually to adopt the annual District Assessment Rate.
- e. ASU shall inform the District, the Assessor, and the Treasurer upon execution of leases for property leased to a Prime Commercial Lessee (each a “**Prime Commercial Lease**”) and provide a memorandum of lease evidencing the boundary of the leased parcel. ASU shall inform the District, the Assessor, and the Treasurer when any Prime Commercial Lease terminates before the expiration date of the lease term specified in such Lease.

3. Collection of Assessments.

- a. The District shall notify the District Designee (as defined in the next sentence), the Treasurer, and the Clerk of the County Board of Supervisors of the annual District Assessment Rate for all parcels of ABOR Property leased to Prime Commercial Lessees. The District hereby designates and approves the District Board, and any party or entity designated by the District Board, including, but not limited to, ASU or ASU's designee to act as the District Designee (the District Board, ASU and such designee, collectively, the “**District Designee**”).
- b. The District hereby delegates to ASU, or, at ASU’s discretion, ASU’s designee, the responsibility to provide for the preparation and transmission of all invoices related to any Assessments.
- c. The Treasurer shall regularly deposit any and all Assessments collected from Prime Commercial Lessees in the AFD Fund pursuant to ARIZ. REV. STAT. § 48-4235(C), as and if amended.
- d. ASU, or its designee, shall include a provision in each Prime Commercial Lease obligating the Prime Commercial Lessee to pay all Assessments, or portions

thereof, as they become due. ASU, or its designee, shall direct the Prime Commercial Lessees to pay such Assessments to the Treasurer. Such Assessments shall be included as a component of the rents paid by each Prime Commercial Lessee for each leased parcel or leased space. Failure to pay the Assessment when due shall be a condition of default under any Prime Commercial Lease.

- e. The Assessment shall be payable semi-annually on March 1 and October 1 (the “**Assessment Due Dates**”) during the term of a Prime Commercial Lease as prescribed by ARIZ. REV. STAT. § 42-18052, as the same may be amended from time to time. Any Assessment due for less than six (6) months at the commencement or expiration of a Prime Commercial Lease term shall be prorated on a per diem basis.
- f. Any Assessment not paid on or before November 1 at 5:00 p.m. for the first half of the year or on or before May 1 at 5:00 p.m. for the second half of the year (“**Assessment Delinquency Dates**”) shall be delinquent, and shall bear default interest at the default rate set for delinquent property taxes in accordance with ARIZ. REV. STAT. § 42-18053, as the same may be amended from time to time; or if no default rate is so specified, at the default rate of interest specified in the Prime Commercial Lease for delinquent payments. Assessments shall be deemed delinquent if not paid to the Treasurer before the applicable Assessment Delinquency Dates. Delinquent Assessments shall not be subject to the annual tax sale for delinquent taxes conducted by the Treasurer, but shall be referred to the District Board for further action.
- g. To facilitate collection and enforcement of any delinquent Assessments, the Treasurer will provide to the District Board and ASU on or before the 15th day of each month a report of all Assessments received by the Treasurer during the preceding month.

4. Lessee’s Right to Petition Valuation Calculation.

The District, pursuant to ARIZ. REV. STAT. § 48-4235, has adopted a procedure establishing processes for any Prime Commercial Lessee to petition the Valuation of real property to the District, which may be modified in the future. The Assessor shall have no duties with respect to appeals or petitions by the Prime Commercial Lessee. Prime Commercial Lessees shall have no right to appeal or petition the Valuation of real property to the Assessor’s office, and the processes established by the District shall not contain such a right. The District shall make such petition procedure available upon request of the Prime Commercial Lessee.

5. Enforcement of Assessments.

In reliance on the timely collection and enforcement of Assessments, the District may issue its revenue bonds or other obligations payable from the Assessments, and ASU may rely on the Assessments and any financing derived thereof to support and finance the Improvements. In

furtherance of this mutual reliance, it is necessary that all Assessments be enforced as to Prime Commercial Lessees in a timely manner.

- a. Every Prime Commercial Lease involving ABOR Property covered under the terms of the District IGA shall contain sufficient language obligating the Prime Commercial Lessee to pay all Annual Assessments, or portions thereof, as a component of rent, when due and further obligating the Prime Commercial Lessee to pay all delinquent and other charges applicable to the Annual Assessments, and for the reasonable costs incurred as a result of any action to collect any such Assessments. In addition thereto, each such Prime Commercial Lease shall specify that ASU shall have a right to enforce the collection and payment of all Annual Assessments. ASU, or its designee, shall also have, as a remedy for default, the right to enter the leased premises, remove the tenant and take possession of all tenant improvements and fixtures, including any possessions contained within or without or affixed to or upon any buildings or structures constructed on ABOR Property. In addition, ASU, and its designee, shall have any and all lien rights afforded under the Prime Commercial Leases or under applicable law.
- b. The District shall promptly receive a copy of each Prime Commercial Lease involving ABOR Property covered under the terms of the District IGA when executed by both parties to the Prime Commercial Lease.
- c. ASU, and its respective designees, shall each have a right of action to enforce the collection of any Assessments and all related charges and costs. In addition, the District shall have the right to enforce the Prime Commercial Lessee's obligations with respect to Assessments, and shall coordinate its enforcement efforts with ASU.

6. Reimbursement for Services.

The District agrees to reimburse the County, District Designee or ASU (or its designee), as applicable, from any lawfully available funds, for services provided by such parties pursuant to this Agreement, pursuant to a reimbursement schedule of costs for such services as agreed to from time to time by the parties providing and receiving the services, and when so agreed to shall be deemed incorporated into this Agreement. The reimbursement schedule shall not exceed the actual costs for the services provided by applicable party. The District reserves the right to perform for itself any of the services provided by the County, District Designee, ASU, or ASU's designee, as permitted by law.

7. Payments for Improvements.

The District IGA authorizes ASU and the District to finance Improvements and to be reimbursed from the Assessments for such expenditures. ARIZ. REV. STAT. § 48-4204(E) authorizes the payment of such expenditures from the AFD Fund. To the extent there are funds in the AFD Fund on December 15 and June 15, respectively, of each year, the Treasurer will automatically transfer to the District all cash balances held in the AFD Fund on such dates, without any action

needed by the District Board or District Designee. On or before August 31 of each year, the District will provide a report to the Treasurer indicating how the District utilized the funds the Treasurer transferred to the District during the immediately prior year ending on June 30.

8. General.

- a. Entire Agreement. This Agreement embodies the entire understanding of the Parties and supersedes any other agreement or understanding between the Parties relating to the subject matter. The Parties agree that should any part of this Agreement be held to be invalid or void, the remainder of the Agreement shall remain in full force and effect and shall be binding upon the Parties.
- b. Waivers. No waiver, amendment or modification of this Agreement shall be valid or binding unless written and signed by the Parties. Waiver by any Party of any breach or default of any clause of this Agreement by another Party shall not operate as a waiver of any previous or future default or breach of the same or different clause of this Agreement.
- b. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
- c. Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511.
- d. Dispute Resolution. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the Parties 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 all Parties. Pursuant to ARIZ. REV. STAT. § 12-1518, the Parties acknowledge and agree, subject to the Arizona Board of Regents Policy 3-809, that they will be required to make use of mandatory arbitration of any legal action that is filed in the Maricopa County Superior Court concerning a controversy arising out of this IGA if required by ARIZ. REV. STAT. § 12-133.
- e. 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.
- f. News Release. Neither the District nor the County may use the name of ASU in news releases, publicity, advertising, or other promotion, without the prior written consent of ASU, except for documents used for internal consumption by the District or the County.
- g. Service Marks and Trademarks. No Party shall use any service marks, trademarks, logos, or other marks of another Party without the express written approval of the

other Party. The use of any marks must comply with the owner's requirements, including using the "circle R" indication of a registered trademark.

- h. Term. The term of this Agreement shall commence on the date first set forth above and shall remain in effect for so long as the District validly exists pursuant to the Act.
- i. Notices and Contact Information. For any notices or other information required pursuant to this Agreement, notice shall be deemed sufficient if sent to the following:

If to ASU: Arizona State University
Attn: Executive Vice President, Treasurer, and
Chief Financial Officer

Mailing Address:
P.O. Box 877505
Tempe, AZ 85287-7505

Delivery Address:
300 E. University Drive, Suite 320
Tempe, AZ 85281-2061

With a copy to: Arizona State University
Attn: Senior Vice President and General Counsel

Mailing Address:
P.O. Box 877405
Tempe, AZ 85287-7405

Delivery Address:
300 E. University Drive, Suite 335
Tempe, AZ 85281-2061

If to the District: ASU Athletic Facilities District
Attn: Executive Director

Mailing Address:
P.O. Box 873908
Tempe, AZ 85287-3908

Delivery Address:
777 S. Novus Place., Suite 110
Tempe, AZ 85281

With a copy to: Gust Rosenfeld P.L.C.
Attn: Timothy A. Stratton
One East Washington Street, Suite 1600
Phoenix, AZ 85004-2553

If to the County: Maricopa County Board of Supervisors
Attn: Clerk of the Board
301 West Jefferson Street, 10th Floor
Phoenix, AZ 85003

With a Copy to: Maricopa County Treasurer's Office
Attn: Accounting Manager
301 West Jefferson Street, Room 280
Phoenix, AZ 85003

With a Copy to: Maricopa County Assessor's Office
Attn: Chief Deputy Assessor
301 West Jefferson Street
Phoenix, AZ 85003-2196

- j. Cancellation for Nonappropriations. The Parties recognize that performance by ASU depends upon appropriation of funds by the State Legislature of Arizona. If the Legislature fails to appropriate the necessary funds, or if ASU's appropriation is reduced during the fiscal year, ASU agrees to use other legally available funds to perform its obligations hereunder or reduce the scope of this Agreement if appropriate.
- k. Construction. Whenever required by the context of this Agreement, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa, and (ii) use of the words "including," "such as," or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation," or "but not limited to," are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term or matter.

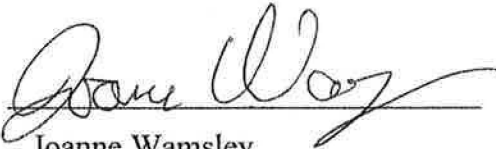
[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective as of the date first set forth above.

ARIZONA BOARD OF REGENTS, A
BODY CORPORATE, FOR AND ON
BEHALF OF ARIZONA STATE
UNIVERSITY

ASU ATHLETIC FACILITIES DISTRICT

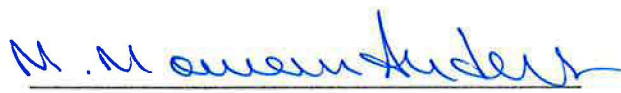
By: 
Name: Morgan R. Olsen
Title: Executive Vice President, Treasurer
and Chief Financial Officer

By: 
Name: Joanne Wamsley
Title: Vice Chair

Approval of Attorneys

Pursuant to ARIZ. REV. STAT. § 11-952, this Agreement has been submitted to counsel. The undersigned has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Board of Regents.


Arizona Board of Regents, a body corporate,
for and on behalf of Arizona State University

By: 
M. Maureen Anders
Associate General Counsel for
Arizona State University

Date: 5.19.22

Pursuant to ARIZ. REV. STAT. § 11-952, this Agreement has been submitted to counsel. The undersigned has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the ASU Athletic Facilities District.

ASU Athletic Facilities District

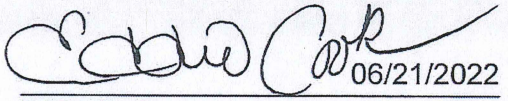
By: 
Timothy A. Stratton
Gust Rosenfeld, PLC
Counsel to the ASU Athletic Facilities District

Date: 5.19.22

IN WITNESS WHEREOF, the Parties have executed this Agreement.

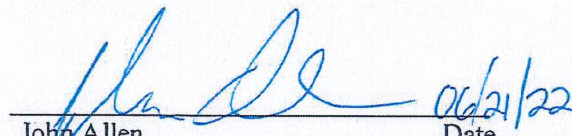
MARICOPA COUNTY

Recommended by:


Eddie Cook
Maricopa County Assessor

06/21/2022

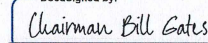
Date


John Allen
Maricopa County Treasurer

06/21/22
Date

Approved and Accepted by:

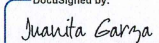
C-43-22-117-X-00

DocuSigned by:

Chairman
Board of Supervisors

6/24/2022

Date

Attest by:

DocuSigned by:

Clerk of the Board

6/24/2022

Date

Approval of Deputy County Attorney

Pursuant to ARIZ. REV. STAT. § 11-952, this Agreement has been submitted to counsel. The undersigned has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to Maricopa County.


Karen J. Hartman-Tellez
Senior Counsel

June 22, 2022

Date