

When Recorded Return to:
The City of Surprise
16000 N. Civic Center Plaza
Surprise, Arizona 85374

AMENDMENT NO. 2
TO
INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF SURPRISE, ARIZONA,
A MUNICIPAL CORPORATION (“CITY”), AND
THE MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT,
A POLITICAL SUBDIVISION OF THE STATE OF ARIZONA,
ON BEHALF OF RIO SALADO COLLEGE (“COLLEGE”)

This Amendment No 2 (“Amendment”) revises the Intergovernmental Agreement dated February 21, 2008, as amended by Amendment No. 1 dated February 19, 2010 (collectively, the “IGA”) between the Maricopa County Community College District, a political subdivision of the State of Arizona, on behalf of Rio Salado College (“College”), and the City of Surprise, Arizona, a municipal corporation (“City”).

The parties agree to amend the IGA as follows:

1. Building Lease. The following new Paragraph 23 is hereby added in its entirety:

23. **Right to Lease.** College shall have the right to lease the entire Building subject to the following terms and conditions:

23.1 Any proposed tenant (“Tenant”) and form of lease (“Lease”), including any addendum, amendment, or other modification to any previously approved Lease, and including any assignment or sublease by any previously approved Tenant, shall be subject to the prior written approval of City, which approval shall not be unreasonably withheld, conditioned or delayed.

23.2 The Lease shall be subordinate to and subject to the terms of the IGA and, in the event of the termination of the IGA, the Lease shall be subject to termination by City unless City as owner, College as landlord, and Tenant have executed a consent and non-disturbance agreement substantially in the form of Exhibit A attached hereto (which consent and non-disturbance agreement shall also be an exhibit to the Lease).

2. Parking. Paragraph 10, Exhibit C, and sentences 6 – 8 of Paragraph 5.1 of the IGA are hereby deleted in their entirety. The final sentence of Paragraph 5.1 of the IGA is hereby restated in its entirety as follows: “City shall forward the invoices for the cost of the Exterior Maintenance to the College representative identified in Paragraph 20 and College shall pay all undisputed invoices within thirty (30) calendar days of receipt of each undisputed invoice, or notice that a disputed amount has been resolved.”

3. Building Use. Paragraph 6 of the IGA is hereby deleted in its entirety.

4. Signage. Paragraph 5.2 of the IGA is hereby deleted in its entirety and replaced with the following:

City approval is required for any signs posted on the Building or surrounding grounds. All signage is subject to City's design standards and design review approval process. City's approval of signage will not be unreasonably withheld, conditioned, or delayed.

5. Utilities. The provisions of Paragraph 4 of the IGA shall extend to Tenant.

6. Transition. Paragraph 8 of the IGA is deleted and hereby restated and substituted in its entirety as follows:

8. Transition:

8.1 Any Lease will include an option for Tenant to purchase the Building (the "Tenant Purchase Option"). Provided Tenant has not previously purchased the Building, upon the earlier to occur of (a) Tenant having waived in writing its Tenant Purchase Option or (b) December 31, 2020, then City shall have the option to purchase the Building on the same terms as granted to Tenant in the Lease, including the price calculation method (the "City Purchase Option"). "Fair market value" of the Building shall have the same meaning as provided in the Lease. Such option may be exercised at any time from the expiration or waiver of the Tenant Purchase Option through the date that the term of the Lease is to expire, including, if applicable, any Extended Lease Term (the "City Option Period"). Termination of the Lease prior to the expiration date of the term of the Lease shall not terminate the City Purchase Option nor shorten the City Option Period.

If City wishes to exercise the City Purchase Option, City shall so notify College in writing (the "City Purchase Option Notice") during the City Option Period. Such City Purchase Option Notice shall set forth a date for closing, which date shall be no sooner than sixty (60) days after the delivery of the City Purchase Option Notice and not later than the expiration of the Lease. In the event that City exercises the City Purchase Option, College and City shall enter into a Purchase Agreement within thirty (30) days following the date the purchase price of the Building is determined, which Purchase Agreement shall be in form and substance reasonably acceptable to both parties and contain terms and conditions customary for the purchase of a building of similar character, use and location.

8.2 Upon the expiration or earlier termination of any Lease of the Building, but in no event prior to July 1, 2019, College shall have the right to give City notice ("Building Vacation Notice") that College intends to vacate the Building by a specified date ("Building Vacation Date"), which date shall be no earlier than a minimum of eighteen (18) months after the Building Vacation Notice. Concurrent with College vacating the Building, City shall purchase the Building for a purchase price determined in accordance with Paragraph 8.1 above. Any rights or claims of College against Tenant relating to the Lease of the Building for any time period subsequent to the date of purchase shall be assigned to City in conjunction with the sale of the Building.

8.3 If, during College's occupancy and ownership of the Building, the Building is rendered untenable or unfit by fire or other casualty, the procedures outlined in Paragraph 14 of the IGA shall be applicable; provided, however, if the Building is subject to an approved Lease, then the terms of the Lease shall control with respect to any casualty or condemnation. Notwithstanding anything to the contrary contained in this Amendment or the IGA, in the event the Building is damaged by fire or other casualty to such extent that the damage cannot, in College's sole judgment, be repaired within one hundred twenty (120) days after the date of such damage (taking into account the time necessary to effectuate a satisfactory settlement with any insurance company and using normal construction methods without overtime or other premium), then the IGA shall terminate (as of the date of the

damage), neither College nor City shall be obligated to repair the Building, City shall have no obligation to purchase the Building, and College shall, within one hundred eighty (180) days of the casualty, raze the Building and restore the Building Land to its pre-construction condition.

8.4 The IGA shall terminate upon any sale of the Building by College to either the Tenant or City. Notwithstanding the foregoing or any other provision of any instrument providing for the termination of the IGA, the indemnity obligations of the parties pursuant to Paragraph 13 of the IGA shall survive such termination with respect to any acts or omissions occurring prior to such termination

7. **Food Service.** Paragraph 9 of the IGA is hereby deleted in its entirety.

8. **Indemnification.** Paragraph 13.1 of the IGA is hereby restated in its entirety as follows:

13.1 To the fullest extent permitted by law, College shall indemnify, defend and hold harmless City, its agents, officers, officials, employees and volunteers from and against all claims, suits, damages, losses, and expenses (including, but not limited to, attorney fees and/or court costs) arising from the acts, errors, mistakes, omissions, work, or services of College, its employees, agents, tenants or subtenants, or any tier of its contractors in the performance of this Agreement or in connection with the occupancy or use of the Building. The amount and type of insurance coverage requirements set forth in this Agreement shall in no way be construed as limiting the scope of the indemnity in this Paragraph.

9. **Damage and Destruction.** Paragraph 14 of the IGA is modified pursuant to the last sentence of Paragraph 8.3 as amended above by this Amendment.

10. **Miscellaneous.** Other than as specified in this Amendment, all other provisions of the IGA remain the same. If there shall be any conflicts between the terms of this Amendment and the IGA, the terms of this Amendment shall control.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date and year first set forth above.

“City”

“College”

CITY OF SURPRISE, an Arizona municipal corporation

Rio Salado College, a Maricopa County Community College

By: _____ Sharon Wolcott, Mayor

By: _____ Margaret McConnell, Asst General Counsel

APPROVED:

APPROVED:

Robert Wingo, City Attorney

Richard Galvan, Assistant General Counsel

EXHIBIT A

Form of Consent and Non-Disturbance

CONSENT AND NON-DISTURBANCE

This Consent and Non-Disturbance (this "Agreement") is made as of _____, 2017 by and among the CITY OF SURPRISE, ARIZONA, a municipal corporation ("City"), MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT, on behalf of RIO SALADO COLLEGE, a political subdivision of the State of Arizona ("Landlord"), and OTTAWA UNIVERSITY, a Kansas non-profit corporation ("Tenant").

WHEREAS, City and Landlord are parties to that certain Intergovernmental Agreement dated February 21, 2008, as amended by Amendment No. 1 dated February 19, 2010 and Amendment No. 2 dated _____, 2017 (collectively, the "IGA") pursuant to which Landlord has leased that certain real property legally described on the attached Exhibit "A" from City (the "Demised Premises"); and

WHEREAS, Landlord has subleased the Demised Premises and the building thereon (the "Building") to Tenant by lease dated _____, 2017 (the "Lease") and, in connection therewith, Tenant has requested that City and Landlord consent and agree to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the parties hereto consent, covenant and agree as follows:

1. City consents to the subleasing of the Demised Premises and the Building to Tenant all as more particularly set forth in the Lease. In the event of a cancellation, termination, expiration or surrender of the IGA (or if City recovers the right of possession to the Demised Premises and the Building under the IGA), for any reason or in any manner whatsoever, upon any such occurrence, City will then be bound by and become the lessor under the Lease and will accept Tenant and its successors and assigns as lessee under the terms and conditions of the Lease for a period equal to the then full unexpired portion of the term of the Lease (including any extension terms) and upon and subject to all of the same terms, covenants and conditions as may be then provided in the Lease. In the event of a conflict between the terms and conditions of the Lease and the IGA, the terms and conditions of the Lease shall prevail and control. From and after City's succession to the interest of Landlord as lessor under the Lease, Tenant shall have no further liability or obligation to Landlord, and, in such event, the Lease shall be deemed a direct lease between City and Tenant, and City shall then be deemed Tenant's lessor for all purposes under and subject to the Lease.

2. City hereby covenants, represents and warrants to Tenant that, as of the date of execution of this Agreement, City has fee simple legal title to the Demised Premises subject to Landlord's rights in the Building as further set forth in the IGA. City and Landlord each covenant, represent and warrant to Tenant that, as of the date of execution of this Agreement, (i) there are no defaults existing or which, but for the passage of time, would exist under the IGA or, should any such default or defaults exist, they are hereby waived for all purposes, and (ii) they each have the right to execute this Agreement.

3. If the Lease includes an option by which Tenant might purchase the Building from

Landlord, and should Tenant exercise such option and actually purchase the Building from Landlord, the Lease shall immediately terminate, the IGA shall immediately terminate and, notwithstanding Section 8 of the IGA as it existed prior to the execution of Amendment No. 2, City shall have no obligation to pay Landlord anything with regard to the Building.

4. This Agreement shall bind and benefit the heirs, legal representatives, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement under seal as of the date first above written.

CITY:

CITY OF SURPRISE, an Arizona municipal corporation

By: _____

APPROVED:

LANDLORD:

RIO SALADO COMMUNITY COLLEGE, a Maricopa community college

By: _____

TENANT:

OTTAWA UNIVERSITY, a Kansas non-profit corporation

By: _____

EXHIBIT A TO CONSENT AND NON-DISTURBANCE
Demised Premises

A parcel of land to be occupied by the City of Surprise City Hall South Building located in the South half of Section 4, Township 3 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the south quarter corner of said Section 4, marked with a 3" Maricopa County aluminum cap from which the north Quarter corner of said Section 4, marked with a 3" Maricopa County Highway Department brass cap in a hand hole, lies North 00°12'56" East 5414.76 feet;

Thence along the north-south midsection line of said Section 4, North 00°12'56" East 1811.15 feet to the POINT OF BEGINNING;

Thence departing said midsection line North 89°03'14" West 122.57 feet;

Thence North 00°56'47" East 101.25 feet;

Thence South 89°03'14" East 118.42 feet to the beginning of a non-tangent curve, concave to the northwest, the center of which lies North 02°31'00" East 79.94 feet;

Thence northeast along said curve through an arc of 56°44'26" 79.17 feet;

Thence South 60°21'41" East 11.35 feet;

Thence North 28°22'44" East 3.73 feet;

Thence South 68°35'29" East 90.91 feet to the beginning of a non-tangent curve, concave to the northwest, the center of which lies North 63°18'59" West 180.36 feet;

Thence southwest along said curve through an arc of 50°36'17" 159.29 feet;

Thence North 89°04'52" West 40.03 feet;

Thence South 00°57'10" West 4.63 feet;

Thence North 89°03'14" West 0.60 feet to the POINT OF BEGINNING.