RESOLUTION NO. R2014.141

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF TEMPE, ARIZONA, APPROVING AND AUTHORIZING THE ISSUANCE OF THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF TEMPE, ARIZONA LEASE REVENUE BONDS (ARIZONA STATE UNIVERSITY/ASU FOUNDATION PROJECT – D.C. BUILDING) TAX-EXEMPT AND/OR TAXABLE SERIES 2014 IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $35,000,000 TO FINANCE THE ACQUISITION AND CONSTRUCTION OF CERTAIN PROPERTY OWNED AND OPERATED BY ASUF DC, LLC AS AN OFFICE BUILDING, CONFERENCE FACILITY AND RELATED FACILITIES.

WHEREAS, The Industrial Development Authority of the City of Tempe, Arizona (the “Authority”) is a nonprofit corporation designated as a political subdivision of the State of Arizona (the “State”) incorporated with the approval of the City of Tempe, Arizona (the “City”), pursuant to the provisions of the Constitution of the State and Title 35, Chapter 5, Arizona Revised Statutes (the “Act”); and

WHEREAS, the Authority is authorized and empowered by the Act, among other things, (a) to issue revenue bonds for the purpose of making loans to finance or refinance the acquisition, construction, improvement or equipping of a “project”, as defined in the Act, and (b) to pledge its property and revenues to secure the payment of the principal of, premium, if any, and interest on its revenue bonds; and

WHEREAS, ASUF DC, LLC, an Arizona limited liability company (the “Borrower”), the sole member of which is Arizona State University Foundation for A New American University (the “Foundation”), an Arizona nonprofit corporation and organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), has requested that the Authority issue its Lease Revenue Bonds (Arizona State University/ASU Foundation Project - D.C. Building) Tax Exempt and/or Taxable Series 2014 (the “Bonds”), in an original aggregate principal amount not to exceed $35,000,000 and to loan the proceeds thereof to the Borrower (i) to finance the costs of acquiring certain real property and renovating, improving and equipping the building which is a part thereof to be operated as an office building, conference facility and related facilities to be located at 1800 Eye Street NW in the District of Columbia and (ii) to pay certain issuance expenses relating to such bonds (collectively, the “Project”); and

WHEREAS, the Authority by a Resolution (a copy of which is attached hereto as Exhibit A) (the “Authority Resolution”), duly adopted by the Board of Directors of the Authority at a lawful meeting called and held on October 16, 2014, granted final approval to the sale and issuance of the Bonds in the original aggregate principal amount not to exceed $35,000,000;
WHEREAS, pursuant to Section 35-721.B of the Act the proceedings of the Authority under which the Bonds are to be issued require the approval of this Council;

WHEREAS, Section 147(f) of the Code requires that an applicable elected representative (as that term is defined therein) approve the issuance of the Bonds following a public hearing, which public hearing was held by the Board of Directors of the Authority on October 16, 2014, with respect to the aforementioned financing, a copy of the notice for which is attached hereto as Exhibit B.

WHEREAS, this Council has had presented to it information regarding the Bonds and is informed and advised regarding the Project and the Bonds and the aforementioned public hearing; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. Approval. The sale and issuance by the Authority of the Bonds in one or more series in an original aggregate principal amount not to exceed $35,000,000 is hereby approved, subject, however, to the same terms and conditions as contained in the Authority Resolution.

Section 2. Authorization. The appropriate officers of the City Council and employees of the City are hereby authorized and directed to do all such things and to execute and deliver all such documents on behalf of the City as may be necessary or desirable to effectuate the intent of this Resolution and the Authority Resolution.

Section 3. Limited Obligations. The Bonds will be special limited obligations of the Authority, payable solely from the revenues pledged to the payment thereof pursuant to the Indenture (as defined in the Authority Resolution). Neither the City nor the State will in any event be liable for the payment of the principal of, premium, if any, or interest on the Bonds or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever that may be undertaken by the Authority. Neither the Bonds nor any of the agreements or obligations of the Authority will be construed to constitute an indebtedness of the City or the State within the meaning of any constitutional or statutory provisions whatsoever.
PASSED by the Council of the City of Tempe, Arizona, this 16th day of October, 2014.

___________________________________
Mark W. Mitchell, Mayor

ATTEST:

_______________________________
Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

_______________________________
Judith R. Baumann, City Attorney

REVIEWED BY:

_______________________________
Andrew B. Ching, City Manager

EXHIBITS:
   Exhibit A - Authority Resolution
   Exhibit B - Notice of Public Hearing
EXHIBIT A

AUTHORITY RESOLUTION

RESOLUTION OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF TEMPE, ARIZONA GRANTING FINAL APPROVAL FOR AND AUTHORIZING THE SALE AND ISSUANCE OF ITS LEASE REVENUE BONDS (ARIZONA STATE UNIVERSITY/ASU FOUNDATION PROJECT – D.C. BUILDING) IN ONE OR MORE SERIES IN AN ORIGINAL AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $35,000,000 TO FINANCE THE ACQUISITION AND CONSTRUCTION OF CERTAIN PROPERTY OWNED AND OPERATED BY ASUF DC, LLC AS AN OFFICE BUILDING, CONFERENCE FACILITY AND RELATED FACILITIES IN THE DISTRICT OF COLUMBIA, APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF VARIOUS DOCUMENTS RELATING THERETO, AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY FOR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY

WHEREAS, The Industrial Development Authority of the City of Tempe, Arizona (the “Authority”) is a nonprofit corporation designated as a political subdivision of the State of Arizona (the “State”) incorporated with the approval of the City of Tempe, Arizona (the “City”), pursuant to the provisions of the Constitution of the State and Title 35, Chapter 5, Arizona Revised Statutes (the “Act”); and

WHEREAS, the Authority is authorized and empowered by the Act, among other things, (a) to issue revenue bonds for the purpose of making loans to finance or refinance the acquisition, construction, improvement or equipping of a “project”, as defined in the Act and (b) to pledge its property and revenues to secure the payment of the principal of, premium, if any, and interest on its revenue bonds; and

WHEREAS, any revenue bonds issued to provide funds for the making of a loan will be payable solely from the revenues received by the Authority from the repayment of such loan and from other revenues derived from the loan of such moneys and from the other security pledged therefor, and such revenue bonds will never be construed to constitute an indebtedness of the Authority, the State, the City, or of any other political subdivision of the State, within the meaning of any constitutional or statutory provisions whatsoever; and

WHEREAS, ASUF DC, LLC, an Arizona limited liability company (the “Borrower”), the sole member of which is Arizona State University Foundation for A New American University, an Arizona nonprofit corporation and organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Foundation”), has requested the Authority to issue its bonds and loan the proceeds
thereof to the Borrower (i) to finance the costs of acquiring certain real property and renovating, improving and equipping the building which is a part thereof to be operated as an office building, conference facility and related facilities to be located at 1800 Eye Street NW in the District of Columbia and (ii) to pay certain issuance expenses relating to such bonds (collectively, the “Project”); and

WHEREAS, in furtherance of the purposes of the Act and in order to promote industry, develop trade, promote job opportunities and to enhance the standard of living within the City and the State (and more specifically Sections 35-706(A)(7) and -706(A)(9) of the Act) and in order to finance the Project, the Authority proposes to issue its Lease Revenue Bonds (Arizona State University/ASU Foundation Project – D.C. Building) in one or more series (collectively, the “Bonds”) pursuant to a trust indenture, to be dated the first day of the month of the dated date of the Bonds determined as herein provided (the “Dated Date”), by and between the Authority and a trustee to be named by the Borrower (the “Trustee”), in substantially the form presented at the meeting at which this Resolution was adopted (the “Trust Document”) and loan the proceeds thereof to the Borrower to assist the Borrower in financing the costs of the Project, the Bonds to be payable solely from the revenues and receipts to be derived by the Authority from the loan of the proceeds of the sale of the Bonds to the Borrower pursuant to a loan agreement, to be dated as of the Dated Date (the “Loan Agreement”), among the Authority, the Borrower and the Foundation, in substantially the form presented at the meeting at which this Resolution was adopted, which revenues and receipts will be payable on such dates and in such amounts as will provide for the payment of the entire principal of and interest on the Bonds authorized to be issued by the Authority pursuant hereto and pursuant to the Trust Document; and

WHEREAS, there have been presented to the meeting at which this Resolution was adopted substantially final drafts of (a) the Trust Document, (b) the Loan Agreement and (c) a Placement Agent Agreement, to be dated the date of sale of the Bonds (the “Placement Agent Agreement”), between RBC Capital Markets, LLC, as placement agent (the “Placement Agent”) and the Authority; and

WHEREAS, pursuant to the Loan Agreement, the Borrower agrees to indemnify and hold harmless the Authority, its directors, officers, legal counsel, underwriters and financial advisors, and the City, its City Council, staff and employees, from and against all liabilities, losses, damages, costs, expenses (including reasonable attorneys’ fees), causes of action, suits, claims, demands and judgments of any nature arising from (a) any errors or omissions of any nature whatsoever contained in any legal proceedings or other official representation or inducement made by the Authority pertaining to the Bonds, (b) any fraud or misrepresentations or omissions contained in the proceedings of the Authority relating to the issuance of the Bonds or pertaining to the financial condition of the Borrower which, if known to a purchaser or holder of the Bonds, might be considered a material factor in a decision whether or not to buy the Bonds, and (c) in any way relating to the execution or performance of the Indenture or the Loan Agreement, the issuance or sale of the Bonds or actions taken pursuant to the resolution authorizing the execution and delivery of the Indenture and the Loan Agreement and the issuance of the Bonds; and
WHEREAS, a public hearing on the proposal to issue the Bonds was duly noticed and held by the Board of Directors of the Authority (the “Board”) on the date hereof (the “Public Hearing”) and all persons wishing to appear and be heard were given an opportunity to do so; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of The Industrial Development Authority of the City of Tempe, Arizona, as follows:

Section 1. Bond Sale and Authorization. The Bonds are hereby authorized to be sold, issued and delivered as revenue bonds in one or more tax-exempt and/or taxable series designated The Industrial Development Authority of the City of Tempe, Arizona, Lease Revenue Bonds (Arizona State University/ASU Foundation Project – D.C. Building), in an original aggregate principal amount not exceeding $35,000,000, to pay the costs of the Project. The Bonds will be in substantially the forms set forth in the Trust Document, the use of which are hereby approved, subject to review and approval thereof by counsel to the Authority, and will be in the series, as designated and titled; be taxable or tax-exempt; have the dated date; mature on the dates and in the amounts and be subject to redemption; bear interest at the rates and be placed by the Placement Agent on the date and with the entity (the “Purchaser”), all as set forth in the Trust Document; provided that the overall true interest cost of the Bonds not exceed six percent (6%), the Bonds mature not later than July 1, 2035, and the purchase price of the Bonds equals the principal amount of the Bonds less a placement fee of not to exceed one percent (1.0%) of the principal amount of the Bonds.

Section 2. Special Limited Obligations; Other Bonds.

(a) The Bonds will be payable solely from the receipts and revenues received by, or on behalf of, the Authority pursuant to the Trust Document and the Loan Agreement. Nothing contained in (i) this Resolution, (ii) any of the Trust Document, the Loan Agreement or the Placement Agent Agreement (collectively, the “Authority Documents”) or (iii) any other agreement, certificate, document, or instrument executed in connection with the sale, issuance and delivery of the Bonds may be construed as obligating the Authority (except as a special limited obligation to the extent provided in such documents or instruments) or obligating the City, or as incurring a charge upon the general credit of the Authority or of the City, nor will the breach of any agreement contemplated by this Resolution, any of the Authority Documents, or any other instrument or document executed in connection therewith impose any charge upon the general credit of the Authority or of the City. The Authority has no taxing power.

(b) Prior to the issuance of the Bonds, the Authority has issued, and subsequent to the issuance of the Bonds, the Authority may issue, bonds in connection with the financing of other projects (the “Other Bonds”). Any pledge, mortgage, or assignment made in connection with the Other Bonds will be protected, and any funds pledged or assigned for payment of principal, premium, if any, or interest on the Other Bonds will not be used for the payment of principal, premium, if any, or interest on the Bonds. Any pledge, mortgage, or assignment made in connection with the Bonds will
be protected, and no funds pledged or assigned for the payment of the Bonds will be used for the payment of principal, premium, if any, or interest on the Other Bonds.

Section 3. **Conditions.** The Bonds will not be issued unless and until: (a) the issuance of the Bonds is approved by the Arizona Attorney General in the manner contemplated by Section 35-721(F) of the Act; (b) the issuance of the Bonds is approved by the City Council of the City; (c) all agreements, certificates, documents, or instruments requiring the execution or consent of the Authority are in a form and substance acceptable to the Authority’s counsel; and (d) the Authority receives such opinions, certificates, comfort letters and consent letters in connection with the Bonds as counsel to the Authority may deem necessary or appropriate, in form and substance satisfactory to counsel to the Authority. The Secretary or the Secretary’s nominee is hereby authorized and directed to obtain the approval of the issuance of the Bonds by the Mayor and City Council of the City.

Section 4. **Execution and Delivery of the Bonds.** Upon satisfaction of the conditions set forth in Section 3 hereof, the Authority’s President, Vice President, Secretary and Treasurer are each hereby authorized to execute and deliver the Bonds for and on behalf of the Authority. The signatures of the Authority’s President, Vice President, Secretary or Treasurer on the Bonds may be manually affixed or may be facsimiles.

Section 5. **Authority Documents.** The forms, terms, and provisions of each of the Authority Documents (including the exhibits thereto) are hereby approved, with such insertions, deletions, and changes as are approved by the officers authorized to execute the documents (which approval will be conclusively established by their execution thereof) and by counsel to the Authority. Upon satisfaction of the conditions set forth in Section 3 hereof, the Authority’s President, Vice President, Secretary and Treasurer are each hereby authorized to execute and deliver each of the Authority Documents.

Section 6. **Ratification of Actions.** All actions (not inconsistent with the provisions of this Resolution) heretofore or hereafter taken by or at the direction of the Authority and its directors, officers, counsel, advisors or agents with respect to the sale and issuance of the Bonds are hereby approved, adopted and ratified. Specifically, the determination of the date for the Public Hearing and the publication of a public notice with respect thereto are approved, adopted and ratified.

Section 7. **Further Actions.** Upon satisfaction of the conditions set forth in Section 5 hereof, the officers of the Authority shall take all other actions necessary or reasonably required to carry out, give effect to and consummate the transactions contemplated hereby and thereby, including without limitation, the execution and delivery of the Authority Documents, the closing certificates and other documents and certificates required to be delivered in connection with the issuance, sale, and delivery of the Bonds.
Section 8. Appointments. At the direction of the Borrower, the Trustee is appointed as trustee for purposes of the Trust Document. For purposes of the Trust Document, the President and the Secretary are hereby each appointed as an “Issuer Representative.”

Section 9. Open Meeting Laws. All formal actions of the Authority and the Board concerning and relating to the adoption of this Resolution were adopted in an open meeting, and all deliberations that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements of the State.

Section 10. Irrepealability. After the Bonds are duly executed by the Authority and authenticated and delivered by the Trustee to the Purchaser against payment therefore, this Resolution will be and remain irrepealable until the Bonds and all principal thereof and interest thereon shall have been fully paid, satisfied, and discharged.

Section 11. Severability. If any section, paragraph, clause, or provision of this Resolution is, for any reason, held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision will not affect any of the remaining provisions of this Resolution.

Section 12. Headings. Subject headings included in this Resolution are included for the purpose of convenience only and shall not affect the construction or interpretation of any of the provisions hereof.

Section 13. Effectiveness. This Resolution will be effective immediately.
PASSED, ADOPTED, AND APPROVED on October 16, 2014.

THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF TEMPE, ARIZONA

By......................................................................
John J. Brooking, President
NOTICE OF PUBLIC HEARING REGARDING A PLAN OF THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF TEMPE, ARIZONA TO FINANCE A PROJECT OF AND FOR ASUF DC, LLC

Public notice is hereby given that on Thursday, October 16, 2014, a representative of The Industrial Development Authority of the City of Tempe, Arizona (the “Authority”), will conduct a public hearing in the Public Works Conference Room of the City of Tempe, Arizona, Garden Level, 31 East 5th Street, Tempe, Arizona 85281, commencing at 9:00 a.m., Mountain Standard Time, for the purpose of providing an opportunity for interested persons to express their views, orally and in writing, with respect to the proposed issuance by the Authority of its Lease Revenue Bonds (Arizona State University/ASU Foundation Project – D.C. Building) Series 2014 in one or more series, in the maximum aggregate face amount of not to exceed $35,000,000 (collectively, the “Bonds”) to finance the costs of acquiring certain real property and renovating, improving and equipping the building which is a part thereof to be operated as an office building, conference facility and related facilities, constituting a “project” within the meaning of Sections 35-701, Arizona Revised Statutes (the “Project”), for the use and benefit of, and to be initially owned and operated by, ASUF DC, LLC, an Arizona limited liability company (“ASUF DC”), the sole member of which is Arizona State University Foundation for A New American University (the “Foundation”), an Arizona nonprofit corporation that has been determined to be an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), to fund, if necessary, reserves for the Bonds and to pay the costs and expenses of selling and issuing the Bonds. The maturity of the Bonds will not exceed 30 years. The Authority’s obligation to pay the principal of and premium, if any, and interest on the Bonds will be limited to amounts received by the Authority pursuant to a loan agreement to be entered into among the Authority, ASUF DC and the Foundation.

The Project includes facilities located at 1800 Eye Street NW in the District of Columbia.

This notice is published pursuant to the requirements of Section 147(f) of the Code.

The Bonds will be special limited obligations of the Authority and will not constitute a debt or general obligation of the Authority, the City of Tempe, Arizona, or the State of Arizona or any political subdivision thereof. Neither the credit nor the taxing power, if any, of the Authority, the City of Tempe, Arizona, or the State of Arizona or any political subdivision thereof will be pledged for the payment of the principal of, premium, if any, or interest on, the Bonds. The Authority has no taxing power.
Any person may appear at the hearing and express his or her views, or may submit his or her views in writing, regarding the proposed Project and/or the issuance of the Bonds. Any written submissions should be sent to Greenberg Traurig, LLP, Suite 700, 2375 East Camelback Road, Phoenix, Arizona 85016, Attention: Michael Cafiso, Esq. (telephone number 602.445.8451), clearly marked Lease Revenue Bonds (Arizona State University/ASU Foundation Project – D.C. Building) Series 2014. Additional information about the foregoing can be obtained from the same address. Written transmissions must be mailed or delivered in sufficient time to be received prior to the public hearing. Anyone desiring to attend the hearing who requires special accommodations should call Michael Cafiso at the telephone number hereinabove to request such accommodations.

DATED: October 2, 2014

THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF TEMPE, ARIZONA