

# CITY COUNCIL REPORT



Meeting Date: **February 24, 2026**  
General Plan Element: **Character & Design**  
General Plan Goal: ***Build upon the significant role the arts have played in shaping our community's image and lifestyle by maximizing the potential of public art to enrich the daily lives of people that live in or visit Scottsdale.***

## **ACTION**

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### **Scottsdale Arts Management Services Agreement and Financial Participation Agreement**

1. Adopt Resolution No. 13577 authorizing Agreement No. 2026-012-COS with Scottsdale Arts, a Management Services Agreement (MSA) for advisory and management services related to the city's arts and cultural programs for the period of July 1, 2026, to June 30, 2031.
2. Adopt Resolution No. 13578 authorizing Financial Participation Agreement (FPA) No. 2026-013-COS with Scottsdale Arts for FY 2026/27 in the amount of \$6,297,114 to be allocated for activities consistent with Management Services Agreement 2026-012-COS for the period of July 1, 2026, to June 30, 2027.

## **BACKGROUND**

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Since 1987, through a public-private partnership, the city has maintained a management services organization to provide advisory and management services for the city's arts and cultural programs and facilities. For nearly four decades, the non-profit organization now known as Scottsdale Arts, which rebranded in 2016, has served as the city's principal partner in managing arts and cultural activities, operating certain city-owned facilities, and administering public art programs. Scottsdale Arts also promotes the city's arts and cultural interests at the local, regional, state and federal levels.

The public-private partnership model enables the city to leverage non-profit expertise to enhance arts and cultural offerings for residents of all ages. The MSA ensures city funds are used for a defined program of work, presented annually through an operational plan and report. Performance is monitored on an ongoing basis by the city's contract administrator through established performance measures, programming updates, and financial reporting. The agreement requires an annual independent audit and year-end financial report, and City Council annually approves the funding through the FPA.

In 2024, the City Auditor conducted a performance of the MSA to evaluate compliance, effectiveness, and contract administration. The audit identified four primary areas for improvement:

Action Taken \_\_\_\_\_

- 1) improving contract clarity and performance expectations;
- 2) maximizing event programming and rental of city-owned facilities to reduce reliance on city funding and expand community access;
- 3) strengthening financial performance reporting; and
- 4) monitoring of deliverables.

Specifically, the audit identified the need for clearer contract expectations, more consistent and transparent financial reporting, defined performance objectives for city-owned facilities, and a strengthened framework for city oversight.

On June 24, 2025, City Council considered a proposed six-month extension of the existing MSA and FPA with Scottsdale Arts to allow time for new city leadership and Scottsdale Arts to fully respond to the City Auditor's findings and negotiate a revised long-term agreement. During that discussion, Council emphasized the importance of contract clarity, measurable performance expectations, fiscal accountability, and preserving operational stability for a long-standing community partner.

While staff recommended a six-month extension, Council expressed a preference for a one-year agreement to provide greater planning certainty while negotiations continued. Council also highlighted the need for improved alignment with the city's fiscal year, clearer oversight and reporting mechanisms, and retention of Council's annual budget authority. The proposed five-year MSA and annual FPA reflect the direction provided by Council during that meeting.

## **ANALYSIS & ASSESSMENT**

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The proposed five-year MSA and annual FPA with Scottsdale Arts reflect a comprehensive restructuring of the city's contractual framework for arts and cultural management services. The agreements are designed to respond directly to the City Auditor's findings, incorporate direction provided by City Council on June 24, 2025, and strengthen long-term accountability while preserving operational stability for a long-standing nonprofit partner.

The MSA establishes a clear five-year governance framework that defines scope, responsibilities, and performance expectations across five distinct tracts of work. Unlike prior agreements, the proposed MSA does not include an automatic renewal provision, ensuring that Council has a deliberate opportunity at the end of the term to review performance, assess outcomes, and determine future direction. Annual funding approval is retained through the FPA, preserving Council's budgetary authority and ongoing oversight throughout the term of the agreement.

The proposed agreement directly addresses audit recommendations related to contract clarity, performance expectations, and reporting. Objectives and services have been clarified and organized, ambiguous provisions that proved difficult to administer in practice have been simplified, and a defined Key Performance Indicator (KPI) framework has been incorporated to support measurable evaluation of outcomes. Financial reporting requirements have been strengthened to

ensure clearer tracking of restricted and earmarked funds and improved transparency for Council review.

The KPI framework establishes measurable performance expectations tied directly to the scope of services, including facility utilization, attendance, earned revenue, destination event performance, public art stewardship, arts education, and local arts agency functions. Required annual reporting, audits, and deliverables provide the city with consistent, actionable information to support contract administration and funding decisions. The agreement also includes clearer mechanisms for corrective action and enhanced reporting should performance expectations not be met.

## **RESOURCE IMPACTS**

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The proposed FPA for FY 2026/27 is consistent with Council's adopted budget cycle and maintains the city's annual authority to approve funding levels. The funding structure improves transparency by clearly distinguishing unrestricted General Fund support from restricted General Fund and non-General Fund sources, ensuring funds are used solely for their intended purposes. Over time, the agreement supports Council's policy objective of responsibly managing General Fund exposure while encouraging increased earned and non-city revenues where appropriate.

### **Agreement Funding**

The city provides annual funding to Scottsdale Arts through an FPA, which authorizes a management services fee for the delivery of services outlined in the MSA. The FPA is approved annually by City Council and establishes the funding amounts, restrictions, and reporting requirements for the applicable fiscal year.

The proposed FY 2026/27 FPA reflects a full year of funding, consistent with the proposed FY 2026/27 operating budget and the five-year MSA. Under Agreement No. 2026-013-COS, the city will provide a total management services fee of \$6,297,114 for the period of July 1, 2026, through June 30, 2027, payable in monthly installments.

Of this amount, \$3,497,194 is allocated as unrestricted funding for management and administrative services. The remaining funds are restricted and designated for specific programmatic purposes consistent with the MSA, including arts education and outreach programs, community arts grants, conservation of city artwork, administration of the Cultural Improvements Program and Art in Public Places Program, specialty equipment maintenance, and destination events supported by Tourism Development Funds. Scottsdale Arts is required to maintain separate accounting for all restricted funds and provide detailed reporting to the city in accordance with the agreement.

Beginning in the second year of the MSA, the management services fee includes a 3% annual cost-of-business adjustment to recognize inflationary operating pressures. At the same time, the agreement incorporates a planned step-down in General Fund support, reducing the General Fund portion of the management services fee by \$250,000 per year, reaching a \$1,000,000 annual

reduction by year four, which is then held flat in year five. This approach balances cost-of-business realities with Council’s objective of responsibly reducing long-term reliance on the General Fund.

In parallel, the agreement aligns tourism-driving programming with dedicated funding sources by continuing \$750,000 in Tourism Development Fund support for Canal Convergence and adding \$250,000 annually in Tourism Development Funds to support Dreamy Draw and/or a second qualifying destination event, consistent with the purpose of the Tourism Development Fund.

Table 1 below summarizes the FY 2026/27 FPA, detailing the management services fee by funding source and distinguishing between restricted General Fund support, unrestricted General Fund allocations, and restricted non-General Fund sources consistent with the proposed MSA.

**Table 1.**

|  | <b>FY 26/27</b>           | <b>City Fund</b>      |
|--|---------------------------|-----------------------|
| <b><i>Unrestricted General Fund:</i></b>           |                           |                       |
| Management and Administration Fee                  | \$3,497,194               | General Fund          |
| <b><i>Restricted General Fund:</i></b>             |                           |                       |
| Arts Education                                     | 817,068                   | General Fund          |
| Community Arts Grant Program                       | 49,000                    | General Fund          |
| Public Art Conservation                            | 137,806                   | General Fund          |
| Public Art Administration                          | 689,028                   | General Fund          |
| Specialty Equipment                                | 56,018                    | General Fund          |
| <b><i>Sub-Total General Fund Restricted:</i></b>   | <b><i>1,748,920</i></b>   |                       |
| <b><i>Total General Fund Fees:</i></b>             | <b><i>\$5,246,114</i></b> |                       |
| <b><i>Restricted Non-General Fund Sources:</i></b> |                           |                       |
| Canal Convergence                                  | 750,000                   | Tourism Dev Fund      |
| Dreamy Draw/2 <sup>nd</sup> Destination Event      | 250,000                   | Tourism Dev Fund      |
| Community Arts Trust                               | 51,000                    | Special Programs Fund |
| <b>Total Management Services Fee</b>               | <b>\$6,297,114</b>        |                       |

**STAFF RECOMMENDATION**

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Adopt Resolution No. 13577 authorizing Agreement No. 2026-012-COS with Scottsdale Arts, a Management Services Agreement (MSA) for advisory and management services related to the city’s arts and cultural programs for the period of July 1, 2026, to June 30, 2031.

Adopt Resolution No. 13578 authorizing Financial Participation Agreement (FPA) No. 2026-013-COS with Scottsdale Arts for FY 2026/27 in the amount of \$6,297,114 to be allocated for activities

consistent with Management Services Agreement 2026-012-COS for the period of July 1, 2026, to June 30, 2027.

**RESPONSIBLE DEPARTMENTS**

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Tourism and Events Department

**STAFF CONTACT**

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Kevin Burke, Senior Director Economic Development & Tourism, [KBurke@ScottsdaleAZ.gov](mailto:KBurke@ScottsdaleAZ.gov), 480-312-2533,

**APPROVED BY**

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*Scott Selin*

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Scott Selin, Budget Director  
(For Financial Policies Compliance and Budget Appropriation)  
480-312-2603, [SSelin@ScottsdaleAZ.gov](mailto:SSelin@ScottsdaleAZ.gov)

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2/10/26 11:26 MST

Date

*Kevin Burke*

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Kevin Burke, Sr Director Economic Development & Tourism  
480-312-2533, [KBurke@ScottsdaleAZ.gov](mailto:KBurke@ScottsdaleAZ.gov)

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2/10/26 12:32 MST

Date

*Judy Doyle*

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Judy Doyle, Deputy City Manager  
480-312-2691, [JDoyle@ScottsdaleAZ.gov](mailto:JDoyle@ScottsdaleAZ.gov)

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2/10/26 12:40 MST

Date

*Greg Caton*

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Greg Caton, City Manager  
480-312-7759, [GCaton@ScottsdaleAZ.gov](mailto:GCaton@ScottsdaleAZ.gov)

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2/10/26 13:57 MST

Date

**ATTACHMENTS**

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1. Resolution No. 13577
2. Management Services Agreement 2026-012-COS
3. Resolution 13578
4. Financial Participation Agreement No. 2026-013-COS

RESOLUTION NO. 13577

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AGREEMENT NO. 2026-012-COS WITH SCOTTSDALE ARTS, A MANAGEMENT SERVICES AGREEMENT FOR ADVISORY AND MANAGEMENT SERVICES REGARDING THE CITY'S ARTS AND CULTURAL PROGRAMS FOR THE PERIOD FROM JULY 1, 2026, TO JUNE 30, 2031.

WHEREAS, Scottsdale Cultural Council doing business as Scottsdale Arts ("Scottsdale Arts"), was formed to provide advisory and management services regarding the arts and cultural programs and facilities of the City; and

WHEREAS, the City, through Management Services Agreements with Scottsdale Arts, has enjoyed a long mutually beneficial relationship with Scottsdale Arts and desires to pursue certain objectives to further enhance and promote arts and cultural programs and facilities in the City; and

WHEREAS, the objectives are for Scottsdale Arts to be responsible for the management and programming of the City's cultural venues; develop and maintain destination events at City venues; manage the City's Public Art program; provide arts education/life-long learning services; and be responsible for advisory and grant-making services as the City's Local Arts Agency; and

WHEREAS, in 2020, the City and Scottsdale Arts entered into a five-year Management Services Agreement, which was later extended until June 30, 2026; and

WHEREAS, the City and Scottsdale Arts wish to enter into Agreement No. 2026-012-COS, a management services agreement for advisory and management services regarding the City's arts and cultural programs for the period from July 1, 2026, to June 30, 2031.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. The Mayor is hereby authorized and directed to execute, on behalf of the City of Scottsdale, Management Services Agreement No. 2026-012-COS with Scottsdale Arts.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona this \_\_\_\_ day of \_\_\_\_\_, 2026.


CITY OF SCOTTSDALE, an Arizona municipal corporation

\_\_\_\_\_  
Lisa Borowsky, Mayor

ATTEST:

\_\_\_\_\_  
Ben Lane, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Luis E. Santaella, Interim City Attorney  
By: William Hylan, Deputy City Attorney

(Resolution No. 13577)

**MANAGEMENT SERVICES AGREEMENT**

This Management Services Agreement (this "Agreement") is made and entered into by and between the CITY OF SCOTTSDALE, an Arizona municipal corporation ("City"), and Scottsdale Arts, an Arizona non-profit corporation ("Scottsdale Arts") (individually, a "Party;" collectively, the "Parties").

**RECITALS**

- A. City and Scottsdale Arts desire to pursue certain objectives to enhance and promote arts and cultural programs and facilities in the City.

The Objectives have five distinct tracts:

1. Scottsdale Arts is responsible for the management and programming of the City's cultural venues as follows:
  - i. Operate and manage programming, facility rentals and events at the City-Owned Facilities.
  - ii. The City-owned Facilities include Scottsdale Center for Performing Arts, Scottsdale Museum of Contemporary Art (SMoCA), and Scottsdale Civic Center.
  - iii. Secure new funding sources for use to supplement City expenditures on capital improvements to current facilities and construction of future facilities.
  - iv. Continue to grow SMoCA's Fine Art Collection through both donations and acquisitions.
2. Scottsdale Arts shall develop and maintain Destination Events at Scottsdale Civic Center, Scottsdale Waterfront and Scottsdale Stadium as follows:
  - i. Maintain Canal Convergence as an established Destination Event at the Scottsdale Waterfront.
  - ii. Execute an additional (e.g. Dreamy Draw Music Festival) Destination Event at Scottsdale Civic Center and Scottsdale Stadium.
  - iii. Develop additional or alternate Destination Events at Scottsdale Civic Center.
3. Scottsdale Arts is responsible for the management of the City's Public Art program and community exhibits as follows:
  - i. Manage and maintain the City's Public Artwork and the Public Art Program, Events and Online Guides.
  - ii. Curate displays of City Artwork and other displays of community interest at Scottsdale Public Libraries and other City facilities (the Portable Collection).
4. Scottsdale Arts is responsible for providing arts education/life-long learning services as follows:
  - i. Ensure that Arts Education is provided in Public School Systems.
  - ii. Ensure that Community Outreach activities, including life-long learning programs, are provided to the community.
  - iii. Organize an annual Family Arts Festival.

5. Scottsdale Arts is responsible for advisory and grant-making services as the City's Local Arts Agency (LAA) as follows:
  - i. Actively work to engage the community to create within the City a climate in which the arts may flourish.
  - ii. Provide advisory services to the City toward implementing recommendations from the 2024 Arts & Cultural Needs-Assessment through an Arts & Culture Action Plan.
  - iii. Inspire increased partnerships and collaboration with and between local Arts Organizations and Scottsdale Arts.
  - iv. Evolve new arts engagements, funding opportunities and facilities across Scottsdale through initiatives, partnerships and advocacy.

The Parties recognize that the City or Scottsdale Arts may from time-to-time desire to add facilities or services to the scope of this Agreement and that such addition(s) may require the Parties to negotiate further amendments to this Agreement.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and agreements contained herein, the Parties agree as follows:

## 1. TERM OF AGREEMENT; KEY PERFORMANCE INDICATORS; DELIVERABLES

1.1. Termination of Prior Agreement; Term of Agreement. Agreement No. 2020-046-COS (and amendments thereto) between the parties is hereby terminated and superseded by this Agreement. This Agreement shall take effect on July 1, 2026 ("Effective Date") and shall continue for five years, unless sooner terminated as set forth in this Agreement.

1.2. Recitals; Key Performance Indicators. The Recitals are hereby incorporated into this Agreement as if set forth fully herein. The Key Performance Indicators and Performance Measures that are required to comply with the objectives set forth in the Recitals are in Exhibit F.

1.3. Required deliverables and submissions that are in addition to the Key Performance Indicators are contained in Exhibit G.

## 2. ARTS AND CULTURAL ACTIVITIES

2.1. Arts Advocacy. Scottsdale Arts shall advise City and, as determined by Scottsdale Arts, other governmental entities (including at the state and federal level), on how various activities or plans may affect arts and cultural affairs and facilities in Scottsdale. Scottsdale Arts shall not use City funds, including the Management Services Fee, to influence elections for governmental offices, but can educate and advocate on arts and cultural affairs.

2.2. New Arts and Culture-Related Facilities, Ventures and Partnerships. In its capacity as arts and cultural advisor to the City, Scottsdale Arts shall establish processes and criteria for considering opportunities for new partnerships or ventures that would bring new programs or arts facilities to Scottsdale. Criteria shall include, without limitation, consistency with Scottsdale Arts' Strategic Plan, Annual Reports, demonstrated community support, and the potential for private partnership. Scottsdale Arts shall evaluate all such opportunities and make recommendations (including budgetary implications and proposals) to the City, as appropriate.

2.2.1. "Arts Organizations" means those independent, non-profit organizations that are either based in Scottsdale or conduct programs in Scottsdale, and that have visual, literary, performing arts, or cultural enhancement as a component of their mission.

2.3. Community Arts Grants Program. Scottsdale Arts shall manage and administer a community arts grants program in support of Arts Organizations to be funded solely by the City. The City shall not make any decisions pertaining to the selection of Arts Organizations to be funded through this program. The majority of Community Arts Grants Program funding in a fiscal year shall be awarded for specific arts projects. The program may also provide Scottsdale-based, non-profit arts and culture organizations with general operating support funding to fund programs that are 100% arts-related and pursue objectives under this Agreement. Scottsdale Arts shall acknowledge the City's support, and require grant recipients to acknowledge the City's support, in press releases, advertisements and other media using the City symbol and the following language: *This program is made possible, fully or in part, by a grant from Scottsdale Arts with funding provided by the City of Scottsdale.*

2.4. Rental Support Program. Scottsdale Arts shall manage and administer a program to provide rental support for the City-Owned Facilities for Scottsdale-based non-profit Arts Organizations. Scottsdale Arts shall acknowledge the City's support, and require Arts Organizations to acknowledge the City's support, in press releases, advertisements and other media using the City symbol and the following language: *This program is made possible, in part, by Scottsdale Arts with funding provided by the City of Scottsdale.*

2.5. Artistic Partnership Program. Scottsdale Arts shall establish Artistic Partnerships with Scottsdale-based Arts Organizations through technical support, advocacy, Community Arts Grant or Rental Support Programs. Funding for Artistic Partnerships shall be provided directly by Scottsdale Arts and may include funds provided under the Community Arts Grant and Rental Support Programs. Scottsdale Arts shall acknowledge the City's support, and require Arts Organizations to acknowledge the City's support, in press releases, advertisements and other media using the City symbol and the following language: *This program is made possible, in part, by Scottsdale Arts with funding provided by the City of Scottsdale.*

2.6. Community Events. Scottsdale Arts shall develop and implement a minimum of 12 arts and cultural events citywide each year that are available at no cost to the public. Such events shall be free to the public and shall emphasize the talent of local artists, and/or arts education. Scottsdale Arts may program the events to occur at any of the Facilities or other public spaces and facilities within the City of Scottsdale. The proposed schedule for community events should be discussed and reviewed annually with the Contract Administrator, after review with city departments and other impacted community arts organizations and businesses.

2.7. Destination Events. Scottsdale Arts shall manage and administer the Canal Convergence event and at least one additional Arts-Related Destination Event. An Arts-Related Destination Event is one that is marketed to and will attract visitors who travel more than 20 miles to attend.

2.7.1. The Canal Convergence event shall include components that are open and free to the public but may include fee-based programming. Scottsdale Arts shall work with the City's destination marketing organization and the Contract Administrator on developing and implementing a marketing plan. Scottsdale Arts shall include local, national and international artists and organizations, and include both visual and performing arts of interest to residents of and visitors to Scottsdale. Scottsdale Arts shall be responsible for all elements of event production. Scottsdale Arts shall retain all fees and sponsorship revenue earned from the event to support the Objectives. If the event occurs on public property in November, Scottsdale Arts shall make best efforts to commission at least one art installation that will remain onsite through

December 31<sup>st</sup> at Scottsdale Arts' expense. If the event occurs on City property, Scottsdale Arts shall reimburse the City for any damage occurring to the event location.

2.7.2 The additional Arts-Related Destination Event shall include local and national artists of interest to residents of Scottsdale and include a marketing plan designed to attract overnight visitors. Scottsdale Arts shall be responsible for all elements of event production. Scottsdale Arts shall publicly acknowledge the City support for this event represented by this Agreement and provide the City with benefits, including recognition and publicity, commensurate with benefits provided to other supporters at a similar support level as the City.

2.7.3 Within 60 days after each Arts-related destination event, Scottsdale Arts shall submit a post-event report in a form specified by the City.

2.8. Arts Education and Outreach Programs. Scottsdale Arts shall manage and administer Arts Education and Outreach Programs through working with local educational institutions, as well as with other Scottsdale-based, non-profit arts and culture organizations, which shall include:

2.8.1. Ensuring that arts education is provided in the public school system.

2.8.2. Ensuring that community outreach activities, including life-long learning programs, are provided to the community.

2.8.3. In addition to the community events required by subsection 2.6, organize an annual Family Arts Festival.

### 3. ADMINISTRATION AND MANAGEMENT OF CITY ARTWORK

3.1. Management of City Artwork. Scottsdale Arts shall manage all City Artwork on behalf of the City. "City Artwork" means the City's entire art collection, consisting of the Scottsdale Municipal/Portable Works Collection, the Public Art Collection, and the Museum Collection, together with any Artwork acquired and accessioned by Scottsdale Arts pursuant to this Agreement. Management includes Conservation. "Conservation" means the process of maintaining, preserving and protecting Artwork.

3.2. Purpose, Policies and Procedures. Subject to and consistent with the applicable provisions of the Scottsdale Revised Code, as amended, Scottsdale Arts shall define the purpose and focus of the Public Art Collection, the Portable Works Collection and the Museum Collection, and shall establish and implement comprehensive written management and stewardship policies and procedures applicable to such collections.

3.2.1. "Public Art" or "Public Art Collection" means publicly accessible Artwork that is acquired and accessioned by Scottsdale Arts on behalf of the City pursuant to the Art in Public Places Program.

3.2.2. "Scottsdale Municipal/Portable Works Collection" or "Portable Works Collection" means readily moveable Artwork that is acquired and accessioned into the City's portable works collection. The Portable Works Collection does not include Artwork in the Museum Collection or the Public Art Collection.

3.2.3. "Museum Collection" means the permanent art collection of the Scottsdale Museum of Contemporary Art ("SMoCA").

3.3. Adherence to Recognized Standards and Guidelines. All policies and procedures related to the Public Art Collection and the Portable Works Collection shall at all times conform to generally recognized standards and guidelines for the acquisition, display, exhibition, storage, conservation, disposition and decommission of Artwork in each of these collections. All policies and procedures related to the Museum Collection shall at all times conform to standards and guidelines promulgated from time to time by the American Association of Museums ("AAM"). With the exception of the Museum Collection standards and guidelines, Scottsdale Arts shall provide the City with a copy of all such policies and procedures, including amendments, for review and comment at least 15 days prior to final approval and implementation.

3.4. Inventory. By no later than May 15th, Scottsdale Arts shall deliver to the City an updated inventory and condition report regarding all City Artwork, specifically setting forth new acquisitions and any lost, damaged or stolen items. The updated inventory shall be incorporated herein by this reference upon delivery to the City Contract Administrator.

3.5. Ownership of City Artwork. Scottsdale Arts acknowledges and agrees that it does not hold title to, or possess any incidents of ownership of, and hereby expressly waives any claims to ownership of, City Artwork, whether any such Artwork is acquired or accessioned before, during or after the term of this agreement. Moreover, at no time shall Scottsdale Arts acquire legal, beneficial or equitable title to any Artwork of any kind, nature or description, it being the intent of the Parties that Scottsdale Arts acquire or accession Artwork solely on behalf, in the name, and for the benefit, of the City and the citizens of Scottsdale.

3.6. Conservation of City Artwork. Scottsdale Arts is responsible for the Conservation of City Artwork. Not later than May 15th, concurrently with the updated City Artwork inventory required pursuant to subsection 3.4 above, Scottsdale Arts shall assess the condition of all City Artwork and submit to the City Contract Administrator a 10-year Conservation analysis and 10-year budget estimate that will provide sufficient funding for conservation of existing public art. If under section 5.1, Scottsdale Arts requests an amount greater than that specified in the conservation budget, Scottsdale Arts shall provide written justification for such request.

3.7. City Involvement. The City shall not make any decisions pertaining to the design, selection and management of City Artwork, including the selection of artists. Scottsdale Arts shall, however, notify and provide the City with a reasonable opportunity to review and comment on Scottsdale Arts' consideration of any existing Artwork or Artwork design that may require a substantial financial commitment for Conservation. Scottsdale Arts shall consider any such comments before making a final decision to approve the design of any such Artwork, or to acquire or accession any such Artwork.

3.8. Museum Collection.

3.8.1. In order to ensure SMoCA and the Museum Collection are managed in accordance with the highest professional standards, and to maximize the potential for major donations of historical value by private collectors, Scottsdale Arts shall at all times operate and manage SMoCA and the Museum Collection in accordance with AAM standards and shall use its best efforts to maintain SMoCA's AAM accreditation throughout the term of this Agreement.

3.8.2. Scottsdale Arts shall present annually at SMOCA at least one exhibit from the Museum Collection.

3.9. Management of Art in Public Places Program and Public Art Collection. Scottsdale Arts shall manage and administer the Art in Public Places Program, as set forth in S.R.C. §§ 20-121 through 20-123, as amended, and shall manage the Public Art Collection. Scottsdale Arts shall establish and implement written policies and procedures for the administration of the Art in Public Places Program, which shall contain provisions for public participation and for appeals of decisions concerning Public Art to the City Council. Scottsdale Arts shall deliver to the City Contract Administrator copies of all such policies and procedures, including amendments, for review and comment at least 15 days prior to final approval and implementation. Notwithstanding anything in this subsection to the contrary, the City does not intend to and does not hereby delegate to Scottsdale Arts any of its authority, duties or functions set forth in S.R.C. § 20-123(e), as amended.

3.10. Management of Cultural Improvements Program. Scottsdale Arts shall manage and administer the Cultural Improvements Program, as set forth in Section 5.3083 of Appendix B to the Scottsdale Revised Code, as amended. Scottsdale Arts shall maintain written policies and procedures for the management and administration of the Cultural Improvements Program. Scottsdale Arts shall deliver to the City Contract Administrator copies of all such policies and procedures, including amendments, for review and comment at least 15 days prior to approval and implementation.

3.11. Art Displays at Public Libraries and City Facilities. Scottsdale Arts shall curate displays of City Artwork and other displays of community interest, such as those showcasing the work of local artists, at spaces made available by the City at the Scottsdale Public Libraries and other City facilities.

#### 4. MANAGEMENT AND PROGRAMMING OF CITY-OWNED FACILITIES

4.1. City-Owned Facilities. The City-Owned Facilities ("City-Owned Facilities") are arts and cultural facilities owned, leased or otherwise controlled by the City. The City-Owned Facilities are:

4.1.1. The Scottsdale Center for the Performing Arts ("SCPA"), which is located at 7380 E. Second St., Scottsdale, Arizona, excepting those portions of the premises occupied from time to time by the City. For the purposes of this agreement, this does not include the portion of the Scottsdale Center for the Performing Arts occupied by the City's Information Technology Department.

4.1.2. Scottsdale Civic Center ("Civic Center") means the City-owned property, and facilities located thereon, as defined in S.R.C. § 20-107, as amended.

4.1.3. The Scottsdale Museum of Contemporary Art, which is located at 7374 E. Second Street, Scottsdale, Arizona.

4.2. Managerial Services and Responsibilities. Scottsdale Arts shall manage, operate and program each of the City-Owned Facilities in a manner consistent with this Agreement, which shall include, without limitation, scheduling, booking, promoting, administering, creating and presenting exhibitions, events and programs at the City-Owned Facilities. Scottsdale Arts shall manage the Facilities in a first-class manner; furnish prompt and courteous service, and keep the

Facility attractively maintained, orderly, clean, sanitary and in an inviting condition at all times to the City's reasonable satisfaction. For each of the City-Owned Facilities Scottsdale Arts shall:

4.2.1. Comparison Facilities. Operate the City-Owned Facilities and perform its operation and maintenance obligations to standards equal to or higher than those maintained at similar first-class facilities in Maricopa County, all as reasonably determined by City. For purposes of the preceding sentence, Tempe Center for the Arts, Mesa Arts Center, and Chandler Center for the Arts (the "Comparison Facilities") shall be deemed to be similar facilities. City shall have the right by written notice from time to time in its reasonable discretion to designate other arts centers in the western United States as additional or replacement Comparison Facilities.

4.2.2. Policies. Establish and implement reasonable written policies, regulations, hours of operation, and other reasonable and appropriate operating procedures. Scottsdale Arts shall provide the City Contract Administrator with a copy of any such materials, including amendments, for review and comment at least 15 days prior to final approval and implementation. The purpose of the review and comment is to ensure that the content of the proposed materials conforms to this Agreement and all applicable federal, state, and local laws, ordinances, resolutions, rules, and regulations; however, any failure by the City Contract Administrator to comment shall not constitute an approval by the City of such materials.

4.2.3. Ticket prices and admission fees. Establish and maintain reasonable event and City-Owned Facility ticket prices and admission fees for the public at the sole discretion of Scottsdale Arts with exception of subsection 4.4. Scottsdale Arts may also establish and maintain a reasonable ticket surcharge to be used to help fund improvements to the City-Owned Facilities or replace Specialty Equipment.

4.2.4. Facility use fees charged to businesses. No later than February 1 of each year, provide to the City Contract Administrator any proposed rental rates to City-Owned Facilities to take effect in the new fiscal year, so that they can be posted on the City's website prior to City Council approval.

4.2.5. Adequate Qualified Personnel. Ensure the presence at the Facilities of adequate qualified personnel to conduct all operations at the Facilities as required or permitted by this Agreement. All personnel shall be authorized to represent and act for Scottsdale Arts in matters pertaining to all emergencies and the day-to-day operation of the Facilities. Scottsdale Arts shall provide notice to the City Contract Administrator and the City's Facilities Management Director of the name, business address, email address, and regular and after-hours telephone numbers of a person or persons to handle Scottsdale Arts' affairs and emergencies at the Facilities.

4.2.6. Access Control and Security. Assume all operational responsibility and costs for access control and security, including all property contained therein.

4.3. Non-City-Owned Facilities. The City of Scottsdale is not responsible for the "Non-City-Owned Facilities" which means properties leased or owned by Scottsdale Arts, including, without limitation, the administrative offices located at 7373 E. Scottsdale Mall in Scottsdale. Management Services Fees cannot be used to pay the cost of leasing the Non-City-Owned Facilities.

4.4. Scottsdale Civic Center. Scottsdale Arts shall schedule all public and private events, including events produced by Scottsdale Arts, occurring at Scottsdale Civic Center,

including accepting and reviewing event applications for compliance with applicable City special event permit requirements, confirming required insurance coverage, collecting applicable fees, issuing facility use permits with appropriate conditions, and advising users of their responsibilities under the Scottsdale Revised Code. Scottsdale Arts, event producers, and any third-party contractors shall comply with S.R.C. §§ 20-106 through 20-120, as amended, and all other applicable federal, state, and local laws, ordinances, resolutions, rules and regulations in discharging these responsibilities. Scottsdale Arts shall retain fees collected under this subsection.

4.4.1. Scottsdale Arts may administratively determine a policy for refunds due to inclement weather.

4.4.2. Scottsdale Arts shall have the first-right-of-refusal to provide for the sale or dispensing of any food and beverages, including alcohol if pursuant to a valid state license, on Scottsdale Civic Center except when the event is sponsored by the City.

4.4.3. Scottsdale Arts will notify the City Manager, or the City Manager's designee, and any other City departments potentially impacted by the issuance of the permit at the time the permit application is filed and upon the issuance of the permit.

4.4.4. If the date of the proposed use is being held by Scottsdale Arts, it must make a determination of Scottsdale Arts' use within 15 working days of the applicant's submission of the event proposal.

4.4.5. Scottsdale Arts shall ensure that Scottsdale Civic Center is cleaned up immediately following each event and left in good order and repair, and in at least the condition in which Civic Center existed immediately prior to the event. The City and Scottsdale Arts should immediately notify the other's respective contact in the event that damage is discovered.

4.4.6. The City reserves the right to assess to Scottsdale Arts any costs associated with damage, beyond normal wear and tear, which result from any event or performance scheduled by Scottsdale Arts. Damage due to severe weather conditions shall be considered normal wear and tear for the purposes of this section.

4.4.6.1. If damage to a turf area is so significant that it requires immediate replacement for use by the general public or an event, Scottsdale Arts shall be responsible for reimbursement of the City's costs for turf replacement. No payment is necessary for general wear and tear, or damage that does not necessitate immediate replacement, or occurs at the end of the season when turf is scheduled for replacement regardless.

4.4.7. Scottsdale Arts shall pay to the City upon demand any and all amounts expended or incurred by the City in performing Scottsdale Arts' obligations under this subsection, or if agreed to by both parties, the amount shall be deducted from the next payment required under the annual Financial Participation Agreement.

4.4.8. The City and Scottsdale Arts shall meet at least once to review and discuss grounds and facilities maintenance issues.

4.4.9. Scottsdale Arts shall ensure the presence of on-site staff to continually monitor event impacts, including, without limitation, refuse, security and public restroom sanitation, appropriate to the size, nature and duration of the event.

4.4.10. The City Contract Administrator shall have the authority to require Scottsdale Arts and third parties using Scottsdale Civic Center to use reasonable protective materials, signage or safety equipment to protect City landscaping and infrastructure.

4.4.11. All other functions in connection with Scottsdale Civic Center, including routine maintenance, shall be performed by the City.

4.5 Food, Beverage and Retail Concessions. Scottsdale Arts may:

4.5.1 Operate food and non-alcoholic beverage concessions at each of the Facilities.

4.5.2 Operate alcoholic beverage concessions at City-owned Facilities in accordance with the terms of the Concession Agreement executed between the City and Scottsdale Arts.

4.5.3 Operate retail concessions that are consistent with the purpose and function of each Facility, as determined by the City.

4.5.4 Subcontract with other entities to operate food and beverage and retail concessions.

4.5.5 Allow licensees or permittees to provide food and beverage and/or retail concessions for their respective events.

4.5.6 Scottsdale Arts, its subcontractors, licensees or permittees shall at all times comply with all rules, regulations, standards, laws and ordinances of the United States of America, State of Arizona, County of Maricopa, City of Scottsdale and any other authority lawfully exercising authority over food and beverage sales and services and retail sales including, without limitation, Federal Pure Food and Drug Laws.

4.5.7 Scottsdale Arts shall at its own expense obtain and maintain all necessary licenses and permits (with the exception of the City's government liquor license) permitting the sale of food, beverages and retail items.

4.5.8 Scottsdale Arts shall operate all concessions in a first-class manner. Scottsdale Arts shall supervise any and all subcontractors, licensees and permittees such that they provide the same level of service and quality products as required by Scottsdale Arts hereunder.

4.6 Government Liquor License and Concession Agreement. The City holds government liquor license no. 05071004 ("Liquor License"), which applies to the City-Owned Facilities. The City and Scottsdale Arts are parties to an alcoholic beverage concession agreement (No. 930069) ("Concession Agreement"), dated June 14, 1993, which names Scottsdale Arts as the alcoholic beverage concessionaire. The Concession Agreement, as amended, or any successor agreement, specifies the terms and conditions under which Scottsdale Arts may use the Liquor License. The Parties understand and agree that the Concession Agreement authorizes Scottsdale Arts to execute a subcontract with a third party for the provision of alcoholic beverage concession services, and that such a subcontract does not constitute an assignment of Scottsdale Arts' rights and obligations under the Concession Agreement. The City's rights under this Agreement shall supplement and augment the City's rights under the Concession

Agreement. In the event of an irreconcilable conflict between the Concession Agreement and this Agreement, this Agreement shall control. All of Scottsdale Arts' obligations and limitations under this Agreement are in addition to its obligations and limitations under the Concession Agreement. Any breach by Scottsdale Arts of the Concession Agreement is a default by Scottsdale Arts under this Agreement and any default by Scottsdale Arts under this Agreement is a breach by Scottsdale Arts of the Concession Agreement. The Contract Administrators under this Agreement constitute the contract administrators for the Concession Agreement.

4.7 City Access to Facilities.

4.7.1 The City may access all parts of City-Owned Facilities at all times upon reasonable notice and in such manner as will minimize disruption to the extent reasonably practicable, for purposes of:

4.7.1.1 Performing, administering or enforcing this Agreement.

4.7.1.2 Examining, inspecting, evaluating, planning, repairing, designing, maintaining, showing or otherwise administering the City-Owned Facilities.

4.7.1.3 Performing City's regulatory, law enforcement and other governmental duties.

4.7.2 The City retains the right to conduct health/safety inspections of City-Owned Facilities. Scottsdale Arts must immediately implement any corrective measures resulting from these inspections and notify the City in writing of the implementation within seven days.

4.8 City Notification of Reserved Dates. In consultation with Scottsdale Arts, the City shall have the right to reserve dates during which no events or performances may be scheduled in the City-Owned Facilities so that the City may reseed the turf, perform other maintenance or renovations, or schedule tourism-related events and programming. The City Contract Administrator will inform Scottsdale Arts of such dates in writing as soon as possible.

4.9 City Use of City-Owned Facilities. The City shall have the right, without charge, to use any of the City-Owned Facilities, provided there is no conflicting event or performance scheduled by Scottsdale Arts. Facility use fees and in-house labor and equipment use fees shall be waived for all City use of City-Owned Facilities. The City shall be responsible for paying expenses incurred for temporary or contract labor (over-hires), or rental costs of Specialty Equipment required for the event. The City may use any concessionaire or caterer for events it conducts at the Facilities. City use of the City-Owned Facilities shall not exceed 12 events per year, unless Scottsdale Arts consents to additional dates.

4.10 Naming of City-Owned Facilities and Event Title Sponsorship.

4.10.1 The names of the City-Owned Facilities shall include the word "Scottsdale." All names of the City-Owned Facilities, interior spaces therein, and Event Title Sponsorships are subject to City Council approval at City Council's sole and absolute discretion as to name, and payments for naming rights. The preceding sentence does not apply to temporary (12 months or less) naming of programs, changing exhibit spaces, education classes and workshops.

4.10.2 Scottsdale Arts shall not use in connection with the City-Owned Facilities or its operations at the City-Owned Facilities any name associated with products or purveyors of any sort of alcohol, tobacco, adult entertainment or gambling-related products or services.

4.11 Maintenance, Utilities and Replacement. Maintenance, utilities and replacement for the Premises shall be provided as follows:

4.12 Maintenance. Maintenance shall be provided for the Center for Performing Arts and Scottsdale Museum of Contemporary Art as follows:

4.12.1 Maintenance, repairs and replacement. Except as specifically stated otherwise, the duty to maintain any item includes the duty to repair and replace the item.

4.12.2 Maintenance by Scottsdale Arts: Scottsdale Arts shall perform certain maintenance work (the "Scottsdale Arts Maintenance Work") as follows:

4.12.2.1 The Scottsdale Arts Maintenance Work is limited to the items listed on Exhibit "A" attached hereto together with all other maintenance that this Agreement does not specifically require City to perform.

4.12.2.2 Scottsdale Arts shall perform the Scottsdale Arts Maintenance Work at Scottsdale Arts' expense and maintain the Facilities in a first-class, clean and sanitary condition.

4.12.3 Maintenance by City: City shall perform certain maintenance work (the "City Maintenance Work") as follows:

4.12.3.1 The City Maintenance Work is limited to the items listed on Exhibit "B" attached hereto.

4.12.3.2 City shall perform the City Maintenance Work at City's expense.

4.13 Utilities. Utilities shall include electricity, water, gas, sewer, solid waste and recycling services. The City shall notify and bill Scottsdale Arts for its share of utility costs. The City Contract Administrator shall notify Scottsdale Arts of changes in utility rates to assist Scottsdale Arts in its budgeting process, but the duty to pay shall in no way be conditioned upon such notification. Either Party may request the performance of an energy audit; the requesting Party shall pay for the cost of such audit.

Utilities shall be paid for the Premises as follows:

4.13.1 Utilities by Scottsdale Arts: Scottsdale Arts shall pay certain utilities (the "Scottsdale Arts Utilities") as follows:

4.13.1.1 Scottsdale Center for the Performing Arts: fifty percent (50%).

4.13.1.2 Scottsdale Museum of Contemporary Art: one hundred percent (100%).

4.13.1.3 Scottsdale Civic Center: zero percent (0%).

4.13.1.4 Any other Facilities: one hundred percent (100%).

4.13.2 Utilities by City: City shall pay certain utilities (the "City Utilities") as follows:

4.13.2.1 The City shall pay one hundred percent (100%) of all utilities at the Scottsdale Civic Center and fifty percent (50%) of all utilities at the Scottsdale Center for the Performing Arts.

4.13.3 Utility Interruptions and Mishaps. City is not responsible for utility interruptions. City is not responsible for the acts, breaches, errors or omissions of any provider or consumer of electrical service or other utilities to the Premises.

4.14 Specialty Equipment. Scottsdale Arts shall maintain and repair all Specialty Equipment (Exhibit C), and may, if necessary, replace any Specialty Equipment which is damaged beyond repair or obsolete. "Specialty Equipment" means highly technical personal property that is unique to the performing or visual arts including, without limitation, the Steinway grand piano located in the Scottsdale Center for the Performing Arts.

4.15 Specialty Fixtures. The City shall maintain and repair all Specialty Fixtures (Exhibit D), and may, if necessary, replace any Specialty Fixtures which are damaged beyond repair or obsolete. "Specialty Fixture" means personal property unique to the performing or visual arts and that is affixed to City-Owned Facility including, without limitation, stage lighting, rigging, cabling and sound equipment.

4.16 Capital Improvements. Scottsdale Arts shall work with the City Contract Administrator to identify and propose capital improvements, and funding sources for improvements, to City-Owned Facilities as part of the City's budget process to further the objectives outlined in this agreement. Scottsdale Arts may conduct capital campaigns for projects in the City's Adopted Capital Improvement Plan and may contribute financially from any of Scottsdale Arts non-City financial resources. Capital improvements to City-owned facilities shall only be constructed with City permission.

4.17 Damage to Facilities. Scottsdale Arts shall notify the City Facilities Department of any fire, flooding or other damage that occurs within, on or about the Facilities. Scottsdale Arts shall give the notice required under this subsection as soon as possible, either in person or by telephone; under all circumstances, Scottsdale Arts shall also give the notice in writing, within one business day of the occurrence requiring the notice, and such notice may be transmitted personally or by email.

4.18 Responsibility for Damage. Scottsdale Arts shall bear all costs resulting from damage arising from or related to any event or performance scheduled at, or other use of, the Facilities, by Scottsdale Arts or its invitees, licensees or permittees. City shall bear all costs resulting from damage from or related to City use of the City-Owned Facilities under Sec. 4.9.

4.19 Liens – City Right to Cure. Scottsdale Arts shall not, directly or indirectly, create or permit to be created or to remain and shall promptly discharge, at its expense, any mortgage, lien, encumbrance or charge on or pledge of the City-Owned Facilities, or any part thereof, except to the extent that such mortgages, liens, encumbrances, charges or pledges are created or expressly approved in writing by the City Contract Administrator. Scottsdale Arts shall promptly notify the City Contract Administrator of any lien or encumbrance that has been created on or attached to City-Owned Facilities, whether by act of Scottsdale Arts or otherwise. If Scottsdale Arts, in violation of the provisions of this Agreement, shall fail to pay and to discharge any imposition, mortgage, lien, encumbrance, charge or pledge, the City may (but shall not be

obligated to) pay or discharge it, and the amount paid by the City and the amount of all costs, expenses, interest and penalties connected therewith, including attorneys fees, shall be reimbursed to the City by Scottsdale Arts on demand.

## 5 CITY FUNDING

5.1 Management Services Fee. The City shall pay Scottsdale Arts a fee ("Management Services Fee") for the performance of its obligations under this Agreement. The City Council shall determine the amount allocated for the Management Services Fee in accordance with the City's annual budgetary process. However, the City is not obligated to pay to Scottsdale Arts the full amount budgeted for the Management Services Fee. The amount to be paid to Scottsdale Arts is the amount set forth in the Financial Participation Agreement(s) under subsection 5.5, which may be less than the amount budgeted. The Management Services Fee is subject to annual appropriation by the City Council, which appropriation shall be at the sole and absolute discretion of the City Council. If city revenues are the same as or less than the annual forecast, the Contract Administrator shall inform Scottsdale Arts that an increase in their fee is unlikely and it is possible that the Management Services Fee may be less than the previous fiscal year.

5.1.1 Increase in Management Services Fee. Except for the first fiscal year this Agreement is in effect, the Management Services Fee shall be increased by 3% from the prior fiscal year.

5.1.2 Reduction in Management Services Fee. After the 3% increase specified in subsection 5.1.1 is applied (if applicable), the Management Services Fee shall be reduced from the amount in the prior fiscal year as follows:

5.1.2.1 For Fiscal Year 2027, a reduction of \$250,000 in unrestricted funds.

5.1.2.2 For Fiscal Year 2028, a reduction of \$250,000 in unrestricted funds.

5.1.2.3 For Fiscal Year 2029, a reduction of \$250,000 in unrestricted funds.

5.1.2.4 For Fiscal Year 2030, a reduction of \$250,000 in unrestricted funds.

5.1.3 The amount for the Second Destination Event will be \$250,000 for each of the following Fiscal Years: 2027, 2028, 2029, 2030 and 2031.

5.2 City Budgetary Process. In accordance with the City's deadlines for submission of budget proposals and supporting documentation, Scottsdale Arts shall provide the City Contract Administrator with timely information relevant to the City funding needed to perform the Objectives outlined under this agreement. Scottsdale Arts' information shall include all estimated funding sources, direct and indirect expenditures, and City funds allocation plans for the following activities:

5.2.1 Management and administration of the Objectives of this Agreement not otherwise specified below.

5.2.2 Management and administration of the Public Art Program as follows:

5.2.2.1 Management and administration of the Public Art Program shall include those administrative and programming costs associated with the implementation of the

program, and includes funding for public art staff salaries, benefits and overhead; the implementation of a temporary art program; public art planning, education and outreach; and other related public art programs, events, and exhibitions.

5.2.2.2 Management and administration of the Public Art Program shall not include public art salaries, benefits and overhead associated with project management of Artwork funded through the City's capital improvement project budget, which is provided for below. It shall also exclude public art expenditures associated with a higher level of service provided to developers with Cultural Improvement Program commitments. Such expenditures include costs associated with researching public artists for the benefit of a specific developer, the solicitation of art proposals on behalf of developers, and construction or project management of public art installations for developers.

5.2.3 Community Arts Grants, Rental Support and Artistic Partnership programs as outlined in Sec. 2.4 through 2.7.

5.2.4 Destination Events as outlined in Sec. 2.7.

5.2.5 Conservation of City Artwork as outlined in Sec. 3.6.

5.2.6 Specialty Equipment as outlined in Sec. 4.14.

5.3 City Budgetary Responsibilities. With the assistance of Scottsdale Arts, the City Contract Administrator shall be responsible for proposing as part of the City's budgetary process, a budget for capital improvements to the City-Owned Facilities, non-capital improvements to the City-Owned Facilities, and replacement of the Specialty Fixtures outlined in Exhibit D.

5.4 Art in Public Places Program ("AIPP") Funding. On July 1, in consultation with Scottsdale Arts, the City will identify the level of Capital Improvement Project funding consistent with the Public Art ordinance.

5.4.1 Project administration of AIPP projects will be funded within the City's Capital Improvement Project budget as a part of the Arts in Public Places CIP Project, as a stand-alone CIP project or as a component of specific existing or planned Capital Improvement Projects.

5.4.2 Scottsdale Arts shall work with the Transportation & Infrastructure Department prior to the initiation of any public art project funded by the City's Capital Improvement Program to define each project, identify the funding source, determine if the project will be stand alone or integrated to an existing capital project, determine management and maintenance responsibilities and the project budget. This information shall be documented in a Memorandum of Understanding to be signed by Scottsdale Arts, the Transportation & Infrastructure Department and the Facilities department. The Memorandum of Understanding may be executed administratively.

5.4.3 Scottsdale Arts shall track and separately invoice to the Senior Director – Transportation & Infrastructure based on each signed Memorandum of Understanding. Scottsdale Arts may track and invoice for staff time and costs directly associated with the delivery of the public art project. An estimate of any invoiced costs must have been included in the signed Memorandum of Understanding.

5.5 Financial Participation Agreement. The City shall disperse the Management Services Fee to Scottsdale Arts in installment payments, the timing and amount of which the Parties shall set forth in a separate Financial Participation Agreement, in substantially the form attached hereto as Exhibit E. Although as provided in subsection 5.1, an amount is budgeted per fiscal year for the Management Services Fee, the parties may enter multiple Financial Participation Agreements covering parts of the fiscal year, the total of which may be less than the amount budgeted for the fiscal year.

5.6 Scottsdale Arts' Revenues. Scottsdale Arts shall, to the maximum extent practicable, supplement the Management Services Fee with contributed and earned revenues, including, without limitation, in-kind services, grants, donations, membership fees, rentals, fund raisers, ticket sales, consulting fees, sponsorships and underwriting.

5.7 Non-Program Costs. Scottsdale Arts shall keep its non-program costs within a competitive range as determined by market conditions and its applicable policies. As used in the immediately preceding sentence, "competitive range" and "market conditions" shall be determined by comparing the Scottsdale Arts non-program costs with those of arts organizations similar to Scottsdale Arts. Scottsdale Arts shall provide to the City a written comparison of Scottsdale Arts' non-program costs with those of its peers in the Annual Report required under section 6.3. As used in this Section, "non-program costs" means administrative/general expenses and personnel costs.

5.8 Required Policies. On or before the date that is 60 days after the effective date of this agreement, Scottsdale Arts shall provide to the City a copy of its current compensation, facilities use, procurement and travel policies (the "Policies"). If Scottsdale Arts makes any substantive revisions to any of the Policies, Scottsdale Arts shall provide a copy of such revised Policies to the City Contract Administrator not less than 30 days prior to the effective date of the revised Policies.

5.9 Transparency Requirements. Scottsdale Arts shall post on its website for a minimum of five years a copy of its IRS Form 990, financial audit, and annual report.

5.10 Unanticipated, Extraordinary Funding Requests. Scottsdale Arts may seek supplemental Management Services Fees from the City in the event of unanticipated, extraordinary expenses. Nothing in this subsection, however, shall obligate the City to provide additional Management Services Fees.

5.11 Accounting System. Scottsdale Arts shall maintain an accounting system that complies with generally accepted accounting principles ("GAAP") and with GAAP standards for non-profit corporations. Not later than December 31, Scottsdale Arts shall provide the City Contract Administrator with an annual audit report and opinion by an independent certified public accountant.

5.12 Scottsdale Arts' Budget. The City shall not approve Scottsdale Arts' annual budget. Scottsdale Arts shall provide a copy of its final budget within ten days of approval by Scottsdale Arts Board of Trustees. Scottsdale Arts' budget documentation shall include all estimated funding sources, direct and indirect expenditures, and City funds allocation plans. Scottsdale Arts shall make its staff available for budget presentations at the City's request.

5.13 Restricted Funds. Scottsdale Arts shall account separately for funds that are designated from time to time by ordinance, resolution or agreement for a specific program or purpose and shall only use such funds for the earmarked program or purpose.

5.14 Inspection of Books and Records. City or its agent may, by giving reasonable advance notice to Scottsdale Arts and on the date or dates that City and Scottsdale Arts may reasonably agree upon, inspect Scottsdale Arts' books and records that relate to this Agreement at such times during normal business hours that City deems appropriate. Upon reasonable request, Scottsdale Arts shall furnish copies of such books and records to City, at no cost to City.

## 6 REPORTS AND AUDITS

6.1 Strategic Plan. This agreement incorporates by this reference Scottsdale Arts' current strategic arts and cultural affairs plan ("Strategic Plan") that includes Scottsdale Arts' mission, vision and goals to provide the City with the advisory, planning, development, production, operations and managerial services required of it under this Agreement. The Strategic Plan shall address each of the Objectives under this Agreement. Scottsdale Arts shall provide the City Contract Administrator with amendments to the Strategic Plan as approved by the Board of Trustees.

6.2 Annual Operational Plan. Scottsdale Arts shall provide the City Contract Administrator with a comprehensive written operational plan no later than May 15th. The initial Operational Plan shall include Scottsdale Arts' detailed plans to achieve the Strategic Plan, including financial development plan progress, performance measures for each of its goals, objectives, strategies and other components, adopted budget, as well as an update on progress-to-date in achieving the previous operational plan.

6.3 Annual Report. Scottsdale Arts shall provide the City Contract Administrator with an annual report no later than September 15th. The Annual Report shall include a pro forma budget that corresponds with the City's fiscal year, which shall be organized in such a way as to clearly reflect Scottsdale Arts' organizational structure. The Annual Report shall critically evaluate, for the preceding fiscal year, each of the key performance indicators and performance measures, Scottsdale Arts' satisfaction of each of its objectives under this Agreement, and Scottsdale Arts' achievements with regard to its mission.

6.4 Performance Audits. The City may at any time conduct a performance audit to evaluate Scottsdale Arts' performance under this Agreement. Scottsdale Arts shall make available any information related to this Agreement requested by the City for the audit reasonably promptly after City's written request, but in any event, within ten (10) working days of City's written request. The performance audit may consider all information that is relevant to Scottsdale Arts' responsibilities under this Agreement.

6.5 Internal Controls. Scottsdale Arts shall maintain financial controls and management policies consistent with the responsible stewardship of City-Owned Facilities, City Artwork and Specialty Equipment.

6.6 Arts Grants Audits. Scottsdale Arts shall require all organizations that receive a grant from the Arts Grants Program in excess of \$10,000.00 to agree, in writing, to allow the City, upon request, to inspect and audit the organization's financial records upon ten (10) business days written notice, and the City shall be named a third party beneficiary of such audit provision in all such grant agreements.

6.7 Third Party Agreements. Subject to City approval, which the City may withhold in the exercise of its sole and absolute discretion, Scottsdale Arts may enter into separate agreements with third parties for the provision to those third parties of advisory and managerial services similar or related to those it provides to the City under this Agreement.

## 7 INSURANCE AND INDEMNITY

7.1 Indemnification by Scottsdale Arts. To the fullest extent permitted by law, Scottsdale Arts agrees to defend, indemnify and hold harmless the City, its Mayor and Council, appointed board and commission members, officials, officers and employees individually and collectively from and against any and all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from or alleged to arise from or out of, or result from, any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Scottsdale Arts or arising out of Scottsdale Arts' negligent performance of the terms of this Agreement, including but not limited to, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Insurance provisions set forth in this Agreement are separate and independent from the indemnity provisions of this Agreement and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this section shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

7.2 Indemnification by City. The City agrees to indemnify and hold harmless Scottsdale Arts, its officers, directors and employees from all losses, claims, suits, demands, expenses, subrogation, attorneys' fees or actions of any kind and nature resulting from personal injury to any person (including bodily injury and death) or damages to any property, arising or alleged to have arisen out of the City's use of the Facilities, where the injury or damages resulted from a negligent act or omission of a City employee or a person for whom the City is legally liable.

7.3 Insurance in General. Without limiting any of its obligations or liabilities, Scottsdale Arts, at its own expense, shall purchase and maintain the hereinafter stipulated minimum insurance with companies duly licensed by the State of Arizona, with an AM Best, Inc. rating of B++6 or above, or an equivalent qualified unlicensed insurer (non-admitted insurer) with policies and forms satisfactory to the City. Use of alternative insurers requires the City's prior approval. Failure to maintain insurance as specified may result in termination of this Agreement at the City's option.

7.4 Additional Insureds. All insurance coverage required by this agreement, including but not limited to General Liability and Liquor Liability, except Workers' Compensation and Directors and Officers Liability, shall name the City and its elected or appointed officials, officers, directors, commissioners, board members, agents or employees as Additional Insureds. Furthermore, the insurance shall specify that Primary and Excess insurance purchased by Scottsdale Arts shall be the primary insurance layers and that any insurance coverage or self-insurance carried by the City shall be excess coverage and not contributory to that provided by Scottsdale Arts.

7.5 Deductibles and Self-insured Retentions. The policies set forth in these requirements may provide coverage which contains deductibles and/or self-insured retentions. Such deductibles and/or self-insured retentions shall not be applicable with respect to the limits

provided to the City. Scottsdale Arts shall be solely responsible for any such deductible and/or self-insured retention.

7.6 Licensees and Permittees. Scottsdale Arts shall execute written agreements with Licensees or Permittees containing the same Indemnification Clause and Insurance Requirements set forth herein protecting the City and Scottsdale Arts. Unless the Licensee or Permittees can provide the same insurance coverage as required herein, Scottsdale Arts must extend its insurance to cover Licensees' and Permittees' activities as excess insurance in order to satisfy the total insurance limit requirements. Scottsdale Arts shall be responsible for executing the agreements with Licensees or Permittees and obtaining Certificates of Insurance verifying the insurance requirements.

7.7 Certificates of Insurance. Within five (5) days from the date of this Agreement, Scottsdale Arts shall furnish the City Contract Administrator with Certificates of Insurance, or formal endorsements as required by this Agreement, issued by Scottsdale Arts' insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions, and limits of coverage and that such coverage and provisions are in full force and effect. If any of the cited policies expire during the term of this Agreement, Scottsdale Arts shall forward renewal Certificates to the City Contract Administrator within (10) days after the renewal date containing all the aforementioned insurance provisions.

7.8 No Representation of Adequacy of Coverage. The City makes no representation or warranty with respect to the extent or adequacy of the insurance protection required to be provided by Scottsdale Arts, and Scottsdale Arts shall satisfy itself as to the coverage afforded by such policies. The furnishing of the insurance policies by Scottsdale Arts shall not limit, reduce or otherwise amend any of the obligations or liabilities of Scottsdale Arts expressed herein or in the financial participation agreements or other contract documents.

7.9 Waiver of Subrogation. All policies, except for the Directors and Officers Liability policy and the Fidelity/Crime policy, shall waive rights of recovery (subrogation) against the City of Scottsdale, its agents, representatives, officers, directors, commissioners, board members, officials and employees for any claims arising out of this Agreement.

7.10 Notice of Cancellation. If Scottsdale Arts becomes aware that any of the required policies of insurance are or will be cancelled because of non-payment of premium, Scottsdale Arts shall provide prompt notice of same to the contract administrator, unless such coverage is immediately replaced with similar policies. Scottsdale Arts shall not suspend, void, cancel or reduce coverage except until after 30 days written notice has first been given, by certified mail, return receipt requested to the contract administrator. Scottsdale Arts shall include in the notice how Scottsdale Arts intends to remain in compliance with the insurance requirements of this agreement after the proposed cancellation, suspension or reduction in insurance.

7.11 Required Coverages.

7.11.1 Commercial General Liability. Scottsdale Arts shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$5,000,000 for each occurrence, \$5,000,000 Products and Completed Operations if applicable, and a \$5,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products/completed operations and personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph,

such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

7.11.2 Liquor Liability. Scottsdale Arts has entered into an agreement with the City to use the City's governmental liquor license and shall have the right to operate concessions for food and beverages. Scottsdale Arts and any vendor or concessionaire that serves, sells, or in any manner provides alcoholic beverages in the Facilities shall procure and maintain Liquor Liability insurance in the amount of \$1,000,000 each Occurrence and a \$2,000,000 aggregate limit. If Scottsdale Arts enters into a concession agreement that involves liquor service, that contract shall contain the same indemnity language and insurance provisions as required herein specifically naming the City as indemnitee and additional insured. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal to or broader in coverage and scope than underlying insurance.

7.11.3 Automobile Liability. If applicable, Scottsdale Arts shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each accident with respect to Scottsdale Arts' owned, hired, and non-owned vehicles assigned to or used in performance of Scottsdale Arts' work or services.

7.11.4 Workers' Compensation. Scottsdale Arts shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Scottsdale Arts' employees engaged in the performance of the work or services under this Agreement and shall also maintain Employers' Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

7.11.5 Directors and Officers Liability. Scottsdale Arts shall maintain Not for Profit Directors and Officers Liability insurance, including Employment Practices Liability, in the amount of \$1,000,000 per claim, \$1,000,000 annual aggregate, inclusive of defense costs.

7.11.6 Employee Fidelity/Crime. Scottsdale Arts shall maintain Crime/Fidelity coverage, including but not limited to, the perils of Employee Dishonesty, robbery, theft, and disappearance or destruction of money and securities in performance of their duties under this Agreement. The coverage limit shall be not less than \$100,000 per loss.

7.11.7 City Art Insurance. The City shall have sole and absolute discretion to determine the kinds and amounts of insurance to be purchased for City Artwork in the custody and possession of Scottsdale Arts. Scottsdale Arts shall pay the first two thousand five hundred dollars (\$2,500.00) of each loss of City Artwork. The City shall secure and pay for the insurance policy(ies) for City Artwork.

7.11.8 Vendors and Subcontractors. Scottsdale Arts shall require that all vendors and subcontractors provide "occurrence" form Commercial General Liability with a limit of not less than \$1,000,000 for each occurrence.

7.11.9 Other Insurance. Upon written notice from the City, Scottsdale Arts shall obtain and cause to be in force any other insurance or increase in insurance limits the City may require to account for inflation, changes in risk, or other factor for the protection of the City, its employees, officials, representatives, officers, directors, commissioners and agents or the public. Any modification or variation from these insurance requirements must be made by the City's Risk

Manager, whose decision is final. Such action will not require a formal Contract amendment but may be made by administrative action.

## 8 BREACH AND TERMINATION

8.1 Breach by Scottsdale Arts. Scottsdale Arts shall comply with, perform and do each performance and thing required of Scottsdale Arts herein and Scottsdale Arts' failure to do so shall be a breach by it of this Agreement.

8.2 Events of Default. This entire Agreement is made upon the condition that each and every one of the following events shall be deemed an "Event of Default" and a material breach by Scottsdale Arts of its material obligations under this Agreement:

8.2.1 If Scottsdale Arts shall fail to maintain any insurance required by this Agreement. Notwithstanding the preceding sentence, such failure shall not be a default if, within five (5) days after notice from the City, Scottsdale Arts provides to the City the required insurance and the required evidence thereof. Such insurance must cover the past for a period adequate that there is no gap in the insurance coverage required by this Agreement.

8.2.2 If any environmental, health, safety or similar inspector issues any formal notice of investigation or violation of health, environmental or similar regulations in connection with Scottsdale Arts' management and operation of the Facilities or determines during any two or more consecutive inspections that the same deficiency has been repeated or that the overall operation falls materially below first-class standards. Notwithstanding the preceding sentence, Scottsdale Arts shall not be in default if it immediately commences and thereafter diligently proceeds to cure the condition and the City receives within thirty (30) days official notice from the regulatory authority that the notice is rescinded or the matter otherwise completely resolved to the satisfaction of the regulatory authority.

8.2.3 If Scottsdale Arts shall be the subject of a voluntary or involuntary bankruptcy, receivership, insolvency or similar proceeding, or if any assignment of any of Scottsdale Arts' property shall be made for the benefit of creditors or if Scottsdale Arts is not regularly paying its debts as they come due.

8.2.4 If Scottsdale Arts shall fail to or neglect to do or perform or observe any other provisions contained herein on its part to be kept or performed and such failure or neglect to do or perform or observe any of such other provisions shall continue for a period of thirty (30) days after the City has notified Scottsdale Arts in writing of its default hereunder.

8.2.5 If Scottsdale Arts shall engage in a pattern of repeated failure (or neglect) to timely do or perform or observe any provision contained herein.

8.3 The City's Remedies. Upon the occurrence of any Event of Default or at any time thereafter, the City may, at its option and from time to time, exercise at Scottsdale Arts' expense any or all or any combination of the following cumulative remedies in any order and repetitively at the City's option:

8.3.1 Terminate this Agreement. Termination of this Agreement due to Scottsdale Arts' breach or for any other reason does not terminate Scottsdale Arts' obligations arising prior to or simultaneous with, or attributable to, the termination or in any way terminate any of Scottsdale Arts' liability related to any breach of this Agreement.

8.3.2 Terminate or suspend any and all of Scottsdale Arts' rights under this Agreement.

8.3.3 Use, manage, operate or allow another party to use, manage or operate all or part of the Facilities.

8.3.4 Pay or perform, for Scottsdale Arts' account, in Scottsdale Arts' name, and at Scottsdale Arts' expense, any or all payments or performances required hereunder to be paid or performed by Scottsdale Arts.

8.3.5 Abate at Scottsdale Arts' expense any violation of this Agreement.

8.3.6 Be excused without any liability to Scottsdale Arts therefor from further performance of any or all obligations under this Agreement, including suspending payments under the Financial Participation Agreement unless and until such breach is remedied.

8.3.7 Assert, exercise or otherwise pursue at Scottsdale Arts' expense any and all other rights or remedies, legal or equitable, to which the City may be entitled.

8.4 Notice of Scottsdale Art's Breach. Scottsdale Arts shall promptly give notice to the City of any event or circumstance that is (or which with the passing of time or the giving of notice, or both, will become) an Event of Default under this Agreement. Scottsdale Arts shall also promptly give to the City notice of any notice or claim given by any third party alleging that an event or circumstance has occurred that is (or that with the passing of time or the giving of notice, or both, will become) an Event of Default under this Agreement.

8.5 Non-waiver. Except as otherwise expressly provided in this Agreement, any failure or delay by any Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default, or of any such rights or remedies, or deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

8.6 Reimbursement of City's Expenses. Scottsdale Arts shall pay to the City upon demand any and all amounts expended or incurred by the City in performing Scottsdale Arts' obligations, together with interest thereon at the rate of ten percent per annum from the date expended or incurred by the City.

8.7 Breach by the City. In the event the City at any time is required to pay to Scottsdale Arts any amount or render any performance, such amount or performance is not due until thirty (30) days after notice by Scottsdale Arts to the City that the amount has become payable or that the performance is due. In the event a cure cannot be effected during that period, the City shall not be in default so long as the City commences cure during the period and diligently prosecutes the cure to completion provided such cure must be completed within 60 days after the notice.

8.8 Scottsdale Arts' Obligations. In the event of and following such notice of termination, Scottsdale Arts agrees not to enter into any contracts or agreements for events or performances scheduled to occur at any time after notice of termination in the City-Owned Facilities or to commission any projects through the Art in Public Places or Art in Cultural Improvements Programs.

8.9 City Obligations. In the event of and following such notice of termination, the City agrees to fulfill and perform any non-cancelable contracts or agreements of Scottsdale Arts for events or performances scheduled to occur in the City-Owned Facilities subsequent to such notice of termination and to fulfill and carry out any artists' commissions in connection with the Art in Public Places or Cultural Improvements Programs. The City will hold Scottsdale Arts harmless from and against any liability for cancellation fees or payments in respect of any such contracts or agreements; provided, however, the City shall not have any responsibility to fulfill or perform, or any obligation to hold Scottsdale Arts harmless from and against any liability for, any contracts or agreements of Scottsdale Arts that contain terms of agreement longer than two years from the notice of termination, with the exception of Scottsdale Arts office space.

8.10 Expenditure of City Monies. Following notice of termination of this Agreement for any reason, Scottsdale Arts must receive prior City approval from the City Contract Administrator of each expenditure of any Management Services Fees or any other monies received from the City.

8.11 Return of City Monies. Upon termination of this Agreement for any reason, Scottsdale Arts shall return to the City, within 30 days of the effective date of the termination, all unexpended Management Services Fees and any other monies received from the City.

8.12 Return of City Artwork and Specialty Equipment. Upon termination of this Agreement for any reason, Scottsdale Arts shall, within 30 days of the effective date of the termination, return to the City custody and possession of all City Artwork (unless otherwise required by the terms and conditions of any particular donation, which terms and conditions the City agreed to in writing contemporaneously with the donation) and Specialty Equipment paid for with City funds, remove all Scottsdale Arts property from City-Owned Facilities, and clean the City-Owned Facilities to "broom-clean condition."

## 9 MISCELLANEOUS

9.1 Amendments. This Agreement may not be amended except by a formal writing executed by the Parties.

9.2 Governance Enhancement. During the term of this Agreement, Scottsdale Arts shall cooperate with the City in making good faith efforts to explore potential changes to the governance of Scottsdale Arts to better support understanding and accountability between the parties. These enhancements may include but are not limited to the addition of a member of the Scottsdale City Council to the Scottsdale Arts Board of Trustees.

### 9.3 Appropriation.

9.3.1 Notwithstanding any other provision hereof, all payments from the City to Scottsdale Arts under this Agreement are in all respects subject to appropriation by the City Council, which appropriation shall be at the sole and absolute discretion of the City Council.

9.3.2 In the event funds necessary to pay such Management Services Fees or otherwise fulfill Scottsdale Arts' obligations pursuant to this Agreement during the ensuing fiscal year are not appropriated by the City Council, the City shall give prompt written notice to Scottsdale Arts and the City and Scottsdale Arts shall each have the right to terminate this Agreement upon not less than 30 days prior written notice.

9.3.3 Termination pursuant to this subsection does not constitute a breach of or default under this Agreement and Scottsdale Arts shall not be entitled to claim or receive any damages, other compensation or remedy from or against the City as a consequence thereof.

9.4 Assignment. No assignment of this Agreement by Scottsdale Arts is contemplated or bargained for. Scottsdale Arts acknowledges that only Scottsdale Arts can provide to the City the benefits that induced the City to enter into this Agreement. The City, therefore, has the absolute right for any reason or for no reason in its sole and absolute discretion to give or withhold consent to any assignment or to impose any conditions whatsoever upon the City's consent to any Assignment.

9.5 Attorneys' Fees. In the event any action, suit or proceeding is brought by either party to enforce this Agreement or for failure to observe any of the covenants of this Agreement or to vindicate or exercise any rights or remedies hereunder, the prevailing party in such proceeding shall be entitled to recover from the other party such prevailing party's reasonable attorneys' fees and other reasonable litigation costs as determined by the court (and not a jury) in such proceeding.

9.6 Choice of Law. This Agreement shall be governed by the laws of the State of Arizona. Claims by Scottsdale Arts shall comply with time periods and other requirements of State law and the City's claims procedures.

9.7 City Consent. Unless expressly stated to the contrary herein, any provision for consent or approval of any matter by the City or any officer or employee of the City shall be in the sole and absolute discretion of the City.

9.8 Commodities. Each Party shall purchase, at its expense, all supplies and commodities used in conjunction with its respective responsibilities under this Agreement.

9.9 Compliance with Law. Scottsdale Arts shall perform its obligations and exercise its rights under this Agreement in accordance with all federal, state, county and local laws, ordinances, regulations or other rules or policies as are now in effect or as may hereafter be adopted or amended.

9.10 Conflicts of Interest. No officer or employee of the City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement that is prohibited by law.

9.11 Construction. The words such as "herein," "hereinafter," "hereof," "hereby" and "hereunder" refer to this Agreement as a whole and not merely to a section or subsection in which such words appear, unless the context specifically requires otherwise. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. Any reference to any federal, state, local or foreign statute, law or ordinance shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

9.12 Contract Administrators.

9.12.1 The City Contract Administrator shall be the individual designated by the City Manager in a notice to Scottsdale Arts. Unless otherwise specified, the City Contract Administrator shall be authorized to represent the City on all matters relating to the performance of this Agreement.

9.12.2 Scottsdale Arts' Contract Administrator shall be the Chief Executive Officer of Scottsdale Arts or such individual designated by the Chief Executive Officer in a notice to the City. Unless otherwise specified, Scottsdale Arts' Contract Administrator shall be authorized to represent Scottsdale Arts on all matters relating to the performance of this Agreement.

9.13 Discretion. When a Party may exercise discretion under this Agreement, it shall do so reasonably, unless otherwise expressly indicated.

9.14 Discrimination. No person shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of the Facilities or any other programs or activities produced, sponsored or supported by Scottsdale Arts, on the grounds of race, color, religion, sex, national origin, age, sexual orientation, gender identity or disability.

9.15 Exhibits. All exhibits specifically referenced herein are hereby incorporated into and made an integral part of this Agreement for all purposes.

9.16 Headings. The section and subsection headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.

9.17 Integration. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, or discussion.

9.18 Joint Participation in Negotiation of Agreement. The Parties have participated jointly in the negotiation and drafting of this Agreement. This Agreement has been negotiated at arm's length by parties of equal bargaining power. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

9.19 Non-liability of Officials and Employees. No official, representative or employee of the City shall be personally liable to any Party, or to any successor in interest to any Party, in the event of any default or breach by the City or for any amount which may become due to any Party or successor, or with respect to any obligation of the City or otherwise under the terms of this Agreement.

9.20 Non-Profit Status. At all times Scottsdale Arts shall maintain its legal status as an Arizona non-profit corporation.

9.21 Notices. Except as otherwise indicated, all notices, waivers, demands, requests and other communications required or permitted by this Agreement (collectively, "Notices") shall be in writing and shall be effective only if sent by one or more of the following methods: (a) personal delivery; (b) generally-recognized overnight commercial courier regularly providing proof of delivery, with delivery charges prepaid or duly charged; or (c) United States registered or certified mail, return-receipt requested, postage prepaid, addressed to the Parties at the respective addresses set forth opposite their titles below, or to any other address or addresses as either Party shall designate from time to time by notice given to the other in the manner provided in this subsection:

TO SCOTTSDALE ARTS:

President and Chief Executive Officer  
Scottsdale Arts  
7380 E. Second Street  
Scottsdale, AZ 85251

TO THE CITY:

City Contract Administrator  
Tourism & Events Department  
7447 E. Indian School Rd., Suite 301  
Scottsdale, AZ 85251

Notices given or served by personal delivery shall be deemed to have been received upon tender to the respective Party. Notices given by facsimile transmission shall be deemed to have been received on the day of transmission, as evidenced by a report of successful transmission generated by the transmitting facsimile machine. Notices given or served by mail or commercial courier shall be deemed to have been given or served as of the date of delivery (whether accepted or refused) established by the United States Postal Service return-receipt or the overnight courier's proof of delivery, as the case may be. When the Parties are permitted to provide notice by email, they shall do so at the email address(es) designated from time to time in the manner provided in this subsection.

9.22 No Real Property Interest. Notwithstanding any provision herein to the contrary, and notwithstanding any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the Parties, Scottsdale Arts does not and shall not have, and the Parties do not by this Agreement intend to create, a lease, easement or other real property interest in, on, under, over or through the City-Owned Facilities.

9.23 Relationship. Nothing contained within this Agreement shall be deemed or construed to create a partnership, joint venture, principal and agent, landlord and tenant, or similar relationship between the City and Scottsdale Arts. Scottsdale Arts is a legal entity separate and distinct from the City; Scottsdale Arts is not a council, board, commission, department, agency or agent of the City. The management of Scottsdale Arts operations is solely the responsibility of the Scottsdale Arts' Board of Trustees and its appointed officers.

9.24 Severability. If any term, condition, covenant, stipulation, agreement or other provision of this Agreement is held to be invalid or unenforceable for any reason, the invalidity of any provision shall in no way affect any other provision herein contained and this Agreement shall otherwise remain in full force and effect. If any provision of this Agreement is so severed, this

Agreement shall retroactively be deemed reformed in such a manner so that the reformed Agreement provides, to the extent reasonably possible, the same rights and benefits to the Parties as if such severance and reformation were not required. The Parties further agree in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement to the extent permitted by law.

9.25 Statutory Cancellation Right. In addition to its other rights hereunder, the City shall have the rights specified in A.R.S. § 38-511.

9.26 Survival of Indemnifications. All indemnifications contained in this Agreement shall survive the rescission, cancellation, expiration or termination of this Agreement for any reason.

9.27 Taxes and Assessments. Scottsdale Arts shall promptly pay all taxes of every kind or nature properly assessed against it by reason of its activities, duties or responsibilities under this Agreement. Scottsdale Arts shall further require that any contract related to use of the Facilities entered into by Scottsdale Arts shall have pertinent provisions therein requiring that the contracting party shall promptly pay all taxes or assessments of every nature applicable to it by virtue of any and all activities arising out of such contract.

9.28 Time Periods. Unless otherwise expressly indicated, any reference to a period of time shall mean calendar time (e.g., "30 days" shall mean 30 calendar days; "one year" shall mean one calendar year). Any reference to a year shall refer to a calendar year, unless a fiscal year is specifically stated. Unless otherwise stated or required by the context, references to a fiscal year refer to the City's fiscal year. Where any action in this Agreement is required on or by a date which is either a Saturday, a Sunday or a legal holiday, the Party obligated to take such action shall be entitled to delay such action until the next succeeding day which is not a Saturday, a Sunday or a legal holiday.

9.29 Israel Boycott Prohibition. Scottsdale Arts certifies that it is not currently engaged in and agrees for the duration of this agreement not to engage in a boycott of Israel as defined in A.R.S. §35-393.

9.30 Immigration Law Compliance. Under the provisions of A.R.S. §41-4401, Scottsdale Arts warrants to the City that Scottsdale Arts and all its Subcontractors will comply with all Federal Immigration Laws and regulations that relate to their employees and that Scottsdale Arts and all its Subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

9.30.1 A breach of this warranty by Scottsdale Arts or any of its Subcontractors will be considered a material breach of this Contract and may subject Scottsdale Arts or Subcontractor to penalties up to and including termination of this Contract or any subcontract. Scottsdale Arts will take appropriate steps to assure that all Subcontractors comply with the requirements of the E-Verify Program. Scottsdale Arts' failure to assure compliance by all its' Subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

9.30.2 The City retains the legal right to inspect the papers of any employee of Scottsdale Arts or any Subcontractor who works on this Contract to ensure that Scottsdale Arts or any Subcontractor is complying with the warranty given above.

9.30.3 The City may conduct random verification of the employment records of Scottsdale Arts and any of its' Subcontractors to ensure compliance with this warranty. Scottsdale Arts agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

EXECUTED as of the date first given above.

SCOTTSDALE ARTS, an Arizona non-profit corporation

By:   
Dr. Gerd Wuestemann, President and CEO


CITY OF SCOTTSDALE,  
an Arizona municipal corporation


By: \_\_\_\_\_  
Lisa Borowsky, Mayor

ATTEST:

\_\_\_\_\_  
Ben Lane, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Luis E. Santaella, Interim City Attorney  
By: William Hylan, Deputy City Attorney

  
\_\_\_\_\_  
George Woods  
Risk Management Director

  
\_\_\_\_\_  
Kevin Burke  
Senior Director of Economic Development and Tourism

**EXHIBIT A. SCOTTSDALE ARTS MAINTENANCE RESPONSIBILITIES**

**SCOTTSDALE ARTS SHALL BE RESPONSIBLE FOR:**

1. **Cleaning.** Wash, wax, vacuum, dust floors, walls, windows, furniture, HVAC register grills, and equipment.
2. **Supplies.** Restroom stock, commodities, light bulbs for all light fixtures, copy paper, writing utensils, etc.
3. **Interior Fixtures.** Maintain, repair, refinish and replace if necessary, the interior fixtures (any item within the interior of any rooms within the Center for Performing Arts or Contemporary Museum) including AV projectors, screens, furniture, and window coverings, exterior and interior doors, and building security system.
4. **Trash and Pest Control.** Building interior trash and recycling collection, removal to dumpsters, and pest control.
5. **Payments.** Trash Collection bills. Utility bills at the following facilities: Scottsdale Center for the Performing Arts at 50% percent; SMOCA at 100%; Scottsdale Civic Center Plaza at 0%; and any other facilities at 100%.
6. **Offsite Coordination.** Direct bus, valet and limousines to acceptable parking.
7. **Furniture and Equipment.** Furniture and equipment within any room's interior space that has no permanent connection to the structure of a building or utilities.
8. **Exhibits and Artwork.** Maintenance and operation of the museum's interior and exterior exhibit and artwork.
9. **Security System.** Daily monitoring; repair and replacement of buildings' security systems.
10. **Humidity Control System.** Daily monitoring of system and notifying the City of any need for repair or replacement as the City is responsible for the building's humidity control system.
11. **City Notice.** Contact Facilities and Contract Administrator if a City maintenance responsibility item needs attention.

**EXHIBIT B. CITY OF SCOTTSDALE MAINTENANCE RESPONSIBILITIES.**

**THE CITY SHALL BE RESPONSIBLE TO MAINTAIN, REPAIR AND REPLACE IF NECESSARY:**

1. Roof. Roofing material, caulking, flashing, beams, slabs and trusses.
2. Electrical distribution systems. Main panel, breakers, receptacles, raceways, ballasts, and wiring within walls, and motion sensors not connected to security system.
3. Floors. Concrete flatwork.
4. Fenestration. Windows and storefronts, except interior and exterior doors.
5. HVAC. Heating, ventilating, air conditioning and humidity systems, including quarterly change out of HVAC filters.
6. Automated energy management systems.
7. Fixtures. Replacement of normal wear and tear of interior such as painted surfaces, carpeting, wall coverings, drains and plumbing fixtures, cover plates and specialty lighting fixtures.
8. Plumbing system. Water lines, valves and waste pipes within the walls as well as traps and fixture hangers.
9. Vertical circulation. Guardrails, handrails and elevators (includes emergency phone and line and annual maintenance contract with regular inspections).
10. Emergency and safety systems. Fire alarm panel, fire sprinklers, fire extinguishers, emergency exit lighting, and the annual inspection of these items.
11. Building Exterior. Paint, caulking of exterior surfaces, metal siding and lights attached to building, including soffit areas and in courtyard (all items attached to exterior of the building except for artwork).
12. Lighting for Grounds and Sculpture Garden. Area light poles, fixtures and ground boxes.
13. Exterior Grounds, Hardscape and Sculpture Garden. Trees, cactus, shrubs and groundcover; irrigation valves and boxes, control wire, heads and emitters; exterior pest and weed control; sidewalks and patio surfaces.
14. Routine exterior trash collection.

**EXHIBIT C. SPECIALTY EQUIPMENT LISTING**

**SCOTTSDALE ARTS SHALL BE RESPONSIBLE TO MAINTAIN, REPAIR AND REPLACE:**

1. Audio Cables.
2. Audio Visual (AV) Projectors.
3. Clothing Racks.
4. Forklift.
5. Gels for Stage Lighting.
6. Geni/Scissor Lift.
7. Grand Piano.
8. IT Systems/Equipment (SCPA Enterprise Network).
9. Kitchen / Food Service Equipment.
10. Marley Dance Floor.
11. Microphones.
12. Motor Control Units for Line Array and Lineset Cable Management.
13. Spare Motors to hang truss or other items in the theatre.
14. Outdoor Portable Stage Equipment (Sound, Lighting, etc.).
15. Ticketing and Retail Point of Sales (POS) Systems.
16. Road Cases.
17. Sandbags.
18. Special Security Systems (Museum).
19. Sewing Machines.
20. Stage Manager Console.
21. Video Switcher.
22. Washer & Dryer.
23. Wireless Microphones.
24. Wireless Receivers.

EXHIBIT D. SPECIALTY FIXTURE LISTING

THE CITY SHALL BE RESPONSIBLE TO MAINTAIN, REPAIR AND REPLACE IF NECESSARY:

1. Audio System (Amps, Distribution Rack, Monitor etc.).
2. Catwalks.
3. Digital Signal Processing (DSP) System.
4. Emergency / Exit lights.
5. Flyline system.
6. Follow Spot Lights.
7. House lights.
8. Lamps.
9. Lighting - Booms & Pipe, Cables, Console / Board, Dimmers, Storage Racks and Lighting Instruments.
10. Motor Control Units for Acoustic Paneling above the audience and the Main Curtain.
11. Orchestra Shell (Side and Top).
12. Public Address (PA) System.
13. Paging System.
14. Paradigm Lighting Control System.
15. Projector Roll/Drop down Screen.
16. Proscenium Panels.
17. Retail Store Furnishings.
18. Rigging Chain, equipment.
19. Sound Console / Board.
20. Speakers Surround Sound Equipment.
21. Stage Audio / Lighting Panels.
22. Stage Structure.
23. Stage Surface.
24. Stage Weights.
25. Theater Aisle lighting.
26. Theater Seats.
27. Video Distribution Rack.
28. Wall mounted power distribution.

EXHIBIT E. FINANCIAL PARTICIPATION AGREEMENT FORM

City of Scottsdale Agreement No. 20\_\_-xxx-COS  
Resolution No.

This Financial Participation Agreement ("Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2026, by and between the City of Scottsdale, an Arizona municipal corporation (the "City"), and the Scottsdale Arts, an Arizona non-profit corporation.

RECITALS

A. The City and Scottsdale Arts executed City of Scottsdale Agreement No. 2026-012-COS ("Management Services Agreement"), in which the City designated Scottsdale Arts as the principal organization for advising, planning and administering arts and cultural activities for the City.

B. In accordance with the Management Services Agreement, the City desires to pay Scottsdale Arts a Management Services Fee for the City's fiscal year 2026-27, and the City Council has appropriated funds for such purposes.

C. The Management Services Agreement provides that the City shall disperse the Management Services Fee for any given fiscal year to the Scottsdale Arts in installment payments, pursuant to a separate financial participation agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, the parties agree as follows:

1. Incorporation of Recitals. The recitals to this Agreement are hereby affirmed by the parties as true and correct and are incorporated herein by this reference.

2. Incorporation by Reference. The Management Services Agreement is incorporated into this Agreement by this reference as if fully set forth herein. Likewise, this Agreement is made a part of the Management Services Agreement by this reference as if fully set forth therein.

3. Definitions. Unless otherwise expressly provided herein, the definitions contained in the Management Services Agreement shall apply to the same terms used in this Agreement.

4. Services to be Performed by the Scottsdale Arts. Scottsdale Arts shall provide the services specified in the Management Services Agreement and shall comply in all respects with the provisions of the Management Services Agreement.

5. Financial Participation by the City.

5.1. Solely for the purposes stated in this Agreement and the Management Services Agreement, the City shall pay Scottsdale Arts a total Management Services Fee of \$\_\_\_\_\_ during and for the City's fiscal year 2026-27. The City shall pay the Management Services Fee to Scottsdale Arts in accordance with the following schedule. If the first of the month falls on a weekend, payment is due on the following Monday.

EXHIBIT E. FINANCIAL PARTICIPATION AGREEMENT FORM

- 5.1.1 \$ \_\_\_\_\_ by July 1, 2026.
- 5.1.2 \$ \_\_\_\_\_ by August 1, 2026.
- 5.1.3 \$ \_\_\_\_\_ by September 1, 2026.
- 5.1.4 \$ \_\_\_\_\_ by October 1, 2026.
- 5.1.5 \$ \_\_\_\_\_ by November 1, 2026
- 5.1.6 \$ \_\_\_\_\_ by December 1, 2026
- 5.1.7 \$ \_\_\_\_\_ by January 1, 2027
- 5.1.8 \$ \_\_\_\_\_ by February 1, 2027
- 5.1.9 \$ \_\_\_\_\_ by March 1, 2027

5.2. Of the Management Services Fee specified above, \$ \_\_\_\_\_ is hereby allocated and unrestricted by the City as the management and administrative fee to Scottsdale Arts.

5.3. Of the Management Services Fee specified in Subsection 5.1, the following amounts are hereby allocated and restricted by the City and shall be expended by Scottsdale Arts solely for the identified purposes:

5.3.1 \$ \_\_\_\_\_ for the management and administration of grant awards for the Community Art Grants Program, as provided in Subsection 2.3 of the Management Services Agreement.

5.3.2 \$ \_\_\_\_\_ from the City's special revenue Community Arts Trust to support additional amounts towards the grant awards and/or other Arts Organizations located in Scottsdale as provided in Subsection 2.3 of the Management Services Agreement.

5.3.3 \$ \_\_\_\_\_ from the City's special revenue Tourism Development Fund for the management and administration of the two Destination Events as provided in Subsection 2.7 of the Management Services Agreement.

5.3.4 \$ \_\_\_\_\_ for the Conservation of City Artwork, as provided in Subsection 3.6 of the Management Services Agreement.

5.3.5 \$ \_\_\_\_\_ for the management and administration of the Cultural Improvements Program and the Art in Public Places Program, as provided in Subsections 3.10 and 5.4, respectively, of the Management Services Agreement.

5.3.6 \$ \_\_\_\_\_ for the maintenance and repair of all Specialty Equipment as provided in Subsection 4.14 and Exhibit C of the Management Services Agreement.

5.4. Not later than May 15 \_\_\_\_\_, in accordance with Subsection 5.11 of the

EXHIBIT E. FINANCIAL PARTICIPATION AGREEMENT FORM

Management Services Agreement, Scottsdale Arts shall provide the City Contract Administrator with a separate accounting of each of the restricted funds set forth above in subsection 5.3.

6. Term. The term of this Agreement shall commence on July 1, \_\_\_\_\_, and end on June 30, \_\_\_\_\_, unless sooner terminated.

7. Termination. The termination provisions of the Management Services Agreement are incorporated herein by this reference as if fully set forth.

8. Statutory Cancellation Right. In addition to its other rights hereunder, the City shall have the cancellation rights specified in A.R.S. § 38-511.

9. Survival. Any and all provisions or obligations contained in this Agreement that by their nature or effect are required or intended to be observed, kept or performed after termination of this Agreement shall survive termination of this Agreement and remain binding on the parties.

10. Israel Boycott Prohibition. Scottsdale Arts certifies that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393.

EXHIBIT F

KEY PERFORMANCE INDICATORS AND PERFORMANCE MEASURES

The Key Performance Indicators (“KPIs”) set forth herein establish measurable performance expectations aligned with the objectives described in the Recitals and shall be used by the City to monitor performance, ensure accountability, and support audit and oversight requirements.

The performance standards and targets set forth in this Exhibit F are intended to establish an initial baseline for monitoring performance during the transition to this new Agreement. Following review of performance data during the first full fiscal year of this Agreement, the City may establish revised baseline metrics or performance targets for subsequent fiscal years. Any such adjustments may consider historical performance trends, peer benchmarking, facility capacity, community demand, funding levels, economic conditions, changes in scope or services, and Council policy direction. Revised targets may be implemented upon written notice from the City or by mutual written agreement of the parties.

Unless otherwise approved in writing by the City, Scottsdale Arts shall collect, maintain, and report data necessary to demonstrate compliance with this Exhibit F. Where the reporting frequency is annual, the report is due by May 15. Where the reporting frequency is Event-based, the report is due within 60 days of the end of the event. Event-based reporting applies only to KPIs that are directly attributable to an individual event and is intended to provide timely, event-specific performance information. Event-based reporting shall supplement, but not replace or duplicate, annual performance reporting requirements.

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1. MANAGEMENT AND PROGRAMMING OF CULTURAL VENUES

**Applicable Facilities:** Scottsdale Center for the Performing Arts, Scottsdale Museum of Contemporary Art (SMoCA), Scottsdale Civic Center

| KPI                          | Performance Measure  | Standard / Target  | Reporting Frequency |
|------------------------------|--|--|---------------------|
| a. Facility Utilization Rate | Percentage of available facility days programmed or rented | At least 65% annually  | Annual              |
| b. Attendance by Venue       | Total annual attendance by facility                        | Attendance is equal to or greater than the attendance of the prior fiscal year | Annual              |
| c. Earned Revenue Ratio      | Earned revenue divided by total operating cost             | Maintain or exceed prior FY baseline   | Annual              |

---

**2. DESTINATION AND COMMUNITY EVENTS**

**Applicable Locations:** Civic Center, Scottsdale Waterfront, Scottsdale Stadium

| KPI                          | Performance Measure                                   | Standard / Target  | Reporting Frequency |
|------------------------------|---|--|---------------------|
| Destination Events Delivered | Number of City-recognized Destination Events executed | At least 2 annually  | Annual              |
| Event Attendance             | Total attendance per Destination Event                | Number of attendees that travel from a distance greater than 20 miles <sup>(1)</sup> is greater than or equal to the number in the prior fiscal year | Event-based         |
| Sponsorship & Event Funding  | Non-City funding secured for Destination Events       | The amount of non-City funding is greater than or equal to the prior fiscal year   | Annual              |
| Community Events             | Free arts and cultural events                         | At least 12 community events, which does not include Arts Education Programs, Family Arts Festival or Destination Events                             | Annual              |

**3. PUBLIC ART PROGRAM & COMMUNITY EXHIBITS**

| KPI                               | Performance Measure                               | Standard / Target             | Reporting Frequency |
|-----------------------------------|---|-------------------------------|---------------------|
| Public Art Inventory              | Accuracy and completeness of public art inventory | 100% inventoried and assessed | Annual              |
| Conservation Compliance           | Artwork maintained per approved schedule          | At least 90%                  | Annual              |
| Portable Collection Installations | Number of community exhibit rotations             | At least 4 annually           | Annual              |

(1) As measured through surveys, ticketing data, or third-party analysis reasonably acceptable to the City.

**4. ARTS EDUCATION & LIFE-LONG LEARNING**

| KPI                          | Performance Measure                          | Standard / Target  | Reporting Frequency |
|------------------------------|--|--|---------------------|
| K-12 Programs Delivered      | Number of arts education programs in schools | At least the same number of programs as the prior fiscal year                      | Annual              |
| Students Served              | Total students participating                 | Number of students participating is equal to or greater than the prior fiscal year | Annual              |
| Community Education Programs | Adult and life-long learning offerings       | At least 15 annually   | Annual              |
| Family Arts Festival         | Annual Family Arts Festival delivered        | At least one Family Arts Festival annually   | Annual              |

**5. LOCAL ARTS AGENCY (LAA) ADVISORY & GRANT-MAKING SERVICES**

| KPI                                 | Performance Measure   | Standard / Target  | Reporting Frequency |
|-------------------------------------|---|--|---------------------|
| Arts & Culture Action Plan Progress | Develop an action plan for council approval in year one and subsequent years measured on percentage of actions advanced | At least 25% of council approved actions advanced annually | Annual              |
| Partner Organizations Engaged       | Unique arts organizations collaborating through rental support or technical assistance                                  | At least 10 organizations collaborating per year           | Annual              |
| Grant Program Administration        | Grant cycles completed on schedule stated in operating plan   | 100% of grant cycles completed on schedule                 | Annual              |

6. GOVERNANCE

| KPI                  | Performance Measure   | Standard / Target                             | Reporting Frequency/Source |
|----------------------|---|---|----------------------------|
| Council Oversight    | KPI's reported with results and analysis submitted with annual report       | At least 90% of KPI 's met or exceeded        | Annual                     |
| Contract Compliance  | Material violations of Agreement as set forth in Section 8 of the Agreement | Zero violations                               | Annual                     |
| Reporting Compliance | Required performance reports submitted                                      | 100% of performance reports submitted on time | Annual                     |

7. FINANCIAL STEWARDSHIP & FUNDING DEVELOPMENT

| KPI                      | Performance Measure                          | Standard / Target  | Reporting Frequency |
|--------------------------|--|--|---------------------|
| Non-City Funding Secured | Grants, donations, sponsorships, revenue     | The amount of non-City funding is greater than or equal to the amount in the prior fiscal year | Annual              |
| Capital Funding Support  | Funds raised for capital improvements        | In accordance with plans approved by the City as set forth in subsection 4.16 of the Agreement | Annual              |
| Financial Reporting      | Separate accounting for all restricted funds | 100% Compliance  | Annual              |

8. KPI INTERPRETATION AND APPLICATION

Contextual Evaluation.

The City shall evaluate KPI performance holistically and in context. The City shall determine achievement or non-achievement of individual KPIs in light of program intent, facility capacity, funding levels, economic conditions, community demand, and other material factors, some of which may be reasonably beyond Scottsdale Art's control.

Capacity Stabilization.

Where performance levels approach practical or operational capacity limits, including but not limited to facility availability, venue utilization thresholds, staffing constraints, or funding

limitations, stabilization at high-performance levels may be deemed compliant with KPI expectations, as determined by the City.

**Program Design Flexibility.**

For programmatic KPIs measured by quantity (e.g., number of programs or events), years in which Scottsdale Arts intentionally prioritizes program depth, intensity, or expanded engagement over volume shall be deemed compliant where such approach is documented and demonstrated through qualitative or outcome-based reporting in Scottsdale Arts' annual report.

**Extraordinary or One-Time Revenue.**

Extraordinary or non-recurring, one-time revenues, including major gifts, endowments, capital campaign proceeds, or atypical windfall funding, shall not automatically reset future baseline expectations for revenue-related KPIs unless mutually agreed upon in writing by the Parties.

**Economic Conditions.**

In evaluating revenue-related KPIs, including earned revenue, sponsorships, donations, and non-City funding, the City shall consider prevailing economic conditions and documented market impacts.

**Continuous Improvement Intent.**

KPIs are intended to support accountability, transparency, and continuous improvement and shall not be interpreted or applied in a manner that discourages responsible innovation, prudent risk-taking, or sound financial management.

**9. PERFORMANCE REVIEW AND REMEDIES**

The City may review Contractor performance against these KPIs on a quarterly and annual basis. In addition to the remedies set forth in Section 8 of the Agreement, failure to meet performance standards may result in the City requiring Scottsdale Arts to comply with corrective action plans and/or enhanced reporting requirements. Corrective action plans shall be mutually developed and approved by the City.

## EXHIBIT G

### Additional Deliverables and Required Submissions

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#### Administrative

- Strategic Plan (and amendments, as adopted)
  - Annual Operational Plan (due to the City no later than May 15 each year)
  - Annual Report (due to the City no later than September 15 each year)
  - Annual Independent Financial Audit & Opinion (due to the City no later than May 15)
  - Final Board-approved Annual Budget (submitted to the City within 10 days of approval)
  - Written comparison of non-program costs to peer organizations
  - IRS Form 990 (posted publicly for five years)
  - Financial audit posted publicly for five years
  - Annual report posted publicly for five years
  - Documentation supporting any extraordinary funding requests
  - Insurance certificates and endorsements (submitted to the City within 5 days of execution and upon renewal)
  - Access to books and records for City inspection
  - Performance audit cooperation and documentation (upon request)
  - Timely notices of default events, insurance issues, or regulatory actions
  - Compliance certifications (E-Verify, Israel Boycott statute, nondiscrimination)
- 

#### Public Art & Collections

- Written Public Art, Portable Works, and Museum Collection policies and procedures
  - 10-Year Conservation Budget Estimate
  - Annual presentation of at least one Museum Collection exhibit at SMOCA
  - Written Cultural Improvements Program policies and procedures
- 

#### Facilities Management

- Facility operating policies and procedures
- Proposed facility rental rates submitted to the City annually by February 1
- Event permitting, scheduling, and compliance administration for Civic Center
- Inventory return of City Artwork and Specialty Equipment upon termination

RESOLUTION NO. 13578

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING FINANCIAL PARTICIPATION AGREEMENT NO. 2026-013-COS WITH SCOTTSDALE ARTS, FOR FY2026/2027 IN THE AMOUNT OF \$6,297,114 TO BE ALLOCATED FOR ACTIVITIES CONSISTENT WITH MANAGEMENT SERVICES AGREEMENT 2026-012-COS FOR THE PERIOD OF JULY 1, 2026 THROUGH JUNE 30, 2027.

WHEREAS, on November 10, 2020, the City and Scottsdale Arts ("Scottsdale Arts") entered into Management Services Agreement 2020-046-COS ("Management Services Agreement"), wherein the City designated Scottsdale Arts as the principal organization for advising, planning and administering arts and cultural activities for the City; and

WHEREAS, on June 24, 2025, the City and Scottsdale Arts extended the Management Services Agreement through June 30, 2026; and

WHEREAS, the City and Scottsdale Arts are entering into a new Management Services Agreement 2026-012-COS for the time period of July 1, 2026, to June 30, 2031.

WHEREAS, the City desires to provide funds for the period of July 1, 2026, to June 30, 2027, so that Scottsdale Arts may continue to administer the arts and cultural activities for the City pursuant to the terms of the Management Services Agreement, and the City Council has appropriated funds for such purposes; and

WHEREAS, the Management Services Agreement provides that if the City Council appropriates funds for Scottsdale Arts, the parties shall enter into a Financial Participation Agreement regarding the appropriation; and

WHEREAS, the City is not obligated to pay Scottsdale Arts the full amount appropriated, rather the amount to be paid to Scottsdale Arts is the amount set forth in the Financial Participation Agreement;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Scottsdale as follows:

Section 1. The Mayor is hereby authorized and directed to execute, on behalf of the City, Financial Participation Agreement No. 2026-013-COS with Scottsdale Arts in the amount of \$6,297,114 to be allocated for activities consistent with Management Services Agreement 2026-012-COS for the period of July 1, 2026, through June 30, 2027.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Arizona, this \_\_\_\_ day of \_\_\_\_\_, 2026.


ATTEST:

CITY OF SCOTTSDALE,  
a municipal corporation

\_\_\_\_\_  
Ben Lane, City Clerk

\_\_\_\_\_  
Lisa Borowsky, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Luis E. Santaella, Interim City Attorney  
By: William Hylen, Deputy City Attorney

City of Scottsdale Agreement No. 2026-013-COS

Resolution No. 13578

This Financial Participation Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2026, by and between the City of Scottsdale, an Arizona municipal corporation (the "City"), and the Scottsdale Arts, an Arizona non-profit corporation.

RECITALS

A. The City and Scottsdale Arts executed City of Scottsdale Agreement No. 2026-012-COS ("Management Services Agreement"), in which the City designated Scottsdale Arts as the principal organization for advising, planning and administering arts and cultural activities for the City.

B. In accordance with the Management Services Agreement, the City desires to pay Scottsdale Arts a Management Services Fee for the City's fiscal year 2026-27, and the City Council has appropriated funds for such purposes.

C. The Management Services Agreement provides that the City shall disperse the Management Services Fee for any given fiscal year to the Scottsdale Arts in installment payments, pursuant to a separate financial participation agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, the parties agree as follows:

1. Incorporation of Recitals. The recitals to this Agreement are hereby affirmed by the parties as true and correct and are incorporated herein by this reference.

2. Incorporation by Reference. The Management Services Agreement is incorporated into this Agreement by this reference as if fully set forth herein. Likewise, this Agreement is made a part of the Management Services Agreement by this reference as if fully set forth therein.

3. Definitions. Unless otherwise expressly provided herein, the definitions contained in the Management Services Agreement shall apply to the same terms used in this Agreement.

4. Services to be Performed by the Scottsdale Arts. Scottsdale Arts shall provide the services specified in the Management Services Agreement and shall comply in all respects with the provisions of the Management Services Agreement.

5. Financial Participation by the City.

5.1. Solely for the purposes stated in this Agreement and the Management Services Agreement, the City shall pay Scottsdale Arts a total Management Services Fee of Six Million Two Hundred Ninety-seven Thousand One Hundred Fourteen Dollars (\$6,297,114) during and for the City's fiscal year 2026-27. The City shall pay the Management Services Fee to Scottsdale Arts in accordance with the following schedule. If the first of the month falls on a weekend, payment is due on the following Monday.

5.1.1 One Million Nine Hundred Fifty-eight Thousand One Hundred Seventy-eight Dollars (\$1,958,178) by July 1, 2026.

5.1.2 Three Hundred Ninety-four Thousand Four Hundred Forty-seven Dollars (\$394,447) by August 1, 2026.

5.1.3 Three Hundred Ninety-four Thousand Four Hundred Forty-seven Dollars (\$394,447) by September 1, 2026.

5.1.4 Three Hundred Ninety-four Thousand Four Hundred Forty-seven Dollars (\$394,447) by October 1, 2026.

5.1.5 Three Hundred Ninety-four Thousand Four Hundred Forty-seven Dollars (\$394,447) by November 1, 2026

5.1.6 Three Hundred Ninety-four Thousand Four Hundred Forty-seven Dollars (\$394,447) by December 1, 2026

5.1.7 Three Hundred Ninety-four Thousand Four Hundred Forty-seven Dollars (\$394,447) by January 1, 2027

5.1.8 Three Hundred Ninety-four Thousand Four Hundred Forty-seven Dollars (\$394,447) February 1, 2027

5.1.9 Three Hundred Ninety-four Thousand Four Hundred Forty-seven Dollars (\$394,447) by March 1, 2027

5.1.10 Three Hundred Ninety-four Thousand Four Hundred Forty-seven Dollars (\$394,447) by April 1, 2027.

5.1.11 Three Hundred Ninety-four Thousand Four Hundred Forty-seven Dollars (\$394,447) by May 1, 2027.

5.1.12 Three Hundred Ninety-four Thousand Four Hundred Sixty-six Dollars (\$394,466) by June 1, 2027

5.2. Of the Management Services Fee specified above, Three Million Four Hundred Ninety-seven Thousand One Hundred Ninety-four (\$3,497,194) is hereby allocated and unrestricted by the City as the management and administrative fee to Scottsdale Arts.

5.3. Of the Management Services Fee specified in Subsection 5.1, the following amounts are hereby allocated and restricted by the City and shall be expended by Scottsdale Arts solely for the identified purposes:

5.3.1 Forty-nine Thousand (\$49,000) for the management and administration of grant awards for the Community Art Grants Program, as provided in Subsection 2.3 of the Management Services Agreement.

5.3.2 Eight Hundred Seventeen Thousand Sixty-eight Dollars (\$817,068) for Arts Education and Outreach Programs, as provided in Subsection 2.8 of the Management Services Agreement

5.3.3 Fifty-one Thousand Dollars (\$51,000) from the City's special revenue Community Arts Trust to support additional amounts towards the grant awards and/or other Arts Organizations located in Scottsdale as provided in Subsection 2.3 of the Management Services Agreement.

5.3.4 One Million Dollars (\$1,000,000) from the City's special revenue Tourism Development Fund for the management and administration of the two Destination Events as provided in Subsection 2.7 of the Management Services Agreement.

5.3.5 One Hundred Thirty-seven Thousand Eight Hundred Six Dollars (\$137,806) for the Conservation of City Artwork, as provided in Subsection 3.6 of the Management Services Agreement.

5.3.6 Six Hundred Eighty-nine Thousand Twenty-eight Dollars (\$689,028) for the management and administration of the Cultural Improvements Program and the Art in Public Places Program, as provided in Subsections 5.4 and 3.9, respectively, of the Management Services Agreement.

5.3.7 Fifty-six Thousand Eighteen Dollars (\$56,018) for the maintenance and repair of all Specialty Equipment as provided in Subsection 4.14 and Exhibit C of the Management Services Agreement.

5.4. Not later than May 15 2027, in accordance with Subsection 5.11 of the Management Services Agreement, Scottsdale Arts shall provide the City Contract Administrator with a separate accounting of each of the restricted funds set forth above in subsection 5.3.

6. Term. The term of this Agreement shall commence on July 1, 2026 and end on June 30, 2027 unless sooner terminated.

7. Termination. The termination provisions of the Management Services Agreement are incorporated herein by this reference as if fully setforth.

8. Statutory Cancellation Right. In addition to its other rights hereunder, the City shall have the cancellation rights specified in A.R.S. § 38-511.

9. Survival. Any and all provisions or obligations contained in this Agreement that by their nature or effect are required or intended to be observed, kept or performed after termination of this Agreement shall survive termination of this Agreement and remain binding on the parties.

10. Israel Boycott Prohibition. Scottsdale Arts certifies that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393.

EXECUTED as of the date first given above.

SCOTTSDALE CULTURAL COUNCIL,  
an Arizona non-profit corporation



Gerd Wuestemann  
President and CEO

ATTEST:

CITY OF SCOTTSDALE,  
an Arizona municipal corporation

\_\_\_\_\_  
Ben Lane, City Clerk

\_\_\_\_\_  
Lisa Borowsky, Mayor

APPROVED AS TO FORM:



\_\_\_\_\_  
Luis E. Santaella, Interim City Attorney  
By: William Hylan, Deputy City Attorney



\_\_\_\_\_  
Kevin Burke  
Senior Director of Economic Development and Tourism

# Scottsdale Arts

New 5-Year Management Services Agreement  
& Annual Financial Participation Agreement

City Council | February 24, 2026





# June 24 City Council Meeting

Requested 6-month extension for new leadership to review audit findings and renegotiate an improved, clear, and transparent long-term contract.

Council's preference was to extend 12 months

Direct response to the Auditor's findings (clarity, reporting, measurable outcomes)

Expectation of fiscal responsibility and long-term sustainability




## Summary of Proposed Agreement

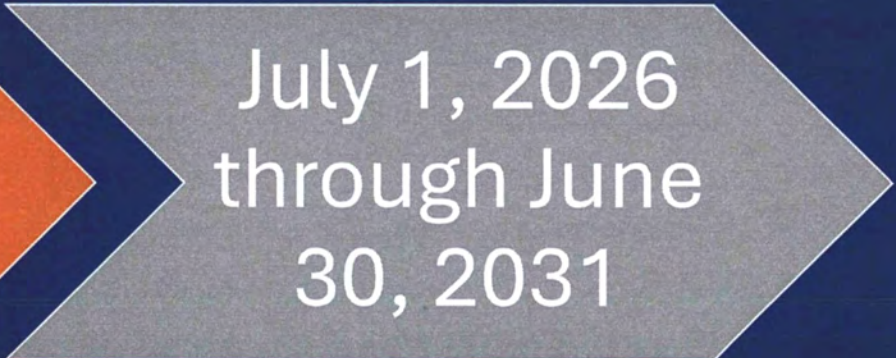
- Term
- Response to Audit Findings
- Scope of Services
- Funding Structure
- Key Performance Indicators
- Reporting



# Management Services Agreement Term




Five-Year  
Term



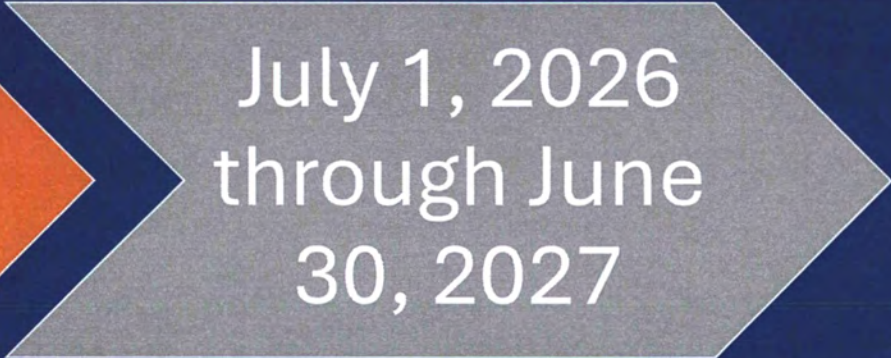
July 1, 2026  
through June  
30, 2031



# Financial Participation Agreement Term



One-Year  
Term



July 1, 2026  
through June  
30, 2027



## Key Areas Identified for Improvement



Contract Clarity & Expectations



City Facilities



Financial Reporting



Oversight

# FY 23/24 Audit Findings

# Differences in New 5-year Agreement

8

## Clarifies the **WHAT**

- Rewritten objectives and scope (5 tracts of work)
- KPI exhibit tied directly to those objectives
- Annual reporting cadence

## Strengthens the **HOW**

- Enhanced financial transparency and restricted-fund accounting
- Simplified/clarified provisions that were ambiguous in practice
- More explicit oversight: enhanced reporting, deliverable monitoring, etc.
- Governance enhancement to strengthen understanding and accountability



# Scope of Services

City-Owned Cultural Venues

Destination Events

Arts Education & Life-Long Learning

Public Art & Community Exhibits

Local Arts Agency (LAA) Functions



# Funding Structure

- 3% Adjustment
- Reduce \$250,000 per year for Total of \$1,000,000
- \$250,000 for 2<sup>nd</sup> Destination Event

|  | FY 26/27                  |
|--|---------------------------|
| <b><i>Unrestricted General Fund:</i></b>           |                           |
| Management and Administration Fee                  | \$3,446,194               |
| <b><i>Restricted General Fund:</i></b>             |                           |
| Arts Education                                     | 817,069                   |
| Community Arts Grant Program                       | 100,000                   |
| Public Art Conservation                            | 137,806                   |
| Public Art Administration                          | 689,028                   |
| Specialty Equipment                                | 56,018                    |
| <i>Sub-Total General Fund Restricted:</i>          | \$1,799,920               |
| <b><i>Total General Fund</i></b>                   | <b><i>\$5,246,114</i></b> |
| <b><i>Restricted Non-General Fund Sources:</i></b> |                           |
| Canal Convergence                                  | \$750,000                 |
| Dreamy Draw / 2 <sup>nd</sup> Destination Event    | 250,000                   |
| Community Arts Trust                               | 51,000                    |
| <b><i>Total Management Services Agreement</i></b>  | <b><i>\$6,297,113</i></b> |



# Key Performance Indicators

| Tract              | Example KPIs (high level)   | Reporting Cadence    |
|--------------------|---|----------------------|
| Venues             | Utilization • Attendance • Earned Revenue Ratio                           | Annual               |
| Destination Events | Events Delivered • Attendance/Visitor Draw • Sponsorship/Non-City Funding | Event-based + Annual |
| Public Art         | Inventory/Condition • Conservation Compliance • Portable Rotations        | Annual               |
| Education          | Programs Delivered • Students Served • Community Learning Offerings       | Annual               |
| LAA/Grants         | Action Plan Progress • Partners Engaged • Grant Cycle Compliance          | Annual               |
| Governance/Finance | On-Time Reporting • Contract Compliance • Restricted-Fund Accounting      | Annual               |

# Key Deliverables & Required Submissions

12

Administrative

Public Art & Collections

Facilities Management



## ADOPT RESOLUTION

**NO. 13577** authorizing agreement no. 2026-012-COS with Scottsdale Arts, a management services agreement for advisory and management services regarding the city's arts and cultural programs for the period from July 1, 2026 to June 30, 2027.

**NO. 13578** authorizing agreement no. 2026-013-COS with Scottsdale Arts, for FY 2026/27 in the amount of \$x to be allocated for activities consistent with management services agreement 2026-012-COS for the period of July 1, 2026 to June 30, 2027.

