

# CITY COUNCIL REPORT



Meeting Date: **September 19, 2023**  
 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**

### **Agreements Authorizing Scottsdale's Museum of the West Expansion.**

1. Adopt Resolution No. 12918, authorizing a Scottsdale Museum of the West Expansion Construction Agreement No. 2023-133-COS between the City of Scottsdale and Scottsdale Museum of the West, Inc. located at 3830 N Marshall Way, Scottsdale, and
2. Adopt Resolution No. 12919, authorizing an amended Museum Management Agreement No. 2021-088-COS-A1 for management services between the City of Scottsdale and Scottsdale Museum of the West, Inc. located at 3830 N Marshall Way, Scottsdale.

## **BACKGROUND**

Western Spirit: Scottsdale's Museum of the West (SMoW) opened on January 15, 2015. Since February 2013, the city has maintained a Museum Management Agreement (MMA) between the City of Scottsdale and Scottsdale's Museum of the West, Inc. (Manager) a non-profit organization that provides management services for the museum in the city's facilities. The contemporary, two-story museum is an award-winning architectural building that meets the highest standards for sustainability and conservation of natural resources. The museum store provides an outstanding selection of quality, western themed merchandise.

A Smithsonian Affiliate since 2015, SMoW continues to be highly rated on TripAdvisor and since 2016 consistently listed as one of the best museums in the nation by *True West Magazine* - just recently being awarded the No. 1 spot for Top Western Museums of the West 2023. The museum celebrates Western Heritage by showcasing art, culture and traditions of the West that reflect the greater American West region, accomplished through western art and history, art and artifacts, interpretive and public programs, permanent and changing exhibits, media, interpretive ideas, educational programs, and programmatic tie-ins to other institutions.

Regularly changing and permanent exhibits featuring Western and Native American art and artifacts bring the West's heritage, culture, and community to life currently featuring: *The Gather: A Portrait of the American West* by Scott T. Baxter; Werner Segarra: *Vaqueros de La Cruz del Diablo*, and

SEE MARKED AGENDA - Adopt Resolution Nos. 12918 and 12919 - YES - 7/0

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

Western Pop: Andy Warhol & Billy Schenck; and The Railroad Opening Up the West, a model train exhibition.

Several significant collections have been gifted to the museum and some are permanent exhibitions including Canvas of Clay: Hopi Pottery Masterworks from The Allan and Judith Cooke Collection that features 65 of the finest examples of Hopi pottery spanning six centuries; the Frankie and Howard Alper Collection of John Coleman Bronzes; and The Abe Hays Family Spirit of the West Collection, a showcase of more than 1,400 saddles, spurs, cowboy gear, and other Old West objects. Of note, the City of Scottsdale sponsored the Canvas of Clay Gallery, which opened in September 2017.

The City Council approved a new five-year Agreement No. 2021-088-COS in July 2021. Having an MMA ensures that the city's facilities and funds are used for the program of work as presented annually through an operation plan and annual report. The agreement is monitored on an ongoing basis by the city's contract administrator and through annual performance measures, programming updates and financial reports. Terms of the agreement call for an annual audit and year-end financial report.

In Spring 2023, the Manager announced a privately funded planned expansion to the city-owned 43,000 square foot building. This new two-story, \$12 million capital development project, underwritten by longtime Valley of the Sun automobile dealer, Western art collector, and philanthropist, Louis Sands IV, will expand the footprint of open gallery space with an additional 11,360 square feet for new dynamic and dramatic rotational exhibitions.

## **ANALYSIS & ASSESSMENT**

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The expansion, to be located on the southwestern corner of the existing building, will include two floors and two new galleries. The Manager has contracted with the same designer (StudioMa) and contractor (CORE) that built the original building at a cost to the city of \$13.6 million.

The expansion cost is estimated to be \$12 million, to be funded by the Manager through a Charitable Gift Agreement. Brick by brick, the Manager will donate the expansion of building to the city. The construction will be completed within two years and have limited impact on the current facility and parking.

The expansion site currently contains a valuable cactus garden display and stacked slate stones. All existing plant materials and stones will be salvaged by the Manager and relocated to a new cactus garden display within the property.

The two-story structure will match the existing museum floors at Level 1 and Level 2 with an open connection into the existing museum for an uninterrupted visitor experience. The design intent is to build a high-quality extension of the existing museum with the same level of quality and care as the original building, and exterior and interior finishes will be selected to match or best complement the existing materials.

With the museum expansion, a construction agreement is required to address construction and guaranteed funding as well as an amended MMA to address items related to the expansion and ongoing cost.

Key points of the construction agreement include:

- Stating all improvements shall be designed and constructed by the museum at their sole cost and expense. (Sec. 3.1)
- Ownership of improvements are considered owned by city and as such, upon construction (brick by brick), title to all such improvements is transferred to city. (Sec. 3.4)
- Outlining the city's approvals of all elements of the project (Sec. 3.7, 3.13)
- All Manager improvements to comply with the design requirements to present uniformity of design, function, appearance, and quality throughout and consistency with other building and improvements. (Sec. 3.10.2)
- Requiring city and Manager to designate a construction manager to coordinate each parties participation in designing and constructing the improvements (Sec. 3.13.1)
- Requiring Manager to provide funding assurances at least two weeks prior to commencing construction. (Sec. 4.1, 4.2)
- Requiring Manager to have their contractor have a payment bond or a performance bond. (Sec. 5.1, 5.2, 5.3)
- Requiring insurance be extended to the expansion. (Sec. 19)
- Documenting the process for approval of the marshalling yard and other logistics (Exhibit C)

The MMA provides for:

- Annual fee by city to Manager is not to exceed \$650,000, which is the amount the city has provided to Manager the last two fiscal years. The expansion will not increase the management services fees nor changes to the financial participation agreement made by the city to the Manager. (Sec. 4.1)
- A new section outlines museum owned art and new art collection shall always conform to generally recognized standards and guidelines for the acquisition, display, exhibition, storage, conservation, disposition and decommission of artwork. (Sec. 5.5.1)
- The city's maintenance responsibilities remain the same as in the original building, and city facilities staff estimates \$40,000 per year for additional city expenses, based on the added square footage for those items the city has responsibility. (Exhibit D)

## **City Council Report | Agreements Authorizing Scottsdale's Museum of the West Expansion**

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- Manager provided its actual and forecast revenue and expenses for the period 2021-2027. (Exhibit E)

This expansion will further position Western Spirit: Scottsdale's Museum of the West not only as a great community asset being our city's western anchor of Scottsdale's Arts District but one that serves all the American West.

### **RESOURCE IMPACTS**

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As stated above, the annual management services fee is not to exceed \$650,000, which is the amount the city has provided to Manager for several fiscal years through an annual financial participation agreement. As such, the expansion will not increase the management services fees or changes to the annual financial participation agreement made by the city to the Manager. The annual maintenance cost increases to the city are estimated at \$40,000.

### **STAFF RECOMMENDATION**

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Adopt Resolution No. 12918, authorizing a Scottsdale Museum of the West Expansion Construction Agreement No. 2023-133-COS between the City of Scottsdale and Scottsdale Museum of the West, Inc. located at 3830 N Marshall Way, Scottsdale, and

Adopt Resolution No. 12919, authorizing an amended Museum Management Agreement No. 2021-088-COS-A1 for management services between the City of Scottsdale and Scottsdale Museum of the West, Inc. located at 3830 N Marshall Way, Scottsdale.

### **RESPONSIBLE DEPARTMENTS**

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Tourism and Events Department

### **STAFF CONTACT (S)**

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Karen Churchard, Tourism & Events Director, [kchurchard@scottsdaleaz.gov](mailto:kchurchard@scottsdaleaz.gov), 480-312-2890

**APPROVED BY**

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*Sonia Andrews*

Sonia Andrews, City Treasurer  
(For Financial Policy Compliance and Budget Appropriation )  
480-312-2364, [sAndrews@scottsdaleaz.gov](mailto:sAndrews@scottsdaleaz.gov)

8/30/23 10:13 MST

Date



Daniel J. Worth, Public Works Director  
480-312-5555, [dworth@scottsdaleaz.gov](mailto:dworth@scottsdaleaz.gov)

8/30/23 10:50 MST

Date

*Erin Perreault*

Erin Perreault, Executive Director  
Planning, Economic Development & Tourism  
480-312-7093, [eperreault@scottsdaleaz.gov](mailto:eperreault@scottsdaleaz.gov)

8/30/23 18:09 MST

Date



Brent Stockwell, Assistant City Manager  
480-312-7288, [bstockwell@scottsdaleaz.gov](mailto:bstockwell@scottsdaleaz.gov)

8/31/23 09:23 MST

Date

*Jim Thompson*

Jim Thompson, City Manager  
480-312-2811, [jthompson@scottsdaleaz.gov](mailto:jthompson@scottsdaleaz.gov)

8/31/23 11:46 MST

Date

**ATTACHMENTS**

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1. Resolution No. 12918
2. Museum Construction Agreement No. 2023-133-COS
3. Resolution No. 12919
4. Amended Museum Management Agreement No. 2021-088-COS-A1

RESOLUTION NO. 12918

A RESOLUTION OF THE CITY OF SCOTTSDALE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE CONSTRUCTION AGREEMENT NO. 2023-133-COS WITH SCOTTSDALE MUSEUM OF THE WEST, INC. FOR EXPANSION OF THE SCOTTSDALE MUSEUM OF THE WEST LOCATED AT 3830 N. MARSHALL WAY, SCOTTSDALE

WHEREAS, the Scottsdale Museum of the West was previously constructed and opened for public visitation in 2015; and

WHEREAS, the City has entered Museum Management Agreement No. 2021-088-COS with Scottsdale Museum of the West, Inc. ("Manager"); and

WHEREAS, Manager desires to finance and construct an expansion of the existing Museum building through the use of private funds and Manager is willing to expand the scope of the Management Agreement to include management of any additionally constructed space; and

WHEREAS, the City believes that private funding sources are sufficient to fund construction of an expansion of the Museum building; and

WHEREAS, it is in the best interest of the City to enter into an agreement that defines the rights and responsibilities of the parties with respect to construction of the Museum expansion;

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

Section 1. That the Mayor of the City of Scottsdale is hereby authorized and directed to execute Scottsdale Museum of the West Expansion Construction Agreement No. 2023-133-COS between the City of Scottsdale and Scottsdale Museum of the West, Inc.

Section 2. The City Council hereby authorizes the City Manager or designee to execute any other documents and take such other actions as are necessary to carry out the intent of this Resolution and Contract No. 2023-133-COS.

PASSED AND ADOPTED by the Council of Scottsdale this \_\_\_\_ day of \_\_\_\_\_, 2023.

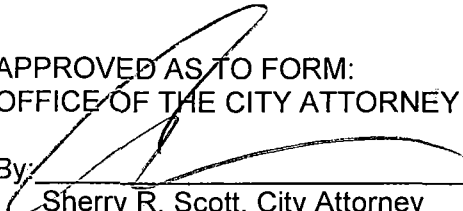
ATTEST:

CITY OF SCOTTSDALE, an Arizona municipal corporation

By: \_\_\_\_\_  
Ben Lane, City Clerk

By: \_\_\_\_\_  
David D. Ortega, Mayor

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

By:  \_\_\_\_\_  
Sherry R. Scott, City Attorney  
By: Eric Anderson, Senior Assistant City Attorney

**MUSEUM EXPANSION CONSTRUCTION AGREEMENT**

THIS MUSEUM EXPANSION CONSTRUCTION AGREEMENT (the "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Scottsdale, an Arizona municipal corporation ("City"), and Scottsdale Museum of the West, Inc., an Arizona non-profit corporation ("Manager").

**RECITALS REGARDING AGREEMENT**

A. The art and culture of the Western United States during the years from approximately 1820 through 1920 ("Western Heritage") are an important part of the City of Scottsdale's and the State of Arizona's past, present and future.

B. The Scottsdale Museum of the West (the "Facility") celebrates Western Heritage by showcasing art, culture and traditions of the West that reflect the greater American West region, accomplished through western art and history, art and artifacts, interpretive and public programs, permanent and changing exhibits, media, interpretive ideas, educational programs, and programmatic tie-ins to other institutions.

C. In 2013, the Parties entered Contract No. 2013-025-COS (which has since been terminated) wherein the City agreed to construct and Manager agreed to manage a facility generally located at 1<sup>st</sup> St. and Marshall Way in the City of Scottsdale. The initial construction of the Facility has been completed and Manager is currently managing the Facility through Contract No. 2021-088-COS as amended ("the Management Agreement") and associated financial participation agreements.

D. The Parties desire to expand the Facility to add an additional approximate 11,360 square feet of space and Manager has secured substantial funding to support this effort.

E. City is willing to allow the expansion of the Facility on City owned property so long as certain terms and conditions are met by Manager.

NOW, THEREFORE, for and in consideration of the foregoing and the covenants and agreements contained herein and other good and valuable consideration, City and Manager agree that the Agreement is hereby as follows:

1. City-Owned Facilities. The City-Owned Facilities ("City-Owned Facilities") are facilities owned, leased or otherwise controlled by the City and are depicted in Exhibit A to this Agreement. The City-Owned Facilities include:

A. The Scottsdale's Museum of the West ("SMoW") and the exterior Plaza, which is located at 3830 N Marshall Way, Scottsdale, Arizona, excepting those portions of the premises occupied from time to time by the City.

2. No Real Estate Interest. Regardless of funding source, the Parties do not intend this Agreement to create any real estate interest or ownership of any City property including the Facility and any expansion thereof. Manager expressly disclaims any such real estate or ownership interests and Manager shall further cause any donors, funding sources, or persons otherwise contributing to the Facilities expansion to execute a disclaimer acknowledging the

same. Such disclaimer shall be substantially in the form attached hereto as Exhibit B or as otherwise approved by City's Contract Administrator. This Agreement shall not confer any naming or other rights of publicity associated herewith but such rights may be addressed through other agreements.

3. Manager Improvements. Manager desires to construct an expansion to the existing Facility as depicted in Exhibit C. Construction will be in accordance with permits issued by City's Planning & Development Department in general conformance with the construction plan set forth in Exhibit C as well as City's Design Standards & Policies Manual. Manager shall not perform any improvements, repairs, installation, construction, grading, structural alterations, utility alterations, parking or traffic alterations, removal, demolition or other cumulatively significant construction or similar work of any description whether or not specifically described herein upon or related to the Premises (collectively "Manager's Improvements") except in compliance with the following:

3.1 *Cost of Manager Improvements*. Should Manager wish to further improve the Premises, all Manager's Improvements shall be designed and constructed by Manager at Manager's sole cost and expense. In no event, including without limitation termination of this Agreement for any reason, shall City be obligated to compensate Manager in any manner for any of Manager's Improvements or other work provided by Manager during or related to this Agreement. Manager shall timely pay for all labor, materials, work and all professional and other services related thereto and shall pay, indemnify, defend and hold harmless City and City's employees, officer's, contractors and agents against all claims related thereto. Manager shall bear the cost of all work required from time to time to cause the Premises to comply with local zoning rules, environmental approvals, the Americans with Disabilities Act, building codes and similar rules. Manager shall also bear the cost of all work required from time to time to cause any other property owned by City to comply with all such rules implicated by work performed by Manager, by Manager's use of the Premises, or by any exercise of the rights granted to Manager under this Agreement.

3.2 *Design and Construction Professionals*. All construction and plans preparation for all Manager's Improvements from initial proposals through final construction documents and completion of construction shall be performed by professionals selected and paid by Manager. All of Manager's design and construction contractors shall have substantial experience in timely and successfully constructing projects similar to Manager's Improvements. Manager's Contractor shall also provide insurance as set forth in Exhibit E.

3.3 *Improvement Quality*. Any and all work performed on the Premises by Manager shall be performed in a workman-like manner as reasonably determined by City and shall be diligently pursued to completion and in conformance with all building codes and similar rules. All of Manager's Improvements shall be high quality, safe, modern in design, and attractive in appearance, all as approved by City through the plans approval processes described in this Agreement in addition to any zoning, building code or other regulatory processes that may apply.

3.4 *Ownership of Manager's Improvements*. All Manager's Improvements shall be considered owned by City throughout the term of this Agreement. Upon construction (brick by brick), title to all such improvements shall be deemed automatically transferred to City, without need for action by any party, (b) the foregoing shall not excuse Manager from any of its obligations under the this Agreement concerning such improvement, and (c) Manager shall not



have any right to remove any such Improvements upon any termination of the management agreement or upon the expiration of the term of this Agreement, except as may be expressly permitted pursuant to this Agreement.

3.5 *Time for Completion.* Manager shall diligently and expeditiously pursue to completion the construction of all approved Manager's Improvements and shall complete construction of all of Manager's Improvements, if any, no later than the earlier of i) twenty-four (24) months after commencement of such construction, or ii) any earlier date required by this Agreement or by City's approval of the plans.

3.6 *Construction Coordination.* Manager shall conduct all of its construction activities at and about the Premises so as not to materially interfere with activities, operation, and other construction for surrounding properties.

3.7 *Approval Required.* Manager shall not perform any construction work requiring a building permit without having first received the written consent of City.

3.8 *Effect of Approval.* City's approval of plans submitted shall be irrevocable for purposes of this Agreement and shall constitute approval (but only at the level of detail of the applicable stage of the review process) of the matters plainly shown on the plans approved. City shall not reject subsequent plans to the extent the matter to which City objects was clearly included in plans previously approved by City and plainly shown on plans previously approved by City. However, City is not precluded from objecting to refinements or implementation of matters previously approved or treatment of matters previously not approved.

3.9 *Utility Modifications.* Any changes to utility facilities shall be strictly limited to the Premises and shall be undertaken by Manager at its sole cost and expense.

3.10 *Design Requirements.* All Manager's Improvements shall comply with the following design requirements:

3.10.1 All Manager's Improvements shall be contained entirely within the Premises and without any encroachment or dependence upon any other property, except that Manager's Improvements shall include construction of related curbs, gutters, pavement, landscaping, and other street improvements City determines to be appropriate.

3.10.2 All Manager Improvements shall be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other buildings and improvements in the surrounding area.

3.10.3 All Manager's Improvements shall comply with all requirements of law, any applicable insurance contracts, all Site Documents and this Agreement.

3.10.4 Manager shall be responsible to directly obtain all necessary permits and approvals from any and all governmental or other entities having standing or jurisdiction over the Premises.

3.10.5 To the extent requested by City, Manager's plans shall include a description of construction methods employed to address environmental issues affecting or affected by the Premises and protect other facilities and surrounding properties.

3.11 *Disturbance of Toxic Substances.* Prior to undertaking any construction or maintenance work, Manager shall cause the Premises to be inspected to ensure that no potential asbestos or other Toxic Substances are disturbed, except in accordance with all applicable laws and regulations. Prior to any work of any description that bears a material risk of disturbing potential asbestos or other Toxic Substances, Manager shall cause the contractor or other person performing such work to give to City notice by the method described in this Agreement to the effect that the person will inspect for such materials, will not disturb such materials except in accordance with all applicable laws and regulations, and will indemnify, defend and hold City harmless against any disturbance of such materials in the course of the contractor's or other person's work. Manager shall cause any on-site or off-site storage, inspection, treatment, transportation, disposal, handling, or other work involving Toxic Substances by Manager in connection with the Premises to be performed by persons, equipment, facilities and other resources who are at all times properly and lawfully trained, authorized, licensed, permitted and otherwise qualified to perform such services.

3.12 *Plans Required.* Manager's design of all Manager's Improvements shall occur in three stages culminating in final working construction documents for the Manager's Improvements (the "Final Plans"). The three stages are, in order of submission and in increasing order of detail, as follows:

3.12.1 Conceptual plans showing the general layout, locations, elevations, configuration, and capacities of all significant improvements, topographical features, pedestrian and vehicular ways, buildings, utilities, water systems, and other features significantly affecting the appearance, design, function and operation of each element of Manager's Improvements. The conceptual plans must also show general locations and dimensions of all rooms, hallways and other areas together with the number of square feet of building and other area that all significant uses and facilities will respectively occupy.

3.12.2 Preliminary plans showing all building finishes and treatments, finished elevations, general internal and external building design and decoration schemes (including without limitation colors, textures and materials), mechanical, communications, electrical, plumbing and other utility systems, building materials, landscaping and all other elements necessary prior to preparation of final working construction documents and showing compliance with all requirements of this Agreement. The preliminary plans shall show all detail necessary prior to preparation of Final Plans.

3.12.3 Final Plans.

3.13 *Approval Process.* The following procedure shall govern Manager's submission to City of all plans for Manager's Improvements, including any proposed changes by Manager to previously approved plans:

3.13.1 Upon execution of this Agreement, City and Manager shall each designate a construction manager to coordinate the respective party's participation in designing and constructing the Manager's Improvements. Each construction manager shall devote such time and effort to the Manager's Improvements as may be necessary for timely, good faith, and convenient coordination among the parties and their representatives involved with the Manager's Improvements and compliance with this Agreement. City's construction manager will not be exclusively assigned to this Agreement or the Manager's Improvements.

3.13.2 All plans submitted under this Agreement shall show design, appearance, style, landscaping, mechanical, utility, communication and electrical systems, building materials, layout, colors, streets, sidewalks, transportation elements, views, and other information reasonably deemed necessary by City for a complete understanding of the work proposed, all in detail reasonably deemed appropriate by City for the level of plans required by this Agreement.

3.13.3 All submissions by Manager under this Agreement shall be delivered directly to City's construction manager and shall be clearly labeled to indicate that they are submitted pursuant to this Agreement and not for building permits, zoning or other approvals. Each submittal of plans by Manager for City's review shall include two (2) complete sets of the plans on paper together with one (1) electronic copy of the plans in PDF.

3.13.4 Manager shall coordinate with City as necessary on significant design issues prior to preparing plans to be submitted hereunder.

3.13.5 In addition to other submissions required under this Agreement, Manager shall simultaneously deliver to City's construction manager copies of all applications and supplemental, supporting and related materials for all zoning, development review and similar processes for the Manager's Improvements (excluding building permits).

3.13.6 No plans shall be deemed approved by City until stamped "APPROVED PER ARTICLE III OF CONSTRUCTION AGREEMENT" (or other words clearly evidencing City's approval pursuant to this Agreement as distinguished from any regulatory or other approval) and dated and initialed, by City's construction manager (collectively "Stamped").

3.13.7 Construction shall not commence until Manager delivers to City a formal certification in favor of City by a qualified registered engineer acceptable to City to the effect that the Manager's Improvements are properly designed to be safe and functional and comply with this Agreement. Such certification shall be accompanied by and refer to such supporting information and analysis as City may require. Such certification shall be on the face of the plans themselves.

3.13.8 Manager acknowledges that City's construction manager's authority with respect to the Premises is limited to the administration of the requirements of this Agreement. No oral approval, consent or direction by City's construction manager or other persons affiliated with City inconsistent with this Agreement shall be binding upon City. Manager shall be responsible for securing all environmental and zoning approvals, development review, and other governmental approvals and for satisfying all governmental requirements pertaining to the Manager's Improvements and shall not rely on City or City's construction manager for any of the same.

3.13.9 City's issuance of building permits or zoning clearances, or any other governmental reviews or actions shall not constitute approval of any plans for purposes of this Agreement. Manager's submission of plans under this Agreement, City's approval of plans for purposes of this Agreement, and the plans approval process under this Agreement, shall be separate and independent of all zoning, design review and other regulatory or similar plans submittal and approval processes, all of which shall continue to apply in addition to the requirements of this Agreement and its approvals.

3.13.10 City has the right to require Manager to obtain approval for any Manager Improvements from the City of Scottsdale Development Review Board and any similar body. Manager shall hand deliver all plans to City no later than each submission date. Submission dates shall be such dates as are necessary for Manager to timely obtain the approvals required by this Agreement. Manager is responsible to allow adequate time for all communications and plans revisions necessary to obtain approvals and shall schedule its performances hereunder and revise its plans as necessary to timely obtain all approvals.

3.13.11 Within thirty (30) days after City's receipt of plans from Manager, City shall make available to Manager one (1) copy of the plans Manager submitted either Stamped or marked to indicate the reasons that City does not approve the plans.

3.13.12 If changes are required, Manager shall revise the plans incorporating the changes requested by City and shall within thirty (30) days after City returns the marked-up plans to Manager submit revised plans to City. Within twenty (20) days after City's receipt of the revised plans, City shall make available to Manager one (1) copy of the revised plans either Stamped or marked to indicate the reasons that City does not approve the plans.

3.13.13 Manager shall provide to City copies of any and all designs or plans for improvements upon the Premises for City's unrestricted use at the Premises or elsewhere.

3.13.14 **Minor Changes.** City's consent shall not be required for minor changes discovered by Manager during the course of construction to be necessary to complete construction as contemplated by the latest plans approved by City. For purposes of the preceding sentence, "minor changes" are those that do not materially alter the structure, size, layout, location, quality, appearance, functionality or other aspects of any room, area, feature, structure, or other aspects of any improvements. Manager shall give to City as much advance notice of any minor changes as is reasonably possible. In the event advance notice to City is not possible, Manager shall as soon as possible, and in no event later than three (3) days after the change, give City notice of any such minor change. Such notice shall refer specifically to this paragraph.

3.14. Parking Requirements. In order to account for additional parking spaces needed due to the Museum expansion, Manager shall secure seven (7) additional parking spaces at a location adjacent to or near the Museum building. For purposes of Planning and Development, City consents to Manager leasing such parking spaces within the planned apartment building complex to be constructed between 2nd and 3rd Streets on Marshall Way in Scottsdale, Arizona, by the owner ARC Scottsdale Holdings LLP. In the event that the required spots cannot be secured in that manner, Manager shall promptly locate and secure substitute spots in a location at or near the Museum building which is approved by City's Contract Administrator. Any parking agreement entered by Manager for this purpose will include execution of the City's standard "Assurance to the City of Remote Parking" agreement as approved by City's Planning & Development Department.

4. Funding Assurances. Manager shall at least two weeks prior to the commencement of any construction work by Manager provide to City the following assurances that Manager will timely pay for the work to be completed (the "Funding Assurances") as follows:

4.1 *Funding Assurances Amount.* The Funding Assurance shall be in an amount (the "Funding Assurances Amount") equal to one hundred percent (100%) of the full contract amounts payable directly or indirectly to all persons for the construction work. In the event the contract amounts increase, the Funding Assurances Amount shall increase by the same proportion.

4.2 *Funding Assurances Alternatives.* All Funding Assurances shall be approved by the City and consist of one of the following:

4.2.1 A fully executed construction loan commitment or agreement legally obligating a reputable federally insured financial institution to fund construction.

4.2.2 A letter of credit meeting the requirements listed on Exhibit "D" attached hereto. The following provisions apply to any and all letters of credit provided by Manager under this Agreement:

4.2.2.1 Manager shall cause the original letter of credit to be delivered to City's financial services general manager. Manager shall pay all costs associated with the letter of credit, regardless of the reason or manner such fees are required.

4.2.2.2 Within fourteen (14) days after City gives Manager notice that City has drawn on the letter of credit, Manager shall cause the letter of credit to be replenished to its prior amount.

4.2.2.3 City may draw on the letter of credit upon any Event of Default related to the construction and completion of any improvement reinitiating the Funding Assurance, and in the following circumstances whether or not they are an Event of Default:

4.2.2.4 Manager fails to cause the letter of credit to be renewed, extended, increased in amount or otherwise maintained as required by this Agreement.

4.2.2.5 Manager fails to make monetary payments related to the construction of improvements required under this Agreement.

4.2.2.6 The issuer of the letter of credit fails to immediately honor a draft on the letter of credit or otherwise repudiates or fails to honor the letter of credit.

4.2.2.7 City shall also have such additional rights regarding the letter of credit as may be provided elsewhere in this Agreement.

4.2.3 Written confirmation from a federally insured financial institution reasonably approved by City having offices in Maricopa County, Arizona to the effect that said institution is holding funds (the "Construction Account") in the Funding Assurances Amount. Such funds shall be held in an interest-bearing account in City's name only. All interest shall remain in the Construction Account until conclusion of the project and full payment therefore. Funds shall be disbursed to anyone other than City only upon City's notice to the institution that City has received unrelated third-party invoices for actual hard costs of construction labor or materials together with notice from Manager that such funds may be disbursed. The invoices must be accompanied by a certificate from the third party that the third party has actually supplied the labor or materials to the Premises and by such additional information and things as City may reasonably deem necessary to determine compliance with this Agreement. All

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distributions from the Construction Account shall be by check payable to City or jointly payable to Manager and the third party, provided that, if Manager provides receipts to City showing Manager has already paid the third party payee, then checks reimbursing Reimbursable Funds to Manager shall name only Manager as payee. Manager shall provide to City no later than the tenth day of each month a detailed statement of Construction Account activity during the preceding month. All funds will be immediately available to City upon demand. At no time is City required to pay or advance any funds not previously deposited by Manager.

4.2.4 A construction escrow agreement on terms mutually acceptable to Manager and the City's Contract Manager.

4.2.5 City's City Manager may make modifications to the funding assurance requirements of this section if in the City Manager's discretion, such modifications do not unreasonably impair City's assurance that construction will be completed in accordance with this Agreement.

5. Contractor Assurances. In addition to the Funding Assurances and any other payment or performance required under this Agreement, Manager shall at least two weeks prior to the commencement of any construction work by Manager provide to City evidence of the following assurances in favor of Manager that Manager's general contractor will timely and properly complete and pay all suppliers and subcontractors for the work completed (the "Contractor Assurances") as follows:

5.1 *Contractor Assurance Amount.* Each Contractor Assurance shall be in an amount (the "Contractor Assurance Amount") equal to one hundred percent (100%) of the full contract amount payable directly or indirectly to all persons for the construction work.

5.2 *Contractor Assurances Required.* Manager's obligation to cause its general contractor to provide Contractor Assurances includes both of the following:

5.2.1 A payment bond in favor of Manager covering all of the contracted work.

5.2.2 A performance bond in favor of Manager covering all of the contracted work.

5.3 *Contractor Assurance Qualifications.* The issuer of each Contractor Assurance must be qualified to do business and in good standing in the State of Arizona and in its home state and must have a net worth of at least three times the Contractor Assurance amount. Each Contractor Assurance shall be issued by a person acceptable to City and shall also at a minimum meet the requirements of A.R.S. §§ 34-222 to 34-223, and other applicable laws.

6. Rules Applicable to Both Funding Assurances and Contractor Assurances. The following rules shall be applicable to both all Funding Assurances and all Contractor Assurances (collectively "Improvement Assurances"):

6.1 *Amount Adjustment.* In the event the required amount of an Improvement Assurance increases from time to time by more than ten percent (10%) above the prior amount, Manager shall, on or before the date of the increase, deliver to City an additional Improvement

Assurance in the amount of such increase, or cause the existing Improvement Assurance held by City to be amended to increase its amount.

6.2 *Improvement Assurance Form.* Each Improvement Assurance must be in form and substance reasonably acceptable to City. The scope of City's approval is to assure that the Improvement Assurance complies with this Agreement. Manager shall deliver directly to City's legal department (together with a copy to City as provided for notices under this Agreement) a full and complete draft form of each Improvement Assurance and all related and supporting documentation at least twenty (20) days prior to the date the actual Improvement Assurance is required. City shall give its comments concerning the draft form no later than ten (10) business days after receiving the draft form.

6.3 *Improvement Assurance Claims.* City shall not make demand on an Improvement Assurance contrary to the provisions of this Agreement; but in the event of a dispute over City's obtaining and using the benefits of an Improvement Assurance due to a default by Manager, neither Manager, the Improvement Assurance issuer, nor any third party shall be entitled to interfere in any way (including without limitation, restraining order, injunctions or other judicial remedies, all of which are hereby unconditionally and irrevocably waived) with City's obtaining or using the funds or other benefits of the Improvement Assurance. This paragraph does not apply to a construction loan commitment or the Contractor Assurances.

6.4 *City's Improvement Assurance Claim.* In the event Manager is in default or the construction is not completed or timely progressing for any reason, City shall have the right to set-off, deduct and withhold an amount or otherwise make claim upon any Improvement Assurance sufficient to complete the construction and to pay all other costs and expenses related to such construction. Additionally, in such event, City shall have the right to claim an amount sufficient to pay all costs of litigation, attorneys' fees and costs required by a judgment or decision relating to any contingent liability that, in the opinion of City, may be outstanding at the time of termination. Further, City may draw on any Improvement Assurance at any time whatsoever to satisfy any of Manager's obligations under this Agreement. This paragraph does not apply to a construction loan commitment or the Contractor Assurances.

6.4 *Improvement Assurance Term.* Manager shall give City not less than thirty (30) days nor more than sixty (60) days advance notice of expiration or other termination of an Improvement Assurance. Any replacement Improvement Assurance must be delivered to City at least thirty (30) days before expiration of the Improvement Assurance being replaced. Any replacement Improvement Assurance must meet all requirements of this Agreement. No Improvement Assurance may be modified without City's consent.

6.5 *Release of Improvement Assurance.* Within thirty (30) days after the last to occur of the following, City shall deliver to Manager notice that the Improvement Assurance is released: i) Manager's completion of the Manager Improvements, ii) Manager's payment of all design, construction, and all other amounts to be paid in connection with construction of the Manager Improvements, iii) Manager's performance and payment of all other obligations related to the Improvement Assurance and the construction, payment and other obligations thereto, and iv) Manager's giving to City notice requesting the release stating that the preceding conditions have been satisfied along with such supporting documentation as City may reasonably require. This paragraph does not apply to a construction loan commitment or the Contractor Assurances.

7. Managerial Services and Responsibilities. At or near the same time as execution of this Agreement Manager shall execute an agreed upon amendment to its Management Agreement with the City to manage, operate and program the addition to the Facility contemplated by this Agreement.

8. Other Agreements. Manager shall comply with any recorded or unrecorded agreements or other matters affecting the Facility. City does not warrant title to the Facility.

9. City's Fixtures and Personalty. City is not obligated to provide any fixtures or personal property. Any and all of City's property as may come into the possession of Manager or be used by Manager shall be returned to City by Manager upon the earlier of City's request or at termination of this Agreement and shall be maintained in good working condition by Manager from time to time at Manager's expense and replaced by Manager at Manager's expense when worn out and shall be owned at all times by City with Manager being solely responsible for the condition thereof. All such personal property is provided "as is" and Manager accepts all responsibility for its condition and shall thoroughly inspect the same before use.

10. Term of Agreement. This Agreement is effective upon the date of its execution by all Parties. The term of the Agreement shall be for a period of five (5) years or until all construction contemplated by this Agreement is completed, whichever is later.

11. Breach. Manager shall comply with, perform and do each performance and obligation required of Manager herein and shall cause all persons using the Facility or claiming through or under Manager or this Agreement to do the same. Manager's failure to do so shall be a breach by Manager of this Agreement.

12. 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 Manager of Manager's material obligations under this Agreement:

12.1 If Manager shall be in arrears in the payment of any amount and shall not cure such arrearage within ten (10) days after City has notified Manager in writing of such arrearage.

12.2 If Manager shall fail to operate the facilities as herein required.

12.3 If Manager shall fail to timely pay any taxes or other amounts herein required to be paid by Manager to any third person. Such failure to pay shall not be an event of default if Manager gives immediate notice to City of Manager's intent to challenge the amount claimed to be due, Manager does in fact promptly challenge said amount, and Manager provides to City with said notice bonds or other financial security adequate in City's discretion to assure Manager's ability to pay the disputed amount and to protect City and the Facility from adverse consequences of Manager's failure to pay.

12.4 If Manager shall fail to or neglect to do or perform or observe any other provision 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 City has notified Manager in writing of Manager's breach.

12.5 If Manager shall repeatedly fail to perform any requirement of this Agreement. After City has once given notice of any failure by Manager to comply with any provision



of this Agreement, three (3) or more failures to comply with said provision of this Agreement during any six (6) month period shall constitute a repeated failure by Manager to comply with such provision.

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

13.1 Terminate this Agreement.

13.2 Without demand or notice, enter into and upon the Facility or any part thereof, and expel Manager and those claiming by, through or under it, and remove their effects, if any, forcibly if necessary, without being deemed guilty of trespass and without prejudice to any other remedy.

13.3 Enforce a lien hereby established upon Manager's property (excluding any property belonging to persons or entities other than Manager) at the Facility securing all of Manager's obligations hereunder.

13.3 Cause a receiver to be appointed for the Facility and for the continuing operation of Manager's business thereon.

13.4 Pay or perform, for Manager's account and at Manager's expense, any or all payments or performances required hereunder to be paid or performed by Manager.

13.5 Abate at Manager's expense any violation of this Agreement.

13.6 Refuse without any liability to Manager therefor to perform any obligation imposed on City by this Agreement.

13.7 Be excused without any liability therefore from further performance under this Agreement.

13.8 Insist upon Manager's full and faithful performance under this Agreement during the entire remaining term of this Agreement.

13.9 Assert or exercise any other right or remedy permitted by law.

14. Power of Attorney. For the purpose of exercising any of City's rights or remedies as hereunder, Manager hereby irrevocably appoints City as Manager's true and lawful attorney in fact, and such power of attorney shall be deemed to be a power coupled with an interest that cannot be revoked for any reason, to pay or perform, for Manager's account and at Manager's expense, any or all payments or performances required hereunder to be paid or performed by Manager, to terminate of record this Agreement, to enter into and upon the Facility or any part thereof, and to perform any act upon the Facility or otherwise deemed necessary by City to exercise its rights under this Agreement.

15. Non-waiver. Manager acknowledges Manager's unconditional obligation to comply with this Agreement. No failure by City to demand any performance required of Manager under this Agreement, and no acceptance by City of any imperfect or partial performance under this Agreement, shall excuse such performance or impair in any way City's ability to insist,

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prospectively and retroactively, upon full compliance with this Agreement. No acceptance by City of payments or other performances hereunder shall be deemed a compromise or settlement of any claim City may have for additional or further payments or performances. Any waiver by City of any breach of condition or covenant herein contained to be kept and performed by Manager shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent City from declaring a default for any succeeding or continuing breach either of the same condition or covenant or otherwise. No statement, bill or notice by City concerning payments or other performances due hereunder shall excuse Manager from compliance with this Agreement nor estop City (or otherwise impair City's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this Agreement. No waiver of any description (including any waiver of this sentence or paragraph) shall be effective against City unless made in writing by a duly authorized representative of City specifically identifying the particular provision being waived and specifically stating the scope of the waiver. Manager expressly disclaims and shall not have the right to rely on any supposed waiver or other change or modification, whether by word or conduct or otherwise, not conforming to this paragraph.

16. Reimbursement of Remedies City's Expenses. Manager shall pay to City upon demand any and all reasonable amounts expended or incurred by City in performing Manager's obligations under this Agreement.

17. Inspection. City shall have access to the Facility at all times and upon reasonable notice (except, in the event of an emergency without notice) for the purpose of examining, inspecting, evaluating, planning, repairing, designing, maintaining or showing the Facility or exercising City's other rights hereunder. Manager shall promptly undertake appropriate action to rectify any deficiency (identified by City during such inspections or otherwise) in Manager's compliance with this Agreement.

18. Default by City. Notwithstanding anything in this Agreement to the contrary, if City at any time is required to pay to Manager any amount or render any performance, such amount or performance is not due until thirty (30) days after notice by Manager to City that the amount has become payable or that the performance is due. If a cure cannot be effected during that period, City shall not be in default so long as City commences cure during the period and diligently prosecutes the cure to completion provided such cure must be completed within sixty (60) days after it is due.

19. Rights at Termination. Termination of this Agreement due to Manager's breach or for any other reason does not terminate Manager's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or in any way terminate any of Manager's liability related to this Agreement.

20. Insurance and Indemnity. During the entire term of this Agreement, Manager shall insure the Facility and any expansion thereof and provide indemnification to the City in the same manner as is set forth in the Management Agreement.

21. Condemnation. The terms and conditions in the Management Agreement shall govern any condemnation of any part of or interest in the Facility or expansion thereof.

22. Damage to or Destruction of Facility. The terms and conditions in the Management Agreement shall govern any damage or destruction occurring to the Facility or expansion thereof.

23. Procurement Process. Manager shall cause all Manager design and construction

activity at the Facility to comply in all respects with all applicable bidding and procurement laws and shall pay, indemnify, defend and hold harmless City from any suits or other claims of any description related to such laws. City shall have the right, but not the obligation, to determine in City's reasonable discretion how such laws apply to the Facility.

24. Miscellaneous. The following additional provisions apply:

24.1 *Severability*. If any provision of this Agreement is declared void or defective, that declaration shall not affect the validity nor any other provision of this Agreement.

24.2 *Amendments*. This Agreement may not be amended except by a formal writing executed by all of the parties.

24.3 *Conflicts of Interest*. No member, official or employee of 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 and City shall have the cancellation rights specified in A.R.S. § 38-511.

24.4 *Notices*. Notices hereunder shall be given in writing personally served upon the other party or mailed by registered or certified mail, return receipt requested, postage prepaid addressed to:

If to City: Karen Churhard  
Tourism and Events Director  
City of Scottsdale  
7506 E. Indian School Road  
Scottsdale, AZ 85251

Copy to: City of Scottsdale  
3939 Drinkwater Blvd.  
Scottsdale, AZ 85251  
Attn: City Attorney

If to Manager: Museum of the West  
3830 N. Marshall Way  
Scottsdale, Arizona 85251

Copy to: William Ridenour, Esq.  
Fennemore Craig  
2394 East Camelback Road, Suite 600  
Phoenix, Arizona 85016-5695

By notice from time to time, a party may designate any other street address within Maricopa County, Arizona as its address for giving notice hereunder. Notices to Manager may instead be hand delivered to Manager's management office at the Facility. Service of any notice by mail shall be deemed to be complete three (3) days (excluding Saturday, Sunday and legal holidays) after the notice is deposited in the United States mail.

24.5 *Contract Administrator*. The City's contract administrator shall be the Tourism and Events Director or such other person as may be designated by the City Manager. The

contract administrator shall have authority to exercise all powers and rights of the City under this Agreement.

24.6 *Time of Essence.* Time is of the essence of each and every provision of this Agreement.

24.7 *Integration.* This Agreement constitutes the agreement between the parties with respect to the subject matter of expansion of the Facility. The Parties recognize the existence of the Management Agreement concurrent with this Agreement and further agree that the terms of the Management Agreement shall be incorporated into this Agreement herein by reference with the exception of any terms of the Management Agreement that should conflict with the terms of this Agreement in which case such conflicting term(s) shall not be applicable to this Agreement.

24.8. *Construction.* Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was entered into on the basis that it shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, that might otherwise favor Manager.

24.9 *No Third-Party Beneficiaries.* Except for any limited provisions expressly stated to be for the benefit of a third party, no person or entity shall be a third-party beneficiary to this Agreement or shall have any right or cause of action hereunder. City shall have no liability to third parties for any approval of plans, Manager's construction of improvements, Manager's negligence, Manager's failure to comply with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by Manager), or otherwise as a result of the existence of this Agreement.

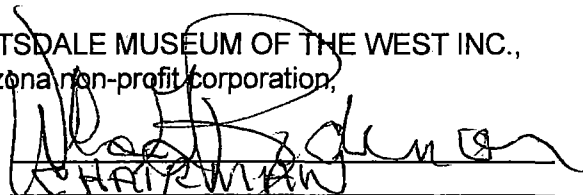
24.10 *Exhibits.* All attached exhibits that are specifically referenced in this Agreement are hereby incorporated into and made an integral part of this Agreement for all purposes.

24.11 *Choice of Law.* This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules. Exclusive proper venue for any action regarding this Agreement shall be Maricopa County.

EXECUTED as of the date first given above.

MANAGER: SCOTTSDALE MUSEUM OF THE WEST INC.,  
an Arizona non-profit corporation,

By:  
Its:



A. HARTMAN

CITY: CITY OF SCOTTSDALE,  
an Arizona municipal corporation

By: \_\_\_\_\_  
David D. Ortega, Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Sherry R. Scott, City Attorney  
By: Eric C. Anderson, Senior Assistant City Attorney

  
\_\_\_\_\_  
Karen Churchard  
Tourism and Events Director

**TABLE OF EXHIBITS**

<u>Exhibit</u>	<u>Description</u>
A	Depiction of City Facility.
B	Form of Disclaimer.
C	Proposed Facility Expansion
D	Form of Letter of Credit.
E	Contractor Insurance Requirements

**Exhibit A**

**Depiction of Existing City Facility**

**Museum of the West - 2023**

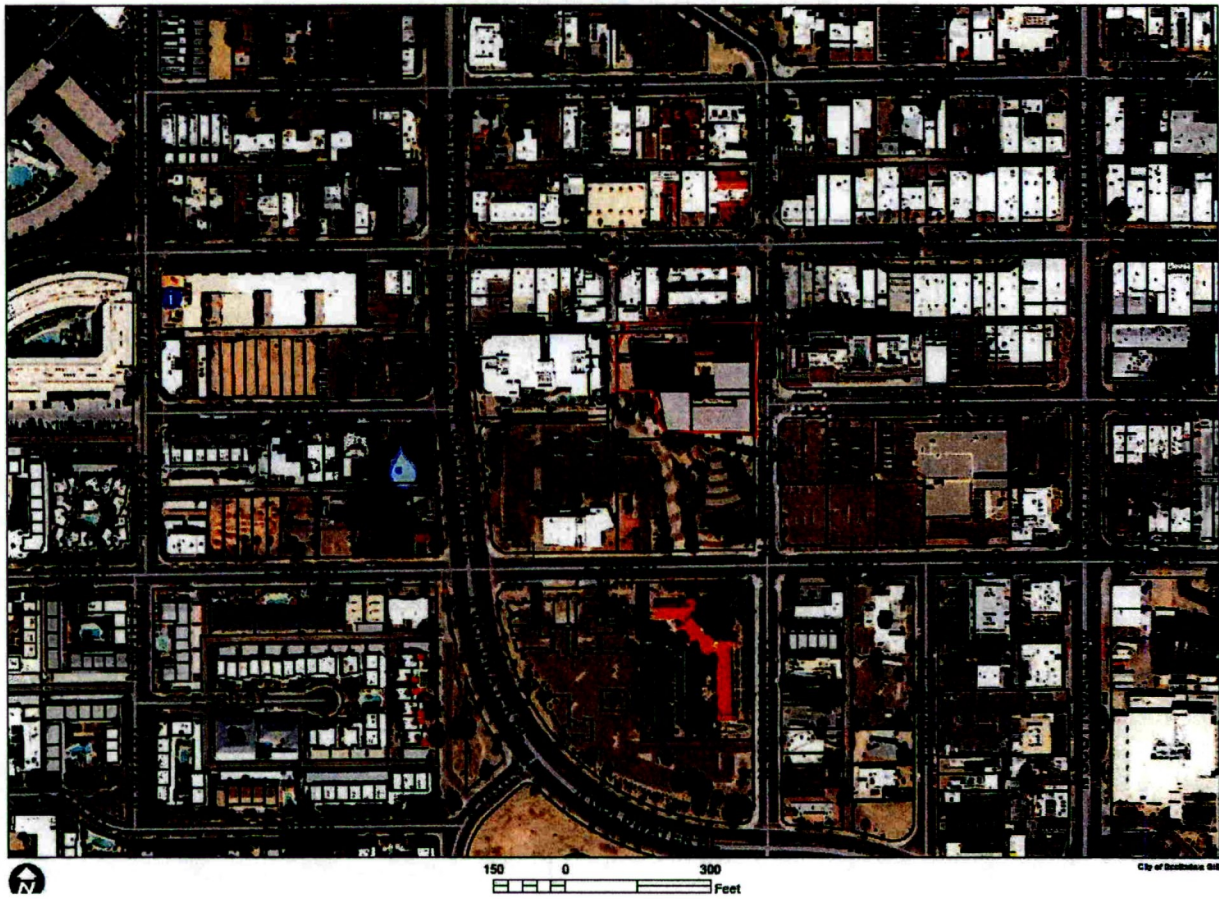


Exhibit B Form of Disclaimer

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 between the City of Scottsdale (City), an Arizona municipal corporation, and \_\_\_\_\_, an Arizona corporation/individual (Donor), collectively, the Parties.

Donor has donated or has agreed to donate funds to support a facilities expansion of the Scottsdale Museum of the West located which is located at 3830 N Marshall Way, Scottsdale, Arizona.

Donor has entered into a donation agreement with Scottsdale Museum of the West, Inc. ("Manager") for financial support of a project to expand the facility on property belonging to the City of Scottsdale ("the City").

Donor understands that the City will only permit the expansion of the facility under the terms and conditions of City Contract No. 2023-xxx-COS which includes a requirement that each donor contributing funds to the expansion of the facility execute this agreement.

IN CONSIDERATION of the mutual covenants, conditions and agreements contained in this Agreement, it is agreed as follows:

1. *The Museum of the West.* The Parties do not intend this Agreement or any donation or financial contribution made by Donor to create any real estate interest or ownership of any City property including the Facility and any expansion thereof. Donor expressly disclaims any such real estate or ownership interests.

2. *Donor Recognition:* With the consent of the City and the Manager, a name plate [or building mounted sign] may be installed in a mutually agreeable location in or upon the Facility expansion recognizing Donor (or its members) for its financial contributions. Any name plate [or building mounted sign] will be in keeping with the style of the Museum and will be tastefully rendered to the mutual satisfaction of the Manager and the City. Any additional naming rights shall be as provided in separate agreements approved by the City.

3. *Limited Severability.* In the event any term, condition, covenant, stipulation, agreement or provision herein contained is held to be invalid or unenforceable for any reason, the invalidity of any such term, condition, covenant, stipulation, agreement or provision shall in no way affect any other term, condition, covenant, stipulation, agreement or provision herein contained. Further, this Agreement shall be deemed automatically reformed to secure to the City the legal, equitable, practical and other benefits of the written provisions of this Agreement to the very maximum extent permitted by law.

4. *Conflicts of Interest.* No member, official or employee of the Donor shall have any direct or indirect interest in this Agreement; nor participate in any decision relating to the Agreement that is prohibited by law.

5. *No Partnership.* This Agreement and the transactions and performances contemplated herein shall not create any sort of partnership, joint venture or similar relationship between the Parties.



6. *Invalid Provisions.* In the event any term, condition, covenant, stipulation, agreement or provision herein contained is held to be invalid or unenforceable for any reason, the invalidity of any such term, condition, covenant, stipulation, agreement or provision shall in no way affect any other term, condition, covenant, stipulation, agreement or provision herein contained.

7. *No Third Party Beneficiaries.* No person or entity shall be a third party beneficiary to this Agreement.

8. *Choice of Law.* This Agreement shall be governed by the laws of the State of Arizona. Proper venue for any action regarding this Agreement shall be Maricopa County.

9. *Approvals and Inspections.* All approvals, reviews and inspections by the City under this Agreement or the Facilities Expansion Agreement or otherwise are for the City's sole benefit and not for the Donor's benefit.

10. *Authority.* The Parties represent and warrant to one another that the undersigned have full power and authority to enter into this Agreement on behalf of the entity for which each has signed and that all necessary actions have been taken to give full force and effect to this Agreement.

11. *Tax Consequences.* Donor may retain a copy of this Agreement as evidence of the donation. However, City makes no representation or warranties as to any tax benefits or other consequences that Donor may have as a result of this donation and Donor is not relying on any of the same.

12. *No Promise of Future Benefits.* Donor further acknowledges that this donation is made for altruistic purposes and Donor is not relying on any express or implied promise or expectation of any favorable or preferential treatment by the City Council, City Staff or any Boards or Commissions. Donor further acknowledges that Donor is not currently conducting any business transactions with the City and is not preparing to submit any proposals to the City or otherwise respond to City solicitations for procurement of goods or services.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2023.

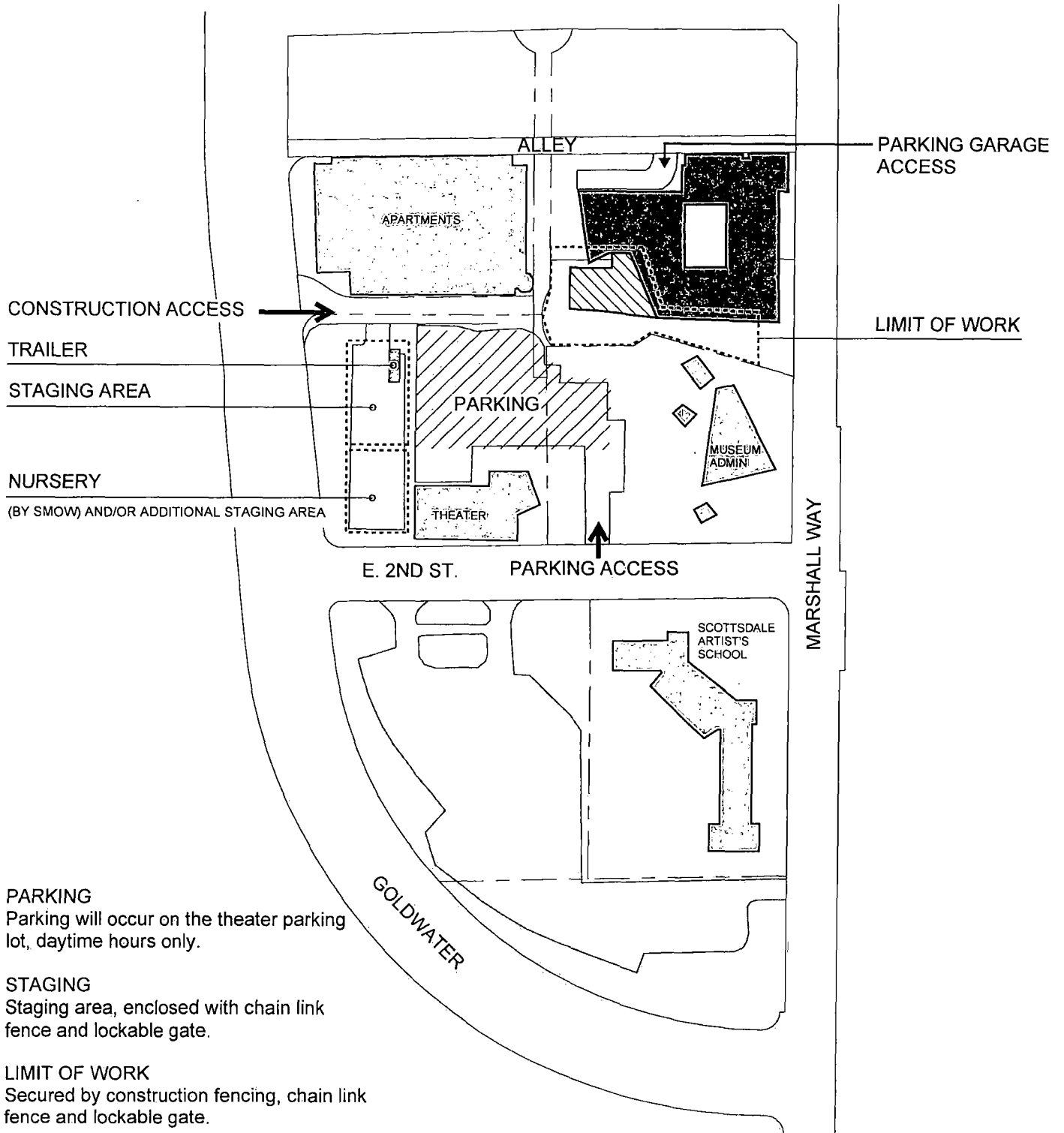
Donor

City of Scottsdale

By: \_\_\_\_\_

By: \_\_\_\_\_  
Jim Thompson, City Manager

Exhibit C  
Proposed Expansion



**PARKING**  
Parking will occur on the theater parking lot, daytime hours only.

**STAGING**  
Staging area, enclosed with chain link fence and lockable gate.

**LIMIT OF WORK**  
Secured by construction fencing, chain link fence and lockable gate.

**NURSERY**  
(by SMOW) and/or additional staging area  
Salvaged plant area, to be provided with temporary irrigation and maintenance for duration of construction by SMOW.

Exhibit D = Letter of Credit example

**SAMPLE STANDBY LETTER OF CREDIT**  
[Template – print final on bank safety paper]  
**Irrevocable Non-Transferrable Standby Letter of Credit**  
**(Construction)**

Date \_\_\_\_\_, 20\_\_

Letter of Credit No.: \_\_\_\_\_

City Treasurer  
City of Scottsdale  
7447 E. Indian School Road, Suite 210  
Scottsdale, AZ 85251

Dear Sir or Madam:

We hereby establish our clean, unconditional, Irrevocable Standby Letter of Credit in favor of the City of Scottsdale (hereinafter called "Beneficiary") at the request of The Artisan Owner, LLC, an Arizona limited liability company, with a mailing address of \_\_\_\_\_ ("Applicant") in the initial aggregate amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00) to draw at sight an TBD Bank ("Issuer").

We will honor and immediately pay to you each draft presented to us in compliance with the terms of this Letter of Credit. Drafts shall be in substantially the form attached hereto as **Schedule 1**, as signed by an authorized signer of Beneficiary. Partial draws are permitted. Each draft must be accompanied by a copy of this Letter of Credit (and any amendments thereto). Within ten (10) days after we honor your draft, you must make the original of this Letter of Credit available to us in Maricopa County, Arizona upon which we may endorse our payment. We hereby agree with Beneficiary that drafts and documents as specified above will be duly honored upon presentation to Issuer, attn: Standby Letters of Credit Address, if presented on or before the fifth anniversary date of the issuance of this Letter of Credit (unless entered as set forth below).

Disbursements under the Letter of Credit shall be in accordance with the following terms and conditions:

1. The amount that may be drawn by the Beneficiary under this Letter of Credit shall be automatically reduced without amendment by the amount of any drawings hereunder.
2. All commissions and charges will be borne by the Applicant.
3. This Letter of Credit may not be transferred or assigned by the Issuer.
4. This letter of Credit is irrevocable.

If we fail to honor any draft, we will inform you (and your counsel) of the particular reason by telephone and in writing no later than 1:00 p.m. Arizona time on the first business day following presentation of the draft. Drafts may be presented by any of the following means:

1. By telefax to (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_.
2. By email to \_\_\_\_\_.
3. By hand or overnight courier service delivery to:  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, Maricopa County, Arizona.

Except as expressly set forth herein, this Letter of Credit may not be amended, changed or modified without the express written consent of the Beneficiary and the Issuer. This Letter of Credit is valid until the fifth annual anniversary of its issuance and thereafter automatically shall be renewed for successive one (1) year periods, unless at least one hundred twenty (120) days prior to the expiration date we notify Beneficiary in writing, by either registered or certified mail, that Issuer elects not to renew the Letter of Credit for such additional period. If Issuer does so notify Beneficiary, then, any then unused portion of the Letter of Credit shall be available upon Beneficiary presenting to Issuer Beneficiary's draft on or before the then current expiration date.

Beneficiary shall not be deemed to have waived any rights under this Letter of Credit, unless the Beneficiary or an authorized agent of the Beneficiary shall have signed a written waiver. No such waiver, unless expressly so stated therein, shall be effective as to any transaction that occurs subsequent to the date of the waiver, nor as to any continuance of a breach after the waiver.

Pursuant to U.S. Law, Issuer is required to obtain, verify and record information that identifies parties to the transaction and Issuer is prohibited from issuing, transferring, accepting, or effecting payment to any party or entity identified by the U.S. Department of Treasury including any office and bureau thereof or subject to the denial of export privileges by the U.S. Department of Commerce.

Issuer hereby certifies that Issuer is a federally insured financial institution with offices in Maricopa County, Arizona, at which drafts upon the Letter of Credit may be presented. Issuer further certifies that Issuer is a member of the New York Clearing House Association and has a net worth of not less than \$1 billion.

This Letter of Credit is subject to the most recent edition as of the date of this Letter of Credit of the International Standby Practices [ISP98] published by the International Chamber of Commerce, Publication 590, or any subsequent revision thereto. This letter of Credit shall otherwise be governed by Arizona law. In the event of a conflict between the ISP98 and Arizona law, the ISP98 shall apply. This Letter of Credit is not assignable.

\_\_\_\_\_ [bank name] \_\_\_\_\_, a \_\_\_\_\_  
By [bank officer's signature] \_\_\_\_\_  
[bank officer's name printed] \_\_\_\_\_  
Its [bank officer's title] \_\_\_\_\_  
Phone: [bank officer's phone number] \_\_\_\_\_  
Email: [bank officer's email address] \_\_\_\_\_

## Exhibit E = Contractor Insurance Requirements

### INSURANCE REQUIREMENTS

A. Prior to the commencement of any construction, the Trade Contractor will furnish a Certificate of Insurance on a standard insurance industry ACORD form. The ACORD form will be issued by an insurance company authorized to transact business in the State of Arizona.

B. The Trade Contractor must procure and maintain, until final completion and acceptance by Developer and City, insurance against claims for injury to persons or damage to property, which may arise from or in connection with the performance of the Work by the Trade Contractor, its agents, representatives, employees, or subcontractors.

C. The insurance requirements are minimum requirements for this Trade Contract and in no way limit the indemnity covenants contained in this Trade Contract.

D. The Developer in no way warrants that the minimum limits contained in this Trade Contract are sufficient to protect the Trade Contractor from liabilities that might arise out of the performance of the Work under this Trade Contract by the Trade Contractor, its agents, representatives, employees, Subcontractors or Subconsultants and the Trade Contractor is free to purchase any additional insurance as may be determined necessary. The Developer will not pay for higher limits, but if the Trade Contractor pays for insurance with higher limits, the Trade Contractor will name the Developer and City as an additional insured on any additional insurance.

E. Claims Made. In the event any insurance policies required by this Trade Contract are written on a "claims made" basis, coverage shall continue uninterrupted throughout the term of this Trade Contract by keeping coverage in force using the effective date of this Trade Contract as the retroactive date on all "claims made" policies. The retroactive date for exclusion of claims must be on or before the effective date of this Trade Contract and can never be after the effective date of this Trade Contract. Upon completion or termination of this Trade Contract, the "claims made" coverage shall be extended for an additional three (3) years using the original retroactive date, either through purchasing an extended reporting option; or by continued renewal of the original insurance policies. Submission of annual Certificates of Insurance, citing the applicable coverages and provisions specified herein, shall continue for three (3) years past the completion or termination of this Trade Contract.

F. Self-Insured Retentions. Any self-insured retentions and deductibles must be declared to and approved by the Developer and City. If not approved, the Developer and City may require that the insurer reduce or eliminate any self-insured retentions with respect to the Developer and City, its officers, officials, agents, employees, and volunteers.

MINIMUM SCOPE AND LIMITS OF INSURANCE

The Trade Contractor must provide coverage with limits of liability not less than those stated below.

A. Commercial General Liability-Occurrence Form

- General Aggregate \$2,000,000
- Products-Completed Operations Aggregate \$2,000,000
- Personal & Advertising Injury \$1,000,000
- Each Occurrence \$2,000,000

Medical Expenses (Any one person) OPTIONAL

B. Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles

- Combined Single Limit Per Accident \$1,000,000
- For Bodily Injury and Property Damage

C. Workers Compensation and Employers Liability

Workers Compensation	Statutory
Employers Liability:	
Each Accident	\$1,000,000
Disease - Each Employee	\$1,000,000
Disease - Policy Limit	\$1,000,000

D. Coverage Terms and Required Endorsements

1. The City and Developer, and their respective officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of activities performed by, or on behalf of, the Trade Contractor; products and completed operations of the Trade Contractor; and automobiles owned, leased, hired, or borrowed by the Trade Contractor.

2. The City and Developer, and their respective officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the Trade Contractor even if those limits of liability are in excess of those required by this Trade Contract.

3. The Trade Contractor's insurance coverage must be primary insurance with respect to the City and Developer, and their respective officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City and Developer, and their respective officers, officials, agents, and employees will be in excess of the coverage provided by the Trade Contractor and must not contribute to it.

4. The Trade Contractor's insurance must apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Coverage provided by the Trade Contractor must not be limited to the liability assumed under the indemnification provisions of this Trade Contract.

6. All policies must contain a waiver of subrogation against the City and Developer, and their respective officers, officials, agents, and employees, for losses arising from Work performed by the Trade Contractor for the Developer and City.

7. If the Trade Contractor receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Trade Contractor's responsibility to provide prompt notice to the contract administrator of same to the City and Developer, unless such coverage is immediately replaced with similar policies.

#### E. Builders Risk Installation Floater Insurance

To be provided if determined by the Developer and City as necessary with each Trade Contract.

The Trade Contractor bears all responsibility for loss to all Work being performed and to Work under construction. Unless waived in writing by the City and Developer, the Trade Contractor will purchase and maintain in force Builders Risk-Installation insurance on the entire Work until completed and accepted by the City. This insurance will be Special Causes of Loss or Open Perils policy form, for the completed value, at replacement cost equal to each Trade Contract price and all subsequent modifications. The Trade Contractor's Builders Risk-Installation insurance will be primary and not contributory; and waive all rights of subrogation against the City and Developer, and their respective officers, officials and employees.

This Builders Risk-Installation insurance must name the City, Developer, the Trade Contractor and all tiers of subcontractors as respects their insurable interest at the date of loss. It must contain a provision that subject insurance will not be canceled or materially altered without at least 30 days advance notice to the City and Developer. The Trade Contractor is also required to give the City and Developer thirty (30) days advance written notice of the coverage termination for each project. The City and Developer will also be named as a Loss Payee under Builders Risk-Installation coverage.

This Builders Risk-Installation insurance must cover the entire Work including reasonable compensation for architects and Trade Contractor's' services and expenses and other "soft

costs” made necessary by an insured loss. Builders Risk-Installation insurance must provide coverage from the time any covered property comes under the Trade Contractor’s control and or responsibility, and continue without interruption during course of construction, renovation and or installation, including any time during which any project property or equipment is in transit, off site, or while on site for future use or installation. Insured property must include, but not be limited to, scaffolding, false work, and temporary buildings at the site. This insurance must also cover the cost of removing debris, including demolition as may be legally required by operation of any law, ordinance, regulation or code.

The Trade Contractor will be responsible for any and all deductibles under these policies and the Trade Contractor waives all rights of recovery and subrogation against the City and Developer under the Trade Contractor-provided Builders Risk-Installation insurance described in this Exhibit.

The Builders’ Risk insurance must be endorsed so that the insurance will not be canceled or lapse because of any partial use by the City or Developer. Builders’ Risk Insurance must be maintained until whichever of the following first occurs: (i) final payment has been made; or (ii) until no person or entity, other than the City, has an insurable interest in the property required to be covered.

By signing this Trade Contract, all rights of subrogation are waived against the City of Scottsdale, Developer, and their respective officers, officials, agents and employees.

#### TRADE CONTRACTOR’S SUBCONSULTANT’S AND SUBCONTRACTOR’S INSURANCE

Unless the Trade Contractor’s subconsultants and subcontractors can provide the same level of coverage as detailed above and name the City, Developer and the Trade Contractor as Additional Insureds, the Trade Contractor’s certificates must include all subcontractors and subconsultants as insureds under its policies or the Trade Contractor must maintain separate certificates and endorsements for each subcontractor and subconsultant. All coverages for subcontractors and subconsultants must be in the amounts shown above. Certificates must contain a provision that the insurance will not be canceled or materially altered without at least 30 days advance notice to the City and Developer. The City and Developer must also each be named as a Loss Payee under the Builders Risk-Installation coverage.

#### NOTICE OF CANCELLATION

If the Trade Contractor receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Trade Contractor’s responsibility to provide prompt notice to the contract administrator of same to the City and Developer, unless such coverage is immediately replaced with similar policies. Each insurance policy required by the insurance provisions of this Trade Contract must provide the required coverage and must not be suspended, voided, canceled by either party, reduced in coverage or in limits



until 30 days written notice has first been given, by certified mail, return receipt requested to City and Developer.

#### ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers duly licensed or approved to conduct business in the State of Arizona and with an A. M. Best rating of no less than A-. The City and Developer in no way warrant that the above required minimum insurer rating is sufficient to protect the Trade Contractor from potential insurer insolvency. Failure to maintain insurance as required may result in termination of this Trade Contract.

#### VERIFICATION OF COVERAGE

A. The Trade Contractor must furnish the City and Developer Certificates of Insurance (ACORD form or equivalent approved by the City and Developer) and with original endorsements effecting coverage as required by this Trade Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

B. All certificates and endorsements are to be received and approved by the City and Developer before Work commences. Each insurance policy required by this Trade Contract must be in effect at or before the earlier of commencement of Work under the Trade Contract and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Trade Contract or to provide evidence of renewal is a material breach of contract.

C. All Certificates of Insurance required by this Trade Contract must be sent directly to the City and Developer. The project number and project description must be included on the Certificates of Insurance. The City and Developer each reserves the right to require complete, certified copies of all insurance policies required by this Trade Contract, at any time.

#### APPROVAL

Any modification or variation from the insurance requirements in this Contract must be approved by Developer and City's Risk Management Division, whose decision is final. This action does not require a formal Trade Contract modification, but may be made by unilateral administrative action.

#### INDEMNIFICATION

##### A. TRADE CONTRACTOR'S GENERAL INDEMNIFICATION

Trade Contractor's General Indemnification. To the fullest extent permitted by law, the Trade Contractor, its successors, assigns and guarantors, must defend, indemnify and hold harmless the City and Developer, and their respective agents, representatives, officers, directors, members, managers, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not

limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, investigation and litigation, for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, related to, arising from or out of, or resulting from any acts, omissions, negligence, recklessness, or intentional wrongful conduct to the extent caused by the Trade Contractor or any of its owners, officers, directors, agents or employees performing Work under this Trade Contract, 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 and any injury or damages by any of the Trade Contractor employees. This indemnity includes any claim or amount arising out of, or recovered under, the Worker's Compensation Law or arising out of the failure of the Trade Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the City and Developer shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the City or Developer as applicable, be indemnified by the Trade Contractor from and against any and all claims. It is agreed that the Trade Contractor will be responsible for primary investigation, defense, and judgment costs where this indemnification is applicable.

Insurance provisions in this Trade Contract are separate and independent from the indemnity provisions of this Exhibit and will not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph will not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

RESOLUTION NO. 12919

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AN AMENDED MUSEUM MANAGEMENT AGREEMENT NO. 2021-088-COS-A1 FOR MANAGEMENT SERVICES BETWEEN THE CITY OF SCOTTSDALE AND SCOTTSDALE MUSEUM OF THE WEST, INC. LOCATED AT 3830 N MARSHALL WAY, SCOTTSDALE.

WHEREAS, the City and Scottsdale Museum of the West, Inc. ("Manager") are entering into expansion construction agreement No. 2023-133-COS to add approximately 11,360 square feet of space to the museum; and

WHEREAS, the City wishes to enter into an Amended Museum Management Agreement Contract No. 2021-088-COS-A1 with Manager to address changes in management duties resulting from the expansion.

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

Section 1. The City Council authorizes and directs the Mayor to execute, on behalf of the City, Contract No. 2021-088-COS-A1 with Scottsdale Museum of the West, Inc.

PASSED AND ADOPTED by the City Council of the City of Scottsdale, Arizona this \_\_\_\_ day of \_\_\_\_\_, 2023.

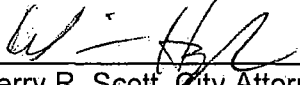
CITY OF SCOTTSDALE, an Arizona  
municipal corporation

ATTEST:

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

\_\_\_\_\_  
David D. Ortega, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Sherry R. Scott, City Attorney  
By: William Hylan  
Senior Assistant City Attorney

(Resolution No. 12919)

**AMENDED AND RESTATED MUSEUM MANAGEMENT AGREEMENT**

THIS AMENDED AND RESTATED MUSEUM MANAGEMENT AGREEMENT (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Scottsdale, an Arizona municipal corporation ("City"), and Scottsdale Museum of the West, Inc., an Arizona non-profit corporation ("Manager").

**RECITALS REGARDING AGREEMENT**

A. The art and culture of the Western United States during the years from approximately 1820 through 1920 ("Western Heritage") are an important part of the City of Scottsdale's and the State of Arizona's past, present and future.

B. The Scottsdale Museum of the West (the "Facility") celebrates Western Heritage by showcasing art, culture and traditions of the West that reflect the greater American West region, accomplished through western art and history, art and artifacts, interpretive and public programs, permanent and changing exhibits, media, interpretive ideas, educational programs, and programmatic tie-ins to other institutions.

C. In 2013, the Parties entered Contract No. 2013-025-COS (which has since been terminated) wherein the City agreed to construct and Manager agreed to manage a facility generally located at 1<sup>st</sup> Street and Marshall Way in Scottsdale. The Parties subsequently entered Contract No. 2021-088-COS (the "Management Agreement") for management of the Facility.

D. The Parties desire to expand the Facility to add approximately 11,360 feet of space (the "Museum Expansion") and amend the Management Agreement to address issues related to the Museum Expansion.

E. Manager has acquired, or is in the process of acquiring, artwork and other materials for display as part of the Museum's Expansion ("New Art Collection").

F. In addition to this Amendment of the Management Agreement, the Parties are entering a Museum Expansion Construction Agreement, Contract No. 2023-\_\_\_\_-COS, covering the construction and funding of the Museum Expansion.

NOW, THEREFORE, for and in consideration of the foregoing and the covenants and agreements contained herein and other good and valuable consideration, City and Manager agree that the Agreement is hereby as follows:

**I. MANAGEMENT AND PROGRAMMING OF CITY-OWNED FACILITIES**

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

1.1.1. The Scottsdale's Museum of the West ("SMoW") and the exterior Plaza, which is located at 3830 N Marshall Way, Scottsdale, Arizona, excepting those portions of the premises occupied from time to time by the City.

1.2. No Real Estate Interest. This Agreement is not a lease. Manager has no real estate interest or ownership of the Buildings, the Plaza or any other aspect of the Property or the Facility. The parties acknowledge that Manager has an office and library located at 7035 E. Main St., Ste. 110, Scottsdale, AZ which is solely at Manager's expense.

1.3. Managerial Services and Responsibilities. Manager shall manage, operate and program SMOw 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. Manager 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 Manager shall:

1.3.1. 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, Heard Museum, Scottsdale Museum of Contemporary Art and Phoenix Art Museum (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.

1.3.2. Policies. Establish and implement reasonable written policies, regulations, hours of operation, and other reasonable and appropriate operating procedures. Manager 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.

1.3.3. 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 Manager.

1.3.4. Facility Use Fees Charged to Businesses. No later than February 1 of each year, provide to the City Contract Administrator and the City's Budget Office 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 as part of the budget approval process.

1.3.5. 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 Manager in matters pertaining to all emergencies and the day-to-day operation of the Facilities. Manager 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 Manager's affairs and emergencies at the Facilities.

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

## II. FACILITY TO BE MANAGED

2. Facility to be Managed. Manager shall manage the Facility as follows:

2.1 Management Scope. Manager shall manage the interior of the Buildings and the exterior Plaza for the Permitted Uses as set out in this Agreement. Manager shall not manage any other area, property improvements or facilities.

2.2 Reservation. City specifically reserves to itself the right to enter and to use the entire Facility for the exercise of all of City's rights under this Agreement.

2.3 Facility Modification. After ninety (90) days' notice to Manager, City shall have the unilateral right to modify the Facility from time to time during the term of this Agreement.

2.4 Other Agreements. Manager shall comply with any recorded or unrecorded agreements or other matters affecting the Facility. City does not warrant title to the Facility.

2.5 City's Fixtures and Personalty. City is not obligated to provide any fixtures or personal property. Any and all of City's property as may come into the possession of Manager or be used by Manager shall be returned to City by Manager upon the earlier of City's request or at termination of this Agreement and shall be maintained in good working condition by Manager from time to time at Manager's expense and replaced by Manager at Manager's expense when worn out and shall be owned at all times by City with Manager being solely responsible for the condition thereof. All such personal property is provided "as is" and Manager accepts all responsibility for its condition and shall thoroughly inspect the same before use.

## III. TERM OF AGREEMENT

3. Term of Agreement. City hereby hires Manager to manage the Facility subject to and conditioned upon Manager's full, timely, complete and faithful performance of all performances and things to be performed or done hereunder by Manager, and Manager hereby accepts this Agreement.

3.1 Term. This Agreement is effective on July 1, 2023. The term of the Agreement shall be for a period of five (5) years unless sooner terminated as set forth in this Agreement. The Agreement may be extended for one additional term of up to five years upon mutual written agreement of the parties.

3.2 Holding Over. In any circumstance whereby Manager would manage or occupy the Facility after the expiration of this Agreement, such holding over shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a limited extension from month to month that may be terminated at any time by City upon thirty (30) days notice to Manager, or by Manager upon sixty (60) days notice to City.

3.3 Termination Right. Notwithstanding anything contained herein to the contrary, City shall have the unconditional right, with or without cause, to unilaterally terminate this Agreement at any time upon three hundred and sixty-five (365) days written notice.

#### IV. FINANCIAL COMMITMENTS

4. Financial Commitments. The parties make financial commitments to each other as follows:

4.1 Management Services Fee. Subject to the provisions of Subsection 4.4, the City shall pay Manager an annual fee ("Management Services Fee") not to exceed Six Hundred and Fifty Thousand Dollars (\$650,000) for the performance of its obligations under this Agreement. The City Council shall determine the Management Services Fee in accordance with the City's annual budgetary process. In determining the Management Services Fee, the City shall consider whether the forecast revenues set forth in **Exhibit "G"** have been met for the year. Manager may request annually through the City Manager's operating budget process an adjustment in the Management Services Fee for increased costs related to the performance of its obligations under this Agreement. Manager shall submit any request for the following fiscal year, along with sufficient justification, in writing to the Contract Administrator by December 1. If approved by the City Council, the increase will be adjusted into a new Management Services Fee amount for the next fiscal year of the contract period. The Contract Administrator shall evaluate Manager's performance, services and documentation to determine the appropriateness of the increase requested. 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.

4.2 City Budgetary Process. Each year, in accordance with the City's deadlines for submission of budget proposals and supporting documentation, Manager shall provide the City Contract Administrator with timely information relevant to the City funding needed to perform the Objectives outlined under this agreement. Manager's information shall include all estimated funding sources, direct and indirect expenditures, and City funds allocation plans.

4.3 Financial Participation Agreement. The City shall disperse the Management Services Fee for any given fiscal year to Manager 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 "A."**

4.4 Unanticipated, Extraordinary Funding Requests. Manager 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.

4.5 The issue of disposition of Manager's cash security deposit, set forth in Section 4.4 of 2021-088-COS, has been resolved and that requirement is no longer applicable.

4.6 Political Activities. Manager shall use no City funds or resources for political activities, for lobbying City's city council or any legislative or administrative body as defined in State law, or for the purpose of influencing the outcome of any election.

4.7 Notwithstanding the financial commitments described in this Article IV and any Financial Participation Agreement entered into from time to time between the City and Manager, no part of Manager's compensation hereunder is based on a share of net profits from operation of the Facility, and the terms of this Agreement do not impose upon the Manager the burden of bearing any share of net losses from the operation of the Facility. To the extent necessary, the City will bear the costs and expenses of the minimal operation of the Facility consistent with the requirements of Subsection 5.8 hereof and as otherwise determined by the City from time to time, if the Management Services Fee is otherwise insufficient for such purposes.

## V. MANAGEMENT DUTIES

5. Management Duties. Manager's management of the Facility shall in all respects conform to all and each of the following cumulative provisions:

5.1 Permitted Uses. Manager shall use the Facility solely for the Permitted Uses. No other activity shall be conducted at or from the Facility.

5.2 Related Uses Permitted. As an adjunct to its operation of the Permitted Uses, Manager shall have the right to:

5.2.1 Operate a ticket office or counter selling primarily tickets to the Facility.

5.2.2 Operate food and beverage concessions selling items for on-site consumption by persons attending the Facility.

5.2.3 Operate an administrative office for activities conducted at the Facility.

5.2.4 Conduct education in Western Heritage.

5.2.5 Conduct sales of programs and souvenirs relating to Western Heritage.

5.2.5.1 Occasional rental of the Facility on an hourly basis to third parties for convention, social meeting and similar group presentation uses. Except as City may approve from time to time, such events must not overlap normal museum operating hours more than five (5) hours during any month.

5.2.6 Museum gift shop selling newspapers, periodicals, greeting cards, post cards, gifts, books, jewelry, toys, photography supplies, and similar items. The gift shop must not occupy more than Fifteen Hundred (1500) square feet.

5.2.7 Sales of artwork at the Facility shall be limited in order to maintain an open and participatory working relationship with the gallery owners and related businesses in the area. This paragraph applies to internet, mail order, and similar sales, whether or not occurring at the Facility.

5.3 Additional Restrictions. The Permitted Uses are further restricted as follows:

5.3.1 Sales of chewing gum, tobacco, alcohol, pornography, condoms, or other adult materials, weapons, postcards, and hats or other clothing is prohibited. This paragraph does not prohibit Manager branded postcards, hats and clothing and does not prohibit alcohol at private events.

5.3.2 Smoking or other use of tobacco or similar substances is not permitted indoors.

5.3.3 All equipment and other personalty shall be stored in a manner that it is not visible from outside the Facility.

5.3.4 Food shall not be cooked at the Facility. The preceding sentence does not apply to serving of catered food cooked offsite, heating of snack bar food, or incidental cooking such as a lunchroom microwave oven, crock-pot, or coffee pot.



5.3.5 No gambling activities of any sort whatsoever are permitted at the Facility. The preceding sentence shall not apply to infrequent "casino night" events conducted by charitable or other non-profit local entities for their own fundraising purposes. No more than six (6) such one-day events shall occur at the Facility in any twelve (12) month period.

5.3.6 Sales, merchandise, signs, and merchandise storage and display are confined to the interior of the Facility within the Buildings.

5.3.7 Notwithstanding anything in this Agreement to the contrary, the Permitted Uses are hereby further restricted from time to time to prohibit any activity that would cause or result in (or in City's reasonable discretion creates a material risk of causing or resulting in) any of the following:

5.3.7.1 Violation of any bond or other documents (collectively the "Financing Documents") related to acquisition or construction of the Property or the Facility or refinancing any debt or other obligations related to the Property or the Facility.

5.3.7.2 Unfavorable tax treatment of any rights or obligations relating to the Financing Documents.

5.4 Animals. No animals are allowed other than seeing eye dogs and similar animals providing health assistance to disabled persons.

5.5 Manager-Owned Art and New Art Collection. All art, artifacts, exhibits, media or other displays or attractions owned by Manager (the "Manager Collection") shall be subject to the following:

5.5.1 Adherence to Recognized Standards and Guidelines. All policies and procedures related to the Manager-Owned Art and the New Art Collection shall at all times conform to generally recognized standards and guidelines for the acquisition, display, exhibition, storage, conservation, disposition and decommission of Artwork. 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"). Manager 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.

5.5.2 Upon Manager's ceasing to operate the Facility for any reason, whether through expiration of this Agreement or otherwise, Manager shall convey ownership of the Manager Collection to another 501(c)(3) organization chosen by the City under Section 8 of this Agreement. Manager shall not otherwise cease ownership of an item in the Manager Collection without notice to City and specific authorization of its board of directors to dispose of the item. The Manager Collection excludes normal gift shop inventory.

5.6 Borrowed Art. All art, artifacts, exhibits, media or other displays or attractions owned by others but available to Manager for a period (the "Borrowed Collection") shall be subject to the following:

5.6.1 Manager shall cause all contracts for items in the Borrowed Collection to provide as follows if Manager ceases to operate the Facility:

5.6.1.1 The City or a 501(c)(3) organization chosen under Section 8 of this Agreement shall have the right to continue to use and display the item during the remaining

time of the agreement.

5.6.1.2 City shall not be responsible for damage to the item prior to City receiving the item or be otherwise responsible for the actions or responsibilities of Manager or others.

5.6.1.3 City's use and display of the item shall be at no expense to City except that during City's use and display of the item City shall safeguard the item and shall pay any remaining rental or similar charge for the item according to the contract between the item's owner and Manager, not to exceed a prorated portion of such charges based on the amount of time City has the item compared to the overall term of the contract.

5.6.1.4 Compliance with Annual Plan. Manager shall manage the Facility in compliance with the Annual Plan.

5.7 Transparency. Manager shall establish and implement written policies and procedures, including enforcement provisions, regarding ethics, open meetings, disclosure of documents, and records retention. Except to the extent City may approve in writing from time to time, Manager shall conduct its affairs in compliance with the same Arizona public records and open meetings laws that are applicable to City except that Manager need not disclose the identity of donors other than donors of Matching Donations.

5.8 Required Operation. During the entire term of this Agreement and any renewals or extensions, Manager shall actively and continuously operate the Facility as a Western Heritage museum. To that end, unless otherwise approved by City from time to time, Manager shall open the Facility to the public as follows:

5.8.1 The museum must be open at least three hundred (300) days each year.

5.8.2 Each calendar year, ensure that each Thursday between November 1 and April 30 (except on Thanksgiving) the Museum will be open until 9 p.m. and residents of Scottsdale will be admitted to the Museum, including all galleries, without charge on that day.

5.8.3 Each calendar year, ensure that on the days the Hashknife Pony Express and Parada del Sol Parade events are held, the Museum will be open without charge on that day.

5.8.4 Manager shall give City at least seven (7) days advance notice of changes in its operating schedule.

5.8.5 If the Facility is damaged severely enough that the Facility cannot reasonably be operated during repairs, the operation requirements of this paragraph shall be suspended during any time specified by this Agreement for accomplishing repair of such damage.

5.9 Signs. Manager shall install all signs and markings required for safe use of the Facility. No other signs are allowed without City consent except those originally installed when the Facility is first completed. The requirements of this paragraph apply to all signs, designs, monuments, decals, graphics, posters, banners and other manner of signage visible from outside the Facility. No marquees or other signage shall promote or depict anything other than the Facility and events occurring at the Facility.

5.10 Publicity. Upon special or standing requests made by City from time to time and not in the absence of such requests, Manager shall include in its promotional materials and other information distributed, sent, or made available to the public or others a notation that all or any part of Manager's activities at the Facility are accomplished "with the assistance of the City of Scottsdale" or other words or indications of sponsorship or support as City may reasonably select from time to time.

5.11 Names. Except as provided in Section 5.12, the names of the museum operations and the Facility and its features shall be "Western Spirit: Scottsdale's Museum of the West".

5.11.1 All names of the museum operation and the Facility and its features are subject to City approval at City's sole and absolute discretion as to name, payments for naming rights, payment of all or a portion of naming rights payment to City, and other matters. The preceding sentence does not apply to temporary (18 months or less) naming of funding programs, changing exhibit spaces, education classes and workshops.

5.11.2 Manager shall not use in connection with the Facility or its operations at the Facility any name associated with products or purveyors of any sort of alcohol, tobacco, adult entertainment or gambling related products or services.

5.11.3 Following termination of this Agreement for any reason, City shall have the exclusive right to use or allow others to use any name used at the Facility.

5.12 The name of the Museum Expansion shall be the "Louis Sands IV Center" or such other name as the parties may mutually agree to in writing.

5.13 Nonexclusive Uses. Manager understands and agrees that City, City's other tenants, and other persons within and without the surrounding vicinity may conduct from time to time business activities in direct competition with Manager. Manager has no exclusive rights to conduct any activity.

5.14 Communications Operations Restriction. Manager shall not install, operate, or allow the use of equipment, methodology or technology that may or would interfere with the optimum effective use or operation of City's existing or future fire, emergency or other communication equipment, methodology or technology (i.e., voice or other data carrying, receiving or transmitting equipment). If such interference should occur, Manager shall immediately discontinue using the equipment, methodology or technology that causes the interference until Manager takes corrective measures. Any such corrective measures shall be made at no cost to City.

5.15 Conduct at Facility. In entering into this Agreement, City and Manager have foremost in mind providing the public with a family atmosphere devoid of any act by any person contrary to the highest standards of community sensitivity, and avoiding any substance or appearance of any noisy, unruly, inebriated, disruptive, disorderly, lewd, nude, topless, bottomless, adult oriented, unwholesome or sexually oriented behavior, business, entertainment, or other activity of any description or to any degree at the Facility. Any such behavior, business or activity at the Facility or while arriving at or leaving the Facility by Manager, any customer of Manager or anyone else using any part of the Facility related to Manager or this Agreement while this Agreement is in effect is strictly prohibited. Manager specifically acknowledges that the requirements of this paragraph are a requirement of this Agreement independent of and in addition to any zoning or other governmental regulation affecting the Facility. Any violation of this paragraph

shall be an "Unruly Behavior Occurrence" by Manager under this Agreement. Manager shall immediately cause removal from the Facility any person who commits or who causes, directs or encourages any person to commit, an Unruly Behavior Occurrence. To that end and without limitation, all of the following shall apply:

5.15.1 No materials shall be displayed, viewed or produced upon the Facility depicting specified anatomical areas or specified sexual activities. No person shall exhibit, use, display or offer to sell any devices, objects or paraphernalia that are designed or typically marketed for use in connection with specified sexual activities. No person shall perform specified sexual activities upon the Facility. No person shall make visible his or her specified anatomical areas. "Specified anatomical areas" shall mean less than completely and opaquely covered human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola; and human male genitals in a discernibly turgid state, even if completely and opaquely covered; or any simulation or portrayal of any of the foregoing. Specified sexual activities shall mean human genitals in a state of sexual stimulation or arousal; acts of masturbation, sexual intercourse or sodomy; fondling or other erotic touching of human genitals, pubic region, buttock or female breast; or any simulation or portrayal of any of the foregoing.

5.15.2 Any direct or indirect physical contact involving customers (other than patron dancing during permitted private events, if allowed by law), employees, performers and other persons is prohibited.

5.15.3 Manager shall immediately cause to be removed from the Facility any person related to Manager or this Agreement (including without limitation Manager's customers) who:

5.15.3.1 Violates any provision of this paragraph.

5.15.3.2 Appears or is believed to be to be intoxicated or illegally under the influence of any narcotic or chemical.

5.15.3.3 Commits an act of violence.

5.15.3.4 Acts in a loud or unusually boisterous manner.

5.15.3.5 Harms or threatens harm to any person or thing.

5.15.3.6 Uses loud or electronically amplified profanity that can be heard by users of the Facility or the public.

5.15.3.7 Violates laws or regulations applicable to the Facility Site.

5.15.4 The address used in any police report of an Unruly Behavior Occurrence shall not be conclusive proof of the location of the matters reported for the purposes of this Agreement; rather, Unruly Behavior Occurrences reported in police reports to have occurred at the address of the Facility or at other locations shall be chargeable to Manager under this Agreement only to the extent provided by this Agreement.

5.15.5 The requirements of this paragraph are for the benefit of City and for the benefit of all real property located within three hundred feet (300') of the Facility. The owners of such real property and their successors and assigns are third party beneficiaries of this paragraph

throughout the term of this Agreement. Such third party beneficiaries' sole remedy is injunctive relief against Manager and those claiming under Manager to enforce the requirements of this paragraph.

5.16 Quality Service. In entering into this Agreement, City and Manager have foremost in mind providing the public with Western Heritage museum services of the highest quality. Without limitation, Manager shall do the following:

5.16.1 Manager shall operate the Facility in a first-class manner; shall furnish prompt, clean and courteous service; and shall keep the Facility attractively maintained, orderly, clean, sanitary and in an inviting condition at all times, all to City's reasonable satisfaction.

5.16.2 Manager shall not employ any person or persons in or about the Facility who shall fail to be clean, courteous, efficient and neat in appearance or who shall use improper, profane, obnoxious or rude language or act in a loud or boisterous or otherwise improper manner.

5.17 Manager's Agent. Manager shall at all times when the Facility is occupied retain on call available to City upon the Facility an active, qualified, competent and experienced manager to supervise all activities upon and operation of the Facility and who shall be authorized to represent and act for Manager in matters pertaining to all emergencies and the day-to-day operation of the Facility and other matters affecting this Agreement. Manager shall also provide notice to City of the name, street address, electronic mail address, and regular and after hours telephone and telefax numbers of a person to handle Manager's affairs and emergencies at the Facility.

5.18 Manager Board Member. City shall have the right from time to time to appoint and replace at City's pleasure board members representing not less than fifteen percent (15%) of the voting members on Manager's governing board. Manager shall provide to such persons appointed by City such errors and omissions insurance and other protections as City or such persons may reasonably request, and in any event not less protection than is provided to any other members of Manager's board or any employee of Manager. City is not responsible for the actions or inaction of board members City may appoint. Manager shall obtain bonds covering such persons. If City determines in its sole and absolute discretion that City desires not to appoint a board member to a position during any particular period, then City may elect not to appoint the board member for that period.

5.19 Non-Profit Status. Manager shall continuously maintain its status as a non-profit charitable organization under § 501(c)(3) of the Internal Revenue Code.

5.20 Operation Standards. Manager shall operate the facility in compliance with the standards of the American Alliance of Museums.

5.21 Manager's Income. All of Manager's income from whatever source shall be used solely to perform Manager's obligations under this Agreement. Any excess Manager income shall be used for the Permitted Uses as set out in this Agreement.

5.22 Manager's Personnel. No officer, employee, volunteer or other person employed by or working for or with Manager shall be an employee of city or have any other relationship to City by virtue of such employment or work. Manager shall cause that Manager, and not City, shall be responsible for all salaries, wages, bonuses, retirement, withholding, worker's compensation, occupational disease compensation, unemployment compensation, employee benefits, taxes and all similar and related responsibilities.

5.23 Manager Contracts with Others. Manager shall not enter into agreements with third parties to provide museum, art or artifact management or related services to third parties without City consent, which City may grant, condition, limit, withhold or retract from time to time in its sole and absolute discretion.

5.24 Facility Security. Manager shall implement a security program acceptable to City to protect the Facility and its contents.

5.25 Hazardous Materials. Manager's activities upon or about the Facility shall be subject to the following provisions regarding any hazardous waste or materials or toxic substance or any substance now or hereafter subject to regulation under the Arizona Hazardous Waste Management Act, A.R.S. § 49-901, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq., or the Toxic Substances Control Act, 15 U.S.C. 2601, et seq., or any other federal, state, county, or local law pertaining to hazardous waste or toxic substances (collectively "Toxic Substances"):

5.25.1 Manager shall not produce, dispose, transport, treat, use or store any Toxic Substances upon or about the Facility. The prohibitions of the preceding sentence only shall not apply to:

5.25.1.1 Materials necessary for creating exhibits at the Facility, provided such materials are present only in the minimum quantities reasonably necessary for such uses.

5.25.1.2 Janitorial supplies and similar materials in the minimum quantities necessary for first class modern museum uses permitted by this Agreement.

5.25.2 Manager shall dispose of any materials as required by law and as reasonably required by City.

5.25.3 Manager shall not use the Facility in a manner inconsistent with regulations issued by the Arizona Department of Health Services.

5.25.4 In addition to any other indemnities or obligations, Manager shall pay, indemnify, defend and hold City harmless against any loss or liability incurred by reason of any Toxic Substance on or affecting the Facility attributable to or caused by Manager or anyone using the Facility or acting or claiming under Manager or this Agreement or otherwise relating to this Agreement. Manager shall immediately notify City of any prohibited Toxic Substance at any time discovered or existing upon the Facility.

5.25.5 Manager understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. Manager acknowledges the possibility that the Facility may contain actual or presumed asbestos containing materials.

5.26 Use Reserved by City. City reserves the limited right to use the Facility and all equipment and furnishings therein for its own events and performances and related rehearsals and activities (collectively "Reserved Events") subject to the following requirements:

5.26.1 City shall have the right from time to time to request use of all or part of the Facility for Reserved Events when such portion of the Facility is not otherwise being used by Manager. Manager shall grant such requests if, at the time of the request, the portion of the Facility requested has not previously been publicly scheduled for a specific conflicting use. Such requests

shall be answered within seventy-two (72) hours. If Manager has previously scheduled a conflicting use of the requested portion of the Facility, Manager shall offer to City City's choice of the unscheduled times within thirty (30) days before or after the time requested. Manager shall each month publish and deliver to City updates of its schedule for the Facility.

5.26.2 Manager shall have the right to provide workers at its own expense to operate lighting and sound equipment at Reserved Events.

5.26.3 Reserved Events shall be limited to all areas that are accessible to visitors or that Manager makes available to other events or users.

5.26.4 Manager shall provide janitorial service and, if requested, operate lighting and sound equipment at Reserved Events.

5.26.5 City has the right to obtain its own exclusive concessions for Reserved Events.

5.26.6 City shall be responsible for any damage to the Facility or to Manager's equipment or furnishings caused by use of the Facility for Reserved Events.

5.26.7 Manager shall, if requested by City, sell tickets to Reserved Events through the box office at the Facility or other ticket sales points used by Manager. The preceding sentence does not require Manager to open the box office or other sales points at times they would not otherwise be open.

5.26.8 City's use of the Facility for Reserved Events shall be without compensation of any sort to Manager except that:

5.26.8.1 Manager may charge City a reasonable equipment rental for Manager's actual cost of providing equipment City uses during Reserved Events. City shall use Manager's equipment to the extent available.

5.26.8.2 Manager may charge City a reasonable fee for Manager's actual cost of janitorial work and sound and lighting work provided by Manager necessitated by a Reserved Event.

5.26.8.3 If the Facility would otherwise be closed during a Reserved Event, Manager may elect to station one of its employees at the Facility during a Reserved Event and charge City a reasonable fee to reimburse Manager's actual additional expense of such employee.

5.26.8.4 Manager may charge City Manager's actual costs for additional services City may request for Reserved Events.

5.26.8.5 City shall not conduct more than twelve (12) Reserved Events during any calendar year except with the Manager's permission and the approval of the City's Contract Administrator.

5.26.8.6 All uses of the Facility under this paragraph shall be without compensation of any sort to Manager and shall be delegable and assignable by City (except that City must be a sponsor or co-sponsor of the event). City shall not be permitted to conduct at the

Facility any type of event that this Agreement would prohibit Manager from conducting at the Facility.

5.27 Admissions for City. Upon request, Manager shall provide to City at no charge not less than thirty (30) admission tickets per month. The tickets must allow access to all areas for which tickets are issued. This paragraph does not detract from City's other rights to access the Facility.

5.28 Fixtures and Personal Property. Manager shall from time to time commencing on the Opening Deadline provide to the Facility all equipment and other items necessary for the Facility to be conveniently used for the Permitted Uses. Without in any way limiting the foregoing, Manager at its own expense shall provide to the Facility and maintain in good repair all of the items listed on **Exhibit "B"** attached hereto.

5.29 Common Areas. Subject to current and future City regulations and policies governing the use of, and access to such areas, Manager, its officers, employees, agents, customers and invitees, and its suppliers of services and furnishers of materials shall have the right of ingress to and egress from the Facility through such portions of the Property and surrounding public areas as are reasonably necessary for Manager to perform this Agreement. Such right is strictly limited to ingress and egress over areas that City opens to the public for that purpose from time to time. There shall be absolutely no activity or storage, however temporary, in the parking lots, sidewalks, driveways, porches or other areas surrounding the Facility. Manager shall immediately clean up any spills or debris caused by Manager or its suppliers or customers. Service doors of the Facility will remain closed at all times except during the actual act of bringing in or taking out supplies or other materials through the door. Vehicles making deliveries to the Facility shall park only in areas specifically designated by City from time to time as delivery areas.

5.30 Parking. City at no expense to Manager shall cause parking to be available for the Facility as necessary to comply with applicable parking codes. Parking areas are not part of the Facility.

5.31 Employee Parking. Manager shall cause its employees and all other persons working or performing at the Facility to park in employee parking areas as designated by City from time to time.

5.32 Noise. Except for burglar alarms and other safety devices, outdoor loud speakers, sirens or other devices for making noise are prohibited. All equipment at the Facility shall be designed, installed, maintained, and operated so that noise created thereby does not exceed the ambient noise level and cannot be heard at a distance of one hundred feet (100') from the equipment. Music must be inside the Buildings or Plaza. Music inside the Buildings must not be audible outside the Buildings.

5.33 Lighting. Exterior lighting shall be shielded and otherwise configured to minimize spillover outside the specific lighted area of the Facility. At a minimum, spillover light levels at the boundaries of the Facility shall not exceed the level at the remainder of the Community Site.

5.34 Actions by Others. Manager shall be responsible to ensure compliance with this Agreement by all persons using the Facility or claiming through or under Manager or this Agreement. Manager shall prevent all such persons from doing anything that this Agreement prohibits Manager from doing.



5.35 City has not promised to and is not obligated in any manner to make any improvements or perform any work to the Facility.

5.36 Reliance. City is entering into this Agreement and is undertaking to design and construct the Shell Work and the Specialty Work in reliance upon Manager's promise to manage and occupy the Facility and otherwise perform all of its obligations under this Agreement.

## VI. MAINTENANCE AND UTILITIES

6. Maintenance and Utilities. Maintenance and utilities for the Premises shall be provided as follows:

6.1 Maintenance. Maintenance shall be provided for the Premises as follows:

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

6.1.2 Maintenance by Manager. Manager shall perform certain maintenance work (the "Manager Maintenance Work") as follows:

6.1.2.1 The Manager Maintenance Work is limited to the items listed on **Exhibit "C"** attached hereto together with all other maintenance that this Agreement does not specifically require City to perform.

6.1.2.2 Manager shall perform the Manager Maintenance Work at Manager's expense.

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

6.1.3.1 The City Maintenance Work is limited to the items listed on **Exhibit "D"** attached hereto.

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

6.2 Utilities. Utilities shall be provided for the Premises as follows:

6.2.1 Utilities by Manager. Manager shall provide certain utilities (the "Manager Utilities") as follows:

6.2.1.1 The Manager Utilities are the items listed on **Exhibit "E"** attached hereto together with all other utilities that this Agreement does not specifically require City to provide.

6.2.1.2 Manager shall provide the Manager Utilities at Manager's expense.

6.2.2 Utilities by City: City shall provide certain utilities (the "City Utilities") as follows:

6.2.2.1 The City's Utilities are limited to the items listed on **Exhibit "F"** attached hereto.

6.2.2.2 City shall provide the City Utilities at City's expense.

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

## VII. BREACH

7. Breach. Manager shall comply with, perform and do each performance and obligation required of Manager herein and shall cause all persons using the Facility or claiming through or under Manager or this Agreement to do the same. Manager's failure to do so shall be a breach by Manager of this Agreement.

7.1 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 Manager of Manager's material obligations under this Agreement:

7.1.1 If Manager shall be in arrears in the payment of any amount and shall not cure such arrearage within ten (10) days after City has notified Manager in writing of such arrearage.

7.1.2 If Manager shall fail to operate the facilities as herein required.

7.1.3 If Manager shall fail to timely pay any taxes or other amounts herein required to be paid by Manager to any third person. Such failure to pay shall not be an event of default if Manager gives immediate notice to City of Manager's intent to challenge the amount claimed to be due, Manager does in fact promptly challenge said amount, and Manager provides to City with said notice bonds or other financial security adequate in City's discretion to assure Manager's ability to pay the disputed amount and to protect City and the Facility from adverse consequences of Manager's failure to pay.

7.1.4 If Manager shall fail to or neglect to do or perform or observe any other provision 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 City has notified Manager in writing of Manager's breach.

7.1.5 If Manager shall repeatedly fail to perform any requirement of this Agreement. After City has once given notice of any failure by Manager to comply with any provision of this Agreement, three (3) or more failures to comply with said provision of this Agreement during any six (6) month period shall constitute a repeated failure by Manager to comply with such provision.

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

7.2.1 Terminate this Agreement.

7.2.2 Without demand or notice, enter into and upon the Facility or any part thereof, and expel Manager and those claiming by, through or under it, and remove their effects, if any, forcibly if necessary, without being deemed guilty of trespass and without prejudice to any

other remedy.

7.2.3 Enforce a lien hereby established upon Manager's property at the Facility securing all of Manager's obligations hereunder.

7.2.4 Cause a receiver to be appointed for the Facility and for the continuing operation of Manager's business thereon.

7.2.5 Pay or perform, for Manager's account and at Manager's expense, any or all payments or performances required hereunder to be paid or performed by Manager.

7.2.6 Abate at Manager's expense any violation of this Agreement.

7.2.7 Refuse without any liability to Manager therefor to perform any obligation imposed on City by this Agreement.

7.2.8 Be excused without any liability therefore from further performance under this Agreement.

7.2.9 Insist upon Manager's full and faithful performance under this Agreement during the entire remaining term of this Agreement.

7.2.10 Assert or exercise any other right or remedy permitted by law.

7.3 Power of Attorney. For the purpose of exercising any of City's rights or remedies as hereunder, Manager hereby irrevocably appoints City as Manager's true and lawful attorney in fact, and such power of attorney shall be deemed to be a power coupled with an interest that cannot be revoked for any reason, to pay or perform, for Manager's account and at Manager's expense, any or all payments or performances required hereunder to be paid or performed by Manager, to terminate of record this Agreement, to enter into and upon the Facility or any part thereof, and to perform any act upon the Facility or otherwise deemed necessary by City to exercise its rights under this Agreement.

7.4 Non-waiver. Manager acknowledges Manager's unconditional obligation to comply with this Agreement. No failure by City to demand any performance required of Manager under this Agreement, and no acceptance by City of any imperfect or partial performance under this Agreement, shall excuse such performance or impair in any way City's ability to insist, prospectively and retroactively, upon full compliance with this Agreement. No acceptance by City of payments or other performances hereunder shall be deemed a compromise or settlement of any claim City may have for additional or further payments or performances. Any waiver by City of any breach of condition or covenant herein contained to be kept and performed by Manager shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent City from declaring a default for any succeeding or continuing breach either of the same condition or covenant or otherwise. No statement, bill or notice by City concerning payments or other performances due hereunder shall excuse Manager from compliance with this Agreement nor estop City (or otherwise impair City's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this Agreement. No waiver of any description (including any waiver of this sentence or paragraph) shall be effective against City unless made in writing by a duly authorized representative of City specifically identifying the particular provision being waived and specifically stating the scope of the waiver. Manager expressly disclaims and shall not have the right to rely on any supposed waiver or other change or

modification, whether by word or conduct or otherwise, not conforming to this paragraph.

7.5 Reimbursement of Remedies City's Expenses. Manager shall pay to City upon demand any and all reasonable amounts expended or incurred by City in performing Manager's obligations.

7.6 Inspection. City shall have access to the Facility at all times and upon reasonable notice (except, in the event of an emergency without notice) for the purpose of examining, inspecting, evaluating, planning, repairing, designing, maintaining or showing the Facility or exercising City's other rights hereunder. Manager shall promptly undertake appropriate action to rectify any deficiency (identified by City during such inspections or otherwise) in Manager's compliance with this Agreement.

7.7 Default by City. Notwithstanding anything in this Agreement to the contrary, if City at any time is required to pay to Manager any amount or render any performance, such amount or performance is not due until thirty (30) days after notice by Manager to City that the amount has become payable or that the performance is due. If a cure cannot be effected during that period, City shall not be in default so long as City commences cure during the period and diligently prosecutes the cure to completion provided such cure must be completed within sixty (60) days after it is due.

#### VIII. DISSOLUTION OF MUSEUM OF THE WEST, INC.

8.1 Manager shall not dissolve or take any action in preparation for dissolving Museum of the West, Inc., as a non-profit corporation or dispose of the assets of Museum of the West, Inc. unless Manager has submitted to the City a written proposal to dissolve the corporation and distribute the assets and received written approval from the City, which may be granted or withheld in the City's sole discretion. Manager shall provide the City's contract administrator with all information and documents regarding the proposed dissolution and distribution of assets as determined necessary by the contract administrator. If the City approves a plan of dissolution, the City shall have the sole authority and discretion to determine the 501(c)(3) entity to which Manager transfers its assets.

8.2 If the City approves a dissolution and transfer of assets to another 501(c)(3) entity, Manager shall assign all obligations and rights under this Agreement to the entity chosen under this Section 8 and in compliance with Section 15 of this Agreement (Assignability).

#### IX. TERMINATION

9. Rights at Termination. Termination of this Agreement due to Manager's breach or for any other reason does not terminate Manager's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or in any way terminate any of Manager's liability related to this Agreement.

9.1 Departure. At the expiration of the term hereof or upon any sooner termination thereof, Manager shall without demand, peaceably and quietly quit and exit the Facility leaving it thoroughly cleaned, in good repair, and with all utilities operating, with the Facility maintained and repaired and in as good order and condition, reasonable use and wear excepted, with the Facility as the same may be upon its completion or in such better condition as the Facility may thereafter be placed. Upon termination, Manager shall deliver to City any amounts for which City deems a claim may be made respecting the Facility.

9.2 Confirmation of Termination. Upon expiration or termination of this Agreement for any reason, Manager shall provide to City upon demand quit claim deeds covering the Facility executed by Manager and by all persons claiming through this Agreement or Manager any interest in or right to use the Facility.

9.3 Termination Items. Upon termination of this Agreement through expiration, default or otherwise, if the same has not occurred earlier, title to certain items (the "Termination Items") shall automatically vest in City as follows:

9.3.1 The Termination Items shall vest in City without any payment by City or any compensation to Manager and without requirement of any deed, conveyance, or bill of sale. However, if City shall request any documents in confirmation thereof, Manager shall promptly execute, acknowledge and deliver the same.

9.3.2 The Termination Items are all personal property owned or used at the Facility under this Agreement. Without limitation, the Termination Items include:

9.3.2.1 Any and all fixtures and structural or permanent improvements placed upon the Facility together with all pipes, fences, conduits, traffic bumpers, pumps, valves, sprinklers, meters, hoists, wiring, cables, cabinets, controls, air conditioners, heaters, water heaters and all other mechanical or other systems and their components, monitors, timers, utility lines and all other equipment and personal property of every description attached in any way to the Facility or installed at a fixed location upon the Facility together with every part of the utility systems serving the Facility, whether or not located upon the Facility.

9.3.2.2 All fixtures, furniture, furnishings, equipment and other personal property located at the Facility.

9.3.2.3 Any other property required by this Agreement.

9.3.3 Notwithstanding the foregoing, the Termination Items do not include the following:

9.3.3.1 Personal effects owned by Manager's employees and volunteers.

9.3.3.2 Security cameras or other security devices (except cables) that may be leased from a security company.

## X. INSURANCE AND INDEMNITY

10. Insurance and Indemnity. During the entire term of this Agreement, Manager shall insure the Facility and property and activities at and about the Facility and provide indemnification as follows:

10.1 Insurance Required. Prior to entering, occupying or using the Facility in any way, and at all times thereafter Manager shall obtain and cause to be in force and effect the following insurance:

10.1.1 Commercial General Liability. Commercial general liability insurance with a limit of Five Million Dollars (\$5,000,000.00) for each occurrence, a limit of Five Million Dollars (\$5,000,000.00) for products and completed operations annual aggregate, and a limit of Five

Million Dollars (\$5,000,000.00) general aggregate limit per policy year. The policy shall cover liability arising from Facility, operations, independent contractors, products, completed operations, personal injury, bodily injury, advertising injury and liability assumed under an "insured contract" including this Agreement, except as to pollution, and Manager's intentional acts.

10.1.2 Liquor Liability. Liquor liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) for each claim and Two Million Dollars (\$2,000,000.00) for all claims in the aggregate. This coverage is required at all times when alcohol is being consumed, sold, or served at the Facility, or when Manager holds any type of liquor license for the Facility, or when any liquor license otherwise exists with respect to the Facility.

10.1.3 Automobile Liability. Automobile liability insurance with a combined single limit of One Million Dollars (\$1,000,000.00) for each accident covering any and all owned, hired, and non-owned vehicles assigned to or used in any way in connection with Manager's use of the Facility. Without limitation, such insurance shall cover hazards of motor vehicle use for loading and offloading.

10.1.4 Workers' Compensation. Such workers' compensation and similar insurance as is required by law and employer's liability insurance with a minimum limit of One Hundred Thousand Dollars (\$100,000.00) for each accident, One Hundred Thousand Dollars (\$100,000.00) disease for each employee, Five Hundred Thousand Dollars (\$500,000.00) policy limit for disease. All contractors and subcontractors must provide like insurance.

10.1.5 Directors and Officers Liability. Directors and Officers Liability insurance, including Employment Practices Liability, in the amount of One Million Dollars (\$1,000,000.00) per claim, and One Million Dollars (\$1,000,000.00) annual aggregate, inclusive of defense costs.

10.1.6 Employee Fidelity/Crime. 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 One Hundred Thousand Dollars (\$100,000.00) per loss.

10.1.7 Fine Art. Fine art insurance covering works of art and collections of all kinds and of every description, and all associated property including but not limited to frames, glasses, shadow boxes, crates and other display equipment while at the Facility, at Manager's other premises, at any other location worldwide, or in transit worldwide. Coverage shall be on a "wall to wall" basis from the time property is removed from its normal repository, incidental to shipment, until returned or shipped to another point designated by the owner or its agent prior to return shipment. Perils insured against shall all be risks of direct physical loss or damage from any external cause, except as excluded. Any applicable deductible or retention shall not be greater than One Thousand Dollars (\$1,000.00).

10.1.8 Personal Property. Manager shall maintain special causes of loss personal property coverage, as defined by Insurance Services Office, Inc., in an amount per occurrence equal to full replacement cost of all personal property used in connection with the Facility.

10.1.9 Other Insurance. Any other insurance City may reasonably require for the protection of City and City's employees, officials, representatives, officers and agents (all of whom, including City, are collectively "Additional Insureds"), the Facility, surrounding property, Manager, or the activities carried on or about the Facility. Such insurance shall be limited to insurance a reasonable person owning, leasing, designing, constructing, occupying or operating similar facilities

could reasonably purchase.

10.2 Policy Limit Escalation. Not more than once in any thirty-six (36) month period, City may elect on not less than thirty (30) days notice to Manager to increase the amount or type of any insurance to account for inflation, changes in risk, or any other factor that City reasonably determines to affect the prudent amount of insurance to be provided.

10.3 Form of All Insurance. All insurance provided by Manager with respect to the Facility, whether required by this Agreement or not, and all insurance provided by third parties under this Agreement, shall meet the following requirements:

10.3.1 "Occurrence" coverage is required except for directors' and officers' liability. "Claims made" insurance is not otherwise permitted.

10.3.2 If Manager uses any excess insurance then such excess insurance shall be "follow form" equal to or broader in coverage than the underlying insurance.

10.3.3 Policies must also cover and insure Manager's activities relating to the business operations and activities conducted away from the Facility.

10.3.4 Manager must clearly show by providing copies of insurance policies, insurance certificates, formal endorsements or other documentation acceptable to City that all insurance coverage required by this Agreement is provided.

10.3.5 Upon City's request, Manager shall provide to City copies of actual insurance policies.

10.3.6 Manager's insurance shall be primary insurance as to the risks it covers.

10.3.7 All policies, except for directors and officer's liability and fidelity/crime policies, shall waive transfer rights of recovery (subrogation) against City and the other Additional Insureds.

10.3.8 All deductibles, retentions or "self-insured" amounts shall be subject to the following:

10.3.8.1 Manager shall be solely responsible for all such amounts.

10.3.8.2 No deductible shall be applicable to coverage provided to City.

10.3.8.3 No such amount for any policy during any year may exceed Five Thousand and No/100 Dollars (\$5,000.00).

10.3.9 All policies shall contain provisions that neither Manager's breach of a policy requirement or warranty, nor failure to follow claims reporting procedures, shall affect coverage provided to City.

10.3.10 All liability insurance must name City and the other Additional Insureds as additional insureds. Manager shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement.

10.3.11 All applicable policies must list City as a loss payee as respects proceeds relating to the Facility.

10.3.12 All policies must require the insurer to provide City with at least thirty (30) days prior notice of any cancellation, reduction or other change in coverage that would reduce coverage below the amount required by this Agreement. The insurer's duty to notify City of changes in coverage shall not include phrases such as "endeavor to" or "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives."

10.3.13 All policies shall require that notices be given to City in the manner specified for notices to City under this Agreement.

10.4 Evidence of Insurance. Manager shall provide evidence of all insurance as follows:

10.4.1 Certificates must be in ACORD form or equivalent acceptable to City.

10.4.2 Manager shall provide to City certificates of insurance annually. Manager shall provide certificates at other times at City's request.

10.4.3 Certificates must evidence that the policy described by the certificate is in full force and effect and that the policy satisfies each requirement of this Agreement applicable to the policy. For example, certificates must evidence that City and the other Additional Insureds are additional insureds.

10.4.4 Certificates shall identify the contract number, the date of this Agreement and the Parties' names, and shall be sent to the designated City Contract Administrator and the City of Scottsdale Senior Real Estate Manager.

10.4.5 Each insurance certificate provided to City constitutes a warranty and representation by Manager to City that policies, coverages and other matters are actually in effect as described in the certificate.

10.4.6 Upon City's request, Manager shall provide to City copies of actual insurance policies.

10.5 Acceptable Insurers. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurer) by the State of Arizona Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++ 6.

10.6 City's Election to Provide Insurance. City is not required to carry any insurance covering or affecting the Facility or use of City's property related to this Agreement. City may elect to acquire all or any part of the insurance required by this Agreement (with or without any other real property City may own, or control) and Manager shall pay to City the costs of such insurance as reasonably determined by City. Manager shall provide all required insurance not so provided by City. Any insurance or self-insurance maintained by City shall not contribute to Manager's insurance.



10.7 No Representation of Coverage Adequacy. By requiring insurance, City does not represent that coverage or limits will be adequate to protect Manager. Failure to demand evidence of compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Manager from Manager's obligation to maintain required insurance.

10.8 Insurance to be Provided by Others. Manager shall cause its contractors or other persons occupying, working on or about, or using the Facility pursuant to this Agreement to be covered by their own or Manager's commercial general liability insurance with liability limits of not less than One Million Dollars (\$1,000,000.00) each occurrence, Two Million Dollars (\$2,000,000.00) products' completed operations and a Two Million Dollar (\$2,000,000.00) general aggregate limit per policy year and conforming to the other requirements of this Agreement. Directors' and officers' liability and employee fidelity/crime coverage shall not be required from such persons.

10.9 Indemnity. In addition to all other indemnities and other obligations hereunder, to the fullest extent permitted by law, throughout the term of this Agreement and until all obligations and performances under or related to this Agreement are satisfied and all matters described in this paragraph are completely resolved, Manager (and all other persons using, acting, working or claiming through or for Manager or this Agreement (if they or their subcontractor, employee or other person or entity hired or directed by them participated in any way in causing the claim in question)) shall jointly and severally, indemnify, defend and hold harmless City and all other Additional Insureds for, from and against any and all claims or harm related to the Facility or this Agreement (the "Indemnity"). Without limitation, the Indemnity shall include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use, financial harm, or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, and the cost of appellate proceedings and all other costs and expenses of litigation or resolving the claim) that may arise in any manner out of any use of the Facility or other property related to this Agreement or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to this Agreement, including without limitation any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the Facility or surrounding areas related to this Agreement, including without limitation, claims, liability, harm or damages caused in whole or in part by City or any other Additional Insured or anyone for whose mistakes, errors, omissions or negligence Manager or City may be liable. As a condition to City's executing this Agreement, Manager specifically agrees that to the extent any provision of this paragraph is not fully enforceable against Manager for any reason whatsoever, this paragraph shall be deemed automatically reformed to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law. The Indemnity shall also include and apply to any environmental injury, personal injury or other liability relating to City's or Manager's acquisition, ownership or use of real property developed, operated, owned, used, controlled or possessed by City or Manager under this Agreement. Notwithstanding the foregoing, the Indemnity does not apply to:

10.9.1 Claims arising only from the sole gross negligence of City and its employees.

10.9.2 Claims that the law prohibits from being imposed upon the indemnitor.

## XI. CONDEMNATION

11. Condemnation. The following shall govern any condemnation of any part of or interest in the Facility (the "Part Taken") and any conveyance to a condemnor in avoidance or settlement of condemnation or a threat of condemnation:

11.1 Termination as to Part Taken. This Agreement shall terminate as to the Part Taken on the date (the "Condemnation Date") that is the earlier of the date title to the Part Taken vests in the condemnor or the date upon which the condemnor is let into possession of the Part Taken. In the event of a partial taking, this Agreement shall continue in full force and effect as to the part of the Facility not taken. A partial taking is a taking that does not substantially affect the Facility or its operation. City shall determine whether condemnation is total or partial.

11.2 Condemnation Proceeds. Manager hereby assigns and transfers to City Manager's entire interest in all condemnation damages, interest, severance damages, and any other payments or proceeds of any kind relating to the condemnation (collectively the "Condemnation Proceeds"). Manager shall execute and deliver to City assignments or other instruments requested by City confirming such assignment and transfer. Manager shall immediately pay to City any Condemnation Proceeds Manager may receive. The Condemnation Proceeds shall not include relocation benefits, if any, awarded specifically only to Manager to cover expenses of relocating Manager's business located at the Facility at the time of the condemnation. Such relocation benefits shall be owned by and paid directly to Manager only.

## XII. DAMAGE TO OR DESTRUCTION OF FACILITY

12. Damage to or Destruction of Facility. If the Facility is wholly or partially damaged by fire, explosion, the elements, the public enemy, or other casualty, and the cost of restoring the damage would exceed One Hundred Thousand Dollars (\$100,000.00), then City shall have a ninety (90) day period following such damage to notify Manager that City elects to terminate this Agreement. Otherwise, City shall repair the Facility. City's obligations are limited to the Building structure. City is not obligated to repair Display Work, fixtures, or art, artifacts or other personal property.

## XIII. MANAGER'S RECORDS

13. Manager's Records. Manager shall provide information to City as follows:

13.1 Record Keeping. Manager shall maintain in a secure place at a secure location within Maricopa County, Arizona proper and accurate books, records, ledgers, correspondence, and other papers and repositories of information, relating to this Agreement and to all of Manager's obligations hereunder. Manager shall furnish, from time to time, such financial and other information as City may reasonably request pertaining to Manager's and City's respective rights and obligations with respect to this Agreement as reasonably determined by City.

13.2 Audit Report. Within one hundred twenty (120) days after the end of each fiscal year, Manager shall prepare and submit to City at Manager's expense an annual audit report of revenues and expenses related to this Agreement and an opinion thereon prepared by an independent certified public accounting firm. The audit report shall include an annual financial statement prepared in accordance with generally accepted accounting principles (GAAP) and the provisions of the Statement of Financial Accounting Standards No. 117 (Financial Statements of Not-for-Profit Organizations). Manager shall make available to City all work

papers and records produced by the auditor pertaining to the audit, or copies thereof, within ten (10) working days after notice by City to do so.

13.3 Strategic Plan. Manager shall provide its Strategic Plan to the city to include its mission, vision and goals that provides planning, development, production, operations and managerial services required of it under this Agreement. Manager shall provide the City Contract Administrator with amendments to the Strategic Plan as approved by its Board of Directors.

13.4 Annual Operational Plan. Manager shall provide the City Contract Administrator with an annual calendar year comprehensive written operational plan no later than October 1 each year for the subsequent year. The Operational Plan shall include Managers detailed plans to achieve the Strategic Plan, including financial development plan progress, performance measures for each of its goals, objectives, strategies and other components, and its adopted budget.

13.5 Annual Report. Manager shall provide the City Contract Administrator with an annual report no later than June 1 each year. The Annual Report shall critically evaluate, for the preceding fiscal year, each of the performance measures, Manager's satisfaction of each of its objectives under this Agreement, and Manager's achievements with regard to its mission.

13.6 Performance Audits. The City may at any time conduct a performance audit to evaluate Manager's performance under this Agreement. Manager 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 Manager's responsibilities under this Agreement.

13.7 Internal Controls. Manager shall maintain financial controls and management policies consistent with the responsible stewardship of City-Owned Facilities and Specialty Equipment.

13.8 Applicable to Others. By claiming under this Agreement, others using the Facility shall also be deemed to have agreed to provide to City upon request information relevant to compliance with this Agreement by Manager or others.

#### XIV. COMPLIANCE WITH LAW

14. Compliance with Law. Manager shall conduct only lawful operations and activities at and near the Facility 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 and shall use and occupy the Facility in conformance with all of the same. This Agreement does not constitute, and City has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance or favoritism to Manager with regard to), any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Scottsdale or any other governmental body upon or affecting Manager, the Facility, or Manager's use of the Facility. Manager acknowledges that all of Manager's obligations hereunder are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of), all laws and regulations applicable to Manager. Manager further agrees that this Agreement is not intended to diminish any performances to the City of Scottsdale that would be required of Manager by law if this Agreement had been made between Manager and a private citizen. City has not relinquished

any right of condemnation or eminent domain over the Facility. This Agreement does not impair the City of Scottsdale power to enact, apply or enforce any laws or regulations, or exercise any governmental powers, affecting in any way Manager or the Facility. Without limiting in any way the generality of the foregoing, Manager shall comply with all and each of the following:

14.1 Government Property Lease Excise Tax. Manager shall be responsible for any and all property taxes and all government property lease excise taxes described in A.R.S. § 42-1901 *et seq.* or similar laws in force from time to time that are lawfully assessed against the Facility or against City or Manager with respect to the Facility. Pursuant to A.R.S. § 42-1931, failure by Manager to pay the taxes after notice and an opportunity to cure is an event of default that could result in divesting Manager of any interest in or right of occupancy of the Facility.

14.2 Taxes, Liens and Assessments. In addition to all other amounts herein provided, Manager shall pay, when the same become due and payable, all taxes and general and special fees, charges and assessments of every description that during the term of this Agreement may be lawfully levied upon or assessed against Manager, the Facility, the operations conducted therein, any amounts paid or other performances under this Agreement by either party, and all possessory interest in the Facility and improvements and other property thereon, whether belonging to City or Manager. The preceding sentence does not apply to obligations of Manager not related to the Facility. Manager shall have the right to contest, but not the right to refuse to timely pay, any taxes and assessments. Manager shall pay all sales, transaction privilege, and similar taxes that it is legally obligated to pay.

14.3 Procurement Process. Manager shall cause all Manager design and construction activity at the Facility to comply in all respects with all applicable bidding and procurement laws and shall pay, indemnify, defend and hold harmless City from any suits or other claims of any description related to such laws. City shall have the right, but not the obligation, to determine in City's reasonable discretion how such laws apply to the Facility.

## XV. ASSIGNABILITY

15. Assignability. This Agreement is not assignable by Manager and any assignment shall be void and create in the assignee no rights except in strict compliance with the following:

15.1 Special Expertise. In making this Agreement, City depends upon the particular capacities, expertise, powers, and good offices of Manager, which would not be satisfactorily provided by a third party. No right or obligation of Manager hereunder may in any way whatsoever be assigned or delegated to a third party without City's prior express written consent.

15.2 Assignments Prohibited. Every assignment of Manager's interest in this Agreement or any of Manager's rights or interests hereunder is prohibited unless Manager first receives from City notice of City's consent to the assignment.

15.3 Assignment Transactions Included. References in this Agreement to assignments by Manager shall be deemed also to apply to all of the following transactions, circumstances and conditions:

15.3.1 Any voluntary or involuntary assignment, conveyance or transfer of any rights under this Agreement.

15.3.2 Any voluntary or involuntary pledge, lien, mortgage, security interest, judgment, deed of trust, claim or demand, whether arising from any contract, any agreement, any work of construction, repair, restoration, maintenance or removal, or otherwise (collectively "Liens").

15.3.3 The use, occupation, management, control or operation of the Facility or any part thereof by others.

15.3.4 Any transfer of membership interests, corporate stock or any other direct or indirect transfer of the majority of the ownership, management or control of Manager.

15.3.5 Any assignment by Manager for the benefit of creditors, voluntary or involuntary.

15.3.6 Any bankruptcy or reorganization of Manager not completely resolved in Manager's favor within one hundred twenty (120) days after it is initiated.

15.3.7 The occurrence of any of the foregoing by operation of law or otherwise.

15.3.8 The occurrence of any of the foregoing with respect to any assignee or other successor to Manager.

15.4 Assignment Transactions Excluded. References in this Agreement to assignments by Manager do not apply to the following transactions:

15.4.1 Agreements to allow an event producer to hold a one-time event (such as a wedding reception) at the Facility.

15.4.2 Manager's hiring and discharging of employees.

15.4.3 Normal turnover on Manager's board of directors.

15.5 Effect of Assignment. No action or inaction by City shall be deemed a waiver of the prohibition on assignments or any other provision of this Agreement, or the acceptance of the assignee or occupant as Manager, or a release of Manager from the further performance by Manager of this Agreement. The consent by City to an assignment shall not relieve Manager from obtaining City's consent to any further assignment. No assignment shall release Manager from any liability hereunder.

15.6 Enforceability after Assignment. This Agreement shall control any conflict between this Agreement and the terms of any assignment. Upon execution of this Agreement, and upon each subsequent assignment, Manager shall provide a complete copy of this Agreement and any amendments to each assignee.

15.7 Grounds for Refusal. No assignments of this Agreement are contemplated or bargained for. City has the absolute right for any reason or for no reason in its sole discretion to give or withhold consent to any assignment or to impose any conditions upon any assignment. Manager shall pay to City the sum of One Thousand Five Hundred Dollars (\$1,500.00) as a fee for legal and administrative expenses related to any assignment or any request for consent to an assignment.

15.8 Form of Assignment. Any permitted assignment shall be by agreement in form and content acceptable to City. Without limitation, any assignment shall specify and require each assignee acquiring any interest under this Agreement to assume and be bound by, and be obligated to perform the terms and conditions of this Agreement, and that in the event of default of Manager under such assignment, City at City's sole option may succeed to the position of Manager as to any assignee of Manager without liability for any prior breaches or performances.

## XVI. MISCELLANEOUS

16. Miscellaneous. The following additional provisions apply:

16.1 Years. Unless otherwise specified, references in this Agreement to a year refer to a calendar year. A fiscal year begins July 1 and ends June 30.

16.2 Severability. If any provision of this Agreement is declared void or defective, that declaration shall not affect the validity nor any other provision of this Agreement.

16.3 Amendments. This Agreement may not be amended except by a formal writing executed by all of the parties.

16.4 Conflicts of Interest. No member, official or employee of 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.

16.5 No Partnership. Manager has no relationship with City except as defined by this Agreement. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture, association or similar relationship between the parties. Manager is a non-profit corporation and is neither a department, nor an operating agency of City.

16.6 Nonliability of City Officials and Employees. No member, official, representative or employee of 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 City or for any amount that may become due to any party or successor, or with respect to any obligation of City or otherwise under the terms of this Agreement or related to this Agreement.

16.7 Notices. Notices hereunder shall be given in writing personally served upon the other party or mailed by registered or certified mail, return receipt requested, postage prepaid addressed to:

If to City:                      Tourism and Events Department  
    City of Scottsdale  
    7447 E. Indian School Road, Suite 301  
    Scottsdale, AZ 85251  
    Attn: Tourism & Events Director

Copy to:                              City of Scottsdale  
    3939 N. Drinkwater Blvd.  
    Scottsdale, AZ 85251  
    Attn: City Attorney

If to Manager: Scottsdale's Museum of the West  
3830 N. Marshall Way  
Scottsdale Arizona 85251  
Attn: CEO/Executive Director

Copy to: William Ridenour, Esq.  
Fennemore Craig  
2394 East Camelback Road, Suite 600  
Phoenix, Arizona 85016-5695

By notice from time to time, a party may designate any other street address within Maricopa County, Arizona as its address for giving notice hereunder. Notices to Manager may instead be hand delivered to Manager's management office at the Facility. Service of any notice by mail shall be deemed to be complete three (3) days (excluding Saturday, Sunday and legal holidays) after the notice is deposited in the United States mail.

16.8 Contract Administrator. The City's contract administrator shall be the Tourism and Events Director or such other person as may be designated by the City Manager. The contract administrator shall have authority to exercise all powers and rights of the City under this Agreement.

16.9 Time of Essence. Time is of the essence of each and every provision of this Agreement.

16.10 Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreements, understandings, negotiations, proposals, draft agreements, discussion outlines, correspondence and memoranda or representation regarding the Property or the Facility.

16.11 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was entered into on the basis that it shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, that might otherwise favor Manager.

16.12 Manager Payments Cumulative. All amounts payable by Manager to City hereunder or under any tax, assessment or other existing or future ordinance or other law of City of Scottsdale or the State of Arizona shall be cumulative and payable in addition to each other payment required hereunder, and such amounts shall not be credited toward, substituted for, or set off against each other by Manager in any manner.

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

16.14 No Third Party Beneficiaries. Except for any limited provisions expressly stated to be for the benefit of a third party, no person or entity shall be a third party beneficiary to this Agreement or shall have any right or cause of action hereunder. City shall have no liability to third parties for any approval of plans, Manager's construction of improvements, Manager's negligence,

Manager's failure to comply with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by Manager), or otherwise as a result of the existence of this Agreement.

16.15 Exhibits. All attached exhibits that are specifically referenced in this Agreement are hereby incorporated into and made an integral part of this Agreement for all purposes.

16.16 Attorneys' Fees. If any action or suit or proceeding is brought by City or Manager to vindicate or exercise any of City's or Manager's rights or remedies hereunder, the non-prevailing party shall pay all costs of such action or suit and all expenses of such action or suit together with such sum as the court may adjudge reasonable as attorneys' fees to be allowed in said suit, action or proceeding.

16.17 Choice of Law. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules. Exclusive proper venue for any action regarding this Agreement shall be Maricopa County.

16.18 Approvals and Inspections. All approvals, reviews and inspections by City under this Agreement or otherwise are for City's sole benefit and not for the benefit of Manager, its contractors, engineers or other consultants or agents, or any other person.

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

16.20 E-Verify. The following provisions shall apply to all work by Manager, its subcontractors or others performing work under this Agreement:

16.20.1 Under the provisions of A.R.S. §41-4401, Manager warrants to City that Manager and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that Manager and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A). A breach of this warranty by Manager or any of its subcontractors will be considered a material breach of this Agreement and may subject Manager or its subcontractors to penalties up to and including termination of this Agreement or any subcontract. City retains the legal right to inspect the papers of any employee of Manager or any subcontractor who works on this Agreement to ensure that Manager or any subcontractor is complying with the warranty given above. City may conduct random verification of the employment records of Manager and any of its subcontractors to ensure compliance with this warranty. Manager agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

16.20.2 City will not consider Manager or any of its subcontractors in material breach of this Agreement if Manager and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324 (a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

16.20.3 The provisions of this paragraph must be included in any contract Manager enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the



State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property. Manager will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. Manager's failure to assure compliance by all its subcontractors with the E-Verify Program may be considered a material breach of this Agreement by City.

16.21 Manager 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.

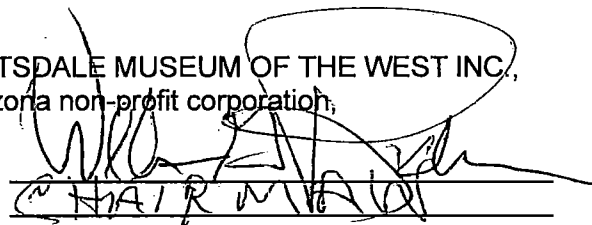
16.22 Dates. Sunday, Saturday and Arizona legal holidays are holidays for purposes of this Agreement.

16.23 Recording. This Agreement shall not be recorded.

EXECUTED as of the date first given above.

MANAGER: SCOTTSDALE MUSEUM OF THE WEST INC,  
an Arizona non-profit corporation,

By:  
Its:



CITY: CITY OF SCOTTSDALE,  
an Arizona municipal corporation

By:

\_\_\_\_\_  
David D. Ortega, Mayor

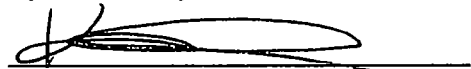
ATTEST:

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

APPROVED AS TO FORM:



Sherry R. Scott, City Attorney  
By: William Hylan, Senior Assistant City Attorney



Karen Churchard  
Tourism and Events Director

## TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A	Financial Participation Agreement.
B	Fixtures and Personal Property.
C	List of Manager Maintenance Work.
D	List of City Maintenance Work.
E	List of Manager Utilities.
F	List of City Utilities.
G	Forecast Revenues.

FINANCIAL PARTICIPATION AGREEMENT BETWEEN THE CITY OF  
SCOTTSDALE AND SCOTTSDALE'S MUSEUM OF THE WEST, INC. FOR  
FISCAL YEAR \_\_\_\_\_

This Financial Participation Agreement ("Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the City of Scottsdale, an Arizona municipal corporation (the "City"), and Scottsdale's Museum of the West, Inc., an Arizona non-profit corporation doing business as Scottsdale Arts ("SMoW").

RECITALS

A. On \_\_\_\_\_, 202\_, the City and the SMoW executed City of Scottsdale Agreement No. 2021-088-COS ("Museum Management Agreement"), in which the City designated SMoW as the principal organization for managing Scottsdale's Museum of the West through showcasing art, culture and traditions of the West that reflect the greater American West region.

B. In accordance with the Museum Management Agreement, the City desires to pay SMoW a Management Services Fee for the City's fiscal year \_\_\_\_\_, and the City Council has appropriated funds for such purposes.

C. The Museum Management Agreement provides that the City shall disperse the Management Services Fee for any given fiscal year to SMoW 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 Museum Management 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 SMoW. SMoW shall provide the services specified in the Museum Management Agreement and shall comply in all respects with the provisions of the Museum Management Agreement.
5. Financial Participation by the City.

5.1. Solely for the purposes stated in this Agreement and the Museum Management Agreement, the City shall pay SMoW a total Management Services Fee of

20068409v3

\$ \_\_\_\_\_ during and for the City's fiscal year 202\_-2\_.

5.2. Of the Management Fee specified in Subsection 5.1, \$ \_\_\_\_\_) requires a Donations Matching Program with the following stipulations:

5.2.1 On June 30, 202\_, SMoW shall provide City with evidence reasonably satisfactory that SMoW has received Match Donations made during July 1, 202\_ through June 29, 202\_ (Match Period) totaling \$ \_\_\_\_\_ that meet the following requirements.

5.2.1.1 The donation was not made in payment or exchange for (or in anticipation of) any membership, admission, use of the Facility, instruction, goods, services or any other consideration or benefit.

5.2.1.2 The Match Donation was delivered or pledged by enforceable contract to SMoW before the end of June 29, 202\_.

5.2.1.3 The Match Donation is a pledge by written contract or donation of money from individuals or companies.

5.2.1.4 The use of the donation is restricted to normal operating expenses of the Facility during the Match Period which it is received or during the twelve (12) month period immediately succeeding the Match Period in which it is received.

5.2.1.5 The Match Donation may include an amount not to exceed fifty percent (50%) of appraised value of any donation or gift of property including, but not limited to, art, artifacts, sculptures, jewelry or other personal property accepted by SMoW for the Facilities collection.

5.2.1.6 At the end of the Match Period and to receive credit, SMoW shall provide City with the Match Donation donors' names and places of residence or the principal place of business for corporations or other business entities.

5.2.2 Donations Matching Program. If the requirements of Section 5.2.1 are met, on July 15, 20\_\_, City shall pay SMoW the sum of Four Hundred Thousand Dollars (\$400,000.00) for operation of the Facility.

5.2.3 Of the Management Services Fee specified in Subsection 5.1, \$ \_\_\_\_\_ shall be paid to SMoW in twelve monthly installments. The annual payment shall be used for fixed costs which would include but not be limited to utilities, security, storage, insurance, equipment rental, etc.

5.3. The City shall pay the Management Fee to SMoW in accordance with the following schedule:

5.3.1 \$ \_\_\_\_\_ by July 15, 202\_.

5.3.2 \$ \_\_\_\_\_ by August 15, 202\_.

5.3.3 \$ \_\_\_\_\_ by September 15, 202\_.

- 5.3.4 \$ \_\_\_\_\_ by October 15, 202\_\_.
- 5.3.5 \$ \_\_\_\_\_ by November 15, 202\_\_.
- 5.3.6 \$ \_\_\_\_\_ by December 15, 202\_\_.
- 5.3.7 \$ \_\_\_\_\_ by January 15, 202\_\_.
- 5.3.8 \$ \_\_\_\_\_ by February 15, 202\_\_.
- 5.3.9 \$ \_\_\_\_\_ by March 15, 202\_\_.
- 5.3.10 \$ \_\_\_\_\_ by April 15, 202\_\_.
- 5.3.11 \$ \_\_\_\_\_ by May 15, 202\_\_.
- 5.3.12 \$ \_\_\_\_\_ by June 15, 202\_\_.

6. Term. The term of this Agreement shall commence on July 1, 20\_\_\_\_ and end on June 30, 20\_\_\_\_, unless sooner terminated.

7. Termination. The termination provisions of the Museum Management 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. SMOw 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.

## Fixtures and Personal Property

1. Desks
2. Chairs
3. Computers and copiers
4. Computer Monitors
5. IT hardware and software (servers, etc.)
6. File cabinets
7. Phones
8. Ladders
9. Conference room table(s)
10. Kitchen equipment? (refrigerator, stove, microwave, dishwasher)
11. Lamps, desk lights
12. Forklift, scissor lift
13. Tools
14. Point of sale equipment (cash registers)
15. Event tent silverware, portable tables
16. Outdoor speakers and enclosures
17. Retail items, display cases or tables
18. Curatorial equipment or supplies
19. Everyday commodities (toilet paper, paper, pencils pens, etc.)

## MANAGER MAINTENANCE RESPONSIBILITY

SMoW shall be responsible to:

1. Provide cleaning for all interior areas:

Wash, wax, vacuum, dust floors, walls, displays, exhibits, windows (interior and exterior), furniture, HVAC register grills, and equipment.

2. Provide supplies for public and staff use:

Restroom stock, commodities, light bulbs for all light fixtures, copy paper, writing utensils, etc.

3. Maintain, repair, refinish and replacing if necessary the interior fixtures (any item within the interior of any room within the Museum):

AV projectors, screens, furniture, window coverings, exterior and interior doors, building security system, drains and plumbing fixtures, cover plates and specialty lighting fixtures.

4. Provide building interior trash collection and pest control.

5. Pay Utility and Trash Collection bills

6. Provide Offsite Coordination:

Direct bus, valet and limousines to acceptable parking

7. Maintain the Sculpture Garden:

Maintain, repair and replace, as necessary, all exterior sculptures and other art displayed on the grounds.

8. Replacement of Normal Wear and Tear of Interior FF& E, such as:

Painted surfaces, carpeting, wall coverings, electrical fixtures and all plumbing fixtures (all items located within any room's interior space)

9. Maintain and keep operating all interior and exterior exhibits and artwork.

10. Provide daily monitoring of both the humidity control system and Security System and provide maintenance, repair and replacement of the building security system.

11. City Notice:

Contact Contract Administrator or Real Estate Department Co-Administrator if City maintenance responsibility item needs attention.

## CITY MAINTENANCE RESPONSIBILITY

The City shall be responsible to:

1. Maintain, repair and replace, if necessary, the:
  - a. Roof - roofing material, caulking, flashing, beams, slabs and trusses
  - b. Electrical distribution systems - Main panel, breakers, receptacles, raceways, ballasts, and wiring within walls, and motion sensors not connected to security system
  - c. Floors - all concrete flatwork
  - d. Fenestration - windows and storefronts, but not interior and exterior doors
  - e. HVAC - heating, ventilating, air conditioning and humidity systems (not grills), including quarterly change out of HVAC filters
  - f. Automated energy management systems
  - g. Plumbing system - water lines, valves and waste pipes within the walls as well as drains, traps, hot water heaters, and fixture hangers
  - h. Vertical circulation - guardrails, handrails and elevators (includes emergency phone, phone line and annual maintenance contract with regular inspections)
  - i. Emergency and safety systems - fire alarm panel, fire sprinklers, fire extinguishers, emergency exit lighting, and the annual inspection of these items
  - j. Building Exterior - painting and 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)
  - k. Lighting for Grounds and Sculpture Garden - area light poles, fixtures and ground boxes
  - l. 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
  - m. Routine exterior trash collection



## LIST OF MANAGER UTILITIES

The Manager will be responsible for establishing accounts and paying all utilities that service the building, according to the following list:

- Water
- Sewer
- Telecommunication (Cox or Qwest)
- Internet (Cox or Qwest)
- Electric (Arizona Public Service), interior
- Gas (Southwest Gas)

If a utility provider service area or ownership changes the responsibility to pay the utilities remain the SMOW Manager.

## LIST OF CITY UTILITIES

The City will be responsible for establishing accounts and paying all utilities that service outside the building, according to the following list:

Water

Electric (Arizona Public Service), exterior, including site lighting

# WESTERN SPIRIT: Scottsdale's Museum of the West

## 2021-2027 Revenues & Expenses: Actual and Forecast

	Actual 2021	Actual 2022	Est Act 2023	Forecast 2024	Forecast 2025	Forecast 2026	Forecast 2027	ASSUMPTIONS
<b>REVENUES</b>								
Admissions	372,478	551,660	600,000	704,000	844,800	929,280	1,022,208	20% Bump in 2025; 10% Growth 2026, 2027
Programs/ Events	29,259	80,105	120,000	140,000	168,000	184,800	203,280	20% Bump in 2025; 10% Growth 2026, 2027
Membership Sales	37,830	62,475	60,000	70,000	77,000	80,850	84,893	10% Bump in 2025; 5% Growth 2026, 2027
Gift Shop - Net Retail Sales	74,653	82,845	85,500	100,000	120,000	132,000	145,200	20% Bump in 2025; 10% Growth 2026, 2027
Saddle Up Gala, Net	147,362	155,212	130,000	145,000	159,500	175,450	192,995	10% growth/year
Pandemic Grants	414,131	0	0	0	0	0	0	One time
Piper Sustaining Grant	5,000,000	0	0	0	0	0	0	One time
Donations, Grants, Exhibit u/w	1,023,865	731,170	1,252,750	1,768,935	1,533,358	1,521,424	1,513,262	Piper drawdown for \$\$s over \$1,000,000
Tour Dev Fund (TDF) Support	650,000	400,000	775,000	650,000	650,000	650,000	650,000	Continued per year
<b>TOTAL</b>	<b>7,749,578</b>	<b>2,063,467</b>	<b>3,023,250</b>	<b>3,577,935</b>	<b>3,552,658</b>	<b>3,673,804</b>	<b>3,811,837</b>	
<b>EXPENSES</b>								
Personnel	1,685,098	1,765,245	2,079,600	2,575,680	2,470,524	2,587,883	2,712,217	Restaffing 2024; 5 emp x \$40K in 2025; +5%/yr
Marketing	118,563	105,592	270,000	270,000	319,607	400,000	460,000	Enhanced marketing tactics
Exhibit Design & Construction	355,831	126,785	154,000	169,450	177,923	186,819	196,160	Enhanced spend 2023-24 increases 5% 2025-27
Storage	73,825	36,932	60,800	98,800	106,000	75,200	53,500	Basha storage begins 2023; tapers after 2025
Insurance	82,095	83,296	95,000	99,750	104,738	109,974	115,473	Includes insurance on new collections 2024-27
Utilities, Maint/Repair	122,768	130,686	172,500	167,825	175,325	182,477	190,786	No expected impact due to expansion
Financial	120,390	77,633	151,100	156,180	158,292	161,671	165,388	Increases with bank card fees on admissions
Office Expenses	86,846	83,521	40,250	40,250	40,250	40,250	40,250	No expected impact due to expansion
<b>TOTAL</b>	<b>2,645,416</b>	<b>2,409,690</b>	<b>3,023,250</b>	<b>3,577,935</b>	<b>3,552,658</b>	<b>3,673,804</b>	<b>3,811,837</b>	

# Western Spirit: Scottsdale Museum of the West Expansion

September 19, 2023  
City Council Meeting

Brent Stockwell, MPA, ICMA-CM  
Assistant City Manager

[Bstockwell@ScottsdaleAZ.gov](mailto:Bstockwell@ScottsdaleAZ.gov) | 480-312-7288

# Project Overview

- 11,360 sq. foot expansion on city property, two floors, two new galleries
- Expansion cost is estimated to be \$12 million
- Museum has Charitable Gift Agreement with Louis “Buzz” Sands IV for \$12 million
- Same designer (StudioMa) and contractor (CORE) hired that built the original building
- Museum construction completion within two years
- Expansion contemplated during Museum Square development





Goldwater Blvd

City Property –  
Stagebrush Site

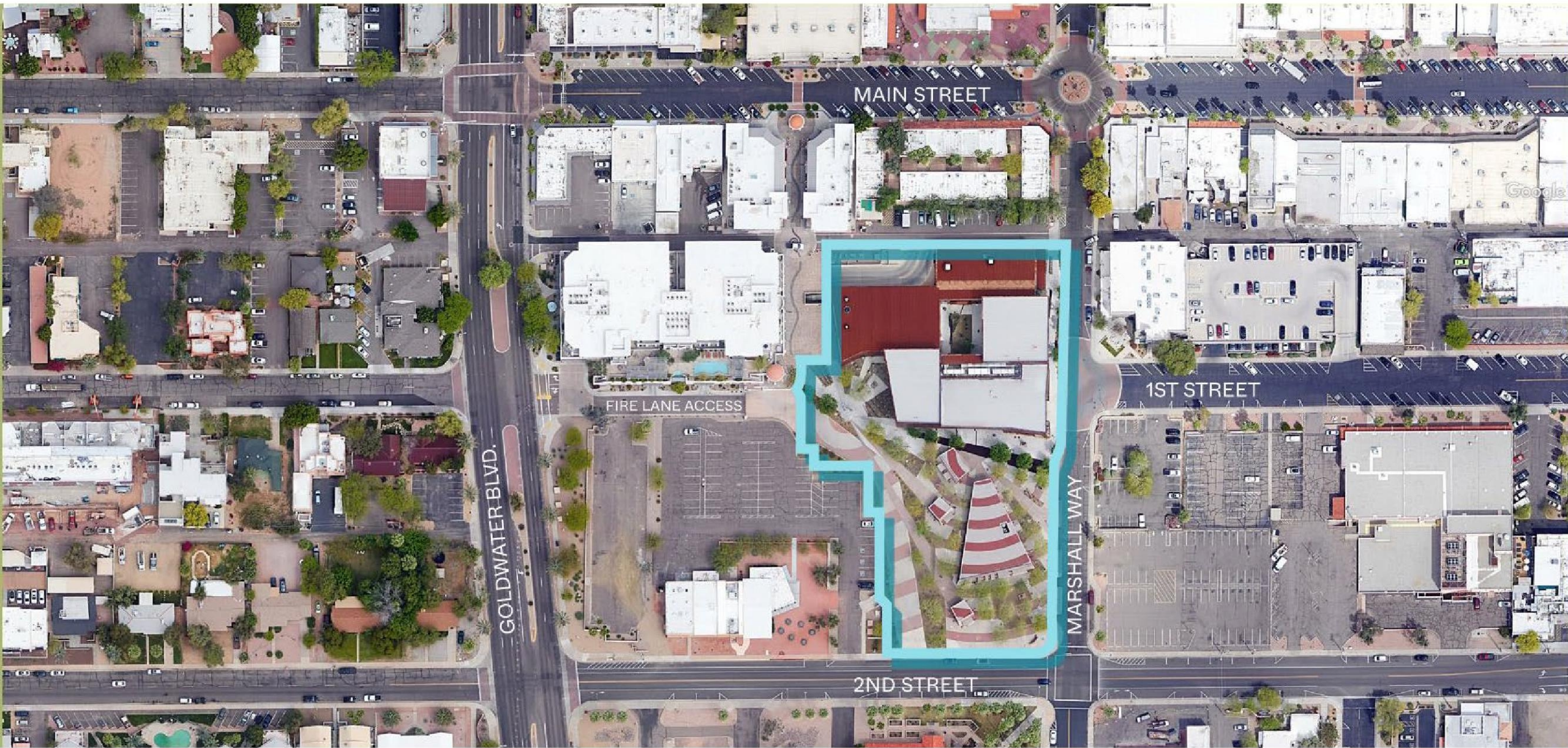
City Property –  
Museum Site

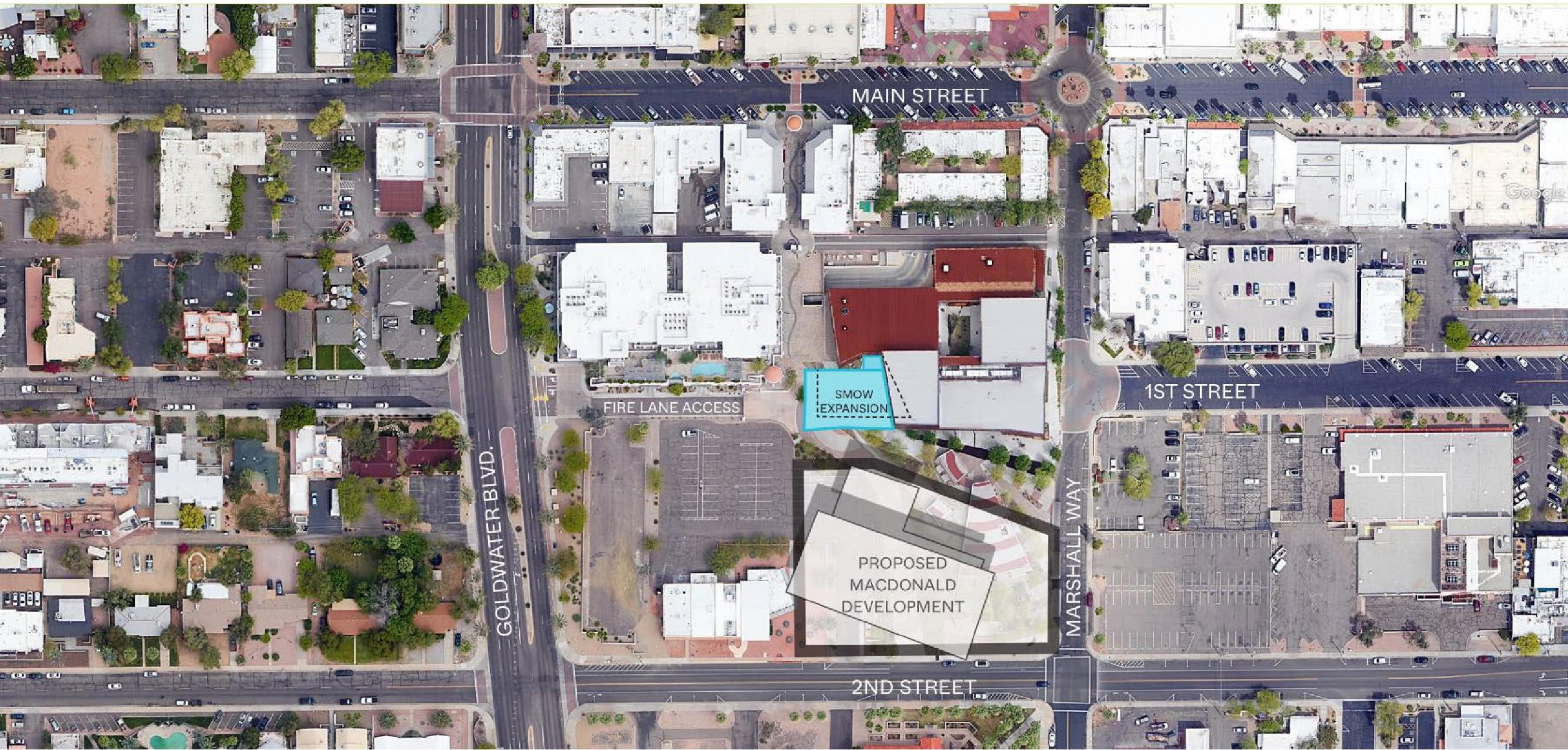
Private Property –  
Museum Square Site

Marshall Way

E 1st St  
First Street

E 2nd St  
Second Street





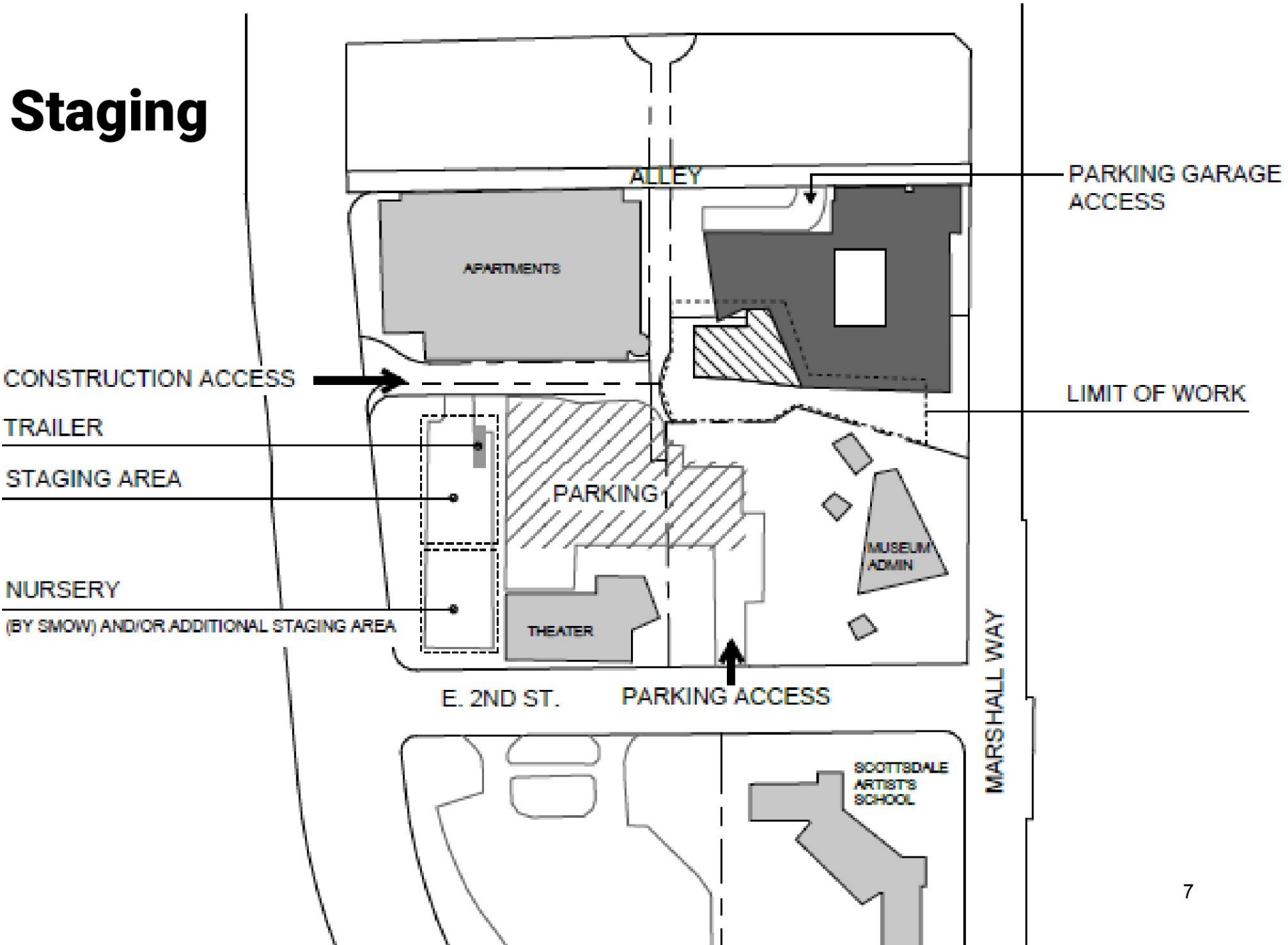




← **NEW** EXISTING →

Scottsdale's  
Museum  
of the West  
LOUIS SANDS IV CENTER

# Construction Staging



# Construction Agreement

- Documented approval of expansion location, marshalling yard and other logistics (3)
- Expansion designed and constructed by museum at their sole cost and expense (3.1)
- Expansion owned by the city as constructed, brick by brick (3.4)
- Uniformity of expansion design, function, appearance and quality throughout (3.10.2)
- City and Museum design construction manager to coordinate (3.13.1)
- Net 7 parking spaces required for expansion obtained on private property (3.14)
- Museum to provide funding assurances at least two weeks prior to construction (4.1-2)
- Museum to require contractor payment or performance bond (Sec. 5.1-3)
- Insurance to be extended to expansion (19)



# Museum Management Agreement Amended

- Annual fee by city to Museum capped at \$650,000 (4.1)
- Actual/forecast revenue/expenses documented through 2027 to track self-reliance (4.1)
- Standards for how museum-owned art should be stored and displayed (5.5.1)
- City maintenance responsibilities extended to the expansion, cost est. \$40k/year (D)



# Action requested

1. Adopt Resolution No. 12918, authorizing a Scottsdale Museum of the West Expansion Construction Agreement No. 2023-133-COS and
2. Adopt Resolution No. 12919, authorizing an amended Museum Management Agreement No. 2021-088-COS-A1



**Kurth, Rebecca**

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**From:** Morales, Isol  
**Sent:** Tuesday, September 19, 2023 12:12 PM  
**To:** Kurth, Rebecca  
**Subject:** FW: City Council Agenda Items 23-27

-----Original Message-----

From: SHELLIE ANDREEN <rickandshellie@aol.com>  
Sent: Tuesday, September 19, 2023 11:31 AM  
To: Mayor David D. Ortega <DOrtega@Scottsdaleaz.gov>  
Cc: rickandshellie@aol.com  
Subject: City Council Agenda Items 23-27

 External Email: Please use caution if opening links or attachments!

Mayor Ortega,

Let in be noted, that Mischelle and Richard Andreen who reside at 6602 East Laayette Blvd. are adamantly opposed to Items 23-27 on the City Council Agenda for the Meeting 9-19-2023. Until further disclosure as to the scope, duration and demographic are fully disclosed - items should be removed from the agenda. This has been pushed to a vote with little to no public information.

Kindest Regards,

MIschelle and Richard Andreen

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**From:** SHELLIE ANDREEN <rickandshellie@aol.com>  
**Sent:** Tuesday, September 19, 2023 1:41 PM  
**To:** Graham, Barry  
**Subject:** Scottsdale City Council Agenda Items 23-27

⚠ External Email: Please use caution if opening links or attachments!

Councilman Graham,

Let it be known that Mischelle and Richard Andreen, who own property, pay taxes and reside at 6602 East Lafayette Blvd, adamantly oppose a vote on agenda items 23-27 which is to take place tonight at the City Council Meeting.

Until a clear vision of the scope of the project is made clear to the taxpaying residents of Scottsdale; a vote is inappropriate. I have lived here since 1995 and respectfully request that a pause be taken on these items until legitimate questions are answered. What is the impact of traffic on local residents? Who will receive access to these proposed homes and how will they qualify? What is the maximum amount of apartments that will be built? I drove through this property and it is vast - what is the long term vision for this piece of land? Will it be expanded as more money is thrown to Scottsdale? Will this be a facility for processing our incoming population of illegal immigrants? We deserve to know who will be our neighbors!

After and only after, the taxpayers have received full disclosure for this project, should a vote occur! This has been brought forward while most residents are still away on vacation ...it feels like a high impact project is being shoved through in the dark of night with little attention to the details. Taxpayers have a right to ask questions and the council has an obligation to disclose the full scope of the project for the long term. 25 years out at least!

Kind Regards,

Mischelle Andreen