

CITY COUNCIL REPORT



Meeting Date: **March 26, 2019**
 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.***

STUDY ITEM

Scottsdale Arts Management Services Agreement and Scottsdale Mall Ordinance. Staff presentation, discussion and possible direction to staff regarding the Scottsdale Cultural Council d/b/a Scottsdale Arts new Management Services Agreement with the City of Scottsdale and proposed updates to Chapter 20 sections 20-106 through 20-120 of the Scottsdale Revised Code regarding Scottsdale Mall, including special events held on the Scottsdale Mall.

BACKGROUND

Scottsdale Arts has provided advisory and management services for arts and cultural programs and facilities of the City of Scottsdale for more than 30 years through three separate 10-year agreements. Last July, City Council extended the 2008 ten-year agreement for one additional year to provide adequate time to prepare a new master services agreement with the newly hired CEO of Scottsdale Arts.

The management services agreement ensures that city funds are used for the program of work as presented annually through an operation plan and 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. The terms of the contract call for an annual audit and year-end financial report. The City Council must annually approve the allocation for the city's financial participation (Exhibit E of the draft Management Services Agreement) for Scottsdale Arts, subject to the terms of the management services agreement.

Ordinance 1967 was adopted by City Council in October 1987 adding the Scottsdale Mall as Article VI to Chapter 20 sections 20-106 through 20-119 to the Scottsdale Revised Code, which remained essentially unchanged until April 2011.

The proposed amendment seeks to achieve alignment with current use and language, insurance requirements, and to require use of the Special Events Ordinance to the extent possible and reasonable. Additionally, the amendment proposes the name Scottsdale Mall be changed to Scottsdale Civic Center.

Scottsdale Arts Funding History

The City has provided funding each year to the Scottsdale Arts through a variety of sources and methods most notably through the annual Financial Participation Agreement. This annual agreement authorizes a management services fee to the Scottsdale Arts to provide the services outlined in the master agreement. Funding for this agreement is drawn upon the General Fund and represents 43 percent of Scottsdale Arts’ operating budget. The Annual Financial Participation Agreement for year one under the new master agreement for FY 2019/20 is scheduled to be heard by the Scottsdale City Council in June.

Scottsdale Arts may submit supplemental funding requests at the discretion of the Cultural Council Board of Trustees. Recent examples of this type of request were substantial replacements and upgrades to the Scottsdale Center for the Performing Arts and Scottsdale Museum of Contemporary Art and Tourism Development Fund requests to support the annual Canal Convergence.

The additional 57 percent of Scottsdale Arts’ funding comes through contributed revenues such as donations and memberships, and through earned revenues such as ticket sales and admissions.

Table 1 outlines how the current budget is allocated.

Table 1. Scottsdale Arts FY 2018/19 Budget Allocation and Percentage of Total

| | FY 18/19 | % of Total |
|---|--------------------|---------------|
| Management and Administration of the Facilities | \$3,988,148 | 83.29% |
| Maintenance and Repair of Specialty Equipment | 20,000 | 0.42% |
| Community Arts Grant Program | 60,000 | 1.25% |
| <i>Management and Administration subtotal:</i> | 4,068,148 | 84.96% |
| Conservation and Restoration of City Artwork | 120,000 | 2.51% |
| Management and Administration of Art in Public | 600,000 | 12.53% |
| <i>Public Art subtotal:</i> | 720,000 | 15.04% |
| Total Management Services Fee | \$4,788,148 | |

ANALYSIS & ASSESSMENT

A team comprised of city staff and Scottsdale Arts staff participated in a process to address the renewal of the master agreement and proposed updates to the ordinance.

The team reviewed the current policies and the existing master agreement, the recent FY 2018/19 City Audit of the agreement, and discussed objectives for the new contract and ordinance. The team also discussed specific new components of the proposed master agreement. A new draft master agreement and draft ordinance have been prepared based upon these discussions.

Staff is seeking input from City Council pertaining to key items and whether additional changes are needed in the draft agreement to encourage and incentivize Scottsdale Arts.

The following objectives have been outlined in the agreement.

KEY OBJECTIVES:

1. Provide advisory services to the City for current and future arts and cultural affairs and facilities in Scottsdale.
2. Actively work to engage the community to create within the City a climate in which the arts may flourish.
3. With the input of arts and cultural organizations within Scottsdale, develop an Arts and Cultural Community Needs Assessment and recommend to the City an action plan for the support of arts and culture in Scottsdale.
4. Increase partnerships with local arts organizations for use of the City-Owned Facilities and increase the amount of grant funding available for Scottsdale-based and Scottsdale-focused arts organizations.
5. Cooperate in the development and ensure the ongoing operation of a citywide Arts and Cultural Events Calendar either directly, or through a third-party.
6. Ensure that arts education and outreach programs are provided to the community.
7. Manage City Artwork and the Public Art Program and Events, and curate displays of City Artwork and other displays of community interest at Civic Center and Appaloosa libraries.
8. Operate and manage programming, facility rentals and events at the City-Owned Facilities.
9. Increase funding over time from earned and contributed revenue with the goal of increasing reliance on outside funding to 67 percent of total revenue.
10. Increase private revenues and secure new funding sources for use to supplement City expenditures on capital improvements necessary for current and future facilities.

Term of Agreement - Staff recommends that the Scottsdale Arts new agreement be five years versus the ten-year agreements for the previous 30 years.

Strategic Plan - Staff recommends that we receive a 5-year strategic plan at the beginning of our new agreement, and a one-year operational plan annually thereafter. Previously, the agreement required both a strategic plan and operational plan annually.

Changes in Responsibilities - Staff and Scottsdale Arts have agreed upon and outlined responsibilities for ongoing maintenance of facilities as well as the repair and replacement of specialty equipment and specialty fixtures (Exhibits A through D of the attached draft management services agreement). As part of our process to address the renewal of the master agreement, staff also suggested Scottsdale Arts plan for future improvements for the managed facilities. Scottsdale Arts instituted a \$1.50 surcharge on tickets over \$20.00 for performances and events.

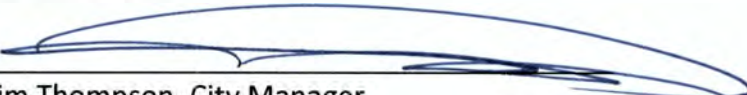
The primary change to the proposed Scottsdale Mall Ordinance pertains to the name of the area. Staff is recommending Scottsdale Civic Center, as this was the original name for the area in 1968. It also avoids conflicts with Civic Center Plaza which is a road in Old Town Scottsdale.

STAFF CONTACTS (S)

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APPROVED BY


Jim Thompson, City Manager

480-312-2811, jthompson@scottsdaleaz.gov

3/12/19
Date

ATTACHMENTS

1. Draft Master Services Agreement with attachments
2. Draft changes for Scottsdale Mall Ordinance

MANAGEMENT SERVICES AGREEMENT

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

RECITALS

A. City and Scottsdale Arts desire to pursue certain objectives to enhance and promote arts and cultural programs and facilities in the City. The Objectives are:

1. Provide advisory services to the City for current and future arts and cultural affairs and facilities in Scottsdale.
2. Actively work to engage the community to create within the City a climate in which the arts may flourish.
3. With the input of arts and cultural organizations within Scottsdale, develop an Arts and Cultural Community Needs Assessment and recommend to the City an action plan for the support of arts and culture in Scottsdale.
4. Increase partnerships with local arts organizations for use of the City-Owned Facilities and increase the amount of grant funding available for Scottsdale-based and Scottsdale-focused arts organizations.
5. Cooperate in the development and ensure the ongoing operation of a citywide Arts and Cultural Events Calendar either directly, or through a third-party.
6. Ensure that arts education and outreach programs are provided to the community.
7. Manage City Artwork and the Public Art Program and Events, and curate displays of City Artwork and other displays of community interest at Civic Center and Appaloosa libraries.
8. Operate and manage programming, facility rentals and events at the City-Owned Facilities.
9. Increase funding over time from earned and contributed revenue with the goal of increasing reliance on outside funding to 67 percent of total revenue.
10. Increase private revenues and secure new funding sources for use to supplement City expenditures on capital improvements necessary for current and future facilities.

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

C. Previous Agreement Superseded. This Agreement completely terminates and supersedes Management Services Agreement (No. 2008-048-COS).

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

1. TERM OF AGREEMENT

1.1. Term of Agreement. This Agreement shall take effect on July 1, 2019 ("Effective Date") and shall continue for an initial term of five years until June 30, 2024, unless sooner terminated as set forth in this Agreement. The term of this Agreement may be extended for one additional term of up to five years upon mutual written agreement of the parties.

2. ARTS AND CULTURAL ACTIVITIES

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

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

2.3. Arts and Cultural Community Needs Assessment. Scottsdale Arts shall engage the community and other arts and cultural organizations within Scottsdale, to develop an Arts and Cultural Community Needs Assessment, and recommend to the City an action plan for the support of arts and culture in Scottsdale.

2.4. Community Arts Grants Program. Scottsdale Arts shall manage and administer a community arts grants program in support of independent, non-profit Arts Organizations. Scottsdale Arts shall work to increase the amount of grant funding available for Scottsdale-based and Scottsdale-focused arts organizations. The majority of Community Arts Grants Program funding in a fiscal year shall be awarded for specific arts projects. The program may also provide Scottsdale-based, non-profit arts and culture organizations with general operating support funding to fund programs that are 100% arts related and pursue objectives under this Agreement. Scottsdale Arts shall acknowledge the City's support, and require grant recipients to acknowledge the City's support, in press releases, advertisements and other media using the City symbol and the following language: *This program is made possible, fully or in part, by a grant from Scottsdale Arts with funding provided by the City of Scottsdale.*

2.5. Rental Support Program. Scottsdale Arts shall manage and administer a program to provide rental support for the City-Owned Facilities for Scottsdale-based non-profit Arts Organizations. "Arts Organizations" means those non-profit organizations that are either based in Scottsdale or conduct programs in Scottsdale, and that have visual, literary, performing arts, or cultural enhancement as a component of their mission. Scottsdale Arts shall acknowledge the City's support, and require Arts Organizations to acknowledge the City's support, in press releases, advertisements and other media using the City symbol and the following language:

This program is made possible, in part, by Scottsdale Arts with funding provided by the City of Scottsdale.

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

2.7. Destination Event. Scottsdale Arts shall manage and administer an Arts-Related Destination Event that shall include components that are open and free to the public but may include fee-based programming. Scottsdale Arts shall work with the City's destination marketing organization and the Contract Administrator on developing and implementing a marketing plan. Scottsdale Arts shall include local, national and international artists and organizations, and include both visual and performing arts of interest to residents of and visitors to Scottsdale. Scottsdale Arts shall be responsible for all elements of event production. Scottsdale Arts shall retain all fees and sponsorship revenue earned from the event to support the mission.

2.8. Citywide Arts and Cultural Events Calendar. Scottsdale Arts shall cooperate with other entities to develop and ensure the ongoing operation of a citywide Arts and Cultural Events Calendar either directly, or through a third-party. The Calendar shall be available to, and have information of interest to, both residents of the City and visitors to the City.

2.9. Arts Education and Outreach Programs. Scottsdale Arts shall manage and administer Arts Education and Outreach Programs through working with local educational institutions, as well as with other arts and cultural organizations within Scottsdale.

3. ADMINISTRATION AND MANAGEMENT OF CITY ARTWORK

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

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

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

3.2.2. "Scottsdale Municipal/Portable Works Collection" or "Portable Works Collection" means readily moveable Artwork that is acquired and accessioned into the City's

portable works collection. The Portable Works Collection does not include Artwork in the Museum Collection or the Public Art Collection.

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

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

3.4. Inventory. Annually, and not later than December 31 each year, Scottsdale Arts shall deliver to the City an updated inventory and condition report regarding all City Artwork, specifically setting forth new acquisitions and any lost, damaged or stolen items. Each such updated inventory shall be incorporated herein by this reference upon delivery to the City Contract Administrator.

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

3.6. Conservation and Restoration of City Artwork. Scottsdale Arts is responsible for the Conservation and Restoration of City Artwork. Not later than December 31 each year, concurrently with the updated City Artwork inventory required pursuant to subsection 3.2, above, Scottsdale Arts shall assess the condition of all City Artwork and submit to the City Contract Administrator 10-year Conservation and Restoration analyses, together with budget estimates for Conservation and Restoration to the City Contract Administrator.

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

3.8. Museum Collection.

3.8.1. In order to ensure SMOCA and the Museum Collection are managed in accordance with the highest professional standards, and to maximize the potential for major donations of historical value by private collectors, Scottsdale Arts shall at all times operate and

manage SMOCA and the Museum Collection in accordance with AAM standards and shall use its best efforts to maintain SMOCA's AAM accreditation throughout the term of this Agreement.

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

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

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

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

4. MANAGEMENT AND PROGRAMMING OF CITY-OWNED FACILITIES

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

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

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

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

4.2. Managerial Services and Responsibilities. Scottsdale Arts shall manage, operate and program each of the City-Owned Facilities in a manner consistent with this Agreement, which shall include, without limitation, scheduling, booking, promoting, administering, creating

and presenting exhibitions, events and programs at the City-Owned Facilities. Scottsdale Arts shall manage the Facilities in a first-class manner; furnish prompt and courteous service, and keep the Facility attractively maintained, orderly, clean, sanitary and in an inviting condition at all times to the City's reasonable satisfaction. For each of the City-Owned Facilities Scottsdale Arts shall:

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

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

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

4.2.4. 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.

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

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

4.3. Non-City-Owned Facilities. The City of Scottsdale is not responsible for the "Non-City-Owned Facilities" which means properties leased or owned by Scottsdale Arts, including, without limitation, the administrative offices located at 7373 N. Scottsdale Mall in Scottsdale.

However, Management Services Fees may be used to pay the cost of leasing the Non-City-Owned Facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.6. Government Liquor License and Concession Agreement. The City holds government liquor license no. 05071004 ("Liquor License"), which applies to the City-Owned Facilities. The City and Scottsdale Arts are parties to an alcoholic beverage concession agreement (No. 930069) ("Concession Agreement"), dated June 14, 1993, which names

Scottsdale Arts as the alcoholic beverage concessionaire. The Concession Agreement, as amended, or any successor agreement, specifies the terms and conditions under which Scottsdale Arts may use the Liquor License. The Parties understand and agree that the Concession Agreement authorizes Scottsdale Arts to execute a subcontract with a third party for the provision of alcoholic beverage concession services, and that such a subcontract does not constitute an assignment of Scottsdale Arts' rights and obligations under the Concession Agreement. The City's rights under this Agreement shall supplement and augment the City's rights under the Concession Agreement. In the event of an irreconcilable conflict between the Concession Agreement and this Agreement, this Agreement shall control. All of Scottsdale Arts' obligations and limitations under this Agreement are in addition to its obligations and limitations under the Concession Agreement. Any breach by Scottsdale Arts of the Concession Agreement is a default by Scottsdale Arts under this Agreement and any default by Scottsdale Arts under this Agreement is a breach by Scottsdale Arts of the Concession Agreement. The Contract Administrators under this Agreement constitute the contract administrators for the Concession Agreement.

4.7. City Access to Facilities.

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

4.7.1.1. Performing, administering or enforcing this Agreement.

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

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

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

4.8. City Notification of Reserved Dates. In consultation with Scottsdale Arts, the City shall have the right to reserve dates during which no events or performances may be scheduled in the City-Owned Facilities so that the City may reseed the turf, perform other maintenance or renovations, or schedule tourism-related events and programming. The City Contract Administrator will inform Scottsdale Arts of such dates in writing as soon as possible, but no later than March 1 for the following fiscal year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Utilities shall be paid for the Premises as follows:

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

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

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

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

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

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

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

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

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

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

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

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

4.18. Responsibility for Damage. Scottsdale Arts shall bear all costs resulting from damage arising from or related to any event or performance scheduled at, or other use of, the Facilities, by Scottsdale Arts or its invitees, licensees or permittees. City shall bear all costs resulting from damage from or related to City use of the City-Owned Facilities under Sec. 7.7.

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

5. CITY FUNDING

5.1. Management Services Fee. The City shall pay Scottsdale Arts an annual fee (“Management Services Fee”) 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. 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.

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

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

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

5.2.2.1. Management and administration of the Public Art Program shall include those administrative and programming costs associated with the implementation of the program, and includes funding for public art staff salaries, benefits and overhead; the implementation of a temporary art program; public art planning, education and outreach; and other related public art programs, events, and exhibitions.

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

the solicitation of art proposals on behalf of developers, and construction or project management of public art installations for developers.

5.2.3. Conservation and Restoration of City Artwork as outlined in Sec. 3.6.

5.2.4. Community Arts Grants Program as outlined in Sec. 2.4

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

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

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

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

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

5.5. Financial Participation Agreement. The City shall disperse the Management Services Fee for any given fiscal year to Scottsdale Arts in installment payments, the timing and amount of which the Parties shall set forth in a separate Financial Participation Agreement, in substantially the form attached hereto as Exhibit E.

5.6. Scottsdale Arts' Revenues. Scottsdale Arts shall, to the maximum extent practicable, supplement the Management Services Fees with contributed and earned revenues, including, without limitation, in-kind services, grants, donations, membership fees, rentals, fund raisers, ticket sales, consulting fees, sponsorships and underwriting. Scottsdale Arts shall implement a financial development plan that increases funding over time from earned and contributed revenue with the goal of increasing reliance on outside funding to 67 percent of total revenue. Scottsdale Arts shall work to increase the amount of grant funding available for Scottsdale-based and Scottsdale-focused arts organizations from non-City sources. Scottsdale Arts shall also increase private revenues and secure new funding sources for use to supplement City expenditures on capital improvements necessary for current and future facilities. Scottsdale Arts shall devote substantially all of its revenues to the performance of the Objectives under this

Agreement and Scottsdale Arts shall not participate in any project or undertake any activity that will impair or detract in any material respect from the performance of the Objectives under this Agreement.

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

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

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

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

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

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

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

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

6. REPORTS AND AUDITS

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

6.2. Annual Operational Plan. Scottsdale Arts shall provide the City Contract Administrator with an annual comprehensive written operational plan no later than June 1 each year. The initial Operational Plan shall include Scottsdale Arts' detailed plans to achieve the Strategic Plan, including performance measures for each of its goals, objectives, strategies and other components, adopted budget, as well as an update on progress-to-date in achieving the current operational plan for that fiscal year.

6.3. Annual Report. Scottsdale Arts shall provide the City Contract Administrator with an annual report no later than December 1 each year. The Annual Report shall include a pro forma budget that corresponds with the City's fiscal year, which shall be organized in such a way as to clearly reflect Scottsdale Arts' organizational structure. Each Annual Report shall critically evaluate, for the preceding fiscal year, each of the performance measures; Scottsdale Arts' satisfaction of each of its objectives under this Agreement; and Scottsdale Arts' achievements with regard to its mission.

6.4. Performance Reporting. Scottsdale Arts shall provide the City Contract Administrator with a quarterly written report outlining progress in achieving the Annual Operational Plan, including identified performance measures. In addition, at the City's request, Scottsdale Arts shall present one or more verbal and/or written progress reports to the City Council each year concerning its activities pursuant to this Agreement.

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

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

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

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

7. INSURANCE AND INDEMNITY

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

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

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

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

7.5. Deductibles and Self-insured Retentions. The policies set forth in these requirements may provide coverage which contains deductibles and/or self-insured retentions. Such deductibles and/or self-insured retentions shall not be applicable with respect to the limits provided to the City. Scottsdale Arts shall be solely responsible for any such deductible and/or self-insured retention.

7.6. Licensees and Permittees. Scottsdale Arts shall execute written agreements with Licensees or Permittees containing the same Indemnification Clause and Insurance

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

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

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

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

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

7.11. Required Coverages.

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

7.11.2. Liquor Liability. Scottsdale Arts has entered into an agreement with the City to use the City's governmental liquor license and shall have the right to operate concessions for food and beverages. Scottsdale Arts and any vendor or concessionaire that

serves, sells, or in any manner provides alcoholic beverages in the Facilities shall procure and maintain Liquor Liability insurance in the amount of \$5,000,000 each Occurrence. If Scottsdale Arts enters into a concession agreement that involves liquor service, that contract shall contain the same indemnity language and insurance provisions as required herein specifically naming the City as indemnitee and additional insured. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal to or broader in coverage and scope than underlying insurance.

7.11.3. Automobile Liability. If applicable, Scottsdale Arts shall maintain Business Automobile Liability insurance with a limit of \$5,000,000 each accident with respect to Scottsdale Arts' owned, hired, and non-owned vehicles assigned to or used in performance of Scottsdale Arts' work or services.

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

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

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

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

7.11.8. Vendors and Subcontractors. Scottsdale Arts shall require that all vendors and subcontractors provide the same insurance and indemnity as required in this Section 7.

7.11.9. Other Insurance. Upon written notice from the City, Scottsdale Arts shall obtain and cause to be in force any other insurance or increase in insurance limits the City may require to account for inflation, changes in risk, or other factor for the protection of the City, its employees, officials, representatives, officers, directors, commissioners and agents or the public. Any modification or variation from these insurance requirements must be made by the City's Risk Manager, whose decision is final. Such action will not require a formal Contract amendment but may be made by administrative action.

8. BREACH AND TERMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

8.3.6. Be excused without any liability to Scottsdale Arts therefor from further performance of any or all obligations under this Agreement.

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

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

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

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

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

8.8. Termination. In addition to any other grounds for termination specified elsewhere in this Agreement, or as provided by law, either Party may terminate this Agreement for convenience upon 365 days-notice to the other Party.

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

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

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

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

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

9. MISCELLANEOUS

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

9.2. Annual Appropriation.

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

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

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

9.2.4. In the event of and following such notice of termination:

9.2.4.1. Scottsdale Arts agrees not to enter into any contracts or agreements for events or performances scheduled to occur at any time after notice of termination in the City-Owned Facilities or to commission any projects through the Art in Public Places or Cultural Improvement Programs; and

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

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

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

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

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

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

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

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

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

9.11. Contract Administrators.

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

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

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

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

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

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

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

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

9.18. Non-liability of Officials and Employees. No official, representative or employee of the City shall be personally liable to any Party, or to any successor in interest to any Party, in the event of any default or breach by the City or for any amount which may become due to any Party

or successor, or with respect to any obligation of the City or otherwise under the terms of this Agreement.

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

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

TO SCOTTSDALE ARTS:

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

TO THE CITY:

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

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

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

9.22. Relationship. Nothing contained within this Agreement shall be deemed or construed to create a partnership, joint venture, principal and agent, landlord and tenant, or similar relationship between the City and Scottsdale Arts. Scottsdale Arts is a legal entity separate and distinct from the City; Scottsdale Arts is not a council, board, commission,

department, agency or agent of the City. The management of Scottsdale Arts operations is solely the responsibility of the Scottsdale Arts' Board of Trustees and its appointed officers.

9.23. Severability. If any term, condition, covenant, stipulation, agreement or other provision of this Agreement is held to be invalid or unenforceable for any reason, the invalidity of any provision shall in no way affect any other provision herein contained and this Agreement shall otherwise remain in full force and effect. If any provision of this Agreement is so severed, this Agreement shall retroactively be deemed reformed in such a manner so that the reformed Agreement provides, to the extent reasonably possible, the same rights and benefits to the Parties as if such severance and reformation were not required. The Parties further agree in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement to the extent permitted by law.

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

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

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

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

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

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

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

all its' Subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

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

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

[SIGNATURE PAGE FOLLOWS]

EXECUTED as of the date first given above.

SCOTTSDALE CULTURAL COUNCIL dba
Scottsdale Arts, an Arizona non-profit corporation

By: _____
Dr. Gerd Wuestemann, President and CEO

CITY OF SCOTTSDALE,
an Arizona municipal corporation

By: _____
W.J. "Jim" Lane, Mayor

ATTEST:

Carolyn Jagger
City Clerk

APPROVED AS TO FORM:

Bruce Washburn, City Attorney
By: William Hylan, Senior Assistant City Attorney

Katherine Calloway
Risk Management Director

Karen Churchard
Tourism & Events Director

EXHIBIT A. SCOTTSDALE ARTS MAINTENANCE RESPONSIBILITIES

SCOTTSDALE ARTS SHALL BE RESPONSIBLE FOR:

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

EXHIBIT B. CITY OF SCOTTSDALE MAINTENANCE RESPONSIBILITIES.

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

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

EXHIBIT C. SPECIALTY EQUIPMENT LISTING

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

1. Audio Cables.
2. Clothing Racks.
3. Forklift.
4. Gel.
5. Geni/Scissor Lift.
6. Grand Piano. IN AGREEMENT CONFLICTING?
7. IT Systems/Equipment (SCPA Enterprise Network).
8. Kitchen/Food Service Equipment.
9. Marley Dance Floor.
10. Microphones.
11. Motor Control Units.
12. Motors.
13. Outdoor Portable Stage Equipment (Sound, Lighting, etc.).
14. Ticketing and Retail POS Systems.
15. Road Cases.
16. Sandbags.
17. Special Security Systems (Museum).
18. Sewing Machines.
19. Stage Manager Console.
20. Video Rack.
21. Video Switcher.
22. Washer & Dryer.
23. Wireless Microphones.
24. Wireless Receivers.

EXHIBIT D. SPECIALTY FIXTURE LISTING

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

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

EXHIBIT E. FINANCIAL PARTICIPATION AGREEMENT FORM

City of Scottsdale Agreement No. 2019-XXX-COS
Resolution No. XXXXX

FINANCIAL PARTICIPATION AGREEMENT BETWEEN THE CITY OF SCOTTSDALE
AND THE SCOTTSDALE CULTURAL COUNCIL FOR FISCAL YEAR 2019-20

This Financial Participation Agreement ("Agreement") is made and entered into this ___ day of _____, 2019, by and between the City of Scottsdale, an Arizona municipal corporation (the "City") , and the Scottsdale Cultural Council, an Arizona non-profit corporation doing business as Scottsdale Arts (the "Cultural Council").

RECITALS

A. On _____, 2019, the City and the Cultural Council executed City of Scottsdale Agreement No. 2019-XXX-COS ("Management Services Agreement"), in which the City designated the Cultural Council as the principal organization for advising, planning and administering arts and cultural activities for the City.

B. In accordance with the Management Services Agreement, the City desires to pay the Cultural Council a Management Services Fee for the City's fiscal year 2019-20, and the City Council has appropriated funds for such purposes.

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

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

1. Incorporation of Recitals. The recitals to this Agreement are hereby affirmed by the parties as true and correct and are incorporated herein by this reference.
2. Incorporation by Reference. The Management Services Agreement is incorporated into this Agreement by this reference as if fully set forth herein. Likewise, this Agreement is made a part of the Management Services Agreement by this reference as if fully set forth therein.
3. Definitions. Unless otherwise expressly provided herein, the definitions contained in the Management Services Agreement shall apply to the same terms used in this Agreement.
4. Services to be Performed by the Cultural Council. The Cultural Council shall provide the services specified in the Management Services Agreement and shall comply in all respects with the provisions of the Management Services Agreement.

EXHIBIT E. FINANCIAL PARTICIPATION AGREEMENT FORM

City of Scottsdale Agreement No. 2019-XXX-COS
Resolution No. XXXXX

5. Financial Participation by the City.

5.1. Solely for the purposes stated in this Agreement and the Management Services Agreement, the City shall pay the Cultural Council a total Management Services Fee of \$_____ during and for the City's fiscal year 2019-20. The City shall pay the Management Services Fee to the Cultural Council in accordance with the following schedule:

- 5.1.1 \$_____ by July 5, 2019.
- 5.1.2 \$_____ by August 5, 2019.
- 5.1.3 \$_____ by September 5, 2019.
- 5.1.4 \$_____ by October 5, 2019.
- 5.1.5 \$_____ by November 5, 2019
- 5.1.6 \$_____ by December 5, 2019
- 5.1.7 \$_____ by January 5, 2020
- 5.1.8 \$_____ by February 5, 2020
- 5.1.9 \$_____ by March 5, 2020

5.2. Of the Management Services Fee specified above, the following amounts are hereby allocated and earmarked by the City and shall be expended by the Cultural Council solely for the identified purposes:

5.2.1. \$_____ for the management, administration of, and grants awards for the Community Art Grants Program, as provided in Subsection 2.4 of the Management Services Agreement.

5.2.2. \$_____ for the Conservation and Restoration of City Artwork, as provided in Subsection 3.6 of the Management Services Agreement.

5.2.3. \$_____ for the maintenance and repair of all Specialty Equipment and Specialty Fixtures, as provided in Subsections 4.14 and 4.15 of the Management Services Agreement.

5.2.4. \$_____ for the management and administration of the Art in Public Places Program and the Cultural Improvements Program, as provided in Subsections 3.9 and 3.10, respectively, of the Management Services Agreement.

EXHIBIT E. FINANCIAL PARTICIPATION AGREEMENT FORM

City of Scottsdale Agreement No. 2019-XXX-COS
Resolution No. XXXXX

5.3. Not later than December 31, 2019, in accordance with Subsection 5.11 of the Management Services Agreement, the Cultural Council shall provide the City Contract Administrator with a separate accounting of each of the earmarked funds set forth above in subsection 5.2.

6. Term. The term of this Agreement shall commence on July 1, 2019 and end on June 30, 2020, unless sooner terminated.

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

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

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

10. Israel Boycott Prohibition. The Cultural Council 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.

ARTICLE V. - SCOTTSDALE CENTER FOR THE PERFORMING ARTS

Sec. 20-71. - General; authority.

The Scottsdale Center for the Performing Arts and the mall public areas adjacent to the facility shall be managed, operated and maintained by the city. The city may enter into agreements with nonprofit corporations and other entities to perform some or all of these functions when the city council deems it in the public interest to do so.

ARTICLE VI. - SCOTTSDALE MALL CIVIC CENTER

Sec. 20-106. - Purpose.

This article is intended to establish rules, regulations and a facility use permit system to promote and encourage the safe use and enjoyment of the Scottsdale Mall Civic Center to facilitate the public's enjoyment of arts and special events that support tourism by residents of the city, visitors and the general public, while protecting and preserving the mall, its facilities and grounds. Nothing in this article shall be construed to limit or diminish the general right of the public to use and enjoy the mall Scottsdale Civic Center, except as specifically provided in this article.

Sec. 20-107. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~*Mall Civic Center coordinator* or *coordinator* means that employee of the city designated by the city manager, who has general responsibility over the scheduling of the Scottsdale Mall including the issuance of permits under this article. The city may contract with the Cultural Council, or other organization, to provide these services, in which case anthe officer or employee designated by Scottsdale Arts to have general responsibility over the scheduling of the Civic Center, including issuing permits under this Article that organization shall be the mall coordinator. The mall Civic Center coordinator may be referred to in this article as "the coordinator."~~

~~*Concessions* means the sale of food, beverage, alcohol, merchandise andor convenience items, or the rental of items or equipment in connection with an special event on the at Scottsdale Mall Civic Center.~~

~~*Cultural Council* means the Scottsdale Cultural Council, a nonprofit arts management corporation contracted by the City of Scottsdale to manage cultural and arts affairs of the city and who, from time to time, programs the use of the Scottsdale Mall, and is responsible for scheduling on the Scottsdale Mall, in accordance with the Management Services Agreement between the City of Scottsdale and the Scottsdale Cultural Council.~~

~~*Event* means an organized activity, whether conducted for profit or not, by a group or member of the general public including, but not limited to, concerts, musical or artistic performances, shows, displays, exhibitions, fairs, bazaars, ceremonies and weddings.~~

~~*Issuing agency* means the organization Scottsdale Arts, which is responsible for accepting, processing and issuing applications for facility use permits to use any portion of Scottsdale Mall Civic Center and includes the city and, as applicable, any organization with which the city may contract to perform these services.~~

16569718v6

V:Tourism/TourismShare/Scottsdale Cultural Council/Agreements/Management Services Agreement/2018MSA/16569718v5 – Civic Center Ordinance – Legislative Format – 1-10-19

~~Mall coordinator means that employee of the city designated by the city manager, who has general responsibility over the scheduling of the Scottsdale Mall, including the issuance of permits under this article. The city may contract with the Cultural Council, or other organization, to provide these services, in which case an officer or employee designated by that organization shall be the mall coordinator. The mall coordinator may be referred to in this article as "the coordinator."~~

Permit means a facility use permit for use of the Scottsdale Civic Center.

Permittee means any person, firm, association, organization, partnership, company or corporation that requests and is granted a permit for the use of the Scottsdale Mall Civic Center under the provisions of this article.

Risk management director means the Risk Management Director of the City of Scottsdale.

~~Cultural Council~~ *Scottsdale Arts* means the Scottsdale Cultural Council dba Scottsdale Arts, a nonprofit arts management corporation contracted by the City of Scottsdale to manage cultural and arts affairs of the city and who, from time to time, programs the use of the Scottsdale Mall Civic Center, and is responsible for scheduling on the Scottsdale Mall Civic Center, in accordance with the Management Services Agreement between the City of Scottsdale and the Scottsdale Cultural Council Arts.

Scottsdale Mall Civic Center means that public property indicated in ~~revised~~ Exhibit "A" to this article, which is incorporated by this reference and made a part of it, including the facilities located thereon. "*Scottsdale Mall Civic Center*" shall be referred to ~~variously~~ in this article as "~~the mall~~ Civic Center." If the term "Scottsdale Mall" is referenced in City documents it shall be read as "Scottsdale Civic Center" unless the context clearly indicates otherwise.

Special event means an organized, temporary activity or series of temporary activities held outdoors, on public property or private property that is inconsistent with the legal use of the property under the City's Zoning Ordinance and open to the public by advertisement or invitation, with or without charge.

Sec. 20-108. - Facility Use Permit—Required; exemptions.

- (a) No person, firm, association, organization, partnership, company, or corporation, other than City of Scottsdale or Scottsdale Arts shall conduct an Special eEvent on the Scottsdale Mall Civic Center, or any portion thereof, without having first obtained a facility use permit pursuant to this article.
- (b) The facility use permit required by this article is in addition to any others required by state statute, city ordinance or other laws and regulations. The issuance of a special event facility use permit under this article does not relieve the applicant of the responsibility of complying with these other laws, regulations or legal requirements as they apply to the special event. Failure to comply with other laws, regulations or legal requirements shall be grounds for the denial of a permit or the revocation of a permit, as applicable.
- (c) ~~Provisions to the contrary notwithstanding,~~ This article shall not apply to special events organized ~~sponsored or presented~~, in whole or part, by the Ceity or the Cultural Council. A special event for which the City solely provides funding or sponsorship is not a special event organized, in whole or in part, by the City for purposes of this section.

Sec. 20-109. - Same—Application.

- (a) *Process.* An applicant for a permit shall submit to the coordinator such information as Scottsdale Arts may require, which shall be the same or substantially similar to the information required by Scottsdale Revised Code Section 22-8 for a standard special event permit ~~a mall event proposal, prior to the event, which shall contain basic information about the proposed event, including, but not limited to, equipment needed or to be used, crowd control, emergency medical services, security or general management of the event.~~ The coordinator may request such additional information from the applicant concerning facility use, arrangements, special services, or other information as may be deemed reasonably necessary by the coordinator to fully evaluate the application.
- (b) *Fee.* A permit shall be issued upon the approval of an application by the coordinator and the payment by the applicant of the applicable fee and any damage deposit required by this article.
- (c) *Damage deposit.* The issuing agency may condition the issuance of a permit on the payment of a damage deposit in an amount determined by the issuing agency as being reasonable and sufficient to pay for damage to property which might be incurred as a result of the proposed special event. The amount of the deposit shall be determined by the issuing agency, based upon the issuing agency's experience with special events of similar size, type and character. ~~The damage deposit shall be in the form of a cashier's check made payable to the issuing agency and shall be marked as a damage deposit for the event.~~ The issuing agency may waive the requirement of a damage deposit for those special events which are unlikely to have risk of property damage.
- (d) *Grounds for denial.* A permit for a ~~mall~~ civic center special event may be denied when the coordinator has reasonable grounds to believe that, as proposed, the special event will not meet all of the criteria in Scottsdale Revised Code section 22-4.

Sec. 20-110. - Decision on special event application; special conditions.

The coordinator shall follow the procedures in Scottsdale Revised Code Section 22-13 regarding decisions on special event applications.

Sec. 20-111. - Permit revocation.

Scottsdale Arts shall follow the procedures in Scottsdale Revised Code Section 22-14 when revoking a permit.

Sec. 20-1102. - ~~Same~~ Permit—Contents.

- (a) An issued permit shall describe the permitted special event, including the dates and times when it will be held, and shall include any terms and conditions that have been developed during the permit process or that the coordinator deems to be reasonably necessary to protect the health, safety, or general welfare of the public during the special event. The permit shall be signed by the coordinator and shall be carried by the applicant, or other designated responsible party, during the course of the special event.
- (b) During the permit process, the applicant may change the dates of the proposed special event, with the consent of the coordinator, and such consent will not be unreasonably withheld.

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- (c) ~~The coordinator will notify the city manager, or the city manager's designee, and any other city departments potentially effected by the issuance of the permit at the time the permit application is filed and upon the issuance of the permit.~~

Sec. 20-1143. - ~~Same~~Permit—Fees; payment; cancellation; refund.

- (a) All fees required to obtain a permit shall be paid to the issuing agency in cash, money order or certified bank check, or other means deemed acceptable by the issuing agency.
- (b) All fees required for permits and any applicable damages, deposits or licenses, or taxes shall be paid not later than forty-five (45) days prior to the proposed special event. If the required fees are not paid forty-five (45) days prior to the special event, the coordinator may treat the application as having been withdrawn. Scottsdale Arts may waive or modify these time periods at their discretion.
- (c) A date for ~~mall~~ Civic Center use may be held based on the submission of an special event proposal and payment of an amount equal to fifty (50) percent of applicable fees or special event cost estimates detailed in the permit, for the proposed special event. ~~If the date of the proposed use is being held by the cultural council, the coordinator must make a determination of cultural council's use within fifteen (15) working days of the applicant's submission of the event proposal. If there is a challenge for an event date which is being held pursuant to this subsection, the coordinator may demand, at any time forty five (45) days or more prior to the event date being held, that the applicant for whom the mall is being held to pay in full all permit fees and deposits due upon the request of the coordinator. In the event that the fees and deposits are not paid in full, within the time limit specified in writing by the coordinator, the hold on the date will be removed.~~
- (d) A permittee that is otherwise in compliance with the terms and conditions of the permit may voluntarily request the cancellation of the permit prior to the special event being held. In the event of a voluntary cancellation:
- (1) ~~Eighty (80)~~One hundred (100) percent of facility use fees shall be refunded if the request for cancellation is made more than ~~forty five (45)~~ninety (90) days prior to the scheduled special event. ~~Fifty (50)~~Eighty (80) percent of facility use fees shall be refunded if the request for cancellation is made ~~less~~more than ~~forty five (45)~~ sixty (60) days ~~but more than thirty (30) days~~ prior to the scheduled special event. ~~No facility use fees will be refunded if the request for cancellation is made less than thirty (30) days prior to the scheduled event.~~If a special event is cancelled based on a permittee's request, the permittee shall pay a \$250 cancellation fee.
 - (2) Damage deposits will be refunded in full, upon cancellation pursuant to this section, regardless of when the request is made, except as otherwise provided in this section.
 - (3) All direct expenses relating to the special event incurred by the issuing agency will be deducted from any credits or refunds due to the permittee or damage deposits, prior to making any refunds.
- (e) ~~When all or a substantial part of an event for which a permit has been obtained is precluded by inclement weather, including rain, causing the cancellation of the event, the issuing agency shall refund to the permittee fifty (50) percent of the facility use fees paid, less any direct~~

~~costs associated with the event and incurred by the issuing agency, for any period for which the mall civic center is not used. The issuing agency shall retain the balance of the facility use fees as compensation for administrative costs. Damage deposits will be refunded in full, less any amount that the issuing agency may be entitled to retain.~~

- (fe) The issuing agency shall determine how many staff members, if any, are necessary to be present when the mall civic center is being used by a permittee. A permittee shall pay the issuing agency for any staff required to be on the site. The amount paid shall be calculated based upon the time spent by staff on site at the hourly rate established pursuant to section 20-1142, below.

Sec. 20-1124. - Fees; setting; rules and regulations.

- (a) Fees and charges for the use of Scottsdale Mall Civic Center, or any portion of the mall Civic Center, and the general conditions of use shall be established by the issuing agency. The issuing agency may also establish usage priorities between types and classes of users when in the judgment of the issuing agency the promotion of such usage is beneficial to the community. The issuing agency may also determine what fees are to be paid by nonresident users. The city shall not be subject to any fees for the use of Scottsdale Mall Civic Center, or any portion of the mall Civic Center.
- (b) The city manager, or the city manager's designee, may make such rules and regulations as are necessary to manage, use, preserve and govern the property and activities which are subject to this article. Rules and regulations made pursuant to this section shall be adhered to and enforced by the issuing agency and the mall Civic Center coordinator. The operation of Scottsdale Mall Civic Center shall also be subject to such other portions of this Code, rules and regulations of the city as may be applicable to it and when appropriate shall be enforced by the Scottsdale Police Department.
- (c) All rules and regulations enacted pursuant to this section and copies of any and all rules and regulations promulgated by the city manager, or the city manager's designee, shall be kept on file and subject to public inspection with: (i) city manager, or designee; (ii) city clerk's office; (iii) administrative offices of any issuing agency, if other than the City of Scottsdale.

Sec. 20-1135. - Use of premises—Generally.

- (a) A permit issued pursuant to this article shall allow the permittee to use the premises only as authorized by the terms of the permit.
- (b) The permittee shall accept the premises as is and shall restore the premises used to the same condition at the expiration of the permit. The permittee shall make no changes or alterations of the premises without the prior written approval of the coordinator. The permittee shall be responsible for removing litter and trash from the area to suitable trash containers or off the premises.
- ~~(c) The permit fee includes the right of the permittee to use electricity from one (1) electrical outlet (one hundred ten (110) volts, fifteen (15) amps) in the area specified in the permit. The fee does not include any special services, equipment, clean-up, indoor facilities or staff personnel.~~

- (c) The permittee may use electrical outlets and water located in the area specified in the permit. The coordinator may stipulate additional equipment, such as generators, that may be required for the special event.
- (d) The permittee shall be responsible to the city or issuing agency, as applicable, for any and all damage to any city property or property of the issuing agency in the area for which the permit has been issued including, but not limited to equipment, sprinklers, grounds, plantings, walkways or buildings, whether or not the damage was caused by the permittee, or by patrons, guests or invitees. In respect to these areas, the permittee shall not be responsible for ordinary wear and tear.

Sec. 20-1146. - Same Permit—Limitations.

- (a) The permittee is responsible for obtaining any and all additional permits required to conduct ~~anthe event under for which the permit provided for in this article is obtained, or for related activities, whether such licenses or permits are required by city ordinances, regulations or state laws.~~ The permittee will allow appropriate city, county or state representatives to conduct any inspections which may be required or deemed necessary in this regard or to insure the public health, safety or general welfare.
- (b) No person shall erect or place upon the ~~mall~~ Civic Center any structure, machine or device upon the ~~mall~~ Civic Center without the prior written approval of the coordinator, who shall consult with the risk management department and other city offices as deemed necessary. The permittee shall be responsible for obtaining any permits required in respect to such activity.
- (c) No person shall erect any engine, motor or other machinery on the ~~mall~~ Civic Center premises, or use any gas, electricity, flammable liquid or charcoal, without first obtaining approval by the fire department, as defined in chapter 36 of the City Code.
- (d) No persons shall bring, exhibit or set off any fireworks or explosives on the ~~mall~~ Civic Center premises.
- (e) If liquor is present at the special event, permittee shall ensure that liquor is contained within the special event footprint and fencing and security personnel are present to prevent alcohol from being removed from the liquor licensed premises.

Sec. 20-1157. - Concessions; alcoholic beverages.

- ~~(a) The issuing agency shall have the first right of refusal to provide for the sale or dispensing of any food and beverages, including alcohol if pursuant to a valid state license, on Scottsdale Mall except when the event is sponsored by the city.~~
- (b) In order to preserve and maintain a quality standard level of presentation and service to the community, the service of food, operation of concessions or the use of a caterer in connection with any permitted use is subject to the prior written approval of the coordinator. The permittee is responsible to insure that quality standards, cleanliness, and presentation are kept up, and any area which is used for these activities is cleaned up and restored to the condition it was in at the time when the permittee took possession. Glass containers may not be used to consume beverages from on the ~~mall~~ Civic Center. A permittee may, however, serve beverages from glass containers (i.e. bottles).

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- (c) The permittee shall be responsible for insuring that any and all persons furnishing food in connection with an special event for which a permit has been obtained have complied with all state and local laws and regulations in respect to such activity. The permittee shall furnish proof of compliance as a condition of the issuance of a permit.
- (d) The sale or dispensing of alcoholic beverages shall be prohibited, unless such activity is permitted under state law.
- (e) Consumption of spirituous liquor from an open container, or possession of spirituous liquor in an open container, on the mall Civic Center is unlawful, unless it has been dispensed pursuant to a valid state liquor license and it is possessed or consumed in an area subject to the license.

Sec. 20-1168. - Signs; advertising; decorative material; solicitation prohibited.

- (a) No signs shall be posted upon the mall Civic Center premises, nor anything that will tend to injure, mar, or in any manner deface the premises. No nails, tacks, hooks, adhesive fasteners or screws shall be used or installed on any mall Civic Center building or on the mall Civic Center premises without the written permission of the coordinator.
- (b) Advertising matter or programs circulated upon the premises at a permitted special event must relate solely to that special event and are subject to the prior approval of the coordinator.
- (c) All decorative or other materials shall be of a noncombustible type or be suitably treated with a flame retardant approved by the fire department.
- (d) Promotion, publicity or special event advertising shall be solely at the permittee's expense. ~~References in such materials to the City of Scottsdale, the Scottsdale Mall or the Scottsdale Center for the Arts shall only be for the purpose of identifying the location of the event being promoted. No other use of these references may be made without the prior written approval of the coordinator.~~
- (e) No collections or donations, whether charitable or otherwise, shall be made, solicited, attempted, or announced on the premises without the prior approval of the coordinator. This provision shall not apply to the offer for sale, or sale of merchandise at retail, incidental to a permitted special event.
- (f) Scottsdale Revised Code section 22-23 relating to special event signage criteria applies to special events at the Civic Center.

Sec. 20-1179 - General rules.

- (a) Use of the mall Civic Center is restricted to pedestrians, except as expressly provided in this section. Horses, horsedrawn carriages, automobiles, carts, skateboards, bicycles, pedicabs, motorbikes, self-balancing personal transportation devices, all terrain vehicles and similar devices are prohibited, unless approved by the coordinator in writing for use in a specific event or attraction. Manual or motorized wheelchairs and electric personal assistive mobility devices as defined under state law may be used on the mall Civic Center by individuals needing mobility assistance.

- (b) The owner of a dog, or a person who has a dog in their custody, must restrain and control the dog at all times when the dog is on the mall Civic Center, securing it with a leash of not more than six (6) feet in length. This section does not apply to a service animal when either the handler is unable because of a disability to use a leash or the use of the leash would interfere with the service animal's safe and effective performance of work or tasks, and when the service animal is otherwise under the control of the service animal's handler as defined under state law.
- (c) The owner of a dog, or a person who has a dog in their custody, shall immediately pick up all dog droppings (fecal matter), place them in a closed or sealed container and deposit them in a mall Civic Center trash receptacle, or remove them from the mall Civic Center.
- (d) No glass, ceramic or easily broken plastic food or beverage containers are permitted on the mall Civic Center. A permittee may, however, serve beverages from glass containers (i.e. bottles).
- (e) No person shall harm, injure, remove from, or release into the Scottsdale Mall Civic Center any animal, without approval of the community services director or designee. Except as otherwise provided by law, no person shall feed, touch, tease, frighten, hunt, kill, wound or intentionally disturb wildlife in the Scottsdale Mall Civic Center, without authorization from the community services director or designee. No person shall remove plants, wildlife or natural materials found in the Scottsdale Mall Civic Center. For purposes of this section, "wildlife" means all undomesticated and feral animals, and includes birds, coyotes, javelinas, feral cats, eggs and nests.
- (f) Lakes, fountains and other waterways shall not be used for swimming, wading or bathing.
- (g) A violation of any of the provisions of this section shall be punishable as class 3 misdemeanors are punishable under state law.

Sec. 20-120. Additional Regulations for the Use of Civic Center for Facility Use Permits

- (a) Live entertainment. Sound must be maintained at reasonable levels, directed away from residents and/or sound mitigation techniques or sophisticated sound systems used to establish lower level volumes. Sound cease by 9 p.m. weekdays and 11:30 p.m. weekends, unless an exception is specified in an approved facility use permit.
- (b) Setup time. Setup times shall be as follows unless an exception is specified in an approved facility use permit: No earlier than 6 a.m. April 1 through October 31, Mondays through Fridays and 7 a.m. on Saturdays and Sundays; No earlier than 7 a.m. from November 1 through March 31, Mondays through Fridays and 8 a.m. Saturdays and Sundays
- (c) Teardown time. No noise-generating teardown shall occur past 10 p.m. Sunday through Thursday, or past midnight on Friday and Saturdays. Noise-generating items include tents and poles, stage deconstruction, fencing, and beeping of trucks such as porta john pick up. Non-noise generating teardown such as vendors bringing items to their vehicles, picking up trash and debris, cleaning areas, is permitted to continue past 10:00 p.m.

Sec. 20-14821. - Security.

The permittee shall be responsible for security at the event for which the permit is issued. Upon request, applicants shall provide the coordinator with documentary proof of any and all arrangements made for security. The coordinator, with the assistance of the police department, shall determine whether the proposed security provisions are adequate for the event. Approved security provisions shall become conditions of the permit. No permit shall be issued if, in the judgment of the coordinator, the proposed security provisions are inadequate to insure the health and safety of the participants and the general public, or if there is insufficient evidence to show that adequate provisions have been made for security staffing.

Sec. 20-12249. - Insurance; indemnification.

- (a) As a condition of issuing a permit, the applicant shall furnish evidence of commercial general liability insurance, issued by a company authorized to do business in the State of Arizona, and upon forms acceptable to the coordinator. The city and the issuing agency, if other than the city, shall be named as an additional insureds and the policy shall be designated as primary. The insurance shall be in effect for the entire period of the event, and any necessary preparation or close down period. The applicant shall also provide workers' compensation insurance, as applicable, in no less than the statutory minimum amount. If any vehicles are used in connection with the permitted activity, applicant shall also provide vehicle liability insurance and shall name City of Scottsdale, and any issuing agency, as an additional insured.
- (b) The city risk management director and the coordinator shall establish general insurance and indemnification requirements for permitted events and any special requirements deemed reasonably necessary for specific events. The coordinator may increase or decrease the amount of insurance required by this section as a condition of the permit when in the coordinator's professional judgment it is necessary because of the size, type and character of the proposed event. Certificates of insurance, evidencing compliance with the requirements of this section, must be filed with the coordinator no less than fifteen (15) days prior to event for which the permit is issued. Failure to comply with this subsection constitutes grounds for revocation of the permit. At any time, if the coordinator has reasonable grounds to believe that a permittee is not in compliance with this section, the permit shall be revoked.
- (c) Excess liability insurance may be required by the coordinator, if a higher amount of insurance is necessary to reasonably protect the city, issuing agency, if other than the city; and the public in light of the risks inherent in the event to be held. If any alcoholic beverages are served, applicant must secure and maintain liquor liability insurance with minimum liability limits equal to that required for the special event liquor permit application, and such policy shall name City of Scottsdale, and any issuing agency, as an additional insured.
- (d) If food or beverages are to be served or dispensed at the event, product liability coverage must be included in the coverage afforded by the commercial general liability insurance required by this section.
- (e) The insurance requirements of this section shall not apply to weddings where no food or beverages are to be served, unless the coordinator determines that the number of persons attending, the nature of the ceremony, or the use of specific property, things, or devices

creates potential risks to persons or property which make insurance reasonably necessary to protect the city and the issuing agency, if other than the city, against loss.

- (f) Should any of the insurance required by this section be written on a claims-made basis, the reporting period for such claims shall extend to two (2) years following the expiration of the policy.
- (g) The issuance of a permit under this article is conditioned on the applicant agreeing, in writing, to the maximum extent permitted by law, to indemnify, hold harmless and defend the city; the issuing agency, if other than the city; and any of its departments, agencies, officers or employees from any and all damages, claims, demands or judgments arising out of the event for which the permit is to be issued.
- (h) Any indemnification and insurance requirement contained in this section 20-119 and any general provision developed by the risk management director pursuant to subsection (b), above, may be modified, ~~eliminated, decreased, increased or added to if after consultation with, and with the concurrence of the risk management director, it is deemed to be necessary to protect or is deemed to be in the best interest of the City of Scottsdale and the issuing agency, if other than the city is required to eliminate, decrease, increase, change or add coverage.~~

Sec. 20-1230. - Appeal from denial or revocation of permit.

(a) Appeal. An applicant may appeal a denial, revocation, or special condition to the City Manager as follows:

(1) The appeal shall be filed within 10 calendar days from the date of the permit decision;

(2) The appeal shall include the specific reasons for the appeal and any supporting documents.

(b) The City Manager shall make a decision on the appeal within 10 calendar days of receiving the appeal.

(c) After considering the appeal, the City Manager may uphold, reverse or modify a permitting decision.

~~(a) When a permit is denied or revoked, the coordinator shall notify the applicant or permittee, as appropriate, in writing by giving the written notice personally to the applicant or permittee, or by certified or registered mail, return receipt requested, mailed to the applicant or permittee at the business or personal address given in the application. The notice shall state the reasons for the denial or revocation.~~

~~(b) An applicant or permittee who has been denied a permit or whose permit has been revoked may appeal the action to the city manager, or designee. Notice of appeal must be given in writing, and served personally on the general manager, community services. Notice of appeal as provided in this subsection must be given within fifteen (15) working days of the either personal notice of the denial or revocation, or within fifteen (15) working days of the mailing of notice, as provided in this section.~~

~~(c) The city manager, or designee, will set an appeal hearing as soon as is practicable, but not later than thirty (30) days from the receipt of the notice of the appeal. At the hearing, the city manager, or designee, shall hear evidence as to the grounds for the denial or revocation and shall hear evidence from the applicant or permittee, as applicable. Within five (5) days of the conclusion of the hearing, the city manager, or designee, will rule on the appeal, giving notice to the aggrieved party in the manner provided in subsection (b) of this section.~~

**Scottsdale Arts Management Services Agreement
and
Scottsdale Mall Ordinance**

City Council Work Study Meeting
March 26, 2019

Actively Engage Community

- Actively work to engage the community to create within the City a climate in which the arts may flourish.
- With input from arts organizations, develop an Arts and Cultural Community Needs Assessment; make action plan recommendations to the City.
- Increase partnerships with local arts organizations for use of the City-Owned Facilities; increase the amount of Community Arts Grant program.
- Cooperate in the development and ensure the ongoing operation of a citywide Arts and Cultural Events Calendar.

Destination Event

- **Manage and administer an Arts-Related Destination Event; include free components to the public that may also include fee-based programming.**
- **Develop and implement a marketing plan with City and Experience Scottsdale.**
- **Include local, national and international artists and organizations, and both visual and performing arts of interest to residents of and visitors to Scottsdale.**
- **Scottsdale Arts responsible for all elements of event production and retains all fees and sponsorship revenue earned from the event to support the mission.**

Arts Education and Outreach Programs

- Ensure that Arts Education and outreach programs are provided to the community.
- Scottsdale Arts Education program of work has increased significantly since 2008.
- Key Pillar of Scottsdale Arts' projects of work.

Public Art

- Management and conservation of 990 portable art and 110 public art pieces on behalf of the City; does not include the museum collection of 1,855 objects.
- Management of Art in Public Places and Cultural Improvements Programs.
- New addition formalizes the curation of Public Art displays at Civic Center and Appaloosa libraries.

Management of City-Owned Facilities

- Operate to standards equal or higher than other Maricopa County facilities.
- Consistency with newer city-owned facility agreements.
- Defined Maintenance responsibilities.
- Defined Specialty Equipment and Specialty Fixtures.
- With Facilities and Scottsdale Arts, created detailed Exhibits.

City Funding / Increase Revenues

- Scottsdale Arts to secure new funding sources to supplement City expenditures on capital improvements.
- Recommend adding Destination Event as part of Financial Participation Agreement.
- Goal for Scottsdale Arts to increase outside funding to 67 percent of total revenue over time.
- Transparency Requirements.

Reports and Audits

Require:

- **One time 5-Year Strategic Plan at the beginning of new agreement**
- **Annual Operations Plan with details and performance measures for 5-year plan goals, objectives and strategies.**
- **Annual Report with pro forma budget organized to reflect organizational structure; also evaluate preceding fiscal year performance measures and objectives of MSA.**
- **Written Quarterly Performance Reports.**

Scottsdale ~~Mall~~ Civic Center Ordinance

Primary recommendations for proposed amendment:

- Aligns with current use and language.
- Adds the requirement that Civic Center Coordinator use the Special Events Ordinance for decisions on applications.
- Adds regulations to the Facility Use Permits for live entertainment, set-up and teardown.
- That the name Scottsdale Mall be changed to Scottsdale Civic Center.

Next Steps

APRIL

- **Finalize Management Services Agreement and Scottsdale Mall Ordinance per direction from City Council.**
- **Consent Agenda items for Council approval.**

JUNE

- **Financial Participation Agreement as Consent Agenda item in coordination with the final FY 2019/20 Operating Budget approval.**

**Scottsdale Arts Management Services Agreement
and
Scottsdale Mall Ordinance**

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10

FY 2018/19 Operating Budget and Percentage of Total

| | FY 18/19 | % of Total |
|---|--------------------|-------------------|
| Management and Administration of the Facilities | \$3,988,148 | 83.29% |
| Maintenance and Repair of Specialty Equipment | 20,000 | 0.42% |
| Community Arts Grant Program | 60,000 | 1.25% |
| <i>Management and Administration subtotal:</i> | 4,068,148 | 84.96% |
| Conservation and Restoration of City Artwork | 120,000 | 2.51% |
| Management and Administration of Art in Public | 600,000 | 12.53% |
| <i>Public Art subtotal:</i> | 720,000 | 15.04% |
| Total Management Services Fee | \$4,788,148 | |