

# CITY COUNCIL REPORT



Meeting Date: Friday, December 2, 2016  
 General Plan Element: **Community and Economic Development**  
 General Plan Goal: ***Sustain Scottsdale as a tourist destination***

## **ACTION**

**Subject statement.** Approve Resolution # 10622, authorizing City of Scottsdale five – year contract # 2016-174-COS between the City of Scottsdale and Russo and Steele LLC for use of the State Land on the southeastern corner of Scottsdale Road and Hwy 101 from 2017 – 2021.

## **BACKGROUND**

WestWorld enjoys the recognition of being one of the premier locations for equestrian and special events as well as being a major contributor to the City tourism industry. The City has assumed the responsibility of the SLUP (State Land Use Permit) for the primary reason for dust control and to ensure that the City can retain access to overflow parking and staging needs for a number of special events. All the events provide great financial benefits to the community through tax receipts as well as contribute to the Scottsdale brand and tourist destination.

The City of Scottsdale has been awarded a new SLUP (State Land Use Agreement) that is active from July 1, 2016 – June 30, 2021.

The SLUP is managed and administered through the office and operations of WestWorld.

## **ANALYSIS & ASSESSMENT**

### **Recent Staff Action**

City Staff has worked with the City Attorney's office to draft a multi-year Land Use Agreement to run parallel with the SLUP at the request of the event producer, Russo and Steele LLC.

This is a cost neutral contract per year as the cost issued from the State Land Department is invoiced to the event producer. In addition the event producer pays the annual maintenance cost for the management and repairs of the land permit area.

### **Significant Issues to be Addressed**

None

## RESOURCE IMPACTS

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### Staffing, Workload Impact

The contract administrator responsible for enforcement of all provisions of this contract is Brian Dygert, General Manager and the management staff at WestWorld as well as the operation staff at WestWorld for maintenance and repair.

### Maintenance Requirements

WestWorld management staff inspects the SLU P area weekly and issues repair orders as needed.

### Cost Recovery

The cost for the state land is paid for by Russo Steele as shown below:

First Year (2017): \$33,000  
Second Year (2018): \$36,000  
Third Year (2019): \$39,000  
Fourth Year (2020): \$42,000  
Fifth Year (2021): \$45,000

## OPTIONS & STAFF RECOMMENDATION

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### Recommended Approach

Approve Resolution # 10622, authorizing City of Scottsdale five – year contract # 2016-174-COS between the City of Scottsdale and Russo and Steele LLC for use of the State Land on the southeastern corner of Scottsdale Road and Hwy 101 from 2017 – 2021.

## RESPONSIBLE DEPARTMENT(S)

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WestWorld

## STAFF CONTACT (S)

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Brian Dygert, General Manager, [bdygert@scottsdaleaz.gov](mailto:bdygert@scottsdaleaz.gov)

**APPROVED BY**

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Brian Dygert, WestWorld General Manager

(480)312-6825; [bdygert@scottsdaleaz.gov](mailto:bdygert@scottsdaleaz.gov)

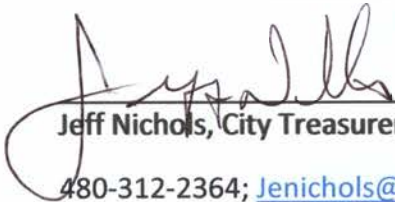
11/3/2016  
Date



Kroy Ekblaw, Strategic Projects

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11/11/2016  
Date



Jeff Nichols, City Treasurer

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11/14/16  
Date



Brian K. Biesemeyer, Acting City Manager

480-312-2811; [Bbiesemeyer@scottsdaleaz.gov](mailto:Bbiesemeyer@scottsdaleaz.gov)

11/14/16  
Date

**ATTACHMENTS**

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1. Contract # 2016-174-COS
2. Resolution # 10622

# ATTACHMENT 1

## EVENT AGREEMENT

THIS EVENT AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between City of Scottsdale, an Arizona municipal corporation ("City"), and Russo and Steele, LLC, an Arizona Limited Liability Company ("Producer").

### RECITALS

A. The City has obtained a non-exclusive Special Land Use Permit ("SLUP") from the Arizona State Land Commissioner allowing the City to use the Land described on **Exhibit "A-1"** ("SLUP Area") attached hereto, for the purpose of producing a special event including site preparation and clean-up, barricading, traffic management and dust control.

B. Producer desires to stage an event known as Russo and Steele Auto Auction (the "Event") during the month of January, 2017, 2018, 2019, 2020 and 2021, and as part of the Event Producer desires to use a portion of the SLUP Area for the following purpose:

Temporary event staging, production and parking for individuals attending the Event and related activities.

C. City desires to grant to Producer a license to use certain portions of the SLUP Area for the Event subject to the requirements of this Agreement. The Area licensed to the Producer is identified on **Exhibit "B-1"** ("Use Area") attached hereto.

D. The Permitted Uses in the Use Area include and are limited to activities that are directly related to the theme of the Event that are held on the Use Area as described above, such as but not limited to:

1. Event production.
2. Event staging.
3. Automobile parking.
4. Traffic control.
5. Public control and safety.
6. Dust control.

E. The Permitted Uses do not include activities that are not directly related to the theme of the Event as described above, such as:

1. Event production, parking, signage, lighting, staging and public access for events held at a different location than on the Use Area.
2. Gatherings of people for purposes other than event participation, at this site.

F. At Producer's request, the City may also provide specified Support at an additional cost to Producer.

NOW, THEREFORE, in consideration of the foregoing, the amounts hereinafter to be paid by Producer, and the covenants and agreements contained herein to be kept and performed by Producer, and other good and valuable consideration, City and Producer agree as follows:

## I. SCHEDULES AND USE AREA

1. Schedules and Use Area. City hereby grants to Producer a license to use the Use Area as described in **Exhibit "C"** attached for events held in January 2017, 2018, 2019, 2020 and 2021.

1.1 Producer shall cause all personnel and all vehicles and other personality to be removed from the Use Area and shall cause the Use Area to be completely cleaned as required by this Agreement no later than the last day of the Move-out Period.

1.2 Event Use Area. Producer has no right to use any other land near or adjacent to the Use Area in connection with the Event, without prior consent of the City.

1.3 City Supplied Operations Support. City shall provide to Producer support for the Event as follows:

1.3.1 Subject to availability, Producer may purchase additional Event support services from the City as provided elsewhere in this Agreement.

1.3.2 Unless clearly specified otherwise, City's obligation regarding all Event support is merely to provide the items listed in paragraph 1.5, including all permits required by the City and tax liabilities. All set up, takedown and operation shall be performed by Producer at Producer's expense.

1.4 Producer Supplied Item. Producer must independently provide the items listed on **Exhibit "D"** attached hereto. These items will be submitted to the City during the Special Event Permitting process.

1.5 SLUP and Producer's Rights to Use Area. The Producer's rights to use the Use Area under this License are subject to City's rights under the State Land Use Permit issued to the City, and Producer understands that the State may cancel the City's permit to use the SLUP Area which will terminate Producer's right to use the Use Area under this License. Producer shall not be entitled to any damages or other remedies arising out of the cancellation of this License due to the cancellation of the City's SLUP.

1.6 Condition of Use Area. The Use Area shall be made available in an "as is" condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to the condition or fitness for any use.

1.7 No Real Property Interest. This Agreement creates only a license to use the Use Area. City and Producer do not, by this instrument, intend to create a lease, easement or other real property interest in the Use Area.

1.8 Event Notice Information. No later than ninety (90) days before the Event period the Producer shall deliver to City a notice containing the information specified on **Exhibit "E"**, for the review and approval of the WestWorld General Manager.

## II. TERM OF AGREEMENT

2. Term of Agreement. City hereby grants to Producer a license to use the Use Area subject to and conditioned upon Producer's full, timely, complete and faithful performance to be performed or done hereunder by Producer.

2.1 Original Term. The term of this Agreement shall commence on July 1, 2016 and terminate June 30, 2021. Even though the beginning of such term predates the date of this Agreement, City and Producer desire that this Agreement govern their relationship commencing July 1, 2016.

2.2 Holding Over. In any circumstance whereby Producer would continue using or occupying the Use Area after the expiration of the yearly Event Period, such holding over shall not be deemed to operate as a renewal or extension of the Event Period of this Agreement or any rights of Producer under this Agreement.

2.3 The City designates the WestWorld General Manager as the contact person with the authority to make all decisions regarding compliance with the terms of this agreement.

## III. PRODUCER'S PAYMENTS

3. Producer's Payments. Producer shall make various payments to City as follows:

3.1 Area Use Fee. Producer shall pay to City a fixed annual amount (the "Area Use Fee") in each calendar year under this Agreement as a single amount to pay City for use of the Use Area. The amount of the Area Use Fee for Producer's use of the Use Area, as set by the Arizona State Land Department, for the Events shall be as follows plus applicable taxes:

3.1.1 2017 Event: Thirty Three Thousand and 00/100 Dollars (\$33,000.00);

3.1.2 2018 Event: Thirty Six Thousand and 00/100 Dollars (\$36,000.00);

3.1.3 2019 Event: Thirty Nine Thousand and 00/100 Dollars (\$39,000.00);

3.1.4 2020 Event: Forty Two Thousand and 00/100 Dollars (\$42,000.00);

3.1.5 2021 Event: Forty Five Thousand and 00/100 Dollars (\$45,000.00);

3.2 Additional Fee Items. In addition to the Area Use Fee, Producer shall pay to City amounts for each of the following additional categories of Fees and services:

3.2.1 Producer's Maintenance Fee. Producer shall pay a maintenance fee to reimburse the City for its cost to maintain the SLUP Area, free of litter, and to control dust. The fee shall be calculated as follows:

3.2.1.1 The City will determine the SLUP Area Maintenance Cost for each fiscal year for the term of the Agreement (July 1, 2016 to June 30, 2021).

3.2.1.2 The SLUP Area Maintenance Cost shall be divided by the total number of days the SLUP Area is licensed each fiscal year to all Event Producers, which equals the SLUP Area Maintenance Cost Per Day.

3.2.1.3 Producer's Fee is the SLUP Area Maintenance Cost Per Day multiplied by the total number of days in each fiscal year the Producer has licensed access to the Use Area.

S.A.M.C. = SLUP Area Maintenance  
Cost for the term of the  
Agreement

$$(S.A.M.C.) / (T.L.D.) = M.C.d.$$

T.L.D. = Total licensed days by all  
Producers

M.C.d. = SLUP Area Maintenance  
Cost Per Day

$$(M.C.d.) * (L.E.D.) = \text{Producer's Fee}$$

L.E.D. = Producer's total licensed event  
days for Use Area

3.2.3 Each year City shall have the right to submit an invoice for payment to the Producer for the total fiscal year maintenance fee amount, using the above formula, within sixty (60) days after the actual amount becomes known.

3.2.4 All other amounts required by this Agreement.

3.3 Extra Improvement Fees. The amount of any Extra Improvement Fees charged to Producer shall be the amount necessary to compensate City for Producer's use of any new or additional areas, improvements or equipment as imposed by City from time to time. For example, if City constructs and makes available to Producer, or if Producer otherwise uses any area or facility at the Use Area that does not exist as of the date of this Agreement or that this Agreement does not require City to provide to Producer, then Producer shall pay to City the then prevailing fee for such use.

3.4 Damage Fee. The amount of the Damage Fee shall be the cost to repair any damage to any improvements or other item belonging to the City in any manner by the Event or any work or activity under this Agreement, plus an additional ten percent (10%) of such cost for administrative expenses. Without limitation, such costs include damage to property, repair costs, diminished service life, increased repair frequency, inspection costs, etc.

3.5 Fee Payment Date. Producer shall make Fee payments as follows:

3.5.1 Producer shall pay the Area Use Fee as follows:

3.5.1.1 Thirty Three Thousand and 00/100 Dollars (\$33,000.00) for the 2017 Event no later than November 1, 2016;

3.5.1.2 Thirty Six Thousand and 00/100 Dollars (\$36,000.00) for the 2018 Event no later than November 1, 2017;

3.5.1.3 Thirty Nine Thousand and 00/100 Dollars (\$39,000.00) for the 2019 Event no later than November 1, 2018;

3.5.1.4 Forty Two Thousand and 00/100 Dollars (\$42,000.00) for the 2020 Event no later than November 1, 2019;

3.5.1.5 Forty Five Thousand and 00/100 Dollars (\$45,000.00) for the 2021 Event no later than November 1, 2020.

3.5.2 In the event an amount is not known in advance, City shall have the right to estimate the amount, with an adjustment to be made within sixty (60) days after the actual amount becomes known.

3.6 Fee Payment Location. All Fee payments shall be delivered to:

Remittance Processing  
City of Scottsdale  
7447 E. Indian School Rd. STE. 215  
Scottsdale, AZ 85251-3915

3.7 Overstaying the Move-out Period. In the event Producer fails to timely exit the Use Area after any yearly Event, Producer shall pay to City an amount equal to three times the yearly SLUP Area Maintenance Cost Per Day per day until Producer completely exits the Use Area. Such payment covers the use of the area occupied by Producer and the administrative burden that City will internally suffer due to a late departure, which are very difficult to value, but does not excuse Producer's failure to timely exit the Use Area or excuse Producer from liability for any other harm caused by such failure. Such other harm that is not covered includes, without limitation, claims by other events waiting to move in and occupy the Use Area.

#### IV. USE RESTRICTIONS

4. Use Restrictions. Producer's use and occupation of the Use Area shall in all respects conform to the following cumulative provisions:

4.1 Nature of Events. All activities at the Use Area shall be related to the theme of the Event, including automobile parking, shuttle stops, traffic control, dust control, and barricading, as the primary site Use Area.

4.2 Actions by Others. Producer shall be responsible for compliance with this Agreement by all persons using the Use Area under this Agreement or claiming through or under Producer or this Agreement.

4.3 Additional Activity Limitations. The following additional items are prohibited in the Use Area:

4.3.1 Firearms, except in the possession of sworn police officers.

4.3.2 Knives, swords or other devices with a blade longer than six (6) inches.

4.3.3 Animals other than seeing eye dogs and similar animals providing



assistance to a disabled person.

4.4 Event Opening. Producer shall not commence the Event or permit the public to enter the Use Area for the Event until after all of the following have occurred:

4.4.1 City's fire department has inspected the Event's Parking Area and Producer has resolved to the satisfaction of the Fire Department any issues raised by such inspection.

4.4.2 City's police department has approved Producer's security and public safety plan.

4.4.3 City's risk management staff is satisfied that all insurance required by this Agreement for the Event is in place.

4.4.4 Producer has caused to occur compliance with all other requirements of this Agreement.

4.5 Parking. Producer shall set up and manage parking in the Use Area at its own expense in compliance with the following:

4.5.1 Producer shall use the Use Area for parking only for the Event.

4.5.2 Producer shall operate and provide lighting for the parking areas that are not equipped with permanent lighting.

4.5.3 Producer shall provide security for the parking areas.

4.5.4 Producer shall insure the parking areas and indemnify the City and the State Land Department with respect to the parking areas as provided in this Agreement.

4.5.5 All parkers (other than staff and safety personnel) shall only park during the hours that begin one hour before Producer's first published parking shuttle pickup time of the day and end one hour after Producer's last published parking shuttle drop-off time of the day.

4.5.6 Producer shall accommodate all legally required handicap parking as provided by applicable laws or regulations.

4.6 City's Fixtures and Personal Property. Producer shall return to City any and all of City's property as may come into the possession of Producer or be used by Producer, after each Event and shall maintain such equipment in good working condition at Producer's expense. All such personal property is provided "as is" and Producer accepts all responsibility for its condition and shall thoroughly inspect the same before use. Without City's prior written consent, Producer shall not remove, damage or alter in any way any of City's improvements or fixtures upon the Use Area.

4.7 Security. Producer shall provide adequate security and surveillance to ensure the safety of the general public. Event security and crowd control shall be commensurate with prudent public assembly standards and shall be based on the projected attendance for the Event, all to the reasonable satisfaction of the WestWorld General Manager.

4.8 Qualified Personnel and Responsibility for Costs. Producer is responsible for all costs associated with and shall coordinate with City, all ushering, watchmen, security, and on and off site parking control. This includes any special requirements to separate the general public from areas to which Producer desires to restrict access, and to enforce all parking and other rules and regulations, and otherwise ensure the security, safety and well-being of all person attending or otherwise persons related to the Events. All of the above services must be performed by qualified personnel of a licensed, bonded company with current active liability, worker's compensation and other insurance meeting the requirements of this Agreement. Should the WestWorld General Manager determine the need for additional personnel due to Producer not meeting its obligations for the above services, except in an emergency, the WestWorld General Manager shall first notify Producer's agent to provide Producer the opportunity to address and correct the situation prior to City taking action.

4.9 Additional Personnel. Scottsdale Police Department may place personnel of its choosing on the Use Area for the purpose of coordinating and controlling traffic flow, parking and security to the extent City deems necessary to ensure the safety and well being of patrons and to enforce parking and other rules and regulations. Costs incurred for said personnel will be charged to and paid by Producer.

4.10 Safety Authority. In all matters pertaining to public health and safety, Producer shall have first responsibility, but in the event the WestWorld General Manager become dissatisfied for any reason, City staff, uniformed police and fire department personnel shall have final authority.

4.11 Producer's Agent. Producer shall, at all times during the Event and all other times when the Use Area is occupied by Producer, retain on call available to City an active, qualified, competent and experienced person to supervise all activities and who shall be authorized to represent and act for Producer in matters pertaining to all emergencies and the day-to-day operation of the Event. Unless and until Producer gives notice to City of a new representative, Producer's representative shall be the person who executes this Agreement on behalf of Producer. Any change shall be given in writing, hand-delivered to City's designated Use Area manager as well as in the manner stated for notices under this Agreement. Producer shall also provide notice to City of the name, street address, electronic mail address, and regular and after hours telephone and telefax numbers of a person to handle Producer's affairs and emergencies at the Event.

4.12 Signs. All signage by Producer is prohibited except in compliance with the following requirements:

4.12.1 Producer shall install and maintain the following signs upon the Use Area:

4.12.1.1 All signs and markings required for safe and efficient travel and parking in the Use Area.

4.12.1.2 Signage directing deliveries and emergency vehicles and other uses to comply with this Agreement as reasonably determined by City from time to time.

4.12.1.3 Other signs and other markings as reasonably determined by City from time to time.

4.12.2 Producer may elect to install the following signs:

4.12.2.1 Signs addressed to and principally visible only to persons already at the Event.

4.12.2.2 Signs directing pedestrians to parking, ticket sales, etc.

4.12.3 All other signs not directly related to this event.

4.12.4 Producer shall design, make, install and maintain all signage in a first class, professional manner, without broken panels, faded paint or other damage.

4.12.5 The requirements of this paragraph apply to all signs, designs, monuments, decals, graphics, posters, banners, markings, and other manner of signage visible outside the Event or otherwise visible to anyone other than Producer and its agents and customers.

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

4.14 Governmental and Neighborhood Relations. Producer shall conduct its activities in coordination with City as necessary to maintain good relations with all governmental and other entities having jurisdiction over the Use Area and the occupants of surrounding real property. The preceding sentence does not prohibit Producer from asserting its legal rights against such entities. Producer shall immediately give to City notice of any actual or threatened dispute, violation or other disagreement relating to the Use Area. Producer is not an agent for City. Without limitation, such entities (who are not third party beneficiaries to this Agreement) include (to the extent that such entities have jurisdiction over the Use Area):

4.14.1 Maricopa County.

4.14.2 Arizona Department of Environmental Quality.

4.14.3 Arizona Department of Water Resources.

4.14.4 Bureau of Reclamation.

4.14.5 Central Arizona Water Conservation District.

4.14.6 Federal Aviation Administration.

4.14.7 State of Arizona, State Land Department.

4.15 Nudity and Other Adult Conduct. Nudity and disorderly conduct are prohibited in the Use Area as set forth in **Exhibit "F"** attached hereto.

4.15.1 Drainage Operations. Producer acknowledges that Producer's use

of the Use Area shall be subject and subordinate to the Use Area being subject to flooding that will necessarily directly and indirectly affect Producer and the Event. City's rights under this paragraph limit Producer's rights under all other provisions of this Agreement. Producer's use of the Use Area shall not be permitted by Producer to in any way adversely affect the Use Area as a flooding and drainage area.

4.15.2 Producer shall not be entitled to any damages or other remedy arising out of flooding or drainage on the Use Area or for any interruption of Producer's business, use, or operation related thereto.

## V. CITY'S IMPROVEMENTS

5. City's Improvements. City may continue to improve or change the Use Area as follows:

5.1 Application of Dust Control Measures.

5.2 No Improvements Required. City has not promised to and is not obligated in any manner to construct any new improvements or perform any other construction work at the Use Area.

5.3 Reservation for City's Use and Future Improvements. City may construct, reconfigure, demolish, remove and otherwise modify the Use Area and all improvements located at the Use Area from time-to-time subject only to specific detailed prohibitions, if any, mandated in this Agreement. City specifically reserves to itself and excludes from this Agreement the right to use all parts of the Use Area at all times for any and all purposes that do not materially interfere with Producer's lawful conduct of the Permitted Uses under this Agreement. City may add or subtract parking or other land to or from the Use Area and may otherwise change the boundaries of the Use Area. City may also permit other public agencies and utility providers to enter all areas of the Use Area at their sole risk and expense. Except in an emergency, any such entry by third parties to an Event shall be made only after reasonable oral notice to Producer.

## VI. PRODUCER'S IMPROVEMENTS

6. Producer's Improvements. Producer has installed a temporary asphalt pad, in a designated area of the Use Area the location approved by the WestWorld General Manager or designee. As part of the installation and maintenance process Producer may not grade or disturb washes and/or destroy, damage or harm onsite trees and cacti. The size of the asphalt pad shall be approximately 300 X 150 feet and shall not be at a depth greater than two inches. The exact location of the pad shall be determined by the City in its sole discretion and shall be temporary. If the City's State Land Use Permit is cancelled, revoked or terminated, or if Producer is in breach of this Event Agreement and/or the Event Agreement is terminated or not renewed by the City, Producer shall at its cost remove the asphalt pad and restore the site to the condition it was in before the Pad was installed.

6.1 No Other Improvements. Producer shall not perform any other improvements, construction, utility alterations, or similar work of any kind at the Use Area other than routine setup and take down activities for the Event as provided in this Agreement. City may refuse to permit any other construction work for any reason or for no reason. City's issuance of building permits or zoning clearances, or any other governmental reviews or actions shall not

constitute approval of any work for purposes of this Agreement.

6.2 Bond Requirement. Producer shall purchase and keep in place a bond in the minimum amount of Twelve Thousand Dollars and no cents (\$12,000.00) for the purpose of ensuring that sufficient funds are in place to cover the costs of removal of the asphalt pad and any potential damage to the environment. The bond shall name the Arizona State Land Department as obligee. The Bond shall be executed solely by a surety company or companies holding a certificate of authority to transact surety business in the State of Arizona, issued by the Director of the State Department of Insurance, pursuant to Arizona Revised Statutes, Title 20, Chapter 2, Section 1. The bond shall not be executed by an individual or personal surety or sureties. Additionally, the surety company issuing any bond shall have an A.M. Best Company, Inc., financial strength rating of not less than "A-VI". Producer shall secure and deliver to the City the original bond within ten days (10) of the execution of this Agreement. The prevailing party in a suit on the bond shall recover as part of the judgment reasonable attorneys' fees and costs as may be fixed by a judge of the court.

6.3 FURTHERMORE, notwithstanding the provisions of the Event Agreement, the term of the issued bond shall apply from July 1, 2016, until June 30, 2021, and may be extended by the Surety by Continuation Certificate. However, neither non-renewal by the Surety, nor the failure or inability of the Principal to file a replacement bond in the event of non-renewal, shall itself constitute a loss to the Obligatee recoverable under the issued bond or any renewal or continuation thereof. The liability of the Surety under the issued bond and all continuation certificates issued in connection therewith shall not be cumulative and shall in no event exceed the amount as set forth in the issued bond or in any additions, riders, or endorsements properly issued by the Surety as supplements thereto. In no event shall Surety's aggregate liability exceed the penal sum of the issued bond. NO SUIT, ACTION OR PROCEEDING by the Obligatee to recover on the issued bond shall be sustained unless the same be commenced within two (2) years following the date on which Principal ceased work on said Contract.

## VII. PRODUCER'S INITIAL PROJECT CONSTRUCTION

7. Producer's Initial Project Construction. City has not approved or promised to approve any construction or similar work by Producer at the Use Area.

## VIII. EVENT OPERATIONS

8. Event Operations. Producer shall be solely responsible for all work necessary to safely and properly prepare for, conduct, and take down barricades and signs for the Event and use of the Use Area during the term of this Agreement.

8.1 Access to Use Area. The City at its sole discretion shall determine the access routes to the Use Area, type, size and location of traffic management signs for the Use Area associated with the event. As traffic conditions change the City may at its sole discretion adjust and/or change the access to the Use Area to insure public safety.

8.2 Producer's Operations. Producer shall be solely responsible for all set up, takedown, site preparation, janitorial service, cleanup, crowd control, parking management, security, temporary utilities, and other work necessary to safely and properly conduct the Event and to return the Use Area to its prior condition following each Event.

8.3 Event Support. City may provide Event Support to Producer during the

Events according to the pricing, availability, quality and capacity of such goods and services prevailing at the time. Producer shall make all requests for Event Support in writing using the form attached hereto as **Exhibit "G"** or such other form as City may specify from time to time. City shall not be obligated to provide Event Support until Producer has properly requested the Event Support and City has subsequently agreed to provide it. City's ability to provide Operations Support will be limited by resources available, taking into account the amount of time between the work requests and the work.

8.4 Maintenance by Producer. Producer shall at all times operate the Use Area at Producer's sole expense in a sound, clean, safe and attractive manner, meeting or exceeding the manner of operation of first-class comparable events. All contractors working for Producer must waive any lien rights in writing before doing any work, if their work could result in a lien upon the City's property.

8.5 Entering the Use Area. At the beginning of each Move-in Period (and prior to any permitted use of the Use Area before commencement of a Move-in Period), Producer and City shall walk through the Use Area together and make a written record of any existing damage. By entering the Use Area to begin setting up for the Event, Producer accepts the Use Area as being in good condition and repair except as noted on the walk-through record.

8.6 Vacating the Use Area. At the end of each Move-out Period (and after any permitted use of the Use Area after the end of a Move-out Period), Producer shall vacate the Use Area, leaving it in as good condition as provided or better, ordinary wear and tear excepted. Prior to the end of each Move-out Period, Producer and City shall walk through the Use Area together to make a written record of any new damage, and to determine the cost necessary to repair the damage. Except when prevented by good cause, the walk-through shall be conducted by the same City and Producer representatives who performed the walk-through prior to the Move-in Period. The cost of the repairs shall be added to the Damage Use Fee.

8.7 Walk-through Exceptions. The foregoing walk-throughs shall not be required unless Producer or City requests that they occur.

8.8 Other Users. Producer acknowledges that the Use Area also serves as parking on a year-round basis for numerous other events and activities. Accordingly, Producer must confine its activities to the times and locations specified in this Agreement and not interfere with or disrupt other events or activities. In addition, City and other Use Area users may be moving-in, moving-out or conducting other events and activities at the Use Area during periods that Producer may be at the Use Area. Producer shall cooperate with City and other users to make the most efficient use of the Use Area and to accommodate and avoid disturbing or interfering with other users or activities.

8.9 Producer Provided Utilities. If necessary, Producer shall install and use temporary utilities at the Use Area at Producer's expense for the Event.

8.10 Utility Interruptions. City is not responsible for any interruption of utilities to or upon the Use Area.

## IX. BREACH

9. Breach by Producer. Producer shall comply with, perform and do each performance and provision required of Producer herein and shall cause all persons using the Use

Area or claiming through or under Producer or this Agreement to do the same. Producer's failure to do so shall be a material breach by Producer of this Agreement.

9.1 Events of Default. This entire Agreement is made upon the condition that each and every one of the following events shall be deemed an "Event of Default" by Producer of Producer's material obligations under this Agreement:

9.1.1 If Producer shall be in arrears in the yearly payment of the Use Fee and shall not cure such arrearage within ten (10) days after City has notified Producer of such arrearage.

9.1.2 If Producer shall fail to immediately correct any failure to conduct the Events and its other activities at the Use Area in compliance with this Agreement.

9.1.3 If Producer shall fail to maintain any insurance required by this Agreement.

9.1.4 If Producer shall engage in a pattern of repeated failure (or neglect) to timely do or perform or observe any provision of this Agreement.

9.1.5 If Producer shall fail to or neglect to timely and completely do or perform or observe any other provisions contained herein and such failure or neglect shall continue for a period of thirty (30) days after City has notified Producer in writing of such failure or neglect.

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

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

9.2.2 Without demand or notice, enter into and upon all or part of the Use Area and repossess the same, and expel Producer and those claiming by, through or under it, and remove their effects, if any, forcibly if necessary, without being deemed guilty of trespass and without prejudice to any other remedy.

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

9.2.4 Abate at Producer's expense any violation of this Agreement.

9.2.5 Be excused without any liability to Producer therefor from further performance of any or all obligations under this Agreement.

9.2.6 Insist upon Producer's full and faithful performance under this Agreement and upon Producer's full and timely payment of all amounts during the entire remaining term of this Agreement.

9.2.7 Require an additional security deposit adequate in City's sole discretion to protect City and the Use Area.

9.2.8 Assert, exercise or otherwise pursue at Producer's expense any and all other rights or remedies, legal or equitable, to which City may be entitled.

9.3 Notice of Breach. Producer shall promptly give notice to 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. Producer shall also promptly give to 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.

9.4 Non-waiver. Producer acknowledges Producer's unconditional obligation to comply with this Agreement. No failure by City to demand any performance required of Producer under this Agreement, and no acceptance by City of any imperfect or partial performances under this Agreement, shall excuse such performance or impair in any way City's ability to insist, prospectively and retroactively, upon full compliance with this Agreement. No acceptance by City of Use Fee payments or other performances hereunder shall be deemed a compromise or settlement of any right City may have for additional, different or further payments or performances. Any waiver by City of any breach of condition or covenant herein contained to be kept and performed by Producer shall not be deemed or considered as a continuing waiver and shall not operate to bar or otherwise prevent City from declaring a default for any breach or succeeding or continuing breach either of the same condition or covenant or otherwise. No statement, bill or notice by City or Producer concerning payments or other performances due hereunder, or failure by City to demand any performance hereunder, shall excuse Producer from compliance with this Agreement nor estop City (or otherwise impair City's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this Agreement. No waiver of any description (INCLUDING ANY WAIVER OF THIS SENTENCE OR PARAGRAPH) shall be effective against City unless made in writing by a duly authorized representative of City specifically identifying the particular provision being waived and specifically stating the scope of the waiver. PRODUCER EXPRESSLY DISCLAIMS AND SHALL NOT HAVE THE RIGHT TO RELY ON ANY SUPPOSED WAIVER OR OTHER CHANGE OR MODIFICATION, WHETHER BY WORD OR CONDUCT OR OTHERWISE, NOT CONFORMING TO THIS PARAGRAPH.

9.5 Reimbursement of City's Expenses. Producer shall pay to City upon demand any and all amounts expended or incurred by City in performing Producer's obligations together with interest thereon at the rate of two percent (2%) per month from the date expended or incurred by City.

9.6 Breach by City. Notwithstanding anything in this Agreement to the contrary, in the event City at any time is required to pay to Producer any amount or render any performance, such amount or performance is not due until thirty days after notice by Producer to City that the amount has become payable or that the performance is due. City shall not be in default so long as City commences cure during the Event period and diligently prosecutes the cure to completion.

9.7 Right to Setoff and Credit. In addition to its other rights and remedies under this Agreement, City shall have the right to setoff and credit, from time to time and at any time, any and all amounts due from Producer to City, whether pursuant to this Agreement or otherwise, against any sum that may be due from City to Producer pursuant to this Agreement or otherwise.



## X. TERMINATION

10. Cancellation/Termination of License. In the event that the State Land Commissioner cancels or terminates the City's SLUP as to all or any part of the Use Area, within five (5) days after receiving notice from the Commissioner the City shall notify the Producer that the right to use the Use Area or any portion of the Use Area under this Agreement is terminated. This Agreement may be terminated upon the mutual consent of each party.

10.1 Rights at Termination. The following provisions shall apply at the expiration of the term hereof or upon any other termination of this Agreement:

10.2 Surviving Obligations. Expiration of this Agreement (or City's termination of this Agreement due to an Event of Default or any other reason) does not terminate Producer's obligations existing or arising prior to or simultaneous with, or attributable to, the termination or events leading to or occurring before termination.

10.3 Confirmation of Termination. Upon expiration or termination of this Agreement for any reason, Producer shall provide to City upon demand confirmations of termination covering the Use Area executed and acknowledged by Producer and by all persons claiming through this Agreement or Producer any interest in or right to use the Use Area.

## XI. INDEMNITY AND INSURANCE

11. Insurance Responsibility. During the term of this agreement for the events held in, 2017, 2018, 2019, 2020 and 2021, Producer shall insure the Use Area and property and activities at and about the Use Area and shall provide insurance and indemnification as follows:

11.1 Insurance Required. Producer shall obtain and cause to be in force and effect the following insurance:

11.1.1 Commercial General Liability. Commercial general liability insurance with a limit of One Million Dollars (\$1,000,000) for each occurrence, a limit of Two Million Dollars (\$2,000,000) for products and completed operations annual aggregate, and a limit of Two Million Dollars (\$2,000,000) general aggregate limit per policy year. The policy shall cover liability arising from Use Area, operations, independent contractors, products, completed operations, personal injury, bodily injury, advertising injury, and liability assumed under an "insured contract" including this Agreement. The policy will cover Producer's liability under the indemnity provisions of this Agreement.

11.1.2 Automobile Liability. Automobile liability insurance with a limit of One Million Dollars (\$1,000,000) for each occurrence covering any and all owned, hired, and non-owned vehicles assigned to or used in any way in connection with Producer's use of the Use Area. Without limitation, such insurance shall cover hazards of motor vehicle use for loading and off loading.

11.1.3 Workers' Compensation. Such workers' compensation and similar insurance as is required by law and employer's liability insurance with a minimum limit of One Hundred Thousand Dollars (\$100,000) for each accident, One Hundred Thousand Dollars (\$100,000) disease for each employee, Five Hundred Thousand Dollars (\$500,000) policy limit for disease. All contractors and subcontractors must provide like insurance.

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

11.1.5 Other Insurance. Any other insurance City may reasonably require for the protection of City and City's employees, officials, representatives, officers and agents (all of whom, including City, are collectively "Additional Insureds"), the Use Area, surrounding property, Producer, or the activities carried on or about the Use Area.

11.2 Policy Limit Escalation. City may elect by notice to Producer to increase the amount or type of any insurance to account for inflation, changes in risk, or any other factor that City reasonably determines to affect the prudent amount of insurance to be provided.

11.3 Form of All Insurance. All insurance provided by Producer required by this Agreement or not, shall meet the following requirements:

11.3.1 "Occurrence" coverage is required. "Claims made" insurance is not permitted.

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

11.3.3 Policies must also cover and insure Producer's activities relating to the business operations and activities conducted away from the Use Area.

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

11.3.5 Upon City's request, Producer shall provide to City copies of actual insurance policies.

11.3.6 Producer's insurance shall be primary insurance.

11.3.7 All policies, including workers' compensation, shall waive transfer rights of recovery (subrogation) against City, and the other Additional-Insureds.

11.3.8 No deductibles, retentions, or "self insured" amounts shall exceed One Hundred Thousand Dollars (\$100,000.00) in the aggregate per year, per policy. Producer shall be solely responsible for any self-insurance amount or deductible.

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

11.3.10 City may require Producer from time to time to secure payment of any deductible or self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

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

11.3.12 All policies except workers' compensation must name City and the other Additional Insureds as additional insureds. Producer shall cause coverage for Additional Insureds to be incorporated into each insurance policy by endorsement.

11.3.13 All applicable policies must name City as a loss payee as respects proceeds relating to the Use Area.

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

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

11.4 Insurance Timing. Producer shall cause all insurance policies to be issued (and provide to City the required evidence of such issuance) no later than thirty (30) days prior to the beginning of the Move-in Period for each Event. All insurance policies must be in effect and cover the entire time that Producer in any way uses the Use Area.

11.5 Insurance Coverage. The insurance required by this Agreement shall cover all of the Use Area.

11.6 Insurance Certificates. Producer shall evidence all insurance by furnishing to City certificates of insurance annually and with each change in insurance coverage. Certificates must evidence that the policy described by the certificate is in full force and effect and that the policy satisfies each requirement of this Agreement applicable to the policy. For example, certificates must evidence that City and the other Additional Insureds are additional insureds and that insurance proceeds will be paid as required by this Agreement. Certificates must be in a form acceptable to City. All certificates are in addition to the actual policies and endorsements required. Producer shall provide updated certificates at City's request.

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

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

11.9 Insurance Proceeds. All insurance proceeds (whether actually paid before or after termination of this Agreement) shall be paid directly to City and owned by City for City's use in compensating City for the loss and use of the Use Area, protecting City, the Use Area and City's property from every other loss or exposure suffered by City, and satisfying and securing Producer's obligations hereunder. Thereafter, proceeds of damage to the Use Area shall be used as provided

elsewhere in this Agreement. Any remaining proceeds shall be allocated among City, Producer and other interested parties as their interests may appear.

11.10 No Representation of Coverage Adequacy. By requiring insurance herein, City does not represent that coverage and limits will be adequate to protect Producer. City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Producer from, nor be construed or deemed a waiver of, Producer's obligation to maintain the required insurance at all times.

11.11 Use of Subcontractors. If Producer subcontracts or otherwise delegates any work or use of the License Areas under this Agreement, Producer shall cause the delegatee to execute and provide to City a writing executed by the delegatee containing the same indemnification clauses and insurance requirements set forth herein protecting City and Producer. Producer shall provide to City certificates of insurance and other evidence that such requirements have been satisfied.

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

11.12.1 Claims arising only from the sole gross negligence of City.

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

11.13 Risk of Loss. Producer assumes the risk of any and all loss, damage or claims related to Producer's use of the Use Area or other property of City, Producer or third parties throughout the term hereof. Producer shall be responsible for any and all damage to its property and equipment related to this Agreement and shall hold harmless and indemnify City and all other Additional Insureds, regardless of the cause of such damages.

11.14 Indemnities and Insurance Cumulative. Producer's obligations to indemnify do not diminish in any way Producer's obligations to insure; and Producer's obligations to insure do not diminish in any way Producer's obligations to indemnify. Producer's obligations to indemnify and provide insurance are in addition to, and do not limit, any and all other liabilities or obligations of Producer under or connected with this Agreement. The amount and type of insurance coverage required by this Agreement will in no way be construed as limiting the scope of the indemnities in this paragraph.

11.15 Insurance to be Provided by Others. Any contractors or other persons occupying, working on or about, or using the Use Area pursuant to this Agreement must also provide for the protection of City and all other Additional Insureds all of the insurance and indemnification required by this Agreement. The preceding sentence does not require such persons to provide insurance that merely duplicates insurance Producer provides.

11.16 State Land Department Insurance. Producer shall cause the State Land Department to be a named insured under insurance required by this Agreement and indemnitees shall include the State Land Department.

## XII. CONDEMNATION

12. Condemnation. The following shall govern any acquisition by eminent domain of all or any part of or interest in the Use Area (the "Part Taken") and any conveyance to a condemnor in avoidance or settlement of eminent domain or a threat of eminent domain:

12.1 Termination as to Part Taken. This Agreement shall terminate as to the Part Taken on the date (the "Condemnation Date") that is the earlier of the date title to the Part Taken vests in the condemnor, or the date upon which the condemnor is let into possession of the Part Taken. Producer shall execute and deliver to City deeds or other instruments reasonably requested by City conveying and assigning to City Producer's rights to the Part Taken. In the case of a total condemnation or a condemnation that prevents the Event from occurring as contemplated by this Agreement, this Agreement shall expire as to the entire Use Area as of the Condemnation Date.

12.2 Condemnation Proceeds. Producer hereby assigns and transfers to City Producer's entire interest in all condemnation damages, interest, severance damages, and any other payments or proceeds of any kind relating to the condemnation (collectively the "Condemnation Proceeds"). Producer shall execute and deliver to City assignments or other instruments requested by City confirming such assignment and transfer. Producer shall immediately pay to City any Condemnation Proceeds Producer may receive.

### XIII. DAMAGE TO OR DESTRUCTION OF THE USE AREA

13. Damage to or Destruction of the Use Area. The following provisions shall govern damage to or destruction of the Use Area by fire, explosion, the elements, the public enemy, or other casualty (collectively "Casualty Damage").

13.1 Termination. If the cost of repairing the Casualty Damage exceeds One Hundred Thousand and No/100 Dollars (\$100,000.00), then City shall elect whether to terminate this Agreement or repair the Casualty Damage. Otherwise, City shall repair the Casualty Damage.

13.2 Repair. If City elects to repair the Casualty Damage, then this Agreement shall continue and the cost of such repair shall be reimbursed to the City by Producer within thirty (30) days of the City submitting an itemized statement to Producer.

### XIV. PRODUCER'S RECORDS

14. Producer's Records. During the entire term of this Agreement, Producer shall keep records and provide information to City as follows:

14.1 Scope of Information. Unless otherwise specified, City is only entitled to obtain Producer's information regarding the following topics as reasonably determined by City (collectively the "Covered Information"):

14.1.1 Information relating to this Agreement or to any of City's or Producer's rights, obligations or performances hereunder.

14.2 Records Inspection. If requested by City, Producer shall at Producer's expense:

14.2.1 Permit and assist City and its representatives at all reasonable times to inspect, audit, and copy Producer's records of Covered Information.

14.2.2 Make the records of Covered Information (and reasonable accommodations for City's audit and inspection) available to City at Producer's offices in Maricopa County, Arizona (or at another location requested by City within the corporate limits of the City of Scottsdale).

14.2.3 Cause Producer's employees and agents and accountants to give their full cooperation and assistance in connection with City access to the Covered Information.

14.3 Standards for Records. Producer shall maintain a standard, modern system of recordkeeping for the Covered Information and shall keep and maintain proper and accurate books and other repositories of information relating to the Covered Information in accordance with generally accepted accounting principles applied on a consistent basis. In the event City does not receive Covered Information, City shall have the right to estimate the information that is not provided, which estimate shall be binding upon Producer.

14.4 Record Retention. Producer shall preserve records of the Covered Information in a secure place within the Maricopa County, Arizona for a period ending seven (7) years after the period reported by the records.

14.5 Record Media Included. City's and Producer's rights and obligations regarding the Covered Information encompass all media, materials, and data repositories of every kind and character. Such repositories include, without limitation, records, books, papers, documents, logs, accounts, notes, diaries, ledgers, correspondence, reports, drawings, receipts, vouchers and memoranda, and any and all other sources, records and repositories of Covered Information.

## XV. COMPLIANCE WITH LAW

15. Compliance with Law. Producer shall perform its obligations 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.

15.1 This Agreement includes, replaces and supersedes all economic or other incentives from or through the City of Scottsdale applicable to the Event. In the case of any existing or future ordinance or other law of the City of Scottsdale authorizing a credit, reduction in tax or amount charged or assessed, or any other benefit as a result of performances rendered under this Agreement, Producer expressly waives, relinquishes and repudiates all such benefits with respect to performances rendered under this Agreement. This paragraph does not prevent the parties from entering into subsequent sponsorship, economic development or other contracts regarding the Events.

15.2 Taxes, Liens and Assessments. In addition to all other amounts herein provided, Producer shall pay, when the same become due and payable, all taxes and general and special fees, charges and assessments of every description that during the term of this Agreement may be levied upon or assessed upon or with respect to Producer's use of the Use Area, the operations conducted therein, any amounts paid or other performances under this Agreement by either party, and all possessory interest in the Use Area and improvements and other property thereon, whether belonging to City or Producer. Producer shall pay, indemnify, defend and hold harmless City and the State and all interests therein and improvements thereon from any and all such obligations, including any interest, penalties and other expenses that may be imposed, and from any lien therefor or sale or other proceedings to enforce payment thereof. City shall have the right from time to time to require that all of the foregoing payments be made by Producer through City. Producer shall pay all sales, transaction privilege, and other taxes.

## XVI. ASSIGNABILITY

16. Assignability. This Agreement is not assignable by Producer (and any assignment shall be void and vest no rights in the purported assignee) unless the assignment is made in strict compliance with the following:

16.1 Assignments Affected. All references in this Agreement to assignments by Producer or to assignees shall be deemed also to apply to all of the following transactions, circumstances and conditions and to all persons claiming pursuant to the such transactions, circumstances and conditions:

16.1.1 Any voluntary or involuntary assignment, conveyance, transfer or sublease of the Use Area or any interest therein or any rights under this Agreement, in whole or in part.

16.1.2 Any voluntary or involuntary pledge, lien, mortgage, security interest,

judgment, deed of trust, claim or demand, whether arising from any contract, any agreement, any work of construction, repair, restoration, maintenance or removal, or otherwise affecting the Use Area (collectively "Liens").

16.1.3 The use, occupation, management, control or operation of the Use Area or any part thereof by others, except for ordinary food, souvenir, and other vendors and concessionaires serving the Events under contract with Producer.

16.1.4 Any transfer of membership interests, corporate stock or any other direct or indirect transfer of any significant part of the ownership, management or control of Producer not caused by the death of a shareholder or other owner.

16.1.5 Any assignment by Producer for the benefit of creditors, voluntary or involuntary.

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

16.1.7 The occurrence of any of the foregoing with respect to any assignee or other successor to Producer.

16.2 Grounds for Refusal. No assignment of this Agreement by Producer is contemplated or bargained for. Producer acknowledges that only Producer personally can provide to City the benefits that induced City to enter into this Agreement and that City has entered into this Agreement in strict reliance upon Producer's covenant that only Producer alone would occupy the Use Area and conduct the Event. City 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 City's consent to any Assignment.

16.3 Effect of Assignment. Prior to any assignment, each assignee must execute an assumption of this Agreement in form acceptable to City. No action or inaction by City shall be deemed a waiver of the prohibition on assignments or any other provision of this Agreement, or the acceptance of the assignee, sublessee or occupant as Producer, or a release of Producer from the further performance by Producer of the provisions of this Agreement. Consent by City to an assignment shall not relieve Producer from obtaining City's consent to any further assignment. No assignment shall release Producer from any liability hereunder.

16.4 Assignment Remedies. Any assignment without City's consent shall be void and shall not result in the assignee obtaining any rights or interests in, under or related to this Agreement. City may, in its sole discretion and in addition to all other remedies available to City under this Agreement or otherwise, and in any combination, terminate this Agreement and/or declare the assignment to be void, all without prejudicing any other right or remedy of City under this Agreement. No cure or grace periods shall apply to assignments prohibited by this Agreement or to enforcement of any provision of this Agreement against an assignee who did not receive City's consent.

## XVII. MISCELLANEOUS

17. Miscellaneous. The following additional provisions apply to this Agreement:

17.1 Amendments. This Agreement may not be amended except by a formal



writing executed by City and Producer.

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

17.3 Survival of Liability. All obligations of Producer hereunder and all warranties and indemnities of Producer hereunder shall survive termination of this Agreement for any reason.

17.4 Severability. In the event 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 such provision shall in no way affect any other provision. Further, this Agreement shall be deemed automatically reformed to secure to City the legal, equitable, practical and other benefits of the provisions of this Agreement to the very maximum extent permitted by law.

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

~~17.6 No Partnership. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.~~

17.7 Nonliability of Officials and Employees. No official, representative or employee of City shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by City or for any amount that may become due to any party or successor, or with respect to any obligation of City or otherwise under the terms of this Agreement or related to this Agreement.

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

If to City:

Brian Dygert  
WestWorld Operations  
City of Scottsdale  
16601 North Pima  
Scottsdale, AZ 85260

Copy to:

City Attorney  
City of Scottsdale  
3939 N. Drinkwater Blvd.  
Scottsdale, AZ 85251

If to Producer:

Drew Alcazar  
Chief Executive Officer  
Russo and Steele, LLC  
5230 South 39<sup>th</sup> Street  
Phoenix, AZ 85040

By notice from time to time, a person may designate any other street address within Maricopa County, Arizona as its address for giving notice hereunder. Service of any notice by mail shall be deemed to be complete three (3) days (excluding Saturday, Sunday and legal holidays) after the notice is deposited in the United States mail.

17.9 Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior understanding, negotiation, or discussion regarding the Use Area.

17.10 Other Agreements. City and Producer may now be (or may hereafter become) parties to other contracts regarding the Event or Use Area. Unless otherwise specified in such contracts, such other contracts and this Agreement are separate and do not modify each other.

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

17.12 Funding. This subparagraph shall control notwithstanding any provision of this Agreement or any exhibit or other agreement or document related hereto. In the event funds necessary to fulfill City's obligations under this Agreement are not appropriated by the Scottsdale City Council, City may terminate this Agreement, by notice to Producer. City shall use best efforts to give notice of such a termination to Producer at least fifteen (15) days prior to the end of City's then current fiscal period and will pay all amounts payable through the end of such period. Termination in accordance with this provision shall not constitute a breach of this Agreement by City. No person will be entitled to any compensation, damages or other remedy from City if this Agreement is terminated pursuant to the terms of this subsection.

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

17.14 No Third Party Beneficiaries. Except for limited provisions expressly stated to be for the benefit of a third party, if any, no person or entity shall be a third party beneficiary to this Agreement or shall have any right or cause of action hereunder.

17.15 Exhibits. All Exhibits specifically stated to be attached hereto as specified herein are hereby incorporated into and made an integral part of this Agreement for all purposes.

17.16 Attorneys' Fees. In the event any action, suit or proceeding is brought to

enforce this Agreement, Producer shall pay all costs of such action or suit and all expenses of such action or suit together with such sum as the court (and not a jury) may adjudge reasonable as attorneys' fees to be allowed in said suit, action or proceeding and other litigation costs. Producer shall provide evidence to City of the rate of payment of Producer's attorneys' fees to its counsel and City shall be entitled to recover payment for attorneys employed by City (including attorneys who are regular employees of City) on such proceeding at the same rate of payment.

17.17 Choice of Law. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules. City has not waived its claims procedures as respects this Agreement. Exclusive proper venue for any action regarding this Agreement shall be Maricopa County Superior Court. City and Producer consent to personal jurisdiction in such court.

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

EXECUTED as of the date first given above.

**PRODUCER:** Russo and Steele, LLC, an Arizona Limited Liability Company,

By:   
Drew Alcazar  
Its: Chief Executive Officer

**CITY:** CITY OF SCOTTSDALE,  
an Arizona municipal corporation

By:   
Brian Dygert  
General Manager, WestWorld


CITY OF SCOTTSDALE, an Arizona  
Municipal Corporation

ATTEST:

\_\_\_\_\_  
Carolyn Jagger, City Clerk

\_\_\_\_\_  
W.J. "Jim" Lane, Mayor

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

By:   
Bruce Washburn, City Attorney  
By: Joe Padilla, Deputy City Attorney

## TABLE OF EXHIBITS

| <u>Exhibit</u> | <u>Paragraph</u> | <u>Description</u>   |
|----------------|------------------|--|
| A-1            | A                | Maps showing the SLUP Area                                       |
| B-1            | C                | Diagrams of the Event Use Area                                   |
| C              | 1                | Event Schedule   |
| D              | 1.4              | List of additional items Producer will provide for Event Support |
| E              | 1.8              | Event Notice Information   |
| F              | 4.15             | Nudity and Other Adult Conduct                                   |
| G              | 8.3              | Event Support Services Work Order                                |

Special Land Use Permit Area  
2016-2021

359.9 Acres  
SLUP Area

N SCOTTSDALE RD  
N HAYDEN RD  
E PRINCESS BL  
E MAYO BL  
E THERESA DR  
E MARIA DR  
E TERTIA DR  
E MICHELLE DR  
N 85TH ST  
N PERIMETER RD  
N 82ND ST  
N 79TH ST  
N 76TH ST  
N 73RD ST  
N 70TH ST  
N 67TH ST  
N 64TH ST  
N 61ST ST  
N 58TH ST  
N 55TH ST  
N 52ND ST  
N 49TH ST  
N 46TH ST  
N 43RD ST  
N 40TH ST  
N 37TH ST  
N 34TH ST  
N 31ST ST  
N 28TH ST  
N 25TH ST  
N 22ND ST  
N 19TH ST  
N 16TH ST  
N 13TH ST  
N 10TH ST  
N 7TH ST  
N 4TH ST  
N 1ST ST  
E PRINCESS DR

Photo Date: Fall 2016



**All Measurements Approximate**



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City of Scottsdale GIS  
October 12, 2016



Russo Steele  
2016-2021

54.7 Acres

N SCOTTSDALE RD

N HAYDEN RD

E PRINCESS BL

E MAYO BL

E 85TH ST

N PERIMETER RD

E PRINCESS DR

E 82ND ST

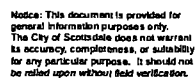
E MARIA DR

E MARTHA DR

E MICHELLE DR

101

Photo Date: Fall 2015



**All Measurements Approximate**



City of Scottsdale GIS  
October 11, 2016



## **EVENT SCHEDULE**

### **2017 Event Schedule**

1. Event Schedule. The Event shall take place during the following period (the "Event Period"):

1.1 The first and last days of the Event Period in 2017 are January 18, 2017 and January 22, 2017.

1.2 Event Move-in. Producer shall have access to the Use Area to set up for the Event as follows:

1.2.1 The time for Producer to move in and set up for the Event (the "Move-in Period") begins on January 2, 2017.

1.3 Event Move-out. Producer shall have access to the Use Area to move out after the Event Period as follows:

1.3.1 The time for Producer to move out after the Event (the "Move-out Period") begins at the end of the Event Period and ends at 5:00 p.m. on February 3, 2017, following the Event Period.

### **2018 Event Schedule**

1. Event Schedule. The Event shall take place during the following period (the "Event Period"):

1.1 The first and last days of the Event Period in 2018 are January 17, 2018 and January 21, 2018.

1.2 Event Move-in. Producer shall have access to the Use Area to set up for the Event as follows:

1.2.1 The time for Producer to move in and set up for the Event (the "Move-in Period") begins on January 1, 2018.

1.3 Event Move-out. Producer shall have access to the Use Area to move out after the Event Period as follows:

1.3.1 The time for Producer to move out after the Event (the "Move-out Period") begins at the end of the Event Period and ends at 5:00 p.m. on February 2, 2018, following the Event Period.

## **2019 Event Schedule**

1. Event Schedule. The Event shall take place during the following period (the "Event Period"):

1.1 The first and last days of the Event Period in 2019 are January 16, 2019 and January 20, 2019.

1.2 Event Move-in. Producer shall have access to the Use Area to set up for the Event as follows:

1.2.1 The time for Producer to move in and set up for the Event (the "Move-in Period") begins on December 31, 2018.

1.3 Event Move-out. Producer shall have access to the Use Area to move out after the Event Period as follows:

1.3.1 The time for Producer to move out after the Event (the "Move-out Period") begins at the end of the Event Period and ends at 5:00 p.m. on February 1, 2019, following the Event Period.

## **2020 Event Schedule**

1. Event Schedule. The Event shall take place during the following period (the "Event Period"):

1.1 The first and last days of the Event Period in 2020 are January 15, 2020 and January 19, 2020.

1.2 Event Move-in. Producer shall have access to the Use Area to set up for the Event as follows:

1.2.1 The time for Producer to move in and set up for the Event (the "Move-in Period") begins on December 30, 2019.

1.3 Event Move-out. Producer shall have access to the Use Area to move out after the Event Period as follows:

1.3.1 The time for Producer to move out after the Event (the "Move-out Period") begins at the end of the Event Period and ends at 5:00 p.m. on January 31, 2020, following the Event Period.



## **2021 Event Schedule**

1. **Event Schedule.** The Event shall take place during the following period (the "Event Period"):

1.1 The first and last days of the Event Period in 2021 are January 13, 2021 and January 17, 2021.

1.2 **Event Move-in.** Producer shall have access to the Use Area to set up for the Event as follows:

1.2.1 The time for Producer to move in and set up for the Event (the "Move-in Period") begins on December 28, 2020.

1.3 **Event Move-out.** Producer shall have access to the Use Area to move out after the Event Period as follows:

1.3.1 The time for Producer to move out after the Event (the "Move-out Period") begins at the end of the Event Period and ends at 5:00 p.m. on January 29, 2021, following the Event Period.

### **SUMMARY OF EVENT DATES**

| <b>EVENT YEAR</b> | <b>FIRST DAY OF EVENT PERIOD</b> | <b>LAST DAY OF EVENT PERIOD</b> | <b>EVENT MOVE IN AND SET UP DAY</b> | <b>EVENT MOVE OUT DAY AND TIME</b> |
|-------------------|----------------------------------|---------------------------------|-------------------------------------|------------------------------------|
| 2017              | January 18, 2017                 | January 22, 2017                | January 2, 2017                     | February 3, 2017 at 5:00 p.m.      |
| 2018              | January 17, 2018                 | January 21, 2018                | January 1, 2018                     | February 2, 2018 at 5:00 p.m.      |
| 2019              | January 16, 2019                 | January 20, 2019                | December 31, 2018                   | February 1, 2019 at 5:00 p.m.      |
| 2020              | January 15, 2020                 | January 19, 2020                | December 30, 2019                   | January 31, 2020 at 5:00 p.m.      |
| 2021              | January 13, 2021                 | January 17, 2021                | December 28, 2020                   | January 29, 2021 at 5:00 p.m.      |

**List of items that Producer must Provide in addition for Event Support**

1. Adequate portable restrooms to meet demand.
  2. Staking and flagging for parking organization
  3. Attendants and Security personnel
  4. Pertinent and necessary signage
  5. Barricading
-

### **Event Notice Information**

1. A schedule of the Event activities and all move-in and move-out activities.
  2. A site plan showing the layout of the upcoming Event showing scheduled activities, staging, parking, fences, vehicle and pedestrian circulation, emergency access, and all other areas to be used for the Event.
  3. A description of any temporary work that Producer proposes to the Use Area for the upcoming Event.
  4. A list of additional Event Support Services that Producer desires to purchase from City for the Event.
  5. A thorough description of fire, emergency and other public safety plans and facilities for the upcoming Event.
  6. The name, telephone number and email address of Producer's agent in charge of the Event.
- 
7. The names, telephone numbers and email addresses of persons who are authorized to contract with City on Producer's behalf for Extra Operations Support for the Event.
  8. Attendance estimates.
  9. Such other information as City may reasonably specify.

### **Nudity and Other Adult Conduct**

1. **Conduct at Use Area.** In entering into this Agreement, City and Producer have foremost in mind providing the public with a family atmosphere devoid of any act by any person contrary to the highest standards of community sensitivity, and avoiding any substance or appearance of any noisy, unruly, inebriated, disruptive, disorderly, lewd, nude, topless, bottomless, gambling, adult oriented, unwholesome or sexually oriented behavior, business, entertainment, or other activity of any description or to any degree at the Use Area. Any such behavior, business or activity at the Use Area by Producer, any customer of Producer or anyone else using any part of the Use Area related to Producer or this Agreement while this Agreement is in effect is strictly prohibited. The preceding sentence does not apply to private conduct that occurs completely inside a lawfully parked recreational vehicle that is fully enclosed with solid walls, if such conduct is not visible to the public or otherwise discernable outside the recreational vehicle. Producer specifically acknowledges that the requirements of this paragraph are a requirement of this Agreement independent of and in addition to any zoning or other governmental regulation affecting the Use Area. Any violation of this paragraph by any person using any part of the Use Area related to Producer or the Event shall be an "Unruly Behavior Occurrence" by Producer under this Agreement. Producer shall immediately cause removal from the Use Area any person whether inside or outside the Fence who commits or who causes, directs or encourages any person to commit, an Unruly Behavior Occurrence.

1.1 This subparagraph does not apply to private conduct that occurs completely inside a lawfully parked recreational vehicle that is fully enclosed with solid walls if such conduct is not visible to the public or otherwise discernable outside the recreational vehicle. No materials shall be displayed, viewed or produced upon the Use Area depicting specified anatomical areas or specified sexual activities. No person shall exhibit, use, display or offer to sell any devices, objects or paraphernalia that are designed or typically marketed for use in connection with specified sexual activities. No person shall perform specified sexual activities upon the Use Area. No person shall make visible his or her specified anatomical areas. "Specified anatomical areas" shall mean less than completely and opaquely covered human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola; and human male genitals in a discernibly turgid state, even if completely and opaquely covered; or any simulation or portrayal of any of the foregoing. Specified sexual activities shall mean human genitals in a state of sexual stimulation or arousal; acts of masturbation, sexual intercourse or sodomy; fondling or other erotic touching of human genitals, pubic region, buttock or female breast; or any simulation or portrayal of any of the foregoing.

1.2 Producer shall immediately cause to be removed from the Use Area any person related to Producer or this Agreement (including without limitation Producer's customers) who:

- 1.2.1 Violates this paragraph.
- 1.2.2 Appears or is believed to be to be intoxicated or illegally under the influence of any narcotic or chemical.
- 1.2.3 Commits an act of violence.
- 1.2.4 Acts in a loud or unusually boisterous manner.
- 1.2.5 Harms or threatens harm to any person or thing.
- 1.2.6 Uses loud or electronically amplified profanity.
- 1.2.7 Violates laws or regulations applicable to the Use Area.

### **Event Support Services Work Order**

The event producer shall sign and deliver a Work Order to City staff before work is scheduled or performed.

Event: \_\_\_\_\_

Date/Time Needed: \_\_\_\_\_

Date/Time Requested: \_\_\_\_\_

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

Work To Be Done: \_\_\_\_\_

#### **Work Schedule Rates\***

|                            |                         |                          |
|----------------------------|-------------------------|--------------------------|
| Electrical Work            |                         | \$ 28.28/hour            |
| Welding Work               |                         | \$ 28.28/hour            |
| Plumbing Work              |                         | \$ 28.28/hour            |
| Clean-Up Labor             | Laborer                 | \$ 16.50/hour/person     |
|                            | Supervisor              | \$ _____.00/hour/person  |
| Maintenance Labor          |                         | \$ 16.50/hour/person     |
| Dumpster Fees              | Each                    | \$250.00/40 yards        |
| Dump Truck                 | With City               | \$ 29.00/hour            |
| Blade Work                 | With City               | \$ 65.00/hour            |
| Tractor                    | With City               | \$ 25.00/hour            |
| Front-end Loader (1 yard)  | With City               | \$ 37.00/hour            |
| Front-end Loader (3 yards) | With City               | \$ 65.00/hour/8 hour min |
| Backhoe                    | With City               | \$ 25.00/hour            |
| Water Truck                | With City (incl. water) | \$ 31.00/load            |
| Parts or Supplies          |                         | Cost plus 10%            |
| Cleaning Supplies          |                         | Cost plus 10%            |

By signing below, the person signing this work order:

1. Commits the above-named event producer to pay for the described work.
2. Personally warrants and represents that he has legal authority to bind the event producer to pay for the work and to speak for the event producer regarding the work.

AUTHORIZATION FOR EVENT PRODUCER:

\* Rates are subject to change by City. Any additional work requested by Licensee outside the described scope of services will be charged at current posted rates and will be due immediately unless otherwise provided in the event agreement.

## ATTACHMENT 2

### RESOLUTION NO. 10622

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE CONTRACT NO. 2016-174-COS FOR THE PURPOSE OF ENTERING INTO A FIVE YEAR EVENT AGREEMENT WITH RUSSO AND STEELE, LLC TO PROVIDE LAND FOR EVENT STAGING, PRODUCTION AND PARKING.

WHEREAS, the City has obtained a non-exclusive Special Land Use Permit ("SLUP") from the Arizona State Land Commissioner allowing the City to use State Land for the purpose of producing special events including site preparation and clean-up, barricading, traffic management and dust control; and

WHEREAS, Russo and Steele, LLC desires to stage an event known as the Russo and Steele Auto Auction ("the Event") during the month of January, in the years 2017, 2018, 2019, 2020 and 2021, and as part of the Event desires to use a portion of the SLUP area for the purpose of temporary event staging, production and parking for individuals attending the Event; and

WHEREAS, the City has determined that it is beneficial to enter into a license agreement with Russo and Steele, LLC for the use of the City's SLUP area for special event production and parking.

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

Section 1. The Mayor of the City of Scottsdale is hereby authorized and directed to execute Contract No. 2016-174-COS for the purpose of entering into a five year agreement with Russo and Steele, LLC for the use of the City's SLUP area for temporary event staging, production and parking.

Section 2. The Mayor of the City of Scottsdale, the City Manager and their designees are authorized and directed to approve this agreement and such other documents and agreements as are necessary to carry out the purposes of contract number 2016-174-COS.

PASSED AND ADOPTED by the City Council of the City of Scottsdale, Arizona this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

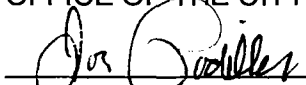
ATTEST:

City of Scottsdale, an  
Arizona Municipal Corporation

\_\_\_\_\_  
Carolyn Jagger, City Clerk

\_\_\_\_\_  
W. J. "Jim" Lane, Mayor

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

  
\_\_\_\_\_  
Bruce Washburn, City Attorney  
By: Joe Padilla, Deputy City Attorney