

**NOTICE OF PUBLIC MEETING
PARKS AND RECREATION BOARD
Revised September 29, 2022**

Pursuant to A.R.S. Section 38-431.02, notice is hereby given to the members of the **PARKS AND RECREATION BOARD**, and to the general public, that the **PARKS AND RECREATION BOARD** will hold a meeting open to the public on **Thursday, September 29, 2022 at 5:00 p.m.**

OPTIONS TO ACCESS THIS MEETING

<https://phoenixparks.webex.com/phoenixparks/onstage/g.php?MTID=ef8eecd52387438638a9454ace4f418e>

Call-in to listen to the live meeting. Dial 602-666-0783. Enter the meeting access code 2485 229 8663, then press #. Press # again when prompted for attendee ID.

Observe the live meeting virtually. Click on the following link and register to join the meeting online:

Register to speak and/or submit a comment on an agenda item.

- Contact: **Tannia Ruiz**
- At: **602-495-5215** or tannia.ruiz@phoenix.gov
- By: September 28, 2022
- Indicate: agenda item number, first and last name, email address
- If registered to speak, click on the link above at the time of the meeting to join the event and speak when called upon.

Per the most recent social distancing guidelines from the federal government, no residents will be allowed to attend the meeting in-person.

A complete packet of meeting materials will be posted 48 hours prior to the meeting at <https://www.phoenix.gov/parks>.

The agenda for the meeting is as follows:

1.	Call to Order –	Dorina Bustamante, Chair
2.	INFORMATION ITEM(S): Information items will be provided to the Board in writing and are not intended for formal presentation unless otherwise requested by a Board member or required for future policy consideration.	
	a. Margaret T. Hance Park Update	Kat Mase
	b. Code of Conduct Update	Jarod Rogers
3.	CONSENT ITEM(S): Consent items will be provided to the Board in writing and are not intended for formal presentation. Consent items may be voted on collectively, unless a Board member requests that any item be voted on separately. The chairperson may direct staff to formally present any consent item. These items are for possible action.	

	a.	Parks and Recreation Board Summary Minutes- August 25, 2022	Sara del Valle
	b.	Chicanos Por La Causa Sponsorship for Maryvale Community Center	Jan Sherwood
	c.	Dream Court Donation from Nancy Lieberman Charities at Winifred Green Park	Todd Shackelford
	d.	2022-2023 Grant Renewal for FitLot Programming	Alonso Avitia
	e.	New Requests to Vend in City Parks	Alonso Avitia
	f.	Heritage Sub-Tenant Agreement for Teeter Carriage House	Kat Mase
	g.	Super Bowl LVII Festival at Margaret T. Hance Park	Kat Mase
	h.	Request to Award Contract for Fixed Concessions at Sports Complexes	Theresa Faull
	i.	Phoenix Revitalization Corporation Sponsorship for the Goelet A. C. Community Center	Jan Sherwood
4.	INFORMATION AND DISCUSSION ITEM(S): Information and discussion items will be presented verbally to the Parks Board and are for discussion only. No action will take place on these items at this meeting.		
	a.	Aquatics Update	Becky Kirk
5.	CALL TO THE PUBLIC – Citizens are provided time to make statements to the Board. <i>(Those desiring to make a statement should have informed staff in advance of the meeting by following the instructions on this notice.)</i> We welcome citizen input; however, items brought to the Board’s attention cannot be discussed unless they are listed as an agenda item. Action taken as a result of public comment will be limited to requesting staff to study the matter or rescheduling the matter for further consideration and/or decision at a later date.		Dorina Bustamante, Chair
6.	BOARD CHAIRPERSON’S REPORT – The Chairperson will verbally present comments or requests to the Board without Board discussion.		Dorina Bustamante, Chair
7.	BOARD COMMENTS/REQUESTS – The Chairperson will entertain Board member comments or requests without Board discussion.		Dorina Bustamante, Chair
8.	DIRECTOR’S BRIEFING – Briefing items will be verbally presented to the Board by the Director or designee without Board discussion.		Cynthia Aguilar, Director
9.	Adjournment		Dorina Bustamante, Chair

For further information or to request a reasonable accommodation, please contact Tannia Ruiz, Management Assistant I, Parks and Recreation Department at 602-495-5215 or TTY: 7-1-1.

September 21, 2022



To: Parks and Recreation Board

Date: September 29, 2022

From: Cynthia Aguilar, Director

Subject: MARGARET T. HANCE PARK UPDATE

This report provides an update to the Parks and Recreation Board on the status of Margaret T. Hance Park (Hance Park) Master Plan implementation.

DISCUSSION

Update

Staff continues to communicate with key stakeholders around the park regarding the garden construction and joint repair activity.

The ADOT joint repairs on the east side of the park were completed in August 2022. The last area completed was the Burton Barr Library overflow parking lot which reopened mid-August. A total of 120,000 square feet of Bermuda sod will be installed in September to remediate the turf condition as a result of the joint repairs and in preparation for upcoming public events on the east side of the park.

Construction of the Garden continues and is still scheduled to be completed in January 2023 in time for Super Bowl LVII.

Staff continue to work with HargreavesJones and Haydon to identify elements of the Master Plan for potential phasing of projects as additional sponsorships are obtained.

BACKGROUND

On April 28, 2016, the board approved the refined Hance Park Master Site Plan and in October 2017, HargreavesJones (HJLA) began the design for the redevelopment of Hance Park, estimated to cost a total of \$100 million. A public open house was held in May 2018; and on April 3, 2019, the City Council approved a contract with Haydon Building Corp. (Haydon) to perform preconstruction services using a Construction Manager at Risk (CMAR) delivery method.

On Aug. 15, 2019, the board approved the first sponsorship agreement for Hance Park: a \$2 million donation from the Fiesta Bowl towards construction of the Fiesta Bowl PLAY at Hance Park. On July 13, 2021, the Board approved the second sponsorship agreement for Hance Park: a \$2 million donation from Republic Services Charitable

Foundation, the charitable arm of Republic Services, towards construction of the Garden at Hance Park.

Since its initial board approval in 2016, the Parks and Recreation Department has been working to execute the refined Hance Park Master Plan. The Hance Park Partner Coalition, comprised of the Parks and Recreation Department, Hance Park Conservancy and Phoenix Community Alliance, hired a professional fundraiser to assist in the development of a capital campaign to raise \$30-45 million in private funding, which will complete Phase 1 of the plan.

An Intergovernmental Agreement (IGA) between the City and the Arizona Department of Transportation (ADOT) was created to repair the bridge joints beneath the park as construction of the park takes place. Coordination is ongoing with ADOT, Haydon and the City regarding maintenance and repair of tunnel bridge joints underneath the park. Haydon completed two joint repairs on the west side of the park in November 2021. To coincide with Phase 1B, the garden construction, joint repairs were completed in early June and security fencing adjusted to increase pedestrian accessibility in the park. Additionally, joint repairs on the east side of the park resumed in June 2022.

Following a \$2 million sponsorship from the Republic Services Charitable Foundation secured by the Phoenix Community Alliance, the Parks and Recreation Department is proceeding with construction of the garden, as planned in Phase 1B. The garden will be located immediately west of Central Avenue and north of the Irish Cultural Center. The garden will include trees, benches, shade canopy, flowing shrubs and succulents, natural surface walking paths and LED security lighting.

RECOMMENDATION

This report is for information only.

Prepared by: Kat Mase, (Delegate) Deputy Director

Approved by: Martin Whitfield, Assistant Director



To: Parks and Recreation Board

Date: September 29, 2022

From: Cynthia Aguilar, Director

Subject: CODE OF CONDUCT UPDATE

This report provides the Parks and Recreation Board (Board) with a standing monthly update regarding implementation of the Code of Conduct and ongoing education.

BACKGROUND

In October 2019, following a series of 13 community meetings to gather public input about problematic behaviors in parks and proposed solutions and discussions at five Board meetings, the Board approved staff to move forward with the implementation of a Code of Conduct for parks and park facilities.

The goal of the Code of Conduct is to promote behavior that allows everyone to enjoy clean, safe, accessible and inviting parks, facilities and programs by providing clear expectations of acceptable behavior in flatland parks, desert and mountain parks and preserves, and other park facilities. The Code of Conduct was written in partnership with the community and several City departments, including the Law Department, the Prosecutor's Office and the Police Department.

In October 2020, City staff provided the Board with an update regarding Code of Conduct implementation, which had been on hold. At that meeting, the Board requested monthly updates regarding implementation and numbers of educational contacts and trespass notices.

In January 2021, staff implemented the Code of Conduct and began a 90-day education period regarding the new behavioral expectations for parks and park facilities. In April 2021, the trespass policy contained within the Code of Conduct took effect.

DISCUSSION

Educational Contacts and Trespass Notices

Staff continues to educate the community and park guests regarding the Code of Conduct. At the Board's request, the number of educational contacts made by staff in the field and the number of trespass notices issued are tracked and reported to the Board monthly.

Parks and Recreation Department staff are also installing Code of Conduct signage throughout the park system to assist with public education. Sign installation has been completed in 41 parks. Installations continue with a goal of installing all signs by the end of 2022.

From July 31 to August 28, approximately 747 educational contacts were made by staff. During the same period, (37) trespass notices were issued by Park Rangers. The (37) trespass notices issued during this period were for offenses related to the following: loitering in a park after hours (22), drugs (9), camping (3), failure to comply (2), loitering in restrooms (1).

At the time of this report, (0) notices have been issued to juveniles with no citations, and no appeals have been received.

The Parks and Recreation Department will continue to provide standing monthly updates as requested by the Board. The following is a summary of the number of educational contacts made in 2022.

Date	Number of Educational Contacts	Number of Trespass Notices Issued Involving Illegal Activity/PD
Week of August 28	97	7
Week of August 21	167	9
Week of August 14	167	4
Week of August 7	133	15
Week of July 31	183	2
Week of July 24	119	11
Week of July 17	158	8
Week of July 10	90	7
Week of July 3	52	5
Week of June 26	191	3
Week of June 19	163	8
Week of June 12	203	0
Week of June 5	237	0
Week of May 29	52	0
Week of May 22	164	1
Week of May 15	336	6
Week of May 8	501	0
Week of May 1	362	0
Week of April 24	485	14
Week of April 17	461	0
Week of April 10	415	0
Week of April 3	401	35

Week of March 27	635	15
Week of March 20	305	1
Week of March 13	540	1
Week of March 6	560	2
Week of Feb. 27	590	1
Week of Feb. 20	601	2
Week of Feb. 13	584	0
Week of Feb. 6	483	1
Week of Jan. 30	568	0
Week of Jan. 23	409	0
Week of Jan. 16	711	5
Week of Jan. 9	301	2
Week of Jan. 2	430	2

Staff will continue to lead with education about the Code of Conduct and report the number of educational contacts made and the number of trespass notices issued to the Board on a monthly basis.

RECOMMENDATION

This report is for information only.

Prepared by: Jarod Rogers, Deputy Director

Approved by: Tracee Hall, Assistant Director

**CITY OF PHOENIX
PARKS AND RECREATION BOARD
SUMMARY MINUTES
August 25, 2022**

Virtual meeting hosted on WebEx.

Board Members Present

Dorina Bustamante (Chair)
Aubrey Barnwell
Kelly Dalton
Michael Lieb
Tony Moya
Sarah Porter
Ed Zuercher

Staff Present

Cynthia Aguilar
Tracee Hall
Martin Whitfield
Patricia Boland
Sara Del Valle
Tannia Ruiz
Claire Miller
Danielle Poveromo
Theresa Faull

Community Members

Betty Wagner
Linda Abegg
Francisco Barraza
Craig Weaver
Kevin Hegarty
Shonna James
Marvin Borsand

Board Members Absent

None.

Board Member Barnwell joined the voting body at 5:07 p.m.
Board Member Lieb left the voting body at 6:15 p.m.

1. CALL TO ORDER

Chair Bustamante called the meeting to order at 5:02 p.m. and recognized the Tovrea Castle staff for displaying blue and goal lights in honor of Ukraine's Independence Day.

2. INFORMATION ITEMS

2a. Margaret T. Hance Park Update

Information only. No Board Member requested additional information.

2b. Code of Conduct Update

Information only. No Board Member requested additional information.

2c. Patriot's Square Park Reconfiguration

Information only. No Board Member requested additional information.

2d. Renaming of Pueblo Grande Museum

Board Member Barnwell joined the voting body at 5:07 p.m.

Chair Bustamante asked staff for additional information on the item.

Parks and Recreation Director Cynthia Aguilar described planned efforts to collaborate with the local indigenous communities to identify a new name for the Pueblo Grande Museum, noting that board approval would not be needed until a new name was identified. She indicated that the results of these efforts would be brought to the board in a future meeting.

3. CONSENT ITEMS

Items 3a-3d were for consent action. No presentations were planned, but staff was available to answer questions.

3a. Parks and Recreation Board Summary Minutes- June 23, 2022

3b. Heritage Square Sub-Permit Agreement- Teeter House

3c. New 2022 Requests to Vend at Heritage Square

3d. Phoenix Sonoran Preserve Committee Reappointment

Board Member Dalton made a motion to approve consent items 3a through 3d. Board Member Porter seconded the motion which passed unanimously, 7-0.

4. INFORMATION AND DISCUSSION ITEM

4a. Shemer Art Center Expansion and Legacy Campaign

Parks and Recreation Deputy Director Danielle Poveromo introduced the item and Shemer Art Center President and Executive Director Shonna James.

Ms. James described the Shemer Art Center's history, program and resource offerings offered, and organizational goals. She explained plans to raise funds to expand and build an additional 5,000 square foot building to support their mission and operations, highlighting the community support for the proposed expansion.

Ms. Poveromo discussed the City's partnership with the Shemer Art Center.

Chair Bustamante recognized the impact of the Shemer Art Center and opened the floor for board member comments.

Board Member Dalton acknowledged the importance of a strong partnership with the Shemer Art Center and thanked the presenters.

Board Member Moya asked about the impact of the proposed expansion on parking needs and the surrounding neighborhood.

Ms. James indicated that a significant increase in vehicle traffic or parking needs was not expected. She noted that the Shemer Art Center would collaborate with the local community to ensure any related concerns were addressed.

Board Member Zuercher thanked the presenters and asked if this item had been presented to the Arcadia Camelback Mountain Neighborhood Association.

Ms. James indicated that a board member of the neighborhood association was present on the call and available to speak, noting their support of the proposal.

Board Member Zuercher asked about the Shemer Art Center's collaboration with RED Development.

Ms. James described efforts to partner with RED Development.

Marvin Borsand of the Arcadia Camelback Mountain Neighborhood Association described the community support for the proposed expansion and fundraising.

5. DISCUSSION AND POSSIBLE ACTION ITEMS

5a. Camp Colley-Request for Proposals

Parks and Recreation Park Supervisor Claire Miller discussed Camp Colley's history and mission to serve disadvantaged Phoenix youth. She described the dissolution of the previous operator, the Camp Colley Foundation, and requested board approval to issue a request for proposals to identify a new operator.

Board Member Lieb emphasized the importance of Camp Colley and expressed his excitement for resumed operations.

Board Member Porter described her previous experience on the Camp Colley Foundation Board and asked if the City had explored alternative methods of sending Phoenix youth to nature and adventure camps. She noted the impact of fire restrictions on camp operations and related financial commitments.

Parks and Recreation Director Cynthia Aguilar indicated that staff had performed preliminary research on alternatives and that a formal analysis had not been conducted. She explained that the item could be brought back to the board if a successful operator could not be identified.

Board Member Porter suggested that the board remain open to all available options to achieve the Camp Colley mission as time progressed.

Board Member Moya asked if the contract would include a minimum term length.

Ms. Aguilar noted that similar contracts typically had three-to-five-year terms and that this contract would include a minimum term of three years.

Board Member Dalton expressed her support of the staff recommendation and highlighted the importance of accomplishing the mission of Camp Colley.

Board Member Dalton made a motion to approve the item. Board Member Moya seconded the motion which passed unanimously, 7-0.

5b. Laveen School District Lease of Park Property

Parks and Recreation Deputy Director Theresa Faull described recent growth in the Laveen area and related needs for additional services and parks. She discussed the proposed partnership with Laveen School District, the conceptual site plan including a school and neighborhood park, and the general lease terms. She requested board approval for the Laveen School District to lease approximately 20 acres of park property at 59th Avenue and Olney Avenue.

Chair Bustamante opened the floor for board member comments.

Board Member Lieb noted the high demand for land and home development in the Laveen area. He asked about the timeline to develop the school and park.

Ms. Faull introduced Laveen School District Chief Financial Officer Kevin Hegarty.

Mr. Hegarty described the school district's partnership with the state to develop the property and efforts to accelerate construction to meet demand. He highlighted the importance of securing the property to move the development process forward.

Board Member Moya asked what the land was currently used for and about nearby park facilities. He also asked if the terms for this lease were similar to comparable leases with other schools.

Ms. Faull explained that the property was currently leased for farmland and described staff communications with the current tenant. She described development in the Laveen area and the proposed lease terms, noting that these terms were similar to an existing lease with the Laveen School District for the Tierra Montana property.

Board Member Barnwell asked where the closest sports fields were.

Parks and Recreation Director Cynthia Aguilar noted that Cesar Chavez Park had the closest sports fields.

Board Member Barnwell asked about the demand for athletic fields in the area.

Ms. Aguilar discussed the high demand for sports fields in the area and the potential benefits of utilizing the athletic fields that would be built by the Laveen School District under the proposed agreement.

Chair Bustamante opened the floor to public comment.

Francisco Barraza expressed the need for additional park and school facilities in the Laveen area and his support for the proposed lease.

Linda Abegg described the need for additional schools and parks in the area and her desire for the City to prioritize the development of the remaining 20 acres of the property.

Board Member Moya made a motion to approve the item. Board Member Porter seconded the motion which passed unanimously, 7-0.

6. CALL TO THE PUBLIC

Craig Weaver described his concerns about unmanned aerial vehicles at Mountain View Park and requested that the Parks and Recreation Department rescind the fly zone in the park.

Chair Bustamante acknowledged that the board received an email from Mr. Bill Rodes regarding increasing safety protocols at Piestewa Peak and Camelback Mountain, a letter from Saddle Rock Hills Neighbors regarding the fly zone at Mountain View Park, an email from Mr. Mark Tichenor regarding the use of Tennis Courts, and an email from Mr. Van Gasse regarding Cholla Trail.

7. BOARD CHAIRPERSONS REPORT

Chair Bustamante recognized Board Member Zuercher recently joining the board. She highlighted upcoming events at Rose Mofford Sports Complex, Beuf Community Center, and Sunnyslope Community Center. She noted that the September Parks and Recreation Board meeting was rescheduled to Sept. 29.

8. BOARD COMMENTS/REQUESTS

Board Member Dalton welcomed Board Member Zuercher onto the board.

9. DIRECTOR'S BRIEFING

Parks and Recreation Assistant Director Tracee Hall described efforts to collaborate with the community on the ongoing Eastlake Park Pool renovations and announced an upcoming event at Perry Park.

Parks and Recreation Assistant Director Martin Whitfield discussed the 2022 summer camp session and construction progress at Hance Park.

Board Member Lieb left the voting body at 6:15 p.m.

Parks and Recreation Director Cynthia Aguilar described the City's pursuit of a General Obligation Bond in the November 2023 election, identified prioritized bond and future capital need projects, and the bond process timeline. She discussed the National Recreation and Parks Association conference taking place in Phoenix in September and progress on the Cholla Trail project.

10. ADJOURNMENT

Chair Bustamante adjourned the meeting at 6:22 p.m.

Respectfully submitted,

Sara Del Valle

Management Assistant

DRAFT



To: Parks and Recreation Board

Date: September 29, 2022

From: Cynthia Aguilar, Director

Subject: CHICANOS POR LA CAUSA SPONSORSHIP FOR MARYVALE
COMMUNITY CENTER

This report requests Parks and Recreation Board approval to accept a financial sponsorship from Chicanos Por La Causa, Inc. for the Maryvale Community Center, in accordance with Sponsorship Policy 3.11.

BACKGROUND

Chicanos Por La Causa formed in 1969 to fight discrimination against the Mexican American community. Inspired by Dolores Huerta and Cesar Chavez, the organization advocated for equity in education, politics, and labor conditions. Today, Chicanos Por La Causa provides services to people of all backgrounds while honoring their Mexican-American roots. Their five areas of impact are health and human services, housing, education, economic development, and advocacy. With offices in Arizona, Nevada, New Mexico, and Texas, they impact more than 2 million lives every year.

DISCUSSION

Chicanos Por La Causa has received a grant from the City of Phoenix, Office of Arts and Culture and proposed utilizing this funding to sponsor financial literacy and arts-based programming at Maryvale Community Center between September 2022 and December 2022. Chicanos Por La Causa will provide the artist instructors, class materials, and refreshments for all class participants. Additionally, Chicanos Por La Causa would pay all repair costs for the onsite kiln to be used to create a totem pole (sample in **Attachment B**) crafted by center teens and displayed at the facility.

Chicanos Por La Causa has generously committed to support the Maryvale Community Center starting October 2022 with a sponsorship of \$9,000 to be used for programs and kiln repair as defined in the Sponsorship Agreement and Schedule (**Attachment A**).

Subject to board approval, the Parks and Recreation Department will enter into a sponsorship agreement with Chicanos Por La Causa, categorized as a Program Sponsorship which follows the required guidelines and documents the rights and responsibilities of both parties. Program sponsor benefits include:

- Recognition on social media, in program description, and at the beginning of the program.
- Logo and link listed on the Parks and Recreation marketing and advertisement.
- Participation in the Maryvale Community Center holiday event in December 2022.
- After completion of the program, installing a totem pole at the facility created by the center teens (sample in **Attachment B**).

RECOMMENDATION

Staff recommends board approval to accept the Chicanos Por La Causa financial sponsorship for Maryvale Community Center and board approval for the director to execute a Sponsorship Agreement and sign all related documents to the agreement.

Prepared by: Jan Sherwood, Deputy Director

Approved by: Martin Whitfield, Assistant Director

Attachment A

SPONSORSHIP AGREEMENT

This Agreement is made on the day of 2022, between City of Phoenix Parks and Recreation Board (Board) and its Parks and Recreation Department (Department) and Chicanos Por La Causa, Inc. (Sponsor).

RECITALS

The Sponsor is engaged in the business referred to in Item 3 of Attachment A, hereafter referred to as the "Schedule" (Description of Sponsor's Business Activities) and, at the request of the Department, has agreed to provide the Sponsorship set out in Item 4 of the Schedule (Details of Sponsorship), subject to the terms and conditions of this Agreement.

IT IS AGREED as follows:

1. TERM

- 1.1 The term of the Sponsorship shall be for the period set out in Item 4(c) of the Schedule (Term of Sponsorship), unless otherwise extended or terminated in accordance with this Agreement.

2. SPONSORSHIP FEE/PRODUCT

- 2.1 In consideration of the grant of Sponsorship Rights under this Agreement, the Sponsor shall pay and/or provide to the Department, for the term of this Agreement, the sponsorship fee and/or product(s) referred to in Item 4(b) of the Schedule (Sponsorship Fee/Product) at the times and in the manner referred to in that Item.
- 2.2 The Sponsorship Fee/Product shall be the entire amount payable or provided to the Department under this Agreement.
- 2.3 The Department shall only use the Sponsorship Fee/Product for the sponsored activity referred to in Item 4(a) of the Schedule (Sponsored Activity) in a manner consistent with the reasons referred to in Item 4(a) of the Schedule (Sponsorship Rationale).
- 2.4 Should the Sponsorship Fee/Product not be fully used on the Sponsored Activity; the Department shall immediately notify the Sponsor of the balance of the unused Sponsorship Fee/Product and shall comply with the Sponsor's directions concerning the use of the unused Sponsorship Fee/Product.

3. SPONSORSHIP RIGHTS

- 3.1 The Department grants to the Sponsor the non-exclusive sponsorship rights set out in Item 5 of the Schedule (Rights of Sponsor) for the term of this Agreement.
- 3.2 All advertising and promotional material produced, published, broadcast, displayed or exhibited by the Sponsor under Item 5 of the Schedule (Rights of Sponsor) shall first be approved by the City of Phoenix Parks and Recreation Director or designee.
- 3.3 The Department shall, whenever the Sponsored Activity is publicized, acknowledge the Sponsor in accordance with the recognition rights specified in Item 6 of the Schedule (Recognition of Sponsor).

4. USE OF SPONSOR'S NAME AND/OR LOGO

- 4.1 All advertising and promotional material produced, published, broadcast, displayed or exhibited by the Department in respect to the Sponsored Activity shall acknowledge the Sponsor in a manner agreed to by both parties.
- 4.2 The Department shall immediately, on the termination or expiration of this Agreement, cease to use or otherwise refer to the Sponsor's name and/or logo except to the extent otherwise authorized by law or agreement.

5. USE OF THE CITY'S NAME AND/OR LOGO

- 5.1 All advertising and promotional material produced, published, broadcast, displayed or exhibited by the Sponsor in respect of the Sponsored Activity shall acknowledge the Phoenix Parks and Recreation Department, in a manner agreed to by all parties.
- 5.2 The Sponsor shall immediately, upon the termination or expiration of this Agreement, cease to use or otherwise refer to any and all of the City of Phoenix/Phoenix Parks and Recreation Department name(s) and/or logo(s) in any manner that could imply that the Sponsorship under this Agreement is still in effect.

6. INDEMNIFICATION

- 6.1 The Sponsorship Fee is a donation to help fund the design and construction of the Sponsored Activity as described in Attachment A, Item 4(a). Sponsor's role is limited strictly to the donation of funds. The City is the owner of the Park, and it or its contractors will be responsible for the design, construction, and maintenance of the Sponsored Activity. The City

will indemnify and hold harmless Sponsor from any and all losses, liabilities, claims, actions, fees, and expenses, including those for personal injury, death, negligence, or property damage arising under, out of or in connection with the design, construction, maintenance, or use of the Sponsored Activity.

7. BREACH AND TERMINATION

- 7.1 If either party breaches any of the terms and conditions of this Agreement and fails to rectify such default in accordance with a written notice by the non-defaulting party within fourteen (14) days after the date of such notice, the non-defaulting party may terminate the Agreement at any time thereafter.
- 7.2 The Department may terminate the Agreement immediately if any of the following events occur:
- (a) The Sponsor is wound up or dissolved, becomes insolvent or enters into an agreement with its creditors, or if a receiver, manager or liquidator is appointed in respect of the Sponsor.
 - (b) The Sponsor's business operations or the business or activities of any associated company are contrary to any City of Phoenix policy(ies).
 - (c) The Department determines that for whatever reason it should no longer use the Sponsorship Fee/Product or be associated with the Sponsor.
- 7.3 If this Agreement is terminated, the Sponsor shall not be required to pay any unpaid installments of the Sponsorship Fee/Product.
- 7.4 The expiration or termination of this Agreement shall not prevent either party from taking action to enforce a term or condition of this Agreement in respect of any breach occurring prior to such expiration or termination.

8. NOTICES

- 8.1 Unless otherwise directed in writing, notices, reports, and payments shall be delivered to the Department at the following address:
- Parks and Recreation Director
 - Phoenix Parks and Recreation Department
 - 200 W. Washington St, 16th
 - Floor
 - Phoenix, AZ 85003

and to the Sponsor at the address and e-mail address referred to in Item 2 of the Schedule (Address of Sponsor).

8.2 A notice forwarded by e-mail shall be deemed to be received by the addressee when recorded by read receipt.

9. AMENDMENTS TO AGREEMENT

9.1 Any amendment to this Agreement shall only be valid if the amendment is in writing and signed by both parties.

10. ASSIGNMENT

10.1 Neither party shall transfer, change or purport to assign, transfer or change this Agreement or any of its rights or obligations without the prior written consent of the other party, which shall not be unreasonably withheld.

11. CHARITABLE CONTRIBUTION

11.1 Board will reasonably cooperate with Sponsor to document Sponsor's charitable contribution as may be required for federal or state income and property tax purposes.

12. GOVERNING LAW

12.1 This Agreement shall be governed by and construed under the laws of the State of Arizona, excluding its choice of law principles. Any litigation arising out of this Agreement shall be commenced and maintained in a court of competent jurisdiction sitting in Maricopa County, Arizona.

13. ENTIRE AGREEMENT

13.1 This Agreement constitutes the entire agreement of the parties and shall supersede any prior or contemporaneous agreements or negotiations, whether written or oral, between the parties, regarding the subject matter herein.

EXECUTED by the parties on the date first written above.

ON BEHALF OF PHOENIX PARKS AND RECREATION BOARD

Parks and Recreation Director

Date

SPONSOR

Chicanos Por La Causa, Inc.

Printed Name

Title

Signature

Date

APPROVED AS TO FORM

ATTEST

Acting City Attorney

City Clerk

ATTACHMENT A

SCHEDULE

1. NAME OF SPONSOR

Chicanos Por La Causa, Inc.

2. ADDRESS OF SPONSOR

1112 East Buckeye Road, Phoenix, Arizona 85034

3. DESCRIPTION OF SPONSOR'S BUSINESS ACTIVITIES

Chicanos Por La Causa, Inc., is a non-profit organization based in Arizona founded in 1969. It is a statewide community development corporation. It has staff of nearly 900 and impacts more than 2,000,000 people every year throughout Arizona, Nevada, New Mexico, Texas, and California.

4. DETAILS OF SPONSORSHIP

(a) Sponsored Activity

Chicanos Por La Causa received a grant from the City of Phoenix, Office of Arts and Culture to provide programming in City Council District 5 from September to December 2022. They will provide financial support for Maryvale Community Center financial literacy and arts-based programming. Chicanos Por La Causa will provide the artist instructors, class materials, and refreshments for all class participants. Additionally, Chicanos Por La Causa would pay all repair costs for the onsite kiln to be used to create a totem pole crafted by center teens and displayed at the facility.

(b) Sponsorship Fee

*\$8000 in-kind payments for instructors, materials, and refreshments
\$1000, kiln repair*

(c) Term of Sponsorship

October 1, 2022, to December 31, 2022

5. RIGHTS OF SPONSOR

- *Chicanos Por La Causa will be recognized as "Official Sponsor;"*
- *The City will provide engagement counts of programs and educational classes*

6. RECOGNITION OF SPONSOR

- *Recognition on social media, in program description, and at the beginning of the program.*
- *Logo and link listed on the Parks and Recreation marketing and advertisement.*
- *Participation in the Maryvale Community Center holiday event in December 2022.*
- *After completion of the program, installing a totem pole the center teens created at the facility (sample in **Attachment B**).*

ATTACHMENT B

SAMPLE TOTEM





To: Parks and Recreation Board

Date: September 29, 2022

From: Cynthia Aguilar, Director

Subject: DREAM COURT DONATION FROM NANCY LIEBERMAN CHARITIES AT WINIFRED GREEN PARK

This report requests Parks and Recreation Board approval to accept a donation from Nancy Lieberman Charities (NLC) to place a Dream Court at Winifred Green Park, in accordance with Sponsorship Policy 3.11 (**Attachment A**).

BACKGROUND

Nancy Lieberman Charities via its Dream Courts initiative reached out to the City with an opportunity to donate an outdoor basketball court. After discussing the proposal with NLC, the Parks and Recreation Department determined that Winifred Green Park located at 1608 W. Peoria Ave., would be a good fit for the sponsorship.

The core mission of Nancy Lieberman Charities is to improve outcomes for underserved youth in the areas of education, health and wellness and career and life preparedness. NLC strives to create impactful programs to achieve goals in a way that are conducive to fostering attitudes regarding racial and gender equality, social justice and civic engagement. Dream Courts is just one of the NLC's initiatives that contribute to the health, self-esteem and career success of young girls and boys while also promoting the sport of basketball, community, police and community relations.

NLC serves more than 4.2 million children by providing college scholarships to high school seniors, delivering tens of thousands of backpacks with school supplies to students, granting camp scholarships to more than 200,000 recipients and awarding iPads and tablets to 2,000 youth mentorship program participants. To date, the organization has opened 108 Dream Courts across the country.

DISCUSSION

Nancy Lieberman Charities and its Dream Courts initiative generously offered to complete improvements to an existing outdoor basketball court at Winifred Green Park. Subject to board approval, the Parks and Recreation Department will enter into a sponsorship agreement (**Attachment B**) with NLC, categorized as a Project Sponsorship which follows the required guidelines and documents the rights and responsibilities of both parties. Highlights of the agreement include:

- NLC will provide and install necessary equipment and paint the basketball court
- City retains ownership of property and all equipment placed on the court
- City will be responsible for maintenance of the Dream Court after installation

RECOMMENDATION

Staff recommends board approval to accept the Nancy Lieberman Charities sponsorship of a Dream Court at Winifred Green Park and for the director to execute a Sponsorship Agreement and sign all related documents to the agreement.

Prepared by: Todd Shackelford, Deputy Director

Approved by: Martin Whitfield, Assistant Director

Attachment A
City of Phoenix
Parks and Recreation Board Policy

Number 3.11	Sponsorship Policy	Adopted:2/25/2021
		Revised:

1.0 PURPOSE

This policy and its guidelines and procedures are intended to guide the Parks and Recreation staff and any partner organization responsible for engaging in sponsorship activities in public parks and preserves.

2.0 BACKGROUND

The City of Phoenix and its residents pride themselves on their extensive park and recreation system. Now, financial and in-kind support is even more critical as the investment needed to sustain and expand parks, facilities, and programs continues to increase. Like other Park and Recreation Departments across the nation, the Phoenix Parks and Recreation Department (Department) is pursuing more sophisticated business partnerships, in the form of event, program, project, and facility/amenity sponsorships. These mutually beneficial business agreements provide an important marketing venue for partners and an opportunity for them to align themselves with the Department's public mission. In turn, the City can build new and exciting programs and places while sustaining the Phoenix Parks system.

Note: This policy does not apply to Margaret T. Hance Park. Hance Park sponsorships are guided by Parks and Recreation Board (Board) Policy 2.10, Hance Park Sponsorship Policy.

3.0 DEFINITIONS

3.1 Sponsorship. Sponsorship is financial or in-kind support from a for-profit or non-profit entity for a specific program, event, project, or site, and for a specific period of time, in exchange for tangible and intangible benefits to the sponsor. For the sponsor that can include but is not limited to:

- a) marketing opportunities (product promotion and temporary advertising) on City property,
- b) authorization by the Department for the business to promote its investment with the Department, and association with Department programs, and
- c) name association ("name title") for an event or program. Sponsorship is a negotiated business agreement between the sponsor and the Department.

3.1.1 Any naming rights must comply with Parks and Recreation Board Policy 3.3, Park Naming

3.2 Gift/Donation. Any donation must comply with the Parks and Recreation Board Policy on Donations. A gift or donation is a freely given donation of goods, cash, or real property to the Department, with no expectation of return or "condition" to the gift. Gifts may be designed for a specific purpose or may be general in nature. Recognition for donations is determined by the City.

3.3 Advertising. Advertising is the physical signage created by the sponsoring entity (usually placed in designated, purchased space) to promote a product. Advertising generally is not allowed in designated flatland parks, mountain preserves, natural areas, outside recreation facilities, or outside other park buildings. The permanent placement of a corporate logo, brand, or product placement in a public park or facility is considered advertising and not allowed unless approved by the Board.

3.4 Temporary Advertising. Temporary advertising is the temporary display of corporate logos, branding, or advertising copy at a Department approved event or on collateral materials associated with an event or program.

3.5 Events. Events are one-time activities for the public organized or facilitated by the Department and held on City property that generally last less than a week.

3.6 Projects. Projects are one-time Departmental efforts, often with a physical improvement project as the result.

3.7 Programs. Programs are on-going, organized activities led by the Department for the public and generally involve staff supervision.

3.8 Sites. Sites are specific places, varying in scale from individual features or areas within a park or recreation center.

3.9 Marketing benefits. These are opportunities given to the sponsor to have their branding, their products, their name and logo given temporary visibility on City property or materials. The details of those opportunities are specific to each sponsorship, detailed in the agreement, and must meet City laws and Departmental policies.

4.0 SPONSORSHIP CATEGORIES

4.1 Sponsorships are appropriate for four broad types of Department activities and places:

4.1.1 Event Sponsorship. Event sponsorship is the financial or in-kind support for a Department organized event on City property. An event includes a one-time occasion and usually lasts less than a week. Sponsors may be recognized with anything relating to the event. Depending upon the details of the agreement, the sponsor's

name may be directly associated with the event (e.g. "title" sponsorship) and the sponsor may have a variety of temporary advertising and marketing opportunities.

4.1.2. Project sponsorship. Project sponsorship is financial or in-kind support of a specific Department project which is usually a one-time effort and results in a physical improvement. Projects may vary in size and scope such as a sponsorship of a piece of skate park equipment or a multi-million corporate sponsorship for a playground or community center. Depending upon the details of the agreement, the sponsor's name and logo could be attached directly to the product along with other marketing opportunities.

4.1.3 Program Sponsorship. Program sponsorship is financial or in-kind support of a Department led program for the public. A program includes a series of on-going activities (e.g., youth sports leagues, after-school programs, or special interest classes) organized by the Department. Recognition of the sponsor may continue throughout and after the program's duration. Depending upon the details of the agreement, a sponsor's name can be associated directly with the program.

4.1.4 Site Sponsorship. Site sponsorship is financial or in-kind operating support of a specific Department place or feature (e.g. a community garden, dog park, a new playground). Marketing opportunities and recognition of the sponsorship are negotiated in the agreement.

Note: A sponsorship may fall into more than one category. For example, the AARP Fit Lot sponsorship resulted in a physical facility (Fit Lot) and programming.

4.2 This policy also impacts several partner relationships:

4.2.1 Community sports teams. These sponsorship policies do not apply to teams and leagues that often solicit their own sponsorship and enter into private agreements. However, written approval must be obtained from the Department for any public display within parks and recreation facilities of private sponsorships (e.g. banners, flags, signs), except for team uniforms.

4.2.2 Concessionaires. Some City facilities are operated by private Concessionaires such as golf course food and beverage areas, sports complex fixed concessions, etc. As private entities, these Concessionaires are permitted to obtain corporate sponsorships as they relate to their operation. However, any marketing materials displayed outside of the physical boundary of the Concession site but within a park must be approved by the Department.

4.2.3 Non-profit partners/Cultural Institutions. Associated park conservancies, foundations, and non-profit organizations are under long term agreements to provide services in specific parks (e.g. Phoenix Zoo, Desert Botanical Garden, Japanese Friendship Garden, Tovrea-Carraro Society, Grant Park Barrio Youth Project Corporation). The level of management responsibility by the group for the specific park is detailed in each individual agreement with the City. Most of these groups will be implementing their own sponsorship, gift, and naming efforts. These individualized plans must meet Departmental and City policies.

5.0 GUIDELINES FOR ACCEPTING SPONSORSHIPS

5.1 A sponsorship is an opportunity to enhance parks and recreation services as long as the sponsorships are consistent with City and Department policies and regulations; respect the aesthetic of public spaces; and reaffirm the Department's mission and core services. In considering any proposal for sponsorship of a Department activity or place by a sponsor, the following guidelines should be considered individually and collectively:

5.1.1 The Sponsor's products, services, and marketing goals are compatible with the Department's mission, values, and policies, and with City policies, laws, rules, and regulations.

5.1.2 The proposed sponsorship enhances current priorities, programs, and core services of the Department.

5.1.3 The conditions of the sponsorship (especially in terms of marketing benefits and temporary advertising) shall not compromise the design standards, visual integrity of the parks and recreation facilities, or the experience of park users.

5.1.4 The sponsorship shall not commit the Department to additional operating and maintenance responsibilities and costs, unless approved by the Director.

5.1.5 The Parks and Recreation Director (Director) or designee has concluded that the tangible and in-tangible benefits are balanced for both the sponsor and the Department.

5.1.6 The sponsorship does not create any conflict of interest for the Department or City.

5.1.7 The Sponsor must be in good financial standing with any previous sponsorships with the City or the Department.

5.1.8 Any costs associated with the sponsorship shall be borne by the sponsor, unless otherwise approved by the Director or designee.

5.1.9 Sponsorships will not result in any loss of Department jurisdiction or authority.

5.2 The following industries and products are not eligible for sponsorships: companies whose business is substantially derived from the sale of alcohol, tobacco, firearms or pornography; sexually oriented businesses; religious and political organizations; and may only be eligible for sponsorship with written authorization from the Director.

6.0 SPONSORSHIP DEVELOPMENT PROCEDURES

6.1 The details of any sponsorship with a cash or in-kind value of more than \$5000, are contained in the Sponsorship Proposal which must accompany each request for sponsorship and be submitted to the Director or designee.

6.1.1 This Proposal shall include the contract relationship; the proposed term; description benefits to the sponsor and the Department, any naming rights requested, proposed fees, commissions, and/or in-kind services provided to the Department.

- a) The value of the sponsorship should have a direct relationship with the sponsorship's term. No sponsorship shall have a term of more than twenty-five (25) years. A general guideline would be one (1) year of sponsorship for every \$1000 of cash or documented in-kind value.

6.2 The Department will review all sponsorship proposals and will make a recommendation to the Director whether to proceed with the development of a Sponsorship Agreement (attached). All such proposals will be reviewed and decided within 30 business days of submittal.

6.2.1 The Sponsorship Agreement will include the contract relationship; the term; description of fees, commissions, and/or in-kind services provided to the Department; the marketing rights and benefits provided to the sponsor; and termination provisions. All contractual language will be consistent with applicable City policies and ordinances and good business practices.

6.2.2 For all sponsorships, the Department will negotiate and develop the Sponsorship Agreement. The Director or designee must obtain Board approval before the sponsorship may be executed.

6.3 The Sponsorship Agreements are managed and tracked by the Parks and Recreation Department/Management Services Division.

7.0 NAMING RIGHTS, SIGNAGE AND RECOGNITION

7.1 Only project sponsorships that meet or exceed the cost of all design, construction, installation, permitting, any other direct or indirect costs associated with the project will be considered for naming recognition under this Policy.

7.1.1 The Sponsor shall agree to bear all costs associated with naming including but not limited to signage, displays, labeling and shall, from time to time, in the judgment of

the Department, agree to fund major maintenance or replacement of the sponsor recognition during the term of the Sponsor agreement.

7.2 Naming recognition applies only to the project and is never to be applied to the name of the park. All policies related to park naming are contained in Board Policy 3.3, Park Naming. The Sponsor shall have the right to recommend any naming recognition, to the Director, who shall have the authority to grant approval in accordance with Parks Board Naming policy. All proceeds and other monetary benefits received from any sponsorship shall be deposited into the Parks Donation Account or another appropriate account as determined by the Director or designee.

7.2.1 The Parks and Recreation Director, upon approval of a sponsor naming, will notify the Parks and Recreation Board, City Council and City Manager's designee.

7.2.2 These naming recognition rights, as defined in 7.1 and 7.2 shall operate as set forth in the contract terms of the Sponsorship Agreement.

7.2.3 Upon expiration of the term of the Sponsorship Agreement without extension or amendment, such naming rights shall then be transferred to the Parks and Recreation Board.

7.3 The sponsor name given to the Park component or area shall not include any reference to any proper geographic name unless such reference is to "Phoenix" or the "City of Phoenix". The City reserves the right to require renaming if a named corporation or organization, ceases to exist or if a named corporation, organization, or individual is conclusively linked to a felony conviction.

7.4 All designs and displays in connection with naming rights will be approved by the Director in consultation with any appropriate park designer, architect or landscape architect involved in project management of the sponsored project.

7.5 Sponsors are not permitted to use any City Mark, the use of which is governed by the Phoenix City Council, including but not limited to the seal, municipal flag, municipal standard, municipal pennant, and municipal badge of the City.

7.5.1 Prior written approval to use the City's marks must be obtained from the Parks and Recreation Director, which shall not be unreasonably withheld.

ATTACHMENT B

SPONSORSHIP AGREEMENT

This Agreement is made on the _____ day of _____, 20____, between City of Phoenix Parks and Recreation Board (Board) and its Parks and Recreation Department (Department) and Nancy Lieberman Charities (Sponsor).

RECITALS

The Sponsor is engaged in the business referred to in Item 3 of Attachment A, hereafter referred to as the "Schedule" (Description of Sponsor's Business Activities) and, at the request of the Department, has agreed to provide the Sponsorship set out in Item 4 of the Schedule (Details of Sponsorship), subject to the terms and conditions of this Agreement.

IT IS AGREED as follows:

1. TERM

- 1.1 The term of the Sponsorship shall be for the period set out in Item 4(c) of the Schedule (Term of Sponsorship), unless otherwise extended or terminated in accordance with this Agreement.

2. SPONSORSHIP FEE/PRODUCT

- 2.1 In consideration of the grant of Sponsorship Rights under this Agreement, the Sponsor shall pay and/or provide to the Department, for the term of this Agreement, the sponsorship fee and/or product(s) referred to in Item 4(b) of the Schedule (Sponsorship Fee/Product) at the times and in the manner referred to in that Item.
- 2.2 The Sponsorship Fee/Product shall be the entire amount payable or provided to the Department under this Agreement.
- 2.3 The Department shall only use the Sponsorship Fee/Product for the sponsored activity referred to in Item 4(a) of the Schedule (Sponsored Activity) in a manner consistent with the reasons referred to in Item 4(a) of the Schedule.
- 2.4 Should the Sponsorship Fee/Product not be fully used on the Sponsored Activity; the Department shall immediately notify the Sponsor of the balance of the unused Sponsorship Fee/Product and shall comply with the Sponsor's directions concerning the use of the unused Sponsorship Fee/Product.

3. SPONSORSHIP RIGHTS

- 3.1 The Department grants to the Sponsor the non-exclusive sponsorship rights set out in Item 5 of the Schedule (Rights of Sponsor) for the term of this Agreement.
- 3.2 All advertising and promotional material produced, published, broadcast, displayed or exhibited by the Sponsor under Item 5 of the Schedule (Rights of Sponsor) shall first be approved by the City of Phoenix Parks and Recreation Director or designee.

- 3.3 The Department shall, whenever the Sponsored Activity is publicized, acknowledge the Sponsor in accordance with the recognition rights specified in Item 6 of the Schedule (Recognition of Sponsor).

4. USE OF SPONSOR'S NAME AND/OR LOGO

- 4.1 All advertising and promotional material produced, published, broadcast, displayed or exhibited by the Department in respect to the Sponsored Activity shall acknowledge the Sponsor in a manner agreed to by both parties.
- 4.2 The Department shall immediately, on the termination or expiration of this Agreement, cease to use or otherwise refer to the Sponsor's name and/or logo except to the extent otherwise authorized by law or agreement.

5. USE OF THE CITY'S NAME AND/OR LOGO

- 5.1 All advertising and promotional material produced, published, broadcast, displayed or exhibited by the Sponsor in respect of the Sponsored Activity shall acknowledge the Phoenix Parks and Recreation Department, in a manner agreed to by all parties.
- 5.2 The Sponsor shall immediately, upon the termination or expiration of this Agreement, cease to use or otherwise refer to any and all of the City of Phoenix/Phoenix Parks and Recreation Department name(s) and/or logo(s) in any manner that could imply that the Sponsorship under this Agreement is still in effect.

6. INDEMNIFICATION AND INSURANCE

- 6.1 To the maximum extent allowed by law, Title 34 A.R.S., Sponsor ("Indemnitor") agrees to defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents and employees (and any jurisdiction or agency issuing permits for any work included in the project, and its officers, agents and employees) ("Indemnitee") from any and all claims, actions, liabilities, damages, losses or expenses, (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever ("Losses") caused or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees, or subcontractors (Indemnitor's Agents") arising out of or in connection with this Contract. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses or other amount arising out of or recovered under any state's workers' compensation law or arising out of the failure of Indemnitor or Indemnitor's Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation, or court decree. Indemnitor's duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor's duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely as a result of Indemnitee's own negligent or willful acts or omissions. Indemnitor is responsible

for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the City's award of this Contract, Indemnitor agrees to waive all rights of subrogation against Indemnitee for losses arising from or related to any work performed by Indemnitor or Indemnitor's Agents for the City of Phoenix under this Contract. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.

Sponsor must procure insurance against claims that may arise from or relate to performance of the work hereunder by Sponsor and its agents, representatives, employees and subconsultants. Sponsor and subcontractors must maintain that insurance until all their obligations have been discharged, including any warranty periods under this Contract.

The City in no way warrants that the limits stated in this section are sufficient to protect the Sponsor from liabilities that might arise out of the performance of the work under this Contract by the Sponsor, its agents, representatives, employees, or subcontractors and Sponsor may purchase additional insurance as they determine necessary.

SCOPE AND LIMITS OF INSURANCE – During the period of the installation of the project, Sponsor must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the liability limits provided that (1) the coverage is written on a "following form" basis, and (2) all terms under each line of coverage below are met.

Commercial General Liability – Occurrence Form

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

The policy must name the City of Phoenix as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations, and liability assumed under an insured contract arising out of the activities performed by, or on behalf of the Contractor, related to this Contract.

- There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Phoenix as an additional insured.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

7. BREACH AND TERMINATION

7.1 If either party breaches any of the terms and conditions of this Agreement and

fails to rectify such default in accordance with a written notice by the non-defaulting party within fourteen (14) days after the date of such notice, the non-defaulting party may terminate the Agreement at any time thereafter.

- 7.2 The Department may terminate the Agreement immediately if any of the following events occur:
- (a) The Sponsor is wound up or dissolved, becomes insolvent or enters into an agreement with its creditors, or if a receiver, manager or liquidator is appointed in respect of the Sponsor.
 - (b) The Sponsor's business operations or the business or activities of any associated company are contrary to any City of Phoenix policy(ies).
 - (c) The Department determines that for whatever reason it should no longer use the Sponsorship Fee/Product or be associated with the Sponsor.
- 7.3 If this Agreement is terminated, the Sponsor shall not be required to pay any unpaid installments of the Sponsorship Fee/Product.
- 7.4 The expiration or termination of this Agreement shall not prevent either party from taking action to enforce a term or condition of this Agreement in respect of any breach occurring prior to such expiration or termination.

8. NOTICES

- 8.1 Unless otherwise directed in writing, notices, reports, and payments shall be delivered to the Department at the following address:
- Parks and Recreation Director
Phoenix Parks and Recreation Department
200 W. Washington St, 16th Floor
Phoenix, AZ 85003

and to the Sponsor at the address and e-mail address referred to in Item 2 of the Schedule (Address of Sponsor).

- 8.2 A notice forwarded by e-mail shall be deemed to be received by the addressee when recorded by read receipt.

9. AMENDMENTS TO AGREEMENT

- 9.1 Any amendment to this Agreement shall only be valid if the amendment is in writing and signed by both parties.

10. ASSIGNMENT

- 10.1 Neither party shall transfer, change or purport to assign, transfer or change this Agreement or any of its rights or obligations without the prior written consent of the other party, which shall not be unreasonably withheld.

11. CHARITABLE CONTRIBUTION

11.1 Board will reasonably cooperate with Sponsor to document Sponsor's charitable contribution as may be required for federal or state income and property tax purposes.

12. GOVERNING LAW

12.1 This Agreement shall be governed by and construed under the laws of the State of Arizona, excluding its choice of law principles. Any litigation arising out of this Agreement shall be commenced and maintained in a court of competent jurisdiction sitting in Maricopa County, Arizona.

13. ENTIRE AGREEMENT

13.1 This Agreement constitutes the entire agreement of the parties and shall supersede any prior or contemporaneous agreements or negotiations, whether written or oral, between the parties, regarding the subject matter herein.

EXECUTED by the parties on the date first written above.

ON BEHALF OF PHOENIX PARKS AND RECREATION BOARD

Parks and Recreation Director

Date

SPONSOR

(insert company name)

Printed Name

Title

Signature

Date

APPROVED AS TO FORM

ATTEST

Acting City Attorney

City Clerk

ATTACHMENT A - SCHEDULE

1. **NAME OF SPONSOR**

Nancy Lieberman Charities (NLC)

2. **ADDRESS OF SPONSOR**

P.O. Box 261233, Plano, TX 75026

3. **DESCRIPTION OF SPONSOR'S BUSINESS ACTIVITIES**

The core mission of Nancy Lieberman Charities is to improve outcomes for underserved youth in the areas of education, health and wellness and career and life preparedness. NLC strives to create impactful programs to achieve goals in a way that are conducive to fostering attitudes regarding racial and gender equality, social justice and civic engagement. Dream Courts is just one of the NLC's initiatives that contribute to the health, self-esteem and career success of young girls and boys while also promoting the sport of basketball, community, police and community relations.

4. **DETAILS OF SPONSORSHIP**

(a) Sponsored Activity

Sponsor desires to promote the sport of basketball, community, and police and community relations.

Sponsor will install a new basketball court and basketball court equipment, including poles, hoops and backstops (Dream Court) at the Winifred Green park, located at 1608 W. Peoria Ave. Phoenix Arizona 85029, in accordance with the terms and provisions set forth herein.

The City will remove the existing basketball poles prior to installation of the new court and the City will be responsible for maintenance of the Dream Court after it has been installed and painted. The City will provide oversight of the court construction and approval upon completion of the installation.

Any and all improvements constructed, placed and located on any part of the basketball court during the term to this Sponsorship shall be considered part of the real property and must remain at the City. Further, subject to the terms of this sponsorship, said real property becomes property of the City, from and after the termination of this Sponsorship. The City will provide oversight of the basketball court construction and approval upon completion of the installation.

(b) Sponsorship Fee / Product

Sponsor shall provide all materials necessary for the installation of the Dream Court and install it within 90 days of execution of this agreement. The schedule may be extended if agreeable by both parties.

(c) Term of Sponsorship

The sponsorship will remain in effect as long as the court is usable and/or the logo has not deteriorated.

5. RIGHTS OF SPONSOR

The Sponsor shall have access to the City basketball court for the purpose of installing and painting the Dream Court during normal business hours, except when the City is performing a maintenance function requiring temporary closure of the area, or during an unforeseen emergency.

6. RECOGNITION OF SPONSOR

NLC shall have the right to procure and display advertising upon the surface of the Dream Court in accordance with the rendering provided. NLC shall not, in procuring, installing or displaying advertisement, violate any person's right to privacy or infringe upon trademarks, trade names, copyrights, or proprietary rights of any person. It is understood and agreed that any approval by the Parks and Recreation Department or City of advertising material shall not constitute a waiver of NLC obligations concerning such violation or infringement.

DRAFT



To: Parks and Recreation Board

Date: September 29, 2022

From: Cynthia Aguilar, Director

Subject: 2022-2023 GRANT RENEWAL FOR FITLOT PROGRAMMING

This report requests Parks and Recreation Board (Board) approval to accept a grant renewal for the continuation of FitLot, Inc. (FitLot) programming at Rose Mofford Sports Complex.

BACKGROUND

FitLot is a non-profit corporation that plans and builds fitness parks nationwide with outdoor equipment designed to accommodate a wide range of fitness levels and abilities. In 2019, AARP, a non-profit, non-partisan organization, focusing on issues affecting those over the age of 50, partnered with FitLot to sponsor the design, construction and activation of one FitLot Outdoor Fitness Park in every state as well as the District of Columbia, the United States Virgin Islands and Puerto Rico for a total of 53 parks over three years. Phoenix was approached and selected as part of this initiative, and in August 2019, the Parks and Recreation Department (Department) executed the FitLot Partnership Agreement No. 150685 to construct an outdoor fitness park at Rose Mofford Sports Complex, funded by AARP (**Attachment A**).

The project is led by FitPHX, a citywide health initiative functioning out of the Department, that was created in 2013, with the goal of improving health and wellness in the region and making Phoenix one of the healthiest in the nation. The initiative has built innovative collaborations between government agencies, private sector groups, non-profit organizations and universities to develop programming that provides residents with resources to be healthier. AARP has provided sponsorship to FitPHX since 2017 on various programs including the virtual Fall into Fitness classes and monthly Morning Yoga program. These sponsorships have been consistent with City and Department policies and regulations and reaffirmed the Department's mission and core services.

In September 2020 a Programmatic Grant Addendum was added to the FitLot Partnership Agreement with a grant plan of \$4,010 to be used within 18 months for fitness classes, with the exception of a one-time \$500 to be used for social media support, with the goal to provide activation of the, now called, AARP Sponsored Outdoor Fitness Park, at no-cost to the community (**Attachment B**). Of these funds, only \$630 was spent during the grant period.

DISCUSSION

AARP has once again committed to providing funds to support the FitLot and has offered the Department a grant renewal in the amount of \$3,510, to be used within a 12-month period from the date of fund distribution to activate the AARP Sponsored Outdoor Fitness Park located at Rose Mofford Sports Complex. A second Programmatic Grant Addendum has been reviewed and further defined in the second amendment to FitLot Partnership Agreement No. 150685 (**Attachment C**). The amendment indicates the previous unspent funds, in the amount of \$3,380, may be used for additional classes during the next 12-month grant period in addition to the new funds, for a total of \$6,890 to support 106 FitLot classes and forgo social media support. Classes will be organized through FitLot and FitPHX with FitLot Neighborhood Coaches, who must be professionally certified group fitness instructors or personal trainers as outlined in the agreement.

Subject to Board approval, the Department will execute the second amendment to FitLot Partnership Agreement No. 150685 with FitLot, which follows the required guidelines and documents the rights and responsibilities of all parties involved.

RECOMMENDATION

Staff recommends Board approval to accept the grant funds provided by AARP and disbursed by FitLot, and approve the Director to execute a second Programmatic Grant Addendum to the FitLot Partnership Agreement No. 150685.

Prepared by: Alonso Avitia, Deputy Director

Approved by: Martin Whitfield, Assistant Director

150685--0

FITLOT PARTNERSHIP AGREEMENT No. _____

FitLot, Inc. (referred to herein as FitLot) is pleased that City of Phoenix (referred to herein as Community Partner) has agreed to collaborate with FitLot (collectively, the "Parties") on the construction of a FitLot outdoor fitness park at Rose Mofford Sports Complex, Phoenix, Arizona (the "Project") funded by AARP ("Funding Party"). This FitLot Partnership Agreement (referred to herein as the "Agreement") sets forth the Parties obligations in connection with the Project and certain matters on which the Parties have agreed.

1. Obligations and Rights of the Community Partner. The Community Partner shall work with FitLot and FUNDING PARTY to plan and build the Project. By executing this contract, the Community Partner is unconditionally agreeing to each of the following obligations, in each case meeting the requirements provided by FitLot:

A. Project Site.

- i. **Ownership:** Prior to the execution of this Agreement, the Community Partner shall provide FitLot with sufficient proof of land ownership or approval from the property owner for the Project. The Community Partner is the owner of the outdoor fitness park in its entirety, for the lifetime of the park, including the equipment and/or safety surfacing purchased by FitLot.
- ii. **Permits:** The Community Partner agrees to assist FitLot in obtaining all necessary permits and licenses regarding the installation, possession, and use of the Project in compliance with applicable laws and regulations.
- iii. **Preparation:** The Community Partner shall ensure that the site is safe for volunteers, including children. This responsibility includes, without limitation: (1) conducting up to two utility checks as reasonably requested by FitLot with the appropriate utility companies with the first test being completed within two weeks of the Agreement being signed. All utility check documentation shall be provided to the FitLot Project Manager upon completion; and (2) conducting up to two soil site tests as reasonably requested by FitLot, with the first test being completed within two weeks of the Agreement being signed. All soil check documentation shall be provided to the FitLot project manager upon completion. The Community Partner is responsible for undertaking any necessary risk mitigation should the soil be deemed unsafe for children and volunteers.
- iv. **Safety and Security:** In the event of a Build Day (defined *infra*), the Community Partner is responsible for ensuring the security of equipment, tools, and supplies to the extent reasonably possible, and for providing appropriate security for adults and children from the beginning

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of the preparation activities until the conclusion of Build Day, including any postponement.

- v. **Maintenance:** Maintenance of the Project and supervision of its use is the responsibility of the Community Partner. The Community Partner, as owner of the property involved in the Project, agrees to collaborate with FitLot during the Project planning process to develop a maintenance program for the Project and agrees to maintain the Project before and after the build to ensure, to the extent reasonably possible, a safe and attractive space. In furtherance of the foregoing, in the event any fitness park included in the Project is no longer permitted to be located at its original site of construction or such site is no longer owned or controlled by the Community Partner, the Community Partner shall promptly notify FitLot and shall, at the Community Partner's sole cost and expense, take such steps as may be reasonable, given the circumstances at the time and the condition of the Project's equipment and surfacing, to either (i) make a reasonable attempt to obtain the agreement of the subsequent owner of the original site to continue to make the Project available in the same manner contemplated as of the Build Day and to maintain (or permit the Community Partner to maintain) the Project in accordance with the maintenance program, or (ii) to promptly and safely relocate the Project's equipment (including any permanent signage and other fixtures) to an alternate site owned or controlled by the Community Partner. If the original site is no longer owned or controlled by the Community Partner and there is no alternate site owned or controlled by the Community Partner available, the Community Partner will remain responsible for the Project equipment and its disposition.
- B. **Build Day.** If agreed upon by the Parties, the Community Partner shall recruit 20-40 adult volunteers from the community to participate in a one-day installation event for the Project, which is scheduled to occur in October 2019, and which is referred to herein as the "Build Day." On the Build Day, the Community Partner shall provide lunch, snacks, water, tools, music and restroom facilities for all volunteers.
- C. **Promotion.** The Community Partner will seek prior approval from FitLot and/or the FUNDING PARTY for any materials that reference the Project or contain the logos or other intellectual property of FitLot and/or FUNDING PARTY, including, without limitation, press releases, fliers and promotional materials. The Community Partner shall collaborate with FitLot and FUNDING PARTY to secure media coverage. The Community Partner agrees to mention FitLot and FUNDING PARTY on all promotional material subject to the obligations set forth in Section 2 herein.

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- D. **Signage.** The Community Partner shall allow the names and logos of FitLot and FUNDING PARTY to be displayed on permanent Project signage, which shall be substantially in the form provided to the Community Partner during the application process and mounted in a mutually agreed location on poles.
- E. **Warranty.** The fitness equipment and the safety-surfacing related to the Project may be covered under warranty by the applicable manufacturers; a copy of such warranties will be provided upon completion of the project. The Community Partner acknowledges that any warranties and/or guarantees on any equipment or material are subject to the respective manufacturer's terms thereof, and the Community Partner agrees to look solely to such manufacturers for any such warranty and/or guarantee. Community Partner agrees that neither FitLot nor FUNDING PARTY, nor any of their respective parents, subsidiaries, affiliates, directors, officers, managers, partners, members, shareholders, employees, agents or representatives, have made nor are in any manner responsible or liable for any representation, warranty or guarantee, express or implied, in fact or in law, relative to any equipment or material, including, without limitation, its quality, mechanical condition or fitness for a particular purpose.
- F. **Insurance.** The Community Partner represents that it is self-insured for both workers' compensation and general liability lines of coverage and is responsible for providing coverage for its own employees and against liability for bodily injury, death, and property damage that may arise out of or be based on the use of the Project at 9833 N 25th Ave, Phoenix, AZ 85021, from 30 (thirty) calendar days before the Build Day, if applicable, and for the duration of the Community Partner's ownership of the FitLot park, in each case, in amounts not less than one million dollars (\$1,000,000). This self-insurance shall be primary over any other insurance covering FitLot and FUNDING PARTY.
- G. **Indemnification.** The Community Party will indemnify and hold harmless FUNDING PARTY from any and all losses, liabilities, claims, actions, fees, and expenses, including those for personal injury, death, negligence, or property damage arising under, out of or in connection with the use of the FitLot park. The Community Partner will indemnify and hold harmless FitLot from any and all losses, liabilities, claims, actions, fees, and expenses, including those for personal injury, death, negligence, or property damage arising under, out or in connection with the use of the FitLot park, except to the extent resulting from the willful misconduct or negligence of FitLot.

2. **Obligations and Rights of FUNDING PARTY.**

- A. **Sponsorship Benefits.** In recognition of the FUNDING PARTY's contribution, FUNDING PARTY shall receive logo placement on any recognition materials developed for the Project, including project signage, banners, press releases, web site, newsletter stories, and flyers provided FUNDING PARTY consents

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with written permission in each instance.

- B. Logo placement on shade canopy and surfacing. Community Partner agrees to maintain the FUNDING PARTY branded surfacing and canopy for at least the duration of the manufacturer's warranty of 10 years. After 10 years, the Community Partner has the option of replacing the canopy and/or surfacing with an unbranded canopy and/or surfacing of the original color. If Community Partner chooses not to replace the FUNDING PARTY branded canopy and flooring after their respective warranties expire, the Community Partner shall remain obligated to maintain those materials in good repair.

3. Obligations and Rights of FitLot.

- A. Fitness Park Build. FitLot shall provide technical and organizational leadership and guidance for the Project and shall:

- i. Coordinate FUNDING PARTY's participation, provide fitness park design, planning meetings, and work with local installers to procure and install the equipment and materials in a timely manner.
- ii. Manage construction logistics for the Project, coordinate site preparation activities with the Community Partner, inventory equipment and materials, and assure that the necessary tools and materials are available on the Build Day.
- iii. Lead the Build Day activities, if applicable, including the coordination of Build Day captains and volunteers.
- iv. Provide educational and promotional materials to support the Project, nametags and other general supplies.

- B. Inspection. FitLot will have a Certified Playground Safety Inspector review the fitness park structure at the conclusion of the Build Day or installation to ensure that the structure is safe and built to all manufacturers standards and guidelines.

- C. Promotion. FitLot will provide proposed promotional materials relating to the Project for FitLot and FUNDING PARTY's review and approval, which approval shall not be unreasonably withheld or delayed. These promotional materials will be consistent with those benefits set forth in the corporate benefits package.

4. Accounting and Audits. FitLot shall maintain all pertinent financial and accounting records pertaining to this Agreement in accordance with generally accepted accounting principles and other procedures

General Provisions.

- A. Build Day Postponement. In the event the Parties and the Funding Party agree to host a Build Day, the Build Day shall not be postponed except when weather or other conditions jeopardize the safety of the volunteers or threaten the structural integrity of the fitness park. The decision to postpone the Build Day will be made by majority agreement of the representatives of FitLot, the Community Partner, and the Funding Party, except where such decision must be made by FitLot on the construction site and representatives of the Community Partner and the Funding Party are not available for consultation. In the event that the Build Day is postponed, FitLot, the Community Partner, and the Funding Party shall develop a plan for rescheduling the Build Day at the next earliest date possible for each party and for allocating additional expenses related to the rescheduled Build Day. In the event that the date of the Build Day is cancelled or changed solely by the Community Partner, the Community Partner shall be liable to FitLot and the Funding Party for any equipment costs, labor, and materials and any additional expenses related to the Program, such as travel expenses and general supplies.
- B. Termination. Any party may terminate this Agreement upon 15 days notice upon one or more of the following:
- (a) any party's violation of any federal, state, or local law or regulation.
 - (b) any party's breach of any of the terms or conditions of this Agreement that has not been cured within 30 days written notice of such breach.
- C. Force Majeure: If any Party is delayed or prevented from fulfilling any of its obligations hereunder by any cause beyond its reasonable control, including, without limitation, to Acts of God, acts or omissions of civil or military authorities of a state or nation (including, without limitation, legal enactments, government orders or regulations), fire, labor dispute, lockout, strike, breakdown of origination or transmission facilities, interruption or preemption due to an event of overriding public interest or importance, flood, riot, act of terrorism (including, without, limitation safety or security measures relating thereto), national emergency, war (whether declared or undeclared), delay of transportation or any other force majeure or cause beyond the reasonable control of the party affected thereby, or inability due to any of the aforementioned or similar causes to obtain necessary labor, materials or facilities, such party shall not be liable hereunder for such delay or failure and any Party may terminate this Agreement if another is unable to perform any obligation hereunder for a period longer than thirty calendar days due to such force majeure event.
- D. Authority. Each signatory below represents that s/he has all requisite power and authority, including any necessary approval by its governing body, to execute

Attachment B

and deliver this Agreement on behalf of the respective Parties, and to perform its obligations hereunder.

- E. Assignment and Transfer. This Agreement may not be assigned or transferred by either party without the prior written consent of the other Parties.
- F. Modification. This Agreement may be altered, modified or amended only by a written document signed by all Parties.
- G. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original and all of which, when taken together, shall constitute the same agreement and may be delivered by facsimile or electronic mail transmission with the same force and effect as if originally executed copies hereof were delivered.
- H. Notice. Any notices required or permitted to be given hereunder shall be sent by certified or registered United States mail, postage prepaid, by personal delivery addressed to the applicable party or by facsimile or electronic mail transmission (the receipt of which is confirmed) at the address set forth under such Parties signature below.
- I. Entire Agreement. This Agreement contains the entire agreement of the Parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of this Agreement. This Agreement supersedes any prior written or oral agreement between the parties.
- J. Severability. If any provision of this Agreement will be held to be invalid or unenforceable for any reason, the remaining provision will continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.
- K. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Arizona.
- L. Waiver of Contractual Right. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of the party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

SIGNATURES ON FOLLOWING PAGE

By executing this FitLot Partnership Agreement where indicated below, both FitLot and the Community Partner agrees, as of the date identified above, to be legally bound by all of the terms and provisions set forth above.

City of Phoenix

By: [Signature] Date: 8/1/19
Name: Inger Erickson
Title: Parks and Recreation Director

FitLot

By: Adam Mejerson Date: 8/2/19
Name: Adam Mejerson
Title: Executive Director

APPROVED AS TO FORM:

[Signature]
Acting City Attorney

ATTEST:

[Signature]
City Clerk 8-12-19



2019 AUG -9 PM 3: 57

CITY CLERK DEPT

**AMENDMENT #1 TO
FITLOT PARTNERSHIP AGREEMENT No. 150685--0**

This Amendment to the FitLot Partnership Agreement (this “Amendment”) is made and entered into on September 25, 2020, by and between City of Phoenix Parks and Recreation, a municipality in the state of Arizona (“Community Partner”), and FitLot, Inc., a non-profit corporation with a principal place of business in New Orleans, Louisiana (“FitLot”).

WHEREAS, Community Partner and FitLot are parties to a FitLot Partnership Agreement, fully executed on August 2, 2019 (“Agreement”); and

WHEREAS, under the Agreement, as amended, Community Partner has agreed to collaborate with Fitlot (collectively, the “Parties”) on the construction of a, now called, AARP Sponsored Outdoor Fitness Park funded by AARP at Rose Mofford Sports Complex located at 833 N 25th Ave, Phoenix, AZ 85021 (the “Project”); and

WHEREAS, there are provisions missing in the Agreement that are required by AARP and related to the Community Partner’s ongoing obligations, promotion, and care of the Project; and

WHEREAS, subsequent to the Agreement being fully executed, FitLot and AARP finalized terms of a programmatic grant whereby AARP will also sponsor the Community Partner in hiring and training FitLot Neighborhood Coaches to lead no-cost outdoor community fitness classes at Rose Mofford Sports Complex and associated social media outreach. The implementation of programmatic grant shall be organized by FitLot with the terms of the programmatic grant provided herein;

WHEREAS, the Parties to this Amendment now desire to make certain modifications and amendments to the Agreement provided herein;

NOW, THEREFORE, in consideration of the mutual provisions, covenants, and undertakings set forth in this Amendment and in the Agreement, and other good and valuable consideration which is hereby acknowledged, the parties to this Amendment agree as follows:

1. Section 1.C (Promotion) in the Agreement shall be amended and replaced as provided herein:
 - B. Promotion. The Community Partner will seek prior written approval from FitLot and/or AARP’s State Office Associate State Director and/or National Office of Community Engagement for any materials that reference the Project or program or contain the logos or other intellectual property of FitLot and/or AARP, including, without limitation, press releases, fliers and promotional materials. The Community Partner shall collaborate with FitLot and AARP to secure media coverage. The Community Partner agrees to mention FitLot and AARP on all promotional material subject to the obligations set forth in Section 2 herein. All AARP trademark and/or intellectual property licenses granted under this Section and Section 2 of this Agreement shall automatically terminate at the expiration or

Attachment C

termination of this Agreement. Community Partner agrees that these licenses are non-exclusive and that AARP may revoke the Community Partner license to use the AARP trademark and any other AARP intellectual property at any time with prior written notice to the Community Partner.

2. Section 3.C. (Promotion) in the Agreement shall be amended and replaced as provided herein:
 - C. Promotion. FitLot will provide proposed promotional materials relating to the Project for FitLot and AARP's review and approval, which approval shall not be unreasonably withheld or delayed. These promotional materials will be consistent with the terms set forth in Sections 1.B (Promotion), 1.D (Signage), 2.B (Logo placement on shade canopy and surfacing), 1.E (Warranty), and 2.A (Sponsorship Benefits).

3. Section B (Termination) in the General Provisions Section in the Agreement shall be amended and replaced as provided herein:
 - A. Term and Termination. The term of the Agreement shall commence on the date of the Agreement and remain in effect through the duration of the useful life of the Project equipment. Provisions relating to ongoing maintenance and other obligations related to continuing upkeep of the Project shall survive any termination or expiration of this Agreement, including but not limited to the following provisions: Maintenance, Logo placement on shade canopy and surfacing, Warranty, Indemnification, and Force Majeure.

Any party may terminate this Agreement upon 15 days notice upon one or more of the following:
 - (a) any party's violation of any federal, state, or local law or regulation.
 - (b) any party's breach of any of the terms or conditions of this Agreement that has

4. **Attachment A - Programmatic Grant Addendum to the FitLot Agreement** ("Programmatic Grant Addendum") is attached to this Amendment. The Programmatic Grant Addendum provides the terms for the activation of the Project through no-cost outdoor fitness class programming and related social media promotion and shall be added to the Agreement as a Modification (Section 5.F of the Agreement) and incorporated as part of the Entire Agreement (Section 5.I of the Agreement).

Attachment C

This Amendment contains all revised terms and conditions agreed upon by the parties. All terms and conditions in the Agreement not amended herein remain in full force and effect.

<Signature page and Programmatic Grant Addendum immediately follows>

IN WITNESS WHEREOF, this Amendment is executed and effective as of the date first set forth above.

FITLOT, INC.:

By: Adam Mejerson Date: 10/01/2020

Name: Adam Mejerson
Title: Executive Director
Address: 4035 Washington Avenue, New Orleans, LA70125
Tel.: 504-264-1568
Email: adam@fitlot.org

CITY OF PHOENIX:

By: Tracee Hall Date: 10/2/20

Name: Tracee Hall
Title: Acting Parks and Recreation Director
Address: 200 W Washington Street, 16th floor, Phoenix, AZ 85003
Tel.: 602-534-1870
Email: tracee.hall@phoenix.gov

APPROVED AS TO FORM:


Patricia Boland (Dec 10, 2020 08:11 MST)
Acting City Attorney

ATTEST:

Deise Acuña
City Clerk Dec 15, 2020



Attachment A

PROGRAMMATIC GRANT

ADDENDUM

TO THE

FITLOT PARTNERSHIP AGREEMENT

This is an addendum specifying the terms of a programmatic grant (the “Programmatic Grant Addendum”), dated as of September 25, 2020 by and between City of Phoenix, a municipality in the state of Arizona (“Community Partner”) and FitLot, Inc. (“FitLot”).

I. BACKGROUND

A. Community Partner and FitLot are parties to a [FitLot Partnership Agreement] (the “Agreement”) fully executed on August 12, 2019 where, sponsored by AARP, FitLot and Community Partner agreed to collaborate on building and programming an AARP Sponsored Outdoor Fitness Park located at Rose Mofford Sports Complex located in Phoenix, AZ.

B. Sponsored by AARP, FitLot is pleased to grant Community Partner, as facilitated by City of Phoenix Parks and Recreation Department, programmatic funding (the “Grant”) to be used for activating the AARP Sponsored Outdoor Fitness Park with local fitness professionals who will host regular, no-cost community classes at the AARP Sponsored Outdoor Fitness Park. The programming of the AARP Sponsored Outdoor Fitness Park is funded by AARP and FitLot is the coordinating party, passing the programmatic funds through to the Community Partner to fulfill the obligations of this Programmatic Grant Addendum. On the basis set out in this Programmatic Grant Addendum and in the programmatic grant plan (the “Grant Plan”) provided below in Section III Grant Plan, FitLot shall provide resources and guidance to Community Partner for the AARP Sponsored Outdoor Fitness Park programming in a professional manner.

C. COVID-19. Community Partner shall be required to provide all AARP Sponsored Outdoor Fitness Park Programming in strict compliance with applicable law, regulation, and industry guidance, including but not limited to COVID-19 regulations promulgated by state and local governments and applicable COVID-19 guidance released by the Centers for Disease Control and Prevention.

II. GENERAL TERMS

Community Partner and FitLot agree as follows:

1. CORE TERMS

1.1 Grant

FitLot will make the Grant to Community Partner in the amount and in accordance with the schedule set out in the Grant Plan.

1.2 Use of Grant

Community Partner will use the Grant for the purpose set out in the Grant Plan.

1.3 Grant Period

The grant period (“Grant Period”) is set out in the Grant Plan.

2. COMMUNICATION; REPORTS; RECORDS

2.1 Contact Persons

Community Partner and FitLot will each appoint one individual to act as principal contact person for communications under this Programmatic Grant Addendum. The initial appointees are identified in the Grant Plan. Community Partner and FitLot may change its contact person at any time, with notice to the other party.

2.2 Reporting

Community Partner will provide FitLot with reports as set out in the Grant Plan.

2.3 Recordkeeping

Community Partner will maintain the AARP Sponsored Outdoor Fitness Park programming records in a manner that will provide FitLot with sufficient detail to review Community Partner’s expenditures and programming records relating to the Grant. Community Partner shall provide such records for review by FitLot upon occasional and reasonable notice during the Grant Period, and for one year after the Grant Period.

3. PUBLICITY; PROMOTION

3.1 Programming Acknowledgement; Trademark Licenses

Community Partner may announce and publicize the Grant in recognition of AARP’s funding in accordance with the Promotion provision found in Section 1. B. Promotion of the Agreement.

4. GRANT AND PROGRAM ADMINISTRATION

4.1 Obligations of the Community Partner

The Community Partner shall be solely responsible for all programmatic functions -- including all programming, outreach, recruitment, scheduling, and ongoing maintenance -- as described in the Grant Plan. FitLot’s involvement in the programmatic functions set forth in this addendum shall be limited to the funding, toolkits, on-line training, and registration system described in the Grant Plan.

The Community Partner will bear all liability for any loss of life or injury or damage to persons or property arising from or relating to any of the acts or omissions of it, its employees, agents, or assigns, related to its programming or other obligations under the Grant Plan. To the fullest extent permitted by law, Community Partner will indemnify, defend, and hold harmless FitLot and AARP, their agents, employees, officials, and insurers (collectively, the “Indemnified Parties”) from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties related to the Community Partner’s programming or other obligations under the Grant Plan.

4.2 Funds Management

Community Partner will manage the Grant funds in accordance with applicable law, the provisions of this Programmatic Grant Addendum, and Community Partner's policies. Community Partner may combine the Grant funds with Community Partner's other assets to aid in programming the AARP Sponsored Outdoor Fitness Park.

4.3 Changed Circumstances

Community Partner will notify FitLot if Community Partner determines in good faith that, because of factual or other changes in circumstances, it is no longer possible for the Grant to serve its original purpose. In that case, and in cases where a portion of the Grant remains unspent or unallocated upon completion of the applicable purpose, Community Partner shall promptly return any remaining Grant funds as described in the Grant Plan.

4.4 Funding Source

Community Partner recognizes that the Grant funds are provided by AARP in its sole discretion and disbursed by FitLot. Community Partner recognizes that it has no claim or right of action against AARP and/or FitLot, for breach of contract or otherwise, should AARP decide not to provide funds for the Grant.

4.5 AARP as a Third-Party Beneficiary

AARP is a third-party beneficiary to this Agreement and Addendum and the Agreement and is entitled to the rights and benefits thereunder and may enforce the provisions thereof as if it were a party thereto.

4.6 Copy of the Addendum for AARP

The parties agree that AARP will receive an executed copy of this Addendum. AARP's receipt of an executed copy of this Addendum is not a breach of any confidentiality obligations of the Parties.

III. GRANT PLAN

1. DESCRIPTION & PAYMENT OF GRANT

<p>Grant amount</p>	<p style="text-align: center;">USD \$4,010 (Total)</p>	
	<p style="text-align: center;">Use of Grant #1 – Fitness Classes</p>	<p style="text-align: center;">Use of Grant #2 - Social Media</p>
	<p>Annual Fitness Class Funding:</p> <p style="text-align: center;">\$3,510.00</p>	<p>One-Time Social Media Support Funding:</p> <p style="text-align: center;">\$500.00</p>
	<p>*Any Unspent Grant funds from a Grant year will be deducted from the subsequent Grant year’s funding. Unspent Grant funds remaining at the end of Grant year three will be donated to a local YMCA or to a 501(c)(3) organization with a health-related mission, subject to prior written approval by AARP.</p>	
<p>Grant general purpose</p>	<p>Community Partner will use this Grant for the programming and activation of the AARP Sponsored Outdoor Fitness Park. These funds will be used for social media outreach and to engage community members in physical activity by providing certified fitness professionals to lead no-cost public fitness classes at the AARP Sponsored Outdoor Fitness Park in Rose Mofford Sports Complex located at 833 N 25th Ave, Phoenix, AZ 85021</p>	
<p>Grant Period and distribution</p>	<p style="text-align: center;">Use of Grant #1 – Fitness Classes</p> <p>Annual Fitness Class Funding:</p> <p><i>Anticipated Distribution Date:</i> September 15, 2020</p> <p><i>Start Date:</i> Funds to be used on outdoor fitness classes, that shall not begin any sooner than one (1) week after the social media campaign begins</p> <p><i>Funds must be used:</i> In accordance to the terms of this Addendum within eighteen (18) months from the date funding is received by the Community Partner.</p>	<p style="text-align: center;">Use of Grant #2 – Social Media</p> <p>One-Time Social Media Support Funding:</p> <p><i>Anticipated Distribution Date:</i> September 15, 2020</p> <p><i>Start Date:</i> Funds to be used on social media campaign that shall start no sooner than one (1) week after the actual completion date of the AARP Sponsored Outdoor Fitness Park.</p> <p><i>Funds must be used:</i> In accordance to the terms of this Addendum within eighteen (18) months from the date funding is received by the Community Partner.</p>

Payment schedule	FitLot will distribute the Grant in a single lump-sum by September 15, 2020 <i>(anticipated)</i> .
Payment mailing address	Name and/or Department: Phoenix Parks and Conservation Foundation C/O: FitPHX Address: 2700 N. 15 th Avenue City, State: Phoenix, AZ Zip: 85007
Additional instructions (if applicable)	

2. USE OF GRANT

Grant Use #1 Fitness Class Funding		
	<u>Duration</u>	<u>Total</u>
	1 year	\$3,510.00

A. Description of Grant Use #1 Funds - Fitness Class Funding

- i. The Fitness Class Funding is to be used by the Community Partner to provide at least **fifty-four (54) fitness classes**, as further defined below, to community residents (“**Fitness Classes**”).
- ii. *Start of Fitness Classes:*
 - a. Community Partner **shall not begin Fitness Classes until one (1) week after the Social Media Campaign begins for the [City] AARP Sponsored Outdoor Fitness Park.**
- iii. *Distribution of funds:*
 - a. FitLot shall distribute Fitness Class Funds to Community Partner by **September 15, 2020 (anticipated)**.
- iv. *Funds must be used by:*
 - a. Community Partner **shall provide the fifty-four (54) Fitness Classes in accordance with the terms of this Addendum within eighteen (18) months of the date funds are received by the Community Partner.**
- v. *Unspent Funds*
 - a. In the event circumstances outside of the reasonable control of Community Partner, such as weather, prohibits the delivery of the fifty-four (54) Fitness Classes during an eighteen (18) month period following the date Fitness Class Funding is received by the Community Partner (“Funding Period”), any unspent Grant funds will be deducted from the subsequent Funding Period’s Grant amount. For unspent Grant funds

remaining at the conclusion of the final Funding Period, FitLot will work with AARP and the Community Partner to make a donation to a local YMCA or to a local 501(c)(3) organization with a health-related mission, subject to prior written approval by AARP, in the amount unspent by the Community Partner on the Fitness Class within fifteen (15) days following the Funding Period.

B. Fitness Classes

- i. Requirements
 - a. A Fitness Class shall consist of **no less than eight (8) adults** who have registered (each a “Registrant”) for the AARP Sponsored Outdoor Fitness Park class on FitLot™ exercise equipment.
 - b. Fitness Classes must be **led by a professionally certified group fitness instructor or personal trainer** (“Trainer”) who has completed an online training on how to facilitate group classes at the FitLot.
 - c. Each Fitness Class must be for the duration of **forty-five (45) minutes to one (1) hour**.
 - d. **If less than eight (8) Registrants are in attendance for a Fitness Class:**
 1. The Trainer shall be paid the standard trainer rate agreed upon between FitLot and Community Partner; and
 2. The unspent \$25 of administrative support cost will be allocated as described in provision III.2.A.v.a **Unspent Funds.**
 3. Community Partner shall provide at least **fifty-four (54) Fitness Classes.**
- ii. Compensation
 - a. Community Partner shall receive a total of **\$65 of support per class** to be used accordingly:
 1. **Twenty-five dollar (\$25) to be allocated towards administrative support**
 2. A maximum of **forty dollars (\$40) per class for trainer compensation**
 - b. Trainer Compensation
 1. Community Partner shall confirm local trainer hourly rate prior to program start date with FitLot.
 2. Any remaining trainer compensation funds should be spent on offering additional classes or will be allocated as described in provision III.2.A.v.a **Unspent Funds.**
- iii. Independent Contractor Status; Employment Disclaimer
 - a. The parties acknowledge that Trainers will be providing services under this Agreement on a part-time/temporary basis and that the relationship will be that of independent contractors. Neither Trainer nor any of Trainer’s agents, employees or helpers will be deemed to be the employee, agent, or servant of the City of Phoenix.
 - b. The parties agree that this Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture, partnership or formal business association or organization of any kind, and the rights and

- obligations of the parties will be only those expressly set forth in this Agreement.
- c. The parties acknowledge that no Trainers performing under this Agreement will be considered a City employee, and that no rights of City Civil Service, City retirement or City personnel rules will accrue to such individual.
- iv. Fitness Class Registration
- a. FitLot will provide a registration website to Community Partner that is compliant with AARP data standards and that will execute FitLot's reporting requirements, as agreed upon between AARP and FitLot ("EventBrite Registration Website").
 - b. **Community Partner shall ensure that each Registrant registers for a Fitness Class on and only utilizing FitLot's Eventbrite Registration Website, including the Registrant's:**
 - 1. first name,
 - 2. last name,
 - 3. home address,
 - 4. email address,
 - 5. date of class, and
 - 6. location of class
 - c. Community Partner shall ensure that **each Registrant accepts an AARP General Liability Waiver prior to participation in a Fitness Class** (see below).

Waiver of Liability and Assumption of Risk.

"By checking the box, I agree that:

1. I am 18 years of age or older, physically capable of participating in each FitLot Method Class that I sign up for and/or participate in. I release, discharge and hold harmless AARP, its affiliates, grantees and subgrantees (this includes FitLot, Inc and the municipality that owns the AARP sponsored fitness park) and their respective, employees, directors, officers, vendors and agents ("Releasees") from any and all liability, claims, and demands of every kind with respect to, including without limitation, any bodily injury, illness, death, property damage or any other harm, that may arise from my participation in each FitLot Method Class. I agree that FitLot, Inc. may confirm with AARP, its affiliates, grantees and subgrantees in writing that I have agreed to these terms and conditions, including the provision of a copy of this Waiver of Liability signed by me with a checkbox.
2. I understand that the reaction of the heart, lung and blood vessel system to exercise cannot always be predicted with accuracy. I know and understand there is a risk of certain abnormal changes, which may occur during or following exercise, including, but not limited to, abnormalities of blood pressure, heart attacks, musculoskeletal strains, pain and/or injury, if adequate warm-up, gradual progression and safety procedures are not followed. I understand that the Releasees shall not be liable for any damages arising from personal injuries sustained by me while participating in and during participation of a FitLot Method Class or while using the Fitlot™ equipment. In consideration of my acceptance and my participation in FitLot Method workouts, I hereby release and agree not to

sue the Releasees' nor their staff, for any and all present and future claims resulting from ordinary negligence and inherent risk during FitLot Method Classes.

3. I have had a recent physical check-up and have a medical physician's permission to engage in aerobic and/or anaerobic activities. I hereby acknowledge and agree to assume responsibility for all the risks, whether identified herein or not, even those risks arising out of negligence of the releasee. In consideration of my acceptance and my participation in FitLot Method workouts

4. My participation in each FitLot Method Class is purely voluntary. I assume full responsibility for any bodily injury to myself. "

- d. Community Partner accepts that the Fitness Class registration process **shall include the Registrant reviewing a conspicuously placed Opt-In Notice** (see below) along with an opt-in box that Registrants can check or uncheck to either accept or reject the Opt-In Notice terms and conditions.
 - 1. Opt-In Notice. "Yes, please share my information with AARP so it can keep me informed about AARP programs, events and offerings. I understand AARP will send me an initial email to confirm my interest in further AARP email communications and my email preferences can be changed at any time. [AARP Privacy Policy](#) [or aarp.org/privacy for printed materials]."

C. FitLot Duties and Obligations

- i. FitLot shall distribute Fitness Class Funds to Community Partner **by September 15, 2020 (anticipated)**.
- ii. FitLot shall provide general administration and data collection, through:
 - a. Providing the Eventbrite Registration Website to Community Partner
 - b. Providing Community Partner with reasonable assistance with Fitness Class Registration and any applicable donations to the local YMCA of unused Fitness Class funds.
 - c. Reporting specified data on Fitness Class Registrants who accepted the Opt-In Notice terms and conditions with a checked opt-in box and those Fitness Class Registrants who actually participated in a Fitness Class and who accepted the Op-In Notice terms and conditions with a checked opt-in box to AARP as agreed upon between FitLot and AARP.

<p>Use of Grant #2 One-Time Social Media Support Funding</p>	<table border="1"> <tr> <th><u>Duration</u></th> <th><u>Total</u></th> </tr> <tr> <td style="text-align: center;">One-time*</td> <td style="text-align: center;">\$500.00</td> </tr> </table>	<u>Duration</u>	<u>Total</u>	One-time*	\$500.00
	<u>Duration</u>	<u>Total</u>			
One-time*	\$500.00				
	<p><i>*Unless AARP provides additional funds</i></p>				

A. Description of Grant Use #2 Funds – Social Media Support

- i. Social Media Support Funding shall be used by Community Partner solely to promote the [City] AARP Sponsored Outdoor Fitness Park and Fitness Classes (defined herein) to local community residents in a ten (10) week social media campaign (“Social Media Campaign”, further defined below).
- ii. *Start of the Social Media Campaign:*
 - a. Community Partner shall **start the Social Media Campaign no sooner than one (1) week after the actual completion date of the AARP Fitness Park.**
- iii. *Distribution of funds:*
 - a. FitLot shall distribute the Social Media Support Funding to Community Partner **by September 15, 2020 (anticipated)**, which should be used exclusively on Facebook advertising.
- iv. *Funds must be used by:*
 - a. Social Media Support Funding must be used by the Community Partner for the above stated Grant **use in accordance with the terms of this Addendum within eighteen (18) months of the date funds are received by the Community Partner.**

B. Social Media Campaign and Social Media Support Toolkit

- i. Community Partner shall utilize **Facebook** for social media promotion.
- ii. To execute the Social Media Campaign, FitLot shall provide Community Partner with a Social Media Support Toolkit that has AARP-approved templates for drafting social media posts (“Toolkit”).
- iii. The Toolkit shall include:
 - a. Twenty (20) templated social media Facebook posts organized as a ten (10) week social media campaign.
 - b. Three (3) 45-60 second videos for Municipality use. The videos will consist of:
 1. One (1) FitLot Neighborhood Coach recruitment video
 2. One (1) general announcement video of AARP Sponsored Outdoor Fitness Park opening, which will link to an AARP hosted webpage or a Cvent link
 3. One (1) “classes starting in your area” program outreach video.
- iv. **Community Partner shall utilize the Toolkit to post on Facebook at least twice a week during the ten (10) week Social Media Campaign.**
- v. Community Partner shall not use the Toolkit in any way that violates any third-party rights

C. Reporting & Data Collection Requirements - Facebook Advertisement Report

- i. Community Partner shall **produce a Facebook Advertisement Report within fifteen (15) days of completion of Community Partners’ ten (10) week Social Media Campaign.**
- ii. The Facebook Advertisement Report shall include the number (each) of:

- a. engagements (a like, reaction, comment, share, click, or video view, as applicable)
- b. reshares
- c. views per post
- d. ‘click-through’ actions to the registration link
- e. conversions (completing the act of signing up for the class).
- iii. Directions for creating the Facebook Advertisement Report can be found in the Other Terms Section below.
- iv. If the Community Partner fails to submit its Facebook Advertisement Report within the aforementioned specified number of days:
 - a. FitLot will follow up with Community Partner with at least two (2) emails and one (1) phone call before making AARP aware of such instance of failed reporting to AARP.
 - b. FitLot will make AARP aware of this and the Community Partner will be deemed ineligible to receive Social Media Support Funding in the following year, if continued social media support funding is made available by AARP beyond year 1 of the program grant

D. FitLot Duties and Obligations:

- i. FitLot shall distribute the one-time pass through Social Media Support Funding to Municipality **by September 15, 2020** (*anticipated*).
- ii. FitLot shall provide general Social Media Campaign Management to Community Partner, including:
 - a. Ensuring all social media posts templates are approved by AARP in writing prior to release of the Social Media Campaign to Community Partner
 - b. Providing the Social Media Support Toolkit
 - c. Providing reasonable assistance with producing the Facebook Advertisement Report if needed
- iii. **Should Community Partner not utilize Facebook for social media promotion, FitLot shall make AARP aware of this and work with AARP and the Community Partner to donate these social media support funds as described in provision III.2.A.v.a Unspent Funds.**

3. OTHER TERMS

<p>Requirements for certified fitness professionals to be hired as FitLot Neighborhood Coaches</p>	<ul style="list-style-type: none"> 1. Community Partner shall only hire certified fitness instructors to lead classes at the AARP Sponsored Outdoor Fitness Park site who have accreditation through the following fitness certifying bodies listed in the next provision: 2. AASFP (Asian Academy for Sports and Fitness Professionals), ACE (American Council on Exercise), ACSM (American Council on Sports Medicine), ACTION (Action Personal Trainer Certification), AFAA (Aerobics and Fitness Association of
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	<p>America), AFPA (American Fitness Professionals and Associates), BCRPA (British Columbia Recreation and Parks Association), canfitpro (Canadian Fitness Professionals Inc), CHEK (Corrective Holistic Exercise Kinesiology Institute), CI (Copper Institute), FAI (Functional Aging Institute), IFPA (International Fitness Professionals Association), ISSA (International Sports Sciences Association), NAFC (National Association for Fitness Certification), NAFTA (National Aerobics & Fitness Trainers Association), NASM (National Academy of Sports Medicine), NBHCW (National Board for Health & Wellness Coaching), NCCPT (National Council for Certified Personal Trainers), NCEP (National College of Exercise Professionals), NCSF (National Council on Strength and Fitness), NESTA (National Exercise & Sports Trainers Association, Inc), NETA (National Exercise Trainers Association), NPI (National Posture Institute), NFPT (National Federation of Professional Trainers), NSCA (National Strength and Conditioning Association), NSPA (National Strength Professionals Association), PTAG (Personal Training Academy Global)</p> <p>3. Community Partner shall obtain and save in its records, a verification of fitness certification for each individual hired as FitLot Neighborhood Coach.</p>
<p>Facebook Advertisement Report</p>	<p>[See forthcoming FitLot Facebook Outreach Campaign Guide that will be emailed]</p>
<p>Use of Class Registration System</p>	<p>[See forthcoming FitLot Registration System Guide that will be emailed]</p>
<p>Ongoing Maintenance of AARP Sponsored Outdoor Fitness Park</p>	<p><u>Signage.</u> The Community Partner shall allow the names and logos of FitLot and AARP to be displayed on permanent Project signage, which shall be substantially in the form provided to the Community Partner and mounted in a mutually agreed location on poles.</p> <p><u>Logo placement on shade canopy and surfacing.</u> In coordination with Section 2.A. (Sponsorship Benefits) in the Agreement, Community Partner agrees to maintain the AARP branded surfacing and canopy for at least the duration of the manufacturer’s warranty of 10 years. After 10 years, the Community Partner has the option of replacing the canopy and/or surfacing with an unbranded canopy and/or surfacing of the original color. If Community Partner chooses not to replace the AARP branded canopy and flooring after their respective warranties expire, the</p>

	Community Partner shall remain obligated to maintain those materials in good repair.
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4. FITLOT CONTACT INFORMATION

FitLot address	4035 Washington Avenue New Orleans, LA 70125
FitLot programming contact	Name: Jessica Atwood Title: Program Manager Email: jessica@fitlot.org Telephone: 504.258.1628

5. COMMUNITY PARTNER CONTACT INFORMATION

Community Partner address	2700 N 15 th Avenue Phoenix, AZ 85007
Community Partner programming contact	Name: Kat Mase Title: FitPHX Coordinator Email: kat.mase@phoenix.gov Telephone:602-262-6864

SIGNATURES ON FOLLOWING PAGE

This Programmatic Grant Addendum is acknowledged by the Community Partner as of the date stated in its first paragraph of this Programmatic Grant Addendum:

Community Partner

By: Kathleen Mase Date: 10/2/20
Name: Kathleen Mase
Title: FitPHX Coordinator
Address: 2700 N. 15th Ave., Phx., 85007
Tel.: 602-262-6864
Email: kat.mase@phoenix.gov

FitLot

By: Adam Mejerson Date: 10/01/2020
Name: Adam Mejerson
Title: Executive Director
Address: 4035 Washington Ave, New Orleans, LA 70125
Tel.: 504-264-1568
Email: Adam@FitLot.org

ACKNOWLEDGED BY:

[Community Partner's Recreation Department DIRECTOR]

By: Tracee Hall Date: 10/2/20
Name: Tracee Hall
Title: Acting Parks and Recreation Director
Address: 200 W. Washington St., 16th Flr., Phoenix, AZ 85003
Tel.: 602-534-1870
Email: tracee.hall@phoenix.gov

[Community Partner's Recreation Department PROGRAMMING LEAD]

By: Kathleen Mase Date: 10/2/20
Name: Kathleen Mase
Title: FitPHX Coordinator
Address: 2700 N. 15th Ave., Phx., 85007
Tel.: 602-262-6864
Email: kat.mase@phoenix.gov

Attachment C

AMENDMENT #2 TO FITLOT PARTNERSHIP AGREEMENT No. 150685--0

This Amendment to the FitLot Partnership Agreement (this "Amendment") is made and entered into on July 1, 2022, by and between City of Phoenix Parks and Recreation, a municipality in the state of Arizona ("Community Partner"), and FitLot, Inc., a non-profit corporation with a principal place of business in New Orleans, Louisiana ("FitLot").

WHEREAS, Community Partner and FitLot are parties to a FitLot Partnership Agreement, fully executed on August 2, 2019 ("Agreement"); and

WHEREAS, under the Agreement, as amended, Community Partner has agreed to collaborate with Fitlot (collectively, the "Parties") on the construction of a, now called, AARP Sponsored Outdoor Fitness Park funded by AARP at Rose Mofford Sports Complex located at 833 N 25th Ave, Phoenix, AZ 85021 (the "Project"); and

WHEREAS, there are provisions missing in the Agreement that are required by AARP and related to the Community Partner's ongoing obligations, promotion, and care of the Project; and

WHEREAS, subsequent to the Agreement being fully executed, FitLot and AARP finalized terms of a programmatic grant whereby AARP will also sponsor the Community Partner in hiring and training FitLot Neighborhood Coaches to lead no-cost outdoor community fitness classes at Rose Mofford Sports Complex and associated social media outreach. The implementation of programmatic grant shall be organized by FitLot with the terms of the programmatic grant provided herein;

WHEREAS, the Parties to this Amendment now desire to make certain modifications and amendments to the Agreement provided herein;

NOW, THEREFORE, in consideration of the mutual provisions, covenants, and undertakings set forth in this Amendment and in the Agreement, and other good and valuable consideration which is hereby acknowledged, the parties to this Amendment agree as follows:

1. **Attachment A - Programmatic Grant Renewal Addendum to the FitLot Agreement** ("Programmatic Grant Renewal") is attached to this Amendment.

This Amendment contains all revised terms and conditions agreed upon by the parties. All terms and conditions in the Agreement not amended herein remain in full force and effect.

<Signature page and Programmatic Grant Addendum immediately follows>

Attachment D

IN WITNESS WHEREOF, this Amendment is executed and effective as of the date first set forth above.

FITLOT, INC.:

By: _____ Date: _____

Name: Adam Mejerson
Title: Executive Director
Address: 4035 Washington Avenue, New Orleans, LA70125
Tel.: 504-264-1568
Email: adam@fitlot.org

CITY OF PHOENIX:

By: _____ Date: _____

Name: Cynthia Aguilar
Title: Parks and Recreation Director
Address: 200 W Washington Street, 16th floor, Phoenix, AZ 85003
Tel.: 602-262-4986
Email: Cynthia.aguilar@phoenix.gov

APPROVED AS TO FORM:

Acting City Attorney

ATTEST:

City Clerk

ATTACHMENT A

PROGRAMMATIC GRANT RENEWAL

This is an addendum specifying the renewal terms of the previously executed Partnership Agreement and Programmatic Grant Addendum (the “Programmatic Grant Addendum”), dated as of July 1, 2022, by and between City of Phoenix (“Community Partner”) and FitLot, Inc. (“FitLot”).

I. BACKGROUND

A. Community Partner and FitLot are parties to a FitLot Partnership Agreement and Programmatic Grant Addendum (the “Agreement”). FitLot and Community Partner previously agreed to collaborate on building and programming an AARP Sponsored Outdoor Fitness Park located at Rose Mofford Sports Complex in Phoenix, AZ.

FitLot is pleased to grant Community Partner a renewal of programmatic funding to be used for activating the AARP Sponsored Outdoor Fitness Park with local fitness professionals who will host regular, no-cost community classes at the AARP Sponsored Outdoor Fitness Park. The programming of the AARP Sponsored Outdoor Fitness Park is funded by AARP and FitLot is the coordinating party, passing the programmatic funds through to the Community Partner to fulfill the obligations of the previously executed Programmatic Grant and or grant addendums.

II. GENERAL TERMS

Community Partner and FitLot agree as follows:

1.1 Use of Grant

Community Partner will use the Grant for the purposes previously agreed upon in the Grant Plan. Primarily to support the hiring of local fitness professionals to offer no-cost community classes at the AARP Sponsored Outdoor Fitness Park.

1.2 Grant Period

The renewal “Grant Period” shall be twelve (12) months from the date of fund distribution.

1.3 Grant Amount

The grant renewal shall be in the amount of \$3,510 to support 54 classes over a 12-month period.

1.4 Reporting

Community Partner will utilize the Eventbrite registration system and provide FitLot with reports as set out in the previously executed Programmatic Grant.

1.5 Unspent Funds. (Please check one)

- ___ Community Partner will donate any remaining, “Unspent Funds” from Grant Term number 1, as defined in the original Partnership Agreement in the amount of \$3380 to a local YMCA or a local 501(c)(3) organization with a health-related mission, **subject to prior written approval** by FitLot and AARP within fifteen (15) days following the Funding Period. Please email a donation receipt to Programs@fitlot.org. Grant funds will be disbursed upon receipt of donation confirmation.

ATTACHMENT A

PROGRAMMATIC GRANT RENEWAL

- X__ Or Community Partner agrees to use Unspent Funds in the Amount of \$3380 to program an additional (52 classes) classes at \$65 per class during the following 12-month Grant Period. A total of 106 (52 classes + 54) are to be provided during the Grant Period.

This Programmatic Grant Renewal is acknowledged by the Community Partner as of the date stated in the first paragraph of this Programmatic Grant Renewal:

Community Partner

FitLot

By: _____

By: _____

Name:

Name: Adam Mejerson

Title:

Title: Executive Director

Address:

Address: 4035 Washington Avenue
New Orleans, LA 70125

Tel.:

Tel: 504.264.1568

Email:

Email: Adam@FitLot.org

Date: _____

Date: _____



To: Parks and Recreation Board

Date: September 29, 2022

From: Cynthia Aguilar, Director

Subject: NEW REQUESTS TO VEND IN CITY PARKS

This report requests Parks and Recreation Board approval of requests for vending at upcoming events being held in City parks.

BACKGROUND

Phoenix parks are reserved throughout the year for various events. Many events are produced by an event coordinator or community partners and some are public events sponsored by the Parks and Recreation Department. Some events are free to the public, while others require a registration fee. Some of the events charge booth entry fees to vendors who sell food and/or products to attendees. Producers who rent City parks and facilities are required to follow all City guidelines, including obtaining all applicable permits and licenses.

Vending, which is a typical component of events in parks, can also consist of selling admission, food and beverages, t-shirts or other concessions for fundraising purposes. Per Phoenix City Charter and Phoenix City Code 24-40, the Board must approve commercial sales/vending in public parks. Each year, the Parks and Recreation Department brings the board an annual report requesting approval of all known requests for vending in parks; however, staff also receives requests for vending throughout the year, such as the four requests below, and brings them to the Board for approval.

DISCUSSION

Urban Wildlife Conservation Day (Rio Salado Restoration Habitat Area: Oct. 8)

This event is hosted in partnership with the Office of Environmental Programs, Arizona Game and Fish Department, Audubon Arizona, Corazon Latino, Rio Reimagined and Arizona State University. It features an Urban Bird Treaty Program signing by Phoenix Mayor Kate Gallego with a representative from the U.S. Fish and Wildlife Service's Urban Bird Treaty Program. The Treaty Program supports public-private partnerships in U.S. cities that are working to make local communities healthier places for birds and people. Other events include a free educational 'Walk for the Wild', hawk and owl displays, educational presentation on native wildlife and plantings of native nectar plants

to support the monarch butterfly garden. Native plants will be available for purchase and a duo of food trucks will provide food for purchase to the public. This event promotes positive community awareness and engagement for a wide array of ages and abilities.

WayneFest (Coronado Park: Nov. 12)

This annual micro-music festival has been hosted by the Coronado Neighborhood Association (CNA) since 2018, excluding the year 2020, to help fund neighborhood programs such as the community toolshed, community garden, animal welfare, block watch, murals, kids' activities, neighborhood lending libraries and community cleanups. The ticketed event invites the community to enjoy live music, local food trucks, Four Peaks Brewing Co. beer sales and children-focused arts and crafts at the historic Coronado Park. CNA has stated one dollar from every ticket sold will benefit the North High School Brass Band and offers a discounted ticket rate for children under the age of 12. CNA is encouraging attendees to walk or bike to the event and has planned for a bicycle valet station on-site. The estimated attendance for this one-day event is 2,500.

Elvia Solano Foundation Car Show and Toy Drive (University Park: Dec. 10)

This first-time event is hosted by the Elvia Solano Foundation (ESF), a Domestic Nonprofit Corporation in Arizona, formed in June 2022, that does charity work to raise money and awareness for cancer research, specifically Non-Hodgkin's Lymphoma. The event plans to include a car show and toy drive, with food, music, merchandise and raffle tickets available for purchase. ESF has requested to accept cash and toy donations at the event with a goal to raise \$5,000 for Banner Health hospitals. ESF has stated the toys will be given to children in hospitals and underprivileged youth in Phoenix and Mesa. Event partners include Viejitos Car Club and Phoenix Parks and Recreation. The estimated attendance for this free and public event is 200.

Vibe Raiser's Chant and Dance Event (Steele Indian School Park: Jan. 14)

This first-time event is hosted by local certified sound healer Joya Sosnowski and her organization, Vibe Raiser. The ticketed event plans to include a guided meditation, music and dance, as well as food and non-alcoholic beverage vendors. Vibe Raiser currently hosts sound healing events in the community, including at the Desert Botanical Garden. The estimated attendance for this one-day event is 1,000.

As with all requests to vend, each of the event organizers for the events will be required to follow all City guidelines and use requirements for sales, including obtaining any required insurance, permits and licenses.

RECOMMENDATION

Staff recommends board approval of the above requests for vending at upcoming events being held in the identified City parks.

Prepared by: Alonso Avitia, Deputy Director and Jarod Rogers, Deputy Director

Approved by: Martin Whitfield, Assistant Director



To: Parks and Recreation Board

Date: September 29, 2022

From: Cynthia Aguilar, Director

Subject: HERITAGE SUB-PERMIT AGREEMENT – TEETER CARRIAGE HOUSE

This report requests Parks and Recreation Board approval for the Heritage Square Foundation to enter into a new five-year sub-permit agreement with the option to renew an additional five years with GardenMisc LLC, dba Stemistry, for the use of the Teeter Carriage House at Heritage Square.

BACKGROUND

Heritage Square is home to the Rosson House and a collection of other historic buildings that house restaurants and shops. The foundation manages the historic buildings at Heritage Square, oversees sub-permittees and operates Heritage Square for the enjoyment of the public.

Under the terms of the Master Use Agreement with the board, the foundation has authority to select tenants for the historic buildings at Heritage Square and to enter into sub-permit agreements with them, subject to approval of the board. The foundation collects event and rental fees and then remits 25 percent of the proceeds to the City to go into the Heritage Square Fund; the foundation keeps the other 75 percent for operational use.

One of the historic homes at Heritage Square is the Teeter Carriage House, the property is currently vacant and the previous sub-permittee, The BLOM, LLC, dba Royal Coffee Bar, vacated the premises on March 2, 2022, after failing to comply with the terms of their sub-permit agreement.

The foundation began recruiting to fill the Teeter Carriage House vacancy in April 2022, providing detailed information about the property on its website, as well as reaching out directly to local chambers and other organizations such as Local First Arizona and Phoenix Community Alliance to help spread the word. The vacancy posted on the foundation website was viewed 219 times. The foundation entertained 47 phone and email leads and provided 22 onsite tours of the property. Applicants were required to complete an application and provide a business plan and financial information, and interviews and credit checks were conducted.

DISCUSSION

The Heritage Foundation Finance and Tenancy Committees thoroughly reviewed the applications, and applicants with adequate financial resources were invited to interview. Upon the recommendation of the Finance and Tenancy Committees as well as the successful negotiation of terms, the Heritage Foundation Executive Board approved moving forward with Stemistry and now requests approval of the City of Phoenix Parks Board to enter into Sub Permit Agreement with Stemistry.

Stemistry, a combination flower bar and coffee lab, opened their first location in Scottsdale in March 2022, after operating as an online flower shop for two years. After several months of success at the Scottsdale location, the business is planning to open their second location at Heritage Square and Science Park in downtown Phoenix, with the goal of creating a welcoming space for the community. Stemistry offers a build-your-own bouquet bar, where customers can use free tools and supplies to create their own flower arrangements, as well as a “Latte Lab” where flowers and coffee are combined to make specialty drinks and are served with a mini bouquet.

Stemistry prioritizes sustainability and environmental impact of profits and takes this into consideration when selecting ingredients. They have chosen to only sell retail items in the shop that are from small and local Arizona businesses. Furthermore, Stemistry plans to use local Arizona social media influencers to spread brand awareness. Current income streams for the company include sales from online orders, in-person orders, local delivery and private parties and events. The company still offers both local and national flower delivery in addition to their physical coffee shop location.

In accordance with the Master Use Agreement, the Foundation Board is recommending approval for the attached draft sub-permit agreement with Dylan Capshaw, owner of GardenMisc, LLC through September 2027 with an option to extend through September 2032. (**Attachment A**).

RECOMMENDATION

Staff recommends Board approval for the Heritage Square Foundation to move forward with a new five-year sub-permit agreement with GardenMisc, LLC, dba Stemistry and allow the Director to review and approve the final sub-permit agreement.

Prepared by: Kat Mase, (Delegate) Deputy Director

Approved by: Martin Whitfield, Assistant Director

Attachment A

SUB-PERMIT AGREEMENT

This Sub-Permit Agreement (the "Agreement") is made and entered into as of August 1, 2022, by and between Rosson House-Heritage Square Foundation, Inc., an Arizona nonprofit corporation ("Foundation") and GardenMisc LLC, doing business as Stemistry ("Occupant").

WITNESSETH

In consideration of the mutual covenants hereinafter stated, the parties agree as follows:

1. Creation of Sub-Permit. It is understood and agreed that this Agreement is in the nature of a permit and does not create a lease, easement, or other estate or right in the real property. Foundation hereby grants to Occupant an exclusive Sub-Permit to use the real property known as the Teeter Carriage House, 618 E. Adams Street, Phoenix, Arizona 85004 (the "Premises"). The Premises include 736 square feet of interior floor space as well as the surrounding Yard (defined below) should Occupant choose to utilize the Yard. The Premises is part of Heritage Square in Heritage and Science Park in the City of Phoenix and is owned by the City of Phoenix.

2. Term. The term of this Agreement shall commence on October 1, 2022, when Foundation will deliver possession and the right to use the Premises to Occupant, and terminate on September 30, 2027, with the option to renew (outlined below in Section 4 of this agreement); provided, however, that Foundation may terminate this Agreement upon sixty (60) days written notice to Occupant for any default of this Agreement as set forth below, provided that Occupant has not cured such default in the same sixty (60) days unless otherwise noted in this Agreement. The authority under which Foundation may enter into this Agreement is subject to the Master Use Agreement dated November 10, 1987, between the City of Phoenix and Foundation, a copy of which is attached hereto as **Exhibit A** and is incorporated by reference (the "Master Use Agreement"); and provided, however, that Occupant, at its sole discretion, may cancel this Agreement without cause upon sixty (60) days written notice and secure reimbursement of advanced permit fees and deposits, subject to payment to Foundation of the monthly permit fee, as

Attachment A

defined below, until the date of noticed termination and for six (6) months following termination. In the event that Foundation exercises its right to terminate this Agreement pursuant to this paragraph, the Occupant shall not be subject to payment of the monthly permit fee following the date of termination and Foundation will promptly reimburse Occupant all advanced and unapplied permit fees and deposits.

3. Monthly Permit Fee. The payment commencement date is November 1, 2022. The monthly fees for the five years of this Agreement in the sum of \$50,167.72 will be advanced by Occupant and deposited with Foundation upon occupancy. The monthly fees are due and will be applied the first day of each term month at the rates reflected below.

Rent Breakdown for the five (5) years of this Agreement:

November 1, 2022 – September 30, 2023: \$800 per month

October 1, 2023 - September 30, 2024: \$824 per month

October 1, 2024 - September 30, 2025: \$848.72 per month

October 1, 2025 - September 30, 2026: \$874.18 per month

October 1, 2026 - September 30, 2027: \$900.41 per month

Occupant further agrees to pay Foundation, together with the monthly fee, any excise, sales or privilege tax imposed or levied by any governmental entity on Foundation on account of this Agreement.

4. Occupant's Option. Occupant shall have the option, exercisable in writing at any time prior to September 1, 2027, to extend this Agreement for an additional term of up to five (5) years. In the event Occupant exercises this Option, the monthly fees payable in each successive term year shall be set at a rate 3% greater than the prior term year. In the event Occupant exercises this Option, all remaining terms, covenants, and conditions of the Agreement shall remain in full force and effect.

Attachment A

5. Late Fee. If Occupant fails to pay the monthly fee when due or any other amount of any kind payable by it under this Agreement, such unpaid amount shall bear interest from the date due to the date of payment at the lower rate of 5% per annum or the maximum rate then allowed by law. If the Occupant is in default of payment for more than ninety (90) calendar days, the late fee will go up to 18% per annum. This interest provision is in addition to and not in lieu of Foundation's other rights and remedies hereunder.

6. Security Deposit. Foundation must receive a security deposit of \$800.00 from the Occupant upon occupancy of the Premises. The security deposit shall be refunded to Occupant upon the conclusion of this Agreement if Occupant satisfies all its obligations under this Agreement. The security deposit shall not earn interest and Foundation is not required to separate the deposit from its other funds.

7. Tenant Improvement Allowance. A Tenant Improvement Allowance ("TIA") will be provided to Occupant from the Heritage Square Foundation in the amount of \$500 as a one-time grant to Occupant upon signing of this Agreement. The Occupant may choose to donate this amount to the Heritage Square Foundation, use it for its build out, or put it towards the rehabilitation of the exterior bar doors on the Teeter Carriage House.

8. Taxes. Occupant shall pay directly to the taxing authority before delinquent all transaction privilege taxes arising from transactions conducted in the Premises, and all taxes, assessments, license fees, and other charges that are levied and assessed against Occupant's personal property installed or located in or on the Premises.

9. Minimum Hours of Operation. Occupant shall hold the Premises open for business, at a minimum of four (4) days a week for six (6) hours a day. Occupant will not be beholden to these hours or required to operate business in the case of emergencies, natural disasters, shutdowns due to COVID-19/other pandemic viruses, or special events with prior approval from Foundation.

Attachment A

10. Scope of Permitted Uses. The Premises may be used as a coffee shop selling beverages and pre-packaged food, a retail store including for, but not limited to, florist services, and/or a gathering/private events space with approved events by Foundation and the City of Phoenix. Examples of approved and prohibited events will be provided by Foundation, referred to as “Heritage Square Tenant Event Parameters”, and attached to this agreement as **Exhibit B**. Occupant may sell alcohol on Premises if all proper licensing is secured and in good standing. No goods, merchandise, or materials shall be kept, stored, or sold by Occupant on or about the Premises that are in any way hazardous. Occupant agrees not to deface or damage the Premises in any manner, to overload the floors of the Premises (max floor load is 12 psi), or in any way to cause more than normal wear to the Premises. Notwithstanding the general default provisions contained elsewhere in this Agreement, violation of this provision for a prohibited use of the Premises identified in **Exhibit B** will constitute a material breach of this Agreement for which Occupant need not be given notice or the opportunity to cure and that in the event of such breach Foundation may immediately exercise any and all remedies permitted to it under sections 26 and/or any other applicable part of this Agreement.

11. Laws, Rules, and Regulations. Occupant shall comply with all applicable laws, rules, and regulations.

11.1. Federal, State, and City/County laws, mandates, and regulations. Occupant agrees to comply with all laws, mandates, and regulations in effect as they may exist from time to time. If Occupant serves or sells alcoholic beverages, Occupant is required to obtain the appropriate licenses and permits. Occupant shall comply with all OSHA regulations.

11.2. City Park Rules and Regulations. Occupant shall comply with all the rules, regulations, and procedures governing occupants of Heritage Square and Heritage and Science Park as they may exist from time to time. Copies of the currently applicable rules, regulations, procedures, and code of conduct governing occupants of Heritage Square and Heritage and Science

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Park are available through the City of Phoenix website (<https://www.phoenix.gov/parks>). Occupant shall be solely responsible for ensuring awareness of the then-current rules, regulations, and procedures governing occupants of Heritage Square and Heritage and Science Park. This includes the Heritage Square parking garage rules as determined by Ace Parking and commercial filming and photography rules as determined by the City of Phoenix and the City of Phoenix Film Office (<https://www.phoenix.gov/econdev/filming>).

11.3. Foundation Rules and Regulations. Occupant shall provide Foundation with copies of all licenses and permits required to operate as determined by the Scope of Permitted Uses in section 10. Occupant shall provide Foundation with an annual copy of their Certificate of Liability Insurance and all other applicable insurance policies and immediately communicate any license or permit status changes. Occupants' Certificate of Liability Insurance must list both the address of the Premises (618 E. Adams Street, Phoenix, AZ 85004) and Foundation office address (113 N. 6th Street, Phoenix, AZ 85004) as Additionally Insured in the Description of Locations box on the COI. Example of format for Additionally Insured entities hereunder:

Heritage Square Foundation
113 N. 6th Street
Phoenix, AZ 85004

Teeter Carriage House
618 E. Adams Street
Phoenix, AZ 85004

Any contractors that are hired by Occupant for repairs must also provide their Certificate of Liability Insurance in the same manner as listed above. Occupant must comply with all Tenant Events Parameters as laid out in the "Heritage Square Tenant Event Parameters", attached to this Agreement as **Exhibit B**. This Agreement is contingent upon Occupant receiving all appropriate licensing such as liquor, retail, restaurant-related, and all other operating permits required, as well as obtaining city, county, and state inspections to operate according to the Scope

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of Permitted Uses in Section 10 of this Agreement. Foundation reserves the right to update its Rules and Regulations at any time but must submit any changes to the Occupant with thirty (30) calendar days written notice, prior to implementation of the changes. Failure to comply with Foundation Rules and Regulations gives Foundation cause to cancel this Agreement upon sixty (60) calendar days written notice with a cure period of the same sixty (60) calendar days.

12. Conditions of Premises and Alterations. The Premises is a historic building on the National Registry of historic places and is subject to all laws and rules that apply to registered historic places. The Premises is owned by the City of Phoenix. Occupant shall retain a certified inspector upon entering into this Agreement with Foundation. Once the final inspection and mutually agreed on necessary repairs for the premises to be move-in ready are completed, Occupant acknowledges acceptance of the existing condition of the Premises. Foundation represents and covenants that upon final inspection of the Premises and delivery of the Premises to Occupant all HVAC, plumbing, and electrical will be in good working condition. Foundation represents and warrants the Premises is ADA compliant or is certified as exempt from ADA compliance pursuant to the law of application prior to delivery of the Premises to Occupant. This Agreement assumes that the facility will be move-in ready by October 1, 2022. If the Premises is not move-in ready by that date, the permit start date and fees deadlines may be postponed and adjusted by mutual written agreement of the Parties. Any upgrades that arise after inspection and are Occupant use specific are the responsibility of Occupant and not the City of Phoenix or Foundation.

12.1. Interior Alterations. Occupant will not, without the prior written consent of Foundation, make or allow to be made any alterations, improvements, or additions (collectively "Alterations") to the interior of the Premises nor shall Occupant alter or remove any fixtures or equipment that may be installed on the Premises without Foundation's prior written approval. Occupant shall provide Foundation for its prior approval any proposed plans for Alterations, which

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approval may be withheld for any reason. All Alterations are subject to the approval of both Foundation and the Parks and Recreation Board. Any Alterations made, excepting only Occupant's trade fixtures, will become part of the Premises and be the property of Foundation unless Foundation requires Occupant to remove such Alterations upon expiration or termination of this Agreement. Occupant's trade fixtures must be approved by Foundation and the City of Phoenix prior to installation. Any new trade fixtures after the signing of this Agreement must be approved prior to installation by Foundation and the City of Phoenix. Failure to comply with this section will result in fees, fines, reparations, and other remedies to restore the Premises to its previous condition.

12.2. Exterior Building Alterations. Occupant will not make or allow any Alterations to the exterior of the Premises, nor shall Occupant alter or remove any features of the building. Occupant shall provide Foundation for its prior approval any proposed plans for exterior building Alterations, which approval may be withheld for any reason. All exterior building Alterations are subject to approval by Foundation, City of Phoenix Parks and Recreation, and City of Phoenix Office of Historic Preservation. Any exterior building Alterations will be made by the City of Phoenix or its contractors and will become part of the Premises and be the property of the City of Phoenix. These rules and regulations apply to any exterior storage as well. Failure to comply with this section will result in fees, fines, reparations, and other remedies to restore the premises to previous condition.

12.3. Exterior of Premises (Yard). The "Yard" is defined as the exterior hardscape space immediately north of the Teeter Carriage House that is approximately the length of the north side of the building and extends about 10 feet to the north towards the Lath Pavilion. Occupant will not, without the prior written consent of Foundation and the City of Phoenix, make or allow to be made any Alterations, improvements, or additions to the exterior landscaping of the Premises, including but not limited to the use of outdoor furniture and seating, the installation and use of shade structures, and the use and installation of outdoor cooling or warming devices (i.e., misters, heat

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lamps, chimineas, etc.) ("Yard Improvements"). Occupant shall provide Foundation for its prior approval any proposed plans for Yard Improvements, which approval may be withheld for any reason. Exterior storage of any items by Occupant must be submitted to Foundation in writing for approval prior to installing or storing trade fixtures or operations-related supplies of any kind in the Yard. Foundation requires Occupant to remove such Yard Improvements upon expiration or termination of this Agreement and restore the Yard to its original condition. Failure to comply with this section will result in fees, fines, reparations, and other remedies to restore the Premises to previous condition. The Yard must be always kept clean; no dumping of trash, dirty mop water, or discarded items are permitted.

12.4. Liens. Occupant shall keep the Premises free and clear of all liens of mechanics or materialmen, and all liens of a similar character, including judgment liens, arising out of or in any way connected with Occupant's use of the Premises or permitted alteration thereof. Notice is hereby given that Occupant, in making any improvements or alterations to the Premises or doing any other acts in connection with Occupant's use and occupancy of the Premises, does not act as Foundation's agent or in any other representative capacity for Foundation, and neither Foundation nor the Premises shall be liable for any labor, services or materials furnished to or to be furnished to Occupant, or to anyone holding the Premises or any part thereof through or under Occupant, and so mechanics' or materialmen's liens for any such labor or materials shall attach to or affect the interest of Foundation in and to the Premises. In the event any such lien or encumbrance is filed against the Premises, Occupant shall, within ten (10) business days after written notice thereof from Foundation, at Occupant's sole expense, satisfy the lien or obtain a surety bond and other items as may be required by Arizona Revised Statute § 33-1004, or any other then applicable statute, to discharge the Premises from such lien or encumbrance. Without in any manner limiting Foundation's other rights and remedies hereunder, Foundation and Occupant hereby expressly agree that Foundation may specifically enforce Occupant's obligation to obtain any such bond.

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13. Signs. Occupant may not erect any signs in the windows of or outside the Premises or on Heritage Square that differ in size, in placement, in reference to the Premises, or in design, from the signs of the other permittees on Heritage Square or violate any signage policies or regulations adopted by Foundation, the Heritage and Science Park Advisory Board, or the City of Phoenix. Occupant will remove any signs erected by it at the termination of this Agreement, and at its sole expense shall repair any damage caused by such removal. No signs are allowed to be placed within the Heritage Square parking garage or any other area of the square without prior approval by Foundation and the City of Phoenix. All proposed signage for the Teeter Carriage House must be approved ahead of installation.

14. Maintenance of Premises. Occupant shall provide interior janitorial maintenance services and maintenance and repairs necessitated by normal wear and tear, to include drain clogs, and to pay for any Alterations during the term of this Agreement. All maintenance, repair, and Alterations by Occupant shall be done in a good and workmanlike manner and in compliance with all applicable laws, rules, regulations and building codes. Occupant shall be responsible for procuring all necessary approvals and permits associated with any improvements, maintenance, repair and/or Alterations to the Premises. Occupant shall provide annual interior flooring maintenance as well as any regular maintenance required for its trade items and equipment. Occupant shall protect plumbing fixtures drains by installing mesh drain covers to prevent objects from entering the drainpipes. Occupant shall construct and maintain a safe protective enclosure for the exterior mop sink with prior design approval by Foundation and the City of Phoenix.

14.1. Maintenance Schedule. The Occupant will follow the required maintenance schedule for the Premises as provided by Foundation below. Foundation and City staff will conduct monthly inspections to ensure that the maintenance schedule is being followed. If maintenance requirements are not met, Foundation will provide Occupant with a thirty (30)-day cure period. Upon inspection after the cure period, if the required maintenance is not completed, Foundation will contract an

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outside party to complete the maintenance and bill Occupant 110% of the cost to be paid within thirty (30) calendar days of invoice. Unpaid portions of the invoice will incur a late fee of \$100, plus \$20/day until paid.

14.1.1 Flooring Maintenance. Interior flooring must be serviced once per permit year at a minimum. This includes a standard professional cleaning, any prep needed (such as sanding), and necessary sealing of the wood, tile, vinyl, or concrete floors. Occupant must deliver an equipment layout plan with equipment detail (type & weight) prior to installation of equipment at the Premises and submit an equipment site layout request for Foundation and City of Phoenix approval.

14.1.2. Grease Traps or Interceptors. Grease trap maintenance is not required by Occupant.

14.1.3. Hydro-Jetting and Plumbing Maintenance. Hydro jetting of all plumbing lines should be completed once per year. Jetting must take place through all of the white floor sink drains to the grease traps and from the traps to the city main line (if applicable). A schedule must be kept and provided upon request.

14.1.4. Landscaping. Landscaping must be maintained weekly by Occupant either by self-performance or through a third-party professional landscaping company. All landscaping must be kept in an orderly manner without overgrown vegetation, trip hazards, or encroachment onto city property outside of the Yard. All landscaping must follow the City of Phoenix noise ordinance rules and follow City of Phoenix Parks Rules and Regulations. All professional landscaping must be completed by 10am so as not to disturb surrounding tenant buildings during their operations hours.

14.1.5. Dumpster Enclosure and Recycling. Occupant may utilize the dumpster south of Adams Street and a designated recycling bin for waste and recycling disposal. No hazardous materials are allowed onsite or in either receptacle. The dumpster area cleanliness is expected to be maintained by all Occupants with no waste left on the ground, the dumpster lids closed, and no spills present in the enclosure. If Occupant is in violation of the previously mentioned cleanliness

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expectations, a fee will be charged in the amount of \$100 to the Occupant to pay for the cleanup of the enclosure.

14.2. Repairs. Occupant is not responsible for structural or mechanical repairs at or for the Premises other than those needed for equipment owned by Occupant, or any interior wall and flooring damage caused by Occupant. Occupant shall not attempt to undertake any repairs to the electrical panels, HVAC systems, plumbing, fire alarm and suppression systems, or any other features of the building owned by the City of Phoenix. Foundation will provide Occupant with estimated timelines for repair projects as provided by the City. The City of Phoenix makes repairs with as little business interruption as possible. If a repair causes Occupant business disruption for a period greater than the period reported to Occupant as required for the subject repair, then the Foundation will compensate Occupant with a rent and utility expenses credit commensurate with the period of disruption. Occupant is responsible for toilets, sinks, built-in cabinetry, bar tops, Ansul systems, and hood repairs. All contractors hired by Occupant for repairs must be pre-approved by Foundation and the City of Phoenix prior to commencement of repairs. Occupant shall provide a list of preferred contractors ahead of scheduled work to Foundation and all contractors must be licensed, bonded and insured. The Occupant shall obtain the contractor's Certificate of Liability Insurance ahead of work and the certificate must list both the address of the Premises (618 E. Adams Street, Phoenix, AZ 85004) and Foundation office address (113 N. 6th Street, Phoenix, AZ 85004) as Additionally Insured in the Description of Locations box on the COI. Example of format for Additionally Insured entities hereunder:

Heritage Square Foundation
113 N. 6th Street
Phoenix, AZ 85004

Teeter Carriage House
618 E. Adams Street
Phoenix, AZ 85004

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14.3. Duty to Report. Occupant shall report all repair needs to Foundation immediately upon discovery. Foundation may solicit answers to questions to effectively troubleshoot issues and then shall promptly submit a work order to the City to address the issue. Unless otherwise provided, the failure to complete reported repair needs for the Premises within forty-five (45) calendar days is cause for Occupant to terminate the permit and secure reimbursement of advanced and unapplied permit fees and deposits.

15. Utilities. All utility services, including water, sewage, garbage, telephone, internet, electric, and natural gas, shall be paid by Occupant. Neither Foundation nor the City of Phoenix shall be liable for the stoppage or interruption of any utilities, nor shall any such stoppage or interruption of utilities entitle Occupant to any abatement in full or in part of the monthly fee or other sums payable hereunder. Occupant shall be solely responsible for setting up and maintaining all utility services. Occupant can begin services (upon the execution of this Agreement) by contacting the Heritage Square Foundation to set up water service and the City of Phoenix Parks Staff member currently in charge of the initial setup of electrical. There is currently no natural gas service at this location.

16. Parking. Occupant and Occupant's customers may use unreserved vehicle parking spaces in the Monroe Street Garage (Heritage Garage) located just west of the Premises said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "Permitted Size Vehicles." Foundation may regulate the loading and unloading of vehicles from time to time as they see fit. No vehicles other than Permitted Size Vehicles may be parked in the Heritage Square Common Area without the prior written permission of Foundation.

16.1. Occupant shall not permit or allow any vehicles that belong to or are controlled by Occupant or Occupant's employees, suppliers, shippers, customers, contractors, or invitees to be loaded, unloaded, or parked in areas other than those designated by Foundation for such activities.

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16.2. Occupant shall not service or store any vehicles in the Heritage Square Common Area.

16.3. If Occupant permits or allows any of the prohibited activities described in this Paragraph, then Foundation shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle.

16.4 Occupant may work with Ace Parking to request discount parking validations for their guests that park in the Heritage Garage, and purchase monthly parking cards for employees, and is responsible for following all Ace Parking rules and regulations.

17. City Responsibilities. Pursuant to the terms of the Master Use Agreement, exterior landscaping of the common areas only, heating and air systems maintenance and repairs, plumbing maintenance and repairs, electrical preventative maintenance and repairs, and pest management for the Premises shall be provided by the Parks and Recreation Board of the City of Phoenix, Arizona. If Occupant identifies any needs that fall under the City Responsibilities, Occupant shall report to Foundation immediately upon identification of the need. Occupant will not attempt to undertake any of the above responsibilities without the written consent of Foundation. Failure to comply with this section will result in fees, fines, reparations, and other remedies to restore the Premises to the City of Phoenix approved condition.

18. Indemnification. Occupant shall indemnify and hold Foundation, the City of Phoenix and the Premises harmless from and against (i) any and all liabilities, penalties, losses, damages, costs and expenses, demands, causes of action, claims or judgments arising from or growing out of any injury to any person or persons or any damage to any property as a result of any accident or other occurrence during the term hereof occasioned by any act or omission of Occupant, its officers, employees, agents, concessionaires, licensees, contractors, and invitees, or arising from or growing out of the use, maintenance, occupation or operation of the Premises during the term

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hereof, and (ii) from and against all legal costs and charges, including reasonable attorneys' fees, incurred in or on account of any such matters and the defense of any action arising out of the same or in discharging the Premises or any part thereof from any and all liens, charges or judgments that may accrue or be placed thereon by reason of any act or omission of Occupant; provided, however, that Occupant shall not be required to indemnify Foundation for any damage or injury of any kind arising as the result of the obligations of Foundation or the City of Phoenix hereunder, the willful or negligent acts of Foundation or the City of Phoenix, or those of their agents or employees.

19. Insurance. Occupant shall obtain and maintain all required insurance and submit updated proof of insurance to Foundation annually. This includes, but is not limited to, Certificate of Liability and business interruption insurance. If proper insurance, according to this Agreement, is not obtained by Occupant prior to use of the Premises, Foundation shall reserve the right to impede public areas until appropriate licenses are confirmed and provided to Foundation and City of Phoenix. A five (5)-business day cure period will be provided to Occupant to remedy the insurance lapse, or Foundation has the right to force place insurance at Occupant's cost to be added to the rent or default Occupant and exercise remedies which could include a lockout.

19.1. Property Insurance. Occupant shall be solely responsible for insuring its trade fixtures, goods, wares, merchandise, and other personal property on the Premises. Occupant hereby agrees that Foundation shall not be liable for damage or injury to Occupant's business or any loss of income therefrom or for damage or injury to the trade fixtures, goods, wares, merchandise or other property of Occupant in or about the Premises regardless of whether such damage or injury is caused by or results from fire, electricity, natural gas, water or rain, wind, sun or from breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause other than the intentional or grossly negligent act of Foundation, whether said damage or injury results from conditions arising upon the

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Premises or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Occupant.

Any policy or policies of insurance obtained by Occupant in connection with the Premises shall include a clause or endorsement denying the insurer any rights of subrogation against Foundation to the extent rights have been waived by Occupant prior to the occurrence of injury or loss. Occupant hereby waives any and all rights of recovery against Foundation for loss of or damage to Occupant of its property or the property of others under its control to the extent that such loss or damage is covered in full and insured against under any insurance policy in force at the time of such loss or damage and paid to Occupant.

19.2. Business Interruption Insurance. Occupant shall obtain and keep in force during the term hereof business interruption insurance. Business Interruption Insurance should cover costs of rent, utilities, and all other operating expenses.

19.3. Liability and Property Damage Insurance. Occupant shall obtain and keep in force during the term hereof public liability and property damage insurance with a company licensed to do business in the State of Arizona, which shall insure Foundation, Occupant and the City of Phoenix against any liability arising out of the use or occupancy of the Premises to limits of at least \$2,000,000 for each person and occurrence and against property damage claims to a limit of at least \$100,000. Occupant will furnish Foundation and the City of Phoenix prior to commencement of the term with a certificate evidencing the fact that such insurance has been obtained and is in full force and effect, that Foundation and City of Phoenix are additional named insured thereunder, and that such insurance cannot be canceled, reduced, or modified without thirty (30) calendar days prior notice by the insurer to Foundation.

20. Non-Discrimination. Occupant, in performing under this Agreement, shall not discriminate against any worker, employee or applicant, or any member of the public because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair

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employment practice. Occupant will ensure that applicants and employees are dealt with without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. Occupant further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement, and that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this Agreement entered into by Occupant. Occupant further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Occupant shall not provide any goods or services that discriminate against any of the protected classes, nor shall they create and disseminate any discriminatory content through social media, website, signage, or any literature associated with the Occupant business. If any of the above discriminatory practices are made known to Foundation and Occupant is notified of the same by Foundation, then Occupant must take immediate action to remedy the discriminatory practices. If Occupant fails to remedy the noticed discriminatory practices within sixty (60) days of notice by Foundation, then Foundation may terminate this Agreement for cause and Occupant must pay Foundation the monthly permit fee for six (6) months following termination.

21. Expiration of Term. On the last day of the term, Occupant will surrender the Premises to Foundation in a state of good repair and in a clean and sanitary condition, excepting only reasonable, ordinary wear and tear, and if so, requested by Foundation, shall remove all trade fixtures installed on the Premises by Occupant; provided, however, that Occupant shall fully repair damage of any kind or character occasioned by the removal of any such fixtures.

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22. Right of Entry. Foundation and its representatives shall have the right to enter the Premises at all reasonable times upon prior notice, unless an emergency is present, to inspect the same, and to post such reasonable notices as Foundation may desire to protect its rights, and during the thirty (30) calendar days prior to the expiration of this Agreement, to exhibit the Premises to prospective permittees. Occupant shall provide security code to Foundation and City of Phoenix (if they install their own security system) and Occupant is not permitted to change locks (without written permission). The City of Phoenix will provide initial keys for the building as the locks must remain city locks. All copies of keys must be made by the City of Phoenix through their contractor.

23. Foundation's Right to Assign. Foundation hereby reserves the right to sell, assign or transfer its interest in the Premises and this Agreement, and in such event, this Agreement will remain in full force and effect and Occupant shall remain obligated to continue performance of all the terms, covenants, and conditions to be performed on its part hereunder.

Upon any such sale, assignment, or transfer, other than merely as security, Occupant agrees thereafter to look solely to the assignee or transferee with respect to all matters in connection with this Agreement and Foundation shall be released from any further obligations hereunder. Foundation shall transfer any prepaid fees to such assignee or transferee and thereupon Foundation shall be discharged from any further liability in reference thereto.

24. Occupant's Right to Assign. Occupant shall not assign this Agreement, nor permit the use of all or any part of the Premises by persons other than Occupant, its servants, and agents, without the prior written consent of Foundation, which consent may be withheld for any reason, and any such assignment or permission without such consent shall be void and, at the option of Foundation, shall terminate this Agreement.

25. Occupant's Defaults Generally. If Occupant shall fail to pay any part of the monthly fee herein provided or any other sum required by this Agreement to be paid by Occupant at the times or in the manner provided within five (5) business days written notice to Occupant, or if

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default shall be made in any of the other covenants or conditions on Occupant's part agreed to be performed, and such failure is not cured within sixty (60) calendar days after written notice thereof from Foundation to Occupant, or if Occupant vacates or abandons the Premises, then such breach shall become material and Foundation, in addition to any other rights or remedies it may have whether under this Agreement or at law or in equity, may, at any time thereafter, either:

- (a) terminate this Agreement, or
- (b) re-enter the Premises by summary proceedings or otherwise, with or without terminating this Agreement, remove all persons and property from the Premises without liability to any person for damages sustained by reason of such removal, and grant a new permit for use of the Premises at such fee and upon such other terms and conditions as Foundation in its sole discretion may deem advisable. In such event, Occupant shall remain liable for the monthly fee, plus the reasonable cost of obtaining possession of and granting a new permit for use of the Premises and of any repairs and alterations necessary to prepare them for use by a new permittee, less the fees received from such new permittee, if any. Any and all monthly deficiencies so payable by Occupant shall be paid monthly on the date herein provided for the payment of the fee. Notwithstanding any such granting of a new permit without termination, Foundation may at any time thereafter elect to terminate this Agreement for such breach. Foundation is not required to give notice of default to Occupant more than twice in any calendar year for the same breach for which Occupant has previously received notice, thereafter, Occupant need not be given either notice or opportunity to cure but rather, Foundation may immediately implement any remedy permitted to it by this Agreement.

25.1. Withholding of Permit Fee. If Occupant withholds permit fees due to a perceived breach of contract by Foundation, Occupant shall hold the amount withheld in an escrow account until an agreement is reached to satisfy the Occupant's complaint. If Occupant refuses to hold the

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amount of permit fees due in escrow, Foundation will consider Occupant in default and may proceed with actions as stated in section 26.

26. Foundation's Remedies. Should Foundation at any time terminate this Agreement for any breach, in addition to any other remedies it may have, it may recover from Occupant all damages it may incur by reason of such breach, including the cost of recovering the Premises, and including the worth at the time of such termination of the excess, if any, of the amount of fees to be paid pursuant to this Agreement for the remainder of the term over the reasonable permit value of the Premises for the remainder of the term, all of which amounts shall be immediately due and payable from Occupant to Foundation, and shall promptly reimburse Occupant the advanced and unapplied permit fees and deposits. No re-entry or taking possession of the Premises by Foundation shall be construed as an election on its part to terminate this Agreement unless a written notice of such intention be given to Occupant.

In addition to the foregoing remedies and so long as this Agreement is not terminated, Foundation shall have the right but not the obligation to remedy any default of Occupant and to add to the monthly fee payable hereunder all of Foundation's reasonable costs in so doing, with interest thereon until the same is repaid at the lower rate of 18% per annum or the maximum rate then allowed by law.

All remedies herein conferred upon Foundation shall be cumulative and not exclusive of any other remedy conferred herein or at law or in equity. If Occupant is in default, Foundation may prevent removal of property from the Premises by any lawful means it deems necessary to protect its interests.

27. Attorneys' Fees. If an action shall be brought to recover the monthly fee or any other sum payable under this Agreement, or for or on account of any breach of or to enforce or interpret any of the terms, covenants or conditions of this Agreement, or for the recovery of possession of the Premises, the prevailing party shall be entitled to recover from the other party a

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reasonable attorneys' fee, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered.

28. Holdover at Expiration of Term. Should Occupant hold possession hereunder after the expiration of the term of this Agreement, Occupant shall become a permittee on a month-to-month basis upon all the terms, covenants and conditions herein specified at a monthly fee equal to 150% of the rent in the last month of the term.

29. Notices. All notices, demands or other notices required to be given, made or sent hereunder shall be in writing and deemed to have been given when delivered or deposited in the United States mail, certified or registered, first-class, return receipt requested, postage prepaid and addressed to Foundation's address or Occupant's address, as the case may be:

If to Foundation:

Rosson House-Heritage Square Foundation, Inc.
Attn: Executive Director
113 North Sixth Street
Phoenix, Arizona 85004

If to Occupant:

Dylan Capshaw
Amy Capshaw
10360 East Jenan Drive
Scottsdale, Arizona 85260

The address to which any notice, demand or other notice shall be given to either party may be changed by written notice given by such party to the other as above provided. If notice is sent by mail, the Occupant agrees that there shall be an irrebuttable presumption that notice was received three (3) calendar days after the date notice was postmarked. Occupant also agrees to receive notice for the purposes of this sub-permit agreement by hand delivery by an employee or officer of Foundation.

30. No Waiver. No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver

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or breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Acceptance by Foundation of any performance by Occupant after the same shall have become due shall not constitute a waiver by Foundation of the breach of any covenant, term or condition unless otherwise expressly agreed to by Foundation in writing.

31. General Items. This Agreement shall be construed as a whole according to its fair meaning and not strictly for or against either Foundation or Occupant. Time is of the essence of this Agreement and of every term, covenant, and condition hereof. The neuter gender includes the masculine and feminine. In the event any term, covenant or condition herein contained is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such term, covenant or condition shall in no way affect any other term, covenant or condition herein contained. Occupant shall not cause this Agreement or any short form or notice thereof to be recorded without the prior written consent of Foundation.

32. Binding on Successors. Subject to the provisions hereof, all the terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of and shall apply to the respective heirs, executors, administrators, successors, assigns, guarantors and legal representatives of Foundation and Occupant.

33. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

34. Incorporation and Written Agreement. This instrument, along with **Exhibit A** hereto and **Exhibit B**, constitutes the entire agreement between Foundation and Occupant relative to the Premises, and this Agreement may be altered, amended or revoked only by instrument in writing signed by both Foundation and Occupant. Foundation and Occupant agree that any prior or contemporaneous representations or agreements made by and between or among themselves or their agents and representatives or by any other persons relative to the subject matter of this

Attachment A

Agreement or the use of the Premises and not expressly set forth herein are revoked by this Agreement.

35. Foundation's Authority. Foundation represents and warrants that: (i) Foundation is the permittee under the Master Use Agreement and has the capacity to enter into this Agreement with Occupant; and (ii) Foundation has not received any notice, and has no actual knowledge, of any default by Foundation under the Master Use Agreement; (iii) Occupant's use of the Premises under the terms as set forth herein will not violate the Master Use Agreement or other agreements related to the Premises.

<p>GARDENMISC LLC DBA STEMISTRY, an Arizona limited liability company</p> <p>By: _____ David Capshaw, Manager Capshaw Enterprises LLC, Member</p> <p>By: _____ Dylan Capshaw, Manager Capshaw Enterprises LLC, Member</p>	<p>HERITAGE SQUARE FOUNDATION, INC., an Arizona nonprofit corporation</p> <p>By: _____ Its: Executive Director</p>
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To: Parks and Recreation Board

Date: September 29, 2022

From: Cynthia Aguilar, Director

Subject: SUPER BOWL LVII FESTIVAL AT MARGARET T. HANCE PARK

This report requests Parks and Recreation Board (Board) approval to hold a multi-day, outdoor festival on the east side of Margaret T. Hance Park (Hance Park), with vending, from Feb. 8 to Feb. 12, 2023, and to extend the park hours of operation from 10:30 p.m. to 11 p.m. for the duration of the festival.

BACKGROUND

On June 2, 2021, the National Football League (NFL) and Arizona Super Bowl LVII Host Committee (Host Committee) announced that Super Bowl LVII will be played on Sunday, Feb. 12, 2023, making it the fourth time the game has been played in the Greater Phoenix region. While State Farm Stadium in Glendale will be the site of the game, many of the official fan-related activities and events will be held in downtown Phoenix over multiple days in locations such as the Phoenix Convention Center, Symphony Hall and other City of Phoenix venues. An announcement was released on June 29, 2022 with the Host Committee's intent to develop a free, multi-day, outdoor festival with Hance Park as the selected festival site (**Attachment A**).

Hance Park is an established and well-known festival location in the downtown Phoenix area, and similar events have been held at the 32-acre park, including the National Collegiate Athletic Association's March Madness Music Festival in 2017. Being centrally located to many restaurants, hotels and shops, Hance Park is also close to public transportation options, including the Valley Metro light rail system, making it an ideal and accessible location for both visitors and residents. In addition, the NFL's Super Bowl Experience, being held in conjunction with the outdoor festival, is taking place at the Phoenix Convention Center, just a short, one-mile walk away from Hance Park.

DISCUSSION

The Host Committee estimates nearly 100,000 people to visit Hance Park for the outdoor festival, which will feature both local and national acts. The full schedule and event layout will be announced closer to Super Bowl LVII, but plans include an immersive experience with live music and entertainment, local cuisine and multi-cultural celebrations for fans of all ages. Vending is being requested to take place at the park, including NFL merchandise, food trucks and beer and liquor sales.

To ensure adequate notification to the community, the Host Committee is responsible for the surrounding neighborhood and business event outreach and education within a half mile radius of Margaret T. Hance Park to include, but not limited to respective neighborhood associations, homeowner associations, multi-family residential units, hotels, businesses, schools and cultural organizations. The half-mile radius for Hance Park is represented by the following roadway boundaries: Palm Lane (North), Fillmore Street (South), Seventh Avenue (West) and Seventh Street (East). Furthermore, the Host Committee plans to include information about the outdoor festival in the larger community outreach notification plan for all Super Bowl LVII related events impacting downtown Phoenix. Some steps have already been taken, including a meeting and presentation with the Hance Park Conservancy on Sep. 1. The Host Committee plans to initiate more community meetings and outreach upon receiving Board approval.

The event and performance sites on the east side of Hance Park will be secured by fencing, and security will be in place as required by the City of Phoenix and Arizona liquor laws. Street closures are expected and will be arranged with City Major Events staff.

RECOMMENDATION

Staff recommends Board approval to hold the Super Bowl LVII outdoor festival at Hance Park, allow vending and approve the extension of park hours to 11 p.m. between Feb. 8 to Feb. 12, 2023.

Prepared by: Kat Mase, (Delegate) Deputy Director
Eric George, Interim City Major Events Administrator

Approved by: Martin Whitfield, Assistant Director



Phoenix's Margaret T. Hance Park Selected as Super Bowl LVII Outdoor Festival Week Location

JUNE 29, 2022 2:30 PM

The Arizona Super Bowl Host Committee has selected Margaret T. Hance Park in Downtown Phoenix as the host site for an unforgettable fan experience the week leading up to Super Bowl LVII. The City of Phoenix is thrilled to welcome the NFL and its fans to the heart of downtown Phoenix.

Free to the public, this multi-day outdoor festival will include an immersive fan experience with live music, entertainment, local cuisine, and multicultural celebrations.

"Downtown Phoenix has changed a lot since the last big game. We look forward to visitors experiencing the growth of business, restaurants, arts, entertainment, and our massively improved transportation," said Phoenix Mayor Kate Gallego. "This festival builds on the fan experience which will showcase our city to thousands of people. They'll discover why we are the fastest growing big city in America."

"Our newly upgraded Margaret T. Hance Park will be the perfect green pocket of our downtown core to kick off 2023 Super Bowl festivities," District 7 Councilwoman Yassamin

Attachment A

Ansari said. "Thousands of families and visitors will get to enjoy a state-of-the-art playground and desert oasis, all while getting a taste of our delicious local cuisine, diverse cultures and community."

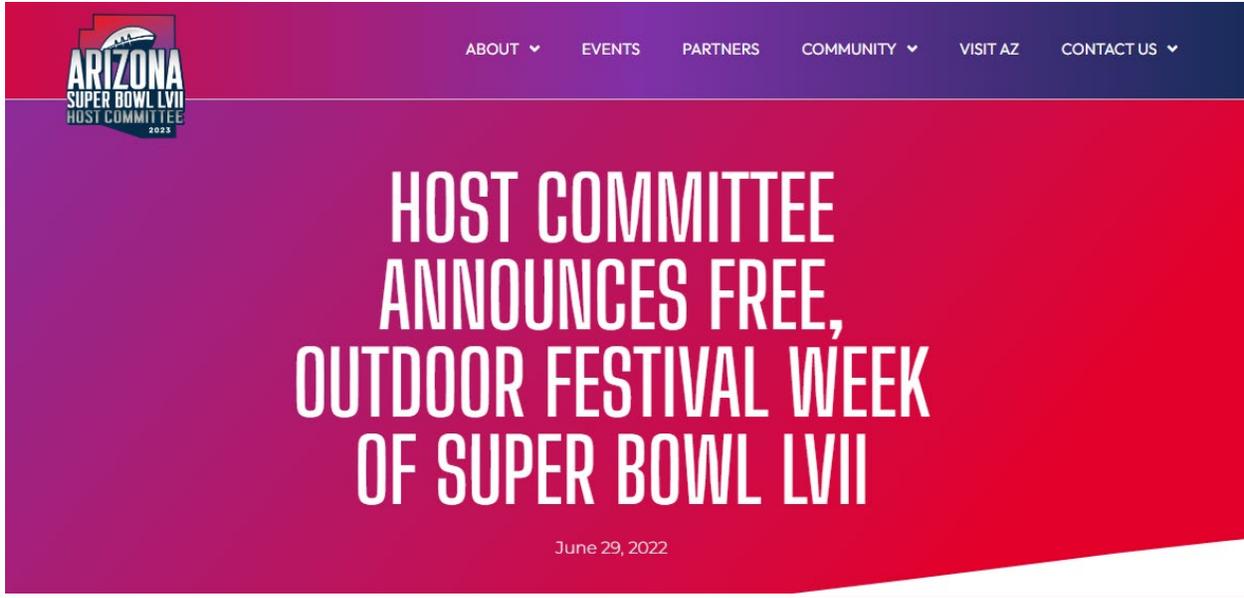
"We are eager to welcome the diverse crowd of football fans to one of the City's most eye-catching parks while showcasing the best in entertainment and culture Phoenix has to offer," said Phoenix Parks and Recreation Director Cynthia Aguilar. "Phoenix Parks is ready to help provide an unforgettable fan experience."

Margaret T. Hance Park is a one-of-a-kind park that is inclusive to all Phoenix residents. Through a public-private partnership, the 32-acre park has experienced a multiphase renovation and revitalization. Visitors will be able to experience the new [Fiesta Bowl PLAY](#) at Hance Park, a 20,000 square-foot playground that features a climbing wall, a separate net climbing structure, a water mist play feature and a sand play area positioned under a shade canopy. Its other unique amenities include three animal-themed play structures – a Kit Fox, Black-Tailed Jackrabbit and Great-Horned Owl.

In January 2023, the City of Phoenix will be opening a garden oasis at Hance Park. Earlier this year, the City [announced a partnership](#) with Republic Services to bring 33 native desert plants, 60 trees as well as 4,000 visually striking ground covers, vines, grasses, perennials, succulents, and shrubs.

Learn more about the Hance Park and the Hance Park Revitalization Project at [Phoenix.gov/Parks](https://phoenix.gov/Parks)

Attachment A



PHOENIX (June 29, 2022) — The Arizona Super Bowl Host Committee today announced plans to develop a free, multi-day, outdoor festival that will take place the week leading up to Super Bowl LVII at Margaret T. Hance Park in downtown Phoenix.

Fans of all ages will enjoy an immersive experience in the heart of the Valley with live music and entertainment, local cuisine, and multicultural celebrations. The day to night event, like Super Bowl Central in 2015, is anticipated to draw fans from around the state and world.

“We are thrilled to showcase Arizona and celebrate the Super Bowl by offering a free festival for all to enjoy. This stop on local and visiting fans’ Super Bowl journey will be an experience that will highlight our state’s diverse and vibrant culture,” said Jay Parry, president & chief executive officer of the Arizona Super Bowl Host Committee.

In conjunction with the free fan festival at Margaret T. Hance Park in downtown Phoenix during Super Bowl LVII week, the NFL’s Super Bowl Experience presented by Lowe’s will take place at the Phoenix Convention Center and will offer fans the opportunity to collect autographs from current NFL players and Legends, participate in interactive games, youth football clinics and more. More “know before you go” details on fan access, tickets, and hours of operation will be posted on SuperBowl.com in the coming months.

This is the fourth time Arizona has hosted the Super Bowl, joining only four other cities (South Florida, New Orleans, Los Angeles, and Tampa Bay) with this distinction. The last Super Bowl hosted in Arizona in 2015 resulted in an economic impact totaling \$719 million. As a liaison between the NFL and all regional efforts, the Arizona Host Committee is committed to driving lasting social and economic impact on Arizona communities while hosting a successful Super Bowl LVII in partnership with stakeholders and sponsors.

About Margaret T. Hance Park

Attachment A

Margaret T. Hance Park is named in honor of the city's first female mayor. The 32-acre park is located in the heart of downtown Phoenix, sitting atop the Interstate-10 freeway tunnel, between 3rd Ave. and 3rd St. The park is steps away from Roosevelt Row Artist District and a brief 10-minute walk from the NFL's Super Bowl Experience presented by Lowe's at the Phoenix Convention Center.

About the Arizona Super Bowl Host Committee

The Arizona Super Bowl Host Committee is a private, non-profit Arizona corporation responsible for planning and executing a successful Super Bowl LVII in 2023. The mandate of the Host Committee is to galvanize local stakeholders in a united approach to hosting the largest single-day sporting event by maximizing positive media exposure, fueling the economic engine of Arizona and leaving a lasting legacy. The Host Committee serves as liaison between the NFL and all regional efforts, culminating with the game in 2023 at State Farm Stadium, home to the Arizona Cardinals. For more information, visit azsuperbowl.com or follow on Twitter and Instagram @AZSuperBowl.

For inquiries, email media@azsuperbowl.com.



To: Parks and Recreation Board

Date: September 29, 2022

From: Cynthia Aguilar, Director

Subject: REQUEST TO AWARD CONTRACT FOR FIXED CONCESSIONS AT SPORTS COMPLEXES

This report requests the Parks and Recreation Board award contracts to Tactical Service Inc., dba Desert Snow to manage and operate the fixed concessions at Rose Mofford, Papago and Desert West Sports Complexes; and to Home Team Snackbars (Gloria J. Phillips) to manage and operate the fixed concessions at the Reach 11 Sports Complex.

BACKGROUND

The Parks and Recreation Department completed a Request for Proposal process to secure a private concessionaire(s) for its four sports complexes.

Rose Mofford Sports Complex is one of the finest softball and soccer complexes in Arizona and hosts a variety of softball and soccer events including National Championships, College Invitationals, Regional Events, State High School Playoffs, and Finals. The softball portion of the complex offers year-round leagues and tournaments which draw over 200,000 spectators and players. Both the sports and softball complexes contain permanent concession facilities.

Papago Sports Complex is known for both its league play, as well as hosting many local, regional and national youth and adult softball and baseball tournaments. On the north side of the complex are the Papago Softball fields which also join Desert West in having repeatedly hosted the Senior Winter Worlds Tournament for almost two weeks in November and the Saguaro Cup in April. The facility hosts four softball playing fields (all enclosed). The four fields have permanent 300 foot fences with the ability to set up temporary fences for the girl's youth fast-pitch tournaments at 200 feet. The complex contains a permanent concession facility area in the center of the complex.

Desert West Softball Complex is known for both its league play, as well as hosting many local, regional and national youth and adult softball tournaments. Desert West has also repeatedly been home to the Senior Winter Worlds Tournament for almost two weeks in November and the Saguaro Cup in April, which draw over 4,000 players and spectators each. The complex contains a permanent concession facility and hosts four softball playing fields (all enclosed). The four fields have permanent 300 foot fences with the ability to set up temporary fences for the girl's youth fast-pitch tournaments at 200 feet.

Reach 11 Sports Complex is one of the largest soccer complexes in Arizona and the Western United States. The complex is composed of three sections:

- East Area (fields 1-10) – No permanent concession facilities
- West Area (fields 11-18) – Fixed Concession Building
- Diamondbacks' Youth Baseball – Fixed Concession Snack Building

The complex features:

- 18 regulation-size lighted soccer fields and is host to international, national, and regional tournaments in soccer, lacrosse, field hockey, and other field sports.
- Four youth lighted baseball fields that host local league games, practices, camps, and tournaments.
- An extensive natural trail system that hosts daily users for walking, hiking, biking and horse riding.

DISCUSSION

The Request for Proposals PKS-RFP22-CON1 (RFP) was issued on Aug. 1, 2022, with proposals due on Aug. 23, 2022. The solicitation requested proposals for one or both fixed concession opportunities for the above-listed sports complexes to operate the fixed concession stands and provide hot and cold food and beverages with a variety of options for patrons for the above-listed sports complexes. Sale of non-food items is not under the scope of this RFP. The two opportunities are listed below:

Opportunity #1

Rose Mofford, Papago and Desert West Softball Complexes

- Hosts four seasons of play for the Adult Slow Pitch Leagues: winter, spring, summer and fall.
- Weekend tournaments play year-round, and fields are allocated to private promoters for youth and adult tournaments.
- Weekend tournaments vary depending on scheduled events.
- Concessionaire will operate the concession during all scheduled events unless otherwise agreed in writing prior to any alternate schedules.
- There is sale of liquor at these facilities and a liquor license is required.

Opportunity #2

Reach 11 Soccer Fields

- Tournament season is September through April, typically weekends (Friday-Sunday). Fields are closed in late September through early November for over seeding to winter rye.
- There is no sale of liquor at this facility and does not have liquor license requirements.

Reach 11 Diamondbacks Youth Baseball Complex

- Play is year-round, fields are allocated to private promoters for youth tournaments and leagues.
- Weekend tournaments and league games vary depending on scheduled events.

Concessionaire shall operate the concession during all scheduled events unless otherwise agreed in writing. Scheduled hours are at the discretion of the Park Manager.

- There is no sale of liquor at this facility and does not have liquor license requirements.

Two proposals were received, and both were evaluated and found responsive and responsible. The five-member evaluation panel reviewed, evaluated and consensus scored the proposals.

Tactical Service, Inc. submitted a proposal for Opportunity #1.

Home Team Snackbars submitted a proposal for Opportunity #1 and #2.

The maximum possible points were 1,000 and the results are as follows:

- Tactical Service, Inc. 925
- Home Team Snackbars: 835

The evaluation panel recommends a contract be awarded to Tactical Service, Inc. to manage and operate fixed concessions for Opportunity #1 at Rose Mofford, Papago and Desert West Softball Complexes. Tactical Service, Inc. has experience operating concession stands for the cities of Peoria and Glendale, and private facilities in Scottsdale.

Although Home Team Snackbars' proposal scored lower; since the other proposer did not submit a proposal for Opportunity #2, the evaluation panel also recommends a contract be awarded to Home Team Snackbars for Opportunity #2 at Reach 11. Home Team Snackbars is the current concessionaire for Papago, Rose Mofford and Reach 11 sports complexes.

RECOMMENDATION

Staff recommends the Parks and Recreation Board award contracts to Tactical Service Inc., dba Desert Snow to manage and operate the fixed concessions at Rose Mofford, Papago and Desert West Sports Complexes; and to Home Team Snackbars (Gloria J. Phillips) to manage and operate the fixed concessions at the Reach 11 Sports Complex; and requests authorization for the Parks and Recreation Director to sign all related contract documents.

Prepared by: Theresa Faull, Deputy Director

Approved by: Martin Whitfield, Assistant Director



To: Parks and Recreation Board

Date: September 29, 2022

From: Cynthia Aguilar, Director

Subject: PHOENIX REVITALIZATION CORPORATION SPONSORSHIP FOR THE
GOELET A. C. BEUF COMMUNITY CENTER

This report requests Parks and Recreation Board approval to accept a \$1,500 in-kind sponsorship from Phoenix Revitalization Corporation to the Goelet A. C. Beuf Community Center, in accordance with Sponsorship Policy 3.11.

BACKGROUND

The Phoenix Revitalization Corporation received a \$1,500 grant from Albertson's Safeway Corporation on behalf of the Goelet A. C. Beuf Community Center with funds earmarked to purchase candy for the 18th Annual Boo Fest special event to be held on Oct. 29, 2022. The annual Boo Fest event is at Paseo Highlands Park and draws over 8,000 people from the northwest Phoenix metropolitan area. The City of Phoenix will not receive any monetary funds from this sponsorship but will receive the goods from the purchased candy for the event. The event flyer is available in **Attachment A**.

Phoenix Revitalization Corporation is a non-profit community development corporation dedicated to the revitalization of neighborhoods by facilitating community improvement projects and the maintenance and creation of low-income and workforce housing. An emphasis is placed on the revitalization of Central City South, a community located immediately south of the Phoenix Downtown Business District and the Arizona State Capitol Mall. Founded in 1986 initially as a project of Phoenix Memorial Hospital, Phoenix Revitalization Corporation was created to address the historic blight of the neighborhoods surrounding the hospital. Their mission, vision and core values include connecting generations, creating culturally vibrant and thriving communities, and developing relationships, wisdom and practicing respect for all.

DISCUSSION

Phoenix Revitalization Corporation has generously committed to support the Goelet A. C. Beuf Community Center's 18th Annual Boo Fest special event with an in-kind sponsorship of \$1,500 to be used to purchase candy as defined in the Sponsorship Agreement and Schedule (**Attachment B**).

Subject to board approval, the Parks and Recreation Department will enter into a sponsorship agreement with Phoenix Revitalization Corporation, categorized as an Event Sponsorship which follows the required guidelines and documents the rights and responsibilities of both parties. Program sponsor benefits include:

- Logo and link listed on the Parks and Recreation Department marketing and advertisement.
- Recognition on social media and in event description.

RECOMMENDATION

Staff recommends board approval to accept the Phoenix Revitalization Corporation in-kind sponsorship for Goelet A. C. Beuf Community Center and approval for the director to execute an Event Sponsorship Agreement and sign all related documents to the agreement.

Prepared by: Jan Sherwood, Deputy Director

Approved by: Martin Whitfield, Assistant Director

ATTACHMENT A

EVENT FLYER (ENGLISH AND SPANISH)



Beef Community Center
3405 West Pinnacle Peak Road • 602.534.4754 • www.phoenix.gov/parks

FEATURING

- Inflatables
- Train Ride
- Costume Contest
- Pumpkin Patch
- Trunk or Treat
- Informational Booths
- Big Zephyr



Saturday, October 29, 2022
6:00p.m. - 9:00p.m.

Food Vendors

- Kona Ice
- Cup'd Coffee
- Coach & Sons Kettle Corn
- Much More....







Thank You Partners!





Beef Community Center
3405 West Pinnacle Peak Road • 602.534.4754 • www.phoenix.gov/parks

OFRECIENDO

- Brinca Brinca
- Viaje de Tren
- Concurso de disfraces
- Parche de calabaza
- Tronco o golosina
- Carpas Informativas
- Big Zephyr



Sábado, 29 de Octubre de 2022
6:00p.m. - 9:00p.m.

Vendedores de Comida

- Kona Ice
- Cup'd Coffee
- Coach & Sons Kettle Corn
- Mucho Mas....







Gracias Socios



Attachment B

SPONSORSHIP AGREEMENT

This Agreement is made on the _____ day of 2022, between City of Phoenix Parks and Recreation Board (Board) and its Parks and Recreation Department (Department) and Phoenix Revitalization Corporation (Sponsor).

RECITALS

The Sponsor is engaged in the business referred to in Item 3 of Attachment B, hereafter referred to as the "Schedule" (Description of Sponsor's Business Activities) and, at the request of the Department, has agreed to provide the Sponsorship set out in Item 4 of the Schedule (Details of Sponsorship), subject to the terms and conditions of this Agreement.

IT IS AGREED as follows:

1. TERM

- 1.1 The term of the Sponsorship shall be for the period set out in Item 4(c) of the Schedule (Term of Sponsorship), unless otherwise extended or terminated in accordance with this Agreement.

2. SPONSORSHIP FEE/PRODUCT

- 2.1 In consideration of the grant of Sponsorship Rights under this Agreement, the Sponsor shall pay and/or provide to the Department, for the term of this Agreement, the sponsorship fee and/or product(s) referred to in Item 4(b) of the Schedule (Sponsorship Fee/Product) at the times and in the manner referred to in that Item.
- 2.2 The Sponsorship Fee/Product shall be the entire amount payable or provided to the Department under this Agreement.
- 2.3 The Department shall only use the Sponsorship Fee/Product for the sponsored activity referred to in Item 4(a) of the Schedule (Sponsored Activity) in a manner consistent with the reasons referred to in Item 4(a) of the Schedule (Sponsorship Rationale).
- 2.4 Should the Sponsorship Fee/Product not be fully used on the Sponsored Activity; the Department shall immediately notify the Sponsor of the balance of the unused Sponsorship Fee/Product and shall comply with the Sponsor's directions concerning the use of the unused Sponsorship Fee/Product.

3. SPONSORSHIP RIGHTS

- 3.1 The Department grants to the Sponsor the non-exclusive sponsorship rights set out in Item 5 of the Schedule (Rights of Sponsor) for the term of this Agreement.
- 3.2 All advertising and promotional material produced, published, broadcast, displayed or exhibited by the Sponsor under Item 5 of the Schedule (Rights of Sponsor) shall first be approved by the City of Phoenix Parks and Recreation Director or designee.
- 3.3 The Department shall, whenever the Sponsored Activity is publicized, acknowledge the Sponsor in accordance with the recognition rights specified in Item 6 of the Schedule (Recognition of Sponsor).

4. USE OF SPONSOR'S NAME AND/OR LOGO

- 4.1 All advertising and promotional material produced, published, broadcast, displayed or exhibited by the Department in respect to the Sponsored Activity shall acknowledge the Sponsor in a manner agreed to by both parties.
- 4.2 The Department shall immediately, on the termination or expiration of this Agreement, cease to use or otherwise refer to the Sponsor's name and/or logo except to the extent otherwise authorized by law or agreement.

5. USE OF THE CITY'S NAME AND/OR LOGO

- 5.1 All advertising and promotional material produced, published, broadcast, displayed or exhibited by the Sponsor in respect of the Sponsored Activity shall acknowledge the Phoenix Parks and Recreation Department, in a manner agreed to by all parties.
- 5.2 The Sponsor shall immediately, upon the termination or expiration of this Agreement, cease to use or otherwise refer to any and all of the City of Phoenix/Phoenix Parks and Recreation Department name(s) and/or logo(s) in any manner that could imply that the Sponsorship under this Agreement is still in effect.

6. INDEMNIFICATION

- 6.1 The Sponsorship Fee is a sponsorship to help fund the design and construction of the Sponsored Activity as described in Attachment B, Item 4(a). Sponsor's role is limited strictly to the sponsorship of funds. The City is the owner of the Park, and it or its contractors will be responsible for the design, construction, and maintenance of the Sponsored Activity. The City

will indemnify and hold harmless Sponsor from any and all losses, liabilities, claims, actions, fees, and expenses, including those for personal injury, death, negligence, or property damage arising under, out of or in connection with the design, construction, maintenance, or use of the Sponsored Activity.

7. BREACH AND TERMINATION

- 7.1 If either party breaches any of the terms and conditions of this Agreement and fails to rectify such default in accordance with a written notice by the non-defaulting party within fourteen (14) days after the date of such notice, the non-defaulting party may terminate the Agreement at any time thereafter.
- 7.2 The Department may terminate the Agreement immediately if any of the following events occur:
- (a) The Sponsor is wound up or dissolved, becomes insolvent or enters into an agreement with its creditors, or if a receiver, manager or liquidator is appointed in respect of the Sponsor.
 - (b) The Sponsor's business operations or the business or activities of any associated company are contrary to any City of Phoenix policy(ies).
 - (c) The Department determines that for whatever reason it should no longer use the Sponsorship Fee/Product or be associated with the Sponsor.
- 7.3 If this Agreement is terminated, the Sponsor shall not be required to pay any unpaid installments of the Sponsorship Fee/Product.
- 7.4 The expiration or termination of this Agreement shall not prevent either party from taking action to enforce a term or condition of this Agreement in respect of any breach occurring prior to such expiration or termination.

8. NOTICES

- 8.1 Unless otherwise directed in writing, notices, reports, and payments shall be delivered to the Department at the following address:
- Parks and Recreation Director
 - Phoenix Parks and Recreation Department
 - 200 W. Washington St, 16th
 - Floor
 - Phoenix, AZ 85003

and to the Sponsor at the address and e-mail address referred to in Item 2 of the Schedule (Address of Sponsor).

8.2 A notice forwarded by e-mail shall be deemed to be received by the addressee when recorded by read receipt.

9. AMENDMENTS TO AGREEMENT

9.1 Any amendment to this Agreement shall only be valid if the amendment is in writing and signed by both parties.

10. ASSIGNMENT

10.1 Neither party shall transfer, change or purport to assign, transfer or change this Agreement or any of its rights or obligations without the prior written consent of the other party, which shall not be unreasonably withheld.

11. CHARITABLE CONTRIBUTION

11.1 Board will reasonably cooperate with Sponsor to document Sponsor's charitable contribution as may be required for federal or state income and property tax purposes.

12. GOVERNING LAW

12.1 This Agreement shall be governed by and construed under the laws of the State of Arizona, excluding its choice of law principles. Any litigation arising out of this Agreement shall be commenced and maintained in a court of competent jurisdiction sitting in Maricopa County, Arizona.

13. ENTIRE AGREEMENT

13.1 This Agreement constitutes the entire agreement of the parties and shall supersede any prior or contemporaneous agreements or negotiations, whether written or oral, between the parties, regarding the subject matter herein.

EXECUTED by the parties on the date first written above.

ON BEHALF OF PHOENIX PARKS AND RECREATION BOARD

Parks and Recreation Director

Date

SPONSOR

Phoenix Revitalization Corporation

Printed Name

Title

Signature

Date

APPROVED AS TO FORM

ATTEST

Acting City Attorney

City Clerk

ATTACHMENT B

SCHEDULE

1. NAME OF SPONSOR

Phoenix Revitalization Corporation.

2. ADDRESS OF SPONSOR

3. *1122 E. Buckeye Rd. Suite A1 / Mailbox 4, Phoenix, AZ 85034*

4. DESCRIPTION OF SPONSOR'S BUSINESS ACTIVITIES

Phoenix Revitalization Corporation is a non-profit organization based in Arizona founded in 1986. It is a Phoenix-based community development corporation. It has a staff, Board of Directors, and impacts thousands of people every year throughout Phoenix.

5. DETAILS OF SPONSORSHIP

(a) Sponsored Activity

The Phoenix Revitalization Corporation received a \$1500.00 grant from Albertson's Safeway Corporation on behalf of the Goelet A. C. Beuf Community Center with funds earmarked to purchase candy for their 18th Annual Boo Fest special event to be held on October 29, 2022. The City of Phoenix will not receive any monetary funds from this sponsorship but will receive the goods from the purchase candy for the event.

(b) Sponsorship Fee

\$1500 in-kind purchase of candy for the event.

(c) Term of Sponsorship

October 1, 2022 to October 29, 2022

6. RIGHTS OF SPONSOR

- *Phoenix Revitalization Corporation will be recognized as "Official Sponsor;"*

7. RECOGNITION OF SPONSOR

- *Logo and link listed on the Parks and Recreation marketing and*

advertisement.

- *Recognition on social media, in program description, and at the beginning of the program.*



To: Parks and Recreation Board

Date: September 29, 2022

From: Cynthia Aguilar, Acting Director

Subject: AQUATICS UPDATE

This report provides the Parks and Recreation Board with updated information on the 2022 aquatic season and efforts to prepare for future aquatics seasons.

BACKGROUND

During a typical aquatic season, City of Phoenix pools welcome more than 463,000 visitors. The Parks and Recreation Department provides programming to include over 2,700 swimming lessons classes, swim and dive recreational teams, water basketball team and water safety classes with over 20,000 participants. Approximately 650 aquatics staff are hired to operate and provide services at 29 aquatic facilities.

As a result of the COVID-19 pandemic all pools were closed in 2020. As a result, the Department lost more than 50 percent of the aquatics workforce resulting in only 12 of 29 pools opening in 2021.

Due to the ongoing national lifeguard shortage the Parks and Recreation Department implemented a variety of recruitment efforts to help attract lifeguards for the 2022 season. Recruitment methods used each year include working closely with high schools, community colleges and universities to promote job opportunities. Aquatics staff visit school campuses and work with high school swim and dive teams. Job opportunities were also promoted at local community events. The Aquatics team worked and coordinated with the City Manager's Office Communications team to initiate a new Instagram channel for PHXLifeguards to continue recruitment targeted to the teen age group. This channel debuted in October 2021.

New this year was a \$2,500 incentive for all certified positions. Pool Managers, Assistant Pool Managers, Swim Lesson Instructors and Lifeguards all received \$500 on their first paycheck and \$2,000 at the completion of the summer. The incentive announcement created interest in the Aquatic positions, increasing applications by over 400 applicants from the previous year. Despite the interest, many candidates did not show up for the certification class and some were not able to pass the swim skills to become certified. Additionally, the Department received a donation from the Phoenix Parks Foundation to reduce the lifeguard certification courses from \$80 to \$20.

Recruitment efforts helped the department hire 415 aquatics staff which resulted in opening 14 of 29 pools. The season ended with 384 staff members due to resignations throughout the summer.

Although staffing levels were sufficient at the start of the summer for operations, keeping the pools staffed at adequate levels continued to be a challenge throughout the year. Aquatics had 34 positive COVID cases over 70 days of operations, which quarantined a total of 91 employees for five days each. In addition, call outs were significant beyond the COVID cases.

To promote future lifeguard opportunities, the Department offered Junior Lifeguard and Lifeguard Academy programs for youth ages 14 to 17 in the months of June 2022 through August 2022. These five-week programs teach water safety and leadership skills. A total of 119 participants registered in the Junior Lifeguard Program and 47 participants registered for Lifeguard Academy. Of these program participants, 21 individuals successfully completed the Lifeguard Academy and obtained lifeguard certifications in August 2022.

Open Swim

This year, 162,376 guests visited the pools between Memorial Day and Labor Day. Of the 14 open pools this summer, 11 participated in the Kool Kids program that allows kids 17 years and younger to swim for free. The Kool Kids donations this year included \$56,432 from the Milwaukee Brewers and \$10,000 from Salt River Project. Admission at the other three pools was \$1 for kids. Adult admission at all pools is \$3; and senior admission is \$1.

Swim Lessons

The Parks and Recreation Department offered swimming lessons at the 14 pools open this summer. Swimming lessons were for participants ages six months to 12 years old and were held June 6 through July 28. Each session consisted of eight, 30-minute classes. Due to the Parks and Recreation commitment to ensure programs are affordable and accessible to everyone, each session was \$15, which equates to \$1.88 per class. These prices were the lowest, in comparison to other nearby municipalities, as their prices range from \$22 to \$45 per session.

Also, thanks to a generous donation of \$10,000 from the Arizona Diamondbacks, 833 of the 7,971 swim lesson spaces across the 14 pools were discounted to \$3.

Registration for all swimming lessons began on May 12 and were ongoing throughout the summer as space was available. Swim lessons were marketed on the Parks and Recreation Department's website, via social media, flyers at pools, interview with local media and by targeted marketing.

Over 8,100 participants registered for swimming lessons at the 14 pools. Classes were filled to 99.5 percent capacity across the city. An additional 3,494 people were registered on waitlists for swimming lessons for the 2022 season.

Recruitment Plans

Preparation for the 2023 swim season has already begun. The Aquatics team works year-round recruiting and training lifeguards and swim lesson instructors due to the large number of aquatic staff needed each year.

In addition to lifeguards, the department is also in need of Pool Managers and Assistant Pool Managers. These positions can be even more challenging to fill as they have increased minimum qualifications. Seventeen staff members interested in these positions participated in an intensive hands-on training, as well as additional two-week course, Aquatic Academy, to learn and prepare for the assistant manager position.

In other recruitment efforts, the Aquatics team will continue communicating with high school, community college and Arizona State University (ASU) teachers, coaches and administrators to distribute recruitment materials on a regular basis. The Parks and Recreation Public Information Officer will assist with outreach on social media, media outlets and newsletters.

Staff will have ongoing contact with participants from the Junior Lifeguards and Lifeguard Academy to promote employment opportunities and application processes. In addition, the Aquatics team will work with StarGuard Elite, the lifeguard certification agency, to implement a shallow water lifeguard certification that can be utilized for guarding areas of water that are less than four feet.

Staff recognizes that retention is a large part of maintaining such a large workforce; therefore, working throughout the year to remain in regular contact with previous employees is essential. The Aquatics team will have bi-monthly communication with aquatic employees from 2022. Pool Managers also reach out to their team members throughout the off season to answer questions and encourage staff to return.

RECOMMENDATION

This report is for information and discussion.

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