Contract No. \_\_\_\_-\_\_\_-COS

COMMUNITY EVENT FUNDING AGREEMENT

THIS COMMUNITY EVENT FUNDING AGREEMENT (the “Agreement”) is made this \_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_\_ by and between \_\_\_\_\_\_\_\_\_\_\_\_\_, an Arizona non-profit (“Producer”) and the City of Scottsdale, an Arizona municipal corporation (“City”).

# RECITALS

1. Producer is the producer of a certain community event (the “Event”) known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
2. Producer has submitted to City an application (the “Application”) describing the Event and requesting that City authorize funds for certain expenses of the Event (the “Qualified Expenses”) dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and attached as **Exhibit A**.
3. At Producer’s request, City has determined to provide funds (the “Event Funds”) to Producer in the amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ($) (the “Event Amount”) to secure the public benefits provided by the Event.
4. Producer’s executing and performing this Agreement is a condition of City’s willingness to provide the Event Funds.
5. City’s willingness to provide the Event Funds is conditioned upon Producer’s executing and performing this Agreement and delivering to City after the Event a report (the “Post Event Report”) accompanied by a separate invoice (the “Invoice”).

NOW, THEREFORE, in consideration of the foregoing and good and valuable consideration received, the parties hereto agree as follows:

1. Funding Limitation. Payment of the Event Funds is subject to the following cumulative conditions and limitations.
   1. The total amount of Event Funds City pays under this Agreement shall not exceed the Event Amount, minus setoffs and other amounts to which City may be entitled.
   2. Without detracting from limits contained elsewhere in this Agreement, Event Funds shall be disbursed only to the extent City determines, in its sole and absolute discretion, that City has adequate funds to disburse these amounts, taking into account all circumstances including, without limitation, competing uses for the funds.
   3. The City may reduce payment, or make no payment of Event Funds or require the Producer to repay to the City Event Funds paid prior to the Event if the City determines that the Producer has failed to fulfill all terms of this Agreement.
2. Event Requirements. Producer shall cause the Event to comply with all of the following requirements:
   1. The Event or portion of the Event shall be held at the location indicated in **Exhibit A.**
   2. The Event shall be open to the public. Producer may elect to charge admission for the Event.
   3. The Event shall be held on the date or dates stated in the Application. The date of the Event may be postponed as follows:
      1. Postponement is not allowed unless due to war; insurrection; strikes, lock-outs; other major industrial disturbances; civil disturbances; riots; floods; earthquakes; fires; casualties; acts of the public enemy; blockades; epidemics; quarantine restrictions; freight embargoes; widespread transportation system failure; or extremely unusual severe weather.
      2. If the Event is postponed, it shall be rescheduled to a date that is acceptable to both Producer and City. If within sixty (60) days after the originally scheduled Event date Producer and City do not agree to a new Event date, then this Agreement shall terminate.
   4. The Event shall be of the same scale, quality, attendance, economic benefit to the public and provide other public benefits, or better, as are described in the Event Description or were provided by the Event last year.
   5. Producer shall publicly acknowledge the City support represented by this Agreement. Without limitation, all Event publicity, messaging and other activities that occur before and during the Event shall clearly and prominently indicate that the Event will occur in Scottsdale. All Event publicity and messaging that acknowledges any Event sponsor shall acknowledge the City as a sponsor and shall utilize (where appropriate in City’s discretion) a logo provided by City provided that at a minimum, Producer shall acknowledge the City as a sponsor at least twice in publicity and messaging. No other use of City’s name is allowed in any form of advertising or public relations without prior City approval.
   6. If the Producer distributes an Event program, Producer shall publish in the Event program at least one reasonably prominent advertisement that is at least a full page. The advertisement shall use content provided by City promoting Scottsdale.
   7. If the City requests, no later than sixty (60) days prior to the Event, Producer shall offer to City a minimum of a 10 foot x 10 foot reasonably prominent exhibit space at the Event to be used by City at no charge for the purpose of promoting Scottsdale.
   8. No later than sixty (60) days prior to the Event, the official Event web site shall have a prominent link to City’s selected web site and contain event information that is sufficient to promote the Event and the dates, times and location of the Event.
   9. The Event shall have attendance of at least 2,000.
3. Event Fund Payment. City shall pay Event Funds as follows:
   1. Producer shall use Event Funds for the sole purpose of paying the City or an unrelated third party for the Qualified Expenses as described in the Application. Only costs for the following are Qualified Expenses:
      1. Event marketing, promotions, or advertising.
      2. City staff services, such as police for parking and traffic control.
      3. City refuse collection services not normally scheduled.
      4. Direct Event production costs.
      5. Fees charged for use of City property.
   2. Within sixty (60) days after the date of this Agreement, Producer shall provide to City Producer’s invoice for 75% of the Event Amount. Within sixty (60) days after the receipt of the invoice, City shall make a payment of 75% of the Event Amount for all Qualified Expenses. City shall not be obligated to pay any part of a late invoice.
   3. No later than the earlier of date sixty (60) days after the Event or the May 31 first following the Event Producer shall provide to City a written report (the “Post Event Report”) signed by Producer in the form attached hereto as **Exhibit B**.
   4. Subject to section 3.5, within sixty (60) days of the receipt of the Post Event Report, City shall make payment of the remaining 25% of all Qualified Expenses.
   5. If the City determines that an audit under Section 7 of the Agreement will be conducted, payment will be made within 120 days of the City receiving the information in Section 3.3 provided the Producer fully cooperates in the audit. The Producer’s failure to fully cooperate in the audit may delay payment beyond 120 days.
4. Compliance With Law. This Agreement does not waive and is not a substitute for Producer’s obligation to comply with all state, local and federal laws, policies and regulations applicable to the Event. This Agreement is not a permit or regulatory approval to hold the Event. This Agreement is not a contract to make City venues or other resources available for the Event. Any use of City property for the Event would require a separate contract.
5. Indemnification. To the fullest extent permitted by law, Producer, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Producer relating to the Event, and any work or services in the performance of this Agreement including, but not limited to, any subcontractors, suppliers or others connected with the Event or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Producer’s or such other persons, customers or employees. Producer’s indemnification obligations shall extend beyond and will not be affected by any termination of this Agreement.
6. Insurance. Producer shall purchase and maintain during the Event and during all setup and takedown of the Event insurance with coverages and limits as follows:
   1. The following coverages are required:
      1. “Occurrence" form Commercial General Liability insurance with a limit of not less than $1,000,000 for each occurrence, $2,000,000 Products and Completed Operations Annual Aggregate, and a $2,000,000 General Aggregate limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying.
      2. If any vehicle is used in the performance of the scope of work that is the subject of this contract, commercial/business automobile liability insurance with a limit of not less than $1,000,000, each accident with respect to the Producer owned, hired, and non-owned vehicles.
      3. Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Producer’s employees; and Employers’ Liability insurance of not less than $100,000 for each accident, $100,000 disease for each employee, and $500,000 disease policy limit. If any work is performed by third parties, Producer will cause the third parties to provide Workers Compensation and Employers’ Liability to at least the same extent as required of Producer.
      4. If valet parking is offered, Garage keepers Legal Liability with limits of not less than $75,000 per vehicle.
      5. If alcohol is sold at the Event, liquor liability insurance with a limit of not less than $5,000,000 for each occurrence and $5,000,000 aggregate.
   2. For all insurance policies except Workers Compensation, the City shall be named as additional insured.
   3. City’s Risk Management Division may increase or change required insurance coverage and limits from time to time depending on the size, scope and nature of the activities of the Event. No reduction in coverage or policy limits is effective without the written approval of City’s Risk Manager or his designee.
   4. Producer shall purchase and maintain all required insurance from insurance companies licensed or qualified unlicensed in the State of Arizona.
   5. Producer shall provide City, prior to the Event, certificates of insurance as evidenced that the required insurance coverages and limits are in full force and effect. If the Event occurs at Westworld, compliance with the Westworld event contract regarding evidence of insurance will be considered compliance with this Section.
   6. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Producer shall execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as required by this Agreement which protects City and Producer. Producer shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.
7. Records and Audit Rights. Producer’s records (hard copy, as well as computer readable data), and any other supporting evidence considered necessary by the City to substantiate charges and claims related to this contract are open to inspection and subject to audit and/or reproduction by City’s authorized representative to the extent necessary to adequately permit evaluation and verification of the cost of the work, and any invoices, change orders, payments or claims submitted by the Producer or any of Producer’s payees in accordance with the terms of the contract. The City’s authorized representative must be given access, at reasonable times and places, to all of the Producer’s records and personnel in accordance with the provisions of this Section throughout the term of this contract and for a period of 3 years after last or final payment.

Producer shall ensure that records necessary to substantiate changes and claims by subcontractors who perform work under this contract are made available for City inspection and subject to audit and/or reproduction by: inserting a provision requiring subcontractors to comply with this Section in a written agreement between Producer and subcontractor; or obtaining the relevant documents from the subcontractor.

If an audit in accordance with this Section discloses overcharges of any nature by the Producer to the City in excess of 1% of the total contract billings, the cost of the City’s audit, but not exceeding the amount of the overcharge, will be reimbursed to the City by the Producer. Any adjustments and/or payments which must be made as a result of any audit or inspection of the Producer’s invoices and/or records will be made within a reasonable amount of time (not to exceed 90 days) from presentation of City’s findings to Producer.

1. Termination. This Agreement shall terminate upon the date that Producer provides to City a satisfactory Post Event Report. However, City may, without further obligation, terminate the Agreement earlier for convenience or cause, upon giving Producer ten (10) days written notice.
2. Miscellaneous. The following additional provisions shall apply:
   1. Assignment. Producer’s obligations and rights hereunder shall not be assigned or delegated, in whole or in part, without City’s prior written consent.
   2. Compliance With Law. This Agreement does not waive and is not a substitute for Producer’s obligation to comply with all state, local and federal laws, policies and regulations applicable to the Event. This Agreement is not a permit or other regulatory approval to hold the Event.
   3. Assignment. Producer’s obligations and rights hereunder shall not be assigned or delegated in whole or in part without City’s prior written consent.
   4. Cancellation. This Agreement is subject to cancellation pursuant to the provisions of A.R.S. Section 38-511.
   5. Modifications. Any amendment or modification from the terms of the Agreement shall be in writing and shall be effective only upon approval of all parties.
   6. Severability. If any term or provision of this Agreement shall be found to be illegal or unenforceable, the remainder of this Agreement shall remain in full force and effect, and such term or provision shall be deemed to be deleted.
   7. Attorney’s Fees. If any party brings any action for any relief, declaratory or otherwise, arising out of this Agreement, the prevailing party shall be entitled to receive from the non-prevailing party reasonable attorney’s fees, costs, and expenses, determined by a court sitting without a jury, which shall be deemed to have accrued on the commencement of such action.
   8. Authority. The person executing this Agreement on behalf of Producer warrants and represents to have full power and authority on behalf of Producer to enter into and perform this Agreement.
   9. Notices. Notices hereunder shall be given in writing by hand delivery or by United States mail, return receipt requested, postage prepaid addressed to:

If to City: Steve Geiogamah-Contract Administrator

Tourism Development Manager

Tourism and Events Department

City of Scottsdale

7447 E Indian School Rd

Scottsdale, AZ 85251

If to Producer:

By notice from time to time, City or Producer may designate any other address for receiving mailed notice hereunder. Service of any notice by mail shall be deemed to be complete three (3) days (excluding Saturday, Sunday and legal holidays) after the notice is deposited in the United States mail.

* 1. Third Parties. There are no third party beneficiaries to this Agreement.
  2. Employment of Unauthorized Workers. Producer shall comply with A.R.S. §23-211, et seq. and all other applicable federal, state and local laws and regulations that relate to Producer’s employees (collectively, the “Unauthorized Worker Laws”). Producer shall cause its contractors to comply with the Unauthorized Worker Laws as respects the contractors’ employees. Without limitation, Producer warrants and represents pursuant to A.R.S. §41-4401(A)(1) that Producer and its contractors comply with A.R.S. §23-214(A). Pursuant to A.R.S. §41-4401(A)(2), a breach of this paragraph shall be a material breach of this Agreement and an event of default, which shall entitle City to exercise any and all remedies described in this Agreement or otherwise available at law or equity, including without limitation termination of this Agreement. However, pursuant to A.R.S. §41-4401(C), Producer shall not be deemed to be in material breach of the warranty if Producer and its contractors establish that they have complied with the employment verification provisions prescribed by §274A and §274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). City shall have the right to inspect the records and papers of Producer and its employees, and of Producer’s contractors and their employees, to ensure that Producer and its contractors are in compliance with this paragraph.

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

IN WITNESS WHEREOF, the parties have hereunto subscribed their names as of the date first stated above.

PRODUCER:

By:

Its:

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

By:

W. J. “Jim” Lane, Mayor

ATTEST:

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Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

Bruce Washburn, City Attorney

By: William K. Hylen, Senior Assistant City Attorney

Katherine Callaway, Risk Management Director

Steve Geiogamah, Tourism Development Manager

Exhibit A

Application

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Exhibit B

Post-Event Report