



CITY OF PHOENIX
Parks and Recreation Department

REQUEST FOR INFORMATION
PKS-RFI-20-012

NON-PROFIT OPERATING AGREEMENT

for

SHEMER ART CENTER AND MUSEUM



SECTION I – GENERAL INFORMATION

CITY OF PHOENIX
Parks and Recreation
Department
16th Floor
Phoenix, AZ 85003

1. INTRODUCTION

The City of Phoenix (City), through its Parks and Recreation Department (PRD), is seeking information from a non-profit organization to operate various City facilities and provide recreation, educational and cultural services to the public.

2. INQUIRIES

All questions that arise relating to this Request for Information (RFI) shall be directed in writing to:

Michael Smiley
Procurement Officer

To be considered, written questions shall be received by **June 16, 2020**, 2:00 P.M. local Arizona time. Written inquiries may be emailed to michael.smiley@phoenix.gov. Questions received will then be answered in an addendum and published on the Procurement Website.

No informal contact initiated by Offerors on the proposed service will be allowed with members of City's staff from date of distribution of this solicitation until after the closing date and time for the submission of proposals. All questions concerning issues related to this solicitation shall be presented **in writing**.

3. SCHEDULE OF EVENTS

RFI Issue Date: June 9, 2020

RFI Due Date: June 23, 2020 at 2:00 p.m. Local Arizona Time

PRD Location: Phoenix City Hall
200 W. Washington Street, 16th floor
Phoenix, AZ 85003
and a copy sent to; michael.smiley@phoenix.gov

4. PUBLIC RECORD

All documents submitted in response to this solicitation will become the property of the City and become a matter of public record available for review pursuant to Arizona State law. If a Respondent believes that a specific section of its response is confidential, the Respondent will isolate the pages marked confidential in a specific and clearly labeled section of its response. A Respondent may request specific information is treated by the Procurement Officer as confidential provided the Respondent clearly labels the information "confidential." To the extent necessary for the evaluation process, information marked as "confidential" will not be treated as confidential. Once the procurement file becomes available for public inspection, the Procurement Officer will not make any information identified by the Respondents as "confidential" available to the public unless necessary to support the evaluation process or if specifically requested in accordance with applicable public records law. When a public records



SECTION I – GENERAL INFORMATION

CITY OF PHOENIX
Parks and Recreation
Department
16th Floor
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request for such information is received, the Procurement Officer will notify the Respondent in writing of any request to view any portion of its response marked “confidential.” The Respondent will have the time set forth in the notice to obtain a court order enjoining such disclosure. If the Respondent does not provide the Procurement Officer with a court order enjoining release of the information during the designated time, the Procurement Officer will make the information requested available for inspection.

5. GENERAL REQUIREMENTS

A. Agreement

The Respondent will be required to enter into an agreement with the terms and conditions as set forth in the attached “Sample Contract” in **Section III**.

B. Non-Profit Organization

The Respondent will be required to be a non-profit organization upon entering into an Agreement with the City of Phoenix. Proof of IRS non-profit status is required at the time of Agreement execution.

C. Insurance and Indemnification

The Respondent is required to provide proof of insurance to the limits indicated in the Sample Contract (**Section III**). The successful Respondent will indemnify the City against any negligent or willful acts or omissions by the Respondent.

D. Background Screening

The Respondent is required to comply with the background screening requirements noted in the Sample Contract (**Section III**). Typically, the successful Respondent will be required to submit all full and part-time employees and volunteers to a maximum level background check.

E. Professional Competency

The Respondent will be required to represent that it is familiar with the nature and extent of the services to be performed, and any conditions that may affect Respondent’s performance. The Respondent further represents that it is fully experienced, properly qualified, is in compliance with all applicable license requirements and is organized and financed to perform the services.

6. ABILITY TO PERFORM

The Respondent certifies that the non-profit organization can comply with all of the terms and conditions contained in the sample contract by signing and submitting the Compliance Form (**Section IV**).



SECTION II – SUBMITTAL REQUIREMENTS

CITY OF PHOENIX
Parks and Recreation
Department
16th Floor
Phoenix, AZ 85003

SUBMITTAL INSTRUCTIONS

Please submit one (1) Compliance Form (**Section IV**) with original signature from an authorized representative of the non-profit organization no later than the date and time below. The Certification Form may be e-mailed or sent through US Mail to the procurement officer at:

Michael.Smiley@phoenix.gov

200 West Washington Street, 16th Floor
Phoenix, AZ 85003
Attn: Procurement Officer

The City shall not be responsible for any costs associated with preparing or responding to this RFI.

RFI response must be clearly marked as **PKS-RFI-20-012 – Non-Profit Organization Operating Agreement** and in the subject line of the e-mail, or on the envelope.

The RFI must be received by **June 23, 2020 at 2:00 P.M., local Arizona time.**

Any response received later than the above date and time shall be deemed unresponsive.



SECTION III – SAMPLE CONTRACT

**CITY OF PHOENIX
Parks and Recreation
Department
16th Floor
Phoenix, AZ 85003**



City of Phoenix

OPERATING AGREEMENT

Between

**CITY OF PHOENIX
A municipal corporation**

And

An Arizona nonprofit corporation

TABLE OF CONTENTS

RECITALS.....	4
AGREEMENT	4
1. Premises	4
2. Term	4
3. Use of Premises	4
4. Parking	5
5. Assignment and Concessions	5
6. Taxes.....	5
7. Reports.....	5
8. Utilities.....	6
9. Maintenance of the Premises	6
10. Operation of the Premises	6
10.A. City of Phoenix Responsibilities	6
10.B. Contractor Responsibilities.....	7
10.C. Both Parties Agree	8
11. Access	9
12. Personal Property	9
13. Permitted Charges	9
14. Defense and Indemnification.....	9
15. Contractor's Insurance	10
15.A. Scope and Limits of Insurance	10
15.B. Commercial General Liability	10
15.C. Property Insurance.....	11
15.D. Automobile Liability	11
15.E. Worker's Compensation and Employers' Liability	11
16. Additional Insurance Requirement	11
17. Notice of Cancellation	12
18. Acceptability of Insurers	12
19. Verification of Coverage.....	12
20. Subcontractors.....	12
21. Approval.....	13
22. Property Loss.....	13
23. Alterations	13
24. Surrender	13
25. Default	14
26. Insolvency	14
27. Legal Expenses	15
28. Time.....	15
29. Notices.....	15
30. Maintenance of 501(c)(3) Status.....	15
31. Legal Workers Requirements.....	15
32. Contractor and Subcontractor Worker Background Screening	16
33. Condition Precedent to Effectiveness	17
34. Nondiscrimination	18
35. Lawful Presence Requirement.....	18

36. Conflict of Interest and Agreement Cancellation	18
37. Waiver.....	18
38. Entire Agreement Changes and Execution	19
39. Implied Agreement Terms.....	19
40. Applicable Law.....	19
41. Severability	19
42. Compliance with Laws	19
43. Non-Waiver of Liability	19
44. Employment Disclaimer	19
45. Appropriations Clause.....	20
46. Force Majeure.....	20
47. Termination.....	20

List of attachments

Exhibit A: Premises	22
Exhibit B: 501(c)(3) IRS Determination Letter	23
Exhibit C: Certificate of Insurance	24
Exhibit D: Sample Quarterly Report	25

SAMPLE

OPERATING AGREEMENT

This Operating Agreement (“Agreement”) is made and entered into on this ____ day of _____, 2020 (“Commencement Date”) by and between the City of Phoenix, a municipal corporation, hereinafter (“the City”), through its Parks and Recreation Department (“PRD”), and the Shemer Art Center and Museum Association, Inc. (“CONTRACTOR”), an Arizona 501(c)(3) non-profit organization.

RECITALS

WHEREAS, Martha Shemer donated the house and grounds of what is now the Shemer Art Center and Museum located at 5005 East Camelback Road, Phoenix, Arizona 85018, to the City of Phoenix, with certain provisions as to the use and care of the facilities as described in the Grant Deed dated September 11, 1984 (84-437238); and

WHEREAS, the City wishes to have the Premises operated and managed by CONTRACTOR to fulfill the City’s desire to provide cultural opportunities to its citizens; and

WHEREAS, CONTRACTOR’s mission is to support and showcase Arizona artists provide the community with a unique and inviting atmosphere to enjoy, promote, and learn about visual arts through exhibitions, classes, and outreach programs and;

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

AGREEMENT

1. Premises

The Premises covered by this Agreement is the Shemer Art Center and Museum, and its grounds, located at 5005 East Camelback Road, Phoenix, Arizona 85018, as shown on the map attached hereto as Exhibit A (the “Premises”).

2. Term

The term of this agreement (“Term”) shall be 10 years, beginning on the Commencement Date with one subsequent option to extend the term for an additional ten (10) years. This Agreement shall be reviewed after five (5) years by both parties to make any updates or revisions, if mutually agreed to by both parties.

3. Use of Premises

CONTRACTOR may occupy and use the Premises, or any part thereof, solely for the purpose of operating a center for the study, creation and appreciation of art, history, and culture with the usual and customary education, cultural, artistic, civic, and private activities incidental thereto, including, but not limited to, festivals,

exhibits, and special events promoting fine arts, history, music, dance, art, literature, drama, crafts, and humanities activities, (hereinafter "Permitted Use") and for no other purpose without the prior written consent of City. The Premises shall not be closed to the public without written approval by PRD, which may be in an electronic format.

CONTRACTOR shall not engage in or permit any use or activity in or upon the Premises or any part thereof in violation of any applicable laws, statues, rules, or regulations of any Federal, State, or local governmental authority.

City may use the Premises up to twelve (12) times in a calendar year in coordination with CONTRACTOR and at times that do not interfere with other activities scheduled by CONTRACTOR. The City will provide its own staffing and clean-up. Such use shall be without charge to the City and without cost to CONTRACTOR. If the City requires CONTRACTOR services, all regular fees will apply.

4. Parking

CONTRACTOR is permitted non-exclusive use of the parking lots shown on Exhibit A for patrons of the Shemer Art Center, to include the legally required number of designated handicapped parking spaces. The parking lots shall at all times be available for park- and CONTRACTOR-related activities. Use by the City shall be consistent with CONTRACTOR activities.

5. Assignment and Concessions

CONTRACTOR shall not assign its interest in this Agreement, or any part thereof, without prior written consent and approval of City.

6. Taxes

In addition to the other fees and charges to be paid by CONTRACTOR, CONTRACTOR shall pay, before delinquent, all taxes and assessments of every kind levied or assessed upon or against any and all personal property of CONTRACTOR, or those claiming under CONTRACTOR that is or may become a lien upon the Premises or any building or improvement thereof.

7. Reports

CONTRACTOR shall prepare and maintain internal financial reports pursuant to generally-accepted accounting standards and submit to the City on an annual basis, the following:

- A. **Quarterly Reports.** Quarterly reports shall be received no later than the 10th of the month following each quarter. If the due date is not a regular

business day, the report(s) will be due on the following regular business day. The Quarterly Report Form is attached as Exhibit D.

- B. **Annual Reports.** CONTRACTOR shall submit an annual report on the anniversary of this Agreement throughout the Term. The annual report shall include a summary of the information contained in the quarterly reports. The annual report shall be provided in a form that is mutually agreeable to both parties.

CONTRACTOR will provide the City with any additional reports as the City may request from time to time with reasonable notice.

8. **Utilities**

Within 30 days from the Commencement Date, CONTRACTOR shall put all applicable utilities (water, electric, gas, telecommunications) that serve the Shemer Art Center and Museum building(s) in the name of CONTRACTOR.

9. **Maintenance of the Premises**

The Parties agree to share maintenance responsibilities of the Premises as defined in this Agreement. Any item not listed will be added with mutual agreement of the Parties and incorporated into this Agreement in writing.

10. **Operation of the Premises**

The parties hereto agree as follows:

A. CITY OF PHOENIX RESPONSIBILITIES:

1. Provide a liaison ("PRD Liaison") to work with CONTRACTOR to facilitate communication regarding the City's processes, facilities/site issues, programming review and partnership activities.
2. Provide exterior trash and recycling collection at designated areas.
3. As budget allows, maintain and repair the existing:
 - a. Roof
 - b. Electrical distribution systems
 - c. Heating, ventilating, and air-conditioning systems
 - d. Plumbing system and restroom fixtures
 - e. Standard exterior lights
 - f. Intrusion alarm system
 - g. Phone and internet connectivity to buildings only
 - h. Doors, floors, and windows
 - i. Exterior fencing and gates
 - j. Exterior painting and finishes

- k. City site signage
- l. Parking lot surface and lighting to applicable City Code requirements.

- 4. Maintain inspection and treatment service for termites and rodents.
- 5. As budget allows and consistent with other City facilities, provide maintenance staff to support weekly area grounds keeping and as-needed general exterior landscape maintenance.
- 6. Pay false alarm fees when the false alarm is caused by City staff on City business.
- 7. Ensure that CONTRACTOR is informed of all informational meetings or events that will assist in the implementation of this Agreement.

B. CONTRACTOR RESPONSIBILITIES:

- 1. Provide a liaison (“CONTRACTOR Liaison”) to work with the PRD to facilitate communication regarding any facilities/site issues, programming review of Premises and activities at monthly meetings or meetings rescheduled with agreement by both parties.
- 2. Provide, coordinate, and pay for all expenses and staffing related to CONTRACTOR’s programs and events, including classes, exhibits, sculpture garden and fundraising; and assume responsibility for paid and volunteer staffing to operate these programs and events.
- 3. Ensure that all activities, programs, and events are in compliance with any and all State, Federal and local laws.
- 4. Operate the gift shop. CONTRACTOR is responsible for all merchandising, staffing, marketing, and management of the gift shop. CONTRACTOR is responsible for all expenses related to the gift shop and will retain all revenues to be used for CONTRACTOR responsibilities contained in this Agreement.
- 5. Assign adequate personnel and organizations to provide for successful operation and programming at the Premises. CONTRACTOR is responsible to take steps to implement the appropriate action if, during the term of the Agreement, any CONTRACTOR staff or volunteer’s job performance or conduct is deemed unacceptable. The City may bring such issues to the attention of CONTRACTOR and work toward acceptable resolution.
- 6. Determine hours of operation for program schedules and activities.

7. Hold fundraising events, rentals, and projects as needed to financially support the development of CONTRACTOR and its programs.
8. Use its best efforts to seek additional funding sources by submitting grant applications when available in cooperation with the City for use in operation, maintenance, repair, and refurbishment.
9. After CONTRACTOR-sponsored events and/or outdoor activities, cause the Premises to be cleaned and returned to the condition prior to the event or activity.
10. Coordinate with the PRD regarding the use of the Premises in the context of those activities that are different than daily, typical operations.
11. Maintain nonprofit status in compliance with the IRS and the Arizona Corporation Commission.
12. Report the need for repairs for which the City is responsible on the Premises to the PRD Liaison.
13. Provide upkeep and curation of exhibits and archival material, including dusting, furniture coverings when not in use, and appropriate storage of materials.
14. Provide custodial service of the Premises. CONTRACTOR will place trash and refuse into dumpsters and place at designated exterior location for pickup by the City.
15. While maintaining and managing CONTRACTOR's website, include a link to PRD's web page.
16. Be responsible for all office equipment including telephone, cell phones, personal computers, photocopiers/scanners, store inventory, and security cameras within the Premises.
17. Regarding City-issued facility keys and alarm/PIN codes, ensure the following:
 - a. only one authorized/assigned person per alarm/PIN code.
 - b. alarm/PIN codes remain confidential to assigned person ONLY and are not shared or distributed.
 - c. CONTRACTOR representative attends mandatory alarm training.
 - d. CONTRACTOR sets and monitors the alarm system daily.
 - e. CONTRACTOR provides first response to alarms.

- f. CONTRACTOR reports alarms and alarm maintenance issues to the City Liaison within one day.
- g. CONTRACTOR pays for false alarm fees, including police responses in excess of one false alarm response annually unless false alarm is caused by City staff.
- h. not duplicate any City-assigned keys to the Premises without first seeking written approval, which can be through e-mail, from the City.

C. BOTH PARTIES AGREE:

- 1. Any City approved construction project on the Premises shall take precedence over programming, events, and activities during the construction period.
- 2. All activities, programs, events, tours, and facilities on the Premises shall be accessible under the Americans with Disabilities Act (ADA) and all reasonable accommodation shall be made in compliance with the ADA.
- 3. The City reserves the right to close the Premises to the public when or if the City determines that the Premises is not safe for public use. A reasonable notice will be given to CONTRACTOR should closure be necessary.

11. Access

City shall have the right to enter and inspect the Premises at any time during regular business hours. City shall make all reasonable effort to inform CONTRACTOR of needed access with prior notice.

12. Personal Property

- A. Personal property may be placed on the Premises by CONTRACTOR so long as it is not physically attached to or becomes a fixture to, the Premises. It shall remain the property of CONTRACTOR and may be removed by CONTRACTOR at any time or upon expiration or termination of this Agreement. Personal property cannot be placed on the roof top of any building/structure without written consent from the City.
- B. The City shall not be responsible for any loss, injury, or damage to CONTRACTOR's business, personal property, or equipment whether belonging to CONTRACTOR or CONTRACTOR's employees, resulting from a casualty loss to the building. It is recommended that CONTRACTOR purchase, at their own expense, Personal Property Insurance and Business Interruption Insurance to cover these types of losses.

13. Permitted Charges

CONTRACTOR shall have the right to impose reasonable charges for the use now or hereafter of any facilities on the Premises by any organization or person. CONTRACTOR shall maintain such proceeds only for use by CONTRACTOR for expenses related to the Permitted Use and the City shall have no right, title, claim, or interest in such proceeds.

14. Defense and Indemnification Clause

CONTRACTOR ("Indemnitor") must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents, and employees ("Indemnitee") from and against 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 contractors ("Indemnitor's Agents") arising out of or related to Indemnitor's occupancy and use of the Premises. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses 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 will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration for the use and occupancy of the Premises, Indemnitor waives all rights of subrogation against Indemnitee for losses arising from the use, occupancy or condition of the Premises. The obligations of Indemnitor under this provision survive the termination or expiration of this Agreement.

15. Contractor's Insurance

CONTRACTOR must procure and maintain, for the duration of this Agreement, insurance against claims or injury to persons or damage to property that arise from or in connection with this Agreement.

The City in no way warrants that the limits stated in this section are sufficient to protect the CONTRACTOR from liabilities that might arise out of this Agreement and CONTRACTOR may purchase additional insurance as CONTRACTOR determines necessary.

A. Scope and Limits of Insurance

CONTRACTOR 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.

B. Commercial General Liability – Occurrence Form

Policy must cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury and liability assumed under an insured contract.

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

1. 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 and operations related to this Agreement.

2. 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.
3. City of Phoenix is an additional insured to the full limits of liability purchased by the CONTRACTOR.
4. CONTRACTOR's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

C. **Property Insurance**

Coverage for CONTRACTOR's Business Personal Property & Equipment	Replacement Value
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Coverage for CONTRACTOR's improvements	Replacement Value
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1. If any tenant improvements to the building are made by CONTRACTOR, property insurance must be provided by CONTRACTOR on the improvements. Coverage must be on a Special Causes of Loss property form at replacement cost value and name the City of Phoenix as a loss payee.
2. The Property policy must contain a waiver of subrogation against the City of Phoenix with respect to the tenant improvement coverage.

D. **Automobile Liability**

Bodily Injury and Property Damage coverage for any owned, hired, and non-owned vehicles used in the activities and operations related to this Agreement.

Combined Single Limit (CSL)	\$1,000,000
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1. The policy must be endorsed to include the City of Phoenix as an additional insured with respect to liability arising out of the activities and operations relating to this Agreement.
2. City of Phoenix is an additional insured to the full limits of liability purchased by the CONTRACTOR.
3. CONTRACTOR's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

E. **Worker’s Compensation and Employers’ Liability**

Workers’ Compensation	Statutory
Employers’ Liability:	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

1. Policy must contain a waiver of subrogation against the City of Phoenix.
2. This requirement does not apply when a contractor or subcontractor is exempt under A.R.S. §23-902(E), **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

16. **Additional Insurance Requirements**

The policies must include, or be endorsed to include, the following provisions:

- A. On insurance policies where the City of Phoenix is named as an additional insured, the City of Phoenix is an additional insured to the full limits of liability purchased by the CONTRACTOR even if those limits of liability are in excess of those required by this Agreement.
- B. The CONTRACTOR’s insurance coverage must be primary insurance and non-contributory with respect to all other available sources.

17. **Notice of Cancellation**

For each insurance policy required by the insurance provisions of this Agreement, CONTRACTOR must provide to the City, within 5 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, or hand delivered to **(City of Phoenix Department Representative’s Name & Address & Fax Number)**.

18. **Acceptability of Insurers**

Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an “A.M. Best” rating of not less than B+ VI. The City in no way warrants that the required minimum insurer rating is sufficient to protect CONTRACTOR from potential insurer insolvency.

19. **Verification of Coverage**

CONTRACTOR must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before the Agreement commences. Each insurance policy required by this Agreement must be in effect at or prior to the inception of this Agreement and remain in effect for the duration of the Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

All certificates required by this Agreement must be sent directly to (City Department Representative's Name and Address). The City project/contract number and project description must be noted on the certificate of insurance. The City reserves the right to review complete copies of all insurance policies required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

20. Subcontractors

All subcontractors providing services on behalf of CONTRACTOR are subject to the insurance coverages identified above and must include the City of Phoenix as an additional insured. At any time throughout the life of the Agreement, the City of Phoenix reserves the right to require proof from the CONTRACTOR that its subcontractors have insurance coverage.

21. Approval

Any modification or variation from the insurance coverages and conditions in this Agreement must be documented by an executed contract amendment.

22. Property Loss

If the buildings or other improvements constituting the premises are destroyed or damaged by fire or other casualty so that they are no longer of use, then this agreement shall be terminated. If the damages to the buildings or other improvements are capable of being repaired, all such repairs shall be paid for by the City to the extent of its fire insurance coverage.

23. Alterations

- A. CONTRACTOR shall make no alterations or improvements on the Premises without first obtaining written permission from the City.
- B. CONTRACTOR shall make no alterations or improvements to the operational, HVAC, and mechanical systems without having first gained written permission from the City. Minor, routine, non-structural modification of space by CONTRACTOR is permissible after informing the City, provided it is done in accordance with all local ordinances, codes, and regulations covering such modifications including, but not limited to, the Americans with Disabilities Act (ADA). Any alteration or improvement commenced by

CONTRACTOR shall be completed expeditiously and in compliance with all laws, rules, and regulations or any governmental authorities having jurisdiction over the Premises.

- C. The Premises shall be kept free and clear from any and all mechanics' and materialmen's liens, claims, and charges. CONTRACTOR shall indemnify and hold the City harmless from any and all cost, expenses, claims, liens, or demands, including reasonable attorney's fees, arising out of or by virtue of any nonpayment of the payments to be made by CONTRACTOR for the cost and expenses of such alterations and improvements.
- D. This Agreement and the respective interests of the City and CONTRACTOR hereunder shall not be subordinated or subject to any encumbrances that may be required for any loans obtained by CONTRACTOR to finance the costs and expenses of CONTRACTOR under this Agreement.

24. Surrender

Upon the expiration of this Agreement, or upon its earlier termination, CONTRACTOR shall immediately surrender peaceable possession of the Premises and all buildings and permanently affixed improvements then located thereon, in good condition and repair, normal wear and tear excepted, which permanently affixed improvements shall thereupon be and become the property of the City.

25. Default

If CONTRACTOR is at any time in default hereunder for a period greater than sixty (60) days after CONTRACTOR's receipt of written notice from the City wherein the City shall have demanded in writing to CONTRACTOR that such default be cured, then in any such event, the City may, at its option:

- A. Terminate this Agreement without further notice to CONTRACTOR and re-enter the Premises and exercise in connection with such re-entry any other right or remedy provided by law regarding such re-entry; or
 - 1. At CONTRACTOR's cost, undertake to remedy or complete CONTRACTOR's obligation which is in default whereupon CONTRACTOR shall reimburse the City, within thirty (30) days of CONTRACTOR's receipt of a written demand therefor, all costs expended in regard thereto by the City. CONTRACTOR shall pay with interest thereon at the rate of 3% per annum if paid after sixty (60) days of receipt of written demand; or
 - 2. Pursue such other legal and/or equitable remedies as are available to the City (the foregoing remedies being cumulative and not exclusive).

3. Notwithstanding the foregoing, if CONTRACTOR is actively pursuing a remedy to a default, the City shall extend to CONTRACTOR a reasonable amount of time, but not to exceed one hundred twenty (120) days to cure such default prior to taking any action as set forth in paragraphs 1-2 above.
- B. If the City is at any time in default hereunder for a period greater than sixty (60) days after the City's receipt of notice from CONTRACTOR wherein CONTRACTOR shall have demanded in writing to the City that such default be cured (provided, however, that in the event of an emergency or other life or property damaging situation immediate telephonic notice shall be sufficient). CONTRACTOR at its option, may:
1. Terminate this Agreement without further notice of such termination to the City; or
 2. Pursue such other legal and/or equitable remedies as are available to CONTRACTOR (the foregoing remedies being cumulative and not exclusive).

26. Insolvency

In addition to any other rights or remedies of the City hereunder and except as provided in the Bankruptcy Code, if CONTRACTOR shall at any time during the Term, voluntarily or involuntarily, sign over CONTRACTOR's estate or effected for any payment of its debts, or if any sheriff, marshal, constable, or any other officer takes possession of the Premises by virtue of any execution or attachment and the same is not released within sixty (60) days thereafter, or if receiver or trustee is appointed of CONTRACTOR's property, or in the event CONTRACTOR shall be adjudged a bankrupt, or files a petition under any chapter of the Bankruptcy Code, then and in such event, this operating Agreement shall be terminated at the option of the City, effective the day prior to any such action or filing. In addition, any such event shall be deemed an event of default hereunder entitling the City to terminate this Agreement without further notice of termination.

27. Legal Expenses

In the event of any suit instituted by either the City or CONTRACTOR against the other in any way connected with this Agreement or for the recovery of fees or possession of the Premises, the successful party to any such action (whether or not prosecuted to judgement), as determined by the court shall recover from the other party the reasonable attorney's fees, as determined by the court, and court costs of the successful party in connection with such suit.

28. Time

Time is of the essence of this Agreement and of every covenant, term, and condition contained herein.

29. Notices

Any notice or demand which shall be required or permitted by law or by any provision of this operating Agreement shall be in writing and shall be either personally delivered or mailed, registered or certified mail, postage prepaid, to the parties as follows:

CITY OF PHOENIX
PARKS AND RECREATION DEPT.
ATTN: DIRECTOR
200 WEST WASHINGTON ST.
16TH FLOOR
PHOENIX, ARIZONA 85003

CONTRACTOR

ATTN: PRESIDENT &
EXECUTIVE DIRECTOR

All notices shall be effective upon receipt.

30. Maintenance of 501(c)(3) Status

CONTRACTOR warrants that it presently is an exempt organization pursuant to Section 501(c)(3), Internal Revenue Code, as amended (the "Code") and that it has not engaged in any prohibited transaction that would cause it to be denied such exemption under Sections 503 and 504 of the Code. CONTRACTOR further agrees that its ability to occupy the Premises is expressly and absolutely conditioned upon its maintenance of such exempt status, and that the loss of such status shall forthwith terminate this Agreement, and that CONTRACTOR shall vacate the Premises within 90 days following the conclusion (or abandonment by CONTRACTOR) of any action or actions determining that such exempt status has been lost. With regard to the foregoing, CONTRACTOR will execute and deliver to the City a Tax Compliance Certificate generally in the form of Exhibit B.

31. Legal Workers Requirements

The City is prohibited by A.R.S. § 41-4401 from awarding an agreement to any contractor who fails, or whose subcontractors, fail, to comply with A.R.S. § 23-214(A). Therefore, CONTRACTOR agrees that:

- A. CONTRACTOR and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A.

- B. A breach of warranty under paragraph 1 shall be deemed a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement.
- C. The City retains the legal right to inspect the papers of CONTRACTOR or sub CONTRACTOR employee(s) who work(s) on this Agreement to ensure that CONTRACTOR or sub CONTRACTOR is complying with the warranty under paragraph one (1).

32. Contractor and Subcontractor Worker Background Screening

A. Background Screening Risk Levels

The City has established two levels of risk: Standard and Maximum and associated background screening. The current risk level and background screening required for this Agreement is Maximum Risk Level. If the scope of work changes, the City may amend the level of risk, which could require the Contractor to incur additional contract costs to obtain background screens or badges

1. Maximum Risk Level

A maximum risk background screening will be performed when the Contract Worker's work assignment will:

- a. Include working directly with vulnerable adults or children (under age 18); or
- b. any responsibility for the receipt of payment of City funds or control of inventories, assets, or records that are at risk of misappropriation; or
- c. have unescorted access to City data centers, money rooms, or high-value equipment rooms; or private residences; or to critical infrastructure sites/facilities; or
- d. direct or remote access to Criminal Justice Information Systems (CJIS) infrastructure.

2. Contractor Certification; City Approval of Background Screening

Unless otherwise provided for in the Scope Contractor will be responsible for determining whether Contract Worker(s) are disqualified from performing work for the City for standard risk level background checks; and, for reviewing the results of the background check every five years; and, engaging in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and, submitting the list of qualified Contract Workers to the contracting department. For sole proprietors, the Contractor must

comply with the background check for himself and any business partners, or members or employees who will assist on the contract and for whom the requirements of the Contract apply. By executing this Contract, Contractor certifies and warrants that Contractor has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current. Also, by executing this Agreement, Contractor further certifies and warrants that Contractor has satisfied all background screening requirements for the standard risk background screening, and verified legal worker status, as required.

3. **Terms of This Section Applicable to All Contractor's Contracts and Subcontracts**

Contractor will include Contract Worker background screening in all contracts and subcontracts for services furnished under this Contract.

4. **Materiality of Background Screening Requirements; Indemnity**

The background screening requirements of this section are material to City's entry into this Agreement and any breach of this section by Contractor will be deemed a material breach of this Contract. In addition to the indemnity provisions set forth in this Agreement, Contractor will defend, indemnify and hold harmless the City for any and all claims arising out of this background screening section including, but not limited to, the disqualifications of a Contract Worker by Contractor or the City. The background screening requirements are the minimum requirements for the Agreement. The City in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of the Contractor's services under this Agreement or Contractor's failure to comply with this section. Therefore, Contractor and its Contract Workers will take any reasonable, prudent and necessary measures to preserve and protect public health, safety and welfare when providing services under this Agreement.

5. **Continuing Duty; Audit**

Contractor's obligations and requirements that Contract Workers satisfy this background screening section will continue throughout the entire term of this Contract. Contractor will maintain all records and documents related to all background screenings and the City reserves the right to audit Contractor's compliance with this section.

33. Condition Precedent to Effectiveness

This Agreement shall not be effective or binding upon the City or CONTRACTOR until:

- A. This Agreement and the transaction embodied herein are approved, in writing, by the City of Phoenix Parks and Recreation Board and CONTRACTOR's Board of Directors; and
- B. This Agreement is executed by authorized officers of the City and CONTRACTOR.

34. Nondiscrimination

CONTRACTOR, in performing under this agreement, will 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 employment practice. CONTRACTOR will 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. Such action includes 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. CONTRACTOR agrees that this clause will be incorporated in all subcontracts including those with all labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with this Agreement. If CONTRACTOR employs more than 35 employees, CONTRACTOR 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 sexual orientation or gender identity or expression.

CONTRACTOR may be required to provide additional documentation to the City's Equal Opportunity Department (EOD) affirming that a nondiscriminatory policy is being utilized.

EOD will monitor CONTRACTOR's employment policies and practices as deemed necessary. EOD is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

35. Lawful Presence Requirement

Pursuant to A.R.S. §§ 1-501 and 1-502, the City of Phoenix is prohibited from awarding an agreement to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying identification and sign a City-provided affidavit

affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. This requirement does not apply to business organizations such as corporations, partnerships or limited liability companies.

36. Conflict of Interest and Agreement Cancellation

All parties acknowledge that this Agreement is subject to cancellation by the City of Phoenix pursuant to the provision of Section 38-511, Arizona Revised Statutes.

37. Waiver

No waiver of any breach of any of the covenants or conditions of this Agreement that are to be performed by either party will be construed as a waiver of any succeeding breach of the same or any other covenant or condition.

38. Entire Agreement: Changes after Execution

This Agreement and any Exhibits attached hereto constitutes the entire agreement between the parties with regard to CONTRACTOR's operation of the Premises. No subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon the City or CONTRACTOR must be in writing, signed, and executed by both parties.

39. Implied Agreement Terms

Each and every provision of law required by law to be in the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.

40. Applicable Law

The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement.

41. Severability

If any provision of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will not be affected thereby and will be valid and enforceable to the fullest extent permitted by law.

42. Compliance with Laws

CONTRACTOR must comply with all applicable federal, state, county, and City laws, ordinances, and regulations governing this activity at its own cost.

CONTRACTOR must immediately notify City of any inspection, audit, or review by any regulatory authority or records procedure of consultant or its subcontractors and provide City with a copy of any written findings prepared by such regulatory authority in connection with such inspection, audit, or review.

43. Non-Waiver of Liability

The City of Phoenix, as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, CONTRACTOR agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.

44. Employment Disclaimer

CONTRACTOR agrees that no person supplied by it in performance of the Agreement is an employee of City and further agrees that no rights of City's Civil Service, Retirement, or Personnel Rules accrue to any such person(s). Any contracting party shall have total responsibility for all salaries, wages, bonuses, retirements, withholdings, worker's compensation and occupational disease compensation insurance, unemployment compensation other benefits, and taxes and premiums appurtenant thereto concerning such persons provided by such consultants in performance of the Agreement and shall save and hold City harmless with respect thereto.

45. Appropriations Clause

Any provision or clause of this Agreement, or in any exhibit attached hereto, which purports to obligate the City to extend any funds, shall be subject to such funds having been appropriated by the City of Phoenix City Council in the annual budget process of the City, and no obligation or undertaking of the City set forth in this Agreement involving the expenditure of funds shall constitute a legal obligation of the City in the absence of a lawful appropriation thereof.

46. Force Majeure

In the event that either party is prevented from performing or is unable to perform any of its obligations under this Agreement due to any act of God, acts or decrees of governmental or military bodies, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, pandemic, destruction of production facilities, riot, insurrection, Materials unavailability, or any other cause beyond the reasonable control of the party invoking this section (collectively, a "Force Majeure"), and if such party shall have used its commercially reasonable efforts to mitigate its effects, such party shall give prompt written notice to the other party, its performance shall be excused, and the time for the performance shall be extended for the period of delay or inability to perform due to such occurrences. Regardless of the excuse of Force

Majeure, if such party is not able to perform within ninety (90) days after such event, the other party may terminate the Agreement.

47. Termination

Irrespective of any other provision of this Agreement, at will either party to this Agreement may cancel or terminate this Agreement upon giving the other party 120 days advance written notice thereof.

The following signatures are in agreement and understanding of the aforementioned items and are required for a binding Agreement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

SAMPLE

IN WITNESS WHEREOF,

This Agreement has been made as of the effective date.

CONTRACTOR

An Arizona non-profit corporation

By (signature): _____

Name (printed): _____

Title: _____

Date: _____

CITY OF PHOENIX, PARKS AND RECREATION DEPARTMENT

A municipal corporation

By (signature): _____

Name (printed): Inger Erickson

Title: Director of Parks and Recreation

Date: _____

Approved as to Form:

Attest:

City Attorney

City Clerk

SAMPLE

**EXHIBIT A
PREMISES**

SAMPLE

EXHIBIT B
501(c)(3) DETERMINATION LETTER
1 of 2

SAMPLE

EXHIBIT C
CERTIFICATE OF INSURANCE

SAMPLE

EXHIBIT D
QUARTERLY REPORT FORM (1 of 2)

NON-PROFIT FACILITY OPERATORS
QUARTERLY REPORT FY [00/00]
[_____] QUARTER (MONTH – MONTH)
 (Page 1)

Facility Name:
Submitted by:

Non-Profit Organization:
Date:

Statistical Data

Number of Participants per Quarter	Avg. Amt of Time Spent w/ Each Participant	Number of Hours of Services Provided	Number of Volunteers Utilized	Number of Volunteer Hours Contributed	Value of Volunteer Service	Number of Programs Offered During Quarter
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TOTALS

Income/Revenue

Donations & Sponsorships	Membership Fees	Program Revenue	Grant Funds	Fundraising Events	Other	Total Revenue
\$	\$	\$	\$	\$	\$	\$

Expenses

Program Services	General Administration	Fundraising	Total Expenses
\$	\$	\$	\$

Service Updates

Number of Community Service Projects	Customer satisfaction Surveys – Average Score for Quarter	Number of Special Events / Fundraisers Held
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TOTALS

EXHIBIT D
QUARTERLY REPORT FORM (2 of 2)
(Page 2)

Successes during the quarter

Challenges during the quarter

SAMPLE



SECTION IV – COMPLIANCE FORM

**CITY OF PHOENIX
Parks and Recreation
Department
16th Floor
Phoenix, AZ 85003**



City of Phoenix

PARKS AND RECREATION DEPARTMENT

**NON-PROFIT ORGANIZATION OPERATING AGREEMENT
COMPLIANCE FORM**

As an authorized representative of the _____, an Arizona non-profit corporation, I hereby certify by my signature below that I can comply with all of the terms, conditions, and stipulations contained in the sample contract attached to this Request for Information No. PKS-RFI-20-012.

By: _____
Authorized Signatory, Non-Profit Organization

Date: _____