



**BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS**

Award Contract Grant

Requested Board Meeting Date: 04/05/22

* = Mandatory, information must be provided

or Procurement Director Award

***Contractor/Vendor Name/Grantor (DBA):**

Old Tucson Entertainment LLC (Headquarters: Durango, CO)

***Project Title/Description:**

Operating Agreement for Old Tucson Studios

***Purpose:**

Award: Contract No. CTN-ED-22-041. This award of contract is recommended to the highest qualified operator for an initial agreement term from 04/05/22 to 04/04/27 with up to two 10-year extensions and one additional 25-year extension for the operation of Old Tucson Studios. Administering Department: Attractions and Tourism.

***Procurement Method:**

Solicitation for Qualifications No. SFQ-PO-2100008 was conducted pursuant to A.R.S. § § 11-932 and 11-933(A), as step one of a two-step procurement process. Two (2) responsive statements of qualifications were received and evaluated by a seven (7) member committee with input from two (2) subcommittees using qualifications and experience-based selection criteria. Based upon the evaluation of the respondent's written representations of their qualifications and necessary due diligence, both respondents were invited to interviews. As a result of the combined scoring of the written statements of qualifications and interviews, one (1) respondent was invited to move forward to step two, Request for Proposal phase and provide a response to RFP-PO-2100017. The response to the RFP was evaluated by the evaluation committee with input from the subcommittees, and the respondent was invited into the negotiation phase. As a result of the RFP evaluation, the highest qualified Operator is recommended for award.

Attachments: Notice of Recommendation for Award, Memorandum to the Board of Supervisors, and Operating Agreement.

***Program Goals/Predicted Outcomes:**

Operator and County will fully cooperate with each other with respect to economic development activities related to the Facility and tourism, including, but not limited to, coordination of tourism promotion with the regional tourism agency, currently Metropolitan Tucson Convention and Visitors Bureau, dba Visit Tucson. The Facility will be fully promoted by County including but not limited to European, regional, statewide and U.S.-wide advertisement, solicitation of business, website presentations and event holding at the Facility. Operator will also participate in the planned regional visitor's center that will be operated by the County within the Pima County Historic Courthouse by providing a reasonable amount of Facility promotional materials and items for consignment in the gift shop. Operator will acknowledge in any Facility promotional materials and general signage that the Facility is a Pima County facility and attraction.

***Public Benefit:**

Operator will manage Facility as a public Western Frontier-type recreation and entertainment venue known as Old Tucson Studios for the benefit of Pima County residents, national, and international visitors taking into consideration the permitted activities will vary for the Developed area and Native area.

***Metrics Available to Measure Performance:**

Operator will participate in a regularly scheduled quarterly oversight meeting between representatives of Operator and County Departments with jurisdiction over the Facility to discuss ongoing operation, maintenance and improvements at the Facility.

***Retroactive:**

No

To: COB 3-18-2022 (D)
vers: 1
Pgs: 28

Contract / Award Information

Document Type: CTN Department Code: ED Contract Number (i.e., 15-123): 22-041
Commencement Date: 04/05/22 Termination Date: 04/04/27 Prior Contract Number (Synergen/CMS): _____
 Expense Amount: \$* _____ Revenue Amount: \$ 60,000.00

***Funding Source(s) required:**

Funding from General Fund? Yes No If Yes \$ _____ % _____

Contract is fully or partially funded with Federal Funds? Yes No

If Yes, is the Contract to a vendor or subrecipient?

Were insurance or indemnity clauses modified? Yes No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? Yes No

If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____
Amendment No.: _____ AMS Version No.: _____
Commencement Date: _____ New Termination Date: _____
Prior Contract No. (Synergen/CMS): _____

Expense or Revenue Increase Decrease Amount This Amendment: \$ _____

Is there revenue included? Yes No If Yes \$ _____

***Funding Source(s) required:**

Funding from General Fund? Yes No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards) Award Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____
Commencement Date: _____ Termination Date: _____ Amendment Number: _____
 Match Amount: \$ _____ Revenue Amount: \$ _____

***All Funding Source(s) required:**

*Match funding from General Fund? Yes No If Yes \$ _____ % _____

*Match funding from other sources? Yes No If Yes \$ _____ % _____

***Funding Source:** _____

***If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?** _____

Contact: Scott Loomis Digitally signed by Scott Loomis
Date: 2022.03.17 13:52:53 -0700

Department: Procurement Director Terri Spencer Digitally signed by Terri Spencer
Date: 2022.03.17 14:55:33 -0700 Telephone: 724-8272

Department Director Signature/Date: Diane Frisch Digitally signed by Diane Frisch
Date: 2022.03.17 15:23:20 -0700

Deputy County Administrator Signature/Date: [Signature] 3/18/2022

County Administrator Signature/Date: [Signature] 3/18/2022
(Required for Board Agenda/Addendum Items)



NOTICE OF RECOMMENDATION FOR AWARD

Date of Issue: March 18, 2022

The Attractions and Tourism Department hereby issues formal notice to respondents to Solicitation No. SFQ-PO-2100008 / RFP-PO-2100017 for an Attractions Operator for the Property FKA Old Tucson Studios that the following listed respondent will be recommended for award as indicated below. The award action is scheduled to be performed by the Board of Supervisors on or after April 5, 2022.

Award is recommended to the most qualified Respondent.

AWARDEE NAME

American Heritage Railways *operating as:* Old Tucson Entertainment LLC

OTHER RESPONDENT NAMES

Rodgers & Company, LLC

Issued by: /s/ Scott Loomis Division Manager

Telephone Number: 520-724-8272

This notice is in compliance with Pima County Procurement Code §11.12.010(C) and §11.20.010(C).

Copy to: Pima County SBE via e-mail at SBE@pima.gov.



Board of Supervisors Memorandum

April 5, 2022

Old Tucson Studios Operating Agreement: Notice of Recommendation for Award

On February 15, 2022, a memo was issued to update you on the on-going procurement process for awarding a contract to a new Operator for the property known as Old Tucson Studios.

Background

Since 1939, Old Tucson Studios (OTS) has been a landmark in Pima County, the site of well over 400 movies and commercial shoots and a well-known tourist attraction and local destination for Southern Arizona residents. Located in Tucson Mountain Park, the property showcases our western heritage, unique and beautiful landscape and has served as a tourism driver for all of Southern Arizona. Many generations of locals and visitors from around the globe have passed through its gates since opening over 60 years ago.

When the former operator of OTS notified Pima County that they would be terminating their lease in mid-August 2020, Pima County assumed control of the property and has taken steps to secure and protect the property while beginning the process to identify a new lease holder (Operator). To ensure the safety of the property, the County provided needed utilities, insurance and staffing to maintain minimal security 24 hours a day, seven days a week and management activities to ensure utilities and infrastructure did not deteriorate while the process for selecting a new Operator began. Needed repairs and maintenance have been done based on reviews by Pima County Facilities Management and Health Department as the process proceeded.

The County Administrator directed a 14-member Task Force to provide suggestions and input on the future of OTS with consideration given to the type of leisure, natural or cultural attraction that might be successfully operated at the location. In addition to the Task Force, public input was solicited at OldTucsonFeedback@pima.gov.

Process

On February 12, 2021, two companies responded to the Solicitation for Qualifications (SFQ) for an Operator for the OTS property. The SFQ was published on December 16, 2020 in the Daily Territorial and the Arizona Daily Star. The SFQ was also advertised in Indiewire and emailed to 114 individuals, corporations or entities that had expressed an interest in being notified of the process or had been identified by staff as possible operators or interested parties. Members of the Task Force also sent the published SFQ to their contacts and posted on social media sites.

A seven-member Evaluation Committee consisting of four Pima County employees and three members of the public, along with input from Subcommittees on Finance and Sustainability

The Honorable Chair and Members, Pima County Board of Supervisors

Re: **Old Tucson Studios Operating Agreement: Notice of Recommendation for Award**

April 5, 2022

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scored the responses. Both respondents were invited to participate in interviews with the Committee. On March 25, 2021, one respondent was invited to move forward to the Request for Proposal (RFP) phase based on the combined scoring of the interviews and written responses. The RFP was released on July 9, 2021, and the Response was received on August 20, 2021 and evaluated by the Evaluation Committee and Subcommittees. Solicitation response documents are available at: [Notice of Solicitation for Qualifications of Old Tucson Stu... \(pima.gov\)](#).

Through the confidential Procurement process, an Intent to Negotiate was issued on September 14, 2021. Negotiations between Pima County and the proposed Operator have concluded, and a contract has been prepared to present to the Board of Supervisors for consideration. As required by the procurement process, a Notice of Recommendation for Award has been published (attached).

Recommended Operator

The American Heritage Railways contracting through its subsidiary corporation Old Tucson Entertainment LLC is the recommended awardee.

American Heritage Railways (AHR) was founded in 1998 and has a variety of experience in the railroad, entertainment, theatrical, and hospitality industry. AHR currently holds over a dozen entities in its portfolio. AHR is the parent company and its subsidiary corporation, Old Tucson Entertainment LLC will operate and manage the property. The AHR umbrella also owns the following companies:

- Rail Events, Inc.
- Rail Events Productions, Inc.
- Durango & Silverton Narrow Gauge Railroad
- Great Smoky Mountains Railroad
- The Grand Imperial Hotel
- True West Rodeo
- D&SNGRR Scenic Tour Bus Company
- Railroad Realty
- Railroad Square

AHR has specialized in the operation and restoration of historic rail equipment and hospitality properties for over 25 years. Their team includes a diverse range of talents from acquisition, operations, risk management, special event design, finance, production, licensing, food and beverage and retail merchandising.

Allen Harper serves as the Chief Executive Officer and Chairman. Mr. Harper has over 25 years of experience with historic railways, theme parks, hotels and other tourist attractions. Prior to

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Re: **Old Tucson Studios Operating Agreement: Notice of Recommendation for Award**

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founding AHR, Mr. Harper was involved in the operation of Eslinger, Wooten, Maxwell, a real estate company based in Miami, Florida. His single greatest passion is historic preservation.

John Harper serves as Vice President and Chief Operating Officer of American Heritage Railways and oversees each property's Executive Team, General Managers, and key employees. He focuses on risk management, safety, liability and insurance. John has over 10 years in the historic preservation industry.

Jarrette Ireland serves as Vice President and General Manager of Rail Events Inc. and Rail Events Productions, Inc. Each year Rail Events oversees more than 50 licensed special events in over 35 states throughout four countries that host over 1.3 million guests in attendance. Jarrette manages the day-to-day operation and guidance of the licensing and production companies. This includes negotiating agreements for licensed brands from several different organizations including Warner Bros. Consumer Products, Peanuts Worldwide and Jim Henson Productions. With background experience in event management, Jarrette will play a key role in developing the overall customer experience, seasonal themed events and local revenue streams of business.

As an organization, the AHR team has experience in over 38 states and four countries. They are currently one of the top five live themed event entertainment licensors from Warner Bros. Consumer Products and own three tourist railroads, a scenic bus company, a 135-year old historic frontier hotel and an event production company.

Operating Agreement Overview

The key aspects of the recommended Lease Agreement are as follows:

- The Facility will operate as a public recreational facility known as Old Tucson Studios. Operator will include a public Western Frontier-type recreational and entertainment venue for the benefit of the public and visitors to Pima County. Additional activities may include operation of concerts and outdoor events, soundstages, trails and restaurants. The history of the Facility as a unique filming location for both professional film and still photography will be pursued through relationships with major studios, Film Tucson, Arizona Department of Film and Pima County.
- The term of the Operating Agreement is an initial five years with up to two 10-year extensions and one additional 25-year extension.
- Operator will pay the County base rent of \$60,000 annually payable in monthly payments of \$5,000. Commencing on the 5-year anniversary of the Agreement, base rent will be adjusted every 5 years based on the lesser of the percentage increase in the Consumer Price Index-Urban (CPI-U) for the previous 5-year period or a 10% increase based on an average of 2% per year.
- In addition to the base rent, Operator will pay 4% of annual gross operating revenue to the County during the initial 5-year period and one 10-year extension after which the

The Honorable Chair and Members, Pima County Board of Supervisors

Re: **Old Tucson Studios Operating Agreement: Notice of Recommendation for Award**

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- percentage rent will be reduced to 2%. County will contribute the percentage rent into a fund to be used for capital maintenance and expansion.
- Operator will also contribute 2% of gross operating revenue to a restricted fund for maintenance, improvement projects or expansion of buildings at the site.
 - The Old Tucson Studios trademark and tradename are owned by the County, and the County grants the Operator the right to utilize the name during the term of this Agreement.
 - Operator agrees to keep the Facility open to the public with full services and will submit a projected operating calendar to the County twice per year.
 - Operator will provide support for youth educational programs in Pima County and assist on programs focused on youth educational elements which may include history of the native people in Pima County, history of the Facility and film industry and American West and sustainable conservation of the Facility and Tucson Mountain Park.
 - Operator will make commercially reasonable efforts to promote Tucson, Arizona as the first UNESCO City of Gastronomy designated in the United States.
 - Operator will participate in quarterly oversight meetings between the Operator and the County Departments to discuss operations, maintenance and improvements at the Facility.
 - Operator must obtain approval from the Board of Supervisors for any alterations over \$500,000.

Recommendation

I recommended the Board of Supervisors approve award of the Old Tucson Studios Operating Agreement to American Heritage Railways contracting through its subsidiary corporation Old Tucson Entertainment, LLC.

Sincerely,



Jan Lesher
Acting County
Administrator

JKL/anc – March 18, 2022

Attachment

c: Carmine DeBonis, Jr., Deputy County Administrator for Public Works
Michelle Campagne, Director, Finance Department
Terri Spencer, Director, Procurement Department
Diane Frisch, Director, Attractions and Tourism

PIMA COUNTY DEPARTMENT OF ATTRACTIONS AND TOURISM

PROJECT: Operating Agreement for Old Tucson Studios

OPERATOR: Old Tucson Entertainment LLC
479 Main Ave
Durango, CO 81301

REVENUE CONTRACT NO.: CTN-ED-22-041

AGREEMENT FOR THE OPERATION OF OLD TUCSON STUDIOS

This Agreement for the Operation of Old Tucson Studios (“**Agreement**”) is made and entered into by and between Pima County, a political subdivision of the State of Arizona (“**County**”), and Old Tucson Entertainment LLC, a Colorado Corporation (“**Operator**”), effective as of April 5, 2022 (the “**Effective Date**”). County and Operator each are a “Party” to this Agreement and collectively are the “Parties”

1. Background and Purpose.

- 1.1. County is the owner of the improved real property described and depicted in **Exhibit A** (the “**Facility**”). Operator is a tourist rail operating company which provides rail-related special event management services, including coordinating licenses for special events, event promotions, and merchandising to railroad operators.
- 1.2. County is authorized by A.R.S. § 11-933 to enter into agreements for the operation of county public parks, as defined in A.R.S. § 11-931. As part of the County’s selection process, Operator submitted the proposal in response to Solicitation for Qualification SFQ-PO-2100008 and Request for Proposal RFP-PO-2100017 (the “**Proposal**”).
- 1.3. County is in the process of making repairs and improvements to the Facility, as listed in **Exhibit B** (the “**County Improvement Projects**”).

2. **Term.** The Term of this Operating Agreement will commence on “Commencement Date” which is the date that the last of the following events have occurred:

- a) the acquisition from Old Tucson Company of the items listed in Exhibit B as “Old Tucson Company owned structures”;
- b) the issuance to Operator of a Series 6 Liquor license for the Facility by the Arizona Department of Liquor Licenses and Control, in form and content satisfactory to Operator;
- c) a final walkthrough and inspection between parties has been completed;
- d) a period of 12-months from Effective Date to hire staff has concluded or the venue has open gates to an admission based event, whichever comes first.

Operating Agreement will continue for five (5) years (the “**Initial Term**”), subject to earlier termination as provided in Section 19 of this Agreement. The term of this Agreement may be extended by Operator for up to two (2) ten-year terms and one (1) additional 25-year period (“**Extension Term**”) with 180– days’ advance written notice to County of its election to so extend the term. The Initial Term and any Extension Term are referred to herein as the “Term.”

3. **Rent.** Operator will pay rent to County, commencing on the Commencement Date, as follows.
 - 3.1. **Minimum Rent.** Operator will pay to County as minimum rent \$60,000 annually payable in monthly payments of \$5,000.00 on the first day of each month commencing the month following the Commencement Date (“Minimum Rent”). Commencing on the five (5) year anniversary, Minimum Rent will be adjusted every five (5) years based on the lesser of (i) the percentage increase, if any, in the Consumer Price Index-Urban (CPI-U) for the previous five (5) year period or (ii) a 10% increase based on an average of 2% per year.
 - 3.2. **Percentage Rent.** In addition to the Minimum Rent, Operator will pay 4% of annual Gross Revenue to County (“Percentage Rent”) during the initial 5-year period and one (1) ten-year extension, after which the Percentage Rent will be reduced to 2%. No cost of living adjustment shall apply to Percentage Rent. County will contribute the Percentage Rent into the Capital Improvement Program restricted fund in accordance with Section 7.1 to be used for capital maintenance and expansion.
 - 3.3. **Gross Operating Revenue.** “Gross Operating Revenue” means all income received by Operator from any source arising out of operations or activities conducted at the Facility, including concession fees received.

Exclusions. Gross Operating Revenue excludes: 1) direct taxes charged on admissions or other monies collected for and paid to a taxing authority such as sales or excise taxes; 2) normal chargebacks such as rebates to charities using the Facility, refunds, returns, credit card fees or uncollected amounts, grant funds, gifts, donations, or revenue derived from activities conducted by or at the direction of Pima County; and 3) royalties for licensing and associated gate admission, retail sales, likenesses and naming rights associated with a licensed themed event, not to exceed 30% of revenue generated by the specific licensed themed event.
 - 3.4. **Payment of Percentage Rent.** Within forty-five (45) calendar days after the end of each month, Operator will report to County all Gross Operating Revenue and Exclusions for that month. On or before forty-five (45) calendar days after the end of each quarter, Operator will pay to County the Percentage Rent for that quarter. On or before February 15th of each year of this Agreement and on or before forty-five (45) calendar days after the termination of this Agreement, Operator will provide to County a reconciliation of the Percentage Rent due for the preceding calendar year and will pay any balance of Percentage Rent for that preceding year or, with County concurrence of overpayment will deduct any overpaid Percentage Rent from its next Percentage Rent payment(s).
4. **Authorization to Operate Facility.** Pursuant to A.R.S. § 11-932, and in consideration of the mutual promises and covenants set forth in this Agreement, County grants Operator the exclusive right to operate, use, occupy and manage the Facility, in accordance with the Permitted Activities, as a public recreational facility known as Old Tucson Studios. Operator agrees that it will, at its own expense and for the benefit and recreation of the County’s inhabitants, tourists, and visitors, operate, manage, use and occupy, repair and maintain, promote, improve, and develop the Facility, in accordance with and subject to the terms of this Agreement. Operator’s affiliated company, AHR Management, LLC will provide and be delegated management services on behalf of Operator under the Agreement and County hereby consents to such use and delegation.
 - 4.1. **Trademark.** Old Tucson Studios trademark and tradename are owned by County. County grants Operator the right to utilize trademark and tradename for the operation of the Facility during the Term of this Agreement.

5. **Condition of Facility Upon Commencement Date.** County will deliver the Facility (including parking areas, restrooms, buildings and other improvements) in good and safe working order. All sanitary facilities shall be in compliance with applicable health and safety laws and regulations.
6. **Operator's Performance Standards.** Operator must comply with the following performance standards during and in accordance with the terms of this Agreement:
 - 6.1. **Permitted Activities.** Operator will operate the Facility as a public Western Frontier-type recreational and entertainment venue for the benefit of the residents of and visitors to Pima County, taking into consideration that the permitted activities will vary for the Developed Area and Native Area. Operator may include within the Facility concert venues, outdoor sporting venues and arenas, soundstages, trails and excursions, gift shops, parking, and restaurants for guests, together with: a) the activities described in the Proposal; b) all other activities described elsewhere in this Agreement and in exhibits hereto and c) all activities which were conducted at the Facility by the prior operator before the Facility closed. The history of the property as a unique filming location will continue to be as currently honored and, subject to the provisions of this Agreement regarding additions and enhancements, new filming opportunities including the addition of a soundstage and/or additional enhancements to attract and book both professional film and still photography will be pursued through relationships with major studios, Arizona Office of Film, Film Tucson and Pima County. In addition to regular operations, Operator may allow the Facility to be used for designated and scheduled special and private events ("Special Events"). The uses described above in this paragraph, hereafter referred to as the "**Permitted Activities**", are the only uses permitted within the Facility. Operator will conduct the Permitted Activities in accordance with the terms of this Agreement.
 - 6.2. **Collections, Furnishings, and Equipment.** Operator will provide all furnishings, collections, displays, and equipment necessary to establish, develop, promote, operate, maintain, and improve the Facility and conduct the Permitted Activities at the Facility.
 - 6.3. **Hours of Operation.** Operator recognizes the public-service nature of this Agreement and agrees to operate the Facility and keep the Facility open to the public, with full services, in accordance with the terms of this Agreement. Hours of operation, shortened hours, holiday, tours restrictions, concerts, limited access or special or private event closings will be determined by Operator based upon weather conditions, seasonal demand, reasonable public demand and business activity. Operator will provide to County a projected operating calendar for the following 6 months each January 1st and July 1st including any special events which are scheduled at the time of submittal. Operator will provide County notice of any substantial changes to a submitted operating calendar. Operator will use commercially reasonable efforts to adequately staff the Facility when open to the public.
 - 6.4. **Admissions and Fees.** The Facility will be open for the use of the public without discrimination as to race, sex (including sexual orientation and gender identity and expression), age, national origin, religion, political affiliation, or physical disability. The admission fees that Operator charges to the general public will be in an amount or amounts determined by Operator based on its business judgement. Operator will provide the County with a schedule of admission fees, including when it increases or decreases such fees.
 - 6.5. **Youth & Educational Programs.** Operator will provide support for youth educational programs in Pima County by working with Pima County to identify and assist on programs focused on youth educational elements which may include history of the native peoples in Pima County, history of the Facility and film industry, and American West and sustainable conservation of the Facility and Tucson Mountain Park.

6.6. **Concessions.** Operator is authorized in the normal course of business to operate, directly or through affiliates and third parties, and enter into concession agreements for the operation of, specific components of the Facility, such as food and beverage, rides, souvenirs, printed materials, gift shops, and other similar items, museums, campgrounds, lodging, trail and stagecoach rides, RV parks, and related activities at the Facility and may hire contractors to perform work such as turf maintenance and landscaping. But Operator may not delegate its overall responsibility for operation of the Facility without County's prior written consent, which may be withheld at the reasonable discretion of County, and no delegation of duties or hiring of contractors will in any way relieve Operator of its responsibilities and obligations under this Agreement. At County's request, Operator will provide County with copies of any contracts and concession agreements it has entered into with respect to the Facility.

6.6.1. If food is sold to or consumed by members of the public, all applicable food permits must be obtained, and Operator and its contractors and concessionaires must comply, to the extent not grandfathered or exempted, with all applicable Pima County health regulations. Operator will make commercially reasonable efforts to promote Tucson, Arizona, as the first UNESCO City of Gastronomy designated in the United States.

6.6.2. Alcoholic beverages may be sold and consumed at the Facility if Operator obtains the necessary liquor license as required by the State of Arizona. Operator must obtain liquor liability insurance in the amount provided in Section 11.1.2. naming County as additional insured.

6.7. **Special Events.**

6.7.1. *Notice; Traffic & Safety Plans.* If Operator intends to conduct a "Special Event", which is an event with a set arrival time that exceeds 2,500 people, Operator must give County a thirty (30) day advance written notice, with a description of the Special Event, together with a traffic control plan for the roads leading to and from the Facility, and a safety and security plan for the Special Event. Operator will provide off site resources to direct and maintain traffic control.

6.8. **Cooperation in Economic Development.** Operator and County will fully cooperate with each other with respect to economic development activities related to the Facility and tourism, including, but not limited to, coordination of tourism promotion with the regional tourism agency, currently Metropolitan Tucson Convention and Visitors Bureau, dba Visit Tucson. The Facility will be fully promoted by County and the above listed organizations, by means including but not limited to European, regional, statewide and U.S. wide advertisement, solicitation of business, website presentations, and event holding at the Facility. Operator will also participate in the regional visitor's center operated by the County within the Pima County Historic Courthouse, located at 115 N. Church Ave., by providing a reasonable amount of Facility promotional materials and items for consignment in the gift shop. Operator will acknowledge in any Facility promotional materials and general signage that the Facility is a Pima County facility and attraction. Operator may also include in such promotional material information about Operator and its other non-competitive businesses.

6.9. **Accounting Records; Audits; Annual Unaudited Financial Reports, Budget.**

6.9.1. *Accounting Records.* In connection with the operation of the Facility, Operator will keep and maintain accounting records consistent with generally accepted accounting principles (GAAP). Such records will be open for inspection and audit

by duly authorized representatives of County during normal office hours and with 48 hours prior written notice.

6.9.2. *Annual Unaudited Financial Reports.* In addition to any required audited statements, Operator must give the County Administrator or his designee a year-end statement of income and expenses of the Facility prepared in accordance with generally accepted accounting principles. The financial statements must be delivered by March 31st each year and must show all revenue from operation of the Facility and all expenses incurred in connection with the operation of the Facility for the previous fiscal year.

6.9.3. *Audited Financial Statements.* Every two (2) years Operator will engage a qualified independent certified public accounting firm to perform an audit of Operator's financial statements covering the two most recent fiscal years of Facility revenues and expenses. Unless otherwise agreed to by the Parties, Operator will provide the County Administrator or his designee with the financial statements and the auditor's opinion within 90 days after the end of the two year reporting period.

6.9.4. *Additional Audits.* At any time upon written notice to Operator, County may require Operator to provide a program-specific financial audit ("**For-Cause Audit**"). County's written notice will specify the period to be covered by the audit, the type of audit required, and the time for completion and submission of the audit. All audits provided under this section must be performed by a qualified independent accounting firm hired by County. Such audits must include any response Operator wishes to make concerning any audit findings. A For-Cause Audit is one based upon a reasonably specific concern, complaint, or allegation discovered by, or made to, County.

6.10. **Compliance with Laws.** Operator may not use the Facility, or authorize anything to be done in, on, or about the Facility, that is a violation of any applicable federal, state, or local law, statute, ordinance or governmental rule or regulation.

6.11. **Volunteers.** If Operator requires volunteers working at the Facility under the direction of Operator to execute a release of liability, it will include the County in such release. Operator will deliver copies of the signed releases to the County in the same manner as the giving of other notices under this Agreement.

6.12. **Utilities.** Except as specifically provided below, Operator will pay for all utility services for operation of the Facility including gas, heat, light, power, sewer charges, telephone service, garbage removal, pest and termite service, security services, and internet services as needed to conduct business.

6.12.1. *Potable Water.* Potable water in necessary quantity will be delivered to the Facility by County at no cost to Operator and will continue to be provided at no cost during the term of this Agreement. Operator acknowledges that County provides water to the Gilbert Ray Campground and to the Arizona Sonoran Desert Museum from the same water source. County may reasonably allocate water among these users in County's sole discretion. County will not be liable for any consequential damages arising out of insufficient supply of water to the Facility. If water service is disrupted, County will make good faith efforts to provide an interim water source until water is fully restored to the Facility.

6.12.2. *Service Interruptions.* County has no liability to Operator if any utilities or services, whether or not furnished by County, are interrupted or terminated to the Facility for

any cause beyond County's reasonable control, and no such failure, interruption or termination will relieve Operator of its obligations, including the payment of rent, under this Agreement during such service disruption.

6.12.3. *Formation of Improvement District.* At County's request, Operator will, at no financial cost or commitment to Operator or the Facility, support formation of a County domestic water improvement district encompassing the Facility and will participate in the district for water service.

6.13. **Signs.** Operator may install any signs at the Facility that Operator deems appropriate, but all signs visible from the street must comply with the Pima County Zoning Code Chapter 18.79. Operator will install, maintain and repair all signs at Operator's expense.

6.14. **Repairs and Maintenance.**

6.14.1. **Duty to Maintain.** Except as specifically set forth below, Operator will, at its expense, keep the interior and exterior of the buildings and improvements located at the Facility in the condition and repair as when delivered to Operator. Operator is responsible for all routine maintenance which includes, but is not limited to, maintaining and repairing, and when necessary replacing all appliances, furnishings, landscaping, irrigation systems, fencing, parking lots, parking lot lighting, doors, window casements, glazing, plumbing, pipes, electrical wiring, lighting fixtures and conduits, fire suppressant systems and related equipment, heating and air conditioning systems, mechanical systems, foundations, walls (exterior and interior), sidewalks, corridors, boardwalks, balconies, patios, porches, roofs, pest control, sewer, water, and exterior electrical lines. Notwithstanding any of the above, Operator is not responsible for any and all latent defects and pre-existing non-compliance(s) with current building, safety or construction laws or regulations. County has conducted a review of all structures and consulted as needed with a structural engineer to determine those structures or portions of structures that needed to be modified to meet structural stability. The recommended modification work was completed, and any studies in relation to this work are available to the Operator. County is responsible for necessary repairs to and replacement of structural systems at the Facility, such as foundations, roofs, walls or underground utility lines, which are not caused by fault or neglect of maintenance by Operator. Operator and County acknowledge and recognize that many of the structures at the Facility were code compliant at the time of construction but may not meet current adopted codes and intentionally look dilapidated and such will be their condition at the end of the Term. Subject to the foregoing, Operator will, upon expiration or sooner termination of this Agreement, surrender the Facility to County in as good condition as it was received.

6.14.2. **Damage by County.** If the Facility is damaged as a result of negligent, omission, intentionally wrongful or other conduct of the County, its agents, employees, or contractors, County will repair the damage at its own expense.

6.14.3. **County Right to Cure.** If County reasonably believes, based upon credible evidence that Operator has failed to perform its maintenance and repair obligations, it will give Operator the written notice required under the Default section of this Agreement. Unless Operator disputes the claim and seeks arbitration thereof, if Operator fails to timely cure the claimed default, it will be in default under this Agreement, and the County, without further notice, may, but will not be obligated to, perform Operator's obligations of maintenance and repair. Operator will, within 30 days of receiving an invoice from County, reimburse County for the cost of the work,

plus interest at a per-annum rate of four- percent (4%) from the time the cost was incurred by County until paid. Any such default by Operator will not be considered cured until Operator has paid the County.

6.14.4. **Liens.** Operator will keep the Facility free from any liens arising out of any work performed, materials furnished, or obligations incurred by or on behalf of Operator.

6.14.5. **As-Is Condition.** Subject to the terms of this Agreement, Operator accepts the Facility and all improvements thereon in "AS IS" condition as of the Commencement Date. Existing warranties on recent maintenance and repairs shall convey with Facility.

6.15. **Waste Removal.** Operator will prepare and implement an integrated waste management plan that utilizes a combination of re-use, recycle, dispose, and/or compost of any waste materials generated or present at the Facility, and will submit the plan for County review at least annually. Operator may comply with the requirements of this paragraph through a contract with a qualified waste hauler for the provision of commercial refuse service to the Facility.

6.16. **Resource Protection.**

6.16.1. Operator will not conduct, or authorize any other person to conduct, on the Facility, mining, quarrying, sand-hauling, fill hauling, or timbering of any kind.

6.16.2. Operator will not authorize the hunting or trapping of wild birds or animals on the Facility, nor the destruction or removal of plants, shrubs, trees, or grasses, except with prior written approval of County or as authorized to conduct the Permitted Activities.

6.16.3. Operator will not discharge waste, byproducts, or materials into water supplies, onto the Facility or into water channels that violates applicable laws and regulations.

6.16.4. Operator will make commercially reasonable efforts to protect the identified scenic aesthetic values of the Facility and prevent soil erosion and gulying that might be caused by construction or improper use of resources.

6.16.5. Operator will make commercially reasonable efforts to provide security and ensure safety relating to the operation of the Permitted Activities on the Facility

6.16.6. Operator will make commercially reasonable efforts to address disorderly conduct at the Facility and will utilize appropriate law enforcement officers when necessary to assist and will cooperate in subsequent prosecutions.

6.16.7. Operator will make commercially reasonable efforts to prevent fire damage to the Facility and any improvements, collections and natural resources at the Facility.

7. **Capital Improvement Program.** In addition to the maintenance, repair and replacement obligations of the Operator and County set forth in Section 6.14.1, Operator and County will contribute to a capital improvement program to replace or expand the buildings and improvements at the Facility.

7.1. **Operator Contribution.** Operator will set aside 2% of the Gross Operating Revenue arising from the Facility for each year into a restricted fund to be used for improvement projects to include capital maintenance, repair, replacement and expansion. On or before February 15 of each year, Operator will provide County with a report and accounting covering the period ending December 31 of that year, demonstrating that such funds have been set aside and are

being used for the planning, design, and construction of capital improvements to the Facility, identifying such improvements, the date of completion or projected completion, and the cost or projected cost. On or before five (5) years from the Commencement Date, Operator will provide County with an accounting demonstrating that not less than seventy-five percent (75%) of such funds has been spent, or is currently encumbered, for capital improvement projects at the Facility. On or before ten (10) years from the Commencement Date and every 5th year anniversary thereafter during the term of this Agreement, Operator will provide such accounting demonstrating that not less than ninety percent (90%) of the total accumulation of such restricted funds from the Commencement Date has been spent or is currently encumbered for capital improvement projects at the Facility.

- 7.2. **County Contribution.** County will contribute Percentage Rent into a restricted fund to fund maintenance and repair obligations of County as stated in 6.14.1 or capital expansions agreed upon, as stated in 8.4, by County and Operator. On or before February 15 of each year, County will provide Operator with a report and accounting covering the period ending December 31 of that year, demonstrating the amount of funds reimbursed to the County and amounts set aside for improvements to the Facility. County may, at its sole discretion, use up to 2% of Percentage Rent generated during the initial 5-year term and one (1) ten-year extension to reimburse County for expenditures made for repairs and improvements shown in Exhibit B. Upon termination of this Agreement, County's portion of Percentage Rent not spent reverts to County.
8. **Alterations and Improvements to Facility.** Operator and County may, with the consent of the other Party, which consent may not be unreasonably withheld, conditioned or delayed, make physical improvements, alterations, additions, or changes to the Facility (collectively, "**Alterations**"), as provided below. Operator may, however, make nonstructural Alterations or modifications for film or still photography costing less than \$150,000 (the "**Maximum Expenditure Amount**"), without obtaining County's consent.
 - 8.1. **Demolition.** Operator must obtain County's consent prior to demolition or removal of any permanent structure located on the Facility.
 - 8.2. **Quarterly Oversight Meeting.** Operator will participate in a regularly scheduled quarterly oversight meeting between representatives of Operator and County Departments with jurisdiction over the Facility to discuss on going operation, maintenance, and improvements at the Facility.
 - 8.3. **County's Consent.** If the estimated cost of an Operator-proposed Alteration exceeds the Maximum Expenditure Amount, Operator must obtain the consent of the County Administrator or his designee. If the Alteration is estimated to cost more than \$500,000, Operator must also obtain the consent of the Board of Supervisors. Notwithstanding the foregoing, no approval shall be required, irrespective of the cost, for temporary alterations for film, TV, still photography or related theatrical productions.
 - 8.4. **Procedure for Obtaining Approval.** A Party that wishes to make an Alteration (the "**Contracting Party**") must provide the other Party (the "**Reviewing Party**") with written notice of the proposed Alterations (an "**Alterations Notice**"). The Alterations Notice must include plans and specifications for the Alterations ("**Alteration Plans**") developed by an Arizona registered architect or engineer. The Reviewing Party will have forty-five (45) days after receipt of an Alterations Notice to approve or reject the proposed Alterations. Failure to respond to an Alterations Request within forty-five (45) days will be deemed approval.

- 8.5. **Reasons for Disapproval.** The Reviewing Party will not unreasonably withhold consent to proposed Alterations. Without limitation, however, it is reasonable for the Reviewing Party to withhold consent for Alterations that would:
- 8.5.1. adversely affect the integrity of any structural, mechanical, or electrical system within any portion of the Facility;
 - 8.5.2. result in the Reviewing Party being required to perform any work that could otherwise be avoided or deferred;
 - 8.5.3. result in an unreasonable increase in the premiums for any hazard or liability insurance carried by the Reviewing Party or result in an unacceptable increased risk of liability or pose a safety hazard;
 - 8.5.4. result in an unreasonable increase in the demand for utilities or services (including wastewater treatment) that are provided by the Reviewing Party to the Facility;
 - 8.5.5. adversely impact the listing of the Facility or deviate from the standards required to maintain the listing of the Facility on the National Register of Historic Places;
 - 8.5.6. adversely impact County's credit rating or cause future financial obligations for County.
- 8.6. **No Liability for Approval of Alterations.** The Reviewing Party's review of the Alteration or Improvement Plans will be solely for that Party's purposes and will not imply that that Party has reviewed the Alteration or Improvement Plans for quality, design integrity, legal compliance, or other substantive matters. Contracting Party will be responsible for any omissions or errors in the Alteration or Improvement Plans. The Reviewing Party's review will be solely to determine that the proposed Alterations and Improvements are consistent with the terms of this Agreement.
- 8.7. **Construction of Alterations.** The Contracting Party will cause an approved Alteration to be constructed in a good and workmanlike manner, be completed promptly, and use new materials.
- 8.7.1. *Compliance with Law.* All Alterations, whether permanent or temporary, must comply with all applicable federal, state and local statutes, codes, ordinances, rules, and regulations. The Contracting Party will obtain all necessary permits from regulatory agencies, including, but not limited to the Pima County Development Services Department, the Pima County Flood Control District, and the State Fire Marshall.
 - 8.7.2. *Contractor Indemnification.* Every construction contract must include the contractor's agreement to indemnify and defend both Parties from and against any and all liability, damages, and expenses of any kind or nature suffered or incurred by the Party as a result, in whole or in part, of any negligent or willfully wrongful acts or omissions of the contractor.
 - 8.7.3. *Contractor Insurance.* Every construction contract must require said contractors to obtain insurance coverage of a type and amount acceptable to the Parties and to name both Parties as additional insureds with respect to liability arising out of the performance of said contracts. Within thirty (30) days after completion of any buildings or improvements, the Contracting Party Operator must deliver to County a complete and reproducible set of as-built plans.

8.7.4. *Interference with Project.* Operator will not unreasonably interfere with the construction of an approved Alteration, and the County will not, in the course of construction, unreasonably interfere with Operator's operation of the Facility.

8.8 **Funding of Alterations.** Contracting Party will solely fund their respective Alterations or other improvements authorized under this Agreement, except that the County and Operator may agree to share in the cost of any Alterations, or the County may choose to fund Alterations and adjust the rent accordingly with agreement of the Operator. Operator shall not use County property as collateral to finance Alterations. Operator is solely responsible for repayment of any debt associated with the Operator's financing of any Alterations. Upon termination of Agreement, Operator is responsible for any outstanding debt related to Operator's financing of Alterations.

8.9 **Liens.** Operator must timely pay all Operator's contractors, subcontractors, mechanics, laborers, or materialmen providing materials or services with respect to the Facility, and will indemnify and defend against all legal costs and charges resulting from any liens filed against the Facility by any person or entity providing materials or services to the Facility.

8.10 **Property of County.** Once installed, Improvements and Alterations are part of the Facility, or the venue owned by the County and maintained and repaired by Operator as provided in this Operating Agreement.

9. Environmental.

9.1. **Hazardous Material.** For the purposes of this section, "Hazardous Material" means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local governmental authority, the State of Arizona, or the United States Government and includes, without limitation, any material or substance that is (i) defined as a "hazardous waste" under NRS 459.400 *et seq.*, (ii) petroleum, (iii) asbestos, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.* (42 U.S.C. 6903), (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* (42 U.S.C. 9601) or (vii) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. 6991 *et seq.*

9.2. **Hazardous Materials Prohibited, Clean Air Act.** Operator will not knowingly cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Facility by Operator or Operator's agents, employees, contractors, or invitees without the prior written consent of County, other than such Hazardous Materials that are necessary or useful to Operator's business and will be used, kept, and stored in a manner that complies with all laws regulating those Hazardous Materials. Operator will comply with applicable provisions of the Clean Air Act, 42 U.S.C. 7401 *et seq.* and Arizona Revised Statutes, Title 49, Chapter 3.

9.3. **Environmental Indemnity.** In the event an Environmental Act occurs because of Operator's actions, Operator will indemnify, protect, defend, and hold County harmless from any and all claims, judgments, damages, penalties, fines, costs, expenses, liabilities, or losses (including, without limitation, diminution in value of the Facility or any part thereof, damages for the loss or restriction on use of usable space or of any amenity of the Facility or any part thereof, damages arising from any adverse impact on marketing of space with respect to the Facility or any part thereof, and sums paid in settlement of claims, attorney's fees, consultant fees, and expert fees) that arose or arises during or after the term of this Agreement as a result of such contamination. This obligation of Operator to indemnify, protect, defend, and hold County harmless includes, without limitation, costs incurred in connection with any

investigation of site conditions or any cleanup, remedial, removal, restoration, or other response work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material presence, as a result of any action or inaction on the part of Operator or Operator's agents, employees, contractors, or invitees, on the Facility or the soil or groundwater on, under or adjacent to the Facility, or elsewhere in connection with the transportation of Hazardous Material to or from the Facility.

9.4. **Environmental Act.** For purposes of this Section, "Environmental Act" means an occasion in which:

9.4.1. Operator breaches the obligations stated in this Section;

9.4.2. the presence (whether consented to by County or otherwise) of Hazardous Material on the Facility or on or in the soil or groundwater under or adjacent to the Facility caused or authorized by Operator or Operator's agents, employees, contractors, or invitees results in contamination of the Facility or such soil or groundwater;

9.4.3. contamination of the Facility or such soil or groundwater by Hazardous Material otherwise caused or authorized by Operator; or

9.4.4. if contamination occurs elsewhere in connection with the transportation by Operator of Hazardous Material to or from the Facility.

9.5. **Clean-Up.** Without limiting the foregoing, if the presence of any Hazardous Material within the Facility caused or authorized by Operator or Operator's agents, employees, contractors, or invitees results in any suspected contamination of the Facility, Operator will promptly notify County in writing and take all actions, at Operator's expense, as are necessary to return the Facility or such soil or groundwater to the condition existing prior to the introduction of any such Hazardous Material to the Facility or to such soil or groundwater; provided that Operator will first obtain County's approval of such actions, which approval County will not unreasonably withhold so long as such actions would not potentially have any material adverse long-term or short-term effect on the Facility.

9.6. **Pre-existing Contamination.** Any Hazardous Materials contaminating the Facility prior to Operator's possession of the Facility will not result in liability for Operator under this Agreement, but will be remediated by the County at its cost.

9.7. **Notices Regarding Environmental Conditions.** Operator will, within ten (10) business days following receipt, provide County with a copy of (i) any notice from any local, state, or federal governmental authority of any violation or administrative or judicial order or complaint having been filed or about to be filed against Operator or the Facility alleging any violation of any local, state, or federal environmental law or regulation or requiring Operator to take any action with respect to any release on or in the Facility or the soil or groundwater under or adjacent to the Facility of Hazardous Material, or (ii) any notices from a federal, state, or local governmental agency or private party alleging that Operator might be liable or responsible for cleanup, remedial, removal, restoration, or other response costs in connection with Hazardous Material on or in the Facility or the soil or ground water under or adjacent to the Facility or any damages caused by such release.

9.8. **Survival.** Operator's and County's obligations under this Section will survive the expiration or earlier termination of this Agreement and vacation of the Facility.

10. Entry by County. County may enter the Facility at reasonable times during regular business hours and upon 48 hours prior written notice to inspect the Facility and Operator's operations on the Facility.

11. Insurance Requirements. Operator will procure and maintain, throughout the term of this Agreement, insurance against claims for injury to persons or damage to property that may arise from or in connection with the actions of Operator, its agents, representatives, employees, volunteers or subcontractors, as provided below. Operator will require any subcontractors and subtenants to also obtain and maintain, during the term of their operations at the Facility, insurance that complies with the below requirements.

11.1. Minimum Scope and Limits of Insurance. Operator must provide coverage with limits of liability not less than those stated below:

11.1.1. *Commercial General Liability (CGL).* Policy will be an occurrence form basis to include insurance coverage for bodily injury, property damage, personal injury, broad form contractual liability, products/completed operations and personal/ advertising injury. Policy limits will be \$2,000,000 Each Occurrence and \$4,000,000 general aggregate.

11.1.2. *Liquor Liability Insurance.* Coverage is required whenever alcohol is being sold. The insurance coverage is to be provided by the vendor providing the liquor and the bartender(s) for the event. The Liability Policy may be under the vendor's CGL Policy or a specialized policy with policy limits of at least \$2 million per occurrence and \$4 million general aggregate. The policy will be endorsed to include Pima County and the Operator as additional insureds.

11.1.3. *Business Automobile Liability.* Operator must provide Auto Liability coverage for Bodily Injury and Property Damage in the amount of \$1 million combined single limit for vehicles used in the performance of services under this Agreement and any renewals thereof.

11.1.4. *Worker's Compensation and Employers' Liability.* Workers' Compensation coverage: Statutory with Employers' Liability insurance to include: Each Accident \$500,000; Disease-Each Employee \$500,000 with a Disease-Policy Limit of \$1,000,000.

11.1.5. *Builders Risk.* Operator must obtain builder's risk insurance for any Improvement and Alteration projects it carries out on the Facility in an amount equal to the contract amount including all subsequent change orders. Pima County will be included as a named insured to the policy. Coverage will be written on an all risk replacement cost basis and will include coverage for flood and earth movement as well as coverage for losses that may occur during equipment testing. Policy will contain a waiver of subrogation endorsement in favor of Pima County and its districts and will be maintained until the final payment is made and the project is fully released to the Operator. The Finance Director (as defined below) will determine the amount of insurance required.

11.2. Additional Insurance Requirements. The policies must include, or be endorsed to include, the following provisions:

11.2.1 *Claims Made Coverage.* If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Operator must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

11.2.2. *Additional Insured.* The General Liability and Business Automobile Liability Policies must each be endorsed to include Pima County and its districts as an additional insured. The liability policies must also name County's officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Operator.

11.2.3. *Subrogation*. The General Liability, Business Automobile Liability and Workers' Compensation Policies must each be endorsed to contain a waiver of subrogation endorsement in favor of Pima County, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of Operator.

11.2.4. *Primary Insurance*. Operator's policies must stipulate that they are primary and that any insurance carried by Pima County, its district, its agents, officials, or employees is excess and not contributory insurance. All insurance deductibles and retentions are the responsibility of the Operator and not Pima County. Coverage provided by Operator may not be limited to the liability assumed under the indemnification provisions of this Agreement.

11.3. **No Limitation on Indemnity**. These insurance requirements are minimum requirements and in no way limit the indemnity covenants contained in this Agreement. County in no way warrants that the minimum required limits are sufficient to protect Operator from liabilities that might arise out of activities at the Facility by Operator, its agents, representatives, employees or subcontractors, and Operator is free to purchase additional insurance.

11.4. **Notice of Cancellation**. Each required insurance policy must provide that it may not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice to Pima County.

11.5. **Acceptability of Insurers**. Insurance must be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. County in no way warrants that the above-required minimum insurer rating is sufficient to protect Operator from potential insurer insolvency.

11.6. **Verification of Coverage**. Operator will furnish County with certificates of insurance (ACORD form or equivalent approved by County) showing it has the required insurance policies. Each certificate must be signed by a person authorized by that insurer to bind coverage on its behalf. Failure to maintain the insurance policies as required by this Agreement, or to provide evidence of renewal, is a material breach of this Agreement. County reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

11.7. **Modification of Insurance Requirements**. If at any time, in the sole opinion of the Director of the County Finance & Risk Management Department (the "**Finance Director**"), the below insurance requirements no longer provide sufficient protection for County, the Finance Director may modify the requirements, with at least 30-days prior notice to Operator.

11.8. **Sub-Contractors**. Operator must include all subcontractors as additional insureds under its policies, or must require the subcontractors to carry insurance satisfying all the requirements of this Section 9, including the obligation to provide certificates and endorsements.

12. **Inclusion of Improvements in County's Insurance Policies**. During the term of this Agreement, County shall include the improvements located on the Facility in County's fire, casualty, and extended coverage insurance, at the replacement value of the buildings, as jointly determined by Operator and County. If damage from an insurance covered event occurs to the improvements to the Facility that negatively affects the operation thereof by Operator, in its reasonable opinion, County shall promptly repair, replace, restore and otherwise return the damaged portion of the improvements to their condition prior to the damage and rent shall be abated during the period prior to the completion of such repair, replacement and restoration. County will not obtain coverage for Operator's personal property or for business interruption.

- 13. Indemnification.** To the fullest extent permitted by law, Operator and County will defend, indemnify and hold harmless each other, its officers, employees, and agents from and against all claims, liabilities, losses, damages, costs, and expenses, including but not limited to reasonable attorney's fees and litigation expenses arising out of or relating (directly or indirectly) to (i) any breach of any provision of this Agreement by Operator or County or any of Operator's or County's subcontractors, employees, agents, or licensees, as the case may be. Neither County or Operator are obligated to indemnify each other for the consequences of any negligent or intentionally wrongful act or omission of the other or its agents, employees, or contractors.
- 14. Operator not Agent of County.** Operator will exercise day-to-day control of activities on the Facility, and County will not control or interfere with those activities. Operator's officers, employees, and agents are not employees of or otherwise under the control of County, nor are they entitled to receive any employment related compensation or fringe benefits under the Pima County Merit System.
- 15. Notices.** Any notice required or permitted to be given under this Agreement must be in writing and must be mailed by first class, registered, certified or overnight mail, return receipt requested, postage prepaid, or transmitted by electronic mail (receipt confirmed), or hand delivered, to the parties at the addresses set forth below, or to such other address as any Party from time to time designates by written notice to the other Party.

If to County:

Director of Pima County Department of Attractions and Tourism
115 N. Church Ave, Suite 221
Tucson, AZ 85701
Diane.Frisch@pima.gov

With a copy to:

Chief Civil Deputy
Pima County Attorney's Office 32 N. Stone Ave, Suite 2100
Tucson, AZ 85701

Director, Pima County Facilities Management 150 W. Congress, 3rd Floor
Tucson, AZ 85701
Lisa.Josker@pima.gov

If to Operator:

Chief Operating Officer
John A. Harper
AHR Management, LLC.
479 Main Ave
Durango, CO 81301
JohnHarper@durangotrain.com

If mailed, all such notices, demands, requests, or other communications will be deemed received seventy-two hours after deposit in the U.S. mail. Notice served personally or by electronic mail or facsimile will be deemed received upon actual delivery. Notices will be deemed to be received even if the party rejects or refuses to accept the notice, or delivery fails because the party changed its address without appropriate notice to the other party.

- 16. Conflict of Interest.** This Agreement is subject to cancellation under A.R.S. § 38-511 for conflicts of interest.

17. Non-Discrimination. During the performance of this Agreement, Operator will not discriminate against any employee, client, or any other individual in any way because of that person's age, race, color, religion, sex, disability or national origin. Operator will comply with the provisions of Arizona Executive Order 75-5, as amended by Executive Order 99-4 and 2009-09, issued by the Governor of the State of Arizona.

18. Choice of Law. The laws of the State of Arizona govern this Agreement and will apply to any action relating to this Agreement. Any court action must be brought in a court in Pima County, Arizona.

19. Default/Termination.

19.1. **Default; Cure.** If Operator is in default of any provision of this Agreement, County will give Operator written notice specifying, in detail, the nature of the default. County may terminate this Agreement if Operator fails to remedy the default within thirty (30) calendar days of receipt of the County's notice of default; provided, however, that if the nature of Operator's claimed default is such that more than thirty (30) calendar days are reasonably required for its cure, then Operator will not be in default if Operator commences such cure with said thirty (30) calendar days and thereafter diligently prosecutes such cure to completion, provided such cure is completed within one hundred twenty (120) calendar days of receipt of the written notice from County.

19.2. **Remedies.** Either party may pursue any remedies provided by law and in equity for the breach of this Agreement by the other, subject to the alternative dispute resolution provisions. No right or remedy conferred or reserved is intended to be exclusive of any other right or remedy, and each is cumulative and in addition to any other right or remedy existing at law or in equity or conferred or reserved in this Agreement, including, without limitation, the right to damages arising out of the breach or default of this Agreement.

20. Alternative Dispute Resolution. The Parties will try to resolve any dispute, controversy, or claim arising out of this Agreement first through prompt, informal, good faith negotiation between them. If the Parties both agree, the dispute may be submitted to mediation prior to filing any legal action. Any unresolved dispute must be submitted to arbitration in accordance with the Arizona Rules of Procedure. Any arbitration, mediation, or other legal action between the Parties will occur in Pima County, Arizona.

21. Operations by Prior Operator/Lessee. County hereby releases and indemnifies Operator from any liability for the actions, conduct, omissions and management of Old Tucson Company and its agents, employees, directors and relationships (including non-profit organizations involved in the operation of the Facility) related, in any way to the Facility, whether known or unknown by County arising prior to the Effective Date.

22. Force Majeure. Neither Party is responsible for a failure to perform any obligation under this Agreement if such failure to perform is directly caused by a Force Majeure Event. A "Force Majeure Event" shall mean an event or circumstance that is beyond the reasonable control and without the fault or negligence of the Party impacted, and that could not have been prevented by the reasonable diligence of that Party. Without in any way limiting the foregoing, Force Majeure Events may include, but are not restricted to (a) acts of God or of a public enemy, (b) acts of the Government in either its sovereign or contractual capacity, (c) fires, (d) floods, (e) epidemics or pandemics, (f) quarantine restrictions, (g) strikes, (h) freight embargoes; (i) failure or disruption of utilities or critical electronic systems, (j) mass health issues or disease, and (k) unusually severe weather. In the event that a Party is impacted by a Force Majeure Event, that Party will give prompt notice to the other Party and take commercially practical actions to mitigate the impacts of the Force Majeure Event.

23. Disposition of Operator Property. Operator will maintain a current inventory of all items of property owned by Operator and placed or kept on the Facility by Operator, including but not limited to the Old

Tucson Company items described in Exhibit B. Operator may remove and/or demolish any such item of property. Any items of property left on the Facility 90 days after expiration or earlier termination of this Agreement, including all craft, exhibits, and displays—except those there on loan—will become the property of County and will be surrendered to County free and clear of all liens and encumbrances of every kind, unless waived by County. County may sell or otherwise dispose of those items left on the Facility without liability to Operator.

24. Non-Waiver. The failure of either Party to insist in any one or more instances upon the full and complete performance of any of the terms and provisions of this Agreement to be performed by the other Party or to take any action permitted as a result thereof is not a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition either in the past or in the future. The acceptance by either party of sums less than may be due and owing to it at any time shall not be construed as an accord and satisfaction.

25. Assignment. Operator may not either voluntarily or by operation of law, assign or transfer its rights or obligations under this Agreement to any other person without the prior written consent of County.

26. Americans With Disabilities Act. Operator will comply with all applicable provisions of the [Americans with Disabilities Act \(Public Law 101-336, 42 U.S.C. 12101-12213\)](#) and all applicable federal regulations under the Act, including 28 CFR [Parts 35](#) and [36](#), in its operation of the Facility unless such compliances is waived or grandfathered.

27. Legal Arizona Workers Act Compliance.

27.1. Compliance with Immigration Laws. Operator warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Operator's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Operator will further ensure that each Subcontractor who performs any work for Operator under this Contract likewise complies with the State and Federal Immigration Laws.

27.2. Books & Records. County has the right at any time to inspect the books and records of Operator and any Subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

27.3. Remedies for Breach of Warranty. Any breach of Operator's or any Subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting Operator to penalties up to and including suspension or termination of this Contract. If the breach is by a Subcontractor, and the subcontract is suspended or terminated as a result, Operator will take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or to retain a replacement Subcontractor (subject to County approval if SBE or DBE preferences apply), as soon as possible so as not to delay project completion.

27.4. Subcontractors. Operator will advise each Subcontractor of County's rights, and the Subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to ensure that Contractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

27.5. Costs. Any additional costs attributable directly or indirectly to remedial action under this Article are the responsibility of Operator. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of Operator's approved construction or critical milestones schedule, such period of delay will be excusable delay for which Operator is entitled to an extension of time, but not costs.

28. Israel Boycott Certification. Pursuant to A.R.S. § 35-393.01, if Operator engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Operator certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

29. Exhibits. The following exhibits to this Agreement are fully incorporated herein as if set forth at length:

Exhibit A: Facility Legal Description

Exhibit B: County Improvement Projects

30. Amendment. The parties may modify, amend, alter or extend this Agreement only by a written amendment signed by the parties.

31. Entire Agreement. This Agreement constitutes the entire agreement between County and Operator with respect to the Facility, and no modification of this Agreement is binding unless in writing and signed by both parties.

(remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day, month, and year written below.

COUNTY:

Pima County, a political subdivision of the State of Arizona

Chair, Board of Supervisors

Date

OPERATOR:

Old Tucson Entertainment LLC
a Colorado for profit corporation.



Authorized Officer Signature

John A. Harper - President
Printed Name and Title

3/16/2022
Date

ATTEST:

Clerk of the Board

Date

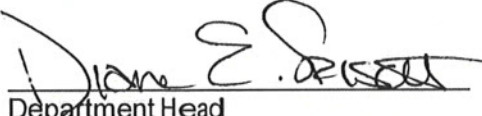
APPROVED AS TO FORM:



Deputy County Attorney

March 16, 2022

APPROVED AS TO CONTENT:



Department Head

EXHIBIT "A" (1 page)

FACILITY LEGAL DESCRIPTION

The site, located in Tucson, Arizona includes Parcel number 2 of 0.2296 acres, Parcel number 1 of 149.7094 acres of land where all the current buildings and improvements are located (the "Developed Area"), and Parcel number 3 of 179.349 acres of land outside the Developed Area previously used periodically as needed by the previous tenant for filming motion pictures, television, or related theatrical productions with restrictions (the "Native Area").

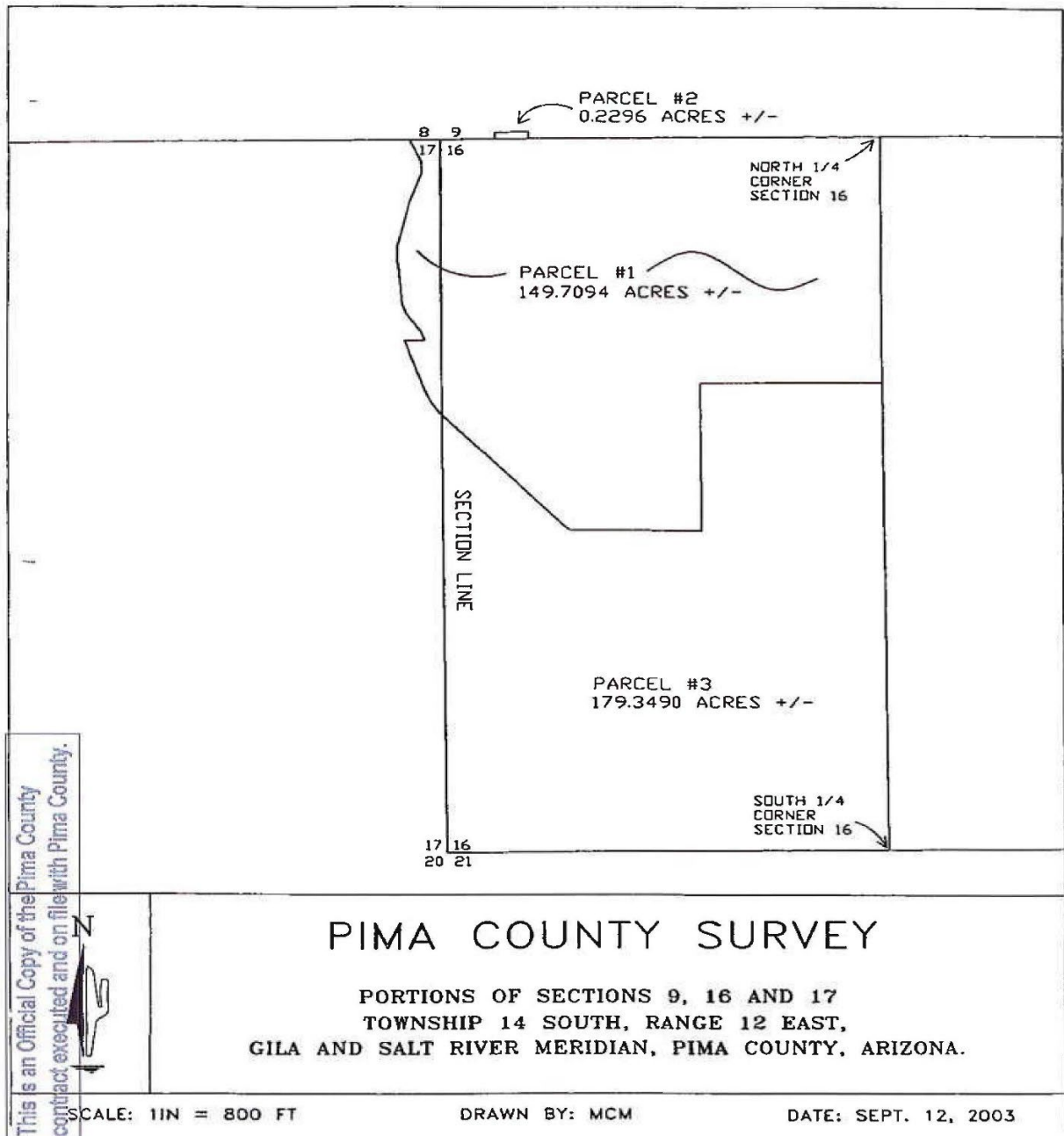


EXHIBIT "B" - COUNTY IMPROVEMENT PROJECTS (7 pages)

Old Tucson 2021-2022 Building Maintenance

3/18/2022

Area	Bldg. #	Size (SF)	Size (LF)	Building Name	Estimate Items	Upcoming Work Week of 3/21/22	Notes/Remaining work
99	1	2,171		Entrance Building	Adobe repairs, interior millwork, replace AC unit, 2 new faucets, replace restroom counters, roof and parapet repairs		Hire A/E for parapet repair design
99	2	1,800		Entry Ramada	Replace saguaro ribs		
99	3	36		Front Gate Storage Shed	Adobe repair, Roof Replacement		
99	4	2,400		Last Outpost (Gift Shop)	Stucco repair, drywall repair & paint		
99	5	303		Railroad Station (Western Pacific)	Replace 10% of boardwalk (windows)		
99	6	200	20	Rammed Earth Seating Wall	Replace planks		
99	7			Concession Stand, Rodeo Arena	OLD TUCSON COMPANY OWNS		
99	8	128		Front Gate Info Kiosk			
99	9	260		Last Outpost Exit Plaza	Fix gates		
99	99		384	Area 99 Fences	Fence repairs		
99	99	535		Area 99 Boardwalks	Replace 40%		
100	100	4,875		Story Teller Theater	Boardwalk repair, fascia repair, new door, interior ceiling repair, replace AC unit		
100	101	2,052		Arizona Theater			
100	102	803		Area 100 Restroom	Cleaning and 8 new faucets, paint ceiling		
100	103	770		Olsen's Cotton Shop	Adobe repairs, boardwalk repairs, fascia repair		
100	104	180		Taxidermist	Wood door, adobe repairs, boardwalk repair		
100	105	561		Big Scoop	Window frame & trim repair, exterior paint, kitchen cleaning, kitchen prep tables, flooring, replace AC units (2)		
100	106	255		Blacksmith Shop	Boardwalk and fascia repair, adobe stabilization		
100	108	5,168	276	Adobe Historical Landmark	Repair split fence		
100	109	60	20	Area 100 Rammed Earth Seating Wall	No work recommended		
100	110		60	Story Teller Historic Ruins	Fence repairs		
100	199		761	Area 100 Fences	Fence repairs		
100	199	2,150		Area 100 Boardwalks			
200	200	5,230		The Big Top Circus Tent	Remove weeds		
200	201	154		Circus Tent Control Room	Wood repairs		
200	203			Gazebo	OLD TUCSON COMPANY OWNS		

Area	Bldg. #	Size (SF)	Size (LF)	Building Name	Estimate Items	Upcoming Work Week of 3/21/22	Notes/Remaining work
200	204	10,000		Mesquite Grove			
200	205	557		Antique Car Loading Station	Roofing, wood repairs & paint		
200	206	240		Antique Car Maintenance Area			
200	207	8,327		Antique Car Track			
200	208	1,524		Huntington Train Depot	Roofing, wood repairs & paint		
200	209		4,060	CPH Rail Road Track			
200	210	2,800		Silverlake Pond			
200	211	336		Silverlake Bridge	Railing repair		
200	211			Carousel	OLD TUCSON COMPANY OWNS		
200	212	328		Little Town Façade	Wood repairs		
200	215	756		Soft Play Ramada	Ship Lap Repair at roof		
200	216	320		Ball Crawl Ramada	Wood repair		
200	218	218		Pony Rides			
200	219	960		OK Corral	Remove stairs, repair loading dock		
200	217			Water Tower	OLD TUCSON COMPANY OWNS		
200	220	550		Adobe School House	Adobe wall (300 sf) & parapet (55lf) repairs, gate/railing repair		
200	221	238		Adobe Ruins Restroom	Not for public use, no scope		
200	222	612		Phoebe's Candy Shop	Adobe wall (180 sf) repair, wood repair, flooring repair, interior paint, replace AC unit		Awaiting delivery of AC unit
200	223	364		Freight Depot	Wood repairs, remove steps and railing		
200	224	430		Petting Zoo Ramada #1			
200	225	330		Petting Zoo Ramada #2			
200	226	920		Harness Shop			
200	229		655	Area 200 Fences	Fence repairs		
200	229	215		Area 200 Boardwalks			
300	300	6,375		Town Hall	Ceiling repair, exterior paint, plywood siding repair, gate repairs, replace AC units (4)		
300	301			Heritage Park			
300	303		106	Adobe Ruins			
300	304	1,336		McClintock Mercantile	Boardwalk and fascia repair, replace evap units (2)	Evap Coolers - Start up and testing	
300	305			Stage Coach	OLD TUCSON COMPANY OWNS		

Area	Bldg. #	Size (SF)	Size (LF)	Building Name	Estimate Items	Upcoming Work Week of 3/21/22	Notes/Remaining work
300	306	1,239		Photo Emporium	Boardwalk repair, siding repair, roof planks missing & door repair, replace AC units, interior paint		
300	308			Mission Plaza Fountain			
300	310	1,120		Mission	Remove weeds and debris		
300	311			Mission Plaza	Remove weeds		
300	312	60		Mission Wild Wall North	Remove Weeds		
300	313	5,625		Mission Garden			
300	314	3,378		Area 300 Rammed Earth Seating Area	Replace planks at benches		
300	315	1,472		Mission Ramada			
300	316	112		Rio Lobo Bridge	Electrical repair		
300	317	8,825		Rio Lobo River			
300	318	480		Traditional Tohono O'odham Ramada			
300	319	300		Ki Sleeping Hut #1	Ocotillo repair		
300	320	120		Kosin Kitchen	Ocotillo repair		
300	321	300		Ki Sleeping Hut #2			
300	322	25		Traditional Tohono O'odham Oven	No work recommended		
300	399		355	Area 300 Fences	Fence repairs		
400	400	3,300		Cowboy Café (Pony Express)	Kitchen cleaning, kitchen prep tables, water heater, replace AC units (3),		
400	401	4,151		Iron Door Mine Ride	Site cleanup, power wash/treat wood, repair planks		
400	402	625		Area 400 Restroom	Cleaning and 5 new faucets, paint		
400	403	228		Boat Dock Ramada (Outhouse)	Power wash/treat wood, repair planks		
400	404	1,100		El Dorado Mine (Toltec)	Trim 2 trees, power wash/treat wood		
400	406	1,584		Old Coyote Building/Sheriff's Bldg	Power wash/treat wood, repair planks, roof repair		
400	407	1,200		Chinese Alley			
400	408	72		Miners Shack	Trim vegetation		
400	409			Water Tower			
400	410	200		Water Wheel, Silverlake	Sleuth rebuild		
400	411		44	Pan for Gold	Debris clean up, repair planks, power wash/treat wood		

Area	Bldg. #	Size (SF)	Size (LF)	Building Name	Estimate Items	Upcoming Work Week of 3/21/22	Notes/Remaining work
400	412	968		Park Brewery	Roof structure		
400	413	3,860		Indian Trading Post	Interior wood and ceiling repairs	Structural design for repairs	
400	414	1,188		Arizona Collectables (Corner Store)			
400	499		221	Area 400 Fences	Fence repairs		
400	499	1,220		Area 400 Boardwalks	Boardwalk repair		
500	500	11,743		Grand Hotel	Paint siding, balcony deck. Roofing repair at stair. Handrail, steps & planking replacement. Cleaning, replace AC units (4), new water heater		Awaiting delivery of (1) AC unit
500	501	3,098		Rosa's Cantina	Minor stucco repair & paint. Patch wall & epoxy paint. Demo some sections of kitchen base cabinets (15LF), new door, kitchen cleaning, new water heater		
500	502	803		Area 500 Restroom	Threshold, entry canopy repair, cleaning, 8 new faucets, ceiling paint		
500	503		169	Walled Adobe Enclosure			
500	504	450		John Wayne Museum	Parapet repair (160 sf), wall plaster, adobe repair (150 sf)		
500	505			High Chaparral Train Depot	OLD TUCSON COMPANY OWNS		
500	507	140		Indian Hogan	Remove vegetation		
500	508	11,500	526	South Corral			
500	509			North Corral	OLD TUCSON COMPANY OWNS		
500	510		880	Reno Railroad Track	OLD TUCSON COMPANY OWNS		
500	511	430		Railroad Trestle			
500	512			North Forty Outpost	OLD TUCSON COMPANY OWNS		
500	514	132		Railroad Trestle Plug			
500	599		148	Area 500 Fences	Fence repairs		
500	599	900		Area 500 Boardwalks	Boardwalk repairs		
600	600	4,160		Big Jakes BBQ	Boardwalk repair, kitchen cleaning, replace AC units (5), new water heater (2)	Start up and test mixed air units, replace damaged clg tiles	
600	601	690		Kitchen Services			

Area	Bldg. #	Size (SF)	Size (LF)	Building Name	Estimate Items	Upcoming Work Week of 3/21/22	Notes/Remaining work
600	602	1,066		Area 600 Restroom	Cleaning, 7 new faucets, paint		
600				Area 600 Staff Restrooms	Drywall repair, paint, flooring repair, lighting replacement		
600	640	940		Wagon Ride Ramada	Replace roof, demo high roof		
600	650	1,242		Stage Coach Depot / Chapel	Exterior paint, bell tower repair		
600	651	2,700	220	South Cemetery			
600	653			North Cemetery	OLD TUCSON COMPANY OWNS		
600	699		198	Area 600 Fences	Fence repairs		
600	699			Area 600 Boardwalks	Boardwalk repairs		
700	700	1,470		High Chaparral House	Misc. overhead wood repair,		
700	701	1,296		High Chaparral Barn			
700	702	585		Area 700 Restroom	Cleaning & 4 new faucets, repair drinking fountain niche		
700	703	1,200		High Chaparral Bunkhouse (Ruins)	Repair split rail fence		
700	704	432		High Chaparral Ramada	Wood roof repairs		
700	705	72		High Chaparral BBQ	Replace damaged top course of adobe blocks	Review existing conditions with JOC	
700	706		120	High Chaparral Corral			
700	730	144		Miners Shack	OLD TUCSON COMPANY OWNS		
700	750			Bone Yard	OLD TUCSON COMPANY OWNS		
700	753	144		High Chaparral Sound Building			
700	770			Phillips Ranch			
700	771			Phillips Ranch Barn & Corral	OLD TUCSON COMPANY OWNS		
700	772			Phillips Ranch Shed	OLD TUCSON COMPANY OWNS		
700	799	894		High Chaparral Fences	OLD TUCSON COMPANY OWNS		
700	799			Area 700 Boardwalks			
800	800	7,800		Stage II	Replace evap units (11), pathway grading, roof		
800	801			Mobile Kitchen	OLD TUCSON COMPANY OWNS		
800	803	1,260		Stage II Ramada			
800	804		121	Bitter Creek False Fronts	Replace 10% of boardwalk		
800	850	22,142		Rodeo Arena			
800	851	130		Rodeo Announcer's Stand	Demolish		

Area	Bldg. #	Size (SF)	Size (LF)	Building Name	Estimate Items	Upcoming Work Week of 3/21/22	Notes/Remaining work
800	853			Rodeo Arena Bleachers	OLD TUCSON COMPANY OWNS		
800	899		50	Area 800 Fences	Fence repairs		
800	899	930		Area 800 Boardwalks	Boardwalk repairs		
900	900			Administration Building	OLD TUCSON COMPANY OWNS		
900	901			Back Gate Security Building	OLD TUCSON COMPANY OWNS		
900	903	7,160		Warehouse	Repair/replace plywood, patch holes at exterior, roof repair		
900	904	480		Warehouse Storage Shed	Roof repair		
900	905			Lumber Storage Ramada	OLD TUCSON COMPANY OWNS		
900	906			Entertainment Office	OLD TUCSON COMPANY OWNS		
900	907			Wardrobe Dressing Room Trailer	OLD TUCSON COMPANY OWNS		
900	908	975		Art Department			
900	909	648		Patty's Parlor			
900	906			Modular Building			
900	907			Modular Building			
900	911	238		Fire Pump House	Paint wood trim		
900	912			Domestic Water Tank	Remove weeds and clutter		
900	913			Water Storage Tank South			
900	914			Water Storage Tank North			
900	915			Water Pressure Tank			
900	916			Fuel Storage Tank	OLD TUCSON COMPANY OWNS		
900	918	1,170		Maintenance Shop	Siding repair, roof repair		
900	919	619		Maintenance Storage	Remove termite infested free standing post		
900	920	144		Old Well Pump House			
900	921	250		Old Storage Ramada	Paint structure		
900	922	2,380		Asphalt Walkway			
900	949	128		Employee Smoking Ramada	Demolition		
900	950			Propane Storage Tank	OLD TUCSON COMPANY OWNS		
900	951	38,387		Employee Parking Lot	Obtain quote to seal cracks		
900	952	19,664		Parking Access Road			
900	953	4.6 Acres		Main Parking Lot	Crack seal, seal coat & restripe		
900	954	5.8 Acres		Auxiliary Parking Lot	Obtain quote to repair extruded curbs and eroded areas		
900	955			Auxiliary Parking Annex			

Area	Bldg. #	Size (SF)	Size (LF)	Building Name	Estimate Items	Upcoming Work Week of 3/21/22	Notes/Remaining work
900	999		690	Area 900 Fences	Fence repairs		
				Septic Tanks and Grease Traps (site)			
				Bleachers (Area 300, 600 & 800)	Repair assessment		
		5,000		Future Warehouse			
	LEGEND						
				Old Tucson Company owned structures			
				ALL work completed			
				Ongoing work			
				Scope to be determined			
				Determine if needed by new operator			

END OF EXHIBIT "B"



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/1/2022

3/17/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies 444 W. 47th Street, Suite 900 Kansas City MO 64112-1906 (816) 960-9000	CONTACT NAME: PHONE (A/C. No. Ext): E-MAIL ADDRESS:	FAX (A/C. No):	
	INSURER(S) AFFORDING COVERAGE		
INSURED 1483464 AMERICAN HERITAGE RAILWAYS, INC 479 MAIN DURANGO CO 81301	INSURER A: Aspen Specialty Insurance Company		NAIC # 10717
	INSURER B: Twin City Fire Insurance Company		29459
	INSURER C: Westchester Surplus Lines Insurance Co		10172
	INSURER D: Hartford Insurance Company of Illinois		38288
	INSURER E:		
	INSURER F:		

COVERAGES**CERTIFICATE NUMBER:** 18354382**REVISION NUMBER:** XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR RAILROAD LIABILITY <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	N	N	RL00JCA21	10/1/2021	10/1/2022	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ XXXXXXXX MED EXP (Any one person) \$ XXXXXXXX PERSONAL & ADV INJURY \$ XXXXXXXX GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ XXXXXXXX
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	N	N	83 UEN OD1271	1/1/2022	1/1/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX
C	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	N	N	G71186404004	10/1/2021	10/1/2022	EACH OCCURRENCE \$ 8,000,000 AGGREGATE \$ 16,000,000 \$ XXXXXXXX
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	83 UEN OD1B2U	1/1/2022	1/1/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

18354382
 PIMA COUNTY
 150 W. Congress Street, 5th Floor
 Tucson AZ 85701-1317

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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UNCOMMONLY INDEPENDENT

March 17, 2022

PIMA COUNTY
150 W. Congress Street, 5th Floor
Tucson, Arizona 85701-1317

Re: Operating Agreement for Old Tucson Studios
Operator: Old Tucson Entertainment LLC
Revenue Contract No. CTN-ED-22-041

Dear PIMA COUNTY:

Lockton Companies is an insurance broker handling the insurance program for American Heritage Railways, Inc. We provide insurance coverage for all of the operations of American Heritage Railways, Inc. and their subsidiary companies including:

Durango & Silverton Narrow Gauge Railroad

Great Smoky Mountain Railroad

Rail Events, Inc.

Rail Events Productions, Inc.

The insurance policies placed for the above entities include Railroad Liability for passenger train excursions, Automobile, Workers Compensation, Excess Liability, Property. For clarification, General Liability is included within Railroad Liability coverage, which also includes FELA coverage for the employees.

We will work with American Heritage to put insurance coverage in place to meet the insurance requirements of the above mentioned contract once operations begin for Old Tucson Entertainment, LLC. We have access to insurance markets that will provide coverage for a theme park operation based upon the Operator's Permitted Activities as stated in the contract.

Attached is a Certificate of Insurance that shows coverage in place for American Heritage Railways, Inc.

Please let us know if you need any additional information.

Regards,

Diane Burgess

Vice President, Sr. Account Executive