



BOARD OF SUPERVISORS AGENDA ITEM REPORT
AWARDS / CONTRACTS / GRANTS

Award Contract Grant

Requested Board Meeting Date: May 21, 2024

* = Mandatory, information must be provided

or Procurement Director Award:

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

Arizona Aerospace Foundation

***Project Title/Description:**

Operating Agreement for Titan Missile Museum

***Purpose:**

Pursuant to A.R.S. § 11-932, and in consideration of the mutual promises and covenants set forth in this Operating Agreement ("Agreement"), Pima County ("County") grants Arizona Aerospace Foundation Inc. ("Operator") the exclusive right to operate the Titan Missile Museum ("Facility") as a public park. Operator agrees that it will, at its own expense and for the benefit and recreation of County's inhabitants, tourists, and visitors operate, manage, repair and maintain, promote, improve, and develop the Facility under and subject to the terms of this Agreement.

***Procurement Method:**

Exempt per Section 11.04.020.

***Program Goals/Predicted Outcomes:**

County will preserve a historic landmark as a permanent asset. County residents and visitors will continue to access this significant educational and recreational resource in Pima County.

***Public Benefit:**

Operator will operate the Facility as a public museum that focuses on the history of the site as "Air Force Facility Missile Site 8" also known as "Titan II ICBM Site 571-7", a former Inter Continental Ballistic Missile (ICBM) site. While the site was constructed in 1963 and deactivated in 1984, it was not declared a National Historic Landmark until 1994. Operator acknowledges the importance of the long standing history the Facility has with southern Arizona, and the United States post "Cold War" era, and the significance of maintaining the integrity of said history through this Agreement.

***Metrics Available to Measure Performance:**

Number of Museum visits, Admission Revenue, Museum Store Revenue.

***Retroactive:**

NO.

To: COB, 5-6-24 (1)
Vers: 1
pgs. 23

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THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: CTN Department Code: ED Contract Number (i.e., 15-123): 24*171
Commencement Date: 5/21/24 Termination Date: 5/20/49 Prior Contract Number (Synergen/CMS):
Expense Amount \$ N/A * Revenue Amount: \$ 1,194,556.00

*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 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: Diane Frisch
Department: Attractions & Tourism

Telephone: 724-7353

Department Director Signature: Diane E Frisch Date: 5/03/2024
Deputy County Administrator Signature: [Signature] Date: 5/3/2024
County Administrator Signature: [Signature] Date: 5-3-2024

PIMA COUNTY DEPARTMENT OF ATTRACTIONS AND TOURISM

PROJECT: Operating Agreement for Titan Missile Museum

OPERATOR: Arizona Aerospace Foundation

REVENUE CONTRACT NO.: CTN-ED 24*171

AMENDED AND RESTATED OPERATING AGREEMENT FOR THE OPERATION AND ADMINISTRATION OF THE TITAN MISSILE MUSEUM

This Amended and Restated Operating Agreement for the Operation of the Titan Missile Museum ("**Agreement**") is made and entered into by and between Pima County, a political subdivision of the State of Arizona ("**County**"), and Arizona Aerospace Foundation, an Arizona nonprofit corporation that is also tax-exempt under 26 U.S.C. § 501(c)(3) ("**Operator**"), to commence on May 21, 2024, and effective as of May 21, 2024, (the "Effective Date").

1. Background and Purpose.

- 1.1. County is the owner of the real property described and depicted in **Exhibit A** (the "**Facility**"). Operator is a non-profit corporation organized under the laws of the State of Arizona.
 - 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.
 - 1.3. Under prior agreements, as amended from time to time, Operator had developed, operated, improved, and maintained the Facility as a public park area for the rest, relaxation, educational benefit, and recreation of the inhabitants, tourists, and visitors of Pima County since May 1, 1986. The Sublease for Operation and Administration of Titan Missile Museum (CTN-ED-12*599) ("**Original Agreement**") was the most recent agreement between County and Operator. The Original Agreement, which the Parties originally executed on June 5, 2012 and amended four times, expired on April 30, 2021. The Parties have been in a holdover period as County worked with the General Services Administration (GSA) on behalf of the USAF for a Negotiated Sale of the Facility to Pima County. Parties have continued to operate as if the Original Agreement remained in effect from May 1, 2021 to May 21, 2024.
 - 1.4. Operator acknowledges that it has possessed and operated the Facility for the entire time that County had sub-leased it to Operator.
 - 1.5. The Parties now wish to enter into a new Agreement for the Facility.
- 2. Original Agreement.** As of the Effective Date, this Agreement will supersede and replace the Original Agreement in its entirety.

3. **Term.** The Term of this Agreement will commence on May 21, 2024 and will continue for twenty five (25) years (the “**Initial Term**”), subject to earlier termination as provided in Section 18 of this Agreement. The term of this Agreement may be extended by Operator for an additional twenty five (25) years (“**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.”

4. **Annual Lease Rate**

4.1 Operator shall pay County an annual lease rate in the amount of \$45,000 per year payable in one payment on July 1st of each year. The annual lease rate may be fully or partially offset by Operator providing a certified statement to County of the annual expenses associated with the operation of the Facility. All real estate related expenses shall be permitted to be used to offset the annual lease rate in full or in part including but not limited to utility costs and expenses for the repair and maintenance of the Facility (costs associated with the property which are the responsibility of Operator.)

4.2 **Rent Escalation.** Beginning five years after the Commencement Date of the Agreement and every five years thereafter during the term, the annual lease rate shall be increased by an amount equal to three percent (3%) of the immediately preceding annual lease rate.

5. **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 the Facility as a public park known as the Titan Missile Museum. Operator agrees that it will—at its own expense and for the benefit and recreation of County’s inhabitants, tourists, and visitors—operate, manage, repair and maintain, promote, improve, and develop the Facility under and subject to the terms of this Agreement.

6. **Operator’s Performance Standards.** Operator must comply with the following performance standards during the Term of this Agreement:

6.1. **Permitted Activities.** Operator will operate the Facility as a public museum that focuses on the history of the site as Air Force Facility Missile Site 8 or as Titan II ICBM Site 571-7, a former ICBM site. Operator acknowledges the site was constructed in 1963 and deactivated in 1984. Operator also acknowledges that the site was declared a National Historic Landmark in 1994 and is the only Titan II complex to survive from the Cold War period. Operator may include within the Facility gallery space, curatorial space, a gift shop, and parking for museum guests. These uses (the “**Permitted Activities**”) are the only uses permitted within the Facility. Operator will conduct the Permitted Activities continuously during the Term of this Agreement.

6.2. **Collections, Furnishings, and Equipment.** Operator will maintain all furnishings, collections, displays, and equipment necessary to establish, develop, promote, operate, maintain, and improve the museum 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 provide public recreation and full service each day. Hours of operation, holiday closings, or special closings will be subject to County approval based on reasonable public demand and business activity. Operator must ensure that the Facility is adequately staffed 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.
- 6.4.1. Any admission fees that Operator charges to the general public will be in an amount that is reasonable and used to support the operations of the Titan Missile Museum. Operator may adjust fees for admission to the museum to reflect market conditions with sixty (60) day written notice to County Attractions & Tourism Department.
- 6.4.2. Operator has committed to the support of youth educational programs in Pima County since its inception. Operator will continue to provide school and youth group tours within the limits of the preservation and safety rules required by the underground location, and access of the underground silo via the 55 stairs.
- 6.5. **Concessions.** Operator may operate concessions for the sale of beverages, snacks, food, publications, souvenirs, and similar items. Any contracts or concession agreements must be approved in writing by County, which approval may be withheld by County for any reason.
- 6.5.1. If food is sold to or consumed by members of the public, Operator must obtain all applicable food permits, and Operator and its contractors and concessionaires must comply with all Pima County health regulations.
- 6.5.2. 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 of \$5,000,000 naming County as additional insured.
- 6.6. **Special Events.**
- 6.6.1. *Definition.* For purposes of this Agreement, a "Special Event" is an event that is beyond the normal scope of the operation of the Facility, including any event, whether public or private, that (a) is expected to attract more than 200 hundred (200) people; (b) involves a cash bar or other sales of alcohol; or (c) may increase risk of injuries to persons at the Facility. Special Events do not include routine meetings and functions.
- 6.6.2. *Notice; Traffic & Safety Plans.* Should Operator desire to conduct a Special Event with a set arrival time that exceeds 200 people, Operator must give County Attractions & Tourism Department a thirty (30) day advance written request, 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. County may impose reasonable traffic, safety and noise restrictions on the Special Event to promote the health and safety of the participants and of the general public and County may designate approved parking areas.
- 6.7. **Use of Revenues and Operator's Non-Profit Status.** Throughout the term of this Agreement, Operator must maintain its status as a non-profit tax-exempt entity and will operate the Facility accordingly. Operator will endeavor to limit expenditures, including salaries, so as not to impair its ability to fulfill the public purpose of this Agreement. All revenues whatsoever must only be used for the operation, maintenance, development, promotion, and improvement of the Facility and Operator's public programs at the Facility.

Such revenues may include, but are not limited to, those collected as donations, admission fees, from concessions and special events, or from other Permitted Activities.

6.8. **Cooperation with County in Economic Development.** Operator will fully cooperate with County with respect to economic development activities related to 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. Operator will also participate in the planned regional visitor's center that will be operated by County within the Pima County Historic Courthouse, located at 115 N. Church Ave., by providing promotional materials, exhibit samples, and items for sale in the gift shop. Operator will acknowledge in any promotional materials and signage that the Facility and the Titan Missile Museum are Pima County facilities and attractions.

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 shall be open for inspection and audit by duly authorized representatives of County at all reasonable times.

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 balance sheet and a year-end statement of income and expenses prepared in accordance with generally accepted accounting principles. The financial statements must be delivered by June 30 each year and must show all revenues from operation of the Facility and all expenses incurred in connection with the operation of the Facility for the previous fiscal year. Operator will cause any other organization that utilizes the Facility on an annual basis to give County an annual financial report within one hundred twenty (120) days after the end of the user's fiscal year end.

6.9.3. *Audited Financial Statements.* Every two years Operator will engage a qualified independent accounting firm to perform an audit of Operator's financial statements covering the two most recent fiscal years (November 1 to October 31) of operations. The statements must include the financial activities of the Titan Missile Museum. 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 30 days after Operator's Annual General Meeting, but no later than March 31st of the year immediately following the conclusion of the most recent fiscal year covered by the audit.

6.9.4. *Additional Audits.* At any time upon written notice to Operator, County may, for cause, require Operator to provide a program-specific or financial audit ("For-Cause Audit") within 120 days of request. 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. 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 permit anything to be done in, on, or about the Facility, that in any way conflicts with any federal, state, or local law, statute, ordinance or governmental rule or regulation.
- 6.11. **Volunteers.** All volunteers working at the Facility under the direction of Operator will execute a release of liability in a form reasonably acceptable to County prior to doing any work at the Facility. Operator will deliver a sample of the release to County in the same manner as the giving of other notices under this Agreement.
- 6.12. **Utilities.** All utilities for the operation of the Facility shall be the sole responsibility of Operator. Utilities shall include water, sewer, natural gas, and electric.
- 6.12.1. *Service Interruptions.* County has no liability to Operator if any utilities or services, whether or not furnished by County, are interrupted or terminated because of any cause beyond County's reasonable control, and no such failure, interruption or termination will relieve Operator of any of its obligations under this Agreement.
- 6.13. **Signs.** Operator may affix and maintain upon the Premises such signs relating to the services provide on the Premises as the Operator deems appropriate; provided, however, if such signs are visible outside of the Premises, such signs must first receive the written approval of the County Administrator or his designee as to the type, size, color, location, copy nature, and display qualities. All signs shall at all times comply with the Pima County Sign Standards and shall be installed and maintained at Operator's sole cost. Operator shall pay all costs for construction, erection, installation, maintenance, and repair of any sign either currently in existence or to be erected or installed or otherwise placed on the Premises, except that County is responsible for any signs on the Arizona Trail. Operator, shall through coordination with the County Administrator or his designee, identify the Premises as belonging to Pima County. Operator shall acknowledge the contribution of County in providing the Premises to the Operator in Operator's annual reports and appropriate publications. A special Pima County Attractions logo shall be affixed and visibly displayed on and to the property's entrance sign, collateral material and publications, billboards, etc.
- 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 good condition and repair. This includes maintaining, 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, foundations, walls (exterior and interior), sidewalks, corridors, roofs, pest control, and sewer, water, and exterior electrical lines. Operator will, upon expiration or sooner termination of this Agreement, surrender the Facility to County in good condition and have the site professionally cleaned.
- 6.14.2. **Damage by County.** If the Facility is damaged as a result of negligent or intentionally wrongful conduct of County, its agents, employees, or contractors, County will repair the damage at its own expense.

- 6.14.3. **County Right to Cure.** If Operator fails to perform its maintenance and repair obligations, Operator will be in default under this Agreement, and County, without notice, may, but will not be obligated to, perform Operator's obligations. 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 twelve percent (12%) 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.** Operator accepts the Facility and all improvements thereon in "AS IS" condition with no warranties of any sort being expressed or implied by County.
- 6.15. **Waste Removal.** Operator will prepare and implement an integrated waste management plan to re-use, recycle, dispose of, and/or compost any waste materials generated or present at the Facility, and will submit the plan for County Attractions & Tourism Department for review at least annually. Operator may comply with the requirements of this paragraph through a contract with the City of Tucson or another 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 permit 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 permit 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.
- 6.16.3. Operator will not discharge waste, byproducts, or materials that might result in harm to wildlife or to human water supplies onto the Facility or into water channels.
- 6.16.4. Operator will take all reasonable measures to protect the scenic aesthetic values of the area and prevent soil erosion and gullyng that might be caused by construction or improper use of resources.
- 6.16.5. Operator will secure the Facility and take all necessary steps and precautions to prevent vandalism and other damage to all buildings, exhibits, and other personal property stored at the Facility.
- 6.16.6. Operator will take all reasonable measures to discourage disorderly conduct at the Facility, and will call appropriate law enforcement officers when necessary and assist and cooperate in subsequent prosecutions.
- 6.16.7. Operator will take all appropriate actions to prevent fire damage to the Facility and any improvements, collections, and natural resources at the Facility, including but not limited to complying with approved building and electrical wiring codes and with area closures and use restrictions imposed by any governing jurisdiction.

6.16.8. In addition to the requirements of Section 9 below, Operator will comply with all present and future laws and regulations regulating the environment, hazardous or toxic waste, ambient air, groundwater, surface water, and land use.

6.17. **Third Party Contract.** Operator may not contract with a third party to conduct the Permitted Activities without County's prior written consent, which will be at County's sole discretion. County's consent to a third party contract will not relieve Operator of any of its obligations, responsibilities, or liabilities under this Agreement.

6.18. **Expenses of Operator.** Operator will conduct all of its operations at the Facility at its own expense and without financial or in-kind contributions from County. Operator will not otherwise suggest, state, or imply that County will participate, guarantee, or assist in any financial or other obligation undertaken by Operator with respect to its operations at the Facility.

7. **Cultural Resources and Historic Preservation.** Operator shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural, or other cultural artifacts, relics, human remains, or objects of antiquity. In the event such items are discovered on the Leased Premises, Operator shall immediately notify County and protect the site and the material from further disturbance until the County gives clearance to proceed. Additionally, the Facility owned by Pima County, designed as a National Historic Landmark, is subject to Board of Supervisors Policy C.3.17, Protection of Cultural Resources. Any alterations and improvements to the Facility as referenced in Sections 7 and 8 of this Agreement will be subject to County review. Furthermore, Operator hereby acknowledges that the Property is subject to the following conditions, restrictions, and limitations, which are hereinafter identified and described as covenants running with the land ("the **Covenant**"), and attached as Exhibit C to this Agreement:

7.1. **Property Description and Character-Defining Features.** The National Historic Landmark nomination form for the Property, Air Force Facility Missile Site 8 (571-7) dated September 1993, identifies character defining features that merit preservation ("Character Defining Features"). The nomination includes a 10-acre reservation parcel, and within that parcel, a 3.3-acre missile site. The Character Defining Features that are subject to this covenant include eight structures all within the 3.3-acre missile site and include:

- 7.1.1. The access entrance portal
- 7.1.2. The silo closure door with associated equipment pads
- 7.1.3. Two concrete propellant transfer trailer pads
- 7.1.4. 6.5' fence (chain link topped with barbed wire) surrounding the missile site
- 7.1.5. The blast lock area (below ground)
- 7.1.6. The launch control center (below ground)
- 7.1.7. The cableway structure (below ground)

7.2. **Preservation.** Operator shall, maintain and preserve the Property in accordance with this Covenant, and the recommended approaches set forth in the "Secretary of the Interior's Standards for Rehabilitation" and "Guidelines for Rehabilitating Historic Buildings" ("Secretary's Standards") and applicable National Park Service ("NPS") Preservation Briefs.

7.3. **Ground-Disturbing Work.** Upon the discovery of archeological resources on the Property, Operator shall cease any work in the vicinity of the discovery and notify the Pima County Office of Cultural Resources & Historical Preservation ("OCRHP"), known as the Office of Sustainability and Conservation ("OSC") until July 1, 2024, and as Conservation Lands &

Resources ("CLR") after July 1, 2024, in writing of such discovery. Operator shall immediately consult with the OCRHP with the goal of avoiding and minimizing any potential adverse effects on such archaeological resources. If a potentially National Register eligible archaeological or cultural resource of religious and cultural significance to a federally recognized Tribe is discovered, Operator shall also consult with that Tribe in accordance with 36 CFR § 800.13, and applicable federal and state laws and regulations.

- 7.4. **Review by "OCRHP."** Plans of proposed work to the Property which would affect the appearance, structural integrity or impact the Character Defining Features shall be reviewed and approved in writing by OCRHP for consistency within Secretary's Standards. OCRHP shall respond in writing to any proposal by the Operator within thirty (30) days (except under extraordinary circumstances) or such approval shall be deemed to have been given.
- 7.5. **Inspections.** OCRHP shall have the right to inspect the premises from time to time, upon reasonable notice, to determine Operator's compliance with the Covenant.
- 7.6. **Maintenance.** Operator shall take commercially reasonable actions to: secure the Property from the elements, vandalism and arson; undertake any stabilization that is necessary to prevent deterioration; undertake all normal maintenance and repairs; and, maintain the Property in a good and sound state of repair and structural integrity.
- 7.7. **Insurance.** Operator shall keep the Property insured against loss or damage.
- 7.8. **Casualty Damage.** If the Property is damaged due to a sudden, unexpected, or unusual event, Operator shall promptly take all steps necessary to render any undamaged portions of the Property in a reasonably safe condition and promptly take all commercially reasonable efforts to render same in a secure and watertight condition and to minimize additional damage to the Property. Operator shall also repair or restore the Property in compliance with the Secretary's Standards. If such repair is commercially or physically infeasible, Operator shall consult with OCRHP.
- 7.9. **Extinguishment.** The parties herein agree that if there the property suffers substantial harm, through no fault of the Operator (such as a natural disaster, a fire, or other casualty loss), this Covenant may be extinguished by written agreement of the parties.
- 7.10. **Amendments.** The parties herein agree that the terms and conditions of this Covenant may be amended or altered to address unforeseen circumstances or to substitute a successor in interest by written agreement of the parties. If this Covenant is amended by written agreement, the language of the amended Covenant will control over the description of the Covenant in Section 7 of this Agreement.
- 7.11. **Violation.** In the event of a violation of the Covenant, in addition to any remedy now or hereafter provided by law, OCRHP may institute suit to enjoin the violation, or require restoration of the Property to the same condition as at the time of conveyance.
- 7.12. **Conveyance.** The OCRHP shall be notified by Operator within thirty (30) days of any conveyance of the Property. Notifications shall include the name and contact information for the new owner(s).

7.13. **Subsequent Deeds or Other Legal Instruments.** Operator shall ensure that Covenant will be inserted in any subsequent deed or other legal instrument by which Operator's fee simple title to the Property is conveyed.

8. **Alterations and Improvements to Facility.** Either Party may, with the written consent of the other, 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 costing less than \$150,000 (the "**Maximum Expenditure Amount**"), without obtaining County's consent, unless such alterations impact the historical integrity as defined in the Covenant, which should be reviewed by OCRHP as provided for in Section 7.4.

8.1. **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 for Alterations costing more than \$150,000, and the consent of the Board of Supervisors for Alterations costing more than \$200,000.

8.2. **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.

8.3. **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:

8.3.1. adversely affect the integrity of any structural, mechanical, or electrical system within any portion of the Facility;

8.3.2. result in the Reviewing Party being required to perform any work that could otherwise be avoided or deferred;

8.3.3. result in an increase in the premiums for any hazard or liability insurance carried by the Reviewing Party, result in an increased risk of liability, or pose a safety hazard;

8.3.4. result in an increase in the demand for utilities or services (including wastewater treatment) that are provided by the Reviewing Party to the Facility;

8.3.5. 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.

8.4. **No Liability for Approval of Alterations.** The Reviewing Party's review of the Alteration Plans will be solely for that Party's purposes and will not imply that that Party has reviewed the Alteration Plans for quality, design integrity, legal compliance, or other substantive matters. Contracting Party will be responsible for any omissions or errors in the Alteration Plans. The Reviewing Party's review will be solely to determine that the proposed Alterations are consistent with the public purposes of this Agreement.

8.5. **Construction of Alterations.** The Contracting Party will cause an approved Alteration to be constructed in a good and workmanlike manner, to be completed promptly, and to use new materials.

8.5.1. *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 Marshal.

8.5.2. *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.

8.5.3. *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.

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

8.6. **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 County 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.

8.7. **Property of County.** Once installed, Alterations are part of the Facility, owned by 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 may not 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, 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 Lease 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 by Operator of Hazardous Material to or from the Facility.
- 9.4. **Environmental Act.** For purposes of this Section 10, "Environmental Act" means an occasion in which:
- 9.4.1. Operator breaches the obligations stated in Section 9.2;
 - 9.4.2. the presence (whether consented to by County or otherwise) of Hazardous Material which results in contamination of the Facility or such soil or groundwater, whether on the Facility, or on or in the soil or groundwater under or adjacent to the Facility, caused or permitted by Operator or Operator's agents, employees, contractors, or invitees;
 - 9.4.3. contamination of the Facility or such soil or groundwater by Hazardous Material otherwise occurs for which Operator is legally liable to County for damage resulting therefrom; 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.** County is concerned about the presence of any Hazardous Material, caused or permitted by Operator or Operator's agents, employees, contractors, or invitees, which results in any suspected contamination of the Facility, or the soil or groundwater under or adjacent to the Facility. When there is such a presence of Hazardous Material, 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 existing condition prior to the introduction of any such Hazardous Material to the Facility, or to such soil or groundwater. Before taking such remedial actions, Operator will first obtain County's

approval of such actions, and County will not unreasonably withhold approval so long as such actions would not potentially have any material adverse long-term or short-term effect on the Facility. This Section 10.5 does not limit the foregoing sections in this Agreement.

- 9.6. **Pre-existing Contamination.** Any Hazardous Materials contaminating the Facility prior to Operator's possession of the Facility in 1984 will not result in liability for Operator under this Section 10 except to the extent such contamination is aggravated by the action or inaction of Operator.
- 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 10 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 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 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 shall 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 shall 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 shall 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. *Workers' Compensation (WC) and Employers' Liability* - Statutory requirements and benefits for Workers' Compensation. In Arizona, WC coverage is compulsory for employers of one or more employees. Employers Liability coverage - \$1,000,000 each accident and each person – disease.

11.1.5. *Builders Risk*. Operator must obtain builder's risk insurance for any alteration projects it carries out on the Facility in an amount equal to the contract amount including all subsequent change orders. Pima County shall be included as a named insured to the policy. Coverage shall be written on an all risk replacement cost basis and shall include coverage for flood and earth movement as well as coverage for losses that may occur during equipment testing. Policy shall contain a waiver of subrogation endorsement in favor of Pima County and its districts and shall 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. **Indemnification.** To the fullest extent permitted by law, Operator will defend, indemnify and hold harmless County, its district, 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) events occurring on at the Facility during the term or any condition created in or about the Facility during the Term; (ii) any breach of any provision of this Agreement by Operator or any of Operator's subcontractors, employees, agents, or licensees. Operator is not obligated to indemnify County for the consequences of any negligent or intentionally wrongful act or omission of County, its agents, employees, or contractors.
13. **Operator not Agent of County.** Operator will exercise day-to-day control of activities on the Facility, and County will not control 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.
14. **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, 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 Avenue, Suite 221
Tucson, AZ 85701

With a copy to:

Chief Civil Deputy Attorney
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

If to Operator:

Executive Director
Arizona Aerospace Foundation
6000 East Valencia Road
Tucson, AZ 85756

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.

15. **Conflict of Interest.** This Agreement is subject to cancellation under A.R.S. § 38-511 for conflicts of interest.
16. **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 shall 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.
17. **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.
18. **Default/Termination.**
 - 18.1. **Termination; Cure.** If, in the sole judgment of County, Operator does not perform in accordance with any of the conditions of this agreement, or if Operator is in default of any provision of this Agreement, County will give Operator written notice specifying the nature of the default. County may terminate this Agreement if Operator fails to remedy the default within thirty (30) calendar days of the County's notice of default; provided, however, that if the nature of Operator's 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 the notice by County.

18.2. Immediate Termination without Notice. Notwithstanding the provisions of Section 18.1 above, County may terminate this Agreement immediately for any of the following:

18.2.1. failure of Operator to carry the required insurance;

18.2.2. violation of any law by Operator or any unlawful activities carried out on the Facility;

18.2.3. any action or omission by Operator that causes a threat to the health or safety of the general public or the users of the facility or constitutes a nuisance;

18.2.4. any actions or omissions by Operator that unduly disturb the quiet enjoyment of neighboring property owners or occupants;

18.2.5. Operator commits a third default in a twelve (12) month period, regardless of whether or not Operator timely cured the previous defaults.

18.3. Remedies. Either party may pursue any remedies provided by law and in equity for the breach of this Agreement. 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.

19. Disposition of Personal Property. Operator will maintain a current inventory of all items of personal property owned by Operator and placed or kept on the Facility by Operator. Any items of personal property left on the Facility upon expiration or earlier termination of this Agreement, including all personal property, gift shop inventory 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 disposed of those items without liability to Operator.

20. 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.

21. Assignment/Concessions. Operator may not either voluntarily or by operation of law, assign or transfer its rights or obligations under this Agreement to any other person. Operator may, in the normal course of business, enter into concession agreements for the operation of specific aspects of the Titan Missile Museum, such as food concessions, and may hire contractors to perform work such as turf maintenance and landscaping. But Operator may not delegate its overall responsibility for all operations of the Titan Museum 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.

22. **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.

23. **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.

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

- Exhibit A: Legal Description
- Exhibit B: Aerial
- Exhibit C: Historic Preservation Covenant

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.)

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

COUNTY:

Pima County, a political subdivision of the State of Arizona

Adelita Grijalva
Chair, Board of Supervisors

Date _____

OPERATOR:

Arizona Aerospace Foundation, an Arizona non-profit corporation.



Scott Marchand
Executive Director

Date 5/2/2024

ATTEST:

Melissa Manriquez, Clerk of the Board

Date _____

APPROVED AS TO CONTENT:



Diane Frisch
Director, Attractions and Tourism

APPROVED AS TO FORM:



Rachelle Barr
Deputy County Attorney

05/01/2024

EXHIBIT "A"
LEGAL DESCRIPTION

Real property in the City of Sahuarita, County of Pima, State of Arizona, described as follows:

Tract Number S-8-100

All that tract or parcel of land, lying and being that portion of the Southeast one-quarter of Section 34, Township 17 South, Range 13 East, Gila and Salt River Meridian, in the County of Pima, State of Arizona, described as follows, basis of bearings being Transverse Mercator Grid, Central Zone, Arizona:

Commencing at the Southeast corner of said section; thence North 33 55' 50" West 1910.16 feet to the POINT OF BEGINNING; thence south of 600.00 feet; thence East 60.00 feet; thence South 300.00 feet; thence West 250.00 feet; thence North 300.00 feet; thence West 410.00 feet; thence North 600.00 feet; thence East 600.00 feet to the POINT OF BEGINNING.

Containing 9.99 acres, more or less.

Together with all improvements thereon and appurtenances thereunto belonging, including the rights and obligations under a perpetual and assignable easement and right of way to operate, maintain, and repair an access road and overhead and/or underground utility lines in, upon, over and across Tract Number S-8-100-E-1, as more fully described below on this exhibit, together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right of way; reserving, however, to the landowners, their heirs, executors, administrators, successors and assigns, the right to cross over said tract, including the movement of machinery, equipment and livestock, to their adjoining land; the above estate is taken subject, however to existing easements for public roads and highways, public utilities, railroads and pipelines.

Tract Number S-8-100-E-1

That portion of the Southeast one-quarter of Section 34, Township 17 South, Range 13 East, Gila and Salt River Meridian, in the County of Pima, State of Arizona within a strip of land, 150.00 feet wide, lying 75.00 feet on each side of the following described center line, basis of bearings being Transverse Mercator Grid, Central Zone, Arizona:

Commencing at the Southeast corner of said section, thence North 33 55' 50" West 1910.16 feet; thence South 600.00 feet; thence West 240.00 feet to the TRUE POINT OF BEGINNING; thence South 409.85 feet to the beginning of a tangent curve concave Northeasterly and having a radius of 200.00 feet; thence Southeasterly along said curve through a central angle of 75 30' 0", a distance of 263.54 feet thence South 75 30' 00"

East 636.98 feet to the beginning of a tangent curve concave Southwesterly and having a radius of 225.00 feet; thence Southeasterly along said curve through a central angle of 63 33' 56", a distance of 249.62 feet; thence South 11 56' 04" East 18.56 feet to the POINT OF ENDING in the center line of the 150.00 foot wide right of way of a County Road, known as Duval Mine Road, said point being in a curve in the center line of said Duval

Mine Road, concave Southeasterly and having a central angle of 38 44' 36", a radius of 1909.86 feet and an arc length of 1291.44 feet, a radial line of said curve to said point bears North 11 56' 04" West.

EXCEPTING from said strip of land that portion lying within said County Road right of way.

ALSO EXCEPTING from said strip of land East 25 feet of the most Northerly 300 feet thereof.

Containing 5.00 acres, more or less, all of which is within Tract Number S-8-100-E-11.

EXHIBIT B - AERIAL

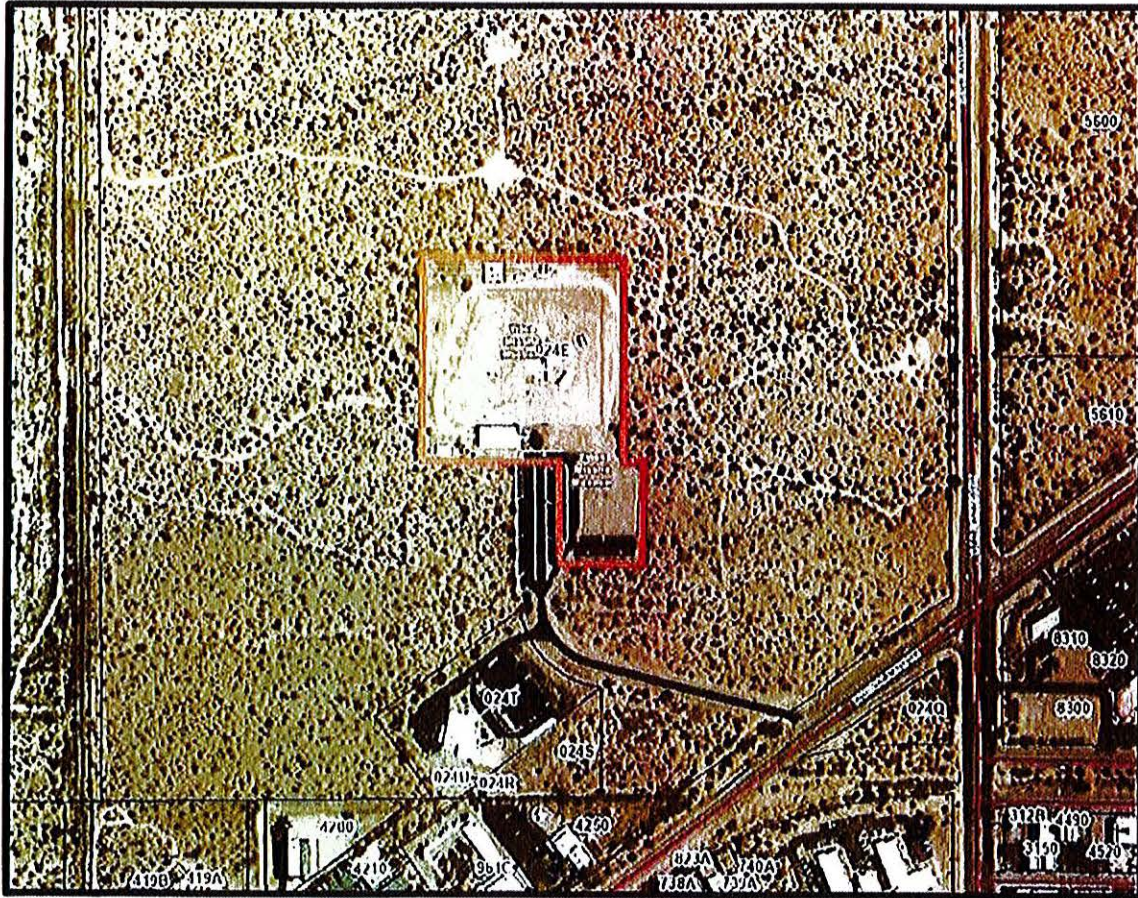


EXHIBIT C - HISTORIC PRESERVATION COVENANT

The Grantee hereby acknowledges that the Property is subject to the following conditions, restrictions, and limitations, which are hereinafter identified and described as covenants running with the land (the "Covenant")

1. **PROPERTY DESCRIPTION AND CHARACTER-DEFINING FEATURES.** The National Historic Landmark nomination form for the Property, Air Force Facility Missile Site 8 (571-7) dated September 1993, identifies character defining features that merit preservation ("Character Defining Features"). The nomination includes a 10-acre reservation parcel, and within that parcel, a 3.3-acre missile site. The Character Defining Features that are subject to this covenant include eight structures all within the 3.3-acre missile site and include:
 - a. The access entrance portal
 - b. The silo closure door with associated equipment pads
 - c. Two concrete propellant transfer trailer pads
 - d. 6.5' fence (chain link topped with barbed wire) surrounding the missile site
 - e. The blast lock area (below ground)
 - f. The launch control center (below ground)
 - g. The cableway structure (below ground)
 - h. The missile silo (below ground)
2. **PRESERVATION.** The Grantee shall, maintain and preserve the Property in accordance with this Covenant, and the recommended approaches set forth in the "Secretary of the Interior's Standards for Rehabilitation" and "Guidelines for Rehabilitating Historic Buildings" ("Secretary's Standards") and applicable National Park Service ("NPS") Preservation Briefs.
3. **REVIEW BY PIMA COUNTY OFFICE OF CULTURAL RESOURCES & HISTORIC PRESERVATION ("OCRHP").** Plans of proposed work to the Property which would affect the appearance, structural integrity or impact the Character Defining Features shall be reviewed and approved in writing by OCRHP for consistency within Secretary's Standards. OCRHP shall respond in writing to any proposal by the Grantee within thirty (30) days (except under extraordinary circumstances) or such approval shall be deemed to have been given.
4. **INSPECTIONS.** OCRHP shall have the right to inspect the premises from time to time, upon reasonable notice, to determine Grantee's compliance with the Covenant.
5. **MAINTENANCE.** The Grantee shall take commercially reasonable actions to: secure the Property from the elements, vandalism and arson; undertake any stabilization that is necessary to prevent deterioration; undertake all normal maintenance and repairs; and, maintain the Property in a good and sound state of repair and structural integrity.

6. **INSURANCE.** The Grantee shall keep the Property insured against loss or damage.
7. **CASUALTY DAMAGE.** If the Property is damaged due to a sudden, unexpected, or unusual event, the Grantee shall promptly take all steps necessary to render any undamaged portions of the Property in a reasonably safe condition and promptly take all commercially reasonable efforts to render same in a secure and watertight condition and to minimize additional damage to the Property. Grantee shall also repair or restore the Property in compliance with the Secretary's Standards. If such repair is commercially or physically infeasible, the Grantee shall consult with OCRHP.
8. **EXTINGUISHMENT.** The parties herein agree that if there the property suffers substantial harm, through no fault of the Grantee (such as a natural disaster, a fire, or other casualty loss), this Covenant may be extinguished by written agreement of the parties.
9. **AMENDMENTS.** The parties herein agree that the terms and conditions of this Covenant may be amended or altered to address unforeseen circumstances or to substitute a successor in interest by written agreement of the parties.
10. **VIOLATION.** In the event of a violation of the Covenant, in addition to any remedy now or hereafter provided by law, OCRHP may institute suit to enjoin the violation, or require restoration of the Property to the same condition as at the time of conveyance
11. **CONVEYANCE.** The OCRHP shall be notified by the Grantee within thirty (30) days of any conveyance of the Property. Notifications shall include the name and contact information for the new owner(s).
12. **SUBSEQUENT DEEDS OR OTHER LEGAL INSTRUMENTS.** The Grantee shall ensure that Covenant will be inserted in any subsequent deed or other legal instrument by which Grantee's fee simple title to the Property is conveyed.
13. **GROUND-DISTURBING WORK.** Upon the discovery of archeological resources on the Property, Grantee shall cease any work in the vicinity of the discovery and notify OCRHP in writing of such discovery. The Grantee shall immediately consult with the OCRHP with the goal of avoiding and minimizing any potential adverse effects on such archaeological resources. If a potentially National Register eligible archaeological or cultural resource of religious and cultural significance to a federally recognized Tribe is discovered, the Grantee shall also consult with that Tribe in accordance with 36 CFR § 800.13, and applicable federal and state laws and regulations.