

City Contract No.: 2023-198
BETWEEN THE CITY OF PRESCOTT
AND
PRESCOTT FRONTIER DAYS – WORLD'S OLDEST RODEO

THIS AGREEMENT, entered this 9th day of, May, 2023, by and between the CITY OF PRESCOTT (hereinafter referred to as "City"), an Arizona municipality, and the PRESCOTT FRONTIER DAYS – WORLD'S OLDEST RODEO (hereinafter referred to as "WOR") a non-profit organization existing under the laws of the State of Arizona.

WHEREAS, the City has the authority to enter into this Agreement pursuant to ARS § 9-493 and ARS § 9-500.11 and the Prescott City Charter; and

WHEREAS, it is in the best interests of the City to enter into this Agreement in order to ensure the future viability of the Prescott Frontier Day's (The World's Oldest Rodeo).

WHEREAS, The Transient Occupancy (Bed Tax) Fund has historically provided an annual contribution to the World's Oldest Rodeo.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, it is hereby agreed as follows:

1. ~~☐☐☐~~The term of this Agreement shall be for a period of one (1) year, commencing on May 9, 2023, and ending May 9, 2024. The City shall provide to the WOR a sum in an amount of Forty Thousand Dollars and zero cents (\$40,000.00), payable in one installment from the City to the WOR on or before June 30th 2023.

2. The WOR shall expend all funds received from the City pursuant to Paragraph 1 above solely for the following purposes: Grant, sponsorship and support designation solely for advertising, destination (tourism) marketing and advertising, WOR event promotion, coordination, and logistics for the 2023 World's Oldest Rodeo Season.

3. The WOR shall work with the City of Prescott to advance and promote the City's western heritage and history, and the time-honored tradition of the WOR. In addition, the City shall receive one arena box per performance equaling the total amount of 64 box seat tickets, Grand Entry flag, announcer stand sign, announcer mentions, a program ad, a sponsor buckle, and a sponsor jacket. Additionally, the WOR website link for travel and accommodation plans links directly to the official City Tourism Office website, *experienceprescott.com*.

4. The WOR shall make an annual report to the Mayor and Council of the City of Prescott regarding WOR's activities for the prior year. Said report shall be made in the last quarter of each fiscal year, upon request.

5. The WOR shall allow representatives of the City to review and make available for inspection any and all records, disbursements, expenditures and other documents relating to the expenditure of the above funds during normal business hours at the offices of the WOR.

6. To the fullest extent allowed by law, the WOR agrees to defend, indemnify and hold harmless the City of Prescott, and its employee officers, agents and representatives from all suits, including attorneys' fees and cost of litigation, actions, loss, damage, expense, cost or claims, caused by the negligence or intentional acts of the WOR. It is the intent of the parties to this Agreement that the City of Prescott shall, in all instances, be indemnified against all liability, losses and damages of any nature whatever for or on account of any injuries to or death of persons or damages to or destruction of property belonging to any person arising out of or in any way connected with the performance of this Agreement, caused by, or alleged to be caused in whole or in part by the negligence or fault of the PDP or of its officers, agents or employees, or subcontractors.

8. Pursuant to A.R.S. Section 38-511, the City of Prescott may cancel this agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the City is, at any time while the agreement or any extension of the agreement is in effect, an employee or agent of any other party to the agreement in any capacity or a consultant to any other party of the agreement with respect to the subject matter of the agreement. In the foregoing event, the City of Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this agreement on behalf of the City of Prescott from any other party to the agreement arising as a result of this agreement.

9. The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court.

10. The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, except as otherwise specifically provided herein, neither party shall be entitled to an award of attorneys' fees, either pursuant to the Contract, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute, common law, or court rule.

11. WOR, with regard to the work performed by it after award and during its performance of this contract, will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the selection and retention of subcontractors, including procurement of materials and leases of equipment. WOR will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, the Immigration Reform and Control Act of 1986, the Drug Free Work Act of 1989 and Executive Order 99-4, 2000-4 and 2000-09.

12. It is expressly agreed and understood by and between the parties that WOR is an independent contractor, and as such neither WOR, its employees or agents shall become a City employee, and are not entitled to payment or compensation from the City or to any fringe benefits to

which other City employees are entitled other than that compensation as set forth in Section 1 above. As an independent contractor, WOR further acknowledges that it is solely responsible for payment of any and all income taxes, FICA, withholding, unemployment insurance, or other taxes due and owing any governmental entity whatsoever as a result of this Agreement. As an independent contractor, PDP further agrees that it and its employees and agents will conduct themselves in a manner consistent with such status, and that they will neither hold themselves out nor claim to be an officer or employee of the City by reason thereof, and that they will not make any claim, demand or application to or for any right or privilege applicable to any officer or employee of the City, including but not limited to workmen's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

13. This Agreement is the result of negotiations by and between the parties. Although it has been drafted by the Prescott City Attorney, it is the result of the negotiations between the parties. Therefore, any ambiguity in this Agreement is not to be construed against either party.

14. This Agreement is non-assignable by WOR unless approved in writing and in advance by the City.

15. This Agreement shall be construed under the laws of the State of Arizona.

16. Nothing in the Contract shall be construed to make either party the legal representative or agent of the other party, nor shall either party have the right or authority to assume, create or incur any liability or any obligation of any kind, either expressed or implied, in the name of or on behalf of the other party. The relationship created by the Contract shall be that of independent Facility Owner, not joint venture, agent or business partners.


17. By entering this Agreement, WOR certifies that it is not currently, and will not during the term of this Agreement, boycott the country of Israel, as that term is defined by A.R.S. §35-393, *et seq.*

18. Fulfillment of the obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the performance of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the City at the end of the period for which the funds are available. No liability shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for future payments as a result of termination under this paragraph.

19. The WOR shall provide and maintain insurance coverage of such kinds, and in such amounts as may be required to protect the City from such losses arising from the events sponsored by the WOR. Minimum coverage shall include premises liability and general liability with a minimum aggregate policy of two million dollars (\$2,000,000.00). All policies shall include the following language, with proof of endorsement: "The City of Prescott shall be named as additional insured with respect to liability arising out of the activities involving the WOR sponsored events contained in this Agreement." The WOR will obtain "Faithful Performance Insurance Coverage" in an amount of at least Five-Hundred Thousand Dollars and no cents (\$500,000.00) and provide proof of such coverage

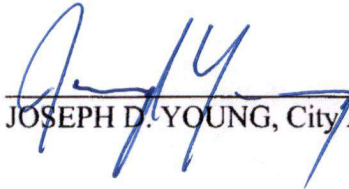
to the City. WOR shall provide City with proof of insurance prior to the first scheduled event in the 2022 series. Coverage must remain in full force and effect until the end of this Agreement. WOR shall notify the City no less than ten (10) days prior to any change in coverage, including policy forms, limits, cancellation, non-renewal, changes in carriers, or any other change that would affect the City's interests in this Agreement. City and WOR waive all rights against each other and their directors, officers, partners, officials, agents, sub-contractors and employees for damages covered by property insurance during the completion of the events contemplated in this Agreement. All insurance required pursuant to this Agreement must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined by A.R.S. §20-217, a copy of which shall be attached to each applicable bond or binder. Prior to commencing any event under this Agreement, WOR shall provide City with evidence that it is either a "self-insured employer" or a "carrier insured employer" for Workers' Compensation as required by A.R.S. §23-901, *et seq.* Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by the City's Risk Management Division. WOR shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The Certificates of Insurance and Additional Insured Endorsements shall be signed by a person authorized by that insurer to bind coverage on its behalf. Please note the Contract Number on the Certificates and Endorsements.

BY: CITY OF PRESCOTT



PHILIP GOODE, Mayor

APPROVED AS TO FORM:



JOSEPH D. YOUNG, City Attorney

ATTEST:



SARAH M. SLEP, City Clerk

PRESCOTT FRONTIER DAYS – WORLD'S OLDEST RODEO

BY: Tom Dwyer

ITS: President