Staff Summary Report

Tempe

Council Meeting Date: 04/17/08 **Agenda Item Number: 21**

SUBJECT: Authorize the Mayor to execute a Rehabilitation Agreement and License with the Rio Salado Foundation for the rehabilitation of the Eisendrath House.

DOCUMENT NAME: 20080417cdnc01 **COMMUNITY DEVELOPMENT ADMIN. (0406)**

SUPPORTING DOCS: Eisendrath House Rehabilitation Agreement and License

COMMENTS: Request authorization for the Mayor to execute a Rehabilitation Agreement and License with Rio Salado Foundation for the rehabilitation of the Eisendrath House.

PREPARED BY: Neil Calfee, Deputy Community Development Manager (350-2912)

REVIEWED BY: Chris Salomone, Community Development Manager (350-8294)

LEGAL REVIEW BY: Cynthia McCoy, Assistant City Attorney (350-2187)

FISCAL NOTE: The Rio Salado Foundation will cover all costs associated with this agreement.

RECOMMENDATION: Authorize the Mayor to execute the document as presented.

ADDITIONAL INFO: The Rio Salado Foundation has finalized partnerships and raised sufficient capital to stabilize and rehabilitate the Eisendrath House. The Rehabilitation Agreement and License outlines the scope of work for the rehabilitation and grants the Rio Salado Foundation and its partners access to the property to conduct the rehabilitation. It is important to note that this agreement focuses solely on the Eisendrath House and associated structures, but not the site work or parking; these items will be addressed at a later date through an amendment to this agreement or a wholly separate agreement.

REHABILITATION AGREEMENT AND LICENSE

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of the ____ day of _____, 2008, between the City of Tempe, an Arizona municipal corporation (the "City"), and [Rehab, LLC], an Arizona limited liability company ("Rehab").

RECITALS

A. The City of Tempe owns the Eisendrath House (the "House") and the surrounding nine acres of land (the "Grounds"), more particularly depicted on Exhibit A hereto (the "Property"). The House was built in 1930 and is a unique two-story adobe structure that represents one of the best examples of pueblo revival architecture in Tempe. The House is rapidly deteriorating due to weather and other factors and needs immediate, specialized, attention.

B. City desires to restore the House and Grounds to maintain their character as a significant cultural resource for Tempe and the Valley as a whole, and Rehab desires to contribute such restoration services to Tempe as part of its ongoing preservation mission.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto state, confirm and agree as follows:

AGREEMENT

1. <u>Definitions.</u> The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise.

"Certificate of Completion" means a document in the form of Schedule 1.1 hereto issued by the Community Development Department certifying that the Project has been substantially completed.

"City" shall mean the City of Tempe, an Arizona municipal corporation, and any successor public body or entity.

"Rehab " shall mean [insert name], L.L.C., an Arizona limited liability company.

"Parties" and "Party" shall mean all of the parties to this Agreement collectively or each of the parties individually, as the context may require.

"Project" shall mean the overall rehabilitation of the House and Grounds in accordance with the Plan attached hereto as Exhibit B and the terms of this Agreement.

2. Rehabilitation Project.

2.1 Rehabilitation Services. At its sole cost and expense, Rehab shall perform or cause to be performed all services and provide or cause to be provided all materials required for completion of the Project in accordance with the plan attached hereto as ***Exhibit "B"***. Rehab shall pay all costs, expenses and fees associated with the Project. The City shall be the sole owner of all work product (in whatever format) produced as part of the Project, and Rehab hereby assigns to City any and all right, title and interest they may have in and to such work product. Rehab shall cause any consultants or other parties retained by it, to execute such further documents of assignment as the City deems necessary or advisable to reflect the City's ownership of the Project.

2.2 Schedule of Performance. The City and Rehab intend that the Project shall be achieved pursuant to the Schedule of Performance attached hereto as ***Exhibit "C"***. From time to time following the Effective Date, however, the Rehab and the City shall, by mutual written agreement, refine and revise the Schedule of Performance as may be necessary to accommodate any unforeseen factors, events or unexpected occurrences that may necessitate such refinement or revision. The Rehab and the City shall each use their best efforts to ensure that development of the Property occurs in accordance with the Development Plan and Schedule of Performance.

2.3 Excused Delays in Performance as a Result of Force Majeure. In addition to any specific provisions of this Agreement, the performance by either party hereunder shall not be deemed to be in default where there is a delay in performance caused by or resulting from war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargos, lack of transportation, governmental restrictions or priority, unusually severe weather, inability (when the party required to perform is faultless) of any contractor, subcontractor or supplier to perform acts for such party, or acts or the failure to act of any public or governmental agent or entity, litigation relating to the Property initiated by a third party other than Rehab or the City (and where the party claiming the excused delay is without fault in connection with such litigation) or any other causes beyond the control or without the fault of the party claiming an extension of time to perform (a "*force majeure*"), and the party affected by the force majeure event gives notice to the other party within five (5) business days after the occurrence of such event. In the event that any party to this Agreement is unable or fails to perform due to an event constituting a *force majeure* and such party has given the notice as provided above, and such excused delay is the proximate cause of the other party being unable or failing to perform in accordance with the terms of this Agreement, then the time for the performance of the other party shall also be extended for a period of time equal to the period of the delay plus a reasonable start-up period. Any extension of time resulting from a *force majeure* shall only be for the period of the *force majeure*.

2.4 Cooperation. The City shall make available to Rehab any and all relevant historic information and studies in the City's possession related to the Property. The City and Rehab hereby acknowledge and agree that they shall cooperate in good faith with each other and use best efforts to pursue completion of the Project as contemplated by this Agreement.

2.5 Temporary License. Until issuance of a Certificate of Completion for the Project, City hereby grants Rehab a non-exclusive license to go upon the Property for the purpose of completing the Project and performing the services described herein. This License does not grant Rehab any right, title or interest in or to the Property, and shall not be construed to prevent or restrict City from granting other privileges to use the Property in any manner not inconsistent with efficient completion of the Project in accordance with this Agreement. Further, this License is subject to all existing encumbrances of record, including easements and licenses to which the Property is subject as of the date hereof.

2.6 Compliance with Laws. Rehab shall comply with all laws, statutes, acts, ordinances, rules, regulations, codes, and standards of legally constituted authorities with jurisdiction, applicable to the Property, the Project and the performance of the services. Rehab shall not use the Property for any purposes in violation of any applicable zoning or other laws. Rehab shall obtain or cause to be obtained at its expense, all permits, approvals and authorizations required by its duties and obligations under this Agreement.

2.7 Inspection Rights. City may enter any part of the Property at any time.

2.8 Prohibition Against Liens. Rehab shall not create or allow to be created a lien on or security interest in the Property; provided, that if the Property or any part thereof, or any interest therein, shall at any time during the term of this Agreement become subject to any vendor's, mechanic's, laborer's, or materialmen's lien based upon the furnishing of material or labor to Rehab, Rehab shall cause the same, at Rehab's expense, to be discharged or bonded over within thirty (30) days after notice thereof.

2.9 Insurance.

2.9.1. Prior to commencement of the Project, Rehab shall obtain, and shall thereafter maintain the insurance coverage specified in Schedule 1.2 attached hereto and incorporated herein; provided that Rehab need not obtain Worker's Compensation coverage until the first day that Rehab has engaged any person as an employee. Insurance limits shall be periodically reviewed by City to ensure coverage based on market and risk requirements throughout the term of this Agreement. Said insurance shall be primary to the City's self-insurance or any other insurance policy coverage applicable to the City. The certificate of insurance shall be issued and shall name the City, its employees, officers, agents and volunteers as an additional insured and shall provide coverage for claims made after the effective term of this Agreement for occurrences during the effective term of this Agreement.

2.9.2. Prior to commencement of the Project, Rehab shall furnish City with original certificates (or certified copies) of the aforementioned insurance policies, in form and with insurers acceptable to the City's Risk Manager (or designee). Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, and/or cancelled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City's Risk Manager.

2.9.3. Rehab shall include all contractors and subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each contractor and subcontractor. All insurance coverage for contractors and subcontractors shall be subject to all of the requirements stated herein for Rehab.

2.10 Indemnification. To the extent not prohibited by law, Rehab, its successors and assigns, shall indemnify, release, defend and hold harmless City, its, Council members, officers, employees, agents, representatives, volunteers, successors and assigns against and from any damage claim, demand, lawsuit or action of any kind for damages or loss, whether such damage or loss is to person or property, arising in whole or in part out of the acts or omissions of Rehab, its agents, contractors, agents, invitees, officers, directors, or employees, its use or occupancy of the Property for the purposes contemplated by this Agreement, including but not limited to claims by third parties who are invited or permitted onto the Property, either expressly or impliedly, by Rehab or by the nature of the Project. Such obligation to indemnify shall extend to and encompass all costs incurred by City in defending against such claims, demands, lawsuits or actions, including but not limited to attorney, witness and expert fees, and any other litigation related expenses. In the event that any action or proceeding shall be brought against City by reason of any claim referred to in this paragraph, Rehab, upon written notice from City, shall at Rehab's sole cost and expense, resist or defend the same through counsel selected by Rehab and reasonably approved by City. Rehab's obligation pursuant to this Section shall not extend to claims, demands, lawsuits or actions for liability attributable to the sole exclusive gross negligence or intentional misconduct of City, its Council members, officers, employees, agents, representatives, volunteers, successors or assigns. The provisions of this Section shall survive termination of this Agreement.

3. Conflicts; Personal Liability

3.1 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested.

3.2 No Personal Liability. No member, manager, officer or employee of Rehab shall be personally liable to City, or any successor or assignee, (a) in the event of any default or breach by the Rehab, (b) for any amount which may become due to the City or its successor or assign, or (c) pursuant to any obligation of Rehab under the terms of this Agreement.

3.3 No Personal Liability. No member, official or employee of the City shall be personally liable to Rehab, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to the Rehab or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

3.4 Liability and Indemnification. Rehab hereby agrees to indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties,

administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the performance of this Agreement by the Rehab.

4. **Default; Termination.**

4.1. Expiration. If not sooner terminated, this Agreement shall expire on the date the City issues a Certificate of Completion for the Project.

4.2. Default. It shall be a default if Rehab fails to perform any covenant, condition, or agreement to be performed by Rehab pursuant to this Agreement or breaches any representation or warranty made by Rehab in this Agreement or otherwise in connection with the transaction of which this Agreement is a part. If a default involves the performance or non-performance of an act, or the occurrence or non-occurrence of an event or circumstance, Rehab shall have a period of 30 days from receipt of written notice from City in which to cure such default; provided that if the nature of the Default is such that it cannot reasonably be cured within 30 days, then City shall not pursue its Default remedies if Rehab commences the cure within 30 days and diligently pursues the same to completion within 90 days. Notwithstanding the foregoing, there shall be no Grace Period applicable to a Default based upon a breach of a representation or warranty of Rehab, or in the breach of Rehab's covenant to maintain insurance.

4.3. City's Remedies. City shall have the following remedies upon Rehab's default, which remedies shall not be exclusive, and are cumulative in addition to any remedies now or later allowed by law:

4.3.1. City may cure the default at Rehab's expense, by taking any action reasonably determined by it to be necessary to correct such default. Rehab shall reimburse City for all costs it incurs to correct such default within thirty (30) calendar days after City presents Rehab with a statement of such costs.

4.3.2. City may terminate this Agreement.

4.3.3. City shall be entitled to recover from Rehab all of City's expenses, costs and damages arising out of any default, including, but not limited to, cleanup, repair, alterations, legal expenses (whether or not suit is brought), and costs and expenses of litigation.

4.3.4. City may also exercise any other rights City may have at law or in equity. City may exercise any remedy without court action, or by one or more court actions, and in exercising any remedy may obtain partial relief without waiving its right to further relief. The exercise of any remedy by City shall not waive City's right to exercise any other remedy.

5 General Provisions.

5.1 Notices. All Notices which shall or may be given pursuant to this Agreement shall be in writing and may be given in person or transmitted by registered or certified mail, return receipt requested, addressed as follows:

TO REHAB	[Rehab], L.L.C., an Arizona limited liability company [insert address and contact info]
TO THE CITY:	City Manager City of Tempe P. O. Box 5002 31 East 5th Street Tempe, Arizona 85281
With a copy to:	***City Attorney*** Tempe City Attorney's Office P. O. Box 5002 21 E. Sixth Street, Suite 201 Tempe, Arizona 85281

Any Party hereto shall have the right to change its designated notice address by providing to the other Parties written notice of such change in the manner described above.

5.2 Dispute Resolution. If there is a dispute hereunder that the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Insight and the City. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the City and Insight shall request the presiding judge of the Superior Court in and for the County of Maricopa, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five (5) years experience in mediating or arbitrating disputes relating to commercial property development. The cost of any such mediation shall be divided equally between the City and Insight. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the moratorium.

5.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

5.4 Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the parties hereto.

5.5 Waiver. No waiver by either party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any

succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

5.6 Attorneys' Fees. In the event of any litigation between the parties in connection with this Agreement, excluding the mediation process described above, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

5.7 Severability; No Merger. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law, to the extent the material provisions of this agreement are not vitiated.

5.8 Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

5.9 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

5.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

5.11 No Partnership or Joint Venture. Under no circumstances shall the parties hereto be considered partners or joint venturers.

5.12 Manager's Power to Consent. The City hereby acknowledges and agrees that any unnecessary delay hereunder would adversely affect the Developer and/or the development of the Property, and hereby authorizes and empowers the City Manager to consent to any and all requests of the Developer requiring the consent of the City hereunder without further action of the City Council, except for any actions requiring City Council approval as a matter of law, including, without limitation, any amendment or modification of this Agreement.

5.13 Conflict. This Agreement is subject to cancellation per ARS 38-511.

IN WITNESS WHEREOF, the undersigned have caused this Development, Disposition and Intergovernmental Agreement to be executed as of the day and year first above written.

ATTEST:

CITY OF TEMPE, an Arizona municipal corporation

_____
City Clerk

By_____
Hugh L. Hallman, Mayor

APPROVED AS TO FORM:

_____
City Attorney

[Rehab], L.L.C., an Arizona limited liability company

By_____
Name_____
Title_____

Exhibit A
Depiction of Property

Exhibit "B"
Description of Project

SCOPE OF WORK FOR **ADVISORY/PROFESSIONAL SERVICES** for the **Eisendrath House**

Overview
The historic Eisendrath House and its associated 9+ acres of indigenous Sonoran Desert is located adjacent to the eastern boundary of the original Papago-Saguaro National Monument in north Tempe. This property was acquired by the City of Tempe in 2003 and added to Tempe's portion of Papago Park. The Pueblo Revival – style structure was designed and constructed of adobe walls and wood vigas by local architect/master builder Robert Evans in 1930. Rose Eisendrath, the wealthy widow of a Chicago glove manufacturer, had purchased the property and commissioned the house after being refused accommodation at valley resorts due to her Jewish ethnicity. After Mrs. Eisendrath's death, a succession of owners and tenants lived in the home. Although some modifications were made over time and some of the adobe walls have deteriorated due to water penetration, the structure retains a high degree of integrity and is listed on the Tempe Historic Property Register (it has also been declared eligible for listing on the Nation Register of Historic Places).

Carl Hayden Campus for Sustainability
Restoration will allow the house and property to serve the public, not only as a reminder of Tempe's past, but as a touchstone for its future as a sustainable, diverse community. A variety of spaces, interior and exterior, will provide opportunities for new and expanded programs in a setting unparalleled in character. Relationships with adjoining facilities, the Arizona Historical Society Museum and the relocated and restored O'Connor House, will promote mutual support amidst an overall "campus for sustainability."

- Carl Hayden - Tempe native, Maricopa County Sheriff, State Legislator, longest-serving U.S. Congressman and Senator, will be honored by interactive exhibits on water conservation and recognized for his vital role in the Central Arizona Project.
- The life of Rose Eisendrath, career of architect/builder Robert Evans and other aspects of the history and restoration of the home and site will be interpreted by displays, as well as the restored structure itself.
- Offices for the City of Tempe's Water Conservation Program will be located in the home. Citizens and visitors will be able to obtain information on water conservation and other sustainable practices.
- Additional office and program space will be available for sustainable-minded organizations.

Not only will the restored Eisendrath House expand opportunities for such groups, but will offer much-needed classroom and meeting space in a unique setting convenient to Phoenix, Scottsdale and the East Valley, as well as Tempe and Arizona State University. Civic, educational and neighborhood organizations will be able to hold meetings, classes and other special events at the facility.

- A large meeting/class room with ADA-accessible restrooms and a catering kitchen, as well as a smaller conference room, the east-facing terrace and the semi-enclosed courtyard will accommodate a variety of functions.
- Convenient parking will be located on-site, with additional parking available nearby at the Arizona Historical Society Museum and the Martinez Water/Wastewater Facility.
- The remainder of the site will be maintained in its indigenous Sonoran Desert state, with trails providing connections to a nature walk, picnic grotto, Papago Park and the Green Line, the Historical Museum and the relocated/restored Sandra Day O'Connor House, as well as College Avenue.

Scope of Work (house and associated structures only)
Advisory/Professional services will be utilized by the City of Tempe to achieve the following objectives related to the rehabilitation of the 6,152 square-foot historic house and immediately associated structures, including the

courtyard/terrace walls, aviary and 900± square-foot garage (including new addition), in concert with the overall project goals (campus for sustainability - see above):

- Research & develop design themes; identify resources.
- Provide qualified architectural services to identify deficiencies, develop rehabilitation program and prepare design and construction documents (including engineering consulting as necessary), in accordance with the Secretary of the Interior's Standards for Rehabilitation.
- Provide qualified construction services to prepare cost estimates, value engineering and construction.

These advisory/professional services are specifically identified in Items 2.m, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15 and 16 of the "Rehabilitation Work Outline Specification" (see attached). Sitework, including landscaping, lighting, paving, etc.; interior furnishings and project management (Owner's representative) will be by others, as designated by the City of Tempe.

Exhibit C
Schedule of Performance

Apply for Building Permits	180 days from execution of this Agreement
Commence Construction	90 days from issuance of building permit
Complete Project	3 years from execution of this Agreement

Schedule 1.1
Certificate of Completion

TO WHOM IT MAY CONCERN:

In accordance with the terms of the Development and Disposition Agreement dated , 2008, by and between the CITY OF TEMPE (CITY) and [Rehab], LLC, this Certificate of Completion is issued for the Improvements on the following described parcel of land:

(LEGAL DESCRIPTION)

The Project commenced on or about _____and was completed on or about _____.

Respectfully,

_____
Community Development Manager
City of Tempe, Arizona

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 2009 before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be _____ of the City of Tempe, an Arizona municipal corporation, and he/she, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL: _____
Notary Public

Schedule 1.2
(Insurance Requirements)

Minimum levels of insurance:

A. Commercial General Liability: $5,000,000 combined single limit per occurrence for bodily injury and property damage, including coverage for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products and completed operations. The general aggregate limit shall apply separately to the activities contemplated by this Agreement or the general aggregate shall be twice the required occurrence limit.

B. Liquor Liability: $5,000,000 single limit.

C. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage, including coverage for owned, hired, and non-owned vehicles as applicable.

D. Workers' Compensation and Employers' Liability: Workers' Compensation and Employers' Liability statutory limits as required by the State of Arizona.

E. Property: Property insurance, including an installation floater, on an all-risk form, including earthquake and flood, for 100% of the replacement value, with any deductible, not to exceed $5,000 (2% earthquake and flood). Such policy shall include the Tempe as a named insured as its interest may appear.

F. Fire and Extended Coverage. Tenant shall obtain and carry course-of-construction insurance while Tenant is constructing the community center and shall insure all Tenant constructed buildings, facilities and improvements to 100% of their replacement cost, using a standard form fire insurance policy containing the "Extended Coverage" endorsement.

G. Fidelity Bond: Tenant shall maintain throughout the term of this Agreement, at its expense, a blanket fidelity bond covering all officers and employees, in an amount not less than $7,500, with any deductible not to exceed $1,000, including Tempe as an additional oblige or loss payee as its interest may appear.

II. Deductibles and Self-Insured Retentions

A. Any deductibles or self-insured retentions must be declared and approved by the Tempe. At the option of Tempe, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Tempe, its officials, employees, and volunteers or Tenant shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

III. Other Insurance Provisions

The policies or self insurance certifications are to contain, or be endorsed to contain, the following provisions:

A. Commercial General Liability and Automobile Liability Coverage

1. Tempe, its officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of activities

performed by or on behalf of Tenant including the insured's general supervision of Tenant; products and completed operations of Tenant; premises owned, occupied or used by Tenant, or automobiles owned, leased, hired or borrowed by Tenant. The coverage shall contain no special limitations on the scope of protection afforded to Tempe, its officials, employees, or volunteers related to Tenant's, its employees', agents', subcontractors', or sub-subcontractors' activities pursuant to this Agreement.

2. Tenant's insurance coverage shall be primary as respects the Tempe, its officials, employees, and volunteers. Any insurance or self-insurance maintained by Tempe, its officials, employees, or volunteers shall be excess of Tenant's insurance and shall not contribute to it.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Tempe, its officials, employees, or volunteers.
4. Coverage shall state that Tenant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

B. Workers' Compensation and Employers' Liability Coverage

1. The insurer shall agree to waive all rights of subrogation against Tempe, its officials, employees and volunteers for losses arising from the activities performed by Tenant for Tempe pursuant to this Agreement.

C. All Coverages

1. Each insurance policy required by this Agreement shall be endorsed to state the coverage shall not be suspended, voided, and/or canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to Tempe.

IV. Other Insurance Requirements:

Tenant shall:

A. Prior to commencement of services, furnish Tempe with certificates of insurance, in form and with insurers acceptable to Tempe's Risk Manager (or designee) which shall clearly evidence all insurance required in this Agreement and provide that such insurance shall not be canceled, allowed to expire or be materially reduced in coverage except on thirty (30) days prior written notice to and approval by Tempe, and in accord with the stated insurance requirements of this Exhibit. Tempe shall not be obligated, however, to review same or to advise Tenant of any deficiencies in such policies and endorsements, and such receipt shall not relieve Tenant from, or be deemed a waiver of the Tempe's right to insist on, strict fulfillment of Tenant's obligations under this Agreement.

B. Provide certified copies of endorsements and policies if requested by Tempe in lieu of or in addition to certificates of insurance.

C. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of services.

D. Maintain such insurance from the time services commence until services are completed. Should any required insurance lapse during this Agreement term, requests for payments originating after such lapse shall not be processed until Tempe receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, Tempe may at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

E. Place such insurance with insurers and agents licensed and authorized to do business in Arizona and having a "Best's" rating of no less than A-VII.

F. Maintain such coverage continuously throughout the term of this Agreement and without lapse for a period of two years beyond this Agreement expiration, should any of the required insurance be provided under a claims-made form, to the extent that should occurrences during the Agreement term give rise to the claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies. Such extension of coverage shall be evidenced by annual certificates of insurance.

V. Subcontractors and Sub-Subcontractors

Tenant shall include all subcontractors and sub-subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor and sub-subcontractor. All coverage for subcontractors and sub-subcontractors shall be subject to all of the requirements stated herein for Tenant.

VI. Safety

Tenant shall be solely and completely responsible for conditions of the sites used pursuant to this Agreement, including the safety of all persons (including employees) and property at the sites, including any set-up at the sites and any take-down at the sites. This requirement shall apply continuously and not be limited to normal hours of the sites. Safety provisions shall conform to all applicable federal (including OSHA), state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. Tenant's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve it from compliance with the obligations set forth therein.