

**TEMPE SISTER CITY, INC.
AGREEMENT**

C2011-110

THIS AGREEMENT ("Agreement"), entered into by and between the Tempe Sister City Corporation, an Arizona non-profit organization, ("TSC") and the City of Tempe, an Arizona municipal corporation, ("City"), this 18th day of August, 2011.

RECITALS

WHEREAS, the TSC has implemented a Student Delegate Exchange to provide international student exchange services free of charge to elementary and high school age City residents who are qualify and selected by TSC, as well as an Educator program for professional educators who teach in an elementary or high school within the City, which programs provides for and promotes the education, health, safety and welfare of the citizens of the City;

WHEREAS, the TSC hosts and sponsors several productions in the City that provide a significant and positive economic impact to the City, including hosting international students, promoting global culture, establishing Tempe youth programs, and producing an annual Oktoberfest @ Tempe Town Lake event, which benefits and promotes the interests of the citizens of the City;

WHEREAS, the TSC and City intend that this Agreement supersede and replace the Tempe Sister City Way Out West Oktoberfest Agreement dated August 17, 2006, Contract No. C2006-201 as amended by the parties;

WHEREAS, TSC is desirous of continuing these programs and will initiate, implement, and produce these programs which attract an increasing number of visitors and international delegates to the City;

WHEREAS, the City and TSC desire to establish a general framework for future cooperative efforts, by which the TSC will carry out the student, educator and professional exchange programs; and

WHEREAS, the City and the TSC desire to enter into a new agreement to replace any and all previous agreements and addenda relating to the Oktoberfest @ Tempe Town Lake production, and other tourist promotion in the City;

NOW, THEREFORE, in consideration of the foregoing, the City and the TSC do mutually agree as follows:

1. Administration.

1.1. The TSC Bylaws are incorporated, by this reference, into this Agreement.

- 1.2. The TSC shall continue to operate as a 501(c)(3) non-profit corporation and be governed by a Board of Directors that has the ultimate authority for oversight and approval of the TSC's programs.
- 1.3. The TSC shall utilize and comply with an accounting system which will comply with generally accepted accounting principles and with the provisions of AICPA audit guide for nonprofit corporations. The TSC shall establish and maintain a line item budget that identifies expenditures from its funding sources.
- 1.4. The City's designated contact with the TSC shall be the Community Services Manager/Director or his/her designee. The Community Services Manager/Director shall coordinate the execution of this Agreement, any extensions, renewals and/or amendments hereto, and any reports and correspondence from the TSC shall be channeled through the City's contact.

2. TSC Obligations.

- 2.1. TSC shall produce and manage the Tempe Sister Cities Oktoberfest @ Tempe Town Lake event ("Event") which shall be held in the City on an annual basis, including the German Shoppe and 5K race;
- 2.2. TSC shall produce and manage the Student Delegate Exchanges, Professional Educator Exchanges and Professional Exchanges, and hereby agrees to use one hundred percent (100%) of the funds provided by the City as stated herein to subsidize travel expenses of these programs;
- 2.3. TSC shall produce and manage any other delegate programs, humanitarian efforts and youth programs to provide for and promote the education, health, safety and welfare of the citizens of the City.
- 2.4. The TSC shall obtain and maintain in effect all licenses and permits required for the obligations stated herein at its sole expense, and shall comply with any conditions stated in those licenses and permits. The TSC shall collect and pay any taxes associated with operation of the events and/or projects, if applicable, including without limitation sales or transaction privilege taxes, workers' compensation and/or employment taxes.
- 2.5. The TSC may, at its sole cost and expense, conduct sales and marketing activities for the Event and obligations stated herein, including but not limited to, design and production of marketing materials, logo marks and other such associated materials. TSC shall secure prior express permission in writing by the City, for any use of the City's official logo in conjunction with the promotion of any event, in printed materials or

otherwise. TSC's application for permission for use of the logo shall constitute its warrant of full compliance with City's graphics standards and usage policy. Only City's service mark(s) that specifically identify and relate to TSC may be available for use by TSC. The City reserves the right to review and approve or disapprove any and all such materials bearing the City's name and/or logo, prior to its use or display. All such materials shall be in accordance with the City of Tempe logo and graphics standards.

- 2.6. TSC shall abide by and adhere to all applicable Federal, State and local laws, including but not limited to the Tempe City Code, Section 5.2, and all attendant review and permitting requirements, in conducting special events or activities as defined therein. TSC understands and agrees that approval of any special event or activity sponsored, operated by or held by TSC is required by the City's Special Events Task Force prior to conducting such special event or activity.
3. Books and Records. The TSC agrees to retain all records relating to the Agreement available for City's inspection upon City's request. TSC agrees to make those records available at all reasonable times for inspection and audit by City during the term of the Agreement and any extension(s) thereof, and for a period of five (5) years after the expiration of the Agreement.
4. Report. The TSC agrees to report on the performance of its programs by submitting a report to the City at the end of each fiscal year (June 30). Said report shall be due 45 days after the close of the fiscal year and shall include an analysis of the TSC programs, including a reasonable estimate of the financial impact of the program on the local economy.
5. Funding.
 - 5.1. Subject to fulfillment of the obligations of TSC and the conditions as set forth in this Agreement, the City shall provide the following payments to the TSC:
 - 5.1.1. Beginning July 2011, for fiscal year 2011-12, the City shall provide funding to the TSC in the amount of \$60,000 ("Payment") which shall be paid on or about September 15, 2011.
 - 5.1.2. The Payment for fiscal year 2012-13 shall be \$55,000 which shall be paid by City to TSC on the first of July, 2012.
 - 5.1.3. The Payment for fiscal year 2013-14 shall be \$50,000 which shall be paid by City to TSC on the first of July, 2013.

- 5.1.4. The Payment for fiscal year 2014-15 shall be \$45,000 which shall be paid by City to TSC on the first of July, 2014.
- 5.1.5. The Payment for fiscal year 2015-16 shall be \$45,000 which shall be paid by City to TSC on the first of July, 2015.
- 5.2. The parties agree that the funding of the TSC set forth in paragraph 1 herein, may be provided to TSC in one lump sum or other series of payments as the parties shall both agree in their reasonable discretion. For purposes of this Section, the City Manager or his designee has authority to determine the schedule and amount of payments, which shall meet the annual funding as stated herein.
- 5.3. No other payment, funding or in-kind services will be provided to TSC under this Agreement, with the exception of mutually beneficial marketing opportunities such as use of logos, advertising in websites, brochures, temporary park signs and email blasts.
- 5.4. The City and TSC agree that the funding scope of this Agreement will necessitate the expansion of TSC fundraising efforts. The City acknowledges and agrees that TSC fundraising outside of the Event will not be reflected in the Payment formula set forth in Section 5.
6. Hold Harmless and Indemnification. To the fullest extent permitted by law, TSC shall defend, indemnify and hold harmless the City, its officials, boards, commissions, agents or employees, individually and collectively, from and against any and all Claims which definition shall include: losses, claims, costs, demands, damages, litigation or expenses, including reasonable attorney's fees, arising out of or materially related to the negligence, acts, errors, mistakes, omissions of TSC, its employees, agents, or any other person for whose acts, errors, mistakes, or omissions TSC may be legally liable, or Claims of any kind and nature resulting from personal injury to any person (including bodily injury and death) or damages to any property, arising or alleged to have arisen out of either (1) the TSC's negligent performance of the terms of this Agreement, or (2) any of the TSC's acts or omissions, or other failure on the part of TSC, its agent, employees or representatives to fulfill TSC's obligations under this Agreement, whether said Claims proceed to judgment or not. The provisions of this Section shall survive termination of this Agreement. This indemnification applies even if the party seeking damages makes a claim against the City or brings a claim against the City based on vicarious liability or non-delegable duty, as well as any litigation brought by third parties challenging the right of City to enter into this Agreement with TSC under City or other applicable law.

7. Term and Termination.
 - 7.1. The term of this Agreement is from August 18, 2011 to June 30, 2016 and may be automatically extended for five (5) additional years upon the agreement of the parties, at such rate(s) that the parties mutually agree upon.
 - 7.2. Either party may terminate this Agreement at any time and for any (or no) reason, by providing written notice the other, on or before the 2nd day of January, of its intent is to terminate at the end of that fiscal year. The City shall be entitled to terminate this Agreement at any time, in its discretion, for non-appropriation of funds. In addition, the City may terminate this Agreement for default, non-performance, breach or convenience, loss of tax-exempt status of TSC during the term of this Agreement, and/or pursuant to A.R.S. §38-511.
 - 7.3. If a party defaults in the performance of any of the covenants, agreements, terms or conditions of this Agreement and such default is not cured within thirty (30) days after notice of such default is given by the non-defaulting party, or such longer period as may be necessary provided the defaulting party has commenced curing within such thirty (30) days and diligently pursues such curing to completion, the non-defaulting party shall have the right, at its option, to immediately terminate this Agreement, whereupon it shall have no further obligation or liability under this Agreement, or to seek full and adequate relief by injunction or other legal and equitable remedies (or all of the above).
8. Independent Contractor Relationship. The relationship between TSC and City is that of an independent contractor and nothing contained in this Agreement shall be construed as establishing an employer/employee relationship, partnership or joint venture, between City and TSC, or cause City to be responsible in any way for the debts or obligations of TSC.
9. Assignment. TSC may not assign this Agreement or any rights herein without the express written consent of the City.
10. Entire Agreement. This Agreement and all exhibits thereto, shall constitute the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements whether written or oral, and cannot be modified or amended except by a written instrument signed by the parties.
11. Severability. Any term or provision of this Agreement which now or hereafter is declared contrary to any law, regulation, ordinance or requirement of any governmental authority, whether now in force or enacted in the future, or which is otherwise invalid, shall be deemed stricken from this Agreement, and shall not

impair or invalidate the remaining portion of the applicable provision or the remainder of this Agreement.

12. Governing Law. This Agreement shall be governed and construed by the laws of the State of Arizona. Any litigation between the parties pursuant to this Agreement shall be subject to and initiated in Maricopa County, Arizona.
13. Attorneys' Fees and Costs. In the event of any legal action or proceeding arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs incurred in such legal action or proceeding, and such fees and costs shall be included in any judgment rendered as determined by a court of competent jurisdiction.
14. Legal Compliance. To the extent applicable, TSC hereby agrees to fully comply with Federal and Arizona law concerning employment including but not limited to, the Legal Arizona Workers Act and all amendments thereto, and acknowledges that a breach of this warranty is a material breach of the Agreement, and TSC is subject to penalties for violation(s) of this provision, including termination of the Agreement. City retains the right to inspect the documents of any and all employees, contractors, subcontractors and sub-subcontractors performing services relating to the Agreement to ensure compliance with this warranty.
15. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument and it shall not be necessary that any single counterpart bear the signature of all parties.
16. Nonliability of City Officials and Employees. No official, employee, or representative of City shall be personally liable to any party, or to any successor in interest to any party, in the event of any breach or default, or for any amount which may become due, or with respect to any obligation of City or otherwise under the terms of this Agreement or related to this Agreement.
17. Non-Waiver of Liability. The City as a public entity supported by public funds, may not waive any lawful or legitimate right to recover monies lawfully due. TSC acknowledges and agrees that it shall not demand any limitation on the part of City to limit or waive any right the City may have in law or in equity, to recover damages in any applicable jurisdiction.
18. Signature by City. This Agreement is subject to adoption by Mayor and City Council. Upon execution of this Agreement by the Mayor, the Mayor and Council authorize the City Community Services Manager or his/her designee to sign other documents, extensions, renewals and/or amendments of the Agreement as may be necessary to effectuate this Agreement, or the programs contemplated herein, and further authorize the Community Services Manager to act upon any

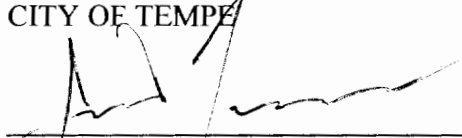
other minor matters not presently contemplated which may arise and require City's action in order to effectuate the purpose of the Agreement.

19. Drafting. The parties agree that any ambiguities or conflicts in this Agreement shall not be construed against the drafter, and shall be equally construed against both parties.
20. TSC Authority and Tax-Exempt Status. The TSC represents that it has full power and authority to execute this Agreement and to be bound by and perform the terms hereof. At all times during the term of this Agreement, the TSC shall maintain its status as a tax-exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. Failure to maintain such tax exempt status may result in termination of this Agreement at City's discretion.
21. Spirit of Cooperation. TSC and the City agree to provide cooperation and proactive support of all mutually agreed upon actions and decisions, helping to assure timely response and productive solutions.

[SIGNATURES ON THE FOLLOWING PAGE]

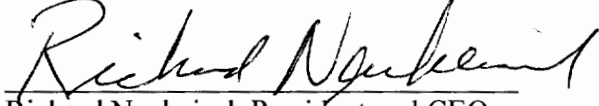
IN WITNESS WHEREOF, the City of Tempe by its Mayor and City Clerk have hereunto subscribed their names this 18th day of August, 2011.

CITY OF TEMPE



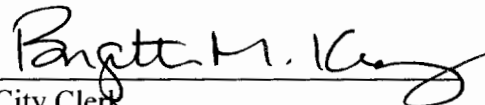
Hugh Hallman, Mayor

TEMPE SISTER CITY CORPORATION



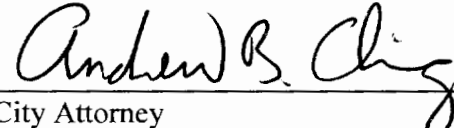
Richard Neuheisel, President and CEO

ATTEST:



City Clerk

APPROVED AS TO FORM:



City Attorney