

AMENDMENT OF LICENSE AGREEMENT AND
ASSIGNMENT, ASSUMPTION, AND CONSENT TO ASSIGNMENT AND ASSUMPTION
AGREEMENT

This Amendment of License Agreement and Assignment, Assumption, and Consent to Assignment and Assumption of the License Agreement ("Agreement") is entered into by and between: the City of Mesa, a municipal corporation whose principal place of business is located at 20 E. Main Street, Mesa, AZ 85211 ("City"); the Arizona Museum of Natural History Guild f/k/a Mesa Southwest Museum Guild, an Arizona non-profit corporation, whose domestic address is 53 N. Macdonald Street, Mesa, AZ 85201 ("Guild"); and the Arizona Museum of Natural History Foundation, an Arizona non-profit corporation, whose domestic address is 53 N. Macdonald Street, Mesa, AZ 85201 ("Foundation").

RECITALS

- A. The City, as Licensors, and the Guild, as Licensee, entered into that certain Cooperative Relations Agreement Between the City of Mesa and the Mesa Southwest Museum Guild dated as of July 1, 1999 ("License Agreement"), which includes as Exhibit A to the License Agreement an agreement with respect to the licensing of space for a gift shop at the Arizona Museum of Natural History located at 53 N. MacDonald Street, Mesa, Arizona ("Museum").
- B. Although the term of the License Agreement ended on June 30, 2004 the City and the Guild have continued to operate under the terms and conditions of the License Agreement since that time, therefore the City and the Guild desire to amend the term of the License Agreement.
- C. On or about June 16, 2015 the Guild and the Foundation merged into a single Arizona non-profit corporation that will provide services supportive to the Museum, including providing services of the same nature as previously made available by the Guild; the joint entity will be titled the Arizona Museum of Natural History Foundation.
- D. The Guild desires to assign its responsibilities under the License Agreement to the Foundation, the Foundation desires to assume the Guild's responsibilities under the License Agreement, and the City desires to consent to the assignment and assumption between the Guild and the Foundation.

AGREEMENT

- 1. Amendment of License Agreement.
 - a. Amendment. The City and the Guild desire to amend the term of the license agreement to allow for renewal periods by adding the following sentence to the end of Section 1 of the License Agreement:
"The term of this Agreement may be renewed on an annual basis by mutual agreement of the parties."

- b. Merger; Reaffirmation. All other terms of the License Agreement not in conflict with the aforementioned amendment will remain in full force and effect. In the event of a conflict between any term and provision of the amendment and the License Agreement, the terms and provisions of the amendment will control. The City and the Guild do hereby ratify, reaffirm, adopt, contract for, and agree to be or continue to be, as the case may be, bound by all of the terms and conditions of the License Agreement. Hereinafter, the amendment language set forth in Section 1 shall be considered to be a part of the License Agreement and all hereafter references to the License Agreement set forth in this Agreement shall include such modified language.
2. Assignment. The Guild hereby assigns to the Foundation all of its right, title, and interest in and to the License Agreement (copy attached hereto as **Exhibit A**). The Guild hereby warrants that the Guild has the right and power to make this assignment, that the License Agreement is not in default and is in full force and effect, and the Guild will indemnify and defend the Foundation for the claims of all persons which arise out of any breach of the foregoing warranties.
3. Assumption. The Foundation assumes the License Agreement and will perform and observe all of the covenants and conditions contained in the License Agreement that are to be performed and observed by the Guild, which shall accrue from and after July 1, 2015 ("Assignment Date"). The Foundation agrees to indemnify against and hold the Guild harmless from any and all costs, liabilities, lawsuits, damages, or expenses, including reasonable attorney's fees, due to or which are the result of any act or omission by the Foundation with respect to the License Agreement originating from and arising from the Foundation's obligations under the License Agreement which accrue on or after the Assignment Date.
4. Consent. The City does hereby consent to the assignment and assumption of the License Agreement, including all rights and responsibilities thereof, from the Guild to the Foundation, under the terms of this Agreement. The City's consent to the assignment is conditioned on the Foundation's assumption of all obligations, rights, and responsibilities as Licensee under the License Agreement, and the term "Guild" as used in the License Agreement shall mean the Foundation on and after the Assignment Date. All other terms and conditions of the License Agreement shall remain unchanged and are in full force and effect. Section 13 of the License Agreement provides that any attempt by the Guild to assign the License Agreement without the consent of the City is void; the City's consent to the assignment and assumption in accordance with the terms of this Agreement will deem the assignment and assumption pursuant to this Agreement as valid.

5. Conditions.

- a. Nothing herein shall be construed to release (in whole or in part) the Guild from any and all liabilities, damages, causes of action, expenses, and reasonable attorneys' fees and legal expenses incurred by the City due to the Guild's failure to fulfill, perform, discharge, or observe its obligations under the License Agreement that arise before the Assignment Date.
- b. Nothing herein shall be construed to release (in whole or in part) the Foundation from any of the terms, conditions, covenants, requirements, liabilities, or conditions under the License Agreement as of the Assignment Date.
- c. Notices pursuant to this Agreement and the License Agreement are to be sent to the Foundation at 53 N. Macdonald Street, Mesa, AZ 85201.

6. Severability. In the event any term or provision of this Agreement is held to be invalid or unenforceable, the validity of the other provisions will not be affected, and this Agreement will be construed and enforced as if it did not contain the particular term or provision that is deemed to be invalid or unenforceable.

[Signatures on following pages]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of _____, 2015.

**Arizona Museum of Natural History Guild, Inc., f/k/a Mesa Southwest Museum Guild,
an Arizona non-profit corporation**

By: _____

Its: _____

Date: _____

STATE OF ARIZONA)

County of Maricopa) ss.

The foregoing Agreement was acknowledged before me this _____ day of _____, 2015, by _____,
in his/her capacity as _____, on behalf of _____.

Notary Public

My Commission Expires:

**Arizona Museum of Natural History Foundation, Inc., f/k/a Mesa Southwest Museum Foundation,
an Arizona non-profit corporation**

By: _____

Its: _____

Date: _____

STATE OF ARIZONA)

) ss.

County of Maricopa)

The foregoing Agreement was acknowledged before me this _____ day of _____, 2015, by _____,
in his/her capacity as _____, on behalf of _____.

Notary Public

My Commission Expires:

CITY OF MESA, an Arizona municipal corporation

By: _____

Its: _____

Date: _____

STATE OF ARIZONA)

) ss.

County of Maricopa)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2015, by _____, in his capacity as _____, on behalf of City of Mesa, an Arizona Municipal Corporation.

Notary Public

My Commission Expires:

RECOMMENDED BY:

Signature: _____

Printed Name: _____

Date: _____

APPROVED AS TO FORM:

Signature: _____

Printed Name: _____

Date: _____

EXHIBIT A

LICENSE AGREEMENT

(SEE ATTACHED)

COOPERATIVE RELATIONS AGREEMENT
BETWEEN
THE CITY OF MESA
AND
MESA SOUTHWEST MUSEUM GUILD

THIS AGREEMENT is made and entered into this 15th day of July, 1999, by and between the City of Mesa, an Arizona municipal corporation, hereinafter referred to as "MESA," and the Mesa Southwest Museum Guild, a non-profit corporation with current certification according to Section 501(c) (3) of the U.S. Internal Revenue Code and chartered under the laws of the State of Arizona, hereinafter referred to as "GUILD."

NOW, THEREFORE, it is mutually covenanted and agreed as follows:

1. PURPOSE:

The Purpose of this Agreement is to enable MESA and the GUILD to work together in achieving the following goals: provide educational activities, special events, volunteer services, and a gift shop as they relate to the mission and operation of the Mesa Southwest Museum ("Museum").

2. DUTIES AND RESPONSIBILITIES:

- a) MESA. MESA shall, for the purpose of GUILD fundraising and educational programming, provide use of Museum clerical equipment, kitchen facilities, office space, meeting space, and other reasonable accommodations as long as such use or accommodations do not detract from Museum programs and services and are consistent with the custom and practice among similar museums. Mesa shall provide the GUILD with postage for such mailings as are approved in advance by Mesa.
- b) GUILD. GUILD shall support the Museum's programs, services, educational activities, and events, through direct advertising, raising community awareness and fundraising. GUILD shall provide educational programs for the community and GUILD members to volunteer at Museum programs and events when needed. GUILD shall understand and adhere to Museum administrative policies, including, without limitation, policies governing equipment usage, security procedures, and requests for meeting or office space. GUILD shall inform the Museum of its activities and will provide the Museum with copies of all minutes from each board meeting. GUILD shall contribute revenue for the Museum expansion, receptions, special events, tour scholarships, and other museum requests.

3. MONITORING:

Mesa Southwest Museum staff shall be permitted to attend all GUILD board meetings. All GUILD activities co-sponsored by the Mesa Southwest Museum will have a Mesa Southwest Museum staff person on the planning committee. Literature mailed to the public pertaining to events co-sponsored by GUILD and MESA will be reviewed and approved by Mesa Southwest Museum staff before mailing. GUILD shall provide the Mesa Southwest Museum with either the originals or copies of all minutes from each board meeting and such minutes shall be kept at the Museum. GUILD shall permit authorized representatives of MESA to inspect and audit all data and records of GUILD relating to GUILD's performance under this Agreement.

4. CONTRACT PERIOD AND NOTIFICATION OF RENEWAL

The term of this Agreement shall be for five (5) years, beginning on July 1, 1999, and ending on June 30, 2004. If MESA determines to enter into a new agreement for an additional five (5) year term, on substantially the same terms as this Agreement, MESA shall so notify GUILD thirty (30) days prior to the end of this five (5) year term.

5. TERMINATION OF AGREEMENT

Notwithstanding the provisions of Section 4 of this Agreement, GUILD and MESA shall each have the right to terminate this Agreement upon thirty (30) days written notice to the other party.

6. NONDISCRIMINATION

GUILD agrees to take all actions necessary to ensure that everyone is treated fairly, courteously, and without bias so as to preserve human dignity and to respect cultural diversity. GUILD agrees to comply with all provisions of applicable federal, state, and local laws related to nondiscrimination, equal employment opportunity and the Americans with Disabilities Act.

7. NO PARTNERSHIP OR AGENCY

Nothing set forth in this Agreement is intended, nor shall this Agreement be interpreted, to create a relationship of principal-agent, employer-employee, partnership, joint venture, or any other relationship of any kind other than that of independent entities cooperating for the public benefit.

8. INSURANCE

- a) Throughout the term of this Agreement, the GUILD shall procure and maintain, at its own cost and expense, the following insurance coverages from an insurance carrier approved by MESA:
 - i) Comprehensive general liability, with limits of not less than \$1,000,000 per occurrence. The coverage shall include independent contractors, premises and operations, products and completed operations, bodily injury, property damage, and blanket contractual covering, without limitation, the liability assumed under the indemnification provisions of this Agreement.
 - ii) Workers compensation for employees of the GUILD, with limits of not less than that required by applicable worker's compensation laws and regulations, as the same may be amended from time to time; and Employer's liability, with limits of not less than \$1,000,000 per occurrence.
- b) Comprehensive general liability shall name MESA, its departments, boards, commissions, council members, officials, officers, agents, and employees as additional insureds.
- c) Each insurance policy shall provide the following: (i) the policies cannot be cancelled, or substantially modified until and unless ten (10) business days written notice is received by MESA; (ii) the insurance company shall have no recourse against MESA for payment of any premium or for assessments under any form of policy; and (iii) the policies are intended as primary coverage for MESA and that any insurance or self-insurance maintained by MESA shall apply in excess of the insurance provided by these policies.
- d) Certificates of the required insurance coverage shall be furnished to MESA upon execution of this Agreement and shall be kept current at all times.

9. INDEMNIFICATION

The GUILD shall defend, indemnify and hold harmless the City, its Mayor and Council, appointed boards and Commissions, officials, officers, and employees, individually and collectively, from and against all losses and expenses (including attorney fees), damages, claims, or other liabilities of any kind ("Liability") resulting from or arising out of this Agreement and/or the GUILD's performance under this Agreement, provided such Liability is due to the negligent or willful acts or omissions of the GUILD, its officers, employees, agents, subcontractors, or anyone directly or indirectly employed by them, or any person or persons under the Contractor's direction and control, or provided such Liability is a result of Contractor's failure to comply with the terms of this Agreement or the provisions of any applicable laws, ordinances or regulations.

10. AMENDMENTS AND MODIFICATIONS

Any amendments and/or modifications to this Agreement shall be in writing signed by MESA and GUILD.

IN WITNESS HEREOF, the parties have executed this agreement the day and year first set forth above.

City of Mesa,
a Municipal Corporation

By: _____

City Manager

Attest:

City Clerk

Mesa Southwest Museum Guild

By: _____

President

10/14/98

Exhibit A

AGREEMENT
BETWEEN THE CITY OF MESA
AND
THE MESA SOUTHWEST MUSEUM GUILD

This Agreement made and entered into this 1st day of July, 1999, by and between the City of Mesa, a municipal corporation ("Mesa") and the Mesa Southwest Museum Guild, an Arizona non-profit corporation ("Guild").

In consideration of the mutual covenants and agreements contained in this Agreement, Mesa and Guild agree as follows:

1. Term. The term of this Agreement shall begin on July 1, 1999 and end on June 30, 2004. Either party may terminate this Agreement upon 30 days written notice being given to the other party.
2. License. Mesa grants to Guild a license to use the following space at the Mesa Southwest Museum, located at 53 N. Macdonald Street, Mesa, for the purpose of operating a museum gift shop ("Licensed Premises"):
 - (a) office space and storage area space of not more than 300 square feet;
 - (b) sales floor space of not more than 700 square feet; and
3. License Fee.
 - (a) For use of the Licensed Premises, the Guild agrees to pay to Mesa a fee of \$2400 for each year during the term of this Agreement. Each such year shall begin on July 1 and end on June 30th of the next year.
 - (b) The Guild shall pay the annual license fee for the first year on July 1, 1999. The Guild shall pay, without demand or set off, the annual license fee for the second year on or before July 31, 2000 and the annual license fee for the following years on or before July 31 of each year, thereafter.
4. Exclusive Right to Operate Gift Shop. The Guild shall have the exclusive right to operate the gift shop at the Mesa Southwest Museum. Nothing set forth in this section 4, however, shall prevent the sale at the Museum of arts, crafts, or other merchandise presented by exhibitors at special events, or the sale of publications produced by the Mesa Southwest Museum or its affiliates.
5. Operation of Gift Shop. The Guild shall operate the gift shop in a manner that is comparable to gift shops of other museums similar to the Mesa Southwest Museum. The Guild shall provide the public with a gift shop of the highest quality, with prices, items, and services comparable to similar museum gift shops. In keeping with these goals, the Guild shall:
 - (a) hire a qualified gift shop manager;

(b) provide educational merchandise for sale at reasonable prices which relates to the collection, purpose and programs of the Mesa Southwest Museum;

(c) submit the gift shop hours of operation to Mesa, for approval;

(d) Not install or keep on the premises any vending machines without the prior written consent of Mesa.

6. No other Purpose. The Guild shall use the Licensed Premises for the operation of a gift shop at the Southwest Museum and for no other purposes.

7. Improvements, Repairs.

(a) Guild shall repair or cause to be repaired, at its own expense all damage or injuries to the Licensed Premises or other property of Mesa, normal wear and tear excepted.

(b) No improvements, alterations, additions, removals or other changes shall be made to the Licensed Premises or other property of Mesa without the prior written consent of Mesa. Mesa, in its discretion, shall determine at whose expense any such changes shall be made.

8. Insurance Requirements.

(a) The Guild shall procure and maintain, at its own cost and expense, the following insurance coverage from an insurance carrier approved by Mesa:

(i) Comprehensive general liability, with limits of not less than \$1,000,000 per occurrence. The coverage shall include independent contractors, premises and operations, products and completed operations, bodily injury, property damage, and blanket contractual covering, without limitation, the liability assumed under the indemnification provisions of this Agreement.

(ii) Workers' compensation for employees of the Guild, with limits of not less than that required by applicable worker's compensation laws and regulations, as the same may be amended from time to time; and Employer's liability, with limits of not less than \$1,000,000.

(b) Comprehensive general liability shall name Mesa, its departments, boards, commissions, council members, officials, officers, agents, and employees as additional insureds.

(c) Each insurance policy shall provide the following: (i) the policies cannot be cancelled, or substantially modified until and unless ten (10) business days written notice is received by Mesa; (ii) the insurance company shall have no recourse against Mesa for payment of any premium or for assessments under any form of policy; and (iii) the policies are intended as primary coverage for Mesa and that any insurance or self-insurance maintained by Mesa shall apply in excess of the insurance provided by these policies.

(d) Certificates of the required insurance coverage shall be furnished to Mesa upon execution of this agreement and shall be kept current at all times.

9. Indemnification. The Guild shall defend, indemnify, and hold harmless Mesa, its officers, employees, agents, and representatives against all claims, fines, actions, judgments and other

losses, and all liability for damage to property and/or injuries to persons, including without limitation wrongful death, by reason of any of its operations hereunder, except where such loss or liability is related to any negligent act or omission of Mesa, its employees, volunteers, agents, or subcontractors.

10. Mesa Responsibilities

(a) Mesa shall furnish all normal utilities for the operation of the gift shop at the Licensed Premises, except that in no event will there be an increase in utility services as they exist on the effective date of this Agreement without the written approval of Mesa. The term "utilities" as used in this Section 10(a) does not include telephone service which is covered in Section 10(b) below.

(b) Mesa shall pay the basic cost of telephone service. Charges for additional services and all long distance calls shall be paid by the Guild.

(c) Mesa shall provide all custodial services for the Gift shop area of the Licensed Premises.

(d) Mesa shall list the Guild gift shop in promotional materials produced by the Mesa Southwest Museum and Mesa, when reasonable to do so.

11. Compliance with Laws. The Guild shall procure all permits and licenses and pay all charges and fees necessary and incidental to the lawful conduct of its business at the Licensed Premises. The Guild shall comply with all applicable laws, ordinances and regulations, which in any manner affect the operation of the gift shop, or its performance under this Agreement.

12. NonDiscrimination. Guild agrees to take all actions necessary to ensure that everyone is treated fairly, courteously, and without bias so as to preserve human dignity and to respect cultural diversity. The Guild agrees to comply with all provisions of applicable federal, state, and local laws related to nondiscrimination, equal employment opportunity, and the Americans with Disabilities Act.

13. No Assignment. The Guild shall not assign or otherwise transfer this Agreement or any of its rights or duties under this Agreement, nor pledge or mortgage this Agreement without first obtaining the written consent of the City. Any assignment, transfer, pledge, or mortgage of this Agreement, by the Guild or by operation of law, shall be void.

14. Modifications. This Agreement may be amended or modified only by a written amendment.

IN WITNESS WHEREOF the parties have executed this Agreement on the date first written above.

City of Mesa

Southwest Museum Guild