

**FUNDING AGREEMENT
DEL E. WEBB CENTER FOR THE PERFORMING ARTS**

THIS FUNDING AGREEMENT ("Agreement") is entered into by and between the TOWN OF WICKENBURG, an Arizona municipal corporation ("Town") and Del E. Webb Center for the Performing Arts, an Arizona nonprofit corporation ("Contractor"). Town and Contractor are sometimes referred to collectively as the "Parties," either of which is sometimes individually referred to as a "Party."

RECITALS

Town has established a need for economic development and marketing activities to ensure a sustainable community.

Contractor performs activities to market the Wickenburg community to potential visitors and/or businesses.

Town has determined that the general welfare of the citizens of Wickenburg will be substantially advanced by authorizing the funding under the terms and conditions and for the purposes as set forth in this Agreement.

The Parties acknowledge that tracking Town payments and Contractor deliverables and outcomes resulting from Town funding is prudent practice to assure that public funds are appropriately used and that the public receives the anticipated benefits of the funding.

AGREEMENT

NOW, THEREFORE, based on the foregoing recitals, which are incorporated here by reference, the Parties agree as follows:

Section 1. Responsibilities of Contractor. Between the date of this Agreement and June 30, 2026, Contractor hereby agrees to provide the following deliverables with Town funding provided under this Agreement:

1.1. Marketing. Contractor will annually market and advertise its season of performing arts events held at the Del E. Webb Center for the Performing Arts, 1090 South Vulture Mine Road, Wickenburg, Arizona, 85390, to areas outside Wickenburg. No town funds shall be utilized for online or remote event programming.

1.2. Sponsorship & Logo. Town shall be listed as a sponsor of the Del E. Webb Center for the Performing Arts programs and performances (including any ticket envelopes and video board displays for performances). Town shall furnish a Tourism marketing statement and/or logo to Contractor for inclusion in any materials listing sponsors and upon all digital and print advertisements paid for with Available Town Funds (i.e., "Supported by the Town of Wickenburg" or "Visit-

Wickenburg.com" with the Town logo). The Parties agree to act in good faith to determine appropriate marketing statements and/or logos to maximize tourism marketing benefit.

1.3. Resale of Advertising Space. Contractor shall not purchase advertising space using Available Town Funds (as that term is defined in Section 2.1 below) and later re-sell that space to any entity other than the Desert Caballeros Western Museum and Wickenburg Chamber of Commerce.

1.4. Late Fees. Contractor shall not use Available Town Funds to pay late fees charged to Contractor by a vendor.

Section 2. Responsibilities of Town. Between the effective date of this Agreement and June 30, 2026, Town hereby agrees to provide the following deliverables to Contractor:

2.1. Funding. Town hereby commits funding from its annual budget to Contractor to fund Contractor responsibilities described in Section 1 above. Town will pay the Contractor in one annual installment by August 1 of each Fiscal Year using the "Available Town Funds." The Available Town Funds shall be calculated as follows: (1) Town will determine the actual bed tax revenues collected from the previous Fiscal Year; (2) From these revenues, Town will subtract operating expenses and planned expenditures for other programs designated by the Town Council; (3); Town will set aside 5% of the remaining funds for contingency; (4) Town will divide the remainder into three equal parts, and 33.3% of this amount will be paid to the Contractor as the Available Town Funds. Contractor shall not use Available Town Funds for any purpose other than the purposes described in Section 1 above.

Section 3. Public Use of Funds. All responsibilities of Contractor described in Section 1 above and supported by Town funding will be public in nature and, if Contractor has members, participation will not be limited to Contractor's members. If Contractor charges a fee for businesses or individuals located in Town's corporate limits to participate in responsibilities described in Section 1 above, said fee will be the same for businesses or individuals that are not members of Contractor as for businesses that are members of Contractor.

Section 4. Reporting. No later than July 31 of each year covered by this Agreement, Contractor shall submit to Town a written annual report demonstrating Contractor's compliance with each of the deliverables listed in Section 1 of this Agreement during the previous twelve (12) month period. The report shall, at a minimum, include the following information:

4.1. Total attendance, attendance by Wickenburg residents, attendance by non-Wickenburg residents, and attendance by event for each season of performing arts events at the Del E. Webb Center for the Performing Arts.

4.2. Copies of all advertisements and invoices for purchases made as part of Contractor's deliverables listed in Section 1 of this Agreement. For each advertisement paid for with Available Town Funds, the report shall document where

the advertisement was placed, the date(s) of distribution, and proof of payment as evidence of compliance with this Agreement.

4.3. Contractor's estimated economic impact on Wickenburg as defined in the Arts and Economic Prosperity IV study, West Valley Region (AZ), produced by Americans for the Arts.

4.4. The Town shall review the annual report submitted pursuant to this section and shall notify Contractor within sixty (60) days of receipt of the annual report of any deficiencies.

4.5. Contractor shall respond to any notice of deficiencies within thirty (30) days of receipt. The Town shall review the response and make a final determination regarding the eligibility of any disputed expenditures. The Town may request a refund of any funds determined to be ineligible. Upon notice of the Town's final determination and request for refund, Contractor shall refund such funds within thirty (30) days.

Section 5. Corporate Documents. Before receiving payment under this Agreement, Contractor shall ensure that copies of the following Contractor documentation, including any and all amendments, are on file with Town:

5.1. Articles of incorporation.

5.2. Current bylaws.

5.3. Annual budget.

5.4. List of current members of Board of Directors.

5.5. Internal Revenue Service designation letter.

Any Corporate Documents already on file with the Town, provided they contain current information, do not need to be resubmitted.

Section 6. Default. If either Party defaults (the "Defaulting Party") with respect to any of that Party's obligations under this Agreement, the other Party (the "Non-Defaulting Party") shall be entitled to give written notice in the manner prescribed in Section 8 below to the Defaulting Party, stating the nature of the default claimed and demanding that the default be corrected. The Defaulting Party shall then have twenty (20) days from the date of the notice within which to cure the default. If any default is not cured within twenty (20) days, then the Non-Defaulting Party may pursue any legal rights or remedies available by law, including commencement of litigation.

Section 7. Indemnity and Hold Harmless. Contractor shall indemnify and hold harmless Town, its officers, employees, and agents from and against any and all claims relating to Contractor's activities, including but not limited to those funded in whole or in part by this Agreement.

Section 8. Manner of Serving. All notices, filings, consents, approvals and other communications provided for in or given in connection with this Agreement shall be validly given, filed, made, transmitted or served if in writing and delivered personally or sent by registered or certified United States mail, postage prepaid, to (or to such other

addresses as any Party may from time to time designate in writing and deliver in a like manner):

To Town:

TOWN OF WICKENBURG
Town Manager
155 North Tegner Street, Suite A
Wickenburg, Arizona 85390

With a copy to:

WICKENBURG TOWN ATTORNEY
Pierce Coleman PLLC
7730 E. Greenway Road, Suite 105
Scottsdale, AZ 85260

To Contractor:

DEL E WEBB CENTER FOR THE PERFORMING ARTS
2001 West Wickenburg Way
Wickenburg, Arizona 85390

Section 9. Waiver. No delay in exercising any right or remedy shall constitute a waiver of that right or remedy, and no waiver by Town or Contractor of the breach of any term of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other term of this Agreement.

Section 10. Attorney's Fees. If any Party brings a lawsuit against any other Party to enforce any of the terms of this Agreement, or by reason of any breach or default of this Agreement, the prevailing Party shall be paid all reasonable costs and reasonable attorneys' fees by the other Party, in an amount determined by the court and not by the jury.

Section 11. Headings. The descriptive headings of this Agreement are inserted to assist in understanding the meaning and construction of this Agreement.

Section 12. Recitals. The Recitals set forth at the beginning of this Agreement are hereby acknowledged, confirmed to be accurate and incorporated here.

Section 13. Exhibits. Any exhibit attached to this Agreement shall be deemed to have been incorporated in this Agreement by reference with the same force and effect as if fully set forth in the body of this Agreement.

Section 14. Time Essence. Time is of the essence for purposes of this Agreement.

Section 15. No Assignment. Contractor's obligations under this Agreement may not be assigned without the written consent of the Town Manager or designee.

Section 16. No Partnership and Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Town and Contractor. No term or provision of this Agreement is intended to, or shall be for the benefit of any person, firm, organization or corporation not a party to this Agreement, and no such other person, firm, organization or corporation shall have any right or cause of action under this Agreement.

Section 17. Other Instruments. Each Party shall, promptly upon the request of the other, have acknowledged and delivered to the other any and all further instruments and assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement.

Section 18. Imposition of Duty by Law. This Agreement does not relieve any Party of any obligation or responsibility imposed upon it by law.

Section 19. Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement. All prior and contemporaneous agreements, representation and understanding of the Parties, oral or written, are hereby superseded and merged in this Agreement.

Section 20. Amendments to Agreement. No change or addition shall be made to this Agreement except by a written amendment executed by the Parties. The Parties agree to cooperate and in good faith pursue any amendments to this Agreement that are reasonably necessary to accomplish the goals expressed by this Agreement.

Section 21. Good Standing; Authority. Contractor represents and warrants to Town that it is duly formed and validly existing under the laws of the State of Arizona. Town represents and warrants to Contractor that it is an Arizona municipal corporation with authority to enter into this Agreement under applicable state laws. Each Party represents and warrants that the individual executing this Agreement on its behalf is authorized and empowered to bind the Party on whose behalf each such individual is signing.

Section 22. Severability. If any provision of this Agreement is declared void or unenforceable, it shall be severed from the remainder of this Agreement, which shall otherwise remain in full force and effect.

Section 23. Governing Law. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of Arizona, and the Parties agree that any litigation or arbitration shall take place in Maricopa County, Arizona.

Section 24. Interpretation. This Agreement has been negotiated by Town and Contractor, and no Party shall be deemed to have drafted this Agreement for purposes of construing any portion of this Agreement for or against any Party.

Section 25. Force Majeure. If any Party is unable to perform under this Agreement by reason of "force majeure," then the failure to perform shall not constitute a default under this Agreement as long as the non-performing Party uses its best effort to remedy with all reasonable speed the event or condition causing the non-performance and performance can be restored within a reasonable amount of time. "Force majeure" means any condition or event not reasonably within the control of a Party, including without limitation, "acts of God," strikes, lock-outs, or other disturbances of employer/employee relations; acts of public enemies; orders or restraints of any kind of government of the United States or any state thereof or any of their departments, agencies, or officials, or of any civil or military authority; insurrection; civil disturbances; riots; epidemics/pandemics; landslides; lightning; earthquakes; subsidence; fires; hurricanes; storms; droughts; floods; arrests, restraints of government and of people; explosions; and partial or entire failure of utilities.

Section 26. Conflict of Interest. This Agreement is subject to A.R.S. § 38-511, which provides for cancellation of contracts by government entities in certain instances involving conflicts of interest.

Section 27. Federal Immigration Law. Contractor warrants that it, and any sub-contractor who performs any work for Contractor under this Agreement, will at all times comply with all federal immigration laws and regulations that relate to its employees and with Arizona Revised Statutes (A.R.S.) § 23-214(A). Contractor acknowledges that pursuant to A.R.S. § 41-4401 a breach of this warranty is a material breach of this Agreement subject to penalties up to and including termination of this Agreement, and that Town retains the legal right to inspect the papers of any employee who works under the requirements of this Agreement to ensure compliance with this warranty.

Section 28. Effective Date. This Agreement is effective on the date of the last Party's signature below.

Section 29. Termination. This Agreement shall terminate and thereafter be void for all purposes under the following conditions:

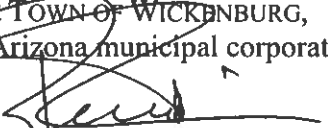
29.1. Upon non-appropriation of funds, insufficient funds, or Contractor's failure to perform its responsibilities described in this Agreement, as determined by the Town Council.

29.2. Automatically on July 1, 2026.

29.3. Upon 90 day written notice by either party

IN WITNESS WHEREOF, the Parties have executed this agreement as of the date set forth below their respective signatures.

Town:
THE TOWN OF WICKENBURG,
an Arizona municipal corporation

By: 
Rui Pereira, Mayor

Date: 6-17-24

ATTEST:


Amy Brown, Town Clerk

APPROVED AS TO FORM:


Trish Stuhan, Town Attorney
Pierce Coleman PLLC

Contractor:
DEL E. WEBB CENTER FOR THE PERFORMING
ARTS,
an Arizona non-profit corporation

By: 
Andy Halseth

Its: CEO

Date: 7-15-24