

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: _____
Amend No. _____

Date prepared: April 9, 2010

Council Meeting Date: April 20, 2010

TO: Carl Swenson, City Manager
THROUGH: Susan J. Daluddung, Deputy City Manager 
FROM: J.P. de la Montaigne, Community Services Director 
SUBJECT: Bailment Agreement with the West Valley Art Museum

RECOMMENDATION:

Discussion and possible action to (a) approve the City of Peoria ("City") entering into a Bailment Agreement with the West Valley Art Museum ("Museum") to store their approximately 1,651 object art collection for two years and (b) approve the necessary expenditures as needed to implement the Bailment Agreement (i.e., approximately one thousand seven hundred forty seven dollars (\$1,747) to provide electrical circuits to the storage area, one thousand six hundred fifty four dollars (\$1,654) to install security fencing around the storage area and approximately one thousand three hundred dollars (\$1,300) for the purchase of insurance for storage of the collection on City property) and (c) authorize the use of General Fund reserves and transfer funds from General Fund Contingency Account to Arts Commission Account in the amount of \$3,401 and (d) authorize the use of funds in the amount of \$1,300 from the Liability Insurance Account and (e) direct that staff undertake such actions as required to implement the Bailment Agreement.

SUMMARY:

City staff has been in discussion with the Museum to make Peoria their home base since the financially driven sale of their current Surprise location. At the Museum's April 8, 2010 Board meeting, they voted to enter into a Bailment Agreement with the City to store the collection. The Museum must vacate their current location by the end of April. The City would provide storage space for the collection to allow the Museum to regroup and possibly relocate in Peoria. There is discussion that in the coming months, the Museum would amend their Articles of Incorporation to allow loaning their art collection to the City for display in public facilities (examples: Libraries, future City Hall Gallery, etc.). Currently the Museum may only loan, lease, donate or sell their assets/collection

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date: _____
- Approved
- Unfinished Business (Date heard previous: _____)
- New Business
- Public Hearing: No Action Taken

ORD. # _____ RES. # _____
LCON# _____ LIC. # _____
Action Date: _____

to other 501(C) (3) organizations.

The Museum incorporated in 1980 as a non-profit organization and has since focused their efforts on an impressive collection of ethnic dress, fine prints and Arizona artists. The collection is insured for \$1,500,000. The opportunity to build a partnership with the Museum will assist the City in meeting the recommendations set forth in the Cultural Arts Master Plan approved by City Council in 2009. Ultimately, having the Museum in Peoria would greatly enhance upcoming Centennial activities due to their Arizona artist collection.

The City's costs associated with offering storage space to the Museum would be \$1,747 to provide electrical circuits to the storage area, \$1,654 to install security fencing around the area and approximately \$1,300 for the purchase of insurance for storage of the collection on City property. The Museum will pay all costs associated with the move of the collection from the current location to the proposed City storage site. Volunteers have assisted with inventorying, packing, and storing in preparation for the move. The City recommended storage area is the northeast corner of the DCSB building on the second floor.

FISCAL NOTE: Costs to the City are \$1,747 for electrical circuits, \$1,654 for security fencing and \$1,300 for insurance totaling \$4,701. Funds in the amount of \$3,401 will be transferred from General Fund Reserves in the Contingency Account (1000-0300-570000). Funds will be expended from the Arts Commission Fund (1000-0042-520099) upon approval of the aforementioned transfer. Funds in the amount of \$1,300 will be expended from the Liability Insurance Account (3200-3600-523011).

ATTACHMENT: Bailment Agreement

PREPARED BY: David Hunenberg, Library Manager

BAILMENT AGREEMENT
BETWEEN
THE CITY OF PEORIA
AND
THE WEST VALLEY ART MUSEUM

This BAILMENT AGREEMENT (“Agreement”) is made on April __, 2010 between the City of Peoria, an Arizona municipal corporation, whose address is 8401 W. Monroe Street, Peoria, Maricopa County, Arizona 85345, referred to as (“Bailee”) and the West Valley Art Museum, an Arizona non-profit corporation whose address is [Insert address_____], [Insert City], Maricopa County, Arizona, referred to (“Bailor”). Bailor and Bailee are also referred to individually as a “Party” and collectively as the “Parties.” The Parties agree as follows.

SUBJECT MATTER OF BAILMENT

Bailee will receive from Bailor their [Insert number] piece art collection (“Bailed Property”) as specifically described in **Exhibit “A”** attached hereto and incorporated by this reference for the purpose of storage.

AGREEMENT

Now, therefore, in consideration of the mutual agreements contained herein, the Parties agree as follows:

1. Purpose.

1.1. The purpose of this Agreement is for Bailee to provide storage for Bailor’s art collection/Bailed Property. It is the intent of this Agreement to outline the terms and conditions for Bailee to provide storage for Bailor’s Bailed Property.

1.2. The Parties agree that entering into this Agreement for the stated Purpose is to their mutual benefit, and that such benefit constitutes full and adequate consideration for entering into this Agreement. By entering into this Agreement, neither Party assumes any obligation of any kind to the other Party not expressly stated herein. This Agreement does not constitute or create a joint venture, partnership, or formal business entity of any kind.

2. Effective Date and Term of the Agreement.

2.1. This Agreement shall become effective on the date first noted above when executed by the signatures of the authorized representatives of the Parties.

2.2. The Parties intend that this Agreement will run for a term of two (2) years from the effective date. This Agreement shall continue from the effective date when executed

by Bailor and Bailee and shall remain in effect for a period of two (2) years from the effective date, unless terminated sooner pursuant to the provisions of this Agreement.

3. Bailed Property.

The Bailor agrees to deliver to Bailee and Bailee agrees to receive from Bailor for the purpose and under the conditions specified in this Agreement the Bailed Property as noted and described in Exhibit "A."

4. Value of Bailed Property.

The value of the Bailed Property at the time of delivery is [Insert written dollar amount of collection (\$[Insert number dollar amount])] as evidenced in **Exhibit "B"** [Insert name of document] and attached hereto and incorporated by this reference.

5. Condition and Title of Bailed Property.

5.1. Bailor in an "as is" condition furnishes the Bailed Property. Bailee will accept the Bailed Property in the "as is" condition and makes no warranties or guarantees concerning the condition or fitness of the Bailed Property.

5.2. Bailor warrants to Bailee that they have clear and good legal title to the Bailed Property and are authorized to allow Bailee to store the Bailed Property. Bailee is not liable to Bailor if a third party makes a lawful claim to the Bailed Property.

6. Preparation and Delivery of Bailed Property.

6.1. Bailor shall deliver the Bailed Property in secured sealed boxes. The Bailee will not accept any Bailed Property that is not in a secured sealed box.

6.2. Bailor shall deliver the Bailed Property to the Bailee at Bailee's Development & Community Services Building located at 9875 N. 85th Avenue, Peoria, Arizona (hereinafter referred to as the Delivery Point) within [Insert number] business days of the effective date of this Agreement.

6.3. Handling, packaging, transportation, and shipping costs for delivery of the Bailed Property to the Delivery Point building shall be the sole responsibility of Bailor.

7. Bailor's Obligation.

7.1. Bailor is responsible for delivery of the Bailed Property to Bailee in the manner and at the Delivery Point as established in this Agreement.

7.2. Bailor agrees and acknowledges that Bailee will retain the Bailed Property for the Purpose and under the conditions specified herein until the date of termination or unless terminated sooner. The date of termination shall not exceed a two (2) year term commencing on the effective date.

7.3. Bailor acknowledges that Bailee will not open the securely sealed Bailed Property boxes while being stored during the term of this Agreement. The condition that Bailor packages, secures seals, and delivers the Bailed Property to Bailee will essentially be the condition that the Bailed Property will be returned to Bailor (with the exception of loss of or damage occasioned by gradual deterioration or inherent defect).

7.4. It is acceptable to Bailor that the Bailed Property will be retained in a fenced area on the second level of the Delivery Point building. The Delivery Point building has environmental controls, which range between sixty-five degrees (65°) to eighty-five degrees (85°) in temperature and range from ten percent (10%) to fifty percent (50%) humidity the majority of the time, and which are permissible fluctuations within the required parameters as needed to maintain the optimum physical condition of the Bailed Property. The fenced secured area, aforementioned temperatures, and procedure for the Delivery Point building are sufficient and acceptable to Bailor for the safekeeping of the Bailed Property while in storage at the Delivery Point building.

7.5. Bailor agrees to request return of and obtain the Bailed Property at the end of the term of this Agreement or sooner as provided for herein.

7.6. Bailor agrees to secure, pay for, and maintain the required insurance as established in Section 12 of this Agreement on the Bailed Property for the term of this Agreement. If Bailor should fail to pay for, and maintain the required insurance, such will constitute a default.

8. Bailee's Obligation.

8.1. Upon receipt of the Bailed Property Bailee will move the Bailed Property to the agreed upon fenced storage location on the second level within the Delivery Point building. Bailee will not inspect the condition of the Bailed Property or report any damage (if any) to the Bailor.

8.2. Bailee will retain the Bailed Property for the Purpose and under the conditions specified herein until the date of termination of this Agreement or unless terminated sooner. The date of termination shall not exceed a two (2) year term commencing on the effective date.

8.3. Bailee will retain the Bailed Property in a fenced area on the second level of the Delivery Point building. The Delivery Point building has environmental controls, which range between sixty-five degrees (65°) to eighty-five degrees (85°) in temperature and range from ten percent (10%) to fifty percent (50%) humidity the majority of the time, and which are permissible fluctuations within the required parameters as needed to maintain the optimum physical condition of the Bailed Property. The fenced secured area, aforementioned temperatures, and procedure for the Delivery Point building are sufficient and acceptable to Bailor for the safekeeping of the Bailed Property while in storage at the Delivery Point building.

8.4. Bailee will not open the securely sealed Bailed Property boxes while being stored during the term of this Agreement.

8.5. Bailee makes no guarantees or warranties as to the Bailed Property.

8.6. Bailee agrees to return the Bailed property to Bailor in the secured sealed boxes at the end of the term of this Agreement or sooner as provided for herein. Bailee is not liable to Bailor, Bailor's heirs, administrators, or assigns for any loss or damage resulting to the Bailed Property from fire, theft, or any other cause whatsoever.

9. Inspection of the Bailed Property.

Bailee will not inspect or open the securely sealed Bailed Property boxes while being stored during the term of this Agreement. Bailor acknowledges that Bailee is not responsible to perform an inspection or under any obligation to inspect the Bailed Property.

10. Extent of Bailee's Liability.

10.1. Bailee assumes no responsibility or liability to Bailor, in spite of anything in this Agreement to the contrary, for the safekeeping of the Bailed Property, or the re-delivery to Bailor, or the performance or non-performance by Bailor of its obligations under this Agreement. Bailee shall not be liable to Bailor, Bailor's heirs, administrators, or assigns or to any third person, agent, or licensee of Bailor for fire, water, theft, damage or any other cause whatsoever to the Bailed Property or injury to person caused by any of the acts of Bailor or any of Bailor's agents, or in any other manner whatsoever, except for the gross negligence of Bailee. Bailee shall not be liable to Bailor or to any third person, agent, or licensee of Bailor, for any defects in the Delivery Point building; it being a condition of this Agreement that Bailor accepts the Delivery Point building premises in the condition in which it exists, and that Bailee shall not be under any duty or obligation to Bailor with respect to the Delivery Point building premises, nor be liable for any warranties or representations in respect to the Delivery Point building premises, whether expressed or implied. Bailee shall not be deemed to be an employer of Bailor or any of its agents or employees, the relation between the Parties is that of Bailee and Bailor.

10.2. Bailee shall not be liable or responsible to Bailor for any of the acts or omissions of Bailor, its agents, servants, employee, or licensees, whether for the safekeeping of the Bailed Property or the condition of the Delivery Point building premises. Bailee shall also not be liable for loss of or damage to the Bailed Property occasioned by gradual deterioration or inherent defect in such Bailed Property.

10.3. Bailee makes no guarantees or warranties as to the Bailed Property.

11. Return on Demand or at the Expiration of this Agreement.

11.1. Bailor may request removal of the Bailed Property from Bailee's storage at any time by sending written notice by certified mail to Bailee at the address of Bailee as shown in Section 16 of this Agreement. If Bailor fails to withdraw such Bailed Property within fifteen (15) days from the date of such notice, then Bailee shall have the absolute right to either (i) continue storing the Bailed Property at the Delivery Point building and

initiate storage fees of one hundred dollars (\$100.00) a day and have and enforce a lien for such fees in consideration for its continued storage and safeguarding during this period or (ii) immediately relocate the Bailed Property to a commercial storage facility and initiate storage fees of one hundred dollars (\$100.00) a day and have and enforce a lien for such fees in consideration for the commercial storage facility storage during this period.

11.2. If Bailor's fails to withdraw the Bailed Property at the end of the two (2) year term of this Agreement, Bailee shall have the absolute right to continue storing the Bailed Property and initiate storage fees of one hundred dollars (\$100.00) a day and have and enforce a lien for such fees in consideration for its continued storage and safeguarding during this period. Should Bailor fail to satisfy the storage fees and lien after ninety (90) days the Bailed Property will be deemed a (unrestricted) gift to the Bailee.

12. Insurance.

Bailor agrees to maintain the insurance that it currently has with Fireman's Fund, Policy Number MZI98388196 that is shown in **Exhibit "C,"** attached hereto and incorporated by this reference for the term of this Agreement. Bailor, at Bailor's expense (unless otherwise stated), shall obtain and maintain such insurance for the duration of this Agreement. Bailor shall name Bailee as an additional insured on the Fireman's Fund, Policy Number MZI98388196 and add coverage for fine art/property at other location (i.e., the Delivery Point building, Bailee's Development & Community Services Building located at 9875 N. 85th Avenue, Peoria, Arizona 85345).

- a. The Bailed Property must remain insured and covered by Bailor as shown in Exhibit "C" during the term of this Agreement, failure of Bailor to do so shall constitute a breach of this Agreement. Upon execution of this Agreement Bailor will furnish Bailee with evidence of the current insurance coverage for the Bailed Property and Bailor shall periodically (ever six (6) months) provide Bailee with proof of continued insurance coverage during the term of this Agreement.
- b. Bailee may elect to purchase additional insurance for the Bailed Property. The Bailed Property may also (at Bailee's sole discretion) be covered by Bailee's additional insurance coverage. Should Bailee elect to obtain additional insurance coverage for the Bailed Property such insurance will not relieve or replace Bailor's obligation to have and keep insurance coverage during the term of this Agreement. Bailee's coverage (if acquired) is solely for Bailee's benefit.
- c. Bailed Property shall be protected by insurance against loss by fire, water and theft in accordance with the valuation established in Exhibit "B."

13. Indemnification.

13.1. Bailor assumes sole responsibility and liability for damage to or loss of the Bailed Property resulting from storage with Bailee, and will indemnify and hold Bailee, its agents, officials and employees harmless from and against all claims, and suits as they relate to damages, and expenses arising out of the handling, storage, etc. of the Bailed Property during the term of this Agreement.

13.2. Bailor agrees to indemnify, defend, and hold harmless Bailee, its agents, officials and employees from and against all suits and claims as they relate to the Bailed Property that is the result of the performance of this Agreement and for any action outside the scope of this Agreement or intentional act which constitutes a violation of the rules, regulations and statutes of the State of Arizona.

13.3. The damages, which are the subject of this indemnity, shall include, but are not limited to, the damages to persons and property and shall include, in the event of an action, court costs, expenses for litigation and reasonable attorney's fees.

14. Amendments to this Agreement.

Amendments to this Agreement may only be accomplished by written instrument, signed by a duly authorized representative of each of the Parties, except as expressly provided otherwise in this Agreement.

15. Events Constituting Default.

The nonperformance by Bailor of any term, covenant, or condition of this Agreement that is not cured within ten (10) days after notice of nonperformance from Bailee, shall constitute a default by Bailor and permit Bailee, at Bailee's option, to terminate this Agreement.

16. Notices.

All notices or demands upon any Party to this Agreement shall be in writing and shall be delivered to the other Party at the address below:

Notices to Bailor:

West Valley Art Museum
c/o _____
_____, Arizona 85018
Telephone: (____) ____-_____
Cell Phone: (____) ____-_____
E-Mail: _____

Notices to Bailee:

City of Peoria
Peoria Library
Attn: Library Manager
8463 W. Monroe Street
Peoria, Arizona 85345
Telephone (623) 773-7555
Facsimile (623) 773-_____

Notices shall be deemed effective upon delivery, if delivered personally or by overnight courier, or if transmitted by telefacsimile; or twenty-four (24) hours after deposit in the U.S. Mail, if by certified mail.

MISCELLANEOUS PROVISIONS

1. The Parties agree to do all the necessary things and take the necessary actions to execute and deliver any documents and instruments that are required to carry out the provisions, intent, and purpose of this Agreement.

2. This Agreement is nonassignable in whole or in part. Bailor shall not assign, transfer, convey, pledge, sublet, or otherwise dispose of this Agreement without the prior written consent of Bailee.

3. If legal action by either Party is brought because of a breach/default of this Agreement or to enforce a provision of this Agreement, the prevailing Party is entitled to reasonable attorneys' fees and court costs.

4. Bailor represents and warrants to Bailee (1) that it is a duly formed non-profit corporation within the State of Arizona; (2) that it possess the ability and Board authorization and authority to carry out the obligations under the Agreement; and (3) that the individual executing this Agreement on behalf of Bailor is authorized and empowered to bind Bailor's Board of Trustees/Directors. Bailee represents and warrants to Bailor (1) that it is a duly formed municipal corporation within the State of Arizona; and (2) that the individual executing this Agreement on behalf of Bailee is authorized and empowered to bind Bailee.

5. This Agreement is subject to cancellation for conflict of interest without penalty or further obligation as provided by A.R.S. § 38-511. Bailor covenants that neither Bailor or as the case may be, if Bailor is a corporation or partnership, has any interest, nor shall Bailor acquire any interest, directly or indirectly, which would conflict in any manner with the performance of this Agreement. Bailor further agrees that in the performance of this Agreement, Bailor shall employ no person having any interest of that nature.

6. Any suit or action arising under this Agreement shall be commenced in the Superior Court of the State of Arizona in and for the County of Maricopa, Arizona.

7. If any Party to this Agreement breaches any provision of the Agreement, the non-defaulting party shall be entitled to all remedies available at both law and in equity, including specific performance.

8. This Agreement shall be strictly constructed against the creation of a duty or responsibility unless the intention to do so is clearly and unambiguously set forth herein. Additionally, this Agreement shall not be construed to imply authority to perform any tasks, or accept any responsibility, not expressly set forth herein.

9. This written Agreement, attachments and exhibits hereto constitute the entire Agreement between the Parties with respect to the subject matter hereto. It may not be released, discharged, changed, or modified, except as expressly provided otherwise in this Agreement.

10. The Parties are required to comply with all applicable federal and state laws and local ordinances and regulations.

11. This Agreement shall be construed in accordance with the laws of the State of Arizona.

12. This Agreement has been prepared by the combined efforts of Bailor and Bailee and is not to be construed against either Party.

13. Pursuant to law, the Parties shall keep and maintain accurate books of records and accounts in accordance with generally accepted accounting principles of liabilities and obligations incurred under this Agreement and all papers, files, accounts, reports, plans and all other material relating to this Agreement and shall make all such materials available at any reasonable time during the term of this Agreement and for five (5) years from the date of termination for audit, inspection and copying upon either Parties' request.

14. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof.

15. Waiver, or the failure of either Party at any time to require performance by the other of any provision herein, shall in no way affect the Party's subsequent rights and obligations under that provision. Waiver by either Party of a breach of any provision herein shall not be taken or held to be a waiver of any succeeding breach of such provision or waiver of such provision itself.

[SIGNATURES APPEAR ON THE NEXT PAGE]

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EXHIBIT “A”

BAILED PROPERTY
[Insert number] PIECE ART COLLECTION LIST

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EXHIBIT "B"

VALUE OF BAILED PROPERTY

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EXHIBIT "C"

FIREMAN'S FUND INSURANCE POLICY
FOR BAILED PROPERTY
(Policy Number: MZI98388196)

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