

June 7, 2011

ITEM#: 6.B.

RE: CONSIDERATION AND ADOPTION OF A "RESOLUTION OF THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF SALT LAKE CITY AUTHORIZING THE EXECUTION OF THE INTERLOCAL COOPERATION PROGRAMMING SERVICES AGREEMENT FOR THE JOHN W. GALLIVAN UTAH CENTER WITH SALT LAKE CITY CORPORATION."

PROJECT AREA: Central Business District

PREPARED BY: Justin Belliveau

EXECUTIVE SUMMARY: The Gallivan Utah Center Programming Services Agreement with Salt Lake City Corporation expires on June 30, 2011. Under the terms of the CC&Rs for Block 57, the Agency is responsible for contracting for and paying for the programming of Gallivan Utah Center. The following memo and term sheet describe the terms of a proposed contract with Salt Lake City Corporation that would cover the period from July 1, 2011 through June 30, 2017.

FUNDING: \$289,000 from Program Income Fund for fiscal year 2011/2012. Funding for subsequent years will be approved as part of the annual budget approval process.

ALTERNATIVES: 1) Adopt the resolution.
2) Do not adopt the resolution and direct staff issue a Request for Proposals for the proposed services.

ANALYSIS AND ISSUES: Agency staff has been working with the Gallivan Utah Center staff to finalize an extension of the existing maintenance and programming contracts. A Term Sheet is attached to the resolution that describes the basic terms of the proposed Programming Services Agreement. A draft of the Programming Services Agreement is also attached. This agreement will also appear on the City Council agenda for ratification.

Among other things, the programming contract outlines the number and types of events the manager is expected to program throughout the year.

BACKGROUND: The construction of the John W. Gallivan Utah Center was completed in July 1993. Salt Lake City Corporation Public Services was hired as the contractor to maintain and program the plaza during the first three years of operation. Salt Lake City Corporation was also selected through a Request for Proposals selection process for the contract period from July 1, 1996 to June 30, 1999. Since that time, the Agency has extended the contract with Public Services without advertising a new request for proposals.

ATTACHMENTS. Resolution
Term Sheet
Draft Interlocal Cooperation Programming Services Agreement by and between Redevelopment Agency of Salt Lake City and Salt Lake City Corporation

RESOLUTION NO.

June 7, 2011

RESOLUTION OF THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF SALT LAKE CITY AUTHORIZING THE EXECUTION OF THE INTERLOCAL COOPERATION PROGRAMMING SERVICES AGREEMENT FOR THE JOHN W. GALLIVAN UTAH CENTER WITH SALT LAKE CITY CORPORATION

WHEREAS, the Redevelopment Agency of Salt Lake City ("Agency") was created to transact the business and exercise the powers provided for in the Utah Community Development and Renewal Agencies Act; and

WHEREAS, the Agency owns the John W. Gallivan Utah Center located at 239 South Main Street; and

WHEREAS, the facilities are intended to be programmed to provide community events and entertainment and the current contract for these services expires on June 30, 2011; and

WHEREAS, the Agency has been able to successfully negotiate a Programming Services Agreement with Salt Lake City Corporation to extend the existing contract an additional six years.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF SALT LAKE CITY, that we do hereby authorize the Chief Administrative Officer and Executive Director to execute a Programming Services Agreement with Salt Lake City Corporation as described in the attached Term Sheet.

Passed by the Board of Directors of the Redevelopment Agency of Salt Lake City, Utah this 7th day of July, 2011.

Luke Garrott, Chairperson

ATTEST:

D.J. Baxter, Executive Director

Transmitted to the Chief Administrative Officer on _____. The Chief Administrative Officer

_____ does not request reconsideration
_____ requests reconsideration at the next regular Agency meeting.

Ralph Becker, Chief Administrator

ATTEST:

D.J. Baxter, Executive Director

**TERM SHEET
PROGRAMMING SERVICES AGREEMENT FOR THE
JOHN W. GALLIVAN UTAH CENTER**

Term: July 1, 2011 through June 30, 2017

Contractor Responsibilities:

1. Hire and supervise all personnel necessary to carry out the programming and administrative duties related to programming of the plaza.
2. Ensure that the programmed events comply with the appropriate provisions of the recorded CC&Rs.
3. Program the following number and types of events on the plaza:

	ht thru Sun night)	i before 5 p.m.)	rs after 5 p.m.)	100 days total)	TOTALS
Gallivan	10	138	7	25	180
Public Rentals	17	5	15	0	37
Private Rentals	37	29	33	7	106
TOTALS	64	172	55	32	323

4. Coordinate and communicate with local organizations such as the Downtown Alliance, Downtown Merchants Association, Chamber of Commerce, and Salt Lake Convention and Visitors Bureau.
5. Provide adequate personnel to supervise and provide security for events.
6. Operate the ice skating rink during the appropriate times of year including the maintenance and operation of the equipment necessary to operate the rink.
7. Negotiate, coordinate, and administer concessionaire, vendor, and other occupancy contracts.
8. Provide the Agency, Gallivan Utah Owners' Association, and property owners covered by the CC&Rs with insurance and defend them in the event of mishaps or lawsuits.
9. Cooperate with the Agency as the configuration of the plaza improvements change to ensure adequate programming in new areas.

Financial Arrangements:

Manager's general overhead expenses for programming the plaza shall be reimbursed by the

Agency, less the program assessment contributions from the other property owners. These expenses shall include the costs of personnel to schedule events, office space, telephones, postage, and other day-to-day expenses. The Agency's portion of the 2011/2012 fiscal year budget is \$289,000. Each year the programming budget will appear as a line item in the Agency's overall budget, and shall be subject to Agency approval.

**INTERLOCAL COOPERATION
PROGRAMMING SERVICES AGREEMENT**

by and between

REDEVELOPMENT AGENCY OF SALT LAKE CITY

and

SALT LAKE CITY CORPORATION

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- Exhibit A - Site Plan
- Exhibit B - Preliminary Budget Form
- Exhibit C - Sample Report Format
- Exhibit D - List of Agency-owned Existing Equipment

**INTERLOCAL COOPERATION
PROGRAMMING SERVICES AGREEMENT**

THIS INTERLOCAL COOPERATION PROGRAMMING SERVICES AGREEMENT (this “Agreement”) is made and entered into as of the ____ day of _____, 2011, by and between REDEVELOPMENT AGENCY OF SALT LAKE CITY, a public agency (“Agency”), and SALT LAKE CITY CORPORATION, a municipal corporation (“Program Manager” or sometimes “City”), collectively referred to herein as the “Parties” or, individually, a “Party”.

R E C I T A L S

WHEREAS, Agency, Wasatch Plaza Holdings, L.L.C. (“Wasatch”), Arcade Developers, LLC (“Arcade”), and Salt Block, L.L.C., formerly Salt Crown, L.L.C. (“Salt”) own parcels of real property located between 200 South Street and 300 South Street and Main Street and State Street in Salt Lake City, Utah, which comprise a portion of “Block 57” as depicted on the site plan (“Site Plan”) attached hereto as Exhibit “A” and incorporated herein by reference (collectively the “Property”); and

WHEREAS, Agency, Wasatch, Arcade, and Salt or their successors in interest to portions of the Property are sometimes collectively referred to as “Property Owners”; and

WHEREAS, an urban plaza known as The John W. Gallivan Utah Center, together with buildings and other improvements located thereon, has been constructed on a portion of the Property (“Plaza”); and

WHEREAS, south of the Plaza, a roadway has been constructed that consists of Gallivan Avenue and Weechquotee Place (hereafter referred to as the “Roadway”); and

WHEREAS, the location of the Plaza and the Roadway are depicted on the Site Plan; and

WHEREAS, the Plaza and all portions of the Property that are not occupied by buildings from time to time and that are available generally to the public (including the Roadway), are hereafter referred to as the “Programming/Maintenance Area.” The Programming/Maintenance Area shall also include all buildings located on the Plaza; and

WHEREAS, Wasatch owns that portion of the Property depicted on the Site Plan as “Wasatch Property”; and

WHEREAS, Arcade owns that portion of the Property depicted on the Site Plan as “Arcade Property”; and

WHEREAS, Salt owns that portion of the Property depicted on the Site Plan as “Salt Property”; and

WHEREAS, Agency currently owns those portions of the Property depicted on the Site Plan as “The John W. Gallivan Utah Center” and “Agency Property”; and

WHEREAS, in connection with Agency’s initial sale of the Wasatch Property to American Stores Properties, Inc. (“ASPI”), ASPI and Agency executed and recorded that certain Declaration of Covenants, Conditions, Restrictions and Easements Pertaining to a Portion of the Surface of Block

57, Salt Lake City, Utah, dated June 30, 1995, as amended by that certain First Amendment of the Declaration of Covenants, Conditions, Restrictions and Easements Pertaining to a Portion of the Surface of Block 57, Salt Lake City, Utah, dated December 20, 1996, that certain Amendment of the Declaration of Covenants, Conditions, Restrictions and Easements Pertaining to a Portion of the Surface of Block 57, Salt Lake City, Utah, dated August 1, 1999, that certain Third Amendment to Declaration of Covenants, Conditions, Restrictions and Easements Pertaining to a Portion of the Surface of Block 57, Salt Lake City, Utah, dated March 29, 2001 , and that certain Fourth Amendment to Declarations of Covenants, Conditions, Restrictions and Easements Pertaining to a Portion of the Surface of Block 57, Salt Lake City, Utah , dated November 19, 2007 (hereafter, the foregoing with any other amendments and supplements are collectively referred to as the “CC&Rs”); and

WHEREAS, the Programming/Maintenance Area is generally defined as “Common Area” in the CC&Rs; and

WHEREAS, the CC&Rs provide certain restrictions and obligations with respect to the Programming/Maintenance Area; and

WHEREAS, pursuant to the CC&Rs, the Gallivan Utah Center Owner’s Association (“GUCOA”) was created; and

WHEREAS, pursuant to the CC&Rs, GUCOA has assumed the certain responsibilities to maintain the Programming/Maintenance Area within the Property; and

WHEREAS, GUCOA has contracted or intends to contract with a maintenance manager to perform such maintenance duties (hereafter “Common Area Manager”); and

WHEREAS, Agency and Program Manager desire to enter into this Agreement to provide for the management and programming of the Programming/Maintenance Area; and

WHEREAS, the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended (the “Interlocal Act”), and Section 17C-1-207(1), Utah Code Annotated 1953, as amended, permit City and Agency to cooperate to their mutual advantage, and this Agreement is made pursuant to that authority.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Incorporation of Recitals. The above Recitals are incorporated herein by reference.
2. Engagement of Program Manager. Agency hereby engages Program Manager, subject to the terms and conditions set forth in this Agreement, to perform the duties and obligations set forth in this Agreement (sometimes collectively referred to herein as the “Services”), and Program Manager agrees to perform the Services in accordance with the terms and conditions of this Agreement.
3. Term. Subject to earlier termination as provided herein, the “Term” of this Agreement shall commence on July 1, 2011 and shall expire on June 30, 2017.
4. Programming and Management of Programming/Maintenance Area Generally. Program Manager hereby acknowledges that the Plaza is an urban amenity that will require a high degree of programming, scheduling, coordination, cooperation, management, maintenance, and security to ensure its long-term success. Program Manager understands that the Plaza has been constructed with the intent to enhance downtown viability and encourage maximum usage by the

community. Program Manager shall perform the Services in a manner consistent with such intent. Without limiting the generality of the terms of this Agreement, the Parties agree that programming of the Plaza and other parts of the Programming/Maintenance Area is intended to include all aspects of activating an urban plaza, including but not limited to (i) organizing, scheduling, and programming of activities on the Plaza and other parts of the Programming/Maintenance Area; (ii) providing additional security for events and activities held on the Programming/Maintenance Area; (iii) managing concessions and concessionaire contracts; (iv) cleaning up and repairing the Programming/Maintenance Area after programmed events; (v) providing competent fiscal management of program activities and providing fund raising activities for the Friends of the GallivanCenter, including budgeting; (vi) coordinating with the Common Area Manager, (vii) negotiating and presenting lease(s) to Agency pertaining to the kiosk located on the Plaza and managing such leases, all in consultation with and with the approval of Agency, and (viii) coordinating and cooperating with surrounding (existing and future) property owners and occupants, the Agency, other Property Owners, local organizations such as the Chamber of Commerce, Downtown Retail Merchants Association, Salt Lake Convention and Visitors Bureau, Downtown Alliance, GUCOA, the Salt Lake City Police Department, and the Friends of the Gallivan Center, among others.

5. Compliance With CC&Rs. Program Manager acknowledges that the CC&Rs provide certain restrictions and requirements in connection with programming of the Programming/Maintenance Area. Without limiting the generality of the foregoing, Program Manager acknowledges that the CC&Rs require Agency to use reasonable efforts to minimize

detrimental effects on the use and enjoyment of other properties on Block 57 by virtue of events and activities, that Agency will cause a programming schedule to be provided to all the Property Owners on a periodic basis, and that certain noise levels are prohibited at the Plaza during certain hours of the day. Program Manager shall assume full responsibility for complying with all the obligations of Agency in connection with the programming of the Programming/Maintenance Area as set forth in the CC&Rs. Program Manager shall, at its sole expense, indemnify, defend and hold Agency, its officers, agents, and employees, from and against all claims, damages, expenses, liabilities, judgments, expenses, costs, and attorneys' fees, arising as a result of the Program Manager failing to fully comply with all of the terms and conditions of the CC&Rs applicable to programming of the Programming/Maintenance Area. Program Manager acknowledges receipt of a copy of the CC&Rs. Agency hereby agrees that Program Manager may defend Agency with an attorney from the Salt Lake City Attorney's office; provided, however, that Agency may, at its own expense, retain an attorney who is not in the Salt Lake City Attorney's Office to defend it in such matters.

6. Initial Hours of Operation. Agency anticipates that programmed events and activities will occur primarily on the Plaza and that the Plaza will be primarily used between the hours of 7:00 a.m. and 10:00 p.m, which may be extended to 11:00 p.m., with the permission of the Salt Lake City Mayor's Office and the Salt Lake Valley Health Department. Notwithstanding the foregoing, the Parties acknowledge that the Plaza and other parts of the Programming/Maintenance Area, except the buildings located thereon ("Plaza Buildings"), will be accessible to the public at all hours; i.e., there are no currently-planned measures to physically barricade the Plaza, except the Plaza Buildings, from adjacent public ways.

7. The Roadway. Program Manager may elect to program the Roadway in connection with the Services so long as Program Manager obtains any required permission or permits, employs appropriate safety measures, and blocks traffic from use of the Roadway.

8. Performance of Services; Expertise of Program Manager. Program Manager shall perform the Services in an efficient, expeditious, and economical manner, consistent with the best interests of Agency and the purposes of this Agreement, with the level of care and skill exercised by other professionals performing similar services along the Wasatch Front who are recognized by their peers as experienced, knowledgeable, and highly skilled in performing services of the type and scope of the Services. Program Manager represents and warrants that Program Manager has the capability and expertise to professionally and competently provide the Services. Program Manager shall not permit any employee, agent, contractor, or subcontractor to perform the Services who does not have the expertise to do so. Program Manager shall perform the Services with reasonable care and in a manner designed to protect all persons and entities using or occupying all or any part of the Property from accident and injury and to prevent interference with business operations on Block 57 and adjacent properties.

9. Program Manager's Personnel. Program Manager shall hire, pay, supervise, train, and discharge all persons and entities that may be required to perform the Services, and Program Manager shall do so with the goal of providing high-quality Services at the lowest reasonable cost. Program Manager shall consult with Agency with regard to the job description of personnel and entities providing Services, as well as the cost thereof, as part of the staffing document to be incorporated into the Budget (as defined hereafter). Program Manager shall provide skilled,

experienced, and highly-motivated persons and entities to perform the Services. None of Program Manager’s employees, agents, contractors, or subcontractors shall be employees, agents, contractors, or subcontractors of Agency, and Program Manager shall be solely responsible for hiring, firing, supervising, and training all persons and entities performing all or any part of the Services pursuant to this Agreement.

10. Programming and Other Obligations. Program Manager shall be responsible for programming events and activities on the Plaza and other parts of Programming/Maintenance Area during the Term of this Agreement. Program Manager’s programming duties include, without limitation, fundraising, scheduling, promoting, advertising, coordinating, organizing, soliciting, monitoring, staging, and supervising events and activities on the Plaza, as well as establishing and enforcing rules and regulations and supplying materials and services for Plaza events and activities. Such events and activities may include, without limitation, art and music festivals, parties, fundraising events, book fairs, art shows, concerts, competitions, holiday festivities, etc. Throughout the Term, Program Manager shall program the following minimum number and types of events during each fiscal year:

	Weekend Events (Fri night thru Sun night)	Weekday (Mon-Fri before 5pm)	Evening (Mon-Thurs after 5pm)	Ice Skating Rink (Mon-Sun-100 days total)	TOTALS
Gallivan	10	138	7	25	180
Public Rentals	17	5	15	0	37
Private Rentals	37	29	33	7	106

TOTALS	64	172	55	32	323
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At least six (6) of the events each fiscal year shall be “major” events that are organized by Program Manager and event staff. At least two (2) events each month shall be held on weekends. Adult-oriented events are intended to include such things as performances by the Utah Symphony & Opera, community orchestras, the symphony chorus, professional choirs, theatrical presentations, dance presentations featuring Ballet West, RDT, Ririe-Woodbury, or University of Utah Dance Department, adult seminars, gallery strolls, art shows, antique shows, film premiers, opera fest, book reviews, Wednesday Rocks Concert Series, Eve, and others. Events shall be evenly distributed throughout the year except that evening events may be primarily, but not exclusively, in the spring, summer, and fall, the Parties acknowledging the difficulty of programming events on winter evenings and yet the need and desire for winter evening events.

Program Manager’s responsibilities shall also include:

(a) communicating and coordinating programming with local organizations and property owners, such as the Chamber of Commerce, Downtown Retail Merchants Association, Visit Salt Lake, Downtown Alliance, GUCOA, Agency, other Property Owners, and Friends of the Gallivan Center;

(b) providing special assistance to entities using the Programming/Maintenance Area to ensure success of programmed events, which efforts shall include, without limitation, assisting with advertising, arranging for

additional security, and arranging for additional personnel as may be required from time to time;

(c) developing a fee schedule and billing, collecting, accounting, and budgeting for programmed events;

(d) working with performing artist groups or unions, as appropriate to provide entertainment on the Programming/Maintenance Area;

(e) coordinating and arranging for public parking if necessary and appropriate to the success of events and activities on the Programming/Maintenance Area. Any public parking arranged by Program Manager shall generate revenues at least equal to the cost of providing such parking;

(f) operating the ice skating rink on the Plaza and coordinating maintenance with Common Area Manager. Program Manager shall be responsible for the day-to-day care of the ice sheet on the ice skating rink, including cleaning and clearing the ice as needed for ice skaters. Program Manager will inform Common Area Manager of any problems with the ice sheet;

(g) arranging for the installation and storage of special event banners and the reinstallation of standard Plaza banners; and

(h) developing (in consultation with Agency) and administering rules and regulations for programmed events.

Program Manager shall manage the programming effort such that during each fiscal year events and activities generate revenue equal to at least one hundred percent (100%) of the out-of-

pocket costs of the events and activities. "Out-of-pocket costs" means all costs incurred in connection with the Services except Program Manager's general overhead costs that are to be reimbursed by Agency (with contributions by the other Property Owners), as more particularly provided elsewhere in this Agreement. Out of pocket costs include, by way of illustration only, all expenses for the purchase or rental of equipment, supplies, or materials; costs of clean up, security, and advertising; payment of honorariums and fees; costs of parking; costs of additional personnel or overtime for Program Manager's personnel; and the cost of entities hired specially for events and activities.

Program Manager acknowledges that Agency leases the underground parking structure under the Plaza ("Parking Structure") to Boyer-Block 57 Associates ("Boyer") pursuant to that certain Lease Agreement for Parking Facilities dated January 23, 1990, as amended ("Lease"). The Lease provides that the Parking Structure will be available for after business hours parking upon certain terms and conditions as more particularly set forth in the Lease. The Parties agree that, until further notice from Agency, Program Manager may exercise the rights of Agency under the Lease to provide after hours parking in the Parking Structure for Plaza events and activities pursuant to the terms of the Lease (a copy of which has been provided to Program Manager); provided, Program Manager shall be responsible for complying with all terms of the Lease pertaining thereto; and further provided, Program Manager shall recover one hundred percent (100%) of any costs to provide parking in the Parking Structure in connection with Plaza events and activities. Agency shall notify Boyer of the foregoing and request that any notices from Boyer to Agency pursuant to the "after hours" provision of the Lease be copied to Program Manager.

Program Manager shall provide all staff functions for Friends of the GallivanCenter and take all steps necessary to maintain it as a non-profit Utah corporation in good standing with the State of Utah and with a 501(c)3 designation by the Internal Revenue Service, which functions shall include, without limitation, providing meeting notices, maintaining meeting minutes, and preparing and filing all documentation required to maintain 501(c)(3) status for Friends of the GallivanCenter.

11. Fund Raising. Program Manager shall assume responsibility for fund raising efforts previously commenced for programmed activities and for present and future fund raising efforts to generate revenues to fund the programming required herein. Fundraising goals shall be included in the Final Budget (as defined hereafter).

12. Concessionaire, Vendor and Occupancy Contracts. Program Manager shall work with concessionaires and cart vendors to ensure a continuous level of activity on the Plaza. Program Manager shall negotiate, coordinate, administer, and enforce concessionaire and vendor contracts pertaining to the Plaza, including, without limitation, the use of the ice skating rink, equipment rental kiosk, banquet/ice skate rental building, and the newly constructed Activities Building, located on the north side of the Plaza (the “Activities Building”); provided, all contracts shall be first approved by Agency (which consent shall not be unreasonably withheld or delayed); and further provided, at Agency’s option such contracts shall be executed by Agency. Program Manager shall also negotiate, coordinate, administer, and enforce occupancy agreements, including licenses, leases, and easements pertaining to the Plaza; provided, such agreements shall first be approved by Agency and shall be executed by Agency. No contract or occupancy agreement described herein or any contract entered

into by Program Manager in connection with the Services shall have a term expiring after the expiration of the Term without the prior written consent of Agency.

13. Maintenance. Program Manager hereby acknowledges that activation of the improvements on the Plaza is vital to Block 57's long-term success. Program Manager shall coordinate its activities with the Common Area Manager to minimize the cost of cleaning event areas before, during, and after programmed events as necessary to keep the Programming/Maintenance Area in a clean and orderly condition. Program Manager may elect to negotiate with the Common Area Manager an hourly fee at which the Common Area Manager will provide maintenance and security services in connection with programmed events on the Programming/Maintenance Area.

14. Budget.

14.1 Budget Generally. During the Term, Agency shall pay for or reimburse Program Manager (with contributions from the other Property Owners), as the case may be, for Program Manager's general overhead costs, such costs to be approved by Agency pursuant to the Final Budget. Revenues generated from events and activities on the Programming/Maintenance Area shall be (a) used to fund the costs of programmed events or (b) placed in a reserve to hire additional personnel, or to acquire equipment and supplies to enhance the activity level on Programming/Maintenance Area. On or prior to January 31 of each year of the Term, Program Manager shall prepare and furnish to Agency, for its approval, a preliminary budget for the twelve (12) month period beginning on the next July 1 ("Preliminary Budget"). The form of this Preliminary Budget for the first year of the Term is attached hereto as Exhibit "B" and incorporated herein by reference. The Parties shall work together in good faith to reach a prompt agreement on a

final budget by no later than April 1 of each year of the Term (hereafter “Final Budget”). The Final Budget shall be in substantially the form of the Preliminary Budget and shall include, among other things, (i) a staffing document, (ii) an itemization of general overhead costs that may include salaries, payroll taxes, and employee benefits and other costs associated with a Program Manager, a Program Manager’s assistant, and a receptionist/secretary; basic telephone service, maintenance of computer equipment, printers, and copiers owned by the Agency, specialized stationary and reservation forms, office space within the Activities Building on the Plaza, and utility services in connection with such space, (iii) an equipment budget to be covered by available resources, and (iv) a budget for revenues and expenses for programmed events, concessionaire and vendor contracts, and all events and activities programmed for the Programming/Maintenance Area. The Final Budget shall include copies of all contracts and bids upon which it is based. Program Manager shall not be reimbursed for general overhead costs in excess of the amounts set forth in the Final Budget without the prior written approval of Agency; provided, Program Manager’s general overhead expenditures need not meet the amounts budgeted for specific items so long as Program Manager’s general overhead expenditures on the whole do not exceed the total amount of the Final Budget. Amounts budgeted or reserved in the Final Budget for equipment expenditures may only be used for equipment expenditures.

14.2 Office Space. Agency shall make office space available for the Program Manager in the Buildings located on the Plaza, but parking for staff shall be arranged for by the Program Manager. Program Manager will share office space within the Activities Building with the Common Area Manager. The Parties

acknowledge that Agency may change the location and/or configuration of the office space; provided, Agency shall provide to the Program Manager and the Common Area Manager combined office space of not less than 950 square feet of floor area. Rent will not be charged to the Program Manager for use of office space or furniture; provided, costs for utilities and telephone services for such office space shall be prorated between the Program Manager and the Common Area Manager as determined by Agency. Program Manager shall maintain all office space, other building space, and furniture occupied or used by Program Manager pursuant to this Agreement in a good, safe, and clean condition and shall deliver such space and furniture to Agency at the expiration or earlier termination of this Agreement in the same condition as was delivered to Program Manager, reasonable wear and tear excepted. If requested by Agency, Program Manager shall execute a separate occupancy agreement with Agency, the terms of which shall be consistent with this Agreement.

14.3 Storage Areas. Storage areas for equipment and tools currently exist within the Parking Structure. Common Area Manager and Program Manager will have access, at no cost, to use certain areas within the Parking Structure identified by Agency for storage of equipment and materials needed and necessary for the maintenance and programming of the Programming/Maintenance Area. Program Manager shall cooperate with the Common Area Manager in connection with the use of such storage space. Program Manager shall maintain all such storage areas in a

good, safe, and clean condition and shall deliver such space to Agency at the expiration or earlier termination of this Agreement in the same condition as it was delivered to Program Manager, reasonable wear, tear, and casualty not required to be insured by Program Manager hereunder, excepted. Program Manager shall occupy and use such space in full compliance with the terms of the Agreement.

15. Monthly Reports. Program Manager shall deliver to Agency on or before the fifteenth day of each calendar month of the Term a report setting forth a summary of the components of the Services provided during the prior month, including, but not limited to, information regarding programmed activities and events, security information related to events, fundraising activities, and the expenditures made or incurred and revenues received during the prior calendar month, together with a calculation of the total expenditures made or incurred and revenues received year to date as the same compare to the amounts permitted or required by the Final Budget for such period. Such report shall follow the format of the sample report attached hereto as Exhibit “C” and incorporated herein by reference. From time to time, Agency may reasonably require adjustments in the report format as well as information to be provided in the report. In addition, Program Manager shall deliver to Agency with each monthly report, the minutes of the meetings of the Friends of the GallivanCenter held during the reporting period.

16. Records.

16.1 Maintaining Records. Program Manager shall keep full and accurate records of all expenses incurred and revenues received in connection with the Services (“Records”). The Records shall be sufficient to show in reasonable detail

the basis for Program Manager's expenditures. The Records shall include, without limitation, records of each person or entity performing any portion of the Services (including time sheets, work diaries, and time cards), receipts for expenses, equipment, and materials charged, contracts, subcontracts, change orders, invoices, purchase records, canceled checks, job cost histories, documents required to maintain 501(c)(3) status for Friends of the GallivanCenter, minutes of meetings and other documents pertaining to Friends of the GallivanCenter, and similar documents relating to the Services. Program Manager shall logically organize and segregate the Records from other business records and accounts, and shall retain the records for at least twenty four (24) months after the date on which Agency is billed for the last component of any portion of the Services.

16.2 Right of Agency to Audit Records. Agency, or any authorized designee thereof, shall be entitled at any reasonable time at Agency's expense to audit the Records at Program Manager's offices during Program Manager's regular business hours. If any audit of the Records reveals that Agency has overpaid for any portion of the Services, the amount of such overpayment shall be, at Agency's election, either deducted from amount owed by Agency or refunded to Agency within thirty (30) days after the date Agency notifies Program Manager of such overpayment. Agency's notice shall state with specificity the basis of the claim relating to the overpayment. Program Manager shall have a reasonable opportunity, within such thirty (30) day period, to demonstrate to Agency's satisfaction that the

questioned payments were proper. If the Parties are unable to come to an agreement with regard to the existence of an over payment, the Parties shall each share the cost of a mutually acceptable accountant to resolve the issue. The decision of such accountant shall be binding on the Parties. If the audit shows that the payments for the Services are excessive by more than five percent (5%) for any twelve (12) month period, Program Manager shall reimburse Agency for all costs reasonably incurred in making such audit, including without limitation the cost of any accountants and attorneys, copying costs and related expenses, and the costs and fees of personnel of Agency. Such reimbursement shall constitute a personal obligation of Program Manager and not a charge for the Services.

17. Equipment.

17.1 Purchases. Any equipment (“Equipment”) purchased by Program Manager pursuant to the Final Budget, or otherwise with funds provided by Agency, shall be used solely in connection with the Services and for no other purpose. Title to the equipment shall be in the name of the Agency. Program Manager shall properly use, maintain, and service the Equipment in a manner that preserves the useful life of the Equipment. Upon the expiration or earlier termination of this Agreement, Program Manager shall convey and deliver possession of the Equipment to Agency, without cost to Agency, in the same condition in which the Equipment was delivered to Program Manager, reasonable wear, tear, and casualty not required to be insured by Program Manager hereunder, excepted. Program Manager shall deliver to Agency

a receipt for purchases and all warranties and instruction manuals for the Equipment.

From time to time, as requested by Agency, Program Manager shall deliver to Agency an inventory of the Equipment that includes for each item of Equipment the date of purchase, the purchase price, the condition, and if the Equipment has been disposed of, the basis therefore and the manner of disposal. Program Manager shall not dispose of any item of Equipment without the prior written approval of Agency.

17.2 Equipment Owned by Agency. Exhibit "D" contains a listing of all equipment currently owned by Agency that is available to the Program Manager for the programming of the Programming/Maintenance Area (hereafter "Existing Equipment"). Program Manager shall properly use, maintain, and service the Existing Equipment in a manner that preserves the useful life of the Existing Equipment. Upon the expiration or the earlier termination of this Agreement, Program Manager shall convey and deliver possession of the Existing Equipment to Agency without cost to Agency, in the same condition in which the Existing Equipment was provided to Program Manager, reasonable wear and tear excepted.

18. Reimbursement of Program Manager. Agency, with contributions from other Property Owners, shall pay to Program Manager, in advance on the first day of the first calendar month of the Term, a sum equal to one-twelfth (1/12) of the budgeted general overhead costs for the year and a one-month advance on programming revenues. Any adjustments to the actual amount due and owing Agency shall be determined by August 1 of each year during the Term, and shall be paid or credited by Agency in connection with its September 1 payment each year thereafter during the

Term. Notwithstanding the foregoing, Program Manager may request Agency to reimburse Program Manager for extraordinary expenses from time to time. Any such request shall not be unreasonably denied and will be timely processed; provided, Agency shall have no obligation to pay to Program Manager during any year amounts in excess of that required to be paid by Agency pursuant to this Agreement.

19. Indemnification. Program Manager shall indemnify, hold harmless, and defend Agency and the other Property Owners and their officers, agents, and employees, from and against all claims, damages, expenses, liabilities, judgments, defense expenses, and costs (including reasonable attorneys' fees) arising from the actual or alleged wrongful act, omission to act, willful misconduct, or negligence of Program Manager, its officers, agents, and employees arising in connection with the Services. However, no obligation shall accrue to pay such attorneys' fees until Program Manager has refused to accept and defend, following a written tender of the defense by Agency or the other Property Owners, as the case may be.

20. Insurance. At all times during the Term, Program Manager shall maintain the following minimum insurance coverage through a company licensed to do business in the State of Utah or, at Program Manager's sole discretion, cover these and other indemnity risks through its self-insurance program. Any commercial insurance coverage shall, at a minimum, be as follows:

20.1 Workers' compensation -- state statutory limit;

20.2 Employer's liability -- Five Hundred Thousand Dollars (\$500,000);

20.3 The standard commercial general liability coverage: Two Million Dollars (\$2,000,000) per incident and Three Million Dollars (\$3,000,000) in the aggregate;

20.4 Automobile liability: Two Million Dollars (\$2,000,000) combined single limit;

20.5 Errors and omissions: Two Million Dollars (\$2,000,000);

20.6 Employee dishonesty: Fifty Thousand Dollars (\$50,000);

20.7 “Special Events coverage” on any scheduled event that is not a regularly scheduled activity, with limits equal to not less than Two Million Dollars (\$2,000,000) per each occurrence and not less than Three Million Dollars (\$3,000,000) in the aggregate; and

20.8 Commercial property insurance: Up to the value of all commercial property located at the Property.

20.9 Such other policies of insurance insuring against such risks as Agency reasonably deems prudent from time to time.

If Program Manager elects to obtain commercial insurance coverage (as contrasted with self-insurance), the foregoing policies shall name Agency, the other Property Owners, GUCOA, and Friends of the Gallivan Center as additional insureds. Further, if commercial insurance is acquired by Program Manager, it shall deliver to Agency a certificate of insurance evidencing that the commercial insurance is in full force and effect.

20.9 Commercial insurance (other than self-insurance), if provided, shall include the following provisions:

(i) The contract shall provide that the policy may not be canceled or reduced in amount or coverage below the requirements of this Agreement, without at least thirty (30) days' prior written notice by the insurer to each insured and to each additional insured;

(ii) Provide that an act or omission of one of the insureds or additional insureds that would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other insureds; and

(iii) Provide for contractual liability coverage with respect to the indemnity obligation set forth in the Article entitled "Indemnification."

20.10 Nothing in this Agreement shall be construed to waive, modify, or alter the caps on liability or privileges, immunities, or other protection provided for or available to Agency or Program Manager under the Utah Governmental Immunity Act or otherwise. It is the intent and purpose of this Agreement to preserve all such defenses, immunities, and liability caps that limit or minimize the risk or damage exposure to government entities.

20.11 If Program Manager elects to provide coverage through its self-insurance program, such self-insurance shall provide the same protections to Agency, the other Property Owners, GUCOA, and the Friends of the Gallivan Center as is required herein with respect to commercial coverage. All insurance coverage (other than self-insurance) shall provide that it is primary; provided, in no event shall Agency be responsible for any retention or deductible. If Program Manager elects to

provide self-insurance, such self-insurance, or any other provision of this Agreement, shall not constitute or imply a waiver, modification, or alteration of the caps on liability or privileges, immunities, or other protection available to Agency or Program Manager under the Utah Governmental Immunity Act or otherwise.

20.12 If Program Manager subcontracts or delegates any work pursuant to this Agreement, Program Manager shall cause such subcontractor or delegate, as the case may be, to obtain insurance and deliver to Agency a certificate of insurance with coverage equal to or greater than the insurance required of Program Manager in this Article, which insurance will name as additional insureds Agency, the other Property Owners, GUCOA, and Friends of the Gallivan Center.

21. Security. Program Manager shall assure that private security is present for all programming events and activities that Program Manager determines require security, at a level determined by Program Manager. In addition, when it deems it necessary or appropriate, Program Manager shall coordinate such private security pursuant to a contract agreed upon with a private security provider. If an event sponsor (including Agency, if it is sponsoring an event) requests additional security above the level deemed necessary by Program Manager and pays the cost of such additional security, Program Manager may obtain such additional security either through private security providers of its choice or by allowing Agency or the event sponsor to hire such additional security directly.

22. Cooling System, Ice Skating Rink, and Refuse Room.

22.1 Cooling System and Ice Skating Rink. Program Manager shall be responsible for coordinating the use of the cooling system for the Plaza with the Common Area Manager. This coordination shall include, but not be limited to, arranging for the activation and on-going operation of the ice skating rink. The Common Area Manager will make the initial ice sheet and any subsequent ice sheets so long as the sheet is not being replaced solely for the addition of decoration on the ice. Program Manager shall be responsible for the day-to-day care of the ice sheet, including cleaning and clearing the ice as needed for ice skaters. Program Manager shall inform the Common Area Manager of any problems with the ice sheet.

22.2 Refuse Room. A refuse room (“Refuse Room”) has been constructed adjacent to the Parking Structure on property ground leased from Salt Lake City Corporation, as landlord, to Agency, as tenant, pursuant to that certain Lease Agreement to Occupy Public Property, dated August 30, 1991 (“Ground Lease”). The Refuse Room is intended to be used in connection with the business operations on Block 57, including, but not limited to, Boyer’s office building, the Parking Structure, the Plaza (and businesses and concessions thereon), and other businesses on Block 57. Agency has granted Boyer a license to use the Refuse Room as set forth in that certain Refuse Services Agreement, dated October 24, 1991, by and between Agency and Boyer (“Refuse Room Agreement”). A copy of the Refuse Room Agreement and Ground Lease have been provided to Program Manager. Agency hereby grants Program Manager a non-exclusive license to use the Refuse Room in

connection with its performance of Services for the Programming/Maintenance Area during the term of this Agreement pursuant to the same terms and conditions applicable to Boyer. Program Manager hereby agrees to use the Refuse Room in accordance with the terms and conditions of the Ground Lease and the Refuse Room Agreement and to properly and promptly administer, enforce, and comply with the Ground Lease and Refuse Room Agreement. Agency shall provide Program Manager with copies of all notices, demands, or claims made by Boyer pursuant to the terms of the Ground Lease and Refuse Room Agreement (and any others pursuant to similar agreements). Agency has or will enter into an agreement providing for removal of refuse from the Refuse Room. Program Manager shall coordinate its use of the Refuse Room with Agency.

23. Utilities. Program Manager and Common Area Manager shall prorate utility costs in connection with the office space in the Activities Building, the other Plaza Buildings, and the Programming/Maintenance Area.

24. Termination. Agency may terminate this Agreement at any time without cause, which termination shall be effective 30 days following Agency's notice to Program Manager of such termination; provided, in the event of such termination Agency shall reimburse Program Manager for its actual costs for reasonable time, material, and expenses incurred solely on account thereof, but not including consequential damages or lost opportunity costs. Program Manager shall attach copies of supporting bills, receipts, and time documentation to all invoices payable on account of such termination. Such supporting bills, receipts, and time documentation shall provide detailed and

understandable descriptions and shall be in a form acceptable to Agency. Agency shall have no obligation to pay invoices for which no such supporting documentation is provided. Agency may terminate this Agreement for cause (i.e., Program Manager's default), which termination shall be effective 30 days following Agency's notice to Program Manager of such termination; provided, if Program Manager cures the default within such 30 day period, Agency may not so terminate this Agreement. The indemnity provisions of this Agreement shall survive any termination or expiration of this Agreement. Upon termination of this Agreement, Program Manager shall deliver to Agency upon Agency's reasonable request therefor (i) any and all materials or equipment acquired by Program Manager in connection with its performance of the Services and paid for by Agency or through programming revenues, (ii) all written records in the possession of Program Manager pertaining to the Services, including without limitation reservations for use of the Programming/Maintenance Area, deposits collected, receipts for expenses, insurance policies, certificates, notices, correspondence, contracts, subcontracts, change orders, invoices, purchase records, canceled checks, etc., that would be useful or convenient to Agency or any subsequent Program Manager in performing the Services or continuing the performance of the Services. Program Manager may terminate this Agreement at any time upon Agency's failure to make any required payment to Program Manager hereunder, which termination shall be effective sixty (60) days following Program Manager's notice to Agency of such termination; provided, if Agency cures the default within such sixty (60) day period, Program Manager may not so terminate this Agreement.

25. Liens; Bonds. Program Manager shall not permit any liens to be attached against all or any part of the Property in connection with its performance of the Services.

26. No Assignment. Agency, in entering into this Agreement, is relying upon Program Manager's expertise and knowledge in performing its obligations. Therefore, this Agreement is not assignable by either Party.

27. Independent Contractor. Program Manager is and shall perform the Services under this Agreement as an independent contractor, and shall not be deemed an agent, employee, or legal representative of Agency. Program Manager has no authority to assume or create any commitment or obligation on behalf of or to bind Agency.

28. Conflict of Interest. Program Manager warrants that it is not a party to any other existing or previous agreement that would prevent Program Manager from entering into this Agreement or would adversely affect Program Manager's ability to perform the Services.

29. Notices. Any notice or demand given or served by either Party to the other shall not be deemed to have been duly given or served unless in writing and forwarded by certified or registered mail, postage prepaid, or another commercially recognized means of delivery (including facsimile so long as the original is also sent by U.S. Mail or another means described above), addressed as follows:

Agency: Redevelopment Agency of Salt Lake City
Room 418, City and County Building
451 South State Street
P.O. Box 145518
Salt Lake City, Utah 84114-5518
Attention: Justin Belliveau
Facsimile 801-535-7245

Program Manager: Salt Lake City Corporation
Public Services Department
239 South Main Street
P.O. Box 145522
Salt Lake City, Utah 84114-5522
Attention: Manager of John W. Gallivan Utah Center
Facsimile 5801-35-6100

Other Owners Wasatch Plaza Holdings, L.L.C
Attn: John Dahlstrom
299 South Main Street, Suite 2400
Salt Lake City, UT 84111
Facsimile: 801-961-1111

AlphaGraphics, Inc.
Attn: Jay Cooper
268 South State Street, Suite 300
Salt Lake City, Utah 84111
Facsimile: 801-595-7271

Ocean Properties
Attn: William Walsh
1000 Market Street, Building One
Portsmouth, NH 03801
Facsimile: 603-559-2179

The person and the place to which notices are to be mailed may be changed by either Party by written notice to the other Party.

30. Change to Scope of Services. Agency reserves the right to request changes in the scope of Services related to the Programming/Maintenance Area, including, without limitation, alterations, reductions, or additions to the Services. Such changes shall be made by an amendment to this Agreement. Program Manager shall accept or reject such amendment within fifteen (15) days (or such reasonable earlier period requested by Agency) after the date such amendment is requested

by Agency. Any amendment shall be on mutually acceptable terms, including financial terms. If Program Manager rejects any request for change, Agency may terminate this Agreement wholly or as it pertains to a portion of the Services and such termination shall be governed by the Article entitled "Termination." If Agency requests, Program Manager shall suspend work on those portions of the Services affected by (i) any contemplated change pending Agency's decision to submit an amendment to this Agreement or (ii) Agency's decision with regard to termination of any part or all of the Services.

31. Compliance with Law. Program Manager shall comply, and shall cause the Programming/Maintenance Area to comply, with all applicable federal, state, and local statutes, rules and regulations and all licenses, orders, permits, and certificates pertaining to the programming of the Programming/Maintenance Area and the Services. In addition, Program Manager shall comply with and assist in the enforcement of any rules and regulations pertaining to all or part of the Programming/Maintenance Area.

32. Cooperation. Program Manager acknowledges that Agency may, from time to time, change, reconfigure, or reconstruct improvements and the location thereof in the Programming/Maintenance Area or the office space and storage space allocated to Program Manager. Program Manager shall to cooperate and coordinate its activities so to permit and facilitate such change, reconfiguration, or reconstruction. Agency agrees to provide reasonable notice to Program Manager of its intended activities and to exercise reasonable care to not unnecessarily inconvenience Program Manager.

33. GRAMA. The City is subject to the requirements of the Government Records Access and Management Act, Chapter 2, Title 63G, Utah Code Annotated or its successor (“GRAMA”). All materials submitted by Agency pursuant to this Agreement are subject to disclosure unless such materials are exempt from disclosure pursuant to GRAMA. The burden of claiming an exemption from disclosure shall rest solely with Agency. Any materials for which Agency claims a privilege from disclosure shall be submitted marked as “Confidential” and accompanied by a statement from Agency explaining Agency’s claim of exemption from disclosure. The City shall promptly notify Agency of any requests made for disclosure of documents submitted under a claim of confidentiality. Agency may, at Agency’s sole expense, take any appropriate actions to prevent disclosure of such material. Agency specifically waives any claims against the City related to disclosure of any materials required by GRAMA.

34. Miscellaneous. This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter hereof and may be modified only by a subsequent writing duly executed by both Parties. Time is expressly made of the essence of each and every provision of this Agreement. This Agreement shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either Party. Nothing in this Agreement is intended, nor shall it be construed, to provide any rights or benefits to third parties. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the state of Utah. The invalidity in whole or in part of any term, covenant, or provision of this Agreement shall not affect the validity of the remainder hereof.

35. Interlocal Co-operation Act Requirements.

(a) This Agreement shall be approved by each party pursuant to § 11-13-201.5 of the Interlocal Act;

(b) This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each party, pursuant to § 11-13-202.5 of the Interlocal Act;

(c) A duly executed original counterpart of this Agreement shall be filed with the keeper of records of each party, pursuant to § 11-13-209 of the Interlocal Act;

(d) Except as otherwise specifically provided herein, each party shall be responsible for its own costs of any action done pursuant to this Agreement, and for any financing of such costs;

(e) No separate legal entity is created by the terms of this Agreement. To the extent that this Agreement requires administration other than as set forth herein, it shall be administered by the mayor of City and the Executive Director of Agency. Any real or personal property that may be acquired jointly by the parties as a result of this Agreement shall be acquired, held or disposed of pursuant to the terms of this Agreement.. To the extent that a party acquires, holds, or disposes of any real or personal property for use in the joint or cooperative undertaking contemplated by this Agreement, such party shall do so in the same manner that it deals with other property of such party.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

SALT LAKE CITY CORPORATION, a municipal corporation

By _____

Ralph Becker
Mayor

ATTEST:

City Recorder

Approved as to form:
Salt Lake City Attorney's Office

REDEVELOPMENT AGENCY OF SALT LAKE
CITY, a public agency

By _____
Ralph Becker
Chief Administrative Officer

By _____
D.J. Baxter
Executive Director
"Agency"

Approved as to form:
Salt Lake City Attorney's Office

Exhibit "A"

Attach Site Plan depicting John W. Gallivan Center, Wasatch Property, Arcade Property, Salt Property, Agency Property, Plaza and the Roadway (note part of Roadway owned by Wasatch)

Exhibit "B"

Attach Preliminary Budget form.

Exhibit "C"

Attach sample monthly report form

Exhibit "D"

Attach list of equipment currently owned by Agency