

Exhibit 1
Draft Memorandum
of Understanding

MEMORANDUM OF UNDERSTANDING

THE CITY OF PEORIA

WESTWARD HO ADVENTURES, LLC DBA COWTOWN RANGE

THIS MEMORANDUM OF UNDERSTANDING, dated _____, 2018, is by and between, **WESTWARD HO ADVENTURES, LLC** an Arizona limited liability company, and owner, operator, and dba Cowtown Range (“Owner” or “Cowtown”) and the **CITY OF PEORIA, ARIZONA**, a municipal corporation of the State of Arizona (the “City”). Each may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

A. The Cowtown facility that is the subject of this Memorandum Of Understanding (MOU) is approximately 78 acres of land located at the northwest corner of 104th Avenue alignment and Old Carefree Highway (APN 201-18-001)(the “Property”). The Property is intended to be used for a variety of recreational and entertainment activities, including but not limited to movie and television filming, outdoor shooting range, live ammunition firearm training facility for law enforcement, the military, and the general public, western entertainment, outdoor activities, paintball, horseback riding/stables, and corporate events.

B. The Property was originally located within unincorporated Maricopa County and subject to a 1977 special use permit (Z77-114), which was subsequently amended in 1987 (Z86-95) allowing sand and gravel operations, and administratively amended in 1993 allowing construction of additional movie sets on the site.

C. The City annexed the Property in 1994 as part of a regional annexation plan (Ord 94-03). The Property owner at that time agreed to the annexation with the understanding that the land uses on the Property at the time of annexation would be permitted and grandfathered. Accordingly, the City Manager in 1994, Peter Harvey, issued a letter dated January 25, 1994 that outlined the City’s position regarding uses on the Property (“1994 Letter”). Case Z94-06 rezoned the Property from Maricopa County Rural-43 with a Special Use Permit to Peoria’s Special Use (SU) and Flood plain (FP) zoning districts.

D. In 2016, the Owner initiated an application (Case Z16-0013) to rezone the Property to Cowtown Planned Area Development (“Cowtown PAD” or “PAD”) in order to clarify the permitted uses on the Property. Specifically, identify and define the particular land uses, allowable operations and events, development standards, and other unique land use criteria applicable to the Property.

E. Owner has acknowledged its responsibility for and obligation to remediate contaminated soil on adjoining State Trust land and to remedy the existing trespass on adjoining State Trust Land.

F. Owner entered into an agreement with the State of Arizona, by and through the Arizona State Land Department (“ASLD”), effective contemporaneously with this Agreement, requiring the Owner, within nine (9) months of the effective date of the agreement between ASLD and the Owner to remove any roads, fences, or any other improvements that are in trespass on adjoining State Trust Land and restore grading and vegetation to match adjacent undisturbed areas.

G Under the agreement between the Owner and ASLD, Owner is required to remediate by removal and disposal of contaminated soil identified in the Phase I Study to be conducted within three (3) months of the effective date of their agreement, as well as remove and dispose of contaminated soil identified in subsequent sampling performed in accordance with regulatory requirements in areas of State Trust Land identified and agreed to jointly by ASLD and the Owner.

H. Under the agreement between the Owner and ASLD, the Owner and ASLD shall agree to a mechanism to which the Owner’s successors and assigns shall address future encroachments onto adjoining State Trust Land, should it occur.

I. The Parties acknowledge and agree that herein contemplated and agreed to uses on the Property are unique, and assessment of the land uses on the Property are within the expertise of Cowtown, and outside the normal course of proficiency of the City. Accordingly, Cowtown has engaged relevant and knowledgeable experts and professionals that have evaluated the operations and safety, and environmental concerns.

J. The Owner has submitted the complete Planned Area Development application to their selected knowledgeable and relevant experts for review, and the experts have determined that Cowtown’s operations meet best management practices for outdoor shooting ranges and account for the most appropriate and relevant operating conditions to ensure safety of the people and property on and off the Property, as well as addresses responsible environmental stewardship.

NOW, THEREFORE, the Parties agree the above Recitals are true, accurate, and incorporated by reference, and FURTHER agree to enter into this Memorandum of Understanding as follows:

UNDERSTANDINGS

1. PAD Preparation

(a) Cowtown.

In order to proceed with City Council adoption of the Cowtown PAD to accommodate the intended uses on the Property, Cowtown agrees to the following (“Cowtown Commitments”):

(i) Provide the relevant and knowledgeable expertise that ensures the safe and sound use and operation of the Property within the parameters of the Cowtown PAD and the Operations Handbook. Accordingly, Cowtown agrees and acknowledges that the City is relying on the expertise provided by Cowtown to ensure the safe and sound use and operation of the Property within the parameters of the PAD and the Operations Handbook. Thus, to the extent permitted by law, Cowtown agrees to indemnify, defend, and hold harmless the City, its directors, officers employees, agents, and elected officials from and against loss, expense, damage, or claim of any nature whatsoever which is caused by any shooting activity, event, or performance that occurs on the Property, arising from use or operation of the Property by Cowtown and its directors, officers, employees, agents, invitees, guests, and members. The City shall in all instances be defended and indemnified against liability, losses and damages of any nature for or on account of injuries to or death of persons or damages to or destruction of property arising out of shooting activities, events, or performances by Cowtown and its directors, officers, employees, agents, invitees, guests, and members, arising from use or operation of the Property. Such indemnification shall include, in the event of action, court costs, expenses for litigation, and/or reasonable attorney's fees for attorneys hired by Cowtown. Such indemnification shall not include reasonable attorney's fees for attorneys employed by the City and/or any outside counsel hired by the City to represent the City.

(ii) Agrees and acknowledges that permitted land uses shall not encroach on neighboring land. Owner commits to performance measures concerning outdoor shooting and tactical training which shall include the following:

(1) Operate in conformance with the Department of the Army's Range Safety manual ("Range Safety Manual") and consistent with best practices of professional operated facilities of this kind, Owner has produced range fan studies and surface danger zone diagrams for all potential firing points shown in the Preliminary Site Plan to demonstrate that no part of the possible cone of fire or danger zone falls outside the Cowtown PAD using the Range Safety Manual's guidelines. If changes or improvements in permitted firearms and changes in potential firing points are made at the Cowtown facility, Owner shall submit updated range fan studies and surface danger zone diagrams to account for the changes or improvements and to demonstrate that no part of the revised cone of fire or danger zone falls outside the Property using the Range Safety Manual's guidelines.

(2) Owner shall produce, with all Temporary Use Permit applications for helicopter tactical and shooting training, a map of the proposed training area and an acknowledgement from the proposed training group that it is aware of the Property boundary and that its activity shall not impact lands outside the Property.

(iii) Work cooperatively with City staff, and appear to address questions and concerns, when the PAD is heard by the Peoria Planning & Zoning Commission.

(iv) Work cooperatively with City staff, and appear to address questions and concerns, when the PAD is heard by the Peoria City Council.

(v) Provide all necessary and relevant documents, reports, and materials to complete adoption, and properly record, the Cowtown PAD.

(vi) Agrees to make commercially reasonable efforts to pursue and acquire accreditation, approval, or letter acknowledging that Cowtown is utilizing best practices at its shooting facility from a responsible and relevant nationally recognized shooting organization (e.g. the National Sports Shooters Foundation, NSSF) or approval by any agency of the federal government, this state, a county or city within which Cowtown is located by the end of the year 2021. If this cannot be accomplished by the end of the year 2021, Cowtown agrees to notify the City, and meet and confer regarding next steps, if any.

(b) The City.

In order to proceed with City Council adoption of the Cowtown PAD to accommodate the intended uses on the Property, the City agrees to the following (“City Commitments”):

(i) Timely and cooperatively work with Cowtown representatives, experts, and professionals to address concerns, reply to comments, and make reasonable efforts to resolve differences.

(ii) Rely on the relevant and knowledgeable expertise provided by Cowtown that will ensure the safe and sound use and operation of the Property within the parameters of the Cowtown PAD and Operations Handbook.

(iii) Work cooperatively with Cowtown representatives, experts, and professionals when the Cowtown PAD is heard before the Peoria Planning & Zoning Commission, and the Peoria City Council.

2. Upon adoption of ordinance creating the Cowtown PAD, the Parties agree and acknowledge the following (“Joint Commitments”):

(a) The Cowtown PAD, Case No. Z16-0013, as adopted, is incorporated herein by reference, and shall govern how this property will be used from the date of adoption, unless amended, rezoned, or changed by the appropriate jurisdictional authority.

(b) The Cowtown PAD shall supersede the 1994 Letter. Accordingly, the 1994 Letter shall no longer have any force or effect from the date of adoption of the Cowtown PAD.

(c) All operations and activities contemplated at the Property have been identified within the Cowtown PAD and shall remain, and can be contained within the boundaries of the Property.

(d) The Property shall be maintained and operated pursuant to the adopted PAD, the adopted PAD Standards & Guidelines Report, the site plan, and by reference the Operations Handbook. Cowtown agrees to operate the activities, facilities, and personnel according to the Operations Handbook. Cowtown shall revise and update the Operations Handbook no less than annually, and as often as state, local, and federal laws require.

(e) **Running with the Land.** The Parties acknowledge and agree that the rights and obligation established under this MOU and the Cowtown PAD are covenants attached to and running with the Property. Cowtown, or any successors or assigns are entitled to exercise the rights granted pursuant to this MOU and the Cowtown PAD, and are subject to, and shall comply with all relevant obligations. The Parties agree and acknowledge that Cowtown shall only be liable for performance of Cowtown's obligations during the period it owns the Property. Cowtown acknowledges and agrees that upon transfer, conveyance, or assignment, it will notify in writing any and all successor owners or assignees of the rights and obligations established by this MOU and the Cowtown PAD.

(f) If the Cowtown PAD is amended from time to time, the provisions, obligations, and requirements under this MOU shall remain in full force and effect. If any conflicts or inconsistencies occur between this MOU and the Cowtown PAD, the Cowtown PAD shall control. If the Cowtown PAD were to become null, void, or without force and effect, for whatever reason (including a rezoning to residential uses, for example), it is agreed that this MOU will terminate upon such an event.

(g) **Proposition 207 Waiver per A.R.S. § 12-1131, et seq.** Cowtown agrees to execute a Proposition 207 Waiver form provided by the City. Cowtown agrees and understands that the City is entering into this Agreement in good faith and with the understanding that, if it acts consistently with the terms and conditions herein, it will not be subject to a claim for diminished value of the Property. Cowtown agrees and consents to all the conditions imposed by this MOU, the Zoning Ordinance, and the Cowtown PAD, and waives any and all claims, suits, damages compensation, and causes of action Cowtown may have now or in the future resulting from development of the Property consistent with this MOU, the Zoning Ordinance, and the Cowtown PAD or from any "land use law" (as such term is defined in the aforementioned statute sections and the Peoria City Code) permitted by this MOU and PAD enacted, adopted, or applied by the City now or hereafter.

(h) **Cooperation and Dispute Resolution.** To further the cooperation of the Parties in implementing the PAD and this MOU, the City and Cowtown shall each designate and appoint a representative to act as a liaison between the City and its various Departments and Cowtown. The initial representative for the City shall be the Planning and Community Development Director or designee (the "City Representative") and the initial representative for Cowtown shall be its General Manager, as identified by Cowtown from time to time (the "Development Representative"). The representatives shall be available at all reasonable times to discuss the review the performance of the Parties to this Agreement and the development of the Property.

With a copy to: Brian Greathouse
Burch & Cracchiolo, P.A.
702 E. Osborn Road
Phoenix, Arizona 85383

3. General Provisions

a) Attorneys' Fees and Costs. If legal action by either party is brought because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and court costs.

b) Counterparts. This MOU may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

c) Entire Agreement. This MOU and the PAD constitutes the agreement between the Parties regarding the Property. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, other than specifically incorporated herein by reference, are superseded by this MOU and the PAD. All prior and contemporaneous agreements, representations and understandings with any other parties, oral or written, other than specifically incorporated herein by reference, regarding any portion of or all of the Property, are superseded by this MOU and the PAD.

d) Severability. If any provision of this MOU is declared void or unenforceable, the provisions will be severed from this Agreement and the remainder of the MOU will otherwise remain in full force and effect, provided that the overall intent of the Parties is not materially vitiated by such severability.

e) No Third Party Beneficiary Rights. The provisions of this Agreement are for the sole benefit of the Parties and their successors and permitted assigns, and they will not be construed as conferring any rights to any third party (including any third party beneficiary rights).

f) Governing Law. This MOU is entered into in Arizona and will be construed and interpreted under the laws of the State of Arizona.

g) Cancellation. This MOU is subject to cancellation for conflict of interest without penalty or further obligation as provided by A.R.S. § 38-511.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the date first above written.

WESTWARD HO ADVENTURES, LLC an Arizona
limited liability company, and owner, operator, and dba
Cowntown Range

By:_____

Name:_____

Title:_____

CITY OF PEORIA, ARIZONA a municipal
corporation of the State of Arizona

By:_____

Name:_____

Title:_____

Attest:

City Clerk

Approved as to Form:

City Attorney