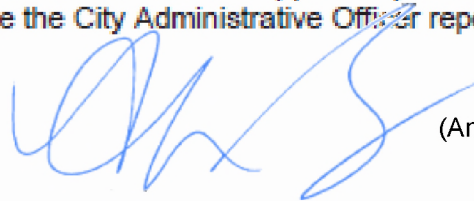


## TRANSMITTAL

|                        |                       |                  |
|------------------------|-----------------------|------------------|
| TO<br>The City Council | DATE<br>02/02/21      | COUNCIL FILE NO. |
| FROM<br>The Mayor      | COUNCIL DISTRICT<br>4 |                  |

**GRIFFITH PARK – GREEK THEATRE – FIRST AMENDED AND  
RESTATED AGREEMENT WITH SMG FOR GREEK THEATRE VENUE AND  
CONCESSIONS MANAGEMENT**

Approved and transmitted for your consideration. The Council has 60 days from the date of receipt to act, otherwise the contract will be deemed approved pursuant to Administrative Code Section 10.5(a). See the City Administrative Officer report attached.



(Ana Guerrero for)

\_\_\_\_\_  
ERIC GARCETTI  
MAYOR

REPORT FROM

## OFFICE OF THE CITY ADMINISTRATIVE OFFICER

---

Date: December 8, 2020

CAO File No. 0150-10575-0002

To: The Mayor

Council File No.  
Council District: 4

From: Richard H. Llewellyn, Jr., City Administrative Officer

References: Letter to the Mayor from the Board of Recreation and Park Commissioners dated August 24, 2020; referred by the Mayor on September 10, 2020

Subject: **GRIFFITH PARK – GREEK THEATRE – FIRST AMENDED AND RESTATED AGREEMENT WITH SMG FOR GREEK THEATRE VENUE AND CONCESSIONS MANAGEMENT**

---

### RECOMMENDATION

That the Council authorize the President and Secretary of the Board of Recreation and Park Commissioners to execute the First Amended and Restated Agreement to Contract No. 3680 between the City and SMG for Greek Theatre Venue and Concessions Management, subject to the approval of the City Attorney as to form.

### SUMMARY

At its meeting of August 20, 2020, the Board of Recreation and Park Commissioners (Board) approved the First Amended and Restated Agreement (First Amendment) to Contract No. 3680 between the City and SMG for Greek Theatre Venue and Concessions Management.

The City, through the Board and the Department of Recreation and Parks (Department), owns the Greek Theatre located at 2700 Vermont Avenue within Griffith Park in Council District 4.

On May 2, 2018, the Board approved a five-year Agreement with one five-year extension option for Venue and Concessions Management of the Greek Theatre to SMG, and the Agreement was executed on November 1, 2018. Under the Agreement, the Department pays an annual management fee (approximately \$2.06 million for Year One) to SMG to provide management services for the Greek Theatre Venue and SMG pays an annual Concession Fee to the Department to operate the Greek Theatre Concessions which includes a Minimum Annual Guarantee amount of \$2.3 million.



### Contract Amendment

Due to the COVID-19 pandemic, the 2020 Greek Theatre season was cancelled in conformance with mandatory health directives. To address the cancellation, the proposed First Amendment incorporates the following key provisions:

- 1) Extends the current contract by 14 months (12 months to recover revenue loss associated with the 2020 season and adds two months to align the term, which currently expires on October 31, 2023, with the end of the calendar year), and increases the number of concerts per season from no more than 76 to no more than 82;
- 2) Adds a Force Majeure clause which provides users, SMG, and the City, relief of obligation in the event of a natural disaster or pandemic event, such as COVID-19;
- 3) Relieves SMG from paying the minimum concession fee (\$2.3 million) for the 2020 season due to the cancellation of the 2020 season; and,
- 4) The SMG monthly management staff fee for Agreement Year Two will increase from approximately \$2.11 million to \$2.17 million due to the addition of two months to the Agreement Year Two term.

For Fiscal Year 2021-22, due to the uncertainties associated with the COVID-19 pandemic, the Department will continue to evaluate the Greek Theatre's operational needs and revenue collections, and will recommend appropriate funding level adjustment for Board approval as necessary.

Council approval of the proposed First Amendment is required because the Council approved the original agreement. To the best of our knowledge, SMG has complied with all standard provisions for City contracts, as well as City contracting requirements.

The Mayor's Fiscal Year 2020-21 Cost Containment Measures Memorandum dated June 24, 2020, reaffirmed by the Mayor's Fiscal Year 2020-21 Instructions for Fiscal Restraint dated September 11, 2020, directed departments to suspend the execution of new contracts, with limited exceptions for contracts that 1) are essential to public health and safety, 2) generate revenue, or 3) are legally mandated. The Services proposed under this contract are necessary to support the administration of the Greek Theatre Venue and Concessions Management and generates revenue for the Department. Therefore, the execution of the proposed contract is eligible for exemption from the direction in this Memorandum.

### **FISCAL IMPACT STATEMENT**

The funding for the proposed Amendment is available in Fund No. 57T Greek Theatre Special Fund, Account No. 89MG01 Greek Theatre Operation through June 30, 2021. There is no impact on the General Fund.

### **FINANCIAL POLICIES STATEMENT**

The recommendation in this report complies with the City's Financial Policies as the current year operations will be funded by current year revenues.

DEPARTMENT OF RECREATION  
AND PARKS

BOARD OF COMMISSIONERS

SYLVIA PATSAOURAS  
PRESIDENT

LYNN ALVAREZ  
VICE PRESIDENT

TAFARAI BAYNE  
NICOLE CHASE  
JOSEPH HALPER

HAROLD ARRIVILLAGA  
BOARD SECRETARY (213) 202-2640

City of Los Angeles  
California



ERIC GARCETTI  
MAYOR

MICHAEL A. SHULL  
GENERAL MANAGER

ANTHONY-PAUL (AP) DIAZ, ESQ.  
EXECUTIVE OFFICER &  
CHIEF OF STAFF

VICKI ISRAEL  
ASSISTANT GENERAL MANAGER

SOPHIA PIÑA-CORTEZ  
ASSISTANT GENERAL MANAGER

CATHIE SANTO DOMINGO  
ASSISTANT GENERAL MANAGER

(213) 202-2633 FAX (213) 202-2614

August 24, 2020

Honorable Eric Garcetti, Mayor  
City of Los Angeles  
Room 303, City Hall

Attention: Ms. Heleen Ramirez

Dear Mayor Garcetti:

In accordance with Executive Directive No. 3, attached herewith is a proposed first amendment and restatement of Agreement No. 3680 (Agreement), between the Department of Recreation and Parks (RAP) and SMG for Venue and Concessions Management of the Greek Theatre and authorization for RAP's General Manager or his designee to execute the amendment to the Agreement.

Attached is Board Report No. 20-168, which was adopted by the Board of Recreation and Park Commissioners at its Regular Meeting held on August 20, 2020. After your review and recommendation, the proposed Agreement will be submitted for final action.

If you have any questions with regard to the proposed refund claim, please contact Ms. Rachel Ramos, Senior Management Analyst II, Concessions, at (213) 202-5659.

Very truly yours,

BOARD OF RECREATION AND  
PARK COMMISSIONERS

HAROLD ARRIVILLAGA  
Commission Executive Assistant II

Attachments

cc: Rachel Ramos, Senior Management Analyst II, Concessions, Finance Branch  
Matthew Rudnick, Chief Management Analyst, Finance Branch



# APPROVED

AUG 20 2020

BOARD REPORT

BOARD OF RECREATION  
AND PARK COMMISSIONERS

NO. 20-168

DATE August 20, 2020

C.D. 4

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: GRIFFITH PARK – GREEK THEATRE – AMENDED AND RESTATED AGREEMENT WITH SMG FOR OVERSIGHT AND MANAGEMENT OF THE GREEK THEATRE AND FRANKLIN'S MARKET & CAFÉ AT THE ROOSEVELT GOLF COURSE AND AMENDMENT TO THE GREEK THEATRE USER AGREEMENT

|           |            |                  |       |
|-----------|------------|------------------|-------|
| * AP Diaz | <u>APD</u> | S. Piña-Cortez   | _____ |
| H. Fujita | _____      | C. Santo Domingo | _____ |
| V. Israel | _____      | N. Williams      | _____ |



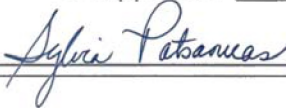
General Manager

Approved X

Disapproved \_\_\_\_\_

Withdrawn \_\_\_\_\_

If Approved: Board President



Board Secretary



RECOMMENDATIONS

1. Approve a proposed first amendment and restatement of Agreement No. 3680, between the Department of Recreation and Parks (RAP) and SMG for Venue and Concessions Management of the Greek Theatre, subject to approval by the City Council and by the City Attorney as to form;
2. Approve a proposed amendment to the User Agreement;
3. Authorize RAP staff to make any necessary technical changes to the amended and restated Agreement No. 3680 and the User Agreement, consistent with the intent of these actions to implement these policies; and
4. Authorize RAP's General Manager or his designee to execute the amendment to the Agreement substantially in the form attached (Attachment 1).

SUMMARY

The historic Greek Theatre is located at 2700 North Vermont Avenue in Griffith Park. The 5,901 capacity outdoor venue is among the City's most cherished public sites, and is one of the Nation's iconic outdoor entertainment venues. On April 15, 2015, the Board of Recreation and Park Commissioners (Board) approved the Operation and Management of the Greek Theatre as an Open Venue Model (Report No. 15-082).

On May 2, 2018, the Board approved award of a five-year Agreement with one five-year extension option for Venue and Concessions Management of the Greek Theatre to SMG. Contract No. 3680 ("Contract") between RAP and SMG was executed on November 1, 2018.



## BOARD REPORT

PG. 2      NO. 20-168

### **Contract Amendment**

Due to health risks associated with the COVID-19 pandemic, the 2020 season was canceled in conformance with mandatory health directives. As a result, SMG has requested a one-year extension of the initial five-year term so that they may enjoy their right to operate for a full five seasons. Currently, the term of the Contract is set to expire on October 31, 2023. To bring the contract term in line with the calendar year and to allow for an expanded concert season (as further discussed below), RAP staff recommends extending the term of the Contract for 14 months to end on December 31, 2024.

Under the proposed amendment, SMG is entitled to an increase in the maximum management fee owed this year. For Agreement Year 2 only, the annual management fee is proposed to be increased from \$2,109,193 to a maximum of \$2,174,210. This increase in the Annual Management Fee is because the amount will now cover a 14-month period of time instead of the standard 12 months. The management fee for all subsequent concert seasons remains the same as in the original agreement.

RAP has already paid SMG \$1,054,597 in management fees for work for the 2020 season from November 2019 through April 2020. RAP has not yet made any further payments for the months of May, June, or July. Assuming monthly payments resume on August 1, SMG would be owed \$223,922.60 per month for the remaining 5 months of the amended Agreement Year 2.

SMG did agree to waive its \$76,500 base compensation for the 2020 year. The portion of the base compensation (SMG management fee) totaling \$38,250 that was already paid to SMG for the 2020 season will be credited to RAP and applied toward the amount due for the 2021 season. SMG has also agreed, in this proposed amendment, to impose furloughs on its Greek Theatre staff equal to any furloughs that may be imposed on RAP staff by the City Council for the remainder of the contract.

Additionally, the proposed contract would relieve SMG of the requirement to pay any money toward the contractually-guaranteed Greek Theatre Concession Fee for Agreement Year 2 because of the cancellation of the 2020 concert season. Since SMG has already pre-paid \$1,150,002 in 2020 concession fees to RAP for Agreement Year 2, the amended contract allows RAP to retain that payment and credit it toward the company's concession fee owing for Agreement Year 3 (January 1, 2021 to December 31, 2021). This revised concert scheduled was unanimously adopted by the Greek Theatre Advisory Committee and has been vetted with other community members and Council District Four.

Finally, since all shows for the 2020 concert season were canceled, and many have been postponed or scheduled for the 2021 season, SMG and RAP propose an increase of six concerts a year from 76 to 82 for the remainder of the contract. To help manage and spread out these additional concerts, the amended contract expands the length of the Greek season by one month (adding two new weeks in early April and another two in early November).

## BOARD REPORT

PG. 3      NO. 20-168

### **User Agreement**

The User Agreement (Exhibit E of the Concession Agreement) is the contracting document utilized by SMG to provide a Right of Entry to the Greek Theatre to promoters or interested parties when booking acts, talent or events. The User Agreement was last amended on December 18, 2019 to increase the House Flat Rate (as defined in the User Agreement) from \$28,500 to \$30,000 (Report No. 19-246).

Here, staff recommends amending the User Agreement to add a Force Majeure clause which provides users, SMG, and the City relief of obligations in the event of a natural disaster or pandemic event such as COVID-19. In addition, the proposed amendments to the User Agreement would transfer risk of liability for certain acts, including property damage, from the promoter to SMG. However, any proposed transfer of risk is to be absorbed by SMG alone, and not RAP, as mirroring changes would be made to the proposed management agreement obligating SMG to indemnify RAP for any increased risk of liability resulting from the User Agreement.

### CONCLUSION

RAP staff recommends approval of the amended and restated agreement as set forth in this Report and as attached in Attachment 1. RAP staff further recommends approval of the amended User Agreement.

### FISCAL IMPACT

The proposed amendments, which are being made in response to the COVID-19 pandemic, will result in an increase of \$65,017 in the amount that RAP owes to SMG for Agreement year two plus an increase of \$2,237,591 in payments to SMG for the addition of a sixth Agreement year.

This Report was prepared by Rachel Ramos, Concessions Manager.

### LIST OF ATTACHMENTS:

Attachment 1: Proposed Amendment to Agreement for Venue and Concessions Management of the Greek Theatre (Exhibits not included except for an updated Exhibit L. All other exhibits remain the same as the original Agreement)

Attachment 2: Proposed Amendment to the User Agreement

Attachment 3: Redline versions of the Proposed Amendment to Agreement for Venue and Concessions Management of the Greek Theatre and Proposed Amendment to the User Agreement



**FIRST AMENDED AND RESTATED AGREEMENT  
FOR  
GREEK THEATRE  
VENUE AND CONCESSIONS MANAGEMENT  
Between**

**THE CITY OF LOS ANGELES DEPARTMENT OF  
RECREATION AND PARKS**

**And**

**SMG**

## TABLE OF CONTENTS

|   |    |
|---|----|
| SECTION 1. DEFINITIONS.....                                       | 3  |
| SECTION 2. RIGHTS AND RESPONSIBILITIES.....                       | 6  |
| SECTION 3. PREMISES.....  | 7  |
| SECTION 4. TERM.....  | 7  |
| SECTION 5. SERVICES AND OPERATING RESPONSIBILITIES.....           | 7  |
| SECTION 6. ANNUAL MANAGEMENT FEE .....                            | 22 |
| SECTION 7. REIMBURSABLE EXPENSES .....                            | 23 |
| SECTION 8. EVENT SERVICES STAFFING EXPENSES.....                  | 23 |
| SECTION 9. SPONSORSHIPS, BOX SEATS AND PREMIUM SEATING SALES..... | 24 |
| SECTION 10. CONCESSION FEE .....                                  | 24 |
| SECTION 11. ACCOUNTING, RECORDS AND ADDITIONAL FEES.....          | 28 |
| SECTION 12. IMPROVEMENTS .....                                    | 31 |
| SECTION 13. PREMISES MAINTENANCE .....                            | 32 |
| SECTION 14. PROHIBITED ACTS.....                                  | 34 |
| SECTION 15. NUMBER OF ORIGINALS.....                              | 36 |
| SECTION 16. RATIFICATION LANGUAGE.....                            | 36 |
| SECTION 17. PERFORMANCE DEPOSIT .....                             | 36 |
| SECTION 18. TAXES, PERMITS AND LICENSES.....                      | 37 |
| SECTION 19. TRANSFER OR ASSIGNMENT .....                          | 37 |
| SECTION 20. BUSINESS RECORDS .....                                | 38 |
| SECTION 21. REGULATIONS, INSPECTION, AND DIRECTIVES.....          | 40 |
| SECTION 22. SURRENDER OF POSSESSION.....                          | 43 |
| SECTION 23. NOTICES .....   | 43 |
| SECTION 24. INDEMNIFICATION .....                                 | 44 |
| SECTION 25. INCORPORATION OF DOCUMENTS.....                       | 45 |

## GREEK THEATRE VENUE AND CONCESSIONS MANAGEMENT AGREEMENT

**THIS FIRST AMENDED AND RESTATED AGREEMENT** ("AGREEMENT") is made and entered into this first day of September, 2020, by and between the CITY OF LOS ANGELES, a municipal corporation (hereinafter referred to as CITY), acting by and through its Department of Recreation and Parks ("RAP"), and SMG, a Pennsylvania General Partnership ("SMG" or "Contractor"). The CITY and SMG may hereafter be referred to individually as a "Party" and collectively as "Parties."

**WHEREAS**, the Parties entered into that certain AGREEMENT FOR GREEK THEATRE VENUE AND CONCESSIONS MANAGEMENT, on November 1, 2018, for the purposes of overseeing management of the Greek Theatre Venue, Greek Theatre Concessions, and the Franklin's Market & Café at the Roosevelt Golf Course (the "Original Agreement");

**WHEREAS**, RAP, previously found, in accordance with Charter Section 1022, that it is necessary, feasible and economical to secure these services by contract as it lacks sufficient and necessary personnel to undertake these specialized professional services; and

**WHEREAS**, RAP previously found, pursuant to Charter Section 371 (e) (10), and Los Angeles Administrative Code Section 10.15(a)(10), that the use of competitive bidding would be undesirable, impractical or otherwise excused by common law and the City's Charter because, unlike the purchase of a specified product, there is no single criterion, such as price comparison, that will determine which proposer can best provide the services required by RAP; and

**WHEREAS**, RAP previously found it necessary to utilize a standard request for proposal process and to evaluate proposals based upon the criteria included in a Request for Proposal (RFP); and

**WHEREAS**, RAP released a RFP for the Greek Theatre Venue and Concessions Management; and

**WHEREAS**, RAP received and evaluated two proposals from venue management companies; and

**WHEREAS**, SMG received the highest score, and was recommended and selected to manage the Greek Theatre Venue and Concessions in accordance with this the Original Agreement's terms and conditions; and

**WHEREAS**, SMG desired to enter into such Original Agreement to assist RAP in providing the public with premium, high-quality patron and community services at the Greek Theatre and Franklin's Market and Café; and

**WHEREAS**, the Parties desire to extend the Original Agreement term by an additional 14 months due to the cancellation of the 2020 season because of health risks associated with the COVID-19 pandemic, and, to extend the length of the concert season and to align the contract years under the AGREEMENT to coincide with calendar years; and

**WHEREAS**, SMG and CITY agree the Annual Management Fee due for Agreement Year 2 of the Original Agreement (starting from November 1, 2019 and ending December 31, 2020) be revised to reflect a reduction in the Annual Management Fee due per month to the amount of \$139,945.48 per month for the period of May 1, 2020 to December 31, 2020 due to the cancellation of the 2020

concert season at the Greek Theatre because of health risks associated with the COVID-19 pandemic; and

**WHEREAS**, SMG has requested it be relieved of the requirement to pay the minimum guaranteed concession fee for the Greek Theatre Concessions for the period of November 1, 2019 through December 31, 2020 due to the cancellation of the 2020 concert season at the Greek Theatre because of health risks associated with the COVID-19 pandemic and that any prepaid balance of such fee for such period be retained by RAP and credited to the minimum guaranteed concession fee owing for the period of January 1, 2021 through December 31, 2021; and

**WHEREAS**, the Parties agree the annual number of concerts shall be set as up to 82 concerts per year from early April through mid-November; and

**WHEREAS**, the Parties desire to restate the Original Agreement in its entirety, together with any new amendments;

**NOW THEREFORE**, in consideration of the terms, covenants and conditions hereinafter to be kept and performed by the respective Parties, it is agreed as follows:

## **SECTION 1. DEFINITIONS**

For the purpose of this AGREEMENT, the following words and phrases are defined and shall be construed as hereinafter set forth:

|                           |  |
|---------------------------|--|
| ADDITIONAL PARKING SITES: | Parking areas as specified in Section 3.   |
| ADMINISTRATIVE COSTS:     | SMG's general and administrative costs for operating the FACILITY, which are further described in Exhibit L.   |
| AGREEMENT:                | This AGREEMENT consisting of forty-seven (47) pages and Exhibits (A thru T) attached thereto.  |
| ANNUAL MANAGEMENT FEE:    | The annual compensation SMG will receive for its services as specified in Section 6.   |
| BOARD:                    | Board of Recreation and Park Commissioners.  |
| CITY:                     | The City of Los Angeles  |
| CITY FF&E COSTS:          | CITY's costs to equip the FACILITY with sufficient furnishings, fixtures and equipment to allow operation of the FACILITY as provided in Section 5U, except for SMG's ADMINISTRATIVE COSTS, SMG'S OFFICE FURNITURE AND EQUIPMENT, and equipment and furnishings described in |

|                                    |  |
|------------------------------------|--|
|                                    | Capital Improvement Plan of SMG's proposal (Exhibit H, pages 109-174).   |
| CITY'S OPERATING EXPENSES:         | Shall consist of: (i) UTILITY MAINTENANCE AND REPAIR COSTS, (ii) REIMBURSABLE EXPENSES, (iii) EVENT SERVICES AND STAFFING COSTS, (iv) CITY'S FF&E COSTS and (v) the ANNUAL MANAGEMENT FEE. CITY'S OPERATING EXPENSES shall be calculated in compliance with this AGREEMENT, Generally Accepted Accounting Principles (GAAP), City Controller's policies and procedures, the City Charter and the LAAC. |
| CONCERT SEASON:                    | April through Mid-November   |
| CONCESSION:                        | Greek Theatre and Franklin's Market & Café's concessions, the permitted operation granted by this AGREEMENT.   |
| DESIGNATED CONTRACT ADMINISTRATOR: | RAP's designated contract administrator to serve as SMG's and the GENERAL MANAGER's primary point of contact for oversight and operational management at the Greek Theatre and Franklin's Market & Café.   |
| EFFECTIVE DATE:                    | November 1, 2018   |
| EVENT SERVICES AND STAFFING COSTS: | Any and all expenses incurred, or payments made by SMG, in connection with the staffing, operation and production of events at the PREMISES, except for expenses included in SMG'S ANNUAL MANAGEMENT FEE.  |
| FACILITY:                          | GREEK THEATRE, located at 2700 N. Vermont Avenue, Griffith Park, Los Angeles, California 90027 and the Franklin's Market & Café, located at 2650 N. Vermont Avenue, Griffith Park, Los Angeles, California 90027.  |
| GENERAL MANAGER:                   | The SMG employee designated as the Greek Theatre and the Franklin's Market & Café Manager to oversee, operate and manage the FACILITY.   |
| LAAC:                              | Los Angeles Administrative Code  |
| LAMC:                              | Los Angeles Municipal Code   |



MANAGEMENT STAFFING  
COSTS:

All costs related to providing personnel for  
SMG's required positions.

OPEN VENUE MODEL:

The FACILITY operating model, as defined by  
the BOARD'S approved policies and  
procedures attached as Exhibits E, F and G

PREMISES:

The geographical area, as defined in Section  
3, including the FACILITY

RAP:

The Department of Recreation and Parks,  
acting through its Board of Recreation and  
Park Commissioners.

REIMBURSABLE EXPENSES:

A purchase, lease or operating expense paid  
by SMG on behalf of RAP, including but not  
limited to website hosting and maintenance  
costs; monies paid to non-DOT shuttle  
operator, if applicable; pre-approved  
expenses related to booking services for non-  
Greek venues; Greek Theatre venue cleaning  
services pre, during and post-concert/event;  
sound system and video equipment and other  
related expenses; lighting system and any  
other equipment other than sound monitoring  
equipment and equipment procured as a part  
of SMG'S OFFICE FURNITURE AND  
EQUIPMENT

SMG OFFICE COSTS:

SMG's costs to provide SMG'S OFFICE  
FURNITURE AND EQUIPMENT pursuant to  
Section 5U.

SPONSORSHIP AND  
PREMIUM SEATING REVENUE:

All gross revenue, less fulfillment costs, from  
the sale of all sponsorship deals and premium  
seating programs including, but not limited to:  
1) Box Suites, 2) Club Seats, 3) Season  
Subscriptions, 4) VIP Seating Packages, or  
other similar programs where license fees are  
charged in connection with seating programs  
created by SMG at the FACILITY. For  
purposes of this definition, SMG's staff time in  
servicing the needs of the sponsor shall not be  
considered a fulfillment cost.

UTILITY MAINTENANCE  
AND REPAIR COSTS:

The CITY'S costs for utilities (excluding  
telephone, trash pick-up, and internet  
connection charges, which will be paid by  
SMG) and for maintenance and repair of such

utilities as provided in Section 5Y, but excluding SMG's OFFICE COSTS.

## **SECTION 2. RIGHTS AND RESPONSIBILITIES**

The CITY hereby grants SMG, subject to this AGREEMENT's terms and conditions, the right to provide operational oversight and coordinated management of the Greek Theatre Venue, Greek Theatre Concessions, and Franklin's Market & Cafe at the Roosevelt Golf Course; and to act as RAP'S agent working with and under the direction of RAP with respect to the day to day operations of the FACILITY.

SMG shall manage and operate the FACILITY on a year-round basis per applicable CITY and RAP codes, rules, regulations, ordinances, and laws regarding, without limitation, levels of noise, accounting procedures and public/private access.

SMG shall provide food and beverage services at the Greek Theatre during all concerts and events as required by RAP or those booking the Greek Theatre.

SMG shall provide food and beverage, and related restaurant management, services at the Franklin's Market & Cafe 365 days a year in coordination with the Roosevelt Golf Course.

SMG shall coordinate and manage the Greek Theater's booking calendar and serve as the booking agent and fulfill riders for a minimum of ten concerts at other City locations, if requested by RAP. SMG agrees to use reasonable efforts in the performance of the following duties: assist RAP in obtaining and negotiating engagements with artists; advise, aid, counsel and guide RAP with respect to those engagements; and fulfill rider obligations required by those artists. Pre-approved, related expenses incurred by SMG in the fulfillment of rider obligations shall be a REIMBURSABLE EXPENSE.

SMG shall submit copies of all proposed sponsorship agreements for approval that relate to and/or affect the Greek Theatre and/or Franklin's Market + Cafe, including in-kind, barter and cash sponsorships, (see SECTION 9 "Sponsorships, Box Seats and Premium Seating Sales," for details).

SMG, in conjunction with RAP, shall organize and operate various community oriented operations and FACILITY related services such as traffic and parking control, security and crowd control measures, and pre and post-event, neighborhood clean-ups, community meetings and other duties described below.

SMG shall collect all fees for FACILITY services, maintain RAP-approved accounting records, pay for and obtain all licenses, permits and insurance (Insurance Requirements and Instructions, Exhibit B) (excluding insurance for CITY'S personal property and/or business interruption) necessary for venue management and concession services provided under this AGREEMENT, and perform or supervise SMG and subcontractor employees in the performance of all other tasks.

CITY reserves the right to develop or improve the PREMISES as needed, without interference or hindrance; however, CITY shall consider and request SMG's views and operational perspectives.

### **SECTION 3. PREMISES**

The PREMISES authorized for use by SMG shall only include:

- The Greek Theatre: main theatre structures; all areas, structures, and facilities in the North Wing, South Wing, North Concourse, South Concourse, and Front Concourse (Plaza); Box Office; concession areas, seating areas; adjacent hillside, light booth; immediate exterior walls, fencing and public access areas fronting North Vermont Avenue.
- All Greek Theatre parking lots, including the adjacent valley lots west of theatre.
- Franklin's Market + Café located at 2650 N. Vermont Ave. Los Angeles, CA 90027

SMG shall not use or permit the PREMISES to be used, in whole or in part, for any other purpose other than as set forth in this AGREEMENT except with prior, written consent of RAP, nor allow any use in violation of any present or future laws, ordinances, rules and regulations relating to sanitation or the public health, safety or welfare of operations at and in connection with the use of the PREMISES. SMG expressly agrees at all times to maintain, use and operate the PREMISES in a safe, clean, wholesome and sanitary condition, and in compliance with any and all present and future laws, ordinances and rules and regulations relating to public health, safety or welfare and RAP standards and directives.

In addition to the PREMISES, CITY shall provide SMG with ADDITIONAL PARKING SITES on Boy Scout Road, and such other parking areas as may be designated by the Parties for use only during show days, or other FACILITY use days. These additional areas may not be used for purposes other than to park vehicles of show patrons, employees of SMG and subcontractor employees and licensees at the FACILITY, unless otherwise approved by RAP. CITY shall retain responsibility for the maintenance of these parking areas.

CITY undertakes and agrees to deliver to SMG the PREMISES, further described in Exhibit C, for use by SMG in accordance with this AGREEMENT.

### **SECTION 4. TERM**

The term of the AGREEMENT shall be six years and 2 months, plus one five-year extension option exercisable at the RAP General Manager's sole discretion on 180 days' prior written notice, commencing on November 1, 2018 and terminating on December 31, 2024.

Neither City, nor any BOARD member, officer, or employee thereof shall be liable to SMG in excess of the then-applicable ANNUAL MANAGEMENT FEE and CITY'S OPERATING EXPENSES because of any action taken to terminate the AGREEMENT early pursuant to Section PSC-9 of the City's Standard Provisions. In addition, neither City, nor any BOARD member, officer, or employee thereof shall be liable to SMG for any reason because of an action to decline to exercise the five-year extension option or disapprove renewal of the AGREEMENT.

### **SECTION 5. SERVICES AND OPERATING RESPONSIBILITIES**

SMG shall, at all times, provide the following services and comply with the following conditions:

- A. Implementation, coordination and enforcement of RAP's Open Venue Model, booking, ticketing and operating documents, policies and procedures.
  1. SMG will provide oversight and management of the FACILITY.



2. SMG will be responsible for coordinating and collaborating with promoters, agents, and interested parties to facilitate no more than 82 concerts and, separately, additional community events during the CONCERT SEASON. Promotion of concerts or events at the Greek Theatre by SMG is strictly prohibited, consistent with an open venue model.
3. SMG agrees to use its Venue Management Software, at no additional cost to RAP, to manage, book and coordinate the execution of all events. SMG further agrees to manage the Challenge Process within the Venue Management Software. SMG will provide RAP access to all information and databases related to the FACILITY. All data captured within the Venue Management Software belongs to RAP and shall be provided to RAP upon request.
4. SMG will manage and provide all as-needed event services staffing required for each event or concert including, but not limited to, ushers, ticket-takers, security, event cleaning, parking attendants, shuttles, neighborhood event staffing and box office staff. SMG may use its own staff or subcontract for the event services staffing. However, SMG shall obtain written approval from City prior to subcontracting any services listed as being provided by SMG staff on the Proposed SMG Organizational Chart on page 62 of SMG's proposal (Exhibit H).
5. Event Management Staffing Plans: SMG must submit Event Services Staffing Plans to RAP for written approval ninety (90) days prior to the start of the CONCERT SEASON. The Event Services Staffing Plans must include appropriate staffing levels for all portions of the PREMISES and the surrounding neighborhood, including:
  - a. A traffic control plan to manage traffic that includes input from the community, RAP and City of Los Angeles Department of Transportation (DOT).
  - b. A security plan addressing security screening, venue crowd control inside and outside the PREMISES, including excessive noise, illegal merchandise vending, ticket scalping, alcohol/drug use, and littering on residential properties in the surrounding area. At a minimum the security plan shall:
    - Provide sufficient off-duty uniformed Los Angeles Police Department (LAPD) police officers and neighborhood event staff at key locations at the PREMISES and outside Griffith Park during all shows, including non-police neighborhood walking patrols.
    - Provide consistent post-show, neighborhood clean ups and area inspections related to concerts or events.
    - Provide other related services directly related to traffic control, neighborhood security, and clean up in areas immediately impacted by FACILITY.
6. **Parking and Shuttles**

SMG will manage all parking operations including a shuttle program to transport customers from off-site parking lots, transportation hubs or other leased parking areas. SMG shall obtain RAP's prior written approval before commencing contract negotiations or executing such contracts for any leased parking areas. Lease payments for approved parking areas shall be a REIMBURSABLE EXPENSE. SMG shall staff these operations with SMG's employees or may subcontract for one or both operations. **SMG shall pay to CITY one hundred (100) percent of all parking receipts received in the course of SMG's management of the parking operations under this AGREEMENT. Nothing in this section limits or otherwise reduces SMG's right to recover EVENT SERVICES AND STAFFING COSTS as otherwise set forth in this AGREEMENT.**

**7. Box Office Operations**

SMG shall manage and staff the Greek Theatre Box Office. There will be no exclusive rights to a particular ticketing vendor at the Greek Theatre, unless approved by RAP. A promoter, agent or other FACILITY user shall have the option to designate and select any ticketing vendor for their respective event, provided that such ticketing vendor meets all of the minimum requirements of RAP.

8. SMG shall coordinate with the Los Angeles Fire Department (LAFD), LAPD, and RAP Park Rangers on all scheduled events regarding Fire, EMS and security services required for public protection.
9. SMG shall perform annual Fire/Life Testing of the FACILITY through a licensed vendor in conformance with LAFD Regulation 4. Failure to perform annual test will result in a penalty of five hundred dollars (\$500.00) per day for noncompliance plus reimbursement to RAP for any costs incurred should RAP perform required testing. Noncompliance shall mean any time that passes beyond 365 days from the prior test.
10. SMG will at all times be responsible for maintaining public and concert staff ingress and egress to the FACILITY.
11. SMG will manage all VIP areas within the FACILITY and VIP Parking.
12. SMG will be responsible for enforcing RAP's established acceptable sound level requirements as set forth in the User Agreement (Exhibit E). As part of this responsibility, SMG shall be responsible for purchasing and keeping sound monitoring equipment in good working condition for every event produced at the Greek Theatre.

**B. Fiscal Responsibilities**

SMG shall act as RAP's fiscal agent for the OPEN VENUE MODEL. SMG will collect all fees associated with FACILITY operations, and will ensure proper accounting for all monies collected and any interest earned.

1. SMG shall ensure promoters and agents submit the required advance deposits, and any other fees for their events as established in the Booking Policy (Exhibit F) and the User Agreement.



2. SMG shall accept challenge request checks and process all challenges in compliance with RAP's Booking Policy.
3. SMG shall complete end of show settlements at the end of each show and will ensure monies for the show are properly distributed to all parties. SMG shall submit the end of show settlement statement to RAP within two (2) business days of settlement.
4. SMG shall manage and administer RAP's Promoter's Commercial Incentive Program Policy (Exhibit G).
  - a. Payment to promoters or agents achieving incentives will be made from the Greek Theatre bank account at the end of the CONCERT SEASON in accordance with the provisions set forth in SECTION 11.

### **C. Concession Rights and Responsibilities**

SMG will have the exclusive right and obligation to sell food, non-alcoholic and alcoholic beverages, and Greek Theatre merchandise from designated portions of the FACILITY and will be permitted to use mobile carts to sell such items at designated areas pursuant to RAP's prior approval, needs and requests. The address and telephone number of SMG will be shown along with the notation that all complaints regarding change, food and beverage, etc., should be referred directly to SMG.

1. **Freedom from Tuberculosis**  
For employees preparing food, and others as required by statute (reference Section 5163 of the California Public Resources Code) or directive of RAP, SMG shall provide RAP with certificates on applicable employees indicating freedom from communicable tuberculosis.
2. **Alcohol Service Training**  
All employees involved in the sale, service, and distribution of alcoholic beverages shall be trained in effective alcoholic awareness, which includes training based on any applicable Laws of California. This training shall include the State of California Department of Alcoholic Beverage Control (ABC) sanctioned training or the Licensee Education on Alcohol and Drugs Alcohol Seller/Server Training Program (LEAD) and may include, without limitation, policies and procedures developed by SMG dealing with alcohol management and a nationally-recognized program such as "Techniques For Effective Alcohol Management" (or "TEAM") or "Techniques For Intervention Procedures By Servers of Alcohol" (or "T.I.P.S."). SMG shall provide RAP with certificates on applicable training for all employees involved in the sale, service and distribution of alcoholic beverages.

SMG will not knowingly serve intoxicated persons and will coordinate with, and immediately notify venue security of any known or observed safety concerns, use of illegal substances and improper use of alcohol that pose immediate threats of safety to patrons and intoxicated individuals.

3. **Concession Manager**  
SMG shall appoint, subject to written approval by RAP, two Concession Managers to manage and oversee food and beverage concessions at the Greek Theatre and at Franklin's Market & Café, respectively.

Each such person must be a qualified and experienced manager or supervisor of operations, vested with full power and authority to accept service of all notices provided for herein and to manage and supervise the operation of the CONCESSION, including the quality and prices of CONCESSION goods and services, and the appearance, conduct, and demeanor of SMG's agents, servants, and employees. The Concession Manager shall be available during regular business hours and, at all times during that person's absence, a responsible subordinate shall be in charge and available.

The Concession Manager shall devote the greater part of his or her working time and attention to the operation of the CONCESSION and shall promote, increase and develop the business. During the days and hours established for the operation of the subject CONCESSION, the Concession Manager's personal attention shall not be directed toward the operation of any other business activity.

#### **4. Quality, Price Schedules and Merchandising**

SMG shall implement and offer varied, high-quality food products, specialty items, food and beverage offerings to patrons at the Greek Theatre and Franklin's Market & Cafe. SMG agrees to highlight and implement, when reasonably feasible, products and beverages from local purveyors including but not limited to: specialty regional food, craft beers, premium wines, unique and high end spirits and, in consultation with RAP and with RAP's approval, develop an operational plan for upcoming CONCERT SEASONS and individual events to ensure the highest quality products are offered to benefit patrons and provide high quality service, satisfaction and first-class food and beverage offerings consistent with the overall theme of the FACILITY.

- a. CITY agrees that SMG's merchandise, including its price for same, shall be within SMG's discretion; subject, however, to disapproval by RAP if the selection of items offered is inadequate, of inferior quality, or if any of said prices are excessively high or low in the sole opinion of RAP. Such determination shall not be unreasonable and shall take into account the business considerations presented by SMG. SMG shall present the menu selections and offerings to RAP for approval as follows: quarterly for Franklin's Market & Café and at least thirty (30) days prior to the beginning of the CONCERT SEASON for the Greek Theatre. Additionally, any in-season menu changes at the Greek Theatre shall be presented to RAP for approval prior to implementation. Menu selections and offerings must take into consideration the diversity of the events and the demographics of the event patrons. All prices shall be comparable to prices charged in similar establishments in the CITY.
- b. All menu items and service, offered for sale and/or sold by SMG in said PREMISES, shall be of high quality and must be related to the ordinary business of the CONCESSION. All merchandise kept for sale by SMG shall be kept subject to the approval or rejection of RAP and SMG shall remove from the PREMISES any article which may be rejected and shall not again offer it for sale without the written approval of RAP. RAP may order the improvement of the quality of any merchandise kept or offered for sale. In addition, no

substitutes, fillers, dilutants, nor reduction in size of standard manufactured or processed food products will be permitted.

- c. SMG shall offer for sale to the public a full range of fresh and pre-packaged food items and beverages (alcoholic and non- alcoholic).
- d. SMG shall offer for sale to the public an appropriate selection of food and refreshment items, which includes a variety of healthy choice options for food and beverages. This includes the availability of fresh fruits and fresh vegetables, bottled water, 100% juice, beverages that contain at least 50% fruit juice with no added sweeteners, and healthy snacks. SMG expressly agrees to comply with CITY'S Good Food Purchasing Guidelines for Food Service Institutions.
- e. SMG shall not use artificial trans-fat (e.g., industrially created partial hydrogenation plant oils) in the preparation of food products. All prepared food items are to be free of artificial trans-fat. SMG shall use only artificial trans-fat free prepackaged food items.
- f. The sale of liquor, beer, and wine is permitted. SMG is solely responsible for obtaining all necessary licenses and permits, including but not limited to Alcoholic Beverage Control License, for the sale of such items. RAP shall provide all cooperation and assistance necessary for SMG to secure necessary licenses under this paragraph. At the termination of this AGREEMENT, SMG shall transfer all necessary licenses and permits to the successor food and beverage concessionaire at fair market value, where applicable, within thirty (30) days of termination, unless prohibited or prevented by the respective licensing authority.
- g. The sale of energy drinks is prohibited.
- h. SMG will implement the proposed plan for Food and Beverage guidelines outlined in SMG Proposal Pages 176 through 229 (Exhibit H).

All merchandise sold or kept for sale by SMG shall be of first class, high-quality and acceptable to all industry standards and conform to all federal, state, and municipal laws, ordinances, and regulations in every respect. No imitation, adulterated, misbranded, or impure articles shall be sold or kept for sale by SMG and all edible merchandise kept on hand shall be stored and handled with due regard for sanitation.

- i. SMG shall minimize the paper items (straw covers, serving cartons, etc.) distributed with take-out CONCESSION products. SMG shall be prohibited from selling merchandise in non-recyclable bottles, and shall not dispense take-out food or beverage items in glass or Expanded Polystyrene (EPS) / Styrofoam containers or with plastic straws. SMG shall not sell or give away or otherwise dispose of any commodity which in the opinion of RAP will cause undue litter. SMG expressly agrees to comply with all CITY and RAP recycling programs.



- j. SMG shall organize and efficiently manage the CONCESSIONS to provide First Class, as defined herein, service and products in a clean, attractive and pleasant atmosphere. For purposes of this AGREEMENT, "First Class" shall mean a manner of operation of the concessions or a standard of quality of products, merchandise and services, as might be comparable to those of similar high-quality concert venue and non-concert venue food service establishments. For Franklin's Market & Café, specifically, this obligation shall include the requirement for SMG to provide Café patrons with background music and free Wi-Fi internet access during business hours.

**5. Receipts**

- a. On request, SMG shall offer receipts to customers for every transaction.
- b. SMG shall at all times have a sign placed within twelve (12) inches of any cash register, in clear view to the public, and in minimum one-inch lettering, which states: "If a receipt for this transaction is not provided on request, please contact Department of Recreation and Parks - Concessions Unit at (213) 202-3280."

**6. Hours / Days of Operation**

- a. During Greek Theatre Concerts the CONCESSION will be open in accordance with the User Agreement (Exhibit E) and mutually agreed upon operating times and hours necessary and consistent with event show plans for each performance.
- b. Franklin's Market & Café ("Café") will be open 365 days a year in coordination with the Roosevelt Golf Course. The Café will open at least thirty minutes prior to the first scheduled tee time and close one hour after sunset. SMG may request adjustment of hours subject to approval by RAP.
- c. NON-CONCERTS AND EVENTS: The Front Plaza Area of the Greek Theatre will be open in accordance with RAP's operating plans, hours and needs, and the CONCESSION will be open based upon mutually agreed operating times necessary and consistent to offer a year-round operation.

D. SMG will keep a separate set of financial records for the Franklin's Market & Café.

E. SMG shall be accessible to RAP and the surrounding community year round to address questions and concerns and to collaborate on all aspects of FACILITY operations in conjunction with RAP's designated Community Liaison.

**F. Website, Social Media and Wi-Fi**

SMG will coordinate with RAP's website vendor to maintain current event and promotional content on the website, including but not limited to, updating concert calendar, promotional opportunities, venue information, ticketing, parking and shuttle services and food and beverage selections. SMG will coordinate resolution of any potential issues with the website vendor. SMG will coordinate and manage all social media apps for the Greek

Theatre including, but not limited to Twitter, Facebook, Instagram or other designated SMG social media outlets. SMG shall provide full administrative access to City staff, including log in information and passwords, to all social media accounts during the term of this AGREEMENT. Upon expiration or termination of this AGREEMENT, SMG shall provide administrative access and information to all social media accounts and, if necessary, assign or transfer ownership of said accounts to the City. SMG shall provide designated City staff with access to the FACILITY's highest-speed available non-public Wi-Fi, including log in information and passwords for such Wi-Fi.

**G. Operating Budget and Reports**

SMG will prepare and submit the following reports: an annual FACILITY operating budget; monthly revenue reports; annual branding campaign; outreach program summary; cash outflow projections submitted on or before April 1 each year; and pro-forma for the length of the AGREEMENT. In addition, SMG will submit audited financials on an annual basis. RAP may request additional reports to assist RAP with managing the FACILITY. SMG will cooperate with RAP to provide the requested reports. The reports may be changed from time to time to include additional information as required by RAP.

**H. International Alliance of Theatrical Stage Employees and American Federation of Musicians Agreements**

SMG shall use existing union contracts to develop and hold agreements with the International Alliance of Theatrical Stage Employees (IATSE) Local 33 (Stage Technicians Union) and 857 (Treasurers and Ticket Sellers Union) and develop and hold contracts with IATSE Local 706 (Make-up Artists and Hair Stylists Guild), Local 768 (Theatrical Wardrobe Union) and the American Federation of Musicians, Local 47 (AFM Local 47). SMG will coordinate the reasonable use of FACILITY to IATSE for job training opportunities at IATSE's cost. There will be no FACILITY rental fee charged to IATSE for this use.

**I. Community Cultural Events**

SMG shall use reasonable efforts to raise funds to offset FACILITY rental fees and the production costs of a **minimum of three (3) annually identified community \ cultural events** to support local performances in consultation and with RAP approvals. SMG will not be responsible for any shortfalls. Should a shortfall occur, SMG shall collect the appropriate fees in compliance with RAP policies. **The Parties agree that CITY shall retain the right to host additional community \ cultural events at the FACILITY at CITY's own expense.**

**J. Filming**

It is the policy of the CITY to facilitate the use of CITY properties as film locations when appropriate. RAP has established a Park Film Office to coordinate the use of park property for film production purposes. All fees for use of park property by film production companies shall be established and collected in accordance with CITY and RAP policies. SMG shall charge any fees for film production conducted at FACILITY as provided in the User Agreement and for filming on the PREMISES on non-event days, such uses and fees subject to RAP approval.



- K. SMG will work with private entities to book the FACILITY for private events throughout the year. RAP must authorize all non-CONCERT SEASON events. There will be no FACILITY rental fee charged to the organizer of such an event if that event is sponsored by RAP.

**L. Customer Satisfaction Surveys**

SMG shall be responsible to conduct customer satisfaction surveys after every event, measuring the quality of service being delivered to patrons in five (5) separate categories: Security, Food & Beverage, Traffic/Parking, Environment and Technology. SMG will provide summary reports to RAP on June 15, September 15 and November 15 of each year for all events held in the previous reporting period. RAP shall be consulted regarding survey questions and reserves the right to suggest additional questions as necessary to assist in the evaluation of community satisfaction. Surveys may be carried out in the form of e-mail messaging, QR codes, website link, or other methods as determined by SMG.

**M. Community Engagement**

1. SMG agrees to organize, host, maintain, oversee and arrange a regular monthly community meeting to accommodate neighborhood associations and community groups at times when convenient for the public to attend such meetings. Should SMG fail to host community meetings for two (2) consecutive months, such failure will be considered a material breach and may result in termination of this AGREEMENT.
2. SMG shall work in conjunction with RAP's assigned community liaison(s) and work collaboratively to address all issues related to community engagement and outreach.
3. SMG will establish and maintain a telephone 'hotline' to accommodate public feedback and develop a log to monitor response times and respond to calls within 24 to 48 hours.

**N. Greek Theatre Advisory Committee**

SMG agrees to organize, host (provide light refreshments), maintain, oversee and arrange RAP's Greek Theatre Advisory Committee (GTAC), which shall act solely in an advisory capacity to RAP in specific matters relating to the operation of the FACILITY. GTAC may make recommendations to RAP regarding programs related to theatre operations, maintenance, concessions, merchandising, traffic control, security, and community relations, and will work with RAP and SMG on ways to enhance community involvement and cultural enrichment. SMG shall staff, host and coordinate a monthly meeting with GTAC to keep the community engaged, informed and to resolve quality of life issues associated with the FACILITY. However, operation of the FACILITY is the contractual obligation of SMG and GTAC is to remain an advisory entity representing community interests related to the Greek Theatre.

**O. Citywide Outreach**

SMG shall coordinate and cooperate with RAP to develop strategies to outreach to at risk youth to provide enrichment opportunities including, but not limited to, job training, workshops, tours, educational concerts or attending concerts/events.

**P. Cleanliness**

SMG shall ensure the FACILITY and PREMISES are always maintained in a safe and clean condition and will work in conjunction with RAP to keep the PREMISES, including the theatre building, parking lots, surrounding community and the surrounding hillside (including fencing), clean, uncluttered, and sanitary at all times. SMG shall work in conjunction with RAP to keep the VIP Parking Lot, the adjacent valley (west of the Greek Theatre) and the surrounding area impacted by the FACILITY, clean, uncluttered and sanitary after all events or other use by SMG. SMG shall work in conjunction with RAP and/or custodial subcontractors to provide all necessary janitorial services to maintain PREMISES, restrooms and public areas according to CITY standards. SMG agrees to respond to and correct in accordance with any instruction given by RAP immediately or to provide a written response within twenty-four (24) hours of necessary corrective action.

SMG shall not permit any offensive or refuse matter, or any substance constituting an unnecessary, unreasonable, or unlawful fire hazard, or any material detrimental to the public health, to remain on the PREMISES, and SMG shall prevent any such matter or material from being or accumulating upon said PREMISES.

SMG, at its own expense, shall ensure that all garbage or refuse is collected from the PREMISES offices, as often as necessary and in no case less than twice a week, and disposed of in the main dumpster. This expense is included in the ANNUAL MANAGEMENT FEE. SMG will incur the cost of all garbage pick-ups from the main dumpster for the PREMISES during the term of this AGREEMENT.

**Q. Conduct**

SMG and its representatives, agents, servants, and employees shall at all times conduct its business in a quiet and orderly manner to the satisfaction of RAP.

**R. Disorderly Persons**

SMG shall use its best efforts to permit no intoxicated person or persons, profane or indecent language, or boisterous or loud conduct in or about the PREMISES and will call upon the aid of peace officers to assist in maintaining peaceful conditions. SMG shall not knowingly allow the use or possession of illegal drugs, narcotics, or controlled substances on the PREMISES.

**S. Personnel**

1. SMG shall develop a protocol, subject to RAP approval, for the engagement of any employee or subcontractor. SMG's protocol shall comply with all applicable CITY, STATE, and/or Federal labor laws.

**2. Qualified Personnel**

SMG will, in the operation of the FACILITY, employ or permit the employment of only such personnel as will assure a high standard of service to the public and cooperation with the CITY. All personnel will be trained in accordance with SMG's submitted training plan prior to starting work at the PREMISES. All such personnel, while on or about the PREMISES, shall be neat in appearance and directed to be courteous at all times and shall be appropriately attired in conjunction with agreed upon appearance

standards attached, with badges or other suitable means of identification. SMG shall prohibit persons employed by SMG, while on or about the PREMISES, to be under the influence of illegal drugs, narcotics, other controlled substances or alcohol, or use inappropriate language, or engage in otherwise inappropriate conduct for a work environment. In the event an employee is not satisfactory, RAP may direct SMG to remove that person from the PREMISES or from employment at the FACILITY. SMG will create an employee handbook that will delineate these requirements to be signed by all employees.

**3. GENERAL MANAGER of the FACILITY:**

SMG shall appoint, subject to written approval and consent by RAP, a GENERAL MANAGER of SMG's operations at the Greek Theatre and Franklin's Market & Café.

The GENERAL MANAGER must be a qualified and experienced manager or supervisor of operations with a minimum of ten years' experience in concert venue or other similar entertainment venue management and adequate technical background, vested with full power and authority to accept service of all notices provided for herein and to manage and supervise the operation of the FACILITY, including the quality and prices of goods and services, and the appearance, conduct, and demeanor of SMG's agents, servants, and employees. The GENERAL MANAGER shall be available on-site during normal business hours, including show times and, at all times during that person's absence, a responsible subordinate shall be in charge and available on-site. The authority of the GENERAL MANAGER includes, but is not limited to, the ability to: hire, fire, and schedule personnel; order merchandise and materials; oversee inventory control and tracking; implement a marketing plan; maintain accounting records; book parties and events; oversee operations; train employees (to include such areas as customer service); and have ultimate on-site decision-making responsibility, as delegated and under the ultimate discretion of RAP.

The GENERAL MANAGER shall devote the greater part of their working time and attention to the FACILITY's operation and shall promote, increase and develop all business related to the FACILITY's operation. During the days and hours established for the operation of the subject FACILITY, the GENERAL MANAGER's personal attention shall not be directed toward the operation of any other business activity.

The GENERAL MANAGER will serve as the primary and direct liaison to RAP's DESIGNATED CONTRACT ADMINISTRATOR and shall be responsible for maintaining and developing consistent and regular communication, meetings and reporting of all FACILITY activities, venue related issues and those issues directly affecting the neighborhood and surrounding communities. RAP's DESIGNATED CONTRACTOR ADMINISTRATOR will maintain direct oversight and responsibilities for ensuring SMG's compliance with this AGREEMENT and the GENERAL MANAGER agrees to work with such DESIGNATED CONTRACT ADMINISTRATOR to carry out SMG's duties and responsibilities required in this AGREEMENT.

**4. Approval of Personnel**



RAP shall have the right to approve or disapprove any employees of SMG hired to work in any capacity at the FACILITY.

**T. Diversion of Business**

SMG shall not divert, cause, allow, or permit to be diverted any business from the PREMISES and shall take all reasonable measures, to develop, maintain, and increase the business conducted by it under the AGREEMENT.

**U. Equipment and Furnishings**

1. Office space at the FACILITY (but not office equipment and furniture) will be provided to SMG by CITY at no cost to SMG. SMG shall provide, maintain and repair office furniture and equipment necessary to operate the administrative offices located at the FACILITY ("SMG's OFFICE FURNITURE AND EQUIPMENT"). SMG shall pay all SMG's OFFICE FURNITURE AND EQUIPMENT costs with no reimbursement from CITY. SMG's office furniture and equipment shall remain the personal property of SMG. RAP reserves the right to approve or disapprove any office equipment and/or furnishing provided at the Greek Theatre.
2. Except for (i) the equipment and furniture described in the Capital Improvement Plan of SMG's proposal (pages 109-174); (ii) SMG's OFFICE FURNITURE AND EQUIPMENT, and (iii) ADMINISTRATIVE COSTS, the CITY shall provide or obtain non-concession related equipment, furnishings, and expendables required to operate the PREMISES (all such property being referred to herein as "CITY'S FF&E"). CITY may request SMG to purchase and install the same on its behalf and, in such case, the expense of doing so shall be a REIMBURSABLE EXPENSE. SMG shall deliver an inventory of all equipment with designation of ownership at the beginning of each calendar year and for each year of the term of the AGREEMENT thereafter. The inventory report shall include updated equipment lists as well as equipment status, length of remaining useful life, and explanations of any reduction in inventory. If, upon termination of the AGREEMENT, RAP does not renew said AGREEMENT, SMG shall have the right to remove its OFFICE FURNITURE AND EQUIPMENT, but not improvements, from the PREMISES and shall be allowed a period of three (3) calendar days to complete such removal. If not removed within that period, said equipment, furnishings and expendables shall become the property of RAP.
3. Concession Equipment  
  
All equipment, furnishings, and expendables, not listed on page 3 of Exhibit R, required for CONCESSION operations shall be purchased and installed by SMG at its sole expense and shall, excluding fixtures and City-owned equipment, remain its personal property. The foregoing notwithstanding, the equipment identified in Exhibit R, pages 1-2 (i.e. "Equipment" and "Kitchen Equipment"), shall be purchased by SMG with the SMG Capital Contribution as defined in Section 12, and shall remain SMG's personal property until expiration of the fifth year of this AGREEMENT.

**V. Maintenance of Equipment**



SMG shall maintain and repair, at its own expense and without reimbursement from the CITY, those items set forth in Exhibit D (Maintenance Responsibilities of SMG). Except for such items as set forth in Exhibit D, CITY will be responsible for maintenance and repair of the PREMISES, the FACILITY, ADDITIONAL PARKING SITES and all CITY FF&E, which the CITY shall maintain and repair in a manner to support a premium, high-quality operation. CITY may request SMG to maintain and repair such PREMISES, FACILITY AND CITY'S FF&E on its behalf and, in such case, the expense of doing so shall be a REIMBURSABLE EXPENSE. The CITY reserves the right to conduct inspections of the FACILITY and make additional requirements to the maintenance of equipment at any time or to approve or disapprove the placement of any property located on any location on or within the PREMISES.

SMG shall, at all times and at its expense, keep and maintain SMG's OFFICE FURNITURE AND EQUIPMENT, in good repair and in a clean, sanitary, and orderly condition and appearance.

No equipment provided by CITY shall be removed or replaced by SMG without the prior written consent of RAP.

**W. Permits and Licenses**

SMG shall obtain at its sole expense any and all permits, approvals, and licenses that may be required in connection with the operation of the FACILITY including, but not limited to: tax permits, business licenses, health permits, police, fire and Building and Safety permits. All permits, approvals and licenses shall be posted in the appropriate areas on a year-round basis

**X. Signs and Advertisements**

SMG shall not erect, construct, or place any signs, banners, ads, or displays of any kind whatsoever (each a "Sign" and collectively, "Signs") upon any portion of CITY property, including websites, without the prior written approval from RAP, who reserves the right in its sole discretion to approve any such Signs and who may require the removal or refurbishment of any previously approved Sign.

SMG shall not permit vendors to display wares inside or outside the FACILITY or on the PREMISES unless written permission is secured from RAP in advance of installation, and such permission shall be subject to revocation at any time but shall not be unreasonably withheld, unless signage is part of a concessionaire or approved artist merchandise. The type of Sign or advertisement and the duration of display shall be approved in advance and in writing by RAP.

At the FACILITY, a sign may be posted in a non-public place stating that the FACILITY is operated by SMG under an AGREEMENT issued by CITY through the Department of Recreation and Parks.

SMG shall not display any signs, banners, ads, displays, logos, lanyards, or name badges of any kind whatsoever that identify or otherwise name ASM Global, except to identify SMG as a subsidiary of ASM GLOBAL. In the instance of such subsidiary identification,

the font size used to identify SMG must be at least 50% larger than the font size used to identify ASM Global.

**Y. Utilities**

RAP shall pay for utility charges associated with the PREMISES, FACILITY and ADDITIONAL PARKING SITES, with the exception of telephone, internet and trash pick-up. Charges for telephone, internet and trash pick-up shall be paid by SMG and are included in SMG's ADMINISTRATIVE COSTS regardless of whether such utility services are furnished by CITY or by other utility service providers. The telephone number shall be placed in the FACILITY's name and shall not be transferable to any other location. SMG will comply with all water and energy saving policies and produce a monthly report on achieving improvements in water and energy usage.

Except to the extent of CITY's fault, including failure to maintain and repair as provided in this AGREEMENT, SMG hereby expressly waives all claims for compensation, or for any diminution or abatement of the revenue-sharing payment provided for herein, for any and all loss or damage sustained by reason of any defect, deficiency, or impairment of the water, heating, or air conditioning systems, electrical apparatus, or wires furnished to the PREMISES which may occur from time to time and from any cause or from any loss resulting from an event of Force Majeure including but not limited to water, earthquake, wind, acts of terrorism, civil commotion, or riot; and SMG hereby expressly releases and discharges CITY and its officers, employees, and agents from any and all demands, claims, actions, and causes of action arising from any of the aforesaid causes.

In all instances of damage to any utility service line, CITY shall be responsible for the cost of repairs and any and all damages occasioned thereby, except to the extent that such damage is caused by the negligence or willful conduct of SMG, its employees, or its subcontractors.

SMG shall use best efforts to assure that water and energy are utilized by SMG in the most efficient manner possible, and SMG expressly agrees to comply with all CITY water and energy conservation programs.

SMG shall reimburse RAP for any telephone, internet or trash pick-up charges paid by RAP.

**Z. Safety**

SMG will prepare a safety plan with specific training programs for all employees. SMG will designate a safety officer to report on safety statistics including employee and patron injuries on a monthly basis. SMG will review all workers compensation claims that arise from the PREMISES.

SMG shall correct violations of safety practices immediately and shall cooperate fully with CITY in the investigation of accidents occurring on the PREMISES. SMG agrees to respond to and correct in accordance with any instruction of RAP immediately or to provide a written response within twenty-four (24) hours of necessary corrective action. In the event of injury to an employee, staff person, manager, patron or customer, SMG shall

summon medical attention as soon as reasonably possible thereafter. SMG shall keep internal documentation of the incident and shall submit to RAP a CITY Form General No. 87 "Non-Employee Accident or Illness Report" (Exhibit I) within forty-eight (48) hours of the incident, and two (2) copies of all Accident/incident reports shall be sent to the address identified in SECTION 23 NOTICES.

If SMG fails to correct in a timely manner any hazardous conditions which have led or, in the reasonable opinion of RAP, could lead to injury, RAP may at its option, and in addition to all other remedies (including termination of this AGREEMENT) which may be available to it, take the necessary action to remedy that condition and recover the cost thereof, including administrative overhead, to be paid by SMG to CITY as set forth in SECTION 11.E; provided that SMG shall not be responsible for such hazardous conditions to the extent caused by CITY or which are otherwise an obligation of the CITY.

**AA. Security**

SMG shall be responsible for the security of the PREMISES. SMG will designate a security director to report on security statistics on a monthly basis. SMG may install equipment, which will assist in protecting the PREMISES from theft, burglary, or vandalism. Any such equipment must be purchased, installed, and maintained by SMG and shall be a REIMBURSABLE EXPENSE. SMG shall obtain RAP's prior written approval for the expenditure. Security personnel shall remain on duty while guests and artists are on the PREMISES.

**BB. Intellectual Property**

"The Greek Theatre" and the Greek Theatre logo (collectively, "Trademarks"), attached as Exhibit T, are registered trademarks of the City. Use of these Trademarks without permission may constitute trademark infringement and unfair competition in violation of federal and state law. Except as permitted in this AGREEMENT, SMG may not:

1. Use the Trademarks in connection with any products or services unrelated to this AGREEMENT;
2. Use any trademarks confusingly similar to the Trademarks in connection with any products or services unrelated to this AGREEMENT;
3. Create or maintain a website, unrelated to this AGREEMENT, using a domain name confusingly similar to the Trademarks or including the words "Greek Theatre";
4. Register or attempt to register the Trademarks or any marks confusingly similar to them; and
5. Challenge or dispute City's ownership of and rights to the Trademarks and the validity of any of City's registrations or applications for the Trademarks.

**CC. Traffic Studies**

SMG shall prepare an annual study of and report on traffic congestion associated with the Greek Theatre and Griffith Observatory that reviews best practices, necessary



capital improvements, successful measures, and required refinement and recommendations. The annual traffic study and report shall be completed by traffic engineering firms experienced in the study of neighborhoods impacted by congestion of local streets. The annual traffic report shall be done in consultation with all interested public stakeholders, Council District 4 (CD 4), and RAP staff. The final traffic study and report shall be presented annually to the community through an organized community meeting involving CD 4, RAP and neighborhood stakeholders. SMG agrees that the annual traffic studies, and related costs, are non-reimbursable expenses.

## **SECTION 6. ANNUAL MANAGEMENT FEE**

An ANNUAL MANAGEMENT FEE shall be paid by CITY to SMG for the services provided by SMG. The ANNUAL MANAGEMENT FEE shall consist of the following three components:

1. All Greek Theatre Management staff and all corresponding operations expenses, including but not limited to payroll taxes, insurance, employee benefits, bonds and any other employee related expenses;
2. ADMINISTRATIVE COSTS necessary to operate the facility (inclusive of maintenance); and
3. SMG Management Fee

The Greek Theatre Management Team shall consist of the following position classifications. Each of the following positions shall be filled and maintained to perform the services required in this AGREEMENT: Greek Theatre General Manager, Executive Assistant, Director of Finance, Director of Food & Beverage, Director of Sales/Special Events, Director of Event Services, Senior Finance Manager, Box Office Manager, Purchasing Manager, Human Resource Generalist, F&B Controller, Franklin's Market & Café Manager, Greek Theater Concessions Manager, Chef, Premium Programs Sales Manager, Premium/Sponsorship Fulfillment Coordinator, Marketing Manager/Booking Coordinator, Marketing Coordinator, Event Manager, Facility Maintenance Manager, Part-time Servers, Part-time SMG Staff/Non-profit groups, Part-time Guest services, and Part-time Ops Event Set-up.

Failure to maintain these positions will be considered a material breach and may result in deductions of the Greek Theatre Management Team expense to SMG. In addition to any deductions, failure to maintain the positions, may result in termination of AGREEMENT, if SMG thereafter fails to (i) continuously and diligently to pursue a remedy, and (ii) appoint an interim staff person within forty-five days thereafter.

Subject to reasonable modification at discretion of SMG with approval by RAP, and provided that it shall not create any variance to the MANAGEMENT STAFFING COSTS, the CITY reserves the right to approve or disapprove or have removed any employee of SMG or of the FACILITY from working at the Greek Theatre and/or Franklin's Market & Café and SMG agrees to comply and remove any SMG or contracted employee from employment at the FACILITY or its PREMISES if requested by CITY.



SMG will be reimbursed for ADMINISTRATIVE COSTS not to exceed the amount set forth in the chart below by providing RAP the appropriate documentation to support the itemized expense. The definition of ADMINISTRATIVE COSTS notwithstanding, SMG will not be reimbursed for expenses in any of the following categories of ADMINISTRATIVE COSTS if the expense is incurred between August 12, 2020 and December 31, 2020: Travel, Meals & Entertainment, Meetings & Conventions, Advertising, Promotional, Credit Card Discounts, Uniforms, and Relocation. However, Advertising and Promotional expenses incurred between August 12, 2020 and December 31, 2020 may be reimbursed if RAP's General Manager gives written approval prior to such an expense being incurred.

Subject to any deductions resulting from the failure to maintain the Greek Theatre Management Team and to actual costs incurred, the ANNUAL MANAGEMENT FEE shall not exceed the TOTAL amounts shown in the following chart:

| AGREEMENT YEAR       | CONCERT SEASON | STAFF EXPENSES | ADMINISTRATIVE COSTS | SMG MANAGEMENT FEE | TOTAL       |
|----------------------|----------------|----------------|----------------------|--------------------|-------------|
| 1 [11/1/18-10/31/19] | 2019           | \$1,006,340    | \$976,100            | \$75,000           | \$2,057,440 |
| 2 [11/1/19-12/31/20] | 2020           | \$1,134,840    | \$1,001,120          | \$0                | \$2,174,210 |
| 3 [1/1/21-12/31/21]  | 2021           | \$1,031,573    | \$1,001,120          | \$76,500           | \$2,109,193 |
| 4 [1/1/22-12/31/22]  | 2022           | \$1,057,516    | \$1,021,373          | \$78,030           | \$2,156,919 |
| 5 [1/1/23-12/31/23]  | 2023           | \$1,084,190    | \$1,024,037          | \$79,591           | \$2,187,818 |
| 6 [1/1/24-12/31/24]  | 2024           | \$1,111,618    | \$1,044,791          | \$81,182           | \$2,237,591 |

Any amount paid as a SMG Management Fee by RAP, during Agreement Year 2, shall be retained by SMG and credited to the SMG Management Fee due for Agreement Year 3, which is the period from January 1, 2021 to December 31, 2021.

Should the City Council impose furloughs upon RAP staff at any time during the term of this contract, SMG agrees that it shall impose matching furloughs upon SMG staff to achieve an equal percentage reduction in staff expenses for as long as the RAP furloughs are imposed. Any furloughs imposed on SMG staff pursuant to this provision may be waived or reduced upon the written approval of RAP's General Manager.

## **SECTION 7. REIMBURSABLE EXPENSES**

SMG will procure services necessary for the FACILITY's operation for and on behalf of RAP, as not otherwise required by SMG. SMG will only utilize qualified vendors for any equipment or service and will receive written authorization by RAP for said services or procurement. SMG must obtain RAP's prior written approval for any expenditure. SMG will be reimbursed for the equipment or service costs by providing RAP the appropriate documentation to support the request for reimbursement. REIMBURSABLE EXPENSES will be included in the Monthly Event Closing Statement for reimbursement.

## **SECTION 8. EVENT SERVICES STAFFING EXPENSES**

SMG shall ensure each event at FACILITY is staffed in accordance with the approved Event Services Staffing Plan. Each event will include the following position classifications and have the following services performed:

Usher, ticket takers, security, load in staff, breakers, set up staff, cleaners, elevator staff, parking attendants, box office personnel, neighborhood event staffing, administration, hospitality, LAPD officers (off duty or on duty uniformed), DOT officers, LAFD Emergency Medical Technicians, traffic control and equipment.

For the 2019 AGREEMENT year, rates billed for EVENT SERVICES AND STAFFING COSTS for the applicable cost category are provided for in Exhibit L. The EVENT SERVICES AND STAFFING COSTS for subsequent years must be submitted to RAP for approval no later than March 15<sup>th</sup> of each year. Any proposed adjustments to said rates at any time shall require approval from RAP.

SMG shall submit the appropriate documentation with the Monthly Event Closing Statement for reimbursement of actual expenditures.

## **SECTION 9. SPONSORSHIPS, BOX SEATS AND PREMIUM SEATING SALES**

SMG shall comply with RAP's Sponsorship Recognition Policy, Procedures and Guidelines for Recognizing Organizations and Individuals who contribute and Support City of Los Angeles Parks and Programs (Exhibit J) and Naming Policy, Procedures and Guidelines for Parks and Recreation Facilities (Exhibit K).

SMG shall pay RAP 80% of all SPONSORSHIP AND PREMIUM SEATING REVENUE. Any barter must be pre-approved by RAP and must reduce the CITY's OPERATING EXPENSES not covered by SMG's ANNUAL MANAGEMENT FEE. RAP shall be owner of any and all bartered equipment.

SMG agrees that costs associated with marketing, selling and generating SPONSORSHIP AND PREMIUM SEATING REVENUE are not fulfillment costs and that SMG shall pay all costs associated with marketing, selling and generating SPONSORSHIP AND PREMIUM SEATING REVENUE out of its 20% share of such revenue (e.g. salespersons' base compensation and sales commissions) and RAP shall simply receive its 80% share.

SMG agrees that it will not incur, without CITY's prior approval, any fulfillment costs for premium seating programs including, but not limited to: 1) Box Suites, 2) Club Seats, 3) Season Subscriptions, 4) VIP Seating Packages, or other similar programs where license fees are charged in connection with seating programs created by SMG at the FACILITY.

The City reserves the right to secure, obtain and provide it owns sponsorship opportunities and venue partnerships. Any CITY-obtained sponsorships or partnerships shall not be shared on any percentage split with SMG. RAP reserves the absolute right, in its sole discretion, to refuse any sponsorship presented by the SMG and RAP shall not be liable for any fee or cost in the event of such refusal.

## **SECTION 10. CONCESSION FEE**

### **A. Fee.**

As part of the consideration for CITY'S granting the CONCESSION rights set forth in this AGREEMENT, SMG shall pay to CITY a Concession Fee, which is cumulative of the individual fees set forth herein:



1. Greek Theatre Concessions. SMG shall pay to CITY a Greek Theatre Concessions fee that is the greater of the Greek Minimum Annual Guarantee (Greek MAG), or forty-three (43) percent of gross receipts of all Greek Theatre Concessions. For the first year of the AGREEMENT, the Greek MAG will be Two Million Three Hundred Thousand Dollars (\$2,300,000.00). The Greek MAG for year two and each subsequent year for the Greek Theatre Concessions is the greater of the previous year's Greek MAG or 90% of the actual Greek Theatre Concessions fee paid for the previous AGREEMENT year. Notwithstanding anything to the contrary in this Subparagraph 1, due to the cancellation of the 2020 CONCERT SEASON at the Greek Theatre, no Concession Fee for Greek Theatre Concessions shall be due for Agreement Year 2, which is the period from November 1, 2019 to December 31, 2020. Any amounts paid as a Concession Fee by SMG, during Agreement Year 2, shall be retained by RAP and credited to the Concession Fee due for the Greek Theatre Concessions for Agreement Year 3, which is the period from January 1, 2021 to December 31, 2021. For avoidance of doubt, the Greek MAG for the Greek Theatre Concession for Agreement Year 3 shall be Two Million Three Hundred Thousand Dollars (\$2,300,000.00).
2. Greek Theatre Catering. SMG shall pay to CITY a Greek Theatre Catering fee that is twenty (20) percent of gross receipts of all Greek Theatre Catering, with the exception that the catering fee for no-host bars shall be paid to CITY at a rate of forty-three (43) percent of gross receipts. Greek Theatre Catering shall not count toward the Greek MAG.
3. Franklin's Market + Café Concessions. SMG shall pay to CITY a Franklin's Market + Café Concessions fee that is the greater of the Franklin Minimum Annual Guarantee (Franklin MAG), or six (6) percent of gross receipts of all Franklin's Market + Café concessions. For the first year of the AGREEMENT, the Franklin MAG will be Twenty-five Thousand Dollars (\$25,000.00). The Franklin MAG for year two and each subsequent year for the Franklin's Market + Café Concessions is the greater of the previous year's MAG or 90% of the actual Franklin's Market + Café Concessions fee paid for the previous AGREEMENT year. The foregoing notwithstanding, pre-sold items and items that the parties reasonably agree are intended or sold for consumption by concertgoers, will be subject to a 20% commission.
4. Filming and Special Events. SMG shall pay to CITY a Filming and Special Events fee equal to seventy-five (75) percent of all **non-food and beverage** Filming and Special Events **receipts remaining after deducting applicable EVENT SERVICES AND STAFFING COSTS, which shall be paid first out of the non-food and beverage gross receipts charged for all Filming and Special Events. In addition, SMG shall pay to CITY a Filming and Special Events Food and Beverage fee equal to twenty (20) percent of all catering and hosted bar gross receipts, and forty-three (43) percent of all concessions and no-host bar gross receipts, charged for all Filming and Special Events.** Notwithstanding the foregoing, one hundred (100) percent of all special event space rental fees charged on concert nights shall be paid to the CITY **from the non-food and beverage gross receipts prior to deducting any EVENT SERVICES AND STAFFING COSTS.** And, in accordance with Section 5.A.6., SMG shall pay to CITY one hundred (100) percent of all parking receipts received in the course of SMG's management of the parking operations during Filming and Special Events,



**prior to applying the non-food and beverage fee split.** In addition, whenever a concert night special event activity occupies, or otherwise removes from the usable inventory, parking spaces in any parking lot covered by this AGREEMENT, one hundred (100) percent of the parking revenue that could have been earned had the spaces been used for parking during the concert is to be paid to the CITY prior to applying **the non-food and beverage fee split.** For purposes of this section, “could have been earned” means revenue earned if the spaces had full occupancy with no same-night turnover.

5. Greek Theatre Merchandise. SMG shall pay to CITY a Greek Theatre Merchandise fee equal to thirty (30) percent of gross receipts of all Greek Theatre Merchandise sold.

**B. Up-front Payment.**

Both the Greek MAG and the Franklin MAG payments shall be paid in equal monthly installments on the first of each month, with the exception of the first year of the AGREEMENT, when the full year’s payment shall be made within three (3) days of AGREEMENT execution. The combined Greek MAG and Franklin MAG payment for Year 1 will be Two Million Three Hundred Twenty-five Thousand Dollars (\$2,325,000.00). As set forth in SECTIONS 10.A.1 and 10.A.2, the Greek MAG and the Franklin MAG for year two and subsequent years for the Greek Theatre Concessions and Franklin’s Market + Café Concessions is the greater of the previous year’s minimum annual guarantee or 90% of the actual concession fee paid for the previous AGREEMENT year, respectively.

Refer to SECTION 10.D for the definition of “Gross Receipts.”

Use of the PREMISES for purposes not expressly permitted herein, whether approved in writing by RAP or not, may result in additional charges to be paid by SMG; however, any such use without the prior written approval of RAP shall also constitute a material breach of AGREEMENT and is prohibited.

The following two examples are included for illustrative purposes only, to assist the parties in calculating SMG’s yearly Greek MAG and Franklin MAG obligations:

Example #1: In year one the Greek MAG is \$2,300,000. Assuming 43% of gross receipts of all Greek Theatre Concessions payable to RAP in year one equals \$2,100,000, then the Greek MAG for year two would remain at \$2,300,000 because 100% of the year one Greek MAG is greater than 90% of \$2,100,000.

Example #2: In year one the Greek MAG is \$2,300,000. Assuming 43% of gross receipts of all Greek Theatre Concessions payable to RAP in year one equals \$3,000,000, then the Greek MAG for year two would increase to \$2,700,000 because 90% of the year one total percentage of gross receipts of all Greek Theatre Concessions payable to RAP is greater than 100% of the year one Greek MAG.

**C. Percentage Fee Payment**

For Filming and Special Events and for Greek Theatre Merchandise the percentage fee shall be due and payable (postmarked) by the fifteenth (15th) day of each calendar month based on the gross receipts received in each previous month. The payment and Monthly Revenue Report (Exhibit M) shall be addressed to:

DEPARTMENT OF RECREATION AND PARKS  
ATTENTION:  
Revenue Section  
P.O. Box 86328  
Los Angeles, California 90086-0610

**D. Gross Receipts Defined**

The term "gross receipts" is defined as the total amount charged for the sale of any goods or services (whether or not such services are performed as a part of or in connection with the sale of goods) provided in connection with this CONCESSION, but not including any of the following:

1. Cash discounts allowed or taken on sales;
2. Any sales taxes, use taxes, or excise taxes required by law to be included in or added to the purchase price and collected from the consumer or purchaser and paid by SMG;
3. California Redemption Value (CRV);
4. Receipts from the sale of waste or scrap materials resulting from the CONCESSION operation;
5. Receipts from the sale of or the trade-in value of any furniture, fixtures, or equipment used in connection with the CONCESSION, and owned by SMG;
6. The value of any merchandise, supplies, or equipment exchanged or transferred from or to other business locations of SMG where such exchanges or transfers are not made for the purpose of avoiding a sale by SMG which would otherwise be made from or at the PREMISES
7. Refunds from, or the value of, merchandise, supplies, or equipment returned to shippers, suppliers, or manufacturers;
8. Receipts from the sale at cost of uniforms, clothing, or supplies to SMG's employees where such uniforms, clothing, or supplies are required to be worn or used by said employees;
9. Receipts from any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by SMG, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit;

10. Fair market trade-in allowance, in the event merchandise is taken in trade;
11. The amount of any cash or quantity discounts received from sellers, suppliers, or manufacturers;
12. Discounts or surcharges applied to receipts for services or merchandise, including discounts to employees, with the concurrence of both SMG and RAP, on total sale transaction;
13. Any catering expenses associated with equipment rental and disposables, to the extent those catering expenses are passed through to the customer at or below SMG's actual cost;
14. Credit/debit card fees.

SMG shall not reduce the amount of gross receipts, as herein defined, as a result of any of the following:

15. Any error in cash handling by SMG or SMG's employees or agents;
16. Any losses resulting from bad checks received from consumers or purchasers; or from dishonored credit, charge, or debit card payments; or any other dishonored payment to SMG by customer or purchaser;
17. Any arrangement for a rebate, kickback, or hidden credit given or allowed to any customer of SMG;
18. Any labor fees recovered.

## **SECTION 11. ACCOUNTING, RECORDS AND ADDITIONAL FEES**

### **A. Bank Accounts**

FOUR (4) GREEK THEATRE ACCOUNTS: On or before November 2, 2018, the City will open four new bank accounts: Deposits, Box Office, Operations, and Disbursement. RAP must be the owner of all four accounts and will give SMG authority to access these bank accounts based on Greek Theatre's operational needs.

#### **1. DEPOSIT ACCOUNT:**

SMG will receive deposits for incidental charges from promoters and agents as required by the User Agreement in the normal course of business. SMG will deposit such funds from promoters and agents into the Deposit Account. SMG shall be responsible for accurately maintaining records for each promoter or agent deposit. At the end of the event or at the end of the CONCERT SEASON, SMG will book transfer the refundable deposit from the Deposit Account to the Operations Account. CITY's staff will transfer the refundable deposit from the Operations Account to the Disbursement Account so that SMG will disburse the proper refundable monies to the promoter or agent. SMG shall have no disbursement authority on the Deposit Account.

#### **2. BOX OFFICE ACCOUNT:**



SMG will receive ticket proceeds for events via the ticketing agents as well as through box office operations. SMG will deposit ticket proceeds and related revenues into the Box Office Account. At event settlement, SMG will book transfer from the Box Office Account to the Operations Account. CITY's staff will transfer funds from the Operations Account to the Disbursement Account. SMG will distribute funds to promoter and venue from the Disbursement Account. SMG shall have no disbursement authority on the Box Office Account.

3. OPERATIONS ACCOUNT:

SMG shall deposit any funds derived from RAP's Greek Theatre OPEN VENUE MODEL operations to the Operations Account. CITY's staff will transfer funds from the Operations Account to the Disbursement Account as needed to pay for Greek Theatre operational expenses. SMG shall have no disbursement authority on the Operations Account.

4. DISBURSEMENT ACCOUNT:

CITY shall give SMG authorization to disburse funds from the Disbursement Account to pay for Greek Theatre operational expenses, refund promoter and agent refundable deposits and distribute event settlement funds to promoters and venue. CITY's staff will transfer cash from the Operations Account to the Disbursement Account for Greek Theatre operations on as-needed basis. SMG will provide cash outflow projections to the City on or before April 1 each year during the term of this AGREEMENT. The City shall give SMG authorization to sign checks and perform electronic funds transfer (EFT) to pay for Greek Theatre operation invoices. SMG is disallowed to disburse funds to their corporate office from the Greek Theatre Disbursement Account. SMG's ANNUAL MANAGEMENT FEE will be disbursed through the City's Financial Management System.

**B. Monthly Event Closing Statement**

SMG shall submit a monthly event closing statement to RAP for review and approval within twenty-five (25) calendar days after the end of each month. The monthly event closing statement shall be accompanied by a Monthly Revenue Report (Exhibit M), clearly identifying: (i) all revenues recognized for that month at the FACILITY including, without limitation, event revenue, SPONSORSHIP AND PREMIUM SEATING REVENUE and any miscellaneous revenue generated from operations at the FACILITY ("monthly operating revenue") and (ii) all expenses incurred in that month including, without limitation, CITY'S OPERATING EXPENSES applicable to such period along with outstanding amounts of CITY'S OPERATING EXPENSES due for prior periods, SMG's share of SPONSORSHIP AND PREMIUM SEATING REVENUE and any miscellaneous expenses incurred in connection with the operation of the FACILITY ("monthly operating expenses"). SMG shall include with such statement detail of monthly operating revenue and expenses including a line item event profit and loss statement for each event presented during the period and supporting documentation for CITY'S OPERATING EXPENSES in a form acceptable to RAP.

SMG will include a statement for each of the four (4) bank accounts established for the Greek Theatre as described in SECTION 11.A above.

1. SMG must pay each eligible promoter the Event Volume Incentive dollar amount (with prior approval by RAP) by December 1<sup>st</sup> after conclusion of the then most recent CONCERT SEASON.

**C. Late Payment Fees**

Failure of SMG to pay any of the revenue-sharing payments or any other fees, charges, or payments owed to the CITY within ten days following notice of such failure to pay is a material breach of the AGREEMENT for which CITY may terminate same or take such other legal action as it deems necessary.

Without waiving any rights available at law, in equity or under the AGREEMENT, in the event of late or delinquent payments by SMG, the latter recognizes that CITY will incur certain expenses as a result thereof, the amount of which is difficult to ascertain. Therefore, in addition to monies owing, SMG agrees to pay the CITY a late fee set forth below to compensate CITY for all expenses and/or damages and loss resulting from said late or delinquent payments.

The charges for late or delinquent payments shall be One Thousand Dollars (\$1,000.00) for each month late plus interest calculated at the rate of eighteen percent (18%) per annum, assessed monthly, on the balance of the unpaid amount. Payments shall be considered past due if postmarked after the fifteenth (15th) day of the month in which payment is due. RAP reserves the right to increase any and all administrative fees at the time of exercising any option to renew the AGREEMENT.

The acceptance of late payment by CITY shall not be deemed as a waiver of any other breach by SMG of any term or condition of this AGREEMENT other than the failure of SMG to timely make the particular payment so accepted.

**D. Annual Accounting Adjustment**

No later than November 25th of each year, SMG shall prepare and submit to CITY a statement showing the total gross receipts for the prior AGREEMENT year by category and the Concession Fee paid for the year, broken down by the four categories in SECTION 10.A. If the Greek MAG and Franklin MAG sums paid by SMG for said year total less than the applicable, respective percentage fee total owing to the CITY, as noted in SECTION 10.A, SMG shall remit to CITY the under payment amount(s) with the annual statement postmarked no later than November 25th.

- E. If CITY pays any sum or incurs any obligations or expense which SMG has agreed to pay or reimburse CITY for, or if CITY is required or elects to pay any sum or to incur any obligations or expense by reason of the failure, neglect, or refusal of SMG to perform or fulfill any one or more of the conditions, covenants, or agreements contained in the AGREEMENT, or as a result of an act or omission of SMG contrary to said conditions, covenants, and agreements, SMG agrees to pay to CITY the sum so paid or the expense so incurred, including all interest, costs (including CITY'S 15% administrative overhead cost), damages, and penalties. This amount shall be added to the monthly payment thereafter due hereunder, and each and every part of the same shall be and become additional payment, recoverable by CITY in the same manner and with like remedies as if it were originally a part of the basic concession fee payment set forth in SECTION 10



hereof. RAP reserves the right to increase any and all administrative fees at the time of exercising any option to renew the AGREEMENT.

- F. For all purposes under this Section, and in any suit, action, or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum by CITY for any work done or material furnished shall be prima facie evidence against SMG that the amount of such payment was necessary and reasonable. Should CITY elect to use its own personnel in making any repairs, replacements, and/or alterations chargeable to SMG, and charge SMG with the cost of same, receipts and timesheets will be used to establish the charges, which shall be presumed to be reasonable in absence of contrary proof submitted by SMG.

## **SECTION 12. IMPROVEMENTS**

SMG shall provide to the Facility the sum of Four Million Dollars (\$4,000,000) for capital improvements and the equipment enumerated in pages 1-2 of Exhibit R, including the future capital improvements listed in Exhibit S, and such other improvements as RAP may request, including some or all of the additional improvements more fully detailed in SMG's proposal (Exhibit H) (together "Capital Improvements"). The sum of Four Million Dollars (\$4,000,000) is in addition to the Two Hundred Twenty-Two Thousand Dollars (\$222,000) being carried over in 2015 capital improvements as referenced on page 111 of SMG's proposal (Exhibit H). The foregoing Capital Improvements shall be completed no later than November 1, 2020, unless the parties otherwise agree in writing. The proposed concepts and restaurant names in Exhibit S are subject to final approval by CITY and may be changed at any time at the direction of the CITY. SMG will also diligently supervise and oversee non-CONCERT SEASON renovations, activities and capital improvement projects in consultation with CITY.

The Greek Theatre as part of Griffith Park, which is designated as Historic-Cultural Monument (HCM) No. LA-942 in accordance with Chapter 9, Article 1 of the Los Angeles Administrative Code, is historically significant. HCM LA-942 is also listed in the California Register of Historic Resources as eligible for the National Register of Historic Places. Therefore, the Greek Theatre is considered historically significant for California Environmental Quality Act (CEQA) purposes.

SMG shall obtain the written approval of the Cultural Heritage Commission for any substantial alterations to the affected area in accordance with Section 22.171.14 of the Los Angeles Administrative Code.

Any infractions, large or small, will be treated as a material breach of the AGREEMENT and will be subject to all of the applicable laws, fines and penalties imposed by the CITY's Department of Building and Safety, as well as the Office of Historic Resources. RAP shall give SMG written notice of such a material breach, and, if SMG does not cure said breach within thirty (30) days after notice, or such longer period as is reasonably necessary to remedy such breach, but, in no case longer than an additional ninety (90) days, provided that SMG shall continuously and diligently pursue such remedy at all times until such material breach is cured, RAP may terminate this AGREEMENT.

- A. Subject to the Four Million Dollar (\$4,000,000) cap on funding for Capital Improvements, SMG agrees to guarantee the completion and manage the construction of all proposed improvements, according to approved plans and SMG shall serve as the fiscal agent for all costs for all necessary permits, insurance, and taxes required for compliance of such improvements.



- B. CITY reserves the right to further develop or improve the FACILITY and the PREMISES as it sees fit, and without interference or hindrance by SMG. Such development or improvement may require the suspension or termination of the AGREEMENT. CITY shall not be liable for loss of business, which results from the construction of any development or improvements to the FACILITY or the PREMISES. CITY will make all reasonable effort to ensure any improvements are completed during non-concert season.
1. Compliance with Applicable Rules and Regulations:  
All structural or other improvements, equipment and interior design and decor constructed or installed by SMG, including the plans and specifications therefore, shall in all respects conform to and comply with the applicable statutes (including the California Environmental Quality Act), ordinances, building codes, rules and regulations of CITY and such other authorities that may have jurisdiction over the FACILITY areas or SMG's operations therein including those which are enacted or promulgated in the future by the City of Los Angeles, the County of Los Angeles, the State of California, and the Federal Government. SGM agrees that as between SMG and City, SMG shall be responsible for ensuring that all Capital Improvements are in compliance with the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.) and any and all other federal, state, and local laws related to the accessibility of the Premises to persons with disabilities. The written approval by RAP's General Manager of any improvements as provided above shall not constitute a representation or warranty as to such conformity or compliance, but responsibility therefore shall at all times remain with SMG.
  2. Procurement of Permits and Approvals:  
SMG shall, prior to construction of any improvements, procure all building, fire, safety, aesthetic, environmental, and other permits and approvals necessary for the construction of the structural and other improvements, installation of the equipment, and the interior design and decor. Copies of all said permits and approvals shall thereafter be submitted to RAP. No permission to begin said improvements shall be granted by RAP's General Manager prior to SMG obtaining said permits and approvals.
  3. Subcontractors: SMG shall require by any contract that it awards in connection with the structural or other improvements, the installation of any and all equipment, and the interior designing and decor, that the contractor doing, performing or furnishing the same shall comply with all applicable statutes, ordinances, codes, rules and regulations, and submit to CITY evidence of required insurance coverage.
  4. Except for the active negligence or willful misconduct of CITY, or any of its boards, officers, agents, employees, assigns and successors in interest, SMG undertakes and agrees to defend, indemnify and hold harmless CITY and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all third-party suits and causes of action, claims, losses, demands and expense, including, but not limited to, attorney's fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including SMG's employees and agents, or damage or destruction of any property of either party hereto or of third parties, proximately caused by SMG's construction or installation of the Capital Improvements as authorized in this AGREEMENT. The provisions of this paragraph survive expiration or termination of this AGREEMENT.

## SECTION 13. PREMISES MAINTENANCE

- A. RAP will be responsible for the maintenance of PREMISES, except maintenance services specified in Exhibit D and further detailed in SMG's proposal (Exhibit H). During all periods that the PREMISES are used or are under the control of SMG for the uses, purposes, and occupancy aforesaid, SMG shall work in conjunction with RAP to coordinate all necessary damage/maintenance repairs, including general exterior appearance of all equipment and facilities and regular graffiti removal, to the satisfaction of RAP and in keeping with other first class, high-quality venues. The cause of said maintenance, cleaning and repairs may result from normal wear and tear, as well as vandalism.

Building maintenance which includes all building components including but not limited to structural, mechanical and electrical for the FACILITY will be provided by RAP unless SMG is specifically requested by RAP to perform a replacement or repair. Should a request be made and a mutually agreed upon scope and cost be reached, said cost will be paid to SMG by CITY as a REIMBURSABLE EXPENSE.

RAP will provide grounds maintenance, which includes tree trimming, mowing, weeding and landscaping.

**B. Property Damage and Theft Reporting**

SMG shall complete and submit to RAP a "Special Occurrence and Loss Report," in the event that the PREMISES and/or CITY-owned property is damaged or destroyed, in whole or in part, from any cause whatsoever, and in the event of theft, burglary, or other crime committed on the PREMISES. RAP shall provide blank forms for this purpose.

**C. Damage or Destruction to Premises**

**a. Partial Damage**

If all or a portion of the PREMISES are partially damaged by fire, explosion, flooding inundation, floods, the elements, public enemy, or other casualty, but not rendered uninhabitable, the same will be repaired with due diligence by CITY at its own cost and expense, subject to the limitations as hereinafter provided; if said damage is caused by the negligent acts or omissions of SMG, its agents, officers, or employees, SMG shall be responsible for reimbursing CITY for the cost and expense incurred in making such repairs.

**b. Extensive Damage**

If the damages as described above in "Partial Damage" are so extensive as to render the PREMISES or a portion thereof uninhabitable, but are capable of being repaired within a reasonable time not to exceed sixty (60) days, the same shall be repaired with due diligence by CITY at its own cost and expense and a negotiated portion of the fees and charges payable hereunder shall abate from the time of such damage until such time as the PREMISES are fully restored and certified by RAP as again ready for use; provided, however, that if such damage is caused by the negligent acts or omissions of SMG, its agents, officers, or employees, said fees and charges will not abate and SMG shall be responsible for the cost and expenses incurred in making such repairs.



**c. Complete Destruction**

In the event all or a substantial portion of the PREMISES are completely destroyed by fire, explosion, the elements, public enemy, or other casualty, or are so damaged that they are uninhabitable and cannot be replaced except after more than sixty (60) days, CITY shall be under no obligation to repair, replace or reconstruct said PREMISES, and an appropriate portion of the fees and charges payable hereunder shall abate as of the time of such damage or destruction and shall henceforth cease until such time as the said PREMISES are fully restored. If within four (4) months after the time of such damage or destruction said PREMISES have not been repaired or reconstructed, SMG may terminate this AGREEMENT in its entirety as of the date of such damage or destruction. Notwithstanding the foregoing, if the said PREMISES, or a substantial portion thereof, are completely destroyed as a result of the negligent acts or omissions of SMG, its agents, officers, or employees, said fees and charges shall not abate and CITY may, in its discretion, require SMG to repair and reconstruct the same within twelve (12) months of such destruction and SMG shall be responsible for reimbursing CITY for the cost and expenses incurred in making such repairs.

**d. Limits of CITY'S Obligation Defined**

In the application of the foregoing provisions, CITY may, but shall not be obligated to, repair or reconstruct the PREMISES. If CITY chooses to do so, CITY'S obligation shall also be limited to repair or reconstruction of the PREMISES to the same extent and of equal quality as obtained by SMG at the commencement of its operations hereunder. Redecoration and replacement of furniture, equipment and supplies included within SMG's OFFICE FURNITURE AND EQUIPMENT costs shall be the responsibility of SMG and any such redecoration and refurnishing/re-equipping shall be equivalent in quality to that originally installed.

**D. Pest Control**

SMG shall perform and pay for pest control in all areas of the PREMISES. SMG shall take all reasonable measures to reduce the proliferation of pests, including maintaining the PREMISES in clean condition. RAP may direct SMG to take additional measures to abate pests, which are an immediate threat to public health or safety.

**SECTION 14. PROHIBITED ACTS**

SMG shall not:

1. Use the PREMISES to conduct any other business operations of SMG not related to the Greek Theatre and/or Franklin's Market &Cafe;
2. Do or allow to be done anything which may interfere with the effectiveness or accessibility of utility, heating, ventilation, or air conditioning systems or portions thereof on the PREMISES or elsewhere on the FACILITY, nor do or permit to be done anything which may interfere with free access and passage in the PREMISES or the public areas adjacent thereto, or in the streets or sidewalks adjoining the PREMISES, or hinder police, fire fighting or other emergency personnel in the discharge of their duties;



3. Interfere with the public's enjoyment and use of the FACILITY or use the PREMISES for any purpose which is not essential to the FACILITY operations;
4. Rent, sell, lease or offer any space for storing of any articles whatsoever within or on the PREMISES other than specified herein, without the prior written approval of RAP;
5. Overload any floor or roof in the PREMISES;
6. Place any additional lock of any kind upon any window or interior or exterior door in the PREMISES, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefore is maintained on the PREMISES, nor refuse, upon the expiration or sooner termination of the AGREEMENT, to surrender to RAP any and all keys to the interior or exterior doors on the PREMISES, whether said keys were furnished to or otherwise procured by SMG, and in the event of the loss of any keys furnished by RAP, SMG shall pay CITY, on demand, the cost for replacement thereof;
7. Do or permit to be done any act or thing upon the PREMISES which will invalidate, suspend or increase (except in connection with increased or changed usage) the rate of any insurance policy required under the AGREEMENT, or carried by CITY, covering the PREMISES, or the buildings in which the same are located or which, in the opinion of RAP, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under the AGREEMENT, provided, however, that nothing contained herein shall preclude SMG from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary;
8. Use, create, store or allow any hazardous materials as defined in Title 26, Division 19.1, Section 19-2510 of the California Code of Regulations, or those which meet the criteria of the above Code, as well as any other substance which poses a hazard to health and environment, provided, however, that nothing contained herein shall preclude SMG from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary except that all hazardous materials must be stored and used in compliance with all City, State and Federal rules, regulations, ordinances and laws;
9. Permit undue loitering on or about the PREMISES;
10. Use the PREMISES in any manner that will constitute waste;
11. Use or allow the PREMISES to be used for any improper, immoral, or unlawful purposes
12. Install or allow the installation of video games or vending machines including but not limited to Automated Teller Machines (ATMs) without the prior written approval of RAP.

13. Permit gambling on the PREMISES or install or operate or permit to be installed or operated thereon, any device which is illegal; or use the PREMISES or permit it to be used for any illegal business or purpose.
14. Permit smoking in the audience seating area and any other interior areas of the Greek Theatre building, FACILITY, or PREMISES, with the exception of designated dressing rooms in conformance with AB13 California Smoke-Free Workplace Law. Any exceptions to this policy will require the prior written approval of RAP.

## **SECTION 15. NUMBER OF ORIGINALS**

The number of original texts of this AGREEMENT shall be equal to the number of Parties hereto, one text being retained by each Party.

## **SECTION 16. RATIFICATION LANGUAGE**

Due to the need for SMG's services to be provided continuously on an ongoing basis, SMG may have provided services prior to the execution of this AGREEMENT. To the extent that said services were performed in accordance with the terms and conditions of this AGREEMENT, those services are hereby ratified.

## **SECTION 17. PERFORMANCE DEPOSIT**

- A. SMG shall provide RAP a sum equal to Eight Hundred Thousand Dollars (\$800,000.00) for the term of the AGREEMENT as a performance deposit ("Deposit").

- B. Form of Deposit**

SMG's Deposit shall be in the form of a cashier's check drawn on any recognized local bank, which cashier's check is payable to the order of the City of Los Angeles.

- C. Agreement of Deposit and Indemnity**

SMG unconditionally agrees that in the event of any material breach of this AGREEMENT by SMG and consequent termination by CITY, CITY shall have full power and authority to use the Deposit in whole or in part to indemnify CITY. All Deposits of cash or checks must be immediately so deposited by RAP.

- D. Maintenance of Deposit**

CITY shall hold SMG's Deposit in an interest-bearing account during the entire term of the AGREEMENT.

- E. Return of Deposit to SMG**

Said Deposit, together with accumulated interest, shall be returned to SMG and any rights assigned to Deposit shall be surrendered by CITY in writing, after the expiration or earlier termination of the AGREEMENT and the later of (i) any exit audits and inspections performed in conjunction with the AGREEMENT, or (ii) ninety (90) days thereafter. The CITY reserves the right to deduct from the Deposit, any amounts up to and including the full amount of the Deposit as stated herein, owed to the CITY by SMG as shown by any exit audits performed by CITY, or as compensation to CITY for material breach by SMG of this AGREEMENT. SMG shall have the right to challenge the accuracy of such audit

and/or the propriety of any claim by CITY against the funds, and in the event that the Parties fail to reach AGREEMENT concerning the disposition of the funds, may institute appropriate dispute resolution or legal proceedings.

## **SECTION 18. TAXES, PERMITS AND LICENSES**

- A. SMG shall obtain and maintain any and all approvals, permits, or licenses that may be required in connection with the management and operation of the FACILITY including, but not limited to, tax permits, business licenses, health permits, building permits, police and fire permits, etc.
- B. SMG shall pay all applicable CITY, STATE and Federal taxes associated with SMG's business activities in performance of the services required in this AGREEMENT, including any possessory interest tax pursuant to California Revenue and Taxation Code Section 107.6. By executing this AGREEMENT and accepting the benefits thereof, SMG may be creating a property interest known as "possessory interest" which may be subject to property taxation. SMG, as the party in whom the possessory interest would be vested, shall be responsible for the payment of all property taxes, if any, levied upon such interest. SMG acknowledges that the notice required under California Revenue and Taxation Code section 107.6 has been provided.
- C. During the entire term of the AGREEMENT, SMG must hold a current Los Angeles Business Tax Registration Certificate (BTRC) as required by the CITY'S Business Tax Ordinance (LAMC Article 1, Chapter 2, Sections 21.00 et. seq.)
- D. Pursuant to Section 21.3.3 of Article 1.3 of the LAMC Commercial Tenants Occupancy Tax, SMG must pay to the City of Los Angeles for the privilege of occupancy, a tax at the rate of One Dollar and Forty-Eight Cents (\$1.48) per calendar quarter or fractional part thereof for the first One Thousand Dollars (\$1,000.00) or less of charges (revenue-sharing rent) attributable to said calendar quarter, plus One Dollar and Forty-Eight Cents (\$1.48) per calendar quarter for each additional One Thousand Dollars (\$1,000.00) of charges or fractional part thereof in excess of One Thousand Dollars (\$1,000.00). Said tax shall be paid quarterly to RAP, on or before the fifteenth (15<sup>th</sup>) of April, July, October, January of each calendar year, for the preceding three (3) months. Should the rate of the Occupancy Tax rise at any time during the term of the AGREEMENT, SMG shall be responsible to pay the updated, higher rate. The charges for late or delinquent Occupancy Tax payments shall be One Hundred Fifty Dollars (\$150.00) for each month late plus interest calculated at the rate of eighteen percent (18%) per annum, assessed monthly, on the balance of the unpaid amount.

## **SECTION 19. TRANSFER OR ASSIGNMENT**

SMG shall not under-let or sub-let the subject PREMISES or any part thereof or allow the same to be used or occupied by any other person or for other use than that herein specified, nor assign the AGREEMENT nor transfer, assign or in any manner convey any of the rights or privileges herein granted without the prior written consent of CITY. Neither the AGREEMENT nor the rights herein granted shall be assignable or transferable by any process or proceedings in any court, or by attachment, execution, proceeding in insolvency or bankruptcy either voluntary or involuntary, or receivership proceedings. Any attempted assignment, mortgaging, hypothecation, or encumbering



of the FACILITY rights or other violation of the provisions of this Section shall be void and shall confer no right, title or interest in or to the AGREEMENT or right of use of the whole or any portion of the PREMISES upon any such purported assignee, mortgagee, encumbrance, pledgee or other lien holder, successor or purchaser.

SMG may not, without prior written permission of the CITY:

- A. Assign or otherwise alienate *any* of its rights hereunder, including the right to payment, except that the Parties acknowledge that the foregoing does not preclude the assignment by SMG of its rights to receive fees hereunder to its lender(s) as collateral security for SMG's obligations under any credit facilities provided to it by such lender(s), provided that such collateral assignment shall not in any event cover SMG's rights to manage, promote or operate the Facility hereunder.
- B. Delegate, subcontract, or otherwise transfer any of its duties hereunder.

## **SECTION 20. BUSINESS RECORDS**

- A. SMG shall maintain for three years after termination of this AGREEMENT, all of its books, ledgers, journals, and accounts wherein are kept all entries reflecting the gross receipts received or billed by it from the business transacted pursuant to this AGREEMENT. Such books, ledgers, journals, accounts, and records shall be available for inspection and examination by RAP, or a duly authorized representative, during ordinary business hours at any time during the term of this AGREEMENT and for at least three years thereafter.

- B. **Employee Fidelity Bonds**

At RAP's discretion, adequate employee fidelity bonds may be required to be maintained by SMG covering all its employees who handle money.

- C. **Cash and Record Handling Requirements**

If requested by RAP, SMG shall prepare a description of its cash handling and sales recording systems and equipment to be used for the management and operation of the FACILITY, which shall be submitted to RAP for approval.

SMG shall be required to maintain a method of accounting in compliance with Generally Accepted Accounting Principles for each location at the FACILITY, which shall correctly and accurately reflect the gross receipts and disbursements received or made by SMG from the management and operation of the FACILITY. For accounting purposes, separate books must be kept for the Greek Theatre and Franklin's Market + Café. The method of accounting, including bank accounts, established for the FACILITY shall be separate from the accounting systems used for any other business operated by SMG or for recording SMG's personal financial affairs. Such method shall include the keeping of the following documents:

1. Regular books of accounting such as general ledgers.
2. Journals including supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.

3. State and Federal income tax returns and sales tax returns and checks and other documents proving payment of sums shown.
4. Receipt vouchers shall be retained in order for daily sales to be identified. Reconciliations are required per event.
5. Any other accounting records that CITY, in its sole discretion, deems necessary for proper reporting of receipts.

**D. Method of Recording Gross Receipts**

Gross receipts will be recorded through the Point of Sale system in order to establish the daily receipts records and reconciliation per event with the exception of onsite parking for which ticket vouchers are retained.

**E. Annual Statement of Gross Receipts and Expenses**

SMG shall transmit certified financial statements for the FACILITY management and operations, prepared in a form and by a Certified Public Accounting firm acceptable to RAP, on or before January 15th for the foregoing AGREEMENT year during the term of the AGREEMENT. Notwithstanding the expiration of the AGREEMENT on November 1, 2023, the certified financial statements provisions shall survive the expiration of the AGREEMENT and the final certified financial statements shall be filed on or prior to January 15th of the calendar year after the expiration of the AGREEMENT. To the extent required by law, the certified financial statements shall set forth an expense account entitled "Compensation to Officers" or an account having some similar title. The amount shown opposite this item shall include all salaries or other compensation paid to officers of SMG's corporation, directors, shareholders, any individual owning stock indirectly and other persons employed by SMG to manage the operations or supervise SMG'S employees and members of their respective families where such payment is for services derived from the FACILITY operations by SMG. These salaries or other compensation shall not be indicated in any other expense category.

The annual certified financial statements shall include an attachment containing the following information for each show of the preceding season:

- All actual revenue, categorized by source (i.e. gate, parking, etc.)
- Paid attendance and total attendance

Failure to provide the certified financial statements described above, within the prescribed time allowed, shall be cause for RAP to call for an immediate audit of the FACILITY management and operations. SMG shall be charged for the full cost of labor, mileage, and materials expended in the investigation and preparation of the audit, plus 30 percent (30%) of said costs for administrative overhead.

All records obtained or created in connection with CITY'S inspections of record or audits, will be or become subject to public inspection and production as public records, except to the extent that certain records or information are not required by law to be disclosed.

Except as provided in the above paragraph A of this SECTION 20, all documents, books and accounting records shall be open for inspection and reinsertion at any reasonable time during the term of the AGREEMENT, and for a reasonable period, not to exceed one year, thereafter. In addition, CITY may from time to time conduct an audit and re-audit of the books and businesses conducted by SMG and observe the operation of the business so that accuracy of the above records can be confirmed. If the report of gross sales made by SMG to CITY shall be found to be less than the amount of gross sales disclosed by such audit and observation, SMG shall pay CITY within 30 days after billing any additional rentals disclosed by such audit. If discrepancy exceeds two percent (2%) and no reasonable explanation is given for such discrepancy, SMG shall also pay the cost of the audit.

## **SECTION 21. REGULATIONS, INSPECTION, DIRECTIVES**

### **A. Constitutional and Other Limits on SMG's Rights to Exclusivity**

Notwithstanding exclusivity granted to SMG by the terms of this AGREEMENT, the CITY in its discretion may require SMG, without any reduction in rent or other valuable consideration to SMG, to accommodate the rights of persons to access and engage in expressive activities, as guaranteed by the first amendment to the United States Constitution, the California Constitution, and other laws, as these laws are interpreted by the City. Expressive activities include, but are not limited to, protesting, picketing, proselytizing, soliciting, begging, and vending of certain expressive, message-bearing items.

### **B. Conformance with Laws: SMG shall comply with:**

- a. Any and all applicable rules, regulations, orders, policies, and restrictions which are now in force or which may be hereafter adopted by CITY with respect to the operation of the FACILITY and Franklin's Market + Café;
- b. Any and all orders, directions or conditions issued, given, or imposed by RAP with respect to the use of the roadways, driveways, curbs, sidewalks, parking areas, or public areas adjacent to the PREMISES;
- c. Any and all applicable laws, ordinances, statutes, rules, regulations or orders, including the LAMC, LAAC, the Charter of the City of Los Angeles, and of any governmental authority, federal, state or municipal, lawfully exercising authority over SMG's operations; and,
- d. Any and all applicable local, state and federal laws and regulations relative to the design and installation of facilities to accommodate disabled persons.

### **C. Permissions**

Any permission required by the AGREEMENT shall be secured in writing by SMG from CITY or RAP and any errors or omissions therefrom shall not relieve SMG of its obligations to faithfully perform the conditions therein. SMG shall immediately comply with any written request or order submitted to it by CITY or RAP.

### **D. Right of Inspection and Access to PREMISES**



CITY and RAP, their authorized representatives, agents and employees shall possess and maintain the right to enter upon the PREMISES at any and all times. Said access and/or inspections may be made at any time by persons identified to SMG as CITY employees, or CITY authorized persons. Inspections may be made for the purpose set forth below, however, the enumerations below shall not be construed to limit CITY's right of inspection for any purpose incidental to the rights of CITY:

1. To determine if SMG is complying with the terms and conditions of the AGREEMENT.
2. To observe transactions between SMG and patrons in order to evaluate the quality and quantities of services provided or items sold or dispensed, the courtesy extended to and method of dealing with the public, the performance and caliber of SMG's employees, subcontractor employees and the methods for recording receipts.

The information gathered on these inspections may be used to evaluate SMG to provide a basis for an action by CITY for the termination, renewal or denial of extensions to the AGREEMENT or for any other appropriate action.

#### **E. Control of Premises**

CITY shall at all times retain and possess absolute and full access to the PREMISES and all its appurtenances during the term of the AGREEMENT and may make such changes and alterations therein, and in the grounds surrounding same, as may be determined by CITY. Such determination shall not be unreasonable and shall take into account the business considerations presented by SMG.

#### **F. Business Inclusion Program**

SMG agrees and obligates itself to utilize the services of Minority, Women, Small, Emerging, Disabled Veteran and Other Business Enterprise firms on a level so designated in its proposal, Schedule A (Exhibit N). SMG certifies that it has complied with Executive Directive No. 14 regarding the Outreach Program. SMG shall not change any of these designated sub consultants and subcontractors, nor shall SMG reduce their level of effort, without prior written approval of the CITY, provided that such approval shall not be unreasonably withheld.

During the term of the AGREEMENT, SMG must submit the MBE/WBE/SBE/EBE/DVBE/OBE Utilization Profile, Schedule B (Exhibit O) when submitting the Monthly Event Closing Statement. Upon termination of this Agreement, a summary of these records shall be prepared on the "Final Subcontracting Report" form, Schedule C (Exhibit P) and certified correct by SMG or its authorized representative. The completed Schedule C shall be furnished to RAP within fifteen (15) working days after termination of this AGREEMENT.

#### **G. First Source Hiring Ordinance**

Unless otherwise exempt in accordance with the provisions of this Ordinance, this AGREEMENT is subject to the applicable provisions of the First Source Hiring Ordinance (FSHO), Section 10.44 et seq. of the LAAC, as amended from time to time.

1. SMG shall, prior to the execution of this AGREEMENT, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that SMG estimates it will need to fill in order to perform the services under the AGREEMENT. The Department of Public Works, Bureau of Contract Administration is the DAA.
2. SMG further pledges that it will, during the term of the AGREEMENT:
  - a. At least seven business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Economic and Workforce Development Department of Los Angeles (EWDD), which will refer individuals for interview;
  - b. Interview qualified individuals referred by EWDD; and
  - c. Prior to filling any employment opportunity, SMG shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who SMG interviewed and the reasons why referred individuals were not hired.
3. Any Subcontract entered into by SMG relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
4. SMG shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

If, under the provisions of Section 10.44.13 of the LAAC, the DAA determines that SMG intentionally violated or used hiring practices for the purpose of avoiding the FSHO, the determination must be documented in RAP's Operator Evaluation, required under LAAC Section 10.39 et seq., and must be documented in each of SMG's subsequent Contractor Responsibility Questionnaires submitted under LAAC Section 10.40 et seq. This measure does not limit the CITY'S authority to act under the FSHO.

Under the provisions of Section 10.44.8 of the LAAC, RAP shall, under appropriate circumstances, terminate this AGREEMENT and otherwise pursue legal remedies that may be available if the DAA determines that the subject SMG has violated provisions of the FSHO.

#### **H. CEC Form 50**

SMG agrees to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance if SMG qualifies as a lobbying entity under Los Angeles Municipal Code 48.02. CEC Form 50 is attached as Exhibit Q. Responses submitted without a completed CEC Form 50, by proposers that qualify as a lobbying entity under Los Angeles Municipal Code 48.02 shall be deemed nonresponsive.

Bidder Contributions -City Charter Sections 470(c) (12). SMG is subject to Charter section 470(c) (12) and related ordinances. As a result, SMG may not make campaign contributions

to and or engage in fundraising for certain elected City officials or candidates for elected City office from the time it submits its proposal for this AGREEMENT until either this AGREEMENT is approved or 12 months after this AGREEMENT is signed. SMG's principals and subcontractors performing \$100,000.00 or more in work on this AGREEMENT, as well as the principals of those subcontractors, are also subject to the same limitations on campaign contributions and fundraising.

**I. CEC Form 55**

CEC Form 55 requires SMG to identify their principals, their subcontractors performing \$100,000.00 or more in work on this AGREEMENT, and the principals of those subcontractors. SMG must also notify their principals and subcontractors in writing of the restrictions and include the notice in contracts with subcontractors. Responses submitted without a completed CEC Form 55 shall be deemed nonresponsive. If SMG fails to comply with this City law, it may be subject to penalties including termination of this AGREEMENT, and debarment. Additional information regarding restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960 or [ethics.lacity.org](http://ethics.lacity.org).

**SECTION 22. SURRENDER OF POSSESSION**

SMG agrees to yield and deliver possession of the PREMISES to CITY on the date of the expiration or earlier termination of the AGREEMENT promptly, peaceably, quietly, and in as good order and condition as the same now are or may be hereafter improved by SMG or CITY.

No agreement of surrender or acceptance of surrender shall be valid unless and until the same is in writing and signed by the duly authorized representatives of CITY and SMG. Neither the doing nor omission of any act or thing by any of the officers, agents or employees of CITY shall be deemed an acceptance of a surrender of the PREMISES utilized by SMG under this AGREEMENT.

**SECTION 23. NOTICES**

**A. To CITY:**

Unless otherwise stated in the AGREEMENT, written notices to CITY hereunder shall be addressed to:

Department of Recreation and Parks  
Attention: Concessions Unit  
P. O. Box 86328  
Los Angeles, California 90086-0610

All such notices may either be delivered personally or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid for delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt.

CITY shall provide SMG with written notice of any address change within thirty (30) days of the occurrence of said change.

**B. To SMG:**



The execution of any notice to SMG by RAP shall be as effective for SMG as if it were executed by BOARD, or by Resolution or Order of said BOARD.

All such notices may either be delivered personally to the SMG or to any officer or responsible employee of SMG or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid for delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt.

Written notices to SMG shall be addressed to SMG as follows:

SMG

300 Conshohocken State Rd., Suite 770  
West Conshohocken, PA 19428  
Attn: President

And

SMG

300 Conshohocken State Rd., Suite 770  
West Conshohocken, PA 19428  
Attn: Counsel

With a copy to (which shall not constitute notice):

SMG

Attention: GREEK THEATRE MANAGER  
2700 North Vermont Avenue  
Los Angeles, CA 90027

SMG shall provide CITY with written notice of any address change within thirty (30) calendar days of the occurrence of said address change.

## **SECTION 24. INDEMNIFICATION**

Except for the active negligence or willful misconduct of CITY, or any of its boards, officers, agents, employees, assigns and successors in interest, SMG shall defend, indemnify and hold harmless CITY and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, 1) attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by CITY, including but not limited to, costs of experts and consultants), 2) damages or liability of any nature whatsoever, 3) for death or injury to any person, including SMG's employees and agents, or 4) loss, damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by SMG, or their boards, officers, agents, employees, assigns, contractors, subcontractors, and successors in interest. The rights and remedies of CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

For the sake of clarity, this provision shall include, but is not limited to, SMG's agreement to defend, indemnify and hold harmless CITY and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, 1) attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by CITY, including but not limited to, costs of experts and consultants), 2) damages or liability of any nature whatsoever, 3) for death or injury to any person, including SMG's employees and agents, or 4) loss, damage or destruction of any property of either Party hereto or of third parties, arising in any manner by reason of a User's (as that term is defined in Exhibit E) occupancy of the PREMISES. This shall include SMG's agreement to defend, indemnify and hold harmless CITY and any of its boards, officers, agents, employees, assigns, and successors in interest from and against: 1) all lawsuits and causes of action, claims, losses, demands and expenses brought by User or their boards, officers, agents, employees, contractors, subcontractors, assigns, and successors in interest, or any other third party, resulting from SMG's, including SMG's employees, contractors, and agents, exercise of SMG's authority to have any objectionable person or persons removed from the PREMISES; and 2) all lawsuits and causes of action, claims, losses, demands and expenses brought by User or their boards, officers, agents, employees, contractors, subcontractors, assigns, and successors in interest, resulting from SMG's provision of watchmen or other protective service to a User, whether by employees, contractors, or agents.

## **SECTION 25. INCORPORATION OF DOCUMENTS**

This AGREEMENT and incorporated documents represent the entire integrated AGREEMENT of the Parties and supersedes all prior written or oral representations, discussions, and agreements. The following Exhibits are attached to, incorporated in, and made part of this AGREEMENT by reference:

- A. Standard Provisions for City Contracts (Rev. 10/17)[v.3], excluding PSC-18 & PSC-34
- B. Insurance Requirements and Instructions
- C. Premises Maps and Additional Parking Lots
- D. SMG Repair and Maintenance Responsibilities
- E. User Agreement, Revised August 2020
- F. Booking Policy, Revised November, 1, 2017
- G. Promoter's Commercial Incentive Program Policy, Established June 18, 2015
- H. SMG's Proposal Response to the Greek Theatre Venue and Concessions Management RFP
- I. Form General No. 87 "Non-Employee Accident or Illness Report
- J. Sponsorship Recognition Policy, Procedures and Guidelines for Recognizing Organizations and Individuals who Contribute to and/or Support City of Los Angeles Park and Programs
- K. Naming Policy, Procedures and Guidelines for Parks and Recreational Facilities
- L. SMG ADMINISTRATIVE EXPENSES AND 2019 Event Services and Staffing Costs.
- M. Monthly Revenue Report
- N. Schedule A, MBE/WBE/SBE/EBE/DVBE/OBE Subcontractors Information Form
- O. MBE/WBE/SBE/EBE/DVBE/OBE Utilization Profile, Schedule B
- P. Final Subcontracting Report form, Schedule C
- Q. CEC Form 50

- R. List of equipment owned by SMG.
- S. List of Capital Improvements
- T. Greek Theatre Trademarks

In the event of any inconsistency between any of the provisions of this AGREEMENT and/or exhibits attached hereto, the inconsistency shall be resolved by giving precedence in the following order: 1) This AGREEMENT exclusive of attachments, 2) Exhibit A, 3) Exhibit H, 4) Exhibit C, 5) Exhibit R, and 6) Exhibit S

(Signature Page to Follow)



IN WITNESS WHEREOF, THE CITY OF LOS ANGELES has caused this AGREEMENT to be executed on its behalf by its duly authorized General Manager of the Department of Recreation and Parks, and SMG'S has executed the same as of the day and year herein below written.

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through the Department of Recreation and Parks

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

MICHAEL A. SHULL  
General Manager

SMG

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

Michael Dundas  
Deputy City Attorney

Business Tax Registration Certificate Number: 0002858497-0001-9

Internal Revenue Service Taxpayer Identification Number: 23-2511871

AGREEMENT Number: \_\_\_\_\_

| attendance Level           |              |               |                                  |         |          |            |       |              |                |            |       |         |              |              |
|----------------------------|--------------|---------------|----------------------------------|---------|----------|------------|-------|--------------|----------------|------------|-------|---------|--------------|--------------|
| Event Staffing Model       |              |               |                                  |         |          |            |       |              |                |            |       |         |              |              |
| Event Type                 |              | Regular       |                                  |         |          |            |       |              |                |            |       |         |              |              |
| Attendance Level           |              | 5,900         | 10 total gates (8 general/2 VIP) |         |          |            |       |              |                |            |       |         |              |              |
|                            |              | Location      |                                  |         |          |            |       |              |                |            |       |         |              |              |
|                            |              | Gates / Plaza | Artist Gate / Buses              | Redwood | Fandango | Box Suites | House | Chorus Rooms | Dressing Rooms | Back Stage | Other | Offsite | Total        |              |
| Function                   | Shift Length | Qty           | Qty                              | Qty     | Qty      | Qty        | Qty   | Qty          | Qty            | Qty        | Qty   | Qty     | Qty          | Cost         |
| Guest Services             |              |               |                                  |         |          |            |       |              |                |            |       |         |              |              |
| Event Manager              | 8            |               |                                  |         |          |            |       |              |                |            |       |         | 1            | \$195.76     |
| Supervisor                 | 7            | 2             |                                  |         |          |            | 5     |              |                |            |       |         | 7            | \$854.07     |
| Ticket Taker               | 5            | 9             |                                  | 1       |          |            |       |              |                |            |       |         | 10           | \$810.50     |
| Usher                      | 7            |               | 1                                | 1       |          |            | 42    |              |                |            | 6     |         | 50           | \$5,673.50   |
| Backstage door/Artist Gate | 8            |               | 2                                |         |          |            |       |              |                | 2          |       |         | 4            | \$538.24     |
| Load In Staff              | 8            |               |                                  |         |          |            |       |              |                |            | 2     |         | 2            | \$269.12     |
| Total                      |              | 11            | 3                                | 2       | 0        | 0          | 47    | 0            | 0              | 2          | 8     | 0       | 74           | \$8,341.19   |
| Security                   |              |               |                                  |         |          |            |       |              |                |            |       |         |              |              |
| Event Manager              | 8            | 1             |                                  |         |          |            |       |              |                |            |       |         | 1            | \$ 268.80    |
| Supervisor                 | 8            | 3             |                                  |         |          |            | 2     |              |                |            | 1     |         | 6            | \$ 1,217.66  |
| Guard                      | 7            | 28            |                                  |         |          |            | 5     |              |                | 2          |       |         | 35           | \$ 5,469.14  |
| Total                      |              | 32            | 0                                | 0       | 0        | 0          | 7     | 0            | 0              | 2          | 1     | 0       | 42           | \$6,955.60   |
| Maintenance/Operations     |              |               |                                  |         |          |            |       |              |                |            |       |         |              |              |
| Ops Asst                   | 8            |               |                                  |         |          |            |       |              |                |            | 1     |         | 1            | \$146.80     |
| Total                      |              | 0             | 0                                | 0       | 0        | 0          | 0     | 0            | 0              | 0          | 1     | 0       | 1            | \$146.80     |
| VIP Services               |              |               |                                  |         |          |            |       |              |                |            |       |         |              |              |
| Concierge                  | 7            |               |                                  | 2       |          | 2          |       |              |                |            |       |         | 4            | \$453.88     |
| Lead                       | 8            |               |                                  | 1       |          |            |       |              |                |            |       |         | 1            | \$137.04     |
| Total                      |              | 0             | 0                                | 3       | 0        | 2          | 0     | 0            | 0              | 0          | 0     | 0       | 5            | \$590.92     |
| Reception                  | 8            |               |                                  |         |          |            |       |              |                |            | 2     |         | 2            | \$259.36     |
| Medical                    |              |               |                                  |         |          |            |       |              |                |            |       |         |              |              |
| EMT Lead                   | 7            |               |                                  |         |          |            |       |              |                |            | 1     |         | 1            | \$266.00     |
| EMT                        | 7            |               |                                  |         |          |            |       |              |                |            | 3     |         | 3            | \$777.00     |
| Total                      |              |               |                                  |         |          |            |       |              |                |            |       |         | 4            | \$1,043.00   |
| LAPD                       |              |               |                                  |         |          |            |       |              |                |            |       |         |              |              |
| Supervisor                 | 6            |               |                                  |         |          |            |       |              |                |            | 1     |         | 1            | \$444.06     |
| Watch Commander            | 6            |               |                                  |         |          |            |       |              |                |            | 1     |         | 1            | \$403.68     |
| Officers                   | 6            |               |                                  |         |          |            |       |              |                |            | 12    |         | 12           | \$4,359.60   |
| Traffic Safety Manager     | 6            |               |                                  |         |          |            |       |              |                |            | 1     |         | 1            | \$427.92     |
| Total                      |              |               |                                  |         |          |            |       |              |                |            |       |         | 15           | \$5,635.26   |
| Box Office                 |              |               |                                  |         |          |            |       |              |                |            |       |         |              |              |
| Supervisor                 | 6            |               |                                  |         |          |            |       |              |                |            | 1     |         | 1            | \$327.24     |
| Day Ticket Sellers         | 6            |               |                                  |         |          |            |       |              |                |            | 2     |         | 2            | \$683.64     |
| Mid-Shift Ticket Seller    | 8            |               |                                  |         |          |            |       |              |                |            | 1     |         | 1            | \$416.88     |
| Show Ticket Sellers        | 6            |               |                                  |         |          |            |       |              |                |            | 4     |         | 4            | \$1,250.64   |
| Total                      |              |               |                                  |         |          |            |       |              |                |            |       |         | 8            | \$2,678.40   |
| Cleaning                   |              |               |                                  |         |          |            |       |              |                |            |       |         |              | \$ 5,375.00  |
| Sound                      |              |               |                                  |         |          |            |       |              |                |            |       |         |              | \$ 700.00    |
| Video                      |              |               |                                  |         |          |            |       |              |                |            |       |         |              | \$ 2,500.00  |
| Total                      |              |               |                                  |         |          |            |       |              |                |            |       |         |              | \$34,225.53  |
|                            |              |               |                                  |         |          |            |       |              |                |            |       |         |              |              |
| Parking and Neighborhood   |              |               |                                  |         |          |            |       |              |                |            |       |         |              | \$ 16,500.00 |
| Photography                |              |               |                                  |         |          |            |       |              |                |            |       |         |              | \$ 125.00    |
|                            |              |               |                                  |         |          |            |       |              |                |            |       |         |              | \$ 16,625.00 |
|                            |              |               |                                  |         |          |            |       |              |                |            |       |         | Grand Total: | \$50,850.53  |

**CITY OF LOS ANGELES  
DEPARTMENT OF RECREATION AND PARKS  
Greek Theatre  
User Agreement**

This User Agreement No.\_\_\_\_ is made and entered into this \_\_ day of \_\_\_\_\_, 20\_\_ by and between SMG, a Pennsylvania General Partnership ("SMG"), as agent for the City of Los Angeles ("City"), a municipal corporation, acting through its Department of Recreation and Parks ("Department") and \_\_\_\_\_ (hereinafter referred to as the "User").

**WITNESSETH:**

**SECTION 1. Permitted Premises and Term**

1. For and in consideration of the mutual agreements contained herein and subject to its stated terms and conditions, SMG hereby grants a Right of Entry and leases to the User, the Greek Theatre, located at 2700 North Vermont Ave. in Griffith Park, Los Angeles, The leased premises shall consist of the theatre stage house, the spectator seating area, available dressing rooms, production offices, green room/hospitality room, and such other areas permitted by SMG for the sole purpose of presenting the event ("Premises"), expressly excepting any rights to all parking lots, except for the allotted parking spaces provided in Section 3 of this Agreement.

**SECTION 2. Event Information and Term**

The User shall have the right to occupy and use the venue for:

\_\_\_\_\_ (the "Event") on  
\_\_\_\_\_ and no other, and the tenancy shall not be assigned or sublet.

Access to the PREMISES shall be granted at **[time]** a.m. (Load-In) on **[day and date]**. The Event shall commence at [time] p.m. and conclude at approximately \_\_\_\_\_p.m. Door opening time is agreed to be Ninety Minutes before scheduled show time indicated on ticket. Load-out of the Event shall commence immediately after the conclusion of the Event and be completed no later than 2:00am the day following the Event.



### SECTION 3. Rental Rates

- a For each performance, the rental rate shall be either eleven percent (11%) of the gross gate receipts (less applicable taxes and facility fee) or the minimum rental rate of Twenty-Five Thousand Dollars (\$25,000.00), whichever is greater. In no event shall the maximum rental rate for each performance exceed Thirty-Five Thousand Dollars (\$35,000.00). Should the same artist have multiple performances on the same day, the rental rate for each subsequent performance on the same day shall be at a flat rate of Fifteen Thousand Dollars (\$15,000.00) per subsequent performance. The advance deposit for this engagement is Twelve Thousand Five Hundred Dollars (\$12,500.00).
- b Rental rate includes a total of twenty-five (25) parking passes for USER or show vehicles
- c Each additional parking space is Twenty-Five Dollars (\$25.00).
- d Move-in and move-out dates must be arranged with SMG, and will be subject to availability of the premises and conditioned upon the User paying all costs as stated in the below table. If a definite booking of a rehearsal date or move-in or move-out date is authorized before or after the performance date, the User shall pay Two Thousand Five Hundred Dollars (\$2,500.00) for each such reserved date in addition to all applicable costs. \* In no case shall the load in for any performance be authorized to begin prior to 7:00 AM.

e Rental Rate Table:

|               |          | Commercial Rental Rate<br>(Those events promoted and/or sponsored by a commercial group organization) |                                |          | Community Rental Rate<br>(Those events which are promoted and/or sponsored by a Civic, Educational, Religious or Charitable group registered as a non-profit 501c3 status) |                                |         |                  |
|---------------|----------|---|--------------------------------|----------|--|--------------------------------|---------|------------------|
| Venue         | Capacity | (A)<br>Admission<br>Charged   | (B)<br>No Admission<br>Charged |          | (C)<br>Admission<br>Charged  | (D)<br>No Admission<br>Charged |         | Load-In/Out Rate |
|               |          | Minimum vs %  | Minimum                        |          | Minimum vs %   |                                |         |                  |
| Greek Theatre | 5,901    | \$25,000  | 11%                            | \$35,000 | \$7,500  | 8%                             | \$5,000 | \$2,500          |
|               |          | Rental fee is Gross Ticket Receipts (less applicable taxes and facility fee)                          |                                |          |  |                                |         |                  |

## **SECTION 4. Fees**

All fees due to SMG must be remitted to:

**SMG GREEK THEATRE  
2700 VERMONT AVENUE  
Los Angeles, CA 90027  
Attn: Becky Colwell**

### **A. Commercial Rental Rate, with Admission Charged (A):**

1. In addition to the rental rates in the table above, the User agrees to reimburse SMG for any and all labor utilized for this event at a House Flat Rate of Thirty Thousand Dollars (\$30,000.00). The House Flat Rate includes labor costs for ushers, ticket takers, security, cleaning, police, emergency medical services, box office staff and leasing costs associated with the house sound, lighting and video. The House Flat Rate expressly excludes the costs of stagehands and production related personnel, which must be provided through the existing contracts with the International Alliance of Theatrical Stage Employees (IATSE) Local 33 (Stage Technicians Union), Local 706 (Make-up Artists and Hair Stylists Guild), Local 768 (Theatrical Wardrobe Union), and Local 47 (Musicians Union). The House Flat Rate also expressly excludes the costs of private security employed for personal protection of artists or not related to public safety, special medical services requested for the artist only, advertising, ASCAP/BMI/SESAC, insurance, catering, runners, transportation, sign language interpreters (if requested), pyro/fire watch expenses (if any), Confetti cleaning expenses (\$1,500) and other USER/artist requested expenses.
2. The House Flat Rate covers the event with doors opening ninety (90) minutes prior to the advertised Event time and the performance ending no later than 10:30PM. The Greek Theatre has a hard curfew of 11:00pm. Additional labor fees will be charged at a rate of \$2,750 per one-half hour or portion thereof for events the duration of which exceeds three- and one-half hours from the scheduled event time as indicated on ticket. User will be responsible for any staffing costs associated with any load-in/load-out days and rehearsals.
3. The User shall provide SMG, at least ten (10) days prior to holding an event, a full and detailed Event and production advance, and such other information required by SMG concerning the booked event. SMG shall determine the final minimum number of, and use of, ushers, ticket takers, security, cleaning, police, emergency medical services and box office staff for those employed to handle and govern the conduct of all in attendance at the User's event.

4. The User also shall pay to SMG, on demand, any other and further sums which may become due to SMG on account of special facilities, equipment, material, or extra services furnished or to be furnished by SMG at the request of the User, or necessitated by the User's occupancy of the premises, the compensation for which is not included in the rent or rents specified above. The User shall pay the guaranteed minimum rental on signing this User Agreement. Should the User fail to satisfy and pay any debts, accounts, and amounts owing and due SMG under the terms of this User Agreement, then the SMG may apply the proceeds of the security deposit.
5. The User agrees to promptly pay any and all Municipal, State, or Federal taxes, permit or license fees of whatever nature applicable to this occupancy and to take out all permits and licenses required for occupancy, and further agrees to furnish SMG, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment or possession of any such taxes, fees or permits. Appropriate records shall be maintained and made available upon request by SMG.
6. A Five Dollar (\$5.00) Facility Maintenance Fee must be added to the price of each ticket sold.
7. Any complimentary tickets set aside by the User and for the User's use shall be marked as such. Any tickets not marked accordingly will be counted as "sold" and Facility Maintenance Fee ("FMF") will be collected. For additional Greek Theatre Ticketing policy requirements please see policy attached in Exhibit A

#### **B. Commercial, with no admission charged and Community Rental Rates**

1. In addition to the policies and rental rates listed above, the User agrees to pay SMG for any and all labor costs for ushers, ticket takers, security, cleaning, police, emergency medical services, box office staff and leasing costs associated with the house sound, lighting and video systems, stagehands and production related personnel. These costs will be determined on an event by event basis. In addition, USER shall be responsible for the costs of private security employed for personal protection of artists or not related to public safety, medical services required for the artist only, advertising, ASCAP/BMI/SESAC, insurance, catering, runners, transportation, sign language interpreters (if requested), pyro/fire watch expenses (if any), confetti cleaning expenses (\$1,500) and other USER/artist requested expenses.
2. The User also shall pay to SMG, on demand, any other and further sums which may become due to SMG on account of special facilities, equipment, material, or extra services furnished or to be furnished by SMG at the request of the User, or necessitated by the User's occupancy of the premises, the compensation for which is not included in the rent or rents specified above. The User shall pay the guaranteed minimum rental on signing this User Agreement. Should the User fail to satisfy and pay any debts, accounts, and amounts owing and due SMG under the terms of this User Agreement, then SMG may apply the proceeds of the security deposit.



3. The User agrees to promptly pay any and all Municipal, State, or Federal taxes, permit or license fees of whatever nature applicable to this occupancy and to take out all permits and licenses required for occupancy), and further agrees to furnish SMG, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment or possession of any such taxes, fees or permits. Appropriate records shall be maintained and made available upon request by SMG.

## **SECTION 5. Security Deposit**

Security Deposit for promoters with less than four (4) shows for the current season shall furnish a

\$10,000.00 per show cashier check only, security deposit to SMG for each show. Beginning with fifth (5<sup>th</sup>) booking, promoters must provide letter of credit.

## **SECTION 6. Rules & Regulations**

It is understood and agreed that SMG hereby reserves the right to control and manage the Greek Theatre and to enforce all necessary and proper established rules for its management and operation and for its authorized representatives to enter any portion of the Greek Theatre and on any occasion, provided that SMG and its agents shall not unnecessarily disturb the privacy of the artists in areas and circumstances where the artists have a reasonable expectation of privacy. SMG also reserves the right, but not the duty, to safely and reasonably have any objectionable person or persons removed from the premises and the User hereby waives any and all claims for damages against SMG or any and all of its officers, agents or employees resulting from the exercise of this authority, except to the extent that any such claims for damages are the result of the negligence or willful misconduct of SMG or any and all of its officers, agents or employees. SMG reserves the right to manage and control all parking facilities on the Greek Theatre property or leased by SMG at all events held at the Greek Theatre. Notwithstanding the foregoing, SMG will make such parking facilities available to event patrons during the User's event (at such prices determined by the Department).

The standard door opening at the Greek Theatre shall be ninety minutes prior to the advertised start time of the show; this may be adjusted as necessary with advance notice by the User to SMG but may be subject to additional fees.

Performances must end no later than 10:30 PM, unless prior written permission has been granted by SMG. In no case, however shall a performance extend past 11:00 PM. SMG reserves the right to cut power, and assess a penalty of One Thousand Dollars (\$1,000.00) per minute for the first five (5) minutes past 11:00pm. A penalty of Five Thousand Dollars

Established June 18, 2015  
Revised August 20, 2020

(\$5,000.00) per minute will be assessed thereafter.

SMG shall be the sole provider of conversion labor, ticket takers, ushers, ticket sellers, peer security, police, medical), cleaning personnel, receptionist, maintenance/ operations staff, engineers, event coordinator, and local stagehand labor. SMG, using reasonable discretion, shall have final say as to the minimum number of personnel required based on the nature of the Event and the anticipated attendance.

Special stage effects involving pyrotechnic displays (including fireworks and flash powders) are prohibited except by a special fee and a City permit from the Fire Prevention Bureau. If a pyrotechnic display is required, arrangements must be made through the Los Angeles Fire Department at the User's expense.

The Greek Theatre has blow-thru barricade available for use at shows with a standing General Admission Pit only.

The User shall use and occupy the venue in a safe and careful manner and shall comply with all applicable Municipal, State, and Federal laws, rules and regulations pertaining to the City of Los Angeles, the Department of Recreation and Parks and all other rules and regulations prescribed by the Fire and Police Departments and other governmental authorities as may be in force and effect during the tenancy. The User shall not use said premises or any part thereof for the possession, storage, or sale of liquor (except with the permission of SMG, and according to law), for any unlawful or improper purpose or in any manner so as to injure persons or property in, on, or near the premises. User shall not do any act or permit or allow, any act to be done during the term of this User Agreement which will in any way mark, deface, alter or injure any part of the Greek Theatre (normal wear and tear excepted).

All portions of the sidewalks, entrances, passages, vestibules, halls, and all ways of access to public utilities on the Premises shall be kept unobstructed by the User and shall not be used for any purpose other than ingress or egress to and from the premises. The doors, stairways, or openings into any place in the structure, including, hallways, corridors, and passageways, also house lighting attachments, shall in no way be obstructed by the User.

SMG will be responsible for traffic control working in conjunction with the City's Department of Transportation (DOT).

SMG assumes no responsibility whatsoever, for any property placed in said premises, and SMG is hereby expressly released and discharged from any and all liabilities for any loss, injury or damages to person or property that may be sustained by reason of the occupancy of said premises under this User Agreement, except to the extent that any such loss, injury or



damages are the result of the negligence or willful misconduct of SMG. All watchmen or other protective service desired by the User must be arranged for by special agreement with SMG with due diligence taken for the receipt, handling, care or custody of any property shipped or otherwise delivered to the Greek Theatre, either prior to, during, or subsequent to the User's occupancy. SMG and its officers, agents, and employees shall act solely for the accommodation of the User and neither SMG nor its officers, agents, or employees shall be liable for any loss, damage, or injury to such property, except to the extent that any such loss, injury or damages are the result of the negligence or willful misconduct of SMG its officers, agents, or employees.

SMG shall have the sole right to collect and have custody of all articles left on the premises by persons attending any function held on the premises. Any property left on the premises by User shall, after a period of thirty (30) days from the last day of tenancy hereunder, be deemed abandoned and at SMG's sole option, become the property of SMG, without further notice.

In the event any portion of the Greek Theatre is not vacated at the end of the term of this rental, then SMG shall be and is hereby authorized to remove articles from the venue, at the expense of the User. SMG shall not be liable for any damage to or loss of such goods, wares, merchandise or property sustained either during the removal or storage of by SMG and it and its agents, employees and officials are hereby expressly released from any and all claims for such loss or damage. SMG will notify the User of any equipment or articles inadvertently left by the User and provide the User with a reasonable opportunity to remove same prior to removal or disposal by SMG. Upon termination of this Agreement, the User will deliver back to SMG the venue in as good condition and repair as it was received and in conformance with the Department's guidelines. Should the User fail to return the venue in as good condition and repair as it was received, any necessary and reasonable amounts owed and due SMG under the terms of this User Agreement may be subtracted from the User's security deposit.

Notwithstanding exclusivity granted to User by the terms of this Agreement, the City in its discretion may require User, without any reduction in rent or other valuable consideration to User, to accommodate the rights of persons to access and engage in expressive activities, as guaranteed by the first amendment to the United States constitution, the California constitution, and other laws, as these laws are interpreted by the City. Expressive activities include, but are not limited to, protesting, picketing, proselytizing, soliciting, begging, and vending of certain expressive, message-bearing items in appropriately legal areas which are not disruptive to the Event, intrusive of the User's exclusivity or which impede commercial operations of the venue.



## ADA – Americans with Disability Act Requirements:

The parties recognize that the City is subject to the provisions of Title II of the Americans with Disabilities Act (“ADA”) and that the User is subject to the provisions of Title III of the ADA (including all revised regulations dated September 15, 2010 and effective March 15, 2011). Concerning compliance with the ADA and all regulations thereunder, the City is responsible for the permanent building access requirements; such as wheelchair ramps, elevators, restrooms, doors and walkways. The User is responsible for the non-permanent accessibility standards and requirements, such as, but not limited to, seating accessibility, ticketing, ticket pricing, sign language interpreters, signage and all other auxiliary aids and services customarily provided by the User. The User shall comply with the ADA and all regulations thereunder.

Tickets for unsold accessible seating may be released for sale to individuals without disabilities:

1. When all non-accessible tickets (excluding luxury boxes, club boxes, or suites) have been sold;
2. When all non-accessible tickets in a designated seating area have been sold and the tickets for accessible seating are being released in the same designated area; or
3. When all non-accessible tickets in a designated price category have been sold and the tickets for accessible seating are being released within the same designated price category.

User represents that it has viewed or otherwise apprised itself that such access to the premises and common areas and accepts such access, common areas, and other conditions of the premises as adequate for User’s responsibilities under the ADA. The User shall be responsible for ensuring that the space rented by City to User complies and continues to comply in all respects with the ADA, including accessibility, usability and configuration insofar as the User modifies, rearranges or sets up in the facility in order to accommodate the performance produced by the User. The User shall be responsible for any violations of the ADA that arise from User’s reconfiguration of the seating areas or modification of other portions of the premises in order to accommodate User’s engagement. The User shall be responsible for providing and paying for auxiliary aids and services that are ancillary to its production and for ensuring that the policies, practices and procedures it applies in its production are in compliance with the ADA.

## **SECTION 7. Ticketing Agent and Tickets**

The User will adhere to the Greek Theatre Ticketing Policy as established by Department (Exhibit A). The User shall not sell, allow, or cause to be sold or issued, admission tickets in excess of the seating capacity of, or admit a larger number of persons to the area than can be lawfully and safely seated or moved about, with the final decision vested by SMG.

Established June 18, 2015  
Revised August 20, 2020

## SECTION 8. Broadcasting & Advertising Rights

**USER shall use only the Greek Theatre approved website address of [www.lagreektheatre.com](http://www.lagreektheatre.com) when advertising the host venue for Event. Any User who uses the name Greek Theatre or any portion thereof in another website, domain, advertising or marketing event is strictly prohibited from booking Events at the Greek Theatre. Users are strictly prohibited from maintaining, operating or using competing websites or other marketing streams that use the Greek Theatre name from doing business at the Greek Theatre.**

This Agreement includes rights to broadcast from the Greek Theatre. Broadcast is defined as the "the dissemination of video, film or radio content via electronic means including but not limited to high definition, standard and cable television, radio, web casting, web streaming, down loads, and/or other forms of digital transmission, digital broadcast or digital distribution effectuated by means of the internet in all forms of television media now and hereafter known SMG shall retain all television, film, radio and/or recording rights to any Events which take place in or at the Facility. Licensee may purchase such rights from SMG for a broadcast and/or recording fee ("**Broadcast Fee**") of \$15,000 plus applicable stagehand costs that are not already covered by the Rental Rates set forth in Section 3 herein.

This User Agreement does not include any advertising rights pertaining to the venue in favor of the User. SMG retains all rights to sell or lease advertising on the premises, and to determine whether any incidental display of products, logos, etc., may conflict with the Department's rights. SMG shall not permit any display on the premises of an objectionable nature, in the sole and absolute discretion of SMG

SMG further reserves the right to make or record any photographs, audio or video at the venue for its own personal use or for the customary advertising and publicity, subject to any applicable required approval(s) from the performing artist.

Except for announcement of upcoming concerts at the Greek Theatre, or events in which the User is promoting or advertising for artists performing at the event, the User shall not distribute fliers, brochures, petitions, surveys or literature of any kind nor sell or cause to be sold or sampled pamphlets, novelties, curios, souvenirs, or similar items at or in the Greek Theatre, except upon written permission of SMG.

USER shall use the Greek Theatre logo in all advertising controlled by or done on behalf of USER relating to an Event, including, but not limited to, television, internet, newspaper, magazine, and outdoor advertising. USER's right to use the Greek Theatre Logo shall be

Established June 18, 2015  
Revised August 20, 2020

limited to the specific, express purpose set forth in the foregoing sentence and/or as otherwise authorized by SMG in writing prior to the use thereof. In connection with USER's use of the Greek Theatre Logo as permitted in this section, USER shall use only the form of the Greek Theatre as provided by SMG to USER in any artwork or other depiction thereof.

## **SECTION 9. Sound, Video & Lighting**

SMG will provide house sound, video displays and basic lighting systems originating at the front house mix position in the venue. The User is required to use the house audience public address/sound reinforcement system for the event but may provide alternative and/or additional stage sound monitors and consoles, video displays and lighting systems required for the event. A comprehensive Greek Theatre Technical Package can be found at [www.lagreektheatre.com](http://www.lagreektheatre.com)

During the performance, SMG will work in conjunction with the User to monitor sound levels. In the event, sound levels that exceed 95dBA, sustained over any three (3) minute interval, the User will be given a warning to lower the sound. If additional violations occur, monetary penalties shall apply as set forth below. A sound monitoring data report showing sound readings each minute shall be generated at the conclusion of each performance. At the conclusion of the show the sound monitoring data report will be provided to document all violations of the sound level limit that occurred during the performance. If any violations occurred, the following penalties shall apply and shall be paid by USER as part of the Event settlement, or otherwise deducted from USER security deposit:

First Offense: Shall be a warning during the performance to lower sound levels to 95dBA.

Second Offense: Shall be a Five Thousand Dollar (\$5,000.00) fine.

Third Offense: Shall be a Seven Thousand Five Hundred Dollar (\$7,500.00) fine.

Subsequent Offenses: Shall be Ten Thousand Dollars (\$10,000.00) per violation.

## **SECTION 10. Food and Beverage**

The User shall not sell or cause to be sold items of food or drink at or in the Greek Theatre, without written permission. Food and beverage sales are in the exclusive rights of the Department's Food and Beverage Concessionaire. SMG must approve any and all sampling requests, with such approval not to be unreasonably withheld if they are made at the request of artist's tour sponsors. The User may opt to bring in a caterer to perform backstage artist and dressing room duties with no additional buy-out fee.



## **SECTION 11. Artists Merchandise Sales**

With regard to Event merchandise sales, Department's Food and Beverage Concessionaire (Concessionaire) shall handle sales on behalf of the Event/artists ("Artist"). USER agree to a split of 80% to Artist and 20% to Concessionaire on merchandise, as well as a split of 90% to Artist and 10% to Concessionaire on recorded media, after the deduction of all applicable taxes, credit card commissions, and bootleg security, if requested. Concessionaire shall supply and pay the merchandise vendors. Neither User nor Department will receive any monetary benefits from the sale of artists' merchandise.

## **SECTION 12. Notices**

Any notice or formal communications between SMG and the User shall be made in writing and will be deemed sufficiently rendered or given when made or sent by e-mail to: bcolwell@lagreektheatre.com

## **SECTION 13. Legal Authority**

User assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate, and official motion, resolution, or action passed or taken, to enter into this User Agreement. The person or persons signing and executing this User Agreement on behalf of User, do hereby warrant and guarantee that he/she or they have been fully authorized by User to execute this User Agreement on behalf of User and to validly and legally bind User to all the terms, performances, and provisions herein set forth:

- A. Standard Provisions for City Contracts (Rev. 10/17 [v.3]), excluding PSC-31 and PSC-32.
- B. Ticketing Policy, Exhibit A
- C. Insurance Requirements Form, Exhibit B
- D. Greek Theatre Booking Policy, Exhibit C

## **SECTION 14. Force Majeure**

If the Event would be illegal or impossible to hold, or it would be illegal or impossible for either of the parties to perform their respective obligations hereunder because of an act or regulation of public authority, fire, riot or civil disorder, strikes or lockouts (other than a lockout by the User or any of the User's contractors or subcontractors), terrorist acts, acts or declarations of war, virus, pandemic, or acts of God ("Force Majeure Event"), neither party shall have any obligation or liability whatsoever to the other party as a result thereof. If government restrictions or guidelines related to the COVID-19 pandemic reduce the capacity of the Premises on the day(s) of the Event by more than 20%, User shall have the right to

cancel the Event, in which case each party's obligations shall be deemed waived, and there shall be no claim for damages by either party. However, while User will not be penalized for such an impossibility or cancellation and may be entitled to a refund of prepaid amounts, including deposits, User shall pay for the costs and fees of any services already rendered by SMG and City prior to receiving any refund that may be owing.

*(Signature Page to Follow)*

**IN WITNESS WHEREOF, THE CITY OF LOS ANGELES** has caused this User Agreement to be executed on its behalf by its duly authorized Department of Recreation and Parks, and User has executed the same as of the day and year herein below written.

**SMG, as agent for THE CITY OF LOS ANGELES**, a municipal corporation, acting by and through its Department of Recreation and Parks:

**BY:** \_\_\_\_\_  
**General Manager or Designee**

**DATE:** \_\_\_\_\_

**[INSERT USER NAME]**

**BY:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**BTRC:** \_\_\_\_\_

**APPROVED AS TO FORM:**

**MICHAEL N. FEUER, City Attorney**

**BY:** \_\_\_\_\_

**Michael Dundas**

**DATE:** \_\_\_\_\_



Attachment 1

**FIRST AMENDED AND RESTATED AGREEMENT**

**FOR**

**GREEK THEATRE**

**VENUE AND CONCESSIONS MANAGEMENT**

**Between**

**THE CITY OF LOS ANGELES DEPARTMENT OF  
RECREATION AND PARKS**

**And**

**SMG**

## TABLE OF CONTENTS

|   |           |
|---|-----------|
| SECTION 1. DEFINITIONS.....   | 3         |
| SECTION 2. RIGHTS AND RESPONSIBILITIES.....                             | 5         |
| SECTION 3. PREMISES.....  | 6         |
| SECTION 4. TERM.....  | 7         |
| SECTION 5. SERVICES AND OPERATING RESPONSIBILITIES.....                 | 7         |
| SECTION 6. ANNUAL MANAGEMENT FEE .....                                  | 22        |
| SECTION 7. REIMBURSABLE EXPENSES .....                                  | 23        |
| SECTION 8. EVENT SERVICES STAFFING EXPENSES.....                        | 23        |
| SECTION 9. SPONSORSHIPS, BOX SEATS AND PREMIUM SEATING SALES.....       | 23        |
| SECTION 10. CONCESSION FEE .....  | 24        |
| SECTION 11. ACCOUNTING, RECORDS AND ADDITIONAL FEES.....                | 27        |
| SECTION 12. IMPROVEMENTS .....  | 30        |
| SECTION 13. PREMISES MAINTENANCE .....                                  | 32        |
| SECTION 14. PROHIBITED ACTS.....  | 34        |
| SECTION 15. NUMBER OF ORIGINALS.....                                    | 35        |
| SECTION 16. RATIFICATION LANGUAGE.....                                  | 35        |
| SECTION 17. PERFORMANCE DEPOSIT .....                                   | 35        |
| SECTION 18. TAXES, PERMITS AND LICENSES .....                           | 36        |
| SECTION 19. TRANSFER OR ASSIGNMENT .....                                | 37        |
| SECTION 20. BUSINESS RECORDS .....                                      | 37        |
| SECTION 21. REGULATIONS, INSPECTION, AND DIRECTIVES.....                | 39        |
| SECTION 22. SURRENDER OF POSSESSION.....                                | 42        |
| SECTION 23. NOTICES .....   | 42        |
| SECTION 24. <del>INCORPORATION OF DOCUMENTS</del> INDEMNIFICATION ..... |           |
| 44  |           |
| <u>SECTION 25. INCORPORATION OF DOCUMENTS.....</u>                      | <u>44</u> |

## GREEK THEATRE VENUE AND CONCESSIONS MANAGEMENT AGREEMENT

**THIS FIRST AMENDED AND RESTATED AGREEMENT** ("AGREEMENT") is made and entered ~~into~~ this first day of ~~November, 2018~~September, 2020, by and between the CITY OF LOS ANGELES, a municipal corporation (hereinafter referred to as CITY), acting by and through its Department of Recreation and Parks ("RAP"), and SMG, a Pennsylvania General Partnership ("SMG" or "Contractor"). The CITY and SMG may hereafter be referred to individually as a "Party" and collectively as "Parties."

**WHEREAS**, ~~RAP seeks to hire a company to oversee~~the Parties entered into that certain AGREEMENT FOR GREEK THEATRE VENUE AND CONCESSIONS MANAGEMENT, on November 1, 2018, for the purposes of overseeing management of the Greek Theatre Venue, Greek Theatre Concessions, and the Franklin's Market & Café at the Roosevelt Golf Course; ~~and (the "Original Agreement")~~;

**WHEREAS**, RAP, ~~finds previously found~~, in accordance with Charter Section 1022, that it is necessary, feasible and economical to secure these services by contract as it lacks sufficient and necessary personnel to undertake these specialized professional services; and

**WHEREAS**, RAP ~~finds previously found~~, pursuant to Charter Section 371 (e) (10), and Los Angeles Administrative Code Section 10.15(a)(10), that the use of competitive bidding would be undesirable, impractical or otherwise excused by common law and the City's Charter because, unlike the purchase of a specified product, there is no single criterion, such as price comparison, that will determine which proposer can best provide the services required by RAP; and

**WHEREAS**, RAP ~~finds previously found~~ it necessary to utilize a standard request for proposal process and to evaluate proposals based upon the criteria included in a Request for Proposal (RFP); and

**WHEREAS**, RAP released a RFP for the Greek Theatre Venue and Concessions Management; and

**WHEREAS**, RAP received and evaluated two proposals from venue management companies; and

**WHEREAS**, SMG received the highest score, and was recommended and selected to manage the Greek Theatre Venue and Concessions in accordance with this ~~AGREEMENT'S~~the Original Agreement's terms and conditions; and

**WHEREAS**, SMG ~~desires~~desired to enter into such ~~AGREEMENT~~Original Agreement to assist RAP in providing the public with premium, high-quality patron and community services at the Greek Theatre and Franklin's Market and Café; ~~and~~

**WHEREAS**, the Parties desire to extend the Original Agreement term by an additional 14 months due to the cancellation of the 2020 season because of health risks associated with the COVID-19



pandemic, and, to extend the length of the concert season and to align the contract years under the AGREEMENT to coincide with calendar years; and

WHEREAS, SMG and CITY agree the Annual Management Fee due for Agreement Year 2 of the Original Agreement (starting from November 1, 2019 and ending December 31, 2020) be revised to reflect a reduction in the Annual Management Fee due per month to the amount of \$139,945.48 per month for the period of May 1, 2020 to December 31, 2020 due to the cancellation of the 2020 concert season at the Greek Theatre because of health risks associated with the COVID-19 pandemic; and

WHEREAS, SMG has requested it be relieved of the requirement to pay the minimum guaranteed concession fee for the Greek Theatre Concessions for the period of November 1, 2019 through December 31, 2020 due to the cancellation of the 2020 concert season at the Greek Theatre because of health risks associated with the COVID-19 pandemic and that any prepaid balance of such fee for such period be retained by RAP and credited to the minimum guaranteed concession fee owing for the period of January 1, 2021 through December 31, 2021; and

WHEREAS, the Parties agree the annual number of concerts shall be set as up to 82 concerts per year from early April through mid-November; and

WHEREAS, the Parties desire to restate the Original Agreement in its entirety, together with any new amendments;

**NOW THEREFORE**, in consideration of the terms, covenants and conditions hereinafter to be kept and performed by the respective Parties, it is agreed as follows:

## SECTION 1. DEFINITIONS

For the purpose of this AGREEMENT, the following words and phrases are defined and shall be construed as hereinafter set forth:

|                            |  |
|----------------------------|--|
| ADDITIONAL PARKING SITES:  | Parking areas as specified in Section 3.   |
| ADMINISTRATIVE COSTS:      | SMG's general and administrative costs for operating the FACILITY, which are further described in Exhibit L.   |
| AGREEMENT:                 | This AGREEMENT consisting of forty-five (45) pages and Exhibits (A thru T) attached thereto.   |
| ANNUAL MANAGEMENT FEE:     | The annual compensation SMG will receive for its services as specified in Section 6.   |
| BOARD:                     | Board of Recreation and Park Commissioners.  |
| CITY:                      | The City of Los Angeles  |
| CITY FF&E COSTS:           | CITY's costs to equip the FACILITY with sufficient furnishings, fixtures and equipment to allow operation of the FACILITY as provided in Section 5U, except for SMG's ADMINISTRATIVE COSTS, SMG'S OFFICE FURNITURE AND EQUIPMENT, and equipment and furnishings described in Capital Improvement Plan of SMG's proposal (Exhibit H, pages 109-174).  |
| CITY'S OPERATING EXPENSES: | Shall consist of: (i) UTILITY MAINTENANCE AND REPAIR COSTS, (ii) REIMBURSABLE EXPENSES, (iii) EVENT SERVICES AND STAFFING COSTS, (iv) CITY'S FF&E COSTS and (v) the ANNUAL MANAGEMENT FEE. CITY'S OPERATING EXPENSES shall be calculated in compliance with this AGREEMENT, Generally Accepted Accounting Principles (GAAP), City Controller's policies and procedures, the City Charter and the LAAC. |
| CONCERT SEASON:            | Mid-April through <del>October 31</del> Mid-November   |
| CONCESSION:                | Greek Theatre and Franklin's Market & Café's concessions, the permitted operation granted by this AGREEMENT.   |

|                                    |   |
|------------------------------------|---|
| DESIGNATED CONTRACT ADMINISTRATOR: | RAP's designated contract administrator to serve as SMG's and the GENERAL MANAGER's primary point of contact for oversight and operational management at the Greek Theatre and Franklin's Market & Café.  |
| EFFECTIVE DATE:                    | November 1, 2018  |
| EVENT SERVICES AND STAFFING COSTS: | Any and all expenses incurred, or payments made by SMG, in connection with the staffing, operation and production of events at the PREMISES, except for expenses included in SMG'S ANNUAL MANAGEMENT FEE.   |
| FACILITY:                          | GREEK THEATRE, located at 2700 N. Vermont Avenue, Griffith Park, Los Angeles, California 90027 and the Franklin's Market & Café, located at 2650 N. Vermont Avenue, Griffith Park, Los Angeles, California 90027.   |
| GENERAL MANAGER:                   | The SMG employee designated as the Greek Theatre and the Franklin's Market & Café Manager to oversee, operate and manage the FACILITY.  |
| LAAC:                              | Los Angeles Administrative Code   |
| LAMC:                              | Los Angeles Municipal Code  |
| MANAGEMENT STAFFING COSTS:         | All costs related to providing personnel for SMG's required positions.  |
| OPEN VENUE MODEL:                  | The FACILITY operating model, as defined by the BOARD'S approved policies and procedures attached as Exhibits E, F and G  |
| PREMISES:                          | The geographical area, as defined in Section 3, including the FACILITY  |
| RAP:                               | The Department of Recreation and Parks, acting through its Board of Recreation and Park Commissioners.  |
| REIMBURSABLE EXPENSES:             | A purchase, lease or operating expense paid by SMG on behalf of RAP, including but not limited to website hosting and maintenance costs; monies paid to non-DOT shuttle operator, if applicable; pre-approved expenses related to booking services for non- |



Greek venues; Greek Theatre venue cleaning services pre, during and post-concert/event; sound system and video equipment and other related expenses; lighting system and any other equipment other than sound monitoring equipment and equipment procured as a part of SMG'S OFFICE FURNITURE AND EQUIPMENT

**SMG OFFICE COSTS:**

SMG's costs to provide SMG'S OFFICE FURNITURE AND EQUIPMENT pursuant to Section 5U.

**SPONSORSHIP AND PREMIUM SEATING REVENUE:**

All gross revenue, less fulfillment costs, from the sale of all sponsorship deals and premium seating programs including, but not limited to: 1) Box Suites, 2) Club Seats, 3) Season Subscriptions, 4) VIP Seating Packages, or other similar programs where license fees are charged in connection with seating programs created by SMG at the FACILITY. For purposes of this definition, SMG's staff time in servicing the needs of the sponsor shall not be considered a fulfillment cost.

**UTILITY MAINTENANCE AND REPAIR COSTS:**

The CITY'S costs for utilities (excluding telephone, trash pick-up, and internet connection charges, which will be paid by SMG) and for maintenance and repair of such utilities as provided in Section 5Y, but excluding SMG's OFFICE COSTS.

**SECTION 2. RIGHTS AND RESPONSIBILITIES**

The CITY hereby grants SMG, subject to this AGREEMENT's terms and conditions, the right to provide operational oversight and coordinated management of the Greek Theatre Venue, Greek Theatre Concessions, and Franklin's Market & Cafe at the Roosevelt Golf Course; and to act as RAP'S agent working with and under the direction of RAP with respect to the day to day operations of the FACILITY.

SMG shall manage and operate the FACILITY on a year-round basis per applicable CITY and RAP codes, rules, regulations, ordinances, and laws regarding, without limitation, levels of noise, accounting procedures and public/private access.

SMG shall provide food and beverage services at the Greek Theatre during all concerts and events as required by RAP or those booking the Greek Theatre.

SMG shall provide food and beverage, and related restaurant management, services at the Franklin's Market & Cafe 365 days a year in coordination with the Roosevelt Golf Course.

SMG shall coordinate and manage the Greek Theater's booking calendar and serve as the booking agent and fulfill riders for a minimum of ten concerts at other City locations, if requested by RAP. SMG agrees to use reasonable efforts in the performance of the following duties: assist RAP in obtaining and negotiating engagements with artists; advise, aid, counsel and guide RAP with respect to those engagements; and fulfill rider obligations required by those artists. Pre-approved, related expenses incurred by SMG in the fulfillment of rider obligations shall be a REIMBURSABLE EXPENSE.

SMG shall submit copies of all proposed sponsorship agreements for approval that relate to and/or affect the Greek Theatre and/or Franklin's Market + Cafe, including in-kind, barter and cash sponsorships, (see SECTION 9 "Sponsorships, Box Seats and Premium Seating Sales," for details).

SMG, in conjunction with RAP, shall organize and operate various community oriented operations and FACILITY related services such as traffic and parking control, security and crowd control measures, and pre and post-event, neighborhood clean-ups, community meetings and other duties described below.

SMG shall collect all fees for FACILITY services, maintain RAP-approved accounting records, pay for and obtain all licenses, permits and insurance (Insurance Requirements and Instructions, Exhibit B) (excluding insurance for CITY'S personal property and/or business interruption) necessary for venue management and concession services provided under this AGREEMENT, and perform or supervise SMG and subcontractor employees in the performance of all other tasks.

CITY reserves the right to develop or improve the PREMISES as needed, without interference or hindrance; however, CITY shall consider and request SMG's views and operational perspectives.

### **SECTION 3. PREMISES**

The PREMISES authorized for use by SMG shall only include:

- The Greek Theatre: main theatre structures; all areas, structures, and facilities in the North Wing, South Wing, North Concourse, South Concourse, and Front Concourse (Plaza); Box Office; concession areas, seating areas; adjacent hillside, light booth; immediate exterior walls, fencing and public access areas fronting North Vermont Avenue.
- All Greek Theatre parking lots, including the adjacent valley lots west of theatre.
- Franklin's Market + Café located at 2650 N. Vermont Ave. Los Angeles, CA 90027

SMG shall not use or permit the PREMISES to be used, in whole or in part, for any other purpose other than as set forth in this AGREEMENT except with prior, written consent of RAP, nor allow any use in violation of any present or future laws, ordinances, rules and regulations relating to sanitation or the public health, safety or welfare of operations at and in connection with the use of the PREMISES. SMG expressly agrees at all times to maintain, use and operate the PREMISES in a safe, clean, wholesome and sanitary condition, and in compliance with any and all present and future laws, ordinances and rules and regulations relating to public health, safety or welfare and RAP standards and directives.

In addition to the PREMISES, CITY shall provide SMG with ADDITIONAL PARKING SITES on Boy Scout Road, and such other parking areas as may be designated by the Parties for use only during show days, or other FACILITY use days. These additional areas may not be used for

purposes other than to park vehicles of show patrons, employees of SMG and subcontractor employees and licensees at the FACILITY, unless otherwise approved by RAP. CITY shall retain responsibility for the maintenance of these parking areas.

CITY undertakes and agrees to deliver to SMG the PREMISES, further described in Exhibit C, for use by SMG in accordance with this AGREEMENT.

#### SECTION 4. TERM

The term of the AGREEMENT shall be ~~five~~<sup>six</sup> years ~~and 2 months~~, plus one five-year extension option exercisable at the RAP General Manager's sole discretion on 180 days' prior written notice, commencing on November 1, 2018 and terminating on ~~October~~<sup>December</sup> 31, ~~2024~~<sup>2023</sup>.

Neither City, nor any BOARD member, officer, or employee thereof shall be liable to SMG in excess of the then-applicable ANNUAL MANAGEMENT FEE and CITY'S OPERATING EXPENSES because of any action taken to terminate the AGREEMENT early pursuant to Section PSC-9 of the City's Standard Provisions. In addition, neither City, nor any BOARD member, officer, or employee thereof shall be liable to SMG for any reason because of an action to decline to exercise the five-year extension option or disapprove renewal of the AGREEMENT.

#### SECTION 5. SERVICES AND OPERATING RESPONSIBILITIES

SMG shall, at all times, provide the following services and comply with the following conditions:

- A. Implementation, coordination and enforcement of RAP's Open Venue Model, booking, ticketing and operating documents, policies and procedures.
  1. SMG will provide oversight and management of the FACILITY.
  2. SMG will be responsible for coordinating and collaborating with promoters, agents, and interested parties to facilitate no more than ~~7682~~ concerts and, separately, additional community events during the CONCERT SEASON. Promotion of concerts or events at the Greek Theatre by SMG is strictly prohibited, consistent with an open venue model.
  3. SMG agrees to use its Venue Management Software, at no additional cost to RAP, to manage, book and coordinate the execution of all events. SMG further agrees to manage the Challenge Process within the Venue Management Software. SMG will provide RAP access to all information and databases related to the FACILITY. All data captured within the Venue Management Software belongs to RAP and shall be provided to RAP upon request.
  4. SMG will manage and provide all as-needed event services staffing required for each event or concert including, but not limited to, ushers, ticket-takers, security, event cleaning, parking attendants, shuttles, neighborhood event staffing and box office staff. SMG may use its own staff or subcontract for the event services staffing. However, SMG shall obtain written approval from City prior to subcontracting any services listed as being provided by SMG staff on the Proposed SMG Organizational Chart on page 62 of SMG's proposal (Exhibit H).



5. Event Management Staffing Plans: SMG must submit Event Services Staffing Plans to RAP for written approval ninety (90) days prior to the start of the CONCERT SEASON. The Event Services Staffing Plans must include appropriate staffing levels for all portions of the PREMISES and the surrounding neighborhood, including:
- a. A traffic control plan to manage traffic that includes input from the community, RAP and City of Los Angeles Department of Transportation (DOT).
  - b. A security plan addressing security screening, venue crowd control inside and outside the PREMISES, including excessive noise, illegal merchandise vending, ticket scalping, alcohol/drug use, and littering on residential properties in the surrounding area. At a minimum the security plan shall:
    - Provide sufficient off-duty uniformed Los Angeles Police Department (LAPD) police officers and neighborhood event staff at key locations at the PREMISES and outside Griffith Park during all shows, including non-police neighborhood walking patrols.
    - Provide consistent post-show, neighborhood clean ups and area inspections related to concerts or events.
    - Provide other related services directly related to traffic control, neighborhood security, and clean up in areas immediately impacted by FACILITY.
6. **Parking and Shuttles**  
SMG will manage all parking operations including a shuttle program to transport customers from off-site parking lots, transportation hubs or other leased parking areas. SMG shall obtain RAP's prior written approval before commencing contract negotiations or executing such contracts for any leased parking areas. Lease payments for approved parking areas shall be a REIMBURSABLE EXPENSE. SMG shall staff these operations with SMG's employees or may subcontract for one or both operations. **SMG shall pay to CITY one hundred (100) percent of all parking receipts received in the course of SMG's management of the parking operations under this AGREEMENT. Nothing in this section limits or otherwise reduces SMG's right to recover EVENT SERVICES AND STAFFING COSTS as otherwise set forth in this AGREEMENT.**
7. **Box Office Operations**  
SMG shall manage and staff the Greek Theatre Box Office. There will be no exclusive rights to a particular ticketing vendor at the Greek Theatre, unless approved by RAP. A promoter, agent or other FACILITY user shall have the option to designate and select any ticketing vendor for their respective event, provided that such ticketing vendor meets all of the minimum requirements of RAP.
8. SMG shall coordinate with the Los Angeles Fire Department (LAFD), LAPD, and RAP Park Rangers on all scheduled events regarding Fire, EMS and security services required for public protection.

9. SMG shall perform annual Fire/Life Testing of the FACILITY through a licensed vendor in conformance with LAFD Regulation 4. Failure to perform annual test will result in a penalty of five hundred dollars (\$500.00) per day for noncompliance plus reimbursement to RAP for any costs incurred should RAP perform required testing. Noncompliance shall mean any time that passes beyond 365 days from the prior test.
10. SMG will at all times be responsible for maintaining public and concert staff ingress and egress to the FACILITY.
11. SMG will manage all VIP areas within the FACILITY and VIP Parking.
12. SMG will be responsible for enforcing RAP's established acceptable sound level requirements as set forth in the User Agreement (Exhibit E). As part of this responsibility, SMG shall be responsible for purchasing and keeping sound monitoring equipment in good working condition for every event produced at the Greek Theatre.

**B. Fiscal Responsibilities**

SMG shall act as RAP's fiscal agent for the OPEN VENUE MODEL. SMG will collect all fees associated with FACILITY operations, and will ensure proper accounting for all monies collected and any interest earned.

1. SMG shall ensure promoters and agents submit the required advance deposits, and any other fees for their events as established in the Booking Policy (Exhibit F) and the User Agreement.
2. SMG shall accept challenge request checks and process all challenges in compliance with RAP's Booking Policy.
3. SMG shall complete end of show settlements at the end of each show and will ensure monies for the show are properly distributed to all parties. SMG shall submit the end of show settlement statement to RAP within two (2) business days of settlement.
4. SMG shall manage and administer RAP's Promoter's Commercial Incentive Program Policy (Exhibit G).
  - a. Payment to promoters or agents achieving incentives will be made from the Greek Theatre bank account at the end of the CONCERT SEASON in accordance with the provisions set forth in SECTION 11.

**C. Concession Rights and Responsibilities**

SMG will have the exclusive right and obligation to sell food, non-alcoholic and alcoholic beverages, and Greek Theatre merchandise from designated portions of the FACILITY and will be permitted to use mobile carts to sell such items at designated areas pursuant to RAP's prior approval, needs and requests. The address and telephone number of SMG will be shown along with the notation that all complaints regarding change, food and beverage, etc., should be referred directly to SMG.

**1. Freedom from Tuberculosis**

For employees preparing food, and others as required by statute (reference Section 5163 of the California Public Resources Code) or directive of RAP, SMG

shall provide RAP with certificates on applicable employees indicating freedom from communicable tuberculosis.

2. **Alcohol Service Training**

All employees involved in the sale, service, and distribution of alcoholic beverages shall be trained in effective alcoholic awareness, which includes training based on any applicable Laws of California. This training shall include the State of California Department of Alcoholic Beverage Control (ABC) sanctioned training or the Licensee Education on Alcohol and Drugs Alcohol Seller/Server Training Program (LEAD) and may include, without limitation, policies and procedures developed by SMG dealing with alcohol management and a nationally-recognized program such as "Techniques For Effective Alcohol Management" (or "TEAM") or "Techniques For Intervention Procedures By Servers of Alcohol" (or "T.I.P.S."). SMG shall provide RAP with certificates on applicable training for all employees involved in the sale, service and distribution of alcoholic beverages.

SMG will not knowingly serve intoxicated persons and will coordinate with, and immediately notify venue security of any known or observed safety concerns, use of illegal substances and improper use of alcohol that pose immediate threats of safety to patrons and intoxicated individuals.

3. **Concession Manager**

SMG shall appoint, subject to written approval by RAP, two Concession Managers to manage and oversee food and beverage concessions at the Greek Theatre and at Franklin's Market & Café, respectively.

Each such person must be a qualified and experienced manager or supervisor of operations, vested with full power and authority to accept service of all notices provided for herein and to manage and supervise the operation of the CONCESSION, including the quality and prices of CONCESSION goods and services, and the appearance, conduct, and demeanor of SMG's agents, servants, and employees. The Concession Manager shall be available during regular business hours and, at all times during that person's absence, a responsible subordinate shall be in charge and available.

The Concession Manager shall devote the greater part of his or her working time and attention to the operation of the CONCESSION and shall promote, increase and develop the business. During the days and hours established for the operation of the subject CONCESSION, the Concession Manager's personal attention shall not be directed toward the operation of any other business activity.

4. **Quality, Price Schedules and Merchandising**

SMG shall implement and offer varied, high-quality food products, specialty items, food and beverage offerings to patrons at the Greek Theatre and Franklin's Market & Cafe. SMG agrees to highlight and implement, when reasonably feasible, products and beverages from local purveyors including but not limited to: specialty regional food, craft beers, premium wines, unique and high end spirits and, in consultation with RAP and with RAP's approval, develop an operational plan for



upcoming CONCERT SEASONS and individual events to ensure the highest quality products are offered to benefit patrons and provide high quality service, satisfaction and first-class food and beverage offerings consistent with the overall theme of the FACILITY.

- a. CITY agrees that SMG's merchandise, including its price for same, shall be within SMG's discretion; subject, however, to disapproval by RAP if the selection of items offered is inadequate, of inferior quality, or if any of said prices are excessively high or low in the sole opinion of RAP. Such determination shall not be unreasonable and shall take into account the business considerations presented by SMG. SMG shall present the menu selections and offerings to RAP for approval as follows: quarterly for Franklin's Market & Café and at least thirty (30) days prior to the beginning of the CONCERT SEASON for the Greek Theatre. Additionally, any in-season menu changes at the Greek Theatre shall be presented to RAP for approval prior to implementation. Menu selections and offerings must take into consideration the diversity of the events and the demographics of the event patrons. All prices shall be comparable to prices charged in similar establishments in the CITY.
- b. All menu items and service, offered for sale and/or sold by SMG in said PREMISES, shall be of high quality and must be related to the ordinary business of the CONCESSION. All merchandise kept for sale by SMG shall be kept subject to the approval or rejection of RAP and SMG shall remove from the PREMISES any article which may be rejected and shall not again offer it for sale without the written approval of RAP. RAP may order the improvement of the quality of any merchandise kept or offered for sale. In addition, no substitutes, fillers, dilutants, nor reduction in size of standard manufactured or processed food products will be permitted.
- c. SMG shall offer for sale to the public a full range of fresh and pre-packaged food items and beverages (alcoholic and non- alcoholic).
- d. SMG shall offer for sale to the public an appropriate selection of food and refreshment items, which includes a variety of healthy choice options for food and beverages. This includes the availability of fresh fruits and fresh vegetables, bottled water, 100% juice, beverages that contain at least 50% fruit juice with no added sweeteners, and healthy snacks. SMG expressly agrees to comply with CITY'S Good Food Purchasing Guidelines for Food Service Institutions.

- e. SMG shall not use artificial trans-fat (e.g., industrially created partial hydrogenation plant oils) in the preparation of food products. All prepared food items are to be free of artificial trans-fat. SMG shall use only artificial trans-fat free prepackaged food items.
- f. The sale of liquor, beer, and wine is permitted. SMG is solely responsible for obtaining all necessary licenses and permits, including but not limited to Alcoholic Beverage Control License, for the sale of such items. RAP shall provide all cooperation and assistance necessary for SMG to secure necessary licenses under this paragraph. At the termination of this AGREEMENT, SMG shall transfer all necessary licenses and permits to the successor food and beverage concessionaire at fair market value, where applicable, within thirty (30) days of termination, unless prohibited or prevented by the respective licensing authority.
- g. The sale of energy drinks is prohibited.
- h. SMG will implement the proposed plan for Food and Beverage guidelines outlined in SMG Proposal Pages 176 through 229 (Exhibit H).

All merchandise sold or kept for sale by SMG shall be of first class, high-quality and acceptable to all industry standards and conform to all federal, state, and municipal laws, ordinances, and regulations in every respect. No imitation, adulterated, misbranded, or impure articles shall be sold or kept for sale by SMG and all edible merchandise kept on hand shall be stored and handled with due regard for sanitation.

- i. SMG shall minimize the paper items (straw covers, serving cartons, etc.) distributed with take-out CONCESSION products. SMG shall be prohibited from selling merchandise in non-recyclable bottles, and shall not dispense take-out food or beverage items in glass or Expanded Polystyrene (EPS) / Styrofoam containers or with plastic straws. SMG shall not sell or give away or otherwise dispose of any commodity which in the opinion of RAP will cause undue litter. SMG expressly agrees to comply with all CITY and RAP recycling programs.
- j. SMG shall organize and efficiently manage the CONCESSIONS to provide First Class, as defined herein, service and products in a clean, attractive and pleasant atmosphere. For purposes of this AGREEMENT, "First Class" shall mean a manner of operation of the concessions or a standard of quality of products, merchandise and services, as might be comparable to those of similar high-quality concert venue and non-concert venue food service establishments. For Franklin's Market & Café, specifically, this obligation shall include the requirement for SMG to provide Café patrons with background music and free Wi-Fi internet access during business hours.

5. **Receipts**

- a. On request, SMG shall offer receipts to customers for every transaction.
- b. SMG shall at all times have a sign placed within twelve (12) inches of any cash register, in clear view to the public, and in minimum one-inch lettering, which states: "If a receipt for this transaction is not provided on request, please contact Department of Recreation and Parks - Concessions Unit at (213) 202-3280."

6. **Hours / Days of Operation**

- a. During Greek Theatre Concerts the CONCESSION will be open in accordance with the User Agreement (Exhibit E) and mutually agreed upon operating times and hours necessary and consistent with event show plans for each performance.
- b. Franklin's Market & Café ("Café") will be open 365 days a year in coordination with the Roosevelt Golf Course. The Café will open at least thirty minutes prior to the first scheduled tee time and close one hour after sunset. SMG may request adjustment of hours subject to approval by RAP.
- c. NON-CONCERTS AND EVENTS: The Front Plaza Area of the Greek Theatre will be open in accordance with RAP's operating plans, hours and needs, and the CONCESSION will be open based upon mutually agreed operating times necessary and consistent to offer a year-round operation.

D. SMG will keep a separate set of financial records for the Franklin's Market & Café.

E. SMG shall be accessible to RAP and the surrounding community year round to address questions and concerns and to collaborate on all aspects of FACILITY operations in conjunction with RAP's designated Community Liaison.

F. **Website, Social Media and Wi-Fi**

SMG will coordinate with RAP's website vendor to maintain current event and promotional content on the website, including but not limited to, updating concert calendar, promotional opportunities, venue information, ticketing, parking and shuttle services and food and beverage selections. SMG will coordinate resolution of any potential issues with the website vendor. SMG will coordinate and manage all social media apps for the Greek Theatre including, but not limited to Twitter, Facebook, Instagram or other designated SMG social media outlets. SMG shall provide full administrative access to City staff, including log in information and passwords, to all social media accounts during the term of this AGREEMENT. Upon expiration or termination of this AGREEMENT, SMG shall provide administrative access and information to all social media accounts and, if necessary, assign or transfer ownership of said accounts to the City. SMG shall provide designated City staff with access to the FACILITY's highest-speed available non-public Wi-Fi, including log in information and passwords for such Wi-Fi.

G. **Operating Budget and Reports**



SMG will prepare and submit the following reports: an annual FACILITY operating budget; monthly revenue reports; annual branding campaign; outreach program summary; cash outflow projections submitted on or before April 1 each year; and pro-forma for the length of the AGREEMENT. In addition, SMG will submit audited financials on an annual basis. RAP may request additional reports to assist RAP with managing the FACILITY. SMG will cooperate with RAP to provide the requested reports. The reports may be changed from time to time to include additional information as required by RAP.

**H. International Alliance of Theatrical Stage Employees and American Federation of Musicians Agreements**

SMG shall use existing union contracts to develop and hold agreements with the International Alliance of Theatrical Stage Employees (IATSE) Local 33 (Stage Technicians Union) and 857 (Treasurers and Ticket Sellers Union) and develop and hold contracts with IATSE Local 706 (Make-up Artists and Hair Stylists Guild), Local 768 (Theatrical Wardrobe Union) and the American Federation of Musicians, Local 47 (AFM Local 47). SMG will coordinate the reasonable use of FACILITY to IATSE for job training opportunities at IATSE's cost. There will be no FACILITY rental fee charged to IATSE for this use.

**I. Community Cultural Events**

SMG shall use reasonable efforts to raise funds to offset FACILITY rental fees and the production costs of **a minimum of three (3) annually identified community \ cultural events** to support local performances in consultation and with RAP approvals. SMG will not be responsible for any shortfalls. Should a shortfall occur, SMG shall collect the appropriate fees in compliance with RAP policies. **The Parties agree that CITY shall retain the right to host additional community \ cultural events at the FACILITY at CITY's own expense.**

**J. Filming**

It is the policy of the CITY to facilitate the use of CITY properties as film locations when appropriate. RAP has established a Park Film Office to coordinate the use of park property for film production purposes. All fees for use of park property by film production companies shall be established and collected in accordance with CITY and RAP policies. SMG shall charge any fees for film production conducted at FACILITY as provided in the User Agreement and for filming on the PREMISES on non-event days, such uses and fees subject to RAP approval.

- K. SMG will work with private entities to book the FACILITY for private events throughout the year. RAP must authorize all non-CONCERT SEASON events. There will be no FACILITY rental fee charged to the organizer of such an event if that event is sponsored by RAP.

**L. Customer Satisfaction Surveys**

SMG shall be responsible to conduct customer satisfaction surveys after every event, measuring the quality of service being delivered to patrons in five (5) separate categories Security, Food & Beverage, Traffic/Parking, Environment and Technology. SMG will provide summary reports to RAP on June 15, September 15 and November 15 of each year for all events held in the previous reporting period. RAP shall be consulted regarding survey questions and reserves the right to suggest additional questions as necessary to

assist in the evaluation of community satisfaction. Surveys may be carried out in the form of e-mail messaging, QR codes, website link, or other methods as determined by SMG.

**M. Community Engagement**

1. SMG agrees to organize, host, maintain, oversee and arrange a regular monthly community meeting to accommodate neighborhood associations and community groups at times when convenient for the public to attend such meetings. Should SMG fail to host community meetings for two (2) consecutive months, such failure will be considered a material breach and may result in termination of this AGREEMENT.
2. SMG shall work in conjunction with RAP's assigned community liaison(s) and work collaboratively to address all issues related to community engagement and outreach.
3. SMG will establish and maintain a telephone 'hotline' to accommodate public feedback and develop a log to monitor response times and respond to calls within 24 to 48 hours.

**N. Greek Theatre Advisory Committee**

SMG agrees to organize, host (provide light refreshments), maintain, oversee and arrange RAP's Greek Theatre Advisory Committee (GTAC), which shall act solely in an advisory capacity to RAP in specific matters relating to the operation of the FACILITY. GTAC may make recommendations to RAP regarding programs related to theatre operations, maintenance, concessions, merchandising, traffic control, security, and community relations, and will work with RAP and SMG on ways to enhance community involvement and cultural enrichment. SMG shall staff, host and coordinate a monthly meeting with GTAC to keep the community engaged, informed and to resolve quality of life issues associated with the FACILITY. However, operation of the FACILITY is the contractual obligation of SMG and GTAC is to remain an advisory entity representing community interests related to the Greek Theatre.

**O. Citywide Outreach**

SMG shall coordinate and cooperate with RAP to develop strategies to outreach to at risk youth to provide enrichment opportunities including, but not limited to, job training, workshops, tours, educational concerts or attending concerts/events.

**P. Cleanliness**

SMG shall ensure the FACILITY and PREMISES are always maintained in a safe and clean condition and will work in conjunction with RAP to keep the PREMISES, including the theatre building, parking lots, surrounding community and the surrounding hillside (including fencing), clean, uncluttered, and sanitary at all times. SMG shall work in conjunction with RAP to keep the VIP Parking Lot, the adjacent valley (west of the Greek Theatre) and the surrounding area impacted by the FACILITY, clean, uncluttered and sanitary after all events or other use by SMG. SMG shall work in conjunction with RAP and/or custodial subcontractors to provide all necessary janitorial services to maintain PREMISES, restrooms and public areas according to CITY standards. SMG agrees to respond to and correct in accordance with any instruction given by RAP immediately or to provide a written response within twenty-four (24) hours of necessary corrective action.

SMG shall not permit any offensive or refuse matter, or any substance constituting an unnecessary, unreasonable, or unlawful fire hazard, or any material detrimental to the public health, to remain on the PREMISES, and SMG shall prevent any such matter or material from being or accumulating upon said PREMISES.

SMG, at its own expense, shall ensure that all garbage or refuse is collected from the PREMISES offices, as often as necessary and in no case less than twice a week, and disposed of in the main dumpster. This expense is included in the ANNUAL MANAGEMENT FEE. SMG will incur the cost of all garbage pick-ups from the main dumpster for the PREMISES during the term of this AGREEMENT.

**Q. Conduct**

SMG and its representatives, agents, servants, and employees shall at all times conduct its business in a quiet and orderly manner to the satisfaction of RAP.

**R. Disorderly Persons**

SMG shall use its best efforts to permit no intoxicated person or persons, profane or indecent language, or boisterous or loud conduct in or about the PREMISES and will call upon the aid of peace officers to assist in maintaining peaceful conditions. SMG shall not knowingly allow the use or possession of illegal drugs, narcotics, or controlled substances on the PREMISES.

**S. Personnel**

1. SMG shall develop a protocol, subject to RAP approval, for the engagement of any employee or subcontractor. SMG's protocol shall comply with all applicable CITY, STATE, and/or Federal labor laws.

**2. Qualified Personnel**

SMG will, in the operation of the FACILITY, employ or permit the employment of only such personnel as will assure a high standard of service to the public and cooperation with the CITY. All personnel will be trained in accordance with SMG's submitted training plan prior to starting work at the PREMISES. All such personnel, while on or about the PREMISES, shall be neat in appearance and directed to be courteous at all times and shall be appropriately attired in conjunction with agreed upon appearance standards attached, with badges or other suitable means of identification. SMG shall prohibit persons employed by SMG, while on or about the PREMISES, to be under the influence of illegal drugs, narcotics, other controlled substances or alcohol, or use inappropriate language, or engage in otherwise inappropriate conduct for a work environment. In the event an employee is not satisfactory, RAP may direct SMG to remove that person from the PREMISES or from employment at the FACILITY. SMG will create an employee handbook that will delineate these requirements to be signed by all employees.

**3. GENERAL MANAGER of the FACILITY:**



SMG shall appoint, subject to written approval and consent by RAP, a GENERAL MANAGER of SMG's operations at the Greek Theatre and Franklin's Market & Café.

The GENERAL MANAGER must be a qualified and experienced manager or supervisor of operations with a minimum of ten years' experience in concert venue or other similar entertainment venue management and adequate technical background, vested with full power and authority to accept service of all notices provided for herein and to manage and supervise the operation of the FACILITY, including the quality and prices of goods and services, and the appearance, conduct, and demeanor of SMG's agents, servants, and employees. The GENERAL MANAGER shall be available on-site during normal business hours, including show times and, at all times during that person's absence, a responsible subordinate shall be in charge and available on-site. The authority of the GENERAL MANAGER includes, but is not limited to, the ability to: hire, fire, and schedule personnel; order merchandise and materials; oversee inventory control and tracking; implement a marketing plan; maintain accounting records; book parties and events; oversee operations; train employees (to include such areas as customer service); and have ultimate on-site decision-making responsibility, as delegated and under the ultimate discretion of RAP.

The GENERAL MANAGER shall devote the greater part of their working time and attention to the FACILITY's operation and shall promote, increase and develop all business related to the FACILITY's operation. During the days and hours established for the operation of the subject FACILITY, the GENERAL MANAGER's personal attention shall not be directed toward the operation of any other business activity.

The GENERAL MANAGER will serve as the primary and direct liaison to RAP's DESIGNATED CONTRACT ADMINISTRATOR and shall be responsible for maintaining and developing consistent and regular communication, meetings and reporting of all FACILITY activities, venue related issues and those issues directly affecting the neighborhood and surrounding communities. RAP's DESIGNATED CONTRACTOR ADMINISTRATOR will maintain direct oversight and responsibilities for ensuring SMG's compliance with this AGREEMENT and the GENERAL MANAGER agrees to work with such DESIGNATED CONTRACT ADMINISTRATOR to carry out SMG's duties and responsibilities required in this AGREEMENT.

**4. Approval of Personnel**

RAP shall have the right to approve or disapprove any employees of SMG hired to work in any capacity at the FACILITY.

**T. Diversion of Business**

SMG shall not divert, cause, allow, or permit to be diverted any business from the PREMISES and shall take all reasonable measures, to develop, maintain, and increase the business conducted by it under the AGREEMENT.

#### **U. Equipment and Furnishings**

1. Office space at the FACILITY (but not office equipment and furniture) will be provided to SMG by CITY at no cost to SMG. SMG shall provide, maintain and repair office furniture and equipment necessary to operate the administrative offices located at the FACILITY ("SMG's OFFICE FURNITURE AND EQUIPMENT"). SMG shall pay all SMG's OFFICE FURNITURE AND EQUIPMENT costs with no reimbursement from CITY. SMG's office furniture and equipment shall remain the personal property of SMG. RAP reserves the right to approve or disapprove any office equipment and/or furnishing provided at the Greek Theatre.
2. Except for (i) the equipment and furniture described in the Capital Improvement Plan of SMG's proposal (pages 109-174); (ii) SMG's OFFICE FURNITURE AND EQUIPMENT, and (iii) ADMINISTRATIVE COSTS, the CITY shall provide or obtain non-concession related equipment, furnishings, and expendables required to operate the PREMISES (all such property being referred to herein as "CITY'S FF&E"). CITY may request SMG to purchase and install the same on its behalf and, in such case, the expense of doing so shall be a REIMBURSABLE EXPENSE. SMG shall deliver an inventory of all equipment with designation of ownership at the beginning of each calendar year and for each year of the term of the AGREEMENT thereafter. The inventory report shall include updated equipment lists as well as equipment status, length of remaining useful life, and explanations of any reduction in inventory. If, upon termination of the AGREEMENT, RAP does not renew said AGREEMENT, SMG shall have the right to remove its OFFICE FURNITURE AND EQUIPMENT, but not improvements, from the PREMISES and shall be allowed a period of three (3) calendar days to complete such removal. If not removed within that period, said equipment, furnishings and expendables shall become the property of RAP.
3. Concession Equipment  

All equipment, furnishings, and expendables, not listed on page 3 of Exhibit R, required for CONCESSION operations shall be purchased and installed by SMG at its sole expense and shall, excluding fixtures and City-owned equipment, remain its personal property. The foregoing notwithstanding, the equipment identified in Exhibit R, pages 1-2 (i.e. "Equipment" and "Kitchen Equipment"), shall be purchased by SMG with the SMG Capital Contribution as defined in Section 12, and shall remain SMG's personal property until expiration of the fifth year of this AGREEMENT.

#### **V. Maintenance of Equipment**

SMG shall maintain and repair, at its own expense and without reimbursement from the CITY, those items set forth in Exhibit D (Maintenance Responsibilities of SMG). Except for such items as set forth in Exhibit D, CITY will be responsible for maintenance and repair of the PREMISES, the FACILITY, ADDITIONAL PARKING SITES and all CITY FF&E, which the CITY shall maintain and repair in a manner to support a premium, high-quality operation. CITY may request SMG to maintain and repair such PREMISES, FACILITY AND CITY'S FF&E on its behalf and, in such case, the expense of doing so shall be a REIMBURSABLE EXPENSE. The CITY reserves the right to conduct

inspections of the FACILITY and make additional requirements to the maintenance of equipment at any time or to approve or disapprove the placement of any property located on any location on or within the PREMISES.

SMG shall, at all times and at its expense, keep and maintain SMG's OFFICE FURNITURE AND EQUIPMENT, in good repair and in a clean, sanitary, and orderly condition and appearance.

No equipment provided by CITY shall be removed or replaced by SMG without the prior written consent of RAP.

**W. Permits and Licenses**

SMG shall obtain at its sole expense any and all permits, approvals, and licenses that may be required in connection with the operation of the FACILITY including, but not limited to: tax permits, business licenses, health permits, police, fire and Building and Safety permits. All permits, approvals and licenses shall be posted in the appropriate areas on a year-round basis

**X. Signs and Advertisements**

SMG shall not erect, construct, or place any signs, banners, ads, or displays of any kind whatsoever (each a "Sign" and collectively, "Signs") upon any portion of CITY property, including websites, without the prior written approval from RAP, who reserves the right in its sole discretion to approve any such Signs and who may require the removal or refurbishment of any previously approved Sign.

SMG shall not permit vendors to display wares inside or outside the FACILITY or on the PREMISES unless written permission is secured from RAP in advance of installation, and such permission shall be subject to revocation at any time but shall not be unreasonably withheld, unless signage is part of a concessionaire or approved artist merchandise. The type of Sign or advertisement and the duration of display shall be approved in advance and in writing by RAP.

At the FACILITY, a sign may be posted in a non-public place stating that the FACILITY is operated by SMG under an AGREEMENT issued by CITY through the Department of Recreation and Parks.

SMG shall not display any signs, banners, ads, displays, logos, lanyards, or name badges of any kind whatsoever that identify or otherwise name ASM Global, except to identify SMG as a subsidiary of ASM GLOBAL. In the instance of such subsidiary identification, the font size used to identify SMG must be at least 50% larger than the font size used to identify ASM Global.

**Y. Utilities**

RAP shall pay for utility charges associated with the PREMISES, FACILITY and ADDITIONAL PARKING SITES, with the exception of telephone, internet and trash pick-up. Charges for telephone, internet and trash pick-up shall be paid by SMG and are included in SMG's ADMINISTRATIVE COSTS regardless of whether such utility services



are furnished by CITY or by other utility service providers. The telephone number shall be placed in the FACILITY's name and shall not be transferable to any other location. SMG will comply with all water and energy saving policies and produce a monthly report on achieving improvements in water and energy usage.

Except to the extent of CITY's fault, including failure to maintain and repair as provided in this AGREEMENT, SMG hereby expressly waives all claims for compensation, or for any diminution or abatement of the revenue-sharing payment provided for herein, for any and all loss or damage sustained by reason of any defect, deficiency, or impairment of the water, heating, or air conditioning systems, electrical apparatus, or wires furnished to the PREMISES which may occur from time to time and from any cause or from any loss resulting from an event of Force Majeure including but not limited to water, earthquake, wind, acts of terrorism, civil commotion, or riot; and SMG hereby expressly releases and discharges CITY and its officers, employees, and agents from any and all demands, claims, actions, and causes of action arising from any of the aforesaid causes.

In all instances of damage to any utility service line, CITY shall be responsible for the cost of repairs and any and all damages occasioned thereby, except to the extent that such damage is caused by the negligence or willful conduct of SMG, its employees, or its subcontractors.

SMG shall use best efforts to assure that water and energy are utilized by SMG in the most efficient manner possible, and SMG expressly agrees to comply with all CITY water and energy conservation programs.

SMG shall reimburse RAP for any telephone, internet or trash pick-up charges paid by RAP.

**Z. Safety**

SMG will prepare a safety plan with specific training programs for all employees. SMG will designate a safety officer to report on safety statistics including employee and patron injuries on a monthly basis. SMG will review all workers compensation claims that arise from the PREMISES.

SMG shall correct violations of safety practices immediately and shall cooperate fully with CITY in the investigation of accidents occurring on the PREMISES. SMG agrees to respond to and correct in accordance with any instruction of RAP immediately or to provide a written response within twenty-four (24) hours of necessary corrective action. In the event of injury to an employee, staff person, manager, patron or customer, SMG shall summon medical attention as soon as reasonably possible thereafter. SMG shall keep internal documentation of the incident and shall submit to RAP a CITY Form General No. 87 "Non-Employee Accident or Illness Report" (Exhibit I) within forty-eight (48) hours of the incident, and two (2) copies of all Accident/incident reports shall be sent to the address identified in SECTION 23 NOTICES.

If SMG fails to correct in a timely manner any hazardous conditions which have led or, in the reasonable opinion of RAP, could lead to injury, RAP may at its option, and in addition

to all other remedies (including termination of this AGREEMENT) which may be available to it, take the necessary action to remedy that condition and recover the cost thereof, including administrative overhead, to be paid by SMG to CITY as set forth in SECTION 11.E; provided that SMG shall not be responsible for such hazardous conditions to the extent caused by CITY or which are otherwise an obligation of the CITY.

**AA. Security**

SMG shall be responsible for the security of the PREMISES. SMG will designate a security director to report on security statistics on a monthly basis. SMG may install equipment, which will assist in protecting the PREMISES from theft, burglary, or vandalism. Any such equipment must be purchased, installed, and maintained by SMG and shall be a REIMBURSABLE EXPENSE. SMG shall obtain RAP's prior written approval for the expenditure. Security personnel shall remain on duty while guests and artists are on the PREMISES.

**BB. Intellectual Property**

"The Greek Theatre" and the Greek Theatre logo (collectively, "Trademarks"), attached as Exhibit T, are registered trademarks of the City. Use of these Trademarks without permission may constitute trademark infringement and unfair competition in violation of federal and state law. Except as permitted in this AGREEMENT, SMG may not:

1. Use the Trademarks in connection with any products or services unrelated to this AGREEMENT;
2. Use any trademarks confusingly similar to the Trademarks in connection with any products or services unrelated to this AGREEMENT;
3. Create or maintain a website, unrelated to this AGREEMENT, using a domain name confusingly similar to the Trademarks or including the words "Greek Theatre";
4. Register or attempt to register the Trademarks or any marks confusingly similar to them; and
5. Challenge or dispute City's ownership of and rights to the Trademarks and the validity of any of City's registrations or applications for the Trademarks.

**CC. Traffic Studies**

SMG shall prepare an annual study of and report on traffic congestion associated with the Greek Theatre and Griffith Observatory that reviews best practices, necessary capital improvements, successful measures, and required refinement and recommendations. The annual traffic study and report shall be completed by traffic engineering firms experienced in the study of neighborhoods impacted by congestion of local streets. The annual traffic report shall be done in consultation with all interested public stakeholders, Council District 4 (CD 4), and RAP staff. The final traffic study and report shall be presented annually to the community through an organized community meeting involving CD 4, RAP and neighborhood stakeholders. SMG agrees that the annual traffic studies, and related costs, are non-reimbursable expenses.

## SECTION 6. ANNUAL MANAGEMENT FEE

An ANNUAL MANAGEMENT FEE shall be paid by CITY to SMG for the services provided by SMG. The ANNUAL MANAGEMENT FEE shall consist of the following three components:

1. All Greek Theatre Management staff and all corresponding operations expenses, including but not limited to payroll taxes, insurance, employee benefits, bonds and any other employee related expenses;
2. ~~Other indirect costs~~ ADMINISTRATIVE COSTS necessary to operate the facility (inclusive of maintenance); and
3. SMG Management Fee

The Greek Theatre Management Team shall consist of the following position classifications. Each of the following positions shall be filled and maintained to perform the services required in this AGREEMENT: Greek Theatre General Manager, Executive Assistant, Director of Finance, Director of Food & Beverage, Director of Sales/Special Events, Director of Event Services, Senior Finance Manager, Box Office Manager, Purchasing Manager, Human Resource Generalist, F&B Controller, Franklin's Market & Café Manager, Greek Theater Concessions Manager, Chef, Premium Programs Sales Manager, Premium/Sponsorship Fulfillment Coordinator, Marketing Manager/Booking Coordinator, Marketing Coordinator, Event Manager, Facility Maintenance Manager, Part-time Servers, Part-time SMG Staff/Non-profit groups, Part-time Guest services, and Part-time Ops Event Set-up.

Failure to maintain these positions will be considered a material breach and may result in deductions of the Greek Theatre Management Team expense to SMG. In addition to any deductions, failure to maintain the positions, may result in termination of AGREEMENT, if SMG thereafter fails to (i) continuously and diligently to pursue a remedy, and (ii) appoint an interim staff person within forty-five days thereafter.

Subject to reasonable modification at discretion of SMG with approval by RAP, and provided that it shall not create any variance to the MANAGEMENT STAFFING COSTS, the CITY reserves the right to approve or disapprove or have removed any employee of SMG or of the FACILITY from working at the Greek Theatre and/or Franklin's Market & Café and SMG agrees to comply and remove any SMG or contracted employee from employment at the FACILITY or its PREMISES if requested by CITY.



SMG will be reimbursed for ADMINISTRATIVE COSTS not to exceed the amount set forth in the chart below by providing RAP the appropriate documentation to support the itemized expense. The definition of ADMINISTRATIVE COSTS notwithstanding, SMG will not be reimbursed for expenses in any of the following categories of ADMINISTRATIVE COSTS if the expense is incurred between August 12, 2020 and December 31, 2020: Travel, Meals & Entertainment, Meetings & Conventions, Advertising, Promotional, Credit Card Discounts, Uniforms, and Relocation. However, Advertising and Promotional expenses incurred between August 12, 2020 and December 31, 2020 may be reimbursed if RAP's General Manager gives written approval prior to such an expense being incurred.

Subject to any deductions resulting from the failure to maintain the Greek Theatre Management Team and to actual costs incurred, the ANNUAL MANAGEMENT FEE shall not exceed the TOTAL amounts shown in the following chart:

| AGREEMENT YEAR          | CONCERT SEASON | STAFF EXPENSES | INDIRECT EXPENSESADMINISTRATIVE COSTS | SMG MANAGEMENT FEE | TOTAL       |
|-------------------------|----------------|----------------|---------------------------------------|--------------------|-------------|
| 1 [11/1/18-10/31/19]    | 2019           | \$1,006,340    | \$976,100                             | \$75,000           | \$2,057,440 |
| 2 [11/1/19-12/31/20]    | 2020           | \$1,134,840    | \$1,001,120                           | \$0                | \$2,174,210 |
| 20203 [1/1/21-12/31/21] | 2021           | \$1,031,573    | \$1,001,120                           | \$76,500           | \$2,109,193 |
| 20214 [1/1/22-12/31/22] | 2022           | \$1,057,516    | \$1,021,373                           | \$78,030           | \$2,156,919 |
| 5 [1/1/23-12/31/23]     | 2023           | \$1,084,190    | \$1,024,037                           | \$79,591           | \$2,187,818 |
| 20236 [1/1/24-12/31/24] | 2024           | \$1,111,618    | \$1,044,791                           | \$81,182           | \$2,237,591 |

Inserted Cells

Inserted Cells

Inserted Cells

Any amount paid as a SMG Management Fee by RAP, during Agreement Year 2, shall be retained by SMG and credited to the SMG Management Fee due for Agreement Year 3, which is the period from January 1, 2021 to December 31, 2021.

Should the City Council impose furloughs upon RAP staff at any time during the term of this contract, SMG agrees that it shall impose matching furloughs upon SMG staff to achieve an equal percentage reduction in staff expenses for as long as the RAP furloughs are imposed. Any furloughs imposed on SMG staff pursuant to this provision may be waived or reduced upon the written approval of RAP's General Manager.

## SECTION 7. REIMBURSABLE EXPENSES

SMG will procure services necessary for the FACILITY's operation for and on behalf of RAP, as not otherwise required by SMG. SMG will only utilize qualified vendors for any equipment or service and will receive written authorization by RAP for said services or procurement. SMG must obtain RAP's prior written approval for any expenditure. SMG will be reimbursed for the equipment or service costs by providing RAP the appropriate documentation to support the request for

reimbursement. REIMBURSABLE EXPENSES will be included in the Monthly Event Closing Statement for reimbursement.

#### **SECTION 8. EVENT SERVICES STAFFING EXPENSES**

SMG shall ensure each event at FACILITY is staffed in accordance with the approved Event Services Staffing Plan. Each event will include the following position classifications and have the following services performed:

Usher, ticket takers, security, load in staff, breakers, set up staff, cleaners, elevator staff, parking attendants, box office personnel, neighborhood event staffing, administration, hospitality, LAPD officers (off duty or on duty uniformed), DOT officers, LAFD Emergency Medical Technicians, traffic control and equipment.

For the 2019 AGREEMENT year, rates billed for EVENT SERVICES AND STAFFING COSTS for the applicable cost category are provided for in Exhibit L. The EVENT SERVICES AND STAFFING COSTS for subsequent years must be submitted to RAP for approval no later than March 15<sup>th</sup> of each year. Any proposed adjustments to said rates at any time shall require approval from RAP.

SMG shall submit the appropriate documentation with the Monthly Event Closing Statement for reimbursement of actual expenditures.

#### **SECTION 9. SPONSORSHIPS, BOX SEATS AND PREMIUM SEATING SALES**

SMG shall comply with RAP's Sponsorship Recognition Policy, Procedures and Guidelines for Recognizing Organizations and Individuals who contribute and Support City of Los Angeles Parks and Programs (Exhibit J) and Naming Policy, Procedures and Guidelines for Parks and Recreation Facilities (Exhibit K).

SMG shall pay RAP 80% of all SPONSORSHIP AND PREMIUM SEATING REVENUE. Any barter must be pre-approved by RAP and must reduce the CITY's OPERATING EXPENSES not covered by SMG's ANNUAL MANAGEMENT FEE. RAP shall be owner of any and all bartered equipment.

SMG agrees that costs associated with marketing, selling and generating SPONSORSHIP AND PREMIUM SEATING REVENUE are not fulfillment costs and that SMG shall pay all costs associated with marketing, selling and generating SPONSORSHIP AND PREMIUM SEATING REVENUE out of its 20% share of such revenue (e.g. salespersons' base compensation and sales commissions) and RAP shall simply receive its 80% share.

SMG agrees that it will not incur, without CITY's prior approval, any fulfillment costs for premium seating programs including, but not limited to: 1) Box Suites, 2) Club Seats, 3) Season Subscriptions, 4) VIP Seating Packages, or other similar programs where license fees are charged in connection with seating programs created by SMG at the FACILITY.

The City reserves the right to secure, obtain and provide it owns sponsorship opportunities and venue partnerships. Any CITY-obtained sponsorships or partnerships shall not be shared on any percentage split with SMG. RAP reserves the absolute right, in its sole discretion, to refuse any sponsorship presented by the SMG and RAP shall not be liable for any fee or cost in the event of such refusal.

## SECTION 10. CONCESSION FEE

### A. Fee.

As part of the consideration for CITY'S granting the CONCESSION rights set forth in this AGREEMENT, SMG shall pay to CITY a Concession Fee, which is cumulative of the individual fees set forth herein:

1. Greek Theatre Concessions. SMG shall pay to CITY a Greek Theatre Concessions fee that is the greater of the Greek Minimum Annual Guarantee (Greek MAG), or forty-three (43) percent of gross receipts of all Greek Theatre Concessions. For the first year of the AGREEMENT, the Greek MAG will be Two Million Three Hundred Thousand Dollars (\$2,300,000.00). The Greek MAG for year two and each subsequent year for the Greek Theatre Concessions is the greater of the previous year's Greek MAG or 90% of the actual Greek Theatre Concessions fee paid for the previous AGREEMENT year. Notwithstanding anything to the contrary in this Subparagraph 1, due to the cancellation of the 2020 CONCERT SEASON at the Greek Theatre, no Concession Fee for Greek Theatre Concessions shall be due for Agreement Year 2, which is the period from November 1, 2019 to December 31, 2020. Any amounts paid as a Concession Fee by SMG, during Agreement Year 2, shall be retained by RAP and credited to the Concession Fee due for the Greek Theatre Concessions for Agreement Year 3, which is the period from January 1, 2021 to December 31, 2021. For avoidance of doubt, the Greek MAG for the Greek Theatre Concession for Agreement Year 3 shall be Two Million Three Hundred Thousand Dollars (\$2,300,000.00).
2. Greek Theatre Catering. SMG shall pay to CITY a Greek Theatre Catering fee that is twenty (20) percent of gross receipts of all Greek Theatre Catering, with the exception that the catering fee for no-host bars shall be paid to CITY at a rate of forty-three (43) percent of gross receipts. Greek Theatre Catering shall not count toward the Greek MAG.
3. Franklin's Market + Café Concessions. SMG shall pay to CITY a Franklin's Market + Café Concessions fee that is the greater of the Franklin Minimum Annual Guarantee (Franklin MAG), or six (6) percent of gross receipts of all Franklin's Market + Café concessions. For the first year of the AGREEMENT, the Franklin MAG will be Twenty-five Thousand Dollars (\$25,000.00). The Franklin MAG for year two and each subsequent year for the Franklin's Market + Café Concessions is the greater of the previous year's MAG or 90% of the actual Franklin's Market + Café Concessions fee paid for the previous AGREEMENT year. The foregoing notwithstanding, pre-sold items and items that the parties reasonably agree are intended or sold for consumption by concertgoers, will be subject to a 20% commission.
4. Filming and Special Events. SMG shall pay to CITY a Filming and Special Events fee equal to seventy-five (75) percent of all **non-food and beverage** Filming and Special Events **receipts remaining after deducting applicable EVENT SERVICES AND STAFFING COSTS, which shall be paid first out of the non-food and beverage gross receipts charged for all Filming and Special Events. In addition, SMG shall pay to CITY a Filming and Special Events Food and Beverage fee equal to twenty (20) percent of all catering and hosted bar gross**



receipts, and forty-three (43) percent of all concessions and no-host bar gross receipts, **charged for all Filming and Special Events.** Notwithstanding the forgoing, one hundred (100) percent of all special event space rental fees charged on concert nights shall be paid to the CITY **from the non-food and beverage gross receipts prior to deducting any EVENT SERVICES AND STAFFING COSTS.** And, in accordance with Section 5.A.6., SMG shall pay to CITY one hundred (100) percent of all parking receipts received in the course of SMG's management of the parking operations during Filming and Special Events, **prior to applying the non-food and beverage fee split.** In addition, whenever a concert night special event activity occupies, or otherwise removes from the usable inventory, parking spaces in any parking lot covered by this AGREEMENT, one hundred (100) percent of the parking revenue that could have been earned had the spaces been used for parking during the concert is to be paid to the CITY prior to applying **the non-food and beverage fee split.** For purposes of this section, "could have been earned" means revenue earned if the spaces had full occupancy with no same-night turnover.

5. Greek Theatre Merchandise. SMG shall pay to CITY a Greek Theatre Merchandise fee equal to thirty (30) percent of gross receipts of all Greek Theatre Merchandise sold.

#### B. **Up-front Payment.**

Both the Greek MAG and the Franklin MAG payments shall be paid in equal monthly installments on the first of each month, with the exception of the first year of the AGREEMENT, when the full year's payment shall be made within three (3) days of AGREEMENT execution. The combined Greek MAG and Franklin MAG payment for Year 1 will be Two Million Three Hundred Twenty-five Thousand Dollars (\$2,325,000.00). As set forth in SECTIONS 10.A.1 and 10.A.2, the Greek MAG and the Franklin MAG for year two and subsequent years for the Greek Theatre Concessions and Franklin's Market + Café Concessions is the greater of the previous year's minimum annual guarantee or 90% of the actual concession fee paid for the previous AGREEMENT year, respectively.

Refer to SECTION 10.D for the definition of "Gross Receipts."

Use of the PREMISES for purposes not expressly permitted herein, whether approved in writing by RAP or not, may result in additional charges to be paid by SMG; however, any such use without the prior written approval of RAP shall also constitute a material breach of AGREEMENT and is prohibited.

The following two examples are included for illustrative purposes only, to assist the parties in calculating SMG's yearly Greek MAG and Franklin MAG obligations:

Example #1: In year one the Greek MAG is \$2,300,000. Assuming 43% of gross receipts of all Greek Theatre Concessions payable to RAP in year one equals \$2,100,000, then the Greek MAG for year two would remain at \$2,300,000 because 100% of the year one Greek MAG is greater than 90% of \$2,100,000.

Example #2: In year one the Greek MAG is \$2,300,000. Assuming 43% of gross receipts of all Greek Theatre Concessions payable to RAP in year one equals \$3,000,000, then the Greek MAG for year two would increase to \$2,700,000 because 90% of the year one total percentage of gross receipts of all Greek Theatre Concessions payable to RAP is greater than 100% of the year one Greek MAG.

**C. Percentage Fee Payment**

For Filming and Special Events and for Greek Theatre Merchandise the percentage fee shall be due and payable (postmarked) by the fifteenth (15th) day of each calendar month based on the gross receipts received in each previous month. The payment and Monthly Revenue Report (Exhibit M) shall be addressed to:

DEPARTMENT OF RECREATION AND PARKS  
ATTENTION:  
Revenue Section  
P.O. Box 86328  
Los Angeles, California 90086-0610

**D. Gross Receipts Defined**

The term "gross receipts" is defined as the total amount charged for the sale of any goods or services (whether or not such services are performed as a part of or in connection with the sale of goods) provided in connection with this CONCESSION, but not including any of the following:

1. Cash discounts allowed or taken on sales;
2. Any sales taxes, use taxes, or excise taxes required by law to be included in or added to the purchase price and collected from the consumer or purchaser and paid by SMG;
3. California Redemption Value (CRV);
4. Receipts from the sale of waste or scrap materials resulting from the CONCESSION operation;
5. Receipts from the sale of or the trade-in value of any furniture, fixtures, or equipment used in connection with the CONCESSION, and owned by SMG;
6. The value of any merchandise, supplies, or equipment exchanged or transferred from or to other business locations of SMG where such exchanges or transfers are not made for the purpose of avoiding a sale by SMG which would otherwise be made from or at the PREMISES
7. Refunds from, or the value of, merchandise, supplies, or equipment returned to shippers, suppliers, or manufacturers;

8. Receipts from the sale at cost of uniforms, clothing, or supplies to SMG's employees where such uniforms, clothing, or supplies are required to be worn or used by said employees;
9. Receipts from any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by SMG, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit;
10. Fair market trade-in allowance, in the event merchandise is taken in trade;
11. The amount of any cash or quantity discounts received from sellers, suppliers, or manufacturers;
12. Discounts or surcharges applied to receipts for services or merchandise, including discounts to employees, with the concurrence of both SMG and RAP, on total sale transaction;
13. Any catering expenses associated with equipment rental and disposables, to the extent those catering expenses are passed through to the customer at or below SMG's actual cost;
14. Credit/debit card fees.

SMG shall not reduce the amount of gross receipts, as herein defined, as a result of any of the following:

15. Any error in cash handling by SMG or SMG's employees or agents;
16. Any losses resulting from bad checks received from consumers or purchasers; or from dishonored credit, charge, or debit card payments; or any other dishonored payment to SMG by customer or purchaser;
17. Any arrangement for a rebate, kickback, or hidden credit given or allowed to any customer of SMG;
18. Any labor fees recovered.

## **SECTION 11. ACCOUNTING, RECORDS AND ADDITIONAL FEES**

### **A. Bank Accounts**

FOUR (4) GREEK THEATRE ACCOUNTS: On or before November 2, 2018, the City will open four new bank accounts: Deposits, Box Office, Operations, and Disbursement. RAP must be the owner of all four accounts and will give SMG authority to access these bank accounts based on Greek Theatre's operational needs.

#### **1. DEPOSIT ACCOUNT:**

SMG will receive deposits for incidental charges from promoters and agents as required by the User Agreement in the normal course of business. SMG will deposit such funds from promoters and agents into the Deposit Account. SMG shall be responsible for accurately maintaining records for each promoter or agent deposit. At



the end of the event or at the end of the CONCERT SEASON, SMG will book transfer the refundable deposit from the Deposit Account to the Operations Account. CITY's staff will transfer the refundable deposit from the Operations Account to the Disbursement Account so that SMG will disburse the proper refundable monies to the promoter or agent. SMG shall have no disbursement authority on the Deposit Account.

2. BOX OFFICE ACCOUNT:

SMG will receive ticket proceeds for events via the ticketing agents as well as through box office operations. SMG will deposit ticket proceeds and related revenues into the Box Office Account. At event settlement, SMG will book transfer from the Box Office Account to the Operations Account. CITY's staff will transfer funds from the Operations Account to the Disbursement Account. SMG will distribute funds to promoter and venue from the Disbursement Account. SMG shall have no disbursement authority on the Box Office Account.

3. OPERATIONS ACCOUNT:

SMG shall deposit any funds derived from RAP's Greek Theatre OPEN VENUE MODEL operations to the Operations Account. CITY's staff will transfer funds from the Operations Account to the Disbursement Account as needed to pay for Greek Theatre operational expenses. SMG shall have no disbursement authority on the Operations Account.

4. DISBURSEMENT ACCOUNT:

CITY shall give SMG authorization to disburse funds from the Disbursement Account to pay for Greek Theatre operational expenses, refund promoter and agent refundable deposits and distribute event settlement funds to promoters and venue. CITY's staff will transfer cash from the Operations Account to the Disbursement Account for Greek Theatre operations on as-needed basis. SMG will provide cash outflow projections to the City on or before April 1 each year during the term of this AGREEMENT. The City shall give SMG authorization to sign checks and perform electronic funds transfer (EFT) to pay for Greek Theatre operation invoices. SMG is disallowed to disburse funds to their corporate office from the Greek Theatre Disbursement Account. SMG's ANNUAL MANAGEMENT FEE will be disbursed through the City's Financial Management System.

**B. Monthly Event Closing Statement**

SMG shall submit a monthly event closing statement to RAP for review and approval within twenty-five (25) calendar days after the end of each month. The monthly event closing statement shall be accompanied by a Monthly Revenue Report (Exhibit M), clearly identifying: (i) all revenues recognized for that month at the FACILITY including, without limitation, event revenue, SPONSORSHIP AND PREMIUM SEATING REVENUE and any miscellaneous revenue generated from operations at the FACILITY ("monthly operating revenue") and (ii) all expenses incurred in that month including, without limitation, CITY'S OPERATING EXPENSES applicable to such period along with outstanding amounts of CITY'S OPERATING EXPENSES due for prior periods, SMG's share of SPONSORSHIP AND PREMIUM SEATING REVENUE and any miscellaneous expenses incurred in connection with the operation of the FACILITY ("monthly operating expenses"). SMG shall

include with such statement detail of monthly operating revenue and expenses including a line item event profit and loss statement for each event presented during the period and supporting documentation for CITY'S OPERATING EXPENSES in a form acceptable to RAP.

SMG will include a statement for each of the four (4) bank accounts established for the Greek Theatre as described in SECTION 11.A above.

1. SMG must pay each eligible promoter the Event Volume Incentive dollar amount (with prior approval by RAP) by December 1<sup>st</sup> after conclusion of the then most recent CONCERT SEASON.

**C. Late Payment Fees**

Failure of SMG to pay any of the revenue-sharing payments or any other fees, charges, or payments owed to the CITY within ten days following notice of such failure to pay is a material breach of the AGREEMENT for which CITY may terminate same or take such other legal action as it deems necessary.

Without waiving any rights available at law, in equity or under the AGREEMENT, in the event of late or delinquent payments by SMG, the latter recognizes that CITY will incur certain expenses as a result thereof, the amount of which is difficult to ascertain. Therefore, in addition to monies owing, SMG agrees to pay the CITY a late fee set forth below to compensate CITY for all expenses and/or damages and loss resulting from said late or delinquent payments.

The charges for late or delinquent payments shall be One Thousand Dollars (\$1,000.00) for each month late plus interest calculated at the rate of eighteen percent (18%) per annum, assessed monthly, on the balance of the unpaid amount. Payments shall be considered past due if postmarked after the fifteenth (15th) day of the month in which payment is due. RAP reserves the right to increase any and all administrative fees at the time of exercising any option to renew the AGREEMENT.

The acceptance of late payment by CITY shall not be deemed as a waiver of any other breach by SMG of any term or condition of this AGREEMENT other than the failure of SMG to timely make the particular payment so accepted.

**D. Annual Accounting Adjustment**

No later than November 25th of each year, SMG shall prepare and submit to CITY a statement showing the total gross receipts for the prior AGREEMENT year by category and the Concession Fee paid for the year, broken down by the four categories in SECTION 10.A. If the Greek MAG and Franklin MAG sums paid by SMG for said year total less than the applicable, respective percentage fee total owing to the CITY, as noted in SECTION 10.A, SMG shall remit to CITY the under payment amount(s) with the annual statement postmarked no later than November 25th.

- E. If CITY pays any sum or incurs any obligations or expense which SMG has agreed to pay or reimburse CITY for, or if CITY is required or elects to pay any sum or to incur any obligations or expense by reason of the failure, neglect, or refusal of SMG to perform or fulfill any one or more of the conditions, covenants, or agreements contained in the AGREEMENT, or as a result of an act or omission of SMG contrary to said conditions,

covenants, and agreements, SMG agrees to pay to CITY the sum so paid or the expense so incurred, including all interest, costs (including CITY'S 15% administrative overhead cost), damages, and penalties. This amount shall be added to the monthly payment thereafter due hereunder, and each and every part of the same shall be and become additional payment, recoverable by CITY in the same manner and with like remedies as if it were originally a part of the basic concession fee payment set forth in SECTION 10 hereof. RAP reserves the right to increase any and all administrative fees at the time of exercising any option to renew the AGREEMENT.

- F. For all purposes under this Section, and in any suit, action, or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum by CITY for any work done or material furnished shall be prima facie evidence against SMG that the amount of such payment was necessary and reasonable. Should CITY elect to use its own personnel in making any repairs, replacements, and/or alterations chargeable to SMG, and charge SMG with the cost of same, receipts and timesheets will be used to establish the charges, which shall be presumed to be reasonable in absence of contrary proof submitted by SMG.

## **SECTION 12. IMPROVEMENTS**

SMG shall provide to the Facility the sum of Four Million Dollars (\$4,000,000) for capital improvements and the equipment enumerated in pages 1-2 of Exhibit R, including the future capital improvements listed in Exhibit S, and such other improvements as RAP may request, including some or all of the additional improvements more fully detailed in SMG's proposal (Exhibit H) (together "Capital Improvements"). The sum of Four Million Dollars (\$4,000,000) is in addition to the Two Hundred Twenty-Two Thousand Dollars (\$222,000) being carried over in 2015 capital improvements as referenced on page 111 of SMG's proposal (Exhibit H). The foregoing Capital Improvements shall be completed no later than November 1, 2020, unless the parties otherwise agree in writing. The proposed concepts and restaurant names in Exhibit S are subject to final approval by CITY and may be changed at any time at the direction of the CITY. SMG will also diligently supervise and oversee non-CONCERT SEASON renovations, activities and capital improvement projects in consultation with CITY.

The Greek Theatre as part of Griffith Park, which is designated as Historic-Cultural Monument (HCM) No. LA-942 in accordance with Chapter 9, Article 1 of the Los Angeles Administrative Code, is historically significant. HCM LA-942 is also listed in the California Register of Historic Resources as eligible for the National Register of Historic Places. Therefore, the Greek Theatre is considered historically significant for California Environmental Quality Act (CEQA) purposes.

SMG shall obtain the written approval of the Cultural Heritage Commission for any substantial alterations to the affected area in accordance with Section 22.171.14 of the Los Angeles Administrative Code.

Any infractions, large or small, will be treated as a material breach of the AGREEMENT and will be subject to all of the applicable laws, fines and penalties imposed by the CITY's Department of Building and Safety, as well as the Office of Historic Resources. RAP shall give SMG written notice of such a material breach, and, if SMG does not cure said breach within thirty (30) days after notice, or such longer period as is reasonably necessary to remedy such breach, but, in no case longer than an additional ninety (90) days, provided that SMG shall continuously and



diligently pursue such remedy at all times until such material breach is cured, RAP may terminate this AGREEMENT.

- A. Subject to the Four Million Dollar (\$4,000,000) cap on funding for Capital Improvements, SMG agrees to guarantee the completion and manage the construction of all proposed improvements, according to approved plans and SMG shall serve as the fiscal agent for all costs for all necessary permits, insurance, and taxes required for compliance of such improvements.
- B. CITY reserves the right to further develop or improve the FACILITY and the PREMISES as it sees fit, and without interference or hindrance by SMG. Such development or improvement may require the suspension or termination of the AGREEMENT. CITY shall not be liable for loss of business, which results from the construction of any development or improvements to the FACILITY or the PREMISES. CITY will make all reasonable effort to ensure any improvements are completed during non-concert season.
  - 1. Compliance with Applicable Rules and Regulations:  
All structural or other improvements, equipment and interior design and decor constructed or installed by SMG, including the plans and specifications therefore, shall in all respects conform to and comply with the applicable statutes (including the California Environmental Quality Act), ordinances, building codes, rules and regulations of CITY and such other authorities that may have jurisdiction over the FACILITY areas or SMG's operations therein including those which are enacted or promulgated in the future by the City of Los Angeles, the County of Los Angeles, the State of California, and the Federal Government. SGM agrees that as between SMG and City, SMG shall be responsible for ensuring that all Capital Improvements are in compliance with the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.) and any and all other federal, state, and local laws related to the accessibility of the Premises to persons with disabilities. The written approval by RAP's General Manager of any improvements as provided above shall not constitute a representation or warranty as to such conformity or compliance, but responsibility therefore shall at all times remain with SMG.
  - 2. Procurement of Permits and Approvals:  
SMG shall, prior to construction of any improvements, procure all building, fire, safety, aesthetic, environmental, and other permits and approvals necessary for the construction of the structural and other improvements, installation of the equipment, and the interior design and decor. Copies of all said permits and approvals shall thereafter be submitted to RAP. No permission to begin said improvements shall be granted by RAP's General Manager prior to SMG obtaining said permits and approvals.
  - 3. Subcontractors: SMG shall require by any contract that it awards in connection with the structural or other improvements, the installation of any and all equipment, and the interior designing and decor, that the contractor doing, performing or furnishing the same shall comply with all applicable statutes, ordinances, codes, rules and regulations, and submit to CITY evidence of required insurance coverage.
  - 4. Except for the active negligence or willful misconduct of CITY, or any of its boards, officers, agents, employees, assigns and successors in interest, SMG undertakes and agrees to defend, indemnify and hold harmless CITY and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all third-party suits and

causes of action, claims, losses, demands and expense, including, but not limited to, attorney's fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including SMG's employees and agents, or damage or destruction of any property of either party hereto or of third parties, proximately caused by SMG's construction or installation of the Capital Improvements as authorized in this AGREEMENT. The provisions of this paragraph survive expiration or termination of this AGREEMENT.

### **SECTION 13. PREMISES MAINTENANCE**

- A. RAP will be responsible for the maintenance of PREMISES, except maintenance services specified in Exhibit D and further detailed in SMG's proposal (Exhibit H). During all periods that the PREMISES are used or are under the control of SMG for the uses, purposes, and occupancy aforesaid, SMG shall work in conjunction with RAP to coordinate all necessary damage/maintenance repairs, including general exterior appearance of all equipment and facilities and regular graffiti removal, to the satisfaction of RAP and in keeping with other first class, high-quality venues. The cause of said maintenance, cleaning and repairs may result from normal wear and tear, as well as vandalism.

Building maintenance which includes all building components including but not limited to structural, mechanical and electrical for the FACILITY will be provided by RAP unless SMG is specifically requested by RAP to perform a replacement or repair. Should a request be made and a mutually agreed upon scope and cost be reached, said cost will be paid to SMG by CITY as a REIMBURSABLE EXPENSE.

RAP will provide grounds maintenance, which includes tree trimming, mowing, weeding and landscaping.

**B. Property Damage and Theft Reporting**

SMG shall complete and submit to RAP a "Special Occurrence and Loss Report," in the event that the PREMISES and/or CITY-owned property is damaged or destroyed, in whole or in part, from any cause whatsoever, and in the event of theft, burglary, or other crime committed on the PREMISES. RAP shall provide blank forms for this purpose.

**C. Damage or Destruction to Premises**

**a. Partial Damage**

If all or a portion of the PREMISES are partially damaged by fire, explosion, flooding inundation, floods, the elements, public enemy, or other casualty, but not rendered uninhabitable, the same will be repaired with due diligence by CITY at its own cost and expense, subject to the limitations as hereinafter provided; if said damage is caused by the negligent acts or omissions of SMG, its agents, officers, or employees, SMG shall be responsible for reimbursing CITY for the cost and expense incurred in making such repairs.

**b. Extensive Damage**

If the damages as described above in "Partial Damage" are so extensive as to render the PREMISES or a portion thereof uninhabitable, but are capable of being repaired within a reasonable time not to exceed sixty (60) days, the same shall be

repaired with due diligence by CITY at its own cost and expense and a negotiated portion of the fees and charges payable hereunder shall abate from the time of such damage until such time as the PREMISES are fully restored and certified by RAP as again ready for use; provided, however, that if such damage is caused by the negligent acts or omissions of SMG, its agents, officers, or employees, said fees and charges will not abate and SMG shall be responsible for the cost and expenses incurred in making such repairs.

**c. Complete Destruction**

In the event all or a substantial portion of the PREMISES are completely destroyed by fire, explosion, the elements, public enemy, or other casualty, or are so damaged that they are uninhabitable and cannot be replaced except after more than sixty (60) days, CITY shall be under no obligation to repair, replace or reconstruct said PREMISES, and an appropriate portion of the fees and charges payable hereunder shall abate as of the time of such damage or destruction and shall henceforth cease until such time as the said PREMISES are fully restored. If within four (4) months after the time of such damage or destruction said PREMISES have not been repaired or reconstructed, SMG may terminate this AGREEMENT in its entirety as of the date of such damage or destruction. Notwithstanding the foregoing, if the said PREMISES, or a substantial portion thereof, are completely destroyed as a result of the negligent acts or omissions of SMG, its agents, officers, or employees, said fees and charges shall not abate and CITY may, in its discretion, require SMG to repair and reconstruct the same within twelve (12) months of such destruction and SMG shall be responsible for reimbursing CITY for the cost and expenses incurred in making such repairs.

**d. Limits of CITY'S Obligation Defined**

In the application of the foregoing provisions, CITY may, but shall not be obligated to, repair or reconstruct the PREMISES. If CITY chooses to do so, CITY'S obligation shall also be limited to repair or reconstruction of the PREMISES to the same extent and of equal quality as obtained by SMG at the commencement of its operations hereunder. Redecoration and replacement of furniture, equipment and supplies included within SMG's OFFICE FURNITURE AND EQUIPMENT costs shall be the responsibility of SMG and any such redecoration and refurnishing/re-equipping shall be equivalent in quality to that originally installed.

**D. Pest Control**

SMG shall perform and pay for pest control in all areas of the PREMISES. SMG shall take all reasonable measures to reduce the proliferation of pests, including maintaining the PREMISES in clean condition. RAP may direct SMG to take additional measures to abate pests, which are an immediate threat to public health or safety.

**SECTION 14. PROHIBITED ACTS**

SMG shall not:

1. Use the PREMISES to conduct any other business operations of SMG not related to the Greek Theatre and/or Franklin's Market &Cafe;



2. Do or allow to be done anything which may interfere with the effectiveness or accessibility of utility, heating, ventilation, or air conditioning systems or portions thereof on the PREMISES or elsewhere on the FACILITY, nor do or permit to be done anything which may interfere with free access and passage in the PREMISES or the public areas adjacent thereto, or in the streets or sidewalks adjoining the PREMISES, or hinder police, fire fighting or other emergency personnel in the discharge of their duties;
3. Interfere with the public's enjoyment and use of the FACILITY or use the PREMISES for any purpose which is not essential to the FACILITY operations;
4. Rent, sell, lease or offer any space for storing of any articles whatsoever within or on the PREMISES other than specified herein, without the prior written approval of RAP;
5. Overload any floor or roof in the PREMISES;
6. Place any additional lock of any kind upon any window or interior or exterior door in the PREMISES, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefore is maintained on the PREMISES, nor refuse, upon the expiration or sooner termination of the AGREEMENT, to surrender to RAP any and all keys to the interior or exterior doors on the PREMISES, whether said keys were furnished to or otherwise procured by SMG, and in the event of the loss of any keys furnished by RAP, SMG shall pay CITY, on demand, the cost for replacement thereof;
7. Do or permit to be done any act or thing upon the PREMISES which will invalidate, suspend or increase (except in connection with increased or changed usage) the rate of any insurance policy required under the AGREEMENT, or carried by CITY, covering the PREMISES, or the buildings in which the same are located or which, in the opinion of RAP, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under the AGREEMENT, provided, however, that nothing contained herein shall preclude SMG from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary;
8. Use, create, store or allow any hazardous materials as defined in Title 26, Division 19.1, Section 19-2510 of the California Code of Regulations, or those which meet the criteria of the above Code, as well as any other substance which poses a hazard to health and environment, provided, however, that nothing contained herein shall preclude SMG from bringing, keeping or using on or about the PREMISES such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary except that all hazardous materials must be stored and used in compliance with all City, State and Federal rules, regulations, ordinances and laws;
9. Permit undue loitering on or about the PREMISES;

10. Use the PREMISES in any manner that will constitute waste;
11. Use or allow the PREMISES to be used for any improper, immoral, or unlawful purposes
12. Install or allow the installation of video games or vending machines including but not limited to Automated Teller Machines (ATMs) without the prior written approval of RAP.
13. Permit gambling on the PREMISES or install or operate or permit to be installed or operated thereon, any device which is illegal; or use the PREMISES or permit it to be used for any illegal business or purpose.
14. Permit smoking in the audience seating area and any other interior areas of the Greek Theatre building, FACILITY, or PREMISES, with the exception of designated dressing rooms in conformance with AB13 California Smoke-Free Workplace Law. Any exceptions to this policy will require the prior written approval of RAP.

#### **SECTION 15. NUMBER OF ORIGINALS**

The number of original texts of this AGREEMENT shall be equal to the number of Parties hereto, one text being retained by each Party.

#### **SECTION 16. RATIFICATION LANGUAGE**

Due to the need for SMG's services to be provided continuously on an ongoing basis, SMG may have provided services prior to the execution of this AGREEMENT. To the extent that said services were performed in accordance with the terms and conditions of this AGREEMENT, those services are hereby ratified.

#### **SECTION 17. PERFORMANCE DEPOSIT**

- A. SMG shall provide RAP a sum equal to Eight Hundred Thousand Dollars (\$800,000.00) for the term of the AGREEMENT as a performance deposit ("Deposit").

- B. **Form of Deposit**

SMG's Deposit shall be in the form of a cashier's check drawn on any recognized local bank, which cashier's check is payable to the order of the City of Los Angeles.

- C. **Agreement of Deposit and Indemnity**

SMG unconditionally agrees that in the event of any material breach of this AGREEMENT by SMG and consequent termination by CITY, CITY shall have full power and authority to use the Deposit in whole or in part to indemnify CITY. All Deposits of cash or checks must be immediately so deposited by RAP.

- D. **Maintenance of Deposit**

CITY shall hold SMG's Deposit in an interest-bearing account during the entire term of the AGREEMENT.

- E. **Return of Deposit to SMG**

Said Deposit, together with accumulated interest, shall be returned to SMG and any rights assigned to Deposit shall be surrendered by CITY in writing, after the expiration or earlier termination of the AGREEMENT and the later of (i) any exit audits and inspections performed in conjunction with the AGREEMENT, or (ii) ninety (90) days thereafter. The CITY reserves the right to deduct from the Deposit, any amounts up to and including the full amount of the Deposit as stated herein, owed to the CITY by SMG as shown by any exit audits performed by CITY, or as compensation to CITY for material breach by SMG of this AGREEMENT. SMG shall have the right to challenge the accuracy of such audit and/or the propriety of any claim by CITY against the funds, and in the event that the Parties fail to reach AGREEMENT concerning the disposition of the funds, may institute appropriate dispute resolution or legal proceedings.

#### **SECTION 18. TAXES, PERMITS AND LICENSES**

- A. SMG shall obtain and maintain any and all approvals, permits, or licenses that may be required in connection with the management and operation of the FACILITY including, but not limited to, tax permits, business licenses, health permits, building permits, police and fire permits, etc.
- B. SMG shall pay all applicable CITY, STATE and Federal taxes associated with SMG's business activities in performance of the services required in this AGREEMENT, including any possessory interest tax pursuant to California Revenue and Taxation Code Section 107.6. By executing this AGREEMENT and accepting the benefits thereof, SMG may be creating a property interest known as "possessory interest" which may be subject to property taxation. SMG, as the party in whom the possessory interest would be vested, shall be responsible for the payment of all property taxes, if any, levied upon such interest. SMG acknowledges that the notice required under California Revenue and Taxation Code section 107 .6 has been provided.
- C. During the entire term of the AGREEMENT, SMG must hold a current Los Angeles Business Tax Registration Certificate (BTRC) as required by the CITY'S Business Tax Ordinance (LAMC Article 1, Chapter 2, Sections 21.00 et. seq.)
- D. Pursuant to Section 21.3.3 of Article 1.3 of the LAMC Commercial Tenants Occupancy Tax, SMG must pay to the City of Los Angeles for the privilege of occupancy, a tax at the rate of One Dollar and Forty-Eight Cents (\$1.48) per calendar quarter or fractional part thereof for the first One Thousand Dollars (\$1,000.00) or less of charges (revenue-sharing rent) attributable to said calendar quarter, plus One Dollar and Forty-Eight Cents (\$1.48) per calendar quarter for each additional One Thousand Dollars (\$1,000.00) of charges or fractional part thereof in excess of One Thousand Dollars (\$1,000.00). Said tax shall be paid quarterly to RAP, on or before the fifteenth (15<sup>th</sup>) of April, July, October, January of each calendar year, for the preceding three (3) months. Should the rate of the Occupancy Tax rise at any time during the term of the AGREEMENT, SMG shall be responsible to pay the updated, higher rate. The charges for late or delinquent Occupancy Tax payments shall be One Hundred Fifty Dollars (\$150.00) for each month late plus interest calculated at the rate of eighteen percent (18%) per annum, assessed monthly, on the balance of the unpaid amount.

#### **SECTION 19. TRANSFER OR ASSIGNMENT**



SMG shall not under-let or sub-let the subject PREMISES or any part thereof or allow the same to be used or occupied by any other person or for other use than that herein specified, nor assign the AGREEMENT nor transfer, assign or in any manner convey any of the rights or privileges herein granted without the prior written consent of CITY. Neither the AGREEMENT nor the rights herein granted shall be assignable or transferable by any process or proceedings in any court, or by attachment, execution, proceeding in insolvency or bankruptcy either voluntary or involuntary, or receivership proceedings. Any attempted assignment, mortgaging, hypothecation, or encumbering of the FACILITY rights or other violation of the provisions of this Section shall be void and shall confer no right, title or interest in or to the AGREEMENT or right of use of the whole or any portion of the PREMISES upon any such purported assignee, mortgagee, encumbrance, pledgee or other lien holder, successor or purchaser.

SMG may not, without prior written permission of the CITY:

- A. Assign or otherwise alienate *any* of its rights hereunder, including the right to payment, except that the Parties acknowledge that the foregoing does not preclude the assignment by SMG of its rights to receive fees hereunder to its lender(s) as collateral security for SMG's obligations under any credit facilities provided to it by such lender(s), provided that such collateral assignment shall not in any event cover SMG's rights to manage, promote or operate the Facility hereunder.
- B. Delegate, subcontract, or otherwise transfer any of its duties hereunder.

## **SECTION 20. BUSINESS RECORDS**

- A. SMG shall maintain for three years after termination of this AGREEMENT, all of its books, ledgers, journals, and accounts wherein are kept all entries reflecting the gross receipts received or billed by it from the business transacted pursuant to this AGREEMENT. Such books, ledgers, journals, accounts, and records shall be available for inspection and examination by RAP, or a duly authorized representative, during ordinary business hours at any time during the term of this AGREEMENT and for at least three years thereafter.
- B. **Employee Fidelity Bonds**  
At RAP's discretion, adequate employee fidelity bonds may be required to be maintained by SMG covering all its employees who handle money.
- C. **Cash and Record Handling Requirements**  
If requested by RAP, SMG shall prepare a description of its cash handling and sales recording systems and equipment to be used for the management and operation of the FACILITY, which shall be submitted to RAP for approval.

SMG shall be required to maintain a method of accounting in compliance with Generally Accepted Accounting Principles for each location at the FACILITY, which shall correctly and accurately reflect the gross receipts and disbursements received or made by SMG from the management and operation of the FACILITY. For accounting purposes, separate books must be kept for the Greek Theatre and Franklin's Market + Café. The method of accounting, including bank accounts, established for the FACILITY shall be separate from the accounting systems used for any other business operated by SMG or for recording

SMG's personal financial affairs. Such method shall include the keeping of the following documents:

1. Regular books of accounting such as general ledgers.
2. Journals including supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.
3. State and Federal income tax returns and sales tax returns and checks and other documents proving payment of sums shown.
4. Receipt vouchers shall be retained in order for daily sales to be identified. Reconciliations are required per event.
5. Any other accounting records that CITY, in its sole discretion, deems necessary for proper reporting of receipts.

**D. Method of Recording Gross Receipts**

Gross receipts will be recorded through the Point of Sale system in order to establish the daily receipts records and reconciliation per event with the exception of onsite parking for which ticket vouchers are retained.

**E. Annual Statement of Gross Receipts and Expenses**

SMG shall transmit certified financial statements for the FACILITY management and operations, prepared in a form and by a Certified Public Accounting firm acceptable to RAP, on or before January 15th for the foregoing AGREEMENT year during the term of the AGREEMENT. Notwithstanding the expiration of the AGREEMENT on November 1, 2023, the certified financial statements provisions shall survive the expiration of the AGREEMENT and the final certified financial statements shall be filed on or prior to January 15th of the calendar year after the expiration of the AGREEMENT. To the extent required by law, the certified financial statements shall set forth an expense account entitled "Compensation to Officers" or an account having some similar title. The amount shown opposite this item shall include all salaries or other compensation paid to officers of SMG's corporation, directors, shareholders, any individual owning stock indirectly and other persons employed by SMG to manage the operations or supervise SMG'S employees and members of their respective families where such payment is for services derived from the FACILITY operations by SMG. These salaries or other compensation shall not be indicated in any other expense category.

The annual certified financial statements shall include an attachment containing the following information for each show of the preceding season:

- All actual revenue, categorized by source (i.e. gate, parking, etc.)
- Paid attendance and total attendance

Failure to provide the certified financial statements described above, within the prescribed time allowed, shall be cause for RAP to call for an immediate audit of the FACILITY

management and operations. SMG shall be charged for the full cost of labor, mileage, and materials expended in the investigation and preparation of the audit, plus 30 percent (30%) of said costs for administrative overhead.

All records obtained or created in connection with CITY'S inspections of record or audits, will be or become subject to public inspection and production as public records, except to the extent that certain records or information are not required by law to be disclosed.

Except as provided in the above paragraph A of this SECTION 20, all documents, books and accounting records shall be open for inspection and reinsertion at any reasonable time during the term of the AGREEMENT, and for a reasonable period, not to exceed one year, thereafter. In addition, CITY may from time to time conduct an audit and re-audit of the books and businesses conducted by SMG and observe the operation of the business so that accuracy of the above records can be confirmed. If the report of gross sales made by SMG to CITY shall be found to be less than the amount of gross sales disclosed by such audit and observation, SMG shall pay CITY within 30 days after billing any additional rentals disclosed by such audit. If discrepancy exceeds two percent (2%) and no reasonable explanation is given for such discrepancy, SMG shall also pay the cost of the audit.

## **SECTION 21. REGULATIONS, INSPECTION, ~~AND~~ DIRECTIVES**

### **A. Constitutional and Other Limits on SMG's Rights to Exclusivity**

Notwithstanding exclusivity granted to SMG by the terms of this AGREEMENT, the CITY in its discretion may require SMG, without any reduction in rent or other valuable consideration to SMG, to accommodate the rights of persons to access and engage in expressive activities, as guaranteed by the first amendment to the United States Constitution, the California Constitution, and other laws, as these laws are interpreted by the City. Expressive activities include, but are not limited to, protesting, picketing, proselytizing, soliciting, begging, and vending of certain expressive, message-bearing items.

### **B. Conformance with Laws: SMG shall comply with:**

- a. Any and all applicable rules, regulations, orders, policies, and restrictions which are now in force or which may be hereafter adopted by CITY with respect to the operation of the FACILITY and Franklin's Market + Café;
- b. Any and all orders, directions or conditions issued, given, or imposed by RAP with respect to the use of the roadways, driveways, curbs, sidewalks, parking areas, or public areas adjacent to the PREMISES;
- c. Any and all applicable laws, ordinances, statutes, rules, regulations or orders, including the LAMC, LAAC, the Charter of the City of Los Angeles, and of any governmental authority, federal, state or municipal, lawfully exercising authority over SMG's operations; and,
- d. Any and all applicable local, state and federal laws and regulations relative to the design and installation of facilities to accommodate disabled persons.

### **C. Permissions**



Any permission required by the AGREEMENT shall be secured in writing by SMG from CITY or RAP and any errors or omissions therefrom shall not relieve SMG of its obligations to faithfully perform the conditions therein. SMG shall immediately comply with any written request or order submitted to it by CITY or RAP.

**D. Right of Inspection and Access to PREMISES**

CITY and RAP, their authorized representatives, agents and employees shall possess and maintain the right to enter upon the PREMISES at any and all times. Said access and/or inspections may be made at any time by persons identified to SMG as CITY employees, or CITY authorized persons. Inspections may be made for the purpose set forth below, however, the enumerations below shall not be construed to limit CITY's right of inspection for any purpose incidental to the rights of CITY:

1. To determine if SMG is complying with the terms and conditions of the AGREEMENT.
2. To observe transactions between SMG and patrons in order to evaluate the quality and quantities of services provided or items sold or dispensed, the courtesy extended to and method of dealing with the public, the performance and caliber of SMG's employees, subcontractor employees and the methods for recording receipts.

The information gathered on these inspections may be used to evaluate SMG to provide a basis for an action by CITY for the termination, renewal or denial of extensions to the AGREEMENT or for any other appropriate action.

**E. Control of Premises**

CITY shall at all times retain and possess absolute and full access to the PREMISES and all its appurtenances during the term of the AGREEMENT and may make such changes and alterations therein, and in the grounds surrounding same, as may be determined by CITY. Such determination shall not be unreasonable and shall take into account the business considerations presented by SMG.

**F. Business Inclusion Program**

SMG agrees and obligates itself to utilize the services of Minority, Women, Small, Emerging, Disabled Veteran and Other Business Enterprise firms on a level so designated in its proposal, Schedule A (Exhibit N). SMG certifies that it has complied with Executive Directive No. 14 regarding the Outreach Program. SMG shall not change any of these designated sub consultants and subcontractors, nor shall SMG reduce their level of effort, without prior written approval of the CITY, provided that such approval shall not be unreasonably withheld.

During the term of the AGREEMENT, SMG must submit the MBE/WBE/SBE/EBE/DVBE/OBE Utilization Profile, Schedule B (Exhibit O) when

submitting the Monthly Event Closing Statement. Upon termination of this Agreement, a summary of these records shall be prepared on the "Final Subcontracting Report" form, Schedule C (Exhibit P) and certified correct by SMG or its authorized representative. The completed Schedule C shall be furnished to RAP within fifteen (15) working days after termination of this AGREEMENT.

#### **G. First Source Hiring Ordinance**

Unless otherwise exempt in accordance with the provisions of this Ordinance, this AGREEMENT is subject to the applicable provisions of the First Source Hiring Ordinance (FSHO), Section 10.44 et seq. of the LAAC, as amended from time to time.

1. SMG shall, prior to the execution of this AGREEMENT, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that SMG estimates it will need to fill in order to perform the services under the AGREEMENT. The Department of Public Works, Bureau of Contract Administration is the DAA.
2. SMG further pledges that it will, during the term of the AGREEMENT:
  - a. At least seven business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Economic and Workforce Development Department of Los Angeles (EWDD), which will refer individuals for interview;
  - b. Interview qualified individuals referred by EWDD; and
  - c. Prior to filling any employment opportunity, SMG shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who SMG interviewed and the reasons why referred individuals were not hired.
3. Any Subcontract entered into by SMG relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
4. SMG shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

If, under the provisions of Section 10.44.13 of the LAAC, the DAA determines that SMG intentionally violated or used hiring practices for the purpose of avoiding the FSHO, the determination must be documented in RAP's Operator Evaluation, required under LAAC Section 10.39 et seq., and must be documented in each of SMG's subsequent Contractor Responsibility Questionnaires submitted under LAAC Section 10.40 et seq. This measure does not limit the CITY'S authority to act under the FSHO.

Under the provisions of Section 10.44.8 of the LAAC, RAP shall, under appropriate circumstances, terminate this AGREEMENT and otherwise pursue legal remedies that may be available if the DAA determines that the subject SMG has violated provisions of the FSHO.

#### **H. CEC Form 50**

SMG agrees to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance if SMG qualifies as a lobbying entity under Los Angeles Municipal Code 48.02. CEC Form 50 is attached as Exhibit Q. Responses submitted without a completed CEC Form 50, by proposers that qualify as a lobbying entity under Los Angeles Municipal Code 48.02 shall be deemed nonresponsive.

Bidder Contributions -City Charter Sections 470(c) (12). SMG is subject to Charter section 470(c) (12) and related ordinances. As a result, SMG may not make campaign contributions to and or engage in fundraising for certain elected City officials or candidates for elected City office from the time it submits its proposal for this AGREEMENT until either this AGREEMENT is approved or 12 months after this AGREEMENT is signed. SMG's principals and subcontractors performing \$100,000.00 or more in work on this AGREEMENT, as well as the principals of those subcontractors, are also subject to the same limitations on campaign contributions and fundraising.

**I. CEC Form 55**

CEC Form 55 requires SMG to identify their principals, their subcontractors performing \$100,000.00 or more in work on this AGREEMENT, and the principals of those subcontractors. SMG must also notify their principals and subcontractors in writing of the restrictions and include the notice in contracts with subcontractors. Responses submitted without a completed CEC Form 55 shall be deemed nonresponsive. If SMG fails to comply with this City law, it may be subject to penalties including termination of this AGREEMENT, and debarment. Additional information regarding restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960 or [ethics.lacity.org](http://ethics.lacity.org).

**SECTION 22. SURRENDER OF POSSESSION**


SMG agrees to yield and deliver possession of the PREMISES to CITY on the date of the expiration or earlier termination of the AGREEMENT promptly, peaceably, quietly, and in as good order and condition as the same now are or may be hereafter improved by SMG or CITY.

No agreement of surrender or acceptance of surrender shall be valid unless and until the same is in writing and signed by the duly authorized representatives of CITY and SMG. Neither the doing nor omission of any act or thing by any of the officers, agents or employees of CITY shall be deemed an acceptance of a surrender of the PREMISES utilized by SMG under this AGREEMENT.

**SECTION 23. NOTICES**

**A. To CITY:**

Unless otherwise stated in the AGREEMENT, written notices to CITY hereunder shall be addressed to:

Department of Recreation and Parks  
Attention: Concessions Unit  
P.  Box 86328  
Los Angeles, California 90086-0610



All such notices may either be delivered personally or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid for delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt.

CITY shall provide SMG with written notice of any address change within thirty (30) days of the occurrence of said change.

B. To SMG:

The execution of any notice to SMG by RAP shall be as effective for SMG as if it were executed by BOARD, or by Resolution or Order of said BOARD.

All such notices may either be delivered personally to the SMG or to any officer or responsible employee of SMG or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid for delivery by registered or certified mail. Service in such manner by registered or certified mail shall be effective upon receipt.

Written notices to SMG shall be addressed to SMG as follows:

SMG

300 Conshohocken State Rd., Suite 770  
West Conshohocken, PA 19428  
Attn: President

And

SMG

300 Conshohocken State Rd., Suite 770  
West Conshohocken, PA 19428  
Attn: Counsel

With a copy to (which shall not constitute notice):

SMG

Attention: GREEK THEATRE MANAGER  
2700 North Vermont Avenue  
Los Angeles, CA 90027

SMG shall provide CITY with written notice of any address change within thirty (30) calendar days of the occurrence of said address change.

#### **SECTION 24. INDEMNIFICATION**

Except for the active negligence or willful misconduct of CITY, or any of its boards, officers, agents, employees, assigns and successors in interest, SMG shall defend, indemnify and hold harmless CITY and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and

expenses, including, but not limited to, 1) attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by CITY, including but not limited to, costs of experts and consultants), 2) damages or liability of any nature whatsoever, 3) for death or injury to any person, including SMG's employees and agents, or 4) loss, damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by SMG, or their boards, officers, agents, employees, assigns, contractors, subcontractors, and successors in interest. The rights and remedies of CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract. For the sake of clarity, this provision shall include, but is not limited to, SMG's agreement to defend, indemnify and hold harmless CITY and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, 1) attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by CITY, including but not limited to, costs of experts and consultants), 2) damages or liability of any nature whatsoever, 3) for death or injury to any person, including SMG's employees and agents, or 4) loss, damage or destruction of any property of either Party hereto or of third parties, arising in any manner by reason of a User's (as that term is defined in Exhibit E) occupancy of the PREMISES. This shall include SMG's agreement to defend, indemnify and hold harmless CITY and any of its boards, officers, agents, employees, assigns, and successors in interest from and against: 1) all lawsuits and causes of action, claims, losses, demands and expenses brought by User or their boards, officers, agents, employees, contractors, subcontractors, assigns, and successors in interest, or any other third party, resulting from SMG's, including SMG's employees, contractors, and agents, exercise of SMG's authority to have any objectionable person or persons removed from the PREMISES; and 2) all lawsuits and causes of action, claims, losses, demands and expenses brought by User or their boards, officers, agents, employees, contractors, subcontractors, assigns, and successors in interest, resulting from SMG's provision of watchmen or other protective service to a User, whether by employees, contractors, or agents.

#### **SECTION 25. INCORPORATION OF DOCUMENTS**

This AGREEMENT and incorporated documents represent the entire integrated AGREEMENT of the Parties and supersedes all prior written or oral representations, discussions, and agreements. The following Exhibits are attached to, incorporated in, and made part of this AGREEMENT by reference:

- A. Standard Provisions for City Contracts (Rev. 10/17)[v.23], excluding PSC-18 & PSC-34
- B. Insurance Requirements and Instructions
- C. Premises Maps and Additional Parking Lots
- D. SMG Repair and Maintenance Responsibilities
- E. User Agreement, Revised ~~November 1, 2017~~August 2020
- F. Booking Policy, Revised November, 1, 2017
- G. Promoter's Commercial Incentive Program Policy, Established June 18, 2015
- H. SMG's Proposal Response to the Greek Theatre Venue and Concessions Management RFP
- I. Form General No. 87 "Non-Employee Accident or Illness Report"

- J. Sponsorship Recognition Policy, Procedures and Guidelines for Recognizing Organizations and Individuals who Contribute to and/or Support City of Los Angeles Park and Programs
- K. Naming Policy, Procedures and Guidelines for Parks and Recreational Facilities
- L. SMG ADMINISTRATIVE EXPENSES AND 2019 Event Services and Staffing Costs.
- M. Monthly Revenue Report
- N. Schedule A, MBE/WBE/SBE/EBE/DVBE/OBE Subcontractors Information Form
- O. MBE/WBE/SBE/EBE/DVBE/OBE Utilization Profile, Schedule B
- P. Final Subcontracting Report form, Schedule C
- Q. CEC Form 50
- R. List of equipment owned by SMG.
- S. List of Capital Improvements
- T. Greek Theatre Trademarks

In the event of any inconsistency between any of the provisions of this AGREEMENT and/or exhibits attached hereto, the inconsistency shall be resolved by giving precedence in the following order: 1) This AGREEMENT exclusive of attachments, 2) Exhibit A, 3) Exhibit H, 4) Exhibit C, 5) Exhibit R, and 6) Exhibit S

(Signature Page to Follow)



IN WITNESS WHEREOF, THE CITY OF LOS ANGELES has caused this AGREEMENT to be executed on its behalf by its duly authorized General Manager of the Department of Recreation and Parks, and SMG'S has executed the same as of the day and year herein below written.

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through the Department of Recreation and Parks

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
MICHAEL A. SHULL  
General Manager

SMG

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:  
MICHAEL N. FEUER, City Attorney

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
~~Mike~~Michael Dundas  
Deputy City Attorney

Business Tax Registration Certificate Number: 0002858497-0001-9  
Internal Revenue Service Taxpayer Identification Number: 23-2511871  
AGREEMENT Number: \_\_\_\_\_

**CITY OF LOS ANGELES  
DEPARTMENT OF RECREATION AND PARKS  
Greek Theatre  
User Agreement**

This User Agreement No. \_\_\_\_\_ is made and entered into this day \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_ by and between SMG, a Pennsylvania General Partnership ("SMG"), as agent for the City of Los Angeles ("City"), a municipal corporation, acting through its Department of Recreation and Parks ("Department") and \_\_\_\_\_ (hereinafter referred to as the "User").

**WITNESSETH:**

**SECTION 1. Permitted Premises and Term**

1. For and in consideration of the mutual agreements contained herein and subject to its stated terms and conditions, SMG hereby grants a Right of Entry and leases to the User, the Greek Theatre, located at 2700 North Vermont Ave. in Griffith Park, Los Angeles, The leased premises shall consist of the theatre stage house, the spectator seating area, available dressing rooms, production offices, green room/hospitality room, and such other areas permitted by SMG for the sole purpose of presenting the event ("Premises"), expressly excepting any rights to all parking lots, except for the allotted parking spaces provided in Section 3 of this Agreement.

**SECTION 2. Event Information and Term**

The User shall have the right to occupy and use the venue for:  
\_\_\_\_\_ (the "Event") on  
\_\_\_\_\_ and no other, and the tenancy shall not be assigned or sublet.

Access to the PREMISES shall be granted at **[time]** a.m. (Load-In) on **[day and date]**. The Event shall commence at [time] p.m. and conclude at approximately \_\_\_\_\_ p.m. Door opening time is agreed to be Ninety Minutes before scheduled show time indicated on ticket. Load-out of the Event shall commence immediately after the conclusion of the Event and be completed no later than 2:00am the day following the Event.

Established June 18, 2015  
Revised June 15, 2020

commence immediately after the conclusion of the Event and be completed no later than 2:00am the day following the Event.

### SECTION 3. Rental Rates

- a. For each performance, the rental rate shall be either eleven percent (11%) of the gross gate receipts (less applicable taxes and facility fee) or the minimum rental rate of Twenty-Five Thousand Dollars (\$25,000.00), whichever is greater. In no event shall the maximum rental rate for each performance exceed Thirty-Five Thousand Dollars (\$35,000.00). Should the same artist have multiple performances on the same day, the rental rate for each subsequent performance on the same day shall be at a flat rate of Fifteen Thousand Dollars (\$15,000.00) per subsequent performance. The advance deposit for this engagement is Twelve Thousand Five Hundred Dollars (\$12,500.00).
- b. Rental rate includes a total of twenty-five (25) parking passes for USER or show vehicles
- c. Each additional parking space is Twenty-Five Dollars (\$25.00).
- d. Move-in and move-out dates must be arranged with SMG, and will be subject to availability of the premises and conditioned upon the User paying all costs as stated in the below table. If a definite booking of a rehearsal date or move-in or move-out date is authorized before or after the performance date, the User shall pay Two Thousand Five Hundred Dollars (\$2,500.00) for each such reserved date in addition to all applicable costs. \* In no case shall the load in for any performance be authorized to begin prior to 7:00 AM.

e. Rental Rate Table:

|       |          | Commercial Rental Rate<br>(Those events promoted and/or sponsored by a commercial group organization) |                      | Community Rental Rate<br>(Those events which are promoted and/or sponsored by a Civic, Educational, Religious or Charitable group registered as a non-profit 501c3 status) |                      | Load-In/Out Rate |
|-------|----------|---|----------------------|--|----------------------|------------------|
|       |          | (A)   | (B)                  | (C)  | (D)                  |                  |
|       |          | Admission Charged   | No Admission Charged | Admission Charged  | No Admission Charged |                  |
| Venue | Capacity | Minimum vs %  | Minimum              | Minimum vs %   | Charged              |                  |

Established June 18, 2015  
Revised June 15, 2020

Page



|               |       |  |     |          |         |    |         |         |
|---------------|-------|--|-----|----------|---------|----|---------|---------|
| Greek Theatre | 5,901 | \$25,000   | 11% | \$35,000 | \$7,500 | 8% | \$5,000 | \$2,500 |
|               |       | Rental fee is Gross Ticket Receipts (less applicable taxes and facility fee) |     |          |         |    |         |         |

## SECTION 4. Fees

All fees due to SMG must be remitted to:

SMG GREEK THEATRE  
2700 VERMONT AVENUE  
Los Angeles, CA 90027  
Attn: Becky Colwell

### A. Commercial Rental Rate, with Admission Charged (A):

1. In addition to the rental rates in the table above, the User agrees to reimburse SMG for any and all labor utilized for this event at a House Flat Rate of Thirty ~~Thousands~~Thousand Dollars (\$30,000.00). The House Flat Rate includes labor costs for ushers, ticket takers, security, cleaning, police, emergency medical services, box office staff and leasing costs associated with the house sound, lighting and video. The House Flat Rate expressly excludes the costs of stagehands and production related personnel, which must be provided through the existing contracts with the International Alliance of Theatrical Stage Employees (IATSE) Local 33 (Stage Technicians Union), Local 706 (Make-up Artists and Hair Stylists Guild), Local 768 (Theatrical Wardrobe Union), and Local 47 (Musicians Union). The ~~House~~ Flat Rate also expressly excludes the costs of private security employed for personal protection of artists or not related to public safety, special medical services requested for the artist only, advertising, ASCAP/BMI/SESAC, insurance, catering, runners, transportation, sign language interpreters (if requested), pyro/fire watch expenses (if any), Confetti cleaning expenses (\$1,500) and other USER/artist requested expenses.
2. The House Flat Rate covers the event with doors opening ninety (90) minutes prior to the advertised Event time and the performance ending no later than 10:30PM. The Greek Theatre has a hard curfew of 11:00pm. Additional labor fees will be charged at a rate of \$2,750 per one-half hour or portion thereof for events ~~who's the~~ duration ~~time exceed of which exceeds~~ three and one-half hours from the scheduled event time as indicated on ticket. User will be responsible for any staffing costs associated with any load-in/load-out days and rehearsals.
3. The User shall provide SMG, at least ten (10) days prior to holding an event, a full and detailed Event and production advance, and such other information required by SMG concerning the booked event. SMG shall determine the final minimum number of, and use of, ushers, ticket takers, security, cleaning, police, emergency medical services and box office staff for those employed to handle and govern the conduct of all in attendance at the User's event.

Established June 18, 2015

Revised June 15, 2020

Page

4. The User also shall pay to SMG, on demand, any other and further sums which may become due to SMG on account of special facilities, equipment, material, or extra services furnished or to be furnished by SMG at the request of the User, or necessitated by the User's occupancy of the premises, the compensation for which is not included in the rent or rents specified above. The User shall pay the guaranteed minimum rental on signing this User Agreement. Should the User fail to satisfy and pay any debts, accounts, and amounts owing and due SMG under the terms of this User Agreement, then the SMG may apply the proceeds of the security deposit.
5. The User agrees to promptly pay any and all Municipal, State, or Federal taxes, permit or license fees of whatever nature applicable to this occupancy and to take out all permits and licenses required for occupancy, and further agrees to furnish SMG, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment or possession of any such taxes, fees or permits. Appropriate records shall be maintained and made available upon request by SMG.
6. A Five Dollar (\$5.00) Facility Maintenance Fee must be added to the price of each ticket sold.
7. Any complimentary tickets set aside by the User and for the User's use shall be marked as such. Any tickets not marked accordingly will be counted as "sold" and Facility Maintenance Fee ("FMF") will be collected. For additional Greek Theatre Ticketing policy requirements please see policy attached in Exhibit A

**B. Commercial, with no admission charged and Community Rental Rates**

1. In addition to the policies and rental rates listed above, the User agrees to pay SMG for any and all labor costs for ushers, ticket takers, security, cleaning, police, emergency medical services, box office staff and leasing costs associated with the house sound, lighting and video systems, stagehands and production related personnel. These costs will be determined on an event by event basis. In addition, USER shall be responsible for the costs of private security employed for personal protection of artists or not related to public safety, medical services required for the artist only, advertising, ASCAP/BMI/SESAC, insurance, catering, runners, transportation, sign language interpreters (if requested), pyro/fire watch expenses (if any), confetti cleaning expenses (\$1,500) and other USER/artist requested expenses.
2. The User also shall pay to SMG, on demand, any other and further sums which may become due to SMG on account of special facilities, equipment, material, or extra services furnished or to be furnished by SMG at the request of the User, or necessitated by the User's occupancy of the premises, the compensation for which is not included in the rent or rents specified above. The User shall pay the guaranteed minimum rental on signing this User Agreement. Should the User fail to satisfy and pay any debts, accounts, and amounts owing and due SMG under the terms of this User Agreement, then SMG may apply the proceeds of the security deposit.

Established June 18, 2015

Revised June 15, 2020

Page



3. The User agrees to promptly pay any and all Municipal, State, or Federal taxes, permit or license fees of whatever nature applicable to this occupancy and to take out all permits and licenses required for occupancy), and further agrees to furnish SMG, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment or possession of any such taxes, fees or permits. Appropriate records shall be maintained and made available upon request by SMG.

## SECTION 5. Security Deposit

Security Deposit for promoters with less than four (4) shows for the current season shall furnish a \$10,000.00 per show cashier check only, security deposit to SMG for each show. Beginning with fifth (5<sup>th</sup>) booking, promoters must provide letter of credit.

## SECTION 6. Rules & Regulations

It is understood and agreed that SMG hereby reserves the right to control and manage the Greek Theatre and to enforce all necessary and proper established rules for its management and operation and for its authorized representatives to enter any portion of the Greek Theatre and on any occasion, provided that SMG and its agents shall not unnecessarily disturb the privacy of the artists in areas and circumstances where the artists have a reasonable expectation of privacy. SMG also reserves the right, but not the duty, to safely and reasonably have any objectionable person or persons removed from the premises and the User hereby waives any and all claims for damages against SMG or any and all of theirs officers, agents or employees resulting from the exercise of this authority, except to the extent that any such claims for damages are the result of the negligence or willful misconduct of SMG or any and all of its officers, agents or employees. SMG reserves the right to manage and control all parking facilities on the Greek Theatre property or leased by SMG at all events held at the Greek Theatre. Notwithstanding the foregoing, SMG will make such parking facilities available to event patrons during the User's event (at such prices determined by the Department).

The standard door opening at the Greek Theatre shall be ninety minutes prior to the advertised start time of the show; this may be adjusted as necessary with advance notice by the User to SMG but may be subject to additional fees.

Performances must end no later than 10:30 PM, unless prior written permission has been granted by SMG. In no case, however shall a performance extend past 11:00 PM. SMG reserves the right to cut power, and assess a penalty of One Thousand Dollars (\$1,000.00) per minute for the first five (5) minutes past 11:00pm. A penalty of Five Thousand Dollars (\$5,000.00) per minute will be assessed thereafter.

SMG shall be the sole provider of conversion labor, ticket takers, ushers, ticket sellers, peer security,

Established June 18, 2015

Revised June 15, 2020

police, medical), cleaning personnel, receptionist, maintenance/ operations staff, engineers, event coordinator, and local stagehand labor. SMG, using reasonable discretion, shall have final say as to

the minimum number of personnel required based on the nature of the Event and the anticipated attendance.

Special stage effects involving pyrotechnic displays (including fireworks and flash powders) are prohibited except by a special fee and a City permit from the Fire Prevention Bureau. If a pyrotechnic display is required, arrangements must be made through the Los Angeles Fire Department at the User's expense.

The Greek Theatre has blow-thru barricade available for use at shows with a standing General Admission Pit only.

The User shall use and occupy the venue in a safe and careful manner and shall comply with all applicable Municipal, State, and Federal laws, rules and regulations pertaining to the City of Los Angeles, the Department of Recreation and Parks and all other rules and regulations prescribed by the Fire and Police Departments and other governmental authorities as may be in force and effect during the tenancy. The User shall not use said premises or any part thereof for the possession, storage, or sale of liquor (except with the permission of SMG, and according to law), for any unlawful or improper purpose or in any manner so as to injure persons or property in, on, or near the premises. User shall not do any act or permit or allow, any act to be done during the term of this User Agreement which will in any way mark, deface, alter or injure any part of the Greek Theatre- (normal wear and tear excepted).

All portions of the sidewalks, entrances, passages, vestibules, halls, and all ways of access to public utilities on the Premises shall be kept unobstructed by the User and shall not be used for any purpose other than ingress or egress to and from the premises. The doors, stairways, or openings into any place in the structure, including, hallways, corridors, and passageways, also house lighting attachments, shall in no way be obstructed by the User.

SMG will be responsible for traffic control working in conjunction with the City's Department of Transportation (DOT).

SMG assumes no responsibility whatsoever, for any property placed in said premises, and SMG is hereby expressly released and discharged from any and all liabilities for any loss, injury or damages to person or property that may be sustained by reason of the occupancy of said premises under this User Agreement- except to the extent that any such loss, injury or damages are the result of the negligence or willful misconduct of SMG. All watchmen or other protective service desired by the User must be arranged for by special agreement with SMG with due diligence taken for the receipt, handling, care or custody of any property shipped or otherwise delivered to the Greek Theatre, either prior to, during, or subsequent to the User's occupancy. SMG and its officers, agents, and employees shall act solely for the accommodation of the User and neither SMG nor its officers, agents, or employees shall be liable for any loss, damage, or injury to such property- except to the extent that any such loss, injury or damages are the result of the negligence or willful misconduct of SMG its officers, agents, or

Established June 18, 2015

Revised June 15, 2020



| employees.

| Established June 18, 2015  
Revised June 15, 2020

Page

SMG shall have the sole right to collect and have custody of all articles left on the premises by persons attending any function held on the premises. Any property left on the premises by User shall, after a period of thirty (30) days from the last day of tenancy hereunder, be deemed abandoned and at SMG's sole option, become the property of SMG, without further notice.

In the event any portion of the Greek Theatre is not vacated at the end of the term of this rental, then SMG shall be and is hereby authorized to remove articles from the venue, at the expense of the User. SMG shall not be liable for any damage to or loss of such goods, wares, merchandise or property sustained either during the removal or storage of by SMG and it and its agents, employees and officials are hereby expressly released from any and all claims for such loss or damage. SMG will notify the User of any equipment or articles inadvertently left by the User and provide the User with a reasonable opportunity to remove same prior to removal or disposal by SMG. Upon termination of this Agreement, the User will deliver back to SMG the venue in as good condition and repair as it was received and in conformance with the Department's guidelines. Should the User fail to return the venue in as good condition and repair as it was received, any necessary and reasonable amounts owed and due SMG under the terms of this User Agreement may be subtracted from the User's security deposit.

Notwithstanding exclusivity granted to User by the terms of this Agreement, the City in its discretion may require User, without any reduction in rent or other valuable consideration to User, to accommodate the rights of persons to access and engage in expressive activities, as guaranteed by the first amendment to the United States constitution, the California constitution, and other laws, as these laws are interpreted by the City. Expressive activities include, but are not limited to, protesting, picketing, proselytizing, soliciting, begging, and vending of certain expressive, message-bearing items in appropriately legal areas which are not disruptive to the Event, intrusive of the User's exclusivity or which impede commercial operations of the venue.

#### ADA – Americans with Disability Act Requirements:

The parties recognize that the City is subject to the provisions of Title II of the Americans with Disabilities Act ("ADA") and that the User is subject to the provisions of Title III of the ADA (including all revised regulations dated September 15, 2010 and effective March 15, 2011). Concerning compliance with the ADA and all regulations thereunder, the City is responsible for the permanent building access requirements; such as wheelchair ramps, elevators, restrooms, doors and walkways. The User is responsible for the non-permanent accessibility standards and requirements, such as, but not limited to, seating accessibility, ticketing, ticket pricing, sign language interpreters, signage and all other auxiliary aids and services customarily provided by the User. The User shall comply with the ADA and all regulations thereunder.

Tickets for unsold accessible seating may be released for sale to individuals without disabilities:

Established June 18, 2015

Revised June 15, 2020

Page

1. When all non-accessible tickets (excluding luxury boxes, club boxes, or suites) have been sold; 2. When all non-accessible tickets in a designated seating area have been sold and the —tickets



1. for accessible seating are being released in the same designated area; or 3. When all non-accessible tickets in a designated price category have been sold and the tickets for accessible seating are being released within the same designated price category.

User represents that it has viewed or otherwise apprised itself that such access to the premises and common areas and accepts such access, common areas, and other conditions of the premises as adequate for User's responsibilities under the ADA. The User shall be responsible for ensuring that the space rented by City to User complies and continues to comply in all respects with the ADA, including accessibility, usability and configuration insofar as the User modifies, rearranges or sets up in the facility in order to accommodate the performance produced by the User. The User shall be responsible for any violations of the ADA that arise from User's reconfiguration of the seating areas or modification of other portions of the premises in order to accommodate User's engagement. The User shall be responsible for providing and paying for auxiliary aids and services that are ancillary to its production and for ensuring that the policies, practices and procedures it applies in its production are in compliance with the ADA.

#### **SECTION 7. Ticketing Agent and Tickets**

The User will adhere to the Greek Theatre Ticketing Policy as established by Department (Exhibit A). The User shall not sell, allow, or cause to be sold or issued, admission tickets in excess of the seating capacity of, or admit a larger number of persons to the area than can be lawfully and safely seated or moved about, with the final decision vested by SMG.

#### **SECTION 8. Broadcasting & Advertising Rights**

**USER shall use only the Greek Theatre approved website address of [www.lagreektheatre.com](http://www.lagreektheatre.com) when advertising the host venue for Event. Any User who uses the name Greek Theatre or any portion thereof in another website, domain, advertising or marketing event is strictly prohibited from booking Events at the Greek Theatre. Users are strictly prohibited from maintaining, operating or using competing websites or other marketing streams that use the Greek Theatre name from doing business at the Greek Theatre.**

This Agreement includes rights to broadcast from the Greek Theatre. Broadcast is defined as the "the dissemination of video, film or radio content via electronic means including but not limited to high definition, standard and cable television, radio, web casting, web streaming, down loads, and/or other forms of digital transmission, digital broadcast or digital distribution effectuated by means of the internet in all forms of television media now and hereafter known SMG shall retain all television, film, radio and/or recording rights to any Events which take place in or at the Facility. Licensee may purchase such rights from SMG for a broadcast and/or recording fee ("**Broadcast Fee**") of \$15,000 plus

Established June 18, 2015  
Revised June 15, 2020

Page

applicable stagehand costs that are not already covered by the Rental Rates set forth in Section 3 herein.

Established June 18, 2015  
Revised June 15, 2020

Page

This User Agreement does not include any advertising rights pertaining to the venue in favor of the User. SMG retains all rights to sell or lease advertising on the premises, and to determine whether any incidental display of products, logos, etc., may conflict with the Department's rights. SMG shall not permit any display on the premises of an objectionable nature, in the sole and absolute discretion of SMG

SMG further reserves the right to make or record any photographs, audio or video at the venue for its own personal use or for the customary advertising and publicity, subject to any applicable required approval(s) from the performing artist.

Except for announcement of upcoming concerts at the Greek Theatre, or events in which the User is promoting or advertising for artists performing at the event, the User shall not distribute fliers, brochures, petitions, surveys or literature of any kind nor sell or cause to be sold or sampled pamphlets, novelties, curios, souvenirs, or similar items at or in the Greek Theatre, except upon written permission of SMG.

USER shall use the Greek Theatre logo in all advertising controlled by or done on behalf of USER relating to an Event, including, but not limited to, television, internet, newspaper, magazine, and outdoor advertising. USER's right to use the Greek Theatre Logo shall be limited to the specific, express purpose set forth in the foregoing sentence and/or as otherwise authorized by SMG in writing prior to the use thereof. In connection with USER's use of the Greek Theatre Logo as permitted in this section, USER shall use only the form of the Greek Theatre as provided by SMG to USER in any artwork or other depiction thereof.

## **SECTION 9. Sound, Video & Lighting**

SMG will provide house sound, video displays and basic lighting systems originating at the front house mix position in the venue. The User is required to use the house audience public address/sound reinforcement system for the event but may provide alternative and/or additional stage sound monitors and consoles, video displays and lighting systems required for the event. A comprehensive Greek Theatre Technical Package can be found at [www.lagreektheatre.com](http://www.lagreektheatre.com)

During the performance, SMG will work in conjunction with the User to monitor sound levels. In the event, sound levels that exceed 95dBA, sustained over any three (3) minute interval, the User will be given a warning to lower the sound. If additional violations occur, monetary penalties shall apply as set forth below. A sound monitoring data report showing sound readings each minute shall be generated at the conclusion of each performance. At the conclusion of the show the sound monitoring data report will be provided to document all violations of the sound level limit that occurred during the performance. If any violations occurred, the following penalties shall apply and shall be paid by USER as part of the Event settlement, or otherwise deducted from USER security deposit:

Established June 18, 2015  
Revised June 15, 2020

Page

First Offense: Shall be a warning during the performance to lower sound levels to 95dBA.



Second Offense: Shall be a Five Thousand Dollar (\$5,000.00) fine.

Third Offense: Shall be a Seven Thousand Five Hundred Dollar (\$7,500.00) fine.

Subsequent Offenses: Shall be Ten Thousand Dollars (\$10,000.00) per violation.

## **SECTION 10. Food and Beverage**

The User shall not sell or cause to be sold items of food or drink at or in the Greek Theatre, without written permission. Food and beverage sales are in the exclusive rights of the Department's Food and Beverage Concessionaire. SMG must approve any and all sampling requests, with such approval not to be unreasonably withheld if they are made at the request of artist's tour sponsors. The User may opt to bring in a caterer to perform backstage artist and dressing room duties with no additional buy-out fee.

## **SECTION 11. Artists Merchandise Sales**

With regard to Event merchandise sales, Department's Food and Beverage Concessionaire (Concessionaire) shall handle sales on behalf of the Event/artists- ("Artist"). USER agree to a merchandise split of 80% (Event) AND to Artist and 20% (to Concessionaire), on merchandise, as well as a split of 90% (Event) to Artist and 10% (to Concessionaire) on recorded media, after the deduction of all applicable taxes, credit card commissions, and bootleg security, if requested. Concessionaire shall supply and pay the merchandise vendors. Neither User nor Department will receive any monetary benefits from the sale of artists' merchandise.

## **SECTION 12. Notices**

Any notice or formal communications between SMG and the User shall be made in writing and will be deemed sufficiently rendered or given when made or sent by e-mail to:

Email: bcolwell@lagreektheatre.com

## **SECTION 13. Legal Authority**

User assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate, and official motion, resolution, or action passed or taken, to enter into this User Agreement. The person or persons signing and executing this User Agreement on behalf of User, do hereby warrant and guarantee that he/she or they have been fully authorized by User to execute this User Agreement on behalf of User and to validly and legally bind User to all the terms, performances, and provisions herein

Established June 18, 2015

Revised June 15, 2020

set forth:

- A. Standard Provisions for City Contracts (Rev. 10/17 [v.3/09]), excluding PSC-3331 and PSC-3432.
- B. Ticketing Policy, Exhibit A

- C. Insurance Requirements Form, Exhibit B
- D. Greek Theatre Booking Policy, Exhibit C

Commented [ 1]: Please forward for review

#### **SECTION 14. Force Majeure**

If the Event would be illegal or impossible to hold, or it would be illegal or impossible for either of the parties to perform their respective obligations hereunder because of an act or regulation of public authority, fire, riot or civil disorder, strikes or lockouts (other than a lockout by the User or any of the User's contractors or subcontractors), terrorist acts, acts or declarations of war, virus, pandemic, or acts of God ("Force Majeure Event"), neither party shall have any obligation or liability whatsoever to the other party as a result thereof. If government restrictions or guidelines related to the COVID-19 pandemic reduce the capacity of the Premises on the day(s) of the Event by more than 20%, User shall have the right to cancel the Event, in which case each party's obligations shall be deemed waived, and there shall be no claim for damages by either party. However, while User will not be penalized for such an impossibility or cancellation and may be entitled to a refund of prepaid amounts, including deposits, User shall pay for the costs and fees of any services already rendered by SMG and City prior to receiving any refund that may be owing.

\_\_\_\_\_*(Signature Page to Follow)*

IN WITNESS WHEREOF, THE CITY OF LOS ANGELES has caused this User Agreement to be executed on its behalf by its duly authorized Department of Recreation and Parks, and User has executed the same as of the day and year herein below written.

SMG, as agent for THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its Department of Recreation and Parks:

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
General Manager or Designee

[INSERT USER NAME]

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



06/15/2021

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

DATE: \_\_\_\_\_

Signature

BTRC: \_\_\_\_\_

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

~~MIKE DUNDAS~~ Michael Dundas

Established June 18, 2015

Revised ~~June 15~~ August