

BOARD REPORT

**BOARD OF RECREATION  
AND PARK COMMISSIONERS**

NO. 18-080 Revised

DATE May 2, 2018

C.D. 4

**BOARD OF RECREATION AND PARK COMMISSIONERS**

SUBJECT: GRIFFITH PARK – GREEK THEATRE AND ROOSEVELT GOLF COURSE –  
AWARD RECOMMENDATION AND CONTRACT FOR VENUE AND FOOD  
AND BEVERAGE CONCESSIONS MANAGEMENT AT THE GREEK THEATRE  
AND FOOD AND BEVERAGE CONCESSIONS MANAGEMENT AT THE  
ROOSEVELT CAFE

* AP Diaz		V. Israel	_____
R. Barajas	_____	S. Piña-Cortez	_____
H. Fujita	_____	N. Williams	_____

  
\_\_\_\_\_  
General Manager

Approved   X                        Disapproved \_\_\_\_\_                      Withdrawn \_\_\_\_\_  
With Modifications

**RECOMMENDATIONS**

1. Approve the award of a contract for open venue management and food and beverage concession management at the Greek Theatre and for food and beverage concession management at the Roosevelt Golf Course Cafe to the highest-ranked proposer, SMG, for a term of five years with one five-year extension option;
2. Approve the proposed Agreement (Agreement) for open venue management and food and beverage concession management at the Greek Theatre and for food and beverage concession management at the Roosevelt Golf Course Cafe, subject to the approval of the Mayor, City Council and the City Attorney as to form;
3. Find, in accordance with Charter Section 1022, that it is necessary, feasible and economical to secure these services by contract as the Department of Recreation and Parks (Department) lacks sufficient and necessary personnel to undertake these specialized professional services;
4. Direct the Board Secretary to transmit the proposed Agreement to the Mayor, in accordance with Executive Directive No. 3, and concurrently to the City Attorney for review and approval as to form; and
5. Authorize the General Manager or his designee to execute the Agreement substantially in the form attached to this Report (Attachment 1) upon receipt of all necessary approvals and to make any necessary technical changes consistent with the Board of Recreation and Park Commissioners' (Board) intent in approving this Report and the Agreement.

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### **SUMMARY**

The historic Greek Theatre (Greek) 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, known the world over as one of the most iconic and recognized 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. On September 22, 2015, as the result of a Request for Proposal (RFP), the Board approved an award and contract to SMG for management of the 2016 concert season at the Greek. The Department executed that agreement on November 2, 2015 for one year with two, one-year extension options. Both options were exercised in 2016 and 2017. This contract will naturally expire on November 1, 2018.

Similarly, on December 9, 2015, the Board approved an award to Premier Food Services Management Group, Inc. (Premier) for the operation of the Greek's food and beverage concessions for the 2016 season. The Department executed that agreement on January 7, 2016 for one year, with two one-year extension options. Both options were exercised in 2016 and 2017. This contract will naturally expire on November 1, 2018.

### **Highlights of the 2016 and 2017 seasons**

The Department's implementation of an open venue model at the Greek Theatre has proven to be a tremendous success. Through its contracts with SMG and Premier, the Department has managed two successful concert seasons, implemented several renovation projects to improve patron and community experiences, improved community relations, improved traffic and noise mitigation, reinstated and grew positive relationships with union workers, trade groups and employed hundreds of individuals from the Los Angeles region.

*Financial Highlights from the 2016 and 2017 concert seasons (April to November) include:*

- Generated \$5.5 million in net revenue in 2017 and \$5.2 million in net revenue in 2016 representing an increase of more than \$3 million compared with the \$1.6 million previous 10-year average
- Generated \$2.35 million in food and beverage net revenue in 2017, more than \$2 million over the previous 10-year average
- Over \$1.58 million Department net revenue received from sponsorships and premium seating in 2017
- 35% increased shuttle ridership

*Theatre Enhancements and Accolades:*

- Winner of two "Best Small Outdoor Amphitheatre" Pollstar Awards (2016 and 2017)
- Recognized for last two years by the LA Food Policy Council for its leadership and participation in the City's Good Food Purchasing Policy
- Environmentally sustainable operations with food composting, recyclable and bamboo based plant material papering; straw free environment
- Newly renovated and expanded front and side plazas
- Implementation of new tri level staircase to connect upper decks and lower plaza

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- Enhanced lighting and landscaping
- Way finding and informational signing
- Restored historical doors, stage accents and improvements
- Development of two new bars
- Redesigned Hospitality Rooms and Redwood Decks
- Created two seasonal menus for box suites, concessions stands and on line ordering
- Built 20 new box suites and 22 club chairs with Wi-Fi, charging stations, tablets and power outlets
- Reforested over 200 plants and trees throughout the hillside and venue
- Improved adjacent parking and shuttle lots
- Developed and maintained state of the art website and social media
- Acquired intellectual property rights for Greek logo, marks and proprietary information.

### *Community Relations*

- Hired two full-time community liaison staff to serve as direct community ambassadors between the neighbors, residents, guests, the Department and venue management
- Responded to all community calls within 24 to 48 hours
- Hosted monthly community coffee hours and neighbor meetings
- Hosted monthly Greek Theatre Advisory Committee (GTAC) meeting
- Met often with local council district staff and community group organizations such as the Los Feliz Improvement Association, the residents, neighborhood council members, stakeholders and local community based organizations.

### *Union Outreach and Development*

Over the past two seasons, the Department has proudly facilitated strong working relationships with local trade unions at the Greek Theatre, including the International Alliance of Theatrical Stage Employees (IATSE) Local 33 (stagehand technicians) and Local 857 (treasurers and ticket sellers). The Department develops and holds contracts with, and advocates for the use of Local 706 (Makeup Artists and Hair Stylists Union), Local 768 (Theatrical Wardrobe Union), and Local 47 (American Federation of Musicians) when working with promoters and artists who book the venue. Currently, over 67% of SMG employees at the Greek are union members. The Greek Theatre is union friendly and values its partnership with organized labor and its management. As an example, UNITE HERE, a labor union that represents hospitality and food service workers, has been invited to the Greek Theatre several times to meet with its food and beverage employees to discuss opportunities to join its union and will continue to be given access to the venue and its employees (including employee contact information) during hiring events and show nights to determine whether employees desire to affiliate with them.

### *Workforce Development*

The Department has established a youth-mentor training program on site at the Greek Theatre, in partnership with Local 33 and SMG, which brings youth from recreation centers in underserved communities to the venue for hands-on training with stagehand professionals and meetings with union representatives. The venue is also made available for other union training, such as Fork Lift Training Certification for IATSE members. Another example of a successful partnership is Premier's relationship with Canning Hunger, a non-profit organization dedicated

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to fighting food insecurity in America. Through this partnership, up to 42 men and women in transitional environments are given the opportunity, every show night at the Greek Theatre, to work and gain skills in the food service industry.

### **OVERVIEW OF RFP PROCESS**

On November 8, 2017, based on the proven success of the open venue model, the Department released a consolidated RFP for the Greek Theatre's venue and food and beverage management and the food and beverage concession at the adjacent Roosevelt Golf Course.

That RFP was distributed to a venue management contact list, advertised in the Daily Journal, marketed to the venue management and entertainment industry online via Pollstar, and posted on the Los Angeles Business Assistance Virtual Network (BAVN). Additionally, the Department discussed the RFP and received input from the GTAC, local community organizations and the Office of Council District 4.

After receiving constructive feedback from the community, Council District 4 and prospective proposers, the Department issued six addendums to the RFP to: make additional tours of the venue available for prospective proposers; extend the RFP's submission deadline by a month; clarify minimum qualification requirements; modify the term to a five year agreement with one five year option to renew; limit the number of concerts per season and clarify the definition of a concert; strengthen the RFP requirement to submit traffic mitigation improvements and an annual traffic study; strengthen the RFP requirements related to sound monitoring; and, make additional minor revisions to the RFP. The Department also posted responses to a number of questions about the RFP on BAVN, as is standard procedure.

Thereafter, on January 31, 2018, the Department received two responsive proposals from well-qualified venue management firms: SMG and Oak View Group (OVG). RAP reviewed each proposer's background and experience; financial capacity; and compliance with City contracting procedures to ensure conformance with the RFP's Level I requirements. Both proposals advanced to Level II evaluation.

Level II evaluation entailed an extensive and comprehensive assessment of each firm's written RFP responses and in-person interview responses. A three-member evaluation panel (the Panel) with expertise in concessions, capital planning, construction and park operations, conducted the Level II review.

Proposer interviews were conducted on March 23, 2018. Three hours were allotted to each proposer and each was given the discretion to bring up to ten representatives for their presentations. Both proposers were afforded 30-minutes for opening statements, with the remaining, two and half hours allocated for clarifying questions and answers.

At the conclusion of both interviews, the Panel deliberated, ranked and scored the proposers in conformance with the Level II scoring criteria. The maximum number of points possible were one hundred, distributed across the following five categories: compensation plan; operational

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oversight and management plan; premium seating and sponsorship plan; capital improvement plan; and food and beverage plan.

The Panel unanimously scored SMG as the highest ranked and best qualified proposer overall, with an overall average score of **92.3 for SMG** and an overall average score of **78.3 for OVG**.

### **DISCUSSION**

The RFP was issued to obtain the best proposer to act as the Department's agent in providing Greek Theatre venue and concessions management and Roosevelt Golf Course Cafe concessions management. To promote equitable and accessible opportunities for booking acts, the RFP prohibited proposals from exclusive concert promoters. It also encouraged the submission of dynamic and robust capital improvement plans, food and beverage opportunities, enhanced community relations, and comprehensive traffic plans from qualified venue management firms.

The RFP's primary objectives were:

- Provide the public with the safest and most enjoyable concert experience.
- Maximize revenue to the Department.
- Provide artists and promoters a high-quality venue to perform and book acts.
- Maintain, respect and preserve the historical identity of the Greek Theatre.
- Maintain strong community collaborations.
- Improve traffic congestion in and around the Greek, particularly on show nights.
- Oversee day to day operations of the Greek under direction from the Department.
- Operate the Roosevelt Golf Course Cafe 365 days a year to serve golfers and visitors to Griffith Park.
- Execute a robust capital improvement program.
- Develop and maintain premium sponsorship and seating sales.
- Ensure five-star customer service.
- Provide a fair and respectful employment environment.

The RFP required each proposal to include specific information in the following categories:

#### ***1. Compensation Plan – Total 20 points***

The RFP stipulated that the successful proposer will be paid an annual management fee, subject to a proposed amount. The RFP also required proposers to offer separate concession fees for the Greek Theatre and the Roosevelt Golf Course Cafe food and beverage concession which would be the greater of a minimum annual guarantee (MAG) or a percentage of gross receipts (revenue share). The required MAG was a minimum of two million dollars (\$2,000,000) for Greek Theatre concessions and twenty-five thousand (\$25,000) for Roosevelt Golf Course Cafe concessions, and the required minimum percentage of gross receipts was forty percent (40%) of gross receipts from the Greek Theatre concessions and six percent (6%) of gross receipts for the Roosevelt Golf Course Cafe concessions.

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Additionally, the RFP required a proposed percentage of gross receipts for sponsorship and premium seat sales, filming and special events, and for Greek merchandise. The minimum acceptable percentages for sponsorship and premium seat sales, and filming and special events, was seventy-five percent (75%) for each category. There was no MAG set for these categories. There was no required MAG and no minimum percentage of gross receipts for Greek merchandise.

### **2. Operational and Management Plan – Total 25 points**

The RFP contained a list of reimbursable and non-reimbursable duties and responsibilities to be performed by the operator and required proposers to describe in detail how those tasks will be accomplished through their operational and management plans. Non-reimbursable items are services required to be built into the proposed annual management fee. These items include, but are not limited to: booking the venue; managing event services (ushers, ticket takers, and security); coordination with the Department and City of Los Angeles Department of Transportation (DOT) on traffic mitigation; parking operations; shuttle program coordination; box office operations; custodial services and post-show cleaning; sound monitoring; and community engagement. (See Attachment 2).

### **3. Sponsorship and Premium Seating Plan – Total 15 points**

The Department required proposals to include a marketing strategy and sales plan to enhance sponsorship opportunities for the venue. The RFP reserved the Department's sole discretion to refuse any sponsorship presented by an operator without any liability associated with a fee in the event of such a refusal. Sales of sponsorships and premium seating, as well as the management of VIP areas, filming, and special events were mandatory RFP requirements.

### **4. Capital Improvement Plan – Total 20 points**

The RFP required proposers to submit a capital improvement plan, a preventive maintenance plan, and a sustainability plan. Renderings of proposed improvements along with financing and phasing plans were also requested. The minimum capital improvements required included, but were not limited to: replacement and expansion of the upper and lower deck areas; renovation, expansion and upgrade of disabled access of the Redwood Deck; renovation of the Redwood Deck; and various upgrades to the Roosevelt Golf Course Cafe. (Attachment 3).

### **5. Food and Beverage Concession Plan – Total 20 points**

The RFP required the submittal of a food and beverage concession plan for the Greek Theatre and Roosevelt Golf Course Cafe to provide high-quality food and beverage experiences; enhance the cultural diversity of events and concerts; increase services for park patrons and golfers throughout the year; and, to be creative in using local, specialized cuisine, offerings and pairings. Proposers were encouraged to suggest additional points of sale and other enhancements.

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**SCORING and RANKINGS**

The following summarizes the Panel’s scoring and award recommendation:

**Table 1 – Panel Scoring Summary**

Evaluation Categories	Maximum Possible Points	Oak View Group			SMG		
		Panelist #1	Panelist #2	Panelist #3	Panelist #1	Panelist #2	Panelist #3
Compensation Plan	20	18	20	19	16	19	18
Operational and Management Plan	25	22	20	20	24	24	23
Sponsorship and Premium Seating Sales Plan	15	13	10	12	14	12	13
Capital Improvement Plan	20	10	10	14	19	20	20
Food and Beverage Concession Plan	20	17	15	15	19	18	18
<b>Total Scores</b>	<b>100</b>	<b>80</b>	<b>75</b>	<b>80</b>	<b>92</b>	<b>93</b>	<b>92</b>
<b>Overall Average Score</b>		<b>78.3</b>			<b>92.3</b>		

**Overall Background, Experience and Qualifications**

SMG, founded in 1977, highlighted its experience as an industry leader in facility operations and management and similarly referenced its strong and highly-qualified executive management team members. SMG employs more than 5,000 employees, manages 241 facilities, including 13 outdoor amphitheaters, with municipal clients comprising 92% of SMG’s domestic clients.

OVG, founded in 2015, articulated its highly-qualified executive management team as well as its partnership with Madison Square Garden (MSG) through Irving Azoff MSG. OVG employs roughly 130 full-time employees and is structured as a holding company comprised of subsidiary service companies, strategic investments, and partnerships. OVG currently manages four facilities over 4,000 seats, and the OVG proposal states that OVG and its principals, affiliated companies and co-venturers have managed dozens of facilities greater than 4,000 seats, with many decades of combined experience. Under OVG’s proposal, the Greek Theatre would be managed by OVG Facilities, which was until recently the venue management firm Pinnacle Venue Service (OVG purchased Pinnacle Venue Services in October 2017, and rebranded the firm OVG Facilities, as detailed in the OVG proposal).

**Compensation Plan**

*Management Fee* - OVG and SMG proposed comparable venue management fees of \$2,154,125 and \$2,057,440 for year one of the contract, respectively. These amounts increase marginally each year of the contract thereafter.

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**Table 2 - Greek Theatre Minimum Annual Guarantees and Revenue Share Comparison**

Category	2017 Actuals	Proposed	
		OVG	SMG
Greek Theatre F&B MAG	\$1,400,000	\$2,500,000	\$2,300,000
Greek Theatre F&B Revenue Share	42%-45%	40%	43%
Premium Seating & Sponsorship Revenue Share	75%	75%	80%
Filming & Special Events Revenue Share	20%-42%	75%	75%
Greek Merchandise Revenue Share	60%	90%	30%

As noted in Table 2 above, OVG offered a \$2,500,000 MAG on Greek Theatre Food and Beverage, compared with SMG's proposed MAG of \$2,300,000 for the same. However, SMG proposed a 43% revenue share percentage for Greek Theatre Food and Beverage, compared with OVG's proposed 40% revenue share percentage. For sponsorship and premium seating sales, OVG offered a 75% revenue share percentage compared with SMG proposed 80% revenue share for sponsorship and premium seating sales. Both OVG and SMG proposed a revenue share of 75% for filming and special events. And for Greek Theatre Merchandise, OVG proposed a 90% revenue share compared with SMG's proposed 30%.

Although not required by the RFP, OVG proposed a cumulative MAG of \$7,000,000 in annual net revenue to the Department, including a proposed MAG of \$2,500,000 for sponsorship and premium seating revenue. However, OVG did not include sponsorship and premium seating sales projections for any years under the contract. Absent such projections, it cannot be determined whether the Department is likely to receive net revenue in excess of OVG's proposed cumulative MAG of \$7,000,000 under its proposal. For reference, for the 2017 Greek Theatre season, the Department received \$5,562,545 in total net revenue. In contrast, while SMG did not provide a cumulative minimum annual guarantee, SMG did provide projections for sponsorship and premium seating sales. Based on these projections, which the Panel deemed reasonable, it is estimated that the Department could receive more than \$6,900,000 in net revenue in year one of a new contract with SMG, based on the food and beverage sales and sponsorship and premium seating sales projections provided in SMG's proposal (\$5,562,545 in actual net revenue received in 2017 plus \$1,419,077 in the projected increase in revenue).

**Table 3 – Revenue Projections Comparison for Year 1**

Category	2017 Actuals	Projected (Year 1)	
		OVG	SMG
Greek Theatre F&B Revenue	\$2,345,766	\$2,517,331	\$2,822,613
Premium Seating & Sponsorship Revenue	\$1,587,000	\$2,500,000*	\$2,529,230**
<b>Sub Total</b>	<b>\$3,932,766</b>	<b>\$5,017,331</b>	<b>\$5,351,843</b>
<b>Projected Increase Over 2017 Actuals</b>		<b>\$1,084,565</b>	<b>\$1,419,077</b>

\*This amount reflects OVG's proposed MAG for this category; projections were not provided.

\*\*This amount is further detailed in Table 5 on page 12 below.

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As indicated, the figures in Table 3 reflect projections for food and beverage revenue and premium seating and sponsorship revenue for year one of a new contract. Over the proposed full, five year term, based on the projections provided by SMG in its RFP response, SMG's proposal could generate more net revenue than would be generated under OVG's proposal. For example, in the submitted Food and Beverage pro forma statements, SMG projects revenue share payments to the Department ranging from \$2,822,613 to \$3,349,817 in year one through year five of the contract, which is about \$300,000 to \$500,000 higher on an annual basis than the projections provided in OVG's Food and Beverage pro forma statement. Under OVG's proposal, it is possible that total net revenue received by the Department could exceed OVG's \$7,000,000 cumulative net revenue MAG commitment in future years. However, without the benefit of any OVG projections for sponsorship and premium seating sales, it is unknown whether net revenue under OVG's proposal would be greater than the net revenue generated under SMG's proposal.

As it relates to the Roosevelt Golf Course Cafe, OVG and SMG both proposed paying the Department the minimum acceptable MAG of \$25,000 or six percent of gross sales annually, whichever is greater.

### **Operational Oversight & Management Plan**

*Booking and Coordination with Promoters* – Both proposers articulated their ability to manage and handle the calendar for the ensuing seasons. OVG touted its strong relationships in the entertainment industry while articulating its ability to effectively manage a robust calendar. SMG highlighted its commitment to maintaining neutrality in booking the venue and ensuring equitable access to promoters, and described its customized electronic calendar management system.

*Financial Management and Reporting* – Both proposers articulated their experience in financial management and outlined their financial management procedures. SMG's proposal included a more detailed Financial Accountability section. It should also be noted that OVG's Management Fee breakdown and Food and Beverage projected Pro Forma Financial Statement contained discrepancies.

*Parking, Traffic Mitigation and Shuttle Operations* – Through reports by the traffic engineering firm Gibson Transportation, OVG presented an assessment of the current circulation, parking and traffic management and proposed a transportation management plan that includes strategies aimed at reducing the number of vehicles through the neighborhoods surrounding the venue, improving shuttle service between off-site lots, better facilitation of rideshare pick-up and drop-off lots, and shuttle route improvements. Of note, OVG proposed a relocation and reorientation of the rideshare lots, which could improve rideshare and overall traffic circulation. There was no reconciliation of how robust revenues could be maintained if their parking proposals were adopted. OVG also recommended implementation of traffic improvements developed by CD4, but did not propose funding these improvements as part of their capital improvement plan.

SMG with the assistance of ITERIS, a traffic engineering firm, also detailed a variety of proposed traffic circulation, parking and shuttle operation strategies and improvements. These

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improvements include expansion of existing shuttle and off-street lot usage, marketing of public transportation opportunities, improved real-time parking and traffic signage, and relocation of the rideshare area to improve ingress and egress. As requested in the RFP, SMG proposed development of an annual traffic control plan for the Greek Theatre and all of Griffith Park to be presented to the community for input. SMG proposed funding additional traffic safety related improvements, as described in more detail below.

*Accessibility to the Community* – OVG described its commitment to open communication with the Greek Theatre community and the Los Feliz neighborhood. OVG provided an overview of recent meetings it has conducted with neighborhood stakeholders and with various City Council offices and community groups.

SMG highlighted its strong existing relationships with neighborhood stakeholders and local residents. In addition, SMG provided specific communication strategies including hosting of monthly meetings and coffee hours, use of Schubert Sound to provide in-field, sound monitoring services, and offering an advanced “hot-line” system for community members to immediately engage with SMG senior staff through real-time communication channels.

*Security Management Plan* – OVG described its partnership with Prevent Advisors, a public safety consulting firm led by former Los Angeles Deputy Police Chief Mike Downing. OVG proposed the development of a customized safety and security plan for the Greek Theatre, proposing various security operations strategies, including four security assessments per year, first responders management, tabletop exercises, the use of new technology and how to access intelligence information.

SMG articulated its relationships with LAPD, LAFD Park Services and the Park Rangers to coordinate closely with local law enforcement and training of its events services security personnel. SMG stated that an emergency and evacuation plan as well as a crisis management plan will be maintained and updated on a yearly basis. In addition, as part of its capital improvement plan, it should be noted that SMG proposed the installation of 42 security bollards and new gates in key areas in front of the venue entrances to mitigate and prevent traffic collisions related to intentional and non-intentional acts.

*Event Services Staffing Plan* – OVG proposed an event services staff comprised of in-house ushers and ticket takers, supplemented by sub-contracted security personnel provided by Contemporary Services Corporation (CSC). OVG proposed a sub-contract with Everpark Inc. for parking management services. In addition, OVG proposed an undisclosed number of neighborhood staff, to assist with pre and post-concert trash collection and reporting of unlawful activity. As part of its Sample Event Services Plan, prepared as a sample plan for a sold-out concert, OVG proposed 66 amphitheater staff, 47 parking staff, and 17 neighborhood staff.

SMG proposed a comprehensive and detailed event services plan. Components of this plan include event service staff training, event management protocols, customer service training, and a detailed approach to sub-contracting and vendor management. SMG also proposed a mix of in-house event services staff, supplemented by sub-contractors for parking management. SMG’s event services plan also included a detailed security section with a variety of industry,

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best practices and protocols. SMG proposed to continue a sub-contract with the current parking management company. As part of its Sample Event Services Plan, SMG proposed a total of 89 amphitheater staff, 56 parking staff, and 30 neighborhood staff.

**Table 4 - Sample Event Services Plan Staffing Comparison**

Fixed Post & Staff Positions	OVG	SMG
<b>Proposed Amphitheater Staff</b>	<b>#</b>	<b>#</b>
Usher	28	42
Ticket Takers	9	10
Security	29	37
Total Amphitheater Staff	<b>66</b>	<b>89</b>
<b>Proposed Parking Staff</b>		
Parking Directors / Attendants	31	40
Payment Processors / Ushers	16	16
Total Parking Staff	<b>47</b>	<b>56</b>
<b>Proposed Neighborhood Staff</b>		
Staff / Security	17	25
DOT	N/A	5
Total Neighborhood Staff	<b>17</b>	<b>30</b>

As indicated above, based on the Sample Event Services Plans for a sold-out concert, SMG proposed 35% more amphitheater event services staffing (including 28% more security staff), 19% more parking staff, and 32% more non-DOT neighborhood staff.

**Sponsorship & Premium Seating** – OVG plans to utilize the services of OVG Global Partnerships to increase premium seating and sponsorship revenue at the Greek Theatre. OVG identified open sponsor categories from bank & credit card, spirits, insurance, consumer electronics, and wireless providers. In addition, OVG identified the following potential sponsorship opportunities: a fully integrated venue presenting/naming sponsor, stage naming rights, box suite title sponsors, main entrance, and all parking areas naming rights. It should be noted that the Department clarified as part of the RFP process that it would not be considering a venue naming sponsor at this time.

For its Premium Seating Plan, OVG proposed the installation of new loge box seats in the North Terrace section. Current seating would be reduced by 200 seats and replaced with 30-35 loge boxes totaling 165 seats. OVG estimates each of these new boxes could be sold for \$35,000 annually for total potential new revenue of \$1,000,000 annually. While the concept of creating additional VIP seating via new loge boxes would have the potential to generate additional premium seating sales, removing 200 seats from the seating manifest may impact general ticket sales for promoters and public access to affordable seating.

As mentioned in the Compensation Plan section above, OVG committed to a \$2,500,000 MAG to the Department from sponsorship and premium seating sales, net of fulfillment costs and OVG's proposed revenue share. However, OVG's proposal did not provide a detailed

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breakdown of the sponsorship concepts and premium seating products that would generate this amount.

SMG stated that it would continue utilizing the services of Premier Partnerships to sell and expand premium seating and sponsorship sales at the Greek Theatre. SMG provided an in depth approach to their sponsorship and premium seating process, including their marketing and sales strategies. SMG’s proposal detailed seven new sponsorship revenue concepts, including: Stage sponsor, Wall of Fame sponsor, North & South Plaza Entry Gates sponsors, Beer Garden sponsor, Shuttle Bus sponsorships, Private Club sponsorships, and Premium Seating sponsor. Each of these concepts was described in detail, included renderings and a narrative of the concept’s benefits, and included a projected annual value for each year of the five year term.

SMG also described in detail its premium seating program, and proposed two new product concepts: a members only private club program and a Priceless Greek Experience concept premised on the sale of new VIP Club Seats packaged together with other VIP experience offerings. SMG provided projected annual revenue for these concepts and existing premium seating products for the full five year term. See Table 5 below.

**Table 5 – SMG Projected Sponsorship and Premium Seating Revenue**

	2019	2020	2021	2022	2023
Sponsorship Gross Sales*	\$2,268,941	\$2,352,009	\$2,437,569	\$2,525,696	\$2,616,467
Less Revenue Share & Fulfillment**	-\$1,021,023	-\$1,058,404	-\$1,096,906	-\$1,136,563	-\$1,177,410
<b>Sub-Total Net Sponsorship Revenue</b>	<b>\$1,247,918</b>	<b>\$1,293,605</b>	<b>\$1,340,663</b>	<b>\$1,389,133</b>	<b>\$1,439,057</b>
Premium Seating Gross Sales	\$1,601,640	\$1,658,176	\$1,716,663	\$1,777,167	\$1,839,756
Less Revenue Share	-\$320,328	-\$331,635	-\$343,333	-\$355,433	-\$367,951
<b>Sub-Total Net Sponsorship Revenue</b>	<b>\$1,281,312</b>	<b>\$1,326,541</b>	<b>\$1,373,330</b>	<b>\$1,421,734</b>	<b>\$1,471,805</b>
<b>Total Net Sponsorship &amp; Premium Seating Revenue</b>	<b>\$2,529,230</b>	<b>\$2,620,146</b>	<b>\$2,713,993</b>	<b>\$2,810,867</b>	<b>\$2,910,862</b>

\*Figure excludes SMG’s \$500,000 projected value of a stage naming sponsor.

\*\*Figure represents SMG’s proposed revenue share of 20% as well as fulfillment costs estimated at 25% of gross sales.

Based on SMG’s projections in Table 5 above, RAP could receive about \$2,529,230 in net sponsorship and premium seating revenue in year one of a new contract, which could increase to \$2,910,862 in year five of a new contract. SMG also presented strategies for the marketing of the Greek as a filming location, and detailed six off-season special event concepts for consideration.

**Capital Improvement Plan** – OVG proposed a relatively limited capital improvement plan, valued at \$1,123,200 total over the five year term. As it relates to the RFP’s minimum capital improvement requirements, which included renovation and expansion of the Greek Theatre upper and lower decks as well as the Redwood Deck, the amount of \$469,950 proposed by OVG appears to be inadequate for the scope of work specified. OVG proposed \$653,250 for additional capital improvements, including a new concession stand in the North Entry Court, the

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creation of new Loge Box Seats described in the Sponsorship and Premium Seating plan section above, the renovation of the Fandango Kitchen and the enhancement of the artist backstage area. Although OVG highlighted a series of more comprehensive additional potential projects, OVG did not provide a funding commitment for these items.

Alternatively, SMG presented a robust and extensively detailed capital improvement plan, valued at \$4,000,000 over the five year term. SMG proposed an investment of \$1,700,500 for minimum capital improvements, \$710,000 for additional food and beverage capital improvements, and \$1,589,500 in additional Greek Theatre venue improvements.

**Table 6 - Capital Improvements Plans – Comparison of Proposed Investments**

	<b>OVG</b>	<b>SMG</b>
Minimum Required Capital Improvements	\$469,950	\$1,700,500
Additional Capital Improvements	\$653,250	\$2,299,500
<b>Total Proposed Capital Improvements</b>	<b>\$1,123,200</b>	<b>\$4,000,000</b>

Highlights of SMG's capital improvements include:

**Food and Beverage Improvements**

- Mercedes Deck (Upper Deck) – renovate deck, expand seating, and renovate kitchen into full service kitchen (\$720,000);
- Fandango Deck (Upper Deck) – renovate deck, relocate and improve disabled access lift, create new 50 seat beer garden, add pizza kitchen (\$385,382);
- Redwood Deck – renovate deck and flatten deck surface area to create seated catering opportunities, relocate disabled access lift, reorient bar, and lengthen and widen overlooking deck (\$490,350);
- North and South Concession Stands – Improve service by adding four additional POS per location, new kitchen equipment, additional improvements (\$286,167)
- Roosevelt Golf Course Café (new Franklin's concept) – convert existing short order café to market/café, renovate bathrooms, new POS, new seating, repair deck, and additional improvements (\$433,196);
- Mobile Carts – addition of unique food carts in Plaza area (\$95,550)

**Venue Improvements**

- Chorus Room / Artist Area – Create a premium back of house Artist Vibe Room with a new bar, lounge area, new private restrooms, and new furnishings (\$150,000);
- Dressing Rooms – enhance dressing room areas, renovate bathrooms (\$89,500);
- Entrance Gates & Security Enhancements – install expanded North and South entry gates, aluminum signage above gate entry points, installation of 42 security bollards to prevent vehicular penetration of entry areas (\$200,781);
- **Bowl Seating – replacement of 100% of the 5,900 fixed bowl seats (\$1,150,000).**

**Food and Beverage Plan** – OVG proposed a partnership with Legends Hospitality for food and beverage service. Legends Hospitality has extensive experience in the industry. OVG also proposed a partnership with Chef Giada De Laurentiis for menu and concept development. OVG provided sample menus for all food and beverage areas, including the Roosevelt Golf

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Course Cafe. The Panel noted that the menu prices for the Roosevelt Cafe appear above a reasonable price point for golfing patrons. OVG also proposed a mobile cart and food truck program, but did not provide cost details.

SMG proposed the continuation of its food and beverage services through Premier, their in-house food services company, as well as a proposed partnership with Los Angeles-based Neil Fraser, chef and owner of Redbird Restaurant and multiple acclaimed restaurants throughout the City. SMG also proposed new restaurant concepts at the Greek Theatre, paired with capital improvement proposals that have the potential to significantly increase seating and the pre-show and off-season experience. SMG's plan for the Roosevelt Cafe was more extensive than OVG's proposal. SMG proposed an innovative take-out picnic basket program, detailed a mobile cart concept, and presented the idea of utilizing the Redwood Deck for food and beverage opportunities. Additionally, SMG provided a thorough food and beverage marketing plan.

### **PROPOSED CONTRACT**

A proposed contract with SMG for Greek Theatre Venue and Concession Management is attached to this Board Report for the Board's approval. The terms of the proposed contract are consistent with all of the aforementioned proposal items included in SMG's RFP response, which will be incorporated into the contract.

### **CONCLUSION**

SMG, which was founded in 1977, submitted a proposal that highlighted its experience as an industry leader in facility operations and management. The SMG proposal provided comprehensive details and responded in full to all aspects of the RFP. OVG, a company founded in 2015, is proposing to manage the Greek Theatre under OVG Facilities, which was the venue management company Pinnacle Venue Services until its recent acquisition by OVG.

As part of its compensation plan, OVG proposed a \$2.5 million MAG for premium seating and sponsorship net revenue and a \$7 million cumulative MAG for net revenue, but did not provide projections for gross receipts of premium seating and sponsorship sales. Based on projections provided by SMG in its proposal, it is anticipated that SMG will generate net revenue in an amount that would approximately meet and then exceed the \$7 million MAG proposed by OVG over the five year term of the proposed Agreement.

Both OVG and SMG submitted proposals with some innovative operational oversight and venue management concepts. SMG submitted a more robust event services staffing plan, demonstrated its commitment to frequent communication with the local community about critical issues such as traffic mitigation, and offered more detailed plans for most areas of the operational plan evaluation category.

While OVG articulated its experience with sponsorship and premium seating products and proposed a \$2.5 million MAG in this area, SMG submitted an extensive sponsorship and premium seating plan with more detailed analysis and financial projections. If the Department

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chooses to implement the SMG sponsorship and premium sales concepts, based on the submitted projections, revenue in excess of the \$2.5 million guarantee by OVG could be realized.

As it relates to the capital improvement plans, SMG submitted a substantially stronger and more detailed proposal as reflected in the scoring. Conversely, OVG's \$1.2 million capital improvement plan did not provide sufficient detail or adequate funding to meet the scope of the minimum required capital improvements listed in the RFP. The \$4 million SMG proposal has the potential to significantly enhance the guest and artist experience at the venue, most notably with the replacement of 100% of the amphitheater seating and the extensive improvements to the upper, lower and Redwood decks.

Although both OVG and SMG proposed the use of reputable food and beverage service providers as well as partnerships with celebrity chefs, SMG's food and beverage proposal was comparably more detailed, included new and dynamic offerings, and was dramatically enhanced by the proposed capital improvements.

Therefore, for all the comparative reasons outlined above, the Department recommends approval to award an agreement to SMG for the management of the Greek Theatre Venue and Concessions and the Roosevelt Golf Course Concession.

### **FISCAL IMPACT STATEMENT**

For the 2017 season, RAP received approximately \$5.5 million in net revenue. Based on projections from SMG's proposal, estimated net revenue in year one of the proposed Agreement would exceed \$6.9 million and increase incrementally over the five year term. The Roosevelt Cafe generated \$11,400 in net revenue to the Department in 2017. Based on SMG's proposal, the Department would receive a minimum of \$25,000 in net revenue annually from the café with the potential for additional profits based on the proposed revenue share percentage.

Award of the contract will also add an additional \$4 million dollars for capital improvements.

This Report was prepared Matthew Rudnick, Chief Management Analyst, and Rachel Ramos, Concessions Manager.

### **LIST OF ATTACHMENTS**

- 1 Proposed Agreement for Management the Greek Theatre Venue and Concessions.
- 2 Duties and Responsibilities
- 3 Capital Improvements

**AGREEMENT  
FOR  
GREEK THEATRE  
VENUE AND CONCESSIONS MANAGEMENT  
Between**

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

**And**

**SMG**

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## GREEK THEATRE VENUE AND CONCESSIONS MANAGEMENT AGREEMENT

**THIS AGREEMENT** (“AGREEMENT”) is made and entered in this first day of November, 2018, 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 management of the Greek Theatre Venue, Greek Theatre Concessions, and the Franklin’s Market & Café at the Roosevelt Golf Course; and

**WHEREAS**, RAP, finds, 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, 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 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 terms and conditions; and

**WHEREAS**, SMG desires to enter into such 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.

**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:	Mid-April through October 31
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 years, 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 31, 2023.

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 76 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 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 under an AGREEMENT issued by CITY through the Department of Recreation and Parks.

**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 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.

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 following:

YEAR	STAFF EXPENSES	INDIRECT EXPENSES	SMG MANAGEMENT FEE	TOTAL
2019	\$1,006,340	\$976,100	\$75,000	\$2,057,440
2020	\$1,031,573	\$1,001,120	\$76,500	\$2,109,193
2021	\$1,057,516	\$1,021,373	\$78,030	\$2,156,919
2022	\$1,084,190	\$1,024,037	\$79,591	\$2,187,818
2023	\$1,111,618	\$1,044,791	\$81,182	\$2,237,591

### **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.
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 refurbishing/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. 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. 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.2], excluding 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
- 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 Dundas  
Deputy City Attorney

Business Tax Registration Certificate Number: 0002858497-0001-9

Internal Revenue Service Taxpayer Identification Number: 23-2511871

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

SMG GREEK THEATRE 2019-2023  
DUTIES AND RESPONSIBILITIES

**Non-reimbursable Items**

The following items are services for which associated costs should be built into the Annual Management Fee:

1. Provide operational oversight and management at the Venue for approximately 76 concerts and additional community and cultural events during the season from April to October 31.
2. Manage and book the Venue calendar along with the challenge process.
3. Manage the sales of **sponsorships** and **premium seating**. See Section V.C.
4. Manage the sales of **VIP** areas within the venue as well as parking.
5. Manage and provide through proposing company or a subcontract for all customer- oriented event services including but not limited to ushers, ticket-takers and security on an as-needed basis. See Section V.B.
6. Prepare an operating budget, monthly financial reports, marketing plans and pro-forma for length of the agreement, including an accounting detailing all revenues and expenditures for each concert/event. Submit audited financials on an annual basis.
7. Coordinate and collaborate with promoters before, during and after the event.
8. Complete an end-of-show settlement process and act as RAP's fiscal agent in collection of all fees owed to RAP.
9. Maintain public and concert staff ingress and egress to the venue at all times.
10. Manage all parking operations including subcontracting of the operation as well as collecting and remitting all parking fees levied by RAP.
11. Prepare an annual study of 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 traffic study and annual report shall be completed by traffic engineering firms experienced in the study of neighborhoods impacted by congestion of local streets. The annual traffic report should be done in consultation with all interested public stakeholders, Council District 4 (CD 4), and RAP staff. The final report shall be presented annually to the community through an organized community meeting involving CD 4, RAP and neighborhood stakeholders.
12. Contract with a licensed California Structural Engineer to inspect terraces at the commencement of the term and annually thereafter.
13. Be completely accessible to the surrounding community to answer questions and to collaborate on all aspects of the operation. Note: RAP will be providing a full time community liaison but this should not limit the community's access to the Operator.
14. Manage and staff the **Box Office**. Promoters will select the ticketing company for their booked events. **There will be no exclusive rights to a ticketing vendor.**
15. Coordinate with Los Angeles Fire Department (LAFD), Los Angeles Police Department (LAPD), and RAP Park Rangers on all scheduled events regarding Fire, EMS and Security services necessary for public protection.
16. Perform annual **Fire/Life testing** of the venue through a licensed vendor in conformance with LAFD Regulations 4.
17. Coordinate with RAP's website vendor on all content, keeping up to date calendar and promotional information and manage all Venue social media accounts on behalf of RAP.
18. Ensure the venue is always in a safe and clean condition. See section V.B.6 for Operator's responsibilities for custodial cleaning and trash collection services for pre, during and post-concert/events.
19. **Preventive and Routine Servicing of Equipment.** See Exhibit J for annual maintenance responsibilities. These costs shall be included as part of the Annual Management Fee and not to be considered a reimbursable expense. Additional items may be requested by RAP including

SMG GREEK THEATRE 2019-2023  
DUTIES AND RESPONSIBILITIES

repair or replacement. Should a request be made and a mutually agreed upon scope and cost be reached, said cost would be reimbursed as per agreement.

20. Meet weekly and monthly with designated RAP manager.
21. Negotiate, develop, and hold agreements with the following: International Alliance of Theatrical Stage Employees (IATSE) Locals 33 (Stage Technicians Union), 857 (Treasures and Ticket Sellers Union), and 706 (Makeup Artists and Hair Stylists Union) and the American Federation of Musicians Local 47 AFL-CIO/CLC.
22. Open and coordinate use of the Venue (during off-season) to IATSE for job training opportunities.
23. Market the venue for filming opportunities during all no-concert dates throughout the year.
24. Manage the transition of the Venue from the current operator. This includes but is not limited to determining best strategies for working with the current list of season ticket subscribers; contacting current sponsors; placement of existing event services staff; coordinating with possible agents or talent that could be holding dates with the current operator for the 2019 season; touring the facility; meeting and preparing necessary agreements with all Unions.
25. Must staff, host (provide refreshments), and coordinate a monthly meeting with the **Greek Theatre Advisory Committee (GTAC)** which is currently made up of community stakeholders that serve to keep the community engaged, informed and to resolve quality of life issues associated with having an outdoor concert amphitheater in their neighborhood.
26. Procure and pay monthly bills for telephone and internet services for Operator's offices at the Venue. All other utilities to be provided by RAP.
27. Provide office equipment (computers, copiers, etc.) and office furniture for Operator's offices at the Venue.
28. Oversee shuttle operations, including coordination with DOT and their shuttle vendor. Shuttle expenses to be paid directly from RAP to DOT.
29. Purchase and install sound monitoring equipment. SMG will ensure compliance with all sound level requirements and must demonstrate experience in performing this task. The Greek Theatre has strict Sound Policies to avoid disruption to the lives of all residents, park patrons and neighbors. SMG shall be responsible for purchasing and keeping sound monitoring equipment in good working condition for every concert and community events produced at the Greek Theatre.

**Reimbursable Items**

The following items are services to be performed by SMG, which will be reimbursed by RAP:

1. Provide a sub-contract for pre, during and post-concert/event cleaning of the Venue as described in Section V.B. Ensure Venue is in pristine condition prior to every show and event.
2. Purchase, lease, and/or install and maintain video projection screens, sound system, and lighting systems. Upon approval by City this will be a reimbursable expense. Please note that the City currently owns two LED screens.
3. Serve as RAP's booking agent and fulfill rider obligations for a minimum of ten concerts per year to be held in various park locations throughout the City, excluding the Greek Theatre. Related pre-approved expenses will be reimbursed by RAP.
4. Should RAP opt to no longer utilize DOT's shuttle vendor (per item #28 above), SMG may be required to contract directly with a shuttle vendor. In such event, monies paid to the shuttle vendor by SMG will be reimbursed by RAP. However, the costs to oversee the contract will be considered non-reimbursable as part of the management fee.

## LIST OF CAPITAL IMPROVEMENTS

### Capital Improvement Requirements - Exhibit J

<i>Greek Theatre</i>	<u>Concept</u>	<u>Investment Amount</u>
1. Replace and expand Upper and lower deck areas including but not limited to renovation of kitchen, exhaust fan duct space, shade canopy, railings, decks, stairs and upper bar.	Gia	\$ 353,000
2. Expansion or redesign of upper and lower decks.	Odele	\$ 466,000
3. Renovation, expansion and disabled access of Redwood Deck area including but not limited to disabled access lift or elevator to interior VIP area from Redwood Deck.	Redwood Club	\$ 400,000
4. Redesign and renovation of redwood deck area including but not limited to exterior office building façade facing redwood deck area, office windows, sliding glass door, perimeter chain link fencing and deck expansion and replacement.		
5. Food Service Improvements: North/South Concessions, Portable Carts		\$ 233,500
<i>Roosevelt Café</i>		
1. Subject to all standards set by LADBS to comply the ADA, upgrade the following: seating and cash transaction counter; aesthetic upgrades, Wi-Fi service according to RAP Systems Division standards	Franklin's	\$ 248,000
<b>Subtotal:</b>		<b>\$ 1,700,500</b>

### Additional Capital Improvements - Food Service

<i>Greek Theatre</i>	<u>Concept</u>	<u>Investment Amount</u>
1. Flatten asphalt ramp into two terraces for additional beer garden seating	Gia	\$ 32,000
2. Modify BOH bar area to create a small kitchen with pizza oven		
3. Convert deck to a full service café/bistro with a functional kitchen and service bar	Odele	\$ 254,000
4. Renovate current floor and flatten it to allow catering opportunities	Redwood Club	\$ 91,000
5. Food Service Improvements: North/South Concessions, Portable Carts		\$ 148,000
<i>Roosevelt Café</i>		
1. Convert café from short order breakfast/lunch to all day Country Market	Franklin's	\$ 185,000
<b>Subtotal:</b>		<b>\$ 710,000</b>

### Additional Capital Improvements - Venue

1. Main Entry Gates; security enhancements		\$ 200,000
2. Artist Dressing Rooms, Bathrooms & Chorus Room renovation		\$ 239,500
3. Replace 100% of Theatre Bowl Seats		\$ 1,150,000
<b>Subtotal:</b>		<b>\$ 1,589,500</b>
<b>Total: New Capital Improvement</b>		<b>\$ 4,000,000</b>

### 2015 Capital Investment

1. F&B Equipment: Plaza Bar, Coffee & Fresh Fare Cart, Quest Point of Sale System		\$ 222,000
<b>Total SMG Capital Investment</b>		<b>\$ 4,222,000</b>

### Key Notes:

- All capital improvements are subject to final approval by the Recreation and Parks Department.
- RAP may choose to substitute, modify or alter any project; however, please note that a substantial portion of capital improvements (particularly the food & beverage area) are needed to achieve the projected operating results and may directly impact our projected revenue to the Department if significantly altered.
- Our cost projections are based upon actual estimates received from licensed architects and contractors, and reflect the existing facility conditions as of January, 2018.
- The 2015 Capital Investment represents the \$488,000 commitment less the depreciated value.
- Once the projects are completed, RAP shall be entitled to retain any surplus capital improvement funds to be used at their discretion.
- All of the equipment would remain should SMG not be renewed for the second 5 year term.