

# APPROVED

NOV 03 2022

BOARD OF RECREATION  
AND PARK COMMISSIONERS

**BOARD REPORT**

NO. 22-285

DATE November 03, 2022

C.D. 4

**BOARD OF RECREATION AND PARK COMMISSIONERS**

SUBJECT: GRIFFITH OBSERVATORY BOOKSTORE/GIFT SHOP – AMENDMENT NO. 2  
TO AGREEMENT NO. 280 WITH EVENT NETWORK, LLC – WAIVE THE 2022  
ANNUAL MINIMUM REVENUE SHARING GUARANTEE.

B. Aguirre	<u>                </u>	* M. Rudnick	<u>MR</u>
H. Fujita	<u>                </u>	C. Santo Domingo	<u>                </u>
B. Jackson	<u>                </u>	N. Williams	<u>                </u>



General Manager

Approved X Disapproved \_\_\_\_\_ Withdrawn \_\_\_\_\_

If Approved: Board President Alynn Paternas Board Secretary Sakina Sardar

**RECOMMENDATIONS**

1. Approve the proposed Amendment No. 2 (Amendment 2) to Concession Agreement No. 280 (Agreement) in substantially the form attached hereto as Attachment 1 to waive the Annual Minimum Revenue-Sharing Guarantee (AMRSG) for calendar year 2022 as set forth in this Report;
2. Direct the Board of Recreation and Park Commissioners (Board) Secretary to transmit the proposed Amendment 2 to the Mayor in accordance with Executive Directive No. 3 (Villaraigosa Series), the City Council for approval, and the City Attorney for approval as to form;
3. Authorize the Board President and Secretary to execute the Amendment 2 upon receipt of the necessary approvals; and
4. Authorize RAP Staff to make any necessary technical changes to implement the Board's intentions in approving this Report.

**SUMMARY**

Griffith Observatory (Observatory) is located at 2800 East Observatory Road in Griffith Park. The Observatory opened in 1935 and is an icon of Los Angeles, a national leader in public astronomy, and one of Southern California's most popular attractions. The Observatory

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features three RAP Concessions: Coin-operated Telescopes; Café; and the Bookstore and Gift Shop known as “Stellar Emporium Gift Shop” (Gift Shop) which offers an array of Observatory insignia items, astronomy-related and space-themed books, gifts, clothing, toys, and other items.

Event Network, Inc. operated and maintained the Observatory Gift Shop beginning September 2006, for 10 years, under Concession Agreement No. 250. On June 15, 2016, the Board approved the award of a new five (5) year Concession Agreement, No. 280, to Event Network, Inc. for the operation and maintenance of the Observatory Gift Shop, with two five (5) year options to renew at the discretion of the Board (Board Report No. 16-146) (attached hereto as Attachment 2). The Agreement, was executed on October 26, 2016, and commenced on October 1, 2016. In December 2017, Event Network, Inc. converted to a limited liability company and is now named Event Network, LLC (Concessionaire).

On August 19, 2021, the Board approved Amendment No. 1 to the Concession Agreement No. 280 (attached hereto as Attachment 3), which extended the term of the Agreement to account for the closure and limited operation of the Gift Shop due to the COVID-19 pandemic, exercised one of the five-year renewal options for the term, and waived the Annual Minimum Revenue Sharing Guarantee (AMRSG) for the period from January 1, 2020 through December 31, 2021 due to closure of the Observatory for health risks associated with the COVID-19 pandemic (Board Report No. 21-144). As amended, the term of the Agreement will expire on December 31, 2027.

While the Observatory currently operates for the public on fewer than normal days open and moves incrementally toward full resumption of six days a week service, Concessionaire continues to operate and maintain the Gift Shop in a clean and attractive manner, stocking it with high-quality, appropriately-themed merchandise, and operating it with a professional and friendly staff who work well with Observatory staff and visitors. To date, Concessionaire continues to meet all contractual terms and conditions, including timely payment of rent and occupancy tax, and insurance requirements.

The Observatory and the three RAP concessions, including Gift Shop, were closed to the public on March 13, 2020, in conformance with mandatory health directives relating to the COVID-19 pandemic. The Observatory and concessions reopened with limited hours on June 25, 2021, operating three days a week only, Friday through Sunday. Prior to the pandemic, the Observatory operated six days a week (Tues-Sun).

The Observatory staff slowly increased the number of days “open” as more vaccines and booster shots were administered, as COVID-19 related health risks declined, as health directives permitted, and as Observatory operations saw feasible. The Observatory:

- Operated three days a week (Fri-Sun) from June 25, 2021, to June 29, 2022\*  
\*(Including other brief, periodic closures during this period due to staffing issues.)
- Operated four days a week (Thurs-Sun) from June 30, 2022 to September 27, 2022
- Is operating five days a week (Wed-Sun) since September 28, 2022
- Management hopes to resume full six days a week (Tues-Sun) in November 2022

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Concessionaire has been patient and understanding of RAP's long delays to resume the Observatory's full days of operation.

Prior to the pandemic and Observatory closure, operating Tuesday through Sunday, the 2019 calendar year gross receipts for the Gift Shop were \$2,392,563 with \$688,105 paid to RAP in revenue share. For the 12-month fiscal year 2021/2022, under reduced days of operation, gross receipts dropped to \$1,046,669 with \$262,121 in revenue share.

In light of the Concessionaire's lost revenue resulting from the delayed full-reopening of the Observatory and the related drop in attendance and reduced Gift Shop hours and sales, RAP staff recommends that the AMRSG for the Gift Shop operations for the calendar year 2022 as provided in the Agreement be waived, as set forth in the proposed Amendment 2. During this period, the Concessionaire will be required to pay a percentage of gross receipts. Further, as part of Amendment 2, the most current version of the Standard Provisions for City Contracts will be incorporated into the Agreement.

### FISCAL IMPACT

For calendar year 2019, pre-pandemic, RAP's revenue share from the Concessionaire was \$688,105. For the 12-month fiscal year 2021/2022 Concessionaire paid \$262,121 as revenue share. Revenue share is not anticipated to return to 2019 levels until Observatory operations can resume the full Tuesday-Sunday schedule and the Observatory guest counts increase.

### STRATEGIC PLAN INITIATIVES AND GOALS

Approval of this Report advances RAP's Strategic Plan by supporting:

Goal No. 6: Build Financial Strength & Innovative Partnerships

Outcome No. 2: Improved management of rental facilities and concessions.

This Report was prepared by Stanley Woo, Management Analyst II, Special Operations Branch, Concessions Unit.

### LIST OF ATTACHMENTS/EXHIBITS

- 1) Proposed Amendment No. 2 to Agreement No. 280 for Operation and Maintenance of Griffith Observatory Bookstore and Gift Shop Concession
- 2) Agreement No. 280
- 3) Amendment No. 1 to Agreement No. 280

**AMENDMENT NO. 2 TO CONCESSION AGREEMENT NO. 280  
FOR THE OPERATION AND MAINTENANCE OF GRIFFITH OBSERVATORY  
BOOKSTORE/GIFT SHOP CONCESSION**

THIS AMENDMENT NO.2 TO CONCESSION AGREEMENT NO. 280 ("AMENDMENT") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, by and between the CITY OF LOS ANGELES, a municipal corporation (hereinafter referred to as "CITY"), acting by and through its Board of Recreation and Park Commissioners (hereinafter referred to as "BOARD") and Event Network, LLC (formerly Event Network, Inc. and hereinafter referred to as "CONCESSIONAIRE").

**WITNESSETH**

Whereas, on June 15, 2016, the BOARD approved Concession Agreement No. 280 (BR 16-146) (hereinafter referred to as "AGREEMENT") for the Griffith Observatory Bookstore and Gift Shop (hereinafter referred to as "CONCESSION"); and

Whereas, on September 30, 2016, the City Council approved the AGREEMENT for the CONCESSION (Council File 06-0331) and authorized the Board President and Secretary to execute the AGREEMENT on behalf of the CITY; and

Whereas, on August 19, 2021, the BOARD approved Amendment No. 1 to the AGREEMENT (BR 21-144) ("Amendment No. 1") to extend the contract term until December 31, 2027 by exercising one of the CITY's options to extend the term of the AGREEMENT as provided therein by an additional five (5) years as well as extending the term for an additional period of approximately 15 months to account for the closure and limited operations of the CONCESSION due to the COVID-19 pandemic; and

Whereas, on August 19, 2021, the BOARD approved Amendment No. 1(BR 21-144) to also waive the Annual Minimum Revenue-Sharing Guarantee ("AMRSG") payable under the AGREEMENT for the period from January 1, 2020 to December 31, 2021; and

Whereas, the CITY and CONCESSIONAIRE desire to further amend the AGREEMENT to waive the Annual Minimum Revenue-Sharing Guarantee ("AMRSG") for calendar year 2022, as approved by the BOARD.

Now, therefore, the CITY and CONCESSIONAIRE hereby mutually agree to amend the AGREEMENT, as previously amended by Amendment No. 1, as follows:

**1. SECTION 8. REVENUE-SHARING PAYMENT**

In subsection A., delete the Annual Minimum Revenue-Sharing Guarantee table in its entirety as provided in Amendment No. 1 and replace with the following table:

Period	Annual Minimum
October 1, 2016-December 31, 2019	\$400,000
January 1, 2020-December 31, 2021	Percentage of gross receipts
January 1, 2022 -December 31, 2022	Percentage of gross receipts
January 1, 2023 -December 31, 2027	\$420,000
January 1, 2028-December 31, 2032 (if 2 <sup>nd</sup> extension is exercised)	\$442,000

In subsection A., after the paragraph, “Refer to Section 8.C for the definition of “Gross Receipts” delete the following two paragraphs in its entirety as provided in Amendment No. 1:

“For the calendar years 2020 and 2021, the Annual Minimum Revenue-Sharing Guarantee (AMRSG) shall not apply. Concessionaire shall pay revenue-share through Percentage of Gross Receipts of all Sales.

The AMRSG shall be \$420,000 from January 1, 2022 through December 31, 2027”

And replace with the following 2 paragraphs:

“For the calendar years 2020 through 2022, the Annual Minimum Revenue-Sharing Guarantee (AMRSG) shall not apply. Concessionaire shall pay revenue-share through Percentage of Gross Receipts of all Sales.

The AMRSG shall be \$420,000 from January 1, 2023 through December 31, 2027”

## **2. SECTION 22. INCORPORATION OF DOCUMENTS**

For Exhibit A:

Replace the term “Standard Provisions for City Contracts Rev. (10/17, v.3)” with “Standard Provisions for City Contracts (Rev. 9.22) [v.1].”

## **3. EXHIBITS**

Exhibit A of the AGREEMENT, as previously amended by AMENDMENT NO. 1, is hereby replaced in its entirety with Exhibit A of this AMENDMENT.

**ATTACHMENTS**

For this Amendment No. 2 to Concession Agreement No. 280 document, the following is attached:

Exhibit A - Standard Provisions for City Contracts (Rev. 9/22) [v.1]

(Signature Page to Follow)

IN WITNESS WHEREOF, the parties hereto have caused this AMENDMENT NO. 2 TO CONCESSION AGREEMENT NO. 280, to be executed by their duly authorized representatives.

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners.

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

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

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

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

Event Network, LLC - CONCESSIONAIRE

BY: \_\_\_\_\_  
Name:  
Managing Member

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

APPROVED AS TO FORM:

MICHAEL N. FUEUR  
City Attorney

BY: \_\_\_\_\_  
Steven Hong  
Deputy City Attorney

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

**ATTACHMENT A**

Standard Provisions for City Contracts (Rev. 9/22) [v.1]

## STANDARD PROVISIONS FOR CITY CONTRACTS

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## STANDARD PROVISIONS FOR CITY CONTRACTS

### **PSC-1. Construction of Provisions and Titles Herein**

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Contract. The language of this Contract shall be construed according to its fair meaning and not strictly for or against **CITY** or **CONTRACTOR**. The word "**CONTRACTOR**" includes the party or parties identified in this Contract. The singular shall include the plural and if there is more than one **CONTRACTOR**, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

### **PSC-2. Applicable Law, Interpretation and Enforcement**

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. **CONTRACTOR** shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this Contract with no additional compensation paid to **CONTRACTOR**.

In any action arising out of this Contract, **CONTRACTOR** consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any federal, state or local law or regulation, the validity of the remaining parts, terms or provisions of this Contract shall not be affected.

### **PSC-3. Time of Effectiveness**

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A. This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR**;
- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

#### **PSC-4. Integrated Contract**

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter of this Contract, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in the provisions of PSC-5 hereof.

#### **PSC-5. Amendment**

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-3.

#### **PSC-6. Excusable Delays**

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Contract, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of **CONTRACTOR** shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both **CONTRACTOR** and Subcontractor, and without any fault or negligence of either of them. In such case, **CONTRACTOR** shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit **CONTRACTOR** to perform timely. As used in this Contract, the term "Subcontractor" means a subcontractor at any tier.

In the event **CONTRACTOR'S** delay or failure to perform arises out of a Force Majeure Event, **CONTRACTOR** agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

#### **PSC-7. Waiver**

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

## **PSC-8. Suspension**

At **CITY'S** sole discretion, **CITY** may suspend any or all services provided under this Contract by providing **CONTRACTOR** with written notice of suspension. Upon receipt of the notice of suspension, **CONTRACTOR** shall immediately cease the services suspended and shall not incur any additional obligations, costs or expenses to **CITY** until **CITY** gives written notice to recommence the services.

## **PSC-9. Termination**

### A. Termination for Convenience

**CITY** may terminate this Contract for **CITY'S** convenience at any time by providing **CONTRACTOR** thirty days written notice. Upon receipt of the notice of termination, **CONTRACTOR** shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. **CITY** shall pay **CONTRACTOR** its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by **CONTRACTOR** to effect the termination. Thereafter, **CONTRACTOR** shall have no further claims against **CITY** under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights **CITY** is entitled to, shall become **CITY** property upon the date of the termination. **CONTRACTOR** agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

### B. Termination for Breach of Contract

1. Except as provided in PSC-6, if **CONTRACTOR** fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, **CITY** may give **CONTRACTOR** written notice of the default. **CITY'S** default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of **CITY**. Additionally, **CITY'S** default notice may offer **CONTRACTOR** an opportunity to provide **CITY** with a plan to cure the default, which shall be submitted to **CITY** within the time period allowed by **CITY**. At **CITY'S** sole discretion, **CITY** may accept or reject **CONTRACTOR'S** plan. If the default cannot be cured or if **CONTRACTOR** fails to cure within the period allowed by **CITY**, then **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2. If the default under this Contract is due to **CONTRACTOR'S** failure to maintain the insurance required under this Contract, **CONTRACTOR** shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subcontractors of the loss of insurance coverage and Contractor's obligation to suspend performance of

services. **CONTRACTOR** shall not recommence performance until **CONTRACTOR** is fully insured and in compliance with **CITY'S** requirements.

3. If a federal or state proceeding for relief of debtors is undertaken by or against **CONTRACTOR**, or if **CONTRACTOR** makes an assignment for the benefit of creditors, then **CITY** may immediately terminate this Contract.
4. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates **CITY'S** laws, regulations or policies relating to lobbying, then **CITY** may immediately terminate this Contract.
5. Acts of Moral Turpitude
  - a. **CONTRACTOR** shall immediately notify **CITY** if **CONTRACTOR** or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
  - b. If **CONTRACTOR** or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, **CITY** may immediately terminate this Contract.
  - c. If **CONTRACTOR** or a Key Person is charged with or indicted for an Act of Moral Turpitude, **CITY** may terminate this Contract after providing **CONTRACTOR** an opportunity to present evidence of **CONTRACTOR'S** ability to perform under the terms of this Contract.
  - d. Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

- e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of **CONTRACTOR**.
  - 6. In the event **CITY** terminates this Contract as provided in this section, **CITY** may procure, upon such terms and in the manner as **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to **CITY** for all of its costs and damages, including, but not limited to, any excess costs for such services.
  - 7. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.
  - 8. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- C. In the event that this Contract is terminated, **CONTRACTOR** shall immediately notify all employees and Subcontractors, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

#### **PSC-10. Independent Contractor**

**CONTRACTOR** is an independent contractor and not an agent or employee of **CITY**. **CONTRACTOR** shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of **CITY**.

#### **PSC-11. Contractor's Personnel**

Unless otherwise approved by **CITY**, **CONTRACTOR** shall use its own employees to perform the services described in this Contract. **CITY** has the right to review and approve any personnel who are assigned to work under this Contract. **CONTRACTOR** shall remove personnel from performing work under this Contract if requested to do so by **CITY**.

**CONTRACTOR** shall not use Subcontractors to assist in performance of this Contract without the prior written approval of **CITY**. If **CITY** permits the use of Subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of this Contract and paying all Subcontractors. **CITY** has the right to approve **CONTRACTOR'S** Subcontractors, and **CITY** reserves the right to request replacement of any

Subcontractor. **CITY** does not have any obligation to pay **CONTRACTOR'S** Subcontractors, and nothing herein creates any privity of contract between **CITY** and any Subcontractor.

#### **PSC-12. Assignment and Delegation**

**CONTRACTOR** may not, unless it has first obtained the written permission of **CITY**:

- A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

#### **PSC-13. Permits**

**CONTRACTOR** and its directors, officers, partners, agents, employees, and Subcontractors, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance of this Contract. **CONTRACTOR** shall immediately notify **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to **CONTRACTOR'S** performance of this Contract.

#### **PSC-14. Claims for Labor and Materials**

**CONTRACTOR** shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any **CITY** property (including reports, documents, and other tangible or intangible matter produced by **CONTRACTOR** hereunder), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this Contract.

#### **PSC-15. Current Los Angeles City Business Tax Registration Certificate Required**

For the duration of this Contract, **CONTRACTOR** shall maintain valid Business Tax Registration Certificate(s) as required by **CITY'S** Business Tax Ordinance, Section 21.00 et seq. of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

#### **PSC-16. Retention of Records, Audit and Reports**

**CONTRACTOR** shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form or as otherwise approved by **CITY**. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by **CITY**, (2) the expiration of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized **CITY** personnel or **CITY'S** representatives at any time. **CONTRACTOR** shall provide any reports requested by **CITY** regarding

performance of this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, **CONTRACTOR** may, upon **CITY'S** written approval, submit the required information to **CITY** in an electronic format, e.g. USB flash drive, at the expiration or termination of this Contract.

#### **PSC-17. Bonds**

All bonds required by **CITY** shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 *et seq.*, as amended from time to time.

#### **PSC-18. Indemnification**

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

#### **PSC-19. Intellectual Property Indemnification**

**CONTRACTOR**, at its own expense, shall defend, indemnify, and hold harmless the **CITY**, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by **CONTRACTOR**, or its Subcontractors, in performing the work under this Contract; or (2) as a result of **CITY'S** actual or intended use of any Work Product (as defined in PSC-21) furnished by **CONTRACTOR**, or its Subcontractors, under this Contract. The rights and remedies of **CITY** provided in this section shall not be exclusive

and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

**PSC-20. Intellectual Property Warranty**

**CONTRACTOR** represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

**PSC-21. Ownership and License**

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this Contract including, without limitation, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by **CONTRACTOR** or its Subcontractors under this Contract (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of **CITY** for its use in any manner **CITY** deems appropriate. **CONTRACTOR** hereby assigns to **CITY** all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

**CONTRACTOR** agrees that a monetary remedy for breach of this Contract may be inadequate, impracticable, or difficult to prove and that a breach may cause **CITY** irreparable harm. **CITY** may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude **CITY** from seeking or obtaining any other relief to which **CITY** may be entitled.

For all Work Products delivered to **CITY** that are not originated or prepared by **CONTRACTOR** or its Subcontractors under this Contract, **CONTRACTOR** shall secure a grant, at no cost to **CITY**, for a non-exclusive perpetual license to use such Work Products for any **CITY** purposes.

**CONTRACTOR** shall not provide or disclose any Work Product to any third party without prior written consent of **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract shall include this provision to contractually bind its Subcontractors performing work under this Contract such that **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein.

## **PSC-22. Data Protection**

- A. **CONTRACTOR** shall protect, using the most secure means and technology that is commercially available, **CITY**-provided data or consumer-provided data acquired in the course and scope of this Contract, including but not limited to customer lists and customer credit card or consumer data, (collectively, the "City Data"). **CONTRACTOR** shall notify **CITY** in writing as soon as reasonably feasible, and in any event within twenty-four hours, of **CONTRACTOR'S** discovery or reasonable belief of any unauthorized access of City Data (a "Data Breach"), or of any incident affecting, or potentially affecting City Data related to cyber security (a "Security Incident"), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. **CONTRACTOR** shall begin remediation immediately. **CONTRACTOR** shall provide daily updates, or more frequently if required by **CITY**, regarding findings and actions performed by **CONTRACTOR** until the Data Breach or Security Incident has been effectively resolved to **CITY'S** satisfaction. **CONTRACTOR** shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with **CITY**. At **CITY'S** sole discretion, **CITY** and its authorized agents shall have the right to lead or participate in the investigation. **CONTRACTOR** shall cooperate fully with **CITY**, its agents and law enforcement.
- B. If **CITY** is subject to liability for any Data Breach or Security Incident, then **CONTRACTOR** shall fully indemnify and hold harmless **CITY** and defend against any resulting actions.

## **PSC-23. Insurance**

During the term of this Contract and without limiting **CONTRACTOR'S** obligation to indemnify, hold harmless and defend **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 1 hereto). The insurance must: (1) conform to **CITY'S** requirements; (2) comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

## **PSC-24. Best Terms**

Throughout the term of this Contract, **CONTRACTOR**, shall offer **CITY** the best terms, prices, and discounts that are offered to any of **CONTRACTOR'S** customers for similar goods and services provided under this Contract.

**PSC-25. Warranty and Responsibility of Contractor**

**CONTRACTOR** warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within **CONTRACTOR'S** profession, doing the same or similar work under the same or similar circumstances.

**PSC-26. Mandatory Provisions Pertaining to Non-Discrimination in Employment**

Unless otherwise exempt, this Contract is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. **CONTRACTOR** shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and **CITY**. In performing this Contract, **CONTRACTOR** shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Contract by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Equal Employment Practices" provisions of this Contract.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Affirmative Action Program" provisions of this Contract.

Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-27. Child Support Assignment Orders**

**CONTRACTOR** shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, **CONTRACTOR** shall fully comply with all applicable State and Federal employment reporting requirements. Failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract. Failure of **CONTRACTOR** or principal owner to cure

the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-28. Living Wage Ordinance**

**CONTRACTOR** shall comply with the Living Wage Ordinance, LAAC Section 10.37 *et seq.*, as amended from time to time. **CONTRACTOR** further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-29. Service Contractor Worker Retention Ordinance**

**CONTRACTOR** shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-30. Access and Accommodations**

**CONTRACTOR** represents and certifies that:

- A. **CONTRACTOR** shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- B. **CONTRACTOR** shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. **CONTRACTOR** shall provide reasonable accommodation upon request to ensure equal access to **CITY**-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

**CONTRACTOR** understands that **CITY** is relying upon these certifications and representations as a condition to funding this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-31. Contractor Responsibility Ordinance**

**CONTRACTOR** shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 *et seq.*, as amended from time to time.

**PSC-32. Business Inclusion Program**

Unless otherwise exempted prior to bid submission, **CONTRACTOR** shall comply with all aspects of the Business Inclusion Program as described in the Request for Proposal/Qualification process, throughout the duration of this Contract. **CONTRACTOR** shall utilize the Business Assistance Virtual Network (“BAVN”) at <https://www.labavn.org/>, to perform and document outreach to Minority, Women, and Other Business Enterprises. **CONTRACTOR** shall perform subcontractor outreach activities through BAVN. **CONTRACTOR** shall not change any of its designated Subcontractors or pledged specific items of work to be performed by these Subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of **CITY**.

**PSC-33. Slavery Disclosure Ordinance**

**CONTRACTOR** shall comply with the Slavery Disclosure Ordinance, LAAC Section 10.41 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-34. First Source Hiring Ordinance**

**CONTRACTOR** shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-35. Local Business Preference Ordinance**

**CONTRACTOR** shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-36. Iran Contracting Act**

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with **CITY** for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit."

**PSC-37. Restrictions on Campaign Contributions and Fundraising in City Elections**

Unless otherwise exempt, if this Contract is valued at \$100,000 or more and requires approval by an elected **CITY** office, **CONTRACTOR**, **CONTRACTOR'S** principals, and **CONTRACTOR'S** Subcontractors expected to receive at least \$100,000 for performance under the Contract, and the principals of those Subcontractors (the “Restricted Persons”)

shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles **CITY** to terminate this Contract and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected **CITY** officials or candidates for elected **CITY** office for twelve months after this Contract is signed. Additionally, a **CONTRACTOR** subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any **CONTRACTOR** subject to Charter Section 470(c)(12) shall include the following notice in any contract with any Subcontractor expected to receive at least \$100,000 for performance under this Contract:

**"Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections**

You are a subcontractor on City of Los Angeles Contract #  
\_\_\_\_\_. Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles ("CITY") officials and candidates for elected **CITY** office for twelve months after the **CITY** contract is signed. You are required to provide the names and contact information of your principals to the **CONTRACTOR** and to amend that information within ten business days if it changes during the twelve month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at ethics.lacity.org or by calling the Los Angeles City Ethics Commission at (213) 978-1960."

**PSC-38.** Contractors' Use of Criminal History for Consideration of Employment Applications

**CONTRACTOR** shall comply with the City Contractors' Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-39.** Limitation of City's Obligation to Make Payment to Contractor

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for **CITY** to comply with its governing legal requirements, **CITY** shall have no obligation to make any payments to **CONTRACTOR** unless **CITY** shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract. **CONTRACTOR** agrees that any services provided by **CONTRACTOR**, purchases made by **CONTRACTOR** or expenses incurred by **CONTRACTOR** in excess of the appropriation(s) shall be free and without charge to **CITY** and **CITY** shall have no obligation to pay for the services, purchases or expenses. **CONTRACTOR** shall have no obligation to provide any services,

provide any equipment or incur any expenses in excess of the appropriated amount(s) until **CITY** appropriates additional funds for this Contract.

**PSC-40. Compliance with Identity Theft Laws and Payment Card Data Security Standards**

**CONTRACTOR** shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act ("FACTA"), including its requirement relating to the content of transaction receipts provided to Customers. **CONTRACTOR** also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards ("PCI DSS"). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, **CONTRACTOR** shall verify proper truncation of receipts in compliance with FACTA.

**PSC-41. Compliance with California Public Resources Code Section 5164**

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, **CONTRACTOR** shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by **CITY**. **CONTRACTOR** is required to have all employees, volunteers and Subcontractors (including all employees and volunteers of any Subcontractor) of **CONTRACTOR** working on premises to pass a fingerprint and background check through the California Department of Justice at **CONTRACTOR'S** sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

**PSC-42. Possessory Interests Tax**

Rights granted to **CONTRACTOR** by **CITY** may create a possessory interest. **CONTRACTOR** agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, **CONTRACTOR** shall pay the property tax. **CONTRACTOR** acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

### **PSC-43. Confidentiality**

All documents, information and materials provided to **CONTRACTOR** by **CITY** or developed by **CONTRACTOR** pursuant to this Contract (collectively "Confidential Information") are confidential. **CONTRACTOR** shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by **CITY** or as required by law. **CONTRACTOR** shall immediately notify **CITY** of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Contract.

### **PSC-44. COVID-19**

Employees of Contractor and/or persons working on its behalf, including, but not limited to, subcontractors (collectively, "Contractor Personnel"), while performing services under this Agreement and prior to interacting in person with City employees, contractors, volunteers, or members of the public (collectively, "In-Person Services") must be fully vaccinated against the novel coronavirus 2019 ("COVID-19"). "Fully vaccinated" means that 14 or more days have passed since Contractor Personnel have received the final dose of a two-dose COVID-19 vaccine series (Moderna or Pfizer-BioNTech) or a single dose of a one-dose COVID-19 vaccine (Johnson & Johnson/Janssen) and all booster doses recommended by the Centers for Disease Control and Prevention. Prior to assigning Contractor Personnel to perform In-Person Services, Contractor shall obtain proof that such Contractor Personnel have been fully vaccinated. Contractor shall retain such proof for the document retention period set forth in this Agreement. Contractor shall grant medical or religious exemptions ("Exemptions") to Contractor Personnel as required by law. If Contractor wishes to assign Contractor Personnel with Exemptions to perform In-Person Services, Contractor shall require such Contractor Personnel to undergo weekly COVID-19 testing, with the full cost of testing to be borne by Contractor. If Contractor Personnel test positive, they shall not be assigned to perform In-Person Services or, to the extent they have already been performing In-Person Services, shall be immediately removed from those assignments. Furthermore, Contractor shall immediately notify City if Contractor Personnel performing In-Person Services (1) have tested positive for or have been diagnosed with COVID-19, (2) have been informed by a medical professional that they are likely to have COVID-19, or (3) meet the criteria for isolation under applicable government orders.

### **PSC-45. Contractor Data Reporting**

If Contractor is a for-profit, privately owned business, Contractor shall, within 30 days of the effective date of the Contract and on an annual basis thereafter (i.e., within 30 days of the annual anniversary of the effective date of the Contract), report the following information to City via the Regional Alliance Marketplace for Procurement ("RAMP") or via another method specified by City: Contractor's and any Subcontractor's annual revenue, number of employees, location, industry, race/ethnicity and gender of majority owner ("Contractor/Subcontractor Information"). Contractor shall further request, on an annual basis, that any Subcontractor input or update its business profile, including the Contractor/Subcontractor Information, on RAMP or via another method prescribed by City.

## **EXHIBIT 1**

### **INSURANCE CONTRACTUAL REQUIREMENTS**

**CONTACT** For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at [www.lacity.org/cao/risk](http://www.lacity.org/cao/risk). The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

### **CONTRACTUAL REQUIREMENTS**

CONTRACTOR AGREES THAT:

- 1. Additional Insured/Loss Payee.** The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.
  - 2. Notice of Cancellation.** All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.
  - 3. Primary Coverage.** CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.
  - 4. Modification of Coverage.** The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.
  - 5. Failure to Procure Insurance.** All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.
- CONTRACTOR'S failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY'S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.
- 6. Workers' Compensation.** By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake

self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all time during the performance of the work pursuant to this Contract.

**7. California Licensee.** All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the CITY. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.

**8. Aggregate Limits/Impairment.** If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect the CITY'S protection are allowed without the CITY'S prior written consent.

**9. Commencement of Work.** For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-3, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

# Required Insurance and Minimum Limits

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

Date: \_\_\_\_\_

Agreement/Reference: \_\_\_\_\_

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

## Limits

---

**Workers' Compensation (WC) and Employer's Liability (EL)**
WC StatutoryEL Waiver of Subrogation in favor of City Longshore & Harbor Workers Jones Act
**General Liability** \_\_\_\_\_
 Products/Completed Operations Sexual Misconduct \_\_\_\_\_ Fire Legal Liability \_\_\_\_\_
**Automobile Liability** (for any and all vehicles used for this contract, other than commuting to/from work) \_\_\_\_\_

**Professional Liability** (Errors and Omissions) \_\_\_\_\_

Discovery Period \_\_\_\_\_

**Property Insurance** (to cover replacement cost of building - as determined by insurance company) \_\_\_\_\_
 All Risk Coverage Boiler and Machinery Flood Builder's Risk Earthquake \_\_\_\_\_
**Pollution Liability** \_\_\_\_\_
**Surety Bonds** - Performance and Payment (Labor and Materials) Bonds \_\_\_\_\_

**Crime Insurance** \_\_\_\_\_

**Other:** \_\_\_\_\_  
  
  
  
**STANDARD PROVISIONS**
**FOR CITY CONTRACTS (Rev. 9/22) [v.1]**

**BOARD OF RECREATION AND  
PARK COMMISSIONERS**

**SYLVIA PATSAOURAS  
PRESIDENT**

**LYNN ALVAREZ  
VICE PRESIDENT**

MELBA CULPEPPER  
PILAR DIAZ  
MISTY M. SANFORD

ARMANDO X. BENCOMO  
COMMISSION EXECUTIVE ASSISTANT II

# CITY OF LOS ANGELES

CALIFORNIA



**ERIC GARCETTI  
MAYOR**

**DEPARTMENT OF  
RECREATION AND PARKS**

COMMISSION OFFICE  
221 NORTH FIGUEROA STREET  
THIRD FLOOR, SUITE 300  
LOS ANGELES, CA 90012

Telephone: (213) 202-2640  
Facsimile: (213) 202-2610  
[RAP.Commissioners@LACity.org](mailto:RAP.Commissioners@LACity.org)

MICHAEL A. SHULL  
GENERAL MANAGER

October 28, 2016

Event Network, Inc.  
9606 Aero Drive, Suite 1000  
San Diego, CA 92123

Attention: Jerry Gilbert, Principal

Dear Mr. Gilbert:

Enclosed is Concession Contract No. 280, executed on October 26, 2016, between the City of Los Angeles, by and through its Board of Recreation and Park Commissioners, and your firm for the operation and maintenance of the Griffith Observatory Bookstore and Gift Shop Concession.

Very truly yours,

**BOARD OF RECREATION AND  
PARK COMMISSIONERS**

*Geo Davis Jr.*

ARMANDO X. BENCOMO  
Commission Executive Assistant II

**Enclosure**

cc: City Controller (w/ enclosure)  
City Attorney (w/ enclosure)  
Rachel Ramos, Partnerships and Revenue Branch, Concessions (w/ enclosure)  
Departmental Chief Accountant (w/ enclosure)

**AGREEMENT  
FOR THE OPERATION AND MAINTENANCE OF  
GRIFFITH OBSERVATORY  
BOOKSTORE AND GIFT SHOP CONCESSION  
Between  
THE CITY OF LOS ANGELES  
And  
EVENT NETWORK, INC.**

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**AGREEMENT FOR THE OPERATION AND MAINTENANCE OF  
GRIFFITH OBSERVATORY  
BOOKSTORE AND GIFT SHOP CONCESSION**

**Between**

**THE CITY OF LOS ANGELES**

**And**

**EVENT NETWORK, INC.**

This Agreement ("AGREEMENT") is made and entered in this 26th day of October, 2016, by and between the CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners ("CITY"), and EVENT NETWORK, INC. ("CONCESSIONAIRE").

**WHEREAS**, CITY seeks to obtain a bookstore and gift shop concessionaire to provide merchandise sales and service at Griffith Observatory; and

**WHEREAS**, CITY finds, in accordance with Charter Section 1022, that it is necessary, feasible and economical to secure these services by contract as it lacks available personnel in its employ with sufficient expertise to undertake these specialized services; and

**WHEREAS**, CITY 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 the common law and the 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 the Department of Recreation and Parks ("DEPARTMENT") for the provision of bookstore and gift shop services; and

**WHEREAS**, CITY finds it is necessary to utilize a standard request for proposals process and to evaluate proposals received based upon the criteria included in a Request for Proposals (RFP); and

**WHEREAS**, DEPARTMENT advertised for proposals for Griffith Observatory Bookstore and Gift Shop Concession ("CONCESSION") on December 16, 2015; and

**WHEREAS**, DEPARTMENT received and analyzed one (1) proposal received on February 16, 2016; and

**WHEREAS**, CONCESSIONAIRE was evaluated and approved by CITY to conduct the operation of the CONCESSION in accordance with the terms and conditions of this AGREEMENT; and

**WHEREAS**, CONCESSIONAIRE desires to secure and enter into an AGREEMENT in accordance with the foregoing and undertakes to provide services of the type and character required therein by CITY to meet the needs of the public at Griffith Observatory.

**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:

AGREEMENT:	This CONCESSION AGREEMENT consisting of thirty-two (32) pages and Exhibits (A thru K) attached hereto.
BOARD:	Board of Recreation and Park Commissioners.
CITY:	The City of Los Angeles, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners.
CONCESSION:	Griffith Observatory Bookstore and Gift Shop ("Stellar Emporium")
CONCESSIONAIRE:	Event Network, Inc.
CONCESSION MANAGER:	The Person with whom the DEPARTMENT interacts with on a regular basis regarding the CONCESSION.
DEPARTMENT:	The Department of Recreation and Parks.
FOTO:	Friends Of The Observatory – A non-profit membership organization established to support and promote Griffith Observatory.
LAAC:	Los Angeles Administrative Code
LAMC:	Los Angeles Municipal Code
OBSERVATORY:	Griffith Observatory

**PREMISES:** The geographical area, as defined in Section 3 of this AGREEMENT, in which the CONCESSION may be operated.

**STANDARD PROVISIONS:** Standard Provisions for City Contracts (Rev. 3/09), attached hereto as "Exhibit A" and incorporated herein.

## **SECTION 2. PERMISSION GRANTED**

For and in consideration of the payment of the fees and charges as hereinafter provided, and subject to all of the terms, covenants, and conditions of the AGREEMENT, CITY hereby grants to CONCESSIONAIRE the privilege to provide only those services set forth in the AGREEMENT, and not for any other purpose without the prior written consent of the DEPARTMENT.

CONCESSIONAIRE agrees and understands that a café, mobile cart, and catering food and beverage concession will be permitted to operate under a separate agreement within the immediate vicinity of the PREMISES herein described. Other concessions may be awarded that do not directly compete with this CONCESSION.

In the event of a conflict between CONCESSIONAIRE and any other concessionaire or any lessee at the OBSERVATORY regarding the services to be offered or products to be sold by respective concessionaires or lessees, DEPARTMENT shall meet and confer with all necessary parties in order to determine the services to be offered or products to be sold by each, and CONCESSIONAIRE hereunder agrees thereafter to be bound by said determination.

CONCESSIONAIRE shall provide merchandise, theme the CONCESSION, and conduct business in a manner which helps promote the mission of the OBSERVATORY, "Inspiring everyone to observe, ponder, and understand the sky."

The CONCESSION rights herein granted shall be carried on at the OBSERVATORY solely within the limits and confines of said areas designated as PREMISES in the AGREEMENT. CONCESSIONAIRE, by accepting the AGREEMENT, agrees for itself, its successors and assigns that it will not make use of the PREMISES in any manner which might interfere with the intended use of the OBSERVATORY by DEPARTMENT.

CONCESSIONAIRE warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within CONCESSIONAIRE'S profession, doing the same or similar work under the same or similar circumstances.

CITY reserves the right to further develop or improve the PREMISES as it sees fit, without interference or hindrance; however the CITY shall consider the desire and views of CONCESSIONAIRE.

### **SECTION 3. PREMISES**

The PREMISES to be authorized for use by CONCESSIONAIRE at the OBSERVATORY shall include the CONCESSION, and a predesignated "mobile point of sale cart/kiosk set-up area" as determined by the DEPARTMENT, acting through Observatory management. The CONCESSION cart/kiosk activity will be located in an admission-free area that can be accessed by visitors and the general public independently of the OBSERVATORY but will operate only when the CONCESSION is open. Its hours of operation must be preapproved by the DEPARTMENT, acting through Observatory management.

CONCESSIONAIRE shall not use or permit the CONCESSION PREMISES to be used, in whole or in part, for any other purpose other than as set forth in this AGREEMENT except with the prior, written consent of DEPARTMENT, 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 use of the CONCESSION PREMISES. CONCESSIONAIRE hereby expressly agrees at all times during the term of this AGREEMENT, to maintain, use and operate the CONCESSION 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.

CITY undertakes and agrees to deliver to CONCESSIONAIRE the PREMISES described in Exhibit B in as-is condition.

### **SECTION 4. TERM OF AGREEMENT**

The term of the AGREEMENT will commence on October 1, 2016 and shall be for five (5) years, with two (2) five-year extension options, exercisable at the sole discretion of the DEPARTMENT, along with approval of the Board of Recreation and Park Commissioners ("BOARD"). See Ratification (Section 21).

Neither CITY, nor any BOARD member, officer, or employee thereof shall be liable to CONCESSIONAIRE because of any action taken to revoke, decline to exercise an option or disapprove a renewal of the AGREEMENT.

### **SECTION 5. OPERATING RESPONSIBILITIES**

To ensure CONCESSIONAIRE meets the expectations of the CITY to further the OBSERVATORY mission and that the visitor experience at the OBSERVATORY is positive in every respect, CONCESSIONAIRE shall operate under the following principal guidelines.

#### **A. Merchandise**

CONCESSIONAIRE shall offer a creative selection of products to enhance the OBSERVATORY visitor and guest experience. Thematic in nature, the CONCESSION

shall offer items which reflect the OBSERVATORY'S astronomical intent and is consistent with the OBSERVATORY'S programmatic initiatives. Product items shall be derived from the best quality products available. Product inventory must be one hundred percent (100%) mission-related at all times. All merchandise shall be in accordance with the mission of the OBSERVATORY (Section 2) and pre-approved by the DEPARTMENT.

All pricing shall be comparable with prices at other first class, high quality, Los Angeles area cultural retail institutions. Prices shall be determined with a goal of high perceived value. All prices must be posted on display or on product items.

CITY agrees that CONCESSIONAIRE'S merchandise, including its schedule of prices, charges and rates for same, shall be within CONCESSIONAIRE'S discretion; subject, however, to approval by the DEPARTMENT (acting through Observatory management). Such determination shall not be unreasonable and shall take into account the business considerations presented by CONCESSIONAIRE.

#### **B. Merchandise Accessibility**

CONCESSIONAIRE shall offer the same merchandise, approved for the CONCESSION, on a website managed by the CONCESSIONAIRE at its sole expense. The website shall reference the OBSERVATORY and CONCESSION. A portion of the merchandise found in the CONCESSION shall be made available on the mobile point of sale cart/kiosk.

#### **C. Discounts**

CONCESSIONAIRE shall offer a ten percent (10%) discount to OBSERVATORY staff, on-site café concession staff, FOTO staff and volunteers, and current members of FOTO and the Los Angeles Astronomical Society. The discount shall apply to purchases from the CONCESSION and the mobile point of sale cart/kiosk when official identification is shown.

#### **D. Consignment**

CONCESSIONAIRE shall sell items on consignment that are produced by the DEPARTMENT, including but not limited to current and past issues of its publication, the *Griffith Observer*, Solarama handheld safe-viewing filters, and other event or activity related items.

#### **E. Days and Hours of Operation**

The CONCESSIONAIRE shall operate the CONCESSION during the OBSERVATORY'S business hours. The mobile point of sale cart/kiosk may operate only when the CONCESSION is open. Cart/kiosk hours of operation must be preapproved by the DEPARTMENT, acting through Observatory management.

CONCESSIONAIRE must post the hours of operation in a location visible to the public, and must be open for business during the hours posted. Any deviation from the hours

specified requires the prior approval of the DEPARTMENT, acting through Observatory management.

#### **F. Equipment, Furnishings and Expendables**

CONCESSIONAIRE is required to provide and own, at CONCESSIONAIRE'S cost and expense, all loose equipment required for the CONCESSION which includes, but is not limited to, point of sale/cash registers, credit/debit card machines, computers and computer related hardware and software, office furniture/furnishings, mobile carts and fax machine. The DEPARTMENT, acting through Observatory management, will have the right of review and approval of loose equipment that will be used or in view of OBSERVATORY visitors/customers.

If, upon termination of the AGREEMENT, CITY does not renew said AGREEMENT, CONCESSIONAIRE shall have the right to remove its own equipment, furnishings, and expendables, but not improvements, from the PREMISES and shall be allowed a period of thirty (30) days to make such removal. If not removed within that period, said equipment, furnishings and expendables shall become the property of CITY.

#### **G. Maintenance and Repair of Equipment**

CONCESSIONAIRE shall, at all times and at its expense, keep, maintain and repair the PREMISES including all equipment, whether owned and/or installed by CONCESSIONAIRE or CITY, such as, but not limited to, fans, controls and electric panels, installed by CITY, along with all of the fixtures, plate and mirror glass, equipment and personal property therein, in good repair and in a clean, sanitary and orderly condition and appearance.

CITY shall maintain building Heating, Ventilation, and Air Conditioners (HVAC) and the building electrical systems.

#### **H. Cart/Kiosk & Storage**

As a supplement to the retail service in the CONCESSION, CONCESSIONAIRE shall provide mobile point of sale cart/kiosk service featuring merchandise from the CONCESSION. The cart shall be configured and merchandised to maximize visual appeal, product variety and practicality. The cart/kiosk shall be self-contained and mobile for off-premises storage or for storage within the CONCESSION.

CONCESSIONAIRE shall secure all necessary licenses and permits as a cost of business under the AGREEMENT covering the operation of these items. CONCESSIONAIRE shall maintain the carts in good repair and a clean and sanitary condition at all times. CONCESSIONAIRE shall be responsible for the maintenance of the cart and shall provide a trash receptacle for use by customers.

## **I. Personnel**

### **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 the DEPARTMENT, CONCESSIONAIRE shall provide the DEPARTMENT with certificates on applicable employees indicating freedom from communicable tuberculosis.

### **2. Qualified Personnel**

CONCESSIONAIRE will, in the operation of the CONCESSION, 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 such personnel, while on or about the PREMISES, shall be neat in appearance and courteous at all times and shall be appropriately attired, with badges or other suitable means of identification. No person employed by CONCESSIONAIRE, while on or about the PREMISES, shall 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, the DEPARTMENT may direct CONCESSIONAIRE to remove that person from the PREMISES.

### **3. CONCESSION MANAGER**

CONCESSIONAIRE shall appoint, subject to written approval by the DEPARTMENT (acting through Observatory management), a CONCESSION MANAGER of CONCESSIONAIRE'S operations at the CONCESSION.

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 regarding operation of the CONCESSION, including the quality and prices of CONCESSION goods and services, and the appearance, conduct, and demeanor of CONCESSIONAIRE'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.

If, for reasons of ill health, incapacitation, or death, the CONCESSION MANAGER becomes incapable of performing each and all terms and provisions of the AGREEMENT, the CONCESSIONAIRE shall appoint a replacement

CONCESSION MANAGER within thirty (30) days, subject to written approval by the DEPARTMENT (acting through Observatory Management).

**4. Approval of Employees, Volunteers and Subcontractors**

The DEPARTMENT views concession staff as representatives of the Observatory, and reserves the right to disapprove any employee, volunteer, or subcontractor deemed to not meet that vocation (including all employees and volunteers for any subcontractor) of CONCESSIONAIRE. CONCESSIONAIRE shall not hire any employee or volunteer, or subcontract with, any person whom the DEPARTMENT would be prohibited from hiring as an employee or volunteer pursuant to California Public Resources Code Section 5164 to perform work at the CONCESSION. Each employee, volunteer or subcontractor (including all employees or volunteers of any subcontractor) may be required to complete and submit a form requesting the information required by Section 5164, and the DEPARTMENT reserves the right to fingerprint and conduct a Department of Justice criminal background check on any such person at any time. Failure to comply with this hiring standard shall be a material breach of this AGREEMENT and CONCESSIONAIRE shall immediately remove any employee, volunteer or subcontractor from the CONCESSION at the DEPARTMENT'S instruction.

**J. Marketing**

CONCESSIONAIRE shall take all reasonable measures, in every proper manner, to develop, maintain, and increase the business conducted by it under this AGREEMENT.

Except as may be otherwise provided in the AGREEMENT, the CONCESSIONAIRE shall not refer to the OBSERVATORY or its facilities in any manner or through any medium, whether written, oral, or visual, for any purpose whatsoever, including, but not limited to, advertising, promotion, publicity, solicitation or find-raising without the prior written permission of the DEPARTMENT. For purposes of soliciting new business, CONCESSIONAIRE shall have the right to use the OBSERVATORY logo pending prior written approval from the DEPARTMENT.

**K. Customer Surveys**

The CONCESSION services are an integral and important part of the visitor experience. The DEPARTMENT reserves the right to instruct CONCESSIONAIRE to conduct customer survey programs covering its entire retail service at the CITY. The forms and techniques (i.e., automated, written, intercepts, focus groups, etc.) will be subject to prior review and approval of the DEPARTMENT, acting through Observatory management. CONCESSIONAIRE shall provide the results from these activities to the DEPARTMENT in a timely manner.

**L. Cleanliness**

CONCESSIONAIRE shall keep the PREMISES, and the surrounding areas clean [at least twenty-five (25) feet] and sanitary at all times. No offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable or unlawful fire hazard, or material detrimental to the public health, shall be permitted or remain thereon, and

CONCESSIONAIRE shall prevent any such matter or material from being or accumulating upon said PREMISES.

CONCESSIONAIRE shall see that all garbage or refuse is collected as often as necessary and in no case less than twice a week. It shall furnish all equipment and materials necessary therefore, including trash receptacles of a size, type and number approved by DEPARTMENT, acting through Observatory management. CONCESSIONAIRE shall transfer trash and broken-down recyclable cardboard to the OBSERVATORY'S main trash collection area (see Section 5.S), for pick-up.

#### **M. Conduct**

CONCESSIONAIRE shall at all times conduct its business in a quiet and orderly manner to the satisfaction of the DEPARTMENT.

#### **N. Disorderly Persons**

CONCESSIONAIRE 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. It shall not knowingly allow the use or possession of illegal drugs, narcotics or controlled substances on the PREMISES.

#### **O. Diversion of Business**

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

#### **P. Signs and Advertisements**

CONCESSIONAIRE shall post a sign within the CONCESSION in a prominent place stating that the CONCESSION is operated under a CONCESSION AGREEMENT issued by CITY through the Department of Recreation and Parks. The sign's size, design, and content require prior approval from the DEPARTMENT.

CONCESSIONAIRE shall not erect, construct or place additional signs, banners, ads, or displays of any kind whatsoever upon any portion of the OBSERVATORY or PREMISES without the prior written approval from the DEPARTMENT, acting through Observatory management. Additional signage shall include "In collaboration with the City of Los Angeles Department of Recreation and Parks" and shall not contain a call for action. Requests shall include the size, design, content, rendering, location, method of attachment, and posting duration. The DEPARTMENT may require the removal or refurbishment of any previously approved sign.

CONCESSIONAIRE shall not permit vendors to display wares inside or outside the building or on said property unless permission is secured from the DEPARTMENT in advance of installation and such permission shall be subject to revocation at any time but shall not be unreasonably withheld.

Upon the expiration or earlier termination of the AGREEMENT, CONCESSIONAIRE shall remove, obliterate or paint out, as the DEPARTMENT may direct, any and all of its signs and displays on the PREMISES and in connection therewith, and shall restore said PREMISES and improvements thereto to the same condition as prior to the placement of any such signs or displays.

#### **Q. Taxes**

CONCESSIONAIRE shall pay all applicable CITY, State and Federal taxes of whatever character that may be levied or charged upon the rights of CONCESSIONAIRE to use the PREMISES, or upon CONCESSIONAIRE'S improvements, fixtures, equipment or other property thereon or upon CONCESSIONAIRE'S operations hereunder. In addition, by executing the AGREEMENT and accepting the benefits thereof, a property interest may be created known as a "Possessory Interest" and such property interest will be subject to property taxation. CONCESSIONAIRE, as the party in whom the Possessory interest is vested, may be subject to the payment of the property taxes levied by the State and County upon such interest.

Pursuant to Section 21.3.3 of Article 1.3 of the LAMC Commercial Tenants Occupancy Tax, CONCESSIONAIRE 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 (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 to the DEPARTMENT, on or before the fifteenth (15th) of April, July, October, and January of each calendar year, for the preceding three (3) months. CONCESSIONAIRE shall obtain and maintain at its sole expense any and all approvals, permits, or licenses that may be required in connection with the operation of the CONCESSION including, but not limited to: tax permits, business licenses, health permits, building, police and fire permits, etc.

#### **R. Permits and Licenses**

CONCESSIONAIRE shall obtain and maintain any and all approvals, permits, or licenses that may be required in connection with the operation of the CONCESSION including, but not limited to, tax permits, business licenses, health permits, building permits, police and fire permits, etc.

#### **S. Utilities**

CONCESSIONAIRE shall be responsible for all utility charges, regardless of whether such utility services are provided by CITY or by utility service corporations. This includes, but not limited to deposits, installation costs, and deposits related to phone and data cable lines, and all service charges for electricity and other utility services to PREMISES. A separate meter is installed for electricity only, and shall be paid by CONCESSIONAIRE direct to the service provider. Water and gas utility services have not been established nor required in operation of the CONCESSION.

Heating and air conditioning are provided by the CITY for the entire OBSERVATORY and are not separated for the PREMISES. Trash and cardboard recycling services, located by the main parking lot and public restrooms, are provided by the CITY. CONCESSIONAIRE may use an available electrical outlet on the OBSERVATORY grounds for mobile point of sale cart/kiosk sales operation. CONCESSIONAIRE shall remit, on a monthly basis in conjunction with revenue-sharing payments to the DEPARTMENT, the amount of Three Hundred Dollars (\$300.00) as payment for the DEPARTMENT-provided utilities identified above. CONCESSIONAIRE will be required to reimburse the DEPARTMENT for any subsequent utility services that may be provided at a future date. Payment of DEPARTMENT-provided utilities will be subject to periodic price increases to cover increasing costs.

CONCESSIONAIRE hereby expressly waives all claims for compensation or for any diminution or abatement of the rental 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 water, earthquake, wind, civil commotion or riot; and CONCESSIONAIRE hereby expressly releases and discharges CITY, DEPARTMENT, and CITY'S officers, employees, servants and agents from any and all demands, claims, actions and causes of action arising from any of the aforesaid causes.

In all instances where damage to any utility service line is caused by CONCESSIONAIRE, its employees, contractors, sub-contractors, suppliers, agents or invitees, CONCESSIONAIRE shall be responsible for the cost of repairs and any and all damages occasioned thereby.

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

CONCESSIONAIRE shall obtain telephone service to the CONCESSIONS. The telephone number shall be placed in the CONCESSION'S name and shall not be transferable to any other location. CONCESSIONAIRE shall reimburse the DEPARTMENT if the DEPARTMENT pays any telephone or optional internet service.

#### **T. Coin Operated Machines**

CONCESSIONAIRE shall not install any coin-operated machines, including but not limited to vending machines, electronic game, and press penny souvenir machines. The DEPARTMENT shall have the right to order the immediate removal of any unauthorized machines.

#### **U. Safety**

CONCESSIONAIRE shall correct safety deficiencies and violations of safety practices immediately after the condition becomes known or DEPARTMENT notifies CONCESSIONAIRE of said condition. CONCESSIONAIRE shall cooperate fully with CITY in the investigation of accidents occurring on the PREMISES. In the event of injury to a patron or customer, CONCESSIONAIRE shall act reasonably to ensure that the injured person receives prompt and qualified medical attention, and as soon as possible thereafter, CONCESSIONAIRE shall submit a CITY Form General No. 87 "Non-Employee Accident or Illness Report" (Exhibit E) within forty-eight (48) hours of the incident, two (2) copies of all Accident/Incident reports shall be sent to address identified in Section 17: "Notices." If CONCESSIONAIRE fails to correct hazardous conditions specified by the DEPARTMENT in a written notice, which have led, or in the opinion of CITY agents could lead, to injury, the DEPARTMENT may at his option, and in addition to all other remedies which may be available to CITY, to repair, replace, rebuild, redecorate or paint any such PREMISES to correct the specified hazardous conditions, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by CONCESSIONAIRE to CITY on demand.

#### **V. Environmental Sensitivity**

CONCESSIONAIRE shall implement a conservation policy to include, but not be limited to, utilizing non-toxic, non-Styrofoam, recyclable paper and cardboard products; sorting all polystyrene and plastic related products from paper and paperboard products; recycling cardboard boxes and wooden pallets; and maintain inventory controls to reduce waste. The CONCESSIONAIRE must operate the CONCESSION in an environmentally sensitive manner and all operations must comply with CITY policies regarding protection of the environment. CONCESSIONAIRE shall not use or allow the use on the PREMISES of environmentally unsafe products.

#### **W. Amplified Sound**

No amplified sound is permitted by CONCESSIONAIRE in its operations on PREMISES without written approval from the DEPARTMENT, acting through Observatory management.

#### **X. Fund Raising and/or Special Events Activities**

CONCESSIONAIRE is expected to cooperate with DEPARTMENT personnel on all matters relative to the conduct of fund-raising and/or special events, as well as use of OBSERVATORY and/or CONCESSION areas by the film industry. CONCESSIONAIRE may be required to cease operations or to allow for fund-raising and/or special events at the direction of the DEPARTMENT.

#### **Y. Security**

CONCESSIONAIRE shall be responsible for the security of the CONCESSION. CONCESSIONAIRE may install equipment, approved by the DEPARTMENT, and acting through Observatory management, which will assist in protecting the CONCESSION from theft, burglary, or vandalism. Any such equipment must be purchased, installed, and maintained by CONCESSIONAIRE.

## **SECTION 6. FACILITY IMPROVEMENT**

CONCESSIONAIRE will be responsible for completing the Facility Improvement projects submitted with CONCESSIONAIRE'S Proposal to CITY (See Exhibit K). It includes, but is not limited to floor polishing, demolition, installation of cash wrap, wall units, T-units, spinners, cube tables, tables, glass case pedestals, bookshelves, shelves, acrylic cubes, light fixtures, track lighting, LED lamps, and graphics. The total value of all Facility Improvements is One Hundred Seventy-Five Thousand Dollars (\$175,000.00).

CONCESSIONAIRE will be responsible for the cost of any changes to the current equipment designed into the space, all such changes subject to the prior approval of the DEPARTMENT.

All design, equipment, furnishings, etc., shall be subject to the prior review and (reasonable) approval of the DEPARTMENT.

Facility Improvements shall be completed no later than ninety (90) days after execution of the AGREEMENT, or within ninety (90) days of mutual agreement - scheduled with the DEPARTMENT (acting through Observatory management). The Facility Improvements become property of the CITY.

Invoices and receipts shall be submitted to the Department to document all expenses relating to the Facility Improvements. If actual cost is more than stated in this AGREEMENT, the CONCESSIONAIRE is still responsible for completing the projects. If, upon completion, actual cost is less than One Hundred Seventy-Five Thousand Dollars (\$175,000.00) the remaining amount must be invested in other improvements to the CONCESSION facility, as approved by the DEPARTMENT, within twelve (12) months.

## **SECTION 7. REFURBISHMENT AND REPLACEMENT FUND**

CONCESSIONAIRE shall set aside a reserve in the amount of one percent (1%) of total gross annual receipts from all CONCESSIONS, including website and mobile cart/kiosk sales, for the purpose of replacement of the display furniture and fixtures when they become worn. This reserve shall be cumulative and carry-over from year-to-year during the term of the AGREEMENT. In the event of AGREEMENT termination for any reason, any balance in this account will be transferred to the DEPARTMENT. These funds are not to be used for routine maintenance and repair of equipment (Section 5.G), or loose equipment replacement.

CONCESSIONAIRE shall obtain prior written approval from the DEPARTMENT, acting through Observatory management, on all items to be replaced using this fund.

CONCESSIONAIRE shall provide a monthly accounting of the use and balance of the fund, including dates, description of the items, and costs which the fund has used.

## **SECTION 8. REVENUE-SHARING PAYMENT**

A. As part of the consideration for CITY'S granting the CONCESSION rights hereinabove set forth, CONCESSIONAIRE shall pay to CITY a revenue-sharing fee of:

- Percentage of Gross Receipts of all Sales:

Annual Sales From	Annual Sales To	Revenue Share
\$1.00	\$1,000,000.00	25%
\$1,000,001.00	\$2,000,000.00	30%
\$2,000,001.00	\$3,000,000.00	35%
\$3,000,001.00+	-----	38%

or

- The Annual Minimum Revenue-Sharing Guarantee:

Years	Annual Minimum Revenue Share
1-5	\$400,000.00
6-10	\$420,000.00
11-15	\$442,000.00

whichever is greater.

Refer to Section 8.C for the definition of "Gross Receipts."

If the annual minimum revenue-sharing is not met by December 31st of each calendar year, the difference between the actual revenue-sharing payment received by the Department and the annual minimum revenue-sharing payment will be due to the Department by January 15th of the subsequent year, pro-rated as necessary for the first year of operation or fractional part thereof, and prorated as necessary for the final year of operation or fractional part thereof.

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

**B. Revenue-Sharing Payment Due:**

Said payment 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 completed Remittance Advice Form (Section 8.D) shall be addressed to:

DEPARTMENT OF RECREATION AND PARKS  
ATTENTION: Partnership and Revenue Branch/Concessions Unit  
P.O. Box 86328  
Los Angeles, California 90086

**C. 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 CONCESSIONAIRE;
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 CONCESSIONAIRE;
6. The value of any merchandise, supplies, or equipment exchanged or transferred from or to other business locations of CONCESSIONAIRE where such exchanges or transfers are not made for the purpose of avoiding a sale by CONCESSIONAIRE 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 CONCESSIONAIRE'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 CONCESSIONAIRE, 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, with the concurrence of both CONCESSIONAIRE and the DEPARTMENT, including discounts to employees, if concurred by the DEPARTMENT;
13. Credit/debit card fees.
14. Donations to FOTO received from patrons after a transaction has been completed. These are amounts either in whole, or as a remnant from a closed transaction, that are clearly itemized on the applicable receipt/s as a "donation." Proceeds from these donations shall be paid directly to FOTO, however, they will be itemized on the monthly rental remittance for the purposes of disclosure and official records. Collection of said donations is not mandatory.

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

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

**D. Monthly Revenue-Sharing Reports:**

CONCESSIONAIRE shall transmit with each revenue-sharing payment a Monthly Gross Receipts and Revenue-sharing Report, also referred to as a Remittance Advice Form (Exhibit D), each month for which revenue sharing payment is submitted.

**E. Late Payment Fee:**

Failure of CONCESSIONAIRE to pay any of the revenue-sharing payments or any other fees, charges, or payments required herein on time is a 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 CONCESSIONAIRE, 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, CONCESSIONAIRE agrees to pay 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 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. Payments shall be considered past due if postmarked after the fifteenth (15th) day of the month in which payment is due.

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

**F. Pro Rata Payment:**

If the execution or termination of the AGREEMENT falls on any date other than the first or last day of any calendar month, the applicable revenue share payment for said month, if it is based on a flat rate or a minimum revenue share, shall be paid by CONCESSIONAIRE to CITY pro rata in the same proportion that the number of days the AGREEMENT is in effect for that month bears to the total number of days in that month.

**SECTION 9. INSURANCE**

Concessionaire shall follow insurance guidelines in the STANDARD PROVISIONS (Exhibit A); provide and maintain the Required Insurance and Minimum Limits (Exhibit C); and follow the Instructions and Information on Complying with City Insurance Requirements documents (Exhibit C).

**SECTION 10. ADDITIONAL FEES AND CHARGES**

If CITY pays any sum or incurs any obligations or expense which CONCESSIONAIRE 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 CONCESSIONAIRE 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 CONCESSIONAIRE contrary to said conditions, covenants and agreements, CONCESSIONAIRE agrees to pay to CITY the sum so paid or the expense so incurred, including all interest, costs, (including CITY'S fifteen percent [15%] administrative overhead cost), damages and penalties. This amount shall be added to the rental payment thereafter due hereunder, and each and every part of the same shall be and

become additional rental payment, recoverable by CITY in the same manner and with like remedies as if it were originally a part of the basic rental payment set forth in Section 8 hereof.

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 CONCESSIONAIRE that the amount of such payment was necessary and reasonable. Should CITY elect to use its own operating and/or maintenance personnel in making any repairs, replacements and/or alterations and to charge CONCESSIONAIRE 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 CONCESSIONAIRE.

## **SECTION 11. MAINTENANCE OF PREMISES**

During all periods that the PREMISES are used or are under the control of the CONCESSIONAIRE for the uses, purposes, and occupancy aforesaid, CONCESSIONAIRE shall be responsible for all necessary janitorial duties and damage/maintenance repairs, to the satisfaction of the DEPARTMENT. The cause of said maintenance, cleaning and repairs may result from normal wear and tear, as well as vandalism.

### **A. Interior of Premises:**

#### **1. Areas to be Maintained by CONCESSIONAIRE:**

Subject to written approval by the DEPARTMENT, CONCESSIONAIRE shall, at its own expense, keep and maintain all the interior walls and surfaces of PREMISES and all improvements, fixtures, and utility systems which may now or hereafter exist thereon, whether installed by CITY or CONCESSIONAIRE. Improvements shall include all build-outs and appurtenances recessed into or attached by any method to the walls, ceiling, or floor of the CONCESSION.

#### **2. Duties:**

CONCESSIONAIRE'S maintenance duties shall include all sweeping, washing, servicing, repairing, replacing, cleaning, and interior painting that may be required to properly maintain the premises in a safe, clean, operable, and attractive condition. CONCESSIONAIRE shall provide for such repairs, replacements, rebuilding, and restoration as may be required with prior written approval by the DEPARTMENT (acting through Observatory management) to comply with the requirements hereof. Those duties shall also include electrical, mechanical, and plumbing maintenance in the interior of the premises, such as light fixtures, toilets, and faucets.

**B. Exterior of Premises and Common Passageways:**

CITY shall maintain the exterior of all buildings and will endeavor to perform all exterior repairs occasioned by normal wear and tear, and the elements, unless otherwise provided for in the AGREEMENT. Common passageways leading to other CONCESSION facilities or offices maintained by the DEPARTMENT which also lead to the PREMISES shall not be considered under the control of CONCESSIONAIRE for purposes of this Section.

**C. Correction of Conditions Leading to Damage:**

If CONCESSIONAIRE fails, after written notice, to correct such conditions which have led or, in the opinion of DEPARTMENT agents, could lead to significant damage to DEPARTMENT property, the DEPARTMENT may at its option, and in addition to all other remedies which may be available to it, repair, replace, rebuild, redecorate or paint any such CONCESSION included in said notice, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by CONCESSIONAIRE to the DEPARTMENT on demand.

**D. Property Damage and Theft Reporting:**

CONCESSIONAIRE shall work with Park Rangers to complete and submit to the DEPARTMENT a "Special Occurrence and Loss Report," (Exhibit F) 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 event of theft, burglary, or other crime committed on the PREMISES. The DEPARTMENT shall provide forms for this purpose.

**E. Damage or Destruction to Premises:**

**1. 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 CONCESSIONAIRE, its agents, officers, or employees, CONCESSIONAIRE shall be responsible for reimbursing CITY for the cost and expense incurred in making such repairs.

**2. 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 DEPARTMENT as again ready for use; provided, however, that if such damage is caused by the negligent acts or omissions of

CONCESSIONAIRE, its agents, officers, or employees, said fees and charges will not abate and CONCESSIONAIRE shall be responsible for the cost and expenses incurred in making such repairs.

### **3. 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, CONCESSIONAIRE 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 CONCESSIONAIRE, its agents, officers, or employees, said fees and charges shall not abate and CITY may, in its discretion, require CONCESSIONAIRE to repair and reconstruct the same within twelve (12) months of such destruction and CONCESSIONAIRE shall be responsible for reimbursing CITY for the cost and expenses incurred in making such repairs.

### **4. 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 CONCESSIONAIRE at the commencement of its operations hereunder. Redecoration and replacement of furniture, equipment and supplies included within CONCESSIONAIRE'S office furniture and equipment costs shall be the responsibility of CONCESSIONAIRE and any such redecoration and refurnishing/re-equipping shall be equivalent in quality to that originally installed.

### **F. Pest Control:**

CITY shall perform and pay for pest control in or on structures or areas maintained by CITY. CONCESSIONAIRE shall likewise, within its premises, provide pest control as needed to prevent the proliferation of pests, in addition to its routine hygiene practices. DEPARTMENT may direct CONCESSIONAIRE to take additional measures to abate pests, which are an immediate threat to public health or safety.

## **SECTION 12. PROHIBITED ACTS**

CONCESSIONAIRE shall not:

1. Use the PREMISES to conduct any other business operations of CONCESSIONAIRE not related to the CONCESSION;
2. Do or allow to be done anything which may interfere with the effectiveness or accessibility of utility, heating, ventilating, or air conditioning systems or portions thereof on the PREMISES or elsewhere on the CONCESSION, 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, sidewalks or walkways 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 CONCESSION or use the PREMISES for any purpose which is not essential to the CONCESSION operations;
4. Sell lottery merchandise, and shall not sell any food or beverage items;
5. 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 the DEPARTMENT;
6. Overload any floor or roof in the PREMISES;
7. 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 DEPARTMENT any and all keys to the interior or exterior doors on the PREMISES, whether said keys were furnished to or otherwise procured by CONCESSIONAIRE, and in the event of the loss of any keys furnished by DEPARTMENT, CONCESSIONAIRE shall pay CITY, on demand, the cost for replacement thereof;
8. 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 DEPARTMENT, 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 CONCESSIONAIRE 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;

9. 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 CONCESSIONAIRE 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;
10. Permit undue loitering on or about the PREMISES;
11. Use the PREMISES in any manner that will constitute waste;
12. Use or allow the PREMISES to be used for, any improper, immoral, or unlawful purposes;
13. Install or allow the installation of video games, vending machines, Automated Teller Machines (ATMs), or other product/service related machine without the prior written approval of the DEPARTMENT, acting through Observatory management;
14. 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; nor
15. Permit smoking in the PREMISES in conformance with AB13 California Smoke-Free Workplace Law. Any exceptions to this policy will require the prior written approval of the DEPARTMENT.

## **SECTION 13. PERFORMANCE DEPOSIT**

### **A. Deposit Amount:**

CONCESSIONAIRE shall provide the DEPARTMENT a sum equal to One Hundred Thousand Dollars (\$100,000.00) for the term of the AGREEMENT. As the CONCESSIONAIRE is the incumbent from the previous agreement, the current Twenty Thousand Dollars (\$20,000.00) deposit will be retained, however, the difference between the previous deposit and the current deposit will be due within thirty (30) days of execution of the AGREEMENT.

**B. Form of Deposit:**

CONCESSIONAIRE'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:**

CONCESSIONAIRE unconditionally agrees that in the event of any material default of this AGREEMENT by CONCESSIONAIRE 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 the DEPARTMENT.

**D. Maintenance of Deposit:**

CITY shall hold CONCESSIONAIRE'S deposit during the entire term of the AGREEMENT.

**E. Return of Deposit to CONCESSIONAIRE:**

Said Deposit shall be returned to CONCESSIONAIRE 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 CONCESSIONAIRE as shown by any exit audits performed by the CITY, or as compensation to CITY material breach by CONCESSIONAIRE of this AGREEMENT. CONCESSIONAIRE 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 14. BUSINESS RECORDS**

**A. Employee Fidelity Bonds:**

At the DEPARTMENT'S discretion, adequate employee fidelity bonds may be required to be maintained by CONCESSIONAIRE covering all its employees who handle money.

**B. Cash and Record Handling Requirements:**

If requested by DEPARTMENT, CONCESSIONAIRE shall prepare a description of its cash handling and sales recording systems and equipment to be used for operation of the CONCESSION, which shall be submitted to DEPARTMENT for approval.

CONCESSIONAIRE shall be required to maintain a method of accounting in compliance with Generally Accepted Accounting Principles of the CONCESSION, which shall correctly and accurately reflect the gross receipts and disbursements received or made by CONCESSIONAIRE from the operation of the CONCESSION. The method of accounting, including bank accounts, established for the CONCESSION shall be

separate from the accounting systems used for any other business operated by CONCESSIONAIRE or for recording CONCESSIONAIRE'S personal financial affairs. Such method shall include keeping 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, sales tax returns, checks, and other documents proving payment of sums shown.
4. Cash register tapes so that day-to-day sales can be identified. A cash register must be used in public view, which prints a dated double tape, indicating each sale and the daily total.
5. Any other accounting records that CITY, in its sole discretion, deems necessary for proper reporting of receipts.

**C. Method of Recording Gross Receipts:**

Unless otherwise specified in the AGREEMENT, CONCESSIONAIRE and approved SUB-CONTRACTORS shall obtain and install a cash register(s) on which it shall record all gross sales. The cash register shall be non-resettable and sufficient to supply an accurate recording of all sales on tape. CONCESSIONAIRE shall not purchase or install the register before obtaining the DEPARTMENT'S written approval of the specific register to be purchased. All cash registers shall have a price display, which is and shall remain at all times visible to the public.

**D. Annual Statement of Gross Receipts and Expenses:**

CONCESSIONAIRE shall transmit certified financial statements for the CONCESSION operations, prepared in a form acceptable to the DEPARTMENT, on or before March 15th for the foregoing calendar year during the term of the AGREEMENT. Notwithstanding the expiration of the AGREEMENT, 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.

The annual certified financial statements shall include an attachment containing all gross receipts and expenses.

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

**E. Audits:**

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 CONCESSIONAIRE 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 CONCESSIONAIRE to CITY shall be found to be less than the amount of gross sales disclosed by such audit and observation, CONCESSIONAIRE shall pay CITY within thirty (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, CONCESSIONAIRE shall also pay the cost of the audit.

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.

**SECTION 15. REGULATIONS, INSPECTION, AND DIRECTIVES**

**A. Constitutional and Other Limits on CONCESSIONAIRE'S Rights to Exclusivity:** Notwithstanding exclusivity granted to CONCESSIONAIRE by the terms of this AGREEMENT, the CITY in its discretion may require CONCESSIONAIRE, without any reduction in rent or other valuable consideration to CONCESSIONAIRE, 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:**

1. Any and all applicable rules, regulations, orders, and restrictions which are now in force or which may be hereafter adopted by CITY with respect to the operation of the CONCESSION;
2. Any and all orders, directions or conditions issued, given, or imposed by DEPARTMENT with respect to the use of the roadways, driveways, curbs, sidewalks, parking areas, or public areas adjacent to the PREMISES;
3. 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 the CONCESSIONAIRE'S operations; and,

4. 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 CONCESSIONAIRE from CITY or the DEPARTMENT and any errors or omissions therefrom shall not relieve CONCESSIONAIRE of its obligations to faithfully perform the conditions therein. CONCESSIONAIRE shall immediately comply with any written request or order submitted to it by CITY or the DEPARTMENT.

**D. Right of Inspection and Access to CONCESSION:**

CITY and the DEPARTMENT, 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 CONCESSIONAIRE 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 CONCESSIONAIRE is complying with the terms and conditions of the AGREEMENT.
2. To observe transactions between the CONCESSIONAIRE 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 CONCESSIONAIRE'S employees, subcontractor employees and the methods for recording receipts.

The information gathered on these inspections may be used to evaluate CONCESSIONAIRE 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 said CITY. Such determination shall not be unreasonable and shall take into account the business considerations presented by CONCESSIONAIRE.

**F. Business Inclusion Program:**

CONCESSIONAIRE 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 G). CONCESSIONAIRE certifies that it has complied with Executive Directive No. 14 regarding the Outreach Program. CONCESSIONAIRE shall not change any of these designated sub consultants and subcontractors, nor shall CONCESSIONAIRE 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, CONCESSIONAIRE must submit the MBE/WBE/SBE/EBE/DVBE/OBE Utilization Profile, Schedule B (Exhibit H) when submitting the Monthly Event Closing Statement. Upon completion of the project, a summary of these records shall be prepared on the "Final Subcontracting Report" form, Schedule C (Exhibit I) and certified correct by the CONCESSIONAIRE or its authorized representative. The completed Schedule C shall be furnished to the DEPARTMENT within fifteen (15) working days after completion of the 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. CONCESSIONAIRE shall, prior to the execution of the contract, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that CONCESSIONAIRE 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. CONCESSIONAIRE further pledges that it will, during the term of the AGREEMENT:
  - a. At least seven (7) 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, the CONCESSIONAIRE 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 the CONCESSIONAIRE interviewed and the reasons why referred individuals were not hired.
3. Subcontract entered into by the CONCESSIONAIRE relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of CONCESSIONAIRE, and shall incorporate the FSHO.
4. CONCESSIONAIRE shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the LAAC the DAA has determined that the CONCESSIONAIRE intentionally violated or used hiring practices for the

purpose of avoiding the article, the determination must be documented in the Awarding Authority's CONCESSIONAIRE Evaluation, required under LAAC Section 10.39 et seq., and must be documented in each of the CONCESSIONAIRE's subsequent CONCESSIONAIRE Responsibility Questionnaires submitted under LAAC Section 10.40 et seq. This measure does not limit the CITY'S authority to act under this article.

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

**H. CEC Form 50:**

Certain contractors agree to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance if those contractors qualify as a lobbying entity under Los Angeles Municipal Code 48.02. CEC Form 50 attached as Exhibit J. 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)**

Persons who submit a response to this solicitation (bidders) are subject to Charter Section 470(c) (12) and related ordinances. As a result, bidders 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 they submit the response until either the contract is approved or, for successful bidders, twelve (12) months after the contract is signed. The bidder's principals and subcontractors performing One Hundred Thousand Dollars (\$100,000.00) or more in work on the contract, 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 bidders to identify their principals, their subcontractors performing One Hundred Thousand Dollars (\$100,000.00) or more in work on the contract, and the principals of those subcontractors. Bidders 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. Bidders who fail to comply with City law may be subject to penalties, termination of contract, and debarment. Additional information regarding restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960 or ethics.lacity.org.

**SECTION 16. SURRENDER OF POSSESSION**

CONCESSIONAIRE 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 is or may be

hereafter improved by CONCESSIONAIRE or CITY, normal use and wear and tear thereof excepted.

No agreement of surrender or to accept a surrender shall be valid unless and until the same is in writing and signed by the duly authorized representatives of CITY and CONCESSIONAIRE. 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 CONCESSIONAIRE under the AGREEMENT.

## **SECTION 17. FORCE MAJEURE**

The term "force majeure" as used herein is defined as acts of God; strikes, lockouts, or other labor disturbances (when not brought solely against CONCESSIONAIRE, its subcontractors, or material suppliers); acts of public enemy, blockades, wars, terrorism, insurrections, or riots; epidemics; landslides, earthquakes, fires, storms, or floods; arrests, title disputes; governmental restraints, either federal or state, civil or military; civil disturbances; explosions; so long as the above causes or events are beyond the control of the affected party.

Should CONCESSIONAIRE be delayed, materially interrupted or prevented, in whole or in part, from performing any obligations or conditions hereunder or from exercising its rights by reason of or as a result of any force majeure, it shall be excused from performing such obligations or conditions during such period of delay, material interruption, or prevention. Should either party be delayed, materially interrupted or prevented from performing any obligation or exercising any right hereunder for a period exceeding six (6) months by a force majeure event, the delayed party shall meet and confer with the other party on plans and schedule to resolve delay or commence performance.

However, without limiting the preceding language in this Section, should national or international events occur such as terrorism or the threat of terrorism have a material impact on the ability of CONCESSIONAIRE to provide service on the PREMISES and meet its financial obligations to the CITY under this AGREEMENT, CITY and CONCESSIONAIRE shall meet and confer in good faith to review and determine what remedies, relief or abatement is equitable or appropriate as a result of or response to such events or terrorism.

## **SECTION 18. LIMITS ON CONCESSIONAIRE'S RIGHTS TO EXCLUSIVITY**

Notwithstanding exclusivity granted to Concessionaire by the terms of this Agreement, the City in its discretion may require Concessionaire, without any reduction in rent or other valuable consideration to Concessionaire, 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.

## **SECTION 19. 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: Partnership and Revenue Branch/Concessions Unit  
P. O. Box 86328  
Los Angeles, California 90086

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 CONCESSIONAIRE with written notice of any address change within thirty (30) days of the occurrence of said change.

### **B. To CONCESSIONAIRE:**

The execution of any notice to CONCESSIONAIRE by DEPARTMENT shall be as effective for CONCESSIONAIRE 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 CONCESSIONAIRE or to any officer or responsible employee of CONCESSIONAIRE; may be deposited in the United States mail; or may be sent via electronic mail (E-mail).

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

**Event Network, Inc.  
9606 Aero Drive, Suite 1000  
San Diego, CA 92123**

Attn: Jerry Gilbert, Principal  
(503) 635-1249  
[Jerry.Gilbert@eventnetwork.com](mailto:Jerry.Gilbert@eventnetwork.com)

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

## **SECTION 20. FAILURE TO TIMELY EXECUTE AGREEMENT**

Should CONCESSIONAIRE fail to execute this AGREEMENT and deliver it to DEPARTMENT within thirty (30) days of this AGREEMENT's being provided to CONCESSIONAIRE for its execution, the DEPARTMENT has the right, at its sole

discretion, to rescind the award of the CONCESSION to CONCESSIONAIRE, in which case this AGREEMENT, even if already executed by DEPARTMENT, is of no force or effect.

### **SECTION 21. RATIFICATION**

At the request of the DEPARTMENT, should there be a need therefor, CONCESSIONAIRE will begin performance of the services required hereunder prior to the execution hereof. By its execution hereof, the DEPARTMENT hereby accepts such service subject to all the terms, covenants, and conditions of this AGREEMENT, and ratifies its AGREEMENT with CONCESSIONAIRE for such services.

### **SECTION 22. 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 to be attached to and made part of this AGREEMENT by reference:

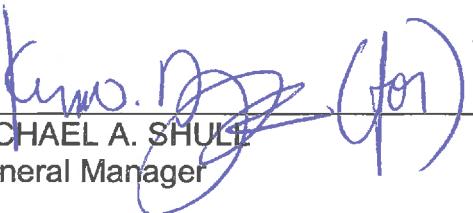
- A. Standard Provisions for City Contracts (Rev. 3/09)
- B. Premises Map
- C. Required Insurance and Minimum Limits; Instructions and Information on Complying with City Insurance Requirements
- D. Remittance Advice Form
- E. Form General No. 87 "Non-Employee Accident or Illness Report"
- F. Special Occurrence and Loss Report
- G. Schedule A, MBE/WBE/SBE/EBE/DVBE/OBE Subcontractors Information Form
- H. Schedule B, MBE/WBE/SBE/EBE/DVBE/OBE Utilization Profile
- I. Schedule C, Final Subcontracting Report
- J. CEC Form 50, Bidder Certification
- K. Facility Improvement Excerpt - Proposal from Event Network, Inc.

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 B, 4) Exhibit C, 5) Exhibit D, 6) Exhibit K, 7) Exhibit E, 8) Exhibit F, 9) Exhibit G, 10) Exhibit H, 11) Exhibit I, and 12) Exhibit J.

*(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 CONCESSIONAIRE 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 Board of Recreation and Park Commissioners

BY:  DATE: 10/21/2016  
MICHAEL A. SHULTZ  
General Manager

Event Network, Inc. - CONCESSIONAIRE

BY:  DATE: 10/17/16

Title: Principal

BY:  DATE: 10/19/16

Title: CFO

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

BY:  DATE: 10/26/16  
STREFAN FAUBLE  
Deputy City Attorney III

Business Tax Registration Certificate Number: 000220204900019

Internal Revenue Service Taxpayer Identification Number: 33-0556105

AGREEMENT Number: 280

DEPARTMENT OF RECREATION  
AND PARKS

BOARD OF COMMISSIONERS

SYLVIA PATSAOURAS  
PRESIDENT

LYNN ALVAREZ  
VICE PRESIDENT

TAFARAI BAYNE  
NICOLE CHASE  
JOSEPH HALPER

TAKISHA SARDIN  
BOARD SECRETARY  
(213) 202-2640

City of Los Angeles  
California



ERIC GARCETTI  
MAYOR

MICHAEL A. SHULL  
GENERAL MANAGER

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

CATHIE SANTO DOMINGO  
ASSISTANT GENERAL MANAGER

MATTHEW RUDNICK  
ASSISTANT GENERAL MANAGER

JIMMY KIM  
ACTING ASSISTANT GENERAL MANAGER  
(213) 202-2633 FAX (213) 202-2614

April 26, 2022

Sent via email

Larry Gilbert, President  
Event Network LLC  
9608 Aero Dr. Ste #1000  
San Diego, CA 92123

Attention: Larry Gilbert

Gentlepersons:

Attached is an Amendment to Agreement No. 280, executed April 26, 2022 between the City of Los Angeles, by and through its Board of Recreation and Park Commissioners, and your organization, to extend the term equal to the duration of government-ordered closure due to the COVID-19 pandemic; (b) exercise the five (5) year option to renew; (3) waive the Annual Minimum Revenue-Sharing Guarantee (AMRSG) as set forth in this Report;

If you have any questions with regard to the Amendment to this Agreement at this time, please contact the undersigned at (213) 202-2640.

Very truly yours,

BOARD OF RECREATION AND  
PARK COMMISSIONERS

TAKISHA SARDIN  
Acting  
Commission Executive Assistant II

Attachment: Amendment to Agreement No. 280

cc: City Controller  
City Attorney  
Departmental Chief Accountant  
Rahulan Kathir, Management Assistant, Concessions Division, Special Operations  
Branch



**AMENDMENT NO. 1 TO CONCESSION AGREEMENT NO. 280  
FOR THE OPERATION AND MAINTENANCE OF GRIFFITH OBSERVATORY  
BOOKSTORE/GIFT SHOP CONCESSION**

THIS AMENDMENT NO.1 TO CONCESSION AGREEMENT NO. 280 ("AMENDMENT") is made and entered into this 26 th day of April, 2022, by and between the CITY OF LOS ANGELES, a municipal corporation (hereinafter referred to as "CITY"), acting by and through its Board of Recreation and Park Commissioners (hereinafter referred to as "BOARD") and Event Network, LLC (formerly Event Network, Inc. and hereinafter referred to as "CONCESSIONAIRE").

**WITNESSETH**

Whereas, on June 15, 2016, the BOARD approved Concession Agreement No. 280 (BR 16-146) (hereinafter referred to as "AGREEMENT") for the Griffith Observatory Bookstore and Gift Shop (hereinafter referred to as "CONCESSION"); and

Whereas, on September 30, 2016 the City Council approved the AGREEMENT for the CONCESSION (Council File 06-0331) and authorized the Board President and Secretary to execute the AGREEMENT on behalf of the CITY; and

Whereas, the CITY and CONCESSIONAIRE desire to amend the AGREEMENT to extend the contract term until December 31, 2027 by exercising one of the CITY's options to extend the term of the AGREEMENT as provided therein by an additional five (5) years as well as extending the term for an additional period of approximately 15 months to account for the closure and limited operations of the CONCESSION due to the COVID-19 pandemic; and

Whereas, the CITY and CONCESSIONAIRE desire to amend the AGREEMENT to waive the Annual Minimum Revenue-Sharing Guarantee ("AMRSG") for certain years of the AGREEMENT.

Now, therefore, the CITY and CONCESSIONAIRE hereby mutually agree to amend the AGREEMENT as follows:

**1. SECTION 4. TERM OF AGREEMENT**

Delete the first paragraph of Section 4 in its entirety and replace with:

"The term of this Agreement shall commence on October 1, 2016 terminate midnight, the evening of December 31, 2027. The CITY shall have one option to extend the term of this Agreement by five years, which shall be exercisable at the sole discretion of the Department, along with approval of the Board of Recreation and Park Commissioners ("BOARD"). See Ratification (Section 21)."

## **2. SECTION 8. REVENUE-SHARING PAYMENT**

In subsection A., delete the Annual Minimum Revenue-Sharing Guarantee table in its entirety and replace with the following table:

Period	Annual Minimum
October 1, 2016-December 31, 2019	\$400,000
January 1, 2020-December 31, 2021	Percentage of gross receipts
January 1, 2022 -December 31, 2027	\$420,000
January 1, 2028-December 31, 2032 (if 2 <sup>nd</sup> extension is exercised)	\$442,000

In subsection A., after the paragraph, “Refer to Section 8.C for the definition of “Gross Receipts.” add the following three (3) paragraphs:

“For the calendar years 2020 and 2021, the Annual Minimum Revenue-Sharing Guarantee (AMRSRG) shall not apply. Concessionaire shall pay revenue-share through Percentage of Gross Receipts of all Sales.

The AMRSRG shall be \$420,000 from January 1, 2022 through December 31, 2027.

If the BOARD grants the final five-year contract renewal option, the AMRSRG shall be \$442,000, for each calendar year from January 1, 2028 through December 31, 2032.”

In subsection A., delete the third paragraph beginning with “If the Annual minimum,” in its entirety and replace with:

“If the annual minimum revenue-sharing is not met by December 31<sup>st</sup> of each calendar year, the difference between the actual revenue-sharing payment received by the Department and the AMRSRG will be due to the Department by January 31<sup>st</sup> of the following year, prorated as necessary for the first year of operation or fractional part thereof, and prorated as necessary for the final year of operation or a fractional part thereof.”

### **3. SECTION 22. INCORPORATION OF DOCUMENTS**

For Exhibit A:

Replace the term "Standard Provisions for City Contracts Rev. 3/09" with "Standard Provisions for City Contracts (Rev. 10/21, v.4)".

### **4. EXHIBITS**

Exhibit A of the AGREEMENT is hereby replaced in its entirety with Exhibit A of this AMENDMENT.

#### ATTACHMENTS

For this Amendment No. 1 to Concession Agreement No. 280 document, the following is attached:

Exhibit A - Standard Provisions for City Contracts (Rev. 10/21, v.4)

(Signature Page to Follow)

IN WITNESS WHEREOF, the parties hereto have caused this AMENDMENT NO. 1 TO CONCESSION AGREEMENT NO. 280, to be executed by their duly authorized representatives.

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners.

BY: Sylvia Pataneas DATE: 04/26/22  
President

BY: Sakisha Sardis DATE: 04/26/22  
Secretary

Event Network, LLC (formerly, Event Network, Inc.) - CONCESSIONAIRE

BY: Jerry Gilbert DATE: April 26, 2022  
Name: Jerry Gilbert  
Managing Member

APPROVED AS TO FORM:

MICHAEL N. FUEUR  
City Attorney

BY: Steven Hong DATE: 4/26/22  
Steven Hong  
Deputy City Attorney

EXHIBIT A

STANDARD PROVISIONS FOR CITY CONTRACTS (REV. 10/21, v. 4)

**ATTACHMENT A**

Standard Provisions for City Contracts (Rev. 10/21) [v.4]

## STANDARD PROVISIONS FOR CITY CONTRACTS

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## STANDARD PROVISIONS FOR CITY CONTRACTS

### **PSC-1. Construction of Provisions and Titles Herein**

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Contract. The language of this Contract shall be construed according to its fair meaning and not strictly for or against **CITY** or **CONTRACTOR**. The word "**CONTRACTOR**" includes the party or parties identified in this Contract. The singular shall include the plural and if there is more than one **CONTRACTOR**, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

### **PSC-2. Applicable Law, Interpretation and Enforcement**

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. **CONTRACTOR** shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this Contract with no additional compensation paid to **CONTRACTOR**.

In any action arising out of this Contract, **CONTRACTOR** consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any federal, state or local law or regulation, the validity of the remaining parts, terms or provisions of this Contract shall not be affected.

### **PSC-3. Time of Effectiveness**

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A. This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR**;
- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

#### **PSC-4. Integrated Contract**

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter of this Contract, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in the provisions of PSC-5 hereof.

#### **PSC-5. Amendment**

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-3.

#### **PSC-6. Excusable Delays**

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Contract, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of **CONTRACTOR** shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both **CONTRACTOR** and Subcontractor, and without any fault or negligence of either of them. In such case, **CONTRACTOR** shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit **CONTRACTOR** to perform timely. As used in this Contract, the term "Subcontractor" means a subcontractor at any tier.

In the event **CONTRACTOR'S** delay or failure to perform arises out of a Force Majeure Event, **CONTRACTOR** agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

#### **PSC-7. Waiver**

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

## **PSC-8. Suspension**

At **CITY'S** sole discretion, **CITY** may suspend any or all services provided under this Contract by providing **CONTRACTOR** with written notice of suspension. Upon receipt of the notice of suspension, **CONTRACTOR** shall immediately cease the services suspended and shall not incur any additional obligations, costs or expenses to **CITY** until **CITY** gives written notice to recommence the services.

## **PSC-9. Termination**

### A. Termination for Convenience

**CITY** may terminate this Contract for **CITY'S** convenience at any time by providing **CONTRACTOR** thirty days written notice. Upon receipt of the notice of termination, **CONTRACTOR** shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. **CITY** shall pay **CONTRACTOR** its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by **CONTRACTOR** to effect the termination. Thereafter, **CONTRACTOR** shall have no further claims against **CITY** under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights **CITY** is entitled to, shall become **CITY** property upon the date of the termination. **CONTRACTOR** agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

### B. Termination for Breach of Contract

1. Except as provided in PSC-6, if **CONTRACTOR** fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, **CITY** may give **CONTRACTOR** written notice of the default. **CITY'S** default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of **CITY**. Additionally, **CITY'S** default notice may offer **CONTRACTOR** an opportunity to provide **CITY** with a plan to cure the default, which shall be submitted to **CITY** within the time period allowed by **CITY**. At **CITY'S** sole discretion, **CITY** may accept or reject **CONTRACTOR'S** plan. If the default cannot be cured or if **CONTRACTOR** fails to cure within the period allowed by **CITY**, then **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2. If the default under this Contract is due to **CONTRACTOR'S** failure to maintain the insurance required under this Contract, **CONTRACTOR** shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subcontractors of the loss of insurance coverage and Contractor's obligation to suspend performance of

services. **CONTRACTOR** shall not recommence performance until **CONTRACTOR** is fully insured and in compliance with **CITY'S** requirements.

3. If a federal or state proceeding for relief of debtors is undertaken by or against **CONTRACTOR**, or if **CONTRACTOR** makes an assignment for the benefit of creditors, then **CITY** may immediately terminate this Contract.
4. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates **CITY'S** laws, regulations or policies relating to lobbying, then **CITY** may immediately terminate this Contract.
5. Acts of Moral Turpitude
  - a. **CONTRACTOR** shall immediately notify **CITY** if **CONTRACTOR** or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
  - b. If **CONTRACTOR** or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, **CITY** may immediately terminate this Contract.
  - c. If **CONTRACTOR** or a Key Person is charged with or indicted for an Act of Moral Turpitude, **CITY** may terminate this Contract after providing **CONTRACTOR** an opportunity to present evidence of **CONTRACTOR'S** ability to perform under the terms of this Contract.
  - d. Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

- e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of **CONTRACTOR**.
  - 6. In the event **CITY** terminates this Contract as provided in this section, **CITY** may procure, upon such terms and in the manner as **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to **CITY** for all of its costs and damages, including, but not limited to, any excess costs for such services.
  - 7. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.
  - 8. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- C. In the event that this Contract is terminated, **CONTRACTOR** shall immediately notify all employees and Subcontractors, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

#### **PSC-10. Independent Contractor**

**CONTRACTOR** is an independent contractor and not an agent or employee of **CITY**. **CONTRACTOR** shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of **CITY**.

#### **PSC-11. Contractor's Personnel**

Unless otherwise approved by **CITY**, **CONTRACTOR** shall use its own employees to perform the services described in this Contract. **CITY** has the right to review and approve any personnel who are assigned to work under this Contract. **CONTRACTOR** shall remove personnel from performing work under this Contract if requested to do so by **CITY**.

**CONTRACTOR** shall not use Subcontractors to assist in performance of this Contract without the prior written approval of **CITY**. If **CITY** permits the use of Subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of this Contract and paying all Subcontractors. **CITY** has the right to approve **CONTRACTOR'S** Subcontractors, and **CITY** reserves the right to request replacement of any

Subcontractor. **CITY** does not have any obligation to pay **CONTRACTOR'S** Subcontractors, and nothing herein creates any privity of contract between **CITY** and any Subcontractor.

#### **PSC-12. Assignment and Delegation**

**CONTRACTOR** may not, unless it has first obtained the written permission of **CITY**:

- A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

#### **PSC-13. Permits**

**CONTRACTOR** and its directors, officers, partners, agents, employees, and Subcontractors, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance of this Contract. **CONTRACTOR** shall immediately notify **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to **CONTRACTOR'S** performance of this Contract.

#### **PSC-14. Claims for Labor and Materials**

**CONTRACTOR** shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any **CITY** property (including reports, documents, and other tangible or intangible matter produced by **CONTRACTOR** hereunder), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this Contract.

#### **PSC-15. Current Los Angeles City Business Tax Registration Certificate Required**

For the duration of this Contract, **CONTRACTOR** shall maintain valid Business Tax Registration Certificate(s) as required by **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

#### **PSC-16. Retention of Records, Audit and Reports**

**CONTRACTOR** shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form or as otherwise approved by **CITY**. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by **CITY**, (2) the expiration of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized **CITY** personnel or **CITY'S** representatives at any time. **CONTRACTOR** shall provide any reports requested by **CITY** regarding

performance of this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, **CONTRACTOR** may, upon **CITY'S** written approval, submit the required information to **CITY** in an electronic format, e.g. USB flash drive, at the expiration or termination of this Contract.

#### **PSC-17. Bonds**

All bonds required by **CITY** shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 *et seq.*, as amended from time.

#### **PSC-18. Indemnification**

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

#### **PSC-19. Intellectual Property Indemnification**

**CONTRACTOR**, at its own expense, shall defend, indemnify, and hold harmless the **CITY**, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by **CONTRACTOR**, or its Subcontractors, in performing the work under this Contract; or (2) as a result of **CITY'S** actual or intended use of any Work Product (as defined in PSC-21) furnished by **CONTRACTOR**, or its Subcontractors, under this Contract. The rights and remedies of **CITY** provided in this section shall not be exclusive

and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

**PSC-20. Intellectual Property Warranty**

**CONTRACTOR** represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

**PSC-21. Ownership and License**

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this Contract including, without limitation, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by **CONTRACTOR** or its Subcontractors under this Contract (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of **CITY** for its use in any manner **CITY** deems appropriate. **CONTRACTOR** hereby assigns to **CITY** all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

**CONTRACTOR** agrees that a monetary remedy for breach of this Contract may be inadequate, impracticable, or difficult to prove and that a breach may cause **CITY** irreparable harm. **CITY** may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude **CITY** from seeking or obtaining any other relief to which **CITY** may be entitled.

For all Work Products delivered to **CITY** that are not originated or prepared by **CONTRACTOR** or its Subcontractors under this Contract, **CONTRACTOR** shall secure a grant, at no cost to **CITY**, for a non-exclusive perpetual license to use such Work Products for any **CITY** purposes.

**CONTRACTOR** shall not provide or disclose any Work Product to any third party without prior written consent of **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract shall include this provision to contractually bind its Subcontractors performing work under this Contract such that **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein.

## **PSC-22. Data Protection**

- A. **CONTRACTOR** shall protect, using the most secure means and technology that is commercially available, **CITY**-provided data or consumer-provided data acquired in the course and scope of this Contract, including but not limited to customer lists and customer credit card or consumer data, (collectively, the "City Data"). **CONTRACTOR** shall notify **CITY** in writing as soon as reasonably feasible, and in any event within twenty-four hours, of **CONTRACTOR'S** discovery or reasonable belief of any unauthorized access of City Data (a "Data Breach"), or of any incident affecting, or potentially affecting City Data related to cyber security (a "Security Incident"), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. **CONTRACTOR** shall begin remediation immediately. **CONTRACTOR** shall provide daily updates, or more frequently if required by **CITY**, regarding findings and actions performed by **CONTRACTOR** until the Data Breach or Security Incident has been effectively resolved to **CITY'S** satisfaction. **CONTRACTOR** shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with **CITY**. At **CITY'S** sole discretion, **CITY** and its authorized agents shall have the right to lead or participate in the investigation. **CONTRACTOR** shall cooperate fully with **CITY**, its agents and law enforcement.
- B. If **CITY** is subject to liability for any Data Breach or Security Incident, then **CONTRACTOR** shall fully indemnify and hold harmless **CITY** and defend against any resulting actions.

## **PSC-23. Insurance**

During the term of this Contract and without limiting **CONTRACTOR'S** obligation to indemnify, hold harmless and defend **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 1 hereto). The insurance must: (1) conform to **CITY'S** requirements; (2) comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

## **PSC-24. Best Terms**

Throughout the term of this Contract, **CONTRACTOR**, shall offer **CITY** the best terms, prices, and discounts that are offered to any of **CONTRACTOR'S** customers for similar goods and services provided under this Contract.

## **PSC-25. Warranty and Responsibility of Contractor**

**CONTRACTOR** warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within **CONTRACTOR'S** profession, doing the same or similar work under the same or similar circumstances.

## **PSC-26. Mandatory Provisions Pertaining to Non-Discrimination in Employment**

Unless otherwise exempt, this Contract is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. **CONTRACTOR** shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and **CITY**. In performing this Contract, **CONTRACTOR** shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Contract by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Equal Employment Practices" provisions of this Contract.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Affirmative Action Program" provisions of this Contract.

Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

## **PSC-27. Child Support Assignment Orders**

**CONTRACTOR** shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, **CONTRACTOR** shall fully comply with all applicable State and Federal employment reporting requirements. Failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract. Failure of **CONTRACTOR** or principal owner to cure

the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-28. Living Wage Ordinance**

**CONTRACTOR** shall comply with the Living Wage Ordinance, LAAC Section 10.37 *et seq.*, as amended from time to time. **CONTRACTOR** further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-29. Service Contractor Worker Retention Ordinance**

**CONTRACTOR** shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-30. Access and Accommodations**

**CONTRACTOR** represents and certifies that:

- A. **CONTRACTOR** shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- B. **CONTRACTOR** shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. **CONTRACTOR** shall provide reasonable accommodation upon request to ensure equal access to **CITY**-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

**CONTRACTOR** understands that **CITY** is relying upon these certifications and representations as a condition to funding this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-31. Contractor Responsibility Ordinance**

**CONTRACTOR** shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 *et seq.*, as amended from time to time.

**PSC-32. Business Inclusion Program**

Unless otherwise exempted prior to bid submission, **CONTRACTOR** shall comply with all aspects of the Business Inclusion Program as described in the Request for Proposal/Qualification process, throughout the duration of this Contract. **CONTRACTOR** shall utilize the Business Assistance Virtual Network (“BAVN”) at <https://www.labavn.org/>, to perform and document outreach to Minority, Women, and Other Business Enterprises. **CONTRACTOR** shall perform subcontractor outreach activities through BAVN. **CONTRACTOR** shall not change any of its designated Subcontractors or pledged specific items of work to be performed by these Subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of **CITY**.

**PSC-33. Slavery Disclosure Ordinance**

**CONTRACTOR** shall comply with the Slavery Disclosure Ordinance, LAAC Section 10.41 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-34. First Source Hiring Ordinance**

**CONTRACTOR** shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-35. Local Business Preference Ordinance**

**CONTRACTOR** shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-36. Iran Contracting Act**

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with **CITY** for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit."

**PSC-37. Restrictions on Campaign Contributions and Fundraising in City Elections**

Unless otherwise exempt, if this Contract is valued at \$100,000 or more and requires approval by an elected **CITY** office, **CONTRACTOR**, **CONTRACTOR'S** principals, and **CONTRACTOR'S** Subcontractors expected to receive at least \$100,000 for performance under the Contract, and the principals of those Subcontractors (the “Restricted Persons”)

shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles **CITY** to terminate this Contract and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected **CITY** officials or candidates for elected **CITY** office for twelve months after this Contract is signed. Additionally, a **CONTRACTOR** subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any **CONTRACTOR** subject to Charter Section 470(c)(12) shall include the following notice in any contract with any Subcontractor expected to receive at least \$100,000 for performance under this Contract:

**"Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections**

You are a subcontractor on City of Los Angeles Contract # \_\_\_\_\_ . Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles ("CITY") officials and candidates for elected **CITY** office for twelve months after the **CITY** contract is signed. You are required to provide the names and contact information of your principals to the **CONTRACTOR** and to amend that information within ten business days if it changes during the twelve month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at ethics.lacity.org or by calling the Los Angeles City Ethics Commission at (213) 978-1960."

**PSC-38.** Contractors' Use of Criminal History for Consideration of Employment Applications

**CONTRACTOR** shall comply with the City Contractors' Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-39.** Limitation of City's Obligation to Make Payment to Contractor

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for **CITY** to comply with its governing legal requirements, **CITY** shall have no obligation to make any payments to **CONTRACTOR** unless **CITY** shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract. **CONTRACTOR** agrees that any services provided by **CONTRACTOR**, purchases made by **CONTRACTOR** or expenses incurred by **CONTRACTOR** in excess of the appropriation(s) shall be free and without charge to **CITY** and **CITY** shall have no obligation to pay for the services, purchases or expenses. **CONTRACTOR** shall have no obligation to provide any services,

provide any equipment or incur any expenses in excess of the appropriated amount(s) until **CITY** appropriates additional funds for this Contract.

**PSC-40. Compliance with Identity Theft Laws and Payment Card Data Security Standards**

**CONTRACTOR** shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act ("FACTA"), including its requirement relating to the content of transaction receipts provided to Customers. **CONTRACTOR** also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards ("PCI DSS"). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, **CONTRACTOR** shall verify proper truncation of receipts in compliance with FACTA.

**PSC-41. Compliance with California Public Resources Code Section 5164**

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, **CONTRACTOR** shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by **CITY**. **CONTRACTOR** is required to have all employees, volunteers and Subcontractors (including all employees and volunteers of any Subcontractor) of **CONTRACTOR** working on premises to pass a fingerprint and background check through the California Department of Justice at **CONTRACTOR'S** sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

**PSC-42. Possessory Interests Tax**

Rights granted to **CONTRACTOR** by **CITY** may create a possessory interest. **CONTRACTOR** agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, **CONTRACTOR** shall pay the property tax. **CONTRACTOR** acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

#### **PSC-43. Confidentiality**

All documents, information and materials provided to **CONTRACTOR** by **CITY** or developed by **CONTRACTOR** pursuant to this Contract (collectively “Confidential Information”) are confidential. **CONTRACTOR** shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by **CITY** or as required by law. **CONTRACTOR** shall immediately notify **CITY** of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Contract.

#### **PSC-44. COVID-19**

Employees of Contractor and/or persons working on its behalf, including, but not limited to, subcontractors (collectively, “Contractor Personnel”), while performing services under this Agreement and prior to interacting in person with City employees, contractors, volunteers, or members of the public (collectively, “In-Person Services”) must be fully vaccinated against the novel coronavirus 2019 (“COVID-19”). “Fully vaccinated” means that 14 or more days have passed since Contractor Personnel have received the final dose of a two-dose COVID-19 vaccine series (Moderna or Pfizer-BioNTech) or a single dose of a one-dose COVID-19 vaccine (Johnson & Johnson/Janssen) and all booster doses recommended by the Centers for Disease Control and Prevention. Prior to assigning Contractor Personnel to perform In-Person Services, Contractor shall obtain proof that such Contractor Personnel have been fully vaccinated. Contractor shall retain such proof for the document retention period set forth in this Agreement. Contractor shall grant medical or religious exemptions (“Exemptions”) to Contractor Personnel as required by law. If Contractor wishes to assign Contractor Personnel with Exemptions to perform In-Person Services, Contractor shall require such Contractor Personnel to undergo weekly COVID-19 testing, with the full cost of testing to be borne by Contractor. If Contractor Personnel test positive, they shall not be assigned to perform In-Person Services or, to the extent they have already been performing In-Person Services, shall be immediately removed from those assignments. Furthermore, Contractor shall immediately notify City if Contractor Personnel performing In-Person Services (1) have tested positive for or have been diagnosed with COVID-19, (2) have been informed by a medical professional that they are likely to have COVID-19, or (3) meet the criteria for isolation under applicable government orders.

**EXHIBIT 1**

**INSURANCE CONTRACTUAL REQUIREMENTS**

**CONTACT** For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at [www.lacity.org/cao/risk](http://www.lacity.org/cao/risk). The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

**CONTRACTUAL REQUIREMENTS**

CONTRACTOR AGREES THAT:

- 1. Additional Insured/Loss Payee.** The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.
  - 2. Notice of Cancellation.** All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.
  - 3. Primary Coverage.** CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.
  - 4. Modification of Coverage.** The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.
  - 5. Failure to Procure Insurance.** All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.
- CONTRACTOR'S failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY'S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.
- 6. Workers' Compensation.** By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake

self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all time during the performance of the work pursuant to this Contract.

**7. California Licensee.** All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the CITY. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.

**8. Aggregate Limits/Impairment.** If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect the CITY'S protection are allowed without the CITY'S prior written consent.

**9. Commencement of Work.** For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-3, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

# Required Insurance and Minimum Limits

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

Date: \_\_\_\_\_

Agreement/Reference: \_\_\_\_\_

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

## Limits

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**Workers' Compensation (WC) and Employer's Liability (EL)**
WC StatutoryEL Waiver of Subrogation in favor of City Longshore & Harbor Workers Jones Act
**General Liability** \_\_\_\_\_
 Products/Completed Operations Sexual Misconduct \_\_\_\_\_ Fire Legal Liability \_\_\_\_\_
**Automobile Liability** (for any and all vehicles used for this contract, other than commuting to/from work) \_\_\_\_\_

**Professional Liability** (Errors and Omissions) \_\_\_\_\_

Discovery Period \_\_\_\_\_

**Property Insurance** (to cover replacement cost of building - as determined by insurance company) \_\_\_\_\_
 All Risk Coverage Boiler and Machinery Flood \_\_\_\_\_ Builder's Risk Earthquake \_\_\_\_\_
**Pollution Liability** \_\_\_\_\_
**Surety Bonds** - Performance and Payment (Labor and Materials) Bonds \_\_\_\_\_

**Crime Insurance** \_\_\_\_\_
Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_