

TRANSMITTAL

TO The City Council	DATE 06/09/2022	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT 4	

GRIFFITH PARK – GREEK THEATRE – UPDATED SECOND AMENDED AND RESTATED AGREEMENT WITH SMG FOR GREEK THEATRE VENUE AND CONCESSIONS MANAGEMENT

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



ERIC GARCETTI
MAYOR

MWS:JSS:08220049t

(Andre Herndon for)

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

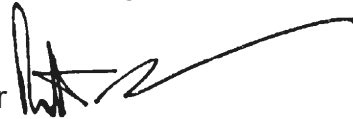
Date: June 8, 2022

CAO File No. 0150-10575-0004

Council File No.
Council District: 4

To: The Mayor

From: Matthew W. Szabo, City Administrative Officer



References: Letter to the Mayor from the Board of Recreation and Park Commissioners dated March 17, 2022; referred by the Mayor on April 5, 2022

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

RECOMMENDATION

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

SUMMARY

At its meeting of March 17, 2022, the Board of Recreation and Park Commissioners (Board) approved the updated Second Amended and Restated Agreement to Contract No. 3680 between the City and SMG for Greek Theatre Venue and Concessions Management.

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

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

First Amended and Restated Agreement (First Amendment)

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

- 1) Extended the current contract by 14 months (12 months to recover revenue loss associated with the 2020 season and adds two months to align the term, which currently expires on October 31, 2023, with the end of the calendar year);
- 2) Added a Force Majeure clause which provides users, SMG, and the City relief of obligation in the event of a natural disaster or pandemic event, such as COVID-19;
- 3) Relieved SMG from paying the minimum concession fee (\$2.3 million) for the 2020 season due to the cancellation of the 2020 season; and,
- 4) The SMG monthly management staff fee for Year Two of the Agreement was decreased by approximately 13 percent, and the Department will periodically update the Board regarding the Greek Theatre management budget, operations, and programming.

Updated Second Amended and Restated Agreement (Second Amendment)

The Second Amendment clarifies three issues not specifically included in the First Amendment when the original contract was extended by 14 months due to the COVID-19 pandemic:

- 1) The First Amendment requires SMG to pay a minimum concession fee (\$2.3 million) for the 2021 season. Due to the continuation of the COVID-19 pandemic, the Greek Theatre was closed from April 2021 to July 2021. The condensed season (approximately half the regular season time period) resulted in the shortfall of the minimum concession fee by \$600,000. The Second Amendment waives the \$600,000 in minimum concession fee shortfall due to the condensed season;
- 2) The First Amendment requires the Department to pay SMG a management fee of \$76,500 for the 2021 season. Due to the condensed 2021 season, the Second Amendment will waive half of the management fee (\$38,250) due to SMG from the Department; and,
- 3) The Second Amendment includes language adding a not-to-exceed three percent per year escalation of the management fee, staff expenses, and administrative costs if the optional five-year extension period is exercised by the Department.

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

FISCAL IMPACT STATEMENT

The recommendation in this report reflects the revenue decrease for the Greek Theatre Special Fund in the amount of \$600,000. The anticipated revenue reduction for the 2021 season has already been addressed in the 2021-22 Adopted Budget. For the 2022 season, the Department is projecting \$3.2 million in revenue from the Greek Theatre Operation.

FINANCIAL POLICIES STATEMENT

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

MWS:JSS:08220049

DEPARTMENT OF RECREATION
AND PARKS

BOARD OF COMMISSIONERS

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

March 17, 2022

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

Attention: Ms. Heleen Ramirez

Dear Mayor Garcetti:

In accordance with Executive Directive No. 3, attached herewith is the proposed agreement between the Department of Recreation and Parks (RAP) and SMG for Venue and Concessions Management of the Greek Theatre.

Attached is Board Report No. 22-067, which was adopted by the Board of Recreation and Park Commissioners at its Regular Meeting held on March 17, 2022.

If you have any questions with regard to the proposed Agreement, please contact Ms. Rachel Ramos, Sr. Management Analyst II, Special Operations Branch, at (213) 202-5659.

Very truly yours,

BOARD OF RECREATION AND
PARK COMMISSIONERS

TAKISHA SARDIN
Acting Commission Executive
Assistant II

Attachments: Board Report No. 22-067

cc: Rachel Ramos, Sr. Management Analyst II, Special Operations Branch



APPROVED

MAR 17 2022

BOARD REPORT

BOARD OF RECREATION AND PARK COMMISSIONERS

NO. 22-067

DATE March 17, 2022

C.D. 4

BOARD OF RECREATION AND PARK COMMISSIONERS

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

*AP Diaz	<u>APD</u>	M. Rudnick	_____
H. Fujita	_____	C. Santo Domingo	_____
J. Kim	_____	N. Williams	_____


General Manager

Approved X

Disapproved _____

Withdrawn _____

RECOMMENDATION

1. Rescind the Board of Recreation and Park Commissioners (Board) action to approve the second amendment and restatement of Agreement No. 3680 between the Department of Recreation and Parks (RAP) and SMG for Venue and Concessions Management of the Greek Theatre (Second Amendment), which was taken on December 16, 2021 (in the interest of clarity, this action would rescind only Recommendations 1 and 4 of BR No. 21-222)
2. Approve an updated Second Amended and Restated Agreement No. 3680, between the Department of Recreation and Parks (RAP) and SMG for Venue and Concessions Management of the Greek Theatre (Revised Second Amendment), subject to approval by the City Council and by the City Attorney as to form;
3. Authorize RAP staff to make any necessary technical changes to the Second Amended and Restated Agreement and to the User Agreement, consistent with the intent of these actions to implement these policies; and
4. Authorize RAP's General Manager or his designee to execute, upon receipt of the necessary approvals, the Second Amendment substantially in the form attached (Attachment 1).

SUMMARY

The historic Greek Theatre is located at 2700 North Vermont Avenue in Griffith Park. The 5,901-capacity outdoor venue is among the City's most cherished public sites, and is one of the Nation's iconic outdoor entertainment venues. On May 2, 2018, the Board approved award of a contract to SMG for open venue and food and beverage concession management of the Greek Theatre

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PG. 2 NO. 22-067

3680 (Agreement), commenced on November 1, 2018 and expires on December 31, 2024, with a five-year additional term option exercisable at the sole discretion of the General Manager.

Due to health risks associated with the COVID-19 pandemic, the 2020 season was canceled in conformance with mandatory health directives. In response, at its meeting of August 20, 2020, the Board approved a First Amended and Restated Agreement (First Amendment) to Contract No. 3680 between the City and SMG for Greek Theatre Venue and Concessions Management.

The First Amendment incorporated the following key provisions:

1. Extended the current contract by 14 months (12 months to recover revenue loss associated with the 2020 season and adds two months to align the term, which originally expired on October 31, 2023, with the end of the calendar year),
2. Increased the maximum number of concerts from no more than 76 per season to no more than 82;
3. Relieved SMG from paying the Minimum Annual Guarantee (MAG) for food and beverage concessions (\$2.3 million) for the 2020 season due to the cancellation of the 2020 season;
4. Relieved RAP from paying the SMG management fee (\$76,500) for 2020; and
5. Increased the SMG monthly management staff fee for Agreement Year Two will increase from approximately \$2.11 million to \$2.17 million due to the addition of two months to the Agreement Year Two term.

REVISED SECOND AMENDMENT

The First Amendment requires SMG pay a Minimum Annual Guarantee (MAG) of Two Million Three Hundred Thousand Dollars (\$2,300,000) for 2021. Due to the continuation of the COVID-19 pandemic, the Greek was closed from April through July 2021, which resulted in a greatly condensed 2021 season. Despite being able to operate for just one half of the season, SMG was successful in generating nearly 74% of the contracted MAG revenue at the concessions stands. Nevertheless, there is still a resulting MAG shortfall of Six Hundred Thousand Dollars (\$600,000). Staff recommends that \$600,000 of the MAG be waived, via the Second Amendment, for the 2021 season due to the COVID-19 closure period referenced above.

Separately, the First Amendment requires RAP to pay SMG a Management Fee of \$76,500 for the 2021 season. Due to the venue being closed from January through July, SMG has agreed to waive half of its \$76,500 base compensation for 2021. The Second Amendment, therefore, states that a portion of the base compensation (SMG management fee) totaling \$38,250 that was already paid by RAP to SMG for the 2021 season will be credited to RAP and applied toward the amount due for the 2022 season.

The Board previously took action to approve this Second Amendment on December 16, 2021 (BR No. 21-222). Since that time, RAP staff identified the need to address an omission in the agreement related to the absence of any escalation of the management fee for the extension option period, should one be exercised. Because the City Council and Mayor have yet to consider

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the Second Amendment as had been approved by the Board on December 16, 2021, it is administratively convenient to address this omission by recommending that the Board rescind its previous approval of the Second Amendment and approve the attached Revised Second Amendment containing language adding a three percent (3%) per year escalation of the management fee for the optional five-year extension period, should it be exercised.

CONCLUSION

Department of Recreation and Parks (RAP) staff recommends approval of the Revised Second Amended and Restated Agreement as set forth in this Report and as attached in Attachment 1.

FISCAL IMPACT STATEMENT

This action will result in concession revenue to RAP of \$1,700,000 for the 2021 season rather than the forecasted amount of \$2,300,000. It will also result in a credit to RAP of \$38,250 from the management fee that RAP paid to SMG for the 2021 season.

STRATEGIC PLAN INITIATIVES AND GOALS

Approval of this Board 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 Rachel Ramos, Senior Management Analyst II.

List of Attachments:

Attachment 1: Revised Second Amended and Restated Agreement

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

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

And

SMG

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GREEK THEATRE VENUE AND CONCESSIONS MANAGEMENT AGREEMENT

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

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

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

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

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

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

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

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

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

WHEREAS, the Parties entered into that certain FIRST AMENDED AND RESTATED AGREEMENT FOR GREEK THEATRE VENUE AND CONCESSIONS MANAGEMENT, on April 19, 2021, for the purposes of amending the agreement to respond to impacts of the COVID-19 pandemic on the Greek Theatre (the "First Amended Agreement");

WHEREAS, the Parties recognize the impacts of the COVID-19 pandemic have continued for another concert season and, therefore, they desire to modify the First Amended Agreement in response to those continued impacts; and

WHEREAS, SMG and CITY agree the Annual Management Fee due for Agreement Year 3 of the Original Agreement (starting from January 1, 2021 and ending December 31, 2021) be revised to reflect a reduction of \$38,250 in the Annual Management Fee due to be paid by RAP; and

WHEREAS, SMG has requested it be relieved of the requirement to pay \$600,000 of the minimum guaranteed concession fee for the Greek Theatre Concessions for the period of January 1, 2021 through December 31, 2021 due to the shortening of the 2021 concert season at the Greek Theatre because of health risks associated with the COVID-19 pandemic; and

WHEREAS, the Parties desire to restate the First Amended and Restated Agreement in its entirety, together with any new amendments;

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

SECTION 1. DEFINITIONS

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

ADDITIONAL PARKING SITES:	Parking areas as specified in Section 3.
ADMINISTRATIVE COSTS:	SMG's general and administrative costs for operating the FACILITY, which are further described in Exhibit L.
AGREEMENT:	This AGREEMENT consisting of forty-seven (47) pages and Exhibits (A thru T) attached thereto.
ANNUAL MANAGEMENT FEE:	The annual compensation SMG will receive for its services as specified in Section 6.
BOARD:	Board of Recreation and Park Commissioners.
CITY:	The City of Los Angeles
CITY FF&E COSTS:	CITY's costs to equip the FACILITY with sufficient furnishings, fixtures and equipment to allow operation of the FACILITY as provided in Section 5U, except for SMG's ADMINISTRATIVE COSTS, SMG'S OFFICE FURNITURE AND EQUIPMENT, and equipment and furnishings described in Capital Improvement Plan of SMG's proposal (Exhibit H, pages 109-174).
CITY'S OPERATING EXPENSES:	Shall consist of: (i) UTILITY MAINTENANCE AND REPAIR COSTS, (ii) REIMBURSABLE

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

OPEN VENUE MODEL:	The FACILITY operating model, as defined by the BOARD'S approved policies and procedures attached as Exhibits E, F and G
PREMISES:	The geographical area, as defined in Section 3, including the FACILITY
RAP:	The Department of Recreation and Parks, acting through its Board of Recreation and Park Commissioners.
REIMBURSABLE EXPENSES:	A purchase, lease or operating expense paid by SMG on behalf of RAP, including but not limited to website hosting and maintenance costs; monies paid to non-DOT shuttle operator, if applicable; pre-approved expenses related to booking services for non-Greek venues; Greek Theatre venue cleaning services pre, during and post-concert/event; sound system and video equipment and other related expenses; lighting system and any other equipment other than sound monitoring equipment and equipment procured as a part of SMG'S OFFICE FURNITURE AND EQUIPMENT
SMG OFFICE COSTS:	SMG's costs to provide SMG'S OFFICE FURNITURE AND EQUIPMENT pursuant to Section 5U.
SPONSORSHIP AND PREMIUM SEATING REVENUE:	All gross revenue, less fulfillment costs, from the sale of all sponsorship deals and premium seating programs including, but not limited to: 1) Box Suites, 2) Club Seats, 3) Season Subscriptions, 4) VIP Seating Packages, or other similar programs where license fees are charged in connection with seating programs created by SMG at the FACILITY. For purposes of this definition, SMG's staff time in servicing the needs of the sponsor shall not be considered a fulfillment cost.
UTILITY MAINTENANCE AND REPAIR COSTS:	The CITY'S costs for utilities (excluding telephone, trash pick-up, and internet connection charges, which will be paid by SMG) and for maintenance and repair of such utilities as provided in Section 5Y, but excluding SMG's OFFICE COSTS.

SECTION 2. RIGHTS AND RESPONSIBILITIES

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

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

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

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

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

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

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

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

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

SECTION 3. PREMISES

The PREMISES authorized for use by SMG shall only include:

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

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

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

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

SECTION 4. TERM

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

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

SECTION 5. SERVICES AND OPERATING RESPONSIBILITIES

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

- A. Implementation, coordination and enforcement of RAP's Open Venue Model, booking, ticketing and operating documents, policies and procedures.

1. SMG will provide oversight and management of the FACILITY.

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

6. Parking and Shuttles

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

7. Box Office Operations

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

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

B. Fiscal Responsibilities

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

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

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

C. Concession Rights and Responsibilities

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

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

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

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

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

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

4. Quality, Price Schedules and Merchandising

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

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

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

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

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

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

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

5. Receipts

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

6. Hours / Days of Operation

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

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

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

F. Website, Social Media and Wi-Fi

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

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

G. Operating Budget and Reports

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

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

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

I. Community Cultural Events

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

J. Filming

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

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

L. Customer Satisfaction Surveys

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

M. Community Engagement

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

N. Greek Theatre Advisory Committee

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

O. Citywide Outreach

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

P. Cleanliness

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

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

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

Q. Conduct

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

R. Disorderly Persons

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

S. Personnel

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

2. Qualified Personnel

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

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

3. GENERAL MANAGER of the FACILITY:

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

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

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

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

4. Approval of Personnel

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

T. Diversion of Business

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

U. Equipment and Furnishings

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

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

V. Maintenance of Equipment

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

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

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

W. Permits and Licenses

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

X. Signs and Advertisements

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

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

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

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

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

Y. Utilities

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

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

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

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

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

Z. Safety

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

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

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

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

AA. Security

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

BB. Intellectual Property

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

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

CC. Traffic Studies

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

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

SECTION 6. ANNUAL MANAGEMENT FEE

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

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

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

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

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

SMG will be reimbursed for ADMINISTRATIVE COSTS not to exceed the amount set forth in the chart below by providing RAP the appropriate documentation to support the itemized expense. The definition of ADMINISTRATIVE COSTS notwithstanding, SMG will not be reimbursed for expenses in any of the following categories of ADMINISTRATIVE COSTS if the expense is incurred between August 12, 2020 and June 30, 2021: Travel, Meals & Entertainment, Meetings & Conventions, Advertising, Promotional, Credit Card Discounts, Uniforms, and Relocation. However, Advertising and Promotional expenses incurred between August 12, 2020 and December 31, 2020 may be reimbursed if RAP's General Manager gives written approval prior to such an expense being incurred.

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

AGREEMENT YEAR	CONCERT SEASON	STAFF EXPENSES	ADMINISTRATIVE COSTS	SMG MANAGEMENT FEE	TOTAL
1 [11/1/18-10/31/19]	2019	\$1,006,340	\$976,100	\$75,000	\$2,057,440
2 [11/1/19-12/31/20]	2020	\$1,134,840	\$1,001,120	\$0	\$2,174,210
3 [1/1/21-12/31/21]	2021	\$1,031,573	\$1,001,120	\$38,250	\$2,070,943
4 [1/1/22-12/31/22]	2022	\$1,057,516	\$1,021,373	\$78,030	\$2,156,919
5 [1/1/23-12/31/23]	2023	\$1,084,190	\$1,024,037	\$79,591	\$2,187,818
6 [1/1/24-12/31/24]	2024	\$1,111,618	\$1,044,791	\$81,182	\$2,237,591

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

Any amount paid as a SMG Management Fee by RAP in excess of \$38,250 during Agreement Year 3, shall be retained by SMG and credited to the SMG Management Fee due for Agreement Year 4, which is the period from January 1, 2022 to December 31, 2022.

Should the Term be extended by exercise of the 5-year option by the RAP General Manager, as set forth in Section 4 of this Agreement, the Parties agree, for Agreement Years 7 through 11, that STAFF EXPENSES, ADMINISTRATIVE COSTS, and the SMG MANAGEMENT FEE, shall not increase from the prior year's not-to-exceed cap by more than 3% per category, per Agreement Year.

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

SECTION 7. REIMBURSABLE EXPENSES

SMG will procure services necessary for the FACILITY's operation for and on behalf of RAP, as not otherwise required by SMG. SMG will only utilize qualified vendors for any equipment or service and will receive written authorization by RAP for said services or procurement. SMG must

obtain RAP's prior written approval for any expenditure. SMG will be reimbursed for the equipment or service costs by providing RAP the appropriate documentation to support the request for reimbursement. REIMBURSABLE EXPENSES will be included in the Monthly Event Closing Statement for reimbursement.

SECTION 8. EVENT SERVICES STAFFING EXPENSES

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

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

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

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

SECTION 9. SPONSORSHIPS, BOX SEATS AND PREMIUM SEATING SALES

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

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

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

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

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

sponsorship presented by the SMG and RAP shall not be liable for any fee or cost in the event of such refusal.

SECTION 10. CONCESSION FEE

A. Fee.

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

1. Greek Theatre Concessions. SMG shall pay to CITY a Greek Theatre Concessions fee that is the greater of the Greek Minimum Annual Guarantee (Greek MAG), or forty-three (43) percent of gross receipts of all Greek Theatre Concessions. For the first year of the AGREEMENT, the Greek MAG will be Two Million Three Hundred Thousand Dollars (\$2,300,000.00). The Greek MAG for year two and each subsequent year for the Greek Theatre Concessions is the greater of the previous year's Greek MAG or 90% of the actual Greek Theatre Concessions fee paid for the previous AGREEMENT year. Notwithstanding anything to the contrary in this Subparagraph 1, due to the cancellation of the 2020 CONCERT SEASON at the Greek Theatre, no Concession Fee for Greek Theatre Concessions shall be due for Agreement Year 2, which is the period from November 1, 2019 to December 31, 2020. Any amounts paid as a Concession Fee by SMG, during Agreement Year 2, shall be retained by RAP and credited to the Concession Fee due for the Greek Theatre Concessions for Agreement Year 3, which is the period from January 1, 2021 to December 31, 2021. Notwithstanding anything to the contrary in this Subparagraph 1, due to the shortening of the 2021 CONCERT SEASON at the Greek Theatre, the Concession Fee for Greek Theatre Concessions due for Agreement Year 3, which is the period from January 1, 2021 to December 31, 2021, will be One Million Seven Hundred Thousand Dollars (\$1,700,000.00). For avoidance of doubt, the Greek MAG for the Greek Theatre Concession for Agreement Year 4 shall be Two Million Three Hundred Thousand Dollars (\$2,300,000.00).
2. Greek Theatre Catering. SMG shall pay to CITY a Greek Theatre Catering fee that is twenty (20) percent of gross receipts of all Greek Theatre Catering, with the exception that the catering fee for no-host bars shall be paid to CITY at a rate of forty-three (43) percent of gross receipts. Greek Theatre Catering shall not count toward the Greek MAG.
3. Franklin's Market + Café Concessions. SMG shall pay to CITY a Franklin's Market + Café Concessions fee that is the greater of the Franklin Minimum Annual Guarantee (Franklin MAG), or six (6) percent of gross receipts of all Franklin's Market + Café concessions. For the first year of the AGREEMENT, the Franklin MAG will be Twenty-five Thousand Dollars (\$25,000.00). The Franklin MAG for year two and each subsequent year for the Franklin's Market + Café Concessions is the greater of the previous year's MAG or 90% of the actual Franklin's Market + Café Concessions fee paid for the previous AGREEMENT year. The foregoing notwithstanding, pre-sold items and items that the parties reasonably agree are intended or sold for consumption by concertgoers, will be subject to a 20% commission.

4. Filming and Special Events. SMG shall pay to CITY a Filming and Special Events fee equal to seventy-five (75) percent of all **non-food and beverage** Filming and Special Events receipts remaining after deducting applicable **EVENT SERVICES AND STAFFING COSTS, which shall be paid first out of the non-food and beverage gross receipts charged for all Filming and Special Events. In addition, SMG shall pay to CITY a Filming and Special Events Food and Beverage fee equal to twenty (20) percent of all catering and hosted bar gross receipts, and forty-three (43) percent of all concessions and no-host bar gross receipts, charged for all Filming and Special Events.** Notwithstanding the forgoing, one hundred (100) percent of all special event space rental fees charged on concert nights shall be paid to the CITY **from the non-food and beverage gross receipts prior to deducting any EVENT SERVICES AND STAFFING COSTS.** And, in accordance with Section 5.A.6., SMG shall pay to CITY one hundred (100) percent of all parking receipts received in the course of SMG's management of the parking operations during Filming and Special Events, **prior to applying the non-food and beverage fee split.** In addition, whenever a concert night special event activity occupies, or otherwise removes from the usable inventory, parking spaces in any parking lot covered by this AGREEMENT, one hundred (100) percent of the parking revenue that could have been earned had the spaces been used for parking during the concert is to be paid to the CITY prior to applying **the non-food and beverage fee split.** For purposes of this section, "could have been earned" means revenue earned if the spaces had full occupancy with no same-night turnover.
5. Greek Theatre Merchandise. SMG shall pay to CITY a Greek Theatre Merchandise fee equal to thirty (30) percent of gross receipts of all Greek Theatre Merchandise sold.

B. Up-front Payment.

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

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

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

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

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

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

C. Percentage Fee Payment

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

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

D. Gross Receipts Defined

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

1. Cash discounts allowed or taken on sales;
2. Any sales taxes, use taxes, or excise taxes required by law to be included in or added to the purchase price and collected from the consumer or purchaser and paid by SMG;
3. California Redemption Value (CRV);
4. Receipts from the sale of waste or scrap materials resulting from the CONCESSION operation;
5. Receipts from the sale of or the trade-in value of any furniture, fixtures, or equipment used in connection with the CONCESSION, and owned by SMG;
6. The value of any merchandise, supplies, or equipment exchanged or transferred from or to other business locations of SMG where such exchanges or transfers are

not made for the purpose of avoiding a sale by SMG which would otherwise be made from or at the PREMISES

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

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

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

SECTION 11. ACCOUNTING, RECORDS AND ADDITIONAL FEES

A. Bank Accounts

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

1. DEPOSIT ACCOUNT:

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

2. BOX OFFICE ACCOUNT:

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

3. OPERATIONS ACCOUNT:

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

4. DISBURSEMENT ACCOUNT:

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

B. Monthly Event Closing Statement

SMG shall submit a monthly event closing statement to RAP for review and approval within twenty-five (25) calendar days after the end of each month. The monthly event closing statement shall be accompanied by a Monthly Revenue Report (Exhibit M), clearly identifying: (i) all revenues recognized for that month at the FACILITY including, without limitation, event revenue, SPONSORSHIP AND PREMIUM SEATING REVENUE and any

miscellaneous revenue generated from operations at the FACILITY (“monthly operating revenue”) and (ii) all expenses incurred in that month including, without limitation, CITY’S OPERATING EXPENSES applicable to such period along with outstanding amounts of CITY’S OPERATING EXPENSES due for prior periods, SMG’s share of SPONSORSHIP AND PREMIUM SEATING REVENUE and any miscellaneous expenses incurred in connection with the operation of the FACILITY (“monthly operating expenses”). SMG shall include with such statement detail of monthly operating revenue and expenses including a line item event profit and loss statement for each event presented during the period and supporting documentation for CITY’S OPERATING EXPENSES in a form acceptable to RAP.

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

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

C. Late Payment Fees

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

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

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

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

D. Annual Accounting Adjustment

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

- E. If CITY pays any sum or incurs any obligations or expense which SMG has agreed to pay or reimburse CITY for, or if CITY is required or elects to pay any sum or to incur any obligations or expense by reason of the failure, neglect, or refusal of SMG to perform or fulfill any one or more of the conditions, covenants, or agreements contained in the AGREEMENT, or as a result of an act or omission of SMG contrary to said conditions, covenants, and agreements, SMG agrees to pay to CITY the sum so paid or the expense so incurred, including all interest, costs (including CITY'S 15% administrative overhead cost), damages, and penalties. This amount shall be added to the monthly payment thereafter due hereunder, and each and every part of the same shall be and become additional payment, recoverable by CITY in the same manner and with like remedies as if it were originally a part of the basic concession fee payment set forth in SECTION 10 hereof. RAP reserves the right to increase any and all administrative fees at the time of exercising any option to renew the AGREEMENT.
- F. For all purposes under this Section, and in any suit, action, or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum by CITY for any work done or material furnished shall be prima facie evidence against SMG that the amount of such payment was necessary and reasonable. Should CITY elect to use its own personnel in making any repairs, replacements, and/or alterations chargeable to SMG, and charge SMG with the cost of same, receipts and timesheets will be used to establish the charges, which shall be presumed to be reasonable in absence of contrary proof submitted by SMG.

SECTION 12. IMPROVEMENTS

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

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

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

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

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

4. Except for the active negligence or willful misconduct of CITY, or any of its boards, officers, agents, employees, assigns and successors in interest, SMG undertakes and agrees to defend, indemnify and hold harmless CITY and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all third-party suits and causes of action, claims, losses, demands and expense, including, but not limited to, attorney's fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including SMG's employees and agents, or damage or destruction of any property of either party hereto or of third parties, proximately caused by SMG's construction or installation of the Capital Improvements as authorized in this AGREEMENT. The provisions of this paragraph survive expiration or termination of this AGREEMENT.

SECTION 13. PREMISES MAINTENANCE

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

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

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

- B. **Property Damage and Theft Reporting**

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

- C. **Damage or Destruction to Premises**

- a. **Partial Damage**

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

b. Extensive Damage

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

c. Complete Destruction

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

d. Limits of CITY'S Obligation Defined

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

D. Pest Control

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

SECTION 14. PROHIBITED ACTS

SMG shall not:

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

materials must be stored and used in compliance with all City, State and Federal rules, regulations, ordinances and laws;

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

SECTION 15. NUMBER OF ORIGINALS

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

SECTION 16. RATIFICATION LANGUAGE

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

SECTION 17. PERFORMANCE DEPOSIT

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

- B. **Form of Deposit**

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

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

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

- D. **Maintenance of Deposit**

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

E. Return of Deposit to SMG

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

SECTION 18. TAXES, PERMITS AND LICENSES

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

rate of eighteen percent (18%) per annum, assessed monthly, on the balance of the unpaid amount.

SECTION 19. TRANSFER OR ASSIGNMENT

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

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

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

SECTION 20. BUSINESS RECORDS

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

SMG shall be required to maintain a method of accounting in compliance with Generally Accepted Accounting Principles for each location at the FACILITY, which shall correctly and accurately reflect the gross receipts and disbursements received or made by SMG

from the management and operation of the FACILITY. For accounting purposes, separate books must be kept for the Greek Theatre and Franklin's Market + Café. The method of accounting, including bank accounts, established for the FACILITY shall be separate from the accounting systems used for any other business operated by SMG or for recording SMG's personal financial affairs. Such method shall include the keeping of the following documents:

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

D. Method of Recording Gross Receipts

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

E. Annual Statement of Gross Receipts and Expenses

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

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

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

- Paid attendance and total attendance

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

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

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

SECTION 21. REGULATIONS, INSPECTION, DIRECTIVES

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

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

B. Conformance with Laws: SMG shall comply with:

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

- d. Any and all applicable local, state and federal laws and regulations relative to the design and installation of facilities to accommodate disabled persons.

C. Permissions

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

D. Right of Inspection and Access to PREMISES

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

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

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

E. Control of Premises

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

F. Business Inclusion Program

SMG agrees and obligates itself to utilize the services of Minority, Women, Small, Emerging, Disabled Veteran and Other Business Enterprise firms on a level so designated in its proposal, Schedule A (Exhibit N). SMG certifies that it has complied with Executive Directive No. 14 regarding the Outreach Program. SMG shall not change any of these designated sub consultants and subcontractors, nor shall SMG reduce their level of effort,

without prior written approval of the CITY, provided that such approval shall not be unreasonably withheld.

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

G. First Source Hiring Ordinance

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

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

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

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

H. CEC Form 50

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

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

I. CEC Form 55

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

SECTION 22. SURRENDER OF POSSESSION

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

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

SECTION 23. NOTICES

A. To CITY:

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

Department of Recreation and Parks

Attention: Concessions Unit
P. O. Box 86328
Los Angeles, California 90086-0610

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

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

B. To SMG:

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

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

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

SMG

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

And

SMG

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

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

SMG

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

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

SECTION 24. INDEMNIFICATION

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

SECTION 25. INCORPORATION OF DOCUMENTS

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

- A. Standard Provisions for City Contracts (Rev. 10/21)[v.4], excluding PSC-18 & PSC-34
- B. Insurance Requirements and Instructions
- C. Premises Maps and Additional Parking Lots
- D. SMG Repair and Maintenance Responsibilities
- E. User Agreement, Revised December 2021
- F. Booking Policy, Revised November, 1, 2017
- G. Promoter's Commercial Incentive Program Policy, Established June 18, 2015

- H. SMG's Proposal Response to the Greek Theatre Venue and Concessions Management RFP
- I. Form General No. 87 "Non-Employee Accident or Illness Report
- J. Sponsorship Recognition Policy, Procedures and Guidelines for Recognizing Organizations and Individuals who Contribute to and/or Support City of Los Angeles Park and Programs
- K. Naming Policy, Procedures and Guidelines for Parks and Recreational Facilities
- L. SMG ADMINISTRATIVE EXPENSES AND 2019 Event Services and Staffing Costs.
- M. Monthly Revenue Report
- N. Schedule A, MBE/WBE/SBE/EBE/DVBE/OBE Subcontractors Information Form
- O. MBE/WBE/SBE/EBE/DVBE/OBE Utilization Profile, Schedule B
- P. Final Subcontracting Report form, Schedule C
- Q. CEC Form 50
- R. List of equipment owned by SMG.
- S. List of Capital Improvements
- T. Greek Theatre Trademarks

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

(Signature Page to Follow)

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

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

BY: _____

DATE: _____

MICHAEL A. SHULL
General Manager

SMG

BY: _____

DATE: _____

Title: _____

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

BY: _____

DATE: _____

Michael Dundas
Deputy City Attorney

Business Tax Registration Certificate Number: 0002858497-0001-9

Internal Revenue Service Taxpayer Identification Number: 23-2511871

AGREEMENT Number: _____