

# APPROVED

JAN 17 2018

## BOARD OF RECREATION AND PARK COMMISSIONERS

BOARD REPORT

NO. 18-007

DATE January 17, 2018

C.D. 4

### BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: GRIFFITH PARK – GREEK THEATRE – SUPPLEMENTAL AGREEMENT TO AMENDED CONTRACT WITH SMG D.B.A. PREMIER FOOD SERVICES MANAGEMENT GROUP, INC., FOR OPERATION AND MANAGEMENT OF THE GREEK THEATRE'S FOOD AND BEVERAGE CONCESSION TO EXERCISE SECOND OPTION TO EXTEND

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

  
General Manager

Approved   X   Disapproved \_\_\_\_\_ Withdrawn \_\_\_\_\_

### RECOMMENDATIONS

1. Approve a proposed Supplemental Agreement to Amended Contract No. 278, between the Department of Recreation and Parks (RAP) and SMG d.b.a. Premier Food Services Management Group, Inc. (Premier) for operation and management of the Greek Theatre's Food and Beverage Concession, subject to the approval of the City Attorney as to form;
2. Authorize RAP to make any necessary technical changes consistent with the intent of these actions; and
3. Authorize the General Manager to execute the Supplemental Agreement substantially in the form attached (Attachment 1).

### SUMMARY

The historic Greek Theatre (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. The Theatre stands as one of the Nation's iconic and recognized outdoor entertainment venues. On April 15, 2015, the Board of Recreation and Park Commissioners (Board) approved the Operation and Management of the Greek Theatre as an Open Venue Model (Report No. 15-082).

## BOARD REPORT

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On December 9, 2015, the Board approved the Contract for the Greek Theatre Food and Beverage Concession (CON-F15-002) to Premier for the Greek Theatre's 2016 season. Contract No. 278 between RAP and Premier was executed on January 7, 2016 for one (1) year with two (2) one-year extension options (Report 15-251). RAP's exercise of the first option to extend the term of the original contract and to enter into an amended contract reflecting the extended term -was approved by the Board on December 14, 2016 (Report 16-242), and the amended contract was entered into on January 7, 2017. Staff is recommending RAP exercise the second option to extend the amended contract with Premier, but for a term of less than one year through November 1, 2018. Premier has agreed to this extension.

### CONCLUSION

RAP recommends approval to exercise the second option to extend the amended contract with Premier and to enter into the proposed Supplemental Agreement (Attachment 1) with Premier to continue food and beverage service for the Greek Theatre 2018 Season for a term beginning January 7, 2018 and ending November 1, 2018. Other than the extension of the term, no other terms and conditions of the amended contract are being changed as part of the proposed Supplemental Agreement.

### FISCAL IMPACT STATEMENT

For the 2017 season, RAP received approximately Two Million, Three Hundred Thousand Dollars (\$2,300,000.00) in food and beverage net revenue, which represents an increase of thirteen percent (13%) over 2016. Assuming continued growth at thirteen percent, estimated revenue for 2018 is Two Million, Six Hundred Thousand Dollars (\$2,600,00.00)

This Report was prepared by Rachel Ramos, Concessions Manager.

### LIST OF ATTACHMENTS

- 1 Proposed Supplemental Agreement to Contract No. 278 for Operation and Maintenance of the Greek Theatre's Food and Beverage Concession.
- 2 Amended Agreement No. 278 for Operation and Maintenance of the Greek Theatre's Food and Beverage Concession.

**SUPPLEMENTAL AGREEMENT TO AMENDED AGREEMENT NO. 278  
BETWEEN THE CITY OF LOS ANGELES  
DEPARTMENT OF RECREATION AND PARKS  
AND  
SMG D.B.A. PREMIER FOOD SERVICES MANAGEMENT GROUP, INC.  
FOR OPERATION AND MAINTENANCE  
OF THE GREEK THEATRE'S  
FOOD AND BEVERAGE CONCESSION**

**This SUPPLEMENTAL AGREEMENT** to Amended Agreement No. 278 is made and entered this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Los Angeles, a municipal corporation ("CITY"), acting by and through its Department of Recreation and Parks ("DEPARTMENT"), and SMG d.b.a. Premier Food Services Management Group, Inc. ("PREMIER").

WITNESSETH

**WHEREAS**, the DEPARTMENT seeks to hire a food and beverage concessionaire to provide food and beverage at the Greek Theatre; and

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

**WHEREAS**, the DEPARTMENT finds, pursuant to Charter Section 371 (e) (10), and Los Angeles Administrative Code Section 10.15(a)(10), that the use of competitive bidding would be undesirable, impractical or otherwise excused by the common law and the Charter because, unlike the purchase of a specified product, there is no single criterion, such as price comparison, that will determine which proposer can best provide the services required by the Department for the provision of food and beverage at the Greek Theatre; and

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

**WHEREAS**, the DEPARTMENT advertised for proposals for a Food and Beverage Concession at the Greek Theatre on June 29, 2015; and

**WHEREAS**, the DEPARTMENT received and evaluated three (3) proposals from food and beverage companies on August 25, 2015; and

**WHEREAS**, PREMIER was scored as the highest-ranked proposer, and selected to conduct the food and beverage operations pursuant to the RFP; and

**WHEREAS**, on or about January 7, 2016, PREMIER and the CITY entered into that certain Agreement for the Operation and Maintenance of the Greek Theatre's Food and Beverage Concession dated January 7, 2016 (the "ORIGINAL AGREEMENT"), which was authorized by

the DEPARTMENT'S Board of Recreation and Park Commissioners ("BOARD") (Board Report No. 15-251); and

**WHEREAS**, the ORIGINAL AGREEMENT had an initial term of one year and included two (2) options to extend such initial term, each for one year and each exercisable at the discretion of the DEPARTMENT (collectively, the "Options"); and

**WHEREAS**, the CITY exercised one of the Options to extend the term of the ORIGINAL AGREEMENT and, pursuant to such option exercise, the CITY and PREMIER entered into that certain Amended Agreement for the Operation and Maintenance of the Greek Theatre's Food and Beverage Concession dated January 4, 2017 (the "AMENDED AGREEMENT"), which was authorized by the BOARD (Board Report No. 16-242); and

**WHEREAS**, the CITY desires to exercise the second option to extend the term of the AMENDED AGREEMENT but for a term less than one year with such extended term to terminate on November 1, 2017, and PREMIER agrees to extend the term of the AMENDED AGREEMENT for such time period to provide the public with premium, high-quality offerings at the Greek Theatre (the "Extension"); and

**WHEREAS**, the CITY and PREMIER desires to enter into this SUPPLEMENTAL AGREEMENT to memorialize the Extension, and the BOARD approved this SUPPLEMENTAL AGREEMENT at the meeting of the BOARD on [\_\_\_\_\_ date \_\_\_\_\_] (Report No. XX-XXX).

**NOW THEREFORE**, in consideration of the foregoing, and the terms and conditions contained herein, and the performance thereof, the CITY and PREMIER agree to enter into this SUPPLEMENTAL AGREEMENT as follows:

The AMENDED AGREEMENT (Agreement No. 278) for the Operation and Maintenance of the Greek Theatre's Food and Beverage Concession is hereby incorporated by reference into this SUPPLEMENTAL AGREEMENT as if fully set forth herein, except as specifically modified below. The capitalized term "AGREEMENT" as used in the AMENDED AGREEMENT, and all references thereto, shall also mean this SUPPLEMENTAL AGREEMENT:

#### **Section 4 – TERM OF AGREEMENT**

Section 4 of the AMENDED AGREEMENT is hereby amended in its entirety and shall now read as follows in the quotation marks:

"The term of the AGREEMENT shall commence on January 7, 2018 and shall terminate on November 1, 2018. Neither CITY, nor any BOARD member, officer, or employee thereof shall be liable in any manner to PREMIER because of an action taken to revoke, or decline to exercise an option of the AGREEMENT."

With the exception of Section 4 as stated above, the remainder of the terms and conditions of the AMENDED AGREEMENT (Agreement No. 278) as incorporated into this SUPPLEMENTAL AGREEMENT as if fully set forth herein shall remain unchanged and in full force and effect by way of this SUPPLEMENTAL AGREEMENT. Should any provision of the AMENDED AGREEMENT conflict with this SUPPLEMENTAL AGREEMENT, the terms and conditions of this SUPPLEMENTAL AGREEMENT shall prevail.

IN WITNESS WHEREOF, the CITY and PREMIER have executed this SUPPLEMENTAL AGREEMENT to Amended Agreement No. 278 as of the day and year first above written.

CITY OF LOS ANGELES, a municipal corporation, acting by and through its BOARD OF RECREATION AND PARK COMMISSIONERS

SMG d.b.a Premier Food Services Management Group, Inc.

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Secretary

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

By: \_\_\_\_\_

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

By: \_\_\_\_\_

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

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

**APPROVED AS TO FORM:**

MICHAEL N. FEUER, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

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



**JOHN F. BURNS**  
Executive Vice President & CFO

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January 4, 2017

Vicky Israel  
City of Los Angeles  
Department of Recreation and Parks  
Executive Office  
221 N. Figueroa Street  
Suite 350  
Los Angeles, CA 90012

BOARD OF RECREATION  
AND PARK COMMISSIONER  
2017 JAN -9 AM 8:47

Dear Vicky:

Enclosed please find two original, signed copies of the Amended Agreement for Operation and Maintenance of the Greek Theatre's Food and Beverage Concession, as discussed. Also enclosed is the payment for the 2017 guaranteed minimum commission.

Should you have any questions, please feel free to contact me.

Sincerely,

John F. Burns

Vicky - Happy New Year. Looking forward to another successful year at The Greek in 2017.

**AMENDED AGREEMENT  
FOR OPERATION AND MAINTENANCE  
OF THE GREEK THEATRE'S  
FOOD AND BEVERAGE CONCESSION**

**Between**

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

**And**

**SMG D.B.A. PREMIER FOOD SERVICES MANAGEMENT GROUP, INC.**

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## **AGREEMENT FOR OPERATION AND MAINTENANCE OF THE GREEK THEATRE'S FOOD AND BEVERAGE CONCESSION**

This Agreement ("AGREEMENT") is made and entered in this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the CITY OF LOS ANGELES, a municipal corporation ("CITY"), acting by and through the Department of Recreation and Parks ("DEPARTMENT"), and SMG d.b.a. Premier Food Services Management Group, Inc. ("PREMIER").

**WHEREAS**, the DEPARTMENT seeks to hire a food and beverage concessionaire to provide food and beverage at the Greek Theatre; and

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

**WHEREAS**, the DEPARTMENT finds, pursuant to Charter Section 371 (e) (10), and Los Angeles Administrative Code Section 10.15(a)(10), that the use of competitive bidding would be undesirable, impractical or otherwise excused by the common law and the Charter because, unlike the purchase of a specified product, there is no single criterion, such as price comparison, that will determine which proposer can best provide the services required by the Department for the provision of food and beverage at the Greek Theatre; and

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

**WHEREAS**, the DEPARTMENT advertised for proposals for a Food and Beverage Concession at the Greek Theatre on June 29, 2015; and

**WHEREAS**, the DEPARTMENT received and evaluated three (3) proposals from food and beverage companies on August 25, 2015; and

**WHEREAS**, PREMIER was scored as the highest-ranked proposer, and selected to conduct the food and beverage operations during the Greek Theatre's 2016 Season in accordance with the terms and conditions of this AGREEMENT; and

**WHEREAS**, on January 7, 2016, PREMIER and CITY entered into a one (1) year contract with two (2) one (1) year options to renew; and

**WHEREAS**, The CITY desires to exercise option 1 with PREMIER and PREMIER agrees to enter into another one (1) year AGREEMENT to provide the public with premium, high-quality patron offerings and services at the Greek Theatre.

**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 for:

AGREEMENT:	This Concession Agreement consisting of thirty-four (34) pages and fourteen (14) exhibits (A-N) attached hereto.
BOARD:	Board of Recreation and Park Commissioners
CITY:	The City of Los Angeles, acting by and through its Board of Recreation and Park Commissioners
CONCESSION:	Greek Theatre Food and Beverage Concession, the permitted operation granted by this AGREEMENT
CONCERT SEASON:	April 15 through October 31
DEPARTMENT:	The Department of Recreation and Parks, acting through the Board of Recreation and Park Commissioners.
FACILITY:	GREEK THEATRE, located at 2700 N. Vermont Avenue, Griffith Park, Los Angeles, California 90027
LAAC:	The Los Angeles Administrative Code
LAMC:	The Los Angeles Municipal Code
PREMIER	SMG d.b.a. Premier Food Services Management Group, Inc.
PREMIER CAPITAL INVESTMENT	The amount of capital paid by Premier under Section 10 to fund revenue-generating improvement and enhancement projects in an AGREEMENT year.
PREMISES:	The geographical area, as defined in Section 3 of this AGREEMENT, in which the concession may be operated.
SMG:	DEPARTMENT'S venue management company.

## **SECTION 2. PERMISSION GRANTED**

For and in consideration of the payment fees and charges hereinafter provided, and subject to all terms, covenants, and conditions of this AGREEMENT, the DEPARTMENT hereby grants to PREMIER the exclusive (except as otherwise excepted herein) right and obligation to sell food, non-alcoholic and alcoholic beverages, artist merchandise and Greek Theatre merchandise during the AGREEMENT'S term. PREMIER will provide and sell food, beverages and merchandise from designated portions of the PREMISES and will be permitted to use mobile carts to sell food, beverages and merchandise at appropriately designated areas pursuant to the DEPARTMENT'S prior approval, needs and requests. The CONCESSION area as described in Section 3 of this AGREEMENT shall only be used for PREMIER'S designated rights and not for any other purpose without the prior written consent of DEPARTMENT. The address and phone number of PREMIER will be shown along with the notation that all complaints regarding change, food and beverage, etc., should be referred directly to PREMIER.

The granted CONCESSION rights shall be at the Greek Theatre solely within the limits and confines of the PREMISES (Section 3) in this AGREEMENT and shall not make use of the PREMISES in any manner which might interfere with other recreational uses of the FACILITY.

In the event of a conflict between PREMIER and any other concessionaire or any lessee at the FACILITY regarding the services to be offered or products to be sold by respective concessionaires or lessees, the DEPARTMENT shall meet and confer with all necessary parties to determine the services to be offered or products to be sold by each, and PREMIER hereunder agrees to be bound by the DEPARTMENT'S final determination.

## **SECTION 3. PREMISES**

The PREMISES (Exhibit B) subject to this AGREEMENT is located at: the Greek Theatre, 2700 North Vermont Avenue, Los Angeles, CA 90027.

The CONCESSION PREMISES are located within the Greek Theatre venue. PREMIER will have exclusive rights to the FACILITY, including the following areas:

- North and South Concession Stands
- Front Plaza Area
- Upper and Lower Zeus Bars

PREMIER will have exclusive rights to the Redwood Deck and Hospitality Room.

The DEPARTMENT agrees to provide PREMIER with appropriately designated office and food and beverage storage spaces at the Greek Theatre. All furniture, office supplies, internet, phone, security, fencing, refrigeration, storage shelving or other tenant improvements for the office and food and beverage storage spaces shall be at the sole expense of PREMIER.

Unless otherwise contracted, PREMIER shall not be responsible for backstage catering for the artists' entourage or crew.

The DEPARTMENT shall retain all rights to sponsorships, including non-alcoholic pouring rights, at the Greek Theatre, and shall execute and administer such sponsorships as obtained by SMG, the sole entity responsible for obtaining the venue's sponsorship agreements. PREMIER, to the extent possible, shall collaborate and assist SMG or the DEPARTMENT to secure and obtain any sponsorship opportunities for the venue.

PREMIER to the best of its knowledge shall not use or allow the PREMISES, to the extent under PREMIER'S exclusive control, to be used, in whole or in part, during the term of the AGREEMENT, for any use in violation of any present or future laws, ordinances, rules, and regulations at any time applicable thereto of any public or governmental authority or agencies, departments or officers thereof, including CITY, relating to sanitation or the public health, safety or welfare or operations at and use of the PREMISES.

**SECTION 4. TERM OF AGREEMENT**

The term of the AGREEMENT shall be one (1) year with one (1) one-year extension option exercisable at the sole discretion of the Department and upon approval of Board of Recreation and Park Commissioners, effective on the date of execution. Neither CITY, nor any BOARD member, officer, or employee thereof shall be liable in any manner to PREMIER because of any action taken to revoke, or decline to exercise an option of the AGREEMENT.

**SECTION 5. OPERATING RESPONSIBILITIES**

To the extent arising from PREMIER'S CONCESSION rights hereunder, PREMIER shall, at all times during the term of the AGREEMENT, comply with the following conditions:

**A. Cleanliness**

PREMIER shall, at its own expense, keep the PREMISES clean and sanitary all CONCESSION materials including, but not limited to, food and beverage-related materials and merchandise-related materials at all times. No offensive or refuse food, beverage or any matter related to merchandise sales, nor any substance constituting an unnecessary, unreasonable, or unlawful fire hazard, nor any material detrimental to the public health, shall be permitted to remain thereon, and PREMIER shall prevent any such matter or material from being or accumulating upon said PREMISES.

PREMIER, at its own expense, shall see that all of its garbage or refuse is collected as often as necessary and in no case less than twice a week, and disposed of in the main dumpster. PREMIER shall furnish all equipment and materials necessary therefore, including trash receptacles of a size, type, and number approved by DEPARTMENT. If no trash storage area is made available, PREMIER shall

provide at its own expense and with DEPARTMENT'S prior written approval, an enclosed area concealing the trash storage from public view.

**B. Conduct**

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

**C. Disorderly Persons**

PREMIER will coordinate with venue security to assist in maintaining peaceful conditions. PREMIER shall not knowingly allow the use or possession of illegal drugs, narcotics, or controlled substances on the PREMISES.

**D. Personnel:**

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

**2. 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 DEPARTMENT, PREMIER shall provide SMG and DEPARTMENT with certificates on applicable employees indicating freedom from communicable tuberculosis.

**3. Alcohol Service Training**

All PREMIER employees involved in the sale, service, and distribution of alcoholic beverages shall be trained in effective alcoholic and 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 PREMIER 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."). PREMIER shall provide SMG and DEPARTMENT with certificates on applicable training for all employees involved in the sale, service and distribution of alcoholic beverages.

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

4. **Qualified Personnel**

PREMIER will, in the operation of the CONCESSION, employ or permit the employment of only such personnel as will assure a high standard of service to the public and cooperation with the CITY. All such personnel, while on or about the PREMISES, shall be neat in appearance and courteous at all times and shall be appropriately attired, with badges or other suitable means of identification. PREMIER shall use best efforts to assure that no person employed by PREMIER, while on or about the PREMISES, shall be under the influence of illegal drugs, narcotics, other controlled substances or alcohol, or use inappropriate language, or engage in otherwise inappropriate conduct for a work environment. In the event an employee is not satisfactory, DEPARTMENT may direct PREMIER to remove that person from the PREMISES.

5. **Concession Manager**

PREMIER shall appoint, subject to written approval by DEPARTMENT, a Concession Manager of PREMIER'S operations at the FACILITY.

Such person must be a qualified and experienced manager or supervisor of operations, vested with full power and authority to accept service of all notices provided for herein and regarding operation of the CONCESSION, including the quality and prices of CONCESSION goods and services, and the appearance, conduct, and demeanor of PREMIER'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.

6. **Approval of Personnel**

The DEPARTMENT shall have the right to approve or disapprove employees of PREMIER.

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

PREMIER shall commit to implement and offer varied, high-quality food products, specialty items, food and beverage offerings to patrons at the Greek Theatre, PREMIER 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 the CITY develop an operational plan for upcoming 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 venue.

1. CITY agrees that PREMIER'S merchandise, including its price for same, shall be within PREMIER'S discretion; subject, however, to disapproval by DEPARTMENT 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 DEPARTMENT. Such determination shall not be unreasonable and shall take into account the business considerations presented by PREMIER. PREMIER shall present the menu selections and offerings on a monthly basis to the DEPARTMENT for approval. 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.
2. PREMIER with the prior approval of the CITY may contract 3<sup>rd</sup> party vendors for the purpose of specialty food and beverage items to be sold at concert events. CITY retains the right to limit the number of 3<sup>rd</sup> party vendors. All 3<sup>rd</sup> party vendors shall conform to the same CITY guidelines and standard as PREMIER'S. PREMIER will collect a minimum of Thirty percent (30%) commission fee on net sales. The commission collected will be included in the Forty Two percent (42%) of net sales up to Three Million Dollars (\$3,000,000.00) of gross receipts of all concession food and beverage sales and Forty Five percent (45%) of gross receipts in excess of Three Million Dollars (\$3,000,000.00) Event season 3<sup>rd</sup> party vendors shall abide by CITY guidelines and uniformity.
- 3.. All menu items and service, offered for sale and/or sold by PREMIER and any approved 3<sup>rd</sup> party vendors in said PREMISES, shall be of high quality and must be related to the ordinary business of the CONCESSION. No adulterated, misbranded, or impure articles shall be sold or kept for sale by PREMIER. All merchandise kept for sale by PREMIER shall be kept subject to the approval or rejection of DEPARTMENT and PREMIER shall remove from the PREMISES any article which may be rejected and shall not again offer it for sale without the written approval of DEPARTMENT. DEPARTMENT 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.
4. PREMIER shall offer for sale to the public a full range of fresh and pre-packaged food items and beverages (alcoholic and non- alcoholic).
5. PREMIER 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, One Hundred percent (100%) juice, beverages that contain at least Fifty percent (50%) fruit juice with no added sweeteners, and providing healthy snacks. PREMIER expressly agrees to comply with CITY'S Good Food Purchasing Guidelines for Food Service Institutions. (Exhibit C).

6. PREMIER 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. PREMIER shall attempt to use only artificial trans-fat free prepackaged food items.
7. The sale of liquor, beer, and wine is permitted. PREMIER is solely responsible for obtaining all necessary licenses and permits, including but not limited Alcoholic Beverage Control License, for the sale of such items. The DEPARTMENT shall provide all cooperation and assistance necessary for PREMIER to secure necessary licenses under this paragraph. At the termination of AGREEMENT, PREMIER 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.
8. The sale of energy drinks are prohibited.
9. PREMIER will implement the proposed plan for Food and Beverage guidelines outlined in PREMIER'S Proposal Pages 157 through 253 (Exhibit D).

All merchandise sold or kept for sale by PREMIER 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 PREMIER and all edible merchandise kept on hand shall be stored and handled with due regard for sanitation.

10. PREMIER shall minimize the paper items (straw covers, serving cartons, etc.) distributed with take-out CONCESSION products. PREMIER 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. PREMIER shall not sell or give away or otherwise dispose of any commodity which in the opinion of DEPARTMENT will cause undue litter. PREMIER expressly agrees to comply with all CITY and DEPARTMENT recycling programs.
11. PREMIER shall not sell lottery tickets or similar type merchandise.

**G. Diversion of Business**

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

**H. Equipment, Furnishings, and Expendables:**

All equipment, furnishings, and expendables required for said CONCESSION shall be purchased and installed by PREMIER at its sole expense and shall remain its personal property, with the exception of the equipment identified by PREMIER as purchased using the Two Hundred Thousand Dollars (\$200,000.00) equipment credit described below. At the beginning of each AGREEMENT year, PREMIER will provide SMG and DEPARTMENT with an inventory of PREMIER-owned equipment and CITY-owned equipment.

The DEPARTMENT accepts the Investment Equipment List, Proposal Pages 202 and 203 (Exhibit E), totaling Six Hundred Thousand Dollars (\$600,000.00), and PREMIER is obligated to invest Six Hundred Thousand Dollars (\$600,000.00) to purchase such equipment and smallwares. If at the termination of the AGREEMENT, PREMIER has not purchased equipment totaling Six Hundred Thousand Dollars (\$600,000.00), PREMIER shall pay to the DEPARTMENT the unspent balance of the Six Hundred Thousand Dollars (\$600,000.00). The list of CITY owned and PREMIER owned equipment, as of the execution of this amended contract, is attached hereto as Exhibit M.

If, upon termination of the AGREEMENT, CITY does not renew said AGREEMENT, PREMIER shall have the right to remove its own equipment, furnishings, and expendables (e.g., purchased utilizing the Four Hundred Thousand Dollars {\$400,000.00} PREMIER investment), but not CITY owned equipment and improvements (e.g., purchased utilizing the Two Hundred Thousand Dollars {\$200,000.00} equipment credit), from the PREMISES and shall be allowed a period of thirty (30) calendar days to complete such removal. If not removed within that period, said equipment, furnishings and expendables shall become the property of CITY. The foregoing notwithstanding, the CITY shall have a right of first refusal to purchase PREMIER'S equipment at fair market value, exercisable by notifying PREMIER within five (5) business days after termination if CITY elects to exercise such right of first refusal, and in such case, the period for removal of the equipment shall be tolled until such time as the parties agree on fair market value or the right of first refusal is waived.

**I. Maintenance of Equipment**

PREMIER shall, at all times and at its expense, perform routine and preventive maintenance on all equipment, whether owned and/or installed by PREMIER or CITY, such as, but not limited to, refrigeration/freezer units, heat exchangers, fans, controls and electric panels, installed by CITY, together with all of the fixtures, plate and mirror glass, equipment and personal property therein, in good repair and in a

clean, sanitary, and orderly condition and appearance. CITY will be responsible for the maintenance of utility lines and repairs, including telephone, exterior to the PREMISES. The cost of any replacement of CITY-owned equipment or parts thereof shall be borne by the CITY, unless caused by improper maintenance by PREMIER. PREMIER shall be responsible for the maintenance and replacement of PREMIER-owned equipment.

PREMIER shall at all times keep current all necessary Fire/Life/Safety permits and certifications, testing, inspections, maintenance and repairs including but not limited to fire extinguishers, alarms, fire sprinklers, and cooking equipment. PREMIER shall provide copies of all permits, certifications, testing, inspections and maintenance and repair records to SMG and DEPARTMENT.

Routine and preventive maintenance of all equipment shall be performed at the sole expense of PREMIER. PREMIER may elect not to use City-owned equipment, with prior written consent of DEPARTMENT.

No equipment provided by CITY shall be removed or replaced by PREMIER without the prior written consent of DEPARTMENT, and if consent is secured, such removal and/or replacement shall be at the expense of PREMIER.

**J. Claims for Labor and Materials**

PREMIER shall promptly pay when due all amounts payable for labor and materials furnished in the performance of the AGREEMENT so as to prevent any lien or other claim under any provision of law from arising against any CITY property (including reports, documents, and other tangible matter produced by PREMIER hereunder), against PREMIER'S rights hereunder, or against CITY, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

**K. Signs and Advertisements**

PREMIER shall not erect, construct, or place any signs, banners, ads, or displays of any kind whatsoever upon any portion of CITY property without the prior written approval from DEPARTMENT. Certain signs and advertisements may also require the prior written approval of the Cultural Affairs Department or other appropriate agencies.

On signage at FACILITY, PREMIER shall provide credit, or as proportions of signage allow, similar credit as approved by DEPARTMENT in writing.

"In Collaboration with the City of Los Angeles Department of Recreation and Parks"

DEPARTMENT may require removal or refurbishment, at PREMIER'S expense, of any sign previously approved.

PREMIER further agrees to only place signs, advertisements, marketing materials, promotional materials, signs or displays visible to the public pre-approved by the DEPARTMENT and in conformance with the venue's theme and overall look and consistency of all branding materials and otherwise designated signage.

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

**L. Utilities**

The DEPARTMENT shall pay for utility charges associated with the CONCESSION, with the exception of telephone, internet and trash pick-up. Charges for telephone, internet and trash pick-up shall be paid by PREMIER regardless of whether such utility services are furnished by CITY or by other utility service providers.

Except to the extent of DEPARTMENT'S negligence or breach of its obligations hereunder, PREMIER 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 water, earthquake, wind, civil commotion, or riot; and PREMIER 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 where damage to any utility service line is caused by PREMIER, its employees, contractors, sub-contractors, suppliers, agents, or invitees, PREMIER shall be responsible for the cost of repairs and any and all damages occasioned thereby.

PREMIER shall use best efforts to utilize water and electricity in the most efficient manner possible, and PREMIER expressly agrees to comply with all CITY water and electrical conservation programs.

PREMIER shall reimburse the DEPARTMENT if any telephone, internet or trash pick-up charges are paid by the DEPARTMENT.

**M. Vending Machines**

PREMIER shall not install, or allow to be installed, any vending machines, electronic games, or other coin-operated machines without prior written approval of DEPARTMENT. DEPARTMENT shall have the right to order the immediate removal of any unauthorized machines.

**N. Safety**

PREMIER shall correct safety deficiencies, and violations of safety practices, immediately after the condition becomes known or DEPARTMENT notifies PREMIER of said condition. PREMIER shall cooperate fully with CITY in the investigation of accidents occurring on the PREMISES. In the event of injury to a patron or customer, PREMIER shall reasonably ensure that the injured person receives prompt and qualified medical attention, and as soon as possible thereafter, PREMIER shall submit a CITY Form General No. 87 "Non-Employee Accident or Illness Report" (see SECTION 20, "NOTICES," for mailing address) (Exhibit F). If PREMIER fails to correct hazardous conditions specified by DEPARTMENT in a written notice, which have led, or in the opinion of CITY could lead, to injury, DEPARTMENT may, in addition to all other remedies which may be available to CITY, repair, replace, rebuild, redecorate, or paint any such PREMISES to correct the specified hazardous conditions, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by PREMIER to CITY on demand.

PREMIER will provide SMG and DEPARTMENT with all injury reports in order for SMG to include in the monthly safety report to the DEPARTMENT.

**O. Environmental Sensitivity**

PREMIER must operate the CONCESSION in an environmentally sensitive manner and all operations must comply with CITY policies regarding protection of the environment. PREMIER shall not use or allow the use on the PREMISES of environmentally unsafe products.

**P. Fund Raising And/Or Special Events Activities**

PREMIER will be expected to cooperate with DEPARTMENT personnel on all matters relative to the conduct of fund-raising and/or special events, as well as use of these areas by the film industry. PREMIER, given adequate notice may be required to cease operations or to allow for fund-raising and/or special events at the discretion of DEPARTMENT.

**Q. Quiet Enjoyment**

CITY agrees that PREMIER, upon payment of the fees and charges specified herein, and all other charges and payments to be paid by PREMIER under the terms of this AGREEMENT, and upon observing and keeping the required terms, conditions and covenants of this AGREEMENT, shall lawfully and quietly hold, use and enjoy the CONCESSION PREMISES during the term of this AGREEMENT. In the case of disputes, during the life of the AGREEMENT, over any conditions which may impede upon PREMIER'S quiet enjoyment of the CONCESSION PREMISES, DEPARTMENT shall have final determination of any solution to such dispute; DEPARTMENT'S final determination shall be binding upon all parties in such dispute.

**R. Receipts**

1. On request, PREMIER shall offer receipts to customers for every transaction.
2. PREMIER 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."
3. In advance of commencement of customer transactions, PREMIER shall submit its cash-handling procedures to the DEPARTMENT.

**S. Annual CONCERT SEASON Opening Event for the Community**

PREMIER shall provide services at an Annual CONCERT SEASON Opening Event for the surrounding community at its own expense.

**T. Greek Theatre Advisory Committee (GTAC) Support**

PREMIER will provide light refreshments for the monthly GTAC meetings at its own expense.

**U. Community Engagement**

PREMIER will provide light refreshments to community meetings hosted by SMG including, but not limited to, regularly scheduled monthly community meetings and coffee hours at its own expense.

**V. Customer Satisfaction Surveys**

PREMIER shall be responsible to ensure Customer Satisfaction Surveys are conducted after every event. The Customer Satisfaction Survey measures the quality of service being delivered to patrons, which rates service in five (5) separate categories. PREMIER will provide summary reports to SMG and DEPARTMENT on a quarterly basis. The DEPARTMENT 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 may be determined by PREMIER.

**SECTION 6. CONCESSION OPERATIONS**

- **CONCERTS AND EVENTS:** The CONCESSION will be open in accordance with the Venue's User Agreement and mutually agreed upon operating times and hours necessary and consistent with event and show plans for each performance.
- **NON-CONCERTS AND EVENTS:** The Front Plaza Area will be open in accordance with the DEPARTMENT'S operating plans, hours and needs, and the

CONCESSION will be open based upon mutually agreed upon operating times necessary and consistent to offer a year-round operation.

## **SECTION 7. REVENUE-SHARING PAYMENT**

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

The greater of:

The Annual Minimum Revenue-Sharing Guarantee, as follows:

- One Million Four Hundred Thousand Dollars (\$1,400,000.00) and Sixty Percent (60%) of net sales of all Greek Theatre Merchandise

OR

- Forty-two percent (42%) of gross receipts of all food and beverage sales up to Three Million Dollars (\$3,000,000.00) and Forty-five percent (45%) of gross receipts of all food and beverage sales greater than Three Million Dollars (\$3,000,000.00)

AND

- 20% of catering food and beverage sales
- Any catering Retail cash bars beverage sales will be calculated at 42% commission rate.

Notwithstanding the foregoing, the monthly revenue-sharing fee for all catering and special events shall be as follows and shall said revenues shall be included in the minimum revenue sharing guarantee calculations addition to the Annual Minimum Revenue-Sharing Guarantee stated above and shall not be included in the minimum revenue-sharing guarantee calculations.

### Catering and Special Events

For the 2017 contract, 20% from food and beverage catering sales will be credited towards commission. The total \$3 million goal and that all cash services will remain at the rate of 42%.

The Annual Minimum Revenue-Share shall be paid to the DEPARTMENT at the beginning of each AGREEMENT year with the exception of the first year of the AGREEMENT, when the payment shall be paid within three (3) days of AGREEMENT execution. ~~The first year's payment will be One Million Two Hundred Thousand Dollars~~ *HW*

~~(\$1,200,000.00), which is the One Million Four Hundred Thousand Dollars (\$1,400,000.00) less the Two Hundred Thousand Dollar (\$200,000.00) equipment credit provided in Section 5, H.~~ In subsequent AGREEMENT years, the Annual Minimum Revenue-Share payment shall be One Million Four Hundred Thousand Dollars (\$1,400,000.00) as stated above.

Refer to SECTION 7.C for the definition of "Gross Receipts."

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

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

**B. Revenue-Sharing Payment Due**

Said payment (to the extent in excess of the Annual Minimum Revenue-Share) 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 Remittance Advice Form (Section 7.D) shall be addressed to:

DEPARTMENT OF RECREATION AND PARKS  
ATTENTION: Partnership and Revenue Branch/Concessions Unit  
P.O. Box 86610  
Los Angeles, California 90086-0610

**C. Gross Receipts Defined**

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

1. Cash discounts allowed or taken on sales;
2. Any sales taxes, use taxes, or excise taxes required by law to be included in or added to the purchase price and collected from the consumer or purchaser and paid by PREMIER;
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 PREMIER;
6. The value of any merchandise, supplies, or equipment exchanged or transferred from or to other business locations of PREMIER where such exchanges or transfers are not made for the purpose of avoiding a sale by PREMIER 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 PREMIER'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 PREMIER, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit;
10. Fair market trade-in allowance, in the event merchandise is taken in trade;
11. The amount of any cash or quantity discounts received from sellers, suppliers, or manufacturers;
12. Discounts or surcharges applied to receipts for services or merchandise, with the concurrence of both PREMIER and DEPARTMENT, including discounts to employees, if concurred by DEPARTMENT; on total sale transaction
13. Credit/debit card fees.

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

14. Any error in cash handling by PREMIER or PREMIER'S employees or agents;
15. Any losses resulting from bad checks received from the consumers or purchasers; or from dishonored credit, charge, or debit card payments; or any other dishonored payment to PREMIER by customer or purchaser;

16. Any arrangement for a rebate, kickback, or hidden credit given or allowed to any customer of PREMIER.
17. Any labor fees recovered

**D. Monthly Revenue-Sharing Reports**

PREMIER shall transmit a Monthly Gross Receipts and Revenue-sharing Report, also referred to as a Monthly Remittance Advice Form (Exhibit G), for the month for which the revenue was earned, to SMG and DEPARTMENT whether or not a revenue-sharing payment is submitted. The Monthly Remittance Advice Form must be postmarked by the fifteen (15) of the month for preceding month's revenue. The DEPARTMENT may revise the Monthly Remittance Advice Form as needed. PREMIER shall use the Food and Beverage Sales Report (Exhibit N) and submit within 48 hours after event for each event as an indicator of revenue performance.

**E. Late Payment Fee**

Failure of PREMIER to pay any of the revenue-sharing payments or any other fees, changes, or payments required herein on time is a breach of the AGREEMENT for which CITY may provide notice of breach and thereafter terminate as specified herein 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 PREMIER, 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, PREMIER agrees to pay CITY a late fee set forth below to compensate CITY for all expenses and/or damages and loss resulting from said late or delinquent payments.

The charges for late or delinquent payments shall be One Hundred Fifty Dollars (\$150.00) for each month late plus interest calculated at the rate of eighteen percent (18%) per annum, assessed monthly, on the balance of the unpaid amount. Payments shall be considered past due if postmarked after the fifteenth (15th) day of the month in which payment is due.

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

## **SECTION 8. ADDITIONAL FEES AND CHARGES**

- A. If CITY pays any sum or incurs any obligations or expense which PREMIER 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 PREMIER 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 PREMIER contrary to said conditions, covenants, and agreements, PREMIER agrees to pay to CITY the sum so paid or the expense so incurred, including all interest, actual costs, (including CITY'S fifteen percent {15%} administrative overhead cost), incurred by the CITY, damages, and penalties. This amount shall be added to the revenue-sharing payment thereafter due hereunder, and each and every part of the same shall be and become additional revenue-sharing payment, recoverable by CITY in the same manner and with like remedies as if it were originally a part of the monthly revenue-sharing payment set forth in Section 7 hereof.

- B. The charges for any late or delinquent payments shall be One Hundred Fifty Dollars (\$150.00) for each month late plus interest calculated at the rate of eighteen percent (18%) per annum, assessed monthly, on the balance of the unpaid amount.
- C. 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 PREMIER 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, and to charge PREMIER 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 PREMIER.

## **SECTION 9. MAINTENANCE OF PREMISES**

During all periods that the PREMISES are used or are under the control of PREMIER for the uses, purposes, and occupancy aforesaid, PREMIER shall be responsible for all necessary CONCESSION-related janitorial duties and damage/maintenance repairs, to the satisfaction of DEPARTMENT. The cause of said maintenance, cleaning and repairs may result from normal wear and tear, as well as vandalism. PREMIER shall provide copies of all repair and maintenance records to SMG and DEPARTMENT on a monthly basis.

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

#### **1. Areas to be Maintained by PREMIER**

PREMIER shall, at its own expense, keep and maintain all the interior walls and surfaces of PREMISES and all improvements, fixtures, CONCESSION equipment and utility systems which may now or hereafter exist thereon, whether installed by CITY or PREMIER. Improvements shall include all buildings and appurtenances recessed into or attached by any method to the ground or to another object which is recessed or attached to the ground or to other CITY-owned facilities (such as buildings, fences, posts, signs, electrical hook-ups, plumbing, tracks, tanks, etc.).

2. **Duties**

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

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

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

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

If PREMIER fails, after written notice, to correct such conditions which have led or, in the opinion of CITY, could lead to significant damage to CITY property, DEPARTMENT may at its option, and in addition to all other remedies which may be available to it, repair, replace, rebuild, redecorate or paint any such PREMISES included in said notice, with the cost thereof, plus fifteen percent (15%) for administrative overhead, to be paid by PREMIER to CITY on demand. If, for any reasons, payment of such fees becomes delinquent, DEPARTMENT may, in its sole discretion, suspend the AGREEMENT and all terms and conditions contained therein.

D. **Property Damage and Theft Reporting**

PREMIER shall complete and submit to SMG and DEPARTMENT a "Special Occurrence and Loss Report," (Exhibit H) 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. Blank forms for this purpose shall be provided by DEPARTMENT.

E. **Damage or Destruction to Premises**

1. **Partial Damage:**

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

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

2. Extensive Damage:

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

3. Complete Destruction:

In the event all or a substantial portion of the PREMISES are completely destroyed by fire, explosion, the elements, public enemy, or other casualty, or are so damaged that they are uninhabitable and cannot be replaced except after more than sixty (60) days, CITY shall be under no obligation to repair, replace or reconstruct said PREMISES, and an appropriate portion of the fees and charges payable hereunder shall abate as of the time of such damage or destruction and shall henceforth cease until such time as the said PREMISES are fully restored. If within four (4) months after the time of such damage or destruction said PREMISES have not been repaired or reconstructed, PREMIER 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 PREMIER, its agents, officers, or employees, said fees and charges shall not abate and CITY may, in its discretion, require PREMIER to repair and reconstruct the same within twelve (12) months of such destruction and PREMIER shall be responsible for reimbursing CITY for the cost and expenses incurred in making such repairs. PREMIER shall continue paying CITY revenue-sharing payment as determined above during the rebuilding of the facility.

4. Limits of CITY'S Obligation Defined:

In the application of the foregoing provisions, CITY may, but shall not be obligated to, repair or reconstruct the PREMISES. If CITY chooses to do so, CITY'S obligation shall also be limited to repair or reconstruction of the PREMISES to the same extent and of equal quality as obtained by PREMIER at the commencement of its operations hereunder. Redecoration and replacement of furniture, equipment and supplies shall

be the responsibility of PREMIER and any such redecoration and refurbishing/reequipping shall be equivalent in quality to that originally installed.

**F. Pest Control**

Unless otherwise specified in the AGREEMENT, PREMIER shall be responsible for pest control in and around the PREMISES including, but not limited to, abatement of insects (including roaches, bees, etc.), spiders, rodents, vermin, and other nuisance pests, if the pests are found in or on structures or areas used and maintained by PREMIER, such as any of the following portions of the PREMISES:

1. Any portion of a building or enclosed structure with walls, roof, and doors, such and any storage facilities or storage containers owned and/or used by PREMIER.

CITY shall be responsible for pest control if pests are found in or on structures or areas maintained by CITY, such as:

2. All outdoor areas of the venue and surrounding landscaping.
3. Interior areas of the venue including backstage, dressing rooms, stage areas, chorus rooms, stagehand work areas and restrooms.
4. Other areas, structures, or facilities adjacent to the PREMISES, but not used by or under the control of PREMIER; or areas, structures, or facilities shared by PREMIER and CITY.

Pest control for pests which may cause permanent structural damage to DEPARTMENT property (for example, termite infestation) shall be the responsibility of CITY. PREMIER shall take all reasonable measures to reduce the proliferation of pests, including maintaining the PREMISES clean and orderly in accordance with this Section, and keeping wood components painted. DEPARTMENT may direct PREMIER to take additional measures to abate pests which are an immediate threat to public health or safety.

**SECTION 10. IMPROVEMENTS**

CITY reserves the right to further develop or improve the FACILITY and the PREMISES as it sees fit, and without interference or hindrance by PREMIER. 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. PREMIER'S Annual Minimum Revenue-Share may be reduced or suspended to the extent that revenues are adversely effected by CITY improvement. Any such revenue share reduction shall be mutually agreed to by both parties.

## **SECTION 11. PROHIBITED ACTS**

PREMIER shall not:

1. Use the PREMISES to conduct any other businesses operations of PREMIER not related to the Greek Theatre;
2. Do or allow to be done anything which may interfere with the effectiveness or accessibility of utility, heating, ventilating, or air conditioning systems or portions thereof on the PREMISES or elsewhere on the 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;
2. Interfere with the public's enjoyment and use of the FACILITY or use the PREMISES for any purpose which is not essential to the CONCESSION operations;
3. 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 DEPARTMENT;
4. Overload any floor in the PREMISES;
5. 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 therefor is maintained on the PREMISES, nor refuse, upon the expiration or sooner termination of the AGREEMENT, to surrender to DEPARTMENT any and all keys to the interior or exterior doors on the PREMISES, whether said keys were furnished to or otherwise procured by PREMIER, and in the event of the loss of any keys furnished by DEPARTMENT, PREMIER shall pay CITY, on demand, the cost for replacement thereof;
6. Do or permit to be done any act or thing upon the PREMISES which will invalidate, suspend or increase the rate of any insurance policy required under the AGREEMENT, or carried by CITY, covering the PREMISES, or the buildings in which the same are located or which, in the opinion of DEPARTMENT, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under the AGREEMENT, provided, however, that nothing contained herein shall preclude PREMIER 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;

7. 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 PREMIER 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 the City, State and Federal rules, regulations, ordinances and laws;
8. Allow any sale by auction upon the PREMISES;
9. Permit undue loitering on or about the PREMISES;
10. Use PREMISES in any manner that will constitute waste;
11. Use or allow the PREMISES to be used for, in the opinion of DEPARTMENT, any improper, immoral, or unlawful purposes.

#### **SECTION 12. 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 13. RATIFICATION LANGUAGE**

Due to the need for PREMIER'S services to be provided continuously on an ongoing basis, PREMIER 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 14. PERFORMANCE DEPOSIT**

A. PREMIER shall provide the DEPARTMENT a refundable performance deposit equal to Three Hundred Thousand Dollars (\$300,000.00) for the term of AGREEMENT.

##### **B. Form of Deposit**

PREMIER'S Deposit shall be in the following form:

1. A cashier's check drawn on a recognized local bank, which cashier's check is payable to the order of the City of Los Angeles.

**C. Agreement of Deposit and Indemnity**

PREMIER unconditionally agrees that in the event of any material default of this AGREEMENT by PREMIER and consequent termination by CITY, CITY shall have full power and authority to use the deposit in whole or in part to indemnify CITY. All deposits of cash or checks must be immediately so deposited by the DEPARTMENT.

**D. Maintenance of Deposit**

CITY shall hold PREMIER'S deposit in an interest-bearing account during the entire term of the AGREEMENT

**E. Return of Deposit to PREMIER**

Said Deposit, together with accumulated interest, shall be returned to PREMIER and any rights assigned to Deposit shall be surrendered by CITY in writing, after the expiration or earlier termination of the AGREEMENT and any exit audits performed in conjunction with the AGREEMENT. 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 PREMIER as shown by any exit audits performed by CITY, or as compensation to CITY for failure to adhere to the terms and conditions of the AGREEMENT.

**SECTION 15. TAXES, PERMITS, AND LICENSES**

- A. PREMIER shall obtain and maintain at its sole expense any and all approvals, permits, or licenses that may be required in connection with the operation of the CONCESSION including, but not limited to, tax permits, business licenses, health permits, building permits, police and fire permits, etc. PREMIER shall provide copies of all permits and licenses to SMG and DEPARTMENT.
- B. PREMIER shall pay all taxes of whatever character that may be levied or charged upon the rights of PREMIER to use the PREMISES, or upon PREMIER'S improvements, fixtures, equipment, or other property thereon or upon PREMIER'S operations hereunder. In addition, by executing the AGREEMENT and accepting the benefits thereof, a property interest may be created known as "Possessory Interest" and such property interest will be subject to property taxation. PREMIER, as the party to whom the Possessory Interest is vested, may be subject to the payment of the property taxes levied by the State and County upon such interest.
- C. During the entire term of the AGREEMENT, PREMIER 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, PREMIER 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 DEPARTMENT, on or before the fifteenth (15<sup>th</sup>) of April, July, October, January of each calendar year, for the preceding three (3) months. Should the rate of the Occupancy Tax rise at any time during the term of the AGREEMENT, PREMIER 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 16. ASSIGNMENT, SUBLEASE, BANKRUPTCY**

PREMIER 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 CONCESSION 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, encumbrancer, pledgee or other lien holder, successor or purchaser.

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

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

#### **SECTION 17. BUSINESS RECORDS**

PREMIER shall maintain during the term of the AGREEMENT and for three (3) years thereafter, 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 the AGREEMENT. Such books, ledgers, journals, accounts, and records shall be available for inspection and examination by DEPARTMENT, or a duly authorized representative, during ordinary business hours at any time during the term of this AGREEMENT and for at least three (3) years thereafter.

A. Employee Fidelity Bonds:

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

B. Cash And Record Handling Requirements:

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

PREMIER shall be required to maintain a method of accounting of the CONCESSION which shall correctly and accurately reflect the gross receipts and disbursements received or made by PREMIER from the operation of the CONCESSION. The method of accounting, including bank accounts, established for the CONCESSION shall be separate from the accounting systems used for any other business operated by PREMIER or for recording PREMIER'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. Cash register tapes shall be retained so that day to day sales can be identified. A cash register must be used in public view which prints a dated double tape, indicating each sale and the daily total.
5. Any other accounting records that CITY, in its sole discretion, deems necessary for proper reporting of receipts.

C. Method of Recording Gross Receipts:

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

In lieu of a cash register as described directly above, PREMIER may install a computerized Point-of-Sale system, including hardware and software, to record transactions and receipts. Such computerized Point-of-Sale system must be capable of providing paper receipts to patrons, have a price display which is and

shall remain at all times visible to the public, and have controls in place to make it equivalent to a non-resettable cash register. PREMIER shall not purchase or install the computerized Point-of-Sale system, including hardware and software, before obtaining DEPARTMENT'S written approval of the specific hardware and software to be purchased.

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

PREMIER shall transmit a Statement of Gross Receipts and Expenses (Profit and Loss Statement) for the CONCESSION operations to SMG and DEPARTMENT as specified in the AGREEMENT, in a form acceptable to DEPARTMENT, on or before April 30th of each calendar year during the term of the AGREEMENT. Such Statement must be prepared by a Certified Public Accountant (CPA) and shall not include statements of omission or non-disclosure. An extension may be granted in writing, prior to the April 30th due date, by DEPARTMENT or his designee, provided sufficient verification of the need for the extension is provided, as accepted by DEPARTMENT. The charge for late or delinquent Profit and Loss Statements shall be One Hundred Fifty Dollars (\$150.00) per month or part thereof late.

In addition, CITY may from time to time conduct an audit and re-audit of the books and businesses conducted by PREMIER 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 PREMIER to CITY shall be found to be less than the amount of gross sales disclosed by such audit and observation, PREMIER shall pay CITY within thirty (30) days after billing any additional revenue-sharing payments disclosed by such audit. If discrepancy exceeds two percent (2%) and no reasonable explanation is given for such discrepancy, PREMIER shall also pay the cost of the audit.

## **SECTION 18. REGULATIONS, INSPECTION, AND DIRECTIVES**

A. **Constitutional and Other Limits on PREMIER'S Rights to Exclusivity**

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

B. **Conformance with Laws:**

1. Any and all applicable rules, regulations, orders, and restrictions which are now in force or which may be hereafter adopted by CITY with respect to the operation of the CONCESSION;

2. Any and all orders, directions or conditions issued, given, or imposed by DEPARTMENT with respect to the use of the roadways, driveways, curbs, sidewalks, parking areas, or public areas adjacent to the PREMISES;
3. Any and all applicable laws, ordinances, statutes, rules, regulations or orders, including the LAMC, LAAC, the Charter of City of Los Angeles, and of any governmental authority, federal, state or municipal, lawfully exercising authority over PREMIER'S operations; and,
4. Any and all applicable local, state and federal laws and regulations relative to the design and installation of facilities to accommodate disabled persons.

**C. Permissions**

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

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

CITY and the DEPARTMENT, their authorized representatives, agents and employees shall possess and maintain the right to enter upon the PREMISES at any and all times. Said access and/or inspections may be made at any time by persons identified to PREMIER 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 PREMIER is complying with the terms and conditions of the AGREEMENT.
2. To observe transactions between PREMIER 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 PREMIER'S employees, subcontractor employees and the methods for recording receipts.

The information gathered on these inspections may be used to evaluate PREMIER 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 have absolute and full access to the PREMISES and all its appurtenances during the term of the AGREEMENT and may make such changes and alterations therein, and in the grounds surrounding same, as may be

determined by said CITY. Such determination shall not be unreasonable and shall take into account the business considerations presented by PREMIER.

**F. Business Inclusion Program**

PREMIER 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 I). PREMIER certifies that it has complied with Executive Directive No. 14 (Villaraigosa Series) regarding the Outreach Program. PREMIER shall not change any of these designated sub consultants and subcontractors, nor shall PREMIER 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, PREMIER must submit the MBE/WBE/SBE/EBE/DVBE/OBE Utilization Profile, Schedule B (Exhibit J) when submitting the Monthly Remittance Advice. Upon completion of the project, a summary of these records shall be prepared on the "Final Subcontracting Report" form, Schedule C (Exhibit K) and certified correct by PREMIER or its authorized representative. The completed Schedule C shall be furnished to the DEPARTMENT within fifteen (15) working days after completion of the AGREEMENT.

**G. First Source Hiring Ordinance**

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

1. PREMIER shall, prior to the execution of the Agreement, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that PREMIER 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. PREMIER further pledges that it will, during the term of the AGREEMENT:
  - a. At least seven (7) business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Economic and Workforce Development Department (EWDD), which will refer individuals for interview;
  - b. Interview qualified individuals referred by EWDD; and
  - c. Prior to filling any employment opportunity, PREMIER 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

PREMIER interviewed and the reasons why referred individuals were not hired.

3. Any Subcontract entered into by PREMIER relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
4. PREMIER shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the LAAC the DAA has determined that PREMIER intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under LAAC Section 10.39 et seq., and must be documented in each of PREMIER'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 this article.

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

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

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

#### Bidder Contributions – City Charter Sections 470(c) (12)

Persons who submit a response to this solicitation (bidders) are subject to Charter section 470(c) (12) and related ordinances. As a result, bidders may not make campaign contributions to and or engage in fundraising for certain elected City officials or candidates for elected City office from the time they submit the response until either the contract is approved or, for successful bidders, twelve (12) months after the contract is signed. The bidder's principals and subcontractors performing One Hundred Thousand dollars (\$100,000.00) or more in work on the contract, as well as the principals of those subcontractors, are also subject to the same limitations on campaign contributions and fundraising.

**I. CEC Form 55**

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

**SECTION 19. SURRENDER OF POSSESSION**

PREMIER 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 PREMIER or CITY.

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

**SECTION 20. 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: Vicki Israel  
221 North Figueroa Street, Suite 350  
Los Angeles, California 90012

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

B. To PREMIER:

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

All such notices may either be delivered personally to PREMIER or to any officer or responsible employee of PREMIER 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.

B. Written notices to PREMIER shall be addressed to PREMIER as follows:

SMG d.b.a. Premier Food Services Management Group, Inc.  
300 Conshohocken State Rd., Suite 770  
West Conshohocken, PA 19428  
Attn: President

With a copy to:

SMG d.b.a. Premier Food Services Management Group, Inc.  
300 Conshohocken State Rd., Suite 770  
West Conshohocken, PA 19428  
Attn: Counsel

And with a copy to:

SMG d.b.a. Premier Food Services Management Group, Inc.  
Attention: CONCESSION MANAGER  
2700 North Vermont Avenue  
Los Angeles, California 90027

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

## **SECTION 21. INCORPORATION OF DOCUMENTS**

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

- A. Standard Provisions for City Contracts (Rev. 3/09), Excluding PSC-34
- B. Premises Map
- C. Good Food Purchasing Policy Guidelines for Food Service Institutions
- D. Premier's Proposal Plan for Food and Beverage

- E. Premier's Investment Equipment List
- F. Non-Employee Accident or Illness Report
- G. Monthly Remittance Advice Form
- H. Special Occurrence and Loss Report
- I. Schedule A, MBE/WBE/SBE/EBE/DVBE/OBE Subcontractors Information Form
- J. MBE/WBE/SBE/EBE/DVBE/OBE Utilization Profile, Schedule B
- K. Final Subcontracting Report form, Schedule C
- L. CEC Form 50
- M. PREMIER/CITY Equipment list breakdown
- N. Food & Beverage Event Sales Report

In the event of any inconsistency between any of the provisions of this AGREEMENT and/or exhibits attached hereto, the inconsistency shall be resolved by giving precedence in the following order: 1) This AGREEMENT exclusive of attachments, 2) Exhibit A, 3) Exhibit B, 4) Exhibit C, 5) Exhibit D, 6) Exhibit E, 7) Exhibit F, 8) Exhibit G, 9) Exhibit H, 10) Exhibit I, 11) Exhibit J, 12) Exhibit K, 13) Exhibit L, 14) Exhibit M, and 15) Exhibit N.

(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 PREMIER 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:   
MICHAEL A. SHULL  
General Manager

DATE: 12-20-16

SMG d.b.a. Premier Food Services Management Group, Inc.

BY:   
Title: HAROLD L. WESTLEY  
PRESIDENT/CEO

DATE: JAN 4, 2017

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

BY: \_\_\_\_\_  
STREFAN FAUBLE  
Deputy City Attorney

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

Business Tax Registration Certificate Number: 2858497-001-9

Internal Revenue Service Taxpayer Identification Number: 23-2511871

AGREEMENT Number: 278

008244	CITY OF LOS ANGELES	SMG	1/4/2017
Ref Nbr	Invoice Nbr	Inv Date	Net Check Amt
097014	ANNUAL REVENUE	01/02/17	1,400,000.00
			1,400,000.00
			1,400,000.00
			1,400,000.00

Check # 158083

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



Worldwide Entertainment and  
Conference Venue Management

SMG

300 Four Falls Corporate Cente  
300 Conshohocken State Rd  
W. Conshohocken, PA 19428

Wells Fargo Bank, NA  
wellsfargo.com, Org 075 R/T 031000503  
Philadelphia, PA  
3-50/310

CHECK # 158083

CHECK DATE  
1/4/2017

\$ \*\*\*\*1,400,000.00

\*\* Void after 90 days \*\*  
US Dollars

One Million Four Hundred Thousand and 00/100

PAY TO THE  
ORDER OF  
CITY OF LOS ANGELES

*H. Winters*  
*John F. B...*  
Authorized Signatures

BORDER CONTAINS MICROPRINTING

⑈ 158083 ⑈ ⑆ 031000503 ⑆ 2030152019690 ⑈