

2025 MANAGEMENT AGREEMENT FRESNO CONVENTION AND ENTERTAINMENT CENTER

THIS AGREEMENT (Agreement), is dated as of this 1 day of February 2026, (the Effective Date), by and between the City OF FRESNO, a California municipal corporation (City), and VENUWORKS OF FRESNO, LLC, an Iowa limited liability corporation (Service Provider).

RECITALS

- A. WHEREAS, The City is the owner of the Fresno Convention & Entertainment Center (Saroyan Theatre, Selland Arena, Fresno Convention Center, Ernie Valdez Exhibit Hall and Surface Parking Lot located at 848 M Street, Fresno CA 93721, (Facility); and
- B. WHEREAS, Service Provider is in the business of providing management and operation and marketing services to similar facilities, and possesses the knowledge and expertise to manage and market the Facility; and
- C. WHEREAS, Service Provider is a wholly owned subsidiary of VenuWorks, Inc. ("VWI"), and enjoys the benefits of a services contract with VWI for on-going support, guidance and consultation to be provided to Service Provider by VWI in the completion of Service Provider's responsibilities as defined herein, and;
- D. WHEREAS, Service Provider shall subcontract with ATG Entertainment to supplement management and technical direction of Saroyan Theatre and Facility Ticket Office under the direction of the Service Provider subject to the terms and conditions of this Agreement; and
- E. WHEREAS, The City wishes to enter into this Agreement with Service Provider for the management of its Facility.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other considerations the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

- 1 DEFINITIONS.** In addition to the capitalized terms defined elsewhere in this Agreement, the following terms have the meanings referred to in this Section:
 - 1.1 "Affiliate" means a person that directly or indirectly controls or is controlled by, or is under common control with, a specified person. For purposes of this definition, "control" means ownership of equity securities or other ownership interests that represent more than 50% of the voting power in the controlled person.
 - 1.2 "Approved Budget" means any budget submitted by Service Provider that is accepted by the City Manager and approved by the City Council, in accordance

with Section 5 hereof.

- 1.3 "ATG" means a required contractual relationship with ATG Entertainment for various management and operations of the Facility. Although Service Provider and ATG Entertainment are separate entities, ATG is subcontracted to Service Provider, and subject to the terms of Service Provider within this Agreement.
- 1.4 "Capital Equipment" means any and all furniture, fixtures, machinery or equipment, either additional or replacement. The depreciable life of which, according to generally accepted accounting principles (GAAP), is in excess of three (3) years and any other item of expense that, according to GAAP, is not properly deducted as a current expense on the books of Service Provider, but rather should be capitalized.
- 1.5 "Capital Improvement" means a permanent enhancement to a fixed assets that increase its value, extends its useful life, or adapts it to new uses, and the cost is capitalized rather than expensed immediately. It is different from routine repairs and maintenance, which are expensed in the period they are incurred because they only maintain the asset's current condition.
- 1.6 "City Council" means the City Council of the City of Fresno.
- 1.7 "City Manager" means the City Manager of the City of Fresno.
- 1.8 "Commercial Rights" means naming rights, advertising signage (including event sponsorships), premium seating (including but not limited to suites and club seats) and memorial gifts, to the extent legally possible.
- 1.9 "Contract Administrator" means the City Manager or designee as designated from time to time in writing by the City Manager.
- 1.10 "Fiscal Year" means a one-year period beginning July 1 and ending June 30.
- 1.11 "Losses" means any and all losses, liabilities, claims (including, without limitation, claims for bodily injury, death or damage to property), damages and expenses (including reasonable attorneys' fees).
- 1.12 "Master Fee Schedule" means a document that lists fees charged by various City departments for their services, permits, and other administrative processes, updated from time to time by approval of the City Council.
- 1.13 "Operating Expenses" means the Operating Expenses listed in Section Exhibit A of this Agreement and approved by the City Council as part of the Adopted Budget.
- 1.14 "Operating Revenues" means any and all revenues of every kind or nature derived, directly or indirectly, from owning, operating, managing or promoting the Facility, all as determined in accordance with generally accepted accounting principles, consistently applied.

- 1.15 "Structural Improvements" means each of following: (i) the roof and replacement only of roofing system; (ii) all bearing walls and members; (iii) the foundation; (iv) all permanently paved surfaces; (v) all pipes, wires and optics located within the bearing walls or under the permanently paved surfaces; and (vi) such other elements of the Facility that are commonly understood by an architect to be structural elements.
- 1.16 "Non-Structural Improvements" means any and all building additions, alterations, renovations, repairs or improvements not categorized under Structural Improvements
- 1.17 "Surface Parking Lot" means the surface parking lot located just east of the Fresno Convention and Entertainment Center.
- 1.18 "Parking Garage" means the parking garage located just east of the Saroyan Theatre

2 COMMENCEMENT DATE AND TERM

- 2.1 This Agreement shall be effective from the date first set forth above (Effective Date), and shall continue in full force and effect for three (3) years, subject to any earlier termination in accordance with this Agreement. The Agreement may be extended, with the mutual written consent of both parties, for two (2) one-year increments with price increases in accordance with the provisions set forth herein, all other terms and conditions specified herein remaining the same. If either the City or Service Provider elects not to extend the Contract, or upon expiration of the final one-year extension term, the Service Provider shall aid the City in continuing, uninterrupted, the requirements of the Contract, by continuing to perform on a temporary basis, when specifically requested to do so in writing by the City Manager or designee, for a specified term not to exceed twelve (12) months. Such continuance shall be subject to price increases in accordance with the provisions set forth herein, and all other terms and conditions remaining the same as if the contract had been extended for such a temporary period by an amendment hereto.

3 RETENTION OF SERVICE PROVIDER

- 3.1 Subject to the terms and conditions set forth in this Agreement, City hereby retains Service Provider as an independent contractor for the purpose of performing the services described in this Agreement. Subject to the terms and conditions set forth herein, Service Provider agrees to provide management services in accordance with this Agreement, and consistent with policies approved by the City. In no event shall Service Provider hold itself out as, act as, or be the agent of the City, without the City's express written authority. Service Provider agrees to use its best efforts to maximize revenues from use of the Facility, including, without limitation, marketing, sales, event production and promotion and otherwise managing the Facility in accordance with this Agreement. In providing these services Service Provider shall manage the Facility in accordance with sound business practices and industry standards.

- 3.2 **Relationship of Parties.** Service Provider is an independent contractor of the City and shall not be deemed to be an employee, joint venturer, or partner of the City except for those matters which are specifically addressed in this Agreement.
- 3.3 The parties to this Agreement acknowledge that the City will retain title and ownership of the Facility and that Service Provider will not acquire title to, any security interest in, or any rights of any kind in or to the Facility (or any income, receipts or revenues there from).

4 COMPENSATION

- 4.1 Service Provider's sole compensation for satisfactory performance of all services required pursuant to this Agreement shall be in accordance with the cost structure provided in this Section 4.
- 4.2 The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to Service Provider's compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. Service Provider shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.
- 4.3 **Base Management Fee.** For the period beginning with the Commencement Date, and continuing through year one of the Agreement, the City shall pay Service Provider a base management fee of \$15,000 per month along with reimbursement of allowable net expenses as provided in Attachment A, which are authorized by the City. In subsequent years, the base fee amount shall be increased by a percentage equal to the 12-month percentage change in the Consumer Price Index (CPI for All Urban Consumers, All items less food and energy), not to exceed 2.8%. Payments for Base Management Fees will be due to Service Provider by the 15th day of the month for which the management fee is earned.
- 4.4 Ninety (90) days prior to the anniversary date of the Agreement, the Service Provider may submit proposed pricing revisions for the following year which will be subject to negotiation by the City at the City's discretion. The Purchasing Manager of the City of Fresno shall be the authorized City agent in any such negotiation. Any proposed price revisions will be subject to the Purchasing Manager's written approval before being implemented by the Service Provider.
- 4.5 **Variable Management Fee:** The City shall pay to Service Provider a Variable Management Fee, over and above the Base Management Fee, calculated at three percent (3.0%) of Net Revenues. "Net Revenues" is defined as the amount of revenues realized in the operation of the location from sources including, but not limited to, rentals, user fees, ticket fees, parking revenue, sponsorships, but specifically excludes any ticket sales, sales tax collected, reimbursed revenue for labor and equipment, revenue received from the City, and Naming Rights

sponsorship revenue. The Variable Management Fee will be due to Service Provider by the 15th day of the month following the month in which the net Revenues were realized, after the invoice is sent by Service Provider to the City.

4.5.1 **FINANCIAL GUARANTEE:** Service Provider will share performance risk for Facility with City and provide a limited guarantee for the annual Gross Operating Profit (GOP) performance, defined as the sum of Total Revenues less Total Expenses including base and variable management fees. At the conclusion of any fiscal year, in the event the final GOP fails to achieve the budgeted amount as approved in the budgetary development process stated in Section 8, Service Provider will refund 100% of the shortfall, not to exceed 30% of the total Variable Management Fees as defined in Section 4.5.

4.6 **Compensation Escalation Due to Change in Minimum Wage.** In the event the Service Provider is required by a collective bargaining labor agreement or by the Federal Government increases the minimum wage then the contract rates as defined in this proposal shall be subject to negotiation between the Service Provider and the City of Fresno. In the event that negotiated changes in contract rates cannot be agreed upon by the City of Fresno and the Service Provider, then the Agreement may be terminated by either party in accordance with the General Conditions of this Agreement. If the Service Provider and the City of Fresno agree to a negotiated change in contract rates as defined in this proposal, the Service Provider shall increase the minimum hourly wages and salaries paid to its employees performing services under this Agreement in accordance with new negotiated wages and salaries.

*Note: The Minimum wage rate in California is currently at \$16.50 an hour effective January 1, 2025, The Service Provider considered wage rates when completing the proposal.

5 MANAGEMENT AGREEMENT

5.1 PROVISION OF SERVICES

5.1.1 **Grant to Service Provider.** During the term of this Agreement, the City grants to Service Provider the exclusive right to manage, market, promote, operate and maintain the Facility, excluding food and beverage sales, all the proceeds of which shall accrue to the City, subject to Service Provider's right to terminate this Agreement as provided below.

5.1.2 **Service Provider's Responsibilities.** Beginning on the Commencement Date, and continuing through the term of the Agreement, Service Provider shall assume management responsibilities as set forth below. Where Service Provider is required to direct or arrange for services or material, Service Provider shall employ all persons performing such services or shall contract with a third party for the performance of such services.

5.1.3 **Relationship with the City.** Service Provider shall provide all of its Management Services in a manner which shall ensure full compliance with all the City requirements.

5.1.4 **Representatives.** The City's Contract Administrator to Service Provider in connection with Facility operations shall be the City Manager or designee, and the Service Provider representative shall be Service Provider's on-site Executive Director at the Facility.

5.2 **MARKETING AND PROMOTION**

5.2.1 Service Provider shall direct all marketing activities which shall be undertaken to maximize the use of the Facility by all persons, including independent promoters and Affiliates of Service Provider so as to provide maximum revenue, as defined in Section 9.5 below for the Facility and accessibility of the facility by the community. Service Provider shall be responsible for ensuring that appropriate programs are booked into the Facility and that suitable media coverage is obtained and shall coordinate such efforts with the City. Engage in such advertising, solicitation, and promotional activities as Service Provider deems necessary or appropriate to develop the potential of the Facility and the cultivation of broad community support; Work with the Fresno Convention and Visitor's Bureau in such manner as requested by the City.

5.2.2 **Commercial and Advertising Rights.** Subject to the approval of the City, Service Provider shall develop, implement and manage a system for selling Commercial and Advertising Rights at or in connection with the Facility, either itself or through a subcontracted entity, provided that the City approves such subcontractor in advance (which consent will not be unreasonably withheld). Any amounts due to a third-party selling the Commercial Rights shall be an Operating Expense.

5.2.3 **Naming Rights.** Service Provider shall assist the City in negotiating a naming rights agreement or extension of any applicable existing agreements upon expiration. City shall have final approval of all naming rights agreements.

5.3 **EVENT BOOKING AND FACILITATION**

5.3.1 Service Provider shall develop and maintain all schedules for Events held at the Facility. Service Provider shall create and maintain the Event Calendar in accordance with the priorities of the City. Service Provider shall provide the City with an updated Event Calendar, including booked events, tentative events, and business pursuits as requested and on a monthly basis. Service Provider shall negotiate and execute event agreements subject to commercially reasonable standards. Service Provider shall use an event rental agreement acceptable in form to the City with insurance requirements approved by the City's Risk Management Division.

5.3.1.1 The City shall be entitled to host Events at or about the Facility with advance notice to Service Provider of its desire to do so without charge to the City, so long as such Event does not conflict with a previously-scheduled Event. City shall reimburse

Service Provider for any costs associated with the event related to labor, rented furniture or equipment or any other expenses not normally accrued during business operations. Should the opportunity arise for Service Provider to program a significant revenue-producing event in a space reserved for a City event, City shall work with Service Provider to move or reschedule the non-rent event to another space or date, with approval not to be unreasonably withheld.

5.3.2 Operational Services. Service Provider shall direct all services required to stage (set up and tear down) the Facility for each event, including but not limited to, tables, chairs, services involving the stage area, sound system, lighting system, stage rigging, dressing area, stage equipment, loading in and loading out. Service Provider shall hire and manage all management staff, ticket sales personnel, ushers and other personnel required for the operation of the Facility, including but not limited to, ticket taking, novelty sales, program distributions and assistance to patrons generally, including the handicapped.

5.3.2.1 ATG Entertainment. Service Provider is required to subcontract with ATG for specific management responsibilities. This includes exclusive provision of ticketing services for all venues under management, and exclusive programming oversight of the Saroyan Theatre. The Saroyan Theatre General Manager and Technical Director, as well as the Ticket Office Manager, will be Service Provider employees, and shall be hired in conjunction with ATG approval. These three positions shall receive ATG corporate support including, but not limited to, ticketing and CRM platforms, event programming, recruiting support, and finance support for the foregoing. Corporate support from ATG is supplemental to Service Provider's corporate support. The General Manager, Technical Director, and Ticket Office Manager positions shall be located onsite. Service Provider and ATG shall work collaboratively to manage the Facility in accordance with this Agreement.

5.4 ESTABLISHING PRICES AND RATES.

5.4.1 Establish and adjust prices, rates and rate schedules for the aforesaid licenses, agreements and contracts and any other commitments relating to the Facility to be negotiated by Service Provider in the course of its management, operation and promotion of the Facility.

3.1.1 Master Fee Schedule. The City's Master Fee Schedule is a comprehensive document that lists fees for Facility charges. The Service Provider shall establish and adjust prices, rates and rate schedules for licenses, agreements and contracts and any other commitments relating to the Facility to be negotiated by Service Provider in the course of its management, operation and promotion of the Facility. Service Provider shall adjust or establish rates during this time in collaboration with the City's Master Fee Schedule and any update to the Master Fee Schedule (which typically occurs August through November) for the forthcoming fiscal year beginning July 1, subject to approval by the City Manager. Service Provider may propose changes outside of this annual update upon approval by the City Manager or designee. City shall then amend City's Master Fee Schedule so as to cause the new

rates to go into effect on a date of adoption of City Council.

- 5.4.2 **Parking Fees.** All rate change requests in Parking Fees are subject to review by the City Manager. Service Provider will provide a copy of the rate change request computation to the City within thirty (30) calendar days following the completion thereof, and the City shall then amend City's Master Fee Schedule so as to cause the new rates to go into effect on the date of adoption of City Council.
- 5.4.3 **Ticket Sales.** Service Provider shall direct all aspects of ticket sales for events and activities including computerized tickets, utilizing its contract with ATG to provide state-of-the-art equipment and software to the Facility at no cost to the City. Ticket sales services shall include ordering, selling and accounting for tickets, reporting ticket revenues for a given event for each user of the Facility, cash, check, and credit card processing, complete auditing and accounting for each event, and providing an accounting of the event income and expenses within ten days after each event is held. The amounts charged by the ticketing contractor for service charges, and the Facility's receipt of revenues from these service charges, will be consistent with regional industry standards.
- 5.4.3.1 **Migration of Ticket Sales.** Within 120 days, Service Provider shall mitigate from the legacy ticketing platform utilized under the prior Management Firm to the ATG ticketing platform.
- 5.4.4 **City Mandated Ticket User Fees and Surcharges.** Ticket User Fees shall be set subject to the Arts, Parks, Entertainment and Sports Fee (APES FEE) ordinance of the City of Fresno, which may be amended from time to time with the approval of amendments to the City's Master Fee Schedule. At the time of execution of this Agreement, a Ticket User Fee of \$3.00 shall be applied to all tickets on top of face value or any facility restoration/maintenance fees. All revenues collected as APES Fees shall be deposited into the Operating Account and paid to the City on a mutually agreed schedule.
- 5.4.5 **Food & Beverage / Concessions.** Catering and Concessions at the Facility, which includes food and beverage services, are performed by a third-party under Agreement with the City and administered by Service Provider. The Service Provider as manager of the Facility is responsible for items required of City under the Catering and Concession Services Agreement, unless stated otherwise within the Catering and Concessions Agreement.
- 5.4.5.1 The City grants the exclusive right and privilege to provide catering, concessions and vendor concessions services to the Catering and Concessions service provider. However, the City does reserve the right to allow the City limited special modifications in coordination with the negotiated approval of the Catering and Concessions service provider, including but not limited to Third-Party service providers. City shall not book any outside catering or concessions food vendors for any non-City sponsored events. The client will contract with and pay the Catering and Concessions service provider directly for the catering services provided at the event.

- 5.4.5.2 Catering and Concession service provider shall manage and provide Concession Services at all public Events at the Facility unless City agrees in writing to the contrary. Catering and Concession service provider shall pay any applicable sales taxes relating to Concession revenue from all forms of payment.
- 5.4.5.3 Catering and Concession service provider has exclusive right and privilege to use the Facilities' food service equipment and smallwares, service area utility systems and service areas.
- 5.4.5.4 Catering and Concession service provider is the registered permit holder for the Facility alcohol beverage license.
- 5.4.5.5 The contractual arrangement may be re-negotiated at the expiration of Catering and Concession Services Agreement.

5.5 FACILITY OPERATION

- 5.5.1 Except as otherwise provided in this Agreement, Service Provider shall be responsible for all aspects of the operation of the Facility and shall be responsible for any and all operating expenses, routine maintenance and repairs of the Facility. Service Provider shall contract and pay for all utilities and services to the Facility. Service Provider may operate the Facility itself or hire subcontractors to perform all or any portion of the operation of the Facility in compliance with all applicable laws (including all applicable bonding and licensing requirements). Service Provider agrees to do all things reasonably necessary to conduct its affairs and carry on its business and operations in such a manner as to comply in all material respects with any and all applicable laws of the United States and the State of California and to duly observe and conform to all valid orders, regulations, or requirements of any governmental authority relative to the conduct of its business and the ownership and/or operation of the Facility. Service Provider shall further comply with any and all provisions and conditions of any development entitlements issued by the City.
- 5.5.1.1 Service Provider' failure to comply with such ordinances, statutes, rules and regulations relating to the Facility shall be an Event of Default under this Agreement and shall entitle the City to terminate this Agreement pursuant to the provisions of Section 9 hereof. Service Provider agrees that it shall not be entitled to claim litigation costs (including attorneys' fees) as Operating Expenses.
- 5.5.2 **Agreements.** Service Provider shall negotiate, execute in its own name as an independent contractor, deliver and administer any and all licenses, occupancy agreements, rental agreements, booking commitments, advertising and sponsorship agreements, decorating agreements, supplier agreements, service contracts, and all other contracts and agreements in connection with the management, promotion and operation of the Facility, subject to (1) the fact that if any such license, agreement, commitment or contract other than those involving the license, lease or rental of any

of the Facility (or any portion thereof) in the ordinary course has a term that extends beyond the remaining Management Term, such license, agreement, commitment or contract shall be approved in advance by City (which approval shall not be unreasonably withheld); and (2) in connection with any licenses, agreements, commitments or contracts for the Facility, Service Provider will include in such documents the right of Service Provider to assign all of its rights and obligations under such licenses, agreements, commitments and contracts, including ownership of data, at no cost to the City (or to any successor management company retained by the City) upon the expiration or termination of this Agreement, and upon such expiration or termination, such assignment and assumption shall automatically occur as provided in Section 11.3(b) hereof. Service Provider shall also be solely responsible for obtaining all necessary permits, licenses or similar authorizations required for the operation.

- 5.5.3 **Custodial and Cleaning Services.** Service Provider shall provide or cause to be provided all routine cleaning and janitorial services at the Facility.
- 5.5.4 **Landscaping Services.** Service Provider shall direct all necessary landscape services, whether performed by Service Provider or a landscape service company engaged by Service Provider.
- 5.5.5 **Pest Control.** Service Provider shall direct all necessary pest control services, whether performed by Service Provider or a pest control service engaged by Service Provider. Service Provider and pest control service engaged by Service Provider shall comply with City's Administrative Order 9-1, Integrated Pest Management Policy.
- 5.5.6 **Trash Removal.** Service Provider shall direct removal of all trash from the Facility and agrees that it shall not permit any employee, concessionaire or caterer to place refuse outside the buildings on the Facility, except in designated trash containers, the Facility of which shall be approved by the City.
- 5.5.7 **Organic Waste.** Service Provider shall implement and maintain an organic waste collection program in compliance with State Law (SB 1383).
- 5.5.8 **Recycling Program.** Service Provider shall establish and maintain a viable and ongoing recycling program, approved by City's Solid Waste Management Division for the Facility. Literature describing City recycling programs is available from City's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
 - 5.5.8.1 Service Provider shall contact City's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit and cooperate with such Division in their conduct of the audit for the Facility.
 - 5.5.8.2 Cooperate with and demonstrate to the satisfaction of City's Solid Waste Management Division the establishment of the recycling program in paragraph (a) above and the ongoing maintenance thereof.

- 5.5.9 Operation of Surface Parking Lot.** Subject to existing reserved parking rights, Service Provider shall be responsible for operating and managing parking areas for the term of this Agreement and depositing any revenue generated therefrom into the Operating Account. Service Provider will honor existing agreements and use rights to the parking areas. Operate or cause to be operated the Surface Parking Lot for use as a pay parking lot for automobiles and for no other use unless approved by the City. The Surface Parking Lot shall be operated and maintained as a first-class parking facility, open to public use during events, and with established rates approved by the City and staffed by sufficient personnel to ensure safe and efficient ingress and egress of traffic. All Service Provider employees, subcontractors, and employees of Service Provider's subcontractors shall park in the Surface Parking Lot. Overnight parking in the Surface Parking Lot shall not be permitted by Service Provider, except as specifically required to accommodate an event in the course of operations at the Facility.
- 5.5.10 Operation of Parking Garage.** The Parking Garage is operated, maintained, and enforced by the City's Parking Division. Service Provider shall work collaboratively with the Parking Division to ensure the Parking Garage is available as needed to support Events at the Facility. Service Provider shall provide the Parking Division with a minimum of 3 business days' notice for all Events at the Facility. All revenue parking revenue generated from the Parking Garage is collected and retained by the City. Parking Garages rates are established in the Master Fee Schedule.
- 5.5.11 Street Parking.** Street Parking is enforced by the City's Parking Division. Street parking rates for Event and Non-Event days are established by the Master Fee Schedule. Service Provider shall provide the Parking Division with a minimum of 3 business days' notice for all Events at the Facility to allow the Parking Division to update parking rate schedules. All revenue parking revenue generated from street parking is collected and retained by the City.
- 5.5.12 Security.** Service Provider shall arrange for proper security for events at the Facility and for general security when events are not in progress. Such security may be provided by Service Provider or by contract, in its discretion. Service Provider shall review and coordinate exterior crowd management and traffic control with appropriate local authorities.
- 5.5.13 Licenses and Permits.** Service Provider shall obtain and maintain all licenses and permits necessary for management and operation of the Facility, subject to the local procedures for the granting of such licenses and permits.
- 5.5.14 Petty Cash and Change Funds.** Service Provider and the City agree that any and all petty cash and change funds shall belong to the City. These funds will be returned to the City at the end of the contract term.
- 5.5.14.1 Cash Discrepancies.** Service Provider will be responsible for any cash discrepancies resulting from errors made in making change at cash sale points, unless performed by the Catering and Concessions Service Provider.

- 5.5.15 **Staffing.** Service Provider shall be responsible for supervision and direction of all personnel staffing at the Facility. All Facility staff will be in the employment of Service Provider. All expenses associated with the employment of staff will be considered operating expenses of the Facility. Pre-employment and relocation expenses must be pre-approved by the City. The City has the right to participate in the recruitment, interviewing and hiring of the Executive Director of the Facility, including the creation of a recruiting task force to work with Service Provider in the hiring process.
- 5.5.16 **Additional Duties.** Service Provider shall also be required to provide, on a timely basis, information, data, and solutions to project issues as may be reasonably requested by the City, together with such other services consistent herewith as the City may reasonably require.
- 5.5.17 **Employee Standards.** Service Provider will employ trained and neatly uniformed employees and said employees shall conduct themselves at all times in a proper and respectful manner. Any dismissal shall be in accordance with Service Provider' corporate policy and applicable federal, state or local laws which may be in effect and, further, shall be in compliance with applicable union or labor organizational agreements which may be in effect at the time of said dismissal and Service Provider shall defend, indemnify and save the City harmless from any claim, cause of action, expense (including attorneys' fees) lost, cost or damage of any kind or nature arising there from, except in the case of express written direction from the City.
- 5.5.18 **Level of Skill.** It is further mutually understood and agreed by and between the parties hereto that inasmuch as Service Provider represents to City that Service Provider and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said industry necessary to perform the services agreed to be done by it under this Agreement, City relies upon the skill of Service Provider and its subcontractors, if any, to do and perform such services in a skillful manner and Service Provider agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by City shall not operate as a release of Service Provider or any subcontractors from said industry and professional standards.
- 5.5.19 **Standard of Operation.** Service Provider represents and warrants to the City that it shall maintain an efficient and high-quality operation at the Facility comparable to other similar facilities and containing facilities similar to those of the Facility.
- 5.5.20 **Public Meetings.** Service Provider shall attend public meetings related to the operation and management of the Facility or related Event as requested by the City.
- 5.5.21 **Use of the City Equipment.** Service Provider will use equipment at the Facility in performance of its obligations hereunder.

- 5.5.22 **Local Preference.** Any provisions set forth in this Agreement to the contrary notwithstanding and with the exception of any production company currently touring with any national conventions, professional touring and/or production company Facility user, Service Provider shall, through its management, sales, staff, representatives, and affiliates, refer Facility users to its approved local vendor list, without favor for production services, sound/lighting/audio visual services, decoration/floral services, and pipe and drape services to be provided to such Facility users, except as necessary due to unavailability of such services locally. The term “local vendor” as used herein shall mean a vendor that is headquartered in Fresno County. Any local vendor that applies for approval, that provides such services, and meets the requirements set forth in this Agreement shall be approved and added to the local vendor list. The approved local vendor list shall be made available to all potential Facility users, published on the Fresno Convention Center website and all social media pages, and shall be attached to all sales proposals and Facility user contracts. With the exception of any production company currently touring with any national conventions, professional touring and/or production company Facility user, Service Provider shall not contract with any service provider with preferred status for services that are provided by local vendors who are on the approved local vendor list. Service Provider shall not recommend any preferred status vendors. Service Provider shall not impose any fee on approved local vendors or facility users for services provided by vendors on the approved local vendors list nor recommend any preferred local vendors or receive any payment or other remuneration in connection with services provided by an approved local vendor to a facility user. Any contrary provisions set forth in this Agreement are superseded by the provisions of this Section.
- 5.5.23 **City Access to Facility.** Representatives of the City shall have the right to enter all portions of the Facility to inspect same, to observe the performance of Service Provider of its obligations under this Agreement, to install, remove, adjust, repair, replace or otherwise handle any equipment, utility lines, or other matters in, on, or about the premises, or to do any act or thing which the City may be obligated or have the right to do under this Agreement or otherwise. In connection with the exercise of such rights, the City will endeavor to provide (but is not obligated to provide) advance notice to Service Provider for security purposes and to minimize any interference with or disruption of Service Provider's work under this Agreement. Nothing contained in this Section is intended or shall be construed to limit any other rights of the City under this Agreement nor shall impose or be construed to impose upon the City any independent obligation to construct or maintain or make repairs, replacements, alterations, additions or improvements or create any independent liability for any failure to do so.
- 5.5.24 **Damage to and Destruction of the Facility.** If all or part of the Facility is rendered unusable by damage from fire and other casualty which, in the reasonable opinion of the City, cannot be substantially repaired under applicable laws and governmental regulations within 180 days from the date of such casualty (employing normal construction methods without overtime or other

premium), then the City shall notify Service Provider thereof. In such case, either the City or Service Provider may elect to terminate this Agreement as of the date of such casualty by written notice delivered to the other not more than 60 days after receipt by Service Provider of the City's notice concerning the reconstruction.

- 5.5.25 **Availability of Facility.** Service Provider agrees that, except as a result of full or partial destruction of the Facility, the Facility will be made available for all events scheduled therein and Service Provider agrees to defend, indemnify and save the City harmless from and against any and all claims, causes of action, expenses (including attorneys' fees) Losses, costs and damages arising from the failure of the Facility to be available in the condition necessary for the conduct of such events for scheduled events due to the negligence or willful misconduct of Service Provider, its agents, servants, employees or contractors of any tier, and in such case, Service Provider shall pay to the City the estimated Revenues, less Operating Expenses, for such event within five (5) days after the event was to have taken place.
- 5.5.26 **Legal Proceedings.** After consultation with and approval by the Contract Administrator and the City Attorney, institute on behalf of the Facility and the City at the reasonable expense of the City or as an Operating Expense, with counsel selected by Service Provider, such legal actions or proceedings as Service Provider shall deem necessary or appropriate in connection with the operation of the Facility, including, without limitation, to collect charges, rents or other revenues due to Service Provider as manager of the Facility or to cancel, terminate or sue for damages under, any license, use, advertisement or concession agreement for the breach thereof or default thereunder by any licensee, user, advertiser, or concessionaire at the Facility.
- 5.5.27 **Written Powers Reserved to the City.** The City shall have right of prior written approval in connection with the following:
- (a) The Annual Budget; and
 - (b) The Business Plan, as defined below
 - (c) Any expenditure for personnel or equipment in excess of budget and;
 - (d) Any booking of events involving risk of **the City** funds.

6 FACILITY MAINTENANCE, REPAIR, AND REPLACEMENTS

- 6.1 **Facility Maintenance.** Service Provider will be responsible for the performance of all facilities maintenance work as described herein.
- 6.2 **City Responsibilities.** The City shall be responsible for the timely maintenance, repair and replacement of all Structural Improvements of the Facility during the Term. "Structural Improvements" shall mean each of following: (i) the roof structure and replacement only of roofing system; (ii) all bearing walls and members; (iii) the foundation; (iv) all permanently paved surfaces; (v) all pipes,

wires and optics located within the bearing walls or under the permanently paved surfaces; and (vi) such other elements of the Facility that are commonly understood by an architect to be structural elements. In the event there is a disagreement between Service Provider and the City as to what constitutes "other elements" coming within the provisions of subpart (vi) above, the determination shall be made by an architect with similar industry construction experience reasonably acceptable to the City and Service Provider and the party whose position is not upheld shall pay the costs of engaging such architect.

6.3 Service Provider Responsibilities. Except for maintenance, repairs and replacements that are the obligation of the City under this Agreement, Service Provider shall be responsible as an Operating Expense for the timely upkeep, cleanliness, maintenance, repair and replacement of all elements of the Facility and grounds that are not Structural Elements, which maintenance, repair and replacement shall be performed (i) in a safe, clean, attractive, and first class manner comparable to that of other facilities of similar design not more than five (5) years older or five (5) years newer than the Facility, ordinary wear and tear excepted, (ii) in a manner that complies with all applicable requirements, and (iii) in a manner consistent with the original design and construction program of the Facility.

6.3.1 Although the City is responsible for the roof structure and replacement of the roofing system, Service Provider is responsible for general upkeep, clearing debris, and routine maintenance of the roofing systems, including the timely repair of leaks. Service Provider shall routinely inspect and maintain all roof drains and water drainage systems.

6.4 Both parties shall have the right to access and use the Facility throughout the Term in order to maintain, repair and replace the Facility as required of them under this Agreement; provided that such activities do not unreasonably interfere with the permitted use of the Facility by the other party.

6.5 Service Provider and the City shall meet at least once prior to December 31st of each year to confer on general operation, maintenance, repair and replacement standards for the Facility and Service Provider's and the City's performance related thereto. At any such meeting the City may require Service Provider, or Service Provider may require the City, to modify their respective policies and/or approaches to operating, maintaining, repairing and replacing the Facility in order to meet such standards. Service Provider shall make no permanent additions or improvements to the Facility without the prior written approval of the City, which approval shall not be unreasonably withheld. Specifically, Service Provider and City will in good faith agree on a repair and improvement plan for both Non-Structural Improvements and Structural Improvements for the succeeding 12-month period (Annual Facility Improvement Expense Plan). If improvements or repairs become necessary during the season, City and Service Provider shall cooperate to complete such improvements or repairs.

6.6 The City shall conduct a yearly walk through of the Facility to be conducted during

the month of January. Service Provider will be notified of the time that the City intends to conduct the walk through and will be permitted to attend the City's inspection of the Facility. In addition to the City's annual January inspection, the City shall be afforded access to the Facility at all reasonable times. If the City determines that Service Provider has not operated, maintained and repaired the Facility to the standards set forth in this Agreement, the City shall have the right to notify Service Provider in writing setting forth specifically the manner in which the City believes Service Provider failed to meet such standards and describing the actions to be taken to cure such failure(s).

- 6.7 Service Provider acknowledges and agrees that the City owns and has title to all improvements that are now or hereafter permanently fixed to the Facility, notwithstanding the fact that the same may have been, or may be, as appropriate, acquired, financed, installed or placed in the Facility by Service Provider.
- 6.8 Except as otherwise provided herein, title to all trade fixtures, furnishings, equipment, and other personal property in the Facility funded or acquired by Service Provider, its predecessors, assignees or concessionaires shall remain with Service Provider (collectively "Service Provider's Personal Property"). Service Provider, its assignees or concessionaires will be entitled to remove Service Provider's Personal Property from time to time during and upon expiration of the Term. Any damage to the Facility caused by Service Provider's removal of Service Provider's Personal Property shall be promptly repaired by Service Provider at its sole cost and expense.
- 6.9 **Emergency Repairs.** If any repairs are of an emergency nature, Service Provider shall immediately contact the Contract Administrator regarding any emergency and make such repairs in accordance with the following: the City shall reimburse Service Provider for the full amount of the emergency repair by depositing the same in the Facility Operating account to replenish such amount utilized from such account. City shall make every effort to provide reimbursement within thirty (30) days of invoice. An emergency repair is defined herein as the repair of a condition which, if not performed immediately, creates an imminent danger to persons or property or would, in Service Provider's reasonable judgment, significantly impact the operational functions of the Facility (including without limitation the holding of any scheduled event at the Facility) and was not the result of lack of preventative maintenance, improper operation, or the negligence or willful misconduct of Service Provider.
- 6.10 **Future Capital Investment:** Service Provider agrees to consider the future option of capital investment funding of which the amount, term, and project would be determined.

7 REPORTING AND OTHER DELIVERABLES

- 7.1 **Business Plan.** Within thirty (60) days after the date of this Agreement, Service Provider shall submit to the City a complete business plan for the fiscal year ending June 30, 2027 (Business Plan) to be approved by the City Manager and followed by

Service Provider. The Business Plan shall be subject to the prior written approval of the City. The Business Plan shall be a marketing plan and a projection of Revenues and Operating Expenses for the year and shall include an analysis of the basis and assumptions underlying each line item of Revenues and Operating Expenses. Service Provider shall submit a Business Plan on an annual basis and shall deliver the same to the City simultaneously with the delivery of the Annual Budget. The Business Plan shall in no way become a performance obligation for either the City or Service Provider but serve as a management blueprint to monitor Service Provider's performance.

- 7.2 **Transition Plan.** Service Provider shall provide to the City a transition plan outlining those action items which must be completed by Service Provider prior to transition of management of the facility to Service Provider. Said transition plan shall include an inventory of all equipment owned by the City and by Service Provider, and said inventory shall be kept up-to-date by Service Provider during the term of this Agreement.
- 7.3 **Monthly Meetings.** Service Provider's on-site management will be made available to meet with the City each month to review revenues and operating expenses for the prior calendar month as well as booked events for the following month. Service Provider's corporate representatives shall be available to meet quarterly with the City to monitor performance and discuss operations.
- 7.4 **Reporting of Key Performance Indicators.** At a frequency to be determined by the City, Service Provider shall provide written operational reports of key performance indicators, event reconciliation, ticketing and sales information, profit and loss, and other industry-standard reports as determined by the City.
- 7.5 **Accounting Records, Reports and Practices**
- 7.6 **Records and Audits.**
 - 7.6.1 Service Provider shall keep full and accurate accounting records relating to its activities at the Facility and shall provide to the City monthly financial statements in a format agreed upon by the City. Service Provider shall give the City's authorized representatives access to such books and records maintained at the Facility during reasonable business hours and upon reasonable advance notice. Service Provider shall keep and preserve for at least three (3) years following each Fiscal Year all sales slips, rental agreements, purchase order, sales books, credit card invoices, bank books or duplicate deposit slips, and other evidence of Operating Revenues and Operating Expenses for such period. Additionally, Service Provider shall deliver to the City annual financial statements within ninety (90) days after the close of each Fiscal Year with a statement that they were prepared in accordance with generally accepted accounting principles.
 - 7.6.2 Service Provider shall also supply to City a complete financial audit in compliance with the Government Accounting Standards Board prepared by a reputable Certified Public Accounting firm. The actual cost of such audit shall be paid equally by Service

Provider, as a Facility Operating Expense, and City; except that Service Provider's share of audit expenses shall never exceed Fifteen Thousand Dollars (\$15,000.00) per year. Service Provider must submit such audit to City within one hundred twenty (120) days after the close of the Fiscal Year. In the event additional costs and expenses relating to field visits to the Facility by auditors are incurred due to errors and/or omissions in the financial statements prepared and delivered by Service Provider hereunder, Service Provider shall be liable for such additional costs and expenses.

7.6.3 Annual Plan: Actual to Budget Comparison. Service Provider shall provide to City an annual management plan, which shall include the annual operating budget and annual cash flow budget described in Section 8.1 for the next Fiscal Year. The annual plan shall include information regarding Service Provider's anticipated operations for such Fiscal Year and requested Capital Equipment and Non-Structural Improvements purchases, and anticipated budgets therefor. The annual plan shall be subject to review, revision and approval by City. As part of the annual plan, but no later than June of each Fiscal Year, Service Provider shall provide to City with a preliminary "projected actual to budget" report estimate for the financial performance of the Facility in a form reasonably acceptable to City. By October 1 of each Fiscal Year, Service Provider shall provide to City a final "actual to budget" report in a form reasonably acceptable to City. Along with the final "actual to budget" report, Service Provider shall provide a detailed explanation of any Operating Expense that exceeds the Facility Budget.

7.6.4 Monthly Reports and Meetings. By the thirtieth day of each month Service Provider shall provide to City a written monthly operational report in a format reasonably acceptable to City setting out the Facility's anticipated activities and financial condition for the upcoming month and detailed monthly financial, programmatic, and statistical reports for all Facility' activities in the prior month. These reports must include all standard financial reports including those unique to the industry; detailed financial reports on subcontract transactions; information on the activities associated with the operation, management, supervision and maintenance of the Facility; a list of upcoming events; a discussion of operating and maintenance issues and concerns; anticipated changes in management, operations or maintenance activities; and other information as appropriate or as requested by City through the Contract Administrator. Service Provider and City shall work together to tailor these reports so that all reviewing parties will understand the information provided. Service Provider shall promptly notify the City Manager when Service Provider determines that a Facility Operating Expense could cause the Facility not to meet the Approved Budget and may require a budget amendment by the City Council. Moreover, on an annual basis, the City Manager shall schedule a presentation by the Facility General Manager in front of the City Council to discuss overall Facility operations.

8 ANNUAL BUDGET

8.1 Delivery of Budget. On a date to be determined by the City each year during the

term, Service Provider shall submit to the City a proposed annual operating budget for the ensuing year, listing all projected Revenues and Operating Expenses by category, broken down by month, with explanations and assumptions for each Revenue and Operating Expense line item. The proposed annual budget shall include a proposed rent structure for events proposed to take place in the Facility for the ensuing year.

- 8.1.1 Accompanying the Annual Budget shall be included a Capital Budget, including reasonable detail of the proposed projects and the associated costs, including Capital Improvements, Structural Repairs, and Capital Equipment for the City to consider for the next funding cycle. The obligation to pay for Capital Improvements, Structural Repairs, and Capital Equipment purchases shall remain with the City and will not be considered Operating Expenses. Service Provider's recommendation for Capital Improvements, Structural Repairs, and Capital Equipment purchases to be accomplished during the year (and on rolling 5-year period) and shall be accompanied by an estimate of the cost of all such items and projects and a request that the City budget funds therefore.
- 8.2 **Review of Budget.** The proposed annual budget shall be reviewed by the City in accordance with the City's budget development schedule. Upon approval by the City, the proposed annual budget shall become the final annual budget (the "Annual Budget") for the year. If the City objects to the proposed annual budget or any part thereof, Service Provider shall be obligated to promptly respond to each such objection and revise the proposed annual budget in connection therewith.
- 8.3 **Revision of Annual Budget.** Service Provider and the City may revise the Annual Budget at any time by mutual written agreement.
- 8.4 **Certified Statements.** Service Provider shall deliver to the City, within twenty (20) days after the end of each calendar month and within forty-five (45) days after the end of each fiscal year, a true and correct statement, certified as true and correct by Service Provider Facility Executive Director, of all Revenues and Operating Expenses of the preceding calendar month and fiscal year, together with any reasonable supporting documentation requested by the City. Service Provider shall provide an accounting of each event held at the Facility in said monthly reports for the preceding calendar month.

9 OPERATING EXPENSES

- 9.1 **Deposit of Funds.** On the first business day of each month during the term and any renewal term of this Agreement, the City will deposit the following sums into the City's Operating Account:
 - 9.1.1 An amount equal to the estimated deficit, if any, as defined below, for such month as set forth in the Annual Budget; and
 - 9.1.2 The Base Management Fee, payable with respect to the current calendar month, and the variable management fee, payable with respect to the previous calendar

month.

- 9.2 **Working Funds.** The City and Service Provider will agree to an amount to be deposited by the City into the Operating Account (City Operating Account) prior to Commencement Date to ensure the uninterrupted and efficient operation of the Facility.
- 9.3 **Insufficient Funds.** In the event that the City Operating Account is insufficient to cover the Operating Expenses plus the Base Management Fee and any Variable Fee, if any, due and payable during a month (Monthly Deficiency), then the Monthly Deficiency shall be paid by the City into the City Operating Account not later than thirty (30) days after the City's receipt of the Monthly Statement. Under no circumstances shall Service Provider be required to advance funding for operating expenses of the Facility.
- 9.4 **Excess Funds.** If the amounts deposited by the City in the City Operating Account exceed the amounts required to pay the Operating Expenses plus the Fees in any month such positive balance shall be credited against the City's obligation to make future deposits into the City Operating Account.
- 9.5 **Revenues; Bank Accounts and Payment of Operating Expenses.** Service Provider shall be responsible for the collection of all Revenues and payment of Operating Expenses, as defined in Exhibit A, including payment and remittance of applicable sales taxes. As used herein, "Revenue" is defined as the total amount received by Service Provider or any other person or entity operating on Service Provider's behalf from third parties, directly or indirectly arising out of or connected with and on behalf of the Facility, including without limitation, transactions for cash, credit and credit card sales, less applicable sales taxes. Service Provider, in cooperation with the City, shall establish two separate commercial bank accounts. These accounts shall be in the name of Service Provider and utilize Service Provider's federal identification number. Signatories shall include those individuals as deemed appropriate by Service Provider and the City. The names of the commercial accounts shall be the Operating Account and the Box Office Account. Revenues from the sale of tickets to events at the Facility shall be deposited by Service Provider in the Box Office Account. After payment from such ticket sales Revenues of all event-related expenses, and within twenty-four hours after the end of the event, Service Provider shall transfer the remaining event ticket sales Revenues to the Operating Account.
- 9.5.1 All other Revenues generated by use of the Facility and collected by Service Provider shall be deposited in the Operating Account. Service Provider is authorized to make disbursements from the Box Office Account to promoters or performers in any amount due the performer or promoter as per contracts with them, and to pay budgeted Operating Expenses from the Operating Account. the City shall be authorized at any time, to obtain information and records from the bank concerning such accounts and to inspect the same. It shall be an Event of Default, as defined below, entitling the City to terminate this Agreement, if Service Provider withdraws any money from the Operating Account or the Box Office Account except in accordance with this Agreement. Interest accrued in these accounts shall be revenue to the Facility and belong to the City.

10. TERMINATION, REMEDIES, AND FORCE MAJEURE

- 10.1. This Agreement shall terminate without any liability of City to Service Provider upon the earlier of: (i) Service Provider's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against Service Provider; (ii) 30 calendar days prior written notice with or without cause by City to Service Provider; (iii) City's non-appropriation of funds sufficient to meet its obligations hereunder during any City fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.
- 10.2. If City determines that termination for cause is appropriate as provided in Section 10.1, Service Provider may be provided with the opportunity to cure and remedy request for termination considerations as soon as possible after such notice but in no event more than thirty (30) days after receipt of such notice, at City's sole discretion.
- 10.3. Immediately upon any termination or expiration of this Agreement, Service Provider shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to City any and all unearned payments and all properties and materials in the possession of Service Provider that are owned by City. Subject to the terms of this Agreement, Service Provider shall be paid compensation for services satisfactorily performed prior to the effective date of termination. Service Provider shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.
 - 10.3.1. A joint inventory shall be immediately undertaken to establish the existence and condition of Facility equipment used by Service Provider during this Agreement.
- 10.4. If, within 60 days of termination of this Agreement, City determines that any part of the Facility equipment are damaged by Service Provider, and that such condition was not evident in the final inventory or walk-through as described in Section 6.1.6. City reserves the right to have Service Provider pay for repairs to said damaged areas and/or equipment caused by Service Provider. This clause shall survive the expiration of this Agreement.
- 10.5. In the event of termination due to failure of Service Provider to satisfactorily perform in accordance with the terms of this Agreement, City may withhold an amount that would otherwise be payable as an offset to, but not in excess of, City's damages caused by such failure. In no event shall any payment by City pursuant to this Agreement constitute a waiver by City of any breach of this Agreement, which may then exist on the part of Service Provider, nor shall such payment impair or prejudice any remedy available to City with respect to the breach.
- 10.6. Upon any breach of this Agreement by Service Provider, City may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages

for the breach of the Agreement. If it is determined that City improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

- 10.7. Service Provider shall provide City with adequate written assurances of future performance, upon Administrator's request, in the event Service Provider fails to comply with any terms or conditions of this Agreement.
- 10.8. Service Provider shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of Service Provider and without its fault or negligence such as, acts of God or the public enemy, acts of City in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Service Provider shall notify Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

10.9. Effect of Termination or Expiration.

- 10.9.1 In the event this Agreement expires or is terminated, (i) all Operating Expenses incurred or committed for prior to the date of expiration or termination, which have either been approved by the Council or are unanticipated expenses approved by the City Manager in light of termination, shall be paid using funds on deposit in the account(s) described in Section 9.5 and to the extent such funds are not sufficient, the City shall pay the balance of such expenses; and (ii) City shall promptly pay Service Provider all fees earned to the date of expiration or termination subject to rights of set off in the event of a breach of this Agreement by Service Provider (the fees described in Section 4 (as applicable) being subject to proration).
- 10.9.2 Upon termination or expiration, without any further action on the part of Service Provider or the City, the City shall, or shall cause another management company retained by it to, accept the assignment of Service Provider's rights, and assume and perform all of Service Provider's obligations, arising after the date of expiration or termination of this Agreement, under any licenses, occupancy agreements, rental agreements, booking commitments, advertising agreements, concession agreements, and any other contracts relating to the Facility which have been executed by Service Provider hereunder, except (A) to the extent that any such license, agreement, commitment or contract was executed by Service Provider in violation of any of the restrictions applicable to Service Provider's right to execute such licenses, agreements, commitments or contracts contained in this Agreement; and (B) for any such license, agreement, commitment or contract to which the consent of the other party thereto is required for such assignment and assumption unless such consent is obtained (in the case of any such consent, Service Provider will use commercially reasonable efforts to obtain such consent and the City

will cooperate in any reasonable manner with Service Provider to obtain such consent), and all further obligations of the parties hereunder shall terminate except for the obligations that are expressly intended to survive the termination or expiration as specified in the Agreement.

11. CONFIDENTIAL INFORMATION AND OWNERSHIP OF DOCUMENTS

- 11.1. Any reports, information, or other data prepared or assembled by Service Provider pursuant to this Agreement shall not be made available to any individual or organization by Service Provider without the prior written approval of the City. During the term of this Agreement, and thereafter, Service Provider shall not, without the prior written consent of City, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of City, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in City.
- 11.2. Any and all writings and documents prepared or provided by Service Provider pursuant to this Agreement are the property of City at the time of preparation and shall be turned over to City upon expiration or termination of the Agreement. Service Provider shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.
- 11.3. If Service Provider should subcontract all or any portion of the services to be performed under this Agreement, Service Provider shall cause each subcontractor to also comply with the requirements of this Section.
- 11.4. This Section shall survive expiration or termination of this Agreement.

12. INDEMNIFICATION AND RELEASE

- 12.1. To the furthest extent allowed by law, Service Provider shall indemnify, hold harmless and defend City, and its officers, officials, employees, agents, and volunteers (City) from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by City, Service Provider or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of Service Provider 's: (i) occupancy, maintenance and/or use of the Premises; (ii) use of all or any part of the Premises, including use of any public facilities and improvements, upon which the Premises is located; or (iii) performance of, or failure to perform, this Agreement. Service Provider's obligations under the preceding sentence shall apply to any negligence of City, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the

gross negligence, or by the willful misconduct, of City.

If Service Provider should contract any work on the Premises or subcontract any of its obligations under this Agreement, Service Provider shall require each consultant, contractor and subcontractor to enter into a Side Agreement, at the discretion of the City's Risk Manager or designee, to indemnify, hold harmless and defend City, and its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

Service Provider's occupancy, maintenance and use of the Premises shall be at Service Provider's sole risk and expense. Service Provider accepts all risk relating to Service Provider's: (i) occupancy, maintenance and/or use of the Premises; (ii) use of all or any part of that Premises, including use of any public facilities and improvements, upon which the Premises is located; and (iii) the performance of, or failure to perform, this Agreement. City shall not be liable to Service Provider or Service Provider's insurer(s) for, and Service Provider and its insurer(s) hereby waives and releases City from, any and all loss, liability, fines, penalties, forfeitures, costs or damages resulting from or attributable to an occurrence on or about the Premises including any public facilities and improvements, upon which the Premises is located, in any way related to the Service Provider's operations and activities. Service Provider shall immediately notify City of any occurrence on the Premises including any public facilities and improvements, upon which the Premises are located, resulting in injury or death to any person or damage to property of any person.

The provisions of this Section shall survive termination or expiration of this Agreement.

- 12.2. **No Payment by the City.** Notwithstanding anything in this Agreement or exhibits hereto to the contrary, the City shall not be obligated to reimburse Service Provider as Operating Expenses or otherwise for costs and expenses (including attorneys, fees) for litigation which is covered by Service Provider' defense and indemnification obligations set forth in Sections 12 above.

13. INSURANCE

- 13.1. Throughout the life of this Agreement, Service Provider shall pay for and maintain in full force and effect all insurance as required in Exhibit B, which is incorporated into and part of this Agreement.
- 13.2. **Property Insurance:** The City will maintain property insurance coverage on the Facility itself. Service Provider shall assume all risks for loss of or damage to its own property at the Facility and Service Provider may maintain such insurance, at its sole expense, as it deems necessary to protect its own property.
- 13.3. The cost of providing insurance hereunder shall be an Operating Expense, regardless of which party procures the coverage.

14. CONFLICT OF INTEREST AND NON-SOLICITATION

- 14.1. Prior to City's execution of this Agreement, Service Provider shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in Exhibit C. During the term of this Agreement, Service Provider shall have the obligation and duty to immediately notify City in writing of any change to the information provided by Service Provider in such statement.
- 14.2. Service Provider shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of City, Service Provider shall provide a written opinion of Its legal counsel and that of any subcontractor that, after a due diligent inquiry, Service Provider and the respective subcontractor(s) are in full compliance with all laws and regulations. Service Provider shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, Service Provider shall immediately notify City of these facts in writing.
- 14.3. In performing the work or services to be provided hereunder, Service Provider shall not employ or retain the services of any person while such person either is employed by City or is a member of any City council, commission, board, committee, or similar City body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.
- 14.4. Service Provider represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.
- 14.5. Service Provider and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, Service Provider shall remain responsible for complying with Section 14.1, above.
- 14.6. If Service Provider should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, Service Provider shall include the provisions of this Section in each subcontract and require its subcontractors to comply therewith.
- 14.7. This Section shall survive expiration or termination of this Agreement.

15. NONDISCRIMINATION

- 15.1. To the extent required by controlling federal, state and local law, Service Provider shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, Service Provider agrees as follows:
- 15.2. Service Provider will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.
- 15.3. Service Provider will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Service Provider shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to Service Provider's employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, Service Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.
- 15.4. Service Provider will, in all solicitations or advertisements for employees placed by or on behalf of Service Provider in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.
- 15.5. Service Provider will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of Service Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 15.6. If Service Provider should subcontract all or any portion of the services to be

performed under this Agreement, Service Provider shall cause each subcontractor to also comply with the requirements of this Section.

16. INDEPENDENT CONTRACTOR

- 16.1. In the furnishing of the services provided for herein, Service Provider is acting solely as an independent contractor. Neither Service Provider, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of City for any purpose. City shall have no right to control or supervise or direct the manner or method by which Service Provider shall perform its work and functions. However, City shall retain the right to administer this Agreement so as to verify that Service Provider is performing its obligations in accordance with the terms and conditions thereof.
- 16.2. This Agreement does not evidence a partnership or joint venture between Service Provider and City. Service Provider shall have no authority to bind City absent City's express written consent. Except to the extent otherwise provided in this Agreement, Service Provider shall bear its own costs and expenses in pursuit thereof.
- 16.3. Because of its status as an independent contractor, Service Provider and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City employees. Service Provider shall be solely liable and responsible for all payroll and tax withholding for its employees, and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, Service Provider shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of Service Provider's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, Service Provider may be providing services to others unrelated to City or to this Agreement.

17. GENERAL TERMS AND CONDITIONS

- 17.1. **General Terms.** Except as otherwise provided by law, all notices expressly required of City within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Contract Administrator or designee.
 - 17.1.1. Records of Service Provider's expenses pertaining to the catering and concession services for the Premises shall be kept on a generally recognized accounting basis and shall be available to City or its authorized representatives

upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of Service Provider pertaining to the catering and concession services for the Premises shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to City until such action is resolved, or until the end of said time period whichever shall later occur. If Service Provider should subcontract all or any portion of the services to be performed under this Agreement, Service Provider shall cause each subcontractor to also comply with the requirements of this paragraph. This Section shall survive expiration or termination of this Agreement.

- 17.1.2. Prior to execution of this Agreement by City, Service Provider shall have provided evidence to City that Service Provider is licensed to perform the services called for by this Agreement (or that no license is required). This includes any applicable liquor licenses necessary to render services. If Service Provider should subcontract all or any portion of the work or services to be performed under this Agreement, Service Provider shall require each subcontractor to provide evidence to City that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.
- 17.2. **Notices.** Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or' certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.
- 17.3. **Binding.** Subject to Section 17.4, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns transferees, agents, servants, employees and representatives.
- 17.4. **Assignment.** This Agreement is personal to Service Provider and there shall be no assignment by Service Provider of its rights or obligations under this Agreement without the prior written approval of the City Manager or designee. Any attempted assignment by Service Provider, its successors or assigns, shall be null and void unless approved in writing by the City Manager or designee.
- 17.4.1. Service Provider hereby agrees not to assign the payment of any monies due

Service Provider from City under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). City retains the right to pay any and all monies due Service Provider directly to Service Provider.

- 17.5. **Compliance With Law.** In providing the services required under this Agreement, Service Provider shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.
- 17.6. **Waiver.** The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
- 17.7. **Governing Law and Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.
- 17.8. **Headings.** The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.
- 17.9. **Severability.** The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.
- 17.10. **Interpretation.** The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.
- 17.11. **Attorney's Fees.** If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.
- 17.12. **Exhibits.** Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.
- 17.13. **Precedence of Documents.** In the event of any conflict between the body of this

Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

17.14. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

17.15. **No Third Party Beneficiaries.** The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

17.16. **Extent of Agreement.** Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and Service Provider.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties have executed this Contract on the day and year here below written, of which the date of execution by City shall be subsequent to that of Service Provider's, and this Contract shall be binding and effective upon execution by both parties.

CITY OF FRESNO,
A California municipal corporation

By: _____
Georgeanne A. White
City Manager

APPROVED AS TO FORM:
ANDREW JANZ

City Attorney
Signed by: _____
By: Brandon Collet 12/11/2025
922BA9AA175B489...
Brandon M. Collet Date
Chief Assistant City Attorney

ATTEST:
AMY ALLER
Interim City Clerk

By: _____
Deputy Date

Addresses:
City:
City of Fresno
Attention: Georgeanne A. White
City Manager
2600 Fresno Street
Fresno, CA 93721
Telephone: (559) 621-2489
E-Mail: Georgeanne.White@fresno.gov

Attachments:
Exhibit A – Operating Expenses
Exhibit B – Insurance Requirements
Exhibit C – Conflict of Interest Disclosure Form
Exhibit D – Site Map

VenuWorks of Fresno, LLC
An Iowa limited liability corporation

DocuSigned by:
By: Steven Peters 12/11/2025
61FEF62F1BB94B0...
Name: Steven Peters

Title: CEO
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)
Signed by: _____
By: Michael Silva 12/11/2025
DCB9AA1E80DD439...
Name: Michael Silva

Title: COO
(If corporation or LLC., CFO, Treasurer,
Secretary or Assistant Secretary)

SERVICE PROVIDER
VenuWorks of Fresno, LLC
Attention: Steven L. Peters
1615 Golden Aspen Drive, Suite 107
Ames, IA 50010
Telephone: (515) 232-5151
Email: SPeters@VenuWorks.com

Exhibit A

OPERATING EXPENSES

Service Agreement between City of Fresno and VenuWorks of Fresno, LLC Fresno Convention and Entertainment Center

Operating Expenses

The term “Operating Expenses” shall mean the following and shall be, in all cases, subject to the Annual Budget:

1. On-the-job payroll cost, including wages paid to employees and the cost of paid holidays, vacations, severance benefits, sick leave and other compensation and benefits; cost of training; payroll processing costs;
2. Employer contribution costs in relation to employees carried on the on-the-job payroll mentioned in the foregoing clause (a), of every nature whatsoever, including but not limited to, social security, reemployment insurance, benefits for:
3. Medical and hospital care, disability, death, termination, retirement or pension, or insurance or annuity contracts to provide any of the foregoing and all payments, other than those referred to in the foregoing clause (a), required under any collective bargaining agreement to which VenuWorks is a party, or under any state or federal law or any regulations promulgated thereunder;
4. Cost of medical and security examination for employees on the on-the-job payroll;
5. Cost of purchasing, renting, maintaining and cleaning uniforms;
6. Cost of equipment, materials and supplies, including the cost of installation thereof;
7. Cost of insurance, required bonding, permits, licenses and fees;
8. Cost of property, business, privilege, sales and all taxes;
9. Cost of marketing, promotions, advertising, and employee travel & training;
10. Cost of necessary outside professional services, upon prior written approval by the City;
11. Cost of the commodities, (i.e. Foodstuffs purchased for resale to the public);
12. Cost of utilities;
13. Litigation expenses or other costs (including attorneys' fees) incurred on behalf of the facility;
14. Base management fees;
15. Cost of installation of additional equipment and replacements thereof;
16. Cost of ordinary maintenance and repair of the facility and the equipment, and ordinary housekeeping;
17. All costs related to VenuWorks corporate staff travel, lodging, and supply costs incurred in connection with servicing the City's needs at location.

EXHIBIT B

INSURANCE REQUIREMENTS Service Agreement between City of Fresno and VenuWorks of Fresno, LLC Fresno Convention and Entertainment Center

INSURANCE REQUIREMENTS

Throughout the life of this Agreement, Service Provider shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or their designee at any time and in their sole discretion. The City of Fresno and each of its officers, officials, employees, agents and volunteers (hereinafter referred to collectively as "CITY") requires policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve Service Provider of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by Service Provider shall not be deemed to release or diminish the liability of Service Provider, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Service Provider. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Service Provider, vendors, suppliers, invitees, contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of

liability not less than those set forth under “Minimum Limits of Insurance.”

2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).

3. Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.

MINIMUM LIMITS OF INSURANCE

Service Provider, or any party the Service Provider subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to The City of Fresno and each of its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**

- (i) \$5,000,000 per occurrence for bodily injury and property damage.
- (ii) \$5,000,000 per occurrence for personal and advertising injury.
- (iii) \$300,000 damage to premises rented to you
- (iv) \$5,000,000 aggregate for products and completed operations; and,
- (iv) \$5,000,000 general aggregate applying separately

2. **COMMERCIAL AUTOMOBILE LIABILITY:**

- (i) \$2,000,000 per accident for bodily injury and property damage.

3. **WORKERS’ COMPENSATION INSURANCE** as required by the State of California with statutory limits and **EMPLOYER’S LIABILITY** with limits of liability not less than:

- (i) \$1,000,000 each accident for bodily injury.
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

4. **PROPERTY:** Limits of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation) of Service Provider’s business property.

5. **COMMERCIAL CRIME INSURANCE** which shall be at least as broad as the most current version of the Insurance Services Office (ISO) Crime and Fidelity Form with limits of insurance of not less than \$500,000.00

UMBRELLA OR EXCESS INSURANCE

In the event Service Provider purchases an Umbrella or Excess insurance policy(ies) to meet the “Minimum Limits of Insurance,” this insurance policy(ies) shall “follow form” and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City of Fresno and each of its officers, officials, employees, agents

and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Service Provider shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Service Provider shall also be responsible for payment of any self-insured retentions. Any deductible or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or designee. At the option of the CITY'S Risk Manager or their designee, either:

- (i) At no time shall the CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

- (i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to CITY, except ten (10) days for nonpayment of premium. In the event the insurance company(s) cannot provide notice to the City, Service Provider is responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Service Provider shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, Service Provider shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than five (5) calendar days prior to the expiration date of the expiring policy.
- (ii) The Commercial General Liability policy shall be written on a per occurrence form.
- (iii) The Commercial General and Automobile Liability policies of insurance shall be endorsed to name The City of Fresno and each of its officers, officials, employees, agents and volunteers as additional insureds.
- (iv) Service Provider shall establish additional insured status for the CITY and for all ongoing and completed operations under the General Liability policy by use of endorsements as broad as ISO Form CG 20 10 11 85 or both CG 20 10 04 13 and CG 20 37 04 13.
- (v) The Commercial General and Automobile Liability policies of insurance shall be endorsed so Service Provider's insurance shall be primary and no contribution shall be required of CITY. Primary and Non-Contributory coverage under the General Liability policy shall be as broad as that contained in ISO Form CG 20 02 04 13.
- (vi) Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

- (vii) All policies of insurance shall contain, or be endorsed to contain, a waiver of subrogation as to The City of Fresno and each of its officers, officials, employees, agents, and volunteers.
- (viii) The Commercial Crime policy must be endorsed to name the City as a Loss Payee.

PROVIDING OF DOCUMENTS

Service Provider shall furnish CITY with all certificate(s) and applicable endorsements affecting coverage required herein. All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, Service Provider shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of Service Provider shall also be required to provide all documents noted herein.

SUBCONTRACTORS

If Service Provider subcontracts any or all the services to be performed under this Agreement, Service Provider shall be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

EXHIBIT C

DISCLOSURE OF CONFLICT OF INTEREST

Service Agreement between City of Fresno and VenuWorks of Fresno, LLC Fresno Convention and Entertainment Center

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input type="checkbox"/>
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
4	Are you or any of your principals, managers, or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
5	Are you or any of your principals, managers, or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

☐ Additional page(s) attached.

Signature

Date

(Name)

(Company)

(Address)

(City, State Zip)

EXHIBIT D
SITE MAP

Service Agreement between City of Fresno and VenuWorks of Fresno, LLC
Fresno Convention and Entertainment Center

