

**AGREEMENT FOR CONTRACT SERVICES  
FOR DEVELOPMENT AND MANAGEMENT OF  
TEMPORARY AMPHITHEATER AT THE GREAT PARK**

**by and among**

**THE CITY OF IRVINE, through its  
COMMUNITY SERVICES DEPARTMENT,**

**PSQ PRODUCTIONS, LLC**

**and**

**STARDUST ENTERTAINMENT GROUP, LLC**

This **Agreement for Contract Services for Development and Management of Temporary Amphitheater at the Great Park** (the “**Agreement**”) is entered into effective as of February 27, 2024 (the “**Contract Date**”), by and among the City of Irvine, a municipal corporation (the “**City**”), acting by and through its Community Services Division (“**CSD**”), on the one hand, and PSQ Productions, LLC, a California limited liability company (“**PSQ**”) and Stardust Entertainment Group, LLC, a California limited liability company (“**SEG**”). The term “**Contractor**” shall refer to both PSQ and SEG. The City, PSQ, and SEG may hereafter be referred to individually as a “**Party**” and collectively as “**Parties**.”

## RECITALS

A. The City and PSQ previously entered into that certain *Agreement for Contract Services* dated October 22, 2021 (the “**Original Agreement**”) pursuant to which PSQ agreed to provide event production and management services to the City at various venues located throughout the City of Irvine, California;

B. The Original Agreement as has been amended from time to time pursuant to *Amendment Number 1 to “Agreement for Contract Services”* dated October 22, 2021, *Amendment Number 2 to “Agreement for Contract Services”* dated July 29, 2022 and *Amendment Number 3 to “Agreement for Contract Services”* dated September 25, 2023 (collectively, the “**Amendments**”) to increase the scope and role for PSQ to produce and manage various events for the City of Irvine, including an exclusive right to manage all events at the City’s Great Park located at 8000 Great Park Boulevard, Irvine, California 92618 (the “**Great Park**”);

C. The City seeks to hire a company to oversee the development, production of events and management of a temporary amphitheater consisting of a soundstage with lighting and audio/video components, performer staging areas, catering areas, food and beverage concessions, merchandise concessions, restrooms, perimeter fencing and other security infrastructure (the “**Temporary Amphitheater**”) located within the Premises (as defined in Part IV, Section 1) at the Great Park;

D. The City finds that it is necessary, feasible and economical to secure these services by a third-party contractor as it lacks sufficient and necessary personnel to undertake these specialized professional services;

E. The City having found it necessary to utilize a standard request for proposal process and to evaluate proposals based upon the criteria included in a Request for Qualifications – Great Park Amphitheater Operator designated as RFQ No. 24-3393 (the “**RFQ**”) issued on December 1, 2023;

F. The City received and evaluated several proposals from venue management companies in response to the RFQ, and PSQ received the highest score for the Temporary Amphitheater, and was recommended and selected to manage the temporary amphitheater at the Great Park in accordance with this Agreement’s terms and conditions; and

G. PSQ and its affiliate, SEG, desire to enter into this Agreement to assist the City in the development of the Temporary Amphitheater and with providing the public with premium, high-quality events and community services at the Facility (as defined in Part IV, Section 1).

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

## **PART I**

### **FUNDAMENTAL TERMS**

- A. **Location of Project:** The City of Irvine location(s) as set forth in Part IV, Scope of Services, included herein.
- B. **Description of Services/Goods to be Provided:** Event Production and Management Services in accordance with Part IV, Scope of Services, included herein (RFQ No. 24-3393).
- C. **Term:** Unless terminated earlier as set forth in this Agreement, the services shall commence on February 27, 2024 (the “**Commencement Date**”) and shall continue through March 31, 2027. The City reserves the right to extend this Agreement for up to one (1) additional one (1) year term commencing as of April 1, 2027. Such extension shall only be valid if effectuated in writing by the City, and may be approved administratively by the City Manager or designee in a document which reflects the Facility Management Fee (defined in Part V) for the extension.
- D. Party Representatives:

- D.1. The City designates the following person/officer to act on the City’s behalf:

Dena Diggins,  
Deputy Director of Community Service, City of Irvine  
1 Civic Center Plaza  
Irvine, California 92606-5207

Telephone: (949) 724-6600  
ddiggins@cityofirvine.org

- D.2. PSQ and SEG designate the following person to act on behalf of PSQ and SEG, respectively:

Mark Entner  
PSQ Productions, LLC  
48 Waterworks Way  
Irvine, California 92618

Telephone: (949) 514-9569  
mark@psqproductions.com

Mark Entner  
Stardust Entertainment Group, LLC  
48 Waterworks Way  
Irvine, California 92618

Telephone: (949) 514-9569  
mark@psqproductions.com

E. **Notices:** PSQ and SEG shall deliver all notices and other writing required to be delivered under this Agreement to the City at the address set forth in Part II (“General Provisions”). The City shall deliver all notices and other writing required to be delivered to PSQ or SEG, as the case may be, at the address set forth in Part I.D.2. of this Agreement.

F. **Attachments:** This Agreement incorporates by reference the following Attachments to this Agreement:

- F.1. Part I: Fundamental Terms
- F.2. Part II: General Provisions
- F.3. Part III: Special Provisions
- F.4. Part IV: Scope of Services
- F.5. Part V: Budget

G. **Integration:** This Agreement represents the entire understanding of the Parties solely with respect to those matters contained herein regarding the production and management of the Temporary Amphitheater. No prior oral or written understanding shall be of any force or effect with regard to those matters covered by this Agreement. This Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understanding, if any between the Parties (other than the Original Agreement and its Amendments, which shall remain in full force and effect), with respect to the production and management of the Temporary Amphitheater and none shall be used to interpret this Agreement.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the Parties have executed and entered into this Agreement as of the date first set forth above.

CITY OF IRVINE

By: *Chris Slama*  
Chris Slama (Mar 1, 2024 11:37 PST)

CHRISTOPHER SLAMA,  
Director of Community Services

By: *Oliver Chi*

OLIVER C. CHI  
City Manager

**ATTESTED BY:**

CITY OF IRVINE

By: *Carl Petersen*

CARL PETERSEN  
City Clerk

**APPROVED AS TO FORM:**

RUTAN & TUCKER, LLP

By: *Jeffrey Melching*

JEFFREY MELCHING  
City Attorney

PSQ PRODUCTION, LLC

By: *Mark Entner*

MARK G. ENTNER, its Managing Member

STARDUST ENTERTAINMENT GROUP, LLC

By: *Mark Entner*

MARK G. ENTNER, its Managing Member

**APPROVED AS TO FORM:**

BUCHALTER, a Professional Corporation

By: *Anthony J. Napolitano*  
Anthony J. Napolitano (Feb 29, 2024 23:10 PST)

ANTHONY J. NAPOLITANO  
Counsel for PSQ Productions, LLC and Stardust  
Entertainment Group, LLC

## PART II

### GENERAL PROVISIONS

#### **SECTION ONE: SERVICES OF CONTRACTOR**

**1.1 Scope of Services.** In compliance with all terms and conditions of this Agreement, Contractor shall provide the goods and/or services shown on Part IV hereto (“Scope of Services”), which may be referred to herein as the “services” or the “work.” If this Agreement is for the provision of goods, supplies, equipment or personal property, the terms “services” and “work” shall include the provision (and, if designated in the Scope of Services, the installation) of such goods, supplies, equipment or personal property.

**1.2 Changes and Additions to Scope of Services.** City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from said work. No such work shall be undertaken unless a written order is first given by City to Contractor, incorporating therein any adjustment in (i) the Budget, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Contractor. City approval and/or payment for work claimed by Contractor as changed or additional shall not act to prevent City at any time to claim such work is covered by the Scope of Work and should be performed by Contractor without additional consideration due. It is expressly understood by Contractor that the provisions of this Section 1.2 shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor.

**1.3 Standard of Performance.** Contractor agrees that all services shall be performed in a competent, professional, and satisfactory manner in accordance with the standards prevalent in the industry, and that all goods, materials, equipment or personal property included within the services herein shall be of good quality, fit for the purpose intended.

**1.4 Performance to Satisfaction of City.** Notwithstanding any other provision herein, Contractor agrees to perform all work to the satisfaction of City within the time specified unless otherwise modified by the Parties. If City reasonably determines that the work is not satisfactory, City shall have the right to take appropriate action, including but not limited to: (i) meeting with Contractor to review the quality of the work and resolve matters of concern; (ii) requiring Contractor to repeat unsatisfactory work at no additional charge until it is satisfactory; (iii) suspending the delivery of work to Contractor for an indefinite time; (iv) withholding payment; and (v) terminating this Agreement as hereinafter set forth.

**1.5 Instructions from City.** In the performance of this Agreement, Contractor shall report to and receive instructions from the City’s Representative designated in Paragraph D.1 of Part I (“Fundamental Terms”) of this Agreement. Tasks or services other than those specifically described

in the Scope of Services shall not be performed without the prior written approval of the City's Representative.

**1.6 Familiarity with Work.** By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties, and restrictions attending performance of the services under the Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any conditions, including any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact in writing and shall not proceed except at Contractor's risk until written instructions are received from the City's Representative.

**1.7 Identity of Persons Performing Work.**

- A.** Contractor represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services required hereunder. Any personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of services under this Agreement and as required by law.
- B.** Contractor represents that the tasks and services required hereunder will be performed by Contractor or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services. Contractor will exclusively determine the means, methods and details of performing the services subject to the requirements of this Agreement.
- C.** This Agreement contemplates the personal services of Contractor and Contractor's employees, and it is recognized by the parties hereto that a substantial inducement to City for entering into this Agreement was, and is, the professional reputation and competence of Contractor. Neither this Agreement nor any interest therein may be assigned by Contractor, except upon written consent of City.

**1.8 Prohibition Against Subcontracting or Assignment.** Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of City. In addition, neither the Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. In the event of any unapproved transfer, including any bankruptcy proceeding, City may void the Agreement at City's

option in its sole and absolute discretion. No approved transfer shall release any surety of Contractor of any liability hereunder without the express written consent of City.

## **SECTION TWO: INSURANCE AND INDEMNIFICATION**

**2.1 Insurance.** Without limiting Contractor's indemnification obligations, Contractor shall procure and maintain, at its sole cost and for the duration of this Agreement, insurance coverage as provided below, against all claims for injuries against persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees, and/or subcontractors. In the event that Contractor subcontracts any portion of the work in compliance with Section 1.8 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to this Section 2.1, except that subcontractors' comprehensive general liability insurance limits shall be lowered to not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

**2.1.1 Insurance Coverage Required.** The Insurance obligations under this agreement shall be (1) all the Insurance coverage and/or limits carried by or available to the Contractor; or (2) the minimum Insurance coverage requirements and/or limits shown in this agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum insurance requirements of this agreement are sufficient to cover the obligations of the Contractor under this agreement.

The policies and minimum amounts of Insurance required hereunder shall be as follows:

**A. Comprehensive General Liability Insurance** which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01 including completed operations and contractual liability, with limits of liability of not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate for liability arising out of Contractor's performance of this Agreement. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set forth above. If written with an aggregate, the aggregate shall be double each occurrence limit. Such insurance shall be endorsed to:

- (1) Name the City of Irvine and its employees, representatives, officers and agents (collectively hereinafter "City and City Personnel") as additional insured for claims arising out of Contractor's performance of this Agreement.
- (2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

*A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.*

**B. Automobile Liability Insurance** with a limit of liability of not less than \$1,000,000 each occurrence and \$1,000,000 annual aggregate. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set above. Such insurance shall include coverage for all “owned,” “hired” and “non-owned” vehicles, or coverage for “any auto.” Such insurance shall be endorsed to:

- (1) Name the City of Irvine and its employees, representatives, officers and agents as additional insured for claims arising out of Contractor's performance of this Agreement.
- (2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

*A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.*

**C. Workers' Compensation Insurance** in accordance with the Labor Code of California and covering all employees of the Contractor providing any service in the performance of this Agreement. Such insurance shall be endorsed to:

- (1) Waive the insurer's right of Subrogation against the City and City Personnel.

*A statement on an insurance certificate will not be accepted in lieu of the actual endorsement unless your insurance carrier is the State of California Insurance Fund (SCIF) and the endorsement numbers 2570 and 2065 are referenced on the certificate of insurance.*

In the performance of the work under this Agreement, if Contractor does not employ any person in any manner so as to become subject to the workers' compensation laws of California, Contractor agrees to indemnify, defend, and hold harmless the City of Irvine and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of Contractors failure to provide such worker's compensation insurance. Contractor agrees that, if firm should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, firm shall forthwith comply with those provisions, immediately furnish insurance certificates evidencing such coverage as set forth herein, and notify the City of the change in status.

**D. Professional Liability Insurance** with minimum limits of \$1,000,000 each claim. Covered professional services shall include all work performed under this Agreement and delete any exclusion that may potentially affect the work to be performed.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor.

**E. Evidence of Insurance:** Contractor shall provide to City a Certificate(s) of Insurance evidencing such coverage together with copies of the required policy endorsements no later than the execution date of this Agreement and at least fifteen (15) business days prior to the expiration of any policy. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days prior written notice thereof given by the insurer to City by U.S. mail, or by personal delivery, except for nonpayment of premiums, in which case ten (10) days prior notice shall be provided.

The City project title or description MUST be included in the “Description of Operations” box on the certificate.

The City’s insurance certificate tracking services provider, Exigis, LLC, will send Contractor an email message providing instructions for submitting insurance certificates and endorsements.

**Certificate Holder:** City of Irvine, California  
c/o: Exigis LLC  
PO Box 4668 ECM #35050  
New York, NY 10168-4668

**F. Endorsements:** A statement on an insurance certificate will not be accepted in lieu of the actual endorsement. Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

Additional Insured Endorsements **shall not**:

1. Be limited to “Ongoing Operations”
2. Exclude “Contractual Liability”
3. Restrict coverage to the “Sole” liability of Contractor

Contain any other exclusion contrary to the Agreement.

**G. Any Deductible in Excess of \$100,000 and/or Self-Insured Retentions** must be approved in writing by the City.

**H. Acceptability of Insurers.** Each policy shall be from a company with current A.M. Best’s rating of A- VII or higher and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus lines brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by the City.

**I. Insurance of Subcontractors.** Contractor shall be responsible for causing Subcontractors to maintain the same types and limits of coverage in compliance with

this Agreement, including naming the City as an additional insured to the Subcontractor's policies.

**2.2 Indemnification by Contractor.** Contractor shall indemnify, defend, and hold City and City Personnel harmless from and against any and all actions, suits, claims, demands, judgments, attorney's fees, costs, damages to persons or property, losses, penalties, obligations, expenses or liabilities (herein "claims" or "liabilities") that may be asserted or claimed by any person or entity arising out of the willful or negligent acts, errors or omissions of Contractor, its employees, agents, representatives or subcontractors which directly or indirectly relate to the work being performed or services being provided under this Agreement, whether or not there is concurrent active or passive negligence on the part of City and/or City Personnel, but excluding such claims or liabilities arising from the sole active negligence or willful misconduct of City or City Personnel in connection therewith:

**2.2.1** Contractor shall defend any action or actions filed in connection with any such claims or liabilities, and shall pay all costs and expenses, including attorney's fees incurred in connection therewith.

**2.2.2** Contractor shall promptly pay any judgment rendered against City or any City Personnel for any such claims or liabilities.

**2.2.3** In the event City and/or any City Personnel is made a party to any action or proceeding filed or prosecuted for any such damages or other claims arising out of or in connection with the work being performed or services being provided under this Agreement, Contractor shall pay to City any and all costs and expenses incurred by City or City Personnel in such action or proceeding, together with reasonable attorney's fees and expert witness fees.

These Indemnification provisions are independent of, and shall not in any way be limited by, the Insurance Requirements of this Agreement. City approval of the insurance contracts required by this Agreement does not in any way relieve the Contractor from liability under this section.

### **SECTION THREE: LEGAL RELATIONS AND RESPONSIBILITIES**

**3.1 Compliance with Laws.** Contractor shall keep itself fully informed of all existing and future state and federal laws and all county and city ordinances and regulations which in any manner affect those employed by it or in any way affect the performance of services pursuant to this Agreement. Contractor shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for the compliance of all work and services performed by or on behalf of Contractor. When applicable, Contractor shall not pay less than the prevailing wage, which rate is determined by the Director of Industrial Relations of the State of California.

**3.2 Licenses, Permits, Fees and Assessments.** Contractor shall obtain at its sole cost and expense all licenses, permits, and approvals that may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Contractor's performance of the services required by this Agreement, and

shall indemnify, defend, and hold harmless City against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against City thereunder.

**3.3 Covenant against Discrimination.** Contractor covenants for itself, its heirs, executors, assigns, and all persons claiming under or through it, that there shall be no discrimination against any person on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, in the performance of this Agreement. Contractor further covenants and agrees to comply with the terms of the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*) as the same may be amended from time to time.

**3.4 Nondiscrimination in City Contracts.** Any business that enters into a contract for goods or services with the City of Irvine or any of its boards, agencies, or departments shall:

- (a) Implement an employment nondiscrimination policy prohibiting discrimination in hiring, discharging, promoting or demoting, matters of compensation, or any other employment-related decision or benefit on account of actual or perceived race, color, religion, national origin, gender, physical or mental disability, age, military status, sexual orientation, gender identity, gender expression, or marital or familial status.
- (b) Not discriminate in the performance of the contract on account of actual or perceived race, color, religion, national origin, gender, physical or mental disability, age, military status, sexual orientation, gender identity, gender expression, or marital or familial status.
- (c) Incorporate the foregoing provisions in all subcontracts hereunder.

**3.5 Independent Contractor.** Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise, or a joint venturer, or a member of any joint enterprise with Contractor. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. Neither Contractor nor any of Contractor's employees shall, at any time, or in any way, be entitled to any sick leave, vacation, retirement, or other fringe benefits from the City; and neither Contractor nor any of its employees shall be paid by City time and one-half for working in excess of forty (40) hours in any one week. City is under no obligation to withhold State and Federal tax deductions from Contractor's compensation. Neither Contractor nor any of Contractor's employees shall be included in the competitive service, have any property right to any position, or any of the rights an employee may have in the event of termination of this Agreement.

**3.6 Covenant against Contingent Fees.** Contractor warrants that it has not employed or retained any company or person other than a bona fide employee working for Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**3.7 Use of Intellectual Property Materials.** Contractor shall assume all costs arising from the use of patented or copyrighted materials, including but not limited to equipment, devices, processes, and software programs, used or incorporated in the services or work performed by Contractor under this Agreement. Contractor shall indemnify, defend, and save the City harmless from any and all suits, actions or proceedings of every nature for or on account of the use of any patented or copyrighted materials consistent with Section 2.2 herein.

**3.8 Proprietary Information.** All proprietary information developed specifically for City by Contractor in connection with, or resulting from, this Agreement, including but not limited to inventions, discoveries, improvements, copyrights, patents, maps, reports, textual material, or software programs, but not including Contractor's underlying materials, software, or know-how, shall be the sole and exclusive property of City, and are confidential and shall not be made available to any person or entity without the prior written approval of City. Contractor agrees that the compensation to be paid pursuant to this Agreement includes adequate and sufficient compensation for any proprietary information developed in connection with or resulting from the performance of Contractor's services under this Agreement. Contractor further understands and agrees that full disclosure of all proprietary information developed in connection with, or resulting from, the performance of services by Contractor under this Agreement shall be made to City, and that Contractor shall do all things necessary and proper to perfect and maintain ownership of such proprietary information by City.

**3.9 Retention of Funds.** Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether arising out of this Agreement or otherwise) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and all amounts for which City may be liable to third parties, by reason of Contractor's negligent acts, errors, or omissions, or willful misconduct, in performing or failing to perform Contractor's obligations under this Agreement. City in its sole and absolute discretion, may withhold from any payment due Contractor, without liability for interest, an amount sufficient to cover such claim or any resulting lien. The failure of City to exercise such right to deduct or withhold shall not act as a waiver of Contractor's obligation to pay City any sums Contractor owes City.

**3.10 Termination by City.** City reserves the right to terminate this Agreement at any time, with or without cause, upon written notice to Contractor. Upon receipt of any notice of termination from City, Contractor shall immediately cease all services hereunder except such as may be specifically approved in writing by City. Contractor shall be entitled to compensation for all services rendered prior to receipt of City's notice of termination and for any services authorized in writing by City thereafter. If termination is due to the failure of Contractor to fulfill its obligations under this Agreement, City may take over the work and prosecute the same to completion by contract or otherwise, and Contractor shall be liable to the extent that the total cost for completion of the services required hereunder, including costs incurred by City in retaining a replacement contractor and similar expenses, exceeds the Budget.

**3.11 Right to Stop Work; Termination by Contractor.** Contractor shall have the right to stop work and terminate only if City fails to timely make a payment required under the terms of the Budget. Contractor shall provide City thirty (30) day prior written notice of such claimed payment

owed and City shall have an opportunity to remedy any such claimed breach during such time with no legal consequence to City. Contractor shall immediately cease all services hereunder following the thirty (30) day notice, except such services as may be specifically approved in writing by City. Contractor shall be entitled to compensation for all services rendered prior to termination and for any services authorized in writing by City thereafter. If Contractor terminates this Agreement because of an error, omission, or a fault of Contractor, or Contractor's willful misconduct, the terms of Section 3.10 relating to City's right to take over and finish the work and Contractor's liability shall apply.

**3.12 Waiver.** No delay or omission in the exercise of any right or remedy by a nondefaulting party with respect to any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent act. A waiver by either party of any default must be in writing.

**3.13 Legal Actions.** Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Courts of the State of California in the County of Orange, or in any other appropriate court with jurisdiction in such County, and Contractor agrees to submit to the personal jurisdiction of such court.

**3.14 Rights and Remedies are Cumulative.** Except as may be expressly set forth in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies or other rights or remedies as may be permitted by law or in equity shall not preclude the exercise by such party, at the same or different times, of any other rights or remedies to which such party may be entitled.

**3.15 Attorneys' Fees.** In any action between the parties hereto seeking enforcement of any of the terms or provisions of this Agreement or in connection with the performance of the work hereunder, the party prevailing in the final judgment in such action or proceeding, in addition to any other relief which may be granted, shall be entitled to have and recover from the other party its reasonable costs and expenses, including, but not limited to, reasonable attorney's fees, expert witness fees, and courts costs. If either party to this Agreement is required to initiate or defend litigation with a third party because of the violation of any term or provision of this Agreement by the other party, then the party so litigating shall be entitled to its reasonable attorney's fees and costs from the other party to this Agreement.

**3.16 Force Majeure.** The time period specified in this Agreement for performance of services shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of City or Contractor, including, but not restricted to, acts of nature or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including City, if the delaying party shall within ten (10) days of the commencement of such delay notify the other party in writing of the causes of the delay. If Contractor is the delaying party, City shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of City such delay is justified. City's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against City for any delay in the performance of this

Agreement, however caused. Contractor's sole remedy shall be extension of this Agreement pursuant to this Section 3.16.

**3.17 Non-liability of City Officers and Employees.** No officer, official, employee, agent, representative, or volunteer of City shall be personally liable to Contractor, or any successor in interest, in the event of any default or breach by City, or for any amount which may become due to Contractor or its successor, or for breach of any obligation of the terms of this Agreement; provided, however, such individual is acting in his, her or their official capacity and within the scope of his, her or their official employment.

**3.18 Conflicts of Interest.**

- A.** No officer, official, employee, agent, representative or volunteer of City shall have any financial interest, direct or indirect, in this Agreement, or participate in any decision relating to this Agreement that affects his or her financial interest or the financial interest of any corporation, partnership, association or other entity in which he or she is interested, in violation of any federal, state or city statute, ordinance or regulation. Contractor shall not employ, contract for, or receive consulting services from any such person, whether for compensation or not, while this Agreement is in effect.
- B.** Contractor represents, warrants and covenants that he, she, they or it presently has no interest, direct or indirect, which would interfere with or impair in any manner or degree the performance of Contractor's obligations and responsibilities under this Agreement. Contractor further agrees that while this Agreement is in effect, Contractor shall not acquire or otherwise obtain any interest, direct or indirect, that would interfere with or impair in any manner or degree the performance of Contractor's obligations and responsibilities under this Agreement.
- C.** Contractor acknowledges that pursuant to the provisions of the Political Reform Act (Government Code section 87100 *et seq.*), City may determine Contractor to be a "Contractor" as that term is defined by the Act. In the event City makes such a determination, Contractor agrees to complete and file a "Statement of Economic Interest" with the City Clerk to disclose such financial interests as required by City. In such event, Contractor further agrees to require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" to disclose such other person's financial interests as required by City.

**3.19 Contractor Ethics.** Contractor represents and warrants that it has not provided or promised to provide any gift or other consideration, directly or indirectly, to any officer, employee, or agent of City to obtain City's approval of this Agreement. Contractor shall not, at any time, have any financial interest in this Agreement or the project that is the subject of this Agreement other than the compensation to be paid to Contractor as set forth in this Agreement. In the event the work and/or services to be performed hereunder relate to a project and/or application under consideration by or on file with the City, (i) Contractor shall not possess or maintain any business relationship with the applicant or any other person or entity which Contractor knows to have a personal stake in said project and/or application, (ii) other than performing its work and/or services

to City in accordance with this Agreement Contractor shall not advocate either for or against said project and/or application, and (iii) Contractor shall immediately notify City in the event Contractor determines that Contractor has or acquires any such business relationship with the applicant or other person or entity which has a personal stake in said project and/or application. The provisions in this Section shall be applicable to all of Contractor's officers, directors, employees, and agents, and shall survive the termination of this Agreement.

**3.20 Compliance with California Unemployment Insurance Code Section 1088.8.**

If Contractor is a Sole Proprietor, then prior to signing the Agreement, Contractor shall provide to the City a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. Contractor understands that pursuant to California Unemployment Insurance Code Section 1088.8, the City will report the information from Form W-9 to the State of California Employment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

**3.21 CalPERS Annuitants.** If Contractor is a California Public Employees' Retirement System ("CalPERS") annuitant, Contractor must provide the City with written notification of such fact a minimum of 14 calendar days prior to commencement of services under this Agreement. Failure to provide such notification may result in termination of the Agreement, and any penalties or other costs relating thereto shall be borne by Contractor. If this Agreement remains in place, Contractor shall execute any amendment(s) to this Agreement requested by the City in order to comply with all laws and regulations applicable to CalPERS annuitants.

**3.22 Levine Act.** California Government Code section 84308, commonly referred to as the Levine Act, precludes an Irvine City Councilmember from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contact award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the Councilmember, or received by the officer on behalf of any other Councilmember, or on behalf of any candidate for office or on behalf of any committee. The Levine Act also requires a Councilmember that has received such a contribution to disclose the contribution on the record of the proceeding. Review California Government Code section 84308 for more information.

**SECTION FOUR: MISCELLANEOUS PROVISIONS**

**4.1 Records and Reports.** The City Manager of the City of Irvine or his/her designee reserves the right to perform such audits, performance reviews, and other evaluations (collectively 'audit') that relate to or concern this Agreement at any time. Contractor agrees to participate and cooperate in up to five (5) hours of meetings and interviews (at no additional cost to City), if the same are requested by the City in connection with such an audit. Further, provided that the City pays Contractor's commercially reasonable hourly rate for services, Contractor agrees to participate and cooperate in such additional meetings and interviews (in excess of five (5) hours), if the same are requested by the City in connection with such an audit. Upon request by City, Contractor shall prepare and submit to City any reports concerning Contractor's performance of the services rendered under this Agreement including any and all receipts or records for goods or services

related to the setup, take down, or operation of the Temporary Amphitheater and the services of the Contractor under this agreement. City shall have access, with 72 hours advance written notice delivered to Contractor, to the books and records of Contractor related to Contractor's performance of this Agreement in the event any audit is required. All drawings, documents, and other materials prepared by Contractor in the performance of this Agreement (i) shall be the property of City and shall be delivered at no cost to City upon request of City or upon the termination of this Agreement, and (ii) shall not be made available to any individual or entity without prior written approval of City. The obligations of this Section 4.1 shall survive the expiration (or earlier termination) of this Agreement for a period of four (4) years. During said four (4) year period, Contractor shall keep and maintain all records and reports related to this Agreement, and City shall have access to such records in the event any audit is required.

**4.2 Notices.** Unless otherwise provided herein, all notices required to be delivered under this Agreement or under applicable law shall be personally delivered, or delivered by United States mail, prepaid, certified, return receipt requested, or by reputable document delivery service that provides a receipt showing date and time of delivery. Notices personally delivered or delivered by a document delivery service shall be effective upon receipt. Notices delivered by mail shall be effective at 5:00 p.m. on the second calendar day following dispatch. Notices to the City shall be delivered to the following address, to the attention of the City Representative set forth in Paragraph D.1 of the Fundamental Terms of this Agreement:

To City: City of Irvine  
One Civic Center Plaza (92606) (Hand Deliveries)  
P. O. Box 19575  
Irvine, CA 92623-9575

Notices to Contractor shall be delivered to the address set forth below Contractor's signature on Part I of this Agreement, to the attention of Contractor's Representative set forth in Paragraph D.2 of the Fundamental Terms of this Agreement. Changes in the address to be used for receipt of notices shall be effected in accordance with this Section 4.2.

**4.3 Construction and Amendment.** The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The headings of sections and paragraphs of this Agreement are for convenience or reference only, and shall not be construed to limit or extend the meaning of the terms, covenants and conditions of this Agreement. This Agreement may only be amended by the mutual consent of the parties by an instrument in writing.

**4.4 Severability.** Each provision of this Agreement shall be severable from the whole. If any provision of this Agreement shall be found contrary to law, the remainder of this Agreement shall continue in full force.

**4.5 Authority.** The person(s) executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and

deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

**4.6    Special Provisions.** Any additional or supplementary provisions or modifications or alterations of these General Provisions shall be set forth in Part III of this Agreement ("Special Provisions").

**4.7    Precedence.** In the event of any discrepancy between Part I ("Fundamental Terms"), Part II ("General Provisions"), Part III ("Special Provisions"), Part IV ("Scope of Services"), and/or Part V ("Budget") of this Agreement, the order of precedence shall be as follows:

Part III

Part II

Part IV

Part V

Part I

## **PART III**

### **SPECIAL PROVISIONS**

1. **Business License Requirement.** Contractors who provide services for the City of Irvine within the city limits of Irvine shall obtain, within five (5) days of executing this Agreement and prior to commencing any work herein, a City of Irvine business license and shall maintain a current business license through the term of this Agreement.
2. **Insurance Requirements.** PART II, GENERAL PROVISIONS, Section 2.1.1 – A Comprehensive General Liability, and B. Automobile Liability Insurance shall be endorsed is replaced with the following:
  - (1) Name the City of Irvine and the Orange County Great Park Corporation and their Officers, employees, agents, volunteers and representatives (collectively hereinafter “City and City Personnel”) as additional insured for claims arising out of Contractor’s performance of this Agreement.
  - (2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.
3. **Insurance Requirements.** PART II GENERAL PROVISIONS, Section 2.1.1.D. Professional Liability Insurance, is deleted in its entirety.
4. **Live Scan Fingerprinting Requirements.** Prior to commencing services, all contractors performing the services under this Agreement, including SEG are required to successfully pass a Department of Justice fingerprinting background check (“Live Scan”) performed by a certified fingerprinting service provider or at the City of Irvine Police Department. The Contractor shall be responsible for obtaining the Live Scan for its staff and shall bear the cost thereof. The agency completing the fingerprints must provide the City of Irvine Human Resources with the background check results and subsequent records for review. Contractor’s staff must carry a visible photo ID, provided by the Contractor at its cost, identifying them as an employee of PSQ Productions LLC while performing work on City property. If Contractor requires access inside a City facility without City staff being present, they must obtain a Contractor’s badge issued by the City of Irvine Human Resources prior to performing work. This requirement shall not apply to temporary or seasonal employees.
5. **Joint and Several Liability.** PSQ and SEG shall be jointly and severally liable for performance of this Agreement and the obligations set forth herein.
6. **Permits.** For the avoidance of doubt, permits required by PART II GENERAL PROVISIONS, Section 3.2 shall include but shall not necessarily be limited to relevant permits from the alcoholic beverage control board, the City of Irvine Police Department, the City of Irvine Building and Safety Department, the Orange County Fire Authority, and the Orange County Health Care Agency.

7. **Subcontracting.** Notwithstanding the prohibition against subcontracting or assignment in Part II, Section 1.8, Contractor may subcontract portions of this Agreement to subcontractors without the prior written consent of City provided that Contractor (1) provides City with written notice of the subcontractor's name within a reasonable time of entering into a subcontract, and (2) City may, upon reasonable request and notice to Contractor, require Contractor to terminate a subcontractor who is not performing in a manner satisfactory to City. Contractor shall remain fully responsible for the supervision and management of all subcontractors, and shall be liable for the acts and omissions of all subcontractors performing services under this Agreement.
8. **City Indemnification.** City shall indemnify, defend, and hold Contractor harmless from claims and liabilities arising out of the willful or grossly negligent acts of City, as determined by a court of competent jurisdiction or an arbitrator agreed to by the Parties, in City's performance of its maintenance obligations in Part IV, Section 4.1, but excluding any claims or liabilities arising from the willful misconduct or gross negligence of Contractor. City reserves the right to assume full legal direction for a defense subject to this Section, including the right to use counsel of City's choosing. Contractor at any time may opt to provide its own defense at its sole cost.
9. **City Manager Administration:** The City Manager or designee shall have the authority to administer this Agreement, including the right to grant approvals where required which do not materially increase the expense or liability of City hereunder. The City Manager reserves the right to refer any matter to the City Council, in their sole discretion.
10. **Legal Actions.** PART II GENERAL PROVISIONS, Section 3.13 Legal Actions is revised to read in its entirety as follows:

3.13 Legal Actions. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Courts of the State of California in the County of Orange, or in any other appropriate court with jurisdiction in such County, or alternative dispute resolution forum (such as JAMS) acceptable to the Parties in Orange County, California and Contractor agrees to submit to the personal jurisdiction of such court.

## PART IV

### SCOPE OF SERVICES

Subject to the terms and conditions of this Agreement, Contractor shall provide the services listed in this Part IV. While this Scope of Services designates obligations to be performed by PSQ and SEG respectively, Part III, Section 5 applies to all services hereunder. The portions of RFQ No. 24-3393 applicable to the “Temp facility” defined therein are incorporated by this reference into this Scope of Services.

All services shall be conducted to a standard of care of a first-class music and performance facility which hosts nationally acclaimed performances and events. It is the Parties’ intention for Contractor to serve as a pass-through for reimbursable expenses listed in Attachment 1 to Part V. Such reimbursements shall be conducted pursuant to Part V.

#### SECTION 1. PLANNING AND DEVELOPMENT.

**1.1 Site Planning.** Contractor shall develop a detailed CAD layout and iterative site plan updates with dimensions, pathways, seating configurations and key details for construction of a temporary music venue, as more specifically described in RFQ No. 24-3393 as the “Temp facility” that can seat up to five thousand (5,000) people, and associated facilities including booking and management facilities and food and drink facilities (the “Facility”). Contractor shall submit the layout and plans to City for review and approval in City’s sole discretion. The planned Facility shall include coordination of stage, sound, rigging, lighting (including in parking areas), power, equipment rentals, restrooms, medical resources, security, fencing, waste management, marketing and branding, wayfinding and signage, tents and temporary facilities, traffic and parking, revenue strategies, calendar management, event contracts (where applicable), contingency planning, severe weather plans, insurance, permits and licenses, budgeting, safety programs, access control and credential planning, and Americans with Disabilities Act compliance. The site planning shall ensure that the Facility is ready to open for use no later than June 1, 2024, provided that Contractor shall not be responsible for delays not caused by or reasonably anticipated by Contractor, including unreasonable and unanticipated delays in City permitting.

**1.2 Procurement and Comparative Quotes.** Contractor shall procure equipment, labor, and all other materials which qualify as reimbursable expenses listed in Attachment 1 to Part V based on at least three (3) competitive quotes or bids, when feasible. Quotes for equipment shall be for seasonal and year-round operation of the Facility for three (3) years, including but not limited to back of house items, front of house items, support items, and contingency items.

**1.3 Budget.** Contractor shall develop a comprehensive budget and timeline for the Facility including procurement, development, and operations. Contractor shall submit the budget to City when complete for City’s reasonable review and approval.

**1.4 Marketing and Branding.** Contractor shall collaborate with and regularly communicate with City regarding development of a marketing strategy for the Facility, including naming, digital presence, sponsorships, and other partnerships. Notwithstanding the foregoing, City shall have sole discretion on decisions related to marketing, branding, advertising, sponsorships, and partnerships for the Facility.

**1.5 Premises.** The Facility shall be located at the Great Park North Lawn identified below (the “Premises”). Notwithstanding any other term or condition of this Agreement, City reserves the right, in its sole discretion, to develop or improve the Premises. City shall reasonably advise Contractor of any development on the Premises which could impact the Facility, and shall consider Contractor’s input related to the same. Upon termination of this Agreement, Contractor shall have no further right to occupy or use the Premises, and shall surrender the Premises immediately to City.



## **SECTION 2. DAY TO DAY OPERATIONS.**

**2.1 Management.** Contractor shall operate, supervise, and manage the Facility including planning, development, and day-to-day operations. The Facility shall be operated in compliance with all applicable laws, regulations and policies, including City policies related to noise, accounting, access and other matters. Contractor operations shall include stage management, including coordination with unions, load in and load out management, coordination with relevant governmental and regulatory agencies for permits and compliance, coordination with vendors including catering, promotion, security, screening, parking (including shuttles), ticketing, internet resources, cleaning services, waste management, food and beverage, merchandise, event coordination and staffing, guest services, sustainability, Americans with Disabilities Act compliance, day-of problem solving and troubleshooting, ticketing management, furniture, fixtures, and equipment rentals, talent support, community impact solutions, and event settlement. Staffing, traffic control, and security plans shall require approval of City, and shall be submitted to City for review and approval prior to the opening of the Facility.

**2.2 Booking.** Except as expressly set forth herein, Contractor shall not be responsible for any booking of performances for the Facility, which shall be managed by another party subject to a separate contract with City. Notwithstanding the foregoing, Contractor shall manage booking for the City’s “Irvine Nights Events” on behalf of City where directed by City, and other events where expressly directed in writing by City. City is responsible for managing the booking calendar for the Facility.

**2.3 Condition of Premises.** Contractor expressly agrees at all times to maintain, use and operate the Premises in a safe, clean, wholesome and sanitary condition, and in compliance with any

and all present and future laws, ordinances and rules and regulations relating to public health, safety or welfare and the City's standards and directives. Deficiencies in premises condition shall be corrected by Contractor as soon as possible, but no later than twenty-four (24) hours after notice thereof unless otherwise agreed to in writing by City.

**2.4 Concessions.** Without limiting Section 2.1, Contractor's concession management shall include providing high-quality and varied food and beverage products, supervised by a qualified and competent manager to ensure compliance with all applicable laws and regulations, including City recycling and environmental directives. Concessions shall be open and operational at all times when a performance or event is conducted at the Facility, except where otherwise agreed in writing by the Parties. Alcoholic beverages may be sold in compliance with applicable laws. Where practicable, concessions shall highlight high-quality local products.

**2.5 Facility Fees and Show Expenses.** "Pacific Symphony Events" (events conducted by Pacific Symphony in cooperation with City) shall not be subject to Facility fees. City shall bare show expenses (back and front of house staff, parking and traffic staff, police security staff, and emergency services) related to "Pacific Symphony Events," conducted by City (up to 5 per calendar year). City may pay such show expenses directly or authorize Contractor to pay such show expenses and request reimbursement therefor. All other events at the Facility shall be subject to a facility fee set based on written agreement of the Parties.

**2.6 Staffing.** Contractor's staff (including subcontractors) shall conduct themselves in a professional manner befitting of a first-class music and performance facility which hosts nationally acclaimed performances and events. City reserves the right to require Contractor to remove any staff from work under this Agreement who fails to comport themselves as required by this Agreement.

**2.7 Security and Safety.** Contractor shall cause the Facility to be operated in a safe and secure manner in compliance with all applicable laws. In the event of any damage, theft, or crime committed on the Premises, Contractor shall complete and submit a loss report to City detailing the nature of the incident, and supplemental measures (if any) Contractor will take to reasonably prevent such occurrences in the future. Such report shall be submitted within ten (10) days of the incident. Contractor shall prepare safety plans for all persons under Contractor's control working on the premises and shall promptly address all safety concerns raised by staff, guests, or City.

**2.8 Trademarks.** Contractor shall not use any City assets or trademarks in any material (including advertising for the Facility) without the prior written consent of City.

**2.9 Transactions.** Contractor shall use commercial best practices for handling cash, credit cards, and other monetary means used at the Facility. Contractor shall provide descriptions of all handling and recording systems for such transactions within a reasonable time of City's request for same.

**2.10 Food and Beverage Program.** Contractor shall operate a food and beverage program ("Food and Beverage Program") for events not operated in the Facility where directed by City including for tournaments and other events hosted in the Great Park. The Food and Beverage Program shall be conducted in cooperation between Contractor and City. The Food and Beverage Program shall include providing high-quality and varied food and beverage products, supervised by a qualified and competent manager to ensure compliance with all applicable laws and regulations, including City recycling and environmental directives. Contractor shall organize and provide various activities which compliment

the Food and Beverage Program such as lawn games and inflatables for kids provided at Contractor's sole cost and expense. City and Contractor shall collaborate to consider development of an online ordering system for the Food and Beverage Program. City shall be responsible for installation and removal of temporary signage for the Food and Beverage Program, including a list of upcoming events, offerings, and QR code menus. Where practicable, the Food and Beverage Program shall highlight high-quality local products. City reserves the right to terminate the Food and Beverage Program at any time without terminating any other portion of this Agreement.

### **SECTION 3. COORDINATION.**

**3.1 Meetings and Communications.** Contractor shall coordinate with City regarding the Facility, including but not limited to meeting regularly with City staff, stakeholders, vendors and potential partners where requested by City.

**3.2 Accounting.** Contractor shall keep accounting of all services provided under this Agreement in a manner consistent with City accounting practices and policies. Such records shall be provided to City upon request. All funds shall be kept in separate bank accounts as appropriate, including accounts for City contributions, operating expenses, and revenue (with separate accountings based on revenue source). A statement for each account shall be provided monthly to City. Accounting shall include regular books of accounting, journals and underlying documents, tax returns completed and maintained in compliance with applicable law, receipt vouchers, and any other records deemed necessary by City. City may audit all such accountings at any time upon reasonable notice to Contractor. Gross receipts will be recorded through a point-of-sale system in order to establish the daily receipts records and reconciliation per event with the exception of onsite parking for which ticket vouchers are retained. Contractor shall transmit reviewed financial statements for the Facility management and operations, prepared in a form and by a certified public accounting firm authorized to do business in California, on or before March 15th for the prior calendar year of the Agreement. The annual financial statements shall include an attachment containing the following information for each show of the preceding season: (1) all actual revenue, categorized by source (i.e. gate, parking, etc.); and (2) paid attendance and total attendance.

**3.3 Social Media.** Contractor may only establish social media or similar accounts for the Facility upon written agreement from City. Contractor shall be required to provide City with all login credentials for such accounts. Contractor shall comply with all City directives with regard to social media established for the Facility.

**3.4 Reports.** Contractor shall provide annual operating budget, revenue, security, marketing, and program reports prior to April 1 of each calendar year. Such reports shall include all actual revenue categorized by source, paid attendance and total attendance accountings, and any other information reasonably requested by City. City may request additional reports which shall be provided within thirty (30) days of such request, or as mutually agreed by the Parties in writing.

**3.6 Community Engagement.** Contractor shall also cooperate in community meetings related to the Facility. Where directed by City, Contractor shall reasonably revise its management approaches to address concerns revealed through community engagement.

**3.7 City Resources.** Upon Contractor's reasonable request and at Contractor's sole risk, cost, and expense, City shall provide space in the Great Park for Contractor to install a temporary mobile office for administration of the services under this Agreement.

**3.8 Records.** PSQ and SEG shall maintain for four (4) years after termination of this Agreement, all of its books, ledgers, journals, and accounts wherein are kept all entries reflecting the gross receipts received or billed by it from the business transacted pursuant to this Agreement. Such books, ledgers, journals, accounts, and records shall be available for inspection and examination by the City, or a duly authorized representative, during ordinary business hours at any time during the term of this Agreement and for at least four (4) years thereafter. City may audit all such records at any time upon reasonable notice to Contractor.

**3.9 Adjustments and Clarifications.** Contractor acknowledges that this Scope of Services provides a high-level summary of Contractor's performance obligations hereunder. Accordingly, Contractor shall enter into amendments to this Agreement reasonably acceptable to Contractor where requested by City to provide specificity and clarification regarding this Part IV.

## **SECTION 4. MAINTENANCE AND UTILITIES.**

**4.1 City Responsible for Maintenance.** The City shall retain responsibility for the maintenance of the Facility and the Premises, any parking areas provided by City on an as-needed basis, and any additional areas of the Great Park incidental to this Agreement provided by City on an as-needed basis. City reserves the right to enter into and conduct maintenance or inspections at the Facility at any time. City's maintenance responsibility shall include pest-control where necessary. City shall maintain these areas in a substantially similar manner as it maintains other City facilities. Contractor may request, and City shall perform maintenance on the Facility which City determines are reasonable and consistent with City's maintenance of other City facilities.

**4.2 Utilities.** Costs for utilities for the Premises and Facility shall be borne by City. Contractor shall use utilities in an efficient manner common for a first-class music and performance facility which hosts nationally acclaimed performances and events.

**4.3 Damage and Destruction.** If all or a portion of the Facility or Premises, or any other location essential to the operation of the Facility, are partially or wholly damaged by acts of nature or of the public enemy, unusually severe weather, fires, earthquakes, floods, riots, wars, civil unrest or other casualty not caused by either Party, and rendered unusable for the purposes under this Agreement, City shall repair the damage provided that the cost of repair is reasonable considering the temporary nature of the Facility, in City's reasonable discretion. If the cost of repair is not reasonable, City may either elect to repair the damage or terminate this Agreement in its sole discretion.

## PART V

### BUDGET

**Contractor's Facility Management Fee:** 10% of the approved annual fixed-costs budget for the Facility for each year of this Agreement. (Currently anticipated to be \$581,816 for Year 1, \$372,212 for Year 2, \$386,773 for Year 3). A prorated portion of the Facility Management Fee shall be included on each request for reimbursable expenses hereunder and shall be paid to Contractor therewith.

**Rental Revenue:** City shall receive 100% of rent revenue collected for the first five (5) "Irvine Nights" events of each calendar year, and the first five (5) "Outside Open Commercial Shows" of each calendar year as the same are conducted pursuant to Part IV, Section 2.2. City shall receive one hundred percent (100%) of rental revenue for any other community events approved by City up to fifteen (15) events in a calendar year. City shall receive eighty percent (80%) of rental revenue for any other community events approved by City exceeding fifteen (15) events in a calendar year. Contractor shall receive the remaining rental revenue except as otherwise agreed to in writing by the Parties.

**Reimbursable Expenses:** Contractor may seek reimbursement or monetary advance from City for all matters contained in Part IV reflected on the document attached as Attachment 1 to this Budget and incorporated herein by this reference (Currently anticipated to be \$6,021,818.07). Requests for reimbursement or monetary advance shall be made in writing and shall be accompanied by at least three (3) written quotes or bids, when feasible for the expenses from different vendors. City shall pay such approved expenses within thirty (30) days of request therefor from Contractor. Within thirty (30) days of payment for the expense to which the reimbursement or monetary advance applies, Contractor shall provide to City satisfactory written confirmation that the expenses were paid by Contractor in the amount reflected on the request. City may withhold the Contractor's Facility Management Fee until such time as satisfactory evidence of compliance with this provision is submitted. City may agree in writing to accept fewer quotes for certain reimbursable expenses where deemed appropriate by City.

**Facility Fees:** 100% of facility fees shall be collected by Contractor and paid to City monthly.

**Parking:** 100% of parking fees collected by Contractor shall be paid to City monthly.

**Concessions during Amphitheater Events:** Contractor shall collect concession revenue from vendors, thirty percent (30%) of which shall be paid by Contractor to City monthly. Contractor shall receive the remaining concession revenue except as otherwise agreed to in writing by the Parties. Concession revenue shall be the gross revenue of the sale of food and non-alcoholic beverages minus cash discounts, refunds, taxes collected from purchasers, card processing fees, California Redemption Value collection, direct expenses related to the acquisition of the food or non-alcoholic beverages sold, expenses associated with equipment rental and disposable products, and labor expenses directly associated with the sale (ie: staff working at concessions table).

**Food and Beverage Program Concessions:** Contractor shall collect a Food and Beverage Program concession fee based on concession revenue from vendors, fifty percent (50%) of which shall be paid by Contractor to City monthly. Contractor shall receive the remaining concession revenue except as otherwise agreed to in writing by the Parties. Concession revenue shall be the gross revenue of the sale of food and non-alcoholic beverages minus cash discounts, refunds, a ten percent (10%) Contractor

management fee, taxes collected from purchasers, card processing fees, California Redemption Value collection, procurement of food and non-alcoholic beverages, packaging, supplies and equipment, direct expenses related to the acquisition of the food or non-alcoholic beverages sold, expenses associated with equipment rental and disposable products, and labor expenses directly associated with the sale (ie: staff working at concessions table). Notwithstanding the foregoing, where Contractor is providing Food and Beverage Program concessions directly (ie: without a vendor paying a concession fee), the fifty percent (50%) collection due to City shall be based on concession revenue instead of based on the concession fee.

**Alcoholic Beverage Sales During Amphitheater Events:** Contractor shall collect alcoholic beverage sales revenue from vendors, thirty percent (30%) of which shall be paid by Contractor to City monthly. Contractor shall receive the remaining concession revenue except as otherwise agreed to in writing by the Parties. Concession revenue shall be the gross revenue of the sale of alcoholic beverages minus cash discounts, refunds, taxes collected from purchasers, card processing fees, California Redemption Value collection, procurement of alcoholic beverages, packaging, supplies and equipment, direct expenses related to the acquisition of the alcoholic beverages sold, expenses associated with equipment rental and disposable products, and labor expenses directly associated with the sale (ie: staff working at concessions table).

**Food and Beverage Program Alcoholic Beverage Sales:** Contractor shall collect a Food and Beverage Program alcoholic beverages fee based on alcoholic beverage sales revenue from vendors, fifty percent (50%) of which shall be paid by Contractor to City monthly. Contractor shall receive the remaining concession revenue except as otherwise agreed to in writing by the Parties. Concession revenue shall be the gross revenue of the sale of alcoholic beverages minus cash discounts, refunds, taxes collected from purchasers, a ten percent (10%) Contractor management fee, card processing fees, California Redemption Value collection, direct expenses related to the acquisition of the alcoholic beverages sold, expenses associated with equipment rental and disposable products, and labor expenses directly associated with the sale (ie: staff working at concessions table). Notwithstanding the foregoing, where Contractor is providing Food and Beverage Program alcoholic beverage sales directly (ie: without a vendor paying a alcoholic beverages fee), the fifty percent (50%) collection due to City shall be based on alcoholic beverage revenue instead of based on the alcoholic beverages fee.

**Sponsorships:** For the first year of this Agreement, City shall be paid eighty percent (80%) of all approved sponsorship revenues. This amount shall increase to ninety percent (90%) following the first year of the Agreement. Notwithstanding the foregoing, City shall be paid ninety five percent (95%) of all sponsorship funds based on trade value, and one hundred percent (100%) of the 2024 Five Point sponsorship of six hundred thousand dollars (\$600,000.00).

**Merchandise:** Contractor shall collection merchandise sales revenue, twenty percent (20%) of which shall be paid by Contractor to City monthly. Contractor shall receive the remaining merchandise sales revenue except as otherwise agreed to in writing by the Parties. Merchandise sales revenue is gross revenue generated from merchandise sale minus cash discounts, card processing fees refunds, taxes collected from purchasers, direct expenses related to the acquisition of the sold merchandise, and labor expenses directly associated with the sale (ie: staff working at merchandise table).

**Payments and Statements:** Contractor shall provide monthly closing reports to City showing all revenues and fees collected for the Facility. All amounts due to City shall be paid within ten (10) business days of request therefor via wire transfer.

**ATTACHMENT 1**  
**REIMBURSABLE EXPENSES**

SHOW NUMBERS PER SEASON/YEAR
SHOW EXPENSES
Cleaning
Trash Service
Restroom Servicing
Supplies (liners, paper & tools)
Fuel Costs
<b><i>Labor &amp; Staffing - (See Labor Budget tab)</i></b>
BOH Staffing
EMS
FOH Staffing
Parking & Traffic Staffing
Police
Security Staffing
<b>TOTAL SHOW EXPENSES</b>
BUILDING THE VENUE EXPENSES
ADA - Elevated Platform with ramp
Audio
Bike Rack - Metal
8' Fence Line with gates (2,200 ft w commercial screening)
Credentials
Deck & Cover - VIP Area
Eventdeck - Health Department required flooring
Entrance Design
Entrance Fabrication/Install/Removal
Entrance Materials
Entrance Production Build (truss/lights/general PA for announcements)
Food & Beverage Containers - 8'x30' Containers (8 stations)
Furniture - Dressing Rooms/Green Room

Furniture - Cabanas
Generators
Fuel for generators
Heavy Equipment (60' boom lift & 12k reach forklift)
Lighting (Solar/ Lawn/Light towers) Fabricated Towers
Marketing/PR/Website/Signage
Production - FOH Truss/Barricade/Misc.
Production - Stage Lighting
Production - Lighting (House/Towers/Misc)
Production - LED Video Screens
Restrooms - 5 ADA Restroom Units (10 stalls)
Restrooms - 10 Restroom Units (40 stalls)
Restrooms - Backstage Dressing rooms/shower/toilet unit
Restrooms - Deck/Ramp/Stairs/Tanks
Restrooms - Sinks (12 units)
Security System - Cameras
Security System - Camera Installation
Site Power Distribution
Stage Power Distribution
Internet & Distribution
Repairs & Maintenance
Stage
Stage / Truss Roof
Stage Scrims/branding
Storage/Office Containers - 8'x40' Containers (6 storage)
Storage/Office Containers - 8'x40' Containers (11 office)
Storage/Office Containers - 30' x36' Storage Shed
Tents - 40x40 (4x) - VIP F&B & BOH Catering
Tents - 40x60 (1x) - VIP F&B
Ticket Container - 8'x30'
Health Department 3-Compartment Sinks (5x)
VIP Area - Entrance Sign
VIP Area - Lighting
VIP Area - Lounge

***Seasonal & Variable Costs***

Decking Setup

Decking Tear Down

IATSE Install

IATSE Load Out

PSQ Labor Install

PSQ Labor Removal

PSQ Management Fee

Contingency

**TOTAL BUILDING THE VENUE EXPENSES**

# PSQ Temp Amp Agreement Final 2.27.24

Final Audit Report

2024-03-01

Created:	2024-02-29
By:	Karen Gerardo (kgerardo@cityofirvine.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAADdKHs6Y-t6P1jKnf6SfZZygk26-1QOm

## "PSQ Temp Amp Agreement Final 2.27.24" History

-  Document created by Karen Gerardo (kgerardo@cityofirvine.org)  
2024-02-29 - 0:23:06 AM GMT- IP address: 63.194.45.134
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-  Email viewed by Napolitano Anthony J. (anapolitano@buchalter.com)  
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 Agreement completed.  
2024-03-01 - 8:14:29 PM GMT



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