

FACILITIES USE AGREEMENT
(Festival Amphitheater – LFA Group, LLC)

THIS AGREEMENT is made and entered into this ____ day of February, 2017, by and between the CITY OF GARDEN GROVE, a municipal corporation, hereinafter referred to as "CITY," and LFA GROUP, LLC, a California limited liability company, hereinafter referred to as "LFA."

RECITALS

- A) CITY owns a 540-seat Amphitheater, known as the "Strawberry Bowl Festival Amphitheater," located at 12762 Main Street, Garden Grove, California, 92840 (the "Amphitheater").
- B) LFA desires to use the Amphitheater for the purposes of programming professional theatrical performances, cultural artistic events and performances, and bookings of other events.

AGREEMENT

SUBJECT TO THE TERMS AND CONDITIONS HEREIN, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1) TERM. This Agreement shall commence, and LFA shall take possession of the Amphitheater, on the 1st day of March, 2017, and shall continue through December 31, 2027 (the "Term"). Subject to the mutual agreement of the parties, the Term may be extended in five-year increments for an additional two terms. LFA accepts the Amphitheater in an "As Is" condition without any representations or warranties being made by CITY. CITY expressly disclaims any warranty or representation with regard to the condition, safety or security of the Amphitheater or the suitability of the Amphitheater for LFA's intended use.
- 2) TERMINATION.
 - a) TERMINATION WITHOUT CAUSE. Either party may terminate this Agreement without cause by giving written notice of such termination at least one hundred eighty (180) days prior to the intended date of termination.
 - b) TERMINATION FOR CAUSE. Either party may terminate this Agreement upon any material breach by the other party by providing written notice specifying the nature of said breach. Unless the Section of this Agreement that is the subject of the breach provides for a grace period for performance or specifies a longer cure period, the breaching party shall have 30 days to cure the breach. Upon the failure to cure the breach within the 30-day period, the Agreement shall be deemed terminated.

- c) **HOLDING OVER.** Upon termination of this Agreement, possession of the Amphitheater shall be surrendered to CITY immediately. In the event LFA holds over beyond the Term herein provided with the express or implied consent of the CITY, such holding over shall be from month to month only, subject to the conditions of this Agreement. Such holding over shall not be construed as a renewal of this Agreement and shall be at the monthly compensation provided in this Agreement. Such holdover period shall be subject to termination upon 30 days' notice.
 - d) **TRADE FIXTURES AND PERSONAL PROPERTY.** Upon the termination of the Agreement, LFA shall remove all of its trade fixtures, furniture, and equipment on the Amphitheater to the extent they are not permanently affixed, and immediately repair any damage resulting from such removal so as to leave the Amphitheater in the condition required in this subsection. LFA may finance its movable fixtures and equipment installed in the Amphitheater, and such financing will not be considered an assignment, provided it does not confer an interest in the Amphitheater.
 - e) **OWNERSHIP OF IMPROVEMENTS; CONDITION ON LFA'S SURRENDER.** Subject to Section 6(a), the Amphitheater and all improvements constructed, attached or used on the Amphitheater are and shall remain the property of CITY. On the date of termination of this Agreement, LFA shall peaceably surrender and quit the Amphitheater and all improvements broom clean, in good order, condition and repair, reasonable wear and tear excepted only, free of hazardous materials caused to have occurred or been released at, on, or about the Amphitheater during LFA's possession during this Agreement, and lien free, except to the extent that the condition of disrepair existed on or before March 1, 2017.
- 3) **PROGRAMMING.** LFA shall coordinate the use of the Amphitheater by community, educational and professional groups for programming of professional theatrical performances, cultural artistic events and performances, as more fully described in Exhibit "A," attached hereto and made a part hereof by this reference. In the event of any inconsistency between the terms of Exhibit "A" and this Agreement, this Agreement shall govern.
- 4) **FACILITY USE.** Use of the Amphitheater shall be subject to the following conditions:
- a) CITY reserves the right to use the Amphitheater for CITY functions two (2) times per year subject only to front of house costs, if any, as determined by the parties in writing prior to CITY's function, and subject to LFA's approval of the dates and times of such functions, which will not unreasonably be withheld. CITY shall submit a use request for each such use in writing no later than 30 days prior to the desired date of use. CITY acknowledges that LFA scheduled and publicized performance dates shall take priority over any requested CITY use of the Amphitheater.

- b) In consideration for the annual activities of the Strawberry Festival Association (ASSOCIATION) during Memorial Day weekend, as provided in an existing Agreement with CITY, the Amphitheatre shall be reserved for use by the ASSOCIATION free of charge for the period beginning the Saturday before the Strawberry Festival and continuing through Memorial Day, or as otherwise mutually agreed by ASSOCIATION and CITY. LFA shall provide stage, lighting, sound, and restroom facilities for ASSOCIATION use.
- c) CITY reserves the right to contract with an operator to produce and perform up to 24 live Shakespeare performances per year. To this end, CITY has an existing use agreement for the Amphitheater with Shakespeare Orange County effective through December 31, 2018, which CITY has agreed to terminate prior to the effective date of this Agreement, provided that Shakespeare Orange County programming is incorporated into an agreement between LFA and Shakespeare Orange County for continuation of Shakespeare performances at the Amphitheater. In consideration thereof, LFA will enter into a written use, license or sublease agreement with Shakespeare Orange County for use of the Amphitheater for 24 performances commencing March 1, 2017 through December 31, 2018. Shakespeare Orange County and LFA shall have the option to mutually extend the use agreement for up to five (5) additional years. Shakespeare Orange County shall have free use of the stage only, and may otherwise be charged for the costs of lighting, sound, janitorial, grounds, and front of house costs associated with its use of the Amphitheater. Furthermore, Shakespeare Orange County shall be permitted to use the Snack Bar area and Green Room for their annual fundraiser during Memorial Day Weekend. In the event that Shakespeare Orange County discontinues its programming and performances as provided herein, CITY may contract with another operator to continue to produce Shakespeare performances.
- d) CITY has an existing use agreement for the Amphitheater with M&D Silva Enterprises, Inc., d.b.a. Strawberry Productions, Inc. (M&D) effective through December 31, 2018, M&D Silva shall have the option to mutually extend the use agreement for up to five (5) additional years. CITY has agreed to terminate the Agreement with M&D Silva prior to the effective date of this Agreement. In consideration thereof, LFA will enter into a written use, license or sublease agreement with M&D for use of the Amphitheater commencing March 1, 2017 through December 31, 2018. M&D shall pay \$250 per event day, plus cost of lighting, sound, janitorial, grounds, and front of house costs.
- e) LFA shall ensure that all productions carried out in furtherance of this Agreement are of a professional quality. Should any production include content generally referred to either as "adult" or "designed for mature audiences", LFA shall prominently advertise said production to the public as such. No lewd, obscene, libelous or hate-promoting performances shall be allowed in the Amphitheater.

- f) If, in the professional opinion of CITY's Chief of Police, there is a clearly identifiable reason that special security arrangements are needed for any particular event, CITY shall promptly advise LFA of said need. Once so notified, LFA shall be responsible for making such arrangements and paying for all costs for such security.
- g) LFA is permitted to explore naming rights for the Amphitheater subject to a written agreement between the parties.
- h) CITY will support LFA's application for a Type 47 alcoholic beverage sales license for the sale of alcoholic beverages within the Amphitheater, provided that LFA shall share 20% of the net proceeds from the sale of alcoholic beverages with the Garden Grove Community Foundation. "Net proceeds" for purposes of this section shall mean alcohol sale revenue minus the costs of goods (alcohol purchases, mixers, and garnishes), bar supplies (barware, serving containers, straws, and napkins), bar labor (bartenders, bar manager), and sales tax.
- i) GOVERNMENT APPROVALS. LFA shall be responsible for obtaining all approvals and permits from all governmental agencies having jurisdiction over any activity or work performed by LFA, its contractors and subcontractors, at the Amphitheater.
- j) COMPLIANCE WITH LAWS AND REGULATIONS. The term "Governmental Regulations" means all federal, state, county, or municipal laws, ordinances, rules, regulations, directives, orders, or requirements now in force or which may hereafter be in force. Subject to LFA's right to contest the same, LFA shall, at all times, comply with all applicable Governmental Regulations, including all applicable federal, state and local occupation, safety and health laws, rules, regulations and standards, applicable federal and state labor standards, applicable prevailing wage requirements, zoning and development, building, plumbing, mechanical and electrical codes, and all other provisions of the City of Garden Grove Municipal Code, and all applicable disabled and handicapped access requirements, including, without the limitation, the Americans With Disability Act, 42 U.S.C. §12101 et seq., Government Code §4450 et seq., and the Unruh Civil Rights Act, Civil Code §51 et seq. Nothing in this Agreement is a representation or warranty by CITY, and LFA hereby expressly acknowledges and agrees that CITY has not previously affirmatively represented to LFA or its agents, in writing or otherwise, that any LFA improvement or construction or erection of improvements performed on the Amphitheater on or after the date of this Agreement is not a "public work," as defined in Section 1720 et seq. of the California Labor Code, including but not limited to Sections 1771 and 1781. LFA hereby agrees that LFA shall have the obligation to provide any and all disclosures or identifications required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. In addition to any other LFA indemnifications of CITY set forth in this Agreement, LFA shall

indemnify, protect, defend and hold harmless the CITY and its officers, employees, contractors and agents, with counsel reasonably acceptable to CITY, from and against any and all loss, liability, damage, claim, cost, expense and/or "increased costs" (including reasonable attorney's fees, court and litigation costs, and fees of expert witnesses) which, in connection with construction at (as defined by applicable law) and/or operation of the Amphitheater, results or arises in any way from any of the following: (1) the noncompliance by LFA of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages and to hire apprentices); (2) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (3) failure by LFA to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the parties that, in connection with any construction (as defined by applicable law) of improvements on the Amphitheater, maintenance and repairs by LFA, LFA shall bear all risks of payment or non-payment of prevailing wages and hiring of apprentices under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. "Increased costs," as used in this Section, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement.

- k) SAFETY. LFA shall immediately correct any unsafe condition of the Amphitheater, as well as any unsafe practices occurring thereon. LFA shall cooperate fully with CITY in the investigation of any injury or death occurring on the Amphitheater, including a prompt report thereof to CITY.
- 5) REPORTING. LFA shall submit to CITY, no later than January 31, 2018 and each year thereafter, the reports enumerated below. In the event that City Hall is closed on a date on which a report is due, that report will be considered to be due on the next day that City Hall is open.
- a) LFA shall provide an annual report of events and activities at the Amphitheater that occurred in the prior year, and which are booked as of December 31st.
 - b) LFA shall submit financial statements of its income and expenses related to the Amphitheater covering the prior calendar year.
- 6) RENT AND FINANCIAL OBLIGATIONS.
- a) RENT. Rent for use of the Amphitheater is hereby established to be the monthly rate of TWO THOUSAND DOLLARS (\$2,000.00) per month, provided that CITY shall provide LFA credit in lieu of remitting payment of Rent as follows:

- i. From March 1, 2017 through December 31, 2022, LFA shall pay no rent provided that LFA completes capital improvements to the Amphitheater of at least \$125,000.00 by December 31, 2021. The value of the improvements shall be determined by the standard valuation applicable to the permits issued by CITY's Building Department, or as otherwise agreed to in writing by the parties. Should CITY terminate the Agreement for convenience per Section 2(a) during the term of this subsection, CITY agrees to pay the value of completed capital improvements minus the rent due for LFA's possession of the Amphitheater during the same term. CITY shall not be liable to pay any reimbursement in the event of termination for cause per Section 2(b) or in the event LFA terminates the Agreement for convenience.
- ii. For the remaining 5 years of the Term, LFA shall pay no rent provided that LFA completes annual capital improvements to the Amphitheater of at least \$20,000.00 commencing January 1, 2023 and annually thereafter. For any year in which capital improvements to the Amphitheater are less than \$20,000.00, LFA shall remit Rent to CITY for the balance of the Rent due for the year minus the cost of capital improvements for the subject year ending December 31st. Rent shall be remitted to the CITY by January 31st of the following year at the address listed in Section 15(d) below. Should CITY terminate the Agreement for convenience per Section 2(a) above during the term of this subsection, CITY agrees to pay the value of completed capital improvements for the year commencing January 1, 2023 minus the rent due for LFA's possession of the Amphitheater during the year of termination. CITY shall not be liable to pay any reimbursement in the event of termination for cause per Section 2(b) or in the event LFA terminates the Agreement for convenience.
- iii. For any Rent payment due, any Rent for any period which is less than one month shall be a prorated portion of the monthly installment based upon a 30 day month. Rent shall be paid to CITY without deduction or offset, in lawful money of the United States of America.
- iv. No payment by LFA or receipt by CITY of a lesser amount than any payment of Rent due shall be deemed to be other than on account of the amount due, and no endorsement or statement on any check or any letter accompanying any check or payment of Rent shall be deemed an accord and satisfaction, and CITY may accept such check or payment without prejudice to CITY's right to recover the balance of such payment of Rent or to pursue any other remedies available to CITY. No receipt of money by CITY from LFA after the termination of this Agreement or LFA's right of possession of the Amphitheater shall reinstate, continue or extend the Term.

- b) ADDITIONAL FINANCIAL OBLIGATIONS.
- i. SECURITY DEPOSIT. There is no security deposit required of, or received from, LFA under this Agreement.
 - ii. LIGHTING AND SOUND EQUIPMENT. LFA will install at the Amphitheater an additional \$165,000.00 in lighting and sound equipment.
 - iii. REAL PROPERTY TAXES. Pursuant to Revenue & Taxation Code §107.6, should a property interest be created herein, it may be subject to property taxation and LFA may be subject to property taxes levied on such interest. In no event shall CITY be liable for any taxes owed as a result of this Agreement or LFA's use of the Amphitheater. CITY shall use reasonable efforts to cause all bills for Taxes payable by LFA hereunder to be sent directly to LFA, in which event, from and after the effective date of this Agreement, LFA shall pay, prior to delinquency, all Taxes assessed during the Term. Taxes for any partial year shall be prorated.
 - iv. PERSONAL PROPERTY TAXES. LFA shall pay all taxes charged against trade fixtures, furnishings, equipment or any other personal property belonging to LFA. LFA shall use commercially reasonable efforts to have personal property taxed separately from the Amphitheater. If any of LFA's personal property is taxed with the Amphitheater and paid by CITY, LFA shall reimburse CITY the taxes for the personal property within 15 days after LFA receives a written statement from CITY for such personal property taxes, together with reasonable evidence showing the amount of personal property taxes paid by CITY.
 - v. CONTESTING TAXES. LFA shall have the right to contest any Taxes, at its own cost and in its own name, and CITY shall not pay any such Taxes; provided, however, that LFA shall take such steps as may be required to perfect the contest, including payment of the Taxes under protest prior to an appeal of adverse determination of the contest. Upon final determination of any such contest (and if the Taxes have not already been paid under protest), LFA shall pay the Taxes for which it is responsible hereunder as they are finally determined and all penalties, interest, costs, and expenses which may thereupon be due or have resulted therefrom. If LFA contests any Taxes and such contest interferes with any proposed sale, financing or refinancing affecting the Amphitheater, which CITY has either commenced or is about to commence, upon CITY's written request, LFA shall either furnish to CITY security in the amount of such contested Taxes, plus estimated costs and interest, or a bond of a responsible corporate surety in such amount.
- b) RECORD OF EXPENSE. LFA shall keep complete and accurate records of all expenses associated with capital improvements to be submitted for credit.

- c) LFA agrees to establish and maintain an accounting system adhering to generally accepted accounting practices, and shall provide an annual financial statement to CITY.
- 7) FACILITY MAINTENANCE, REPAIRS AND ALTERATIONS. Generally, LFA shall provide for the interior maintenance of the Amphitheater and office/annex, and CITY shall provide exterior maintenance and building repairs.
- a) CITY OBLIGATIONS. Except for the capital improvements for which LFA is receiving Rent credit pursuant to Section 6(a), CITY shall keep the Amphitheater, including the building, interior and exterior walls, roof and common areas in good condition and repair; provided, however, CITY shall not be obligated to paint, repair or replace interior wall coverings, or to repair or replace any improvements that are not ordinarily a part of the building or that exceed building code standards. CITY agrees to consult and coordinate repairs and improvements with LFA. CITY and LFA may agree to perform enhanced improvements subject to LFA funding of additional costs, and subject to CITY providing credit therefor to LFA towards LFA's Rent credit under Section 6(a). There shall be no liability to CITY on account of any injury or interference with LFA's business with respect to any improvements, alterations or repairs made by CITY to the Amphitheater or any part thereof. LFA expressly waives the benefits of any statute now or hereafter in effect, which would otherwise afford LFA the right to make repairs at CITY's expense or to terminate this Agreement because of CITY's failure to keep the Amphitheater in good order, condition and repair, including, but not limited to Sections 1932, 1941 and 1942 of the California Civil Code or under any similar law, statute, or ordinance now or hereafter in effect.
 - b) LFA OBLIGATIONS. Notwithstanding CITY's obligation to keep the Amphitheater in good condition and repair, LFA shall be responsible for payment of the cost thereof to CITY for that portion of the cost of any maintenance and repair of the Amphitheater, or any equipment that serves only LFA or the Amphitheater, to the extent such cost is attributable to causes beyond normal wear and tear. LFA shall be responsible for the cost of painting, repairing or replacing wall coverings, and for repairing or replacing any Amphitheater improvements that are not ordinarily a part of the building or that exceed building code standards. CITY may, at its option, upon reasonable notice, elect to have LFA perform any particular such maintenance or repairs, the cost of which is otherwise LFA's responsibility hereunder. LFA shall provide custodial services (including, but not limited to, cleaning of all restrooms, upholstery, carpeting and windows), and shall maintain the Amphitheater in a clean and orderly state.
 - c) ALTERATIONS. LFA shall make no additional alterations, structural modifications, remodeling, or change in use of any portion of the Amphitheater without the prior written permission of CITY, which will not be unreasonably withheld.

- d) LIENS. LFA shall not permit to be placed against the Amphitheater any mechanics', materialmen's, contractors', subcontractors' or other liens. LFA shall indemnify, defend (with counsel acceptable to CITY) and hold CITY harmless from all liability for any and all liens, claims and demands, together with the costs of defense and reasonable attorneys' fees related to same. CITY reserves the right, at any time and from time to time, to post and maintain on the Amphitheater, any portion thereof or on the improvements on the Amphitheater any notices of non-responsibility or other notice as may be desirable to protect CITY against liability. In addition to and not in limitation of CITY's other rights and remedies under this Agreement, should LFA fail, within 15 days of a written request from CITY, to discharge any lien or claim related to LFA's use of the Amphitheater, or to indemnify, hold harmless and defend CITY from and against any loss, damage, injury, liability or claim arising out of LFA's use of the Amphitheater, then CITY, at its option, may elect to pay any lien, claim, loss, demand, injury, liability or damages, or settle or discharge any action or satisfy any judgment and all costs, expenses and attorneys' fees incurred in doing so shall be paid to CITY by LFA upon written demand, together with interest thereon at the rate of 7% per annum (but in no event more than the maximum interest rate permitted by law) from the date incurred or paid through and including the date of payment.
- e) On the last day of the Term hereof, or on any sooner termination, LFA shall surrender the Amphitheater to CITY in the same or reasonably similar condition as received, ordinary wear and tear excepted, clean and free of debris. Any damage or deterioration of the Amphitheater shall not be deemed ordinary wear and tear if the same could have been prevented by good maintenance practices by LFA. LFA shall repair any damage to the Amphitheater occasioned by the installation or removal of LFA's trade fixtures, alterations, furnishings and equipment. Except as otherwise stated in this Agreement, LFA shall leave the air lines, power panels, electrical distribution systems, lighting fixtures not provided by LFA, air conditioning, window coverings, carpets, wall paneling, ceilings and plumbing on the premises and in good operating condition. LFA shall be entitled to remove the sound and lighting systems it provides, but shall not remove any of the other capital upgrades made to the Amphitheater.
- 8) UTILITIES. As consideration for, and assistance to, Shakespeare Orange County using the Amphitheater as provided for in Section 4(c), CITY shall pay for utility services, in an annual amount (commencing March 1, 2017 through December 31, 2017, then each calendar year thereafter commencing January 1 through December 31st) not to exceed twenty thousand dollars (\$20,000), for the provision of water, natural gas, waste disposal and electricity. In the event that LFA exceeds the annual amount provided by CITY for utility services, LFA shall be responsible for payment of excess costs. Any monthly utility services costs in excess of \$1,666.66 shall be the sole responsibility of LFA. All other utility charges shall be the sole responsibility of LFA. In the event that

Shakespeare Orange County ceases to use the Amphitheater as provided for in Section 4(c), the parties will negotiate CITY's continuing payment for utility services.

9) INSURANCE REQUIREMENTS.

- a) COMMERCIAL GENERAL LIABILITY. LFA, at its sole cost and expense, shall, during the entire Term, any extension and holdover period, keep in full force and effect a policy or policies of commercial general liability insurance and property damage insurance with respect to the Amphitheater and LFA's operations in which the combined single limit of liability shall be not less than \$2,000,000. LFA shall also maintain a standard form all-risk policy covering fire and extended coverage, vandalism, malicious mischief, sprinkler leakage and other perils of direct physical loss or damage insuring the personal property, trade fixtures and equipment of LFA. Said policies shall name CITY as additional insured and contain a clause that the insurer may not cancel or change the insurance coverage limits without first giving CITY 30 days' prior written notice, except cancellation for nonpayment of premium, in which case only 10 days' prior written notice shall be required. LFA's commercial general liability insurance shall include a contractual liability endorsement insuring performance of all indemnities of LFA under this Agreement and a cross-liability endorsement to the extent insurable. Said insurance policy shall be with an insurance company or companies with general policy holders' rating of not less than "A-VIII" as rated in the most current available Best's Key Rating Guide and which are qualified to do business in the state in which the Amphitheater are located.
- b) RISK OF LOSS. CITY shall not be liable for injury to any person or for any damage to personal property sustained by LFA or others that are caused by any defects in the Amphitheater, or any service facilities or due to the happening of accident, including any damage caused by water, wind storm, or by any gas, steam, electrical wiring, sprinkler system, plumbing, heating or conditioning apparatus; theft; or acts or omissions of co-users or other occupants of the Amphitheater, or hereafter occurring therein or due to any part or appurtenance thereof, including any and all furniture, fixtures, and equipment of LFA becoming out of repair, or from any act or omission of LFA.
- c) WAIVER OF SUBROGATION. LFA hereby releases CITY from liability and waives all right of recovery against CITY for any loss in or around the Amphitheater from perils insured against under its fire or liability insurance contracts, including any all-risk endorsements thereof, whether due to negligence or any other cause, provided that this section shall be inapplicable if it would have the effect, but only to the extent it would have the effect, of invalidating any insurance coverage of CITY or LFA. Nothing herein shall relieve LFA of its obligation to request and procure, to the extent available on a commercially reasonable basis, the necessary endorsements required to validly waive

subrogation in accordance with this section. LFA shall, at the request of CITY, execute and deliver to CITY a Waiver of Subrogation in the form and content as reasonably required by CITY's insurance carrier. To the extent LFA fails to maintain the insurance required under the terms of this Agreement, such failure shall be a defense to any claim asserted by LFA against CITY by reason of any loss sustained by LFA due to circumstances that would have been covered had such required insurance been maintained.

- d) CERTIFICATE OF INSURANCE. A certificate and/or policies issued by the insurance carrier for each policy of insurance required to be maintained by LFA under the provisions of this Agreement shall be delivered to CITY upon or before the delivery of possession to LFA of the Amphitheater for any purpose. Each of said certificates of insurance and each such policy of insurance required to be maintained by LFA hereunder shall expressly evidence insurance coverage as required by this Agreement.
- e) For any claims related to this Agreement, LFA's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, agents, or volunteers shall be excess of LFA's insurance and shall not contribute with it.

10) ENVIRONMENTAL MATTERS.

- a) HAZARDOUS MATERIALS LAWS; HAZARDOUS MATERIALS. "Hazardous Materials Laws" means any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law") relating to hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Amphitheater, or soil and ground water conditions, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. § 9601, et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq., any amendments to the foregoing, and any similar federal, state or local laws, ordinances, rules, decrees, orders or regulations. "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (i) is a flammable explosive, asbestos, radioactive material, nuclear medicine material, drug, vaccine, bacteria, virus, hazardous waste, toxic substance, gasoline, petroleum product or other product used in the servicing of motor vehicles, polychlorinated biphenyls or related injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; (ii) is controlled, designated in or governed by any Hazardous Materials Law; (iii) gives rise to any reporting, notice or publication requirements under any Hazardous Materials Law; or (iv) gives rise to any liability, responsibility or duty on the part of LFA or CITY with respect to any third person under any Hazardous Materials Law.

- b) USE. LFA shall not allow any Hazardous Material to be used, generated, released, stored or disposed of on, under or about, or transported from, the Amphitheater, unless: (a) such use is specifically disclosed to and approved by CITY (which approval may be granted or withheld in CITY's sole discretion) prior to such use; and (b) such use is conducted in compliance with the provisions of this section. CITY may approve such use subject to conditions to protect the Amphitheater and CITY's interests. CITY may, without limitation, withhold approval if CITY determines that such proposed use involves a risk of a release or discharge of Hazardous Materials or a violation of any Hazardous Materials Laws or that LFA has not provided adequate assurances of its ability to remedy such a violation and fulfill its obligations under this section. Notwithstanding the foregoing, this provision shall not be construed or understood to prohibit LFA from allowing Hazardous Materials to be brought upon the Amphitheater so long as they are Hazardous Materials which are customary and common to the normal course of business and so long as such Hazardous Materials are used, stored and disposed of in strict accordance with all applicable Hazardous Materials Laws. Upon the expiration of the Term, any extensions or holdover period, or sooner termination of this Agreement, LFA shall remove any equipment, improvements or storage facilities utilized by LFA or any assignee or subtenant of LFA or their respective agents, contractors, employees, concessionaires, licensees, or invitees in connection with any Hazardous Materials and shall clean up, detoxify, repair and otherwise restore the Amphitheater to a condition free of Hazardous Materials. LFA shall be solely responsible, both financially and legally, for remediation of Hazardous Materials on the Amphitheater to the extent such Hazardous Materials were released, discharged, used, or stored on or about the Amphitheater during the Term or any extension or holdover period of this Agreement.
- c) COMPLIANCE WITH HAZARDOUS MATERIALS LAWS. LFA and its agents, contractors, employees, assignees, sublessees, licensees, concessionaires, and invitees shall strictly comply with, and shall operate and maintain the Amphitheater in compliance with Hazardous Materials Laws. LFA shall obtain and maintain in full force and effect all permits, licenses and other governmental approvals required for LFA's operations on the Amphitheater under any Hazardous Materials Laws and shall comply with all terms and conditions thereof. At CITY's request, LFA shall deliver copies of, or allow CITY to inspect, all such permits, licenses and approvals. LFA shall not perform any monitoring, investigation, clean-up, removal or other remedial work including, without limitation, the preparation and implementation of any closure, remedial action or other required plans in connection therewith (collectively, "Remedial Work") in response to the presence of any Hazardous Materials in or about the Amphitheater, nor enter into any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Materials in any way connected with the Amphitheater, without first notifying CITY of LFA's intention to do so and affording CITY ample opportunity to appear or otherwise

appropriately assert and protect CITY's interest with respect thereto. CITY shall have the right to intervene in any governmental action or proceeding involving any Remedial Work, and to approve performance of the work, in order to protect CITY's interests. Upon CITY's approval of the work to be performed and provided that CITY does not elect to perform said work as provided hereinbelow, LFA shall perform any Remedial Work required as a result of any release or discharge by LFA or any assignee or sublessee of LFA or their respective agents, contractors, employees, licensees, concessionaires, or invitees of Hazardous Materials affecting the Amphitheater or any violation of Hazardous Materials Laws by LFA or any assignee or sublessee of LFA or their respective agents, contractors, employees, licensees, concessionaires, or invitees. CITY shall have the right, but not the obligation, to remedy any violation by LFA of the provisions of this section or to perform any Remedial Work which is necessary or appropriate as a result of any governmental order, investigation or proceeding and LFA shall pay, upon demand, all costs (including attorneys' fees and other costs) incurred by CITY in remedying such violations or performing all Remedial Work, together with interest thereon at the legal rate from the date of payment by CITY. LFA shall not be responsible for remediation of Hazardous Materials on the Amphitheater which were released, discharged, used, or stored prior to the Effective Date.

- d) NOTICE; REPORTING. LFA shall notify CITY within 2 days after any of the following: (1) a release or discharge of any Hazardous Materials, whether or not the release or discharge is in quantities that would otherwise be reportable to a public agency; (2) LFA's receipt of any order of a governmental agency requiring any Remedial Work pursuant to any Hazardous Materials Laws; (3) LFA's receipt of any warning, notice of inspection, notice of violation or alleged violation, or LFA's receipt of notice or knowledge of any proceeding, investigation or enforcement or regulatory action, pursuant to any Hazardous Materials Laws; (4) LFA's receipt of notice or knowledge of any report made to any environmental agency arising out of or in connection with any Hazardous Materials in or about the Amphitheater or removed therefrom, including any complaints, notices, warnings or asserted violations in connection therewith; or (5) LFA's receipt of notice or knowledge of any claims made or threatened by any third party against CITY or LFA relating to any loss or injury resulting from Hazardous Materials. LFA shall deliver to CITY copies of all test results, reports and business or management plans required to be filed with any governmental agency pursuant to any Hazardous Materials Laws, including without limitation copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Amphitheater. In connection with any Hazardous Materials involving the Amphitheater with respect to which LFA is responsible hereunder, LFA shall make all reports and filings required by any Hazardous Materials Laws, and provide CITY with the same for CITY's review and approval prior to filing.

- 11) INDEPENDENT CONTRACTOR. It is agreed that in the performance of the services to be performed by LFA, LFA shall act and be an independent contractor and not an agent or employee of CITY, and shall obtain no rights to any benefits which accrue to CITY's employees.
- 12) NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF CITY. No official or employee of CITY shall be personally liable to LFA in the event of any default or breach by CITY, or for any amount, which may become due to LFA, or any obligation under the terms of this Agreement.
- 13) NON-DISCRIMINATION. LFA covenants there shall be no discrimination against or segregation of any person, group, or employee due to race, color, creed, religion, sex, marital status, age, handicap, sexual orientation, national origin or ancestry, in any action or activity pursuant to this Agreement.
- 14) ASSIGNABILITY. LFA shall not have the right to assign this Agreement to any person or entity without the prior written permission of CITY, which will not be unreasonably withheld. Any attempted assignment, sublet or transfer made in violation of this provision shall be void.
- 15) GENERAL PROVISIONS.
 - a) INSPECTIONS. CITY and its representatives, employees, agents or independent contractors may enter and inspect the Amphitheater or any portion of the Amphitheater or any improvements on the Amphitheater at any time during business hours and at other times after CITY has provided LFA with 48 hours advanced notice to inspect the Amphitheater, make repairs or replacements, or for any other purpose CITY reasonably deems necessary.
 - b) DISCLOSURE OF DOCUMENTS. All data, documents, or other information developed or received by either party are deemed confidential and not to be disclosed without authorization of the disclosing party, unless disclosure is required by law.
 - c) CONFLICT OF INTEREST AND REPORTING. LFA shall at all times avoid conflict of interest or appearance of conflict of interest in the performance of this Agreement.
 - d) NOTICES. All notices, demands and requests which may be given or which are required to be given by any party to this Agreement, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed effective either: (1) on the date personally delivered to the address below prior to 5:00 p.m. (Pacific Standard Time), as evidenced by written receipt therefor, whether or not actually received by the person to whom addressed; (2) on the third (3rd) business day after being sent, by certified or registered mail, return receipt requested, addressed to the intended recipient at the address specified

below; (3) on the first (1st) business day after being deposited into the custody of a nationally recognized overnight delivery service (i.e., FedEx, UPS, or DHL) addressed to such party at the address specified below; or (4) on the business day sent via electronic transmission to the address below, as evidenced by confirmation of the successful electronic transmission of the message prior to 2:00 p.m. (Pacific Standard Time), or otherwise delivery shall be considered to be on the following business day. For purposes of this section, the addresses of the parties for all notices are as follows:

i. Address of LFA is as follows:

LFA Group, LLC
c/o Viet Tran
11461 Lampson Ave.
Garden Grove, CA 92840
email: viet@outpostfest.com

ii. Address of CITY is as follows:

City of Garden Grove
Attn: Community Services Director
11222 Acacia Parkway
Garden Grove, CA 92840
email: kihuy@garden-grove.org

- e) LICENSES, PERMITS, FEES AND ASSESSMENTS. At its sole expense, LFA shall obtain all licenses, permits, and approvals as may be required by this Agreement, including any Bureau of Alcoholic Beverage Control or City licenses necessary, if alcoholic beverages are to be served.
- f) FAMILIARITY WITH AMPHITHEATER. By executing this Agreement, LFA warrants that:
- i. It has investigated the use and the improvements to be performed at/on the Amphitheater;
 - ii. It has investigated the Amphitheater and is aware of all conditions there;
 - iii. It has considered how the use and improvements should be performed; and
 - iv. It understands the facilities, difficulties, and restrictions of the use and improvement work under this Agreement.
- g) TIME OF ESSENCE. Time is of the essence in the performance of this Agreement.

- h) LIMITATIONS ON SUBCONTRACTING. The experience, knowledge, capability, and reputation of LFA were a substantial inducement for CITY to enter into this Agreement. Except as otherwise provided in this Agreement, LFA shall not contract with any other entity to perform the services required without written approval of CITY. If LFA is permitted to subcontract any part of this Agreement, LFA shall be fully responsible to CITY for the acts and omissions of its subcontractor as it is for the acts and omissions of persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY.
- i) AUTHORITY TO EXECUTE. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of the entity for which they are signing, and that by executing this Agreement, the party for which each is signing is bound by this Agreement.
- j) INDEMNIFICATION. LFA agrees to protect, defend, and hold harmless CITY and its elective or appointive boards, officials, officers, agents, employees, and volunteers from any and all claims, liabilities, expenses or damages of any nature, including attorney's fees, for injury or death of any person, damage to property, interference with the use of property and any other monetary damage claims, arising out of, or in any way connected with performance of the Agreement by LFA, LFA's agents, officers or employees, subcontractors, or independent contractors. The only exception to LFA's responsibility to protect, defend and hold harmless CITY is due to the sole negligence or intentional wrongful conduct of CITY, or any of its elective or appointive boards, officials, officers, agents, employees, or volunteers, in the case of which CITY agrees to protect, defend, and hold harmless LFA and its elective or appointive boards, officials, officers, agents, employees, and volunteers from any and all claims, liabilities, expenses or damages of any nature, including attorney's fees, for injury or death of any person, damage to property, interference with the use of property and any other monetary damage claims, arising out of, or in any way connected with performance of the Agreement by CITY, CITY's agents, officers or employees, subcontractors, or independent contractors. The provisions of this Section shall survive the termination of this Agreement.
- k) MODIFICATION. This Agreement constitutes the entire Agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by LFA and CITY.
- l) WAIVER. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of CITY or LFA, as appropriate.
- m) CALIFORNIA LAW. This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced pursuant to this

Agreement shall be initiated in the central or main branch of the Orange County Superior Court.

- n) INTERPRETATION. This Agreement shall be interpreted as though prepared by both parties.
- o) CITY'S REPRESENTATIVE. The City Manager of CITY, or his or her designee, shall serve as CITY's representative in carrying out any CITY responsibility under this Agreement. The City Manager of CITY, or his or her designee, has the authority to execute the document on behalf of the City Council, as well as make minor modifications to the Agreement over the course of the term.
- p) NO PRINCIPAL/AGENT RELATIONSHIP AND NO THIRD PARTY BENEFICIARY. Nothing contained in this Agreement shall be construed as creating the relationship of principal and agent or of partnership or joint venture between CITY and LFA, nor shall it be construed to benefit any third party.
- q) NO RELOCATION RIGHTS. LFA expressly, voluntarily and knowingly understands, acknowledges and agrees that its status is and will be and remain as a "post-acquisition tenant" with no eligibility or rights to relocation assistance or benefits thereunder pursuant to the Relocation Assistance Laws. LFA acknowledges the rights granted by State and/or Federal Relocation Assistance Laws and regulations and, notwithstanding any other provision of this Agreement, expressly waives all rights, if any, to which LFA might otherwise be or become entitled with regard to this Agreement. LFA hereby waives any right to relocation assistance, moving expenses, goodwill or other payments to which LFA might otherwise be entitled under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. § 4601 et seq., and/or the California Relocation Assistance Law, as amended, Government Code § 7260 et seq. LFA fully, intentionally, knowingly and voluntarily waives, releases and discharges CITY, and its appointed and elected officials, officers, directors, employees, contractors, and agents (together "Indemnitees") from all and any manner of rights, demands, liabilities, obligations, claims, or cause of actions, in law or equity, of whatever kind or nature, whether known or unknown, whether now existing or hereinafter arising, which arise from or relate in any manner to (i) the relocation of any of LFA's operations or the relocation of any person or persons, business or businesses, or other occupant or occupants of the Amphitheater, including the specific waiver and release of any right to any relocation benefits, assistance and/or payments under the Relocation Assistance Laws notwithstanding that such relocation assistance, benefits and/or payments may be otherwise required under such state or federal law; and (ii) compensation for any interest in the operations at, on, or about the Amphitheater including, but not limited to, land and improvements, fixtures, furniture, or equipment thereon, leasehold interest, goodwill, severance damage, attorneys' fees or any other compensation of any nature whatsoever.

- r) PRESERVATION OF AGREEMENT. Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provisions found to be invalid or unenforceable, and all remaining interpreted and all remaining provisions shall remain enforceable.

- s) COUNTERPARTS AND FACSIMILES. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. Any facsimile of any original document shall be treated as an original document. The party submitting any facsimile must also submit a copy of the original to the other party within a reasonable time after the transmission of the facsimile.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS THEREOF, the parties have executed this Agreement on the day and year first referenced herein.

Date: _____

“CITY”
CITY OF GARDEN GROVE


By: _____
Scott C. Stiles,
City Manager

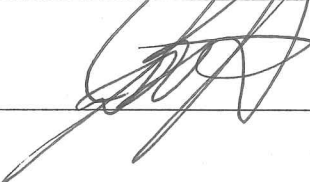
ATTESTED:

City Clerk

Date: _____

“LFA”
LFA GROUP, LLC

By: _____


By: _____


APPROVED AS TO FORM:



City Attorney

EXHIBIT A

Festival Amphitheater – LFA Group, LLC (LFA) Services to be Provided

1. Coordinate and manage the use of the Festival Amphitheater by LFA, the community, educational and professional groups throughout the term of the Facility Usage Agreement.
2. Commencing March 1, 2017, LFA shall manage live performances, including, but not limited to, music, theater, private events, movies and filming, corporate events and tradeshow, tour presentations and rehearsals, weddings, award shows, church events, live broadcasting and podcasting, cultural events and art installations.
3. No later than August 1, 2017, LFA shall develop a rental fee structure to be reasonably approved by CITY, and shall make the Theater available for public rentals, the income from which may be retained by LFA.
4. Commencing May 1, 2017, LFA will provide a Capital Improvement List, to be approved by CITY, that identifies a four (4) year Capital Improvement Plan, that identifies the expenditure of a minimum of \$125,000 in capital improvements.
5. LFA shall provide an annual report of events and activities at the Amphitheater that occurred in the prior year, and which are booked as of December 31.
6. LFA shall submit financial statements of income and expenses related to the Amphitheater covering the prior calendar year.
7. Should LFA obtain an Alcoholic Beverage License, twenty (20%) percent of the net sales of alcohol shall be paid to the Garden Grove Community Foundation.