

AGENDA ITEM NO. 1K

COUNCIL MEETING 2/14/13

APPROVED BY


DEPARTMENT DIRECTOR

CITY MANAGER



February 14, 2013

FROM: ROB BROWN, Fire Chief
Fire Department

SUBJECT: APPROVE AGREEMENT WITH NATIONAL CINEMEDIA FOR \$234,700 FOR PUBLIC SERVICE ANNOUNCEMENT ADVERTISING IN LOCAL THEATERS TO BE FUNDED THROUGH THE 2011 ASSISTANCE TO FIREFIGHTERS GRANT PROGRAM

RECOMMENDATIONS

It is recommended Council approve the Agreement with National Cinemedia (NCM) for \$234,700 to show fire- and life-safety public service announcements produced by the Fire Department in local theaters prior movie presentations.

EXECUTIVE SUMMARY

The Fire Department participated in a U.S. Department of Homeland Security Assistance to Firefighters – Fire Prevention and Safety grant process with other public safety agencies and was awarded a grant of \$530,500 to develop fire prevention and life-safety awareness public service announcements (PSAs) to be broadcast at movie theaters and via radio and television in addition to the purchase of equipment and training to fire investigation personnel. National Cinemedia is the exclusive sales representative for the advertising services for the Fresno Stadium 21, Manchester Mall, and Broadway Faire 10 complexes, and the Purchasing Manager has approved utilization of this vendor as a sole source for these PSAs. Approval of this agreement will provide various seasonal fire department fire- and life-safety messages be shown prior to every movie, everyday through January 2015, and provides research staff to obtain and compile consumer feedback after viewings.

BACKGROUND

On May 4, 2012, the Fire Department was awarded \$530,500 in FY11 Fire Prevention and Safety grant funding. Acceptance of this grant award and related appropriations adjustment were approved by Council on November 8, 2012.

Fire- and life-safety education is a strategic component to reducing fire loss. The department was successful in obtaining grant funding to support an aggressive multi-media campaign as a means of reaching and educating Fresno citizens, who typically have little contact with the department, those whose primary language is not English, and those who live in an area of the city and contract areas who statistically have the highest concentration of fires. Topics will include Fourth of July – Fireworks Safety, Chest Pain/Call 911,

REPORT TO CITY COUNCIL

Approve Agreement with National Cinemedia for \$ 234,700 for Public Service Announcement Advertising in Local Theaters

February 14, 2013

Page 2

Christmas/Holiday Fire Safety, Smoke Alarm Safety, Residential Fire Sprinklers, Water Safety, Drinking and Driving, and Exit Plan for the Home. These PSAs will be publicized via three large theaters strategically located throughout the city and will run prior to every movie everyday for over two years. These media venues, in combination with the television and radio telecasts, will provide for an estimated 6.9 million citizen contacts in the Fresno area.

The department was very successful with similar grant-funded programs in 2004 and 2009 and was recognized as one of six finalists for the Award for Excellence by the International Association of Fire Chiefs for its PSA campaign. Additionally, requests for copies and production assistance were received from over 60 agencies across the nation and in Canada including Mother's Against Drunk Driving and the National Fire Protection Association.

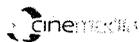
Approval of the contract will allow the department to begin to fulfill the grant program goals and directives.

FISCAL IMPACT

There is no fiscal impact to the General Fund. All expenditures will be fully reimbursed from authorized grant funding and the grant matching funds previously appropriated on November 8, 2012.

RB/CC/mc 013113

Attachment: Agreement



9110 East Nichols Avenue, Suite 200 • Centennial, CO 80112 • 800.828.2828

Date: 11/13/12
V60.4

REGIONAL ADVERTISING INSERTION ORDER AND AGREEMENT

Advertiser desires to place advertisements with National CineMedia, LLC ("NCM") for exhibition at the Locations specified, and upon the terms set forth herein, including the Insertion Order Agreement Terms and Conditions set forth on page 2. It is agreed as follows:

ADVERTISER INFORMATION: Contact: Kerri Donis Company: City of Fresno, Advertiser Business: Emergency Services Address: 911 H Street City/State/Zip: Fresno, CA 93721-3083 Phone: 559-621-4155 Fax: 559-621-4156 Email: kerri.donis@fresno.gov		BILLING INFORMATION: <input type="checkbox"/> Agency Contact: Kerri Donis Company: City of Fresno, Advertiser Address: 911 H Street City/State/Zip: Fresno, CA 93721-3083 Phone: 559-621-4199 Fax: 559-621-4199 Email: kerri.donis@fresno.gov		Account Dir: Ryan Ivanoff Phone: 559-325-1943 Fax: 559-325-1944 Email: ryan.ivanoff@ncm.com Order # Rivanoff-200 Leads: <input type="checkbox"/> New Contract: <input checked="" type="checkbox"/> Renewal Contract: <input type="checkbox"/>	
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Start Date	End Date	Type of Advertising	Duration/Qty	Weight	Media Number	Theatre Code	Theatre Name	State	# Screens	# Wks	Rate per Screen per Week	Total (NET)
01/04/13	3/28/13	Premium	:30	B	TBD	RGL1033	Fresno Stadium 21 plus IMAX	CA	22	12	\$ 60.00	\$ 15,840.00
01/04/13	3/28/13	Premium	:30	B	TBD	RGL1820	Manchester Mall Stadium 16	CA	18	12	\$ 45.00	\$ 8,640.00
01/04/13	3/28/13	Premium	:30	B	TBD	RGL1284	Broadway Faire 10	CA	10	12	\$ 40.00	\$ 4,800.00
01/04/13	3/28/13	LEN	:30	B	TBD	RGL1033	Fresno Stadium 21 plus IMAX	CA	1	12	\$ 10.00	\$ 120.00
01/04/13	3/28/13	LEN	:30	B	TBD	RGL1820	Manchester Mall Stadium 16	CA	1	12	\$ 10.00	\$ 120.00
01/04/13	3/28/13	LEN	:30	B	TBD	RGL1284	Broadway Faire 10	CA	1	12	\$ 10.00	\$ 120.00
											\$ -	

PAYMENT METHOD: Pay in Full <input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Check NET 30 <input checked="" type="checkbox"/> Cash COD <input type="checkbox"/> PO <input checked="" type="checkbox"/> Credit Card Form Attached <input type="checkbox"/>	COMMENTS AND SPECIAL INSTRUCTIONS: ****Addendum Pages Included**** This is a two year agreement (104 weeks). Please invoice client for media + media services....Terms Quarterly. Line items 15 & 16 on Addendum Page C reflect two survey periods during the course of the 104 week schedule. Five new pieces of media will be processed for this campaign \$1250 (\$250 x 5). Spot rotation is TBD. Please break the balance into three quarterly invoices...(Q1 of 2013, Q2 2013, & Q3 2013).	TOTAL MEDIA \$ 233,464.08 Media Services Fees \$ 1,250.00 Creative Services Fees \$ - SubTotal \$ 234,714.08 Less Deposit \$ - TOTAL DUE \$ 234,714.08
		Promotional items are non-commissionable. Special effects, customized placement, rush charges, and changes are extra. All duplication, creative services, and network implementation fees are at advertiser's expense. Fulfillment costs are estimated and final costs may vary. Payment is due when the flight ends.

Advertiser Name/Title: National CineMedia, LLC Date:

Internal Office Use Only

Job Number: _____
 Contract Number: _____

Logged	Scheduled	Creative Approved	Client Approved	Posted	Audit
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9110 East Nichols Avenue, Suite 200 * Centennial, CO 80112 * 800.828.2828 Ext. 8705
V60.4

Date: 11/14/12
Contract #: Rivanoff-200

REGIONAL INSERTION ORDER ADDENDUM

Start Date	End Date	Type of Advertising	Duration/Qty	Weight	Media Number	Theatre Code	Theatre Name	State	# Screens	# Wks	Rate per Screen per Week	Total (NET)
03/29/13	6/20/2013	Regional Segment 1	1:00	B	TBD	RGL1033	Fresno Stadium 21 plus IMAX	CA	22	12	\$ 55.00	\$ 14,520.00
03/29/13	6/20/2013	Regional Segment 1	1:00	B	TBD	rgl1820	Manchester Mall Stadium 16	CA	16	12	\$ 35.00	\$ 6,720.00
03/29/13	6/20/2013	Regional Segment 1	1:00	B	TBD	Rgl1284	Broadway Faire 10	CA	10	12	\$ 35.00	\$ 4,200.00
03/29/13	6/20/2013	LEN	1:00	B	TBD	RGL1033	Fresno Stadium 21 plus IMAX	CA	1	12	\$ 10.00	\$ 120.00
03/29/13	6/20/2013	LEN	1:00	B	TBD	rgl1820	Manchester Mall Stadium 16	CA	1	12	\$ 10.00	\$ 120.00
03/29/13	6/20/2013	LEN	1:00	B	TBD	Rgl1284	Broadway Faire 10	CA	1	12	\$ 10.00	\$ 120.00
								-				\$ -
6/21/2013	10/3/2013	Regional Segment 1	0:30	B	TBD	RGL1033	Fresno Stadium 21 plus IMAX	CA	22	15	\$ 37.00	\$ 12,210.00
6/21/2013	10/3/2013	Regional Segment 1	0:30	B	TBD	rgl1820	Manchester Mall Stadium 16	CA	16	15	\$ 21.00	\$ 5,040.00
6/21/2013	10/3/2013	Regional Segment 1	0:30	B	TBD	Rgl1284	Broadway Faire 10	CA	10	15	\$ 21.00	\$ 3,150.00
6/21/2013	10/3/2013	LEN	0:30	B	TBD	RGL1033	Fresno Stadium 21 plus IMAX	CA	1	15	\$ 10.00	\$ 150.00
6/21/2013	10/3/2013	LEN	0:30	B	TBD	rgl1820	Manchester Mall Stadium 16	CA	1	15	\$ 10.00	\$ 150.00
6/21/2013	10/3/2013	LEN	0:30	B	TBD	Rgl1284	Broadway Faire 10	CA	1	15	\$ 10.00	\$ 150.00
								-				\$ -
10/4/2013	10/31/2013	Premium	0:30	B	TBD	RGL1033	Fresno Stadium 21 plus IMAX	CA	22	4	\$ 60.00	\$ 5,280.00
10/4/2013	10/31/2013	Premium	0:30	B	TBD	rgl1820	Manchester Mall Stadium 16	CA	16	4	\$ 41.22	\$ 2,638.08
10/4/2013	10/31/2013	Premium	0:30	B	TBD	Rgl1284	Broadway Faire 10	CA	10	4	\$ 40.00	\$ 1,600.00
10/4/2013	10/31/2013	LEN	0:30	B	TBD	RGL1033	Fresno Stadium 21 plus IMAX	CA	1	4	\$ 10.00	\$ 40.00
10/4/2013	10/31/2013	LEN	0:30	B	TBD	rgl1820	Manchester Mall Stadium 16	CA	1	4	\$ 10.00	\$ 40.00
10/4/2013	10/31/2013	LEN	0:30	B	TBD	Rgl1284	Broadway Faire 10	CA	1	4	\$ 10.00	\$ 40.00
								-				\$ -
11/1/2013	1/2/2014	Regional Segment 1	1:00	B	TBD	RGL1033	Fresno Stadium 21 plus IMAX	CA	22	9	\$ 55.00	\$ 10,890.00
11/1/2013	1/2/2014	Regional Segment 1	1:00	B	TBD	rgl1820	Manchester Mall Stadium 16	CA	16	9	\$ 35.00	\$ 5,040.00
11/1/2013	1/2/2014	Regional Segment 1	1:00	B	TBD	Rgl1284	Broadway Faire 10	CA	10	9	\$ 35.00	\$ 3,150.00
11/1/2013	1/2/2014	LEN	1:00	B	TBD	RGL1033	Fresno Stadium 21 plus IMAX	CA	1	9	\$ 10.00	\$ 90.00
11/1/2013	1/2/2014	LEN	1:00	B	TBD	rgl1820	Manchester Mall Stadium 16	CA	1	9	\$ 10.00	\$ 90.00
11/1/2013	1/2/2014	LEN	1:00	B	TBD	Rgl1284	Broadway Faire 10	CA	1	9	\$ 10.00	\$ 90.00
								-				\$ -
								-				\$ -
								-				\$ -
								-				\$ -

Account Director: Ryan Ivanoff

COMMENTS AND SPECIAL INSTRUCTIONS:



9110 East Nichols Avenue, Suite 200 * Centennial, CO 80112 * 800.828.2828 Ext. 8705
V60.4

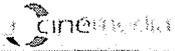
Date: 11/14/12
Contract #: Rivanoff-200

REGIONAL INSERTION ORDER ADDENDUM

Start Date	End Date	Type of Advertising	Duration/Qty	Weight	Media Number	Theatre Code	Theatre Name	State	# Screens	# Wks	Rate per Screen per Week	Total (NET)
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01/03/14	3/27/2014	Premium	0:30	B		Rgl1284	Broadway Faire 10	CA	10	12	\$ 40.00	\$ 4,800.00
01/03/14	3/27/2014	LEN	0:30	B		RGL1033	Fresno Stadium 21 plus IMAX	CA	1	12	\$ 10.00	\$ 120.00
01/03/14	3/27/2014	LEN	0:30	B		rgl1820	Manchester Mall Stadium16	CA	1	12	\$ 10.00	\$ 120.00
01/03/14	3/27/2014	LEN	0:30	B		Rgl1284	Broadway Faire 10	CA	1	12	\$ 10.00	\$ 120.00
							-	-	0			\$ -
3/28/2014	6/19/2014	Regional Segment 1	1:00	B	TBD	RGL1033	Fresno Stadium 21 plus IMAX	CA	22	12	\$ 55.00	\$ 14,520.00
3/28/2014	6/19/2014	Regional Segment 1	1:00	B	TBD	rgl1820	Manchester Mall Stadium16	CA	16	12	\$ 35.00	\$ 6,720.00
3/28/2014	6/19/2014	Regional Segment 1	1:00	B	TBD	Rgl1284	Broadway Faire 10	CA	10	12	\$ 35.00	\$ 4,200.00
3/28/2014	6/19/2014	LEN	1:00	B	TBD	RGL1033	Fresno Stadium 21 plus IMAX	CA	1	12	\$ 10.00	\$ 120.00
3/28/2014	6/19/2014	LEN	1:00	B	TBD	rgl1820	Manchester Mall Stadium16	CA	1	12	\$ 10.00	\$ 120.00
3/28/2014	6/19/2014	LEN	1:00	B	TBD	Rgl1284	Broadway Faire 10	CA	1	12	\$ 10.00	\$ 120.00
							-	-	0			\$ -
6/20/2014	10/2/2014	Regional Segment 1	0:30	B	TBD	RGL1033	Fresno Stadium 21 plus IMAX	CA	22	15	\$ 37.00	\$ 12,210.00
6/20/2014	10/2/2014	Regional Segment 1	0:30	B	TBD	rgl1820	Manchester Mall Stadium16	CA	16	15	\$ 21.00	\$ 5,040.00
6/20/2014	10/2/2014	Regional Segment 1	0:30	B	TBD	Rgl1284	Broadway Faire 10	CA	10	15	\$ 21.00	\$ 3,150.00
6/20/2014	10/2/2014	LEN	0:30	B	TBD	RGL1033	Fresno Stadium 21 plus IMAX	CA	1	15	\$ 10.00	\$ 150.00
6/20/2014	10/2/2014	LEN	0:30	B	TBD	rgl1820	Manchester Mall Stadium16	CA	1	15	\$ 10.00	\$ 150.00
6/20/2014	10/2/2014	LEN	0:30	B	TBD	Rgl1284	Broadway Faire 10	CA	1	15	\$ 10.00	\$ 150.00
							-	-				\$ -
10/3/2014	10/30/2014	Premium	0:30	B	TBD	RGL1033	Fresno Stadium 21 plus IMAX	CA	22	4	\$ 60.00	\$ 5,280.00
10/3/2014	10/30/2014	Premium	0:30	B	TBD	rgl1820	Manchester Mall Stadium16	CA	16	4	\$ 45.00	\$ 2,880.00
10/3/2014	10/30/2014	Premium	0:30	B	TBD	Rgl1284	Broadway Faire 10	CA	10	4	\$ 40.00	\$ 1,600.00
10/3/2014	10/30/2014	LEN	0:30	B	TBD	RGL1033	Fresno Stadium 21 plus IMAX	CA	1	4	\$ 10.00	\$ 40.00
10/3/2014	10/30/2014	LEN	0:30	B	TBD	rgl1820	Manchester Mall Stadium16	CA	1	4	\$ 10.00	\$ 40.00
10/3/2014	10/30/2014	LEN	0:30	B	TBD	Rgl1284	Broadway Faire 10	CA	1	4	\$ 10.00	\$ 40.00
							-	-				\$ -
							-	-				\$ -
							-	-				\$ -
							-	-				\$ -

Account Director: Ryan Ivanoff

COMMENTS AND SPECIAL INSTRUCTIONS:



Creative Production Order Form

Company	City of Fresno, Advertiser	Media #	Estimated* Start Date
Contact		TBD	1/4/13
Phone		TBD	1/4/13
Email		TBD	1/4/13
Acct Dir	Ryan Ivanoff	TBD	1/4/13
		TBD	1/4/13

* Start dates based on receipt of useable creative assets at NCM

Digital Theatre Projection:

0

Advertiser provides a completed live-action or animated Ad

Required for each unique Media # unless animated & produced by NCM

	QUANTITY	COST	TOTAL
Network Implementation Fee		\$250.00	\$0.00
Network Implementation Fee - In Network Provider		\$75.00	\$0.00
Miscellaneous Media Fees:			\$0.00

Creative animation & production completed by NCM

Animated Ads:	:10 or :15 no VO		\$375.00	\$0.00
	:10 or :15 w/VO		\$525.00	\$0.00
	:30 no VO		\$650.00	\$0.00
	:30 w/VO		\$775.00	\$0.00
	:45 w/VO		\$975.00	\$0.00
	:60 w/VO		\$1,150.00	\$0.00
Ad Revision:	Minor Text Revision Only		\$0.00	\$0.00
	Text/Graphics/Photos		\$200.00	\$0.00
Online Banner Ad:	Completed		\$0.00	\$0.00
	New Design		\$525.00	\$0.00
	From NCM Animation		\$275.00	\$0.00
	Mobile "Tap 2 Expand"		\$525.00	\$0.00
Additional Creative Services:	Ad Tag		\$150.00	\$0.00
	Extra VO		\$50.00	\$0.00
	Supplied Audio		\$50.00	\$0.00
	Sound Effects		\$100.00	\$0.00
	Miscellaneous Creative Fees:			\$0.00

Non-Digital Theatre Projection:

0

Imaging Fee:

Slide Re-Production Fee:	# of Screens =	0	\$30.00	\$0.00
35mm slide creative:	From NCM animated ad		\$0.00	\$0.00
	New Design		\$195.00	\$0.00

Rush Fees:

Required for each rushed unique Media #

Ad playback in 10 business days	\$1,000.00	\$0.00
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V60.4 - Rivanoff-200

Grand Total: \$0.00

Additional creative & media services available. Contact your Account Director to obtain a custom quote.

Please Send all media to:
National Cinemedia / Regional Production
9110 East Nichols Ave. Suite 200
Centennial, CO 80112

REGIONAL ADVERTISING INSERTION ORDER AND AGREEMENT
Terms & Conditions (I.O. Page 2)

The Agreement between NCM and Advertiser will include, and all Advertising exhibited by NCM for Advertiser will be subject to, the following Terms and Conditions:

1. **NCM Services.** Subject to the terms of this Agreement, NCM will arrange for the Advertising to be exhibited as specified in each Order entered into under this Agreement. Notwithstanding the foregoing, the exhibition of the Advertising, and performance by NCM of its obligations under this Agreement, will be excused to the extent that (and may be delayed if) Advertiser fails to perform its obligations under this Agreement in a timely manner or otherwise fails to comply with the terms of this Agreement. ANY UNEXCUSED FAILURE BY NCM TO PERFORM ANY OBLIGATION UNDER THIS AGREEMENT WILL AFFECT ONLY THE OBLIGATION WITH RESPECT TO WHICH THE FAILURE OCCURRED AND WILL IN NO WAY AFFECT ANY OTHER OBLIGATIONS OF NCM UNDER THIS AGREEMENT. ADVERTISER'S SOLE AND EXCLUSIVE REMEDY FOR ANY SUCH UNEXCUSED FAILURE BY NCM WILL BE LIMITED TO NCM'S REPERFORMANCE SOLELY OF THOSE OBLIGATIONS WITH RESPECT TO WHICH THE FAILURE OCCURRED WITHIN A REASONABLE TIME PERIOD FOLLOWING NOTICE OF THE FAILURE FROM ADVERTISER AND WILL NOT AFFECT ANY OTHER OBLIGATIONS OF NCM UNDER THIS AGREEMENT.
2. **In-Theatre Advertising.** All In-Theatre Advertising or other content will be subject to any audience or advertising restrictions or limitations imposed on NCM by motion picture studios, producers, distributors, exhibitors or other third parties. In addition, in its sole and absolute discretion, NCM may elect to not exhibit or present any In-Theatre Advertising or other content before any motion picture or movie rating. Any screen count or theatre locations for In-Theatre Advertising set forth on an Order are approximate and the actual screen count and theatre locations will be mutually agreed upon by the parties or selected by NCM in its reasonable discretion.
3. **Internet and Online Advertising.** The American Association of Advertising Agencies (AAAA)/Interactive Advertising Bureau (IAB) Standard Terms and Conditions for Internet Advertising for Media Buys One Year or Less, Version 2.0 (the "Terms"), a copy of which is available upon request from NCM, are incorporated into this Agreement for all Internet and online Advertising purchased under this Agreement. "Colorado" and "Denver County, Colorado" are inserted into the respective placeholders in Section XIV(d) of the Terms. If there is no Agency for this Insertion Order, "Advertiser" replaces "Agency" in all instances in the Terms and Section III(c) of the Terms is deleted. The terms of this Agreement will control over any contradictory terms set forth in the Terms in the event of a conflict between this Agreement and the Terms.
4. **Fees and Payment.** Advertiser will pay all fees as specified on each Order under the terms set forth on that Order and in these Terms and Conditions. If Advertiser fails to pay NCM any amount when due, Advertiser will be obligated to pay interest on the unpaid amount from the date such unpaid amount was due until it is paid at the rate of 12% per annum.
6. **Advertiser Obligations.** In addition to the other obligations of Advertiser set forth in this Agreement, Advertiser will, at its expense, and at its risk of loss, provide NCM with the Advertising material as required by NCM at least 7 to 20 business days (dependent upon Advertising vehicle selected) in advance of the date scheduled by NCM for transfer of the materials for use or production as Advertising.
6. **Content.**
 - 6.1 **Advertiser Content.** All advertising, information, data, text, photographs, video, images, audio, call to action, and other content ("Content") provided by Advertiser for use in the Advertising ("Advertiser Content"), as well as the Advertising itself, is subject to prior approval by NCM. All Advertiser Content must be in compliance with the Media Specifications, Creative Deadlines and Advertising Guidelines at <http://adspecs.ncm.com/www/html/specs.html>. NCM may reject any Advertiser Content or Advertising for any reason, provided that NCM has no obligation to review any Advertiser Content or Advertising for compliance with this Agreement or any applicable law, rule, or regulation. Advertiser will remain solely responsible for any liability arising from the Advertiser Content or Advertising, including but not limited to any laws relating to obscenity, defamation, trade libel, the right of publicity or likeness, the right of or to privacy, any laws relating to intellectual property, and any laws relating to advertising. If any Advertiser Content or Advertising is rejected by NCM, Advertiser will promptly replace the Advertiser Content or Advertising with Advertiser Content or Advertising acceptable to NCM so as not to delay the schedule for the display of the Advertising. Advertiser will maintain back-up copies of all Advertiser Content and Advertising and NCM will not be liable for loss or damage to any Advertiser Content or Advertising. Advertiser agrees to and hereby does grant to NCM all rights, authorizations, consents, licenses, and clearances (collectively, "Licenses") necessary or appropriate for the exhibition of the Advertising and the performance by NCM of its other obligations under this Agreement, including, without limitation, all Licenses necessary for the public performance of musical compositions. Advertiser also grants NCM a limited License to use and display portions of the Advertising solely in connection with the promotion of NCM's business.
 - 6.2 **NCM Content.** All Content, including, without limitation, any derivatives, modifications or new versions of any Advertiser Content prepared or delivered by NCM under this Agreement ("NCM Content"), and all intellectual property rights therein and applicable thereto, are and will remain the sole and exclusive property of NCM. Advertiser agrees that NCM will retain sole and exclusive title to all NCM Content and agrees to and hereby makes all assignments necessary to provide NCM such sole and exclusive title. Advertiser receives no rights or licenses in or to any NCM Content (or in or to any NCM trademarks) under this Agreement and NCM expressly reserves all such rights.
7. **Promotional Materials.** All materials distributed or to be distributed by or on behalf of Advertiser as part of or in connection with the Advertising, including, without limitation, toys, food, objects or other materials ("Promotional Materials") will be delivered to locations (at the sole expense of Advertiser and with Advertiser bearing all risk of loss) in accordance with the procedures and deadlines established by NCM. At its discretion, NCM may delay the distribution of Promotional Materials. Certain Promotional Material, as determined by NCM, will contain the following statement: "THIS PROMOTION IS NOT ENDORSED BY NCM, THIS THEATRE OPERATOR OR ANY OF THEIR AFFILIATES. BY FILING OUT THIS FORM YOU WILL OR CAN BE SOLICITED".
8. **Representations and Warranties.** Advertiser represents and warrants to NCM that: (1) Advertiser has the legal right to enter into this Agreement and to perform its obligations under the Agreement; (2) Advertiser has all rights necessary to enable NCM to exercise the rights granted under this Agreement; (3) the exhibition and other use of the Advertiser Content and Advertising, the distribution and other use of the Promotional Materials, and the other activities of Advertiser and obligations of NCM under this Agreement will not violate, applicable local, state and federal laws, rules, and regulations, including, without limitation, laws and regulations governing privacy and email/spam, or any duty toward or rights of any third party; (4) all information and data provided to NCM in connection with this Agreement is correct and current; (5) Advertiser will not collect any personally identifiable information (including, without limitation, any e-mail addresses, full names, mailing addresses and phone number of theatre patrons), or transfer any such information to any third party, without the prior written approval of NCM; (6) the Advertiser Content and Advertising do not contain any viruses, Trojan horses, worms, time bombs, or any other similar software, data, or programs that may damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, information, or property of another; (7) the Advertiser Content, Advertising and Promotional Materials are not, in whole or in part, pornographic, obscene, abusive, threatening, indecent, vulgar, defamatory, harassing, do not otherwise constitute trade libel, a violation of the right of publicity or an invasion of privacy, do not violate any other laws relating to advertising, and are not otherwise objectionable or unlawful; (8) the Advertiser Content, Advertising, and Promotional Materials are not false or misleading; (9) the Advertiser Content, Advertising and Promotional Materials do not infringe, violate or misappropriate any third party copyright, trademark, right of or to privacy, publicity or likeness, or other intellectual property or proprietary right; and (10) the Advertiser Content, Advertising and Promotional Materials will be free from defects, materials or workmanship. If Advertiser executes this contract as an agency or media buyer for a client, such Advertiser and its client shall be jointly and severally responsible for all payments hereunder. Advertiser covenants that if Advertiser at any time fails to have all rights necessary to enable NCM to perform

REGIONAL ADVERTISING INSERTION ORDER AND AGREEMENT
Terms & Conditions (I.O. Page 3)

its obligations and exercise its rights under this Agreement, Advertiser will obtain all such rights, and will be solely responsible for any liability of either party arising out of any claim, allegation, suit or proceeding alleging that either party does not have such rights.

9. **Disclaimer and Limitation of Liability.** NCM PROVIDES ALL NCM CONTENT AND ALL SERVICES PERFORMED BY NCM UNDER THIS AGREEMENT "AS-IS" AND "AS-AVAILABLE." NCM MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE NCM CONTENT OR SUCH SERVICES, AND ADVERTISER HAS NOT RELIED ON ANY REPRESENTATIONS OR WARRANTIES OF NCM REGARDING THE NCM CONTENT OR SUCH SERVICES. NCM EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES REGARDING THE NCM CONTENT AND SUCH SERVICES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. NCM'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES ACTUALLY PAID TO NCM UNDER THIS AGREEMENT DURING THE 3 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. IN NO EVENT WILL NCM BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY DAMAGES RELATING TO LOST DATA, LOST REVENUE OR PROFITS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING FROM OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF NCM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. **Indemnification:** Advertiser is responsible for and will indemnify, defend, and hold harmless NCM and its subsidiaries and affiliates, and their owners, officers, directors, employees and agents, from and against any and all direct and indirect losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) resulting from or arising out of any: (1) actual or alleged breach by Advertiser of a provision of this Agreement; (2) negligence or willful misconduct on the part of Advertiser; (3) exhibition, distribution, display, performance, reproduction, or other use by NCM of the Advertising, Advertiser Content or Promotional Materials; or (4) damage to property or injury to or death of any person directly or indirectly caused by any use or misuse of any Advertiser Content or Advertising, including, without limitation, and promotional materials or other packaging or materials used in connection therewith. NCM will provide Advertiser with notice of any such claim or allegation, and NCM has the right to participate in the defense of any such claim at its expense.

11. **Termination and Remedies.** NCM may terminate this Agreement immediately upon any breach by Advertiser of this Agreement (in addition to any other available remedy) or upon not less than 30 days notice to Advertiser for any other reason. Upon termination for breach by Advertiser, all fees paid for Advertising which has not been exhibited will be forfeited by Advertiser. Upon any termination, NCM is not required to preserve or maintain any Advertiser Content or Advertising. If Advertiser desires NCM to provide Advertiser with a copy of any Advertiser Content or Advertising, Advertiser must notify NCM in writing within 60 days of the last exhibition of the Advertising (such copy to be provided at Advertiser's sole expense).

12. **Cancellation.** Advertiser may not modify or cancel this Agreement except by written consent of NCM.

13. **Insurance.** Advertiser will obtain a general liability insurance policy (or policies) covering such advertising, with no unusual exclusions, and with policy limits of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate. Advertiser will also obtain an advertising errors and omissions policy with similar coverage. NCM and its affiliates will be named as additional insured's on such policy (or policies), and the policy (or policies) will provide that it (or they) will not be subject to modification or cancellation without at least thirty (30) days' prior written notice to NCM. Upon request, Advertiser will furnish NCM with a certificate of insurance evidencing the foregoing coverage before the advertising is exhibited.

14. **Additional Terms.** Advertiser may not assign or otherwise transfer this Agreement or any of Advertiser's rights hereunder without the prior permission of NCM. Any attempt to do so in violation of the foregoing sentence will be null and void. This Agreement will be binding on the parties and upon their heirs, personal representatives, executors, administrators, successors and assigns. The parties agree for themselves and their heirs, personal representatives, executors, administrators, successors or assigns to execute any instruments and to perform any acts that may be necessary or proper to carry out the purposes of this Agreement. This Agreement will be governed by the laws of the State of Colorado excluding its conflict of laws principles. The parties hereby irrevocably consent to the exclusive jurisdiction and venue in the state and federal courts sitting in Denver, Colorado for any dispute concerning the interpretation or effect of this Agreement. In all such disputes arising under this Agreement, the parties expressly waive all constitutional and statutory rights to trial by jury. In any action to enforce the terms of this Agreement, the prevailing party will be entitled to recover all of its costs relating thereto, including, without limitation, attorneys' fees, court costs and any other costs of collection. The relationship between the parties under this Agreement is one of independent contractors. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach. If any provision of this Agreement is deemed unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Any failure or delay in performance by NCM will be excused (and will not constitute a breach of this Agreement) to the extent due to any cause not reasonably within NCM's control, including, without limitation, third party acts, omissions or failures, casualty, labor disputes, governmental action or acts of God. This Agreement sets forth the entire understanding of the parties and supersedes any and all prior oral and written agreements or understandings between the parties regarding the subject matter of this Agreement.


Roy C. ANGEL, RISK MANAGER

11-15-12

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October 5th, 2012

ADDENDUM to Contract # Rivanoff200

Advertising Agreement between National CineMedia LLC & City of Fresno/Fresno Fire Department - The following changes have been made to article #14 in the original Terms and Conditions agreement from National CineMedia, LLC.

#14 Additional Terms

No product, category or other exclusivity is granted to Advertiser. This Agreement shall be governed by the laws of the State of California without giving regard to conflict of laws. All covenants and agreements shall survive termination of this Agreement. Except for Advertiser's remedies as specifically set forth above in paragraph 1 and upon breach by NCM, Advertiser agrees that its rights and remedies in connection with this Agreement will be limited, and Advertiser hereby waives all other rights and remedies. Every dispute concerning the interpretation or effect of this Agreement must be resolved in the United States District Court for the Eastern District of California or the District Court, City and County of Fresno, State of California. To the maximum extent permitted by law, NCM (but not any of its individual employees, officers, directors, agents or independent contractors) and Advertiser agree to personal jurisdiction, subject matter jurisdiction, and venue in both courts. In all proceedings to resolve disputes arising under this Agreement, and subject to express approval of City Council of Fresno, the parties expressly waive all constitutional and statutory rights to trial by jury. In any action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover all of its costs, including attorneys' fees and court costs. If Advertiser fails to timely pay any amount to NCM, Advertiser will be obligated to pay interest on the unpaid amount from the date such unpaid amount was due until it is paid at the rate of twelve percent (12%) per annum. NCM at its convenience may terminate this Agreement upon not less than 30 days notice to Advertiser, in which event Advertiser's sole remedy shall be to obtain a refund of any money paid for advertising which has not been exhibited. Either party may terminate for the other's default not used within 30 days notice, whereupon, the non-breaching party shall have recourse to available rights and remedies.

Other considerations:

The use of the word "Flight" refers to the time period of which the advertiser will be on-screen or in the lobbies. The length of the campaign, the "flight" is from 1/4/13 to 1/1/15.

The "weighting" of the contract, in this case "Weight B" refers to the positioning of Fresno Fire Department's :30/:60 commercials in our "First Look" pre-show. Each time slot in the Regional Advertising Segments are broken down into "weights" i.e. A,B, C, D, E, F, G, & H.

Advertiser's obligations are subject to its annually allocated and available funding. The relationship of the parties is that of independent contractors.

The handwritten corrections included by Fresno City Attorneys on page 1 of the contract and subsequent terms and conditions are agreed to by NCM.

Advertiser Name/Title: _____ Date: _____

National CineMedia LLC: _____ Date: _____

IN WITNESS WHEREOF, the parties authorized agents have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO

NATIONAL CINEMEDIA, LLC

a Municipal Corporation

By:

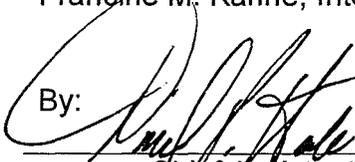
By:

ATTEST:
Yvonne Spence
City Clerk

By:

APPROVED AS TO FORM:
Francine M. Kanne, Interim City Attorney

By:



Chief Assistant City Attorney

CITY:

NCM:

Fresno Fire Department
911 H Street
Fresno, CA 93721

National CineMedia, LLC
9110 East Nichols Avenue, Suite 200
Centennial, CO 80112