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3/28/13

**LICENSE AGREEMENT
SPECIAL EVENT- ROTARY AMPHITHEATER AT WOODWARD PARK
(CITY OF FRESNO -PEAK BROADCASTING)**

CITY OF FRESNO
City Clerk's Office (Original)

THIS LICENSE AGREEMENT (this "Agreement") is dated this 2nd day of April, 2013, and is entered into by and between the CITY OF FRESNO, a municipal corporation organized and existing under the laws of the State of California ("City"), and PEAK BROADCASTING OF FRESNO, LLC. , a Delaware limited liability company, ("PEAK") for use of Rotary Amphitheater at Woodward Park ("AMPHITHEATER").

AGREEMENT

In consideration of the mutual promises, covenants, and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. PEAK shall, as an independent contractor, manage and operate Amphitheater for approximately ten specifically referenced event dates per year ("Events") for 2013, 2014 and 2015. PEAK will also have the option to extend this agreement for up to two (2) one year extensions. In such capacity, PEAK shall have exclusive authority over the operations at the Amphitheater for purposes of the Events. PEAK shall provide such services consistent with the standards for performance of services in this Agreement, and where not expressed herein, in accordance with generally accepted industry standards. In no event shall PEAK hold itself out as, act as, or be the agent of, City, without the City's express written authority to do so.

2. Any and all Fees and Costs generated from the Events, as outlined in Section 6 below, shall be provided to the City consistent with the terms of this Agreement, within ten (10) days following each Event.

3. PEAK will be responsible for managing all operations and production of Events. Furthermore, PEAK is responsible for ensuring that, by the end of each Event, the Amphitheater is restored to the condition which it was in immediately prior to Event in all material respects, ordinary wear and tear excepted. If the Amphitheater is not restored to the City's reasonable satisfaction, the City shall notify PEAK thereof and PEAK shall use commercially reasonable efforts to restore the Amphitheater in all material respects to its prior condition as promptly as reasonably practicable. PEAK reserves the right to pursue claims against any parties responsible for damage to the Amphitheater.

4. On event dates, PEAK shall have access to the Amphitheater from 6:00 a.m. to 11:59 p.m.

5. Events:

PEAK will work in good faith to provide needed dates by March 31 of each year for concerts to be held during the same calendar year.

APPROVED BY CITY COUNCIL
March 28, 2013
By Sherrin L. Badetscher
DEPUTY

Dates shall be subject to availability, and PEAK shall not have priority over previously scheduled events that may conflict with PEAK's dates.

6. Fees and Costs:

For each year of this Agreement, PEAK shall pay to the City for the use and occupancy of the Facility, the following sums:

Reservation Fee: \$500 per event day (\$5,000 per year).

Cleaning Fee: \$1,000 initial deposit plus \$200 additional each event day (\$2,800 per year).

Staff: \$200 per event day (\$2,000 per year).

Event coordinator is provided to monitor event and address facility needs.

Stage setup & usage: \$600 per event day (assessed per event if set-up required).

Per Ticket Fee: \$1.00 per sold ticket. In addition, PEAK shall provide \$1 per comp ticket after 400 comps.

Percentage of Vendor Concessions Fee: 35% of net vendor sales shall be paid to the City. PEAK to use commercially reasonable efforts to provide name, contact info, fee assessed and valid insurance for each vendor prior to the event.

Power Distribution: PEAK will be solely responsible for any electrical or other power distribution above that which is fixed within the Amphitheater.

Advertising Trade: In reciprocal trade for reduction of rental fees for the Amphitheater and in lieu of an additional \$1 facility fee per ticket, PEAK will provide to the City broadcast time and commercial production in the amount of \$30,000 per calendar year, computed according to their rate card in effect at the time the commercial announcements are placed on the station.

Announcements and productions services provided shall be performed and broadcast between May 1 of the year of the event dates and June 30 of the following year. PEAK will provide the City with affidavits of performance showing exact times announcements were broadcast no later than the 10th day of the month following such broadcasts.

Seat Licenses: PEAK will honor existing Rotary Club seat options for the venue and provide a first right of refusal for seat license customers to purchase tickets for each performance. Seat licensees shall have 10-14 days prior to public on-sale to purchase event tickets.

7. Other conditions:

a. ACE Parking is under contractual agreement with the City to collect an entry fee on all vehicles entering the Woodward Park according to the City of Fresno Master Fee Schedule. PEAK will be provided with up to 20 vendor passes and 20 employee passes to allow unpaid vehicle entry into the Park for the duration of the event. All vehicle entries over the 20 allowed, and all other participants, will be required to pay the per vehicle entry fee. ACE

Parking will be notified that entry to Woodward Park for event preparation will not be granted without specified vendor/employee pass provided by the City.

b. PEAK acknowledges that the Amphitheater is one component in a public park owned and operated by the City (the "Park"). During the events covered by this Agreement, the City shall have the right to use or permit the use of any portion of the Park, other than the Amphitheater, to any person or group regardless of the nature of use. PEAK agrees to take reasonable efforts to minimize the disturbance to the operation of and/or other uses of the Park by the City and the public.

c. Storage: City will allow PEAK to place a storage container (max 6' x 12') on-site at the amphitheater. This container will remain accessible only to PEAK under their lock, key and expense. Any additional expense related to clearing a space for placement of the container will also be the responsibility of PEAK. The City assumes no liability for any loss associated with the storage container.

d. PEAK shall not make any alternations or improvements to the Amphitheater without the prior written consent of City, which consent may be withheld at the City's sole and absolute discretion. Any alternations or improvements of whatever nature made or placed by PEAK to or on the Amphitheater, except movable trade fixtures, shall, at the option of City, (i) be removed by PEAK, at PEAK's expense, or (ii) become the property of the City. City assumes no responsibility whatsoever for any property placed in the Amphitheater. Notwithstanding anything to the contrary, PEAK shall be solely responsible for any losses arising out of any rigging from or to the physical structure of the facility or any fixture thereto, set-up, alterations, and/or improvements at or to the Facility necessitated by and/or performed with respect to the event.

e. Royalty payments and copyright clearance is the sole responsibility of PEAK. PEAK must accept all responsibility for and absolve the City from any liability or expense arising out of the use of any composition, work, or material covered by copyright.

8. PEAK will supply all required security officers deemed necessary by the Fresno Police Department.

9. PEAK shall comply in all material respects with all terms of the applicable Conditional Use Permit ("CUP"), laws, liquor licenses, City Ordinances, and written City policies in effect at the time of the Events.

10. Liquor Licensing. PEAK covenants that it will require all persons or entities selling or serving alcohol at the Amphitheater during the Events to represent and warrant to PEAK that such persons or entities hold all licenses and approvals required for such activity under federal, state, and local laws and regulations.

11. Indemnification.
To the furthest extent allowed by law, PEAK shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers from any and all loss,

liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, or Licensee, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or have arisen directly or indirectly out of the performance of this License Agreement. Licensee's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

If PEAK should subcontract all or any portion of the work to be performed under this Agreement, including, but not limited to, the operations and productions of Events, PEAK shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and authorized volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

12. Insurance. Throughout the life of this Agreement, PEAK shall pay for and maintain in full force and effect all policy(ies) of insurance required hereunder with (an) insurance company(ies) either (1) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (2) authorized by the City's Risk Manager. The following policies of insurance are required:

- A. COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as Insurance Services Office (ISO) form CG 00 01 and shall include insurance for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, products and completed operations and contractual liability with limits of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury, \$2,000,000 aggregate for products and completed operations and \$2,000,000 general aggregate.
- B. LIQUOR LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Liquor Liability Coverage Form CG 00 33, with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage. The responsibility for this coverage may be assigned to a concessionaire or vendor.
- C. WORKERS' COMPENSATION insurance as required under the California Labor Code.
- D. EMPLOYERS' LIABILITY insurance with minimum limits of \$1,000,000 each accident, \$1,000,000 disease each employee and \$1,000,000 disease policy limit.
- E. COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto

Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code I - Any Auto) with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.

In the event PEAK purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

PEAK shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Licensee shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii) Licensee shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted thirty (30) day written notice in favor of the City, of policy cancellation, change or reduction of coverage, except for the Workers' Compensation policy which shall provide a ten (10) day written notice of such cancellation, change or reduction of coverage. In the event any policies are due to expire during the term of this Agreement, a new certificate evidencing renewal of such policy shall be provided not less than fifteen (15) days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, Licensee shall file with the City a certified copy of the new or renewal policy and certificates for such policy.

The General Liability, Automobile Liability, and Liquor Liability insurance policies shall be written on an occurrence form and shall name the City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so PEAK'S insurance shall be primary and no contribution shall be required of the City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to the City and each of its officers, officials, employees, agents and volunteers.

PEAK shall furnish the City with the certificate(s) and applicable endorsements for ALL required insurance two (2) weeks prior to any scheduled Event. The failure to furnish the City with the certificate(s) and applicable endorsements for ALL required insurance two (2) weeks prior to any scheduled Event, or to maintain the required insurance during the scheduled Event, shall be sufficient cause for the City to terminate this Agreement.

The fact that insurance is obtained by PEAK shall not be deemed to release or diminish the liability of PEAK, including, without limitation, liability under the indemnification provisions of this Agreement. The duty to indemnify City and its officials, officers, employees, agents and

volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by PEAK. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of PEAK or any subcontractors.

Upon request of City, PEAK shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

If PEAK should subcontract all or any portion of the subcontract all or any portion of the work to be performed under this Agreement, including, but not limited to, the operations and productions of Events, PEAK shall require each subcontractor to provide insurance protection in favor of CITY and each of its officers, officials, employees, agents and authorized volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with CITY two (2) weeks prior to the commencement of any work by the subcontractor.

13. Authority and Approval. All parties hereto have the requisite power and authority to execute, deliver and perform this Agreement, and all actions of each such party, necessary for such execution, delivery and performance have been duly taken.

14. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed an original, and all such counterparts shall together constitute but one document.

15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts entered into and wholly performed in the State of California by California residents. Venue for purpose of filing any action for the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County.

16. Attorney's Fees. If any legal action or proceeding arising out of or relating to this Agreement is brought by either party to this Agreement, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorney's fees, costs and expenses incurred in the action or proceeding by the prevailing party.

17. Termination. This Agreement shall terminate immediately at the scheduled conclusion of the Events. This Agreement shall also be immediately terminated should PEAK fail to comply with the terms of this Agreement, including the terms of the CUP. Sections 11 and 12 of this Agreement shall survive the termination or expiration of this Agreement.

18. Amendment. This Agreement may not be amended or modified except in writing signed by each of the parties to this Agreement. This Agreement shall be construed as to

its fair meaning and not strictly for or against either party. The headings hereof are descriptive only and not to be construed in interpreting the provisions hereof.

19. Assignment. PEAK may not assign its rights under this Agreement without the written consent of City, which consent may be withheld at City's sole and absolute discretion.

20. Prior Agreements. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and agreements and understandings concerning the subject matter hereof.

21. The City will make every effort to provide adequate lighting at the venue and in the parking lot to ensure the safety of participants, performers and guests.

22. The City will maintain banner holders on the light poles inside the venue.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have executed this AGREEMENT to be effective as of the date first above written.

CITY:
CITY OF FRESNO,
a municipal corporation

By: 

Name: Bruce Radd

Title: Asst. City Manager

Date: 4/2/13

PEAK:
PEAK BROADCASTING OF FRESNO,
LLC., a Delaware limited liability company

By: 

Name: Todd Cranley

Title: CEO

Date: 2/27/13

ATTEST:

YVONNE SPENCE CMC
City Clerk

By: 

Date: 4/5/2013

APPROVED AS TO FORM
~~FRANCINE M. KANNE~~ DOUGLAS T. SLOAN
Interim City Attorney


Deputy City Attorney

Date: 4/4/13