



Professional Services Agreement

Epicenter Productions, Sound and Production – Texas Pop Turns 50

This agreement (the "Agreement") is made by and between the City of Lewisville, Texas (the "City") and Epicenter Productions LLC (the "Vendor"), regarding audio, stage and production services for the City's special event Texas Pop Turns 50 (the "Event"), set for Saturday, August 31 and September 1, 2019 at Lake Park Golf Club, 6 Lake Park Road, Lewisville, Tx. 75057. The City and Vendor agree to the following areas of responsibility:

- A. Vendor agrees to provide the following services and materials, as outlined herein and as provided in the Vendor Estimate No. 113058, dated July 8, 2019, and attached to this Agreement as **Exhibit A** (the "Estimate"):
 1. Provide audio, staging, labor, technicians, equipment and production services to include lighting for main stage entertainment for Event, during Event's operating hours of 3-11:30 p.m. both days of Event. Labor and technicians provided by Vendor are for load in and strike of stage, sound and lights only. Labor and technicians for load in and strike for individual artists and entertainers will be provided by others.
 2. Provide troubleshooting and technical services as needed for the Main Stage, as well as provide manpower for load in and load out at the close of the Event. Load in for production may begin Thursday, August 29, 2019 at 8 a.m. Any earlier load in must be approved in advance by The City. Load out must be completed by Monday, September 2, 2019 no later than 8 p.m. Exact load in times and logistics plans will be communicated to Vendor on or before Friday, August 23, 2019.
 3. Make all reasonable efforts to accommodate any special audio or lighting request submitted by Event contracted entertainers. The City understands these special audio or lighting requests outlined on performance riders may result in cost overruns. Vendor agrees that any or all cost overruns not aligned with Vendor estimate 113058 must be approved by The City before being initiated.
 4. Answer any or all on-site technical questions or requests of entertainers or entertainers' representatives, and to serve as production liaison to artists, as well as their tour or production managers, for technical riders for the event.

5. In addition to services described in Exhibit A, make all arrangements for generator power for main stage entertainment and the event zone's vendors, attractions, production inventory and temporary dressing room spaces for entertainers.
6. Vendor agrees to provide a valid certificate of insurance that meets the City's minimum insurance requirements, attached hereto as **Exhibit B**. It must also add Arcis CF Lake Park LLC as additionally insured. Any or all subcontractors must also submit a certificate of insurance which complies with the requirements outlined in **Exhibit B** and names Arcis CF Lake Park LLC as additionally insured. All Certificates of Insurance shall be kept current and shall be forwarded to the Purchasing Division of the City by cover letter from Vendor. Insurance certificate must be received and approved prior to commencement of work on the Event.

B. The City agrees to:

1. Provide all site logistics for the Event to include but not be limited to site plan for ingress and egress, public safety matters, street closures, barricades, perimeter bike rack fencing if needed, police presence if needed, portable restroom facilities and directional and event signage including "no alcohol beyond this point signs."
2. Develop overall site plan for Event and communicate such plan to Vendor on or before August 23, 2019.
3. Arrange for LPD close patrol and/or on site security for any infrastructure which may be loaded into the venue beginning Thursday, August 29, 2019 overnight, and to provide overall security for overnight during the Event, with security to end at 8 a.m. Monday, September 2, 2019.
4. Arrange for all matters and permitting needs to facilitate the sale of alcoholic beverages, if alcohol sales at the event are desired by the City.
5. Arrange for on-site parking and event access for all of Vendor's employees and staff working the event.
6. Ensure timely payment of invoices from Vendor following the Event, as outlined in section D., below.

C. TERM: The term of this annual Agreement begins on the date executed by both parties, ends on September 3, 2019, and pertains specifically to the Event.

D. COMPENSATION: City agrees to pay Vendor **\$114,100** for services rendered under the terms of this Agreement. Payment to be made in two installments of **\$57,050**, the first of which to be made after execution of Agreement by both parties and receipt of an invoice by the City, and the second to be made on or before **August 30, 2019**. Vendor agrees to invoice the City at least thirty

days before payment shall be issued. The City understands that in productions of this nature, there may be some cost increases based on the technical requirements or requests of the artists or their representatives. The City shall not be required to pay any increase in cost which has not been approved in writing by the City in advance. The City reserves the right to request additional justification prior to payment of any invoice. If satisfactory justification is not received, the City reserves the right to amend the invoice or to refuse to make payment without incurring penalty or interest. The City agrees to make prompt payments for all approved invoices and agrees to pay interest at the rate approved by law for approved invoices not paid within 30 days from the date of approval.

- E. EXPENSES: City will coordinate and pay for on-site Event items such as Event production items like portalets, security, fencing, etc. Vendor will coordinate and pay for their specific vendor items such as cables, extension cords, microphone stands, etc.
- F. TERMINATION. This Agreement may be terminated without cause at any time prior to completion of the Vendor's services by the City, or by the Vendor with cause, upon seven (7) days written notice to the City at the address of record. Termination shall release each party from all obligations of this Agreement, except those outlined in Section G, below. Upon notice of termination, the Vendor shall prepare and submit to City a final invoice including actual outstanding costs already incurred by Vendor, which shall not exceed the amount outstanding to be paid under this Agreement, within 15 days.
- G. CONFIDENTIAL INFORMATION. To the extent allowed by law, the City will safeguard and keep from release any documents marked "proprietary" or information not generally available to the public. However, the City will, if required, comply with all requirements of the Texas Public Information Act with regard to any documents in its possession at the time of a request made under that Act.
- H. **INDEMNIFICATION: VENDOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY VENDOR'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY VENDOR, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF VENDOR AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE**

ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO VENDOR'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

- I. ADA COMPLIANCE. All goods and services provided to the City must be compliant with the Americans with Disabilities Act ("ADA") and all regulations promulgated pursuant to the ADA. Vendor will be required to certify compliance, if applicable.
- J. TEXAS GOVERNMENT CODE CHAPTER 2270: Pursuant to Texas Government Code Chapter 2270, Producer affirms that the execution of this Agreement serves as written verification that Producer: (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the Agreement.
- K. TEXAS GOVERNMENT CODE CHAPTER 2252: Pursuant to Texas Government Code Chapter 2252, Subchapter F, Producer affirms, by entering into this Agreement that is it not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to Iran, Sudan, or a foreign terrorist organization.
- L. PROTECTION OF RESIDENT WORKERS: The Client actively supports the Immigration and Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). Vendor shall establish appropriate procedures and controls so no services under the Contract Documents will be performed by any worker who is not legally eligible to perform such services or employment. The Client reserves the right to audit Vendor's employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services under the Contract Documents. The audit will be at the Client's expense.
- M. IMMIGRATION REFORM AND CONTROL ACT (8 U.S.C. §1324a): The Client supports the Immigration Reform and Control Act (IRCA) which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. Vendor shall submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that it has not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. Vendor shall ensure that its Subcontractors submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that they have not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. Vendor and its Subcontractors shall at all times during the term of the contract with the Client comply with the requirements of IRCA and shall notify the Client within fifteen (15) working days of receiving notice of a violation of IRCA. The Client may terminate a contract with Vendor if the Client determines that (a) Vendor or its Subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years; (b) if Vendor fails to ensure that its Subcontractors submit the aforementioned declaration; or (c) Vendor or its Subcontractors fail to timely notify the Client of an IRCA violation.

- N. **DISCLOSURE:** Pursuant to Chapter 176 of the Texas Local Government Code, a person or agent of a person who contracts or seeks to contract with the Client must complete a conflict of interest questionnaire if the person or agent has an affiliation or business relationship that might cause a conflict of interest with the Client. The conflict of interest questionnaire, which is available online at ethics.state.tx.us, must be filed with the City Secretary of the City of Lewisville no later than the seventh business day after the person or agent begins contract discussions or negotiations with the Client or submits to the Client an application, response to a request for proposal or bid, correspondence, or another writing related to a potential agreement with the Client. An updated conflict of interest questionnaire must be filed in accordance with Chapter 176 of the Local Government Code. Said person should consult with legal counsel if they have questions regarding its compliance with the requirements of Chapter 176. It is the responsibility of each person or agent who is contracting or seeking to contract with the Client to comply with the filing requirements of Chapter 176.

- O. **SUCCESSORS AND ASSIGNS.** The City and Vendor each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to partners, successors, executors, administrators and assigns of each other in party in respect to all covenants of this Agreement. Neither the City nor the Vendor shall assign, sublet or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as giving any right or benefits hereunder to anyone other than the City and the Vendor.

- P. **GOVERNING LAW AND VENUE:** The Parties agree that if legal action is brought under this Agreement, exclusive venue shall lie in the courts of Denton County, Texas, and its terms and provisions, as well as the right and duties of the Parties hereunder, shall be governed by the laws of the State of Texas.

- Q. **ARBITRATION.** In the event of a dispute which may arise under this Agreement, the City does not agree to arbitration.

- R. **AMENDMENT:** This Agreement may be amended or modified only by the mutual agreement of the Parties. Such amendment or modification must be in writing and executed by an authorized representative of each Party.

- S. **CLOSURE.** By signature below, the parties to this Agreement hereby bind themselves to the terms stated herein, including all attachments referred to herein.

ACCEPTED AND AGREED:

CITY OF LEWISVILLE, TEXAS
Approved by the Lewisville City
Council _____

EPICENTER PRODUCTIONS LLC

By: _____
 Donna Barron
 City Manager

By: _____
 Jeff Krebs
 Owner

Date: _____

Date: _____

Attest: _____

Julie Worster, City Secretary

Attest: _____

CITY OF LEWISVILLE

151 West Church Street
Lewisville, Texas 75057

APPROVED AS TO FORM:

Lizbeth Plaster, City Attorney