

APPROVAL OF FACILITY USE
AGREEMENT WITH SHAKESPEARE
ORANGE COUNTY AND WITH GREAT
REUNIONS, INC. FOR THE CO-OPERATION
OF THE FESTIVAL AMPHITHEATER
November 26, 2013
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An RFP was released on July 22, 2013, with proposals due August 22, 2013. During the selection process, proposals were evaluated on the following criteria, as requested in the RFP:

- 1) Organization's philosophy regarding the role of the arts in the community as a whole and its vision for the Festival Amphitheatre; and
- 2) Performance experience in at least three (3) high quality theatrical performances or cultural artistic events offered to patrons at a reasonable cost as well as experience with professional and amateur directors, production staff, core professional actors; and
- 3) Imagination, creativity, judgment, and guiding philosophy related to the production, implementation of proposed programming and managing/operating of the theater; and
- 4) Inclusion of fulfilling youth, school, and/or family-oriented theatrical activities; and
- 5) Inclusion of a budget, timeline and marketing plan.

The RFP Review Committee was comprised of two Community Services staff members; two Parks, Recreation and Arts Commissioners and one Community Development Planning staff member intimately involved with the Re:Imagine Downtown project. The Committee evaluated the five (5) responses, and based upon the proposals meeting the requirements of the RFP, the applicant's qualifications and demonstrated competence and experience, staff selected the two best candidates, Shakespeare Orange County and Great Reunions, Inc. The Committee selected Shakespeare Orange County, under the direction of John Walcutt, to be the new operator of the Festival Amphitheatre.

John Walcutt is an experienced professional actor, with over 20 years of experience in performing arts. He has worked with Tom Bradac, previous Festival Amphitheatre operator, and has been an integral part of Shakespeare Orange County at the Festival Amphitheatre for several years.

The winning proposal includes the following highlights:

- 1) Continuation of Shakespeare throughout the summer, with a component that ultimately provides for "free" Shakespeare performances to the community;

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- 2) A children's summer camp and theater program;
- 3) Fusion of ethnicity into theater arts to reflect the community's cultural diversity;
- 4) Theater productions and cultural events that appeal to an expanded audience;
- 5) Resources to host additional artistic events including music festivals, art galleries, ethnic arts evenings;
- 6) Agreement to provide at least five (5) free "use of venue" events to the City of Garden Grove non-profits, and
- 7) Commitment from faculty at both Cal State Fullerton and Chapman University theater departments to assist in theater management, operation and performances.

As a complement to Shakespeare Orange County's theatrical experience and success, Great Reunions, Inc. was also selected to expand the theater use to more non-theatrical performances and utilization of local non-profits. Great Reunions, Inc. has extensive business experience in operating venues of large events.

Great Reunions, Inc. shall provide a minimum of ten (10) for-profit programs offered to the community during the months of January-April and October-December of each calendar year, along with hosting programs for local non-profit organizations.

FISCAL IMPACT

Like the current Agreement with Tom Bradac, the proposed Facility Use Agreement provides for no compensation for services to the facility operator. The Agreement continues to provide reimbursement to the facility operator for expenses necessary for the fulfillment of the Agreement in an amount not to exceed \$20,000 per year. The funds will be paid through the Cultural Arts Fund; there are sufficient funds within the account to pay for this annual reimbursement.

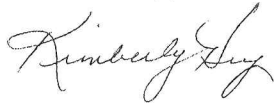
Serving as a for-profit Corporation, the Agreement with Great Reunions, Inc., provides for an annual payment to the City of \$7,000 per year commencing in 2015 through 2018.

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RECOMMENDATION

It is recommended that the City Council:

- Approve Shakespeare Orange County and Great Reunions, Inc. as the co-operators of the Festival Amphitheatre;
- Approve the Agreement with Shakespeare Orange County for a five (5) year term with an option to renew for another five-year term for the co-operation of the Festival Amphitheatre; and
- Approve the Agreement Great Reunions, Inc. for a five (5) year term with an option to renew another five-year term or the co-operation of the Festival Amphitheatre
- Authorize the City Manager to execute these Agreements on behalf of the City, including any minor modifications as appropriate thereto.




KIMBERLY HUY
Community Services Director

By: Elaine Ma'ae
Administrative Analyst 

Attachment 1: Shakespeare Orange County Facility Use Agreement
Attachment 2: Great Reunions, Inc. Facility Use Agreement

Recommended for Approval


Matthew Fertal
Director

FACILITIES USAGE AGREEMENT
(Festival Amphitheatre – Shakespeare Orange County)

THIS AGREEMENT is made and entered into this 1st day of January, 2014, by and between the CITY OF GARDEN GROVE, a municipal corporation, hereinafter referred to as "CITY," and Shakespeare Orange County, a non-profit public benefit corporation, hereinafter referred to as "SOC."

RECITALS

- 1) CITY owns a 540-seat theater, known as the "Festival Amphitheatre," located at 12762 Main Street (the "Theater").
- 2) CITY desires to utilize services of SOC to furnish Amphitheatre-booking services.
- 3) In addition, SOC wishes to utilize the Theater for the presentation of professional theatrical performances, cultural artistic events and performances and a children's summer camp and theater program.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1) TERM. This Agreement shall commence on the 1st day of January, 2014, and shall continue through December 31, 2018 (the "Term") and shall authorize SOC to utilize the Theater from May 1 through September 30 of each year during which this Agreement is in effect. SOC acknowledges and agrees that the Theater will be utilized by others during the remainder of each year.
 - a) Commencing no later than one (1) year prior to expiration of the Term of this Agreement, City and SOC may negotiate extensions of the terms for an additional five-year term.
- 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 thirty (30) days to cure the breach. Upon the failure to cure the

breach within the thirty (30) day period, the Agreement shall be deemed terminated.

- 3) SERVICES TO BE PROVIDED. The services to be performed by SOC shall consist of the following: coordinating the use of the Festival Amphitheatre by community, educational and professional groups pursuant to SOC's Proposal attached as "Exhibit A." In the event of any inconsistency between the terms of the proposal attached as "Exhibit A" and this Agreement, this Agreement shall govern.
- 4) FACILITY USE. The facility covered by the Agreement is the 540-seat Festival Amphitheatre, owned by CITY, and located at the Village Green Park, 12762 Main Street, in the city of Garden Grove.
 - a) CITY reserves the right to use the facility for CITY functions three (3) times per year and without charge by SOC, subject to SOC'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 SOC scheduled and publicized performance dates shall take priority over any CITY use of the facility.
 - b) In consideration for the Strawberry Festival Association's (ASSOCIATION) annual activities during Memorial Day weekend, as provided in an existing Agreement with CITY, the Festival Amphitheatre shall be reserved for use by the ASSOCIATION for the period beginning the Saturday before the Festival and continuing through Memorial Day, or as otherwise mutually agreed by ASSOCIATION and CITY.

SOC retains the right to utilize the Festival Amphitheatre Concession Area for fundraising purposes during the Strawberry Festival, provided that SOC complies with all applicable rules and directions of ASSOCIATION, including obtaining insurance cover the ASSOCIATION as an additional insured. The coverage shall cover the activities, products sold, and premises occupied by SOC. Any organizations operating under the authority of SOC shall carry similar insurance. The amount of the insurance shall be the same as the amount required by the ASSOCIATION from all other non-profit food vendors at the Strawberry Festival.

- c) SOC shall have limited use and operation of the Annex, specifically a portion of the office space that is reserved for use by SOC as co-operator of the facility, to be determined and agreed upon prior to January 1, 2014.
- d) SOC 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", SOC shall prominently advertise said production to the public as

such. No lewd, obscene, libelous or hate-promoting performances shall be allowed in the Theater.

- e) 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 SOC of said need. Once so notified, SOC shall be responsible for making such arrangements and paying for all costs for such security.
- 6) PROGRAMMING OBLIGATIONS. SOC shall ensure programming in the Theater, so as to maximize facility usage with the following minimum requirements:
- a) Programming shall, in general, be in conformance with the programming identified in SOC's proposal attached hereto as Exhibit "A."
 - b) Should SOC fail to meet the obligations under this Section, CITY shall have the right to renegotiate or terminate the Agreement without financial compensation to SOC.
 - c) Commencing January 1, 2014, SOC shall produce a minimum of three (3) full theatrical productions per year, with a minimum of 20 performance dates per year.
 - d) Commencing June 2014, a summer youth performing arts camp to teach and inspire children between 5 years through 16 years of age. The camp will include skills such as theater performance, singing, and dance.
 - e) By May 30, 2014, SOC 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 SOC.
- 7) REPORTING. SOC shall submit to CITY, in each year of this Agreement, on the dates noted herein, the reports enumerated in Subparagraphs 7(a) – (b). All reports required under this Agreement must be presented no later than ten (10) days after the date listed herein to be considered timely. 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) Each year, SOC shall provide an annual report by January 31 of the following year.
 - b) SOC shall submit financial statements along with the annual report by January 31, of each year, covering the prior calendar year.
- 8) FINANCIAL OBLIGATIONS. SOC shall be compensated as follows:
- a) PAYMENT. Subject to annual budget allocations by the City Council for the applicable year, CITY shall allocate the amount of \$20,000 from the

Cultural Arts Fund to be used to subsidize the costs of operations and performances in the Festival Amphitheatre. For expenses incurred under this Agreement, reimbursements shall be made per monthly invoice.

- i. To be eligible for reimbursement, costs must be necessary and reasonable; authorized or not prohibited under local laws/regulations; and be adequately documented. Costs must have been incurred during the term period of the Agreement.
 - ii. Allowable costs include production/event materials, office supplies, marketing materials, and minor equipment deemed viable for the purposes of this Agreement.
 - iii. Unallowable costs include coffee, bottled water, or any other alcoholic and non-alcoholic beverages, candy, donuts, snacks, or any other food items and costs of fundraising.
 - b) RECORD OF EXPENSE. SOC shall keep complete and accurate records of all expenses to be submitted for reimbursement. Copies of these records will be submitted with the appropriate reimbursement invoice.
 - c) SOC agrees to establish and maintain an accounting system adhering to generally accepted accounting practices, and shall provide an annual financial statement to CITY.
 - d) In the event that SOC exceeds the annual amount provided by CITY for utility services as outlined in Section 10(a), SOC shall be responsible for payment of excess costs.
- 9) NONPROFIT STATUS. SOC shall at all times during the term of this Agreement, maintain California non-profit corporate status, and shall adhere to all laws and regulations related to such status.
- 10) FACILITY MAINTENANCE, REPAIRS AND ALTERATIONS. Generally, SOC shall provide for the interior maintenance of the Theater and office/annex, and CITY shall provide exterior maintenance and building repairs.
- a) CITY OBLIGATIONS. CITY shall keep the Theater, including the building, interior and exterior walls, roof and common areas, and the equipment, 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. There shall be no liability of CITY on account of any injury or interference with SOC's business with respect to any improvements, alterations or repairs made by CITY to the Theater or any part thereof. SOC expressly waives the benefits of any statute now or hereafter in effect, which would otherwise afford SOC the right to make repairs at CITY's expense or to terminate this Agreement because of CITY's failure to keep the premises in good order, condition and repair. CITY agrees to provide for any capital improvements necessary for the physical

safety of the Theater. In addition, CITY shall pay for utility services, in an annual amount (accounting to comment May 1st each calendar year through April 30th) not to exceed twenty thousand dollars (\$20,000), for the provision of water, natural gas, waste disposal and electricity. In the event that SOC exceeds the annual amount provided by CITY for utility services between May 1st and September 30th as outlined in Section 9(a), SOC shall be responsible for payment of excess costs. Any monthly utility services costs in excess of \$1666 shall be the sole responsibility of SOC. The amount is subject to increase, based upon the annual Consumer Price Index (CPI). All other utility charges shall be the sole responsibility of SOC.

- b) SOC OBLIGATIONS. Notwithstanding CITY's obligation to keep the Theater in good condition and repair, SOC shall be responsible for payment of the cost thereof to CITY for that portion of the cost of any maintenance and repair of the Theater, or any equipment that serves only SOC or the Theater, to the extent such cost is attributable to causes beyond normal wear and tear. SOC shall be responsible for the cost of painting, repairing or replacing wall coverings, and for repairing or replacing any Theater 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 SOC perform any particular such maintenance or repairs, the cost of which is otherwise SOC's responsibility hereunder. SOC shall provide custodial services (including, but not limited to, cleaning of all restrooms, upholstery, carpeting and windows), and shall maintain the Theater in a clean and orderly state.
- c) ALTERATIONS. SOC shall make no additional alterations, structural modifications, remodeling, or change in use of any portion of the Theater without the prior written permission of CITY, which will not be unreasonably withheld.
- d) On the last day of the Term hereof, or on any sooner termination, SOC shall surrender the Theater 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 Theater shall not be deemed ordinary wear and tear if the same could have been prevented by good maintenance practices by SOC. SOC shall repair any damage to the Theater occasioned by the installation or removal of SOC's trade fixtures, alterations, furnishings and equipment. Except as otherwise stated in this Agreement, SOC shall leave the air lines, power panels, electrical distribution systems, lighting fixtures not provided by SOC, air conditioning, window coverings, carpets, wall paneling, ceilings and plumbing on the premises and in good operating condition. SOC 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 theater.

11) INSURANCE REQUIREMENTS.

- a) COMMENCEMENT OF ACTIVITY. SOC shall not commence work under this Agreement until all insurance certificates and endorsements have been received and approved by CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify CITY of any material change, cancellation, or termination at least thirty (30) days in advance.
- b) WORKERS' COMPENSATION INSURANCE. For the duration of this Agreement, SOC shall maintain and ensure that all of its contractors and subcontractors shall maintain Workers' Compensation Insurance in the amount and type required by law, if applicable.
- c) INSURANCE AMOUNTS. SOC shall maintain the following insurance for the duration of this Agreement:
 - i. Commercial general liability in the amount of \$1,000,000.00 per occurrence (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by CITY.
 - ii. Automobile liability in the amount of \$100,000.00 combined single limit; Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by CITY.

An Additional Insureds Endorsement for the policy under Section 10(c)(i) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of SOC. SOC shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by CITY.

An Additional Insureds Endorsement for the policy under Section 10(c)(ii) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for automobiles owned, leased, hired, or borrowed by the SOC. SOC shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by CITY.

For any claims related to this Agreement, SOC'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 SOC's insurance and shall not contribute with it.

- 12) INDEPENDENT CONTRACTOR. It is agreed that in the performance of the services to be performed by SOC, SOC 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.

- 13) NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF CITY. No official or employee of CITY shall be personally liable to SOC in the event of any default or breach by CITY, or for any amount, which may become due to SOC, or any obligation under the terms of this Agreement.
- 14) NON-DISCRIMINATION. SOC 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.
- 15) ASSIGNABILITY. SOC 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.
- 16) GENERAL PROVISIONS.
- a) COMPLIANCE WITH LAWS. Both parties shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state and local governments.
 - 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. SOC shall at all times avoid conflict of interest or appearance of conflict of interest in the performance of this Agreement.
 - d) NOTICES. All notices shall be personally delivered or mailed to the below listed address, or to such other address as may be designated by written notice. These addresses shall be used for delivery of service of process.
 - i. Address of SOC is as follows:
Shakespeare Orange County
c/o John Walcutt
117a East Fairview Avenue
Glendale, Ca 91207
 - ii. Address of CITY is as follows:
City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92840
Attn: Community Services Director
 - e) LICENSES, PERMITS, FEES AND ASSESSMENTS. At its sole expense, SOC 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 WORK. By executing this Agreement, SOC warrants that:
- i. It has investigated the work to be performed;
 - ii. It has investigated the site of the work and is aware of all conditions there;
 - iii. It has considered how the work should be performed; and
 - iv. It understands the facilities, difficulties, and restrictions of the 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 SOC were a substantial inducement for CITY to enter into this Agreement. SOC shall not contract with any other entity to perform the services required without written approval of CITY. If SOC is permitted to subcontract any part of this Agreement, SOC 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. All persons engaged in the work will be considered employees of SOC. CITY will deal solely and directly with SOC.
- 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. SOC 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 SOC, SOC's agents, officers or employees, subcontractors, or independent contractors. The only exception to SOC'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 SOC 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.

- 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 SOC and CITY.
- l) WAIVER. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of CITY or SOC, 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) I NTERPRETATION. 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) 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.

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

CITY OF GARDEN GROVE

By: _____
City Manager

ATTEST:

City Clerk

SHAKESPEARE ORANGE COUNTY

By: _____
John Walcutt

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

Festival Amphitheatre – Shakespeare Orange County (SOC) *Services to be Provided*

- a) Coordinate the use of the Festival Amphitheatre by community, educational and professional groups from May 1st through September 30th of each calendar year.
- b) Commencing January 1, 2014, SOC shall produce a minimum of three (3) full theatrical productions per year, with a minimum of 20 performance dates per year.
- c) Commencing June 2014, a summer youth performing arts camp to teach and inspire children between 5 years through 16 years of age. The camp will include skills such as theater performance, singing, and dance.
- d) By May 30, 2014, SOC 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 SOC.
- e) SOC shall submit an annual report including financial statements by January 31, of each year, covering the prior calendar year.

FACILITIES USAGE AGREEMENT
(Festival Amphitheatre – Great Reunions, Inc.)

THIS AGREEMENT is made and entered into this 1st day of January, 2014, by and between the CITY OF GARDEN GROVE, a municipal corporation, hereinafter referred to as "CITY," and Great Reunions, Inc., a California corporation, hereinafter referred to as "GRI."

RECITALS

- 1) CITY owns a 540-seat theater, known as the "Festival Amphitheatre," located at 12762 Main Street (the "Theater").
- 2) CITY desires to utilize services of GRI to furnish Amphitheatre-booking services from October 1st through April 30th of each calendar year.
- 3) In addition, GRI wishes to utilize the Theater for the presentation of cultural artistic events and performances.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1) TERM. This Agreement shall commence on the 1st day of January, 2014, and shall continue through December 31, 2018 (the "Term") and shall authorize GRI to utilize the Theater from January 1 through April 30 and October 1 through December 31 of each year during with this Agreement is in effect. GRI acknowledges that the Theater will be utilized by others during the remainder of each year.
 - a) Commencing no later than one (1) year prior to expiration of the Term of this Agreement, City and GRI may negotiate extensions of the terms for an additional five-year term.
- 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. GRI shall be able to fulfill any previously booked events, provided that the event is not later than April 30th of the next calendar year. Annual bookings will not be honored past April 30th of the next calendar year.
 - 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 thirty (30) days to cure the breach.

- 3) **SERVICES TO BE PROVIDED.** The services to be performed by GRI shall consist of the following: coordinating the use of the Festival Amphitheatre by community, educational and professional groups, from October 1st through April 30th of each calendar year, pursuant to GRI's Proposal attached as "Exhibit A." In the event of any inconsistency between the terms of the proposal attached as "Exhibit A" and this Agreement, this Agreement shall govern.
- 4) **FACILITY USE.** The facility covered by the Agreement is the 540-seat Festival Amphitheatre, owned by CITY, and located at the Village Green Park, 12762 Main Street, in the city of Garden Grove.
 - a) CITY reserves the right to use the facility for CITY functions two (2) times per year and without charge by GRI, subject to GRI's approval of the dates and times of such functions, which will not unreasonably be withheld. The facility rental fee does not include any event related expenses. 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 GRI scheduled and publicized performance dates shall take priority over any CITY use of the facility.
 - b) GRI shall have limited use and operation of the Annex, specifically a portion of the office space that is reserved for use by GRI as co-operator of the facility, to be determined and agreed upon prior to January 1, 2014.
 - c) GRI agrees to provide compensation to the CITY for use of the theatre as a venue for third party events. Compensation shall be \$500 per month beginning January 1, 2015. Compensation shall be \$1000 per month beginning January 1, 2016. Payments shall be made monthly to the CITY by the 1st of each month.
 - d) GRI 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", GRI shall prominently advertise said production to the public as such. No lewd, obscene, libelous or hate-promoting performances shall be allowed in the Theater.
 - e) 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 GRI of said need. Once so

notified, GRI shall be responsible for making such arrangements and paying for all costs for such security.

- 6) PROGRAMMING OBLIGATIONS. GRI shall ensure programming in the Theater, so as to maximize facility usage with the following minimum requirements:
 - a) Programming shall, in general, be in conformance with the programming identified in GRI's proposal, Exhibit "A."
 - b) Should GRI fail to meet the obligations under this Section, CITY shall have the right to renegotiate or terminate the Agreement without financial compensation to GRI.
 - c) Commencing January 1, 2014, GRI shall produce a minimum of ten (10) events per year, open to the public. Commencing January 1, 2015, GRI shall produce a minimum of fifteen (15) events per year, open to the public.
 - d) By January 31, 2014, GRI 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 GRI.
- 7) REPORTING. GRI shall submit to CITY, in each year of this Agreement, on the dates noted herein, the reports enumerated in Subparagraphs 7(a) – (c). All reports required under this Agreement must be presented no later than ten (10) days after the date listed herein to be considered timely. 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) Each year, GRI shall provide an annual report by January 31 of the following year.
 - b) GRI shall submit financial statements along with the annual report by January 31, of each year, covering the prior calendar year.
- 8) FINANCIAL OBLIGATIONS. GRI shall be compensated as follows:
 - a) AMOUNT. GRI shall receive no compensation for services under this Agreement.
 - b) GRI agrees to establish and maintain an accounting system adhering to generally accepted accounting practices, and shall provide an annual financial statement to CITY.
 - c) In the event that GRI exceeds the annual amount provided by CITY for utility services as outlined in Section 10(a), GRI shall be responsible for payment of excess costs.

9) FACILITY MAINTENANCE, REPAIRS AND ALTERATIONS. Generally, GRI shall provide for the interior maintenance of the Theater, and CITY shall provide exterior maintenance and building repairs.

a) CITY OBLIGATIONS. CITY shall keep the Theater, including the building, interior and exterior walls, roof and common areas, and the equipment, 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. There shall be no liability of CITY on account of any injury or interference with GRI's business with respect to any improvements, alterations or repairs made by CITY to the Theater or any part thereof. GRI expressly waives the benefits of any statute now or hereafter in effect, which would otherwise afford GRI the right to make repairs at CITY's expense or to terminate this Agreement because of CITY's failure to keep the premises in good order, condition and repair. CITY agrees to provide for any capital improvements necessary for the physical safety of the Theater. In addition, CITY shall pay for utility services, in an annual amount, (accounting to commence May 1 of each calendar year through April 30 of the following year), not to exceed twenty thousand dollars (\$20,000), for the provision of water, natural gas, waste disposal and electricity. In the event that GRI exceeds the annual amount provided by CITY for utility services between October 1st of the current year and April 30th of the following year as outlined in Section 9(a), GRI shall be responsible for payment of excess costs. Any monthly utility services costs in excess of \$1666 shall be the sole responsibility of GRI. The amount is subject to increase, based upon the annual Consumer Price Index (CPI). All other utility charges shall be the sole responsibility of GRI.

b) GRI OBLIGATIONS. Notwithstanding CITY's obligation to keep the Theater in good condition and repair, GRI shall be responsible for payment of the cost thereof to CITY for that portion of the cost of any maintenance and repair of the Theater, or any equipment that serves only GRI or the Theater, to the extent such cost is attributable to causes beyond normal wear and tear. GRI shall be responsible for the cost of painting, repairing or replacing wall coverings, and for repairing or replacing any Theater 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 GRI perform any particular such maintenance or repairs, the cost of which is otherwise GRI's responsibility hereunder. GRI shall provide custodial services (including, but not limited to, cleaning of all restrooms, upholstery, carpeting and windows), and shall maintain the Theater in a clean and orderly state.

c) ALTERATIONS. GRI shall make no additional alterations, structural modifications, remodeling, or change in use of any portion of the Theater

without the prior written permission of CITY, which will not be unreasonably withheld.

- d) On the last day of the Term hereof, or on any sooner termination, GRI shall surrender the Theater 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 Theater shall not be deemed ordinary wear and tear if the same could have been prevented by good maintenance practices by GRI. GRI shall repair any damage to the Theater occasioned by the installation or removal of GRI's trade fixtures, alterations, furnishings and equipment. Except as otherwise stated in this Agreement, GRI shall leave the air lines, power panels, electrical distribution systems, lighting fixtures not provided by GRI, air conditioning, window coverings, carpets, wall paneling, ceilings and plumbing on the premises and in good operating condition. GRI 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 theater.

10) INSURANCE REQUIREMENTS.

- a) COMMENCEMENT OF ACTIVITY. GRI shall not commence work under this Agreement until all insurance certificates and endorsements have been received and approved by CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify CITY of any material change, cancellation, or termination at least thirty (30) days in advance.
- b) WORKERS' COMPENSATION INSURANCE. For the duration of this Agreement, GRI shall maintain and ensure that all of its contractors and subcontractors shall maintain Workers' Compensation Insurance in the amount and type required by law, if applicable.
- c) INSURANCE AMOUNTS. GRI shall maintain the following insurance for the duration of this Agreement:
- i. Commercial general liability in the amount of \$1,000,000.00 per occurrence (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by CITY.
 - ii. Automobile liability in the amount of \$100,000.00 combined single limit; Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by CITY.

An Additional Insureds Endorsement for the policy under Section 10(c)(i) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed

by or on behalf of GRI. GRI shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by CITY.

An Additional Insureds Endorsement for the policy under Section 10(c)(ii) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for automobiles owned, leased, hired, or borrowed by the GRI. GRI shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by CITY.

For any claims related to this Agreement, GRI'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 GRI's insurance and shall not contribute with it.

- 11) INDEPENDENT CONTRACTOR. It is agreed that in the performance of the services to be performed by GRI, GRI 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 GRI in the event of any default or breach by CITY, or for any amount, which may become due to GRI, or any obligation under the terms of this Agreement.
- 13) NON-DISCRIMINATION. GRI 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. GRI 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.
- 15) GENERAL PROVISIONS.
 - a) COMPLIANCE WITH LAWS. Both parties shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state and local governments.
 - 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. GRI shall at all times avoid conflict of interest or appearance of conflict of interest in the performance of this Agreement.
- d) NOTICES. All notices shall be personally delivered or mailed to the below listed address, or to such other address as may be designated by written notice. These addresses shall be used for delivery of service of process.
- i. Address of GRI is as follows:
Great Reunions, Inc.
c/o Michael Silva
11311 Lampson Avenue
Garden Grove, CA 92840
 - ii. Address of CITY is as follows:
City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92840
Attn: Community Services Director
- e) LICENSES, PERMITS, FEES AND ASSESSMENTS. At its sole expense, GRI 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 WORK. By executing this Agreement, GRI warrants that:
- i. It has investigated the work to be performed;
 - ii. It has investigated the site of the work and is aware of all conditions there;
 - iii. It has considered how the work should be performed; and
 - iv. It understands the facilities, difficulties, and restrictions of the 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 GRI were a substantial inducement for CITY to enter into this Agreement. GRI shall not contract with any other entity to perform the services required without written approval of CITY. If GRI is permitted to subcontract any part of this Agreement, GRI 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. All persons engaged in the work will be considered employees of GRI. CITY will deal solely and directly with GRI.

- 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.** GRI 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 GRI, GRI's agents, officers or employees, subcontractors, or independent contractors. The only exception to GRI'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 GRI 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.
- 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 GRI and CITY.
- l) **WAIVER.** All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of CITY or GRI, 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) 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.

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

CITY OF GARDEN GROVE

By: _____
City Manager

ATTEST:

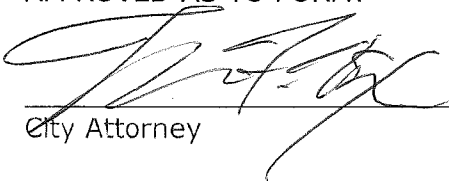
City Clerk

GREAT REUNIONS, INC

By: 

Michael Silva

APPROVED AS TO FORM:



City Attorney

EXHIBIT A

Festival Amphitheatre – Great Reunions, Inc. (GRI) *Services to be Provided*

- a) Coordinate the use of the Festival Amphitheatre by community, educational and professional groups from January 1st through April 30th and October 1st through December 31st of each calendar year.
- b) Commencing January 1, 2014, GRI shall produce a minimum of ten (10) events per year, open to the public. Commencing January 1, 2015, GRI shall produce a minimum of fifteen (15) events per year, open to the public.
- c) By January 31, 2014, GRI 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 GRI.
- d) Commencing January 1, 2015, GRI agrees to provide compensation to the City of Garden Grove, in the amount of \$500 per month. Commencing January 1, 2016, GRI agrees to compensate the City of Garden Grove, in the amount of \$1,000 per month.
- e) GRI shall submit an annual report including financial statements by January 31, of each year, covering the prior calendar year.