

## PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement") for professional services is made on February 28, 2017, between the City of Hercules, a California municipality ("City"), and RGR Entertainment Agency, an LLC ("Provider").

**1. Scope of Services.** Provider shall provide to City the professional services described in the Scope of Services, attached hereto as **Attachment A** and incorporated herein (the "Services"). Only the City's governing body or the City Manager may authorize any change or addition to the Scope of Services specified in Attachment A. The City retains the right to approve or disapprove all aspects of each event.

**2. Term.** This Agreement shall become effective on February 28, 2017, and shall terminate on February 28, 2018 unless terminated sooner in accordance with Section 12 of this Agreement. Two, one-year extensions may be agreed upon mutually by the parties prior to the expiration of the initial term and any subsequent extended term. The City Council must approve each extension on behalf of City. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance.

**3. Compensation.** For the full and satisfactory completion of the first event Services, City shall compensate Provider in an amount not to exceed 70% of any net revenue remaining after the first event (after all reasonable event expenses have been paid for by Provider as verified by receipts for all event expenses). Provider shall always pay the City for its anticipated expenses for providing event support no later than seven (7) days prior to the event by cashier's check. City's anticipated expenses for first event support are provided in event budget, attached hereto as **Attachment B** and incorporated herein. Final financial reconciliation, based on the City's actual expenses incurred in supporting the event and the net revenue generated by the event, will take place between City and Provider within thirty (30) days following the event. In accordance with Section 5 of this Agreement, Provider will provide City with receipts for all event expenses incurred and revenue collected within 30 days following the event for the purposes of determining event expenses, event revenue, and net revenue from the event.

For all Services provided subsequent to the first event, the City and Provider will discuss and mutually agree on a net revenue sharing formula, provided, however, that the City's share of net revenue will never be less than 30%.

**4. Allowable Reimbursable Expenses.** City shall compensate Provider for the following Allowable Reimbursable Expenses at the following rate(s), not to exceed a total of 0 Dollars, without prior written authorization:

Allowable Reimbursable Expense:	Rate:
_____	_____

**5. Payment.** City shall pay Provider for services satisfactorily provided during each calendar month following within thirty (30) days following City receipt and approval of a detailed invoice. The invoice must include, at a minimum:

- 5.1 A description of the specific Services provided,
- 5.2 the name of the individual providing the Services,
- 5.3 the date(s) upon which the Services were provided,
- 5.4 the time spent providing the Services,
- 5.5 the amount due for the Services and the basis for calculating the amount due,
- 5.6 an itemized summary of Allowable Reimbursable Expenses, and
- 5.7 copies of all receipts for the specific Services detailed in the invoice.

**6. Independent Contractor.** The parties agree that Provider shall act as an independent contractor under this Agreement and shall have control of its work and the manner in which it is performed. Provider is not an employee of City and is not entitled to participate in any health, retirement, or similar employee benefits from the City.

**7. Provider's Warranty.** Provider warrants that all Services provided under this Agreement shall be performed in accordance with generally accepted professional practices and standards for Provider's profession in the state.

7.2 Provider warrants that all Services provided under this Agreement shall be performed in accordance with applicable federal, state, and local laws and regulations, including, but not limited to, conflict of interest laws.

7.3 Provider warrants that Provider has no present interest which would conflict in any manner with the performance of Services on the City's behalf.

**8. Notice.** Any notice, billing, or payment required by this Agreement must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by e-mail as a .pdf (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party shall be given as follows:

City:

City of Hercules  
111 Civic Drive  
Hercules, CA 94547

Provider:

RGR Entertainment Agency  
P.O. Box 229  
1511 Sycamore Avenue  
Hercules, CA 94547

Ph: 510.799.8200  
Fax: 510.799.2521

Ph: 510.375.5567  
Fax: 610.822.6685

Attention: Parks and Recreation  
Director

Attention: Rich Villavicencio  
Partner/Owner

**9. Indemnity.** The terms and conditions set forth in subsection 9.1., below, are applicable to this Agreement if the Services to be provided by Provider are not “design professional” services as used and defined in Civil Code section 2782.8. The terms and conditions set forth in subsection 9.2., below, are applicable to this Agreement if the Services to be provided by Consultant are “design professional” services as used and defined in Civil Code section 2782.8.

9.1 Provider shall indemnify, defend with counsel acceptable to City, and hold harmless to the full extent permitted by law, City, its governing body, officers, agents, employees, and volunteers from and against any and all liability, demands, loss, damage, claims, settlements, expenses, and costs (including, without limitation, attorney fees, expert witness fees, and costs and fees of litigation) (collectively, “Liability”) of every nature arising out of or in connection with Provider’s acts or omissions with respect to this Agreement, except such Liability caused by the active negligence, sole negligence, or willful misconduct of the City. This indemnification obligation is not limited by any limitation on the amount or type of damages or compensation payable under Workers’ Compensation or other employee benefit acts, or by insurance coverage limits, and shall survive the expiration or early termination of this Agreement. This subsection 9.1 does not apply if the Services to be provided under this agreement are design professional services provided by a licensed architect, landscape architect, professional engineer, or professional land surveyor.

9.2 To the full extent permitted by law, Provider shall indemnify, defend, and hold harmless City, its governing body, officers, agents, employees, and volunteers from and against any and all liability, loss, damage, claims, expenses and costs (including, without limitation, attorney fees and costs and fees of litigation) (collectively, “Liability”) of every nature which arises out of, pertains to, or relates to the negligence, recklessness, or willful misconduct of Provider in the performance of this Agreement, except such Liability caused by the active negligence, sole negligence or willful misconduct of City. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Provider or its agents or employees under Workers’ Compensation acts, disability benefits acts, or other employee benefit acts. This indemnification obligation is not limited by any limitation on the amount or type of damages available under any applicable insurance coverage and shall survive the expiration or early termination of this Agreement with respect to Liability arising during the term of the Agreement. This subsection

9.2 is applicable if the Services to be provided under this agreement are design professional services provided by a licensed architect, landscape architect, professional engineer, or professional land surveyor.

**10. Insurance.** Before providing any services under this Agreement, Provider shall be required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of Provider and its employees or subcontractors relating to or arising from the performance of services under this Agreement, and must remain in full force and effect at all times during the term of the Agreement. All required insurance must be issued by an insurer licensed to do business in the State of California, and each such insurer must have an A.M. Best financial strength rating of "A" or better and a financial size rating of "VIII" or better. If Provider fails to provide any of the required coverage, City may, at its sole discretion, purchase such coverage at Provider's expense and deduct the cost from payments due to Provider.

10.1 The following insurance policies and limits are required for this Agreement:

**10.1.1 Commercial General Liability Insurance ("CGL").** The CGL policy shall be issued on an occurrence basis, written on a comprehensive general liability form, and shall include coverage for liability arising from Provider's acts or omissions in the performance of services under this Agreement with limits of at least one million dollars (\$1,000,000.00) per occurrence. The CGL policy must name City as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and must protect City, its officers, employees, and agents against any and all liability for personal injury, death, or property damage or destruction arising directly or indirectly in the performance of the Agreement. The CGL coverage may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella policies, provided each such policy complies with the requirements set forth herein.

**10.1.2 Automobile Insurance.** The automobile liability insurance shall cover bodily injury and property damage in an amount no less than one million dollars (\$1,000,000.00) combined single limit for each occurrence, including owned, hired, and non-owned vehicles.

**10.1.3 Workers' Compensation Insurance and Employer's Liability.** The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act, with limits of at least one million dollars (\$1,000,000.00). If Consultant is self-insured, Provider shall provide its Certificate of Permission to

Self-Insure, duly authorized by the Department of Industrial Relations.

**10.1.4 Professional Liability.** This insurance must insure against Provider's errors and omissions in the provision of services under this Agreement, in an amount no less than one million dollars (\$1,000,000.00) combined single limit.

10.2 Each certificate of insurance must state that the coverage afforded by the policy or policies shall not be reduced, cancelled or allowed to expire without at least thirty (30) days written notice to City, unless due to non-payment of premiums, in which case at least ten (10) days written notice shall be made to City.

10.3 Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against City.

10.4 The CGL policy must include the following endorsements:

10.4.1 The inclusion of more than one insured shall not operate to impair the rights of one insured against another, and the coverage's afforded shall apply as though separate policies have been issued to each insured.

10.4.2 The insurance provided is primary and no insurance held or owned by City shall be called upon to contribute to a loss.

**11. Dispute Resolution.** In the event that any dispute arises between the parties in relation to this Agreement, the parties agree to meet face to face as soon as possible to engage in a good faith effort to resolve the matter informally. In the event that any dispute arises between the parties in relation to this Agreement, and the dispute is not resolved by informal discussions, the parties agree to submit the dispute to mediation.

11.1 Either party may give written notice to the other party of a request to submit a dispute to mediation, and a mediation session must take place within sixty (60) days after the date that such notice is given, or sooner if reasonably practicable. The parties shall jointly appoint a mutually acceptable mediator. The parties further agree to share equally the costs of the mediation, except costs incurred by each party for representation by legal counsel.

11.2 Good faith participation in mediation pursuant to this Section is a condition precedent to either party commencing litigation in relation to the dispute.

## **12. Early Termination.**

**12.1 Termination for Convenience.** City may terminate this Agreement for convenience by giving ninety (90) calendar days prior to event written notice to Provider. In the event City elects to terminate the Agreement without cause, it shall pay Provider for services satisfactorily provided up to that date.

**12.2 Termination for Cause.** If either party breaches this Agreement by failing to timely or satisfactorily perform any of its obligations or otherwise violates the terms of this Agreement, the other party may terminate this Agreement by giving written notice fourteen (14) calendar days prior to the effective date of termination, specifying the reason and the effective date of the termination. Provider shall be entitled to payment for all services satisfactorily provided up to the effective date of termination, except that the City may deduct from that payment the amount of costs the City incurred, if any, because of Provider's breach of the Agreement.

**13. Work Product.** City shall be the sole owner of all rights to any work product in any form which has been prepared by Provider on City's behalf pursuant to this Agreement, unless otherwise specified in writing by the parties.

## **14. General Provisions.**

**14.1 Assignment and Successors.** Neither party may transfer or assign its rights or obligations under this Agreement, in part or in whole, without the other party's prior written consent. This Agreement is binding on the heirs, successors, and permitted assigns of the parties hereto.

**14.2 Third Party Beneficiaries.** There are no intended third party beneficiaries to this Agreement.

**14.3 Nondiscrimination.** Provider shall comply with all applicable federal, state and local laws, rules and regulations regarding nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, disability, or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.

**14.4 Choice of Law and Venue.** This Agreement shall be governed by California law, and venue shall be in the Superior Court for the county in which City is located, and no other place.

**14.5 Severability.** If any provision of this Agreement is determined to be illegal, invalid, or unenforceable, in part or in whole, the remaining provisions, or portions of the Agreement shall remain in full force and effect.

**14.6 Amendment.** No amendment or modification of this Agreement shall be binding unless it is in a writing duly authorized and signed by the parties to this Agreement.

**14.7 Provisions Deemed Inserted.** Every provision of law required to be inserted in this Agreement shall be deemed to be inserted, and this Agreement shall be construed and enforced as though included. If it is discovered that through mistake or otherwise that any required provision is not inserted, or not correctly inserted, this Agreement shall be amended to make the insertion or correction.

**14.8 Entire Agreement.** This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties regarding the subject matter of this Agreement and supersedes all prior written or oral understandings or agreements of the parties.

**14.9 Attachments.** If any provision in any attachment to this Agreement conflicts with or is inconsistent with the provisions set forth in the body of this Agreement, the provisions set forth in the body of this Agreement shall control over the conflicting or inconsistent provisions in the attachment.

**14.10 Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

**14.11 Force Majeure.** If either party is delayed or hindered in or prevented from the performance of any act required hereunder because of strikes, lockouts, inability to procure labor or materials, failure of power, riots, insurrection, war, fire or other casualty, or other reason beyond the reasonable control of the party delayed, excluding financial inability ("Force Majeure Event"), performance of that act shall be excused for the period during which the Force Majeure Event prevents such performance, and the period for that performance shall be extended for an equivalent period. Delays or failures to perform resulting from lack of funds shall not be Force Majeure Events.

**14.12 Headings.** The headings in this Agreement are included for convenience only and shall neither affect the construction or interpretation of any provision in this Agreement nor affect any of the rights or obligations of the parties to this Agreement.

**14.13 Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

**14.14 Authorization.** Each individual executing this Agreement, or its counterpart, on behalf of the respective party, warrants that he/she is authorized to do so and that this Agreement constitutes the legally binding obligation of the entity which he/she represents. As to those Parties that are corporations, signatures from two officers of the corporation are required pursuant to California Corporation Code section 313.

The parties agree to this Agreement as witnessed by the signatures below:

CITY:

City of Hercules

s/ David Biggs

David Biggs, City Manager

Date: 4/30/17

PROVIDER:

RGR Entertainment Agency

s/ Ryan Monsanto

Ryan Monsanto / Partner  
Name/Title [print]

Date: 4/27/17



PROVIDER:

\_\_\_\_\_

s/ \_\_\_\_\_

\_\_\_\_\_  
Name/Title [print]

Date: \_\_\_\_\_

**Attachments:**

**Attachment A:     Scope of Services**

## **Attachment A**

### **Scope of Services**

WHEREAS, RGR Entertainment Agency provides event organizational, Sponsor /Vendor acquisition, and consulting services, including, without limitation, artist booking, vendor booking, food vendor booking, sponsor booking, and other services as set forth herein;

WHEREAS, The City of Hercules is the owner and operator of the city;

WHEREAS, The City of Hercules wishes to engage with RGR Entertainment Agency, and RGR Entertainment Agency wishes to be engaged by City of Hercules, to provide a foodie event entertainment services to the City of Hercules under the terms and conditions of this Agreement;

The proposed events upon this agreement will be activated upon notice provided to the City Council and adequate funding acquisition through vendor and sponsorship sales. If the funding goals are not met to activate the events, all monies will be refunded back to the appropriate party and this agreement will be null and void.

#### **1. RGR Entertainment Agency Services.**

- (a) Contract for Services. RGR Entertainment Agency will manage all budgets and shall provide the city of Hercules financial report information on a monthly basis in a form acceptable to the City's Finance Director. RGR Entertainment Agency is committed in reconnecting the community and designing family oriented special events. In addition to working directly with Council, Commissions, staff, volunteers, and community members, RGR Entertainment Agency is committed to creating an entertainment revenue model for the City of Hercules. RGR Entertainment Agency will acquire merchant vendors, non- profit organizations, and food vendors including sponsorship opportunities to generate the funding for all approved events.
- (b) Artist Booking and Stage Management. RGR Entertainment Agency shall procure, and negotiate agreements with artists to appear at "City of Hercules events" on specified dates and events. RGR Entertainment Agency shall perform stage management for the entire event, ensuring time slots for all artists booked by RGR Entertainment Agency. RGR will design the concept layout and content for each event approved by the City of Hercules. Fees for artist bookings shall be paid by the acquisition of vendors and sponsorship funding.
- (c) Marketing and Promotions. RGR Entertainment Agency shall assist in marketing and promotions by way of flyers, online marketing, websites, television advertisements, radio advertisements, guerilla marketing, and street promotions, the costs of which shall be paid by the acquisition of vendor and sponsorship funding.
- (d) Vendor Operations. RGR Entertainment Agency shall sell vendor booth space to third party merchandise and food vendors for the Event. All vendors selected for the event are subject to the City's approval. There will be no alcohol, tobacco or sexually-oriented vendors allowed. Furthermore, no vendors will be allowed who could be deemed inappropriate for a family-oriented event sponsored by a municipal government organization. In this regard, the City will have final and full authority to approve and disallow any and all vendors. In this regard, RGR will submit to the City's representative, in advance of contacting vendors, a list of all vendors it wishes to contact to participate in the event. The City will approve or disapprove all vendors included on the list prior

to contact being made with the vendors by RGR. The City of Hercules acknowledges that RGR Entertainment Agency has made no guarantees with regard to the number of vendor booth sales it can execute.

- (e) Sponsorships. RGR Entertainment Agency will design all sponsorship programs for each event and activate these upon written advance approval by the City of Hercules. RGR Entertainment Agency will create a sales team and manage each member to present the sponsorship program to approved sponsorship prospects. RGR Entertainment Agency makes no guarantees with regard to the number of sponsorship sales it can complete.
- (f) Operation / Coordination: RGR Entertainment Agency will develop and present to the City a concept plan per event including logistics and operation of each event at least thirty (30) days prior to activation. This will require written approval by the City. Thereafter, City and RGR representatives will meet no less than every two (2) weeks until the event occurs to coordinate all aspects of the event. RGR Entertainment Agency will secure necessary permits for the execution of the various aspects for the events. RGR Entertainment Agency will coordinate all staffing requirements for each event including ticket operations, sales, logistics, food vendors, beverage vendors, vendor / sponsorship relations, outreach corporate / private sponsors, and will monitor all budgets. For all events, RGR will apply for a temporary Use Permit from the City and coordinate each event with all appropriate City Departments as required by the permit process. However, this process will be fee-exempt for RGR.
- (g) Private Security: RGR will provide private security for each event at a level deemed appropriate by the City's Chief of Police.
- (h) Other Services: RGR will provide all of the services and equipment identified in the event budget with the exception as those listed as City expenses.
- (i) Licensing Requirements: If any licensing requirements apply to any of the events (ASCAP, BMI, SESAC, IMLA, etc.), RGR is responsible for securing the appropriate licensing rights from all vendors and performers performing in events held in Hercules pursuant to this Agreement.
- (j) Event Parking: RGR agrees to work with City representatives to determine ways to minimize any adverse impacts on surrounding residences and businesses from event parking.
- (k) Proposed Events: Social Bite Foodie Events and other events to occur from time to time with the approval of City.

## **2. City of Hercules Obligations**

- (a) City of Hercules agrees to perform the following services in connection with RGR Entertainment Agency Services:
  - i. City of Hercules will reference that RGR Entertainment Agency is working on behalf of the city for their special events.
  - ii. Promote all events through all of the City of Hercules normal channels. No City e-mail lists, mailing lists, or City contact information will be shared with RGR in the marketing of the events.
  - iii. Provide facilities / venues to accommodate the events of RGR Entertainment Agency at no cost. (streets, parks, etc.) The City and RGR agree the first event will be held in Refugio Valley Park.
  - iv. City of Hercules shall provide event cleanup and traffic control for the approved events. City will also provide a basic level of security for each event as deemed appropriate by the Chief of Police, to supplement the private event security provided by RGR. These City expenses will be paid for by RGR no later than seven (7) days in advance of the event from event revenues collected by RGR.

- v. City of Hercules will provide adequate support and communication with RGR Entertainment Agency in designing and activating all events.