

MANAGEMENT AGREEMENT

This Management Agreement (the "Agreement") is made this 13 day of January, 2015, by and between the Unified Government of Wyandotte County/Kansas City, Kansas ("Unified Government") and New West Presentations, Inc., a Missouri corporation ("New West").

RECITALS

WHEREAS, the Unified Government owns and controls property located at 633 North 130th Street, Bonner Springs, Wyandotte County, Kansas 66012 on which is constructed an outdoor amphitheater (the "Amphitheater");

WHEREAS, to enhance the Public Benefit of the Amphitheater to the Unified Government and its citizens, the Unified Government desires to engage a professional manager and event promoter to provide entertainment attractions, as well as facilities and services;

WHEREAS, the Unified Government desires to engage New West as manager of the Amphitheater, which management shall include marketing, sales and operational functions, maintenance, security and support services for any and all events held at the Amphitheater on the terms as hereinafter set forth;

WHEREAS, New West desires to accept engagement by the Unified Government as manager of the Amphitheater on the terms as hereinafter set forth;

WHEREAS, both parties agree that various capital improvements are required if the Amphitheater is going to remain a viable entertainment attraction; and

NOW, THEREFORE, in consideration of the above-stated premises and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Exclusive Engagement of Services; Authority.

- (a) The Unified Government hereby engages New West, and New West hereby accepts the engagement by the Unified Government, as the exclusive manager of the Amphitheater for the purpose of presenting, producing, promoting, and financing a series of musical and other events (collectively "Events") to occur at the Amphitheater from the date hereof through and including December 31, 2016; and, with an option to renew for an additional one (1) year term until December 31, 2025 based on 1.) mutual consent to renew following the same terms and conditions outlined in this agreement; 2.) an annual pledge by New West to make the bond payment; and 3.) satisfactory financial assurance in the form of a bond, promissory note, or

other security interest that New West is able to make the bond payment when it becomes due.

- (b) The Unified Government shall provide a onetime payment of eighty five thousand dollars (\$85,000.00) and Bonner Springs will provide a onetime payment of thirty thousand dollars (\$30,000.00) to perform capital improvements to the Amphitheater. The Unified Government shall debt finance seven hundred and fifty thousand dollars (\$750,000.00) to perform capital improvements for the Amphitheater. New West shall pay the annual principal and interest payments promptly when said payment are due over a ten (10) year period as set out in Exhibit B which is incorporated and made a part of this agreement or until such time as the funds that were debt financed by the Unified Government to perform the capital improvements at the Amphitheater are repaid in full.
- (c) In addition to other fees set out in this Agreement, including but not limited to the facility fees noted in section 11(b), New West shall pay to the Unified Government a user fee of \$50,000 and to the city of Bonner Springs, Kansas a user fee of \$15,000 annually. Payment will be made in two installments. The first due on or before August 31 and the second due on or before October 31 of each year.
- (d) The Unified Government hereby agrees that New West shall be the Unified Government's exclusive manager with respect to the presentation, production, promotion and financing of all Events at the Amphitheater throughout the term of this Agreement. In this connection, the Unified Government shall neither retain any third party to manage the presentation, production, promotion, or financing of Events at the Amphitheater, nor shall the Unified Government lease or otherwise make available the Amphitheater to third parties for the presentation, production, promotion or financing of Events at the Amphitheater.
- (e) In recognition, however, that New West's record of successful production of events was a critical factor in the selection by the Unified Government of New West as the provider of management services and the Unified Government's desire to bring an increased number of visitors to Wyandotte County, to increase activity in the Amphitheater and to generate additional sales tax revenues, New West agrees that it will use commercially reasonable efforts to promote and manage the Amphitheater.
- (f) New West will make the general admission and reserved parking lots available to the Unified Government for special events held within Wyandotte County Park. The Unified Government has the right to charge \$5.00/car parking for the special events. The special events include, but are not limited to, high school cross country events held in the park. The special events will not take priority over New West's booking of revenue

generating events. The special events will be held to the same guidelines and rules as those of New West events. All coordination of the special events will be through New West to insure the events are within the operating parameters of New West. Any events held at the amphitheater by the Unified Government will be subject to reimbursement of expenses related to its use not limited to water, electricity, supplies, staffing. The expenses will be determined in advance of each event

(g) New West will make the amphitheater and grounds available to the Unified Government for two special events per year on an as available basis. The two Unified Government events will not take priority over New West's booking of revenue generating events. The two Unified Government events will be held to the same guidelines and rules as those of New West events. Coordination of the two Unified Government events will be through New West to insure the events are within the operating parameters of New West. Any events held at the amphitheater will be subject to reimbursement of expenses by the Unified Government related to its use not limited to water, electricity, supplies, staffing. The expenses will be determined in advance of each event.

(h) New West shall have such powers and authority to manage the Amphitheater as expressly granted in this Agreement. Any rights not granted shall be reserved to the Unified Government. New West shall have the power to subcontract directly with third parties for necessary services in New West's sole discretion to manage the Amphitheater or produce Events, provided however, that New West shall not enter into any subcontracts with a term longer than the term of this Agreement. New West shall have the authority for (i) advertising and marketing of the Amphitheater and Events occurring at the Amphitheater, (ii) contracting with third parties such as a concessionaire, ticket agency or public relations firm for services rendered at or in connection with operation of the Amphitheater, (iii) Amphitheater operations, including but not limited to purchasing, payroll, fire prevention and security, (iv) Event management including but not limited to crowd control, security, admission procedures, supervision of box office and servicing of tenants, and (v) any and all matters that may be required to properly merchandise, utilize and promote the use of the Amphitheater.

2. Term.

The initial term of this Agreement shall commence on the date hereof and shall terminate on December 31, 2016, unless terminated or renewed sooner as provided below.

If New West shall have complied with all the terms and conditions of this Agreement, the parties shall have the option to renew for an additional one (1) year

term until December 31, 2025 based upon the conditions of this Agreement and an annual review in which New West will pledge and provide financial assurances regarding its ability to make the annual bond payments. In addition, so long as this Agreement has not terminated and all terms and conditions are met, the Unified Government shall first consider an offer or proposal from New West based on mutually agreeable terms before considering an offer or proposal from another party regarding management of the Amphitheater.

3. Representations and Warranties.

(a) New West represents and warrants to the Unified Government as follows:

- (i) New West is a corporation duly organized, and validly existing and in good standing within the State of Missouri and qualified to do business and in good standing within the State of Kansas;
- (ii) New West has taken all necessary action for this Agreement to be valid, legally binding, and enforceable against New West in accordance with its terms except as may be limited by the laws governing insolvency, creditors' rights and the equitable principles generally applied in connection therewith. The terms of this Agreement do not conflict with the terms of any other agreements, laws or regulations to which New West may be bound;
- (iii) New West intends to use commercially reasonable efforts to hire as many local residents of Wyandotte County, Kansas as possible in the operation of the Amphitheater; and
- (iv) New West shall operate the Amphitheater in conformity with all local, state and federal laws or regulations applicable thereto.

(b) The Unified Government hereby represents and warrants to New West as follows:

- (i) The Unified Government is the sole owner of the Amphitheater and has the right to grant the rights set forth herein, and in connection herewith, the Unified Government has taken all necessary action for this Agreement to be valid, legally binding and enforceable against the Unified Government in accordance with its terms except as may be limited by the laws governing insolvency, creditors' rights and the equitable principals generally applied in connection therewith; and
- (ii) None of the terms of this Agreement conflict with any other agreements, laws or regulations to which the Unified Government may be bound. The Unified Government has not entered into any contracts,

agreements or understandings with any party with respect to the operation or use of the Amphitheater, except as is otherwise specifically stated herein.

4. Production.

- (a) New West shall perform, or engage third parties to perform, all customary activities involved in the production of each of the Events at the Amphitheater, including but not limited to, set up of appropriate sound and lighting equipment, security and crowd control, stagehands, concession sales, ticket sales, and janitorial services.
- (b) New West shall insure that stagehands engaged in the production of the Events have experience in their trade and work under the supervision of industry professionals. New West shall be responsible for the operation and maintenance of the sound system and equipment and shall be responsible for any repairs to the system and equipment. Any replacement components shall be the same make and model or the equivalent.
- (c) The parties acknowledge that the Events contemplated hereunder may attract audiences of up to twenty thousand (20,000) spectators. The parties further acknowledge that accommodating such an audience requires planning with respect to parking, crowd management and traffic control. New West shall have principal responsibility with respect to these production elements provided, however, that Bonner Springs Police Department (the "Police Department") shall have a right of approval as to such production elements which approval shall not be unreasonably withheld. New West shall notify the Unified Government and the Bonner Springs Police Department of all tentative holds and confirmed events and other changes in the booking calendar on a monthly basis. The Parks and Recreation Director will be included on all confirmation of shows at the time that they are done.

5. Parking and Traffic Control.

- (a) The Unified Government shall be responsible for maintaining all of the pole lights in the parking lots and the Amphitheater in working condition. In addition, the Unified Government shall be responsible for any maintenance and repair of the general admission and reserved parking lot, including mowing of the grass parking areas and grading of the general admission lot as needed.
- (b) New West shall be responsible for any damages to the general admission and reserved parking lot with the exception of normal wear and tear or weather-related damages. For damages incurred as a result of usage by Kansas City

Renaissance Festival or those "Free" events as organized by the Unified Government, it will be the Unified Governments responsibility to assume the cost of repairs.

(c) Parking for Kansas City Renaissance Festival:

- (i) New West will control the scheduling of the parking lots. New West agrees to provide use of all of its parking lots available at no charge to the Kansas City Renaissance Festival Corp for parking purposes in connection with all yearly self-produced scheduled events by the Kansas City Renaissance Festival Corp. All events outside of The Kansas City Renaissance Festival Corp's self-produced events that seek to utilize any of the parking lots must be approved by New West. For damages incurred as a result of usage by Kansas City Renaissance Festival or those "Free" events as organized by the Unified Government, it will be the Unified Governments responsibility to assume the cost of repairs.
- (ii) The Kansas City Renaissance Festival Corp will be responsible to provide adequate staff to manage the parking for all of their events.
- (iii) New West and the Kansas City Renaissance Festival will on occasion have corresponding events taking place at both venues which may include concerts. While all parties recognize that the need for sound checks are a necessary part of the setup and presentation process for a successful concert, New West will endeavor to minimize or eliminate these during the hours of Kansas City Renaissance Festival operations whenever within their control. New West will work to not allow any unnecessary amplification of music during the hours of the Kansas City Renaissance Festival (10am to 3pm). In addition, New West agrees to work with the Kansas City Renaissance Festival prior to these corresponding events to create a parking plan that works for each party in order to minimize traffic issues.

6. Permits.

New West shall obtain all permits and licenses, if any, necessary for the presentation of Events as contemplated at the Amphitheater. In this regard, New West shall be the applicant for all such permits and New West will require the subcontractors of New West to secure all permits required.

7. Insurance.

- (a) The Unified Government will maintain at its own expense, property damage coverage on the Amphitheater and personal property therein. Any damage sustained to the Amphitheater that the Unified Government is responsible for

covering must be promptly repaired or replaced within a reasonable timeframe as not to become a business interruption.

- (b) Any delay or failure of New West to perform its obligations under this agreement to the extent that it is caused by an event or occurrence beyond its reasonable control, including, but not limited to acts of God, actions by governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, terrorism, sabotage, labor problems, or artist injury, illness, or death is not breach of contract, provided that New West, claiming force majeure, promptly notifies the Unified Government of the event of force majeure, the anticipated duration of the event of force majeure, and the steps being taken to remedy the failure. Should New West be unable to perform its normal business activities due to any of the aforementioned occurrences, a restructuring of the agreement under mutually agreeable terms may take place.
- (c) New West shall maintain an insurance policy as follows:
 - (i) A policy of comprehensive general liability insurance including products/completed operations hazard, contractual coverage, broad form property damage coverage, operation of non-licensed motorized vehicles, and personal injury liability, with a minimum limit of five hundred thousand (\$500,000) combined single limit per occurrence and aggregate. The policy shall list the Unified Government as an additional insured on this coverage, having all rights of protection as New West;
 - (ii) A policy of automobile liability insurance on all owned, hired, and non-owned vehicles operated by New West in the performance of this Agreement. Limit of coverage will be a minimum one million dollars (\$1,000,000) combined single limit per occurrence and aggregate. The policy shall list the Unified Government as an additional insured on this coverage, having all rights of protection as New West;
 - (iii) Workmen's compensation coverage at statutory limits and employer's liability coverage at a limit of one hundred thousand dollars (\$100,000) on all New West employees, provided, however, that the Unified Government shall be responsible for workmen's compensation and employer's liability on all Unified Government employees.
- (d) New West shall list the Unified Government as an additional insured on all the foregoing policies and shall provide a certificate of insurance to such effect to the County Administrator's office within thirty (30) days of the signing of this Agreement. Such policies shall be with carriers approved by the Unified Government and shall provide that the insurer may not cancel such policy without sixty (60) days prior written notice as provided for in this Agreement. New West shall not produce any Event at the Amphitheater without the insurance policies, as

required in this section, in full force and effect. New West shall be responsible for all premiums for such policies.

8. Event Promotion; Ticket Sales; Sponsorships.

- (a) New West shall have sole responsibility for, and shall undertake all customary and appropriate activities involved in the promotion of Events at the Amphitheater during each season, provided, however, that New West may co-promote Events at the Amphitheater with local or national promoters deemed appropriate by New West.
- (b) The name of the Amphitheater shall be Amphitheater Amphitheater, unless as otherwise provided below. New West shall have the right to sell to a sponsor the naming rights to the Amphitheater. In addition, New West shall have the right to develop a logo or logos to identify the Amphitheater as a site for Events during each season and to develop an identity for the Amphitheater as a location where live entertainment activities occur on a consistent basis.
- (c) New West shall purchase all advertising necessary or appropriate for the promotion of Events at the Amphitheater.
- (d) New West shall be responsible for managing all ticket sales with respect to all Events at the Amphitheater. New West may charge a reasonable service charge on tickets sold directly by New West or any of its subsidiaries or through an in-house box office without the prior written approval of the Unified Government. New West shall arrange for tickets to be sold through one or more local ticket agencies, in the sole discretion of New West. New West shall undertake to establish a box office at the Amphitheater to permit potential spectators to purchase tickets to each Event on or before the day of such Event at the Amphitheater. The box office shall remain open when necessary in New West's professional opinion. New West shall bear all responsibility of hiring and supervising box office personnel.
- (e) New West, through Ticketmaster, will provide a system to provide ticket sales twenty-four hours a day, seven days a week.
- (f) New West shall have the right to enter into sponsorship and/or advertising agreements with companies that wish to identify themselves with the Events to be produced at the Amphitheater.
- (g) New West shall also be responsible for the following:
 - i. New West will give a greater presence on the World Wide Web home page of Amphitheater to the Unified Government Parks and Recreation Department. The Parks and Recreation Director of the Unified Government will provide his desired Logo and internet link to

be included on the amphitheater Homepage. New West will provide a link to the Unified Government Parks and Recreation Department's web site on the home page of the Amphitheater on the World Wide Web.

- ii. New West will make its best efforts to include the Parks and Recreation Department's logo in any New West-produced media including posters, flyers, printed and television ads. Said inclusion will be based on "Artist" approval.
- iii. New West will ensure that Bonner Springs is listed as the location of the venue on all media materials.

(h) The Unified Government will be responsible for the following:

- i. The Unified Government will provide advertisement for Amphitheater in each of the Department's seasonal Recreation Program Guides.
- ii. The Unified Government will provide year-round advertisement for Amphitheater on the Unified Government's cable television channel.
- iii. The Unified Government will create a page on the Department's web site that promotes Amphitheater and encourages the viewer to click on the provided link and to move to the web site of Amphitheater to receive specific concert and ticket information.
- iv. The Unified Government will provide a link to the Amphitheater web site on the home page of its Parks and Recreation Department.

9. Talent Acquisition.

- (a) New West alone or New West in cooperation with its co-promoters or New West's licensees shall contract with performers to appear at Events occurring at the Amphitheater. In this connection, New West and its co-promoters or licensees, if any, shall be responsible for payment of advances to agencies booking the various performers, and New West, its co-promoters and licensees, if any, shall be responsible for settlement of the box office and payment of any monies due performers on the day of each Event.
- (b) The schedule of performers to appear at the Amphitheater during each season shall remain solely within the discretion of New West. New West will use commercially reasonable efforts to have, but not be obligated to have, a minimum of 12 high quality events for each year of operation. The parties acknowledge that the appearance of any one particular performer is beyond the control of New

West, and New West makes no representations or warranties regarding which performers may be available or desire to appear at the Amphitheater, or what the financial terms of any personal appearance shall be.

- (c) New West shall provide an activity report to the County Administrator and the Director of the Parks and Recreation Department within thirty (30) days of the last Event of the year. The report shall list the following information for the Events which took place during the year: the date of each Event, the performer, the sponsor or promoter of the Event, and the attendance.

10. Concessions and Novelty Sales.

- (a) New West shall retain absolute control of the manner of such sales, supply its own employees or its concessionaire's employees to manage such sales, and collect monies for such sales; provided, however, subject to compliance with local law, New West may retain a concessionaire to manage and conduct alcoholic beverage sales at the Amphitheater. New West or its concessionaire shall provide a list of all food and beverages to be furnished, and prices thereof, and conspicuously post said list at the Amphitheater and adhere to said schedule of prices. New West's concessionaire shall be responsible for collecting sales tax and alcoholic liquor taxes and remitting same to the Department of Revenue. New West's concessionaire shall be responsible for obtaining any and all necessary cereal malt beverage license or alcoholic beverage license prior to selling alcoholic beverages at the Amphitheater. The Unified Government does not guarantee or assure New West that a cereal malt beverage license or alcoholic beverage license will be issued to New West or its concessionaire. New West shall have the right to subcontract directly on its own behalf with a concessionaire to provide food and beverage service at the Amphitheater. The negotiation of the terms of a concession license agreement with a concessionaire shall be the sole responsibility of New West. New West or its concessionaire shall provide notice to the Unified Government of the menu items, prices and product offerings. New West warrants that the menu and prices shall be competitive with other facilities in the metropolitan Kansas City market.

11. Ticketing; Ticket Prices; User Fees.

- (a) New West shall have sole authority to set ticket prices for Events at the Amphitheater provided, however, that New West warrants that ticket prices shall be competitive with the metropolitan Kansas City market.
- (b) Annually, New West shall pay a three dollar (\$3.00) facility fee for each paid ticket to the Unified Government until the annual bond payment and user fees have been paid. After that obligation has been met, New West shall pay the Unified Government a seventy five cents (\$.75) facility fee and a twenty five cents (\$.25) facility fee to the city of Bonner Springs, Kansas for each paid ticket

a season. Ticket facility fee payment reconciliation shall be submitted to the Unified Government and the city of Bonner Springs, Kansas for approval by the twelfth day of each month. Payment to the Unified Government and the city of Bonner Springs, Kansas of its share of the previous month's ticket fees shall be submitted prior to the end of the month. The fees set forth above may be classified in whole or in part as facility fees by New West solely for purposes of negotiating or contracting for Events at the Amphitheater.

12. Books and Records.

- (a) New West agrees to maintain books, records, documents, and other evidence pertaining to the costs and expenses of the services provided under the Agreement (hereinafter collectively called "records") to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies, and services, and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this Agreement. Except for documentary evidence delivered to the offices of the Unified Government, New West shall preserve and make available to persons designated by the Unified Government its records for a period of three (3) years from the date of final payment under the Agreement or until all audit questions have been resolved, whatever period of time is longer. The Unified Government agrees to keep the records of New West confidential and shall not release the records and any related information to the public except as required by law, namely the Kansas Open Records Act.
- (b) Because New West operates other entertainment facilities within the Kansas City metropolitan area, New West shall segregate the books, records, and accounts for the Amphitheater from New West's other operations.

13. Equipment, Furniture and Fixtures.

- (a) The Unified Government furnished and equipped the Amphitheater as set forth in an inventory of such furniture, fixtures and equipment to be attached hereto as Exhibit "A" (the "Inventory"). Exhibit "A" shall be prepared by the Unified Government and shall be verified and approved by the parties to this Agreement. All items on the Inventory shall remain the property of the Unified Government subject to the rights of New West to use such items pursuant to the terms of this Agreement. No equipment, furniture or fixtures provided by the Unified Government shall be removed temporarily or permanently or replaced by New West without prior written consent of the Unified Government. If the Unified Government consents to such removal or replacement, such removal and/or replacement shall be at the sole expense of New West. New West will maintain the furnishings, fixtures and equipment in good working order and to the extent not covered by insurance, shall be liable for damages to all items on the

Inventory. The Unified Government will conduct an annual inventory of all real and personal property under the management of New West. To the extent not covered by insurance, New West will replace all furnishings and equipment which are lost, stolen, damaged or otherwise rendered unusable. To the extent Inventory, furnishings and equipment are covered by insurance, New West shall pay \$500 of the damages to such property. Title to such furnishings, fixtures and equipment shall be in the name of the Unified Government.

- (b) New West shall have the right to provide such additional furniture, fixtures and equipment as New West shall deem necessary and appropriate in its sole discretion in order to further the effective use of the Amphitheater, provided, however, that installation of furniture, fixtures or equipment that requires a material alteration of the Amphitheater shall require the approval of the Unified Government, which approval shall not be unreasonably withheld. Purchase and any necessary installation of additional, furniture, fixtures and equipment shall be at the sole cost of New West unless otherwise agreed in writing by the Unified Government. New West shall have the right to remove any and all furniture, fixtures and equipment it may have installed on or in the Amphitheater during the term hereof, provided such furniture, fixtures and equipment are not permanently affixed. All additional constructed facilities and fixtures not removed by New West shall be the property of the Unified Government at the end of this Agreement. All additional furniture, fixtures and equipment provided by New West shall be maintained and repaired by New West. The Unified Government shall not provide maintenance and repair services to any furniture, fixtures and equipment provided by New West.

14. Repair and Maintenance; Utilities.

- (a) During all times that the Amphitheater is under the control of New West for the uses and purposes set forth herein, New West shall maintain the Amphitheater in a safe, clean and sanitary condition. New West's janitorial duties shall include all cleaning necessary, including but not limited to washing and mowing, prior to and after each Event. New West shall perform post-Event cleaning in a timely manner. New West's failure to promptly clean post-Event shall result in the Unified Government performing such duties and charging New West for its services. The bill for the Unified Government's performing such duties shall be sent to New West at the place designated for notices. New West shall remit payment for such services to the Unified Government within thirty (30) days after receipt of the bill. New West shall be responsible for all maintenance and repair of all interior areas of the Amphitheater, including but not limited to the VIP pavilion, the stage, all dressing rooms, walkways, concession areas, office areas, restrooms, all seating and the general admission area in front the stage. The Unified Government shall be responsible for the repair and maintenance listed in section five (5) above. New West shall be responsible for the repairs and maintenance listed in sections five (5) and New West shall be liable for all

damages to the Amphitheater and the furniture, fixtures and equipment owned by the Unified Government resulting from New West's misuse or neglect.

- (b) New West shall be liable for all damages to the Amphitheater by all performers. New West shall report all damages to the Director of the Parks and Recreation Department in a timely manner in writing. The notice shall be timely if sent within ten (10) days of discovering the damage. The report shall state the nature and cause of the damage and a detailed plan for any and all necessary repairs.
- (c) New West shall be responsible for the year-round landscape maintenance of the Amphitheater. New West shall be responsible for garbage and refuse pickup service.
- (d) Sidewalks, entries, passageways, or access ways to public utilities of the Amphitheater shall not be obstructed or caused to be obstructed by any performer, or caused or permitted to be used for any purpose other than ingress or egress to and from the Amphitheater.
- (e) New West shall pay all utilities expenses for the operating of the Amphitheater, including but not limited to natural gas, electricity, and water. In addition, New West shall pay for New West's local and long-distance telephone service.
- (f) The Director of the Parks and Recreation Department, or his designees, or such other authorized representatives, agents and employees of the Unified Government shall have the right to enter upon the premises of the Building at any and all times for the purpose of inspections and observation of New West's operations to assure that the requirements of this Agreement are upheld.
- (g) The Unified Government will continue to maintain all water systems on the amphitheater property. Included in that maintenance will be the summarization/winterization at the beginning and ending of each concert season as well as the repair of water and sewer lines and culvert as a result of age, weather damage or any other damage that is not a direct result of negligence by New West. New West will coordinate with the Unified Government Parks and Recreation department as to the best timeframe for these services to be performed. New West will be responsible for basic plumbing needs as they result to sinks, toilets and shower facilities as well as the costs associated with the water services as provided by the Bonner Springs Water Department.

15. Taxes.

The Unified Government has received an exemption from the Kansas Court of Tax Appeals for the Amphitheater. New West shall pay sales tax and personal property tax for any and all personal property owned by New West. If at any time, the Amphitheater becomes subject to real estate, personal property, ad valorem or school taxes, the Unified Government shall pay the taxes in a timely manner. However, if at

any time during the term of this agreement, the Amphitheater becomes subject to real estate, personal property, ad valorem or school taxes, the Unified Government shall have the option of terminating this management agreement.

16. Initial Condition; Capital Improvements.

- (a) New West shall arrange to have interactive activities in the plaza area for spectators.
- (b) New West shall have the right to make additional capital improvements to the Amphitheater at its sole cost and expense subject to approval of such capital improvements by the Parks and Recreation Director of the Unified Government. Any capital improvements made to the Amphitheater shall become Unified Government property.
- (c) New West agrees that all government funded capital improvements will be competitively and publicly bid.

17. Additional Requirements.

- (a) New West shall be responsible for the following:
 - i. New West will follow the guidelines, established by the Unified Government Parks and Recreation Department for the use of the Unified Government's easement on Agriculture Hall of Fame property adjacent to the Amphitheater as the agreement current exists
 - ii. New West will provide the Unified Government five photo "venue staff passes" that will provide Department management staff year long access to the site during all performances.
 - iii. New West will provide the Unified Government with two Premium Season Passes yearly for the purpose of the Department to reacquaint community leaders as to the quality of the venue's productions and the relationship between New West and the Unified Government.
 - iv. New West will reserve two VIP boxes for the Unified Government. One box provided to the Mayor's Office of the Unified Government and one box to the Parks and Recreation Department of the Unified Government.
 - v. New West will provide the Director of Parks and Recreation a monthly copy of all payments made to the UG Treasury Department per the terms of the contract.

b. The Unified Government will be responsible for the following:

- i. Allow New West to utilize the Unified Government's easement on the Agriculture Hall of Fame property with proper notification by New West of the justified need, in advance, of each occasion.

18. Termination.

The following acts committed by New West will constitute a material breach of the Agreement and may result in the termination of the Agreement by the Unified Government:

- (a) Fraud or willful misconduct with respect to any matter in connection with this Agreement;
- (b) New West's failure to pay debts when due;
- (c) Any assignment for the benefit of New West's creditors;
- (d) New West being adjudged bankrupt or insolvent;
- (e) A trustee or receiver being appointed for New West or any of its property;
- (f) New West filing a petition to take advantage of any debtor's act or to reorganize under bankruptcy or other applicable laws;
- (g) New West failing to supply materially necessary services under the provisions of this Agreement; or
- (h) New West being in default of any provision of this Agreement for more than thirty (30) days after receipt of notice specifying such default.

New West may terminate this Agreement if the Unified Government is in default of any provision of this Agreement for more than thirty (30) days after receipt of notice specifying such default.

19. Indemnification.

- (a) New West agrees to defend, indemnify, and hold harmless the Unified Government from any and all damage or claims which the Unified Government may be compelled to pay on account of injuries to the person or property of any person whatsoever, occurring or happening solely by the negligence or misconduct of New West, its agents, servants or employees.

(b) The Unified Government shall not be released from liability which arises from the negligence of the Unified Government, its agents, servants or employees.

20. Notice.

Any notice to either of the parties required or permitted under this Agreement shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed to the party to whom notice is to be given by certified or registered mail, first class or airmail, postage prepaid, and addressed as follows:

NEW WEST:

New West Presentations, Inc.
Attn: Chris Fritz, President
633 N. 130th St.
Bonner Springs, KS 66012

UNIFIED GOVERNMENT:

Unified Government Clerk
Municipal Office Building
701 N. 7th St.
Kansas City, KS 66101

With a copy to:

Chief Counsel
Unified Government Legal Department
701 N. 7th St., 9th floor
Kansas City, KS 66101

The address to which notices are mailed may be changed from time to time through notice served as herein above provided.

21. Subject Headings.

The subject headings of the sections of this Agreement are included solely for purposes of convenience and reference, and shall not be deemed to explain, modify, limit, amplify or aid in the meaning, construction or interpretation of any of the provisions of this Agreement.

22. Amendments.

No supplement, modification or amendment of any term, provision or condition of this Agreement shall be binding or enforceable unless executed in writing by the parties hereto.

23. Entire Agreement and Waiver.

This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior and contemporaneous agreements, arrangements, negotiations and understandings between the parties hereto relating to the subject matter hereof. There are no other understandings, statements, promises and inducements, oral or otherwise, contrary to the terms of this Agreement. No representations, warranties, covenants or conditions, expressed or implied, whether by statute or otherwise, than as set forth herein have been made by any party hereto. No waiver of any term, provision or condition of this Agreement, whether by contract or otherwise in any one of or more instances, shall be deemed to be or shall constitute a waiver of any other provision hereof whether or not similar, nor shall such waiver constitute a continuing waiver, and no waiver shall be binding unless executed in writing by the party making the waiver.

24. Parties-in-Interest.

Nothing in this Agreement, whether expressed or implied, is intended to confer upon any person other than the parties hereto and their respective representatives, successors and permitted assigns, any rights or remedies under or by reason of this Agreement, nor is anything in this Agreement intended to relieve or discharge the liability of any other party hereto, nor shall any provision hereof given any entity any right of subrogation against or action against any party.

25. Successors and Assigns.

New West, with consent from the Unified Government, shall have the right to assign, sell or transfer the current agreement through its stock to additional shareholders under the same terms of this agreement.

26. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

27. Applicable Law; Venue.

- (a) This Agreement shall be governed by, construed and enforced in accordance with and subject to the laws of the State of Kansas.
- (b) New West must comply with all local, state and federal ordinances, statutes, rules and regulations and will be responsible for obtaining all local, state or national licenses and permits to do business in Kansas.
- (c) New West agrees to comply with the Americans with Disabilities Act. New West further agrees that it will not restrict the Unified Government's responsibility to comply with the Americans with Disabilities Act. The parties are aware that neither the place of public accommodation nor the programs or services offered by the public accommodation can discriminate against individuals with disabilities. In addition, discrimination in the provision of programs and activities conducted by public accommodations are prohibited.

28. Anti-Discrimination Requirements.

- (a) New West will not discriminate against any employee or applicant for employment because of race, religion, color, sex, physical disability, national origin or ancestry. Such action shall include but not be limited to the following: employment, promotion, demotion, transfer, recruitment, recruitment advertising, lay-off, termination, rates of pay, any other form of compensation, or selection for training, including apprenticeship. New West agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- (b) New West will, in all solicitations or advertisements for employees placed by or on behalf of New West, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, physical disability, national origin, or ancestry.
- (c) New West will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor.
- (d) If New West shall fail, refuse, or neglect to comply with the terms of these contractual conditions, such failure shall be deemed a total breach of the Agreement and such Agreement may be terminated, canceled, or suspended, in whole or in part. In addition, New West may be declared ineligible for any further Unified Government contracts for a period of up to one (1) year. Provided that if the Agreement is terminated, canceled, or suspended for failure to comply with this section, New West shall have no claims for damages against the Unified Government on account of such termination, cancellation, or suspension or declaration of ineligibility.

(c) New West shall assure that it is in compliance with and shall maintain sufficient records to document that, under all aspects of this Agreement, it has acted in a manner which is in full compliance with the foregoing paragraphs regarding equal employment, and the following as applicable:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*, and any amendments thereto);
- ii. Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*, and any amendments thereto);
- iii. The Age Discrimination in Employment Act (29 U.S.C. 621 *et seq.*, and any amendments thereto);
- iv. The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*, and any amendments thereto);
- v. The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*, and any amendments thereto);
- vi. The Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*, and any amendments thereto);
- vii. The Kansas Discrimination in Employment Act (K.S.A. 44-1110 *et seq.*, and any amendments thereto); and
- viii. The Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*, and any amendments thereto).

(f) New West and the Unified Government, in carrying out this Agreement, shall comply with all other applicable existing federal, state and local laws relative to equal opportunity and nondiscrimination, all of which are incorporated by reference and made a part of this Agreement.

29. Further Documents.

Each party agrees to execute and deliver at any time and from time to time upon the request of any other party, such further instruments, papers or documents that may be necessary or appropriate to carry out the provisions hereof and to take such other action as any other party may reasonably request to effectuate the purpose of this Agreement.

30. Interpretations and Definitions.

The parties agree that each party and its counsel have reviewed this Agreement, and any rule of construction to the effect that ambiguities are to be resolved against the

drafting party shall not apply in the interpretation of this Agreement. In this Agreement, neuter gender includes the feminine and masculine, and the singular number includes the plural, and the words "person" and "party" includes corporation, partnership, firm, trust or association whenever the context so requires.

31. Employees.

New West will use commercially reasonable efforts to recruit employees who reside in Wyandotte County, Kansas.

32. Independent Contractor Relationship.

- (a) Nothing in this Agreement shall be construed to create a relationship of employer and employee or principal and agent or any other relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions in this Agreement. Nothing in this Agreement shall create any right or remedies in any third party.
- (b) This Agreement is not intended to be, and will not constitute or otherwise recognize a joint venture, partnership agreement or relationship, or formal business organization or association of any kind between the parties; and the rights and obligations of the parties shall be only those expressly set forth in the Agreement. The parties agree that no persons supplied by New West in the performance of this Agreement are employees of the Unified Government and further agree that no right of the Unified Government's civil service, retirement, or personnel rules accrue to such persons. New West shall have the total responsibility for all salaries, wages, worker's compensation insurance, unemployment compensation, bonuses, retirement, withholdings, other benefits, and all taxes and premiums appurtenant thereto concerning such persons and shall hold the Unified Government harmless with respect thereto.

33. Enforcement of Agreement.

Each party shall pay their own costs and attorney's fees in the event it becomes necessary for any party to employ or utilize an attorney to enforce the provisions of this Agreement, whether or not a suit in a court of law or equity is commenced.

34. Emergency Response Plan.

New West shall provide the Unified Government with an emergency response plan and updates thereto. The emergency response plan shall include but not be limited to, New West's plans to handle manmade and natural disasters, medical emergencies, crowd control techniques, crisis communications, and action plans.

(Signature page to follow. The rest of this page left intentionally blank.)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

NEW WEST PRESENTATIONS, INC.

Chris Fritz
Chris Fritz, President

UNIFIED GOVERNMENT OF
WYANDOTTE COUNTY/KANSAS CITY,
KANSAS

Douglas G. Bach
Douglas G. Bach, County Administrator

ATTEST:

By: R. P. Bach

Title: U.G. Clerk

Approved as to Form:

Misty S. Brown
Misty S. Brown, Assistant Counsel