

**NON-EXCLUSIVE PURCHASE AGREEMENT  
BETWEEN CITY OF TEMECULA AND MUSSON THEATRICAL, INC.**

**AUTOMATED THEATRICAL LIGHTING FIXTURES**

**THIS AGREEMENT** is made and effective as of **July 13, 2021**, between the City of Temecula, a municipal corporation (hereinafter referred to as "City"), and **Musson Theatrical, Inc.**, a Corporation (hereinafter referred to as "Vendor"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**1. TERM**

This Agreement shall commence on **July 13, 2021**, and shall remain and continue in effect until tasks described herein are completed, but in no event later than **December 31, 2021**, unless sooner terminated pursuant to the provisions of this Agreement.

**2. PURCHASE AND SALE OF MERCHANDISE**

On and subject to the terms and conditions set forth in this Agreement and the Agreement Documents, Vendor agrees to sell and deliver to City merchandise as more particularly described in **Exhibit A**, attached hereto and incorporated herein as though set forth in full (hereafter "Merchandise"). This is a non-exclusive agreement between the City and Vendor and no guarantee of purchase or total purchase price as outlined in the section entitled "Purchase Price" is given or implied. This Agreement shall remain and continue in effect unless terminated pursuant to the provisions of this Agreement.

**3. PURCHASE PRICE**

The Purchase Price, which City agrees to pay to Vendor for the merchandise, will be as quoted in Exhibit A, with an annual not to exceed amount of **One Hundred Thirty-Five Thousand Four Hundred Seventy-Four dollars and Ninety-eight Cents (135,474.98)** for the total term of the agreement. Vendor will submit invoices monthly for actual merchandise ordered and received. Invoices shall be submitted between the first and fifteenth day of each month for merchandise delivered and received. Payment shall be made within thirty (30) days of receipt of the invoice as to all non-disputed fees. If the City disputes any of the Vendor's fees, it shall give written notice to the Vendor within thirty (30) days of receipt of the invoice of the disputed fees on the invoice. The not to exceed purchase amount listed herein is an estimated expenditure and this agreement does not guarantee Vendor this amount in purchases.

**4. REJECTION**

In the event of such notice of non-conformity by City pursuant to the section entitled "Inspection and Acceptance" above, City may, at its option, (1) reject the whole of the Merchandise, (2) accept the whole of the Merchandise, or (3) accept any commercial unit or units of the Merchandise and reject the remainder. The exercise of any of the above options shall be "without prejudice" and with full reservation of any rights and remedies of City attendant upon a breach. In the event of such notice and election by City, City agrees to comply with all reasonable instructions of Vendor and, in the event that expenses are incurred by City in following such instructions, Vendor shall indemnify City in full for such expenses.



**5. NO REPLACEMENTS OF CURE**

This Agreement calls for strict compliance. Vendor expressly agrees that both the merchandise tendered and the tender itself will conform fully to the terms and conditions of the Agreement on the original tender. In the event of rejection by City of the whole of the merchandise or any part thereof pursuant to the section entitled "Rejection", City may, but is not required to, accept any substitute performance from Vendor or engage in subsequent efforts to effect a cure of the original tender by Vendor.

**6. INDEMNIFICATION**

Vendor agrees to defend, indemnify, protect, and hold harmless, the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, and its officers, officials, employees, agents, and volunteers, from and against any and all claims, demands, losses, defense costs or expenses, actions, liability or damages of any kind and nature which the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, agents, employees, and volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Vendor's negligent or wrongful acts or omissions arising out of or in any way related to the Work or the Vendor's performance or non-performance of this Agreement, excepting only liability out of the sole negligence of the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency.

**7. AGREEMENT DOCUMENTS**

a. This Agreement includes the following documents, which are by this reference incorporated herein and made a part hereof:

- Description of Merchandise and Price List, attached hereto as Exhibit A
- Payment Rates and Schedule, attached hereto as Exhibit B

b. In the event any term or condition of the Agreement Documents conflicts with or is contradictory to any term or condition of the Agreement, the terms and conditions of this Agreement are controlling.

c. In the event of a conflict in terms between this Agreement, and a Vendor quote the prices list as attached hereto and incorporated herein prevail over the Vendor's quote.

**8. REMEDIES**

The remedies and rights conferred on the City by this Agreement are in addition to and cumulative with all other remedies and rights accorded the City under law or equity.

**9. SURVIVAL OF RERESENTATIONS AND WARRANTIES**

All representations, warranties, covenants and agreements of the parties contained in this Agreement shall survive the execution, delivery and performance of this Agreement.

**10. LEGAL RESPONSIBILITIES**

The Vendor shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service



pursuant to this Agreement. The Vendor shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Vendor to comply with this section.

**11. ASSIGNMENT**

The Vendor shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. This Agreement shall be binding on, and shall inure to the benefit of, the parties to it and their respective heirs, legal representatives, successors and assigns. Upon termination of the Agreement, Vendor's sole compensation shall be payment for actual equipment received.

**12. SEVERABILITY**

If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable, and binding on the parties.

**13. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE**

a. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Vendor at least ten (10) days prior written notice. Upon receipt of said notice, the Vendor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

b. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Vendor the actual value of the merchandise produced up to the time of termination, provided the merchandise was ordered by the City prior to termination of the Agreement. Upon termination of the Agreement pursuant to this Section, the Vendor will submit an invoice to the City pursuant to the section entitled "Purchase Price."

**14. PROHIBITED INTEREST**

No officer, or employee of the City of Temecula that has participated in the development of this agreement or its approval shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Vendor, or Vendor's sub-Contractors for this project, during his/her tenure or for one year thereafter. The Vendor hereby warrants and represents to the City that no officer or employee of the City of Temecula that has participated in the development of this agreement or its approval has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, the proceeds thereof or in the business of the Vendor or Vendor's sub-Contractors on this project. Vendor further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.



**15. ENTIRE AGREEMENT; MODIFICATION; WAIVER**

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and thereof and supersedes all prior and contemporaneous agreements, representations and understandings of the parties, whether oral or written. No supplement, modification or amendment of this Agreement or the Agreement Documents shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement or the Agreement Documents shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

**16. NOTICES**

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

**Mailing Address:** City of Temecula  
Attn: City Manager  
41000 Main Street  
Temecula, CA 92590

**To Consultant:** Musson Theatrical, Inc.  
Attn: Bobbie Odehnal  
890 Walsh Avenue  
Santa Clara, CA 95050

**17. EFFECTS OF HEADINGS**

The subject headings of the sections and subsections of this Agreement are included for convenience only and shall not affect or be considered in the construction or interpretation of any of its provisions.

**18. GOVERNING LAW**

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California as applied to contracts that are executed and performed entirely in California. The City and Vendor understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Temecula. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

19. **AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this Agreement on behalf of the Vendor warrants and represents that he or she has the authority to execute this Agreement on behalf of the Vendor and has the authority to bind the Vendor to the performance of its obligation hereunder. The City Manager is authorized to enter into an amendment on behalf of the City to make the following non-substantive modifications to the agreement: (a) name changes; (b) extension of time; (c) non-monetary changes in scope of work; (d) agreement termination.


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF TEMECULA

MUSSON THEATRICAL, INC.


*(Two Signatures of corporate officers required unless corporate documents authorize only one person to sign the agreement on behalf of the corporation.)*

By: \_\_\_\_\_  
Maryann Edwards, Mayor

By:  \_\_\_\_\_  
Bob Downs, President

ATTEST:

By: \_\_\_\_\_  
Randi Johl, City Clerk

By:  \_\_\_\_\_  
Dave Rimerman, Vice President

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Peter M. Thorson, City Attorney

VENDOR

MUSSON THEATRICAL, INC.

Attn: Bobbie Odehnal

890 Walsh Avenue

Santa Clara, CA 95050

(800) 843-2837

City Purchasing Mgr. Initials and Date: MSV 06-23-2021
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# **EXHIBIT A**

## **Scope of Work / Outline of Order or Service Procedure**

Vendor recognizes and agrees that this Agreement is for the purpose of establishing a contractual relationship between the **City of Temecula** and the Vendor, for the purchase of goods or services. The procedure for ordering goods or requesting services is set forth as follows:

### **A. Ordering Process**

1. The City Manager or his designee shall submit to Vendor a written "Request for Order/Services". The Request for Order/Services shall include a description of the items to be purchased or the services to be completed, the time for delivery or completion of the services, and the plans and specifications for goods and equipment, if any.

2. Within five (5) business days of the date of the Request for Order/Services, Vendor shall respond in writing to the Request for Order/Services and advise the City Manager or his designee whether the goods are available or services can be performed, along with the cost and estimated delivery or start of services.

3. In the event an emergency or service is required, the City Manager or his designee may transmit the Request for Order/Services orally to the Vendor. As soon as practical following the emergency, the Vendor and City designee shall in good faith confirm in writing the scope of the emergency order submitted or services undertaken.

4. Upon acceptance of the Vendor's response by the City Manager or his designee the Vendor shall proceed with the order or begin services. The acceptance of the goods and/or performance of the services shall be pursuant to the terms of this Agreement.

### **B. Type of retail goods being procured, but not limited to:**

1. Automated Theatrical Lighting Fixtures

**EXHIBIT B**  
**DESCRIPTION OF MERCHANDISE OR SERVICE PRICE LIST**  
**AND PAYMENT RATES AND SCHEDULE**

**Type of merchandise procured, but not limited to:**

1. Automated Theatrical Lighting Fixtures

Cost shall be as per Vendor price listing attached hereto in and incorporated herein as though set forth in full.

Cost of merchandise shall be as quoted, but in no event shall the total Agreement amount exceed \$135,474.98 as outlined in Section 3 of this Agreement.

Musson Theatrical, Inc. Sales Quotation in the amount of \$135,474.98 is attached.





Rep: Bobbie Odehnal Direct (916) 661-0383

Phone:  
Ext:  
Cell:

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