

SERVICES AGREEMENT (CITY SERVICES)

BottleRock 2024

City Agreement No.C2024-597

City Budget Code: 10119100-43722-21BTLEROCK

This Services Agreement (City Services) for BottleRock 2024 (“**Agreement**”), by and between the City of Napa, a California charter city (“**City**”), and Live Nation Worldwide, Inc., a Delaware corporation DBA Latitude 38 Entertainment (“**Applicant**”), is effective on the date last signed by the City, which is identified on the signature page as the “Effective Date.”

- A. Applicant has entered into a rental agreement with the 25th District Agricultural Association, a state institution of the State of California (the “Association”), to use and occupy the facilities commonly known as the Napa Expo (the “Expo”), located at 575 3rd Street in Napa, for the three-day BottleRock Napa Valley Music Festival (“BottleRock” or “Event”). The Expo, located within the City Limits of the City of Napa, is owned by the State of California and operates under the management of the Association.
- B. The Applicant has requested the City to provide law enforcement, emergency medical and other services on the Expo property during the Event.
- C. This Agreement sets forth the terms and conditions upon which the City will provide the requested services during the Event.

The City and the Applicant, for the mutual consideration described herein, agree as follows:

1. SCOPE OF SERVICES.

1.1. Services. City will perform the services described in the *Scope of Services and Schedule of Performance*, attached hereto as **Exhibit “A”** and incorporated herein by reference (“**Services**”), in accordance with the terms and conditions of this Agreement. City will coordinate the services with the Applicant’s authorized representative, Justin Drago, Partner (“**Applicant’s Authorized Representative**”).

1.2. Independent Contractor. City will control the manner and means for performing the Services, acting as an independent contractor and not as an employee of the Applicant.

2. COMPENSATION.

2.1. Payment. The Applicant will pay City for City’s time and authorized expenses necessary to perform the Services, at the rates and charges set forth in the *Compensation Rates and Charges* attached hereto as **Exhibit “B”** and incorporated herein by reference, as compensation in full for Services satisfactorily performed in compliance with this Agreement. City’s total compensation for performing the Services may not exceed \$500,000, without prior written authorization from the Applicant.

2.2. Invoices. The Applicant will pay the City within thirty (30) days after receipt of each invoice from the City.

3. AUTHORIZED REPRESENTATIVE. City hereby assigns Chase Haag, Police Captain to serve as the City’s authorized representative (“**City’s Authorized Representative**”), to personally participate in and manage the Services provided under this Agreement, and to serve as the primary point of contact for all matters pertaining to this Agreement.

4. **NOTICES.** All notices or requests required or contemplated by this Agreement will be in writing and delivered to the other party's Authorized Representative by personal delivery, U.S. Mail, nationwide overnight delivery service, email, or as otherwise specified herein. Delivery is deemed effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, (b) actual receipt at the address identified below, or (c) three working days following deposit in the U.S. Mail of registered or certified mail sent to the address identified below. A party's contact information, below, may be changed by providing written notice of any change to the other party.

TO CITY: Chase Haag, Police Captain
CITY OF NAPA
P.O. Box 660
NAPA, CA 94559-0660
chaag@cityofnapa.org

TO APPLICANT: Justin Drago, Partner
Live Nation Worldwide Inc.
DBA Latitude 38 Entertainment
Napa, CA 94559
justin@latitude38ent.com

5. **TERM.** The term of this Agreement begins on the Effective Date, and ends upon City's completion of the Services required by this Agreement, unless terminated earlier as provided herein. The following provisions will survive expiration or termination of this Agreement: Section 7 (Dispute Resolution), Section 8 (Records of Performance), and Section 9 (General Provisions). Time is of the essence for the performance of all Services under this Agreement.

6. **RIGHT TO TERMINATE.** Either party may terminate this Agreement for convenience (with or without cause) by providing written notice of termination to Applicant, effective upon the date stated in the notice. The Applicant will pay City for all Services satisfactorily performed up to and including the effective date of the termination, subject to the provisions of Section 2.

7. **DISPUTE RESOLUTION.** If any dispute arises between the parties in relation to this Agreement, the Authorized Representatives for each party will meet, in person, as soon as practicable, to engage in a good faith effort to resolve the dispute informally. 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 60 days of the date that such notice is given, or sooner if reasonably practicable. The parties will jointly appoint a mutually acceptable mediator. The parties will share equally the costs of the mediator; however, each party will pay its own costs of preparing for and participating in the mediation, including any legal costs. Good faith participation in mediation pursuant to this Section is a condition precedent to either party commencing litigation in relation to the dispute. In addition, any claims by Applicant arising from or related to this Agreement, are subject to the claim presentment requirements in the Government Claims Act (Government Code section 900 et seq.).

8. **RECORDS OF PERFORMANCE.** Both parties will maintain adequate records of performance under this Agreement (including Services provided, invoices, and payments received) and make these records available to the other party for inspection, audit, and copying, during the term of this Agreement and until four years after the Agreement has expired or been terminated.

9. **INDEMNIFICATION.** To the full extent permitted by law, Applicant will indemnify, hold

harmless, release, and defend the City (including its officers, elected or appointed officials, employees, volunteers, and agents) from and against any and all liability or claims (including actions, demands, damages, injuries, settlements, losses, or costs [including legal costs and attorney's fees]) (collectively, "Liability") of any nature, arising out of, pertaining to, or relating to the Event or Applicant's acts or omissions under this Agreement. Applicant will not be obligated to indemnify the City for the proportionate share of the Liability caused by the City's active negligence, sole negligence, or willful misconduct. Applicant's indemnification obligations under this Agreement are not limited by any limitations of any insurance held by Applicant, including, but not limited to, workers' compensation insurance.

To the full extent permitted by law, City will indemnify, hold harmless, release, and defend the Applicant (including its officers, elected or appointed officials, employees, volunteers, and agents) from and against any and all liability or claims (including actions, demands, damages, injuries, settlements, losses, or costs [including legal costs and attorney's fees]) (collectively, "Liability") of any nature, arising out of, pertaining to, or relating to City's acts or omissions under this Agreement. City will not be obligated to indemnify the Applicant for the proportionate share of the Liability caused by the Applicant's active negligence, sole negligence, or willful misconduct. City's indemnification obligations under this Agreement are not limited by any limitations of any insurance held by City, including, but not limited to, workers' compensation insurance.

10. Insurance.

Applicant shall provide and maintain a certificate of insurance for Commercial General Liability insurance policy (in a form acceptable to the Risk Manager), which carries general policy coverage limits of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

Applicant shall also provide an endorsement to such insurance policy providing coverage at least as broad as Insurance Services Office Endorsement CG 2010, 1985 Edition, which names the City of Napa, its officers, employees, agents, and volunteers as additional insureds under said policy. Such insurance shall be primary and non-contributing and shall include a waiver of any right of subrogation against the City. The Additional Insureds endorsement must include the following, or very similar, language: The City of Napa, its officers, employees, agents, and volunteers are hereby added as additional insureds with respect to liability arising out of the paid services the City provides to the Applicant under the terms of this Agreement.

10.1. WORKER'S COMPENSATION CLAIMS An employee's worker's compensation claim for an injury sustained while performing Services under this Agreement shall be primarily covered by the City's Workers' Compensation Insurance Plan.

11. GENERAL PROVISIONS.

11.1. Headings. The heading titles for each section of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

11.2. Severability. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement will be construed as not containing that term, and the remainder of this Agreement will remain in full force and effect; provided, however, this section will not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

11.3. Governing Law, Jurisdiction, and Venue. The interpretation, validity, and enforcement of this Agreement will be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement

will be filed and heard in a court of competent jurisdiction in the County of Napa.

11.4. Attorney's Fees. If any litigation is commenced to enforce or interpret this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses.

11.5. Modifications. This Agreement may not be modified orally. No amendment or modification of this Agreement is binding unless it is in a writing signed by both parties.

11.6. Waivers. No waiver of a breach default, or duty under this Agreement will be effective unless it is in writing and signed by the party waiving the breach, default, or duty. Waiver of a breach, default, or duty under this Agreement will not constitute a continuing waiver or a waiver of a subsequent breach, default, or duty under this Agreement.

11.7. Entire Agreement. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the Services. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all. If any provision in any document attached or incorporated into this Agreement conflicts or is inconsistent with a provision in the body of this Agreement, the provisions in the body of this Agreement will control over any such conflicting or inconsistent provisions.

11.8. Interpretation. Each party to this Agreement has had an opportunity to review the Agreement, and to consult with its respective legal counsel regarding the meaning of the Agreement. Accordingly, Civil Code Section 1654 will not apply to interpret any uncertainty in the meaning of the Agreement.

12. SIGNATURES

12.1. Counterparts. This Agreement may be executed in counterparts, each one of which is deemed an original, but all of which together constitute a single instrument.

12.2. Signatures; Electronic Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Applicant and the City. The parties agree that this Agreement may be executed and transmitted electronically and that electronic signatures shall have the same force and effect as original signatures in accordance with the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq.; the California Uniform Electronic Transactions Act, Civil Code Section 1633.1 et seq. and California Government Code Section 16.5.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the Effective Date set forth below.

CITY:
CITY OF NAPA, a California charter city

APPLICANT:
Live Nation Worldwide, Inc., a Delaware corporation DBA Latitude 38 Entertainment

By: _____
Steve Potter, City Manager

By: _____
Justin Dragoo, Partner

By: _____
{***INSERT name and title of second person signing for Applicant [if needed, eg. for corporations]**}

Date: _____
(“Effective Date”)

COUNTERSIGNED:

Erika Leahy, City Auditor

APPROVED AS TO FORM:

Sabrina Wolfson, Interim City Attorney

EXHIBIT "A"**SCOPE OF SERVICES AND SCHEDULE OF PERFORMANCE**

The City will perform the Services at BottleRock, located at Napa Valley Exposition, located at 575 Third Street, described below on May 24, May 25, May 26, 2024. Prior to City's commencement of the Services, the Applicant shall provide the City with written documentation approvable as to substance by the City's Authorized Representative and as to form by the City Attorney demonstrating that the Applicant has obtained permission from the Association for the City to provide the Services at the Expo for the Event in accordance with this Agreement.

A. Law Enforcement Services

The City will provide up to 2 Captains, 4 Lieutenants, 9 Sergeants and 31 Officers to perform security and general law enforcement services on the Expo Property and work 12 hour shifts covering the hours of 9 am and 2 am, on each day of the Event to include event egress in the downtown area; provided, however, the City reserves the right to substitute other Napa County sworn officers in place of Napa Police Department sworn officers, if the City's Authorized Representative determines that it is necessary.

B. Fire

The City will provide up to 1 Battalion Chief, 3 Captains, 3 Firefighter/Paramedics and 2 SWAT Medics to perform all-risk incident command and emergency first response services including but not limited to fire suppression; rescue; hazardous materials incident response; tactical paramedics; and EMS support, on the Expo Property during the hours of 11am and 10 pm on each day of the Event. The City reserves the right to substitute other Napa County first responder/emergency medical response personnel in place of Napa Fire Department personnel, if the City's Authorized Representative determines that it is necessary.

EXHIBIT "B"

COMPENSATION RATES AND CHARGES

1. AUTHORIZED HOURLY RATES:

City will be compensated for time reasonably necessary to provide the Services based on the following hourly rate schedule, subject to the not-to-exceed limit in Section 2 of the Agreement:

<u>Position:</u>	<u>Hourly Rate:</u>
Police Captain	\$382.42
Police Lieutenant	\$330.75
Police Sergeant	\$284.11
Police Officer	\$214.09
Community Services Officer	\$117.53
Public Safety Dispatcher	\$138.86
Public Safety Dispatcher Supervisor	\$152.96
Police Records Specialist	\$97.62
Intelligence Analyst	\$135.10
Fire Battalion Chief	\$293.84
Fire Captain	\$239.05
Firefighter/Paramedic	\$156.88
SWAT Medics (Fire Captains-56 hr. rate)	\$170.76

Hourly Rates are based on the **Full Cost, Fully Burdened Overtime Rate** established by City Council as of July 1, 2023 ([FY 2023/24 Billable Rates by Bargaining Unit and Job Class](#)).

City of Napa Fees & Charges for Special Events						
Event: BOTTLE ROCK - BottleRock Napa Valley, May 24 - 26, 2024						
Estimated Event Hours by Department - subject to change based on actual needs						
	Fri	Sat	Sun	Total Hours	Payrate	Total
Fire Department						
Battalion Chief (1)	12	12	12	36	\$ 293.84	\$ 10,578.24
Captains (3)	36	36	36	108	\$ 239.05	\$ 25,817.40
Firefighters/Paramedics (3)	36	36	36	108	\$ 156.88	\$ 16,943.04
SWAT Medics (2) - both are Captains	24	24	24	72	\$ 239.05	\$ 17,211.60
Subtotals				324		\$ 70,550.28
Police Department						
Captains (2)	24	24	24	72	\$ 382.42	\$ 27,534.24
Lieutenants (3)	36	36	36	108	\$ 330.75	\$ 35,721.00
Sergeants (9)	108	108	108	324	\$ 284.11	\$ 92,051.64
Police Officers (22)	264	264	264	792	\$ 214.09	\$ 169,559.28
Community Service Officers II (2)	24	24	24	72	\$ 117.53	\$ 8,462.16
Public Safety Dispatcher Supervisor (1)	12	12	12	36	\$ 152.96	\$ 5,506.56
Public Safety Dispatcher II (1)	12	12	12	36	\$ 138.86	\$ 4,998.96
Intelligence Analyst (1)	12	12	12	36	\$ 125.59	\$ 4,521.24
Subtotals				1476		\$ 348,355.08
				Total		\$ 418,905.36