

CONSENT TO PROMOTIONAL AGREEMENT

THIS CONSENT TO PROMOTIONAL AGREEMENT (Consent) is executed by THE CITY OF SAN DIEGO, a California municipal corporation (City), to be effective upon approval by the San Diego City Attorney (Effective Date).

RECITALS

- A. City and SEA WORLD, LLC., d.b.a. Sea World San Diego, a Delaware Company ("Lessee") are parties to a certain lease agreement and amendments thereto (the "Lease"), as set forth in documents filed in the Office of the San Diego City Clerk as Document Nos. 762304, 765767, RR-259814, RR-263507, RR-266641, OO-18538-1, and RR-296787, and relating to certain City-owned real property further described in the Lease (the "Premises") located in Mission Bay Park in San Diego, California.
- B. Lessee now desires to enter into a promotional agreement with Biological and Popular Culture Inc., a Delaware Corporation ("Agreement"), with offices located at 2205 Faraday Avenue, Suite F, Carlsbad, CA 92008 ("BioPop"), related to Lessee's Electric Ocean Exhibit.
- C. Article XXXIX of the Lease requires City's consent to the promotional agreements on any portion of the Premises.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is acknowledged, City hereby grants its consent subject to the following terms and conditions:

- 1. Subject to the terms and conditions herein, City hereby consents to Lessee's request to enter into a promotional agreement with BioPop related to the Lessee's Electric Ocean Exhibit. All terms and conditions of the Lease shall control and supersede any inconsistent or contrary provisions in any subsequent promotional agreement executed between Lessee and BioPop, except as otherwise approved herein; and
- 2. Pursuant to subsection A.1.f of Article IV Rent of the Lease, Lessee shall pay City two and one half percent (2.5%), as adjusted from time to time by the applicable rent adjustments pursuant to the Lease, of all of Lessee's gross income received from the Agreement on the Premises; and
- 4. By granting this Consent, City does not release, discharge or modify Lessee's obligations to City under the Lease. As set forth in applicable law, Lessee's obligations under the Lease shall survive said Agreement and shall continue through the termination date of the Lease, as set forth therein; and
- 5. This Consent does not constitute consent to any subsequent promotional agreement at the Premises.
- 6. City shall not be liable for any brokerage commission or finder's fee in connection with the consummation of the Agreement. Further, Lessee shall agree to protect, defend, indemnify, and hold City, its elected officials, officers, representatives, agents, and employees harmless from and against any claim for any brokerage commission or finder's fee related to the

consummation of the Agreement or this Consent, and from and against any cost or expense (including without limitation attorney fees) incurred by City in resisting any claim for any such brokerage commission or finder's fee.

IN WITNESS WHEREOF, this, Consent is executed by City acting by and through its Mayor, or his designee.

THE CITY OF SAN DIEGO, a California municipal corporation

Date: 5/26/17

By: 
Cybele Thompson
Director, Real Estate Assets Department

Planning Department - Environmental Clearance:
Environmental Analysis Section Environmental Clearance:

This activity is adequately addressed in EIR Project No. 84-0160, for the Sea World Master Plan EIR (SCH No. 84030708) certified by the San Diego City Council and is part of a series of subsequent discretionary actions, and therefore not considered to be a separate project for purposes of CEQA review as defined in State CEQA Guidelines Section §15378(c). Pursuant to Section 15162 of CEQA, there is no change in circumstance, additional information or project changes to warrant additional environmental review.

Date: 5/31/17

By: 
Name: Alyssa M. Muto
Title: Deputy Director, Environmental and Policy Analysis,
Planning Department

Approved as to form this 5th
day of June, 2017

MARA W. ELLIOT, City Attorney

BY: Melissa Aboles
Name: Melissa Aboles
Title: Deputy City Attorney

Balotsky, Vladimir

From: Steinert, Kurtis
Sent: Thursday, May 25, 2017 4:41 PM
To: Balotsky, Vladimir
Subject: RE: NORA - SEA WORLD - Consent to Bio Pop Promotional Agreement

Hi Vladimir,

Talk about timing was discussing this with Myra Hermann and Marta Blake and it is our consensus that the previous EIRs done on Sea World provide the environmental analysis for the consent. The EIR on the Master Plan was a condition of the Sea World lease. So no NORA is needed, and the CEQA language is:

This activity is adequately addressed in EIR Project No. 84-0160, for the Sea World Master Plan EIR (SCH No. 84030708) certified by the San Diego City Council and is part of a series of subsequent discretionary actions, and therefore not considered to be a separate project for purposes of CEQA review as defined in State CEQA Guidelines Section §15378(c). Pursuant to Section 15162 of CEQA, there is no change in circumstance, additional information or project changes to warrant additional environmental review.

From: Balotsky, Vladimir
Sent: Thursday, May 25, 2017 4:30 PM
To: Steinert, Kurtis <KSteinert@sandiego.gov>
Subject: FW: NORA - SEA WORLD - Consent to Bio Pop Promotional Agreement
Importance: High

Hi Kurt,
What CEQA language should I include into the attached consent? Please let me know asap.

Thank you,

Vladimir Balotsky
Supervising Property Agent
City of San Diego
Real Estate Assets Department
1200 Third Avenue, Suite 1700
San Diego, CA 92101
T(619) 235-5248
vbalotsky@sandiego.gov



~ A world-class city for all

CONFIDENTIAL COMMUNICATION

PROMOTIONAL AGREEMENT

THIS PROMOTIONAL AGREEMENT (this "Agreement") is made and entered into as of the last day of execution by the parties hereto (the "Effective Date") by and between Sea World LLC a Delaware limited liability company d/b/a SeaWorld San Diego with offices located at 500 Sea World Drive San Diego, CA 92109 ("SEA" or "SeaWorld"), and Biological & Popular Culture, Inc., a Delaware corporation, with offices located at 2205 Faraday Avenue, Suite E, Carlsbad, CA 92008 ("Partner" or "BioPop"); SEA and Partner are sometimes individually referred to as a "Party" or collectively as the "Parties." The details of the promotion, sponsorship, or other event (collectively, the "Event") are as follows:

Park: SeaWorld San Diego

Name of Event: Electric Ocean

Date(s) of Event: June 17, 2017 – September 4, 2017 (select dates)

Location of Event: SeaWorld San Diego

SEA Representative: Wyatt Ellison

Email: Wyatt.Ellison@seaworld.com

Partner Representative: Andy Bass

Email: Andy@biopop.com

1. **Agreement and Term.** This Agreement shall begin on the Effective Date and, unless sooner terminated in accordance with the provisions hereof, shall end on the date specified above; subject, however, to the survival of any term or provisions of this Agreement contemplating performance after the expiration or earlier termination of this Agreement.

2. **Partner Consideration.** Partner shall provide SEA with the following:

See Exhibit A

3. **SEA Consideration.** SEA shall provide Partner with the following:

See Exhibit B

4. **Amendment and Authorized Signatories.** No supplement, modification, or amendment of this Agreement shall be binding unless in a writing specifically referencing this Agreement and executed by authorized representatives of both Parties. Each of the individuals executing this Agreement certifies that he or she is duly authorized to do so.

5. **SEA's Intellectual Property and Other Rights.** SEA grants to Partner the right to use SEA's trademarks furnished by SEA in connection with the Event; provided, however, that said right is non-exclusive, non-assignable and non-transferable. Partner shall acquire no right to use, and shall not use any trademark, logo, name or other indicia of SEA or the Park in any manner whatsoever without the express, prior written consent of SEA. No SEA intellectual property shall be changed in any way unless approved in advance by SEA in writing. The provisions of this paragraph shall be an independent covenant and shall survive the expiration or sooner termination of this Agreement. SEA and its affiliated companies operate other theme parks, facilities, and businesses, and this Agreement does not in any way provide Partner with any rights with respect to any other operations of SEA and/or its affiliated companies, unless specifically described herein.

6. **Partner's Intellectual Property and Other Rights.** Partner grants to SEA the right to use Partner's trademarks furnished by Partner in connection with the Event; provided, however, that said right is non-exclusive, non-assignable and non-transferable. Partner shall acquire no right to use, and shall not use any trademark, logo, name or other indicia of Partner in any manner whatsoever without the express, prior written consent of Partner. No Partner intellectual property shall be changed in any way unless approved in advance by Partner in writing. The provisions of this paragraph shall be an independent covenant and shall survive the expiration or sooner termination of this Agreement.

7. **Indemnification:**

A. Partner hereby agrees to hold harmless, indemnify, and defend SEA, its subsidiaries, affiliates, and all companies directly or indirectly controlling, controlled by, or under common control with and their respective shareholders, officers, directors, members, agents, employees, assigns, trustees, receivers, and successors (sometimes collectively referred to herein as "SEA Indemnitees" and individually as a "SEA Indemnitee") from and against any and all third party claims, damages, liabilities, losses, costs, and expenses, alleged or actual, which one or more of the SEA Indemnitees may incur, including reasonable attorneys' fees and costs, obligations, liens, liabilities, actions, and causes of actions (collectively, the "Claims"),

which any one of the SEA Indemnitees may suffer or incur arising directly or indirectly out of or in connection with: (i) the willful misconduct or negligent act or omission of Partner; (ii) the acts or omissions of any third parties engaged by Partner providing services in connection with the Event; (iii) the advertising, promotion, preparation for, staging and conduct of the Event by Partner; (iv) any claim of disparagement, infringement of any intellectual property right or violation of rights of publicity or privacy by Partner (with the exception of any such claim attributable solely to Partner's use of SEA's trademarks within the scope of SEA's authorization); or (v) any breach of any provision of this Agreement by Partner.

B. SEA hereby agrees to hold harmless, indemnify, and defend Partner, its subsidiaries, affiliates and all companies directly or indirectly controlling, controlled by or under common control with and their respective shareholders, officers, directors, members, agents, employees, assigns, trustees, receivers, and successors (sometimes collectively referred to herein as "Partner Indemnitees" and individually as a "Partner Indemnitee") from any and all Claims which one or more of the Partner Indemnitees may suffer or incur arising directly or indirectly out of or in connection with: (i) the willful misconduct or negligent act or omission of SEA; (ii) any breach of any provision of this Agreement by SEA; or (iii) any claim of disparagement, infringement of any intellectual property right or violation of rights of publicity or privacy solely related to any use by Partner of SEA's trademarks within the scope of SEA's authorization.

C. The foregoing indemnification obligations shall survive any termination or the expiration of the Term of this Agreement. Each Party shall give the other Party prompt written notice of any Claim brought against it coming within the purview of these indemnities. Within fifteen (15) days after receipt of such notice, the indemnitor shall undertake the defense of each such Claim with counsel satisfactory to and approved by the indemnitee. If the indemnitor fails to undertake and sustain the defense of any Claim in the manner required by this Section, the indemnitee may engage separate counsel, pay, settle, or otherwise finally resolve such Claim for the account and at the risk and expense of the indemnitor. In such case, any payment, settlement, or final resolution otherwise by the indemnitee shall release the indemnitor from liability for such Claim. If the indemnitor undertakes the defense of a Claim in the manner required by this Section, the indemnitee may engage separate counsel and participate in the defense of any Claim brought against it, but at the sole cost and expense of the indemnitee.

8. **Notices.** All notices, consents, requests, demands, and other communications hereunder are to be in writing, and are deemed to have been duly given and received: (a) when delivered in person; (b) three (3) business days after deposit in the United States mail, postage prepaid, and sent by certified mail with return receipt requested; or (c) one (1) business day after delivery to an overnight courier service with payment provided respecting any domestic delivery and three (3) business days respecting any international delivery; in each case with proof of delivery provided, and addressed as provided in this Agreement, unless otherwise instructed in writing. In addition, a mandatory copy of any communication alleging a default of breach or default of any kind also shall be sent to SEA as provided above at: SeaWorld Parks & Entertainment, Inc., 9205 South Park Center Loop, Suite 400, Orlando FL 32819-8651 Attention: General Counsel.

9. **Governing Law and Jurisdiction.** This Agreement is made in the state in which the Park is located and shall be governed exclusively by the substantive laws of such state without giving effect to any conflict-of-laws rules requiring the application of the substantive law of any other jurisdiction. SEA and Partner knowingly and voluntarily intend and agree that the mandatory, exclusive venue for any action in any way related to this Agreement or its enforcement shall be the federal court for the district in which the Park is located or, in the alternative, any state court of competent jurisdiction in the county where the Park is located. All Parties hereby knowingly and voluntarily waive any and all objections to venue and personal jurisdiction in the foregoing courts and submit themselves to the jurisdiction thereof.

10. **Remedies.** Upon termination for cause, or default or breach of this Agreement by either Party, the terminating or non-defaulting Party shall have the right to recover from the other Party all damages and other remedies available to the terminating or non-defaulting Party at law or in equity resulting from or arising out of the default under this Agreement. All such remedies shall be cumulative and non-exclusive. To the extent permitted by law, each remedy may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy.

II. Miscellaneous Provisions:

- A. **Entire Agreement.** This Agreement and all Exhibits hereto constitute the final, complete, and exclusive understanding between the Parties with respect to its subject matter and supersedes all prior or contemporaneous agreements in regard thereto.
- B. **Assignment and Subcontracts.** This Agreement shall be binding upon SEA and Partner, and their respective successors and permitted assigns. Partner shall not be permitted to assign its rights hereunder without the prior written consent of SEA, which may be granted in SEA's sole discretion.
- C. **Relationship.** The Parties shall be and act as independent contractors, and under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, leasehold, or employment between the Parties.
- D. **No Waiver.** The failure of either Party to object to or to take affirmative action with respect to any conduct of the other Party which is in violation of the terms hereof shall not be construed as a waiver thereof, nor of any subsequent breach or wrongful conduct.
- E. **Survival.** The warranties, remedies, and indemnities provided in this Agreement, as well as any other sections specifically indicating survival, shall survive the expiration or earlier termination of this Agreement.
- F. **Compliance with the Law.** All provisions of this Agreement are subject to all applicable requirements, limitations, and conditions of the federal, state, and local codes, laws, ordinances, regulations, and rules applicable in the state in which the subject Park is located. Partner shall comply with all applicable local, state, and federal laws, rules, regulations, and ordinances, and all goods and services furnished under this Agreement shall comply with said laws, rules, ordinances, standards, and regulations, and shall be free from any lien or encumbrance of any kind and shall not infringe upon any third party's rights.
- G. **Severability.** If any provision of this Agreement is deemed to be invalid or unenforceable by any court of competent jurisdiction, then the balance of this Agreement shall remain enforceable, and such invalid or unenforceable provision shall be enforced by such court to the maximum possible extent.
- H. **Attorneys' Fees.** If either Party commences legal action to interpret or enforce the terms of this Agreement, the prevailing Party in such action shall be entitled to recover reasonable attorneys' fees and costs, including, without limitation, in-house attorney fees and all fees and costs incurred at the trial and appellate levels and in any bankruptcy, reorganization, insolvency or similar proceeding.
- I. **Execution.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the Parties. The Parties may execute this Agreement and any amendment hereto by an exchange of scanned and emailed executed copies. In the event of such an exchange, this Agreement and any applicable amendment shall become binding and any scanned and emailed signed copies shall constitute admissible evidence of the existence of this Agreement and any applicable amendment. This Agreement cannot be amended except by an agreement in writing signed by both Parties and specifically referring to this Agreement.
- J. **Confidentiality.** This Agreement, and all non-public information furnished to the other party in writing, verbally, or through any medium, including but not limited to trade secrets ("Confidential Information"), are and shall remain confidential, and shall be communicated and available only to such employees or agents of either Party with a legitimate business need to know such confidential terms and conditions; provided that Confidential Information shall not include any information which: (i) is or becomes generally available to the public other than as a result of a disclosure by the receiving Party or its employees or agents in breach of the terms hereof; (ii) becomes available to the receiving Party on a non-confidential basis from a source not known by the receiving Party to be under a duty of confidentiality; (iii) is already known to the receiving Party at the time of disclosure; or (iv) is explicitly approved for release by written authorization of the disclosing Party. Each Party shall be responsible for any breach of this Section by such Party's employees, related companies and/or agents and each such Party shall cooperate with the other Party to remedy the breach.
- K. **Termination.** In addition to any other remedy set forth in this Agreement or otherwise available at law or in equity, either party may terminate this Agreement at any time, effective upon the other party's receipt of termination notice, without

prejudice to any other legal rights to which such terminating party may be entitled, upon the breach of this Agreement or default by the other party that is not cured within ten (10) days following written notice of such breach or default.

L. **Force Majeure.** Neither Partner nor SEA shall be in default hereunder by reason of its delay in the performance of, or failure to perform, any of its obligations under this Agreement and/or any Amendment if such delay or failure is caused by strikes, acts of God, acts of terrorism, public enemies, riots or any other causes beyond its reasonable control, or due to the fault or negligence of the other party. During such intervening event, all of the parties shall take all reasonable steps to perform its obligations required hereunder by other means and in any event shall, upon termination of such intervening event, forthwith resume performance of its obligations under this Agreement and/or any Amendment.

PARTNER UNDERSTANDS THAT THE TERMS OF THIS AGREEMENT ARE SUBJECT TO APPROVAL BY THE CITY OF SAN DIEGO AND IN THE EVENT THAT SEA IS UNABLE TO GAIN SUCH APPROVAL WITHIN FORTY-FIVE DAYS OF EXECUTION HEREOF, THE TERMS OF THIS AGREEMENT SHALL BE DEEMED NULL AND VOID.

SEA WORLD LLC dba: SeaWorld San Diego

By: Tara M Pleickhardt

Name: _____

Title: Tara M Pleickhardt

Date: Director of Accounting

4/24/17

BIOLOGICAL & POPULAR CULTURE, INC.

By: Dean Sauer

Name: Dean Sauer

Title: CEO

Date: 4-12-2017

Exhibit A
Benefits to SeaWorld from BioPop

- BioPop will ship 700 liters of healthy dinoflagellates culture once a month to SeaWorld for the display over 3 months. Total 2100 liters (\$315,000 list) in exchange for marketing and promotions offered. BioPop will provide transportation and SeaWorld will supply peristaltic pumps and tubing necessary for accessing cultures in the 100 liter containers provided by BioPop.
- BioPop to provide 6 hours of senior level consulting time.
- For requests in excess of the amounts to be delivered above, the rates are:
 - o \$5,400/100 liters* includes transportation costs
 - o \$350/hr consulting time beyond the originally allocated 6 hours.
- Any replacement shipments for crashed or diminished cultures within a two week period will be billed at \$1,400 per 100 liters. Only one replacement per actual order.
- BioPop would approve all signage copy associated with the BioPop product.
- BioPop will provide marketing materials/collateral/copy to support SeaWorld designers.
- BioPop is open to exploring expansion to other SeaWorld parks in 2018 and beyond

Exhibit A
Benefits to BioPop from SeaWorld

- **Park Activation:**
 - Exhibit Signage during the Electric Ocean Event – SeaWorld will design, fabricate and install the following:
 - Branded entry sign at exhibit
 - Branded signage in hallway queue:
 - BioPop logo sign
 - BioPop company info sign
 - Education signage with co-branded logo
 - Branded logo included on pathway banners near the exhibit
 - Park Wide – SeaWorld will design and implement the:
 - Branded logo included on Park Map (timing subject to print runs)
 - Branded logo included on SeaWorld App
 - Branded logo within the exhibit
- **External Activation:**
 - Logo and brief description on SeaWorld website
 - Multiple mentions on social media throughout the event
 - Featured on event Public Relations LIVE news casts
 - Included in pass member communication (email to 350-400k pass holders)
- **Operation:**
 - SeaWorld will design, build and install the exhibit
 - SeaWorld will follow BioPop's practices and procedures with respect to the care, transport and maintenance of the organisms
 - Based on recommendation from BioPop, SeaWorld has revised its daily capacity to 1,750 people
 - 350 Liters will be on display at a time with the exhibit
 - Guests will be pulsed through the exhibit