

**AGREEMENT FOR CO-PRESENTATION OF AND REVENUE SHARING FOR
FIESTAS DEL MARIACHI EVENT**

THIS AGREEMENT is made and entered into this 17th day of September 2024 (“Effective Date”) by and between Power of One Foundation Inc, a California non-profit public benefit corporation (hereinafter “Foundation”), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California (hereinafter “City”). Foundation and City are also referred to as the Parties or singularly as a Party.

RECITALS

- A. City desires to co-present a Fiestas Del Mariachi (“Event”) at the City’s Santa Ana Stadium (“Stadium”). The Event will feature a youth talent showcase and resource fair in the morning and afternoon, and an evening portion of the Event with professional Mariachi bands and performers;
- B. The Parties have agreed to share revenue in an effort to ensure reimbursement of all expenditures by the Parties, and to allow the City to determine whether it would like to co-present similar events in the future through a public-private partnership;
- C. Foundation is a non-profit public benefit corporation whose mission is to provide basic human resources to every person in need of them, regardless of their country of origin, race, gender, or socioeconomic status;
- D. The Event supports the Foundation’s Mission by empowering youth and supporting mental health through music; and
- E. Foundation has experience in planning and holding large scale community events. Foundation also represents that any services performed by Foundation under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional non-profit foundation.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

1. FOUNDATION OBLIGATIONS

Foundation will provide the necessary planning, management, staffing, and services required to put on the Event (except those items and services specifically excluded below in this Agreement) at Foundation’s expense. The Parties agree that Event will be held on October 13, 2024, but should the need to reschedule the Event occur, the Parties agree to work together to determine a mutually agreeable new date. The planning, management and services required to put on the Event shall include, but are not limited to, the following:

A. Event Permit

Foundation shall submit application for City Special Event Permit (“Permit”) and shall comply with all conditions and requirements set forth in Permit, City special event rules, policies and procedures as

provided in advance in writing to the Foundation.

B. Youth Showcase and Resource Fair

Foundation agrees that Youth Showcase and Resource Fair will have free admission for the public. The Youth Showcase will feature local youth groups. The Resource Fair will feature local non-profits and community organizations.

C. Food and Beverage Vendors

Foundation shall require all food and beverage vendors to obtain all necessary permits and licenses to sell or provide food and/or beverages at the Event, including, but is not limited, to City permits, Orange County Health permits, and regulatory permits as necessary from the Alcoholic Beverages Commission ("ABC") and any other applicable regulatory agencies. Foundation shall require food and beverage vendors to comply with all applicable laws and regulations regarding food and beverage preparation, handling, and service, and any applicable laws and regulations regarding the disposal of cooking grease.

Foundation shall require that any vendor selling alcoholic beverages have sufficient safeguards in place to protect against sales of alcohol to anyone under the age of twenty-one 21 and utilize an appropriate and reasonable process for checking identification of any person purchasing alcoholic beverages at the Event.

D. Other Vendors (Not Food and Beverage)

Foundation shall require all other vendors to obtain a City permit and City of Santa Ana business license and to comply with all other applicable laws and regulations.

E. Marketing and Advertising of Event

Foundation shall be allowed to list City as Co-Presenter of Event and to utilize City logos and marks for purposes of advertising for the Event. All use of City's name, logos, trademarks, or similar information shall be pre-approved by City prior to distribution to the public which includes, but is not limited to, press releases regarding the Event, website advertising, email blasts, radio spots, and social media posts.

F. Security

Foundation shall work with SAPD to ensure there is sufficient security to keep order and maintain safety for the Event. To the extent SAPD officers are necessary for the Event, Foundation shall pay those costs. All private security providers and guards will be licensed by the State of California when required by applicable laws and regulations.

G. Mariachi Bands and Performers for Evening Portion of Event

Foundation shall secure performance of four (4) to five (5) Mariachi Bands or performers for the evening portion of Event which will require paid admission. Foundation shall provide a stage, professional lighting, and all other necessary elements for the performances. Foundation shall comply with all applicable laws and regulations, including but not limited to, building, electrical, plumbing, and fire codes, in addition to maximum occupancy provisions for the Event. Foundation

will advise City of the identity of the bands and performers no later than three (3) weeks prior to the Event. Foundation shall ask all bands and performers that the daytime Event is a family friendly event and ask said bands and performers to select performance material that is family friendly and without profanity.

H. Sponsorships

Foundation will have the ability to solicit Sponsors for the Event subject to discussion and input direction from City and understanding that City is a public entity subject to certain legal and policy-related restrictions.

I. Restrooms

Foundation shall provide additional restrooms as deemed necessary by City Parks and Recreation staff for the Event; and the costs of such additional restrooms will be added to the overall budget for the Event.

J. First Aid Station(s) or Ambulances

Foundation shall provide a First Aid Station(s) for the Event when deemed necessary by City Parks and Recreation staff; and the costs of such First Aid Station(s) or the ambulance(s) will be paid by Foundation.

K. Trash Clean Up

Foundation is responsible for maintaining litter control and sufficient trash bins during the Event. Foundation is also responsible for clean-up after the Event and returning the Event location to the same condition that it was in prior to the Event. Foundation will require removal and disposal of grease from cooking booths or booths where food is sold in compliance with applicable laws. Foundation will use or require vendors or sub-contractors to use, grease barrels where applicable. Event clean-up shall be completed no later than Monday, October 14, 2024, at 1:00 p.m. Foundation will work diligently to meet Event clean-up deadline.

2. CITY OBLIGATIONS

- A. City will provide flooring to cover the Stadium athletic field for the Event and will arrange for installation of flooring at City's expense. In addition, City agrees to absorb the fees for Permit for Event. City's financial obligations regarding the Event shall not exceed one hundred and thirty thousand dollars (\$130,000.00).
- B. City agrees to use City social media, the City's website, and other city communication mediums to advise the public about the Event. This shall be at City's sole discretion as to the manner, method and frequency.

3. REVENUE SHARING

- A. Foundation will be responsible for the payment of costs associated with the services provided pursuant to this Agreement; including the cost for City services as agreed to by the Parties, such as the presence of Santa Ana Police Department officers, costs of bands and performers, equipment and support personnel (excluding City personnel provided as part of the Eddie

Exhibit 1

West Field Santa Ana Stadium's facility rental fees), security, set up, clean up, sponsorship acknowledgements, insurance, taxes, fees (except those expressly assumed by City pursuant to this Agreement), and any other costs involved in undertaking the Event.

- B. As noted in Section 2 above, the City will procure and install flooring over the Eddie West Field at the Santa Ana Stadium for the Event at City's cost and will waive Permit fees for Foundation.
- C. The Parties agree to a share of the revenue from the Event. The goal of the revenue sharing arrangement is that both Parties recoup their share of all costs paid by each Party or absorbed by the City.
- 1) For purposes of this Agreement, "Revenue" means total ticket sales for the evening portion of the Event, total fees paid by food, beverage and other Vendors to the Foundation, and total sponsorship fees, excluding any in-kind sponsorship, paid to Foundation for the evening portion of the Event.
 - 2) The Parties agree to share Revenue from the Event as follows:

Table 1-Phased Approach to Expenditure Recovery

For clarity purposes, the following table includes the cost estimate, (but does not include the any additional restrooms, security, first aid stations and on-site ambulances costs that may be requested by the City and will need to be added to the overall cost estimate), for the Event:

	City Pays/Absorbs	Foundation Pays	Total
Flooring Rental	\$118,548		\$118,548
Absorption of Eddie West Field at the Santa Ana Stadium Rental Fee	\$9,005		
Security, Food/Beverage, Stage/Lighting, Additional Floor Seating, Sound System		\$411,826	\$411,826
Total Costs	\$127,553	\$411,826	\$530,374

Foundation has estimated that the Event will generate approximately \$775,950 of Revenue. Under normal circumstances, the City would collect a fee of \$9,005 for the rental fee for the Eddie West Field at the Santa Ana Stadium. However, in lieu of the normal rental fee, the City and Foundation have agreed to the following formula for cost recovery for the Event, as outlined in the table below:

Milestone	Ratio of Revenue to Total Costs	City Cost Recovery at each Milestone
1	0%-25%	Maximum of \$13,259 (10% of revenue)
2	26%-50%	Maximum of \$53,037 (20% of revenue)
3	51%-75%	Maximum of \$118,548 (City's portion of total costs) + \$786 (a portion of the stadium rental fee)
4	76%-100%	Maximum of \$118,548 (City's portion of total

Exhibit 1

		costs) + \$9,005 (entire stadium rental fee)
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If the Revenue exceeds total costs, the City will receive the maximum cost recovery and stadium rental fee outlined in Milestone 4 in the table above, plus twenty percent (20%) of Revenue in excess of Total Costs.

Example #1

If the event only generates \$132,594 of Revenue (25% of total costs), the City will only receive \$13,259 (10% of the Revenue) to offset its costs. This would result in a net loss of \$105,289 (\$13,259 Revenue, less \$118,548 cost).

Example #2

If the event generates \$530,374 of Revenue (100% of total costs), the City will receive reimbursement for the \$118,548 of flooring and the \$9,005 Eddie West Field at the Santa Ana Stadium Rental Fee that would have normally been charged.

Example #3

If the event generates \$775,950 of Revenue, as estimated by the Foundation, the City will receive the same \$118,548 cost recovery and \$9,005 Eddie West Field at the Santa Ana Stadium Rental Fee in the previous example, plus \$49,115 (\$775,950 Revenue, less \$530,374 total costs, multiplied by 20%).

Appropriation Adjustment

City staff requests an appropriation adjustment of \$118,548 for the cost of flooring rental from the City's General Fund balance available for spending (currently estimated at \$1,508,397). As discussed above, the City will recover some portion of this cost. If the Event generates Revenue as outlined in Example #3 and the City receives an additional \$49,115 of Revenue, the City staff will return to City Council with a proposed appropriation adjustment to enable additional department spending.

Table 2-Proposed Revenue Sharing Arrangement Between Foundation and City

Milestone	Cost Recovery (%)	Foundation	City	City Projected Revenue After Expenditures
5	100%+	80%	20%	If all Milestones are met, the City anticipates a minimum revenue of \$47,314

- 3) Foundation shall provide to City in writing an accounting of all Revenue collected from the Event and expenditures made by Foundation for the Event within thirty (30) days of the Event.
- 4) City will have thirty (30) days to review the accounting and if the City deems necessary, within the thirty (30) days to notify Foundation in writing an audit of the accounting by a third party certified public account ("CPA") of City's choosing and at City's expense. If the City's thirty (30) days to review the accounting elapses with no action by the City or City does not request an audit within those thirty (30) days or City notifies Foundation at any time during City's thirty (30) day review period that it will not be seeking an audit, Foundation shall pay City its share of the Revenue within fourteen (14) days thereafter.
- 5) If City deems an audit is necessary, the audit will be done and the results

communicated to Foundation in writing within ninety (90) days of the City's notice that it deems an audit necessary. Foundation shall provide access to all records of all Revenue collected from the Event, expenditures made by Foundation for the Event, and all records regarding the Event deemed necessary by the City's third party CPA for purposes of the audit.

- 6) If the City determines that a third party audit is required, the Foundation will issue payment of the City's portion of the revenue within thirty (30) days of the determination of City's third party CPA.

D. This Section shall survive expiration of the Agreement.

4. ACCESS TO EVENT BY CITY STAFF

City staff designated by the City's Parks, Recreation and Community Services Agency and/or the City Manager's Office wearing City identification will have access to the Event. For clarity, Foundation will provide City with one lounge seating area which encompasses seating for only 12 people.

5. TERM

This Agreement shall commence on the Effective Date and terminate on January 15, 2025 ("Term"), unless terminated earlier in accordance with Section 13, below.

6. INDEPENDENT CONTRACTOR

Foundation, its agents, officials, Board of Directors and staff shall, during the entire Term of this Agreement, be construed to be independent contractors and not employees of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Foundation performs the services which are the subject matter of this Agreement; however, the services to be provided by Foundation shall be provided in a manner consistent with all applicable standards and regulations governing such services. Foundation shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

6. OWNERSHIP OF MATERIALS

This Agreement creates a non-exclusive and limited license for City to copy or use, to the extent owned by Foundation, or allowed for limited use for the Event pursuant to a contract with the performer(s), any copyrights, designs, and other intellectual property embodied in the marketing materials, which are prepared or caused to be prepared by Foundation for the Event under this Agreement ("Documents"). Provided, however, that any marketing material prepared for or by Foundation shall remain the sole and exclusive property of Foundation; and except as set forth herein, City shall have no right to copy, use, modify, reuse or sublicense any and all such items other than in connection with the Event. The Foundation may not use any drawings or artwork that identifies the City of Santa Ana or uses the City seal for any use other than for the Event without written authorization. For avoidance of doubt, all marketing materials, plans, specifications, studies, drawings, artwork, and any other documents or works of authorship is owned by the Foundation or the specific group of performers and Foundation has limited right to use such works.

7. INSURANCE

Foundation shall procure and maintain for the duration of the Agreement insurance against third party claims for injuries to persons or damages to City property ("Claims") which may arise from or in connection with products and materials supplied to City. Total cost of such insurance shall be borne by Foundation. The minimum scope and limits required are as follows:

- A. Commercial General Liability: coverage shall be at least as broad as Insurance Services Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
- B. If Foundation maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Foundation. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.
- C. The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - 1. City of Santa Ana, its City Council, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the City including materials, parts, equipment, and personnel furnished in connection with such work or operations.
 - 2. If allowed by Foundation's insurance company, insurance company agrees to waive all rights of subrogation against City of Santa Ana, its City Council, its officers, officials, employees, agents, and volunteers for losses paid under the terms of any policy which arise from work performed by Foundation for City.
 - 3. For any Claims related to this Agreement, Foundation's insurance coverage shall be primary and any insurance maintained by City, its City Council, its officers, officials, employees, agents, or volunteers shall not contribute with it.
 - 4. If allowed by Foundation's insurance company, a severability of interest provision must apply for all the additional insureds, ensuring that Foundation's insurance shall apply separately to each insured against whom a Claim is made or suit is brought, except with respect to the insured's limits of liability.
 - 5. Foundation shall ensure that the insurance policy required herein shall not be canceled, suspended, voided, reduced in coverage or in limits, non-renewed by the carrier, or materially changed except after thirty (30) days prior written notice has been given to City. Foundation agrees to provide the City with ten (10) days prior written for any policy cancellation or non-renewal due to non-payment.
 - 6. Certificate Holder on each Evidence of Insurance certificate shall be: City of Santa Ana, Attention: Risk Management Division, 20 Civic Center Plaza, P.O. Box 1988, Santa Ana, CA 92701.
- D. Insurance is to be placed with insurers authorized to conduct business in the state of California with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to City.

- E. Foundation shall furnish City with Certificates of Insurance, copies of the insurance policies including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause).
- F. To the extent applicable, and after discussion with City and potential subcontractor(s), Foundation shall require such applicable sub-contractors to comply with all of the provisions in this Agreement regarding Insurance.

8. INDEMNIFICATION

Foundation agrees to defend and indemnify City, City officials, officers, agents, employees, assigns and successors in interest, from and against any and all third party claims, lawsuits, causes of action, losses, demands expenses, including but not limited to, reasonable attorney's fees, costs of litigation, and damages of any kind for death or injury of any kind, including Foundation's employees, agents, officials, and volunteers, or damage or destruction of any property of Foundation, vendors, subcontractors, arising from the negligent acts, omissions or willful misconduct resulting from the Event. This provision does not include the negligence, omissions or willful misconduct of the City, City officials, officers, agents, employees, volunteers, assigns, and/or successors in interest. The provision of this Section survive cancellation or expiration of this Agreement.

9. CONFIDENTIALITY

If either Party receives from the other information which due to the nature of such information is reasonably understood to be confidential and/or proprietary, receiving Party agrees that it shall not use or disclose such information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. "Confidential Information" shall include all nonpublic information. Confidential information includes not only written information, but also information transferred orally, visually, electronically, or by other means. Confidential information disclosed to either Party by any subsidiary and/or agent of the other Party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of the disclosing Party where it is disclosed in a publicly available source; (c) is in rightful possession of the disclosing Party without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by the Party without reference to information disclosed by the other Party. The provision of this Section survive cancellation or expiration of this Agreement.

10. NOTICE

Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by fax or other telegraphic communication in the manner provided in this Section, to the following persons:

To City: City Clerk
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92702-1988

Fax 714- 647-6956

With courtesy copies to:

Executive Director –Parks, Recreation and Community Services Agency
City of Santa Ana
20 Civic Center Plaza (M-75)
P.O. Box 1988
Santa Ana, California 92702
Fax 714- 571-4221

And

City Attorney
City of Santa Ana
20 Civic Center Plaza (M-29)
P.O. Box 1988
Santa Ana, California 92702
Fax 714- 647-6515

To Foundation:

Power of One Foundation
Attention: Andre Roberson, Executive Director
918 North Cleveland Street
Orange, California 92867
Email: andre@powerofonefoundation.org

A Party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by fax, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

11. EXCLUSIVITY AND AMENDMENT

This Agreement represents the complete and exclusive statement between the City and Foundation, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Foundation. The Parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Foundation or the City. Each Party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any Party, or anyone acting on behalf of any

Party, which are not embodied herein.

12. ASSIGNMENT

Inasmuch as this Agreement is intended to secure the specialized services of Foundation, Foundation may not assign, transfer, delegate, or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. Nothing in this Agreement shall be construed to limit the City's ability to have any of the services which are the subject to this Agreement performed by City personnel or by other Foundations retained by City at its cost and expense.

13. TERMINATION

- A. Without Cause Termination. This Agreement may not be terminated without cause unless it is by mutual agreement in writing of both City and Foundation.
- B. With Cause Termination. This Agreement may be terminated with cause by either City or Foundation with no less than fourteen (14) days' written notice to the other Party. "Cause" shall mean:
 - 1) Either Party's material breach of its obligations under this Agreement; or
 - 2) Either Party's filing for bankruptcy protection.
- C. To the extent possible, Foundation and City agree to use best efforts to resolve any issues or concerns that develop and to resolve them to the mutual satisfaction of Foundation and City. Each Party recognizes that the other will have a substantial investment of time and money in performing this Agreement.

15. COMPLIANCE WITH ALL LAWS

The Parties shall comply with all applicable federal, state, and local laws and regulations including but not limited to the American with Disabilities Act.

16. DISCRIMINATION

Foundation shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, military service or veteran's status or any other grounds prohibited by state or federal law. Foundation affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

17. JURISDICTION – VENUE

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that

Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

18. PROFESSIONAL LICENSES

- A. Foundation shall, throughout the term of this Agreement, maintain all licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the City of Santa Ana and all other governmental agencies. Foundation shall notify the City immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. For purposes of this Section, email communication to the City is sufficient notice for such inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions.
- B. Foundation shall require that all vendors and/or sub-contractors obtain all necessary licenses, permits, approval, waivers and exemptions necessary for the provision of any contracted services hereunder and required by the laws and regulations of the United States, the State of California, the City of Santa Ana and all other governmental agencies.

19. MISCELLANEOUS PROVISIONS

- A. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective Parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.
- B. This Agreement may be signed in counter parts with each counter part being assembled to create a fully executed Agreement. This Agreement may be signed electronically by any means mutually agreed upon by the Parties and upon sufficient evidence to demonstrate the validity of each signature.

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

ATTEST:

CITY OF SANTA ANA

Jennifer L. Hall
City Clerk

Alvaro Nuñez
City Manager

Signatures continue on the next page

SONIA R. CARVALHO
City Attorney

By: Laura A. Rossini
Laura A. Rossini
Chief Assistant City Attorney

POWER OF ONE FOUNDATION, INC.

RECOMMENDED FOR APPROVAL:

Hawk Scott
Hawk Scott
Executive Director
Parks, Recreation & Community
Services Agency

BY: Andre Roberson
Andre Roberson
Executive Director