

**SPECIAL EVENT AGREEMENT BETWEEN
WICK COMMUNICATIONS CO. AND THE CITY OF BISBEE**

THIS SPECIAL EVENT AGREEMENT (“Agreement”) is made by and between Wick Communications Co., an Arizona corporation (the “Event Promoter”) and the City of Bisbee, an Arizona municipal corporation (the “City”), and is entered into this 5th day of July, 2023 (the “Effective Date”). Event Promoter and the City may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, Event Promoter is the sponsor and promotor of the Bisbee 1000, The Great Stair Climb (the “Bisbee 1000”), consisting of an approximately 4.5-mile race course that features nine staircases (over 1000 total steps) connected by the winding roads in Old Bisbee; and,

WHEREAS, the Bisbee 1000 started in October 1990 and is held annually each year during the third week of October, garnering national and international attention and attendance; and,

WHEREAS, the City recognizes special events, such as the Bisbee 1000, are an important part of the City’s history and quality of life, together with the contribution they make to a sustainable tourism industry; and,

WHEREAS, Special events also provide economic benefits to local businesses and residents, together with unique civic, cultural, educational, recreational, and entertainment experiences; and,

WHEREAS, the City and Event Promoter desire to enter into this Agreement to recognize and reserve the third week of October for the Bisbee 1000 event, to provide priority for the Bisbee 1000 as a special event in the City for the third week of October in order to avoid other conflicting special events during that time period that may interfere with the Bisbee 1000.

NOW THEREFORE, in consideration of the foregoing Recitals and the mutual terms and conditions contained in this Agreement, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Incorporation of Recitals.** The Event Promoter and the City agree the Recitals set forth above are true and accurate and are hereby incorporated by reference.

2. **Responsibility of Event Promoter:** Event Promoter shall:
 - a. Event Promoter will organize, run and manage the Bisbee 1000 and coordinate with the City to ensure that the impacts of the Bisbee 1000 are minimized to the surrounding community.

b. Event Promoter shall submit for and obtain all necessary special event permits, which may include, but are not limited to, special event liquor licenses, sign plan approval, security plan approval, and waste/recycling plans, and all other required permits, approvals, etc. that may be encompassed by the Bisbee 1000 event. These permits shall be obtained each year prior to each annual Stair Climb pursuant to the City's then existing special event permit requirements.

c. Deliver and set up necessary equipment approximately forty-eight (48) hours before the Bisbee 1000, such that the equipment is fully functional and may be operated safely no later than twelve (12) hours before the commencement of the Bisbee 1000 event. Event Promoter will take all actions necessary to avoid conflicts with others' use of the City's venues during the equipment setup and Event Promoter shall disassemble and remove all equipment within 24 hours after the conclusion of the Bisbee 1000 event.

d. Not cause or permit any City property to be injured, marred or defaced in any manner. If any City property is damaged by an act, default or negligence of the Event Promoter, or Event Promoter's agents, employees, contractors, or any person admitted to the Stair Climb event by the Event Promoter, Event Promoter shall pay the City, within thirty (30) days invoice, the cost necessary to restore, repair and/or replace the City property to its present condition.

e. Pay the required fees for the special event permits and services provided by the City pursuant to the City's then current standard fee schedule and comply with all other provisions of this Agreement.

f. Event Promoter shall work with the City to assist in the restoration and maintenance of the stairways used for the Bisbee 1000 event.

3. Responsibility of City: The City shall:

a. The City will provide Event Promoter with exclusive special event permitting for the third weekend of October during the Term of this Agreement for the Bisbee 1000 event and such City property necessary for the Bisbee 1000 event route and will not grant additional special event permits that may interfere with the Bisbee 1000, including no additional special events during the three (3) day period of the Bisbee 1000 for the following City property locations:

- i. Higgins Hill Park;
- ii. Grassy Park (day of the event only);
- iii. City Park (day of the event only); and
- iv. Various streets of Old Bisbee used for the designated Bisbee 1000 Route.
- v. Various parking spaces on the designated Bisbee 1000 Route necessary for open access to the stairways for the Bisbee 1000

Route. Event Promoter will take all necessary steps to limit the number of parking spaces reserved and necessary for the Bisbee 1000 event.

- b. Provide Event Promoter access to the various parks and event locations forty-eight (48) hours before the Bisbee 1000 to deliver and set up necessary equipment and signage for reserved parking the day of the event.
- c. Setup and erect three (3) tents at Higgins Hill Park forty-eight (48) hours before the Stair Climb event.
- d. Deliver and pickup of necessary trash dumpsters at Higgins Hill Park.
- e. Provide necessary police and fire department presence during the Bisbee 1000 event, including necessary traffic control, subject to the City's then current fee schedule for such services and subject to available resources at the time.
- f. Provide Event Promoter with necessary right-of-way use permits for the Bisbee 1000 Route through Old Bisbee on the day of the event.

4. Payment. Event Promoter shall pay the required fees for the special event permits and services provided by the City, which will be based on the then existing City fee schedule and necessary City services for the Bisbee 1000 event. Such fees have historically ranged between \$3,500 and \$5,000 annual, but will be calculated each year based on the criteria for each annual event.

5. Term. This Agreement shall be for a term of five (5) years, terminating following the Bisbee 1000 event in October 2027 (the "Term"), or unless otherwise terminated as provided in this Agreement. Thereafter, this Agreement will be automatically renewed and extended for an additional three (3) two-year terms, unless written notice of non-renewal is provided by either Party sixty (60) calendar days prior to the then expiring Term.

6. Termination. This Agreement may be terminated at any time by either Party upon written notice given no later than one hundred eighty (180) prior to the Bisbee 1000 event.

7. Default. If Event Promoter fails to fulfill Event Promoter's obligations under this Agreement properly and on time, or otherwise violates any provision of this Agreement, the City may terminate this Agreement by written notice to Event Promoter. The City's notice shall specify the acts or omissions relied upon as cause for termination.

8. Insurance: Before the commencement of this Agreement and for each annual Bisbee 1000 event, Event Promoter shall carry public liability and property damage insurance for a combined single limit of at least one million dollars (\$1,000,000.00 per occurrence), two million dollars (\$2,000,000.00) in the aggregate while the Agreement is in effect, and shall name and endorse the City as an additional insured and include an endorsed waiver of subrogation in favor of the City. The policy provided hereunder shall: 1) contain a provision whereby the insurance

company agrees to give all named insureds thirty (30) days written notice before the insurance is cancelled or reduced; 2) be written on an occurrence basis; 3) provide, or be endorsed to provide, for primary coverage without right of contribution from any insurance of the City; and 4) be maintained with companies either rated no less than A- in the most recent edition of "Best's Insurance Guide" or otherwise reasonably acceptable to the City. If Event Promoter maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limit maintained. Failure to provide required coverage and failure to comply with the terms and conditions of this Agreement shall not waive the contractual obligations herein. The amount of insurance required in this Section does not operate to limit Event Promoter's liability in this Agreement or during any of the annual Bisbee 1000 events.

9. Workers Compensation. Event Promoter understands and agrees that Event Promoter's employees, agents, contractors, volunteers, and directors, are not serving as employees of the City in any manner and therefore are not entitled to any of the City's industrial benefit coverages, including Workers' Compensation coverages. Event Promoter acknowledges that any injury its employees/volunteers sustain in the performance of this Agreement will be not be eligible for industrial benefits and any necessary treatment will be Event Promoter, or Event Promoter's insurer's, sole responsibility.

10. Indemnification Obligations. Event Promoter shall indemnify, defend, save and hold harmless the City and its officers, directors, employees, and elected officials from and against all suits or claims that may be based upon any damage or injury or death, to any person or property that may occur, or that may be alleged to have occurred (collectively "Damages"), in the course of the Bisbee 1000 event, unless such Damages are the result of the City and/or its officers and/or its employees' sole negligence or willful misconduct thereof. Event Promoter shall indemnify, defend, save and hold harmless the City and its officers, directors, employees and elected officials, from and against all suits or claims that may be based upon any liability of the City. Event Promoter shall, at the Event Promoter's own expense, pay all charges of attorneys, and all costs and other expenses arising therefrom or incurred in connection therewith, and if any judgment shall be rendered against the City and its officers, directors, employees, and elected officials in any such action, or actions ("Fees"), Event Promoter, at the Event Promoter's own expense, shall satisfy and discharge the same, unless such Fee is the result of the City and its officers, directors, employees, and elected officials sole negligence or willful misconduct.

The City shall not, under any circumstances, be required to indemnify or hold Event Promoter harmless for any claims, losses or liabilities of any kind, and any provision to this or any other contract purporting to impose such liability upon the City shall be null and void.

11. Successors and Assigns. This Agreement is not assignable unless both Parties mutually consent otherwise in writing and signed by both Parties and approved by the City Council. An assignment for purposes of this provision shall include any change in ownership, control or management of the Event Promoter's corporation from what currently exists as of the Effective Date of this Agreement. The requirements of this Agreement are binding upon the heirs, executors, administrators, successors, and assigns of both Parties.

12. Non-Waiver. The failure or delay of either Party to insist upon strict performances

of any of the provisions of this Agreement, or to exercise any of the rights or remedies provided by this Agreement, shall not release either Party from any of the responsibilities or obligations imposed by law or by this Agreement, and shall not be deemed a waiver of any right of either Party to insist upon strict performance of this Agreement

13. Severability. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall be in full force and effect.

14. Conflict of Interest. The Agreement is subject to all provisions of A.R.S. § 38-511.

15. Compliance with Non-Discrimination Laws. Event Promoter shall comply with Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, and State Executive Order No. 99-4 which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities. Event Promoter shall comply with the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap, and the Americans with Disabilities Act.

16. Jurisdiction/Venue. Any action to enforce any provision of this Agreement or to obtain any remedy with respect this Agreement shall be brought exclusively in the Superior Court, Cochise County, Arizona (or, as may be appropriate, in the Justice Courts of Cochise County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks jurisdiction over such action). The Parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action.

17. Entire Agreement and Amendments. This instrument contains the entire Agreement between the Parties hereto and supersedes all prior and contemporaneous agreements, discussions and representations related thereto. No supplement, modification or amendment hereof shall be binding and effective unless in writing and signed by both Parties.

18. No Partnership. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Parties.

19. No Third-Parties. The terms of this Agreement are intended only to define the respective rights and obligations of the Parties hereto. Except as provided for herein, no term or provision of this Agreement is intended to, or shall, be for the benefit of any person or entity not a Party hereto, and no such other person or entity shall have any right or cause of action hereunder, except for permitted successors in interest to the extent that they assume or succeed to the rights and/or obligations under this Agreement.

20. Notices. Unless otherwise provided in this Agreement, all notices, demands, requests, consents, approvals and other communications (collectively "Notices") required or permitted hereunder shall be in writing and delivered by registered or certified U.S. mail, postage

prepaid, or personally delivered, at the address shown below. Notices shall be deemed received at the time of actual receipt, which shall be evidenced by a copy of receipt (in the case of notices that are personally delivered), or as evidenced by the United States Postal Service receipt; or ten (10) calendar days after mailing, whichever comes first, in the case of notices that are mailed:

City: City of Bisbee
Attn: City Manager
76 Erie Street
Bisbee, Arizona 85603

Event Promoter: Wick Communications Co.
Attn: Francis Wick
333 W. Wilcox Dr., Suite 302
Sierra Vista, Arizona 85635

21. Force Majeure. Neither Party shall be responsible for complying with any provision of this Agreement or amendment to this Agreement when prevented from complying with such provision due to an act of God or any other legitimate condition beyond the control of such Party. A force majeure event shall include: Any act of terrorism, severe weather, natural disaster or the imminent threat of such natural disaster, pandemics or epidemics, industry-wide labor or equipment shortages, quarantines, civil disturbances, acts of the public enemy, wars, blockades, public riots, labor unrest (e.g., strikes, lockouts, or other labor disturbances), acts of domestic or foreign governments or governmental restraint or other causes, whether of the kind enumerated or otherwise, and whether foreseeable or unforeseeable, that are not reasonably within the control of a Party.

22. Compliance with Law. Event Promoter shall comply with all City rules and regulations and with all federal, state and local laws, regulations and ordinances applicable to Event Promoter's activities and obligations under this Agreement.

23. Attorney's Fees. In the event of litigation under this Agreement, the prevailing Party shall be entitled to recover its costs and fees, including reasonable attorney's fees as determined by the court in such action.

24. Authorized Signatory. Each Party warrants that the person signing this Agreement on behalf of the Party is authorized to execute and accept contracts of this nature.

25. E-verify Requirements. To the extent applicable under A.R.S. § 41-4401, Event Promoter and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. § 23-214(A). Event Promoter's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

26. Boycott of Israel. To the extent A.R.S. § 35-393 through § 35-393.03 are applicable, the Parties hereby certify that they are not currently engaged in, and agree for the

duration of this Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in A.R.S. § 35-393.

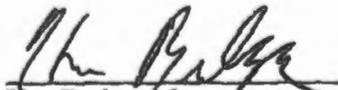
27. Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, this Agreement will promptly be physically amended to make such insertion or correction.

28. Headings. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement.

29. Counterparts and Signatures. This Agreement may be executed in any number of counterparts, and when each Party has executed a copy thereof, such copies, taken together, shall be deemed to be a full and complete original contract between the Parties. An electronic transmission or other facsimile of this Agreement shall be effective and binding upon the Parties as if such signatures were originals, and shall be admissible as evidence of the document and the signer's execution thereof; provided that such Party shall upon request of any other Party, immediately provide an original signature to such other Party.

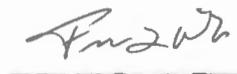
IN WITNESS WHEREOF, the Parties have caused to be affixed the signatures of their respective authorized officials on the Effective Date written above.

CITY OF BISBEE, an Arizona
municipal corporation



Ken Budge, Mayor

WICK COMMUNICATIONS CO.,
an Arizona corporation



Francis Wick, President

ATTEST:



Ashlee Coronado, City Clerk

APPROVED AS TO FORM:



Joseph D. Estes, City Attorney