



Agenda Item #: \_\_\_\_\_

# Staff Report

## City of Manhattan Beach

**TO:** Honorable Mayor Montgomery and Members of the City Council

**THROUGH:** David N. Carmany, City Manager

**FROM:** Richard Gill, Director of Parks and Recreation  
Idris Jassim Al-Oboudi, Recreation Services Manager  
Brienne Sternad, Recreation Supervisor

**DATE:** June 7, 2011

**SUBJECT:** Consideration of Entering Into an Agreement with CommCinema to Provide Six Movies in Polliwog Park and One Movie on the Beach at Minimal Cost to the City

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**RECOMMENDATION:**

Staff recommends that City Council approve entering into an agreement with CommCinema to provide up to six movies in Polliwog Park and one movie on the beach at a minimal cost to the City.

**FISCAL IMPLICATION:**

CommCinema is committed to collecting \$25,000 in sponsorships and food services to cover their in-kind contribution of creative services and professional event production resources needed to implement seven outdoor movies.

There will be minimal staffing costs to the City which staff believes can be covered by collecting donations (passing the hat) at each event. The cost for five staff at each event is \$365.00 per event.

**BACKGROUND:**

In fiscal year 2007/2008, the 'Movies on the Beach' event was cut from the general fund budget. The Parks and Recreation Commission agreed to continue the summer movies through sponsorships and donations. For the past two summers, the Commission has raised over \$10,000 each summer to provide two movies on the beach. Approximately, 500 – 1,000 moviegoers have gathered on the sand with picnic baskets, blankets and chairs to view movies such as: *E.T.*, *The Wizard of Oz*, and more on a 35 ft. wide inflatable movie screen. For the past three years, all professional movie services at Polliwog Park and at the beach have been provided by CommCinema. However, for the past two years the Parks and Recreation Commission has struggled to obtain the approximate \$11,000 required to fund the two movie events. In order to lower the cost and remove any obstruction to the Downtown Business district, the Commission asked if the event could be moved to Polliwog Park.

Commissioner Nicholson and Commissioner Murray then sought the expertise of Scott Tallal at CommCinema regarding sponsorships to fund the 2011 program at Polliwog Park.

**DISCUSSION:**

On April 11, 2011, the Parks and Recreation Commission viewed a presentation by CommCinema, a professional mobile digital production company from Malibu, California. As a premier provider of high-definition portable cinema systems and events, CommCinema proposed an agreement to the Parks and Recreation Department (Attachment A) that provides full cost coverage for the 2011 'Movies in Manhattan' events. CommCinema is proposing six outdoor movie screenings to be held every 2-3 weeks on Saturdays from late June through mid-September 2011 in the amphitheater at Polliwog Park. Additionally, CommCinema will provide one free movie on the beach for the City, located north of the Pier, in the same format as in the previous two years (without a food court). The proposed dates for 2011 are: June 25, July 9 and 23, August 13 and 27, September 10, and September 24.

CommCinema has proposed an advantageous format in order to maintain the 'Movies in Manhattan' events by gathering sponsorships and maintaining a food court at each movie event. This will result in offsetting production costs. CommCinema proposes to recruit and manage a food court consisting of five to eight gourmet food trucks for on-site food sales two hours prior to the start of each screening to be parked on the north side of the ampitheatre, on the concrete walkway next to the pond. They will not be visible from Manhattan Beach Boulevard. Within the food court, CommCinema is to provide color-coded wristbands for paying patrons (\$5.00), provide staffing for wristband sales, and retain all proceeds from wristband sales in order to offset production costs. A limited area of the ampitheater will be designated as the food court sponsorship area. Patrons who pay \$5 will be part of the food court sponsorship and will be able to sit in the designated area on a first-come first-served basis.

Staff's only concern with the attached Agreement is that CommCinema is asking for a five year agreement. They have stated that Section 6 is a deal breaker if it is not kept in the Agreement. They state it will take up to five years to attain sponsors and make this venture profitable for them. Since there is no cost to the City (except minimal staffing), CommCinema will assume all the risks with this endeavor. The Agreement states that the City can drop the Agreement with CommCinema at the end of each year for no reason, but the City cannot find another vendor to replace CommCinema until after 2015.

In addition, CommCinema proposes to provide all of the following at no charge to the City:

- 1) Turnkey event production services, consisting of:
  - a) 28-35' wide inflatable movie screen.
  - b) High definition digital light processing (DLP) digital cinema projector.
  - c) Blu-Ray disc player.
  - d) Full range self-amplified speakers suitable for audiences of up to 1,000.
  - e) Professional stereo audio mixer and ultra high frequency (UHF) wireless microphone.
  - f) Professional audio/visual (AV) staff to set up, operate, and tear down all equipment at each screening.
  - g) Film selection and pre-show entertainment (subject to approval by City staff).
  - h) Film licensing fees.

- i) \$2 million aggregate/\$1 million per occurrence in general liability event insurance coverage.
- 2) “Food court” management, consisting of:
  - a) Recruiting some of Southern California’s top gourmet food trucks to provide on-site food sales for two hours prior to the scheduled start of each movie (food trucks to be parked on the semi-circular walkway near the amphitheater).
  - b) Staffing and supplies for the sale of color-coded wristbands to food court patrons (\$5 per person, free for event sponsors); CommCinema to retain proceeds from food court sales to offset its production costs.
- 3) Sponsorship sales, consisting of:
  - a) Preparation, production, and distribution of all marketing materials.
  - b) Sales staff to solicit sponsorships.
  - c) Coordination with sponsors regarding the submission of sponsor slides and videos.
  - d) Compilation of pre-show sponsor slides and videos to be shown prior to each screening.
  - e) Customized lawn blankets to be provided for sponsors in the reserved seating area, to be located on the top tier of the amphitheater.
  - f) CommCinema to retain proceeds from sponsorship sales to offset its production costs.
- 4) If CommCinema achieves at least \$25,000 from the sale of sponsorships and food court admissions for all six events at Polliwog Park, then for the September 24 bonus screening CommCinema will also provide all turnkey event services (as identified in #1 above) plus:
  - a) Two city police officers.
  - b) Two city community service officers.
  - c) One male and one female porter for restroom maintenance.

The proposal from CommCinema was met with great support by the Parks and Recreation Commission and direction was given to seek the approval of City Council. The Parks and Recreation Commission believes that the planned ‘Movies in Manhattan’ for 2011 will enhance community image and provide a unique recreational experience for the whole family.

ATTACHMENT:

- A. 2011 CommCinema proposed Agreement to the Parks and Recreation Department



May 16, 2011

City of Manhattan Beach  
1400 Highland Ave.  
Manhattan Beach, CA 90266

### EVENT MANAGEMENT SERVICES AGREEMENT

This letter shall serve as an agreement between the City of Manhattan Beach, California (City) and Tallal, Inc. of Malibu, California (dba "CommCinema") made on June 2, 2011. The purpose of this letter agreement is to enable the City to offer community movies at little or no cost to the City. The terms of this agreement are as follows:

1. CommCinema will provide, at its own expense, all of the following for a series of outdoor movie screenings, as defined by Paragraph 3, ("Series") to be held at the City amphitheater at Polliwog Park ("Venue") during the summer of 2011:
  - a. Turnkey event production services, consisting of the following:
    - i. A 25-35' wide inflatable movie screen system with air blower and ground anchors
    - ii. A true high-definition, high brightness DLP digital cinema projector
    - iii. The industry's highest-rated Blu-Ray Disc media player
    - iv. Full-range self-amplified speakers suitable for audiences of up to 1,000
    - v. Professional stereo audio mixer and UHF wireless microphone
    - vi. Professional freelance AV staff to set up, operate, and remove all equipment
    - vii. Film selection and pre-show entertainment (subject to approval by City Manager)
    - viii. All costs associated with film licensing and acquisition, media handling and check through playback as required
    - ix. General liability event and automobile insurance coverage in accordance with Paragraph 7 and workers' compensation insurance as required by law.
  - b. Sponsorship sales, consisting of the following:
    - i. Preparation, production, and distribution of all marketing materials
    - ii. Sales staff to solicit sponsorships
    - iii. Coordination with sponsors regarding the submission of sponsor slides and videos
    - iv. Compilation of pre-show sponsor slides and videos to be shown prior to each screening
    - v. Customized lawn blankets to be provided for sponsors in a reserved seating area on the top tier of the Venue

- c. "Food court" management, consisting of the following:
    - i. Recruiting a maximum of eight Southern California's top gourmet food trucks to provide on-site food sales for at least two hours but no more than three hours prior to the scheduled start of each movie (food trucks to be parked on the concrete walkway on the south side of the pond next to the Venue)
    - ii. Staffing and supplies for the sale of color-coded wristbands to food court patrons (\$5 per person; free for event sponsors)
    - iii. CommCinema must verify that all food trucks have current Los Angeles County health permits food service with an "A" rating. No food trucks will be permitted without a Los Angeles County Health permit with an "A" rating
  - d. Program marketing, consisting of the following:
    - i. Promotional banners subject to City approval and if approved, to be placed on site by City staff
    - ii. Other promotional materials subject to approval by City staff, which will be distributed by CommCinema
    - iii. Artwork for use by City on its own website and other media as desired by City
2. For the Series, City agrees to provide all of the following at its own expense:
- a. Advertising and promotion on the City website, on selected Parks & Recreation Dept. ads in The Beach Reporter, and as otherwise deemed appropriate by City
  - b. Email blasts to the Parks and Recreation Department database
  - c. Flyers, posters, and announcements at City events as deemed appropriate by City
  - d. Advance public relations as desired by City, to advise local residents of event seating policies
  - e. All necessary City permits and reservations required for use of the Venue for the outdoor screening, including the amphitheater and all gazebos west of the red house building except the County health permits which are the responsibility of CommCinema
  - f. Access to two separate 120V 20A AC outlets to provide power for CommCinema equipment
  - g. On-site solicitation of donations ("Donations") to help offset City's costs for the series. City to keep 100% of on site donations
  - h. One Park Ranger or CSO to be at the event to insure safety and security at each event
  - i. Staffing of each event to ensure safe, clean conditions for vendors and participants
  - j. "Snow fence" barriers (or similar) to limit food court access to paying patrons and sponsors
  - k. Pennant tape flag barricade (or similar) and staffing to reserve seating in the eastern half of the Venue for the sponsors and food court patrons
3. CommCinema will retain all proceeds from the sale of sponsorships and food court admissions ("Production Revenue"). The Series will begin with three screenings (June 25, July 9 and 23, 2011). If CommCinema deems Production Revenue to be sufficient to cover its costs and provides the City notice of its intent to add additional events in writing by August 1, 2011, it will continue the Series with up to three additional screenings (August 13 & 27 and September 10, 2011).
4. If Production Revenue for the Series is \$25,000 or higher, a final screening will be held on September 24, 2011 on the beach just north of Manhattan Beach Pier. There will be no "food court"

at the beach event. City will provide 2a-f (as defined above); CommCinema will all turnkey event production services (as defined under 1a above), and will also cover all costs to provide the following:

- a. Two City Police Officers
  - b. Two City Community Services Officers
  - c. One male and one female porter for restroom maintenance
5. If CommCinema falls short of \$25,000 in Production Revenue but City's total Donations exceed \$3,200 over actual costs for the Series, City may hire CommCinema to provide turnkey production services for the September 24 screening at the beach and CommCinema shall provide the same services described in this agreement for a cost not to exceed \$3,200.
6. City recognizes the following:
- a. This agreement does NOT represent a traditional contract for paid services, as CommCinema is undertaking all of the risk and expense in order to offer its services for free (at no charge to City taxpayers).
  - b. As CommCinema is offering its services at no charge to City, City cannot save money by putting this program out to bid.
  - c. CommCinema has expended significant time and expense in developing this program, which represents unique and original intellectual property developed entirely by CommCinema. All such intellectual property shall be owned by CommCinema; City has no rights to such property.
  - d. *If the City a) opts to renew the summer outdoor movie program at any time through the end of 2015, and b) if CommCinema meets all of the obligations contained herein, then City agrees to renew with CommCinema. There is no obligation to for the City to continue the summer outdoor movie program beyond 2011 – but if it does, then it will do so with CommCinema.*
7. Prior to effective date of this Agreement, CommCinema shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by CommCinema, its agents, representative, subcontractors or employees.
- a. CommCinema shall maintain \$1,000,000 per occurrence/\$2,000,000 aggregate in general liability insurance coverage for bodily injury, personal injury and property damage.
  - b. CommCinema will require its independent contractors to carry \$1,000,000 per accident in automobile liability coverage for bodily injury and property damage.
  - c. CommCinema will require its independent contractors to carry \$1,000,000 per accident for bodily injury or disease in worker's compensation insurance coverage.
  - d. Any deductibles or self-insured retention must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City, its officers, officials, employees and volunteers; or

CommCinema shall provide security satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- e. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
  - i. The City, its officers, officials, employees and volunteers are to be covered as insureds as respects; liability arising out of activities performed by or on behalf of CommCinema; premises owned, occupied or used by CommCinema; or automobiles owned, leased, hired or borrowed by CommCinema. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.
  - ii. For any claims related to the performance of this Agreement, CommCinema insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City, its officers, officials, employees or volunteers shall be excess of CommCinema insurance and shall not contribute with it.
  - iii. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
  - iv. CommCinema insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - v. Each insurance policy required by this clause shall be endorsed to state that coverage or in limits, except after thirty (30) days, prior written notice by certified mail, return receipt requested, has been given to the City.
- f. Insurance requirements as set forth above shall apply to all subcontractors as well as independent contractors.
- g. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A – unless otherwise acceptable to the City.
- h. CommCinema shall furnish the City with original endorsements, or complete, certified copies of all required insurance policies effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms acceptable to the City. All endorsements are to be received and approved by the City before work commences.
- i. To the fullest extent permitted by law and notwithstanding the limits of insurance policies, CommCinema shall indemnify, defend and hold harmless the City and any and all of its officials, employees, volunteers and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs which arise out of, pertain to, or relate to the subject matter of this Agreement, or otherwise arising out of or relating to CommCinema's business activities, including, without limitation, the conduct of the Series, the manufacture, advertising, promotion, use, marketing or sale of the goods, services, or activities using the City's logo, provided such claims are not caused by sole negligence or willful misconduct of the City. This indemnity obligation shall survive termination or expiration of this Agreement.


8. If CommCinema fails to perform all of the services as detailed above, City has the right to cancel the outdoor movie program.
9. In the event of high winds, inclement weather, or any other unforeseen occurrence on the day of any planned screening, City and CommCinema may reschedule that screening for another mutually agreed upon date.
10. The City provides the license and permissions granted hereunder without warranty of any kind. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE CITY DISCLAIMS ALL EXPRESS, IMPLIED AND STATUTORY WARRANTIES. IN NO EVENT SHALL THE CITY BE LIABLE FOR LOST PROFITS OR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH CLAIM IS BASED AND EVEN IF THE CITY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.**
11. CommCinema shall not assign or otherwise alienate any of its rights or delegate or otherwise transfer any of its duties hereunder except those duties and subcontracts reasonably anticipated under the Agreement.
12. This Agreement contains the entire Agreement and understanding between the City and CommCinema with respect to the subject matter of this Agreement. This Agreement supersedes any and all prior written or verbal agreements and understandings related to the subject matter of this Agreement. This Agreement may be changed only by a writing executed by both parties that expressly states that it is changing the provisions of this Agreement
13. This Agreement shall be deemed to be made in California and shall in all respects be interpreted, construed, and governed by and in accordance with the laws of the State of California.
14. No Agency. The parties hereto are separate and independent, and no agency, partnership, joint venture, employee-employer or franchiser-franchise relationship is intended or created by this Agreement. Neither party shall make any warranties or representations on behalf of the other party.
15. Both parties agree to accept photocopied, electronic facsimile (FAX) and e-mail transmissions or copies of the signatures of the authorized representatives of each party as attached to this Agreement as legal and binding upon both parties. The terms and provisions of this Agreement shall then be binding on both Customer and CommCinema upon signing by the authorized representatives of each party.



16. THIS AGREEMENT MUST BE SIGNED AND RETURNED TO THE PARKS AND RECREATION DEPARTMENT OFFICE PRIOR TO THE START OF THE SERVICE.

Approved and accepted by:

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Richard Montgomery  
Mayor  
CITY OF MANHATTAN BEACH

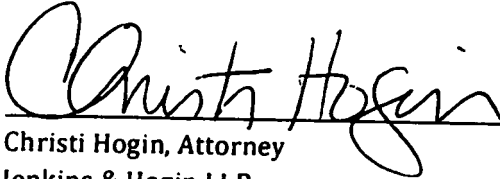
  
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Scott Tallal  
President  
TALLAL, INC. DBA COMMCINEMA

\_\_\_\_\_  
David N. Carmany  
City Manager  
CITY OF MANHATTAN BEACH

ATTEST:

\_\_\_\_\_  
Liza Tamura  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Christi Hogin, Attorney  
Jenkins & Hogin LLP  
CITY OF MANHATTAN BEACH