

1. The Agreement (a “**Shopping Agreement**”) is between the City and County of San Francisco, acting by and through the Office of the San Francisco Public Defender “**PD Office**” or “**City**”) and BoBCat Studios, LLC (“**BoBCat**”). The term of this Agreement shall commence on full execution hereof and expire upon the expiration of the Shopping Period (as defined below), including any extension thereof, unless earlier terminated as otherwise provided herein, and in no event shall the term of the agreement exceed 10 years.

2. PD Office grants to BoBCat an exclusive right for 6 months (the “**Shopping Period**”) to present to traditional and digital networks (each, a “**Network**”) the concept of a reality series based on the Office of the San Francisco Public Defender (the “**Series**”). If, during the Shopping Period, a Network is interested in the Series, then BoBCat and PD Office will negotiate an agreement (“**Cooperation and License Agreement**”) within the parameters set forth below (subject to all applicable laws); also, at that time, BoBCat would negotiate a financing, license or other agreement with the Network for the further development and/or production of the Series (“**Network Agreement**”). The Network Agreement shall include the requirement, where applicable, that any person or entity using City property for film production or related activities enter into a USE AGREEMENT FOR CITY PROPERTY FOR FILM PRODUCTION AND RELATED ACTIVITIES (a sample of which is attached to this Agreement and labeled Attachment 1.) Provided that, prior to conclusion of the Shopping Period, BoBCat has given written notice to the PD Office that BoBCat is in serious negotiations with a Network (identified by BoBCat to the PD Office) concerning the Series, the Shopping Period could be extended for up to an additional 90 days in order for BoBCat and the Network to complete negotiations for and enter into the Network Agreement, if possible, and for BoBCat and PD Office to complete negotiations for and enter into the Cooperation and License Agreement. If, despite such negotiations, the Network Agreement and Cooperation and License Agreement are not concluded within the Shopping Period + 90 days, neither PD Office nor any party obtaining rights through PD Office would enter into an agreement with the same Network for a Series within 12 months after such negotiations between PD Office and BoBCat unsuccessfully conclude.

3. During the Shopping Period and subject to his duties as Public Defender, Jeff Adachi, the San Francisco Public Defender, would make himself reasonably available to consult with BoBCat concerning the Series.

4. Subject to all applicable laws, if concluded, among other things, the Cooperation and License Agreement would contain the following provisions:

4.1 PD Office would have the right to approve the overall format of the Series (PD Office hereby pre-approves the Series format to be a “docu-follow” program from the perspective of San Francisco public defenders; any material deviation from such format shall be subject to PD Office’s approval, not to be unreasonably withheld); a “docu-follow” program is defined as the documentary filming or storytelling (with as little staging or intrusion as possible) of naturally occurring events, to inform or educate the viewer.

4.2 PD Office would grant to BoBCat the exclusive right of access to and cooperation by the PD Office with respect to production of a series for television or Internet/Wireless streaming for

a negotiated period (the “**Cooperation Period**”). The Cooperation Period would encompass a development period, plus the term of the initial Network Agreement, plus a period after conclusion of the term of the initial Network Agreement, during which BoBCat would have the right to set the Series up at another Network (“**Second Network Agreement**”), which total period is here referred to as the “**Term.**” At the conclusion of the Cooperation Period, if BoBCat has not entered into a Second Network Agreement, PD Office would be free to enter into an agreement with any other party concerning a reality series about and within the PD Office, provided that, with respect to any such other series with a third party, PD Office shall have no right to use any protectable elements of the Series (e.g., original music, graphics, titles, etc.) created or funded by BoBCat or Network.

4.3 BoBCat would own the copyright in perpetuity to Series, if actually produced pursuant to the terms hereof.

4.4 PD Office would endeavor to assist BoBCat in obtaining the cooperation of and releases from clients of the PD Office, assistant public defenders, other PD Office employees, judges, and bailiffs, but PD Office would not warrant that it could obtain cooperation and releases from any person, except Jeff Adachi, the San Francisco Public Defender. In that regard, the PD Office’s cooperation with BoBCat would at all times be subject to its obligations to its clients, the courts, and the law.

4.5 PD Office would have the right to screen and provide comment on the rough cuts of each episode of the Series, solely to assure that such content does not contain any information or materials that, in the good faith opinion of the PD Office, would (i) violate any confidentiality, privacy or safety obligations of the PD Office with respect to its cases and clients, (ii) jeopardize any client’s right to a fair trial, or (iii) would jeopardize public safety or any city agency’s performance of its legal duties or obligations (collectively, “**Sensitive Material**”). Any such comments from PD Office shall be returned to BoBCat within a set period of time, to be determined by the Series production schedule. Provided PD Office provides BoBCat with timely comments, BoBCat shall edit the applicable Series content so as to remove or obscure any Sensitive Material identified by PD Office. Additionally, the final cut of each episode will not include any content that was not previously provided to the PD Office for review and comment as set forth above.

4.6 During the Term of the Cooperation and License Agreement, and so long as Jeff Adachi is the San Francisco Public Defender, he would serve as a consultant and in an on-camera capacity, as a regular narrator, interviewee, or in a similar capacity (to be determined based on the creative development of the Series), which services would be exclusive with respect to all non-scripted/reality television and digital programming during the time Mr. Adachi remains as San Francisco Public Defender; provided that his services would be subject to his obligations as San Francisco Public Defender. If Jeff Adachi ceases to be the San Francisco Public Defender, then, at the end of the applicable production season, BoBCat and Mr. Adachi would negotiate directly the basis on which he might serve in such capacity, provided that the material terms of such direct engagement shall be as set forth herein (including, without limitation, the exclusivity and financial terms). Except as described here, nothing would preclude Jeff Adachi from producing, directing, writing, consulting or otherwise providing services for himself or others in

connection with motion picture, television, or Internet/Wireless production and any film productions begun prior to the signing of this agreement concerning similar subject matter would not be precluded. In that regard, Mr. Adachi has notified BoBCat that he has produced and directed a documentary film currently entitled "Ricochet" about the Kate Steinle San Francisco pier shooting case. Additionally, nothing would prevent Jeff Adachi, the PD Office, or any successor San Francisco Public Defender from (a) engaging in media interviews or the like, (b) appearing in dramatic programs or films, or (c) appearing in a one-off, non-recurring basis in documentary programs (as distinct from "reality" programs), specials, or films.

4.7 The PD Office would be consulted and must approve the BoBCat initial press release announcing the Series development and, also, with regard to each press release issued by BoBCat concerning production of the Series. Such approval would not be unreasonably withheld.

4.8 In connection with production and exploitation of the Series, PD Office would grant all necessary trademark licenses to BoBCat. However, BoBCat would not have the right to manufacture or sell merchandise regarding the Series (other than a limited number of free promo items), except pursuant to a separate merchandise license, which, if entered into, among other things, would grant the PD Office the right to approve each type and item of merchandise.

4.9 In consideration of its services and licenses of rights and subject to the budgetary and fiscal authority of the San Francisco Board of Supervisors to appropriate funds, BoBCat would pay the PD Office or a non-profit foundation designated by the PD Office, as follows:

4.9.1 For cooperation and licensing, PD Office shall receive an episodic fee (the "**PD Office Access Fee**") equal to the greater of (i) 5% of the episodic budget of the first production cycle of the Series (less the same exclusions and subject to the same fee caps [if any, applied on a pro-rata basis] applicable to the calculation of BoBCat's executive producer/production fee), or (ii) \$15,000, which PD Office Access Fee shall be paid to PD Office for each episode of the Series produced by BoBCat and on which PD Office provides the cooperation, access and licensing contemplated hereunder. The PD Office Access Fee shall be increased (*e.g.*, for subsequent seasons of the Series) at the same rate the Series budget is increased pursuant to the Network Agreement (*e.g.*, 4-5% cyclically or annually). No PD Office Access Fee shall be payable for development content (including, without limitation, any casting tape, presentation or non-airable pilot), unless BoBCat (or any of its principals) actually takes a fee (*i.e.*, does not apply its/their fee, if any, toward production costs) in connection with any such development content, in which case the PD Office Access Fee for the applicable development content shall be equal to 50% of BoBCat's fee actually received and retained. At PD Office's request, the PD Office Fee will be paid to a charitable organization identified by the PD Office.

4.9.2 For providing the services of Jeff Adachi, for each episode in which Jeff Adachi appears, the PD Office shall receive a fee (the "**Adachi On-Camera Fee**") equal to the greater of (i) 1.5% of the episodic budget of the first production cycle of the Series (less the same exclusions and subject to the same fee caps [if any, applied on a pro-rata basis] applicable to the calculation of BoBCat's executive producer/production fee), or (ii) \$7,500, which Adachi On-Camera Fee shall be paid to the PD Office for each episode of the Series produced by BoBCat

and on which Mr. Adachi appears on-camera hereunder. The Adachi On-Camera Fee shall be increased (*e.g.*, for subsequent seasons of the Series) at the same rate the Series budget is increased pursuant to the Network Agreement (*e.g.*, 4-5% cyclically or annually). No Adachi On-Camera Fee shall be payable for development content (including, without limitation, any casting tape, presentation or non-airable pilot), unless BoBCat (or any of its principals) actually takes a fee (*i.e.*, does not apply its/their fee, if any, toward production costs) in connection with any such development content, in which case the Adachi On-Camera Fee for the applicable development content shall be equal to 15% of BoBCat's fee actually received and retained. The Adachi On-Camera Fee will be paid to a charitable organization identified by the PD Office.

4.9.3 An amount equal to 50% of 100% of BoBCat's share of the net proceeds of the Series. If the Network or its affiliate owns the Series, then net proceeds will be as defined in the Network Agreement, and would mean "Net Proceeds," "Adjusted Gross Proceeds," "Modified Adjusted Gross Proceeds," or however the measurement of contingent participation is defined therein. If BoBCat or its affiliate owns the Series, the parties would negotiate the definition within customary parameters.

4.10 Appropriate credit would be given on each episode of the Series to the PD Office.

5. Insurance. 5.1 Required Coverages. Without in any way limiting BoBCat's liability pursuant to the "Indemnification" section of this Agreement, BoBCat must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

5.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

5.3 BoBCat shall provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages.

5.4 Should any of the required insurance be provided under a claims-made form, BoBCat shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

5.5 Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

5.6 Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

5.7 Before commencing any Services, BoBCat shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease BoBCat's liability hereunder.

5.8 The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the BoBCat, its employees, agents and subcontractor.

5.9 If BoBCat will use any subcontractor (s) to provide Services, BoBCat shall require the subcontractor (s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and BoBCat as additional insureds.

## 6. Indemnification.

6.1 BoBCat shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or BoBCat; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from BoBCat's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from BoBCat's performance of this Agreement, including, but not limited to, BoBCat's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be

imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on BoBCat, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

6.2 In addition to BoBCat's obligation to indemnify City, BoBCat specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to BoBCat by City and continues at all times thereafter.

6.3 BoBCat shall indemnify and hold City harmless from all loss and liability, including/ attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of BoBCat's Services.

7. Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

8. Independent Contractor. "BoBCat" shall be deemed to include not only BoBCat, but also any agent or employee of BoBCat. BoBCat acknowledges and agrees that at all times, BoBCat or any agent or employee of BoBCat shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. BoBCat, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. BoBCat or any agent or employee of BoBCat shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. BoBCat or any agent or employee of BoBCat is liable for the acts and omissions of itself, its employees and its agents. BoBCat shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to BoBCat's performing services and work, or any agent or employee of BoBCat providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and BoBCat or any agent or employee of BoBCat. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of BoBCat's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which BoBCat performs work under this Agreement. BoBCat agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating BoBCat's compliance with this section. Should City determine that BoBCat, or any agent or employee of BoBCat, is not performing in accordance with the requirements of this Agreement, City shall provide BoBCat with written notice of such failure. Within five (5) business days of BoBCat's receipt of such notice, and in accordance with BoBCat policy and procedure, BoBCat shall remedy the deficiency. Notwithstanding, if City believes that an action of BoBCat, or any agent or employee of BoBCat, warrants immediate

remedial action by BoBCat, City shall contact BoBCat and provide BoBCat in writing with the reason for requesting such immediate action.

8. Termination for Convenience. The PD Office shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving BoBCat written notice of termination. The notice shall specify the date on which termination shall become effective.

9. Limitation on Liability. IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

10. Nondisclosure of Private, Proprietary or Confidential Information. If this Agreement requires City to disclose "Private Information" to BoBCat within the meaning of San Francisco Administrative Code Chapter 12M, BoBCat shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services.

AGREED TO BY THE PARTIES:

\_\_\_\_\_  
Jeff Adachi for the San Francisco Public Defender's Office

Dated: \_\_\_\_\_

\_\_\_\_\_  
Sarah Bernard for BobCat Studios, LLC

Dated: \_\_\_\_\_

Approved as to Form:

Dennis J. Herrera  
City Attorney

By: \_\_\_\_\_

**Jana Clark**  
Deputy City Attorney