

AGREEMENT FOR GOODS AND SERVICES

This Agreement for goods and services (this "Agreement") is entered into on July 25th, 2019 (the "Effective Date"), by and between the City of South Bend, acting by and through its Board of Public Works (the "City"), and *Hero Design LLC.*, a California corporation, with its Principal place of business located at 2421 Peralta Street, Oakland, CA 94607 (the "Provider") (each a "Party" and collectively the "Parties").

For and in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

1. Goods and Services. The Provider will provide to the City the goods and services ("Goods and Services") set forth in the Provider's proposal attached hereto as Exhibit A (the "Proposal"), which Proposal is incorporated herein. In the event of any conflict between the terms of this Agreement and the terms of the Proposal, the terms of this Agreement will prevail.

2. Compensation. In exchange for the Goods and Services, and subject to the terms and conditions of this Agreement, the City will pay the Provider the fee stated in the Proposal (the "Contract Amount") in accordance with the project budget stated in the Proposal. The City will pay the Contract Amount in installments upon invoicing by the Provider as set forth in the Proposal (each a "Contract Installment"). The City will not be required to pay any Contract Installment if any material default or breach of this Agreement by the Provider exists. The sum of all Contract Installments will not exceed the Contract Amount, and the Provider will not incur or seek reimbursement for any expenses in excess of the Contract Amount.

3. Term; Termination. Unless earlier terminated in accordance with its terms, this Agreement will commence on the Effective Date and end upon the Provider's satisfaction of all its obligations hereunder and the City's final payment therefor. Notwithstanding the foregoing, effective immediately upon delivery of a written termination notice to the Provider, the City may terminate this Agreement, in whole or in part, for any reason, if the City determines that such termination is in the best interest of the City. In addition, in accordance with Ind. Code 6-1.1-18-4, payments are subject to annual appropriation by the City. If the City makes a written determination that funds are not appropriated or are otherwise unavailable to support the continuation of this Agreement, it shall be cancelled. A determination by the City that funds are not appropriated or are otherwise unavailable to support the continuation of performance shall be final and conclusive. The City will not be required to pay any Contract Installment or be otherwise liable for any cost associated with the Provider's performance of any Services after the effective date of termination.

4. Remedies for Breach of Contract. Failure to provide the Goods and Services in accordance with this Agreement will be considered a material breach. In the event of such breach, the City may suspend all payments to the Provider and may pursue any and all remedies available at law or in equity. The Provider shall repay to the City any portion of the Contract Amount expended for matters not within the scope of the Services.

5. Point of Contact. The City employee identified in Section 9 below will serve as the

City's principal point of contact for purposes of this Agreement.

6. Relationship. The Provider shall at all times be an independent contractor for all services performed and goods supplied rather than an employee of the City, and no act or omission to act by the Provider shall in any way bind or obligate the City. This Agreement is strictly for the benefit of the Parties and not for any third party or person. This Agreement was negotiated by the Parties at arm's length and each of the parties hereto has reviewed the Agreement after the opportunity to consult with independent legal counsel. Neither party shall maintain that the language in the Agreement shall be construed against any signatory hereto. The City and the Provider hereby renounce the existence of any form of agency relationship, joint venture, or partnership between the Provider and the City and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the City and the Provider.

7. Indemnification of City. The Provider hereby agrees to defend, indemnify, and hold harmless the City, its officials, employees, and agents from any and all claims of any nature which arise from the performance by the Provider under this Agreement and from all costs and attorney fees in connection therewith, excepting for claims arising out of the negligence of the City, its officials, directors, employees, and agents. The obligations of the Provider under this section shall survive the termination of this Agreement.

8. Assignment. The Provider shall not assign or subcontract the whole or any part of this Agreement or its obligations hereunder without the prior written consent of the City.

9. Notices. Any notice required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to the City or the Provider, as the case may be, at the address set forth below.

Provider:
Hero Design, LLC
2421 Peralta Street
Oakland, CA 94607

Attn: Kelly Parkinson

City
City of South Bend
Venues Parks & Arts Department
1020 High Street
South Bend, IN 46601
Attn: Patrick Sherman

10. Equal Opportunity; Non-Discrimination; Compliance. The Provider shall comply with all applicable laws and regulations in its hiring and employment practices and policies for any activity covered by this Agreement. The Provider shall comply with all state, federal, and municipal laws, regulations, and standards applicable to its activities pursuant to this Agreement including, but not limited to, the requirements imposed by Ind. Code 22-9-1-10 (non-discrimination), the provisions of Ind. Code 5-22-16.5 (disqualification for dealings with the government of Iran), and the provisions of Ind. Code 22-5-1.7 (requiring E-Verify for new employees and prohibiting employment of unauthorized aliens). Each of the foregoing provisions is incorporated herein as if set forth in full, and the Provider certifies that it is in compliance with each such provision and shall remain in compliance through the term of this Agreement.

11. Drug-Free Workplace. The Provider hereby agrees to make a good faith effort to provide and maintain a drug-free workplace. The Provider will give written notice to the City within ten (10) days after receiving actual notice that the Provider or an employee of the Provider within the State of Indiana has been convicted of a criminal drug violation occurring in the workplace.

12. Entire Agreement; Amendment; Applicable Law. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understanding of any and every nature between them. This Agreement may be amended only by separate writing, signed by authorized representatives of both the Provider and the City. This Agreement will be construed and interpreted according to the laws of the State of Indiana, and any dispute arising out of this Agreement or otherwise concerning the Provider's rendering of the Services will be resolved in the courts located in St. Joseph County, Indiana, unless the Parties mutually agree to a different method of dispute resolution.

13. Severability. All provisions of this Agreement shall be considered as separate terms and conditions, and in the event any one shall be held illegal, invalid or unenforceable, all the other provisions hereof shall remain in full force and effect as if the illegal, invalid, or unenforceable provision were not a part hereof, unless the provision held illegal, invalid or unenforceable is a material provision of this Agreement, in which case the Provider and the City agree to amend this Agreement with replacement provisions containing mutually acceptable terms and conditions.

14. Force Majeure. The Provider shall not be responsible for any failure or delay in the performance of any obligation hereunder, if such failure or delay is due to a cause beyond the Provider's reasonable control, including, but not limited to acts of God, flood, fire, volcano, war, third-party suppliers, labor disputes or governmental acts.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement for Professional Services to be effective as of the Effective Date stated above.

HERO DESIGN, LLC.

Signature

Printed Name and Title

Street Address

P.O. Box

City, State Zip

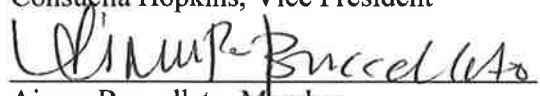
Telephone Fax

**CITY OF SOUTH BEND, INDIANA
BOARD OF PARK COMMISSIONERS**



Mark Neal, President

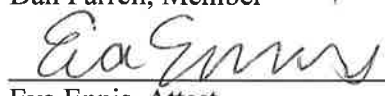
Consuella Hopkins, Vice President



Aimee Buccellato, Member



Dan Farrell, Member



Eva Ennis, Attest

EXHIBIT A

Proposal

[See attached]

SECTION 5

Your Investment

Your **Investment**

pricing made **simple**

We have a transparent and simple payment plan:

60% | Upon signing this proposal

40% + shipping | When we have completed production and your Everbright is ready to ship. Photos and video can be provided at the time of final invoice to demonstrate full functionality.

The **Details**

Each Everbright is made to order.

To secure your position in our production queue, we request a signed Everbright Product Purchase Agreement and a 60% deposit on the purchase price of the Everbright.

The remainder plus shipping is invoiced and due within 5 days of notification that the board is complete and ready to ship.



The Everbright and Available Upgrades

EVERBRIGHT CLASSIC

With 476 color dials that rotate endlessly in either direction to produce every color of the rainbow, the Everbright Classic interactive light board measures approximately 92.81 inches long, 47.11 inches high, and 5.25 inches deep (including the dials). Price includes 11 engaging and customizable, dynamically-generated interactive canvases, two function buttons to reset the board and to change canvases, a three-year warranty with lifetime technical support, and the ability to upgrade anytime to the Everbright Content License with Tablet.

\$25,000

1 @ \$25000.00

EVERBRIGHT CONTENT LICENSE WITH TABLET

\$1,200

One lifetime owner's license to experience new interactive features and dynamic animations as they become available, for as long as you own your Everbright. All content is wirelessly loaded onto the Everbright via a 10-inch tablet which ships with your board and will be preloaded with the Everbright app, through the Everbright's (private) wifi connection. The Everbright Content License allows the Everbright to become an evergreen installation that can offer

up unique, surprising experiences, and need never provide the same interaction from month to month. In addition to allowing owners to upload new content to the board, the tablet also lets you configure the Everbright to the unique requirements of your space and your visitors. Tablet offers the ability to load and save images, and to select from a growing library of dynamic animations and unique interactive canvases. New features are pushed out to the tablet, and can be loaded onto the board wirelessly.

Shipping and Crating

DOOR-TO-DOOR FREIGHT SHIPPING

Door-to-door shipping from Oakland, CA to South Bend, IN via air-ride premium freight, to loading dock only

\$1,285

PLYWOOD CRATE AND CRATING SERVICE

Custom plywood shipping crate with dimensions of 60"x34"x56" with crating and packing service

\$562

TRANSIT INSURANCE

Transit insurance during shipping

\$75

Total \$28,122

Maintenance Requirements and Durability

Maintenance Requirements and **Durability**

The Everbright is an interactive, tactile installation designed for public spaces with millions of visitors a year. We have invested in upgrades to the design in the four years that we have been in production, and our current design allows you to bring open-ended creativity to a public space without introducing removable parts. As with any tactile exhibit, your Everbright will require maintenance eventually. Knowing that most customers would not have an electrician, a technical expert, an IT person, and a crew of contractors on hand, we designed the Everbright to be straightforward for any layperson with a screwdriver to maintain and to repair.

Durability was a central factor in the Everbright's design.

The Everbright has been road-tested for almost four years now in science centers and libraries by the world's heaviest abusers of exhibits-- unsupervised 8-year-olds on field trips. Our museum customers were worried about Everbright initially because it was a new product, but they have been happy with the performance in their high-traffic environments. Everbright's dials cannot be pulled off without the use of hand tools. The need to replace a pixel has been rare.

While we do include a three-year warranty on all replaceable parts, and can offer an extended service plan if desired, our intention was to design an exhibit that would minimize effort and maintenance with a durable and

modular design. Everbright's designer Alan Rorie drew upon many years as an artist, designer, and fabricator, as well as his experience at the Exploratorium to design a product that would be interactive and low-maintenance.

Here is how we designed Everbright for extreme durability and longevity:

1 | PREMIUM, HIGH-GRADE MATERIALS AND COMPONENTS

Everbright is built with high-grade materials, including one-inch thick, cabinet-grade plywood for the interior framing, and Valchromat for the exterior frame, which is an extremely dense, engineered wood product typically used in luxury kitchens and bathrooms. The power supplies are rated for 500,000 hours of operation and can be replaced easily, and LEDs, which have a reputation as being the longest-lasting of light sources, can also be replaced. You do not need to troubleshoot pixels to determine which LED needs to be replaced. They are replaced all at once by removing a cup, and inserting a new cup.

2 | MODULAR DESIGN ISOLATES ANY PROBLEMS

Everbright has a modular design, which makes any repairs straightforward, and limits problems to just the affected pixel. If a dial stops changing color when turned, its neighbors can still be used as a creative canvas. Each pixel is self-contained and has 24 LEDs (eight for each color of red, green, and blue) so if a single LED fails, you may not notice because of the redundant lights. Replacement pixels will be available for less than \$12 each if they are needed in the future.

If you ever need a new pixel, you would be receiving a small, lightweight cup designed by us at Hero Design. The cup holds everything each pixel needs to light up and to change hues and colors when you twist a dial. This is where all the magic happens. If you ever need to replace a pixel, for any reason, you would simply lift the board up and off the wall, unscrew the cup from the back of the board, and screw in the new cup that we ship to you.

3 | KID-PROOF EXTERIOR, STRAIGHTFORWARD REPLACEMENTS

We designed Everbright to be extremely durable when actively used by all ages. Except for the rare flaw in an LED/pixel, or occasional

dusting/cleaning, you should not expect to do much maintenance. Because dials are designed to be impossible for a human to remove from the front, a replacement or repair will require the board to be removed from the wall first. Two strong people will need to lift the board up and off its French cleat, keep it supported upright, and remove the backing board. Once that is done, replacing a pixel is straightforward and takes about 2 minutes.

4 | LIFETIME TECHNICAL SUPPORT

The need to replace a pixel should be infrequent. If maintenance is ever needed for this or anything else, please call or email me personally. My cell is 415-323-5928 and my email is kp@hero-design.com. We will walk you through troubleshooting and/or fixing the problem for as long as you own your Everbright.

5 | FREE REPLACEMENT PARTS AND SHIPPING FOR THREE YEARS

For three years after you have received your Everbright, if you need a new pixel or have any issues whatsoever, tell us. We will ship replacement part(s) out to you via UPS at our expense, along with a step-by-step guide so your facilities person can make the repair. We will also be on call during the window of your repair in case you need to speak with us live by video or phone. If you need to replace a pixel after the first three years, call us. We will work with you to get you what you need.

SECTION 7

Let's Begin

Let's **Begin**

If you would like to partner with us to create memorable visits for everyone who enters your space, we're ready to get started.

Next Steps

- 1 |** Sign below by typing your name and tapping 'Sign Proposal'
- 2 |** We'll arrange the initial meeting where we'll gather all the details we need for the detailed specifications.
- 3 |** We'll be in touch with your invoice details and will set up billing for your 60% deposit.

We're ready to begin, are you?

SECTION 8

Terms & Conditions

Terms & Conditions

This Product Sales Agreement (this "Agreement") is made as of 3rd September 2019, by and between Hero Design LLC, a California limited liability company ("Seller"), with an address of 2421 Peralta Street, Oakland, CA 94607, and South Bend Venues Parks & Arts ("Customer"), with an address of 1020 High Street, South Bend, IN 46601.

A. Items purchased. Seller shall sell to Customer, and Customer shall purchase from Seller: One Everbright Classic board ("Product"), which is an interactive light board with 476 color dials that rotate endlessly in either direction to produce every color of the rainbow. The Everbright Classic measures approximately 92.81 inches long, 47.11 inches high, and 5.25 inches deep (including the dials). Product includes a selection of interactive canvases and two function buttons that can switch between canvases and that allow the user to erase the board. This new edition Everbright is optimized for use in public spaces, and includes a three-year limited warranty with free shipping on all replaceable parts and lifetime technical support.

B. Custom Fabrication: Each Everbright is individually fabricated upon receipt of Customer's deposit. Seller agrees to exercise commercially reasonable best efforts to supply Product to Customer in a timely fashion. The current lead time is approximately 12 weeks, although the actual ship date can vary based on the availability of custom components and materials.

C. Payment and Payment Terms. The purchase price for the Everbright is \$25,000 USD, plus shipping, crating, transit insurance, and any optional upgrades such as the Everbright content license with tablet. Payment shall be made via check, ACH or wire transfer to Hero Design LLC, 2421 Peralta

Street, Oakland, California 94607, as follows: Initial nonrefundable 60% deposit of \$15,000 due at time of order to secure customer's position in the production queue; balance of \$10,000 plus shipping and any applicable upgrades within 5 business days of notification that Product is complete and ready to ship. If payment is not received within 10 days of submittal of final invoice, a 5% late fee will be assessed on the remaining balance due, and interest will accrue monthly until payment is received. Once Product is complete and ready to ship, a weekly storage fee of \$50 will be due prior to shipping if Customer requests a shipping delay.

D. Product design modifications. Customer acknowledges that Seller may make changes to the Product specifications at any time for various reasons, such as to improve quality, comply with applicable law, or to adopt changes in materials or component sourcing. Buyer agrees that any such changes that do not materially change the function of the Product do not constitute a breach of or otherwise interfere with this Agreement. Unless otherwise provided in this purchase agreement, and except as otherwise provided for herein, Customer shall pay a flat change order fee of \$1,000 for any changes requested by the customer prior to the start of production, and \$5,000 for any requested changes after the start of production. For any changes in excess of 25% of the value of the original purchase agreement, a new purchase agreement may be required, and the original nonrefundable deposit will be retained in full. Customer will pay an hourly design rate of \$150 for any requested changes that require additional design or engineering time. Such charges shall be in addition to all other amounts payable under the purchase agreement, despite any maximum budget, contract price or final price identified therein. Seller may extend or modify any delivery schedule as may be required by such Changes.

E. Delivery. Seller will notify Customer when Product is complete and ready to ship.

F. Terms and Conditions. The Terms and Conditions of Sale attached hereto as Exhibits "A" and "B" are incorporated into this Agreement by reference as if fully set forth herein.

EXHIBIT A

TERMS AND CONDITIONS OF SALE

1. Terms and Conditions. These Terms and Conditions of Sale ("Terms") apply to the sale and delivery by Seller to Customer of the Product as set forth in the Agreement to which these Terms are attached. These Terms are

incorporated into the Agreement and, in combination therewith, constitute the entire agreement between the parties with respect to the sale and delivery of the Product. The Agreement is expressly limited to these Terms, and any and all terms or provisions submitted by Customer which add to, conflict with, or otherwise modify these Terms or the Agreement are expressly rejected.

2. Price. The price for the Product shall be as set forth in the Agreement (the "Price"). Unless otherwise stated, the Price does not include delivery by the appropriate shipper or courier service, additional taxes, customs, duties or insurance. Any and all current or future taxes, fees, or governmental charges applicable to the sale, delivery or shipment of the Product that Seller is required to pay or collect shall be payable by Customer either directly or if paid by Seller, paid by Customer within ten (10) days of the date of invoice from Seller of such additional costs and not subject to any off set or reduction for any reason.

3. Risk of Loss & Title. Title to the Product shall pass to Customer at such time as Seller has received payment in full for the invoiced amount for the Product, and payment of all other monies then due or owing to Seller. Risk of loss of the Product shall transfer to Customer upon acceptance of the Product by the common carrier.

4. Invoices; Payment. Customer shall be responsible for and pay, if applicable, all fees and expenses incurred by Seller in connection with the installation of Product. Product will not be shipped until payment is made in full. All amounts referenced in this Agreement are denominated and shall be paid in United States Dollars.

5. Warranty. Exhibit B hereto sets forth the terms of the limited warranty offered with the Product. No other warranty, express or implied, shall apply.

6. Consequential Damages; Limitation of Liability. Notwithstanding anything to the contrary contained in this Agreement, Seller and Customer waive all claims against each other (and against each other's parent company, affiliates, contractors, subcontractors, consultants, agents and vendors) for any consequential, incidental, indirect, special, exemplary or punitive damages arising out of this Agreement (including but not limited to, loss of actual or anticipated profits, revenues or product; or loss of use), and regardless of whether any such claim arises out of breach of contract, tort, product liability, indemnity, contribution, strict liability or any other legal theory. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT

LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S CUMULATIVE LIABILITY TO CUSTOMER EXCEED THE PRICE FOR THE PRODUCT GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.

7. Delivery. Seller's delivery dates are estimates only and Seller is not liable for delays in delivery or for failure to perform due to causes beyond the reasonable control of the Seller, nor shall the carrier be deemed an agent of the Seller. A delayed delivery of any part of an order does not entitle Buyer to cancel other deliveries.

8. Intellectual Property. The Product, including software or other intellectual property components, is subject to any applicable rights of third parties, such as patents, copyrights and/or user licenses.

9. Termination and Cancellation. Any order or delivery may be terminated or suspended, (a) by either party if any proceeding under bankruptcy is brought by or against the party, (b) by a party if the other party defaults in its material obligations and such default is not cured within a reasonable time if such default is curable, or (c) by Seller if it has reason to doubt the ability or willingness of Buyer to pay for the Product. The Agreement is not otherwise subject to cancellation except by mutual written agreement of the parties.

10. Inspection And Notification: Buyer shall inspect and test the Product for damage or defect immediately upon receipt, and provide Seller notice of any such damage, defect or shortage within ten (10) days of receipt. All claims for any cause whatsoever, whether based in contract, negligence or other tort, strict liability, breach of warranty or otherwise, shall be deemed waived unconditionally and absolutely unless Seller receives written notice of such claim not later than ten (10) days after Buyer's receipt of the Product as to which such claim is made.

11. Notices. All notices required hereunder shall be in writing and shall be deemed properly served if delivered in person or by reputable overnight courier service, or if sent by registered or certified mail, with postage prepaid and return receipt requested, to the addresses in the Agreement or to such addresses as a party may designate from time to time pursuant to this Section 12. All notices shall be deemed received on the date of delivery or attempted delivery, if delivered in person, or if mailed, on the date which is two (2) days after the date such notice is deposited in the mail.

12. No Waiver. No course of dealing or failure of Seller or Customer to strictly enforce any term, right or conditions of this Agreement shall be construed

as a waiver of such term, right or condition. No express waiver of any term, right or condition of this Agreement shall operate as a waiver of any other term, right or condition.

13. Compliance with Laws and Regulations. Customer is responsible for complying with any and all applicable federal, state and local laws, codes, ordinances, rules, regulations, and administrative orders, including, without limitation, export and import laws, rules and regulations and any and all other product safety laws, rules and regulations.

14. Modification. Notwithstanding anything contained herein, these Terms may be modified or changed only by a written amendment to the Agreement signed by Seller and Customer.

15. Use of Name. Customer agrees to obtain prior written consent of Seller before using the names Hero Design or Everbright in any advertisement, publications, or promotional materials. Customer shall not rename the product, or refer to it by another name or title. In cases when using the term "Everbright" does not seem ideal, or when the customer would prefer to use a generic description to reference the product, the terms "interactive light board" or "pixel art" may be used interchangeably, as general descriptions of the product, without gaining prior consent from the Seller.

16. Entire contract. This Contract contains the entire agreement of the parties regarding the subject matter of this Contract, and there are no other promises or conditions in any other agreement whether oral or written. This Contract supersedes any prior written or oral agreements between the parties.

17. Applicable law. This Contract shall be governed by the laws of the State of California.

SECTION 9

Warranty

Limited Warranty

Exhibit B | Limited Warranty

The warranty obligations of Hero Design ("Hero Design") for this product are limited to the terms set forth below:

What Is Covered

This limited warranty covers physical defects in the individual LED boards within each pixel, the onboard CPU, the pixel housings, and the DC power supplies.

What Is Not Covered

This limited warranty does not cover any damage, deterioration or malfunction resulting from any alteration, modification, improper or unreasonable use or maintenance, misuse, abuse, accident, neglect, exposure to excess moisture, foreign objects, fire, improper packing and shipping damage (such claims must be presented to the carrier), lightning, power surges, or other acts of nature. This limited warranty does not cover any damage, deterioration or malfunction resulting from the installation or removal of this product from any installation, any unauthorized tampering with this product, any repairs attempted by anyone unauthorized by Hero Design to make such repairs, or any other cause which does not relate directly to a defect in materials and/or workmanship of this product. Without limiting any other exclusion herein, Hero Design does not warrant that the product covered hereby, including, without limitation, the technology and/or integrated circuit(s) included in the product, will not become obsolete or that such items are or will remain compatible with any other product or technology with which the product may be used.

How Long Does This Coverage Last?

The lifetime technical support lasts for as long as the original Customer owns the Everbright. In addition, Everbright has a three (3) year limited warranty for all specified parts and any labor associated with the fabrication of these parts. Coverage begins upon delivery to the Customer.

Who Is Covered

The Product is being purchased by the Customer, who will be considered the original Purchaser and Owner for the purpose of Warranty coverage. The limited warranty, and technical support, will not be transferable to subsequent purchasers or owners of this product.

What Hero Design Will Do

Hero Design will, at its sole option, provide one of the following three remedies to whatever extent it shall deem necessary to satisfy a proper claim under this limited warranty:

1. Elect to replace, repair or facilitate the repair of any defective parts within a reasonable period of time, free of any charge for the necessary parts to complete the repair and restore this product to its proper operating condition. Hero Design will cover the shipping costs necessary to supply the required parts. Customer will be responsible for all labor associated with all aspects of replacing any defective parts with working parts provided by Hero Design.
2. Replace this product with a direct replacement or with a similar product deemed by Hero Design to perform substantially the same function as the original product. Customer is responsible for packaging the product as specified by Hero Design. Customer is responsible for all shipping costs, including insurance.
3. Provide live video, email, or phone technical support and detailed visual documentation for any needed repairs or replacements.

What Hero Design Will Not Do Under This Limited Warranty

If any parts are returned to Hero Design for repair, they must be insured during shipment, with the insurance, packaging, and shipping charges

prepaid by the Customer. All parts must be packaged and shipped in accordance with Hero Design's specifications. If parts are returned uninsured, the Customer assumes all risks of loss or damage during shipment. Hero Design will not be responsible for any costs related to the removal or re-installation of this product from or into any location. Hero Design will not be responsible for any costs related to the installation of this product.

How to Obtain a Remedy Under This Limited Warranty

To obtain a remedy under this limited warranty, contact Hero Design in writing at support@hero-design.com.

Limitation On Liability

THE MAXIMUM LIABILITY OF HERO DESIGN UNDER THIS LIMITED WARRANTY SHALL NOT EXCEED THE ACTUAL PURCHASE PRICE PAID FOR THE PRODUCT. TO THE MAXIMUM EXTENT PERMITTED BY LAW, HERO DESIGN IS NOT RESPONSIBLE FOR DIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY BREACH OF WARRANTY OR CONDITION, OR UNDER ANY OTHER LEGAL THEORY. Some countries, districts or states do not allow the exclusion or limitation of relief, special, incidental, consequential or indirect damages, or the limitation of liability to specified amounts, so the above limitations or exclusions may not apply to you.

Exclusive Remedy

TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS LIMITED WARRANTY AND THE REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REMEDIES AND CONDITIONS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED. TO THE MAXIMUM EXTENT PERMITTED BY LAW, HERO DESIGN SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IF HERO DESIGN CANNOT LAWFULLY DISCLAIM OR EXCLUDE IMPLIED WARRANTIES UNDER APPLICABLE LAW, THEN ALL IMPLIED WARRANTIES COVERING THIS PRODUCT, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SHALL APPLY TO THIS PRODUCT AS PROVIDED UNDER APPLICABLE LAW. IF ANY PRODUCT TO WHICH THIS LIMITED WARRANTY APPLIES IS A "CONSUMER PRODUCT" UNDER THE MAGNUSON-MOSS WARRANTY ACT (15 U.S.C.A. §2301, ET SEQ.) OR OTHER APPLICABLE LAW, THE FOREGOING DISCLAIMER OF IMPLIED WARRANTIES SHALL NOT APPLY TO YOU, AND ALL IMPLIED WARRANTIES ON THIS PRODUCT,

INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR THE PARTICULAR PURPOSE, SHALL APPLY AS PROVIDED UNDER APPLICABLE LAW.

Other Conditions

This limited warranty gives you specific legal rights, and you may have other rights that vary from country to country or state to state.

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed as of the date first set forth above.

EXHIBIT B

Contractor Affidavit

[See attached]

- ii. Contractor, its successor or its affiliate, is a financial institution that extends twenty million dollars (\$20,000,000) or more in credit to another person for forty-five (45) days or more, if that person will (i) use the credit to provides goods and services in the energy sector in Iran; and (ii) at the time the financial institution extends credit, is a person identified on list published by the Indiana Department of Administration.

4. Contractor does not knowingly employ or contract with an unauthorized alien, nor retain any employee or contract with a person that the Contractor subsequently learns is an unauthorized alien. Contractor agrees that he/she/it shall enroll in and verify the work eligibility status of all of Contractor's newly hired employees through the E-Verify Program as defined by I.C. 22-5-1.7-3. Contractor's documentation of enrollment and participation in the E-Verify Program is included and attached as part of this bid/quote; and

5. Contractor shall require his/her/its subcontractors performing work under this public contract to certify that the subcontractors do not knowingly employ or contract with an unauthorized alien, nor retain any employee or contract with a person that the subcontractor subsequently learns is an unauthorized alien, and that the subcontractor has enrolled in and is participating in the E-Verify Program. The Contractor agrees to maintain this certification throughout the term of the contract with the City of South Bend, and understands that the City may terminate the contract for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the City.

6. Persons, partnerships, corporations, associations, or joint venturers awarded a contract by the City of South Bend through its agencies, boards, or commissions shall not discriminate against any employee or applicant for employment in the performance of a City contract with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of race, sex, religion, color, national origin, ancestry, age, gender expression, gender identity, sexual orientation or disability that does not affect that person's ability to perform the work.

In awarding contracts for the purchase of work, labor, services, supplies, equipment, materials, or any combination of the foregoing including, but not limited to, public works contracts awarded under public bidding laws or other contracts in which public bids are not required by law, the City, its agencies, boards, or commissions may consider the Contractor's good faith efforts to obtain participation by those Contractors certified by the State of Indiana as a Minority Business ("MBE") or as a Women's Business Enterprise ("WBE") as a factor in determining the lowest, responsible, responsive bidder.

In no event shall persons or entities seeking the award of a City contract be required to award a subcontract to an MBE/WBE; however, it may not unlawfully discriminate against said WBE/MBE. A finding of a discriminatory practice by the City's MBE/WBE Utilization Board shall prohibit that person or entity from being awarded a City contract for a period of one (1) year from the date of such determination, and such determination may also be grounds for terminating the contact for which the discriminatory practice or noncompliance pertains.

7. The undersigned contractor agrees that the following nondiscrimination commitment shall be made a part of any contract which it may henceforth enter into with the City of South Bend, Indiana or any of its agencies, boards or commissions.

Contractor agrees not to discriminate against or intimidate any employee or applicant for employment in the performance of this contract with privileges of employment, or any matter directly or indirectly related to employment, because of race, religion, color, sex, gender expression, gender identity, sexual orientation, handicap, national origin or ancestry. Breach of this provision may be regarded as material breach of contract.

I, the undersigned bidder or agent as contractor on a public works project, understand my statutory obligations to the use of steel products or foundry products made in the United States (I.C. 5-16-8-1). I hereby certify that I and all subcontractors employed by me for this project will use steel products or foundry products made in the United States on this project if awarded. I understand I have an affirmative duty to notify the City in my bid that my proposal does not include the use of steel products or foundry products made in the United States. I understand it is my sole obligation and responsibility to provide a justification to the City, subject to review and approval, why the cost of United States made steel or foundry products is unreasonable. Prior to award and upon submission of bid which does not use steel products or foundry products made in the United States, the City, through its director of public works, shall make a determination if the price of United States made steel or foundry is unreasonable. I understand that violations hereunder may result in forfeiture of contractual payments.

I hereby affirm under the penalties of perjury that the facts and information contained in the foregoing bid for public works are true and correct.

Dated this _____ day of _____, 20__

Contractor/Bidder (Firm)

Signature of Contractor/Bidder or Its Agent

Printed Name and Title

Subscribed and sworn to before me this _____ day of _____, 20__

My Commission Expires _____

Notary Public

County of Residence _____

SECTION 8

Terms & Conditions

Terms & Conditions

This Product Sales Agreement (this "Agreement") is made as of 3rd September 2019, by and between Hero Design LLC, a California limited liability company ("Seller"), with an address of 2421 Peralta Street, Oakland, CA 94607, and South Bend Venues Parks & Arts ("Customer"), with an address of 1020 High Street, South Bend, IN 46601.

A. Items purchased. Seller shall sell to Customer, and Customer shall purchase from Seller: One Everbright Classic board ("Product"), which is an interactive light board with 476 color dials that rotate endlessly in either direction to produce every color of the rainbow. The Everbright Classic measures approximately 92.81 inches long, 47.11 inches high, and 5.25 inches deep (including the dials). Product includes a selection of interactive canvases and two function buttons that can switch between canvases and that allow the user to erase the board. This new edition Everbright is optimized for use in public spaces, and includes a three-year limited warranty with free shipping on all replaceable parts and lifetime technical support.

B. Custom Fabrication: Each Everbright is individually fabricated upon receipt of Customer's deposit. Seller agrees to exercise commercially reasonable best efforts to supply Product to Customer in a timely fashion. The current lead time is approximately 12 weeks, although the actual ship date can vary based on the availability of custom components and materials.

C. Payment and Payment Terms. The purchase price for the Everbright is \$25,000 USD, plus shipping, crating, transit insurance, and any optional upgrades such as the Everbright content license with tablet. Payment shall be made via check, ACH or wire transfer to Hero Design LLC, 2421 Peralta

Street, Oakland, California 94607, as follows: Initial nonrefundable 60% deposit of \$15,000 due at time of order to secure customer's position in the production queue; balance of \$10,000 plus shipping and any applicable upgrades within 5 business days of notification that Product is complete and ready to ship. If payment is not received within 10 days of submittal of final invoice, a 5% late fee will be assessed on the remaining balance due, and interest will accrue monthly until payment is received. Once Product is complete and ready to ship, a weekly storage fee of \$50 will be due prior to shipping if Customer requests a shipping delay.

D. Product design modifications. Customer acknowledges that Seller may make changes to the Product specifications at any time for various reasons, such as to improve quality, comply with applicable law, or to adopt changes in materials or component sourcing. Buyer agrees that any such changes that do not materially change the function of the Product do not constitute a breach of or otherwise interfere with this Agreement. Unless otherwise provided in this purchase agreement, and except as otherwise provided for herein, Customer shall pay a flat change order fee of \$1,000 for any changes requested by the customer prior to the start of production, and \$5,000 for any requested changes after the start of production. For any changes in excess of 25% of the value of the original purchase agreement, a new purchase agreement may be required, and the original nonrefundable deposit will be retained in full. Customer will pay an hourly design rate of \$150 for any requested changes that require additional design or engineering time. Such charges shall be in addition to all other amounts payable under the purchase agreement, despite any maximum budget, contract price or final price identified therein. Seller may extend or modify any delivery schedule as may be required by such Changes.

E. Delivery. Seller will notify Customer when Product is complete and ready to ship.

F. Terms and Conditions. The Terms and Conditions of Sale attached hereto as Exhibits "A" and "B" are incorporated into this Agreement by reference as if fully set forth herein.

EXHIBIT A

TERMS AND CONDITIONS OF SALE

1. **Terms and Conditions.** These Terms and Conditions of Sale ("Terms") apply to the sale and delivery by Seller to Customer of the Product as set forth in the Agreement to which these Terms are attached. These Terms are

incorporated into the Agreement and, in combination therewith, constitute the entire agreement between the parties with respect to the sale and delivery of the Product. The Agreement is expressly limited to these Terms, and any and all terms or provisions submitted by Customer which add to, conflict with, or otherwise modify these Terms or the Agreement are expressly rejected.

2. Price. The price for the Product shall be as set forth in the Agreement (the "Price"). Unless otherwise stated, the Price does not include delivery by the appropriate shipper or courier service, additional taxes, customs, duties or insurance. Any and all current or future taxes, fees, or governmental charges applicable to the sale, delivery or shipment of the Product that Seller is required to pay or collect shall be payable by Customer either directly or if paid by Seller, paid by Customer within ten (10) days of the date of invoice from Seller of such additional costs and not subject to any off set or reduction for any reason.

3. Risk of Loss & Title. Title to the Product shall pass to Customer at such time as Seller has received payment in full for the invoiced amount for the Product, and payment of all other monies then due or owing to Seller. Risk of loss of the Product shall transfer to Customer upon acceptance of the Product by the common carrier.

4. Invoices; Payment. Customer shall be responsible for and pay, if applicable, all fees and expenses incurred by Seller in connection with the installation of Product. Product will not be shipped until payment is made in full. All amounts referenced in this Agreement are denominated and shall be paid in United States Dollars.

5. Warranty. Exhibit B hereto sets forth the terms of the limited warranty offered with the Product. No other warranty, express or implied, shall apply.

6. Consequential Damages; Limitation of Liability. Notwithstanding anything to the contrary contained in this Agreement, Seller and Customer waive all claims against each other (and against each other's parent company, affiliates, contractors, subcontractors, consultants, agents and vendors) for any consequential, incidental, indirect, special, exemplary or punitive damages arising out of this Agreement (including but not limited to, loss of actual or anticipated profits, revenues or product; or loss of use), and regardless of whether any such claim arises out of breach of contract, tort, product liability, indemnity, contribution, strict liability or any other legal theory. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT

LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S CUMULATIVE LIABILITY TO CUSTOMER EXCEED THE PRICE FOR THE PRODUCT GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.

7. Delivery. Seller's delivery dates are estimates only and Seller is not liable for delays in delivery or for failure to perform due to causes beyond the reasonable control of the Seller, nor shall the carrier be deemed an agent of the Seller. A delayed delivery of any part of an order does not entitle Buyer to cancel other deliveries.

8. Intellectual Property. The Product, including software or other intellectual property components, is subject to any applicable rights of third parties, such as patents, copyrights and/or user licenses.

9. Termination and Cancellation. Any order or delivery may be terminated or suspended, (a) by either party if any proceeding under bankruptcy is brought by or against the party, (b) by a party if the other party defaults in its material obligations and such default is not cured within a reasonable time if such default is curable, or (c) by Seller if it has reason to doubt the ability or willingness of Buyer to pay for the Product. The Agreement is not otherwise subject to cancellation except by mutual written agreement of the parties.

10. Inspection And Notification: Buyer shall inspect and test the Product for damage or defect immediately upon receipt, and provide Seller notice of any such damage, defect or shortage within ten (10) days of receipt. All claims for any cause whatsoever, whether based in contract, negligence or other tort, strict liability, breach of warranty or otherwise, shall be deemed waived unconditionally and absolutely unless Seller receives written notice of such claim not later than ten (10) days after Buyer's receipt of the Product as to which such claim is made.

11. Notices. All notices required hereunder shall be in writing and shall be deemed properly served if delivered in person or by reputable overnight courier service, or if sent by registered or certified mail, with postage prepaid and return receipt requested, to the addresses in the Agreement or to such addresses as a party may designate from time to time pursuant to this Section 12. All notices shall be deemed received on the date of delivery or attempted delivery, if delivered in person, or if mailed, on the date which is two (2) days after the date such notice is deposited in the mail.

12. No Waiver. No course of dealing or failure of Seller or Customer to strictly enforce any term, right or conditions of this Agreement shall be construed

as a waiver of such term, right or condition. No express waiver of any term, right or condition of this Agreement shall operate as a waiver of any other term, right or condition.

13. Compliance with Laws and Regulations. Customer is responsible for complying with any and all applicable federal, state and local laws, codes, ordinances, rules, regulations, and administrative orders, including, without limitation, export and import laws, rules and regulations and any and all other product safety laws, rules and regulations.

14. Modification. Notwithstanding anything contained herein, these Terms may be modified or changed only by a written amendment to the Agreement signed by Seller and Customer.

15. Use of Name. Customer agrees to obtain prior written consent of Seller before using the names Hero Design or Everbright in any advertisement, publications, or promotional materials. Customer shall not rename the product, or refer to it by another name or title. In cases when using the term "Everbright" does not seem ideal, or when the customer would prefer to use a generic description to reference the product, the terms "interactive light board" or "pixel art" may be used interchangeably, as general descriptions of the product, without gaining prior consent from the Seller.

16. Entire contract. This Contract contains the entire agreement of the parties regarding the subject matter of this Contract, and there are no other promises or conditions in any other agreement whether oral or written. This Contract supersedes any prior written or oral agreements between the parties.

17. Applicable law. This Contract shall be governed by the laws of the State of California.