



# City of Palo Alto

## City Council Staff Report

(ID # 9684)

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**Report Type: Consent Calendar**

**Meeting Date: 11/5/2018**

**Summary Title: New financial participation plan & agreements: Theatreworks, Palo Alto Players, West Bay Opera**

**Title: Approval of new Three-year Operating Agreements With TheatreWorks, Palo Alto Players and West Bay Opera; and for the City to Hold new Revenues Paid by the City's Resident Theatre Companies in Reserve to Help Fund Facility Improvements at the Lucie Stern Community Theatre**

**From: City Manager**

**Lead Department: Community Services**

### **Recommendation**

Staff recommends that the City Council:

1. Approve the City to hold revenues paid by the City's Resident Theatre Companies (TheatreWorks, Palo Alto Players and West Bay Opera) in reserve to help to fund facility improvements at the Lucie Stern Community Theatre (LSCT);
2. Approve new three-year operating agreements with TheatreWorks, Palo Alto Players and West Bay Opera that replace their current agreements.

### **Executive Summary**

The Lucie Stern Community Theatre is used by three local theater companies: TheatreWorks, Palo Alto Players, and West Bay Opera, who perform approximately 15 theater productions annually. The City's partnership with these companies provide them with an artistic home; an essential component of their ongoing existence, offering stability through the up and downs of the economy during times when cutbacks in government, foundation and corporate funding for the arts are the national norm. In return, the companies collectively provide culturally enriching theatrical experiences for more than 45,000 audience members annually. Their programming and operation at the Stern Theatre is completely separate from the Children's and Cubberley Theatres.

In 2016, VenueTech Management Group (VenueTech), a full-service consulting and management firm involved in the planning, capital development and management of community-based organizations and public cultural facilities, was retained by the City of Palo Alto's Community

Services Department (CSD) to provide analysis and planning for the Lucie Stern Community Theatre (Theatre).

VenueTech has provided contracted management services for public performing arts theaters for nearly three decades. The firm currently produces and presents more than 1,200 theater events annually and manages five performing arts venues for the cities of Vacaville, Campbell, San Ramon and Downey.

VenueTech's work was implemented in two phases. The initial work of the first phase, completed in November 2017, provided an operational analysis of the Theatre, with a focus on best industry practices. The second phase, completed in August 2018, looked at the strategies best suited for the management and operation of the Theatre moving forward. The results of their findings are incorporated into the recommendations brought forward in the Discussion section.

Through a series of meetings, conversations and collaborative problem solving, the City, TheatreWorks, Palo Alto Players, and West Bay Opera have agreed on an operating plan that will ensure the historic Theatre remains their artistic home, while being maintained and cared for properly for at least the next twenty years.

Staff recommends the approval of a) the terms outlined in the Financial Participation Plan for achieving long term operational and facility sustainability at the Theatre through greater financial participation by the resident theatre companies as per Chapter 2.28 of the muni code Fiscal Procedures; b) new agreements between the City and the three companies (*Attachment D: Agreements*), updated from a 45-year-old document that replace the current agreements. The effective date of recommendation 'a' would be July 1, 2019 and recommendation 'b' would be implemented immediately. To adequately plan for these changes in their next season, the resident theatre companies must implement these changes by November 2018.

### **Background**

The Lucie Stern Community Theatre was built in 1933 and while the three theatre groups in residence at the Theatre continue to achieve new artistic and operational goals, the aging, historic, 85-year-old facility needs a plan for long-term sustainability due to its many facility and equipment needs. In addition, the 45-year-old annual agreements with the theatre groups need to be updated and the relationships renewed. While improvements had been made in operations and communications (*See Attachment A: Primary Accomplishments – Stern Community Theatre*), staff determined a full evaluation and strategic renewal of the operating model and facility was needed.

The Stern Community Theatre has been the home to these three performing arts groups since the early 1970's. The Palo Alto Players began in the 1930's as a City program and became its own nonprofit in 1971. TheatreWorks was also a City program and became a nonprofit in the

early 1970s. West Bay Opera had its origins at the Theatre in the 1950s and became a nonprofit in 1973. A description of each group follows:

**TheatreWorks** was founded by San Francisco Bay Area native Robert Kelley in 1970 as a theatre arts workshop for teenage and college students. Chartered by the City to produce work that would reflect the concerns of the community during an unsettled period in American life, the company produced thirteen wholly original works for the stage in its first three years. Although company actors initially performed in a variety of venues, a tradition was established of staging several shows each season at the Theatre. When the Mountain View Center for the Performing Arts opened in 1991, the company began producing five main stage productions there each season, along with at least three productions each season at the Lucie Stern Theatre in Palo Alto.

**Palo Alto Players** became the Peninsula's first theatre company in 1931 when a group of 100 like-minded citizens gathered together to create a theatre dedicated to its community. Initially, productions were held at a makeshift performance space in the Palo Alto Community House adjacent to the train station (now MacArthur Park Restaurant). Soon after, Lucie Stern invited the Players to be the resident theatre company at the Community Theatre. In 1974, the Players dissolved their ties with the Community Services Department, becoming an independent company. Since that time, the City of Palo Alto has continued to support the Palo Alto Players with performance, rehearsal and shop space.

**West Bay Opera** was founded by Henry Holt in 1955. Originally called the Little Opera Guild, the company began presenting fully staged operatic performances. In 1973, the West Bay Orchestra was established. In 1982, the company acquired space for rehearsals, offices, a costume shop and storage on Lambert Avenue in Palo Alto. Annually, West Bay Opera presents three fully staged productions at the Lucie Stern Theatre.

In 1973, the City entered into contractual relationships with these three groups, now referred to as the Resident Theatre Companies (RTCs) on a rent-free basis, while the Children's Theatre remained under the direct support of the City. This commitment was reconfirmed in 1989 when the working relationship was again reviewed by the community. The City had also provided them for many years with three full time staff, including a costumer, technical supervisor and theater facilities manager. Over the years as the groups became sustainable nonprofits and the City weathered budget challenges, those positions were eliminated (technical supervisor and facilities manager) or were moved to support the City-operated Children's Theatre (costumer).

In FY 2006, the City instituted a Patron Facility Use Fee at the Theatre; modeled after TheatreWorks' revenue agreement with the City of Mountain View. The intention of the fee has been to offset operating costs by applying a surcharge on every ticket sold. The fee is

contractually considered to be compensation in lieu of rent. The fee was last raised approximately seven years ago from \$1 per ticket to \$2 per ticket. The surcharge currently nets the City approximately \$90,000 per year. Direct departmental operating expenses are currently approximately \$60,000 per year, utilities are an additional \$40,000, and janitorial costs are another \$40,000.

The City has funded maintenance and improvements at the Children's and Stern Theatres for many decades (*See Attachment B: CIP Funded Improvements*), including more than \$7 million in the last decade for both theatres. Although these major capital needs have been substantial, the aging, historical Stern Theatre has many more future equipment and facility needs that are beyond the City's current resources. Some of the projects that staff have identified include replacement of the theatre seats to increase fire safety and improve the patron experience, and to conduct a professional assessment of all theatre capital needs in order to develop a capital improvement plan for the theatre.

## **Discussion**

Staff has outlined the major historic, partnership, operational and budgetary issues involved in these recommendations as follows:

1. The City provides the three resident theatre companies with an artistic home; an essential component of their ongoing existence, offering stability through the ups and especially the downs of the economy, during times when cutbacks in government, foundation and corporate funding for the arts are the national norm. In return, the companies collectively provide culturally enriching theatrical experiences for more than 45,000 audience members annually through 15 productions.
2. It is extremely rare for performing arts venues to rent their facility without a charge across the nation and in the Bay Area. The industry norm is for renters to pay both rental fees and ticket fees (*See Attachment C: Study of Comparable Theatre Rental Fees – Regional Market*). As long-time resident companies of the Stern Theatre, the Resident Theatre Companies understand the uniqueness of free rent, offset by a modest ticket fee.
3. The Stern Theatre is a beautiful, historic building that is currently in need of attention, including both facility improvements and equipment upgrades and replacement. The City has funded maintenance, repairs and improvements through CIP's over many years. However, the City does not have the resources to adequately address all the equipment and facility needs (*See Exhibit F: Preliminary Capital Needs*). For instance, the City does not have funds to replace all the seats in the 416-seat house, to improve the dark and narrow lobby and inadequate restrooms, to purchase new lighting equipment and fixtures, and to make the theatre more user-friendly to its patrons.

#### **Related to Approval of New Agreement**

4. The updated agreements (*See Attachment D: Agreement*) between the City and the three resident theatre companies (RTCs) show a much-improved document, with updated language, formatting and terms. Staff has revamped the language in the agreement, updated the terms to reflect increased accountability, clarity of roles and responsibilities, defined policies with a focus on safety. The clarity in the now three-year agreement will help to ensure successful implementation and increased accountability. The RTCs have signed and staff recommends approval of these agreements. These agreements will go into place upon Council Approval, replacing the current agreements, which were placeholders until these agreements were ready. The current agreements will terminate as of November 9, 2018, as per the amendments also attached to *Attachment H: Agreement*. However, the current insurance policies will continue through June 30, 2018.

#### **Related to Approval of Financial Participation Plan**

5. The recommended reserve fund for the Stern Theatre has several other precedents. There are similar long term, formal and informal agreements to reserve funding for specific initiatives such as Human Services Resource Allocation Process (HSRAP) funding, Bryant Street Garage Fund, and the Cubberley Property Infrastructure Fund.
6. A *Financial Participation Plan* was developed and includes a proposed funding strategy for the beginning steps to addressing the maintenance and preservation needs of the Lucie Stern Community Theatre (*See Attachment E: Financial Participation Plan.*) The Plan would increase the per-ticket payment from the RTCs by \$2.00 per patron, with the option of increasing by an additional \$1.00 after three years. These new funds would be reserved as an essential, though not exclusive resource, for funding capital improvements at the Stern Theatre.

While the RTCs strongly oppose paying a formal rent, they are in favor of increasing their financial participation toward maintaining and enhancing the facility. They have committed to doubling the ticket fee to \$4.00 -or paying its equivalency- with the understanding that \$2.00 will be reserved for theatre improvements and \$2.00 will continue to return to the General Fund to offset operating costs.

Staff believes this is a positive step forward as the Financial Participation Plan returns the same revenue to the General Fund, while creating a new revenue source for maintenance, preservation and improvements to the facility and its equipment. It is important to note that the City is not providing a truly working, rental theatre house, as it does not have state of the art equipment, facility upgrades or adequate staffing.

The Financial Participation Plan is expected to continue indefinitely but the four parties are hopeful that at the end of its first 20-years, substantial improvements will have been

realized. Thus, the Financial Participation Plan focuses on a 20-year commitment. The chart below shows the current and projected revenues.

### Ticket Fee Revenues

Funding Source	Total Per Ticket Fee	Average Annual Ticket Sales	Total "Per Ticket" Revenue	Offset Operating Expenses?	Offset for Theatre Improvements?
Current ticket fee - \$2 <i>Operating Cost Offset Ticket</i>	\$2	45,000	\$90,000	Yes	No
Increase ticket fee - \$2 <i>Building Enhancement Ticket</i>	\$2	45,000	\$90,000	No	Yes
Total City Revenue <i>Beginning July 2019</i>	\$4	45,000	\$180,000	Yes	Yes
Potential ticket fee increase - FY 2022	\$1	45,000	\$45,000	\$0	\$135,000 annually

**NOTES:**

a. The above chart does not include any increases in revenue due to increased ticket sales by the Resident Theatre Companies. It also does not include any potential for decreased sales should there be dips in the economy causing slower ticketsales.

b. Assuming the four organizations agree to increase the Stern Theatre Improvement Ticket payment after the third year of the program (FY 2022) the total potential revenues which would be available to offset the cost of building enhancements would reach \$2,565,000 over the 20 years of the projected program (at current cost of money).

c. Ticket prices for events produced by the three Resident Theatre Companies are offered within the range of \$23 and \$95. The average ticket prices for each Company is approximately \$35 for Palo Alto Players, \$48 for TheatreWorks and \$69 for West Bay Opera. Significant discounts are provided to students and season ticket patrons.

d. Currently TheatreWorks supplies about half of the \$90,000/year revenue at about \$50,000, Players about \$25,000, and WBO about \$15,000.

7. Since the ticket fees are charged to the resident theatre companies in consideration for their use of the Theatre, it is not prudent to include a ticket fee in the Municipal Fee Schedule. This will be changed in the next budget cycle for FY 2020.

8. The *Financial Participation Plan (Exhibit E: Financial Participation)* includes several other elements. It is expected that the City would make contributions to the Theatre's CIPs as possible to support the theatre improvements, especially for mechanical and electrical upgrades and roof repairs. The theatre groups' additional ticket fee would greatly increase the facility's long-term sustainability and our collective ability to care for the theatre. Over time the funds would build up and trigger the creation of a CIP for an improvement that the four parties agree upon, with the City as the final approver. One of the first uses of these funds would go to fund a Conditions Consultant, who would help assess facility and equipment needs, and formulate a long term, prioritized plan. The City and RTCs have drafted a preliminary list (*See Attachment F: Preliminary List of Capital Needs*) of improvements needed.
9. In addition to the increase in the ticket fee, the RTCs would also commit annually to a minimum of 25 volunteer hours by each group, to support the Stern Theatre with tasks such as deep cleaning, physical space organization, marketing and outreach.
10. The Financial Plan commits the RTCs to work with the City to explore the feasibility of a capital campaign after five years. The RTCs, as non-profit performing arts organizations, are in a unique position to raise funds for their artistic home, thus closing the anticipated financial gap. After proper assessment of how the new ticket fee (or its equivalent) is working, plus the conditions assessment, the City can determine the full outstanding need and determine if it wishes to work with the RTCs on a capital campaign.
11. The City and three theatre groups also agreed on a Vision, Values and Goals statements as well as Roles and Responsibilities document that defines each party's commitment (*See Attachment G: Resetting the Relationship between the City and the Resident Theatre Companies*). At the beginning of the Phase 2 Strategic Process, these relationships did not resemble true "partnerships", but rather year-to-year contractual obligations based on historical habit. The re-establishing of a strong partnership relationship with the City's Resident Theatre Companies represents far more than the resulting planning documents.

Overall, the Phase 2 work can best be described as a truly cooperative effort, with the real potential of leading to a cultural shift that will provide significant long-term benefits to the City, the three Resident Theatre Companies, and most importantly the arts patrons of the Palo Alto community and surrounding region. All four parties hope that the planning and relationship reset process is the first step in a 20-year strategy that will lead to enhanced arts experiences for patrons, increased creative and financial success for the nonprofit organizations, a stable and cooperative partnership and significant improvements to the historic Stern Community Theatre.

### **Resource Impact**

The current \$2 per ticket surcharge will not change and is anticipated to continue bringing in approximately \$90,000 per year to offset operational costs at the Stern Theater. Direct departmental operating expenses are currently approximately \$60,000 per year, utilities are an additional \$40,000, and janitorial costs are another \$40,000.

The Financial Participation Plan is estimated to generate an additional \$90,000 each year, beginning July 1, 2019, earmarked for the Stern Theatre Improvements. CSD staff will work with the Office of Management and Budget and Accounting in the Administrative Services Department to set up a tracking system for the funds and hold them for appropriate use. It is not anticipated that these contracts will generate additional operating costs, but staff's increased commitment to maintenance of the aging theatre will likely result in some additional capital improvement projects being proposed in the near term. The additional \$90,000 of revenue will offset costs associated with capital projects for the Theatre, including the projects mentioned above, seat replacement and an assessment of facility needs.

### **Policy Implications**

Chapter 2.28 of the Municipal Code Fiscal Procedures allows for:

Money collected in the name of the city.

The solicitation and collection of all money made in the name of or for the use of units of city government by nongovernmental agencies or agents shall be governed by the following procedure:

- a. The purpose for which money is to be solicited or collected shall be referred to the city council;
- b. Obtain approval of the city council to enter into such activities on behalf of units of the city government;
- c. Obtain approval of the city council on the manner and technique by which the money is to be solicited and/or collected;
- d. Establish with the city council prior to the time of solicitation and/or collection the conditions under which the money is to be given to the city of Palo Alto;
- e. Report to the city council the total amount of money collected and such costs are to be solicitation and collection of said money within thirty days of collection.

Policy L-8.5 Recognize public art and cultural facilities as a community benefit. Encourage the development of new and the enhancement of existing public and private art and cultural facilities throughout Palo Alto. Ensure that such projects are compatible with the character and identity of the surrounding neighborhood.

Policy C-1.4 Promote City parks, open spaces, recreational facilities, libraries, classes and cultural activities for community members recognizing that these facilities and services build and strengthen community.

**Attachments:**

- Attachment A - Primary Accomplishments - Stern Community Theatre
- Attachment B - CIP funded improvements at Stern and Children's Theatre, 1972-Current
- Attachment C - Study of Comparable Theatre Rental Fees – Regional Market
- Attachment D - Theatre Agreements
- Attachment E - Financial Participation Plan
- Attachment F - Preliminary Capital Needs
- Attachment G - Resetting the Relationship between the City and the Resident Theatre Companies
- Attachment H - Amended Theatre Agreements

## Attachment A Primary Accomplishments – Stern Community Theatre

### *Resident Theatre Companies: A Sample of Significant Achievements (2013-2018)*

#### TheatreWorks:

- Produced 6 world premieres and helped develop over 40 additional new works.
- Produced five New Works Festivals
- Engaged 10,000 in the experience of creating new plays and musicals
- Reached over 500,000 patrons and 100,000 students
- Received Best Production of the Year award from The Bay Area Critics Circle Awards for the world premiere of *The Four Immigrants: An American Musical Manga*.

#### Palo Alto Players:

- Celebrated its 85th Anniversary in 2016 and continues to be one of the longest running theatre companies in the Bay Area, serving over 14,000 audience members and over 200 artists and volunteers each year
- Honored with both Theatre Bay Area and Bay Area Theatre Critics Circle nominations and awards over the last 5 years
- Produced its first family show in 2016, Disney's "The Little Mermaid." Since 2015 increased contributed funding 350%, and doubled the number of donors.

#### West Bay Opera:

- Completed \$100,000 capital campaign to replace roof, paint, install flooring, and redevelop costume shop at their Holt Building
- Initiated the West Bay Opera NOW (New Opera Works) program, devoted to showcasing operas by Latin American composers
- *Opera In The Schools* (OITS) program has visited over 100 schools on the Peninsula and South Bay and provided tens of thousands of children their first exposure to opera.

With limited personnel and budgetary resources, it has been challenging to preserve the Stern Community Theatre or enhance the operation over the past decade. The specific tasks required for management of the Theatre has been assigned to various city staff in the Arts and Sciences Division who have added these duties to their primary daily responsibilities. Over the past approximately 5-year period, a number of important achievements have been accomplished at the initiative of City staff:

#### Organizational:

- Organization of annual meetings for executive leadership of three resident theatre companies (RTCs) and A&S Division staff to meet to discuss policy, procedures, issues and updates.
- Implementation of use of City logo in theatre groups' collateral materials.
- Improvements in scheduling and scheduling of ancillary spaces to maximize efficient use of space.
- Creation and implementation of three checklists for use during each production to ensure accountability.
- New process for the Resident Theatre Companies scheduling space at Stern Community Center was implemented, that aligns with City's rental practices, but still allows for theatre groups to reserve some adjacent space to the Stern Theatre at no charge.
- Cubberley Theatre's producer became point person for theatre groups at Stern Theatre, in charge of

coordination and communications.

- Cubberley Theatre's theatre technicians oversee load ins and load outs at Stern Theatre.
- Former long- term house manager leaves employ of the City. Facility:
- Major CIPS for audio board, mechanical and electrical, fire completed.
- Catwalk repair completed.
- Resolution of sound bleed problem with improved communications and coordination, when Stern Community Center (SCC) renters' amplified sound from SCC Courtyard bleeds into ST.
- Rat and bee invasions eliminated (or greatly reduced).
- Major deep clean of scene shop and costume shop completed over two years.
- Major clean out of basement of theatre almost completed.
- Fire Marshall and Public Works inspect facility for safety and weight limits and update safety policy for the facility.

Current/In progress:

- Web page for resident theatre groups created.
- Funds are being identified for new intercom/paging system, new lightingboard.
- Clean out of upstairs prop storage space to occur in FY19.
- Assessment of how best to use City staff considering the house manager position is only position solely dedicated to the Stern Theatre and it is potentially the least needed (see Exhibit A above).
- Assessment of availability of ancillary spaces for use by Children's Theatre.
- Plans for Signage for ST and the rest of Rinconada Park's west end amenities are in development for completion in FY21, with theatre groups renting space on signage as needed/desired
- Develop long-lead list for equipment replacement and repair needs.
- Develop improved reporting structure.
- Regularize production meetings between RTGs and City's ST point of contact.

## **Attachment B: CIP funded improvements at Stern and Children's Theatre, 1972-Current**

Estimated Total Expenditure 2008-2018: \$7.1 million

- 1. PF - 09002 : Lucie Stern Community Center and Theatre Exterior Paint / 2008-2013**  
*This project provides for the exterior painting of the Lucie Stern Community Center and Adult Theatre. The new exterior painting will match the existing colors.*  
*Estimated Expenditure - \$95,326*
- 2. AC - 09002 : New Sound System for Lucie Stern Community Theatre / 2009-2010**  
*This project will purchase a new sound system for the Community theatre that includes sound mixer, house speakers (including a new center luster), audio snake system to connect the booth and the right back-of-house, amplifiers, audio patch for microphones and speakers, hard drive audio editing/storage unit and CD recorder/player, and monitor speakers in the costume shop and rehearsal hall.*  
*Estimated Expenditure - \$179,250*
- 3. PF - 01003: Building Systems Improvements / 2009-2013**  
*These upgrades may include main and emergency power sources, fixtures, fire alarm systems and devices, HVAC, and structural repairs or reinforcement. This project provides for system upgrades required for updated code compliance. Facilities identified for upcoming work include Jr Museum, Golf Course Clubhouse, and Lucie Stern Theatre and Community Center*  
*Estimated Expenditure - \$1,149,691 to date/ in progress*
- 4. PF - 02022 : Facility Interior Finishes Replacement / 2012-2016**  
*Work scheduled includes replacement of floor finishes such as carpet and tile. FY 2013 — Lucie Stern Community Theatre and City Hall floors 5 & 8*  
*Estimated Expenditure - \$1,566,854 to date/ in progress*
- 5. PE - 14015 : Lucie Stern Buildings Mechanical and Electrical Upgrades / 2012-2017**  
*This project provides funding to replace and upgrade mechanical and/or electrical systems, fire/life safety and finishes as necessary at Lucie Stern Children's Theatre; Lucie Stern Theatre and Scene Shop; and Lucie Stern Community Center. The systems will meet current code and user needs, and optimize operational and energy efficiency.*  
*Estimated Expenditure - \$3,912,347 to date/ in progress*
- 6. AC - 17000 : Performing Arts Venues Soft Goods Replacement / 2016-2017**  
*This project provides funding for the replacement of existing soft fabric goods in City performing arts venues and to bring the goods in the facilities up to fire code, which requires that all hanging fabric be certified as fire retardant. The soft goods must be flame-retardant with up-to-date flame certification in the Children's Theatre, Community Theatre and Cubberley Theatre. Soft goods refer to: 1) theatre drapes and stage curtains: large pieces of cloth used for purposes such as backdrops to scenery, or to mask backstage areas of a theater from spectators; 2) cyclorama: a vertical backdrop usually made of heavy fabric drawn tight to achieve a flat surface; 3) scrim: a large piece of fabric which serves as a drop or border for creating the illusion of a solid wall, backdrop, or creating a semi-transparent curtain when lit from behind. Estimated Cost: \$15,000 Children's Theatre; \$20,000 Community Theatre; \$20,000 Cubberley Theatre.*  
*Estimated Expenditure - \$41,912/ in progress*

**7. AC - 18000 : Performing Arts Venues Seat Replacement / 2017-2019**

*This project provides funding for the replacement of damaged seats in City performing arts venues. Many seats have broken hinges which may cause the seat to block a fire exit or create a tripping hazard if it is not able to be kept in an upright position.*

*Estimated Expenditure - \$75,000*

**8. AC - 09001 : Replacement of Children's Theatre Audio and Visual Monitoring Systems / 2009-2010**

*To replace the non-functioning Children's theatre audio and visual monitoring systems, and to expand the monitoring systems to the Wang Library/Rehearsal Hall and the Magic Castle Stage. This includes an audio and video monitoring system, paging system, and intercom system.*

*Estimated Expenditure - \$106,601*

**9. Pre-SAP CIP - Community Theatre HVAC Upgrades (1999 – 2000)**

**10. Pre-SAP CIP - Children's Theatre Addition (~1997) Phase II - Stage building with the outdoor seating area**

**11. Pre-SAP CIP - Children's Theatre Addition (~1992) Phase I - Workshop Area**

**12. Pre-SAP CIP - Main & Children's Theatre Heating and Ventilation Improvements (~1982)**

**13. Pre-SAP CIP - Community & Children's Theatre, Stern wing, Wings A&B - Heating & Ventilation (~1982)**

**14. Pre-SAP CIP - (~1982) Theatres Rehab. Project - Phase II (Children's & Community Theatre)**

**15. Pre-SAP CIP - (~1980) Theatres Rehab. Project - Phase I (Children's & Community Theatre)**

**16. Pre-SAP CIP - (~1970) Children's Theatre Improvements**



**AGREEMENT  
FOR PERFORMING ARTS SERVICES  
BETWEEN THE CITY OF PALO ALTO AND (THEATRE GROUP)**

THIS AGREEMENT FOR PERFORMING ARTS SERVICES (“**Agreement**”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018 by and between **THE CITY OF PALO ALTO**, a California chartered municipal corporation (“**City**”) and TheatreWorks Silicon Valley \_\_\_\_\_ (Organization Name), a California nonprofit public benefit corporation, located at 350 Twin Dolphin Drive, Suite 127, Redwood City, CA 94065\_(Address) (telephone: 650-463-1950) (“**Contractor**”) (individually, a “**Party**” and, collectively, the “**Parties**”).

1. **Services.** During the Term of this Agreement Contractor shall present that portion of Contractor’s Performances of its annual scheduled Productions that are produced at Facility pursuant to the Schedule approved by City for the Compensation set forth below, pursuant to the terms and conditions of this Agreement.
2. **Facility.** Facility shall mean the City-owned Lucie Stern Community Theatre, and for purposes of this Agreement, the Facility, is deemed to include those portions of the Lucie Stern Community Theatre including, but not limited to, the theatre, lobby, green room, dressing rooms, scene shop, paint shop, light and sound booth, flat storage, rehearsal hall and costume shop.
3. **Performance.** Performance shall mean a single instance of a staged theatrical Production pursuant to a Schedule for a single fiscal year (July 1, through June 30).
4. **Production.** Production shall mean all activity from inception to completion to include multiple Performances together with such normal activities to include but not limited to load-in, load-out, set building, lighting design, rehearsal, and activities taking place in the auditorium, stage, paint shop, scene shop, flat dock, costume shop, green room, dressing rooms, rehearsal hall, lobby, hallways and outdoor areas adjacent to Facility (collectively the “Production”) pursuant to the Schedule.
5. **Resident Theatre Companies.** Resident Theatre Companies shall mean TheatreWorks Silicon Valley, Palo Alto Players, and West Bay Opera.
6. **Schedule.** Contractor’s Schedule shall mean that particular schedule for all of its activities related to its planned Productions and Performances to be performed in one fiscal year as submitted to City Project Manager no later than fifteen days after they announce their annual season for the following calendar year.
  - a. Resident Theatre Companies shall have the right of first refusal for scheduling and use of Facility over all others except for the City.

- b. City shall control and maintain a master theatre calendar to accurately reflect the actual usage of each production space, including the date and purpose of each scheduled date.
  - c. Dates of use shall be reserved on the master theatre calendar by the City Project Manager no later than fifteen days after the announcement of the annual season for each of the Resident Theatre Companies. This use reservation may be initially identified or blocked as a full day of use. However, to maintain complete information relating to actual Facility use, each Resident Theatre Company must provide the City Project Manager with clarification of the time and purpose of each day of use on the Master Theatre calendar no later than twenty-one (21) days after the completion of each Production.
  - d. For the avoidance of doubt, the City, with advance notice and justification, has the right to change, cancel and control the scheduling of any and all activities, including Performances, at Facility. The City may delegate at its sole discretion the scheduling responsibility to one of the three Resident Theatre Companies. Such delegation shall be made in writing by the City and may be revoked by City at any time.
7. **City's Project Manager.** City shall assign a City employee, excluding any Party that may have a conflict of interest, as its Project Manager for the Term of this Agreement who shall act on the City's behalf on all matters related to the use of Facility. City Project Manager shall have the authority to assign matters relating to the day-to-day use of Facility to a City employee who shall be referred to "Facility Coordinator".
8. **Contractor Liaison.** Contractor shall assign a Contractor employee as a liaison between Contractor, City and City Project Manager and as a liaison with other Resident Theatre Companies for all matters related to the use of Facility.
9. **Operating Policies for Contractor Services.** The Services shall be performed by Contractor pursuant to this Agreement and all Exhibits in particular, the "Operating Policies" attached hereto as Exhibit D. The City reserves the right to change or modify the Operating Policies during the Term of this Agreement provided however that City shall give Contractor a written thirty (30) day notice of same.
10. **Term, Termination & Breach.** This Agreement shall commence as of (DATE) and shall terminate on June 30, 2021 (the "Term"). The Term of this Agreement may be renewed for an additional three (3) year term by mutual agreement of the Parties to this Agreement.
- a. **Termination for Material Breach & Cure of Default.** This Agreement may be terminated upon material breach by either Party as set forth herein. The term "Material Breach" shall mean any material breach or default by a Party of any material covenant, duty or obligation under this Agreement.
  - b. **Notice & Cure.** The non-defaulting Party shall provide written notice of its intention to terminate and declare a Material Breach or default under this Agreement, stating the reasons for the notice and the date of intended termination. The defaulting Party shall have a period of sixty (60) days to cure the breach. Upon the expiration of the cure period and where cure is not achieved within said cure period, or in instances

where the breach cannot be cured within sixty (60) days, efforts to cure the breach have not commenced or are not being diligently pursued, this Agreement shall terminate immediately upon receipt of written notice of termination by the non-defaulting Party.

- c. **Material Breach by Contractor.** Contractor breach of the following provisions of this shall be deemed a “Material Breach” for purposes of this Agreement and shall include failure of performance of any provision in (i) Section 1 through 14 of this Agreement or of any provision in Exhibits A, C, D, and E.
  - d. Material Breach with regard to public safety must be cured by Contractor no later than 48 hours from receipt of notification of such violation.
11. **Compensation.** Contractor shall compensate City for the use of Facility, including use during public events and use for all other times when there is no public event. Compensation shall be derived as follows:
- a. **Operating Cost Offset Fee:** Contractor shall pay City \$2.00 for each ticket sold for events with paid admission. This charge compensates City for use of Facility for all such days scheduled by Contractor, including performances, load-in, load-out, set building, rehearsal, and dark days. There shall be no additional compensation for use of Facility on days where no tickets are sold.
  - b. **Stern Theatre Improvement Fee:** Commencing on July 1, 2019, Contractor shall pay City an additional \$2.00 for each ticket sold for events with paid admission to indirectly offset the costs of building maintenance, enhancements, improvements, repairs and new equipment and furnishings for Facility. This fee may go up to \$3.00 per ticket sold as of the new term beginning July 1, 2021.
  - c. **Funding of Fees:** Contractor has sole authority to allocate the funds required for this payment to City from any revenues generated by the Contractor organization.
    - d. **Stern Theatre Improvement Annual Plan:** Funds collected by the City from payment of **Stern Theatre Improvement Fee** shall fund improvements to the Facility as appropriated by and specified in the annual City budget. Items to be funded shall be recommended to City each year by a committee with representation from each of the three (3) Resident Theatre Companies and City staff.
    - e. **Facilities Attendant:** At the discretion of the City, Contractor shall provide compensation for the Facilities Attendant present at each performance, at prevailing rates as set forth in the Municipal Fee Schedule.
12. **Payment of Compensation:** Contractor shall pay City all required Compensation within thirty (30) days from the completion of each Production run. Payment shall be made in full and shall be reconciled against actual ticket sales. Along with payment, Contractor shall provide City with a printed report from their automated box office system that provides detailed ticket sales data for the Performances included in the payment. This “Event Ticket

Sales Report” must include final sales data for each date of the performance run, the total performance run, total ticket sales, ticket sales by pricing category, total sales revenues and issued complimentary tickets. If such report is not available within the automated box office system and Contractor is unable to develop such customized report, Contractor shall submit a report or multiple reports that will provide City with the required information.

13. **Late Payments:** If Contractor is late on payments, the City may, in its discretion, add a three percent (3%) surcharge levied for payments received between 31 days and 60 days after the closing date of the Production, a four percent (4%) surcharge levied for payments received between 61 days and 90 days after the closing date of the Production, and a five percent (5%) surcharge levied for payments received in excess of 90 days of the closing date of the Production. Payment must be accompanied by the production report specified in Exhibit C, Section (9), “PRODUCTION REPORTS AND RECORDS,” item (a) before payment will be considered to have been made.
14. **Indemnity:** Contractor shall defend, indemnify and hold harmless City, its officers, contractors, agents, and employees and Facility from and against (a) any demands, claims, or liability of any nature, including injury or death or property damage, arising out of or in any manner related to performance or nonperformance by Contractor, its officers, agents, employees or any persons brought onto the Facility premises by or through Contractor, (b) any claims or demands made against City, its officers, agents or employees by reason of any infringement or alleged infringement of any copyright or trademark caused by or alleged to have been caused by Contractor or its subcontractor(s) under this Agreement, (c) any penalties imposed on account of the violation of any law or regulation or of any term or condition of any permit in connection with this Agreement, or (d) any damage arising under this Agreement from any loss or damage to materials and equipment owned, rented or borrowed by Contractor, its employees, subcontractors, participants, volunteers, sponsors or any others engaged in connection with the Services rendered by Contractor under this Agreement.
15. **Insurance:** Contractor, at its sole cost and expense, shall obtain and maintain in full force and effect throughout the Term of the Agreement insurance coverage pursuant to Exhibit E “Insurance Requirements”.

**Cooperation:** The Parties shall in good faith cooperate in all matters under the terms and conditions of this Agreement. Furthermore, the Parties agree to adhere all terms as outlined in the then current version of the Theatre Operating Plan (TOP) including its attachments, regarding jointly agreed upon Financial Participation Plan, Commitments (roles and responsibilities) and Joint Mission, Values and Goals.

16. **Amendment:** This Agreement this may be amended or modified only by written agreement, signed by the Parties to be bound.
17. **Assignment:** This Agreement may not be assigned by either Party, without the express written consent of the other Party or its successor in interest.
18. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

19. **Governing Law:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.
20. **Venue:** Any action or suit or proceeding with respect to this Agreement shall be brought exclusively in the state courts of Santa Clara County, in the State of California or, where otherwise appropriate, exclusively in the federal courts of the Northern District of California.
21. **Entire Agreement:** This Agreement and the terms and conditions set forth in the attached Exhibits, and any Appendices or Attachments represent the entire Agreement between the Parties. All prior agreements, representations, statements, negotiations and undertakings whether oral or written are superseded hereby.
22. **Exhibits, Appendices, and Attachments:** The Exhibits listed below, together with Appendices A through E are attached hereto and are incorporated herein by this reference. The Parties acknowledge that this Agreement shall have no force or effect unless all such Exhibits and Appendices are attached hereto.  
Exhibit A: Responsibilities of Contractor  
Exhibit B: Responsibilities of City  
Exhibit C: General Conditions  
Exhibit D: Facility Operating Policies  
Exhibit E: Insurance Requirements

Appendices:

[Building Safety Responsibility \(Appendix A\)](#)

[Conduct in City Facilities \(Appendix B\)](#)

[City of Palo Alto Safety Policy \(Appendix C\)](#)

[Zero Waste Plan \(Appendix D\)](#)

[City Report of Accident/Property Damage \(Appendix E\)](#)

23. **Order of Precedence:** For the purposes of construing, interpreting and resolving inconsistencies between and among the provisions of this Agreement, the contract documents shall have the order of precedence as set forth below. If a claimed inconsistency cannot be resolved through the order of precedence, the City shall have the sole power to decide which document or provision shall govern as may be in the best interests of the City.
- a. Order of Precedence
- i. This Agreement (before all Exhibits)
  - ii. Exhibit C: General Conditions
  - iii. Exhibit E: Insurance Requirements
  - iv. Exhibit A: Responsibilities of Contractor
  - v. Exhibit B: Responsibilities of City
  - vi. Appendices
  - vii. Exhibit D: Facility Operating Policies

**SIGNATURES OF THE PARTIES TO AGREEMENT NO. \_\_\_\_\_**

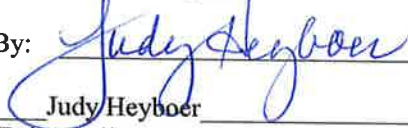
**IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT  
THE DAY, MONTH, AND YEAR FIRST WRITTEN ABOVE**

**THE City OF PALO ALTO**, a municipality  
chartered under the laws of the State of California

By: \_\_\_\_\_  
City Manager

Its:  
REPRESENTATIVE FOR City

TheatreWorks Silicon Valley \_\_\_\_\_  
(Organization Name) a California non-profit  
public benefit corporation

By:  \_\_\_\_\_  
Judy Heyboer  
(Print Full Name)

\_\_\_\_\_  
Board of Directors Chair  
(Print Full Title)

I.R.S. Number: \_\_\_\_\_ 94-  
2831245

Address: \_\_\_\_\_ 350 Twin Dolphin Drive, Suite 127  
Redwood City, CA 94065

Telephone: \_\_\_\_\_ 650-480-1950 \_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT A**  
**RESPONSIBILITIES OF THE CONTRACTOR**

Contractor shall comply with the duties in this Exhibit A:

1. Contractor shall abide by the Facility Operating Policy (Exhibit D) established by City for the use of Facility, equipment, and other production elements.
2. Contractor shall abide by the following: Building Safety Responsibility (Appendix A) Conduct in City Facilities (Appendix B), City of Palo Alto Safety Policy (Appendix C), Zero Waste Plan (Appendix D), and City Report of Accident/Property Damage (Appendix E). Contractor shall follow safety procedures for the use of power and hand tools, mechanical lifts, etc. including the use of safety goggles, ear protection, face shields, safety cables, outriggers, and all other safety provisions, as described in Building Safety Responsibility (Exhibit A).
3. Contractor's use of Facility must conform to the City's safety and fire codes and policies: Building Safety Responsibility (Appendix A) Conduct in City Facilities (Appendix B), City of Palo Alto Safety Policy (Appendix C),
4. Contractor's use of Facility must demonstrate ample awareness of the Facility's age and guard against unnecessary wear and tear. The scope of Productions by Contractor must not stress the Facility unduly and must be designed within its restrictions of scope and scale. Productions that are deemed by the City to stress the Facility, such as causing excessive wear and tear or exceeding weight limits or safety regulations, will not be allowed.
5. Contractor shall bear sole responsibility for the control and supervision of all production activities and personnel associated with the events produced by Contractor.
6. Contractor shall be responsible for the safety and security for all personnel, patrons and participants. Contractor shall provide awareness and training to all personnel of their obligations and responsibilities under this Agreement. If City deems that any procedure followed by Contractor is unsafe, City has the authority to require the immediate suspension of such procedure. Contractor shall prevent or quickly mitigate any fire hazards or any items identified by the Fire Department during Facility inspections.
7. Contractor shall provide City with a copy of their Injury and Illness Prevention Policies which shall ensure that Contractor shall exercise safe practices in the use of City facilities and equipment, maintain and clear work areas, and, within twenty-four (24) hours, report, on a form provided by City (Appendix E), information regarding accidents. Immediately report to City on a form provided by City any breakage, malfunction, deterioration or loss of any of the City's resources (including musical instruments, tools, lights, sound equipment, props, curtains, etc.). Contractor will be responsible for costs of any repairs or necessary replacement needed due to breakage, malfunction, deterioration or loss

(including possible theft) as a result of Contractor's willful, negligent, and/or reckless acts or omissions. Contractor shall immediately discontinue any activity in which an unsafe or dangerous condition exists. Contractor shall train and supervise Contractor's staff and volunteers on safe theatre practices and adhere to City's safety procedures and guidelines. Contractor shall be solely responsible for the control and supervision of such participants. All such personnel shall be deemed the sole agents and employees of Contractor and shall be notified by Contractor of this circumstance. If, in the opinion of any City or Contractor employee, Contractor is conducting an activity in an unsafe manner, Contractor or its agents shall be informed and shall immediately discontinue such activity until such activity is able to be conducted in a safe manner approved by City staff.

8. Contractor shall replace or repair or cause to be replaced or repaired by factory authorized technicians City-owned equipment, instruments or materials identified by Project Manager or Facility Coordinator as having been lost, damaged or destroyed by Contractor or its agents. A written report must be made on a City form whenever City equipment is lost, damaged, or destroyed by Contractor.
9. Contractor shall bear responsibility for providing appropriate auxiliary aids, interpretive services and accommodations where they are necessary to achieve an equal opportunity for patrons to participate in and enjoy the benefits of public performances produced under the Agreement, in conformance with the Americans with Disabilities Act (ADA) of 1990 guidelines and requirements as amended. Printed programs shall include the following statement required by the Americans with Disabilities Act: "Persons with disabilities who require information on auxiliary aids or services in using City facilities, services, or programs or who would like information on the City's compliance with the Americans with Disabilities Act (ADA) of 1990, may contact: ADA Coordinator, City of Palo Alto, 650-463-4952 (Voice) or [ada@Cityofpaloalto.org](mailto:ada@Cityofpaloalto.org) (Internet).
10. Contractor shall maintain good standing as an independent, non-profit corporation under the laws of the State of California.
11. Contractor's signs or displays to be located on or in the Facility to are subject to approval by City. All displays may be put up at load-in and must be removed during strike. Inside the Facility, no display materials may be placed upon stucco walls. Lobby displays may be placed only on the lobby display boards, and all fasteners must be removed at the time display is taken down. Nothing may be posted on the exterior walls or doors of the Facility or in the Lucie Stern Community Center courtyard, except for items in the display case and an approved production name sign hung from the theatre balcony. Marquee signs must be constructed of light weight material, and shall be secured in such a way that the sign is unlikely to become dislodged by normal vibration or seismic activity. Signs shall be of a standard size no larger than ten feet in length and eight feet in height. All marquee signage must be attached to the theatre balcony with rigging so that the sign may be safely and easily removed for limited periods during photography shoots, special events, or building maintenance.

12. Contractor shall, within six hours after the conclusion of the final Performance clean and clear from the Facility, including the auditorium, stage, paint shop, scene shop, flat dock, and costume shop, green room, dressing rooms, rehearsal hall, hallways and outdoor areas adjacent to theatre and shop. Disassemble and store, to City's reasonable satisfaction, scenery, properties, and other production elements, within six hours after the final performance or on such other time schedule mutually agreed upon between Contractor and City and the incoming authorized user of the Facility, if any. The stage shall always be returned to its basic set-up as established by Project Manager or his/her designee unless there is a mutual agreement with the incoming group that has been approved by Project Manager or his/her designee. All items on the CHANGEOVER CHECKLIST are to be performed unless there is a mutual agreement with the incoming group that has been approved by the Project Manager or his/her designee. The Project Manager or his/her designee will sign a copy of the CHANGEOVER CHECKLIST form at the completion of the strike to signify acceptance of clean and neat facilities. The City shall, at its sole discretion, recover all of its costs, including staff time, from Contractor if Contractor fails to comply with this Section and City must clean and clear the Facility of Contractor's items.
13. Storage, paint, scene, and costume spaces shall always remain clean and clear of Contractor's materials other than those materials necessary for the ongoing maintenance and repair of the sets and costumes.
14. In addition to regular clean up, Contractor is responsible for participating in annual, deep clean ups of the Stern Theatre complex, up to 25 person hours per each theatre group.
15. Rehearsal Hall shall be cleared of all materials, except major set pieces and any rehearsal props and costumes, after each daily use. Rehearsal Hall is to be completely cleared within twenty-four (24) hours of final use. Kitchen, restrooms and dressing rooms shall be cleaned and cleared after each daily use. Trash, recycling and compostable materials are to be removed from all areas daily. Recyclables and compostable materials shall be placed in the recycling and composting carts near the trash dumpster and garbage and trash shall be placed into the dumpster. Contractor shall reduce waste, reuse and recycle per the City's Zero Waste Plan (Appendix D). Office space and hallways shall be kept continually clear, clean and orderly and neither space shall be used for the purpose of set, prop, or costume storage. Materials may not be left or stored any place out-of-doors overnight or when unattended by Contractor's personnel.
16. Contractor shall enforce current regulations as established by City with regard to smoking, food and drink in Facility as referenced throughout this agreement. Contractor shall provide ushers or sufficient staff at all previews and performances to enforce such regulations. Smoking is not permitted inside any City facility. No person shall bring any animal into the theatre. This regulation shall not apply to service animals assisting individuals with disabilities or to animals in training to become service animals. Use of animals on the stage is subject to approval by City with reasonable notification. Food and drink are not permitted in the auditorium, light/sound booth or on stage, unless used as part of a production scene. Food and drink shall be permitted only in approved areas such

as the green room and lobby, with the exception of bottled water and sippy cups outlined below and on page 23, Exhibit D #27. Contractor shall clean up all food and drink containers daily after use

Contractor shall have the right to sell or otherwise distribute adult sippy cups to patrons attending events. Aside from bottled water, no liquid refreshments are to be allowed in the Theatre auditorium other than with the use of Contractors' sippy cups. Contractor shall be responsible for the clean-up of any spillage resulting from the use of beverages in the auditorium including immediate clean-up required for patron safety as well as all required clean-up immediately following each event. At City's discretion, the City may request a damage deposit in advance or levy a charge should there be any damage, stains or excessive wear and tear caused by accidents related to the use of sippy cups. Contractor understands that it is responsible for immediate cleaning and any and all fees should problems occur.

17. Contractor shall remove from the Facility, at the conclusion of each Production, costumes, properties and sets created by Contractor with Contractor-owned materials, which costumes, properties and sets will remain the property of Contractor. All office equipment, construction tools, special effects and lighting equipment purchased and owned by Contractor will remain the private property of Contractor and City assumes no responsibility or liability for the loss or maintenance of such materials. All equipment, instruments, costumes and any other materials rented, borrowed or owned by any subcontractor, agent or person for Contractor is the responsibility of Contractor and/or its subcontractors, and City assumes no responsibility or liability for their maintenance or loss. Contractor assumes all liability and responsibility for any default on Production expenses.
18. Contractor shall be responsible for cleaning and restocking the Lucie Stern Community Center hallway restrooms for weekend performances, if and when the City has no custodial staff available.
19. Contractor shall comply with City noise ordinance levels for any outdoor activities, including load-in, strike, dismantling, or disposal, in cooperation with Stern Community Center staff. Shop doors facing Hopkins and Harriet Streets shall be closed between 8:00 p.m. and 8:00 a.m.
20. Contractor shall pay any additional Attendant according to prevailing rates as set forth in the Municipal Fee Schedule, pursuant to the following: For a period of one and one half (1 1/2) hours prior to until at least one half (1/2) hour after the completion of each Performance listed.
21. For any Performance not included in Schedule, Contractor may add additional performances of the Productions in Schedule, assuming availability, upon thirty (30) days' advance notice to City and City approval.

22. Contractor shall provide House Manager and ushers for every Performance or event whenever the public is in attendance. Contractor shall only engage the services of ushers that have been trained in theatre emergency, safety and use procedures usher. Ushers must be available to assist patrons under all circumstances and must be aware of and able to assist disabled persons. Contractor's House Manager and ushers must also be available to assist in emergency situations throughout the entire Performance until the audience has left the theatre. Ushers must ensure that wheelchairs, walkers, etc. are not blocking any of the aisles or exits. Ushers shall return seats to the upright position and remove litter from the auditorium and restrooms at the conclusion of each performance.
23. Contractor shall install and/or remove the removable ADA auditorium seats in designated areas to accommodate wheelchair patrons and as required due to the needs of the Production.
24. Contractor may be entitled, based on availability and at the discretion of the City, to a small amount of time each year (approximately 3 to 10 hours, depending on the rooms requested and their size) in Stern Community Center rental spaces, limited to one of the following: the Ballroom, Fireside Room or Community Room, on a gratis basis, and excluding Saturday nights and any other rental sites, including but not limited to the Art Center Auditorium. The City at its discretion may make exceptions. Contractor may rent spaces as per Municipal Fee Schedule.
25. Contractor shall cause to have present at the Facility at all times when Contractor or any of its employees, subcontractors or volunteers is in the Facility, one of Contractor's designated and City-approved key and/or card holders. Any exceptions must be approved by City in writing.
26. Contractor shall report to the police any incidents of a criminal or suspicious nature occurring on City property, and notify City within twelve hours. If initial notification is verbal, Contractor must subsequently submit the information in writing to City on a form provided by City.
27. Contractor shall ensure that the doors to the Scene Shop, Rehearsal Hall, and Costume Shop, as well as any other exterior access doors to any area of the Facility, are not left open, unlocked or left with the locking mechanism disabled, even if only briefly, at any time when the immediate area secured by the door is unoccupied by Contractor. Failure to do this may be deemed a material breach by the City. When leaving the Facility unoccupied, the Contractor should confirm that all exterior doors to the Facility are secure, and that the perimeter alarm is engaged.
28. Contractor shall complete a City Report of Accident/Property Damage report (Appendix E) for any and all accidents, injuries or property damage if a City employee is not present to fill out the report.
29. Contractor shall operate and conduct business in compliance with City's Zero Waste Plan (Appendix D) for all activities including, but not limited to, set construction and strike,

food and beverage service, and office activities. The goal is to send as little waste to landfill as possible through waste reduction, reuse and recycling. To achieve this goal Contractor must first reduce waste whenever possible.

30. Contractor shall avoid the use for food/beverage service of disposables, including, but not limited to, Styrofoam and other plastics. Reusable food/beverage service ware should be utilized to the maximum extent possible. Where a reusable food/beverage service option is not available, Contractor shall choose items that are recyclable. For concessions, choose product packaging that is recyclable.
31. Contractor shall practice reuse before, during and after Production. City shall provide a list of reuse resources to avoid the disposal of construction materials, sets and props. Contractor must recycle construction debris from set materials (e.g. wood, metal).
32. Contractor shall recycle all materials included in the City's Recycling Program including paper (all types), plastic containers #1-#7, cardboard, glass bottles and jars, and metal cans. Compostable materials will be disposed of in designated compost waste receptacles. Contractor responsible for proper disposal of HazMat items.
33. Contractor shall include on the title page of all Production and event programs and Contractor's website the following credit: "Use of this Facility is made possible through support from The City of Palo Alto, Community Services Department, Division of Arts and Sciences," and include the official City of Palo Alto logo on the title page or prominent placement within event programs; print in all publicity for the Productions, including, but not limited to, mailings, flyers, posters, brochures, website, social media and paid or public service advertising, the statement: "In cooperation with the City of Palo Alto Community Services Department, Division of Arts and Sciences." The City of Palo Alto, Community Services Department, Division of Arts and Sciences shall also be credited in the Contractor's list of funders as a "Civic Sponsor." Where data collection from patrons of Facility is performed, Resident Theatre Company(ies) agree as follows:
  - a. To provide City with the results of market research surveys;
  - b. Cooperate with City to add City desired inquiries to any market research surveys performed; and
  - c. Shall not include such inquiries regarding the City or the Facility without preapproval from City.
34. Contractor shall have the right to borrow available City owned properties, sets, costumes and scenery for its productions scheduled in this Agreement when deemed available by City. Costumes, properties and sets created by Contractor with Contractor-owned materials shall remain the property of Contractor. Contractor property shall be removed from Facility at the conclusion of the production in which such materials are used. The City may, on a case-by-case basis, authorize exceptions. All office equipment, construction tools, special effects and lighting equipment purchased and owned by

Contractor will remain the private property of Contractor and the City assumes no responsibility or liability for the loss or maintenance of such materials. All equipment, instruments, costumes and any other materials rented, borrowed or owned by any subcontractor, agent or person for the Contractor is the responsibility of the Contractor and/or its subcontractors, and the City assumes no responsibility or liability for its maintenance or loss.

35. If minors are involved in the Production, Contractor shall comply with all of the State of California's rules and regulations regarding Child Labor.

**EXHIBIT B**  
**RESPONSIBILITIES OF CITY**

During the Term of this Agreement, City shall:

1. Allow Contractor the use of the Facility for uses in accordance with this Agreement.
2. Allow the use of the stage and the auditorium prior to the opening night of the Productions, with the exception of necessary maintenance procedures that may require access to the stage and auditorium during this period, according to the Schedule. Allow the Contractor use of the rehearsal hall, box office, scene shop, paint shop and costume shop according to the Schedule as supplied by Contractor and approved by City .. Additional facility use may be provided as specified in item (Exhibits A and B) ) above; however, priority use of the room will always be given to actual rehearsals of productions covered by a contract with City. City reserves the right to allow other uses of space within the Facility when not in actual, scheduled use by Contractor on a non-interference basis and with at least forty-eight (48) hours' prior notice to Contractor.
3. Allow Contractor to use all operational production equipment in City's inventory as requested by Contractor and approved in writing by City. Contractor shall take such equipment "as is" and is responsible for ensuring that such equipment is in a safe condition prior to use and is returned in working condition at the conclusion of its use or of the Production.
4. Unless the City deems unnecessary, provide a Facilities Attendant for a period of one and one half (1 1/2) hours prior to and until at least one half (1/2) hour after the completion of each Performance.
5. Provide persons designated by Contractor and approved by City with keys, proximity cards (up to a maximum of six), and alarm codes for access to the Facility for the sole purpose of carrying out the requirements of the Agreement. Keys, proximity cards, and alarm codes shall not be loaned or transferred and shall be used only by the designated persons. In the event that Contractor fails to properly open or lock and secure City facilities leading to a false alarm call-out or leaves areas of the facility unlocked and unattended, a Two Hundred Dollar (\$200.00) penalty shall be paid to City on each such occasion. In the event that a designated key holder loses any key or proximity card issued by City, Contractor shall be assessed a Seventy-Five Dollar (\$75.00) replacement charge for each key or proximity card or pay for the cost of rekeying or reprogramming the locks of Facility if circumstances indicate it as determined in City's reasonable judgment. Contractor will be responsible and held accountable for all personnel, properties and activities of Contractor and its employees and/or agents.
6. Have the right, with no notice, to suspend the Agreement if Facility should be declared uninhabitable for reasons of safety by the proper authorities (e.g., if the building should be damaged in an earthquake and be declared unsafe for occupancy). If there is an

outbreak of pandemic flu or other medical emergency and places of public gatherings are closed, City shall not assume any financial responsibility for loss of revenue by Contractor.

## EXHIBIT C

### GENERAL CONDITIONS

1. City. The City designates the CSD Assistant Director of the Arts & Sciences Division, or his or her designee, as Project Manager for City, who shall render overall supervision of the progress and performance of this Agreement. City reserves right to change this designation at any time during the Term of this Agreement. All City services set forth in this Agreement shall be performed by City under the overall supervision of Project Manager or its Facility Coordinator. Contractor and its Project Liaison shall communicate with the Project Manager in all matters dealing with City policies, funding, facilities, equipment and other City departments outside the Facility.
2. Contractor. Contractor shall assign a single Contractor Liaison who shall have overall responsibility for the compliance of this Agreement. Should circumstances or conditions subsequent to the execution of this Agreement require a different liaison, Contractor shall notify City in writing immediately of same. Contractor shall ensure that its Liaison communicates effectively with the City at all times under this Agreement.
3. Access. Contractor shall not prevent Project Manager, facility maintenance personnel, and/or others specifically designated by Project Manager from access to the Facility; provided, however, that City shall use its best efforts to give advance notice and not to disrupt the activities of Contractor as permitted by the Agreement. The Project Manager and others specifically designated by Project Manager shall attempt to coordinate such access if possible.

Notwithstanding the foregoing, except in the case of emergency or if they are present on the premises as members of the audience or specifically invited into the backstage areas of the theatre, Project Manager, facility maintenance personnel and/or others specifically designated by the Project Manager shall not enter the auditorium or backstage areas during public performances of a production.

4. Days Defined. The term "days" shall mean calendar days.
5. Qualifications. Contractor represents that it is qualified to furnish the Services described under the Agreement.
6. Ticket Sales:
  - (a) Contractor shall be responsible for sale of season tickets and single tickets, depositing of revenue and reporting of revenue and expenditures, and shall place available tickets for each production for sale at the Facility box office one hour prior to each performance. Until one (1) hour prior to the beginning of a performance, Contractor shall not sell (a) seat numbers C1, C2, D1, D2, D3, and D4; (b) either (i) the block of seats T2, T4, T6, T8, T10, U2, U4, U6, U8 and U10 or (ii) the block of seats T1, T3, T5, T7, T9, U1, U3, U5, U7 and U9 for the

purpose of making such seats available for the disabled; provided, however, that this Section 10(b) shall not apply to the sale of tickets for such seats to persons who identify themselves as disabled when they purchase their ticket.

- (b) Contractor agrees the price of admission for the season shall be as set forth in their ticket sales reporting to the City, at the time of submitting financial records.
- (c) Contractor shall provide City, when requested by Project Manager or his/her designee, with at least six (6) complimentary tickets for each Production on the date(s) requested. Best available seating will be provided to City if any seats are available at the time of the request.
- (d) Contractor may operate an intermission snack concession during each performance under this Agreement. Contractor shall conduct such operation in a safe, clean manner and shall hold City harmless from any claim or demand or liability of any nature whatsoever which may arise out of such operation.

7. Composition of Contractor. Throughout the term of this Agreement, Contractor shall remain an independent, non-profit public benefit corporation, in good standing under all applicable local, state and federal laws.

8. Fiscal Responsibilities of Contractor.

- (a) Fiscal Agent. Contractor shall appoint a fiscal agent who shall be responsible for the financial and accounting activities of Contractor, including the receipt and disbursement of Contractor funds. Contractor shall provide City with the name of a fiscal agent in writing and shall immediately notify Project Manager of any changes occurring during the Term. Contractor shall have sole responsibility for the safekeeping of Contractor tickets and monies.
- (b) System of Accounts. Contractor and its fiscal agent shall establish and maintain a system of accounts that shall be in conformance with generally accepted principles of accounting for budgeted funds. Such system of accounts shall be subject to the review and approval of City.
- (c) Financial Records. In support of its system of accounts, Contractor shall maintain complete and accurate records of all financial transactions, including, but not limited to, contracts, invoices, time cards, cash receipts, vouchers, canceled checks, and bank statements. City may inspect these records at Contractor's office upon reasonable advance notice and during normal business hours upon request. NOTE: Contractor's cash receipts are not to be stored on the Premises between Productions.
- (d) Audit of surcharge payments. Contractor shall retain for a period of at least three (3) years records of tickets sold through their automated ticketing system, sales records, and a verified report of sold and unsold tickets which must be made available to City Auditor upon request.

9. Production Reports and Records.
- (a) Reports. On reasonable notice and with reasons specified, Contractor shall grant Project Manager and/or City's Auditor access to all Contractor records relating to this Agreement, including performance records, data, statements, and reports.
  - (b) Tax Form 199. A copy of Contractor's most recently filed California State Tax Form 199, "California Exempt Organizations Annual Information Return" must be filed with Project Manager or his/her designee within fifteen (15) days of when it is due to the State of California and shall also be attached to this Agreement prior to its final approval (Attachment 5).
10. Corrective Action Requirement/Disputes. In the event City should determine from any source, including but not limited to reports submitted by Contractor under this Agreement to City or any evaluation report from any source, that Contractor may not be in compliance with any provision of the Agreement, City may forward to Contractor written notice of same. Such notice shall specify with particularity the nature of the condition(s) or issue(s) that require(s) corrective action and may include a recommendation as to appropriate corrective action. Within fifteen (15) days of City's request, Contractor shall submit its written response to the notice, which response shall set forth its view of the alleged violation and its proposed plan, if any, for corrective action. Upon request of either Party, the Parties shall meet within five (5) days thereafter to discuss the alleged violation and proposed corrective action. Should the Contractor fail to submit a response within the above timeframe, or should fail to follow through on corrective action, the City may a fine of up to \$100 for and initial violation, or up to \$1000 for repeated violations.
11. Subcontractors. Contractor shall be responsible for employing or engaging all persons necessary to perform the Services of Contractor hereunder. All subcontractors are deemed to be agents of Contractor and Contractor agrees to be responsible for their performance. Contractor shall give its personal attention to the fulfillment of the provisions of the Agreement by all of its employees, participants, volunteers, and subcontractors.
12. Intoxication. Contractor agrees to be responsible for injuries or damage caused by any of its directors, officers, employees, agents, subcontractors, or volunteers who are under the influence of alcohol, drugs, hallucinogens or narcotics, whether or not legally prescribed. Neither Contractor nor City shall permit any of Contractor's employees or volunteers discovered to be under the influence of any of the foregoing substances from remaining in any facility used under the terms of this Agreement and City reserves the right of denying such person's further participation in any activities in Facility. Consumption of alcoholic beverages or use of illegal drugs at the Facility is expressly forbidden by any person working for Contractor, paid or volunteer. This includes all staff, actors, crew and musicians.

13. Worker's Compensation. Contractor certifies that it is aware of the provisions of the Labor Code of the State of California, which requires every employer to be insured against liability for workers' compensation and certifies that Contractor shall comply with Worker's Compensation laws of the State of California during the Term of this Agreement.
  
14. Weapons. For the avoidance of doubt, no firearms or other weapons, whether loaded or not, shall be allowed in the Facility or any other City property. Stage weapons and firearms designed solely for the use of blank cartridges will be allowed if they are being used as a prop in the current Production, but must be stored, when not being used, in a secure manner by Contractor's stage manager or his/her designee.
  
15. Legal Compliance. Contractor and all its paid employees, subcontractors, and volunteer participants are required to abide by all applicable federal, state and local laws and ordinances.
  
16. Notices. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; when received if transmitted by fax, email or regular US mail; if received during normal business hours on a business day (or if not, the next business day after delivery) provided that such document is legible and that at the time such document is sent the sending Party receives written confirmation of receipt; if sent for next day delivery to a domestic address by recognized overnight delivery service (*e.g.*, Federal Express); and upon receipt, if sent by certified or registered mail, return receipt requested.

**EXHIBIT D**  
**OPERATING POLICIES FOR ALL USERS OF THE STERN THEATRE**

1. **Resident Theatre Companies** – The City of Palo Alto has long-standing relationships with Resident Theatre Companies to provide programming at the Lucie Stern Community Theatre. These organizations serve as “house companies” and provide the primary programming featured on the stage of the Theatre. The Resident Theatre Companies include: Palo Alto Players, TheatreWorks Silicon Valley (TheatreWorks) and West Bay Opera.
2. **Rental Agreement** - All performances and associated activities held at the Facility must have a fully executed rental agreement prior to the Contractor’s arrival at the facility. Resident Theatre Companies must have a fully executed Agreement.
3. **Theatre Use Times** – The Theatre is available for use between 8:00 am and midnight and no activity may take place outside of this time period. This available use time includes all production related activities, including load-in, load-out, set building, scene shop activities, costume shop activities, rehearsal and public performance.
4. **Provision of Trained House Staff** – Contractor must provide a qualified house manager and trained house staff for all public events, including ticket takers, ushers and box office personnel. These personnel may be paid or volunteer, at the sole discretion of Contractor. All paid and volunteer staff must be trained by Contractor both through an annual training workshop and through a day-of-show orientation. This training and orientation shall include public relations, event information, seating locations, directions for assisting disabled patrons, use of the hearing assistance devices, emergency exits and evacuation procedures and fire alarm procedures. At all times the safety, comfort and event experience of Theatre patrons will be placed in high priority.
5. **Regulations for Consumption of Alcoholic Beverages** – Contractor must comply with all State and City laws relating to the sale and consumption of alcoholic beverages. Alcohol is allowed in the Theatre during public performances, with pre-approval by the City of Palo, which shall not be unreasonably withheld. Unless otherwise specifically approved, the sale or free distribution of alcoholic beverages is limited to wine, champagne, beer and sparkling wine. If alcohol is to be provided for sale, Contractor must possess a valid on-sale alcohol permit approved by the California Department of Alcoholic Beverage Control (ABC). All requirements must be posted as per ABC requirements and Contractor is responsible for ensuring that no individual under the age of 21 is served alcohol. Contractor agrees that identification will be checked for individuals appearing to be under the age of 30. At no times may event participants, including actors, musicians, employees or event volunteers be served alcoholic beverages.
6. **Insurance Provision for the Sale or Free Distribution of Alcoholic Beverages** – For all events during which alcohol is to be provided for sale or at no cost to patrons, Contractor must provide the City of Palo Alto with proof of liquor liability insurance with minimum coverage of \$2 million pursuant to Exhibit E.

7. **Janitorial Duties Relating to Food and Beverage Sales** – Upon the completion of each event, Contractor shall clean-up and remove all trash and supplies relating to the distribution of food and beverage, including alcoholic beverages, including but not limited to empty bottles or containers, glassware (plastic or glass), used napkins, food and other trash or unused supplies. All garbage containers are to be removed from the Theatre and dumped in appropriate garbage bins. If required, doors should be opened to allow fresh air into the lobby or event spaces to ensure that the smell of alcohol or food is not present in the Theatre at the end of each event. At no time can this task be left for completion on the following day(s).
8. **Production Equipment** - Contractors shall be required to use the in-house production equipment. At the expense of Contractor, additional equipment to augment the in-house system may be provided by a third-party Contractor with City approval.
9. **Complimentary Tickets** - Contractor shall have the right to issue complimentary tickets for events produced at Theatre. The number of complimentary tickets for any given events must not exceed ten percent (10%) of the total seating capacity without pre-approval by the City.
10. **Refunds** - If the event(s) anticipated in a Theatre Use Agreement are cancelled, Contractor shall have the sole responsibility and authority to provide refunds to the public and shall control all box office receipts until all required refunds have been provided.
11. **Ticket Prices** - Contractor shall have the sole right to establish ticket prices for the event(s) anticipated in a Theatre Use Agreement.
12. **Advertising** – Contractor shall have the sole right and authority to design, develop and distribute all advertising and promotional materials for the events produced at Theatre and shall be responsible for the costs associated with this endeavor. No advertising materials may be displayed on the interior, exterior or any other part of Theatre without specific authorization from City of Palo Alto, other than the rack cards, window boxes and banners currently used.
13. **Storage of User's Property** – Any property belonging to Contractor, or third parties such as caterers, decorators or florists may not be stored overnight either prior to or following the rental period. All requirements for load-in and load-out must be followed to ensure that events scheduled in Theatre immediately before and after the Contractor's event can be fully and professionally supported. Long term on-site storage is to be requested by the Contractor and up to the City to permit.
14. **Animals** - No live animals are to be brought into the facility without prior permission from the City of Palo Alto.
15. **Staging** –With proper care and repair, Contractor or its representative, as per normal operating procedure, may drill or nail sets or props into the stage floor of Theatre

16. **Surfaces**Nails, hooks, tacks or screws may not be used on any surface or furnishing in Theatre, unless approved by the City. No tape or other materials may be applied to walls, glass, tables or any surface in the lobby, auditorium, green room or back stage areas. User will be held financially responsible for repair/replacement of any damaged or defaced property.

No bunting, tissue paper, crepe paper or any other combustible material may be used at any time in the Theatre, without pre-approval from City. Similarly, no glitter, rice or confetti may be used anywhere within the facilities, including the auditorium, lobby, backstage areas, or outside areas such as the patio or courtyard.

17. **Modifications to Theatre Building** – Contractor shall not make any modifications to the Theatre that would leave permanent or disfiguring impacts to the facility. This includes the use of drills, nails or other attachment devices. If questions arise about the need to alter elements of the Theatre for production needs, Contractor agrees to discuss these needs with City staff for pre-approval.
18. **Use of Flammable Materials** - The use of any flammable device or substance, including but not limited to pyrotechnics, candles, cigarette or cigars, or other materials or device with a flame is strictly forbidden. In rare cases, the City and Fire Marshall may approve, with adequate advance notification, in advance of at least 30 days prior to the first date of live public performance..
19. **Mechanical Smoke and Fog Equipment** - Mechanical smoke or fog generating machinery can only be used with pre-approval of Theatre Management and is subject to inspection by the City Fire Marshall. The use of mechanical smoke or fog generating machinery must be tested at least 30 days prior to first use in the Theatre during live performances. This test must determine that the machinery does not cause the fire alarm system to respond. Any questions regarding this testing shall be subject to approval and guidance by the City Fire Marshall or a representative of the Palo Alto Fire Department. Any cost associated with the testing of this equipment or due to false alarms caused by this equipment will be the financial responsibility of Contractor.
20. **Approval of Additional Production Techniques & Devices** – The use of strobe lights, loud noises (i.e. gun shots), and aerial suspension must be pre-approved by the City of Palo Alto at least 30 days prior to the first date of live public performances. No fire arms are allowed in the Theatre and the use of any prop guns must be pre-approved by the City. Pyrotechnics, defined by PAFD as 'Any exothermic chemical reaction special effect that produces heat, flame, sound, light or a combination of these effects', must be pre-approved by the Fire Marshall unless a licensed pyrotechnic handler is being used by the theatre group. In that case, theatre group must provide written proof of the licensed pyrotechnic handler's name, license number, and contact info in advance.
21. **Adherence to Fire Codes** – Contractor is responsible for complying with all applicable sections of the California Fire Codes as adopted by the City and as may be amended from time to time, including, but not limited to: maintaining required clear emergency exit paths, proper use of fire doors, and adhering to posted occupancy loads. At no time during Theatre use may fire exit signs

by covered or otherwise dimmed. Should any question or doubt arise regarding the proper adherence or interpretation of fire code arise, Contractor shall be responsible for contacting the City Fire Marshal or other representative of the Palo Alto Fire Department for direction and advice. At all times, the direction and decisions of the Fire Department shall be viewed as the final authority. The Fire Marshal has the right to charge a fee for their inspection services and Contractor is obligated to pay it.

22. **Adherence to Fire Inspection and Occupancy Load Requirements**  
Stern Community Theatre is inspected routinely at least once a year by the Palo Alto Fire Department. The Fire Marshall should be notified of any productions where public safety questions or concerns arise during the set up or design, or the use of special effects during performances. Fire Inspections are listed in the Fee Schedule at \$355/hour as of July, 2018 (and are subject to amendment by the City) which may be charged to Resident Theatre Company.

At all times, Resident Theatre Companies are required to adhere to City Fire codes, including but not limited to, required occupancy loads for each section or room of the Theatre, good house- keeping of combustibile materials, keeping exit ways clear and the storage/use/disposal of hazardous materials. As of 2018, these established occupancy loads are as follows:

- a. Front of Curtain Stage – 31
- b. Behind Stage Curtain – 83
- c. Orchestra Pit – 14, unless otherwise approved by the Fire Marshall in sufficient advance. Any costs incurred for exceeding the limit will be incurred by Contractor. Any costs associated with exceeding the limit must be borne by Contractor.
- d. Basement below stage area – 7
- e. Paint desk/shop off load – 57 for musicians/vocals
- f. No occupancy is allowed in flat dock area other than removal/returning of props. There is a hazard of falling production items during a seismic event. Should occupancy be desired, all production items must be completely removed or areas for holding production items must be seismically secured in advance.

The Palo Alto Fire Department is available to assist the Resident Theatre Companies if fire safety practices are in question. Please contact them at: 650-329-2194 option 1.

23. **Fire Alarm Procedures** – In the event that the fire alarm is activated, Contractor must immediately evacuate the building and wait for the Palo Alto Fire Department to arrive. Follow their instructions, and only reenter the building when given permission to do so. These procedures must be followed even in the case of a false alarm.

Should the alarm go off during a performance, ushers should direct and assist patrons in exiting the building, and stage crew should trip the manual release of the fire curtain. Particular attention should be given to providing evacuation assistance to disabled, older and child patrons.

If the system detects issues that do not rise to the level of setting off an alarm, the system may

produce an audible signal at the alarm panel in the green room, and possibly at the one in the lobby. In this case, the alarm company will contact the City of Palo Alto on call Facility staff, who will be dispatched to investigate and deal with the alert. They should arrive within an hour. In no case should anyone but authorized personnel (City staff or Fire Department personnel) acknowledge, silence, or reset the alert on the alarm panel.

24. **Event Safety and Security** - Contractor shall provide for the orderly production of the event(s) anticipated in the Use Agreement and shall insure that the safety of the public and the Theatre are always maintained. If, at any time, the activities in Theatre appear to be detrimental to members of the public, City employees shall have a superceding right to make decisions required to ensure safety and the professional presentation of the event. This shall include, but not be limited to, issues involving security in the building, ushering of patrons, production safety and other event related issues. Contractor agrees that at all times, decisions relating to these issues shall be made at the superceding discretion of City.

In the event that security may be required, the City of Palo Alto shall have the sole right to approve the private security company and to establish the personnel requirements for the event(s) anticipated in the Use Agreement. The costs associated with the provision of private event security shall be the financial responsibility of Contractor.

25. **Concession Sales** - Contractor shall have exclusive rights to the sale of concession products including food or beverage, subject to City approval for the sale or provision of free alcohol.
26. **Merchandise Sales** - The Contractor shall have the right to sell merchandise to the patrons attending the event produced by Contractor.

**Use and Sale of Sippy Cups** – With City approval, Contractor shall have the right to sell or otherwise distribute adult sippy cups to patrons attending events. If the City permits, no liquid refreshments are to be allowed in the Theatre auditorium other than with the use of Contractors' sippy cups, other than bottled water. Contractor shall be responsible for the clean-up of any spillage resulting from the use of beverages in the auditorium including immediate clean-up required for patron safety as well as all required clean-up immediately following each event. If the City so desires, the City may require a damage deposit in advance or a charge may be levied should there be any damage, stains or excessive wear and tear caused by accidents related to the use of sippy cups.

27. **Force Majeure** - If Theatre is deemed to be unfit for occupancy during the period covered by this agreement, by reason of fire, earthquake, strike, civil disturbance or any other cause beyond the control of the City of Palo Alto, then the agreement shall be of no further force and effect.
28. **Use and Management of Hearing-Impaired Device Equipment** - Contractor's personnel shall manage, distribute and collect the hearing-impaired devices ("headsets") that City owns for use by hearing-impaired persons at all Performances at the Facility, subject to the following restrictions:
- (a) Contractor shall verify that all headsets and batteries are present and functioning normally and shall report to Project Manager or his/her designee any missing or

broken items before taking control of them for the run of the Production.

- (b) For any damage or loss of any headset while under Contractor's control, Contractor shall promptly, upon request, pay City the fair market price for any necessary replacement or repair of any component of the headsets, as such replacement or repair is reasonably determined by Project Manager or his/her designee.
- (c) Contractor will diligently ensure the security of the headsets, in a manner approved by Project Manager or his/her designee, when the headsets are not in use. When the headsets are not so secured, Contractor will not leave the headsets unattended.
- (d) Contractor will provide at least one (1) person in the Facility lobby, whose sole responsibility will be to distribute and collect the headsets, as the case may be, pursuant to the following:
  - (i) Beginning one-half (1/2) hour before each Performance until ten (10) minutes after the Performance begins;
  - (ii) At all times during any and all intermissions; and
  - (iii) From the end of the Performance until all of the headsets have been returned.
- (e) Contractor shall collect a Driver's License or credit card as security for the loan of a headset, which Driver's License or credit card will be returned to its owner upon return of the headset. Contractor will implement procedures for the safe handling of the Driver's Licenses and credit cards and their return to their owners.
- (f) Contractor's responsibility at the end of each performance will include the following:
  - (i) Clean and otherwise sanitize all the earpieces by swabbing them with isopropyl alcohol swabs.
  - (ii) Turn off the on/off/volume switches on all returned headsets and place them into the battery charger.
  - (iii) Return all headsets and accessories to their storage case.
  - (iv) Verify the presence of all sixteen (16) headsets.
  - (v) Return the chargers to their place in the rolling cart.
  - (vi) Return the rolling cart to the House Manager's Closet.
  - (vii) Be sure the rolling cart is plugged into an electrical outlet.
  - (viii) Make sure the battery charger is getting power, as indicated by the red lights

- (ix) Padlock the rolling cart's doors shut, using either the padlock provided by City or a padlock supplied by Contractor, provided that Project Manager or his/her designee has been given a copy of the key or the combination.
- (x) Immediately report to City's attendant at the Facility any missing headsets, and turn over to the attendant any malfunctioning headsets.

**EXHIBIT E  
INSURANCE REQUIREMENTS**

CONTRACTORS TO THE CITY OF PALO ALTO (City), AT THEIR SOLE EXPENSE, SHALL, FOR THE TERM OF THE CONTRACT, OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW AND AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A-VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY. (THIS MUST INCLUDE COVERAGE FOR SERVING LIQUOR IF LIQUOR IS SERVED OR SOLD).	BODILY INJURY	\$2,000,000	\$2,000,000
		PROPERTY DAMAGE	\$2,000,000	\$2,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$2,000,000	\$2,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
YES	PROPERTY INSURANCE	ALL RISK COVERAGE		
NO	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES		\$1,000,000
YES	<b>THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONTRACTORS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.</b>			

- I. INSURANCE COVERAGE MUST INCLUDE:
  - A. A PROVISION FOR A WRITTEN THIRTY (30) DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
- II. CONTRACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.
- III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL

INSUREDS”

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSUREDS.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CONTRACTOR AS INSUREDS UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDS, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE CONTRACTOR SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE CONTRACTOR SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

**NOTICES SHALL BE MAILED TO:**

**PURCHASING AND  
CONTRACT ADMINISTRATION  
City OF PALO ALTO  
P.O. BOX 10250  
PALO ALTO, CA 94303**



**AGREEMENT  
FOR PERFORMING ARTS SERVICES  
BETWEEN THE CITY OF PALO ALTO AND (THEATRE GROUP)**

THIS AGREEMENT FOR PERFORMING ARTS SERVICES ("Agreement") is made and entered into as of the 16 day of October, 2018 by and between **THE CITY OF PALO ALTO**, a California chartered municipal corporation ("City") and Palo Alto Players

(Organization Name), a California nonprofit public benefit corporation, located at \_\_\_\_\_  
1305 Middlefield Rd, Palo Alto, 94301 (Address) (telephone: 650-329-0891) ("Contractor") (individually, a "Party" and, collectively, the "Parties").

1. **Services.** During the Term of this Agreement Contractor shall present that portion of Contractor's Performances of its annual scheduled Productions that are produced at Facility pursuant to the Schedule approved by City for the Compensation set forth below, pursuant to the terms and conditions of this Agreement.
2. **Facility.** Facility shall mean the City-owned Lucie Stern Community Theatre, and for purposes of this Agreement, the Facility, is deemed to include those portions of the Lucie Stern Community Theatre including, but not limited to, the theatre, lobby, green room, dressing rooms, scene shop, paint shop, light and sound booth, flat storage, rehearsal hall and costume shop.
3. **Performance.** Performance shall mean a single instance of a staged theatrical Production pursuant to a Schedule for a single fiscal year (July 1, through June 30).
4. **Production.** Production shall mean all activity from inception to completion to include multiple Performances together with such normal activities to include but not limited to load-in, load-out, set building, lighting design, rehearsal, and activities taking place in the auditorium, stage, paint shop, scene shop, flat dock, costume shop, green room, dressing rooms, rehearsal hall, lobby, hallways and outdoor areas adjacent to Facility (collectively the "Production") pursuant to the Schedule.
5. **Resident Theatre Companies.** Resident Theatre Companies shall mean TheatreWorks Silicon Valley, Palo Alto Players, and West Bay Opera.
6. **Schedule.** Contractor's Schedule shall mean that particular schedule for all of its activities related to its planned Productions and Performances to be performed in one fiscal year as submitted to City Project Manager no later than fifteen days after they announce their annual season for the following calendar year.
  - a. Resident Theatre Companies shall have the right of first refusal for scheduling and use of Facility over all others except for the City.
  - b. City shall control and maintain a master theatre calendar to accurately reflect the actual usage

of each production space, including the date and purpose of each scheduled date.

- c. Dates of use shall be reserved on the master theatre calendar by the City Project Manager no later than fifteen days after the announcement of the annual season for each of the Resident Theatre Companies. This use reservation may be initially identified or blocked as a full day of use. However, to maintain complete information relating to actual Facility use, each Resident Theatre Company must provide the City Project Manager with clarification of the time and purpose of each day of use on the Master Theatre calendar no later than twenty-one (21) days after the completion of each Production.
  - d. For the avoidance of doubt, the City, with advance notice and justification, has the right to change, cancel and control the scheduling of any and all activities, including Performances, at Facility. The City may delegate at its sole discretion the scheduling responsibility to one of the three Resident Theatre Companies. Such delegation shall be made in writing by the City and may be revoked by City at any time.
7. **City's Project Manager.** City shall assign a City employee, excluding any Party that may have a conflict of interest, as its Project Manager for the Term of this Agreement who shall be act on the City's behalf on all matters related to the use of Facility. City Project Manager shall have the authority to assign matters relating to the day-to-day use of Facility to a City employee who shall be referred to "Facility Coordinator".
8. **Contractor Liaison.** Contractor shall assign a Contractor employee as a liaison between Contractor, City and City Project Manager and as a liaison with other Resident Theatre Companies for all matters related to the use of Facility.
9. **Operating Policies for Contractor Services.** The Services shall be performed by Contractor pursuant to this Agreement and all Exhibits in particular, the "Operating Policies" attached hereto as Exhibit D. The City reserves the right to change or modify the Operating Policies during the Term of this Agreement provided however that City shall give Contractor a written thirty (30) day notice of same.
10. **Term, Termination & Breach.** This Agreement shall commence as of (DATE) and shall terminate on June 30, 2021 (the "Term"). The Term of this Agreement may be renewed for an additional three (3) year term by mutual agreement of the Parties to this Agreement.
- a. **Termination for Material Breach & Cure of Default.** This Agreement may be terminated upon material breach by either Party as set forth herein. The term "Material Breach" shall mean any material breach or default by a Party of any material covenant, duty or obligation under this Agreement.
  - b. **Notice & Cure.** The non-defaulting Party shall provide written notice of its intention to terminate and declare a Material Breach or default under this Agreement, stating the reasons for the notice and the date of intended termination. The defaulting Party shall have a period of sixty (60) days to cure the breach. Upon the expiration of the cure period and where cure is not achieved within said cure period, or in instances where the breach cannot be cured within sixty (60) days, efforts to cure the breach

have not commenced or are not being diligently pursued, this Agreement shall terminate immediately upon receipt of written notice of termination by the non-defaulting Party.

- c. **Material Breach by Contractor.** Contractor breach of the following provisions of this shall be deemed a “Material Breach” for purposes of this Agreement and shall include failure of performance of any provision in (i) Section 1 through 14 of this Agreement or of any provision in Exhibits A, C, D, and E.
  - d. **Material Breach with regard to public safety must be cured by Contractor no later than 48 hours from receipt of notification of such violation.**
11. **Compensation.** Contractor shall compensate City for the use of Facility, including use during public events and use for all other times when there is no public event. Compensation shall be derived as follows:
- a. **Operating Cost Offset Fee:** Contractor shall pay City \$2.00 for each ticket sold for events with paid admission. This charge compensates City for use of Facility for all such days scheduled by Contractor, including performances, load-in, load-out, set building, rehearsal, and dark days. There shall be no additional compensation for use of Facility on days where no tickets are sold.
  - b. **Stern Theatre Improvement Fee:** Commencing on July 1, 2019, Contractor shall pay City an additional \$2.00 for each ticket sold for events with paid admission to indirectly offset the costs of building maintenance, enhancements, improvements, repairs and new equipment and furnishings for Facility. This fee may go up to \$3.00 per ticket sold as of the new term beginning July 1, 2021.
  - c. **Funding of Fees:** Contractor has sole authority to allocate the funds required for this payment to City from any revenues generated by the Contractor organization.
  - d. **Stern Theatre Improvement Annual Plan:** Funds collected by the City from payment of Stern Theatre Improvement Fee shall fund improvements to the Facility as appropriated by and specified in the annual City budget. Items to be funded shall be recommended to City each year by a committee with representation from each of the three (3) Resident Theatre Companies and City staff.
  - e. **Facilities Attendant:** At the discretion of the City, Contractor shall provide compensation for the Facilities Attendant present at each performance, at prevailing rates as set forth in the Municipal Fee Schedule.
12. **Payment of Compensation:** Contractor shall pay City all required Compensation within thirty (30) days from the completion of each Production run. Payment shall be made in full and shall be reconciled against actual ticket sales. Along with payment, Contractor shall provide City with a printed report from their automated box office system that provides detailed ticket sales data for the Performances included in the payment. This “Event Ticket Sales Report” must include final sales data for each date of the performance run, the total

performance run, total ticket sales, ticket sales by pricing category, total sales revenues and issued complimentary tickets. If such report is not available within the automated box office system and Contractor is unable to develop such customized report, Contractor shall submit a report or multiple reports that will provide City with the required information.

13. **Late Payments:** If Contractor is late on payments, the City may, in its discretion, add a three percent (3%) surcharge levied for payments received between 31 days and 60 days after the closing date of the Production, a four percent (4%) surcharge levied for payments received between 61 days and 90 days after the closing date of the Production, and a five percent (5%) surcharge levied for payments received in excess of 90 days of the closing date of the Production. Payment must be accompanied by the production report specified in Exhibit C, Section (9), "PRODUCTION REPORTS AND RECORDS," item (a) before payment will be considered to have been made.
14. **Indemnity:** Contractor shall defend, indemnify and hold harmless City, its officers, contractors, agents, and employees and Facility from and against (a) any demands, claims, or liability of any nature, including injury or death or property damage, arising out of or in any manner related to performance or nonperformance by Contractor, its officers, agents, employees or any persons brought onto the Facility premises by or through Contractor, (b) any claims or demands made against City, its officers, agents or employees by reason of any infringement or alleged infringement of any copyright or trademark caused by or alleged to have been caused by Contractor or its subcontractor(s) under this Agreement, (c) any penalties imposed on account of the violation of any law or regulation or of any term or condition of any permit in connection with this Agreement, or (d) any damage arising under this Agreement from any loss or damage to materials and equipment owned, rented or borrowed by Contractor, its employees, subcontractors, participants, volunteers, sponsors or any others engaged in connection with the Services rendered by Contractor under this Agreement.
15. **Insurance:** Contractor, at its sole cost and expense, shall obtain and maintain in full force and effect throughout the Term of the Agreement insurance coverage pursuant to Exhibit E "Insurance Requirements".

**Cooperation:** The Parties shall in good faith cooperate in all matters under the terms and conditions of this Agreement. Furthermore, the Parties agree to adhere all terms as outlined in the then current version of the Theatre Operating Plan (TOP) including its attachments, regarding jointly agreed upon Financial Participation Plan, Commitments (roles and responsibilities) and Joint Mission, Values and Goals.

16. **Amendment:** This Agreement this may be amended or modified only by written agreement, signed by the Parties to be bound.
17. **Assignment:** This Agreement may not be assigned by either Party, without the express written consent of the other Party or its successor in interest.
18. **Counterparts:** This Agreement may be executed in any number of counterparts, each of

which shall be an original, but all of which together shall constitute one instrument.

19. **Governing Law:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.
20. **Venue:** Any action or suit or proceeding with respect to this Agreement shall be brought exclusively in the state courts of Santa Clara County, in the State of California or, where otherwise appropriate, exclusively in the federal courts of the Northern District of California.
21. **Entire Agreement:** This Agreement and the terms and conditions set forth in the attached Exhibits, and any Appendices or Attachments represent the entire Agreement between the Parties. All prior agreements, representations, statements, negotiations and undertakings whether oral or written are superseded hereby.
22. **Exhibits, Appendices, and Attachments:** The Exhibits listed below, together with Appendices A through E are attached hereto and are incorporated herein by this reference. The Parties acknowledge that this Agreement shall have no force or effect unless all such Exhibits and Appendices are attached hereto.  
Exhibit A: Responsibilities of Contractor  
Exhibit B: Responsibilities of City  
Exhibit C: General Conditions  
Exhibit D: Facility Operating Policies  
Exhibit E: Insurance Requirements

Appendices:

Building Safety Responsibility (Appendix A)

Conduct in City Facilities (Appendix B)

City of Palo Alto Safety Policy (Appendix C)

Zero Waste Plan (Appendix D)

City Report of Accident/Property Damage (Appendix E)

23. **Order of Precedence:** For the purposes of construing, interpreting and resolving inconsistencies between and among the provisions of this Agreement, the contract documents shall have the order of precedence as set forth below. If a claimed inconsistency cannot be resolved through the order of precedence, the City shall have the sole power to decide which document or provision shall govern as may be in the best interests of the City.
  - a. Order of Precedence
    - i. This Agreement (before all Exhibits)
    - ii. Exhibit C: General Conditions
    - iii. Exhibit E: Insurance Requirements
    - iv. Exhibit A: Responsibilities of Contractor
    - v. Exhibit B: Responsibilities of City
    - vi. Appendices

vii. Exhibit D: Facility Operating Policies

SIGNATURES OF THE PARTIES TO AGREEMENT NO. \_\_\_\_\_

**IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT  
THE DAY, MONTH, AND YEAR FIRST WRITTEN ABOVE**

**THE City OF PALO ALTO, a municipality  
chartered under the laws of the State of California**

By: \_\_\_\_\_  
City Manager

Its: \_\_\_\_\_  
REPRESENTATIVE FOR City

Palo Alto Players  
(Organization Name) a California non-profit  
public benefit corporation

By: Eugenie M Watson

EUGENIE M. WATSON  
(Print Full Name)

Board President  
(Print Full Title)

I.R.S. Number: 94-2295483

Address: 1305 Middlefield Rd.

Palo Alto, CA 94301

Telephone: 650-329-0891

**EXHIBIT A  
RESPONSIBILITIES OF THE CONTRACTOR**

Contractor shall comply with the duties in this Exhibit A:

1. Contractor shall abide by the Facility Operating Policy (Exhibit D) established by City for the use of Facility, equipment, and other production elements.
2. Contractor shall abide by the following: Building Safety Responsibility (Appendix A) Conduct in City Facilities (Appendix B), City of Palo Alto Safety Policy (Appendix C), Zero Waste Plan (Appendix D), and City Report of Accident/Property Damage (Appendix E). Contractor shall follow safety procedures for the use of power and hand tools, mechanical lifts, etc. including the use of safety goggles, ear protection, face shields, safety cables, outriggers, and all other safety provisions, as described in Building Safety Responsibility (Exhibit A).
3. Contractor's use of Facility must conform to the City's safety and fire codes and policies: Building Safety Responsibility (Appendix A) Conduct in City Facilities (Appendix B), City of Palo Alto Safety Policy (Appendix C),
4. Contractor's use of Facility must demonstrate ample awareness of the Facility's age and guard against unnecessary wear and tear. The scope of Productions by Contractor must not stress the Facility unduly and must be designed within its restrictions of scope and scale. Productions that are deemed by the City to stress the Facility, such as causing excessive wear and tear or exceeding weight limits or safety regulations, will not be allowed.
5. Contractor shall bear sole responsibility for the control and supervision of all production activities and personnel associated with the events produced by Contractor.
6. Contractor shall be responsible for the safety and security for all personnel, patrons and participants. Contractor shall provide awareness and training to all personnel of their obligations and responsibilities under this Agreement. If City deems that any procedure followed by Contractor is unsafe, City has the authority to require the immediate suspension of such procedure. Contractor shall prevent or quickly mitigate any fire hazards or any items identified by the Fire Department during Facility inspections.
7. Contractor shall provide City with a copy of their Injury and Illness Prevention Policies which shall ensure that Contractor shall exercise safe practices in the use of City facilities and equipment, maintain and clear work areas, and, within twenty-four (24) hours, report, on a form provided by City (Appendix E), information regarding accidents. Immediately report to City on a form provided by City any breakage, malfunction, deterioration or loss of any of the City's resources (including musical instruments, tools, lights, sound equipment, props, curtains, etc.). Contractor will be responsible for costs of any repairs or

necessary replacement needed due to breakage, malfunction, deterioration or loss (including possible theft) as a result of Contractor's willful, negligent, and/or reckless acts or omissions. Contractor shall immediately discontinue any activity in which an unsafe or dangerous condition exists. Contractor shall train and supervise Contractor's staff and volunteers on safe theatre practices and adhere to City's safety procedures and guidelines. Contractor shall be solely responsible for the control and supervision of such participants. All such personnel shall be deemed the sole agents and employees of Contractor and shall be notified by Contractor of this circumstance. If, in the opinion of any City or Contractor employee, Contractor is conducting an activity in an unsafe manner, Contractor or its agents shall be informed and shall immediately discontinue such activity until such activity is able to be conducted in a safe manner approved by City staff.

8. Contractor shall replace or repair or cause to be replaced or repaired by factory authorized technicians City-owned equipment, instruments or materials identified by Project Manager or Facility Coordinator as having been lost, damaged or destroyed by Contractor or its agents. A written report must be made on a City form whenever City equipment is lost, damaged, or destroyed by Contractor.
9. Contractor shall bear responsibility for providing appropriate auxiliary aids, interpretive services and accommodations where they are necessary to achieve an equal opportunity for patrons to participate in and enjoy the benefits of public performances produced under the Agreement, in conformance with the Americans with Disabilities Act (ADA) of 1990 guidelines and requirements as amended. Printed programs shall include the following statement required by the Americans with Disabilities Act: "Persons with disabilities who require information on auxiliary aids or services in using City facilities, services, or programs or who would like information on the City's compliance with the Americans with Disabilities Act (ADA) of 1990, may contact: ADA Coordinator, City of Palo Alto, 650-463-4952 (Voice) or [ada@Cityofpaloalto.org](mailto:ada@Cityofpaloalto.org) (Internet).
10. Contractor shall maintain good standing as an independent, non-profit corporation under the laws of the State of California.
11. Contractor's signs or displays to be located on or in the Facility to are subject to approval by City. All displays may be put up at load-in and must be removed during strike. Inside the Facility, no display materials may be placed upon stucco walls. Lobby displays may be placed only on the lobby display boards, and all fasteners must be removed at the time display is taken down. Nothing may be posted on the exterior walls or doors of the Facility or in the Lucie Stern Community Center courtyard, except for items in the display case and an approved production name sign hung from the theatre balcony. Marquee signs must be constructed of light weight material, and shall be secured in such a way that the sign is unlikely to become dislodged by normal vibration or seismic activity. Signs shall be of a standard size no larger than ten feet in length and eight feet in height. All marquee signage must be attached to the theatre balcony with rigging so that the sign may be safely and easily removed for limited periods during photography shoots, special events, or building maintenance.

12. Contractor shall, within six hours after the conclusion of the final Performance clean and clear from the Facility, including the auditorium, stage, paint shop, scene shop, flat dock, and costume shop, green room, dressing rooms, rehearsal hall, hallways and outdoor areas adjacent to theatre and shop. Disassemble and store, to City's reasonable satisfaction, scenery, properties, and other production elements, within six hours after the final performance or on such other time schedule mutually agreed upon between Contractor and City and the incoming authorized user of the Facility, if any. The stage shall always be returned to its basic set-up as established by Project Manager or his/her designee unless there is a mutual agreement with the incoming group that has been approved by Project Manager or his/her designee. All items on the CHANGEOVER CHECKLIST are to be performed unless there is a mutual agreement with the incoming group that has been approved by the Project Manager or his/her designee. The Project Manager or his/her designee will sign a copy of the CHANGEOVER CHECKLIST form at the completion of the strike to signify acceptance of clean and neat facilities. The City shall, at its sole discretion, recover all of its costs, including staff time, from Contractor if Contractor fails to comply with this Section and City must clean and clear the Facility of Contractor's items.
13. Storage, paint, scene, and costume spaces shall always remain clean and clear of Contractor's materials other than those materials necessary for the ongoing maintenance and repair of the sets and costumes.
14. In addition to regular clean up, Contractor is responsible for participating in annual, deep clean ups of the Stern Theatre complex, up to 25 person hours per each theatre group.
15. Rehearsal Hall shall be cleared of all materials, except major set pieces and any rehearsal props and costumes, after each daily use. Rehearsal Hall is to be completely cleared within twenty-four (24) hours of final use. Kitchen, restrooms and dressing rooms shall be cleaned and cleared after each daily use. Trash, recycling and compostable materials are to be removed from all areas daily. Recyclables and compostable materials shall be placed in the recycling and composting carts near the trash dumpster and garbage and trash shall be placed into the dumpster. Contractor shall reduce waste, reuse and recycle per the City's Zero Waste Plan (Appendix D). Office space and hallways shall be kept continually clear, clean and orderly and neither space shall be used for the purpose of set, prop, or costume storage. Materials may not be left or stored any place out-of-doors overnight or when unattended by Contractor's personnel.
16. Contractor shall enforce current regulations as established by City with regard to smoking, food and drink in Facility as referenced throughout this agreement. Contractor shall provide ushers or sufficient staff at all previews and performances to enforce such regulations. Smoking is not permitted inside any City facility. No person shall bring any animal into the theatre. This regulation shall not apply to service animals assisting individuals with disabilities or to animals in training to become service animals. Use of animals on the stage is subject to approval by City with reasonable notification. Food and drink are not permitted in the auditorium, light/sound booth or on stage, unless used as

part of a production scene. Food and drink shall be permitted only in approved areas such as the green room and lobby, with the exception of bottled water and sippy cups outlined below and on page 23, Exhibit D #27. Contractor shall clean up all food and drink containers daily after use

Contractor shall have the right to sell or otherwise distribute adult sippy cups to patrons attending events. Aside from bottled water, no liquid refreshments are to be allowed in the Theatre auditorium other than with the use of Contractors' sippy cups. Contractor shall be responsible for the clean-up of any spillage resulting from the use of beverages in the auditorium including immediate clean-up required for patron safety as well as all required clean-up immediately following each event. At City's discretion, the City may request a damage deposit in advance or levy a charge should there be any damage, stains or excessive wear and tear caused by accidents related to the use of sippy cups. Contractor understands that it is responsible for immediate cleaning and any and all fees should problems occur.

17. Contractor shall remove from the Facility, at the conclusion of each Production, costumes, properties and sets created by Contractor with Contractor-owned materials, which costumes, properties and sets will remain the property of Contractor. All office equipment, construction tools, special effects and lighting equipment purchased and owned by Contractor will remain the private property of Contractor and City assumes no responsibility or liability for the loss or maintenance of such materials. All equipment, instruments, costumes and any other materials rented, borrowed or owned by any subcontractor, agent or person for Contractor is the responsibility of Contractor and/or its subcontractors, and City assumes no responsibility or liability for their maintenance or loss. Contractor assumes all liability and responsibility for any default on Production expenses.
18. Contractor shall be responsible for cleaning and restocking the Lucie Stern Community Center hallway restrooms for weekend performances, if and when the City has no custodial staff available.
19. Contractor shall comply with City noise ordinance levels for any outdoor activities, including load-in, strike, dismantling, or disposal, in cooperation with Stern Community Center staff. Shop doors facing Hopkins and Harriet Streets shall be closed between 8:00 p.m. and 8:00 a.m.
20. Contractor shall pay any additional Attendant according to prevailing rates as set forth in the Municipal Fee Schedule, pursuant to the following: For a period of one and one half (1 1/2) hours prior to until at least one half (1/2) hour after the completion of each Performance listed.
21. For any Performance not included in Schedule, Contractor may add additional performances of the Productions in Schedule, assuming availability, upon thirty (30) days' advance notice to City and City approval.

22. Contractor shall provide House Manager and ushers for every Performance or event whenever the public is in attendance. Contractor shall only engage the services of ushers that have been trained in theatre emergency, safety and use procedures usher. Ushers must be available to assist patrons under all circumstances and must be aware of and able to assist disabled persons. Contractor's House Manager and ushers must also be available to assist in emergency situations throughout the entire Performance until the audience has left the theatre. Ushers must ensure that wheelchairs, walkers, etc. are not blocking any of the aisles or exits. Ushers shall return seats to the upright position and remove litter from the auditorium and restrooms at the conclusion of each performance.
23. Contractor shall install and/or remove the removable ADA auditorium seats in designated areas to accommodate wheelchair patrons and as required due to the needs of the Production.
24. Contractor may be entitled, based on availability and at the discretion of the City, to a small amount of time each year (approximately 3 to 10 hours, depending on the rooms requested and their size) in Stern Community Center rental spaces, limited to one of the following: the Ballroom, Fireside Room or Community Room, on a gratis basis, and excluding Saturday nights and any other rental sites, including but not limited to the Art Center Auditorium. The City at its discretion may make exceptions. Contractor may rent spaces as per Municipal Fee Schedule.
25. Contractor shall cause to have present at the Facility at all times when Contractor or any of its employees, subcontractors or volunteers is in the Facility, one of Contractor's designated and City-approved key and/or card holders. Any exceptions must be approved by City in writing.
26. Contractor shall report to the police any incidents of a criminal or suspicious nature occurring on City property, and notify City within twelve hours. If initial notification is verbal, Contractor must subsequently submit the information in writing to City on a form provided by City.
27. Contractor shall ensure that the doors to the Scene Shop, Rehearsal Hall, and Costume Shop, as well as any other exterior access doors to any area of the Facility, are not left open, unlocked or left with the locking mechanism disabled, even if only briefly, at any time when the immediate area secured by the door is unoccupied by Contractor. Failure to do this may be deemed a material breach by the City. When leaving the Facility unoccupied, the Contractor should confirm that all exterior doors to the Facility are secure, and that the perimeter alarm is engaged.
28. Contractor shall complete a City Report of Accident/Property Damage report (Appendix E) for any and all accidents, injuries or property damage if a City employee is not present to fill out the report.
29. Contractor shall operate and conduct business in compliance with City's Zero Waste Plan

(Appendix D) for all activities including, but not limited to, set construction and strike, food and beverage service, and office activities. The goal is to send as little waste to landfill as possible through waste reduction, reuse and recycling. To achieve this goal Contractor must first reduce waste whenever possible.

30. Contractor shall avoid the use for food/beverage service of disposables, including, but not limited to, Styrofoam and other plastics. Reusable food/beverage service ware should be utilized to the maximum extent possible. Where a reusable food/beverage service option is not available, Contractor shall choose items that are recyclable. For concessions, choose product packaging that is recyclable.
31. Contractor shall practice reuse before, during and after Production. City shall provide a list of reuse resources to avoid the disposal of construction materials, sets and props. Contractor must recycle construction debris from set materials (e.g. wood, metal).
32. Contractor shall recycle all materials included in the City's Recycling Program including paper (all types), plastic containers #1-#7, cardboard, glass bottles and jars, and metal cans. Compostable materials will be disposed of in designated compost waste receptacles. Contractor responsible for proper disposal of HazMat items.
33. Contractor shall include on the title page of all Production and event programs and Contractor's website the following credit: "Use of this Facility is made possible through support from The City of Palo Alto, Community Services Department, Division of Arts and Sciences," and include the official City of Palo Alto logo on the title page or prominent placement within event programs; print in all publicity for the Productions, including, but not limited to, mailings, flyers, posters, brochures, website, social media and paid or public service advertising, the statement: "In cooperation with the City of Palo Alto Community Services Department, Division of Arts and Sciences." The City of Palo Alto, Community Services Department, Division of Arts and Sciences shall also be credited in the Contractor's list of funders as a "Civic Sponsor." Where data collection from patrons of Facility is performed, Resident Theatre Company(ies) agree as follows:
  - a. To provide City with the results of market research surveys;
  - b. Cooperate with City to add City desired inquiries to any market research surveys performed; and
  - c. Shall not include such inquiries regarding the City or the Facility without preapproval from City.
34. Contractor shall have the right to borrow available City owned properties, sets, costumes and scenery for its productions scheduled in this Agreement when deemed available by City. Costumes, properties and sets created by Contractor with Contractor-owned materials shall remain the property of Contractor. Contractor property shall be removed from Facility at the conclusion of the production in which such materials are used. The City may, on a case-by-case basis, authorize exceptions. All office equipment,

construction tools, special effects and lighting equipment purchased and owned by Contractor will remain the private property of Contractor and the City assumes no responsibility or liability for the loss or maintenance of such materials. All equipment, instruments, costumes and any other materials rented, borrowed or owned by any subcontractor, agent or person for the Contractor is the responsibility of the Contractor and/or its subcontractors, and the City assumes no responsibility or liability for its maintenance or loss.

35. If minors are involved in the Production, Contractor shall comply with all of the State of California's rules and regulations regarding Child Labor.

36.

**EXHIBIT B  
RESPONSIBILITIES OF CITY**

During the Term of this Agreement, City shall:

1. Allow Contractor the use of the Facility for uses in accordance with this Agreement.
2. Allow the use of the stage and the auditorium prior to the opening night of the Productions, with the exception of necessary maintenance procedures that may require access to the stage and auditorium during this period, according to the Schedule. Allow the Contractor use of the rehearsal hall, box office, scene shop, paint shop and costume shop according to the Schedule as supplied by Contractor and approved by City .. Additional facility use may be provided as specified in item (Exhibits A and B ) above; however, priority use of the room will always be given to actual rehearsals of productions covered by a contract with City. City reserves the right to allow other uses of space within the Facility when not in actual, scheduled use by Contractor on a non-interference basis and with at least forty-eight (48) hours' prior notice to Contractor.
3. Allow Contractor to use all operational production equipment in City's inventory as requested by Contractor and approved in writing by City. Contractor shall take such equipment "as is" and is responsible for ensuring that such equipment is in a safe condition prior to use and is returned in working condition at the conclusion of its use or of the Production.
4. Unless the City deems unnecessary, provide a Facilities Attendant for a period of one and one half (1 1/2) hours prior to and until at least one half (1/2) hour after the completion of each Performance.
5. Provide persons designated by Contractor and approved by City with keys, proximity cards (up to a maximum of six), and alarm codes for access to the Facility for the sole purpose of carrying out the requirements of the Agreement. Keys, proximity cards, and alarm codes shall not be loaned or transferred and shall be used only by the designated persons. In the event that Contractor fails to properly open or lock and secure City facilities leading to a false alarm call-out or leaves areas of the facility unlocked and unattended, a Two Hundred Dollar (\$200.00) penalty shall be paid to City on each such occasion. In the event that a designated key holder loses any key or proximity card issued by City, Contractor shall be assessed a Seventy-Five Dollar (\$75.00) replacement charge for each key or proximity card or pay for the cost of rekeying or reprogramming the locks of Facility if circumstances indicate it as determined in City's reasonable judgment. Contractor will be responsible and held accountable for all personnel, properties and activities of Contractor and its employees and/or agents.
6. Have the right, with no notice, to suspend the Agreement if Facility should be

declared uninhabitable for reasons of safety by the proper authorities (e.g., if the building should be damaged in an earthquake and be declared unsafe for occupancy). If there is an outbreak of pandemic flu or other medical emergency and places of public gatherings are closed, City shall not assume any financial responsibility for loss of revenue by Contractor.

## EXHIBIT C

### GENERAL CONDITIONS

1. **City.** The City designates the CSD Assistant Director of the Arts & Sciences Division, or his or her designee, as Project Manager for City, who shall render overall supervision of the progress and performance of this Agreement. City reserves right to change this designation at any time during the Term of this Agreement. All City services set forth in this Agreement shall be performed by City under the overall supervision of Project Manager or its Facility Coordinator. Contractor and its Project Liaison shall communicate with the Project Manager in all matters dealing with City policies, funding, facilities, equipment and other City departments outside the Facility.
2. **Contractor.** Contractor shall assign a single Contractor Liaison who shall have overall responsibility for the compliance of this Agreement. Should circumstances or conditions subsequent to the execution of this Agreement require a different liaison, Contractor shall notify City in writing immediately of same. Contractor shall ensure that its Liaison communicates effectively with the City at all times under this Agreement.
3. **Access.** Contractor shall not prevent Project Manager, facility maintenance personnel, and/or others specifically designated by Project Manager from access to the Facility; provided, however, that City shall use its best efforts to give advance notice and not to disrupt the activities of Contractor as permitted by the Agreement. The Project Manager and others specifically designated by Project Manager shall attempt to coordinate such access if possible.

Notwithstanding the foregoing, except in the case of emergency or if they are present on the premises as members of the audience or specifically invited into the backstage areas of the theatre, Project Manager, facility maintenance personnel and/or others specifically designated by the Project Manager shall not enter the auditorium or backstage areas during public performances of a production.

4. **Days Defined.** The term "days" shall mean calendar days.
5. **Qualifications.** Contractor represents that it is qualified to furnish the Services described under the Agreement.
6. **Ticket Sales:**
  - (a) Contractor shall be responsible for sale of season tickets and single tickets, depositing of revenue and reporting of revenue and expenditures, and shall place available tickets for each production for sale at the Facility box office one hour prior to each performance. Until one (1) hour prior to the beginning of a

performance, Contractor shall not sell (a) seat numbers C1, C2, D1, D2, D3, and D4; (b) either (i) the block of seats T2, T4, T6, T8, T10, U2, U4, U6, U8 and U10 or (ii) the block of seats T1, T3, T5, T7, T9, U1, U3, U5, U7 and U9 for the purpose of making such seats available for the disabled; provided, however, that this Section 10(b) shall not apply to the sale of tickets for such seats to persons who identify themselves as disabled when they purchase their ticket.

- (b) Contractor agrees the price of admission for the season shall be as set forth in their ticket salesreporting to the City, at the time of submitting financial records.
- (c) Contractor shall provide City, when requested by Project Manager or his/her designee, with at least six (6) complimentary tickets for each Production on the date(s) requested. Best available seating will be provided to City if any seats are available at the time of the request.
- (d) Contractor may operate an intermission snack concession during each performance under this Agreement. Contractor shall conduct such operation in a safe, clean manner and shall hold City harmless from any claim or demand or liability of any nature whatsoever which may arise out of such operation.

7. **Composition of Contractor.** Throughout the term of this Agreement, Contractor shall remain an independent, non-profit public benefit corporation, in good standing under all applicable local, state and federal laws.

8. **Fiscal Responsibilities of Contractor.**

- (a) **Fiscal Agent.** Contractor shall appoint a fiscal agent who shall be responsible for the financial and accounting activities of Contractor, including the receipt and disbursement of Contractor funds. Contractor shall provide City with the name of a fiscal agent in writing and shall immediately notify Project Manager of any changes occurring during the Term. Contractor shall have sole responsibility for the safekeeping of Contractor tickets and monies.
- (b) **System of Accounts.** Contractor and its fiscal agent shall establish and maintain a system of accounts that shall be in conformance with generally accepted principles of accounting for budgeted funds. Such system of accounts shall be subject to the review and approval of City.
- (c) **Financial Records.** In support of its system of accounts, Contractor shall maintain complete and accurate records of all financial transactions, including, but not limited to, contracts, invoices, time cards, cash receipts, vouchers, canceled checks, and bank statements. City may inspect these records at Contractor's office upon reasonable advance notice and during normal business hours upon request. NOTE: Contractor's cash receipts are not to be stored on the Premises between Productions.

- (d) Audit of surcharge payments. Contractor shall retain for a period of at least three (3) years records of tickets sold through their automated ticketing system, sales records, and a verified report of sold and unsold tickets which must be made available to City Auditor upon request.

9. Production Reports and Records.

- (a) Reports. On reasonable notice and with reasons specified, Contractor shall grant Project Manager and/or City's Auditor access to all Contractor records relating to this Agreement, including performance records, data, statements, and reports.
- (b) Tax Form 199. A copy of Contractor's most recently filed California State Tax Form 199, "California Exempt Organizations Annual Information Return" must be filed with Project Manager or his/her designee within fifteen (15) days of when it is due to the State of California and shall also be attached to this Agreement prior to its final approval (Attachment 5).

10. Corrective Action Requirement/Disputes. In the event City should determine from any source, including but not limited to reports submitted by Contractor under this Agreement to City or any evaluation report from any source, that Contractor may not be in compliance with any provision of the Agreement, City may forward to Contractor written notice of same. Such notice shall specify with particularity the nature of the condition(s) or issue(s) that require(s) corrective action and may include a recommendation as to appropriate corrective action. Within fifteen (15) days of City's request, Contractor shall submit its written response to the notice, which response shall set forth its view of the alleged violation and its proposed plan, if any, for corrective action. Upon request of either Party, the Parties shall meet within five (5) days thereafter to discuss the alleged violation and proposed corrective action. Should the Contractor fail to submit a response within the above timeframe, or should fail to follow through on corrective action, the City may a fine of up to \$100 for and initial violation, or up to \$1000 for repeated violations.

11. Subcontractors. Contractor shall be responsible for employing or engaging all persons necessary to perform the Services of Contractor hereunder. All subcontractors are deemed to be agents of Contractor and Contractor agrees to be responsible for their performance. Contractor shall give its personal attention to the fulfillment of the provisions of the Agreement by all of its employees, participants, volunteers, and subcontractors.

12. Intoxication. Contractor agrees to be responsible for injuries or damage caused by any of its directors, officers, employees, agents, subcontractors, or volunteers who are under the influence of alcohol, drugs, hallucinogens or narcotics,

whether or not legally prescribed. Neither Contractor nor City shall permit any of Contractor's employees or volunteers discovered to be under the influence of any of the foregoing substances from remaining in any facility used under the terms of this Agreement and City reserves the right of denying such person's further participation in any activities in Facility. Consumption of alcoholic beverages or use of illegal drugs at the Facility is expressly forbidden by any person working for Contractor, paid or volunteer. This includes all staff, actors, crew and musicians.

13. **Worker's Compensation.** Contractor certifies that it is aware of the provisions of the Labor Code of the State of California, which requires every employer to be insured against liability for workers' compensation and certifies that Contractor shall comply with Worker's Compensation laws of the State of California during the Term of this Agreement.
  
14. **Weapons.** For the avoidance of doubt, no firearms or other weapons, whether loaded or not, shall be allowed in the Facility or any other City property. Stage weapons and firearms designed solely for the use of blank cartridges will be allowed if they are being used as a prop in the current Production, but must be stored, when not being used, in a secure manner by Contractor's stage manager or his/her designee.
  
15. **Legal Compliance.** Contractor and all its paid employees, subcontractors, and volunteer participants are required to abide by all applicable federal, state and local laws and ordinances.
  
16. **Notices.** All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; when received if transmitted by fax, email or regular US mail; if received during normal business hours on a business day (or if not, the next business day after delivery) provided that such document is legible and that at the time such document is sent the sending Party receives written confirmation of receipt; if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express); and upon receipt, if sent by certified or registered mail, return receipt requested.

**EXHIBIT D**  
**OPERATING POLICIES FOR ALL USERS OF THE STERN THEATRE**

1. **Resident Theatre Companies** – The City of Palo Alto has long-standing relationships with Resident Theatre Companies to provide programming at the Lucie Stern Community Theatre. These organizations serve as “house companies” and provide the primary programming featured on the stage of the Theatre. The Resident Theatre Companies include: Palo Alto Players, TheatreWorks Silicon Valley (TheatreWorks) and West Bay Opera.
2. **Rental Agreement** - All performances and associated activities held at the Facility must have a fully executed rental agreement prior to the Contractor’s arrival at the facility. Resident Theatre Companies must have a fully executed Agreement.
3. **Theatre Use Times** – The Theatre is available for use between 8:00 am and midnight and no activity may take place outside of this time period. This available use time includes all production related activities, including load-in, load-out, set building, scene shop activities, costume shop activities, rehearsal and public performance.
4. **Provision of Trained House Staff** – Contractor must provide a qualified house manager and trained house staff for all public events, including ticket takers, ushers and box office personnel. These personnel may be paid or volunteer, at the sole discretion of Contractor. All paid and volunteer staff must be trained by Contractor both through an annual training workshop and through a day-of-show orientation. This training and orientation shall include public relations, event information, seating locations, directions for assisting disabled patrons, use of the hearing assistance devices, emergency exits and evacuation procedures and fire alarm procedures. At all times the safety, comfort and event experience of Theatre patrons will be placed in high priority.
5. **Regulations for Consumption of Alcoholic Beverages** – Contractor must comply with all State and City laws relating to the sale and consumption of alcoholic beverages. Alcohol is allowed in the Theatre during public performances, with pre-approval by the City of Palo, which shall not be unreasonably withheld. Unless otherwise specifically approved, the sale or free distribution of alcoholic beverages is limited to wine, champagne, beer and sparkling wine. If alcohol is to be provided for sale, Contractor must possess a valid on-sale alcohol permit approved by the California Department of Alcoholic Beverage Control (ABC). All requirements must be posted as per ABC requirements and Contractor is responsible for ensuring that no individual under the age of 21 is served alcohol. Contractor agrees that identification will be checked for individuals appearing to be under the age of 30. At no times may event participants, including actors, musicians, employees or event volunteers be served alcoholic beverages.
6. **Insurance Provision for the Sale or Free Distribution of Alcoholic Beverages** – For all events during which alcohol is to be provided for sale or at no cost to patrons, Contractor must provide the City of Palo Alto with proof of liquor liability insurance with minimum coverage of \$2 million pursuant to Exhibit E.

7. **Janitorial Duties Relating to Food and Beverage Sales** – Upon the completion of each event, Contractor shall clean-up and remove all trash and supplies relating to the distribution of food and beverage, including alcoholic beverages, including but not limited to empty bottles or containers, glassware (plastic or glass), used napkins, food and other trash or unused supplies. All garbage containers are to be removed from the Theatre and dumped in appropriate garbage bins. If required, doors should be opened to allow fresh air into the lobby or event spaces to ensure that the smell of alcohol or food is not present in the Theatre at the end of each event. At no time can this task be left for completion on the following day(s).
8. **Production Equipment** - Contractors shall be required to use the in-house production equipment. At the expense of Contractor, additional equipment to augment the in-house system may be provided by a third-party Contractor with City approval.
9. **Complimentary Tickets** - Contractor shall have the right to issue complimentary tickets for events produced at Theatre. The number of complimentary tickets for any given events must not exceed ten percent (10%) of the total seating capacity without pre-approval by the City.
10. **Refunds** - If the event(s) anticipated in a Theatre Use Agreement are cancelled, Contractor shall have the sole responsibility and authority to provide refunds to the public and shall control all box office receipts until all required refunds have been provided.
11. **Ticket Prices** - Contractor shall have the sole right to establish ticket prices for the event(s) anticipated in a Theatre Use Agreement.
12. **Advertising** – Contractor shall have the sole right and authority to design, develop and distribute all advertising and promotional materials for the events produced at Theatre and shall be responsible for the costs associated with this endeavor. No advertising materials may be displayed on the interior, exterior or any other part of Theatre without specific authorization from City of Palo Alto, other than the rack cards, window boxes and banners currently used.
13. **Storage of User’s Property** – Any property belonging to Contractor, or third parties such as caterers, decorators or florists may not be stored overnight either prior to or following the rental period. All requirements for load-in and load-out must be followed to ensure that events scheduled in Theatre immediately before and after the Contractor’s event can be fully and professionally supported. Long term on-site storage is to be requested by the Contractor and up to the City to permit.
14. **Animals** - No live animals are to be brought into the facility without prior permission from the City of Palo Alto.
15. **Staging** –With proper care and repair, Contractor or its representative, as per normal operating procedure, may drill or nail sets or props into the stage floor of Theatre

16. **Surfaces** Nails, hooks, tacks or screws may not be used on any surface or furnishing in Theatre, unless approved by the City. No tape or other materials may be applied to walls, glass, tables or any surface in the lobby, auditorium, green room or back stage areas. User will be held financially responsible for repair/replacement of any damaged or defaced property.

No bunting, tissue paper, crepe paper or any other combustible material may be used at any time in the Theatre, without pre-approval from City. Similarly, no glitter, rice or confetti may be used anywhere within the facilities, including the auditorium, lobby, backstage areas, or outside areas such as the patio or courtyard.

17. **Modifications to Theatre Building** – Contractor shall not make any modifications to the Theatre that would leave permanent or disfiguring impacts to the facility. This includes the use of drills, nails or other attachment devices. If questions arise about the need to alter elements of the Theatre for production needs, Contractor agrees to discuss these needs with City staff for pre-approval.
18. **Use of Flammable Materials** - The use of any flammable device or substance, including but not limited to pyrotechnics, candles, cigarette or cigars, or other materials or device with a flame is strictly forbidden. In rare cases, the City and Fire Marshall may approve, with adequate advance notification, in advance of at least 30 days prior to the first date of live public performance..
19. **Mechanical Smoke and Fog Equipment** - Mechanical smoke or fog generating machinery can only be used with pre-approval of Theatre Management and is subject to inspection by the City Fire Marshall. The use of mechanical smoke or fog generating machinery must be tested at least 30 days prior to first use in the Theatre during live performances. This test must determine that the machinery does not cause the fire alarm system to respond. Any questions regarding this testing shall be subject to approval and guidance by the City Fire Marshall or a representative of the Palo Alto Fire Department. Any cost associated with the testing of this equipment or due to false alarms caused by this equipment will be the financial responsibility of Contractor.
20. **Approval of Additional Production Techniques & Devices** – The use of strobe lights, loud noises (i.e. gun shots), and aerial suspension must be pre-approved by the City of Palo Alto at least 30 days prior to the first date of live public performances. No fire arms are allowed in the Theatre and the use of any prop guns must be pre-approved by the City. Pyrotechnics, defined by PAFD as 'Any exothermic chemical reaction special effect that produces heat, flame, sound, light or a combination of these effects', must be pre-approved by the Fire Marshall unless a licensed pyrotechnic handler is being used by the theatre group. In that case, theatre group must provide written proof of the licensed pyrotechnic handler's name, license number, and contact info in advance.
21. **Adherence to Fire Codes** – Contractor is responsible for complying with all applicable sections of the California Fire Codes as adopted by the City and as may be amended from time to time, including, but not limited to: maintaining required clear emergency exit paths, proper use of fire doors, and adhering to posted occupancy loads. At no time during Theatre use may fire exit signs

by covered or otherwise dimmed. Should any question or doubt arise regarding the proper adherence or interpretation of fire code arise, Contractor shall be responsible for contacting the City Fire Marshal or other representative of the Palo Alto Fire Department for direction and advice. At all times, the direction and decisions of the Fire Department shall be viewed as the final authority. The Fire Marshal has the right to charge a fee for their inspection services and Contractor is obligated to pay it.

**22. Adherence to Fire Inspection and Occupancy Load Requirements**

Stern Community Theatre is inspected routinely at least once a year by the Palo Alto Fire Department. The Fire Marshall should be notified of any productions where public safety questions or concerns arise during the set up or design, or the use of special effects during performances. Fire Inspections are listed in the Fee Schedule at \$355/hour as of July, 2018 (and are subject to amendment by the City) which may be charged to Resident Theatre Company.

At all times, Resident Theatre Companies are required to adhere to City Fire codes, including but not limited to, required occupancy loads for each section or room of the Theatre, good house- keeping of combustible materials, keeping exit ways clear and the storage/use/disposal of hazardous materials. As of 2018, these established occupancy loads are as follows:

- a. Front of Curtain Stage – 31
- b. Behind Stage Curtain – 83
- c. Orchestra Pit – 14, unless otherwise approved by the Fire Marshall in sufficient advance. Any costs incurred for exceeding the limit will be incurred by Contractor. Any costs associated with exceeding the limit must be borne by Contractor.
- d. Basement below stage area – 7
- e. Paint desk/shop off load – 57 for musicians/vocals
- f. No occupancy is allowed in flat dock area other than removal/returning of props. There is a hazard of falling production items during a seismic event. Should occupancy be desired, all production items must be completely removed or areas for holding production items must be seismically secured in advance.

The Palo Alto Fire Department is available to assist the Resident Theatre Companies if fire safety practices are in question. Please contact them at: 650-329-2194 option 1.

- 23. Fire Alarm Procedures** – In the event that the fire alarm is activated, Contractor must immediately evacuate the building and wait for the Palo Alto Fire Department to arrive. Follow their instructions, and only reenter the building when given permission to do so. These procedures must be followed even in the case of a false alarm.

Should the alarm go off during a performance, ushers should direct and assist patrons in exiting the building, and stage crew should trip the manual release of the fire curtain. Particular attention should be given to providing evacuation assistance to disabled, older and child patrons.

If the system detects issues that do not rise to the level of setting off an alarm, the system may

produce an audible signal at the alarm panel in the green room, and possibly at the one in the lobby. In this case, the alarm company will contact the City of Palo Alto on call Facility staff, who will be dispatched to investigate and deal with the alert. They should arrive within an hour. In no case should anyone but authorized personnel (City staff or Fire Department personnel) acknowledge, silence, or reset the alert on the alarm panel.

24. **Event Safety and Security** - Contractor shall provide for the orderly production of the event(s) anticipated in the Use Agreement and shall insure that the safety of the public and the Theatre are always maintained. If, at any time, the activities in Theatre appear to be detrimental to members of the public, City employees shall have a supercedingright to make decisions required to ensure safety and the professional presentation of the event. This shall include, but not be limited to, issues involving security in the building, ushering of patrons, production safety and other event related issues. Contractor agrees that at all times, decisions relating to these issues shall be made at the superceding discretion of City.

In the event that security may be required, the City of Palo Alto shall have the sole right to approve the private security company and to establish the personnel requirements for the event(s) anticipated in the Use Agreement. The costs associated with the provision of private event security shall be the financial responsibility of Contractor.

25. **Concession Sales** - Contractor shall have exclusive rights to the sale of concession products including food or beverage, subject to City approval for the sale or provision of free alcohol.
26. **Merchandise Sales** - The Contractor shall have the right to sell merchandise to the patrons attending the event produced by Contractor.

**Use and Sale of Sippy Cups** – With City approval, Contractor shall have the right to sell or otherwise distribute adult sippy cups to patrons attending events. If the City permits, no liquid refreshments are to be allowed in the Theatre auditorium other than with the use of Contractors’ sippy cups, other than bottled water. Contractor shall be responsible for the clean-up of any spillage resulting from the use of beverages in the auditorium including immediate clean-up required for patron safety as well as all required clean-up immediately following each event. If the City so desires, the City may require a damage deposit in advance or a charge may be levied should there be any damage, stains or excessive wear and tear caused by accidents related to the use of sippy cups.

27. **Force Majeure** - If Theatre is deemed to be unfit for occupancy during the period covered by this agreement, by reason of fire, earthquake, strike, civil disturbance or any other cause beyond the control of the City of Palo Alto, then the agreement shall be of no further force and effect.
28. **Use and Management of Hearing-Impaired Device Equipment** -Contractor’s personnel shall manage, distribute and collect the hearing-impaired devices (“headsets”) that City owns for use by hearing-impaired persons at all Performances at the Facility, subject to the following restrictions:
- (a) Contractor shall verify that all headsets and batteries are present and functioning normally and shall report to Project Manager or his/her designee any missing or

broken items before taking control of them for the run of the Production.

- (b) For any damage or loss of any headset while under Contractor's control, Contractor shall promptly, upon request, pay City the fair market price for any necessary replacement or repair of any component of the headsets, as such replacement or repair is reasonably determined by Project Manager or his/her designee.
- (c) Contractor will diligently ensure the security of the headsets, in a manner approved by Project Manager or his/her designee, when the headsets are not in use. When the headsets are not so secured, Contractor will not leave the headsets unattended.
- (d) Contractor will provide at least one (1) person in the Facility lobby, whose sole responsibility will be to distribute and collect the headsets, as the case may be, pursuant to the following:
  - (i) Beginning one-half (1/2) hour before each Performance until ten (10) minutes after the Performance begins;
  - (ii) At all times during any and all intermissions; and
  - (iii) From the end of the Performance until all of the headsets have been returned.
- (e) Contractor shall collect a Driver's License or credit card as security for the loan of a headset, which Driver's License or credit card will be returned to its owner upon return of the headset. Contractor will implement procedures for the safe handling of the Driver's Licenses and credit cards and their return to their owners.
- (f) Contractor's responsibility at the end of each performance will include the following:
  - (i) Clean and otherwise sanitize all the earpieces by swabbing them with isopropyl alcohol swabs.
  - (ii) Turn off the on/off/volume switches on all returned headsets and place them into the battery charger.
  - (iii) Return all headsets and accessories to their storage case.
  - (iv) Verify the presence of all sixteen (16) headsets.
  - (v) Return the chargers to their place in the rolling cart.
  - (vi) Return the rolling cart to the House Manager's Closet.
  - (vii) Be sure the rolling cart is plugged into an electrical outlet.
  - (viii) Make sure the battery charger is getting power, as indicated by the red lights

- (ix) Padlock the rolling cart's doors shut, using either the padlock provided by City or a padlock supplied by Contractor, provided that Project Manager or his/her designee has been given a copy of the key or the combination.**
- (x) Immediately report to City's attendant at the Facility any missing headsets, and turn over to the attendant any malfunctioning headsets.**

**EXHIBIT E  
INSURANCE REQUIREMENTS**

CONTRACTORS TO THE CITY OF PALO ALTO (City), AT THEIR SOLE EXPENSE, SHALL, FOR THE TERM OF THE CONTRACT. OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW AND AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A-VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY. (THIS MUST INCLUDE COVERAGE FOR SERVING LIQUOR IF LIQUOR IS SERVED OR SOLD).	BODILY INJURY	\$2,000,000	\$2,000,000
		PROPERTY DAMAGE	\$2,000,000	\$2,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$2,000,000	\$2,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
YES	PROPERTY INSURANCE	ALL RISK COVERAGE		
NO	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES		\$1,000,000
YES	<b>THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONTRACTORS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.</b>			

- I. INSURANCE COVERAGE MUST INCLUDE:
  - A. A PROVISION FOR A WRITTEN THIRTY (30) DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
- II. CONTRACTOR MUST SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.
- III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL

INSUREDS"

**A. PRIMARY COVERAGE**

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSUREDS.

**B. CROSS LIABILITY**

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CONTRACTOR AS INSUREDS UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDS, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

**C. NOTICE OF CANCELLATION**

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE CONTRACTOR SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE CONTRACTOR SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

**NOTICES SHALL BE MAILED TO:**

**PURCHASING AND  
CONTRACT ADMINISTRATION  
City OF PALO ALTO  
P.O. BOX 10250  
PALO ALTO, CA 94303**





**AGREEMENT  
FOR PERFORMING ARTS SERVICES  
BETWEEN THE CITY OF PALO ALTO AND (THEATRE GROUP)**

THIS AGREEMENT FOR PERFORMING ARTS SERVICES (“Agreement”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018 by and between THE CITY OF PALO ALTO, a California chartered municipal corporation (“City”) and West Bay Opera \_\_\_\_\_ (Organization Name), a California nonprofit public benefit corporation, located at \_\_\_\_\_ (Address) (telephone: \_\_\_\_\_) (“Contractor”) (individually, a “Party” and, collectively, the “Parties”).

1. **Services.** During the Term of this Agreement Contractor shall present that portion of Contractor’s Performances of its annual scheduled Productions that are produced at Facility pursuant to the Schedule approved by City for the Compensation set forth below, pursuant to the terms and conditions of this Agreement.
2. **Facility.** Facility shall mean the City-owned Lucie Stern Community Theatre, and for purposes of this Agreement, the Facility, is deemed to include those portions of the Lucie Stern Community Theatre including, but not limited to, the theatre, lobby, green room, dressing rooms, scene shop, paint shop, light and sound booth, flat storage, rehearsal hall and costume shop.
3. **Performance.** Performance shall mean a single instance of a staged theatrical Production pursuant to a Schedule for a single fiscal year (July 1, through June 30).
4. **Production.** Production shall mean all activity from inception to completion to include multiple Performances together with such normal activities to include but not limited to load-in, load-out, set building, lighting design, rehearsal, and activities taking place in the auditorium, stage, paint shop, scene shop, flat dock, costume shop, green room, dressing rooms, rehearsal hall, lobby, hallways and outdoor areas adjacent to Facility (collectively the “Production”) pursuant to the Schedule.
5. **Resident Theatre Companies.** Resident Theatre Companies shall mean TheatreWorks Silicon Valley, Palo Alto Players, and West Bay Opera.
6. **Schedule.** Contractor’s Schedule shall mean that particular schedule for all of its activities related to its planned Productions and Performances to be performed in one fiscal year as submitted to City Project Manager no later than fifteen days after they announce their annual season for the following calendar year.
  - a. Resident Theatre Companies shall have the right of first refusal for scheduling and use of Facility over all others except for the City.
  - b. City shall control and maintain a master theatre calendar to accurately reflect the actual usage

of each production space, including the date and purpose of each scheduled date.

- c. Dates of use shall be reserved on the master theatre calendar by the City Project Manager no later than fifteen days after the announcement of the annual season for each of the Resident Theatre Companies. This use reservation may be initially identified or blocked as a full day of use. However, to maintain complete information relating to actual Facility use, each Resident Theatre Company must provide the City Project Manager with clarification of the time and purpose of each day of use on the Master Theatre calendar no later than twenty-one (21) days after the completion of each Production.
  - d. For the avoidance of doubt, the City, with advance notice and justification, has the right to change, cancel and control the scheduling of any and all activities, including Performances, at Facility. The City may delegate at its sole discretion the scheduling responsibility to one of the three Resident Theatre Companies. Such delegation shall be made in writing by the City and may be revoked by City at any time.
7. **City's Project Manager.** City shall assign a City employee, excluding any Party that may have a conflict of interest, as its Project Manager for the Term of this Agreement who shall be act on the City's behalf on all matters related to the use of Facility. City Project Manager shall have the authority to assign matters relating to the day-to-day use of Facility to a City employee who shall be referred to "Facility Coordinator".
8. **Contractor Liaison.** Contractor shall assign a Contractor employee as a liaison between Contractor, City and City Project Manager and as a liaison with other Resident Theatre Companies for all matters related to the use of Facility.
9. **Operating Policies for Contractor Services.** The Services shall be performed by Contractor pursuant to this Agreement and all Exhibits in particular, the "Operating Policies" attached hereto as Exhibit D. The City reserves the right to change or modify the Operating Policies during the Term of this Agreement provided however that City shall give Contractor a written thirty (30) day notice of same.
10. **Term, Termination & Breach.** This Agreement shall commence as of (DATE) and shall terminate on June 30, 2021 (the "Term"). The Term of this Agreement may be renewed for an additional three (3) year term by mutual agreement of the Parties to this Agreement.
- a. **Termination for Material Breach & Cure of Default.** This Agreement may be terminated upon material breach by either Party as set forth herein. The term "Material Breach" shall mean any material breach or default by a Party of any material covenant, duty or obligation under this Agreement.
  - b. **Notice & Cure.** The non-defaulting Party shall provide written notice of its intention to terminate and declare a Material Breach or default under this Agreement, stating the reasons for the notice and the date of intended termination. The defaulting Party shall have a period of sixty (60) days to cure the breach. Upon the expiration of the cure period and where cure is not achieved within said cure period, or in instances where the breach cannot be cured within sixty (60) days, efforts to cure the breach

have not commenced or are not being diligently pursued, this Agreement shall terminate immediately upon receipt of written notice of termination by the non-defaulting Party.

- c. **Material Breach by Contractor.** Contractor breach of the following provisions of this shall be deemed a “Material Breach” for purposes of this Agreement and shall include failure of performance of any provision in (i) Section 1 through 14 of this Agreement or of any provision in Exhibits A, C, D, and E.
- d. Material Breach with regard to public safety must be cured by Contractor no later than 48 hours from receipt of notification of such violation.

**11. Compensation.** Contractor shall compensate City for the use of Facility, including use during public events and use for all other times when there is no public event. Compensation shall be derived as follows:

- a. **Operating Cost Offset Fee:** Contractor shall pay City \$2.00 for each ticket sold for events with paid admission. This charge compensates City for use of Facility for all such days scheduled by Contractor, including performances, load-in, load-out, set building, rehearsal, and dark days. There shall be no additional compensation for use of Facility on days where no tickets are sold.
- b. **Stern Theatre Improvement Fee:** Commencing on July 1, 2019, Contractor shall pay City an additional \$2.00 for each ticket sold for events with paid admission to indirectly offset the costs of building maintenance, enhancements, improvements, repairs and new equipment and furnishings for Facility. This fee may go up to \$3.00 per ticket sold as of the new term beginning July 1, 2021.
- c. **Funding of Fees:** Contractor has sole authority to allocate the funds required for this payment to City from any revenues generated by the Contractor organization.
- d. **Stern Theatre Improvement Annual Plan:** Funds collected by the City from payment of **Stern Theatre Improvement Fee** shall fund improvements to the Facility as appropriated by and specified in the annual City budget. Items to be funded shall be recommended to City each year by a committee with representation from each of the three (3) Resident Theatre Companies and City staff.
- e. **Facilities Attendant:** At the discretion of the City, Contractor shall provide compensation for the Facilities Attendant present at each performance, at prevailing rates as set forth in the Municipal Fee Schedule.

**12. Payment of Compensation:** Contractor shall pay City all required Compensation within thirty (30) days from the completion of each Production run. Payment shall be made in full and shall be reconciled against actual ticket sales. Along with payment, Contractor shall provide City with a printed report from their automated box office system that provides detailed ticket sales data for the Performances included in the payment. This “Event Ticket Sales Report” must include final sales data for each date of the performance run, the total

performance run, total ticket sales, ticket sales by pricing category, total sales revenues and issued complimentary tickets. If such report is not available within the automated box office system and Contractor is unable to develop such customized report, Contractor shall submit a report or multiple reports that will provide City with the required information.

13. **Late Payments:** If Contractor is late on payments, the City may, in its discretion, add a three percent (3%) surcharge levied for payments received between 31 days and 60 days after the closing date of the Production, a four percent (4%) surcharge levied for payments received between 61 days and 90 days after the closing date of the Production, and a five percent (5%) surcharge levied for payments received in excess of 90 days of the closing date of the Production. Payment must be accompanied by the production report specified in Exhibit C, Section (9), "PRODUCTION REPORTS AND RECORDS," item (a) before payment will be considered to have been made.
14. **Indemnity:** Contractor shall defend, indemnify and hold harmless City, its officers, contractors, agents, and employees and Facility from and against (a) any demands, claims, or liability of any nature, including injury or death or property damage, arising out of or in any manner related to performance or nonperformance by Contractor, its officers, agents, employees or any persons brought onto the Facility premises by or through Contractor, (b) any claims or demands made against City, its officers, agents or employees by reason of any infringement or alleged infringement of any copyright or trademark caused by or alleged to have been caused by Contractor or its subcontractor(s) under this Agreement, (c) any penalties imposed on account of the violation of any law or regulation or of any term or condition of any permit in connection with this Agreement, or (d) any damage arising under this Agreement from any loss or damage to materials and equipment owned, rented or borrowed by Contractor, its employees, subcontractors, participants, volunteers, sponsors or any others engaged in connection with the Services rendered by Contractor under this Agreement.
15. **Insurance:** Contractor, at its sole cost and expense, shall obtain and maintain in full force and effect throughout the Term of the Agreement insurance coverage pursuant to Exhibit E "Insurance Requirements".

**Cooperation:** The Parties shall in good faith cooperate in all matters under the terms and conditions of this Agreement. Furthermore, the Parties agree to adhere all terms as outlined in the then current version of the Theatre Operating Plan (TOP) including its attachments, regarding jointly agreed upon Financial Participation Plan, Commitments (roles and responsibilities) and Joint Mission, Values and Goals.

16. **Amendment:** This Agreement this may be amended or modified only by written agreement, signed by the Parties to be bound.
17. **Assignment:** This Agreement may not be assigned by either Party, without the express written consent of the other Party or its successor in interest.
18. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

19. **Governing Law:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.
20. **Venue:** Any action or suit or proceeding with respect to this Agreement shall be brought exclusively in the state courts of Santa Clara County, in the State of California or, where otherwise appropriate, exclusively in the federal courts of the Northern District of California.
21. **Entire Agreement:** This Agreement and the terms and conditions set forth in the attached Exhibits, and any Appendices or Attachments represent the entire Agreement between the Parties. All prior agreements, representations, statements, negotiations and undertakings whether oral or written are superseded hereby.
22. **Exhibits, Appendices, and Attachments:** The Exhibits listed below, together with Appendices A through E are attached hereto and are incorporated herein by this reference. The Parties acknowledge that this Agreement shall have no force or effect unless all such Exhibits and Appendices are attached hereto.  
Exhibit A: Responsibilities of Contractor  
Exhibit B: Responsibilities of City  
Exhibit C: General Conditions  
Exhibit D: Facility Operating Policies  
Exhibit E: Insurance Requirements

Appendices:

Building Safety Responsibility (Appendix A)

Conduct in City Facilities (Appendix B)

City of Palo Alto Safety Policy (Appendix C)

Zero Waste Plan (Appendix D)

City Report of Accident/Property Damage (Appendix E)

23. **Order of Precedence:** For the purposes of construing, interpreting and resolving inconsistencies between and among the provisions of this Agreement, the contract documents shall have the order of precedence as set forth below. If a claimed inconsistency cannot be resolved through the order of precedence, the City shall have the sole power to decide which document or provision shall govern as may be in the best interests of the City.
- a. Order of Precedence
- i. This Agreement (before all Exhibits)
  - ii. Exhibit C: General Conditions
  - iii. Exhibit E: Insurance Requirements
  - iv. Exhibit A: Responsibilities of Contractor
  - v. Exhibit B: Responsibilities of City
  - vi. Appendices
  - vii. Exhibit D: Facility Operating Policies

SIGNATURES OF THE PARTIES TO AGREEMENT NO. \_\_\_\_\_

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT  
THE DAY, MONTH, AND YEAR FIRST WRITTEN ABOVE

THE City OF PALO ALTO, a municipality  
chartered under the laws of the State of California

By: \_\_\_\_\_  
City Manager

Its: \_\_\_\_\_  
REPRESENTATIVE FOR City

West Bay Opera Assoc, Inc.  
(Organization Name) a California non-profit  
public benefit corporation

By: \_\_\_\_\_  
Jose Luis Mosconchi  
(Print Full Name)  
General Director  
(Print Full Title)

I.R.S. Number: 94-61-05053

Address: 221 Lambert Ave.  
Palo Alto, CA 94306

Telephone: (650) 534-7811

**EXHIBIT A**  
**RESPONSIBILITIES OF THE CONTRACTOR**

Contractor shall comply with the duties in this Exhibit A:

1. Contractor shall abide by the Facility Operating Policy (Exhibit D) established by City for the use of Facility, equipment, and other production elements.
2. Contractor shall abide by the following: Building Safety Responsibility (Appendix A) Conduct in City Facilities (Appendix B), City of Palo Alto Safety Policy (Appendix C), Zero Waste Plan (Appendix D), and City Report of Accident/Property Damage (Appendix E). Contractor shall follow safety procedures for the use of power and hand tools, mechanical lifts, etc. including the use of safety goggles, ear protection, face shields, safety cables, outriggers, and all other safety provisions, as described in Building Safety Responsibility (Exhibit A).
3. Contractor's use of Facility must conform to the City's safety and fire codes and policies: Building Safety Responsibility (Appendix A) Conduct in City Facilities (Appendix B), City of Palo Alto Safety Policy (Appendix C),
4. Contractor's use of Facility must demonstrate ample awareness of the Facility's age and guard against unnecessary wear and tear. The scope of Productions by Contractor must not stress the Facility unduly and must be designed within its restrictions of scope and scale. Productions that are deemed by the City to stress the Facility, such as causing excessive wear and tear or exceeding weight limits or safety regulations, will not be allowed.
5. Contractor shall bear sole responsibility for the control and supervision of all production activities and personnel associated with the events produced by Contractor.
6. Contractor shall be responsible for the safety and security for all personnel, patrons and participants. Contractor shall provide awareness and training to all personnel of their obligations and responsibilities under this Agreement. If City deems that any procedure followed by Contractor is unsafe, City has the authority to require the immediate suspension of such procedure. Contractor shall prevent or quickly mitigate any fire hazards or any items identified by the Fire Department during Facility inspections.
7. Contractor shall provide City with a copy of their Injury and Illness Prevention Policies which shall ensure that Contractor shall exercise safe practices in the use of City facilities and equipment, maintain and clear work areas, and, within twenty-four (24) hours, report, on a form provided by City (Appendix E), information regarding accidents. Immediately report to City on a form provided by City any breakage, malfunction, deterioration or loss of any of the City's resources (including musical instruments, tools, lights, sound equipment, props, curtains, etc.). Contractor will be responsible for costs of any repairs or necessary replacement needed due to breakage, malfunction, deterioration or loss (including possible theft) as a result of Contractor's willful, negligent, and/or reckless

acts or omissions. Contractor shall immediately discontinue any activity in which an unsafe or dangerous condition exists. Contractor shall train and supervise Contractor's staff and volunteers on safe theatre practices and adhere to City's safety procedures and guidelines. Contractor shall be solely responsible for the control and supervision of such participants. All such personnel shall be deemed the sole agents and employees of Contractor and shall be notified by Contractor of this circumstance. If, in the opinion of any City or Contractor employee, Contractor is conducting an activity in an unsafe manner, Contractor or its agents shall be informed and shall immediately discontinue such activity until such activity is able to be conducted in a safe manner approved by City staff.

8. Contractor shall replace or repair or cause to be replaced or repaired by factory authorized technicians City-owned equipment, instruments or materials identified by Project Manager or Facility Coordinator as having been lost, damaged or destroyed by Contractor or its agents. A written report must be made on a City form whenever City equipment is lost, damaged, or destroyed by Contractor.
9. Contractor shall bear responsibility for providing appropriate auxiliary aids, interpretive services and accommodations where they are necessary to achieve an equal opportunity for patrons to participate in and enjoy the benefits of public performances produced under the Agreement, in conformance with the Americans with Disabilities Act (ADA) of 1990 guidelines and requirements as amended. Printed programs shall include the following statement required by the Americans with Disabilities Act: "Persons with disabilities who require information on auxiliary aids or services in using City facilities, services, or programs or who would like information on the City's compliance with the Americans with Disabilities Act (ADA) of 1990, may contact: ADA Coordinator, City of Palo Alto, 650-463-4952 (Voice) or [ada@Cityofpaloalto.org](mailto:ada@Cityofpaloalto.org) (Internet).
10. Contractor shall maintain good standing as an independent, non-profit corporation under the laws of the State of California.
11. Contractor's signs or displays to be located on or in the Facility to are subject to approval by City. All displays may be put up at load-in and must be removed during strike. Inside the Facility, no display materials may be placed upon stucco walls. Lobby displays may be placed only on the lobby display boards, and all fasteners must be removed at the time display is taken down. Nothing may be posted on the exterior walls or doors of the Facility or in the Lucie Stern Community Center courtyard, except for items in the display case and an approved production name sign hung from the theatre balcony. Marquee signs must be constructed of light weight material, and shall be secured in such a way that the sign is unlikely to become dislodged by normal vibration or seismic activity. Signs shall be of a standard size no larger than ten feet in length and eight feet in height. All marquee signage must be attached to the theatre balcony with rigging so that the sign may be safely and easily removed for limited periods during photography shoots, special events, or building maintenance.
12. Contractor shall, within six hours after the conclusion of the final Performance clean and

clear from the Facility, including the auditorium, stage, paint shop, scene shop, flat dock, and costume shop, green room, dressing rooms, rehearsal hall, hallways and outdoor areas adjacent to theatre and shop. Disassemble and store, to City's reasonable satisfaction, scenery, properties, and other production elements, within six hours after the final performance or on such other time schedule mutually agreed upon between Contractor and City and the incoming authorized user of the Facility, if any. The stage shall always be returned to its basic set-up as established by Project Manager or his/her designee unless there is a mutual agreement with the incoming group that has been approved by Project Manager or his/her designee. All items on the CHANGEOVER CHECKLIST are to be performed unless there is a mutual agreement with the incoming group that has been approved by the Project Manager or his/her designee. The Project Manager or his/her designee will sign a copy of the CHANGEOVER CHECKLIST form at the completion of the strike to signify acceptance of clean and neat facilities. The City shall, at its sole discretion, recover all of its costs, including staff time, from Contractor if Contractor fails to comply with this Section and City must clean and clear the Facility of Contractor's items.

13. Storage, paint, scene, and costume spaces shall always remain clean and clear of Contractor's materials other than those materials necessary for the ongoing maintenance and repair of the sets and costumes.
14. In addition to regular clean up, Contractor is responsible for participating in annual, deep clean ups of the Stern Theatre complex, up to 25 person hours per each theatre group.
15. Rehearsal Hall shall be cleared of all materials, except major set pieces and any rehearsal props and costumes, after each daily use. Rehearsal Hall is to be completely cleared within twenty-four (24) hours of final use. Kitchen, restrooms and dressing rooms shall be cleaned and cleared after each daily use. Trash, recycling and compostable materials are to be removed from all areas daily. Recyclables and compostable materials shall be placed in the recycling and composting carts near the trash dumpster and garbage and trash shall be placed into the dumpster. Contractor shall reduce waste, reuse and recycle per the City's Zero Waste Plan (Appendix D). Office space and hallways shall be kept continually clear, clean and orderly and neither space shall be used for the purpose of set, prop, or costume storage. Materials may not be left or stored any place out-of-doors overnight or when unattended by Contractor's personnel.
16. Contractor shall enforce current regulations as established by City with regard to smoking, food and drink in Facility as referenced throughout this agreement. Contractor shall provide ushers or sufficient staff at all previews and performances to enforce such regulations. Smoking is not permitted inside any City facility. No person shall bring any animal into the theatre. This regulation shall not apply to service animals assisting individuals with disabilities or to animals in training to become service animals. Use of animals on the stage is subject to approval by City with reasonable notification. Food and drink are not permitted in the auditorium, light/sound booth or on stage, unless used as part of a production scene. Food and drink shall be permitted only in approved areas such as the green room and lobby, with the exception of bottled water and sippy cups outlined

below and on page 23, Exhibit D #27. Contractor shall clean up all food and drink containers daily after use

Contractor shall have the right to sell or otherwise distribute adult sippy cups to patrons attending events. Aside from bottled water, no liquid refreshments are to be allowed in the Theatre auditorium other than with the use of Contractors' sippy cups. Contractor shall be responsible for the clean-up of any spillage resulting from the use of beverages in the auditorium including immediate clean-up required for patron safety as well as all required clean-up immediately following each event. At City's discretion, the City may request a damage deposit in advance or levy a charge should there be any damage, stains or excessive wear and tear caused by accidents related to the use of sippy cups. Contractor understands that it is responsible for immediate cleaning and any and all fees should problems occur.

17. Contractor shall remove from the Facility, at the conclusion of each Production, costumes, properties and sets created by Contractor with Contractor-owned materials, which costumes, properties and sets will remain the property of Contractor. All office equipment, construction tools, special effects and lighting equipment purchased and owned by Contractor will remain the private property of Contractor and City assumes no responsibility or liability for the loss or maintenance of such materials. All equipment, instruments, costumes and any other materials rented, borrowed or owned by any subcontractor, agent or person for Contractor is the responsibility of Contractor and/or its subcontractors, and City assumes no responsibility or liability for their maintenance or loss. Contractor assumes all liability and responsibility for any default on Production expenses.
18. Contractor shall be responsible for cleaning and restocking the Lucie Stern Community Center hallway restrooms for weekend performances, if and when the City has no custodial staff available.
19. Contractor shall comply with City noise ordinance levels for any outdoor activities, including load-in, strike, dismantling, or disposal, in cooperation with Stern Community Center staff. Shop doors facing Hopkins and Harriet Streets shall be closed between 8:00 p.m. and 8:00 a.m.
20. Contractor shall pay any additional Attendant according to prevailing rates as set forth in the Municipal Fee Schedule , pursuant to the following: For a period of one and one half (1 1/2) hours prior to until at least one half (1/2) hour after the completion of each Performance listed.
21. For any Performance not included in Schedule, Contractor may add additional performances of the Productions in Schedule, assuming availability, upon thirty (30) days' advance notice to City and City approval.
22. Contractor shall provide House Manager and ushers for every Performance or event

whenever the public is in attendance. Contractor shall only engage the services of ushers that have been trained in theatre emergency, safety and use procedures usher. Ushers must be available to assist patrons under all circumstances and must be aware of and able to assist disabled persons. Contractor's House Manager and ushers must also be available to assist in emergency situations throughout the entire Performance until the audience has left the theatre. Ushers must ensure that wheelchairs, walkers, etc. are not blocking any of the aisles or exits. Ushers shall return seats to the upright position and remove litter from the auditorium and restrooms at the conclusion of each performance.

23. Contractor shall install and/or remove the removable ADA auditorium seats in designated areas to accommodate wheelchair patrons and as required due to the needs of the Production.
24. Contractor may be entitled, based on availability and at the discretion of the City, to a small amount of time each year (approximately 3 to 10 hours, depending on the rooms requested and their size) in Stern Community Center rental spaces, limited to one of the following: the Ballroom, Fireside Room or Community Room, on a gratis basis, and excluding Saturday nights and any other rental sites, including but not limited to the Art Center Auditorium. The City at its discretion may make exceptions. Contractor may rent spaces as per Municipal Fee Schedule.
25. Contractor shall cause to have present at the Facility at all times when Contractor or any of its employees, subcontractors or volunteers is in the Facility, one of Contractor's designated and City-approved key and/or card holders. Any exceptions must be approved by City in writing.
26. Contractor shall report to the police any incidents of a criminal or suspicious nature occurring on City property, and notify City within twelve hours. If initial notification is verbal, Contractor must subsequently submit the information in writing to City on a form provided by City.
27. Contractor shall ensure that the doors to the Scene Shop, Rehearsal Hall, and Costume Shop, as well as any other exterior access doors to any area of the Facility, are not left open, unlocked or left with the locking mechanism disabled, even if only briefly, at any time when the immediate area secured by the door is unoccupied by Contractor. Failure to do this may be deemed a material breach by the City. When leaving the Facility unoccupied, the Contractor should confirm that all exterior doors to the Facility are secure, and that the perimeter alarm is engaged.
28. Contractor shall complete a City Report of Accident/Property Damage report (Appendix E) for any and all accidents, injuries or property damage if a City employee is not present to fill out the report.
29. Contractor shall operate and conduct business in compliance with City's Zero Waste Plan (Appendix D) for all activities including, but not limited to, set construction and strike, food and beverage service, and office activities. The goal is to send as little waste to

landfill as possible through waste reduction, reuse and recycling. To achieve this goal Contractor must first reduce waste whenever possible.

30. Contractor shall avoid the use for food/beverage service of disposables, including, but not limited to, Styrofoam and other plastics. Reusable food/beverage service ware should be utilized to the maximum extent possible. Where a reusable food/beverage service option is not available, Contractor shall choose items that are recyclable. For concessions, choose product packaging that is recyclable.
31. Contractor shall practice reuse before, during and after Production. City shall provide a list of reuse resources to avoid the disposal of construction materials, sets and props. Contractor must recycle construction debris from set materials (e.g. wood, metal).
32. Contractor shall recycle all materials included in the City's Recycling Program including paper (all types), plastic containers #1-#7, cardboard, glass bottles and jars, and metal cans. Compostable materials will be disposed of in designated compost waste receptacles. Contractor responsible for proper disposal of HazMat items.
33. Contractor shall include on the title page of all Production and event programs and Contractor's website the following credit: "Use of this Facility is made possible through support from The City of Palo Alto, Community Services Department, Division of Arts and Sciences," and include the official City of Palo Alto logo on the title page or prominent placement within event programs; print in all publicity for the Productions, including, but not limited to, mailings, flyers, posters, brochures, website, social media and paid or public service advertising, the statement: "In cooperation with the City of Palo Alto Community Services Department, Division of Arts and Sciences." The City of Palo Alto, Community Services Department, Division of Arts and Sciences shall also be credited in the Contractor's list of funders as a "Civic Sponsor." Where data collection from patrons of Facility is performed, Resident Theatre Company(ies) agree as follows:
  - a. To provide City with the results of market research surveys;
  - b. Cooperate with City to add City desired inquiries to any market research surveys performed; and
  - c. Shall not include such inquiries regarding the City or the Facility without preapproval from City.
34. Contractor shall have the right to borrow available City owned properties, sets, costumes and scenery for its productions scheduled in this Agreement when deemed available by City. Costumes, properties and sets created by Contractor with Contractor-owned materials shall remain the property of Contractor. Contractor property shall be removed from Facility at the conclusion of the production in which such materials are used. The City may, on a case-by-case basis, authorize exceptions. All office equipment, construction tools, special effects and lighting equipment purchased and owned by Contractor will remain the private property of Contractor and the City assumes no

responsibility or liability for the loss or maintenance of such materials. All equipment, instruments, costumes and any other materials rented, borrowed or owned by any subcontractor, agent or person for the Contractor is the responsibility of the Contractor and/or its subcontractors, and the City assumes no responsibility or liability for its maintenance or loss.

35. If minors are involved in the Production, Contractor shall comply with all of the State of California's rules and regulations regarding Child Labor.

**EXHIBIT B  
RESPONSIBILITIES OF CITY**

During the Term of this Agreement, City shall:

1. Allow Contractor the use of the Facility for uses in accordance with this Agreement.
2. Allow the use of the stage and the auditorium prior to the opening night of the Productions, with the exception of necessary maintenance procedures that may require access to the stage and auditorium during this period, according to the Schedule. Allow the Contractor use of the rehearsal hall, box office, scene shop, paint shop and costume shop according to the Schedule as supplied by Contractor and approved by City .. Additional facility use may be provided as specified in item (Exhibits A and B ) above; however, priority use of the room will always be given to actual rehearsals of productions covered by a contract with City. City reserves the right to allow other uses of space within the Facility when not in actual, scheduled use by Contractor on a non-interference basis and with at least forty-eight (48) hours' prior notice to Contractor.
3. Allow Contractor to use all operational production equipment in City's inventory as requested by Contractor and approved in writing by City. Contractor shall take such equipment "as is" and is responsible for ensuring that such equipment is in a safe condition prior to use and is returned in working condition at the conclusion of its use or of the Production.
4. Unless the City deems unnecessary, provide a Facilities Attendant for a period of one and one half (1 1/2) hours prior to and until at least one half (1/2) hour after the completion of each Performance.
5. Provide persons designated by Contractor and approved by City with keys, proximity cards (up to a maximum of six), and alarm codes for access to the Facility for the sole purpose of carrying out the requirements of the Agreement. Keys, proximity cards, and alarm codes shall not be loaned or transferred and shall be used only by the designated persons. In the event that Contractor fails to properly open or lock and secure City facilities leading to a false alarm call-out or leaves areas of the facility unlocked and unattended, a Two Hundred Dollar (\$200.00) penalty shall be paid to City on each such occasion. In the event that a designated key holder loses any key or proximity card issued by City, Contractor shall be assessed a Seventy-Five Dollar (\$75.00) replacement charge for each key or proximity card or pay for the cost of rekeying or reprogramming the locks of Facility if circumstances indicate it as determined in City's reasonable judgment. Contractor will be responsible and held accountable for all personnel, properties and activities of Contractor and its employees and/or agents.
6. Have the right, with no notice, to suspend the Agreement if Facility should be declared uninhabitable for reasons of safety by the proper authorities (e.g., if the building should be damaged in an earthquake and be declared unsafe for occupancy). If there is an

outbreak of pandemic flu or other medical emergency and places of public gatherings are closed, City shall not assume any financial responsibility for loss of revenue by Contractor.

## EXHIBIT C

### GENERAL CONDITIONS

1. City. The City designates the CSD Assistant Director of the Arts & Sciences Division, or his or her designee, as Project Manager for City, who shall render overall supervision of the progress and performance of this Agreement. City reserves right to change this designation at any time during the Term of this Agreement. All City services set forth in this Agreement shall be performed by City under the overall supervision of Project Manager or its Facility Coordinator. Contractor and its Project Liaison shall communicate with the Project Manager in all matters dealing with City policies, funding, facilities, equipment and other City departments outside the Facility.
2. Contractor. Contractor shall assign a single Contractor Liaison who shall have overall responsibility for the compliance of this Agreement. Should circumstances or conditions subsequent to the execution of this Agreement require a different liaison, Contractor shall notify City in writing immediately of same. Contractor shall ensure that its Liaison communicates effectively with the City at all times under this Agreement.
3. Access. Contractor shall not prevent Project Manager, facility maintenance personnel, and/or others specifically designated by Project Manager from access to the Facility; provided, however, that City shall use its best efforts to give advance notice and not to disrupt the activities of Contractor as permitted by the Agreement. The Project Manager and others specifically designated by Project Manager shall attempt to coordinate such access if possible.

Notwithstanding the foregoing, except in the case of emergency or if they are present on the premises as members of the audience or specifically invited into the backstage areas of the theatre, Project Manager, facility maintenance personnel and/or others specifically designated by the Project Manager shall not enter the auditorium or backstage areas during public performances of a production.

4. Days Defined. The term "days" shall mean calendar days.
5. Qualifications. Contractor represents that it is qualified to furnish the Services described under the Agreement.
6. Ticket Sales:
  - (a) Contractor shall be responsible for sale of season tickets and single tickets, depositing of revenue and reporting of revenue and expenditures, and shall place available tickets for each production for sale at the Facility box office one hour prior to each performance. Until one (1) hour prior to the beginning of a performance, Contractor shall not sell (a) seat numbers C1, C2, D1, D2, D3, and D4; (b) either (i) the block of seats T2, T4, T6, T8, T10, U2, U4, U6, U8 and U10 or (ii) the block of seats T1, T3, T5, T7, T9, U1, U3, U5, U7 and U9 for the

purpose of making such seats available for the disabled; provided, however, that this Section 10(b) shall not apply to the sale of tickets for such seats to persons who identify themselves as disabled when they purchase their ticket.

- (b) Contractor agrees the price of admission for the season shall be as set forth in their ticket salesreporting to the City, at the time of submitting financial records.
- (c) Contractor shall provide City, when requested by Project Manager or his/her designee, with at least six (6) complimentary tickets for each Production on the date(s) requested. Best available seating will be provided to City if any seats are available at the time of the request.
- (d) Contractor may operate an intermission snack concession during each performance under this Agreement. Contractor shall conduct such operation in a safe, clean manner and shall hold City harmless from any claim or demand or liability of any nature whatsoever which may arise out of such operation.

7. Composition of Contractor. Throughout the term of this Agreement, Contractor shall remain an independent, non-profit public benefit corporation, in good standing under all applicable local, state and federal laws.

8. Fiscal Responsibilities of Contractor.

- (a) Fiscal Agent. Contractor shall appoint a fiscal agent who shall be responsible for the financial and accounting activities of Contractor, including the receipt and disbursement of Contractor funds. Contractor shall provide City with the name of a fiscal agent in writing and shall immediately notify Project Manager of any changes occurring during the Term. Contractor shall have sole responsibility for the safekeeping of Contractor tickets and monies.
- (b) System of Accounts. Contractor and its fiscal agent shall establish and maintain a system of accounts that shall be in conformance with generally accepted principles of accounting for budgeted funds. Such system of accounts shall be subject to the review and approval of City.
- (c) Financial Records. In support of its system of accounts, Contractor shall maintain complete and accurate records of all financial transactions, including, but not limited to, contracts, invoices, time cards, cash receipts, vouchers, canceled checks, and bank statements. City may inspect these records at Contractor's office upon reasonable advance notice and during normal business hours upon request. NOTE: Contractor's cash receipts are not to be stored on the Premises between Productions.
- (d) Audit of surcharge payments. Contractor shall retain for a period of at least three (3) years records of tickets sold through their automated ticketing system, sales records, and a verified report of sold and unsold tickets which must be made available to City Auditor upon request.

9. Production Reports and Records.
- (a) Reports. On reasonable notice and with reasons specified, Contractor shall grant Project Manager and/or City's Auditor access to all Contractor records relating to this Agreement, including performance records, data, statements, and reports.
  - (b) Tax Form 199. A copy of Contractor's most recently filed California State Tax Form 199, "California Exempt Organizations Annual Information Return" must be filed with Project Manager or his/her designee within fifteen (15) days of when it is due to the State of California and shall also be attached to this Agreement prior to its final approval (Attachment 5).
10. Corrective Action Requirement/Disputes. In the event City should determine from any source, including but not limited to reports submitted by Contractor under this Agreement to City or any evaluation report from any source, that Contractor may not be in compliance with any provision of the Agreement, City may forward to Contractor written notice of same. Such notice shall specify with particularity the nature of the condition(s) or issue(s) that require(s) corrective action and may include a recommendation as to appropriate corrective action. Within fifteen (15) days of City's request, Contractor shall submit its written response to the notice, which response shall set forth its view of the alleged violation and its proposed plan, if any, for corrective action. Upon request of either Party, the Parties shall meet within five (5) days thereafter to discuss the alleged violation and proposed corrective action. Should the Contractor fail to submit a response within the above timeframe, or should fail to follow through on corrective action, the City may a fine of up to \$100 for and initial violation, or up to \$1000 for repeated violations.
11. Subcontractors. Contractor shall be responsible for employing or engaging all persons necessary to perform the Services of Contractor hereunder. All subcontractors are deemed to be agents of Contractor and Contractor agrees to be responsible for their performance. Contractor shall give its personal attention to the fulfillment of the provisions of the Agreement by all of its employees, participants, volunteers, and subcontractors.
12. Intoxication. Contractor agrees to be responsible for injuries or damage caused by any of its directors, officers, employees, agents, subcontractors, or volunteers who are under the influence of alcohol, drugs, hallucinogens or narcotics, whether or not legally prescribed. Neither Contractor nor City shall permit any of Contractor's employees or volunteers discovered to be under the influence of any of the foregoing substances from remaining in any facility used under the terms of this Agreement and City reserves the right of denying such person's further participation in any activities in Facility. Consumption of alcoholic beverages or use of illegal drugs at the Facility is expressly forbidden by any person working for Contractor, paid or volunteer. This includes all staff, actors, crew and musicians.

13. Worker's Compensation. Contractor certifies that it is aware of the provisions of the Labor Code of the State of California, which requires every employer to be insured against liability for workers' compensation and certifies that Contractor shall comply with Worker's Compensation laws of the State of California during the Term of this Agreement.
  
14. Weapons. For the avoidance of doubt, no firearms or other weapons, whether loaded or not, shall be allowed in the Facility or any other City property. Stage weapons and firearms designed solely for the use of blank cartridges will be allowed if they are being used as a prop in the current Production, but must be stored, when not being used, in a secure manner by Contractor's stage manager or his/her designee.
  
15. Legal Compliance. Contractor and all its paid employees, subcontractors, and volunteer participants are required to abide by all applicable federal, state and local laws and ordinances.
  
16. Notices. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; when received if transmitted by fax, email or regular US mail; if received during normal business hours on a business day (or if not, the next business day after delivery) provided that such document is legible and that at the time such document is sent the sending Party receives written confirmation of receipt; if sent for next day delivery to a domestic address by recognized overnight delivery service (*e.g.*, Federal Express); and upon receipt, if sent by certified or registered mail, return receipt requested.

**EXHIBIT D**  
**OPERATING POLICIES FOR ALL USERS OF THE STERN THEATRE**

1. **Resident Theatre Companies** – The City of Palo Alto has long-standing relationships with Resident Theatre Companies to provide programming at the Lucie Stern Community Theatre. These organizations serve as “house companies” and provide the primary programming featured on the stage of the Theatre. The Resident Theatre Companies include: Palo Alto Players, TheatreWorks Silicon Valley (TheatreWorks) and West Bay Opera.
2. **Rental Agreement** - All performances and associated activities held at the Facility must have a fully executed rental agreement prior to the Contractor’s arrival at the facility. Resident Theatre Companies must have a fully executed Agreement.
3. **Theatre Use Times** – The Theatre is available for use between 8:00 am and midnight and no activity may take place outside of this time period. This available use time includes all production related activities, including load-in, load-out, set building, scene shop activities, costume shop activities, rehearsal and public performance.
4. **Provision of Trained House Staff**– Contractor must provide a qualified house manager and trained house staff for all public events, including ticket takers, ushers and box office personnel. These personnel may be paid or volunteer, at the sole discretion of Contractor. All paid and volunteer staff must be trained by Contractor both through an annual training workshop and through a day-of-show orientation. This training and orientation shall include public relations, event information, seating locations, directions for assisting disabled patrons, use of the hearing assistance devices, emergency exits and evacuation procedures and fire alarm procedures. At all times the safety, comfort and event experience of Theatre patrons will be placed in high priority.
5. **Regulations for Consumption of Alcoholic Beverages** – Contractor must comply with all State and City laws relating to the sale and consumption of alcoholic beverages. Alcohol is allowed in the Theatre during public performances, with pre-approval by the City of Palo, which shall not be unreasonably withheld. Unless otherwise specifically approved, the sale or free distribution of alcoholic beverages is limited to wine, champagne, beer and sparkling wine. If alcohol is to be provided for sale, Contractor must possess a valid on-sale alcohol permit approved by the California Department of Alcoholic Beverage Control (ABC). All requirements must be posted as per ABC requirements and Contractor is responsible for ensuring that no individual under the age of 21 is served alcohol. Contractor agrees that identification will be checked for individuals appearing to be under the age of 30. At no times may event participants, including actors, musicians, employees or event volunteers be served alcoholic beverages.
6. **Insurance Provision for the Sale or Free Distribution of Alcoholic Beverages** – For all events during which alcohol is to be provided for sale or at no cost to patrons, Contractor must provide the City of Palo Alto with proof of liquor liability insurance with minimum coverage of \$2 million pursuant to Exhibit E.

7. **Janitorial Duties Relating to Food and Beverage Sales** – Upon the completion of each event, Contractor shall clean-up and remove all trash and supplies relating to the distribution of food and beverage, including alcoholic beverages, including but not limited to empty bottles or containers, glassware (plastic or glass), used napkins, food and other trash or unused supplies. All garbage containers are to be removed from the Theatre and dumped in appropriate garbage bins. If required, doors should be opened to allow fresh air into the lobby or event spaces to ensure that the smell of alcohol or food is not present in the Theatre at the end of each event. At no time can this task be left for completion on the following day(s).
8. **Production Equipment** - Contractors shall be required to use the in-house production equipment. At the expense of Contractor, additional equipment to augment the in-house system may be provided by a third-party Contractor with City approval.
9. **Complimentary Tickets** - Contractor shall have the right to issue complimentary tickets for events produced at Theatre. The number of complimentary tickets for any given events must not exceed ten percent (10%) of the total seating capacity without pre-approval by the City.
10. **Refunds** - If the event(s) anticipated in a Theatre Use Agreement are cancelled, Contractor shall have the sole responsibility and authority to provide refunds to the public and shall control all box office receipts until all required refunds have been provided.
11. **Ticket Prices** - Contractor shall have the sole right to establish ticket prices for the event(s) anticipated in a Theatre Use Agreement.
12. **Advertising** – Contractor shall have the sole right and authority to design, develop and distribute all advertising and promotional materials for the events produced at Theatre and shall be responsible for the costs associated with this endeavor. No advertising materials may be displayed on the interior, exterior or any other part of Theatre without specific authorization from City of Palo Alto, other than the rack cards, window boxes and banners currently used.
13. **Storage of User's Property** – Any property belonging to Contractor, or third parties such as caterers, decorators or florists may not be stored overnight either prior to or following the rental period. All requirements for load-in and load-out must be followed to ensure that events scheduled in Theatre immediately before and after the Contractor's event can be fully and professionally supported. Long term on-site storage is to be requested by the Contractor and up to the City to permit.
14. **Animals** - No live animals are to be brought into the facility without prior permission from the City of Palo Alto.
15. **Staging** –With proper care and repair, Contractor or its representative, as per normal operating procedure, may drill or nail sets or props into the stage floor of Theatre

16. **Surfaces**Nails, hooks, tacks or screws may not be used on any surface or furnishing in Theatre, unless approved by the City. No tape or other materials may be applied to walls, glass, tables or any surface in the lobby, auditorium, green room or back stage areas. User will be held financially responsible for repair/replacement of any damaged or defaced property.

No bunting, tissue paper, crepe paper or any other combustible material may be used at any time in the Theatre, without pre-approval from City. Similarly, no glitter, rice or confetti may be used anywhere within the facilities, including the auditorium, lobby, backstage areas, or outside areas such as the patio or courtyard.

17. **Modifications to Theatre Building** – Contractor shall not make any modifications to the Theatre that would leave permanent or disfiguring impacts to the facility. This includes the use of drills, nails or other attachment devices. If questions arise about the need to alter elements of the Theatre for production needs, Contractor agrees to discuss these needs with City staff for pre-approval.
18. **Use of Flammable Materials** - The use of any flammable device or substance, including but not limited to pyrotechnics, candles, cigarette or cigars, or other materials or device with a flame is strictly forbidden. In rare cases, the City and Fire Marshall may approve, with adequate advance notification, in advance of at least 30 days prior to the first date of live public performance..
19. **Mechanical Smoke and Fog Equipment** - Mechanical smoke or fog generating machinery can only be used with pre-approval of Theatre Management and is subject to inspection by the City Fire Marshall. The use of mechanical smoke or fog generating machinery must be tested at least 30 days prior to first use in the Theatre during live performances. This test must determine that the machinery does not cause the fire alarm system to respond. Any questions regarding this testing shall be subject to approval and guidance by the City Fire Marshall or a representative of the Palo Alto Fire Department. Any cost associated with the testing of this equipment or due to false alarms caused by this equipment will be the financial responsibility of Contractor.
20. **Approval of Additional Production Techniques & Devices** – The use of strobe lights, loud noises (i.e. gun shots), and aerial suspension must be pre-approved by the City of Palo Alto at least 30 days prior to the first date of live public performances. No fire arms are allowed in the Theatre and the use of any prop guns must be pre-approved by the City. Pyrotechnics, defined by PAFD as 'Any exothermic chemical reaction special effect that produces heat, flame, sound, light or a combination of these effects', must be pre-approved by the Fire Marshall unless a licensed pyrotechnic handler is being used by the theatre group. In that case, theatre group must provide written proof of the licensed pyrotechnic handler's name, license number, and contact info in advance.
21. **Adherence to Fire Codes** – Contractor is responsible for complying with all applicable sections of the California Fire Codes as adopted by the City and as may be amended from time to time, including, but not limited to: maintaining required clear emergency exit paths, proper use of fire doors, and adhering to posted occupancy loads. At no time during Theatre use may fire exit signs

by covered or otherwise dimmed. Should any question or doubt arise regarding the proper adherence or interpretation of fire code arise, Contractor shall be responsible for contacting the City Fire Marshal or other representative of the Palo Alto Fire Department for direction and advice. At all times, the direction and decisions of the Fire Department shall be viewed as the final authority. The Fire Marshal has the right to charge a fee for their inspection services and Contractor is obligated to pay it.

**22. Adherence to Fire Inspection and Occupancy Load Requirements**

Stern Community Theatre is inspected routinely at least once a year by the Palo Alto Fire Department. The Fire Marshall should be notified of any productions where public safety questions or concerns arise during the set up or design, or the use of special effects during performances. Fire Inspections are listed in the Fee Schedule at \$355/hour as of July, 2018 (and are subject to amendment by the City) which may be charged to Resident Theatre Company.

At all times, Resident Theatre Companies are required to adhere to City Fire codes, including but not limited to, required occupancy loads for each section or room of the Theatre, good house- keeping of combustible materials, keeping exit ways clear and the storage/use/disposal of hazardous materials. As of 2018, these established occupancy loads are as follows:

- a. Front of Curtain Stage – 31
- b. Behind Stage Curtain – 83
- c. Orchestra Pit – 14, unless otherwise approved by the Fire Marshall in sufficient advance. Any costs incurred for exceeding the limit will be incurred by Contractor. Any costs associated with exceeding the limit must be borne by Contractor.
- d. Basement below stage area – 7
- e. Paint desk/shop off load – 57 for musicians/vocals
- f. No occupancy is allowed in flat dock area other than removal/returning of props. There is a hazard of falling production items during a seismic event. Should occupancy be desired, all production items must be completely removed or areas for holding production items must be seismically secured in advance.

The Palo Alto Fire Department is available to assist the Resident Theatre Companies if fire safety practices are in question. Please contact them at: 650-329-2194 option 1.

- 23. Fire Alarm Procedures** – In the event that the fire alarm is activated, Contractor must immediately evacuate the building and wait for the Palo Alto Fire Department to arrive. Follow their instructions, and only reenter the building when given permission to do so. These procedures must be followed even in the case of a false alarm.

Should the alarm go off during a performance, ushers should direct and assist patrons in exiting the building, and stage crew should trip the manual release of the fire curtain. Particular attention should be given to providing evacuation assistance to disabled, older and child patrons.

If the system detects issues that do not rise to the level of setting off an alarm, the system may

broken items before taking control of them for the run of the Production.

- (b) For any damage or loss of any headset while under Contractor's control, Contractor shall promptly, upon request, pay City the fair market price for any necessary replacement or repair of any component of the headsets, as such replacement or repair is reasonably determined by Project Manager or his/her designee.
- (c) Contractor will diligently ensure the security of the headsets, in a manner approved by Project Manager or his/her designee, when the headsets are not in use. When the headsets are not so secured, Contractor will not leave the headsets unattended.
- (d) Contractor will provide at least one (1) person in the Facility lobby, whose sole responsibility will be to distribute and collect the headsets, as the case may be, pursuant to the following:
  - (i) Beginning one-half (1/2) hour before each Performance until ten (10) minutes after the Performance begins;
  - (ii) At all times during any and all intermissions; and
  - (iii) From the end of the Performance until all of the headsets have been returned.
- (e) Contractor shall collect a Driver's License or credit card as security for the loan of a headset, which Driver's License or credit card will be returned to its owner upon return of the headset. Contractor will implement procedures for the safe handling of the Driver's Licenses and credit cards and their return to their owners.
- (f) Contractor's responsibility at the end of each performance will include the following:
  - (i) Clean and otherwise sanitize all the earpieces by swabbing them with isopropyl alcohol swabs.
  - (ii) Turn off the on/off/volume switches on all returned headsets and place them into the battery charger.
  - (iii) Return all headsets and accessories to their storage case.
  - (iv) Verify the presence of all sixteen (16) headsets.
  - (v) Return the chargers to their place in the rolling cart.
  - (vi) Return the rolling cart to the House Manager's Closet.
  - (vii) Be sure the rolling cart is plugged into an electrical outlet.
  - (viii) Make sure the battery charger is getting power, as indicated by the red lights

- (ix) Padlock the rolling cart's doors shut, using either the padlock provided by City or a padlock supplied by Contractor, provided that Project Manager or his/her designee has been given a copy of the key or the combination.
- (x) Immediately report to City's attendant at the Facility any missing headsets, and turn over to the attendant any malfunctioning headsets.

**EXHIBIT E  
INSURANCE REQUIREMENTS**

CONTRACTORS TO THE CITY OF PALO ALTO (City), AT THEIR SOLE EXPENSE, SHALL, FOR THE TERM OF THE CONTRACT, OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW AND AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A-VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY. (THIS MUST INCLUDE COVERAGE FOR SERVING LIQUOR IF LIQUOR IS SERVED OR SOLD).	BODILY INJURY	\$2,000,000	\$2,000,000
		PROPERTY DAMAGE	\$2,000,000	\$2,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$2,000,000	\$2,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
YES	PROPERTY INSURANCE	ALL RISK COVERAGE		
NO	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES		\$1,000,000
YES	<b>THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONTRACTORS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSURED CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.</b>			

- I. INSURANCE COVERAGE MUST INCLUDE:
  - A. A PROVISION FOR A WRITTEN THIRTY (30) DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
- II. CONTRACTOR MUST SUBMIT CERTIFICATE(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.

III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSUREDS"

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSUREDS.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CONTRACTOR AS INSUREDS UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDS, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE CONTRACTOR SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE CONTRACTOR SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

NOTICES SHALL BE MAILED TO:

PURCHASING AND  
CONTRACT ADMINISTRATION  
City OF PALO ALTO  
P.O. BOX 10250  
PALO ALTO, CA 94303

produce an audible signal at the alarm panel in the green room, and possibly at the one in the lobby. In this case, the alarm company will contact the City of Palo Alto on call Facility staff, who will be dispatched to investigate and deal with the alert. They should arrive within an hour. In no case should anyone but authorized personnel (City staff or Fire Department personnel) acknowledge, silence, or reset the alert on the alarm panel.

24. **Event Safety and Security** - Contractor shall provide for the orderly production of the event(s) anticipated in the Use Agreement and shall insure that the safety of the public and the Theatre are always maintained. If, at any time, the activities in Theatre appear to be detrimental to members of the public, City employees shall have a supercedingright to make decisions required to ensure safety and the professional presentation of the event. This shall include, but not be limited to, issues involving security in the building, ushering of patrons, production safety and other event related issues. Contractor agrees that at all times, decisions relating to these issues shall be made at the superceding discretion of City.

In the event that security may be required, the City of Palo Alto shall have the sole right to approve the private security company and to establish the personnel requirements for the event(s) anticipated in the Use Agreement. The costs associated with the provision of private event security shall be the financial responsibility of Contractor.

25. **Concession Sales** - Contractor shall have exclusive rights to the sale of concession products including food or beverage, subject to City approval for the sale or provision of free alcohol.
26. **Merchandise Sales** - The Contractor shall have the right to sell merchandise to the patrons attending the event produced by Contractor.

**Use and Sale of Sippy Cups** – With City approval, Contractor shall have the right to sell or otherwise distribute adult sippy cups to patrons attending events. If the City permits, no liquid refreshments are to be allowed in the Theatre auditorium other than with the use of Contractors' sippy cups, other than bottled water. Contractor shall be responsible for the clean-up of any spillage resulting from the use of beverages in the auditorium including immediate clean-up required for patron safety as well as all required clean-up immediately following each event. If the City so desires, the City may require a damage deposit in advance or a charge may be levied should there be any damage, stains or excessive wear and tear caused by accidents related to the use of sippy cups.

27. **Force Majeure** - If Theatre is deemed to be unfit for occupancy during the period covered by this agreement, by reason of fire, earthquake, strike, civil disturbance or any other cause beyond the control of the City of Palo Alto, then the agreement shall be of no further force and effect.
28. **Use and Management of Hearing-Impaired Device Equipment** -Contractor's personnel shall manage, distribute and collect the hearing-impaired devices ("headsets") that City owns for use by hearing-impaired persons at all Performances at the Facility, subject to the following restrictions:

- (a) Contractor shall verify that all headsets and batteries are present and functioning normally and shall report to Project Manager or his/her designee any missing or

## Attachment E- Financial Participation Plan

Throughout 2018 the City of Palo Alto and its three Resident Theatre Companies conducted a series of meetings to jointly address the future of the Stern Community Theatre. Each of these meetings was followed by individual work exploring how the concepts discussed in these meetings could best be supported by the four organizations (the City and the three Resident Theatre Companies). New ideas were shared prior to each follow-up meeting. The Resident Theatre Companies agreed to support the goal of restoring the Theatre as one element of the total reset of the public-private partnership relationship. Through the joint planning process, the four organizations developed a plan called “Financial Participation”. This is just one element of the relationship that was being discussed and the four organizations recognize that the elements comprising the Financial Participation Plan represent a negotiated agreement that is interconnected to other areas that were explored and mutually agreed upon. Among the issues addressed during this planning process were the funding needs of the Theatre, including the critical discussion of capital improvement needs of the aging facility.

### *The Underlying Foundation of the New Financial Relationship*

Throughout this exploration of the financial relationship between the City and its programming partners, the planning group stated its mutual commitment to the following concepts, which were agreed to as a “common understanding” while negotiating the new financial model:

- 1) It is understood by the four organizations that the current financial relationship effectively places limits on the City’s revenue potential at the Theatre. These limits are partly caused by the fact that the three Companies currently use all of the available dates on the Theatre calendar, thereby restricting the City’s ability to rent the Theatre to other potential users who could provide additional rental income. More than 50% of these use dates are reserved for non-revenue producing activities such as rehearsal, set building, load-in and load-out. However, these activities are essential to the successful programming produced by the Resident Theatre Companies.
- 2) City income is also restricted by a foundational aspect of the historical partnerships that the three Companies are not charged for Theatre use based on a traditional rental fee structure and that much of their use is free. In FY 2006, ticket fees were first instituted as the form of compensation by the Resident Theatre Companies to the City. The Companies currently compensate the City through a payment equal to \$2.00 per ticket sold. There are no additional charges for use of the Theatre on days with no paid audience such as load-in, load-out, set building, lighting design, rehearsal, dark days, etc. These use days (days filled on the Theatre’s calendar) that do not include a paid audience represent slightly more than fifty percent (50%) of the total days of use and the City does not receive compensation for this facility use.

- 3) City revenue is limited to the payment of \$2.00 per sold ticket and a small handful of reimbursable expenses. This means that Theatre revenue is conditional on the ticket sales success of each Resident Theatre Company in any given season (or Fiscal Year). The annual revenue to the City from the ticket fee from the three Companies has been fairly consistent from year-to-year and typically generates approximately \$90,000 annually. This income is considered General Fund revenue by the City and is reflected as an off-set to the expenditures required in the annual budget for Theatre operating costs. Unfortunately, within the existing financial model, the Theatre has no potential for increasing revenues.
- 4) The Resident Theatre Companies acknowledge that the financial arrangement with the City (compensation based on payment of ticket fees rather than a traditional rental rate structure) is highly unusual and accordingly are agreeable to increasing their participation in this endeavor outlined below. The decades-long historical relationship between the City and each of these Companies has been based on the foundational understanding that the City would provide financial support through the provision of the Stern Community Theatre funded through this reduced financial formula. The exhibits of this report include a list of the traditional rental fees charged at other publically-owned theatres in the region.
- 5) It is also understood that these public-private partnerships provide benefits to the City as well as the Resident Theatre Companies. The Companies contractually commit to the production of the programming presented at the Theatre, which has the effect of reducing the cost of Theatre operations, including lower personnel costs, the removal of the requirement for a full-time box office operation and total elimination of funding required for theatre programming. Palo Alto Players and TheatreWorks were at one-time programs fully operated and funded by the City of Palo Alto. A decision was made decades ago, in 1973, to “spin off” these programs to 501(c)3, nonprofit organizations, which effectively reduced the operating budget of the City over time.
- 6) The four organizations acknowledge that the Stern Community Theatre is an aging facility that is deteriorating and that the current condition of the physical plant presents a significant concern for the short and long-term success of both the Theatre and the programming needs of the Resident Theatre Companies. If the building fails in a significant way, the Companies would lose their home theatre. At the same time, the Theatre is one of the most significant historical buildings in Palo Alto, and further decay is very problematic for the City, who is ultimately responsible for the upkeep and preservation of this community asset.
  - a. This planning team (the four parties) recognizes that use of a municipally owned venue with ‘free rent’ is considered a highly unusual and extremely rare practice

nationally. At the same time, the planning team recognize that the Theatre is the artistic home of each of the three Resident Theatre Companies. Jointly agreeing on these concepts has resulted in a mutual agreement between the City and the Resident Theatre Companies that this unique arrangement is best supported through a **commitment** that all four parties should contribute to the care and preservation of the building, with the three resident companies increasing their financial commitment at this juncture.

- b. The City has made improvements to the Theatre, but many more are needed. In the last decade, the City has upgraded the sound reinforcement system and performed a major electrical and mechanical systems upgrade. Both the CHT and ST are in need of new seating, which is an expensive and complex initiative with only \$75,000 set aside through a CIP for repair of the most seriously broken seats. Virtually all of the 400 seats in the Stern Theatre are in need of repair or replacement. The demands for repair and replacement will only increase in the next few years. With three theatres to maintain, the City has attempted to allocated CIP funds when available, having committed more than \$7 million over the past decade. See list of these improvements is included in the Exhibits.
- 7) The four organizations agreed that it was in the best interest of each organization to explore financial solutions to address the maintenance, preservation and other capital needs of the Stern Community Theatre. While major improvements may require funding through the City's CIP budget, the planning group committed to finding financial resources to address the ongoing, short-term needs and to place a high priority on improving the experience of local arts patrons who enjoy events at the Theatre. The parties agreed that the costs associated with limited administration and extensive performing arts programming requires extensive fundraising to maintain the high standards that are expected and deserved by local arts patrons. (See list of proposed building upgrades, repairs, improvements in Financial Participation section.)
- 8) It was agreed by the four organizations during the planning process that the ideal financial solution would not change the fundamental historic financial relationship between the City and the Resident Theatre Companies. It was the goal of the planning group to develop a plan that maintained the current "per-ticket" approach to compensation.

#### *Financial Participation Plan*

It is understood that these policy and contract changes will require approval by the Palo Alto City Council, scheduled in September 2018, for proper promotion and planning and the Board of Directors of each Resident Theatre Companies. With this understanding, the financial Participation Plan is comprised of the following agreements and commitments:

- 1) **Compensation for Theatre Use:** Beginning in July 2019, the three Resident Theatre Companies will increase the compensation to the City for use of the Theatre from the current level of \$2.00 per sold ticket to a new level of \$4.00 per sold ticket. This compensation of \$4.00 will be paid per the following categories:
  - a) *Operating Cost Offset Ticket Fee:* The Resident Theatre Companies shall continue to pay the City of Palo Alto a Ticket Fee of \$2.00 for each ticket sold for events with paid admission. This fee will compensate the City for the use of the Theatre for all use days scheduled by Contractor for the production of the event, including load-in, load-out, set building, rehearsal, and performance. **There shall be no additional compensation for use of the Theatre on days that no tickets are sold.**
  - b) *Stern Theatre Improvement Fund:* Beginning July 1, 2019, the Resident Theatre Companies shall contribute an additional \$2.00 for each ticket sold for events with paid admission. This fee will offset the costs of enhancements, upgrades, improvements, repairs, preservation and new equipment and furnishings for the Lucie Stern Community Theatre.
  - c) The four parties agree that a twenty-year commitment to this plan is needed in order to accumulate enough funds to make a serious contribution to the facility and for the resident theatre companies to achieve these new, additional fundraising goals, on top of the fundraising commitments and needs of their nonprofits.
- 2) **Theatre Improvement Annual Plan:** The approximate equivalency collected by the City from payment into the Stern Theatre Improvement Fund shall be used for upgrades, repairs and improvements made to the Theatre. The budget for specific improvements shall be held in a reserve fund as determined by the City. At the City's discretion and with City Council approval, on a case by case basis, these items may be included in either the Theatre operating budget or the City's Capital Improvement Budget. Items to be funded shall be recommended to the City each year or as needed by a committee with representation from each of the three (3) Resident Theatre Companies and the City of Palo Alto, with the understanding that the City is the final approver as the facility owner. If multi-year planning is required, the committee shall provide the City with appropriate budget and improvement planning recommendations. It should be noted that if and when City funding is available, the City may augment this budget by allocating additional funds through the ongoing CIP to fund major improvements to the Theatre. It is understood that additional City CIP funding will be required for major improvements and maintenance to the physical plant such as the roof, building envelop, and major electrical and mechanical systems.

- 3) The four organizations agree that the funding component of this plan will be re-evaluated after three years. It is understood that if there is organizational potential and mutual agreement, the per-ticket fees paid into the Stern Theatre Improvement Fund may increase by an additional \$1.00 after the third year.
- 4) The Resident Theatre Companies agree to further support the capital funding needs of the Theatre by researching grant opportunities and developing grant applications where appropriate, and with the approval of and in coordination with the City. Other suggested ideas include a capital campaign, targeted donor requests, smaller project fundraising campaigns and potential special event fundraising activities, such as “name your seat” campaign. While exciting concepts for potential community-based fundraising campaigns have been explored, the City and the Resident Theatre Companies need to engage in further assessment and planning to evaluate the timeline and capacity for a capital campaign.
- 5) Through this Financial Participation Program, each of the Resident Theatre Companies agree to provide a minimum of 25 hours annually towards Theatre maintenance, deep cleaning, elimination of aged stored props and other materials, fundraising planning, marketing, outreach, patron research and/or other undertakings that will enhance the Theatre and its funding or functional operation.
- 6) The City will continue to explore all avenues available for funding improvements to the Stern Community Theatre. Recognizing that the revenues generated through payments made by the Companies into the Stern Theatre Improvement Fund will only offset capital needs, the City will commit to considering continuing its periodic contribution to CIP needs for more significant needs. This is particularly relevant for issues that may arise around the building envelope, roofing, flooring, audience seating, major production needs (i.e. rigging, stage lighting, curtains, etc.) and electrical, structural and mechanical systems.
- 7) The Financial Participation Plan anticipates that the City, with participation from the Resident Theatre Companies, will undertake a “Conditions Assessment” study for the Stern Community Theatre. This study will help inform the four organizations as to the funding needs for keeping the building functional, safe and preserved in the coming years. The study should include an architectural review, historic preservation review and a detailed improvement plan and costs. This improvement plan may include such items as lobby improvements and other visitor experience upgrades, electrical, mechanical, structural and theatrical systems, building envelope, safety, defining features, code evaluation, ADA review and production equipment needs. The architectural team should include a cost estimator with experience in the SF Bay Area market.

- 8) The Financial Participation Plan is intended to provide funding for necessary and on-going improvements to the Stern Community Theatre and is projected to be a 20-year plan. The funding generated through the Financial Participation Plan will augment other funding required for the restoration and preservation of the Theatre, including the City's CIP budget, grant writing and potential community-based fundraising campaigns.
- 9) To build greater stability into the plan and provide a stronger relationship between the City and its public-private partners, the Use Agreements with the Resident Theatre Companies will be extended from 1-year to new 3-year Agreements.

This Financial Participation Plan is viewed by the City of Palo Alto and its three Resident Theatre Companies as an example of the commitment between the four organizations to provide the highest quality performing arts experiences for the residents and arts patrons of Palo Alto and the surrounding region. Additionally, it is designed to further strengthen the historical relationship between the City and the Resident Theatre Companies.

**Attachment F- Preliminary Capital Needs**

The following list of Theatre improvements and maintenance items has been composed by VenueTech Management Group with input from City staff and the three Resident Theatre Companies. VenueTech has extensive experience with both theatre management and historic preservation; however, the firm is not an architect or general contractor. Where appropriate we have provided an approximate cost estimate based on similar projects implemented in other city-owned venues. It is important to note that budget estimates are made in 2018 dollars and this list will be refined through the recommended Conditions Assessment.

The total capital funding needs for the Stern Community Theatre is undefined at this time, however based on the age and condition of the facility it is likely that significant funding will be required to maintain and preserve the historic building. The implementation of a Conditions Assessment will help clarify future funding requirements and assist in the prioritization of improvement needs. Ideally the initial expenditures from the newly established Stern Theatre Improvement Fund would include the recommended Conditions Assessment along with facility improvements designed to enhance the public experience at the Theatre. This might include such items as improvement to the lobby, audience seating and directional signage.

The newly proposed Stern Theatre Improvement Fund is designed to provide a jump start toward restoring and preserving the Theatre, which is nearly 90 years old. While this fund will provide just a small portion of the total required funding, it is strongly recommended that the City and its Theatre Companies view this as a 20-year undertaking and fully embrace the commitment of preserving this cherished community architectural and arts resource.

Item	Description & Comments	Budget Estimate	Time Frame
Conditions Assessment (should result in budget to support development of a funding plan)	Architectural Review Historic Preservation Review Detailed Improvement Plan Review Functionality and provide options Immediate Concerns/Issues Cursory Review by Design Team (electrical, mechanical, structural, theatrical, safety, envelop, historic & defining features, code evaluation, ADA, etc.) Cost Estimator	\$30,000- \$45,000	High need, planned for FY20 with new funds from Fin. Part. Plan
Fire Sprinklers	Review and improvement to systems, including additional system for Orchestra Pit	N/A	Completed Sept. 2018
Lighting Console	Installation of new equipment to replace failing older equipment	\$20,000 - \$35,000	Planned for FY20 with new funds

Wireless Intercom and Wired Pager System	Replacement of failing system	\$20,000	Planned for Fall 2018
Safety improvements to back stage areas	Including redesign of storage areas	N/A	Planned for Fall 2018
Lobby Décor	Design and functionality Floor Coverings (entire Theatre) Paint (entire Theatre) Furniture Concessions Options Marquee Cases Welcoming Entrance Point	\$45,000	High Need
Green Room Décor	Design and Functionality Floor Coverings Paint Furniture Equipment and furnishings	25,000	Medium Need
Dressing Room Décor	General clean-up	15,000	Medium Need
Audience Seating*	Replacement (*note: new audience seating is also required at the Children's Theatre)	150,000 - 250,000	High Need
Signage	For both marketing and patron direction	25,000	High Need
Production Equipment Upgrade	Annual additions and upgrades		10-year cycle
Draperies, cyclorama and other soft goods	Maintenance & fire retardant every 10-years. Replacement and addition of soft goods, including legs & borders, second main and new cyclorama		10-year cycle
Stage Floor	Annual Repair and maintenance Replacement		Annual repair 10-year cycle
Rigging	Safety inspection Repair and replacement		5-year cycle
Emergency Lighting	Repair and maintenance		Annual
HVAC	Repair, maintenance, replacement		20-year cycle

ADA Accessibility Plan	Analysis is required to determine if there are current needs that must be met. A larger improvement program will trigger when a restoration plan is implemented.		City policy
Roof and building envelop			100-year cycle
Water Heating			
Rehearsal Hall Improvements	Décor Functional Improvements		High Need
Costume Shop Redesign	Redesign Functional Improvements		High Need
Lighting Distribution	Dimmers and distribution system		
Lighting Instruments	Replace and add new stage lighting instruments		
Annual Inspections	Ensure equipment is safe and operating correctly	\$5,000- \$10,000	
Clear-com Equipment	Replacement of failing equipment	\$6,000	Current Need
Backstage and Lobby Monitors	Audio and Video	\$7,500	Medium Priority
Scene Shop Tools	Additional and Replacement Tools	\$7,500	Medium Priority
Building Alarms	Evaluate, repair or replace both security and fire alarm systems		
Trash and Recycling	Update trash and recycling bins and areas to meet zero-waist standards		
Stacking Chairs	Replace old/broken chairs		

## **Attachment G- Resetting the Relationship between the City and the Resident Theatre Companies**

### **THEATRE MISSION, GOALS & VISION**

The Community Services Department worked closely with its consultant and the three Resident Theatre Companies to develop the foundational concepts of this Operating Plan. This process was designed to build common support the strategies while also re-setting the relationship between the City and its programming partners. Among the work creative in these joint planning meetings was the following Theatre Mission, Goals and Vision statement. Additionally, the cooperative work included the articulation of the responsibilities of the Theatre Companies and the City and a newly developed Financial Participation Plan.

This work was extremely successful and not only created a foundation for the continued success of the Theatre moving forward, but also a stronger relationship between the four parties, built on mutual cooperation and a commitment to the theatre patrons of Palo Alto.

The Theatre is owned and operated by the City of Palo Alto and is one of three city-owned performance spaces that create a unique theatre arts ecology.

The Theatre is the artistic home for three resident theatre companies, two of which began as City programs. These resident theatre companies are provided the stability of a home theatre, allowing them to focus their creative resources on the presentation of high quality arts experiences for the residents of Palo Alto and the surrounding region.

The City wishes to ensure that the Lucie Stern Community Theatre is used as a cultural, entertainment, historic preservation and economic development resource to benefit the Palo Alto community. The City and the three resident theatre companies are completely committed to providing a safe and comfortable environment for all patrons, artists, crew and staff.

### **Mission**

*The Lucie Stern Community Theatre's mission is to provide the residents of Palo Alto and the surrounding region with a unique opportunity to experience high quality live performing arts in a professional arts facility.*

This mission is realized through the following operating goals:

### **Primary Operating Goals**

- To manage, operate and program one of the most significant cultural and historic resources of the City.

- To operate as a cultural and performing arts center that has featured for decades, and will continue to feature the creative works of its Resident Theatre Companies: Palo Alto Players, TheatreWorks and West Bay Opera.
- To provide arts experiences for local adults and youth as audience, artists, musicians, production staff, designers and event volunteers.
- To serve as a catalyst for cultural growth and provide arts education to the community.
- To enhance a “sense of community” in Palo Alto and provide a vehicle for stimulating the local economy through patron spending and meaningful employment in the arts industry.
- To plan for the future maintenance and preservation of the historic building and ensure its continuing value as a community cultural resource.

## **Creative Vision**

**The principal creative vision of the Lucie Stern Theatre is to be a vital, proactive force in the cultural development of the Palo Alto community and surrounding region.** The primary creative base will be events produced by the venue’s Resident Theatre Companies who are committed to ensuring broad-based programming as well as active community participation.

The Resident Theatre Companies provide a diverse base of programming that supports a wide range of patron needs and interests. This ensures that the Theatre features variety in program experiences within a range of ticket prices. The Resident Companies also provide a commitment to the care, maintenance and preservation of the Theatre, ensuring that the Theatre is an integral component of Palo Alto’s unique performing arts ecology by providing a special place that offers rich programming which compliments the offerings featured at the Children’s Theatre and the Cubberley Theatre.

## **Resident Theatre Companies**

A critical component of the Theatre operating strategy is the continuation of long-term relationships with the Resident Theatre Companies. These organizations serve as “house companies” and provide the programming featured on the stage of the Theatre. A valuable aspect of this concept is that these performing arts organizations collaborate to provide diverse programming for the Theatre and to best meet the needs of the arts patrons in Palo Alto and the immediate region. A strong and positive relationship between these Companies and the City’s Arts and Sciences Division will continue to result in benefits to each Resident Company as well as the Theatre operation and the City of Palo Alto.

Palo Alto Players’ status as a City-sponsored program formally ended in 1974 and the organization formed an independent nonprofit corporation. TheatreWorks followed a similar path, originally

founded as a City sponsored program and electing to be governed by a nonprofit organization in 1983. The final of the current Resident Theatre Companies, West Bay Opera, was formally established in 1956. This long history of successful programming is the foundation for the Theatre's Resident Theatre program and will continue to provide the primary programming for the venue.

It is anticipated that the City of Palo Alto will maintain a Resident Theatre Company relationship with three (3) now-independent, nonprofit organizations and that the current theatre companies will continue to fill these positions for the foreseeable future.

#### *Commitment Made by Resident Theatre Companies*

- 1) Resident Theatre Companies will embody the spirit of dedicated arts organizations with a strong presence in the community and a deep commitment to serving the residents of Palo Alto.
- 2) Each Company is committed to working in partnership with the City's Arts and Sciences Division and the other Resident Theatre Companies to develop a positive public image of the Theatre and reflect a strong sense of community ownership.
- 3) Resident Theatre Companies have and will continue to have the creative, organizational and financial capacity to commit to the production of an annual season of high quality programming, while ensuring all practices are aligned with the highest regard for public safety, care of the building and service to the community.
- 4) Resident Theatre Companies will demonstrate a continuing commitment to cooperating fully with the City and the other Theatre Companies to ensure that the Lucie Stern Community Theatre is creatively successful and effectively scheduled and operated. Additionally, the Companies and the City will work as a team to explore availability on the Theatre's programming calendar for opportunities for additional programming. While this may not present programming opportunities each year, it is the goal of the Resident Theatre Companies to work closely with the City to explore how potential calendar availability might support emerging arts groups and how the Resident Companies might provide both ideas and leadership to encourage the cultural development of the Palo Alto community.
- 5) Resident Theatre Companies must be governed by a California nonprofit corporation and have a minimum of 10 years of experience providing quality performing arts in the west bay region.
- 6) The programming focus and targeted audiences of the Resident Theatre Companies will be diverse and complementary to each other.

- 7) Resident Theatre Companies will have a significant level of representation by residents of Palo Alto through its audiences, board leadership, committee structure, volunteer base and artists used in their productions.
- 8) Resident Theatre Companies must be committed to the proper care and treatment of the Lucie Stern Community Theatre and support the goal of maintaining and preserving the historic facility.
- 9) Resident Theatre Companies must commit to financial participation to support the goal of offsetting the operating and maintenance costs of the Lucie Stern Community Theatre. This will primarily be demonstrated through the payment of patron ticket fees, with rates enumerated by contract. Each company will also be involved in in-kind work supporting the success of the Theatre, which may include grant writing and other fundraising efforts, including a potential future capital campaign.
- 10) Resident Theatre Companies will work with all other Resident Theatre Companies and the City of Palo Alto to ensure that the move-in and production needs of each Company are professionally addressed based on the timing and procedures enumerated in the Theatre Use Contract.
- 11) The City and the three Resident Theatre Companies are completely committed to providing a safe and comfortable environment for all patrons, artists, crew and staff. This includes but is not limited to ensuring that all fire code, Americans with Disabilities Act (ADA) and other public safety requirements are responsibly addressed before, during, and after all events produced by the Resident Theatre Companies.
- 12) Resident Theatre Companies will support the City's goal of quality arts programming by participating in a data collection effort relating to patron needs and satisfaction. This may include sharing information collected by individual Theatre Companies through their own patron surveys as well as providing the opportunity for the City to gather input from the patrons of each Theatre Company.

*Commitment Made by City of Palo Alto*

- 1) The City is committed to providing the use of the Lucie Stern Community Theatre as the home venue of the Resident Theatre Companies. This commitment is made to provide organizational stability and ensure the long-term success of the arts organizations.

- 2) Provide an Agreement that allows for use of the Theatre with no traditional rental fee for performance, rehearsal and loading dates.
- 3) Provide priority scheduling of Theatre space to best support the scheduling of season programming by each Resident Theatre Companies.
- 4) Provide oversight of the Theatre operation and coordination of the four parties.
- 5) Provide staffing for house management to coordinate event requirements and public comfort and safety during events produced by each Resident Theatre Companies.
- 6) The City will serve as the responsible party for the oversight of the care and maintenance of the Theatre facility.

*Mutual Commitment Made by City & the Three Resident Theatre Companies*

- 1) The City and its three Resident Theatre Companies (the four parties) will work cooperatively to develop an effective process for reaching agreement, solving problems and maintaining open communication.
- 2) The four parties will work cooperatively to develop an annual (or as needed) recommendation for the City relating to the capital improvement needs of the Theatre and will issue a joint recommendation for the budgeting of capital funds.
- 3) The four parties will cooperate to effectively schedule the Theatre and all auxiliary spaces to ensure that these public assets are efficiently used.
- 4) The four parties will jointly work to identify potential open dates on the Theatre scheduling calendar which could be made available for programming by emerging regional arts organizations. Additionally, the four parties will encourage other performing arts organizations to take advantage of this time for organizational growth and programming expansion.
- 5) If appropriate, one or more of the three Resident Theatre Companies may contract to provide technical advice, design and equipment operation to support use of the Theatre by emerging performing arts groups.
- 6) The four parties acknowledge that the availability of time on the Theatre calendar may vary from year to year and it is even possible that no time is available in any given year.

**AMENDMENT NO. ONE TO THE AGREEMENT FOR PERFORMING ARTS SERVICES  
BETWEEN THE CITY OF PALO ALTO AND  
THEATREWORKS SILICON VALLEY**

This Amendment No. One to the Agreement for Performing Arts Services (“Contract”) is entered into October 23, 2018, by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and THEATREWORKS SILICON VALLEY, a California nonprofit public benefit corporation, located at 350 Twin Dolphin Drive, Suite 127, Redwood City, CA 94065 (“CONTRACTOR”).

**RECITALS**

- A. The Contract was entered into between the parties to provide performing arts services at the City’s Lucie Stern Community Theater.
- B. The parties wish to amend the Contract to shorten the term in lieu of a new agreement between the parties to take effect.

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions of this Amendment, the parties agree:

SECTION 1. Section 5 of the Contract is hereby amended to read as follows:

“5. **TERM:** The services under this Agreement shall commence as of July 1, 2018 and shall terminate on November 9, 2018 (the “**Term**”).

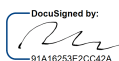
SECTION 2. Except as herein modified, all other provisions of the Contract, including any exhibits and subsequent amendments thereto, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

**CITY OF PALO ALTO**

**THEATREWORKS SILICON VALLEY**

Contracts Administrator

By:  DocuSigned by:  
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Title: Executive Director

APPROVED AS TO FORM:

City Attorney or designee

**AMENDMENT NO. ONE TO THE AGREEMENT FOR PERFORMING ARTS SERVICES  
BETWEEN THE CITY OF PALO ALTO AND  
PALO ALTO PLAYERS**

This Amendment No. One to the Agreement for Performing Arts Services (“Contract”) is entered into October 23, 2018, by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and PALO ALTO PLAYERS, a California nonprofit public benefit corporation, located at 1305 Middlefield Road, Palo Alto, CA 94301 (“CONTRACTOR”).

**RECITALS**

- A. The Contract was entered into between the parties to provide performing arts services at the City’s Lucie Stern Community Theater.
  
- B. The parties wish to amend the Contract to shorten the term in lieu of a new agreement between the parties to take effect.

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions of this Amendment, the parties agree:

SECTION 1. Section 5 of the Contract is hereby amended to read as follows:

“5. **TERM:** The services under this Agreement shall commence as of July 1, 2018 and shall terminate on November 9, 2018 (the “**Term**”).

SECTION 2. Except as herein modified, all other provisions of the Contract, including any exhibits and subsequent amendments thereto, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

**CITY OF PALO ALTO**

Contracts Administrator

**PALO ALTO PLAYERS**

By:  Elizabeth Santana  
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Title: Managing Director

APPROVED AS TO FORM:

City Attorney or designee

**AMENDMENT NO. ONE TO THE AGREEMENT FOR PERFORMING ARTS SERVICES  
BETWEEN THE CITY OF PALO ALTO AND  
WEST BAY OPERA**

This Amendment No. One to the Agreement for Performing Arts Services (“Contract”) is entered into October 23, 2018, by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and WEST BAY OPERA, a California nonprofit public benefit corporation, located at 221 Lambert Avenue, Palo Alto, CA 94306 (“CONTRACTOR”).

**RECITALS**

- A. The Contract was entered into between the parties to provide performing arts services at the City’s Lucie Stern Community Theater.
  
- B. The parties wish to amend the Contract to shorten the term in lieu of a new agreement between the parties to take effect.

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions of this Amendment, the parties agree:

SECTION 1. Section 5 of the Contract is hereby amended to read as follows:

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SECTION 2. Except as herein modified, all other provisions of the Contract, including any exhibits and subsequent amendments thereto, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

**CITY OF PALO ALTO**

**WEST BAY OPERA**

Contracts Administrator

By:  DocuSigned by:  
Jose Luis Mosconich  
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Title: General Director

APPROVED AS TO FORM:

City Attorney or designee