

CITY OF WESTMINSTER

THEATER FACILITY MANAGEMENT SERVICES AGREEMENT

This agreement ("Agreement"), dated ^{July 10,} 2019, is by and between the CITY OF WESTMINSTER, a municipal corporation, ("City") and the FRIENDS OF THE ABBEY CENTER, INC. dba FRIENDS OF THE ROSE CENTER THEATER, a California non-profit 501(c)(3) corporation ("Friends"). City and Friends are jointly referred to as the Parties.

RECITALS

WHEREAS, City previously entered into an agreement with Friends to operate the Theater and Art Gallery areas of the Center for the benefit of the community, and to maintain other designated space within the Westminster Rose Center in relation to providing such services (the "Original Agreement"); and

WHEREAS, the parties desire to amend and completely restate all of the terms and conditions in the Original Agreement, in order to clarify the duties and obligations of the parties and to otherwise comply with various bonding restrictions.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties do mutually agree that the Original Agreement should be deleted in its entirety, and the following Agreement substituted in its place and stead:

1. Definitions.

- A. "Site" as used in this Agreement shall mean the property located at 14140 All American Way, Westminster, California, upon which the Westminster Rose Center has been built.
- B. "Center" refers to the Westminster Rose Center, which is located on the Site. The Center specifically includes, but is not necessarily limited to, the Theater Complex, the Shared Use Areas, the Banquet Facility, and any other areas on the Site associated with the operation of the Westminster Rose Center. The entire Center is identified in Exhibit A, attached hereto and incorporated by this reference.
- C. "Banquet Facilities" means the banquet facilities located in the Center, including the kitchen, banquet hall, the terrace area, and any other areas directly associated with the operation of the banquet hall. The Banquet Facilities are identified in detail in Exhibit A, and are labeled as "Concessionaire Area." The Banquet Facilities will be operated by a Concessionaire under a separate agreement with the City. The term Banquet Facilities specifically excludes the Theater Complex and the Shared Use Areas.
- D. "Concessionaire" refers to the person or company operating the Banquet Facilities in the Center pursuant to a separate agreement with the City. At the time of the execution of this Agreement the Concessionaire is Jay's Catering.
- E. "Theater" means the theater located inside the Center, specifically including the stage, the theater seating, backstage areas, and any other areas, equipment and facilities directly associated with the operation of the Theater.

- F. "Lobby" refers to the lobby area which operates as the main entrance to the Center, and which provides the primary entrance for patrons of the Theater and the Banquet Facilities. The Lobby area will be jointly shared and maintained by the Friends and the Concessionaire.
- G. "Art Gallery" means the public art gallery located in the Center's lobby area. The Art Gallery will be managed by the Friends.
- H. "Office Area" refers to the box office area, and the two administrative offices and conference room located adjacent to the Theater box office. The Office Area will be jointly shared by the Friends and the Concessionaire as outlined in this Agreement, and as negotiated in a separate agreement between the Friends and the Concessionaire.
- I. "Shared Use Areas" refers to the Lobby, the Office Area, and the public restrooms located near the Lobby, the use, operation and maintenance of which will be shared between the Friends and the Concessionaire. The details of the use, operation and maintenance of the Shared Use Areas will be outlined in a separate Agreement to be negotiated between Friends and the Concessionaire.
- J. "Theater Complex" means all areas of the Center which the Friends will manage under this Agreement. The Theater Complex specifically includes, but is not necessarily limited to, the Theater, backstage areas, any area directly related with the operation of the Theater, the snack bar and the Art Gallery. The term Theater Complex does not include the Banquet Facilities. The details of the areas that constitute the Theater Complex are described in detail in Exhibit A, and are labeled as the "Theater Complex."
- K. "Theater Activities" as used in this Agreement shall mean functions consisting of, but not limited to, plays and musical theatre productions, orchestral and choral productions, town hall meetings, seminars, training, children's theater, technical theater classes and such other uses as may be approved by the Friends or its designee. If the Theater is to be used for activities not set forth in this paragraph, it shall notify the City at least 60 days prior to the scheduled activity. If the City disapproves of the proposed use, it shall notify the Friends in writing within 30 days after receiving the notice from Friends. In such event, the Friends shall meet and confer with the City in a good faith attempt to discuss and resolve any objections. If the issue is not resolved, the City Council shall have final authority over the use of the Theater.
- L. "Art" as used in this Agreement shall mean the art and/or photo exhibitions that may be scheduled from time to time in the Art Gallery.
- M. "Theater Management" as used in this Agreement shall refer to the Managing Director hired by the Friends to operate the Theater Complex.
- N. "Good working order" shall mean free of material defect, clean, in good repair, and capable of being used for the purpose intended.
- O. "Theater Reports" as used in this Agreement shall include any and all reports, documents, reports, agendas, minutes or related documents maintained by the Friends which describe and report on the operations of theater. Examples include, but are not limited to: schedules of events, meeting minutes, annual budget, bank statements, attendance reports and /or any related documents.

Such documentation shall be furnished to the City of Westminster and its representatives with fifteen (15) days of request.

- P. "Operating Expenses" shall mean, for any period of measurement, all costs and expenses which relate to the management, operation and marketing of the Theater Complex, which costs and expenses shall include, without limitation, all administrative and general office expenses, costs of inventories, equipment and supplies, any ordinary or extraordinary maintenance or utility expenses for which Friends is responsible under the terms of this Agreement, costs of goods and services provided or performed in connection with the management of the Theater Complex, cost of any commissions, credit card discounts and commissions, music, entertainment, fuel, licenses and permits, together with costs and expenses related to the employment of any Theater Management and personnel.
 - Q. "City Equipment" as used in this Agreement means certain equipment and materials provided by City to Friends at the inception of the Original Agreement, used in the operation of the Theater Complex. A detailed description of all the City Equipment provided by the City to Friends is set forth in the document attached as Exhibit B, incorporated herein by this reference.
 - R. "Permanent Fixtures" shall mean a piece of equipment which has been attached to real estate in such a way as to be part of the premises and its removal would do harm to the building or land.
 - S. "The City" as used in this Agreement refers to The City of Westminster, a California municipal corporation.
2. Effective Date. The effective date of this Agreement shall be July 10, 2019.
3. Agreement to Manage. Subject to the limitations contained in this Agreement, the City hereby appoints and retains the Friends, and the Friends hereby accepts such appointment and retention, as the exclusive manager of the Theater Complex. In connection with its management responsibilities under this Agreement, the Friends shall be responsible for the following:
- A. Theater Complex. Except as may be provided herein to the contrary, Friends is granted the exclusive right to operate, manage, market, promote and control the Theater Complex, as that term is defined above.
 - B. Shared Use Areas. In addition, Friends is granted the non-exclusive right to use, operate, manage, and control the Shared Use Areas in conjunction with Concessionaire. Friends and Concessionaire shall enter into a separate agreement dividing the rights, duties and responsibilities concerning the Shared Use Areas, which shall be provided to the City for reference. Notwithstanding such agreement, at all times Friends and Concessionaire shall remain jointly and severally responsible to City for the maintenance, upkeep, and safe operation of the Shared Use Areas.
 - i. Office Area. Friends is granted the right to designated portions of the Office Area, for exclusive and shared use for the administration of the Theater Complex. In general, the Office Area will be jointly shared between the Friends and the Concessionaire. Nevertheless, Friends shall have the exclusive right to occupy, manage and control the box office area and the office immediately adjacent to the

box office. Of the remaining two offices one shall be available for the exclusive use of Concessionaire, and the other shall serve as a conference room which will be jointly shared between Friends and Concessionaire as they may agree.

- ii. Lobby and Restrooms. Friends and Concessionaire shall have joint use and control over the Lobby and Lobby Restrooms. Friends shall have exclusive use over restrooms located in the backstage areas. Only those contracted to use the Rose Center shall have use of the Lobby restrooms unless otherwise arranged in advance with both the Friends and the Concessionaire.

4. Responsibilities of the Friends.

- A. The Friends shall operate and maintain the Theater Complex and the Shared Use Areas during the term of this Agreement in accordance with the requirements and restrictions of this Agreement. Throughout the term of this Agreement, Friends shall be responsible for managing and operating the Theater Complex and the Shared Use Areas, which duties include, but are not necessarily limited to, scheduling and providing the Theater Activities, the Art Gallery Activities, and other activities and functions related to the normal operation and maintenance of the Theater Complex.
- B. In performing its duties under this Agreement, the Friends shall abide by the highest artistic and theatrical standards, as compared with similar civic theater and art gallery operations established by other municipalities in California. The Friends shall operate in a manner that is deemed to be in the best interest of the City and the general public for all services contemplated by this Agreement.
- C. Friends shall conduct its business at the Site in an orderly, cooperative, and professional manner so as not to annoy, disturb, disrupt, offend, or otherwise interfere with other ongoing operations at the Site, specifically including the operations of Banquet Facilities.
- D. Theater Management shall maintain a business office at the Site, in the box office, the adjacent office space and to the rear of the stage. Theater Complex shall be staffed by a sufficient amount of designated Friends personnel, as determined by the Managing Director, whenever the box office, Theater, Art Gallery, or Shared Use areas are in use by Friends or its invitees. The box office shall be open to the public and shall be staffed by at least one Friends employee during normal business hours Tuesdays - Fridays from 2:00 PM - 6:00 PM as well as one hour before every event where tickets are to be sold through the box office.
- E. Friends shall be responsible for providing and /or requiring appropriate staffing and security for all events held at the Theater Complex in accordance with industry standards. Friends shall ensure appropriate trained personnel are present and available to supervise any person or group using, visiting or performing in the Center. Friends will be responsible for ensuring that only authorized and trained personnel use the fixtures, equipment, and materials in the Center, including but not limited to the City Equipment and the Permanent Fixtures.

- F. The Managing Director shall be the person primarily responsible for operating the Theater Complex on behalf of the Friends. At all times the Theater Management, and all other employees, agents, and volunteers of the Friends, shall be considered employees of the Friends, not of the City. City shall have no direct authority or control over the Theater Management, or the other officers, employees, agents and volunteers of the Friends. The Friends shall provide City with advanced written notice when it intends to hire someone to fill a vacancy in the Theatre Management, which notice shall include information supporting the applicant's qualifications. Friends shall do a background check on the potential Theater Management employee, which shall be forwarded to the City.
- G. Following the initial execution of the Original Agreement, City provided certain City Equipment, which is available for joint use by the City and Friends as described in Section 5 below. Except as specifically stated herein to the contrary, it shall be the responsibility of the Friends to provide all of the personnel, and non-fixed materials and equipment necessary to carry out its obligations under this Agreement. The Friends further has the duty to replace any non-fixed City Equipment initially provided under this Agreement, as well as provide any additional non-fixed equipment that may be necessary for standard theater operations. This specifically includes, but is not limited to, light bulbs, theatrical light bulbs, theatrical light fixtures, non-fixed audio visual equipment (such as microphones, wires, etc.), backstage equipment, non-built-in furnishings and technical materials, and every other type of non-fixed material or equipment related to the operation of the Theater Complex and the Shared Use Areas.
- H. Friends shall maintain the Theater Complex, the Shared Use Areas, and all other materials, equipment, fixtures and areas under its control, in good working order, and in accordance with the terms of Section 16 of this Agreement. Friends shall notify City in a timely manner of any problems with City Equipment, Permanent Fixtures, Center systems, or Center structure itself.
- I. Friends shall maintain a regularly updated website. Friends shall provide the City advance notice of all events for which tickets are sold to the public for posting on the City's social media accounts. The City shall have sole discretion to choose when and in what social media form to post events.

5. Responsibilities of the City.

- A. City Equipment. At the inception of the Original Agreement, City provided Friends with certain City Equipment [as that term is defined in Section 1(Q)] for use in operating the Theater. Friends shall work with City to maintain an ongoing list of the City equipment, whether it's original or a subsequent replacement of an item. The City Equipment shall be available for use by both the City and the Friends in the Center. Although Friends will maintain custody of the City Equipment, at all times the City Equipment shall remain the sole property of the City. Friends shall be responsible for replacing City Equipment once it has served its useful life or become unrepairable. Non-fixed equipment purchased by the Friends to replace or upgrade City Equipment shall remain the property of the Friends. City shall be entitled to immediate possession of the original City Equipment upon the termination or expiration of this Agreement.
- B. Permanent Fixtures. Friends will have a right to use certain Permanent Fixtures (as that term is defined in Section 1(R)), owned by City and located in the Center. Throughout the term of this Agreement the Friends shall maintain custody and

supervision over the Permanent Fixtures, and shall be solely responsible for maintaining the Permanent Fixtures in accordance with industry standards. Nevertheless, at all times the Permanent Fixtures shall remain the property of the City, and will be available for use by both the City and Friends. The City shall be responsible for repairing and replacing the Permanent Fixtures in accordance with its designated replacement program and as may otherwise be required. The City retains the right, in its sole and absolute discretion, to determine when and /or if a particular Permanent Fixture needs replacement. City shall be entitled to immediate possession of the Permanent Fixtures upon the termination or expiration of this Agreement.

- C. City will be responsible for paying to provide a regular maintenance service on the Center's HVAC system and elevator. The maintenance service will be provided by a qualified company approved by the City's public works director. City agrees that while warranties are still in effect for the Permanent Fixtures, City will provide Friends with reasonable assistance in the enforcement of those warranties.
- D. City will be responsible for maintaining the exterior landscaping areas, and the exterior surfaces of the Center's structure, including windows and doors, all in accordance with Section 16 of this Agreement.

6. Scheduling Policies and Priority for Site Use.

- A. All proposed scheduled use of the Theater Complex, the Shared Use Areas, or portions thereof, shall be entered in books maintained by Theater Management, and such books shall be retained by Friends during the term of this Agreement and for three years thereafter. Said books shall be available for City inspection at any time during regular office hours for the Theater Management.
- B. The Friends shall create and maintain a digital, online shared calendar of events, displaying all confirmed and tentative bookings. The City shall have access to the calendar at all times through a password-protected log-in.
- C. Any member of the public may contact the City's Community Services Department to place a temporary reservation on portions or all of the Theater Complex. The Community Services Department can respond to availability inquiries through access to the shared calendar. If the requested time is available, the Community Services Department will place a five business day hold on the calendar, and provide contact information to the Theater Management through the calendar. Theater Management shall respond to the booking inquiry within five business days, to continue the normal reservation procedure.
- D. Friends shall be solely responsible for all bookings in the Theater and exhibits in the Art Gallery. City shall have no responsibility to take deposits, or complete bookings. City shall not be responsible for any cancelled bookings between Friends and any third party, nor be obligated to pay any fees for services, nor to refund any ticket money, deposit, or compensation paid by performance groups or audience to the Friends.
- E. If the City determines Theater Management is not providing sufficient access to the Theater Complex by local performers, artists and audience, the City shall provide Friends with written documentation showing Friends did not provide sufficient access. Theater Management will be asked to upgrade their schedule

of events to meet local needs to the City's satisfaction. Friends agrees to comply with any such reasonable request by City.

- F. The City has priority to schedule up to five (5) public benefit events annually on dates where no other event(s) have been previously booked in the Theater Complex and Shared Use Areas. The City will endeavor to schedule those five (5) events on weekdays during the daytime or evening, and those events will be conducted at no cost to the City. City shall schedule the five events no later than three (3) months in advance of the scheduled event date, unless there are no other events on said date. In addition to the five (5) events for which the City shall be given priority, in the event of a public emergency the City will be entitled to use the Theatre Complex and Shared Use areas for any reason deemed necessary by the City, without prior notice to the Friends. For all other events, Friends will use its best efforts to reasonably accommodate the City's request for scheduling events on the date requested. There shall be no facility rental fee, nor equipment use fee, to the City for the holding of any such event. Friends will assist City with the production of any of its events at the Theater Complex, which may include but is not limited to setup, audio visual equipment use and assistance, and clean up, up to an annual labor cost of \$2,500.
- G. Individuals and groups shall be required to pay a minimum fee /charge for their use of the Theater Complex and Shared Use Areas ("Minimum Charge"), regardless of the amount of revenue ultimately generated by their program or event. Under no circumstances will any fees or charges be waived or reduced. At the time of booking their program or event, users shall be required to deliver to the Friends a minimum deposit amount ("Minimum Deposit"). The purpose of the Minimum Charge and Minimum Deposit is to help ensure that costs of operating the Theater Complex and Shared Use Areas are being recovered from the people actually using those facilities. The Minimum Charge shall be set forth on a schedule to be approved by Friends and attached to any agreement for the use of the Theater or the Theater Complex. Said schedule shall be amended from time to time based on the nature of the use and the economic circumstances. The schedule shall be approved by Friends and forwarded to the City following approval.
- 7. Term. This contract shall commence on the Effective Date and will continue for a period of five (5) years, unless it is terminated earlier as provided in this Agreement (the "Term").
- 8. Contract Extension. The terms and conditions of this Agreement are subject to reconsideration at the end of the initial Term, and at the end of any subsequent term. Any changes to the terms and conditions must be agreed to by both parties in writing.
- 9. Annual Compensation Payable to Friends. The consideration for this Agreement are the mutual promises and obligations of each party as set forth in this agreement.
- 10. Accounting Records and Reporting. All gross ticket sales, donations, other income from all sources, and expenses related to the operation of the Theater Complex and Shared Use Areas shall be recorded by Friends in full and separate books and records of the Theater Complex and Shared Use Areas maintained in accordance with generally accepted accounting principles, consistently applied with entries supported by documentation sufficient to allow City to ascertain the accuracy of such books and records.

- A. Friends shall provide City with, on a monthly basis, a balance sheet and income statement report. Except as otherwise required herein, any additional financial records or other Theater Reports that may be requested by City, shall be provided to the City within 15 days of any such request.
- B. The Friends shall maintain a method of accounting to the reasonable satisfaction of the City's Finance Director.
- C. Friends shall furnish the City with annual reviewed financial statements prepared by an independent Certified Public Accountant acceptable to the City's Finance Director. Said annual reviewed financial statements shall be due on or before September 30th of each year and shall reflect all financial transactions occurring during the preceding fiscal year commencing July 1st and ending June 30th. Copies of all financial statements will be provided to the City on or before September 30th and shall reflect all financial transactions occurring during the preceding fiscal year commencing July 1st and ending June 30th.
- D. All documents, books and accounting records relating to this Agreement shall be open for inspection and re-inspection by City at any reasonable time during the term of this Agreement. The City may from time to time conduct an audit, agreed upon procedures engagement, or any related organizational review of the financial records and /or operations of the Theater and /or Friends, utilizing an auditing firm chosen by the City, at the City's cost. Friends agrees to fully cooperate with any such audit or observation upon reasonable notice.
- E. If, as a result of an audit or review, the City finds that the Friends has failed to accurately report the income and expenditures, or otherwise fails to provide the information or reports required by this Agreement, the City may exercise its option to immediately terminate this Agreement.
- F. Friends shall retain and preserve all accounting records described in this provision for a minimum period of three (3) years from the document's creation, regardless of whether this Agreement has been terminated.
- G. Prior to the Effective Date of this Agreement, Friends will establish one or more bank accounts for the Theater Complex, which accounts (collectively, the Operating Account") shall be used by Friends for the deposit on a daily basis of all revenues collected from the operation of the Theater Complex. Friends and Friends' designee(s), whose names shall be disclosed to City, shall be sole signatory on the Operating Account. Friends shall not allow any funds withdrawn from the Operating Account to be commingled with any other funds or bank accounts of Friends.
- H. Friends shall deposit into the Operating Account all revenues received with respect to the Theater Complex. Friends shall use the funds in the Operating Account to pay accrued and unpaid Operating Expenses, to the extent that the same are consistent with the Friends Approved Annual Budget.
- I. If at any time Friends determines that the funds on deposit in, or projected to be on deposit in, the Operating Account (taking into account reasonably anticipated revenues) will be insufficient to pay, as and when due, Operating Expenses reasonably anticipated to be incurred in accordance with the Friends' Approved Annual Budget during the immediate succeeding 30 calendar days, Friends shall provide written notice (a "Notice of Operating Account Deficiency") to City of the amount of such anticipated deficiency. The Notice of Operating Account

Deficiency shall set forth the anticipated amount of the deficiency. Prior to filing a Notice of Operating Account Deficiency, Friends is required to have exhausted all available resources it has at its disposal dedicated to the Theater /Art Gallery Complex for that year to pay for any shortfalls in the Operating Account.

- J. In the event Friends ceases to exist as a legal entity during the term of this Agreement, all amounts held in the Operating Account shall be distributed pursuant to the nonprofit provision of the California Corporations Code.

11. Termination of Agreement.

- A. With the exception of the following Section 11(B), at any time during the term of this Agreement, City may terminate this Agreement, with or without cause, by providing Friends with one hundred and eighty (180) days' written notice. Friends may cancel this agreement, with or without cause, by providing City with one hundred and eighty (180) days' written notice to the City.
- B. This Agreement is made on the express condition and understanding that the current bylaws of the Friends of the Abbey Centre, Inc., dba Friends of the Rose Center Theater Board of Directors ("Board") will continue to include the Westminster Mayor or the Mayor's designee as a fully - privileged, voting member of the Board, and that the Board will extend privilege in the Mayor's absence to a City Council appointed alternate. The Mayor will also be a permanent member of the Executive Board of the Friends. If for any reason the Rose Center Friends Board of Directors takes any action to exclude the Mayor or Mayor's alternate or designee from membership on the Board or the Executive Board, or otherwise seeks to deny full access to the City to monitor the Friends' operations, this Agreement shall be subject to immediate termination upon written notice from the City. Nothing in this Agreement is intended to preclude a person sitting on the City Council from being a voting member of Friends Board except that at no time shall there be more than two members of the City Council, including the Mayor or Mayor's designee, on the Friends Board of Directors.
- C. Friends shall be considered to be in default of this Agreement if at any time City determines the funds on deposit in, or projected to be on deposit in, the Operating Account (taking into account reasonably anticipated revenues) will be insufficient to pay, as and when due, Operating Expenses reasonably anticipated to be incurred in accordance with the Friends' Approved Annual Budget. The City shall provide Friends with written notice of the default, stating that the Friends has a total of ten (10) business days to cure. Friends' failure to cure the default within the ten (10) day period shall be grounds for immediate termination of this Agreement by City or such other period as the City and Friends may agree.
- D. Subject to the right to cure provisions in Section 12, this Agreement shall be subject to termination by the City upon the occurrence of any one or more of the events of default hereinafter described:
 - i. The failure of the Friends to provide sufficient access to the Theater Complex by local performers, artists and audiences, as determined by the City Council in its discretion.
 - ii. Failure to consider each ticket a contract to provide specified entertainment or services to ticket holders or to refund money if scheduled production or event is cancelled.

- iii. If a voluntary petition under any part of the Federal bankruptcy laws, or an action under present or future insolvency laws or statutes, is filed by Friends, or judgment pursuant thereto is filed against Friends, and Friends fails to cure the same within sixty (60) days of the filing.
- iv. Upon appointment of a receiver or any assignment for benefit of Friends' creditors;
- v. If Friends or Theater Management shall voluntarily abandon, desert, vacate or discontinue all or part of its operation of the Theater Complex and Share Use Areas.
- vi. Failure by Friends to provide all of the services herein described, without just cause. The determination of just cause shall be made solely by the City in its reasonable discretion.
- vii. In the event of an emergency or natural catastrophe which renders the Site unsafe or unavailable for its intended use.
- viii. Friends, its officers, employees, agents or volunteers willfully and /or deliberately commit an act or perform an activity which is reasonably calculated to result in substantial damage to the Center, or to harm the operations at the Center, or which are in direct and substantial interference with the use of the Center.
- ix. Failure to maintain any and all insurance as required by City. City, at its option, may obtain whatever insurance it may deem appropriate to cover the Center during any cure period, and Friends shall immediately reimburse City for the cost of such insurance.
- x. Failure to maintain on-site management during designated office hours as set forth in the Proposal, or during activities or performances as required by this Agreement.
- xi. Failure to comply with the booking requirements under this Agreement.
- xii. Failure to maintain all furnishings, fixtures, equipment, and property used by the Friends in the operation of the facilities in safe and good working condition. This shall specifically include, but shall not be limited to, a failure to maintain the Theater Complex, the Shared Use Areas, the City Equipment, the Permanent Fixtures, and all other furnishings, fixtures, equipment, materials, and facilities used by the Friends in its operations at the Center.
- xiii. Failure of the Friends to keep and maintain its status as a 501(c)(3) tax exempt organization under the Internal Revenue Code.
- xiv. Failure of Friends to keep, perform, and observe all other terms, promises, covenants, conditions, and agreements set forth in this Agreement.

12. Notice to Cure. Prior to termination for any reason set forth under Section 11(D), City shall give Friends written notice of any default. The Friends management shall thereafter have thirty (30) days to cure said default to the satisfaction of City. If Friends

management fails to cure within this time, this Agreement shall immediately terminate upon expiration of the thirty (30) day cure period. This provision shall not in any manner limit or reduce any other notice and cure period as otherwise provided for in this Agreement. Notwithstanding the above, if the nature of the default in Section 11(E) is such that it can be cured by Friends but that more than thirty (30) days are reasonably required for its cure (for any reason other than financial inability), then Friends shall not be deemed to be in default if Friends shall commence such cure within said thirty (30) days, and thereafter diligently prosecute such cure to completion. The requirements of this Section 12 shall be inapplicable to terminations occurring under Section 11(A), 11(B), and 11(C) of this Agreement.

13. Additions, Alterations and Improvements. Upon the termination of this Agreement, any and all fixed or permanent changes, alterations, additions, repairs, or modifications made by the Friends, or by its officers, employees, agents or volunteers, related to the operation of the Center, shall become the property of the City.
14. Use of Theater Complex and Shared Use Areas. Friends agrees that the Theater Complex and the Shared Use Areas shall be used by Friends solely for the public purpose of providing Theater Activities and Art Gallery Activities.
 - A. Friends agrees not to use or keep on the Site any materials or articles which may be deemed hazardous waste or hazardous materials under federal, state or local law, or which would otherwise increase the City's rate of insurance (the "Hazardous Materials"). When it is necessary to temporarily use paint or painting supplies which may be flammable to repair or paint a set, or to use other Hazardous Materials, supplies or equipment, those items will not be stored on the Site. The use of any such materials, supplies or equipment shall be properly supervised, and shall comply with all federal, state and local laws and regulations. Friends shall indemnify, defend and hold the City harmless from any injury or damage that may be alleged, or which may occur, to the Site, to the Center, or to other properties, as a result of Hazardous Materials being brought onto the Site by Friends, its officers, employees, agents, volunteers, guests, invitees and subcontractors, or which are brought by performers, artist and other individuals authorized by any of the above to be present on the Site.
 - B. Friends shall secure and pay for maintenance service contracts to keep computers, electronic equipment, sound equipment, and all other technical equipment in the Theater Complex and Shared Use Areas in good working order.
 - C. Friends shall not create, incur or allow any liens or obligations of any nature or kind whatsoever to be imposed upon the Site, the Center, or any of its fixtures or fixed equipment.
 - D. Friends shall not do anything on the Site that will cause damage to the buildings, structures or improvements. Any damages that occur in relation to any activities of Friends at the Site shall be the sole responsibility of Friends.
 - E. Friends shall not make changes, alterations, additions, repairs or improvements to or upon the Site without prior written permission of the City. Friends shall not install any permanent fixtures. The operation of any major equipment or machinery at the Site, which is not already installed or provided as part of this Agreement for the use of Friends, shall require the prior written consent of the City.

- F. Friends shall comply with all applicable laws concerning the Site, or Friends' use of the Site. Friends shall not use the Site in any manner that will constitute a waste, nuisance, or unreasonable annoyance.
 - G. The City shall have the right, at all reasonable times, to enter the Site for the purpose of inspection, repair and determination of Friends' compliance with this Agreement, and for any other reasonable purpose including the protection of City's property. Such entry may be made without the knowledge or consent of the Friends and may be conducted at any reasonable time; however, the City shall make every effort to notify Theater Management in advance of any scheduled repairs or maintenance it intends to conduct. During any such visit by the City, City shall make its best effort not to unreasonably interfere with events scheduled at the Theater Complex.
 - H. Friends acknowledges that use of the Site shall at all times be in a manner commensurate with and appropriate with the public use of publicly owned property. Friends shall not authorize, allow or tolerate any use of said Site for any unlawful or illegal purpose. In addition, Friends agrees not to knowingly allow or authorize the use of the Site for any use which may be detrimental or annoying to the City, to the general public, or to surrounding property owners. Friends further agrees that it will immediately, upon demand of the City, close the Site and order all persons, other than authorized City officers and employees, from the Site upon occurrence of any event or activity deemed to be illegal, or in violation of any federal, state, or local law or regulation, or which is determined by City (in its absolute discretion) to be an emergency requiring such closure. Failure of Friends to cooperate with City in the enforcement of this provision shall be a material breach of this Agreement and cause for immediate termination.
15. Signs. Friends shall comply with the City's sign ordinances.
16. Maintenance, Repair, and Replacement. The Parties will divide responsibility for the maintenance, repair and replacement of the Theater Complex and Shared Use Areas, and related equipment and facilities, as follows:
- A. Exterior and Landscaping. Except as provided herein to the contrary, City, at its own cost and in its discretion, will maintain in good condition and repair the exterior of the building and the exterior landscaping at the Site.
 - B. Permanent Fixtures. City is responsible for repairing and replacing Permanent Fixtures, unless the problem or damage was caused by Friends, its employees, agents, volunteers, subcontractors or invitees (the "Friends Invitees"), in which case the repair or replacement will become the Friends' responsibility. When the City determines one or more of the Permanent Fixtures has served its useful life, the City will pay to replace that item in accordance with its designated replacement schedule. The decision to replace a Permanent Fixture shall rest with the City, in its sole and absolute discretion.
 - C. Routine Maintenance. Friends shall be responsible for providing regularly scheduled routine maintenance for the interior of the Theater Complex and the Shared Use Areas, including the City Equipment, Permanent Fixtures, together with any other furniture, fixtures, equipment and materials located therein, in a clean, safe and sanitary condition, free from rubbish, refuse, food scraps, garbage, dust, dirt, offensive or unclean materials, roaches and other insects, rodents and vermin, in accordance with the best sanitary practices. Friends will

act in full compliance with all applicable County and State Health Department regulations. Friends' obligations specifically include, but are not limited to, routine preventative maintenance of the plumbing, mechanical, telecommunications, audio visual, and electrical systems, and the replacement of any light bulbs whether in the Theater Complex or Shared Use Areas.

- D. Maintenance of the Shared Use Areas shall be the joint responsibility of the Friends and the Concessionaire, who shall each be jointly and severally responsible for those areas. This will include the responsibility to replace light bulbs in the Shared Use Areas. The Friends and Concessionaire will work together to develop and execute an agreement outlining how the maintenance responsibilities for the Shared Use Areas will be divided. Annually, Friends will be responsible for providing, at minimum, a professional cleaning of the carpeting in the Theater Complex.
 - E. Friends shall take appropriate steps to keep and maintain the City Equipment, the Permanent Fixtures, and all other furniture, fixtures, systems, and equipment used by Friends, in good working order throughout the term of this Agreement. The City, in its sole discretion, shall make the determination of "good working order" of any of the above.
 - F. City's Obligation to Repair and Replace. Notwithstanding Friends' obligation to provide routine scheduled maintenance, the City will be responsible for repairing the Permanent Fixtures and for any repairs that may be needed to the HVAC, plumbing, electrical, and other major systems in the Theater Complex or Shared Use Areas; provided, however, if Friends or the Friends Invitees are determined to have been responsible for causing the problem or damage, then in such case the Friends will be responsible for reimbursing the City for the cost of the repair or replacement.
 - G. City Equipment. Except as specifically provided herein to the contrary, City is not responsible for maintaining, repairing, or replacing the City Equipment. The general duty to maintain, repair, and replace the City Equipment is the sole responsibility of Friends. The City Equipment was originally provided by City and shall remain City property throughout the Term, but the replacement of any City Equipment is the sole responsibility of Friends once an item has served its useful life. Any equipment and materials purchased by the Friends related to its operation of the Theater Complex shall remain property of the Friends.
17. Permits and Licenses. Friends and its employees, agents, volunteers, contractors or subcontractors shall, at their sole cost and expense obtain all licenses and permits in order to comply with all requirements of any City, County, State and Federal governmental authority now in force, or which may hereafter be in force, pertaining to the operation of the Theater Complex, Art Gallery, Shared Use Areas, and all services provided by Friends in the Center pursuant to this Agreement. City will provide its best efforts in processing any licenses or permits which may be required by City.
18. Insurance Requirements.
- A. The Friends shall maintain at its sole cost and expense insurance policies as required by the City and shall furnish Public Liability and Property Damage Insurance, including Products Liability Insurance, against any and all claims and losses arising out of the Friends' operations and the occupancy of the Site. All insurance shall be obtained by Friends at its sole expense from insurers with a

current A.M. Best's rating of no less than 'A' and shall be in the following minimum amounts:

Public Liability Insurance \$1,000,000 each occurrence
\$2,000,000 in the aggregate

Property Damage Insurance \$1,000,000 each occurrence
\$2,000,000 in the aggregate

Automobile Liability Insurance \$1,000,000 each occurrence
\$2,000,000 in the aggregate

- B. All insurance policies shall be in form and content satisfactory to the City, copies of which shall be submitted to the City for review. The policies shall name the City, its officers, officials, agents, employees and volunteers, as additional insureds by an endorsement to the policy.
- C. The Friends shall, at its own cost and expense, secure and maintain in force Worker's Compensation Insurance in the statutory amount required by the State of California for the benefit of each of the persons employed by it in the conduct of its operation on the Site. Each such policy of insurance shall be endorsed to provide that the insurer waives all rights of subrogation against the CITY, its officers, agents, volunteers and employees.
- D. All said policies are to be kept in force during the full terms of this Agreement, and further, contain an endorsement that shall provide that the CITY shall receive not less than thirty (30) days prior written notice of cancellation, or material reduction in coverage, of any policies of insurance required hereunder.
- E. Friends shall provide, or cause to be provided, full and complete Simple certificates of copies of all insurance policies to City upon their execution. Insurance shall not suffice for this purpose. Failure to obtain and maintain required insurance in force shall be deemed a default of this Agreement and shall be grounds for immediate termination.
- F. Further, Friends shall obtain any additional kinds and amounts of insurance which, in its own judgment, may be necessary for the proper protection of any of its officers', employees', agents, volunteers, or authorized contractors or subcontractors' own actions during the performance of this Agreement.
- G. All insurance coverage shall be primary insurance as respects the City, its officers, elected or appointed officials, agents, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, or volunteers shall be excess of Friends' insurance and shall not contribute with it.
- H. Except with respect to the limits of the insurer's liability, Friends' insurance shall apply separately to each insured against whom claim is made or suit is brought

and shall provide that an act or omission of one of the insureds shall not reduce or void coverage to the other insureds. Friends' insurance shall not exclude coverage for suits or claims brought by or on behalf of one insured against any other insured.

- I. Any deductible or self-insured retention must be declared to and approved in advance by the City.
19. Indemnification. Friends shall defend, indemnify, hold free and harmless the City, its officials, officers, employees, agents and volunteers, from and against any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, all civil claims, workers' compensation claims, and all other claims resulting from or arising out of the acts, errors or omissions of the Friends, its officers, employees, agents, volunteers, guests, invitees, and /or authorized subcontractors, whether intentional or negligent, in the performance of this Agreement or its obligations contained therein. City shall defend, indemnify, hold free and harmless the Friends, its officials, officers, employees, agents and volunteers, from and against any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, all civil claims, workers' compensation claims, and all other claims resulting from or arising out of the acts, errors or omissions of the City, its officers, employees, agents, volunteers, guests, invitees, and /or authorized subcontractors, whether intentional or negligent, in the performance of this Agreement or its obligations contained therein.
20. Taxes. Friends shall pay and discharge before delinquency all taxes and assessments which may be levied against it during the terms of this Agreement.
21. Representatives and Notices.
- A. The City Manager, or the City Manager' s designated representative, shall be the representative of the City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of City, called for by this Agreement, except as otherwise expressly provided in this Agreement.
 - B. The President, Vice-President, and Treasurer of the Board of Directors of the Friends shall be the representative of the Friends for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the Friends, called for by this Agreement, except as otherwise expressly provided in this Agreement, after formal action by the Board of Directors.
 - C. All notices and written communications sent by one party to the other shall be personally delivered or sent by registered or certified U. S. Mail, postage prepaid, to the following addresses indicated below. The effective date of any notice or written communications sent by one party to the other shall be the date received if by personal service, or 48 hours after deposit in the U. S. Mail as reflected by the official U. S. postmark. Either party may change its address by giving notice in writing to the other party.

If to City:
City Manager
City of Westminster
8200 Westminster Blvd.
Westminster, California 92683

If to Friends:
President
Friends of the Rose Center
14140 All American Way
Westminster, California 92683

22. Contact Phone and Number. When away from the Theater Complex areas, a designated liaison, who is a corporate officer of the Friends Board, shall return urgent calls from authorized City representatives. The Friends Liaison may maintain a twenty -four (24) hour contact number (answering service or regularly monitored answering machine).
23. Ownership of Center; Public Use. Friends acknowledges that the Site is a public facility for public use, and was designed for use as a multi-use government and recreational facility. Friends further acknowledges that the City, in the design and development of the Site, intended to establish and intends to maintain thereon, a facility open for public use for meetings, conferences, banquets, entertainment, music and cultural events, educational and recreational uses and City business, programs and functions.
24. Independent Contractor. Friends is entering into this Agreement as an independent contractor to provide the services set forth in this Agreement. By entering into this Agreement, Friends acknowledges that it is acquiring no rights whatsoever in the Theater Complex, or any portion thereof, except a nonexclusive and revocable license to enter upon the Theater Complex, if and to the extent reasonably necessary to carry out its obligations pursuant to this Agreement. Friends further agrees that it will not assert, in any legal action or otherwise, any additional right or interest in the Theater Complex, or any portion thereof and will not record any lis pendens or any similar notice of lien against the Theater Complex, or any portion thereof under any circumstances. In no event shall Friends alter or improve any portion of the Theater Complex, except as otherwise expressly permitted under this Agreement.
25. Assignment Prohibited. In acknowledgement of the Site's dedication for public use as set forth herein, Friends expressly agrees that it will not enter into any contract, agreement, engagement, permit, license or authorization for any person or entity to use the Theater Complex, or any portion thereof, for any purpose other than set forth in this agreement. Moreover, Friends shall not sell, transfer, mortgage, hypothecate or otherwise encumber or assign its rights, privileges or obligations, pursuant to the provisions of this contract, nor shall Friends sublet or sublease the Theater Complex in whole or in part without the specific prior written consent of the City. Consent by the City to one assignment, mortgage, hypothecation, encumbrance or sublease shall not be deemed to be a consent to any subsequent assignment, mortgage, hypothecation, encumbrance or sublease. Any such sale, transfer or assignment, or attempted sale, transfer or assignment without written permission from the City may be deemed by the City to constitute a voluntary termination of this Agreement and this Agreement shall thereafter be deemed terminated and void.
26. Independent Contractor. All employees, officers, agents and volunteers serving Friends in connection with this Agreement shall be employees of Friends under the exclusive control and jurisdiction of the Friends unless otherwise authorized by the City in writing. It is expressly understood and agreed that Friends is an independent contractor as distinguished from an employee or agent of the City in the performance of services hereunder. Friends acknowledges the independent contractual relationship and releases the City from any liability or obligation to make deductions or withholding for the

compensation of any officer, agent, employee or volunteer thereof in respect to unemployment, income tax, disability, social security, health, pension or retirement benefits. It is expressly understood that no officer, agent or employee of Friends shall have any status or benefit of a City employee, including health, retirement and worker's compensation benefits. Further, Friends expressly acknowledges its independent contractor status in performing all services under this Agreement and assumes the risk to itself, all agents, employees, volunteers, contractors, subcontractors, their agents or employees, its licensees, permittees and guests, of personal injury or death and all risk of property damage or loss of any property arising out of the performance of any services or the use of the Site, the Theater Complex and support areas during the term of this Agreement.

27. Nondiscrimination. In connection with the execution and performance of this Agreement, Friends shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, marital status, national origin, or because an otherwise qualified person is handicapped.
28. Performance Evaluation. Friends acknowledges that City will have the right to conduct an annual performance evaluation of Friends' compliance and performance under this Agreement. Friends agrees to cooperate in the preparation of said report and to make available to the City Friends' books and records and to supply other information reasonably needed by the City to prepare such report.
29. Noncompetition. Friends, including any of its board members or Theater Management employees shall not open or establish a business within a twenty five (25) mile radius of the Site, which would be in direct competition with the services required to be provided by Friends under this Agreement, without first obtaining the prior written approval of the City. This Agreement not to compete shall be maintained and enforceable for the duration of this Agreement (including any extensions), and for an additional five years thereafter. Each Managing Director hired by Friends to operate and manage the Theater Complex and Shared Use Areas shall acknowledge in writing in his /her employment agreement with the Friends that they are under obligation not to directly compete with the services being provided by the Friends at the Theater Complex as outlined above. Each of those noncompetition agreements shall terminate upon the earlier of five (5) years after that person terminates his /her employment for the Friends, or five years after the Termination of this Agreement between the Friends and the City (including any extensions). The agreement between each of the Theater Management employees and the Friends must be approved in advance by City, and the City shall be specifically named as a third party beneficiary with the right to enforce its terms.
30. Waiver. The waiver by City of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance by City of any fees due hereunder shall not be deemed to be a waiver of any other breach by Friends of any term, covenant, or condition of this Agreement. Nor shall any failure on the part of City to require or exact full and complete compliance with any of the covenants, conditions of this Agreement be construed in any manner to change the terms hereof, nor shall the terms of this Agreement be changed or altered in any manner whatsoever other than by written Agreement of City and Friends. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought referring expressly to this Paragraph. The waiver of any right or remedy in respect to any occurrence or event shall not be

deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

31. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any of the other provisions of this Agreement.
32. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
33. Entire Agreement. This Agreement supersedes any and all other agreements whether oral or written, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matter, and each party to this agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that any other agreement or modification of this Agreement shall be effective only if executed in writing and signed by both the City and the Friends.
34. Attorney's Fees. In the event any legal proceeding is instituted to enforce any term or provision of this Agreement, the prevailing party in said legal proceeding shall be entitled to recover attorneys' fees and costs from the opposing party in an amount determined by a court of competent jurisdiction to be reasonable.
35. Headings. Section and subsection headings are not to be considered part of this Agreement, are included solely for convenience, and are not intended to modify or explain or to be a full or accurate description of the content thereof.
36. Utilities.
 - A. Friends acknowledge that energy consumption related to use of the HVAC is of paramount concern to the City, and that the City has gone to great lengths to reduce energy consumption at the site, including implementation of an automated scheduling system to regulate HVAC usage. Friends and Theater Management shall not modify the HVAC system directly, but shall rely upon the automated HVAC scheduling system to control building temperatures at all times. The HVAC scheduling system shall be programmed to reflect actual, scheduled building usage, and updated by the Friends or Theater Management with each change in occupancy. Neither the Friends nor Theater Management shall override programmed temperature settings. In the event of an HVAC issue, Friends shall immediately notify the City Facilities Manager or designated Facilities staff member, before overriding the scheduling system. An email to IPW-BldgMaint@Westminster-CA.gov shall be considered adequate notice. City shall make every effort to provide Theater Management with an emergency phone number as well. City retains the right to monitor and control HVAC use as needed to ensure proper adherence to this clause. If the City determines, through review of the automated scheduling system and/or on-site visits, that Friends or Theater Management has not adhered to this Section, a meeting will be held with the Friends, Theater Management, and the City Manager or his/her appointee to review and discuss the activities that lead to use of the HVAC system not in compliance with this section. Upon every subsequent documented violation, a \$250 fine shall be issued to the Friends, which will be due and payable within 30 days. Repeated violations and/or failure to pay fines as provided in this Section may result in termination of this Agreement.

B. As between City and Friends only, Friends' utility costs for the Theater Complex, and its portion of the utility costs for the Shared Use Areas, will be paid as hereinafter provided:

- i. Water. City will pay the cost to provide water for the Theater Complex, and Friends' portion of those costs for the Shared Use Areas.
- ii. Electricity. City will pay the cost to provide all electricity charges for the Theater Complex, and Friends' portion of those costs for the Shared Use Areas.
- iii. Gas. City will pay all gas charges for the Theater Complex, and Friends' portion of those costs for the Shared Use Areas.
- iv. City will pay all sewer costs for the Theater Complex, and Friends' portion of those costs for the Shared Use Areas.
- v. Trash Removal. City will pay the regular monthly cost for trash removal from the Theater Complex. Additional trash pick -ups for special events, or related to a specific performance or otherwise, will be paid for by the Friends.
- vi. Security & Fire. All costs incurred related to the monitoring of the Theater Complex and Shared Use Areas security and fire alarm system will be paid by Friends. The Theater Complex shall adhere to all fire code standards, and the Friends shall be responsible for any fees incurred as the result of a fire inspection, and curing of any fire code violations.
- vii. Telephone, Internet, and Computers. All costs incurred by Friends for telephone or internet usage or hardware will be paid for by Friends. At the expiration of this Agreement for any reason, all Friends telephone numbers for the Theater Complex shall remain with the City.
- viii. Computer and Server Costs. All costs for computer servers, workstations or related equipment, whether for their purchase, repair, replacement or maintenance, will be paid for by Friends.
- ix. Other Utilities. All other utilities for the Leased Space will be paid for by Friends.

C. The City, in its sole discretion, may place one or more of the Center's utilities in the City's name. In such event, the Friends and Concessionaire will be invoiced for whatever portion of the utilities for which they are responsible. A copy of the utility invoice will be provided with the City's invoice.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF WESTMINSTER

FRIENDS OF THE ROSE CENTER



BY: EDDIE MANFRO, CITY MANAGER

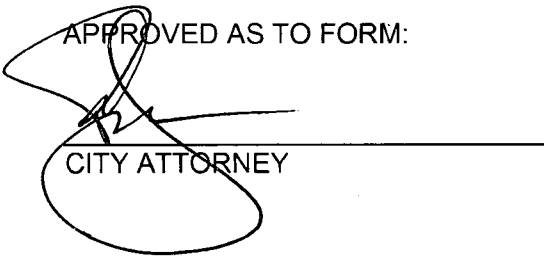
BY: DON ANDERSON, PRESIDENT

ATTEST:



CHRISTINE CORDON, CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY

APPROVED AS TO INSURANCE

DATE: 9/3/19

BY: [Signature]
RISK MANAGEMENT

*Insurance to be renewed by 9/29/19

EXHIBIT A

Map of Facilities -Area of Friends Control

EXHIBIT B

City Equipment

EXHIBIT A – MAP OF FACILITIES, AREAS OF FRIENDS CONTROL AND JOINT USE

Areas noted in orange are considered to be the sole responsibility of the Friends. Areas noted in blue are shared between the Friends and Concessionaire by separate agreement.

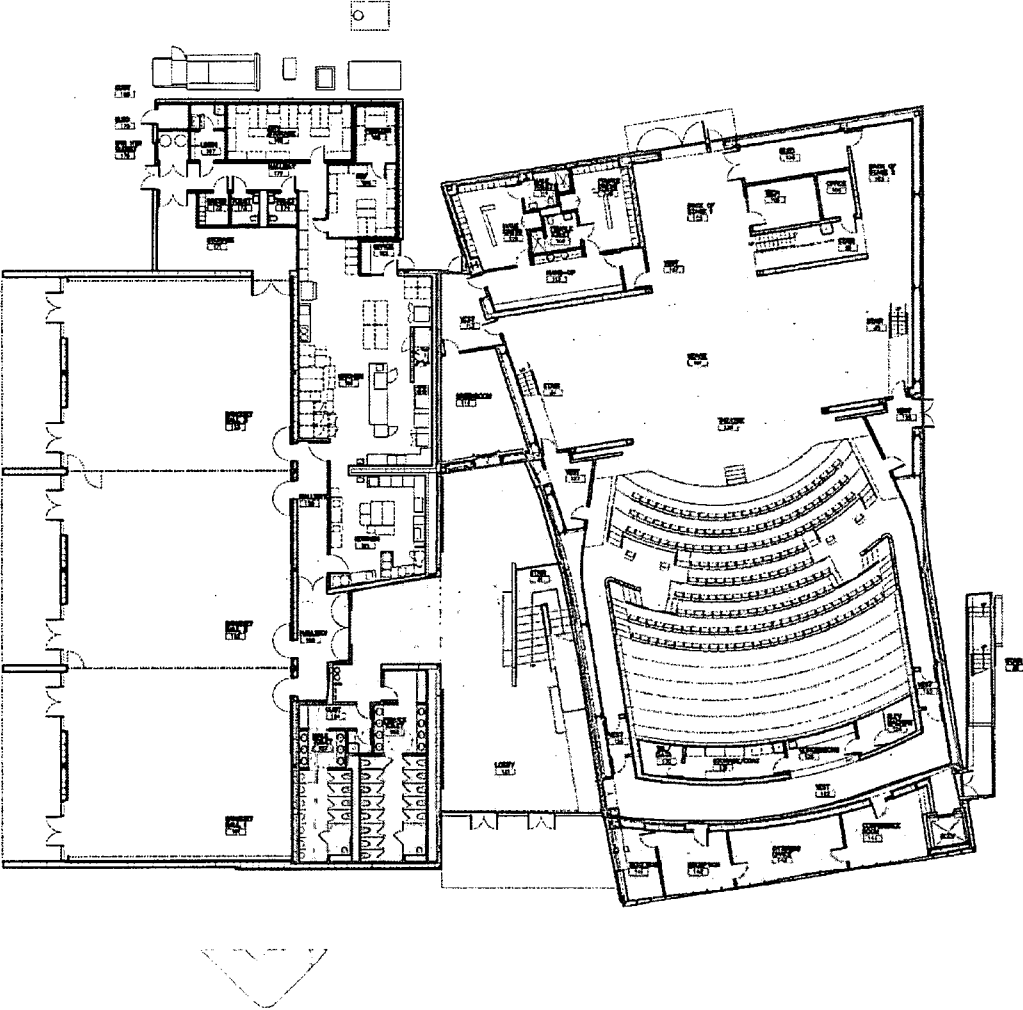


EXHIBIT B – CITY EQUIPMENT

- 10 Lobby Chairs
- 1 podium
- 1 built-in video projector
- Outdoor trash receptacles



301 E Fourth Street, Cincinnati, OH 45202 | (800) 545-4269

PARTICIPATION NUMBER: 394
POLICY NUMBER: 2145200 01

ITEM 1.	
Named Insured:	Friends of Rose Center Theater
Address: (City, State, Zip)	14140 All American Way Westminster, CA 92683

**PARTICIPATION ENDORSEMENT
SPECIAL LIABILITY INSURANCE (SLIP) POLICY DECLARATION**

In return for the payment of the premium, we agree to provide the insurance as stated in this policy.

ITEM 2.	POLICY PERIOD	09/29/2018	09/29/2019
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ITEM 3.	LIMITS OF INSURANCE
A. Per Occurrence Limit (Coverage applies only where checked; Otherwise, no coverage is provided)	LIMIT
(1) Maximum Per Occurrence Limit for all Coverages Combined	\$5,000,000



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
08/30/19

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Alliant Insurance Services, Inc. 1301 Dove Street, Suite 200 Newport Beach, CA 92660	CONTACT NAME: _____	
	PHONE (A/C, No, Ext): _____	FAX (A/C, No): _____
E-MAIL ADDRESS: _____		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: GREAT AMERICAN E&S INSURANCE COMPANY		37532
INSURER B: _____		
INSURER C: _____		
INSURER D: _____		
INSURER E: _____		
INSURER F: _____		


COVERAGES	CERTIFICATE NUMBER:	REVISION NUMBER:
------------------	----------------------------	-------------------------

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GL DED: \$1,000 GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____	X	X	2145200 01	09/29/18	09/29/19	EACH OCCURRENCE \$5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) N/A PERSONAL & ADV INJURY \$5,000,000 GENERAL AGGREGATE N/A* PRODUCTS - COMP/OP AGG \$5,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY AUTO DED: \$1,000			2145200 01	09/29/18	09/29/19	COMBINED SINGLE LIMIT (Ea accident) \$5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED \$ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

ASPECTS REGARDING THE THEATER/ART GALLERY FACILITY MANAGEMENT SERVICES AGREEMENT FOR ONGOING OPERATIONS ON AREAS OF THE CENTER COMMENCING AUGUST 28, 2019 AND CONTINUING THROUGH THE POLICY TERM. THE CITY OF WESTMINSTER, ITS OFFICERS, OFFICIALS, AGENTS, EMPLOYEES AND VOLUNTEERS SHALL BE NAMED AS ADDITIONAL INSURED. ADDITIONAL INSURED ENDORSEMENT ATTACHED. SUBJECT TO POLICY TERMS, CONDITIONS AND EXCLUSIONS.

CERTIFICATE HOLDER CITY OF WESTMINSTER 8200 WESTMINSTER BLVD. WESTMINSTER, CA 92683	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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AGENCY CUSTOMER ID: _____

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page 2 of 3

AGENCY Alliant Insurance Services, Inc.		NAMED INSURED: SPECIAL LIABILITY INSURANCE PROGRAM (SLIP) MEMBER:	
POLICY NUMBER 2145200 01		FRIENDS OF THE ROSE CENTER THEATRE 14140 ALL AMERICAN WAY WESTMINISTER, CA 92683	
CARRIER GREAT AMERICAN E&S INSURANCE COMPANY	NAIC CODE 37532	EFFECTIVE DATE: 09/29/18	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: ACORD 25 (2016/03) **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Notice of cancellation will be delivered only to the participating named insured as stated in Item 1 of the Participation Endorsement.

The Company may cancel the coverage by mailing to the first Participating Named Insured at the address shown in the participation endorsement written notice stating when, not less than sixty (60) days thereafter, such cancellation shall be effective. Provided that the Participating Named Insured fails to discharge, when due, any of its obligations in connection with the payment of premium for the policy or any installment thereof, the coverage may be canceled by the Company by mailing to the Participating Named Insured at the address shown in the participation endorsement, written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Additional Insured - Designated Person or Organization

This endorsement modifies insurance provided under the following:

SPECIAL LIABILITY POLICY FOR PUBLIC ENTITIES AND NON-PROFIT CORPORATIONS

Name of Person or Organization:
Any person or entity that the "Named Insured" has entered into a written agreement, prior to a loss, to provide defense, indemnity or additional insured protection.

The following is added to Section **V. PERSONS OR ENTITIES INSURED:**

Any person(s) or organization(s) listed in the Schedule above is an Additional Insured, but only as respects "Personal Injury" (including "Bodily Injury") and "Property Damage" arising, in whole or in part, out of the operations of the Named Insured. The inclusion of such Additional Insured shall not serve to increase the "Company's" Limit of Liability as specified in the participation endorsement of this Policy:

However, additional insured coverage provided by this insurance will not be broader than coverage required in the written agreement.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Primary and Non-Contributory Coverage Endorsement

This endorsement modifies insurance provided under the following:

SPECIAL LIABILITY POLICY FOR PUBLIC ENTITIES AND NON-PROFIT CORPORATIONS

The following is added to Section **VIII. COMMON POLICY CONDITIONS**:

If insurance similar to this insurance is held by a person or organization that is an additional insured on this policy, this insurance is primary to that other insurance. The "Company" shall not seek contribution from that other insurance for amounts payable under this insurance for liability arising out of the "Participating Named Insured's" ongoing operations performed for that person or organization under a written agreement.

However, the provisions of this endorsement do not apply to a person or organization unless the "Participating Named Insured" had a written agreement with that person or organization requiring:

- a. This insurance be primary insurance;
- b. They be an additional insured on this Policy; and
- c. The written agreement was entered into prior to the date the "Participating Named Insured's" operations for that person or organization commenced.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SUBROGATION

This endorsement modifies insurance provided under the following:

SPECIAL LIABILITY POLICY FOR PUBLIC ENTITIES AND NON-PROFIT CORPORATIONS

The following is added to Section **VIII. COMMON POLICY CONDITIONS:**

(D) Subrogation.

To the extent of any payment hereunder, the "Company" shall be subrogated to all of the "Insured's" rights of recovery, therefore; and the "Insured" shall do nothing after loss to prejudice such rights and shall do everything necessary to secure such rights. Any amount so recovered shall be apportioned as follows:

Any interest, including the "Insured's", having paid an amount in excess of any "Participating Named Insured's" Self- Insured Retention plus the Limit of Liability hereunder shall be reimbursed first to the extent of actual payment. The "Company" shall be reimbursed next to the extent of its actual payment hereunder. If any balance then remains unpaid, it shall be applied to reimburse the "Participating Named Insured". The expenses of all such recovery proceedings shall be apportioned in the ratio of the respective recoveries. If there is no recovery in proceedings conducted solely by the "Insured", it shall bear the expenses thereof. However, the "Company" will waive its right of subrogation against any person or organization for whom the "insured" is performing operations, but only if:

- 1) That person or organization requires in the written agreement with the "Participating Named Insured" that the "Participating Named Insured" waive its right of recovery against that person or organization; and
- 2) The written agreement is made prior to the date of the "Occurrence".