



## **City of Palo Alto City Council Staff Report**

**(ID # 4436)**

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**Report Type: Consent Calendar**

**Meeting Date: 1/27/2014**

**Summary Title: Palo Alto Players Partnership Agreement**

**Title: Approval of a Public-Private Partnership Agreement between the City of Palo Alto and the Palo Alto Players for the Cooperative Use of the Lucie Stern Community Theatre**

**From: City Manager**

**Lead Department: Community Services**

### **RECOMMENDATION**

Staff recommends that the City Council approve the renewal of a public-private partnership agreement between the City of Palo Alto and the Palo Alto Players for cooperative use of the Lucie Stern Community Theatre (Attachment A) for the period September 1, 2013 to August 31, 2014.

### **BACKGROUND**

The Lucie Stern Community Theatre is used by three local theatre companies who produce approximately 15 productions annually. These three companies (the Palo Alto Players, West Bay Opera, and TheatreWorks) partner with the Community Services Department to produce these shows, which foster the cultural and artistic needs of Palo Alto residents and visitors. The City and these companies each benefit from continuing this cooperative relationship.

As of 1974, the Palo Alto Players dissolved their ties with the Parks and Recreation Department, and became an independent company. Since that time, the City has continued to support the Palo Alto Players by providing performance, rehearsal, and shop space at the city-owned Community Theater (also known as the Lucie Stern Theater). During their 2013 – 2014 theatre season, the Palo Alto Players offers six different productions for adults, including musicals, comedies, and historical dramas.

### **DISCUSSION**

The Palo Alto Players' usage of the Lucie Stern Community Theatre is governed by a public-private partnership agreement. Since production scheduling is done interdependently between the three groups, and because the cost of relocating a theatre company is prohibitively high, there exists nearly no opportunity for changing the companies that the Lucie Stern Community Theatre services. Due to these circumstances, staff recommends that the City Council approve the modification of the existing public-private partnership. The key terms of this agreement are discussed below:

Term: The new agreement is for one year effective September 1, 2013 and terminates on August 31, 2014. Similar agreement extensions are intended for subsequent years.

Revenue: In accordance with the Municipal Fee Schedule and in exchange for providing facility usage, the Palo Alto Players shall remit to the City a surcharge in the amount of \$2.00 for each ticket sold. This fee is effectively passed down to patrons and is applied to all subscription, group, individual, promotional, and other tickets sold. Complimentary tickets are excluded, and the sum of the surcharge revenue for each production is due to the City within 30 calendar days after the closing of the production. The City retains roughly \$60,000 per year from this ticket surcharge in total from the three theater partnerships. Among other functions, the proposed agreement acts as a revenue contract which governs the application, collection, and accounting of associated revenue.

Responsibilities of City: The contract outlines the responsibilities of the City using the standard terms of public-private and "joint-venture" partnerships, including specifying goods delivery terms, notice requirements for contract termination, and affirming non-discrimination, insurance, and property guidelines. The City is also responsible for allowing and providing access to the Lucie Stern Community Theatre during designated hours, providing basic maintenance of capital equipment, monitoring production safety, and providing information regarding other scheduled facility uses (such as City-sponsored events or private rentals).

Responsibilities of Company: Additionally, the agreement stipulates the responsibilities of the theatre company, including their duty to abide by City and department policies and procedures (specifically including and as related to, without limitation, conduct in community centers, injury and illness prevention, sale of alcoholic beverages, operations, building emergency procedures, zero waste, and facility use). Other responsibilities include timely remittance of fees and surcharges, requirements for sufficient building supervision/staffing, recordkeeping of ticket sales and surcharge remittance for compliance with audits, and adherence to standard practices for facility security.

This renewed agreement is substantially identical to previous agreements with the exception of

increasing the ticket surcharge from \$1.00 to \$2.00. This increase is implemented as a result of Municipal Fee Schedule adjustments effective 07/01/2010 and 07/01/2011.

### **RESOURCE IMPACT**

No additional City resources are required and it is anticipated that this partnership will lead to enhanced program and capital funding over the life of the agreement.

### **POLICY IMPLICATIONS**

This partnership would be categorized as a public/private partnership under the City's Public-Private Partnership Policy.

#### **Attachments:**

- Palo Alto Players (PDF)
- Public Private Partnership Policy (PDF)

# CITY OF PALO ALTO AND PALO ALTO PLAYERS-PENINSULA CENTER STAGE

## AGREEMENT

BY THIS AGREEMENT MADE AND ENTERED INTO ON THE 3<sup>rd</sup> DAY OF DECEMBER, 2013 BY AND BETWEEN THE CITY OF PALO ALTO ("CITY") AND PALO ALTO PLAYERS-PENINSULA CENTER STAGE ("CORPORATION"), IN CONSIDERATION OF THEIR MUTUAL COVENANTS, THE PARTIES HERETO AGREE AS FOLLOWS:

**CORPORATION** SHALL PROVIDE OR FURNISH THE FOLLOWING SPECIFIED 1) GOODS AND MATERIALS, 2) SERVICES OR 3) A COMBINATION THEREOF AS SPECIFIED IN THE EXHIBITS NAMED BELOW.

**EXHIBITS:** The following attached exhibits are incorporated herein by this reference. Contract is not complete unless all exhibits are attached.

- Exhibit A: Responsibilities of the Corporation
- Exhibit B: Responsibilities of the City
- Exhibit C: General Conditions
- Exhibit D: Non-Discrimination Form
- Exhibit E: Proof of Liability Insurance

**TERM:** The services and/or materials furnished under this agreement shall commence on 9/1/2013 and shall be completed on or before 09/1/2014.

**COMPENSATION:** As compensation for the full performance of this agreement, CORPORATION shall remit fees and surcharges to the CITY in accordance with the prevailing rates set forth in the CITY's Municipal Fee Schedule. Such payments include, but are not limited to, those defined in EXHIBIT A (Section 22) and EXHIBIT C (Section 10) and shall be subject to the terms and conditions set forth herein. In consideration of referenced exhibits, attachments, and appendices, such compensation shall not exceed fifty thousand dollars (\$50,000).

**CITY ACCOUNT NUMBER:** Fees and surcharges remitted pursuant to this agreement shall be credited to the City's accounts included in the table below:

REVENUE TYPE	COST CENTER - GL ACCT - INTERNAL ORDER
Ticket Surcharge	80020412 – 15540 - 61205
Facility Attendant	80020512 – 13450 - 61205

**INVOICING:** Send all invoices to the City of Palo Alto. Such invoices shall be sent to the attention of the Project Manager.

**GENERAL TERMS AND CONDITIONS:** General Terms and Conditions are included on page three of this agreement.

**HOLD HARMLESS.** CORPORATION shall indemnify, defend and hold harmless CITY, its Council Members, officers, employees, and agents from any and all demands, claims or liability of any nature, including wrongful death, caused by or arising out of CORPORATION'S, its officers', directors', employees' or agents' negligent acts, errors, or omissions, or willful misconduct, or conduct for which the law imposes strict liability on CORPORATION in the performance of or failure to perform this agreement by CORPORATION.

**ENTIRE AGREEMENT.** This agreement and the terms and conditions on the following pages represent the entire agreement between the parties with respect to the purchase and sale of the goods, equipment, materials or supplies or payment for services which may be the subject of this agreement. All prior agreements, representations, statements, negotiations and undertakings whether oral or written are superseded hereby.

THIS AGREEMENT SHALL BECOME EFFECTIVE UPON ITS APPROVAL AND EXECUTION BY CITY. IN WITNESS THEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT THE DAY, MONTH, AND YEAR FIRST WRITTEN ABOVE.

By: \_\_\_\_\_ Date \_\_\_\_\_  
Peter Bliznick  
Executive Director  
Palo Alto Players Peninsula Center Stage

By: \_\_\_\_\_ Date \_\_\_\_\_  
Judge Luckey  
Manager Arts, Children's Theatre  
Community Services Department  
City of Palo Alto

**CITY OF PALO ALTO APPROVALS:**

CITY DEPARTMENT Been  Budgeted  (1)	<input type="checkbox"/> Funds Have	PURCHASING & CONTRACT ADMINISTRATION INSURANCE REVIEW  (2)	APPROVAL OVER \$25,000  (3) PURCHASING MANAGER
APPROVAL OVER \$25,000		APPROVAL OVER \$85,000	
CITY OF PALO ALTO  BY: _____ CITY ATTORNEY		ATTEST:  BY: _____ MAYOR CITY CLERK	

# CITY OF PALO ALTO - GENERAL TERMS AND CONDITIONS

**A. ACCEPTANCE.** This agreement is limited to the terms and conditions on pages 1, 2, and 3 hereof which includes any exhibits referenced.

**B. GOVERNING LAW.** This agreement shall be governed by the laws of the state of California.

**C. INTEREST OF CORPORATION.** It is understood and agreed that this agreement is not a contract of employment in the sense that the relation of master and servant exists between the CITY and undersigned. At all times CORPORATION shall be deemed to be an independent contractor and CORPORATION is not authorized to bind CITY to any contracts or other obligations. In executing this agreement, CORPORATION certifies that no one who has or will have any financial interest under this agreement is an officer or employee of CITY.

**D. INSURANCE.** CORPORATION agrees to provide the insurance specified in the "Insurance Requirements" form attached hereto as Exhibit C. In the event CORPORATION is unable to secure a policy endorsement naming the City of Palo Alto as an additional insured under any comprehensive general liability or comprehensive automobile policy or policies, CORPORATION shall at a minimum, and only with the written approval of City's Risk Manager or designee, cause each such insurance policy obtained by it to contain an endorsement providing that the insurer waives all right of recovery by way of subrogation against CITY, its officers, agents, and employees in connection with any damage, claim, liability personal injury, or wrongful death covered by any such policy. Each such policy obtained by CORPORATION shall contain an endorsement requiring thirty (30) days' written notice from the insurer to CITY before cancellation or reduction in the coverage or limits of such policy. CORPORATION shall provide certificates of such policies or other evidence of coverage satisfactory to City's Risk

**J. NON-DISCRIMINATION.** No discrimination shall be made in the employment of persons under this agreement because of the race, color, national origin, age, ancestry, religion or sex of such person. CORPORATION agrees to meet all requirements of the Palo Alto Municipal Code pertaining to nondiscrimination in employment, including completing the NonDiscrimination Compliance Form, attached hereto as Exhibit D, and incorporated herein by this reference.

**K. WARRANTY.** CORPORATION expressly warrants that all materials and services covered by this agreement shall conform to the specifications, requirements, instructions, or other descriptions upon which this agreement is based, shall be fit and sufficient for the purpose intended, of good materials and workmanship and free from defect and that materials and services of CORPORATION'S design will be free from defect in design. Inspection, test, acceptance, payment or use of the goods furnished hereunder shall not affect the CORPORATION'S obligation under this warranty, and such warranties shall survive inspection, test acceptance and use. CORPORATION agrees to replace, restore, or correct defects of any materials or services not conforming to the foregoing warranty promptly. Without expense to CITY, when notified of such nonconformity by CITY, in the event of failure by CORPORATION to correct defects in or replace nonconforming goods or service promptly, CITY, after reasonable notice to CORPORATION, may make such corrections or replace such materials or services and charge contractor for the cost incurred by the CITY thereby.

**L. WORKERS' COMPENSATION.** CORPORATION, by executing this agreement, certifies that it is aware of the provisions of the labor code of the state of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and certifies that it will comply with such provisions before commencing the performance of the work of this agreement.

Manager, together with evidence of payment of premiums, to CITY at the commencement of this agreement, and on renewal of the policy, or policies, not later than twenty (20) days before expiration of the terms of any such policy.

**E. TERMINATION.** This agreement may be terminated by CITY upon ten (10) days written notice to CORPORATION. Monies then owing based upon work satisfactorily accomplished shall be paid to CORPORATION.

**F. CHANGES.** This agreement shall not be assigned or transferred without the written consent of the CITY. No changes or variations of any kind are authorized without the written consent of the City Manager or his or her designee.

**G. AUDITS.** CORPORATION agrees to permit CITY to audit, at any reasonable time during the term of this agreement and for three (3) years thereafter, CORPORATION'S records pertaining to matters covered by this agreement. CORPORATION further agrees to maintain such records for at least three (3) years after the term of this agreement.

**H. NO IMPLIED WAIVER.** No payment, partial payment, acceptance, or partial acceptance by CITY shall operate as a waiver on the part of CITY of any of its rights under this agreement.

**I. CITY'S PROPERTY.** Title to CITY's property furnished to CORPORATION shall remain in the CITY. CORPORATION shall not alter or use property for any purpose, other than that specified by CITY, or for any other person without the prior written consent of CITY. CORPORATION shall store, protect, preserve, repair and maintain such property in accordance with sound professional practice, all at CORPORATION's expense.

## **M. PRICE TERMS.**

(a) Extra charges, invoices and payment. No extra charges of any kind will be allowed unless specifically agreed to in writing by CITY. All state and federal excise, sales and use taxes shall be stated separately on the invoices.

(b) Transportation charges. Any transportation charges with respect to which CORPORATION is entitled to receive reimbursement shall be added to CORPORATION'S invoice as a separate item, with the receipted freight bill attached thereto.

(c) CORPORATION warrants that the prices for materials or services sold to CITY under this agreement are not less favorable than those currently extended to any other customers of the same or like articles or services in equal or less quantities. In event CORPORATION reduces its price for such materials or services during the term of this agreement, CORPORATION agrees to reduce the prices or rates hereof correspondingly.

**N. SCHEDULES OR DELIVERY.** Time is of the essence of this agreement. CORPORATION agrees to comply with the specific schedule provided by the CITY or agreed upon herein without delay and without anticipating CITY'S requirements. CORPORATION also agrees not to make material commitments or scheduling arrangements in excess of the required amount or in advance of the time necessary to meet the schedule(s) of this agreement, if any.

**O. TRANSPORTATION, PACKAGING & LABELING.** All materials or services are to be provided: (a) F.O.B., Palo Alto unless otherwise specified; (b) with a packing list enclosed in cartons, which indicate the agreement number, exact quantity and descriptions, concerning any materials shipments; (c) and comply with current packaging and labeling requirements prescribed by D.O.T.

## **EXHIBIT A**

### **RESPONSIBILITIES OF THE CORPORATION**

(1) Abide by the policies/procedures established by CITY and CITY'S Arts and Sciences Division and the Department of Community Services for the use of CITY facilities, equipment, costumes, props, furniture, scenery and other production elements. These shall include, but are not limited to, Regulations Of The City Of Palo Alto Regarding Prohibited Conduct In Community Centers and Theaters (Appendix A), the City of Palo Alto Injury and Prevention program (Appendix B), Policy for Sale of Alcoholic Beverages (Appendix C), Operations Manual (Appendix D), Safety Procedures and Guidelines (Appendix E), Building Emergency Procedures (Appendix F), procedure for adjusting the forestage height including use of the Scissor lift (Appendix G), House Manager's Guide (Appendix H), Zero Waste Plan (Appendix I), and Costume Room Guidelines (Appendix J). 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, etc.

(2) Obtain, supervise, and pay all necessary related fees for the services of all professional assistance needed to produce such productions. Such assistance may include, but is not limited to the following: Production Directors, all Designers, Carpenters, Painters, Production Assistants, Music Directors, Choreographers, Musicians and other Front of House, Artistic or Administrative personnel.

(3) Pay all fees and costs for materials, supplies, scripts, royalties, licenses and other fees and expenses connected with said productions, including all make-up removal supplies.

(4) Be solely responsible for the control and supervision of all production activities and personnel connected therewith and shall notify all personnel of their obligations and responsibilities pertaining to their production area. Act responsibly in matters of building security when CORPORATION is scheduled to utilize CITY facilities.

(5) Conduct regularly scheduled production meetings, shall notify CITY of such production meetings in writing, and shall coordinate all production activities with CITY'S Project Manager or his/her designee. There shall be at least one or more, as needed, production design meeting(s) for each production as scheduled in ATTACHMENT 1 which shall be convened by CORPORATION at a mutually convenient time prior to start of construction. Provide the Project Manager or his/her designee with a list of major production personnel and their phone numbers for each production at the time of the first production meeting. Construction plans and fly-line plots should be submitted at the aforementioned production design meeting in order for the Project Manager or his/her designee to ascertain compliance with CITY fire or other safety regulations.

(6) Provide the Project Manager or his/her designee with a list of all pyrotechnics effects (including the use of open flames), all hydro technical effects, all use of fog or haze, all loud noises (i.e. gunshots), and all use of strobe lights at least 21 days prior to first use on stage. No flames shall be permitted on stage without the required fire permits from CITY. Smoking by any of the actors on stage as an integral part of the production will be considered a pyrotechnic effect. Safety precautions approved by a CITY Fire Inspector and the Project Manager or his/her

designee will be taken when smoking is occurring on stage, and the audience shall be notified beforehand that smoking, loud noises (i.e. gunshots) or use of strobe lights will occur on the stage. All Fire Department fees for "Open Flame Permits" and "Candles and Open Flames in Assembly Areas Permits" shall be the responsibility of the CORPORATION.

(7) Provide the Project Manager with the rehearsal schedule, performance schedule, shop schedule and any requests for the use of CITY facilities (including but not limited to the Community Theatre, rooms located in the Lucie Stern complex and the Lucie Stern Courtyard and patio) for any purpose. Space reservations should be made at least four weeks in advance. CORPORATION shall accommodate other uses of the theatre facility, including but not limited to the stage, auditorium, rehearsal hall, scene shop, paint shop, flat dock, and costume shop, during periods of non-use during the runs of the productions. CITY shall notify the CORPORATION. CORPORATION shall provide personnel for any shifting of CORPORATION'S scenery and/or equipment.

(8) Designate as Project Director for the length of this contract an employee or sub-contractor to manage or supervise all areas and items in this contract, including production, technical, house personnel and any and all support groups and to be CORPORATION'S liaison with the Project Manager or his/her designee in all matters relating to the CITY in any way.

(9) Arrange for auditions and casting for such productions and be solely responsible for the supervision and control of all performers. With respect to casting, CORPORATION shall have sole discretion to choose and approve the qualifications and select the cast. In personnel decisions, the CORPORATION shall agree to and comply with the provisions of the CITY'S Non-discrimination Policy (Exhibit 8).

(10) Search for, place and train participants in appropriate areas of theatre production activity and shall utilize personnel in a safe and effective manner in the presentation of such productions. CORPORATION shall be solely responsible for the control and supervision of such participants and shall indemnify, defend, and hold harmless the CITY from any claims or liabilities arising from the acts or omissions of such personnel. All such personnel shall be deemed the sole agents and employees of CORPORATION and shall be notified by the CORPORATION of this circumstance.

(11) Exercise safe practices in the use of CITY facilities and equipment, shall maintain and clear work areas, and shall within 24 hours report, with form provided by CITY (Appendix K), information regarding accidents. Immediately report to the Project Manager or his/her designee on 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.). CORPORATION shall not attempt repair of CITY equipment without prior consultation with the CITY'S Project Manager. CORPORATION shall immediately discontinue any activity where an unsafe or dangerous condition exists. CORPORATION shall train and supervise CORPORATION'S staff and volunteers on safe theatre practices and adhere to CITY'S safety procedures and guidelines. If, in the opinion of any CITY or CORPORATION employee, CORPORATION is conducting an activity in an unsafe manner, CORPORATION 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.

(12) Promote and publicize all of its productions, and shall print in all publicity, including, but not limited to, publications, mailings, flyers, posters, brochures, programs, and



paid or public service advertising, the statement, "In cooperation with the City of Palo Alto Community Services Department Division of Arts and Sciences." In conformance with Americans with Disabilities Act (ADA) of 1990 guidelines and requirements, CORPORATION shall bear responsibility for providing appropriate auxiliary aids, interpretive services and accommodations where they are necessary to achieve an equal opportunity to participate in and enjoy the benefits of public performances produced under this contract. 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)."

(13) Continue to exist as an independent, non-profit corporation under the laws of the United States and the State of California.

(14) Submit all signs or displays to be located on the Theatre premises to Project Manager or his/her designee for approval at the first production meeting. All displays may be put up at load-in and must be removed during strike. Inside the Theatre, no display materials may be placed upon stucco walls. Lobby displays may only be placed 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 Theatre or in the Stern 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 cannot 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 easily removed for limited periods during photography shoots, special events, or building maintenance.

(15) Assure that the auditorium, stage, paint shop, scene shop, flat dock, costume shop, green room, dressing rooms, rehearsal hall, hallways and outdoor areas adjacent to theatre and shop will be cleared and clean, and that scenery, properties, and other production elements will be disassembled and stored, to the Project Manager or his/her designee's satisfaction, within six hours after the final performance or on a time schedule mutually agreed upon between the CORPORATION and the Project Manager or his/her designee. The stage shall always be returned to its basic set-up as established by the Project Manager or his/her designee unless there is a mutual agreement with the incoming group that has been approved by the Project Manager or his/her designee. All items on the STRIKE 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 STRIKE CHECKLIST form at the completion of the strike to signify acceptance of clean and neat facilities.

(16) Leave storage, paint, scene and costume spaces clean and clear of CORPORATION'S materials other than those materials necessary for the ongoing maintenance and repair of the sets and costumes by the Monday following opening performance.

(17) Leave all spaces clear, clean and orderly at the end of each use. Rehearsal Hall is to be cleared of all materials, except major set pieces and any rehearsal props, after each daily use. Rehearsal Hall is to be completely cleared within 24 hours of final use. Dressing rooms are to be maintained after each daily use. Trash, recycling and compostable materials are to be

removed from all areas daily. Recyclables and compostable materials are to be placed in the recycling and composting carts near the trash dumpster and garbage and trash are to be placed into the dumpster. The CORPORATION is required to reduce waste, reuse and recycle per the CITY's Zero Waste Plan (Appendix I). Office space and hallways are to 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 personnel.

(18) Enforce current regulations as established by CITY with regard to smoking, food and drink in CITY facilities (Appendix A). CORPORATION shall provide ushers at all previews and performances who will 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 the Project Manager or his/her designee. 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. CORPORATION shall clean up all food and drink containers daily after use.

(19) Observe all provisions of this agreement when using CITY facilities other than or in addition to the Community Theatre. This includes cleaning up the rooms, returning tables and chairs to their initial locations and depositing all trash and recycling in the appropriate receptacles. CORPORATION will be responsible for the maintenance of the Lucie Stern-Recreation Wing restrooms for weekend performances.

(20) Comply with CITY TB test requirement for employees and volunteers of CORPORATION at any time the CITY Risk Manager deems it necessary. If minors are involved in the production, State of California requirements for fingerprinting the staff must be followed.

(21) Comply with CITY sound ordinance levels for any outdoor activities, including load-in, strike, dismantling, or disposal. Shop doors facing Hopkins and Harriet Streets shall be closed between 8:00 p.m. and 8:00 a.m.

(22) Pay Building Attendant fees at prevailing rates as set forth in the Municipal Fee Schedule:

(a) For (an) additional Attendant(s) required for the use of CITY facilities other than the Attendant the CITY will furnish for the Lucie Stern Community Theatre facility for the period of from one hour prior to until at least one half hour after the completion of each public performance as listed in ATTACHMENT 1.

(b) For any performances not included in ATTACHMENT 1.

(c) When using other CITY facilities at the same time as a public performance as listed in ATTACHMENT 1.

All building use policies must be adhered to for any CITY facility use.

Additional performances of the productions listed in ATTACHMENT 1 may be added to ATTACHMENT 1 with two weeks notice.

(23) Provide house manager and ushers for every performance or event whenever public is in attendance. CORPORATION shall permit only persons who have been trained in theatre emergency, safety and use procedures to usher. CORPORATION shall submit a list of their trained personnel to the Project Manager prior to public performances for each production. Ushers must be available to assist patrons under all circumstances and must be aware of and able to assist disabled persons. The CORPORATION'S House Manager and ushers must also be available to assist in emergency situations throughout the entire performance until 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.

(24) Shall be responsible for installing or removing the removable auditorium seats in designated areas to accommodate their wheelchair patrons and as required due to the needs of the production.

(25) Shall have privilege of borrowing available Community Theatre-owned properties, sets, costumes and scenery for productions scheduled in this agreement. Costumes, properties and sets created by CORPORATION with CORPORATION-owned materials will remain the property of CORPORATION, and shall be removed from the theatre facility at the conclusion of the production in which the materials are used. The Project Manager or his/her designee may, on a case-by-case basis, authorize exceptions. Any allowed items stored at the theatre will become available for use by all contracting CORPORATIONS and the CITY. All such items created under former agreements will continue to be the property of the CITY. All office equipment, construction tools, special effects and lighting equipment purchased and owned by CORPORATION will remain the private property of CORPORATION 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 CORPORATION is the responsibility of the CORPORATION and/or its subcontractors, and the CITY assumes no responsibility or liability for its maintenance or loss. Such items as original play scripts, musical scores, scenic designs, costume designs and photographs belong solely to the authors, composers, artists who created them or their representatives, and any use of them will be at the sole discretion of the CORPORATION. Any use of these items must be in accordance with all applicable laws. CORPORATION assumes all liability and responsibility for any default on production expenses.

(26) Shall be required to replace or have repaired by factory authorized technicians CITY owned equipment, instruments or materials identified by the Project Manager or his/her designee as having been lost, damaged or destroyed by an agent of the CORPORATION. A written report must be made on CITY form whenever CITY equipment is lost, damaged, or destroyed by the CORPORATION.

(27) May be allowed the use of Community Theatre-owned properties, sets, costumes, scenery, furniture and equipment for CORPORATION productions not scheduled in this agreement upon written request to the Project Manager or his/her designee and upon express approval and written authorization of the Project Manager or his/her designee. CORPORATION must return to Community Theatre all items borrowed for productions at other venues within four days of the final performance and shall, in the event the items are damaged or destroyed, be

responsible for the repair or replacement of all such borrowed items to the satisfaction of the Project Manager.

(28) May use Community Theatre facilities and equipment only for theatre productions expressly covered under this agreement. Exceptions, such as for classes, camps or workshops, will be considered by the Project Manager or his/her designee upon the receipt from the CORPORATION of a written request at least thirty days prior to the date needed and, if granted, will be approved in writing by the Project Manager or his/her designee. No such activity will be advertised or promoted until it has been expressly approved by the CITY'S Project Manager.

(29) Shall enforce all State and City laws relating to the sale and consumption of alcoholic beverages in CITY facilities. Alcohol is permitted at the Lucie Stern Community Center if approved by the CITY'S Project Manager. Unless otherwise specifically permitted the only alcoholic beverages which may be sold or served at CITY facilities by CITY policy are wines, including champagne and sparkling wine. If alcoholic beverages are to be sold or distributed free of charge, CORPORATION must possess a State A.B.C. The permit for the sale or distribution of alcoholic beverages obtained by the CORPORATION must be provided to the Project Manager. Proof of liquor liability insurance where CITY is named as co-insured with liability of at least one million dollars (\$1,000,000.00) shall be required. Permits are to be displayed as required by law. It is the responsibility of the CORPORATION to ensure that no alcoholic beverage is served to a minor. Identification must be checked if the person appears to be under thirty years of age. CORPORATION shall remove all items, including cups, glasses, bottles, napkins and food from the lobby and any other affected areas, including the courtyard, after each performance. CORPORATION is required to adhere to CITY'S Recycling and Zero Waste Program (Appendix I).

(30) Shall have one of their designated and CITY approved key and/or proximity card holders on the premises at all times as a supervisor whenever anyone from the CORPORATION is in the facility working for the CORPORATION, whether as a paid employee, subcontractor or volunteer. The Project Manager or his/her designee must approve any exceptions in writing.

(31) Shall not in any way modify CITY facilities and may not install or attach anything in or on CITY facilities without having first submitted a written request to the Project Manager and having received written permission from the Project Manager or his/her designee. The approval of the Project Manager does not relieve the CORPORATION from any responsibility to obtain necessary CITY permits or Building Department approvals for the modification. Any violation shall result in the CORPORATION being charged for all repairs necessary to restore the facility to its original condition and any additional costs pertaining to the restoration of CITY property.

(32) Shall immediately report to the police any incidents of a criminal or suspicious nature occurring on CITY property and notify the Project Manager or his/her designee within twelve hours. If initial notification is verbal, it must also be submitted in writing to Project Manager or his/her designee on provided form.

(33) Shall make sure 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 Lucie Stern Community Theatre, are not left open, unlocked or left with the locking mechanism disabled at any time when the immediate area secured by the door is unoccupied by the CORPORATION, even if only briefly. Failure to do this may result in greater restricted access to the Lucie Stern

Community Theatre, including the possible forfeiture of keys/proximity cards by the CORPORATION and/or restricted access times.

(34) Must fill out a CITY Report of Accident/Property Damage report (Appendix K) for any and all accidents, injuries or property damage if a CITY employee is not present to fill out the report.

(35) Must operate and conduct business in compliance with the CITY's Zero Waste Plan (Appendix I) for all activities including, but not limited to, set construction and strike, food and beverage service, and office activities. The CITY Recycling Program can assist with resources for achieving this goal. The goal is to send as little waste to landfill as possible through waste reduction, reuse and recycling. To achieve this goal CORPORATION must first reduce waste whenever possible.

(36) Shall avoid the use of disposables and shall not use Styrofoam™ and other plastics for food/beverage service. Reusable food/beverage service ware should be utilized to the maximum extent possible. Where a reusable food/beverage service option is not available, choose items that are recyclable. For concessions, choose product packaging that is recyclable.

(37) Must practice reuse before, during and after production. A list of reuse resources will be provided to avoid the disposal of construction materials, sets and props. CORPORATION must recycle construction debris from set materials (e.g. wood, metal).

(38) Must 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.

(39) Include on the title page, or other prominent place, of all production and event programs: 1) the official City of Palo Alto logo, to be obtained from Project Manager, and 2) 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." The City of Palo Alto, Community Services Department, Division of Arts and Sciences shall also be credited in the CORPORATION's list of funders, at a level that reflects the annual subsidy provided by the CITY.

## **EXHIBIT B RESPONSIBILITIES OF THE CITY**

(1) Allow CORPORATION the use of the Community Theatre Rehearsal Hall, Costume Room, Scene Shop, Paint Shop, Stage, Auditorium, Light/Sound Booth, designated work space, etc. as scheduled in ATTACHMENT 1 for the preparation and presentation of theatre productions performed under this agreement provided that CORPORATION submits specific rehearsal schedules, performance schedules and shop use schedules. CORPORATION shall be required to comply with all CITY policies. Any use of CITY facilities and equipment other than that listed in this contract but necessary to carry out this contract must be scheduled through and approved in advance by the Project Manager or his/her designee.

(2) Allow the use of the auditorium and the stage for performances and brush-up rehearsals on the following schedule:

No performance shall begin earlier than 9:00 a.m. nor end later than midnight. In no event shall CORPORATION conduct rehearsals or other activities, or otherwise occupy CITY facilities from 12 midnight to 8:00 a.m. unless prior written permission is obtained from the Project Manager or a designated employee of the CITY is on site. CORPORATION shall observe all facility security rules and regulations as established by CITY (Appendix A).

(3) Allow the use of the stage and the auditorium prior to the opening night of such productions according to the production schedule set forth in ATTACHMENT 1. Allow the use of the rehearsal hall, box office, scene shop, paint shop and costume shop according to the schedule as set forth in ATTACHMENT 1. Additional facility use may be provided as specified in item (Exhibit B (1); Exhibit A (28)) above; however, priority use of the room will always be given to actual rehearsals of productions covered by a contract with the CITY. The CITY will not be responsible for obtaining additional space, but may assist in locating other CITY spaces and may act as co-sponsor for use of CITY facilities under appropriate circumstances. Payment as specified in the CITY's Municipal Fee Schedule will need to be made for any productions/performances/events/other uses that are not included as a part of ATTACHMENT 1. CORPORATION will forfeit the right to any additional reservations of CITY facilities should CORPORATION reserve space which is not used. CITY reserves the right to allow other uses of space when not in actual, scheduled use by CORPORATION.

(4) Provide the Project Manager or his/her designee with a list of all planned activities utilizing theatre Stage and Auditorium during said periods. This information is to be provided to the Project Manager or his/her designee in production design meetings

(5) Allow CORPORATION to use all operational production equipment in CITY'S Community Theatre inventory as requested by CORPORATION and approved in writing by CITY. CORPORATION takes 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. The CORPORATION will assist the CITY in keeping the inventory of tools, equipment, instruments and production materials up-to-date so that all theatre users may benefit from the use of these materials.

(6) Monitor all aspects of production relative to safety (Appendix E). If the Project Manager or any designee(s) deem(s) that any procedure followed by CORPORATION is unsafe, he or she has the authority to immediately stop such procedure. The CITY and CORPORATION will work together to prevent or quickly mitigate any fire hazards or any items identified by the Fire Department during facility inspections.

(7) Provide maintenance of CITY facilities and equipment, replacement lamps for lighting equipment and blades for table power tools, but not hand power tools. CITY shall respond with reasonable speed to make necessary repairs hereunder.

(8) Provide persons designated by CORPORATION and approved by the Project Manager or his/her designee with keys, proximity cards (up to a maximum of six), and alarm codes for access to Lucie Stern Community Theatre facilities solely for the purpose of carrying out the requirements of this agreement. Keys, proximity cards, and alarm codes shall not be loaned or transferred and shall only be used by the designated persons. In the event that CORPORATION 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 occasion. In the event that a designated key holder loses any key or proximity card issued by CITY the CORPORATION 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 the facility if circumstances indicate it as determined by the CITY. CORPORATION will be responsible and held accountable for all personnel, properties and activities of CORPORATION. CORPORATION will be responsible and held accountable for all CITY facility and equipment damages or loss due to negligence.

(9) Have the right to, with no notice; suspend this contract if the building should be declared uninhabitable for reasons of safety by the proper authorities. (i.e. 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 will not assume any financial responsibility for loss of revenue by the CORPORATION. If the Lucie Stern Community Theatre is not available due to earthquake, other disaster, or safety related issues, CITY will not assume any financial responsibility for loss of revenue by the CORPORATION.

## **EXHIBIT C GENERAL CONDITIONS**

(1) CITY. The Manager Arts-Children's Theatre is designated the Project Manager for CITY, who shall render overall supervision of the progress and performance of this agreement by CITY. All services herein agreed in this contract to be performed by CITY shall be under the overall supervision of the Project Manager or his/her designee. Contractor shall go through Project Manager or his/her designee in all matters dealing with CITY policies, funding, facilities, equipment and other CITY departments outside the Community Theatre.

(2) CORPORATION. CORPORATION shall assign a single Project Director who shall have overall responsibility for the progress and execution of this agreement by CORPORATION. Should circumstances or condition subsequent to the execution of this agreement require a substitute Project Director, CORPORATION shall notify CITY immediately of such occurrence. The Project Director shall be responsible for all actions of the CORPORATION, including their support groups and volunteers. The Project Director shall also be responsible for all communication and information to and from CITY and CORPORATION'S personnel, including their support groups.

(3) ACCESS. CORPORATION shall not prevent the Project Manager, facility maintenance personnel, and others specifically designated by the Project Manager from free and easy access to all CITY facilities. The Project Manager and others specifically designated by the Project Manager shall attempt to coordinate such access if possible.

(4) SPECIFIC SERVICES. CORPORATION shall provide all specified services as set forth herein, for the presentation of the 2013-2014 Season's productions as listed in and on the dates specified in ATTACHMENT 1.

(5) PRODUCTION CHANGES. CORPORATION may make changes to its productions within the guidelines of the author or his/her representative.

(6) SCHEDULING. CORPORATION may change production scheduling or locations for the purpose of increasing its net revenue and/or audience base, provided that such changes shall not diminish the quality of or access to such offerings by Palo Alto residents. Such changes shall be subject to CITY policies and procedures for space reservation and requests for changes are to be submitted in writing to the Project Manager for approval before any such changes are made.

(7) FISCAL YEAR DEFINED. The term "fiscal year" shall mean July 1 to June 30, although CORPORATION is not required to use the same period for its own record-keeping and reporting purposes.

(8) DAYS DEFINED. The term "days" shall mean calendar days.



(9) QUALIFICATIONS. CORPORATION represents that it is qualified to furnish the services described under this agreement and shall be responsible for the performance of this agreement.

(10) TICKET SALES:

(a) CORPORATION budget for the term of this agreement is attached hereto, marked "ATTACHMENT 2" and incorporated herein by reference as though fully set forth.

(b) CORPORATION 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 theatre box office one hour prior to each performance. CORPORATION shall not pre-sell seat numbers C1, C2, D1, D2, D3, and D4. CORPORATION shall also not pre-sell either the block of seats T2, T4, T6, T8, T10, U2, U4, U6, U8 and U10 or the block of seats T1, T3, T5, T7, T9, U1, U3, U5, U7, and U9 but shall hold one of these blocks of seats for disabled seating priorities. Said unsold seats may be released for sale one hour prior to performance.

(c) CORPORATION agrees the price of admission for the season shall be as set forth in ATTACHMENT 3.

(d) CORPORATION shall remit to CITY a surcharge for each ticket sold of \$2.00 for each and every ticket sold either through subscription, group, individual, promotional or any other means. The surcharge of two dollars (\$2.00) per ticket sold is due within 60 calendar days after the closing date of the production. "Sold" is to include any tickets given in exchange for monetary consideration. There will be a 10% surcharge levied for payments received between 61 days and 90 days after the closing date of the production; a 15% surcharge levied for payments received between 91 days and 120 days after the closing date of the production; and a 20% surcharge levied for payments received in excess of 121 days of the closing date of the production. Payment must be accompanied by the production report.

(e) CORPORATION shall provide CITY, when requested by the 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.

(f) CORPORATION may operate an intermission snack concession during each performance under this agreement. CORPORATION shall conduct such operation in a safe, clean manner and shall hold CITY harmless from any claim or demand of liability of any nature whatsoever which may arise out of such operation. If alcoholic beverages are to be sold or distributed free of charge, CORPORATION shall have on display a California State A.B.C. Permit and provide the Project Manager with proof of liquor liability where CITY is named as co-insured with liability of at least one million dollars (\$1,000,000.00) (See Exhibit A (29) above). It is the responsibility of the

CORPORATION to ensure that no alcoholic beverage is served to a minor by checking I.D.'s if the person appears to be under thirty years of age. Food and drink may not be taken into the Auditorium or the Light/Sound Booth at any time. CORPORATION shall remove all cups, glasses, bottles, napkins and food from the lobby, green room, and any other affected areas, including the courtyard, after each performance. CORPORATION is required to adhere to CITY'S Zero Waste Plan (Appendix I).

(11) ORGANIZATION OF CORPORATION.

(a) Composition of Corporation. Throughout the term of this agreement, CORPORATION shall remain an independent, non-profit corporation under the laws of California governed solely by a Board of Directors. Any changes in CORPORATION'S Articles of Incorporation, By-Laws, or tax-exempt status shall be reported by CORPORATION immediately to the Project Manager. Not more than twenty-five percent (25%) of the persons serving on the governing board of CORPORATION may be interested persons. "Interested persons" means any person currently being compensated by the CORPORATION for services rendered to it, whether as a full or part-time employee, independent or otherwise, but excluding any reasonable compensation paid to a director as director.

(b) Meetings of Corporation. All meetings of the Board of Directors of CORPORATION shall be open to the public, except meetings, or portions thereof, dealing with personnel or litigation matters. Project Manager will serve as CITY liaison to CORPORATION'S Board of Directors. Project Manager shall be notified 21 (twenty-one) days in advance of the dates, times, and locations of all Board of Directors meetings. CORPORATION shall provide CITY with names, addresses and telephone numbers of CORPORATION Board members, as well as your Board's meeting schedule (ATTACHMENT 4) to be attached to this agreement prior to its final approval. CORPORATION shall provide an updated roster of Board of Directors as changes may occur.

(12) FISCAL RESPONSIBILITIES OF CORPORATION.

(a) Fiscal Agent. CORPORATION shall appoint a fiscal agent who shall be responsible for the financial and accounting activities of CORPORATION, including the receipt and disbursement of CORPORATION funds. CORPORATION shall provide CITY with the name of fiscal agent (ATTACHMENT 5) and notify the Project Manager within 24 hours of any changes occurring during the contract period. CORPORATION shall have sole responsibility for the safekeeping of CORPORATION tickets and monies.

(b) Fiscal Monitor. CORPORATION shall appoint from its Board an individual who no less than monthly shall review and by signature acknowledge each monthly financial report.

(c) System of Accounts. CORPORATION 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 appropriate CITY staff.

(d) Financial Record. In support of its system of accounts, CORPORATION 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. These records shall be made available to the CITY upon request. NOTE: CORPORATION currency is not to be stored on the theatre premises.

(e) Audits. CORPORATION shall provide for independent audit of its fiscal year transactions, records, and financial reports. The audit shall be at the discretion of CITY and, if required, shall be done by a certified public accountant. The certified public accountant shall submit the report to both parties. The cost of this audit will be borne by CORPORATION.

(f) Audit of surcharge payments. Corporation shall retain for a period of at least three years ticket stubs, sales records, and a verified report of sold and unsold tickets which must be made available to the city of Palo Alto Auditor upon request.

(13) PRODUCTION REPORTS AND RECORDS.

(a) Production Reports. CORPORATION shall keep accurate records of and shall file with Project Manager or his/her designee Production Reports within thirty (30) calendar days following the closing of each production, listing number of performances, ticket sales, expense/revenue, number of paid and volunteer participants and paid and volunteer participant hours worked. Each report shall be prepared on the form provided by CITY or on a form approved by the Project Manager. CORPORATION shall make every reasonable effort to supply such other information as the Project Manager and/or CITY Auditor may request. On reasonable notice and with reasons specified, CORPORATION shall grant the Project Manager and/or CITY Auditor access to all CORPORATION records relating to this agreement, including performance records, data, statements, and reports.

(b) Evaluation of services. CORPORATION shall furnish all data, statements, records, information, and reports requested by CITY to monitor, review, and evaluate the performance of CORPORATION'S services hereunder.

(c) A copy of CORPORATION'S most recently filed California State Tax Form 199, "California Exempt Organizations Annual Information Return" must be filed with the Project Manager or his/her designee within fifteen 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 6).

(14) CORRECTIVE ACTION REQUIREMENT. Notwithstanding the requirements of this agreement, in the event CITY should determine from any source, including but not limited to reports submitted by CORPORATION under this agreement or any evaluation report from any source, that there is a condition which requires correction, CITY may forward to CORPORATION a request for corrective action. Such request shall indicate the nature of the condition(s) or issue(s) which require(s) corrective action and may include a recommendation as to appropriate corrective action. Within fifteen (15) days of CITY'S request, CORPORATION shall submit its response which shall include its view of the problem and proposed action, if any. Upon request of either party, the parties shall meet within five (5) days thereafter to discuss the problem and proposed corrective action.

(15) RIGHT TO SUSPEND OR TERMINATE. Either party may suspend or terminate the agreement for any reason by giving thirty (30) days' written notice to the other party. Upon the expiration of such notice, performance of the services hereunder shall be immediately discontinued.

(16) SURRENDER OF MATERIALS. Upon suspension or termination, CORPORATION shall immediately turn over to CITY all keys and proximity cards issued by CITY, copies of studies, reports, and other data, whether or not completed, prepared by CORPORATION or its subcontractors, if any, in connection with this agreement. Such materials shall become the property of CITY. CORPORATION, however, shall not be liable for CITY'S use of incomplete materials nor for CITY'S use of complete documents if used for other than the services contemplated by this agreement.

(17) CONTRACTS WITH OTHER AGENCIES. CORPORATION agrees not to enter into any contract or agreement with another person or agency that will materially interfere with or inhibit the full performance of the services to be provided by CORPORATION under this agreement. CORPORATION agrees to terminate as soon as legally possible any contract or agreement which will materially interfere with or inhibit the full performance of the services to be provided by CORPORATION to CITY under this agreement. Nothing herein is intended to prohibit CORPORATION from applying for, and receiving, supplementary funding from other than CITY sources so long as any agreement required for such funding does not materially interfere with or inhibit the full performance of the services to be provided by CORPORATION under this agreement. CORPORATION is specifically encouraged to seek such supplementary funding.

(18) INTEREST OF CORPORATION. CORPORATION covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CORPORATION further covenants that, in the performance of this agreement, no subcontractor or person having such an interest shall be employed. It is expressly agreed that, in the performance of the services hereunder, CORPORATION shall at all times be deemed an independent contractor and not an agent or employee of CITY.

(19) ASSIGNMENT. Both parties shall give their personal attention to the faithful performance of this agreement and shall not assign, transfer, convey, or otherwise dispose of this agreement or any right, title, or interest in or to the same or any part thereof without the prior written consent of the other party, and then only subject to such terms and conditions as the other party may require. Consent to one assignment shall not be deemed to be consent to any subsequent assignment. Any assignment without such approval shall be void and at the option of the other party, shall terminate this agreement and any license or privilege granted herein. This agreement and interest herein shall not be assignable by operation of law without the prior written consent of the other party.

(20) SUBCONTRACTORS: EMPLOYEES. CORPORATION shall be responsible for employing or engaging all persons necessary to perform the services of CORPORATION hereunder. No subcontractor of CORPORATION will be recognized by CITY as such, rather, all subcontractors are deemed to be employees of CORPORATION and it agrees to be responsible for their performance. CORPORATION shall give its personal attention to the fulfillment of the provisions of this agreement by all of its employees, participants, volunteers, and subcontractors, if any, and shall keep the work under its control.

(21) INDEMNITY. CORPORATION hereby agrees to indemnify and hold harmless CITY, its officers, agents, and employees of and from:

(a) Any and all claims and demands which may be made against CITY, its officers, agents, or employees by reason of any injury to or death of any person or damage suffered or sustained by any person or corporation caused by, or alleged to have been caused by, any act or omission, negligent or otherwise, of CORPORATION, its officers, employees, agents, participants, volunteers, or any subcontractor under this agreement or of any of subcontractor's employees or agents.

(b) Any and all damage to, loss or destruction of the property of CITY, its officers, agents, or employees occupied or used by or in the care, custody, or control of CORPORATION caused by any act or omission, negligent or otherwise, of CORPORATION, its officers, employees, agents, participants, volunteers or any subcontractor under this agreement.

(c) Any and all claims and demands which may be made against CITY, its officers, agents, or employees by reason of any injury to or death of or damage suffered or sustained by any employee, participant, volunteer, or agent of CORPORATION or any subcontractor under this agreement, however caused, excepting, however, any such claims and demands which are the result of the sole negligence or willful misconduct of CITY, its officers, agents or employees.

(d) Any and all claims and demands which may be 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 CORPORATION or any subcontractor under this agreement.

(e) Any and all penalties imposed or damages sought on account of the violation of any law or regulation or of any term or condition of any permit in connection with this Agreement.

(f) CORPORATION at its own cost, expense and risk shall defend any and all suits, actions, or other legal proceedings that may be brought or instituted by third persons against CITY, its officers, agents, or employees on any such claim or demand referred to in Paragraphs (a), (b), (c) and (d) above, of such third persons, or to enforce any penalty referred to in Paragraph (e) above and pay and satisfy any judgment or decree that may be rendered against CITY, its officers, agents, or employees in any such suit, action, or other legal proceeding.

(g) Any and all claims and demands which may be made against CITY, its officers, agents or employees for any loss or damage to materials and equipment owned, rented or borrowed by CORPORATION, its employees, subcontractors, participants, volunteers, sponsors or any others under its project management.

(22) INTOXICATION. CORPORATION agrees to be responsible for injuries or damage caused by any of its employees, agents, patrons, subcontractors, or volunteers under the influence of alcohol, drugs, hallucinogens or narcotics, whether or not legally prescribed. CORPORATION as well as CITY shall not permit any of CORPORATION'S employees or volunteers discovered to be under the influence from remaining in any facility used under the terms of this contract and CITY reserves the right of denying such persons further participation in Theatre activities. Consumption of alcoholic beverages or use of illegal drugs is expressly forbidden by any person working for the CORPORATION, paid or volunteer. This includes all staff, actors, crew and musicians while at the Lucie Stern Community Center or any other CITY facility.

(23) WORKER'S COMPENSATION. CORPORATION 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 or to undertake self insurance in accordance with the provisions of the code, and it certifies that it will comply with such provisions before commencing the performance of the work of this agreement.

(24) INSURANCE. CORPORATION, at its sole cost and expense, shall obtain and maintain in full force and effect throughout the entire term of this agreement insurance coverage insuring not only Contractor and its subcontractors, if any, but also, with the exception of workers' compensation and employer's liability insurance, CITY, its officers, agents, and employees and each of them. CITY is to be named as co-insured with liability coverage of at least one million dollars (\$1,000,000.00) to be attached to this agreement prior to its final approval.

Certificates of such insurance shall be filed with CITY concurrently with the execution of this agreement. Said certificate shall be subject to the approval of the City Attorney and shall contain an endorsement stating that said insurance is primary coverage and will not be canceled or altered by the insurer except after filing with the City Clerk

thirty (30) days' written notice of such cancellation or alteration. Current certificates of such insurance shall be kept on file at all times during the term of this agreement.(25)

WEAPONS. No firearms or other weapons, whether loaded or not, shall be allowed in the Lucie Stern Community Theatre or on 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 the CORPORATION'S stage manager or his/her designee. (Please reference the CITY'S Danger Policy, Appendix K)

(26) LEGAL COMPLIANCE. CORPORATION and all its paid employees, subcontractors, and volunteer participants are required to abide by all Federal, State and Local laws and ordinances.

**EXHIBIT D**  
**NON-DISCRIMINATION FORM**

**Certification of Nondiscrimination:**

As suppliers of goods or services to the City of Palo Alto, the firm and individuals listed below certify that they do not discriminate in employment with regards to age, race, color, religion, sex, national origin, ancestry, disability, or sexual preference; that they are in compliance with all Federal, State, and local directives and executive orders regarding nondiscrimination in employment.

**THE INFORMATION HEREIN IS CERTIFIED CORRECT BY SIGNATURE(S) BELOW.**

Firm: \_\_\_\_\_

Signature:

\_\_\_\_\_

Name: \_\_\_\_\_

Signature:

\_\_\_\_\_

Name: \_\_\_\_\_

*Note: California Corporations Code Section 313 requires two corporate officers to execute contracts.*

*\*The signature of First Officer\* must be one of the following: Chairman of the Board; President; or Vice President.*

*\*\*The signature of the Second Officer\*\* must be one of the following: Secretary; Assistant Secretary; Chief Financial Officer; or Assistant Treasurer.*

(In the alternative, a certified corporate resolution attesting to the signatory authority of the individuals signing in their respective capacities is acceptable)



## 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, **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	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY - 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
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 SUBCONSULTANTS, 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 DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND

B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY.

C. DEDUCTIBLE AMOUNTS IN EXCESS OF \$5,000 REQUIRE CITY'S PRIOR APPROVAL.

II. CONTACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.

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

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 INSURED.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURED 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 INSURED, 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 ISSUING COMPANY 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 ISSUING COMPANY 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**

**POLICY AND PROCEDURES 1-25/MGR**  
**REVISED: AUGUST 2007**

**PUBLIC/PRIVATE PARTNERSHIPS**

**POLICY STATEMENT**

The City of Palo Alto encourages the formation of public/private partnerships for the benefits the community receives. For the purposes of this policy, “public/private” also encompasses “public/nonprofit” partnerships.

**Definitions**

*Public/private partnership:* A public/private partnership is an agreement between the City and a nonprofit or private organization to provide services or to assist in funding of public facilities and programs. Such partnerships may take various forms, including:

- Acceptance of or solicitation of service or facility proposals
- Facilitation of such proposals through the City's regulatory process
- Waiver of City General Fund fees to help reduce project costs.
- Contributions of City matching funds for construction of facilities to be owned and controlled or operated by the City.
- Provision of facilities to the private partner at no charge or at a subsidized rent.

Public/private partnerships typically fall into one of three categories: co-sponsorship, alliances or joint ventures.

*Co-Sponsorships:* This is the most common type of public/private partnership. An organization furthers the mission of the City by supporting a City activity or program in conjunction with pursuit of that organization’s own mission or program. Co-sponsorships can take the form of one-time events or annual agreements. Some examples of co-sponsorships include the Palo Alto Tennis Club use of City courts to provide a youth tennis program and American Youth Soccer Organization’s use of space in a City facility to train referees. Co-sponsorships are entered into by staff and normally have no or minimal financial impact.

*Alliances:* This type of public/private partnership involves organizations that have been created for the sole purpose of supporting a City program or an array of City programs. The organization does not expect to receive any direct financial benefit or to alter City policy and/or operations, but undertakes to work closely and cooperatively with staff to implement City goals. Alliance organizations include the Recreation Foundation, the Art Center Foundation (Project Look or Cultural Kaleidoscope), the Friends of the Children’s Theatre (the Magic Castle), the Library Foundation and the Friends of the Palo Alto Library (financial assistance with the renovation and expansion of the Children’s Library). Alliances are approved by the Council if there are any staffing or budgetary implications to the partnership.

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*Joint Ventures:* This type of partnership involves organizations which have programs or missions independent of the City and involve the City entering into a contractual relationship with the public or nonprofit organization with both parties contributing to the partnership for their mutual benefit. Each joint venture is uniquely negotiated by the staff and approved by the City Council. Examples of Joint Ventures include TheatreWorks, Palo Alto Players and West Bay Opera's use of the Community Theatre and use of the former police station by older adult service provider, Avenidas.

**PROCEDURES**

*Initiation of partnerships:* Public/private partnerships may be initiated in one of three ways:

- By staff: Staff identifies an opportunity for such a partnership and undertakes an informal or formal request for proposal process to identify partners.
- By Council: The City Council directs staff to work with a private or nonprofit organization to develop such a partnership.
- By a private or nonprofit organization: An organization makes a partnership proposal to the staff or City.

*City Manager Review:* If the partnership proposal involves more than one City department, the City Manager's Office will appoint a team with representatives of all City departments who are stakeholders in the partnership proposal. The team will analyze the proposal and inform the City Manager of the resource implications of the proposal, including staffing and monetary commitments. This would include proposed fee waivers. If the proposal will require a re-ordering of department priorities that have already been approved by the Council in setting its annual priorities or in the budget process, Council approval will be required prior to commitment to the partnership. Council approval will also be required if the partnership requires a new or adjusted allocation of operating or capital funding. Note: Co-sponsorships usually only involve a single department and do not necessitate the formation of an interdepartmental committee, the involvement of the City Manager's Office or the approval of the City Council.

*City-Initiated Partnerships:* Such partnerships will be guided by existing policies and procedures governing purchasing and outsourcing, using "requests for proposals" and/or bid processes as the method of initiating a partnership. A City-initiated partnership may incorporate incentives including naming rights, waiver of non-enterprise fund building and planning fees, reduced lease rates, free use of space, subsidies, and staff resources. All incentives may be negotiated on a case-by-case basis.

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*Evaluation of Viability of Partnering Organization:* Staff will provide the City Manager and/or City Council with its assessment of the viability of the proposed partnership, based on the partnering organization's possession of sound organizational, administrative and fiscal management, and its demonstrated experience to achieve and sustain project tasks, such as fundraising and building community support. For proposed facility improvement or expansion initiatives, the nonprofit or private organization should have the ability and commitment to make a substantial pledge to the project's cost.

### *Facilities Proposals:*

- If a City facility is to be renovated, expanded or otherwise be directly affected by the partnership, the Infrastructure Management Plan will have to be adjusted appropriately.
- Long-term staffing, operational and maintenance costs must be identified in the proposal. The project's applicable costs and funding sources for furnishings, fixtures and equipment will be identified.
- The parties will negotiate the joint or separate financial responsibility for any project cost overruns on a project-by-project basis.
- Staff may recommend that any standard City processing or use fee authorized under the Municipal Fee Schedule, excluding fees and charges levied by City of Palo Alto Utilities or other City enterprise fund programs, should be waived as a condition of the City's participation. Waiver of fees may be granted by the Council and limited to those fees associated with a construction or capital improvement project which, upon its completion, results in a new or improved public facility, building or park, or some portion thereof, that will be solely owned or controlled by the City. In the event that only a portion of a construction or capital improvement project will result in a new or improved City facility, building or park, or portion thereof, then the Council may waive only that portion of any associated fee directly relating to the construction, improvement or enhancement of the City facility, building or park. As appropriate, the summary and recommendation in the report to the Council will include a staff recommendation on waiving fees which the Council can approve or reject.
- The City will determine whether the nonprofit or private organization shall use or may forego a formal or informal competitive selection process in the hiring of professionals who will perform the management, design and/or construction phases of the project. The City shall review and approve the requirements for and the performance of all phases of design, planning and construction work for the project.