

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: The Honorable City Council

FROM: Jessica Sandifer, Senior Management Analyst

DATE: June 17, 2015 (CC Meeting of 07/01/15)

SUBJECT: Consider Renewal of Operating Agreement for the High Street Arts Center with the Moorpark Foundation for the Arts



BACKGROUND

The Redevelopment Agency of the City of Moorpark (Agency) acquired the High Street Arts Center at 45 High Street ("HSAC") on August 1, 2005, in an effort to preserve a venue for live performances in the downtown. On February 1, 2012 the State of California eliminated Redevelopment Agencies and responsibility for Agency assets fell to the Successor Agency to the Redevelopment Agency of the City of Moorpark (Successor Agency). On June 6, 2012, the Successor Agency approved an operating agreement with the Moorpark Foundation for the Arts (Foundation) for a three year term beginning in July 2012. The Agreement is set to expire on June 30, 2015. On July 1, 2015, the Successor Agency transferred the properties at 45 High Street, 33 High Street and 782 Moorpark Avenue to the City of Moorpark for management and disposal in accordance with the adopted Long Range Property Management Plan. Since the properties have been transferred to the City, the City Council is the proper reviewing authority for the Operating Agreement.

The Foundation was established in September 2009 by the City of Moorpark and the Foundation has since become independent of the City both administratively and financially. The purpose of the Foundation is to support and promote the growth and enjoyment of the performing and visual arts in the City of Moorpark. The Foundation is continuously seeking and securing funding through private donations, private and public grants, and other available sources to provide financial support to the High Street Arts Center and reduce the required financial contribution from the City of Moorpark. The Foundation also makes financial assistance available to diverse groups and individuals within our community, encouraging access and participation in the visual and performing arts.

DISCUSSION

The terms of the new Operating Agreement are generally the same as the previous Agreement with a few notable changes:

- **City Payment:** Under the new Operating Agreement the City will no longer provide a financial subsidy to the Foundation. During the two full fiscal years of reporting the Foundation demonstrated great success with operation of the HSAC. The Foundation has increased attendance, increased revenue and created increased interest in the HSAC. Due to the success of the Foundation and the City's budget constraints for Fiscal Year 2015/16, it was recommended that the subsidy to the Foundation be reduced to \$0. To offset the loss of the subsidy, the City is allowing the Foundation to rent the property at 33 High Street for \$1/year, rather than \$600/month that they currently pay. The building at 33 High Street has proven an important asset to the Foundations operations and operation of the HSAC.
- **Facility Use:** Under the new Operating Agreement 33 High Street has been included within the facilities used by the Foundation for operations at the HSAC. A clause has also been included to account for the need for the City to terminate the use by the Foundation of the building at 782 Moorpark Avenue upon execution of a Disposition and Development Agreement with the Area Housing Authority for construction of an affordable housing project on the site.

With the noted changes, the City will continue to provide major maintenance and repairs to the HSAC, 33 High Street and 782 Moorpark Avenue; the City will now provide solid waste and recycling services, in addition to and phone and internet service with reimbursement by the Foundation; and the City will continue to maintain liability insurance. The Foundation is still required to produce a minimum of 5 main stage productions, conduct one youth musical theater camp, make the HSAC available to the City of Moorpark for 8 events each fiscal year, including Moorpark Has Talent and the Arts Festival, and report to the City semi-annually on their progress.

FISCAL IMPACT

The previous Operating Agreement cost the City \$46,700, when considering the financial contribution, maintenance and insurance costs. These costs were partially offset by the \$7,200 in rent revenue received for 33 High Street making the net cost to the City \$39,500. The new Operating Agreement will cost the City approximately \$21,700 for maintenance and insurance representing a net savings to the City of \$17,800. Funding has been included within the FY 2015/16 budget for these costs. It's important to remember that due to the age of the Arts Center Building, there may be a need for more significant expenditures for items such as roof repair, major plumbing repairs and repairs to the building's heating and air conditioning systems. Staff would

return to City Council for funding for these repairs if they should occur in the future. As a result of the new Operating Agreement, the City will also lose rent revenue of \$7,200 for 33 High Street.

STAFF RECOMMENDATION

Approve Operating Agreement with the Moorpark Foundation for the Arts, for a three-year term beginning July 1, 2015, and authorize the City Manager to sign the Agreement, subject to final language approval of the City Manager.

Attachment: Agreement

ATTACHMENT 1

OPERATING AGREEMENT

THIS OPERATING AGREEMENT (hereinafter "Agreement") is made and entered into as of this _____ day of _____, 2015, by and between the City of Moorpark, a municipal corporation, (hereinafter the "City"), and the Moorpark Foundation for the Arts, a California non-profit corporation under the IRS code 501 (c) 3, (hereinafter the "Foundation").

FINDINGS:

1. The Successor Agency of the Redevelopment Agency of the City of Moorpark (Successor Agency) at its regular meeting on June 6, 2012, authorized the City Manager to sign a three-year operating agreement between the City and the Foundation for operation of the High Street Arts Center (HSAC); and
2. The Successor Agency at its regular meeting on July 1, 2015, authorized the transfer of the HSAC to the City of Moorpark, consistent with the approved Long Range Property Management Plan; and
3. The City Council at its regular meeting on July 1, 2015, authorized the City Manager to renew the three-year operating agreement between the City and the Foundation for operation of the HSAC.

NOW, THEREFORE, in consideration of the mutual covenants, benefits, and premises herein stated, the parties hereto agree as follows:

SECTION 1. OPERATING AUTHORITY

City hereby agrees and authorizes the Foundation to operate as hereinafter provided, the HSAC located at 45 East High Street as a performing arts venue. This Agreement shall also include use of 33 High Street for office and rehearsal space for the Foundation's activities relevant to operation of the HSAC and the City's warehouse building located at 782 Moorpark Avenue (Old Fire Station) for storage of costumes, props, and equipment. When the provisions of this agreement apply to both the HSAC, 33 High Street, and the Old Fire Station, the term Premises may be used. Foundation acknowledges that 782 Moorpark Avenue is pending sale to a developer. Upon completion of the sale of the property, City will provide no less than 60-days' notice to vacate the premises. Pursuant to Section 8, no relocation benefits will be provided upon termination of the use of 782 Moorpark Avenue.

Based on availability and prior written approval by the City Manager, Foundation may also have use of the Apricot Room at the Moorpark Community Center located at 799 Moorpark Avenue, when necessary for performer auditions or rehearsals on Mondays through Fridays between 4:00 p.m. and 9:00 p.m. or other dates and times as approved, in writing, by the City Manager or the City Manager's designee, not including City holidays, at no cost provided no City personnel are required to be available for such use. This Agreement also acknowledges that the public parking available along High Street and in the public parking lots accessible from High Street may be used but will not be

reserved for HSAC events, and other public use of the public parking areas may occur and affect the availability of parking for patrons at HSAC events.

SECTION 2. TERM

The term of this Agreement shall commence on the 1st day of July, 2015, and all terms and conditions of the Agreement shall continue for a three (3) year term to the 30th day of June, 2018, with the exception of the use at 782 Moorpark Avenue which may be terminated as described in Section 1. On or after July 1, 2016, either party may terminate this Agreement with no less than sixty (60) days written notice, except for termination for default as described in Section 13.

SECTION 3. OPTION TO EXTEND TERM

Foundation and City shall have the option to approve a written amendment to this Agreement to extend the term up to a maximum of an additional three (3) years to June 30, 2021. The parties shall provide notification in writing of the intent to approve an amendment to extend this Agreement no less than sixty (60) days prior to the end of the term of this Agreement on June 30, 2018.

SECTION 4. RENT

Foundation shall pay City, without abatement, deduction or offset, rent in the amount of One Dollar (\$1.00) per year for use of Premises, payable in advance on or before the 1st of July each year of the rental term.

City acknowledges that Foundation has already paid the City a One Thousand Dollar (\$1,000.00) security deposit for 33 High Street.

SECTION 5. REPORTING

Foundation shall continue to provide a written Semi-Annual Financial and Activity Report due to the City by January 31 and July 31 of each year. The report shall include but not be limited to revenues from box office sales, concession and rental fees, a list of rentals, attendance at all events, all expenses and other information that may be requested by the City Manager.

SECTION 6. INDEMNIFICATION AND HOLD HARMLESS

To the fullest extent permitted by law, Foundation shall, at Foundation's sole expense and with legal counsel reasonably acceptable to City, defend, indemnify, and hold harmless City and City's officers, employees, and agents from and against all claims (including demands, losses, actions, causes of action, damages, liabilities, expenses, charges, assessments, fines or penalties of any kind, and costs including consultant and expert fees, court costs, and legal counsel's fees) from any cause, arising out of or relating (directly or indirectly) to this Agreement, the tenancy created under this Agreement, or the Premises, including without limitation:

1. The use of occupancy, or manner of use or occupancy, of the Premises or Building by the Foundation;
2. Any act, error, omission, or negligence of Foundation or of any subtenant, invitee, guest, contractor, or licensee of Foundation or any subtenant in, on, or about the Real Property;
3. Foundation's conducting of its business;
4. Any alterations, activities, work, or things done, omitted, permitted, allowed, or suffered by Foundation in, at, or about the Premises or Building, including the violation of or failure to comply with any applicable laws, statutes, ordinances, standards, rules, regulations, orders, decrees, or judgments in existence on the Agreement Commencement Date or enacted, promulgated, or issued after the date of this Agreement;
5. Any breach or default in performance of any obligation on Foundation's part to be performed under this Agreement, whether before or during the Agreement Term or after its expiration or earlier termination
6. This indemnification extends to and includes, without limitation, claims for:
 - a. Injury to any persons (including death at any time resulting from that injury);
 - b. Loss of, injury or damage to, or destruction of property (including loss of use at any time resulting from that loss, injury, damage, or destruction); and
 - c. All economic losses and consequential or resulting damage or any kind.

Foundation's indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement until all claims against Agency involving any of the indemnified matters are fully, finally, and absolutely barred by the applicable statutes of limitation. Agency does not and shall not waive any rights that it may have against Foundation by this Section, because of the acceptance by Agency, or deposit with Agency, of any insurance policy or certificate required pursuant to this Agreement.

SECTION 7. USE AND OBLIGATIONS OF THE FOUNDATION

Foundation shall use the HSAC for Foundation and performing arts, film and other entertainment or training purposes only, including rentals for these purposes, including but not limited to a minimum of five (5), main stage productions during each season and a minimum of one (1) youth musical theater program each year (July 1 – June 30). The Foundation will continue to present diversified programming including music and film. Certain events and performances may be co-sponsored by the City at its sole discretion. If an event or performance is co-sponsored by City, at City's further discretion, such event or performance may be promoted through use of City's electronic message boards, advertising in the City's Quarterly Recreation Guide, inserts in solid waste collection bills, notices on the City's Government Access Channel, and a link from the City's website. The HSAC marquee shall be used only to display

advertising messages for events to be held at the HSAC including private rentals and co-productions. For the required main stage and youth theater productions, the Foundation is allowed to post banners at the entrance to Arroyo Vista Community Park and Campus Canyon Park. Banners for each of the required main stage productions may be posted a maximum of four (4) weeks, either consecutively or in two (2) week increments, but in no event will banners be posted more than one (1) week prior to the first performance. Foundation will submit written notification to the City indicating dates for banner posting and removal for each production. The size of the Foundation's banners will comply with the City's sign ordinance for temporary signs and banners.

The Foundation shall continue to make the HSAC available for private rentals based on availability without discriminating on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or gender of such person or any other protected class. Such rentals shall adhere to the same standards required of the Foundation.

The Foundation shall make every effort to provide the highest level of customer service including a prompt response to verbal or written contact, including telephone calls and emails, maintaining a clean and safe environment, and providing courteous staff and volunteers.

The Foundation shall contract for the services of an HSAC General Manager and provide for any other staffing necessary to operate the HSAC at no cost to the City. Foundation shall provide the City with a twenty-four (24)-hour emergency contact number.

To the greatest extent possible, all productions, presentations, exhibitions, and motion pictures shall be suitable for general audiences of all ages. In no event shall the Foundation permit the exhibition of adult type motion pictures that are rated "NC-17", "X", "XX", or "XXX" or higher, as such ratings are now or hereafter in effect, or similarly rated under any other rating system. Motion pictures that are not rated may be allowed after preview and approval by the Foundation for confirmation that the motion picture does not fall within the ratings referenced above.

The Foundation will make the HSAC including lighting and sound staff available at no cost to the City for up to eight (8) special community events each year, which may include the "Moorpark Has Talent" Show, entertainment for the Annual Arts Festival, entertainment during Country Days, City Library events and other activities as the City may authorize, such as City-hosted training events or meetings. Foundation shall fund prizes for "Moorpark Has Talent" at a minimum level of one thousand two hundred dollars (\$1,200.00). The City shall receive all revenue from any City event or activity as described herein.

The Foundation shall retain all revenues from the operation of the HSAC Theatrical Season, rentals, and special events, including all box office revenues, season ticket sales, Musical Theater Camp registration fees, and revenues from concessions and playbill ads.

The Foundation shall not have naming rights for the HSAC building; however, the Foundation may sell other sponsorship opportunities, such as theater seat sponsorships as a fund-raiser, provided it is acknowledged that such sponsorships shall expire upon termination of this Agreement. Sponsorship shall not include any signage on the exterior of the HSAC building.

The Foundation shall have exclusive use of Theater Equipment as provided in Exhibit B. Theater Equipment shall include sound, stage, and lighting equipment, and other equipment including concession equipment. The Premises shall not be used for any other purpose, except with the prior written consent of the City Manager, which consent may be withheld by the City Manager at his/her sole and absolute discretion.

The Foundation shall have exclusive use of Information Technology and telephone equipment as provided in Exhibit C. Information Technology and telephone equipment shall include computers, switches, wireless equipment, radios, telephone equipment, printers, credit card machines, and projector. The Foundation is solely responsible for maintenance and replacement of all equipment identified in Exhibit C and for any additional Information Technology or telephone equipment necessary to operate the HSAC.

The Foundation shall continuously maintain 501(c)3 non-profit organization status during the term, and any extended terms, of the Agreement. The Foundation acknowledges that maintaining non-profit status is a material consideration for entering into this Agreement and as such, failure to maintain such non-profit status shall be considered a breach of this Agreement and subject to the remedies provided for in this Agreement.

SECTION 8. NOTICE OF NON-ELIGIBILITY FOR RELOCATION BENEFITS

Please read this notification carefully prior to signing this Agreement and moving into the property. The Successor Agency of the Redevelopment Agency of the City of Moorpark acquired the property located at 782 Moorpark Avenue and 33 High Street for redevelopment purposes. The Property has subsequently been transferred to the City of Moorpark. As a post-acquisition tenant, you will not be eligible for relocation benefits under the federal and State Law. This notice is to inform you of the following information **before you enter into any agreement and occupy a unit at the above address:**

1. You may be displaced at the end of Agreement term.
2. You may be subject to a rent increase upon Agreement renewal or option to extend the Agreement term.
3. You will not be entitled to any relocation benefits.

If you have to move or your rent is increased, you will not be reimbursed for any such rent increase or for any costs or expenses incurred by you in connection with a move.

SECTION 9. DISPOSITION OF THEATER EQUIPMENT

Upon commencement of the prior Agreement, an inventory of the Theater Equipment included in Exhibits B and C ("Equipment") was made and the inventory confirmed and the condition of all Equipment was documented, as mutually agreed upon in writing by City and Foundation. At the termination of the Agreement, the Equipment shall be returned to the City in good condition with consideration given for normal wear and tear. The Foundation agrees to surrender to City any Information Technology Equipment that is no longer required, and City shall determine disposition of such returned Equipment.

The Foundation shall advise the City of the type and value of any equipment to be purchased by the Foundation to supplement, upgrade or replace original Theater Equipment, including but not limited to theater lighting instruments, sound and lighting equipment, sound and lighting control equipment, and stage rigging. City authorization shall be required prior to installation. Upon termination of this Agreement, Theater Equipment purchased by the Foundation shall be itemized in writing, and with City written concurrence, the Foundation shall be permitted to remove and retain any such Equipment with a value of one thousand dollars (\$1,000.00) or more, if removal of the Equipment will not result in a building repair cost of similar value due to damage caused by the removal.

SECTION 10. UTILITIES

City agrees to provide solid waste and recycling services to the Premises at no cost to Foundation. City also agrees to provide a wireless internet access point for public internet access for the HSAC.

City shall also provide monthly telephone service for the seven (7) telephone and data lines currently active at the HSAC and shall pay monthly invoices for said service. Foundation shall reimburse City for telephone service costs paid by City on a quarterly basis upon receipt of City invoices. Telephone service reimbursement invoices shall not include a City administrative fee

Foundation agrees to pay all monthly service charges for any other utilities not mentioned above which may be furnished to or used at the Premises by Foundation during the Term of this Agreement, including but not limited to electric current, internet service costs and alarm costs for the HSAC and the City's warehouse building located at 782 Moorpark Avenue (old Fire Station) currently used for storage of costumes, props and equipment, and 33 High Street.

It is further agreed that in the event Foundation shall fail to pay the above mentioned charges when due, City shall have the right to pay the same on demand, together with any interest thereon and any other fees that may be owed. The City shall be reimbursed by the Foundation within five (5) days of notice from City for the amount of payment plus any interest or fees, with an additional fifteen percent (15%) administrative fee. Failure to pay monthly service

charges for any above-mentioned utility in a timely fashion shall be cause for termination of this Agreement.

SECTION 11. TAXES, ASSESSMENTS AND LIENS

Foundation shall pay directly to the tax collector, when due, all taxes and assessments which may be levied against Foundation's possessory interest in the Premises and upon all improvements and personal property which are located on the Premises. Within five (5) days after the date when any tax or assessment would become delinquent, Foundation shall serve upon City receipts or other appropriate evidence establishing the payment.

Foundation shall keep the Premises and improvements free from all liens and encumbrances by reason of the use or occupancy of the Premises by Foundation. If any liens or encumbrances are filed thereon, Foundation shall remove the same at their own cost and expense and shall pay any judgment and penalties which may be entered thereon. Should Foundation fail, neglect or refuse to do so, City shall have the rights to pay any amount required to release any lien or encumbrance or to defend any action brought thereon, and to pay any judgment or penalty, and Foundation shall be liable to City for all costs, damages, and legal counsels' fees, and any amounts expended in defending any proceedings, or in the payment of any lien, encumbrance, judgment or penalty. City may post and maintain upon the Premises notices of non-responsibility as provided by laws. Upon demand by City, Foundation shall post the bond contemplated by Civil Code Section 8424.

SECTION 12. INSTALLATION BY FOUNDATION

Foundation shall not make any alterations, additions, or improvements upon the Premises without the prior written consent of the City Manager. Any alterations, additions, or improvements installed or caused to be installed to the building or site, or any fencing, floor covering, interior or exterior lighting, plumbing fixtures, shades or awnings, or any other improvements on the Premises (collectively "Installations") shall be solely at Foundation's cost and is not reimbursable by City at any time, including at the time of termination of the Agreement by either the Foundation or City. All alterations, additions, and improvements shall be done in a good and workmanlike manner and diligently prosecuted to completion, and shall be performed and maintained in strict accord with all federal, state, county, and local laws, ordinances, codes, standards, and requirements relating thereto. Unless otherwise expressly agreed to by the City, any alterations, additions, and improvements shall remain on and be surrendered with the Premises upon the expiration or termination of this Agreement. Foundation agrees to and shall indemnify, defend with legal counsel approved by City and hold harmless City and its officers, employees, servants and agents from and against all liability, loss, damage, costs, legal counsels' fees, and other expenses of any nature resulting from any Foundation alterations, additions, or improvements to the Premises.

SECTION 13. REMEDIES AND TERMINATION

In case of the failure or refusal of Foundation to comply with and perform each and all of the terms and covenants on their part herein contained, this Agreement and all rights hereby given shall, at the option of the City, cease and terminate, and the City shall have the right forthwith to remove Foundation's personal property from the Premises at the sole cost, expense, and risk of Foundation, which cost and expense Foundation agrees to pay to City upon demand, together with interest thereon at the maximum rate allowed by law from the date of expenditure by City. Such action shall be preceded by thirty (30) day written notice.

This Agreement may also be terminated by either City or Foundation, on or after July 1, 2016 consistent with Section 2.

SECTION 14. MAINTENANCE

City shall provide major maintenance, repairs, and insurance for the Premises during the term of the Agreement including major repairs to building, roof, electrical and plumbing systems, water systems (potable and waste), air conditioning and heating systems and building structure. City shall not be obligated to repair or maintain the Premises or improvements in any manner throughout the term of the Agreement, except as stated above. However, City may elect to perform any obligation of Foundation pursuant to this Section due to Foundation's failure or refusal to do so and at Foundation's waiver of any rights or remedy for Foundation's default.

Foundation shall provide janitorial services including periodic cleaning of carpeting, curtains and seating by contract or by volunteer services, with cleaning products on the City-approved cleaning products list. Foundation has examined the Premises and accepts the same as being clean, in good order, condition, and repair with the exceptions of items specifically stated in this Section. Throughout the term of this Agreement, Foundation shall, at Foundation's sole cost and expense, maintain the Premises and all improvements thereon in good order, condition, and repair and in accordance with all applicable statutes, ordinances, rules, and regulations. Foundation shall immediately report any problems requiring City maintenance or repair to the City Manager or his designated representative. Foundation shall reimburse City for the cost and expense they incurred in the performance of Foundation's janitorial obligations required by this Section within fifteen (15) days of City's request for payment, plus any interest or fees, with an additional fifteen percent (15%) administrative fee. Should City perform any of the Foundation's janitorial obligations, such services shall be at the sole discretion of City, and the performance of such services shall not be construed as an obligation or warranty by City of the future or ongoing performance of such services. Failure to maintain Premises as outlined herein shall be considered grounds for termination of this Agreement.

Foundation shall also indemnify, defend with legal counsel approved by City, and hold harmless City and its officers, employees, servants, and agents from and

against all claims, actions, liabilities, losses, damages, costs, legal counsels' fees, and other expenses of any nature for loss or damage to property, or injury to or death of persons, arising in any manner whatsoever, directly or indirectly, from Foundation's performance pursuant to this Section. The indemnification, legal defense and hold harmless provisions of this Agreement shall survive the termination of the tenancy.

SECTION 15. PESTICIDES AND HERBICIDES

Foundation shall use pesticides and herbicides on the Premises from the City approved pesticide and herbicide list, in strict accordance with all applicable statutes, ordinances, rules and regulations. Such pesticides and herbicides shall be limited to those that are permitted for residential housing units.

SECTION 16. HAZARDOUS MATERIALS INDEMNITY

As used in this Section, Hazardous Materials means any substance, product, waste, or other material of any nature whatsoever which is or becomes listed, regulated or addressed pursuant to: (1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C., Section 6901, et seq.; the Substances Control Act, 15 U.S.C., Section 2601, et seq.; the Clean Water Act, 33 U.S.C. Section 1251, et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100, et seq.; the California Hazardous Substance Account Act, Health and Safety Code Section 25330, et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Section 25280, et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Section 25170.1, et seq.; California Health and Safety Code Section 25501, et seq.; (Hazardous Materials Response Plans and Inventory); or the Porter-Cologne Water Quality Control Act, Water Code Section 13000, et seq. all as amended, (2) any other federal or state law or any local law regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance or material, as now is, or at any time hereafter may be, in effect, and (3) any rule or regulation adopted or promulgated under or pursuant to any of said laws.

If Foundation receives any notice, whether oral or written, of any inquiry, test, investigation, enforcement proceeding, environmental audit, or the like regarding any Hazardous Material on the Premises, Foundation shall immediately serve City with a copy of such notice.

In no case shall Foundation cause or allow the deposit or disposal of any such substance on the Premises. However, household products necessary for routine cleaning and maintenance of the Premises may be kept on the Premises in quantities reasonable for current needs.

The provisions of this Section shall survive the termination of the Agreement and shall relate back to all periods of Foundation's use of the Premises. The provisions of this Section are intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9707(e), and California Health and Safety Code Section 25364, to insure, protect, hold harmless, and indemnify City from any liability pursuant to such law.

SECTION 175. NO WARRANTIES BY CITY

The Premises are accepted by Foundation in an "as is" condition and without any representation or warranty by City as to the condition of the Premises or as to fitness of the Premises for Foundation's use.

SECTION 18. CASUALTY INSURANCE

City shall continue to maintain general liability, fire, and earthquake insurance coverage for the HSAC and shall maintain general liability insurance for the Old Fire Station, with the amounts for such insurance to be determined by City. City shall not be obligated to insure the Old Fire Station or Foundation for any personal injury related to Foundations activities upon the Premises or for damage to Foundation-owned personal property or equipment. Foundation hereby and forever waives all right to claim or recover damages from City in any amount as the result of any damage to the HSAC or any improvement thereon or as a result of any injury to any person upon the Premises.

SECTION 19. INSURANCE

Foundation shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit A attached to and part of this Agreement. The policy shall name Foundation as the insured and the City of Moorpark as additional insured.

SECTION 20. VENUE AND GOVERNING LAW

This Agreement is made, entered into, and executed in Ventura County, California, and any action filed in any court or for arbitration for the interpretation, enforcement or other action of the terms, conditions, or covenants referred to herein shall be filed in the applicable court in Ventura County, California. The City and Consultant understand and agree that the laws of the state of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement.

SECTION 21. ENTRY BY CITY

During the tenancy, City may enter the Premises upon not less than twenty-four (24) hours advance notice and Foundation shall make the Premises available during normal business hours to the City's authorized agent or representative for the purpose of: (1) to show the premises to prospective or actual purchasers, mortgagee, foundations, workmen, or contractors, (2) to make necessary or

agreed repairs, decorations, alterations, or improvements, and (3) at all reasonable times to examine the condition thereof, including its environmental condition. In an emergency, City's agent or authorized representative may enter the premises at any time without securing prior permission from Foundation.

SECTION 22. ASSIGNMENT AND SUBLETTING

No portion of the Premises or of Foundation's interest in this Agreement shall be transferred by way of sublease of Premises, assignment or other voluntary or involuntary transfer or encumbrance, without the prior written consent of the City Manager, which consent Foundation agrees may be reasonably withheld by the City Manager at his sole and absolute discretion. Foundation shall pay City the sum of One Hundred Dollars (\$100.00) to enable City to investigate the qualifications of a proposed assignee and the sum of One Hundred Dollars (\$100.00) to investigate the qualifications of a proposed sublessee, occupant or user; City shall not be required to account for the use of said sum paid.

A consent to one transfer shall not be deemed to be a consent to any subsequent transfer. Any transfer without consent shall be void, and shall, at the option of the City, terminate this Agreement.

SECTION 23. DEFAULT OR BREACH

Except as otherwise provided, at any time one party to this Agreement is in default or breach in the performance of any of the terms and conditions of this Agreement, the other party shall give written notice to remedy such default or breach. If the default or breach is remedied within thirty (30) days following such notice, then this Agreement shall continue in full force and effect. If such default or breach is not remedied within thirty (30) days following such notice or if the nature of the default is such that it cannot reasonably be cured within thirty (30) days, if Foundation fails to commence to cure within the thirty (30) day period, the other party may, at its option, terminate this Agreement. Such termination shall not be considered a waiver of damages or other remedies available to either party because of such default or breach. Each term and condition of this Agreement shall be deemed to be both a covenant and a condition.

SECTION 24. INSOLVENCY OR BANKRUPTCY

If Foundation shall be adjudged bankrupt or insolvent, this Agreement shall thereupon immediately terminate and the same shall not be assignable by any process of law, or be treated as an asset of the Foundation under such adjudication, nor shall it pass under the control of any trustee or assignee by virtue of any process in bankruptcy or insolvency, or by execution or assignment for the benefit of creditors. If any such event occurs, this Agreement shall immediately become null and void and of no effect, and City may thereupon repossess said Premises and all rights of the Foundation thereupon shall cease and terminate.

SECTION 25. DISPOSSESSION

In the event Foundation is lawfully deprived of the possession of the Premises or any part thereof, at any time during the tenancy, by anyone other than City, they shall notify City in writing, setting forth in full the circumstances in relation thereto. Upon receipt of said notice, City may, at its option, either install Foundation in possession of the Premises or terminate the tenancy. No claim for damages or whatsoever kind or character incurred by Foundation by reason of such dispossession shall be chargeable against City.

SECTION 26. CONDEMNATION

If the whole of the Premises should be taken by a public authority under the power of eminent domain, then the term of this Agreement shall cease on the day of possession by the public authority. If only a part of the Premises should be taken under eminent domain, Foundation shall have the right to either terminate this Agreement or to continue in possession of the remainder of the Premises. If Foundation remains in possession, all of the terms hereof shall continue in effect for the balance of the Agreement term.

SECTION 27. WAIVER

A waiver by either party of any default or breach by the other party of any provision of this Agreement shall not constitute or be deemed to be a waiver of any subsequent or other default or breach. No waiver shall be binding, unless executed in writing by the party making the waiver. No waiver, benefit, privilege, or service voluntarily given or performed by either party shall give the other party any contractual right by custom, estoppel, or otherwise.

SECTION 28. ACQUIESCENCE

No acquiescence, failure, or neglect of any party hereto to insist on strict performance of any or all of the terms hereof in one instance shall be considered or constitute a waiver of the rights to insist upon strict performance of the terms hereof in any subsequent instance.

SECTION 29. PARTIES BOUND AND BENEFITTED

The covenants and conditions herein contained shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

SECTION 30. CONDITION UPON TERMINATION

Upon termination of the Agreement, Foundation shall surrender the Premises to City including all improvements, clean and in good condition, except for ordinary wear and tear which Foundation was otherwise obligated to remedy under Section 14 above. Any installation which Foundation installs during the term of this Agreement in accordance with Section 12 of this Agreement, and has not

Foundation: Moorpark Foundation for the Arts
33 East High Street
Moorpark, California 93021
Attn: President

Either party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one specified above. Except as otherwise provided by statute, notice shall be deemed served and received upon receipt by personal delivery or upon the second (2nd) day after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid.

SECTION 35. PARTIAL INVALIDITY

If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect to the full extent allowed by law.

SECTION 36. GENDER AND NUMBER

For the purpose of this Agreement wherever the masculine or neuter form is used, the same shall include the masculine or feminine, and the singular number shall include the plural and the plural number shall include the singular, wherever the context so requires.

SECTION 37. SECTION HEADINGS

Section headings in this Agreement are for convenience only, and they are not intended to be used in interpreting or construing the terms, covenants and conditions of this Agreement.

SECTION 38. INTEGRATION AND MODIFICATION

This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof and all prior agreements and understandings, oral or written, are hereby merged herein. This Agreement may not be modified or amended except: (1) in a writing signed by all of the parties hereto; or (2) upon expiration of thirty (30) days service in accordance with Civil Code Section 1946, or any successor statute in effect on the date the written notice is served, by City on Foundation of a written notice setting forth the modification or amendment. The parties agree that no estoppel argument can be raised during legal proceedings in order to avoid the provisions of this Section.

SECTION 39. INTERPRETATION

Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that the Agreement was prepared by the parties jointly and equally, and the Agreement shall not be interpreted against either party on the ground that the party prepared it or caused it to be prepared.

SECTION 40. ANTI DISCRIMINATION

Neither the Foundation, nor any employee or contract manager under the Foundation, shall discriminate in employment of persons because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, gender identity, or any other protected class, except as provided in Section 12940 of the Government Code. The Foundation shall have responsibility for compliance with this Section.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

CITY OF MOORPARK

MOORPARK FOUNDATION FOR THE ARTS

By: _____
Steven Kueny, City Manager

By: _____
Michael Marion, President

ATTEST:

ATTEST:

By: _____
Maureen Benson, City Clerk

By: _____
Cara Tedric, Secretary

- Exhibit A: Insurance Requirements
- Exhibit B: Theater Equipment
- Exhibit C: Information Technology and Telephone Equipment Inventory

EXHIBIT A

Insurance Requirements

Foundation as operator will maintain insurance in conformance with the requirements set forth below. Foundation will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Foundation agrees to amend, supplement or endorse the existing coverage to do so. Foundation acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to CITY in excess of the limits and coverage required in this Agreement and which is applicable to a given loss, will be available to CITY.

Foundation shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence and \$2,000,000 in aggregate.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident and \$2,000,000 in aggregate. If Foundation owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Foundation or Foundation's employees will use personal autos in any way on this project, Foundation shall provide evidence of personal auto liability coverage for each such person.

Worker's Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the State of California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

General conditions pertaining to provision of insurance coverage by Foundation. Foundation and CITY agree to the following with respect to insurance provided by Foundation:

1. Foundation agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds CITY, its officials, employees, servants, agents, and independent consultants ("CITY indemnities"), using standard ISO endorsement No. CG 2011 with an edition prior to 1996.

Foundation also agrees to require all contractors and subcontractors working on the Premise to do likewise.

2. No liability insurance coverage provided to comply with this Agreement shall prohibit Foundation, or Foundation's agents, from waiving the right of subrogation prior to a loss. Foundation agrees to waive subrogation rights against CITY regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
3. All insurance coverage and limits provided by Foundation and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the CITY or its operations limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to CITY and approved of in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or any contractor or subcontractor.
6. All coverage types and limits required are subject to approval, modification, and additional requirements by the CITY, as the need arises. Foundation shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect CITY'S protection without CITY'S prior written consent.
7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Foundation's general liability policy, shall be delivered to CITY at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, CITY has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by CITY shall be charged to and promptly paid by Foundation or deducted from sums due Foundation, at CITY's option.
8. Certificates are to reflect that the insurer will provide Thirty (30) day notice to CITY of any cancellation of coverage. Foundation agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.

9. It is acknowledged by the parties of this Agreement that all insurance coverage required to be provided by Foundation, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to CITY.
10. Foundation agrees to ensure that subcontractors, and any other party entering onto the Premises, provide the same minimum insurance coverage required of Foundation. Foundation agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Foundation agrees that upon request, all agreements with subcontractors and other parties entering onto the Premises will be submitted to CITY for review.
11. Foundation agrees not to self-insure or to use any self-insured retention or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, or other entity or person entering onto the Premises to self-insure its obligations to CITY. If Foundation's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the CITY. At that time the CITY shall review options with the Foundation, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
12. For purposes of applying insurance coverage, only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
13. Foundation acknowledges and agrees that any actual or alleged failure on the part of the CITY to inform Foundation of non-compliance with any insurance requirement in no way imposes any additional obligations on CITY nor does it waive any rights hereunder in this or any other regard.
14. Foundation will renew the required coverage annually as long as CITY, or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not the Agreement is canceled or terminated for any reason. Termination of this obligation is not effective until CITY executes a written statement to that effect.
15. Foundation shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Foundation's insurance agent to this effect is acceptable. A certificate of

insurance and/or additional insured endorsement is required in these specifications applicable to the renewing or new coverage must be provided to CITY within five days of the expiration of the coverages.

16. The provisions of any workers' compensation or similar act will not limit the obligations of Foundation under this Agreement. Foundation expressly agrees not to use any statutory immunity defenses under such laws with respect to CITY, its employees, officials, and agents.
17. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party of insured to be limiting or all-inclusive.
18. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties here to be interpreted as such.
19. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
20. Foundation agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge CITY or Foundation for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to the CITY. It is not the intent of CITY to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against CITY for payment of premiums or other amounts with respect thereto.
21. Foundation agrees to provide immediate notice to CITY of any claim or loss against Foundation arising out of the lease of the Premises. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.

Exhibit B

HSAC EQUIPMENT LOG

Stage Lights

Type	Manufacturer	Description	Quantity
Projector	Eiki	Projector	1
Leko	Altman	50°	2
Leko	Altman	36°	
Leko	Altman	26°	10
Leko	Altman	19°	10
Leko	Strand	50°	10
Leko	Strand	36°	12
Leko	Strand	26°	4
Leko	Strand	19°	5
Leko	Source Four (ETL)	50°	2
Frenel	Lee Colorstran		4
Movers	Martin	MAC 250	4
Frenel	Times Square		6
Shakespear	Altman	50°	1
Ellipsoidal	Colortran	15°	1
Par 64	Altman	Par 64	1
Vari-Focus	Times Square		5
Par 76	Altman	Par 76	6
Follow Spot	Altman	Follow Spot	1
Follow Spot	Times Square	Follow Spot	1
Nook Spot Light	Lee Colorstran	Spot Light	6
Cyc Strip	Altman	Cyc Strip	3

Cables

Type	Manufacturer	Length	Quantity
Stage Pin		5'	14
Stage Pin		10'	13
Stage Pin		15'	5
Stage Pin		20'	10
Stage Pin		25'	3
Stage Pin		30'	3
Stage Pin		50'	3
Stage Pin		60'	1

Exhibit B

Stage Pin	75'	1
Stage Pin	10'	1
Stage Pin	25'	2
Socopex	50'	4
Socopex	100'	12

Audio Equipment

Type	Manufacturer	Model	Quantity
Mixing Console	Allen & Heath	ML5000	1
Amplifier	QSC	DCA1622	7
Amplifier	Crown	XLS402	2
Speakers	EV	Ceiling Mount	2
Speakers	EV	Eliminator	4
Speakers	Mackie	SPM450	2
Wireless Hand Held	Shure	SM58	16
Wireless Body Mics	Shure	SLX1	16
Wireless Recievers	Shure	SCX4	16
Distribution Amp	DBX	Drive Rack PA	1
Effects Generator	Yamaha	SPX2000	1
Effects Generator	TC Electronics	M-ONE	1
Compressor	Optimus	CD-8150	1
Equalizer	Ashley	3102	2
CD Recorder	Marantz	CDR510	1
CD Player	Optimus	CD-8150	1
Music Stands			13
Mic Stands			8

Concession Equipment

Type	Manufacturer	Model	Quantity
Ice Machine	Hoshizaki	KML-350MAH	1
Cappuccino Machine	Curtis	PC-2D	1
Popcorn Machine	Astro Pop	2010E	1
Display Drink Refrigerator	Fogel	CC-7-BEV-P-RH	1
Refrigerator	Continental	SW27-3S	2
Freezer	Continental	SWF27-BS	1
Soda Dispenser	IMI Corneliys	CB2323AHK8	1
Refrigerator	Continental	KC50	1

Exhibit B

Other Equipment

Type	Manufacturer	Model	Quantity
Vaccum	Sanitaire	Heavy Duty Commercial	2
Chop Saw	Ryobi	TSS1002	1
Jig Saw	Ryobi		1
Circular Saw	Ryobi		1
Drill	Ryobi		1
Table Saw	Skill		1
6' Steel Racks			5
Large Wagon Cart			1
Hand Truck Dollies			3

Exhibit B

Value Each

\$30.00	\$300.00
\$30.00	\$360.00
\$30.00	\$120.00
\$30.00	\$150.00
\$295.00	\$590.00
\$700.00	\$2,800.00

HSAC FURNITURE LOG

EXHIBIT B

Furniture

Type	Manufacturer	Description	Quantity
Sofas		8'	2
Love Seats		6'	2
Chairs		4'	3
Rocking Chairs			4
Coffee Tables			4
Roll Up Desk			1
Kitchen Tables			5
Kitchen/Dining Room Chairs			13
Stools			4
Stage Chairs	Black		15
Furniture Dollies			2

EXHIBIT C

HSAC Information Technology and Phone Equipment Inventory June 2012

Asset ID	Serial Number	Description
1383		TVS50 Voice Processing System
		Dell Desktop Computer
	4MKMR71	Dell Optiplex GX280 Desktop Computer
	ETL1801318271203068394B	Acer Monitor AL1706
	ETL4801318271203068394B	Acer Monitor AL1706
	REF0054007509	Linksys Swtich SD205
	000059A	USB KVM Switch UK-2PF0-A
	2LAUG067043	Panosonic Phone KX-T7431
	8.02581E+11	Hypercom D4210 Credit Card Swipe Device
	825J157000892	D-Link DI-624 Router
	3ABUG068835	Panosonic Phone KX-T7431
	0000431-0411MH009	Sun Monitor 365-1417-02
	G57A60-13400046	Neso Monitor FD5708
		Qty 8, Motorola Radios CP150
1561		Wireless Access Point
1297		Macintosh Laptop
	LC-XT4UG777B1329	Elki Projector
		Viewsonic Wireless Presentation Gateway
		Netgear Switch FS105
	2IBUN052057	Panosonic Phone System KX-TD816
	ETL480B1827120A58C3945	Acer Monitor AL1706A
1223		Dell
	CNL1D22671	HP Laserjet 1320 Printer
	127632	Boca Ticket Printer
	128793	Boca Ticket Printer
	2JCUG064847	Panosonic Phone KX-T7431
	766-042-257	Veriphone Omni 373 Credit Card Machine
	T104400371	ID Tech Credit Card Swipe Device
	CRX4-301-06130	Cash Drawer CR3001
	CN63EEG2FW	Officejet 6210 Printer
		Panosonic Phone KX-T7431
1559		Monitor