

## **RESOLUTION NO. 2011-259**

Adopted by the Sacramento City Council

April 26, 2011

### **AGREEMENT AND LOAN DOCUMENTS WITH CALIFORNIA MUSICAL THEATRE**

#### **BACKGROUND**

- A. The California Musical Theatre (CMT) is host to a wide range of quality events in this community such as Music Circus, The Broadway Series, Cosmopolitan Cabaret and educational programs. CMT is projected to experience a cash flow shortfall during the next three years.
- B. The arts and culture industry is an economic driver in communities – a growth industry that supports jobs, generates government revenue and serves as a cornerstone of tourism.
- C. The City's Community Center Fund (Fund 6010), by defunding the Community Center Theater Renovation Project (M17100100), will make available to CMT up to \$300,000 at any given time over the next three years. The City and CMT will enter into a revolving loan agreement (Exhibit A) that establishes a repayment plan, with all funds to be repaid no later than June 30, 2014. CMT will pay interest on the borrowed funds equal to the City's annual earnings rate on Pool A funds for the previous fiscal year, plus two percentage points, per annum.
- D. The loan will be evidenced by a promissory note and secured by a deed of trust on the Music Circus property.
- E. The loan agreement includes reporting and oversight components.

#### **BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1. The City Manager or his designee is authorized to defund the Community Center Theater Renovation Project (M17100100), amend the Capital Improvement Program (CIP) Budget, and place the funds in the Community Center Fund (Fund 6010) to be used for a revolving loan to the California Musical Theatre.
- Section 2. The City Manager or his designee is authorized to make necessary budget adjustments when funds are loaned and when the loan is repaid.
- Section 3. The City Manager or his designee is authorized to execute the loan agreement with the California Musical Theatre, shown in Exhibit A, in an amount not to exceed \$300,000 for the funding of CMT's ongoing operations.

Section 4. The City Manager or his designee is authorized to loan funds to the California Musical Theatre pursuant to the loan agreement.

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Section 5. Exhibit A is a part of this Resolution.

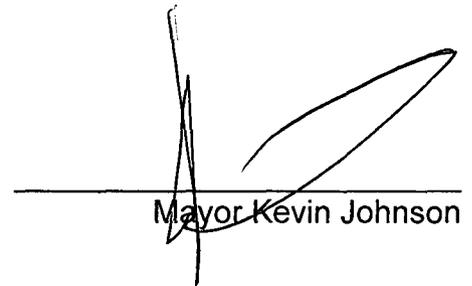
Adopted by the City of Sacramento City Council on April 26, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



Mayor Kevin Johnson

Attest:



Shirley Concolino, City Clerk

Department: Convention, Culture & Leisure  
Division: Administration

### Loan Agreement

This revolving loan agreement, dated \_\_\_\_\_, 2011, for purposes of identification only, is between the **California Musical Theatre**, a California non-profit public benefit corporation ("CMT"), and the **City of Sacramento**, a California municipal corporation (the "City").

#### Recitals

- A. CMT produces various musicals and other theatrical events in the City of Sacramento, including the Music Circus, Broadway Sacramento, and Cosmopolitan Cabaret.
- B. CMT may suffer a temporary cash-flow shortfall over the next three years during CMT's implementation of its business recovery plan.
- C. Through this agreement, the City will make available to CMT up to \$300,000.00 (the "Credit Limit") for a revolving loan to assist with CMT's operating costs incurred in producing theatrical events. Funds drawn against the Credit Limit will constitute a loan of the funds ("Loan"). The Loan is to be evidenced by a promissory note and secured by a deed of trust on the real property at 1422 G Street, Sacramento, California (the "Property").
- D. The Loan amount may be amended from time to time as additional funds are drawn against the Credit Limit or as repayments are credited.

***Based on the facts set forth in the foregoing recitals, the City and CMT agree as follows:***

#### **Section 1. Definitions.**

- (a) "***Draw***" means a disbursement of funds to CMT in accordance with this agreement.
- (b) "***Fiscal Year***" means a twelve-month period beginning July 1 and ending the following June 30.
- (c) "***Obligations***" means all liabilities and obligations of CMT to the City of every kind and description, direct, absolute or contingent, due or to become due, whether now existing or hereafter executed, or by operation of law, whether or not evidenced by a written agreement, document, or promissory note or other instrument, including duties to perform acts or refrain from taking action, as well as obligations to pay money.
- (d) "***Outstanding Loan Balance***" means the aggregate amount of all Draws the City disburses to CMT under this agreement, less all repayments credited toward the reduction of principal.

**Section 2. Loan.**

- (a) *Loan.* The City hereby establishes for a period extending from July 1, 2011, to April 15, 2014, a Credit Limit for CMT in the principal amount of \$300,000.00. The Loan consists of all Draws against the Credit Limit.
- (b) *Draws.* CMT may request a Draw against the Credit Limit once each calendar quarter in multiples of \$50,000.00. Each Draw will be added to the Loan amount. No Draw, when added to the Outstanding Loan Balance, may exceed the Credit Limit amount. All requests for Draws must be made in writing in a form reasonably satisfactory to the City. No Draws may be made after April 15, 2014.
- (c) *Promissory Note.* The Loan is to be evidenced by a promissory note in a form substantially the same as attached hereto as Exhibit A (the "Promissory Note"). The execution and delivery of the Promissory Note does not constitute payment, satisfaction, or release of the Obligations.
- (d) *Interest.* Interest on each Draw will accrue from the day of the disbursement at a percentage rate equal to the City's annual earnings rate on Pool A funds for the previous Fiscal Year, plus two percentage points, per annum ("Interest Rate"). Therefore, it is possible that different interest rates may be applied to Draws made in different Fiscal Years. Interest is to be computed on the basis of a 360-day year and will continue to accrue on each Draw until it is repaid in full.
- (e) *Repayment.* Each Draw and accrued interest must be repaid in accordance with the Promissory Note, without demand of the City, no later than June 30 of the Fiscal Year in which the Draw is disbursed. A late charge of 5% will be applied to any Draw not repaid within 10 days of the due date. Each payment under this agreement will be credited in the following order: first, to any costs or expenses incurred by the City in collecting the payment, and to any other unpaid charges, expenses, or penalties due; second, to accrued interest; and third, to the Outstanding Loan Balance. CMT may prepay all or a portion of the Outstanding Loan Balance at any time before the due date without penalty.

**Section 3. Security.** The Loan will be secured by a deed of trust on the real property located at 1422 G Street, Sacramento, California, 95814 (the "Property").

**Section 4. Representations, Warranties and Covenants.** To induce the City to enter into this agreement and to disburse Draws, CMT represents, warrants, and covenants to the City as follows:

- (a) *No Violation of Law, Agreement, or Authority.* Except as prohibited by any existing agreements, easements, covenants, and restrictions encumbering and/or recorded against the Property, the execution, delivery, and performance of this agreement do not violate (1) any law in effect on the Effective Date; (2) any current or future indenture, agreement,

or undertaking to which CMT is a party or by which CMT is bound; or (3) CMT's charter, bylaws, or other corporate documents.

- (b) *Qualified Corporation.* CMT is duly organized and existing under California law and is duly qualified and in good standing.
- (c) *Use of Loan Proceeds.* CMT will use the funds loaned to it under this agreement only to fund its operating costs incurred in producing theatrical events. CMT will keep the funds loaned under this agreement in a segregated account until they are expended and will identify the funds as obtained under this agreement.
- (d) *Legal Action.* There is no action, suit, investigation, or proceeding pending or threatened against CMT that could have a material adverse affect on its financial condition or any of its assets or the operation of its business.

#### **Section 5. Records; Further Assurances; Financial Reports; Cash Flow.**

- (a) *Records.* At all times, CMT shall allow the City, by or through any of the City's officers, agents, employees, attorneys, and accountants, to possess, examine, audit, and make extracts and copies from CMT's records to aid the City in the enforcement of any rights under this agreement. CMT shall allow the City to use CMT's premises, without cost to the City, as often and for so long as the City may desire to exercise its rights under this section.
- (b) *Assurances.* CMT shall do all things reasonably required by the City to more completely vest the City's rights under this agreement.
- (c) *Financial Reports.* CMT shall furnish to the City quarterly financial statements within 60 days of the end of each calendar quarter. The statements consist of a balance sheet, an income statement, a supplemental schedule of gross receipts and expenditures for the previous quarter, and a cumulative report of the Loan to date, including but not limited to the amount borrowed to date, interest accrued, payments made, and any amounts overdue. CMT shall also provide any other financial and operational information reasonably requested by the City in the form requested by the City. All financial and operational statements must be on CMT's letterhead and signed by CMT's president and chief executive officer. In addition, within 180 days of the end of each Fiscal Year, CMT shall provide the City with copies of its audited financial statements for the year.

#### **Section 6. Events of Default; Acceleration**

- (a) *Events of Default.* Any one or more of the following constitutes an Event of Default under this agreement, unless waived by the City:
  - (1) CMT defaults in the payment of any installment due hereunder and does not cure the default within 30 days after CMT receives the City's written demand for cure.

- (2) CMT files a voluntary petition for bankruptcy or is named as a debtor under an involuntary petition for bankruptcy.
  - (3) CMT institutes any proceeding under any bankruptcy or insolvency laws relating to the relief of debtors.
  - (4) CMT makes an assignment for the benefit of its creditors.
  - (5) The refinancing of any loan secured by a mortgage or deed of trust on the Property without the prior written consent of the City.
  - (6) The receipt of a loan, other than that provided for in this agreement, secured by a mortgage or deed of trust on the Property without the prior written consent of the City.
  - (7) The sale of any portion of the Property without the prior written consent of the City.
  - (8) Entry of a court order that enjoins, restrains, or in any way prevents CMT from conducting all or any part of its affairs in the ordinary course, excluding, however, any such order preventing the promotion or production of a show or event unrelated to any action or omission of CMT.
  - (9) CMT fails to pay any federal, state, or local tax or other debt of CMT unless the same is being contested in good faith.
  - (10) CMT stops organizing, promoting, offering, or presenting theatrical events during the term of this agreement.
  - (11) CMT breaches any covenant, term or condition of this agreement or any amendment thereto and does not cure the default within 30 days after CMT receives the City's written demand for cure.
- (b) *Rights and Remedies in Event of Default.* The City is entitled to all rights and remedies of a creditor under any applicable laws in addition to the rights and remedies provided in this agreement or in any other instrument or paper CMT executes. The City's rights, powers, and remedies are cumulative, and none is exclusive. At the City's option, all Obligations become immediately due and payable upon the occurrence of an Event of Default or anytime thereafter.

**Section 7. Application of Payments.** All payments made by or on behalf of CMT, and all credits due to CMT, may be applied and reapplied in whole or in part to any of the Obligations to the extent and in the manner that the City may elect.

## **Section 8. Termination.**

- (a) *Default.* Upon the occurrence of an Event of Default or based on the fiscal condition of CMT, the City may, at any time and in its sole discretion, terminate this agreement and cease disbursing Draws to CMT. At such time, the Promissory Note and Deed of Trust will remain in effect as to the Outstanding Loan Balance, and, at the City's option, the Obligations may be immediately due and payable.
- (b) *Fiscal Conditions.* The City may, at any time and in its sole discretion, discontinue extending credit to CMT and cease disbursing Draws against the Credit Limit if the City determines that the fiscal condition of CMT so warrants. The City may, in its sole discretion, terminate this agreement at such time. If this agreement is terminated, then the Promissory Note and Deed of Trust will remain in effect as to the Outstanding Loan Balance, and, at the City's option, the Obligations may be due and payable within 30 days of the City's written demand.
- (c) *Effective of Termination.* Termination of this agreement under either Section 8(a) or 8(b) does not in any way affect or impair any right of the City arising before, or by reason of, the termination; relieve CMT of any obligation to the City under this agreement or otherwise until all of the Obligations are fully paid and performed; or affect any right or remedy of the City arising from the Obligations. All of CMT's agreements, warranties, and representations under this agreement will survive termination.

## **Section 9. Waivers.**

- (a) *No Waiver by the City.* The City's failure at any time or times hereafter to require strict performance by CMT of any of the provisions, warranties, terms, and conditions contained in this agreement or any other agreement, document, or instrument now or hereafter executed by CMT and delivered to the City relative to the Loan will not waive, affect, or diminish any right of the City hereafter to demand strict compliance and performance under this agreement or any other related agreement, document, or instrument. Any waiver of any default will not waive or affect any other default, whether of the same or of a different type. None of the warranties, conditions, provisions, and terms contained in this agreement or any other related agreement, document, or instrument now or hereafter executed by CMT and delivered to the City will be deemed to have been waived by any act or knowledge of the City or its agents, officers, or employees. Waiver may only occur if specified in writing and signed by an officer of the City.
- (b) *Notices.* CMT waives any and all notices or demands that CMT might be entitled to receive with respect to this agreement and Promissory Note by virtue of any applicable statute or law, including presentment, demand, protest, notice of protest, notice of dishonor, notice of nonpayment, and notice of any kind or any guarantee of it.

## **Section 10. Miscellaneous Provisions**



- (h) *Effective Date.* This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.
- (i) *Relationship of Parties.* Nothing in this agreement should be deemed or construed to create between the parties a joint venture, partnership, or any other relationship of association other than that of borrower (CMT) and lender (the City).
- (j) *Conflict of Terms.* If there is a material conflict between this agreement and the Promissory Note, then the Promissory Note will control.
- (k) *Counterparts.* The parties may execute this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.

*(Signature Page Follows)*

**City of Sacramento**

By: \_\_\_\_\_  
Cassandra Jennings, Assistant City  
Manager, for William H. Edgar, Interim City  
Manager  
Date: \_\_\_\_\_, 2011

Attest  
Sacramento City Clerk

By: \_\_\_\_\_  
Approved as to Legal Form  
Sacramento City Attorney  
By: Kourtney Burdick  
Kourtney Burdick  
Deputy City Attorney

**California Musical Theatre, Inc.**

By: Richard Lewis  
Richard Lewis, Executive Producer and  
C.E.O.  
Date: 4-20-11, 2011

Approved as to Legal Form  
Hefner Stark & Marois, LLP

By: Martin B. Steiner  
Martin B. Steiner  
Attorneys for California Musical Theatre,  
Inc.

EXHIBIT A

SECURED PROMISSORY NOTE

\$300,000.00

Sacramento, California

Date: 4-20-11

FOR VALUE RECEIVED, THE CALIFORNIA MUSICAL THEATRE, a California non-profit public benefit corporation ("Payor"), promises to pay to the CITY OF SACRAMENTO, a California municipal corporation ("Payee"), the principal sum of THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) or so much thereof as is disbursed (the "Outstanding Balance"), as stated in Schedule A of this Promissory Note (this "Note"), together with interest on the Outstanding Balance at the annual rate or rates specified in Schedule A. The interest rate for each disbursement of funds is to be calculated to equal the annual earnings rate on the City's Pool A funds for the previous fiscal year, plus two percentage points, per annum. As used in this Note, "fiscal year" means a twelve-month period beginning July 1 and ending the following June 30.

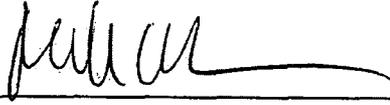
1. For all disbursements in a fiscal year, Payor shall pay Payee, in full, the Outstanding Balance and accrued interest on or before June 30 of the fiscal year; however, at any time before April 15, 2014, Payor may borrow, repay, and borrow again on this Note so long as the Outstanding Balance at any one time does not exceed the principal sum of \$300,000.00.
2. Payor shall pay all amounts due under this Note in lawful money of the United States at the following address or at such other address as Payee may designate in writing: City of Sacramento, Department of Convention, Culture, and Leisure, 1030 15th Street, Suite 250, Sacramento, California 95814.
3. Payor shall pay a late charge of five percent (5%) of any annual payments not paid within ten (10) days of the due date thereof in addition to any other amounts due under this Note.
4. Each payment under this Note will be credited in the following order: first, to any late charges and costs or expenses Payee incurs in collecting the payment, and to any other unpaid charges, expenses, or penalties due; second, to accrued interest; and third, to the Outstanding Balance.
5. At Payee's option, this Note will become immediately due and payable upon the occurrence at any time of any of the following events:
  - (a) Payor defaults in the payment of any installment due hereunder and does not cure the default within 30 days after receiving Payee's written demand for cure.

- (b) Payor files a voluntary petition for bankruptcy or is named as a debtor in an involuntary petition for bankruptcy.
  - (c) Payor institutes any proceeding under any bankruptcy or insolvency laws relating to the relief of debtors.
  - (d) Payor makes an assignment for the benefit of its creditors.
  - (e) The refinancing of any loan secured by a mortgage or deed of trust on the real property at 1422 G Street, Sacramento, California (the "Property") without the prior written consent of Payee.
  - (f) The receipt of a loan secured by a mortgage or deed of trust on the Property without the prior written consent of Payee.
  - (g) The sale of any portion of the Property without the prior written consent of Payee.
  - (h) Entry of a court order that enjoins, restrains, or in any way prevents Payor from conducting all or any part of its affairs in the ordinary course, excluding, however, any such order preventing the promotion or production of a show or event unrelated to any action or omission of Payor.
  - (i) Payor fails to pay any federal, state, or local tax or other debt unless Payor is contesting the same in good faith.
  - (j) Payor stops organizing, promoting, offering, or presenting theatrical events during the term of the Loan Agreement between the City of Sacramento and the California Musical Theatre ("Loan Agreement"), executed concurrently herewith.
  - (k) Payee terminates the Loan Agreement, provided, however, Payor shall have thirty (30) days after receipt of written notice of such termination to pay the outstanding obligations on this Note if such termination is due to Payee's determination that the fiscal condition of Payor warrants such termination.
6. If this Note is not paid when due, whether at maturity or by acceleration, then Payor, every guarantor and endorser of this Note, and every person who assumes the obligations of this Note each promise to pay all costs of collection, including but not limited to reasonable attorneys' fees, whether or not an action is filed hereon. Additionally, the holder of this Note will be entitled to reimbursement for all attorneys' fees and costs incurred in enforcing any judgment arising from, or out of, this Note, whether incurred by the Sacramento City Attorney's Office or outside counsel, and those fees and costs will not merge into the judgment and may be added to the judgment and be substantiated by supplemental cost bill.

7. Payor, every guarantor and endorser of this Note, and every person who assumes the obligations of this Note each waive presentment, demand, protest, notice of protest, notice of dishonor, notice of nonpayment, and notice of any kind with respect to this Note or any guarantee of it.
8. This Note may be changed or terminated only by an agreement in writing signed by the party against whom enforcement of such change or termination is sought.
9. This Note may be prepaid at any time without penalty.
10. The rights, duties, and obligations of Payor and Payee under this Note are binding upon, and inure to the benefit of, their successors, representatives, receivers, trustees, and assigns, if any.
11. The indebtedness evidenced by this Note is secured by a deed of trust on the Property of even date herewith. The deed of trust also secures all indebtedness evidenced by any extension or renewal of this Note. Payee acknowledges that the deed of trust is subject to all existing agreements, easements, covenants and restrictions encumbering and/or recorded against the Property.
12. If any part of this Note cannot be enforced according to its terms, that fact will not affect the balance of this Note.

*(Signature Page Follows)*

PAYOR: CALIFORNIA MUSICAL THEATRE

By: 

Richard Lewis, Executive Producer and C.E.O.

VERIFICATION

The State of California

County of Sacramento

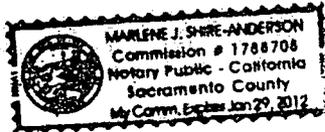
On April 20, 2011, before me, Marlene Shire Anderson, personally appeared RICHARD LEWIS who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[signature] Marlene J. Shire-Anderson

(This area for official notarial seal)



SCHEDULE A

The following table, as amended from time to time, evidences the Outstanding Balance on this Note:

Date	Amount Disbursed	Interest Rate	Repayment Due Date	Principal Repaid	Outstanding Balance	Payor Signature	Payee Signature