

MEMORANDUM OF UNDERSTANDING STUDIOS FOR THE PERFORMING ARTS

This memorandum of understanding ("MOU") is entered into as of July __, 2006, by and among the **CITY OF SACRAMENTO**, a municipal corporation ("City"), and the **CALIFORNIA MUSICAL THEATRE, THE SACRAMENTO BALLET, THE SACRAMENTO OPERA COMPANY,** and **SACRAMENTO PHILHARMONIC ORCHESTRA ASSOCIATION, INC.** (collectively known as the "Arts Organizations"). The City and each of the individual Arts Organizations shall be referred to herein collectively as the "Parties" and individually as "Party."

RECITALS

This MOU is entered into by and between the Parties in consideration of the following:

- A. The City currently owns a parcel of approximately 12,500 square feet in downtown Sacramento located at 725 14th Street ("Site").
- B. On April 18, 2006, the City Council approved a Community Reinvestment Capital Improvement Program which established the Studios for the Performing Arts Project ("Project") and \$9 million in grant funds as well as \$5 million in bridge financing to the Arts Organizations to complete the Project.
- C. The Project will provide multiple benefits to the region, including new and upgraded facilities for the arts, and classroom and office space which will facilitate a positive performing arts environment within the City and community.
- D. The City and Arts Organizations wish to cooperate, coordinate, and act as partners to make the Project a reality.
- E. The development and completion of the Project will require considerable public and private resources and support. For these reasons, the long-term and unified commitment to the Project by the Parties as stakeholders is crucial. To demonstrate their commitment to the successful completion of the Project, the Parties desire to enter into this MOU.
- F. The purpose of this MOU is to ensure that future development of the Site is consistent with the goals, policies and objectives of the City, as they currently exist or as they may be amended. To this end, this MOU sets forth the responsibilities of both the City and the Arts Organizations in developing and completing the Project.

THE PARTIES AGREE AS FOLLOWS:

1. **Project.** The City shall construct an approximately 46,000 square foot facility on a parcel located at 725 14th Street in Sacramento, California.
2. **Cooperation.** The City and Arts Organizations shall cooperate and coordinate with each other to the fullest extent possible to complete the Project, including the acquisition of funding and the promotion of the Project to regional groups, private parties, and community members.
3. **Project Budget.** The cost of the Project ("Project Budget") is currently estimated to be approximately \$18,000,000.00, including land acquisition, construction, and tenant improvements. The Project Budget is contingent upon the funding for the Project described in Section 5 below. The required funds from the Arts Organizations pursuant to Section 5 must be received by the City before the City issues a Request for Proposals or similar forms of solicitation for Project construction. If any part of the funding by the Parties is not obtained, the Project will either be: i) terminated in accordance with Section 21.B below; (ii) reduced in scope so that the Project's costs can be paid with funds that are then available; or, (iii) phased in order to meet the then current and anticipated future funding capacity.
4. **Financing.** The Parties shall use their best efforts to identify a broad range of implementation and funding strategies for the Project, including new revenue sources, non-traditional alignment of funding sources, the formation of public-private partnerships, phasing, and other alternatives. The City shall use its powers for the benefit of the Project, including its bond financing powers. The Parties shall exercise their rights as potential specialized program recipients to acquire funding for the Project.
5. **Funding for Project.** The Parties intend to fund the Project Budget as follows:
 - A. **CRCIP Financing:** The City intends to contribute \$9,000,000.00 from the proceeds of the City's Community Reinvestment Capital Improvement Program ("CRCIP") bond issue.
 - B. **Bridge Financing:** The City intends to contribute a maximum sum of \$5,000,000.00 from the proceeds of the CRCIP bond issue as "bridge" financing, to be repaid by the Arts Organizations, together with interest and the cost of bond issuance. Payments shall be made to the City in the amount of approximately \$350,000.00 per year, paid on a monthly basis in

the form of lease payments. The Parties shall enter into a separate Lease Agreement referred to in Section 15 below which shall provide for the repayment of the bridge financing. The Lease Agreement shall be executed before the City issues a Request for Proposals or similar form of solicitation for Project construction.

C. Capital Campaign: The Arts Organizations shall contribute a minimum sum of \$4,000,000.00 as external funding for the Project. The Arts Organizations shall engage in a concerted campaign to raise this contribution. This contribution shall be transferred to the City before the City issues a Request for Proposals (RFP) or similar form of solicitation for Project construction. As an alternative, fifty percent (50%) of this contribution shall be transferred to the City before the City issues a RFP for Project construction; however, such reduction in contribution will cause the RFP to be split into two packages. The cost increase for splitting the RFP will be incurred by the Arts Organizations, not the City.

6. **Funding Policy Directives.** On May 23, 2006, the City Council adopted six policy directives pertaining to the use of CRCIP proceeds. The policy directives will be followed by the Parties and are as follows:

- A. Preliminary Work: Projects that have not begun preliminary work which may include acquisition, community outreach, environmental, design, etc. within twelve (12) months of July 1, 2006, will be reassessed for continued funding or substitution of other projects.
- B. External Funding Sources: City bond funds will not be advanced until such time that fifty percent (50%) of the needed external funding is achieved.
- C. Grant Funds: Agreements or MOUs with grantee organizations should be put in place to ensure project objectives will be met before funding is awarded.
- D. General Fund Loans: Loan or Development Agreements with grantee organizations must be put in place prior to award of funding.
- E. Contingency: Contingency is earmarked for Tier 1 construction projects and should not be reprogrammed to Tier II or other projects until assurance can be made that all Tier I projects have sufficient funding to be completed; and the contingency can be reduced at the time of bond sale of an amount not less

than twelve percent (12%) of the Tier I projects that have a contingency, if such reduction is necessary to maintain project funds for all Tier I projects originally approved by City Council. City Council must approve all use of contingency.

- F. **Bond Proceeds Management:** The City Treasurer's Office will report back to City Council semi-annually on the availability and programming of investment earnings and the status of projects as they relate to compliance with tax-exempt regulations and Policy Directives, and City Council authorize the use of investment earnings from the 2006 CIRB (excluding the SHRA component) unspent lease revenue bond funds to restore all Tier I projects should interest rates increase prior to the bond issue and a reduction in contingency funds previously described not be sufficient to offset the loss of project funds due to potential interest rate increases.
7. **Ownership.** The City is the current owner of the Project Site and will retain ownership of the Site. It is the intent and understanding that the completed facility will remain a City-owned facility.
8. **Public Project.** Public Project. Since the City will own the facility, the Arts Organizations shall comply with all City policies, rules, and ordinances, and state and federal statutes and regulations, prior and up to the issuance of a Certificate of Occupancy for the Project.
9. **Incorporation.** The Arts Organizations shall file an application by August 1, 2006 to incorporate as a California Public Benefit non-profit corporation. The Arts Organizations presently intend to name this new corporation "Studios for the Performing Arts Operating Company" ("SPA"). SPA's incorporating or governing documents shall include a covenant that identifies the number of voting rights of each of the Arts Organizations. SPA shall apply to the Internal Revenue Service for tax exempt status under Internal Revenue Code § 501(c)(3).
10. **Building Committee.**
- A. The Arts Organizations shall form a committee ("Building Committee") to discuss Project planning and implementation, including building design, construction, and tenant improvements. The Parties agree that the Building Committee members shall have sufficient expertise and authority to discuss these issues in an effective manner.
- B. The Arts Organizations shall appoint their Building Committee member(s) no later than August 1, 2006.

C. The City shall form a City team that will be responsible for identifying and resolving key issues during the planning and project implementation process. The City team shall be composed of representatives from the Convention Center and Leisure, Economic Development and General Services Departments. The Department of General Services will be designated as the lead department in the City and shall have decision-making authority on behalf of the City. The City team will meet regularly with the Building Committee to address and resolve issues that arise during the planning process, at such times and with such frequency as the City team finds necessary and appropriate. The City team and Building Committee shall exchange information related to the Project that had been provided to the Parties singly.

11. **City Council and Arts Organizations Board Involvement.** The designated representatives of the City and Arts Organizations shall be responsible for involving their respective governing bodies so they may make informed decisions regarding the Project. The governing bodies shall consider and provide approval during the programming and design phases of the project. The governing body for the Arts Organizations and the City shall use their best efforts to reach consensus and agreement on these matters. However, neither the City nor the Arts Organizations (including SPA) shall be obligated to proceed with the Project if they are unable to achieve agreement regarding the design and programming phases of the Project. Ultimately, if agreement cannot be achieved, any party to this MOU may invoke the termination provisions of Section 21.B below.
12. **Community Outreach.** The Parties agree that community involvement is an important part of the Project's planning process. The Parties shall develop a community outreach program to allow members of the community to comment on the Project. The Parties shall submit the agreed-upon outreach program for approval by their respective governing bodies.
13. **Programming/Design.** The City and the Arts Organizations will collaborate in the programming and design phase of the Project to ensure the proper use of building space. The design elements of the Project shall remain within the Project Budget.
14. **Project Schedule; Good Faith.** The Parties intend to complete the Project by July 1, 2009. The City shall prepare a Project schedule for review and comment by the Arts Organizations. The Project schedule shall include the dates of completion of Project phases. The Parties agree to act in good faith at all times by being

responsive during discussions and negotiations, and adhering to the Project schedule, expediting the process where possible. Where conflicts or disagreements arise, the Parties shall meet and confer in good faith for the purpose of resolving their disagreements. The City shall follow the Project schedule which will be revised only if necessary.

15. **Lease Agreement.** The Arts Organizations will repay the \$5,000,000 bridge financing, together with interest and the cost of bond issuance described in Section 5.B above, through the payment of rent under a lease structure in which the City will lease the Project, when completed, to SPA which will, in turn, sublease portions of the Project to each of the Arts Organizations. The lease agreement is not intended solely for the purpose of repayment of the bridge financing, but rather will include other terms and conditions. The lease agreement between the City and SPA will be executed before the City issues a Request for Proposals or similar form of solicitation for Project construction.
16. **Notices.** All notices under this MOU shall be given to the other Parties at the addresses set forth below or such other addresses as the Parties may designate.

CITY OF SACRAMENTO
Sheryl A. Taylor, Sr. Project Manager
Economic Development Department
1030 15th Street, 2nd Floor
Sacramento, CA 95814
916.808.8160

CALIFORNIA MUSICAL THEATRE
Richard Lewis, Executive Producer
1510 J Street, Suite 200
Sacramento, CA 95814
916.446.5880

THE SACRAMENTO BALLET
Kerri Warner, Executive Director
1631 K Street
Sacramento, CA 95814
916.552.5800

SACRAMENTO OPERA COMPANY
Rod Gideons, Executive Director
P.O. Box 161027
3811 J Street
Sacramento, CA 95816
916.737.1000

SACRAMENTO PHILHARMONIC ORCHESTRA
ASSOCIATION, INC.
Jane Hill, Executive Director
3418 Third Ave
Sacramento, CA 95817
916.732.9045

17. **California Environmental Quality Act (“CEQA”).** This MOU sets forth the commitments and the processes by which the Parties intend to pursue the Project. The Parties' approval of this MOU does not constitute final approval of the Project itself. The Parties acknowledge that the Project is a "project" within the meaning of CEQA, and will require appropriate environmental review under CEQA. The City shall be responsible for compliance with CEQA. Costs required for such compliance, including, without limitation, City staff time, consultant services, and other costs relating to the preparation of any such study, report or document required for compliance, if needed, shall be included in the Project Budget.
18. **Assignment.** This MOU may not be assigned without the mutual written consent of the Parties. Any assignment of this MOU without such consent shall be void.
19. **Modification.** This MOU contains the entire agreement between the Parties and supersedes whatever oral or written understanding they may have had prior to the execution of this MOU. No modification to the terms of this MOU shall be valid unless approved in writing by the Arts Organizations and the City.
20. **No Agency.** Neither Party, nor any of its agents, contractors or employees are or shall be considered to be the agents of any other Party in connection with the performance of any of act under this MOU.
21. **General Intent.**
 - A. **No Liability.** The Parties recognize that, throughout the planning process contemplated by this MOU, issues will be raised that require consensus and resolution by the Parties. Similarly, there may be a need to enter into additional agreements during the planning process on various issues.

While there can be no guarantee that consensus will be achieved, or agreements reached, the Parties agree to communicate and collaborate as necessary and appropriate, and to use reasonable, good faith efforts to achieve consensus and reach agreement. Failure to achieve consensus or agreement shall not be considered a breach of this MOU, and shall not give rise to a claim or cause of action by any of the parties for damages of any kind, including but not limited to claims for costs, reimbursement of expenses or damages of any kind, including consequential damages such as lost profits.

B. Termination of MOU. This MOU can be terminated and the Project abandoned for any reason prior to the issuance of a Request for Proposals or similar form of solicitation for Project construction by the City. The termination shall not be considered a breach of this MOU, and shall not give rise to a claim or cause of action by either Party for damages of any kind, including but not limited to claims for costs, reimbursement of expenses or damages of any kind, including consequential damages such as lost profits.

22. **Approvals and Execution.** This MOU is subject to approval by the governing body of each Party. The Parties hereto execute this MOU effective as of the date of adoption by their respective governing body. By executing this MOU, each signer represents that the governing body of her or his Party has approved this MOU and that she or he has the authority to execute this MOU on behalf of such Party.

(Signatures on the following Page)

CITY OF SACRAMENTO
APPROVED AS TO FORM:

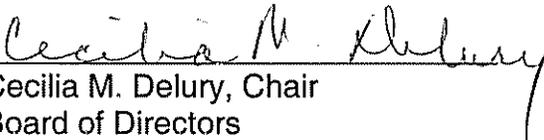
Ray Kerridge
City Manager

Robert Tokunaga
Supervising Deputy City Attorney

ATTEST:

City Clerk

CALIFORNIA MUSICAL THEATRE
A Not-For-Profit California Corporation



Cecilia M. Delury, Chair
Board of Directors



Richard Lewis
Executive Producer

THE SACRAMENTO BALLET
A Not-For-Profit California Corporation

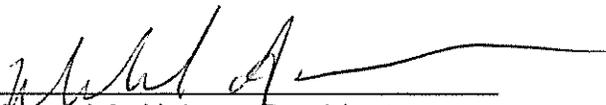


Robert Slater, President
Board of Directors

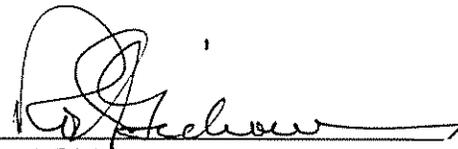


Kerri Warner
Executive Director

THE SACRAMENTO OPERA COMPANY
A Not-For-Profit California Corporation

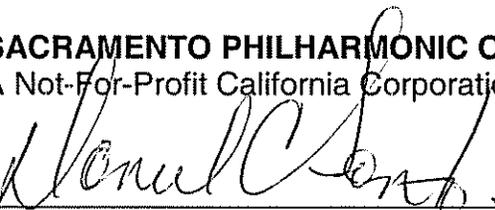


Michael A. Nelson, President
Board of Directors

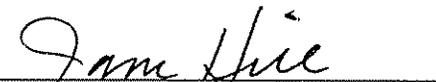


Rod Gideons
Executive Director

SACRAMENTO PHILHARMONIC ORCHESTRA ASSOCIATION, INC.
A Not-For-Profit California Corporation



for David E. Lindgren, President
Board of Directors



Jane Hill
Executive Director