

**PHANTOM PROJECTS THEATRE GROUP  
MANAGEMENT AGREEMENT FOR THE DEPOT THEATER**

**THIS AGREEMENT** is made and entered into this 19th day of April 2021 (“Effective Date”), by and between the City of La Habra, a municipal corporation (hereinafter referred to as “CITY”), and Phantom Projects Theatre Group, a non-profit organization (“PHANTOM” or “CONTRACTOR”). The CITY and PHANTOM may hereafter be referred to individually as a “Party” and collectively as “Parties.”

**W I T N E S S E T H:**

**WHEREAS**, CITY seeks to hire a company to oversee operations, management, and programming of the Depot Theater, located at 311 South Euclid Street, in the City of La Habra; and

**WHEREAS**, CITY finds it necessary, feasible, and economical to secure these services by contract as it lacks sufficient and necessary personnel to undertake these specialized professional services; and

**WHEREAS**, CITY released an RFP for the Operations, Management, and Programming of the Depot Theater; and

**WHEREAS**, CITY received and evaluated four response proposals from theater management companies and one response proposal from a museum management company; and

**WHEREAS**, CITY engaged two interview panels consisting of vested community based volunteers to evaluate the proposals; and

**WHEREAS** PHANTOM received the highest score from both interview panels and it was recommended to CITY by the panels that PHANTOM be awarded a management agreement for the Depot Theater; and

**WHEREAS**, PHANTOM desires to enter into such AGREEMENT to assist CITY in providing the public with high-quality entertainment options at the Depot Theater.

**NOW THEREFORE**, in consideration of the terms, covenants, and conditions hereinafter to be kept and performed by the respective Parties, it is agreed as follows:

**SECTION 1. TERM**

**1.1 Term.** The term of the **AGREEMENT** shall be five years, plus one five-year extension option exercisable at the **CITY’S** sole discretion on 180 day’s prior written notice, commencing on May 1, 2021. **PHANTOM** is provided a minimum of forty (40) weeks of programming time each year, while **CITY** reserves the right to close or utilize the Theater for up to twelve (12) weeks per year for **CITY** activities, including the Tamale Festival, summer activities, or maintenance work.

**1.2 Theater Usage by City.** **CITY** will negotiate with **PHANTOM** to determine the twelve (12) month, July 1 through June 30, calendar of **CITY** utilization, annually in June and will provide **PHANTOM** with the final usage dates by June 30<sup>th</sup> of each year.

## **SECTION 2. FINANCIAL OBLIGATIONS**

**2.1 Monthly Usage Fee.** PHANTOM shall pay a usage fee in the amount of \$ 1,250 per month, due on the 1<sup>st</sup> of each month, with up to \$ 750 per month forgivable in exchange for negotiated facility upgrades performed by PHANTOM. Such credit for upgrades must be requested in writing and approved by the Community Services Director prior to expenditure. The first usage fee shall be made on November 1, 2021 to allow for the Theater transition, including cleaning, preparation, small project enhancements, load-in and other items that need to occur prior to the occupation of the PREMISES by PHANTOM.

**2.2 Additional Ticket Fee.** PHANTOM is also required to pay \$1 per ticket sold at the Depot Theater to the Children's Museum at La Habra, payable on an annual basis. PHANTOM must report all financial data, including but not limited to ticket sales, concessions, and sponsorships annually to CITY (see Section 5 Reporting).

**2.3 Possessory Interest Tax.** PHANTOM is also required to pay the annual Possessory Interest Tax for the Depot Theater.

**2.4 Revenues and Costs Associated with Facility Management.** All costs associated with operating and managing the Depot Theater during the term of this Agreement are the responsibility of PHANTOM (see Section 7, Maintenance and Section 8, Utilities) and all ticket fees, sponsorships, and other revenues during the same term are the exclusive property of PHANTOM.

## **SECTION 3. PREMISES**

**3.1 Premises.** The PREMISES authorized for use by PHANTOM shall only include:

- The Depot Theater: main theater structure, the front patio, the back patio, and the Pullman and other train cars (see Section 6 for more details).
- The Portola Park parking lot adjacent to the Theater for parking purposes only.

**3.2 Authorized Usage.** PHANTOM shall use said PREMISES for the sole purpose of operating a community theater providing opportunities for producing, performing, and operating dramatic and special interest programs to benefit the La Habra community.

PHANTOM shall not use, or permit the use of said PREMISES, or any part thereof, for any purpose other than the purpose stated within this **AGREEMENT**. No use shall be made or permitted to be made of said PREMISES, or acts done, which will cause the cancellation of any insurance policy covering the premises.

PHANTOM shall, at its sole cost and expense, comply with all requirements pertaining to said PREMISES of any insurance organization or company necessary for the maintenance of insurance on and for said PREMISES. PHANTOM shall remain solely and exclusively responsible and liable for any and all damage caused to said PREMISES by PHANTOM'S use of said PREMISES except for the driveways, parking areas and landscape areas during the term of this Agreement.

If PHANTOM would like to use the PREMISES for anything other than what the AGREEMENT was intended for, it must obtain prior written consent from CITY.

### **3.3 Damage or Destruction to Premises**

#### **a. Damage to Premises**

If all or a portion of the PREMISES are damaged by fire, explosion, flooding inundation, floods, the elements, public enemy, or other casualty, but not rendered uninhabitable, the same will be repaired with due diligence by CITY at its own cost and expense, subject to the limitations as hereinafter provided; if said damage is caused by the negligent acts or omissions of PHANTOM, its agents, officers, employees, or guests PHANTOM shall be responsible for reimbursing CITY for the cost and expense incurred in making such repairs.

#### **b. Uninhabitable Premises**

If the PREMISES under the foregoing provisions is substantially damaged and rendered uninhabitable, CITY may, but shall not be obligated to, repair or reconstruct the PREMISES and PHANTOM may terminate this AGREEMENT in its entirety as of the date of such damage or destruction.

**3.4 Authorized City Use.** CITY reserves the right to develop or improve the PREMISES as needed, without interference or hindrance; however, **CITY** shall consider and request **PHANTOM'S** views and operational perspectives.

## **SECTION 4. RIGHTS AND RESPONSIBILITIES**

During the Term of this Agreement, **PHANTOM** shall:

**4.1 Management of Theater.** Manage and operate the Depot Theater, including food and beverage service, on a year-round basis per applicable City, State, and Federal codes, rules, regulations, ordinances, and laws regarding, without limitation, levels of noise, accounting procedures, Alcoholic Beverage Control compliance, public/private access, and any health and safety concern.

**4.2 Permits and Licenses.** Obtain at its sole expense any and all permits, approvals, and licenses that may be required in connection with the operation of the Depot Theater including, but not limited to: business licenses, health permits, police, fire, and Building and Safety permits. All permits, approvals, and licenses shall be posted in the appropriate areas on a year-round basis.

**4.3 Facility Modifications.** Prevent any modifications of a permanent or disfiguring nature of or to the Facility. Contractor may not install or attach anything in or on the Facility without having first submitted a written request to the Community Services Director and having received written permission from the Director or his/her designee. The approval of Director does not relieve Contractor from any responsibility to obtain necessary City permits or Building Department approvals for the modification. Should Contractor violate the provisions of this Paragraph, **PHANTOM** shall be charged for all repairs necessary to restore the Facility to its original condition and for any additional costs arising from such violation.

**4.4 Recycling.** Operate and conduct business in compliance with the City's Recycling Plan for all activities including, but not limited to, set construction and strike, food and beverage service, and office activities. The City Public Works Department, Waste and Recycling staff can assist with resources for achieving this goal. The goal is to send as little waste to landfill as possible through waste reduction, reuse and recycling. To achieve this goal

**PHANTOM** must first reduce waste whenever possible.

Avoid the use for food/beverage service of disposables, including, but not limited to, Styrofoam and other plastics. Reusable food/beverage service ware should be utilized to the maximum extent possible. Where a reusable food/beverage service option is not available, **PHANTOM** shall choose items that are recyclable. For concessions, choose product packaging that is recyclable.

Recycle all materials included in the City's Recycling Program including paper (all types), plastic containers, cardboard, glass bottles and jars, and metal cans. Compostable materials will be disposed of in designated compost waste receptacles

- 4.5 **Supervision of Staff.** Bear sole responsibility for the control and supervision of all production activities and personnel connected therewith, and notify all personnel of their obligations and responsibilities pertaining to their respective responsibilities, having primary responsibility for building security when **PHANTOM** is occupying City facilities.
- 4.6 **Participation in Civic Functions.** In conjunction with **CITY**, shall participate in or organize a minimum of three community-oriented activities annually such as the Love La Habra program, Children's Museum Open House, Police Department's National Night Out, and the like.
- 4.7 **Non-Profit Status.** Maintain its existence as an independent, non-profit corporation under the laws of the State of California.
- 4.8 **Professional Operations.** Maintain and provide professional theater operations, suitable for a community theater at all times and shall refrain from the promotion of offensive, obscene, or material inconsistent with the City Core Values.
- 4.8 **Compliance with Employment Laws.** **PHANTOM** certifies that it is aware of the provisions of the Labor Code of the State of California, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and it certifies that it will comply with such provisions during the Term of the Agreement.

**PHANTOM**, also certifies that it is aware of the provisions of California Assembly Bill 5 (2019), which requires certain contract employees to be classified as employees as well as California Assembly Bill 2257 which exempts certain classifications from Assembly Bill 5, and it certifies that it will comply with such provisions during the Term of this AGREEMENT.

**CITY** bears no responsibility to any subcontractors of **PHANTOM** if **PHANTOM** fails to comply with AB5 or AB2257 and **PHANTOM** certifies that it will hold **CITY** harmless from any claims that arise from operation of the Depot Theater.

During the Term of this Agreement, **CITY** shall:

- 4.9 **Permitting Usage of Premises.** Allow Contractor the exclusive use of the Facility, as defined in Section 3, for the preparation and presentation of Productions performed under this agreement.

4.10 **Suspension of Agreement Due for Safety Purposes.** Have the right, with no notice, to suspend the Agreement if the Facility should be declared uninhabitable for reasons of safety by the proper authorities (e.g., if the building should be damaged in an earthquake and be declared unsafe for occupancy). If there is an outbreak of pandemic flu or other medical emergency and places of public gatherings are closed,

**CITY** will not assume any financial responsibility for loss of revenue by **PHANTOM** if the PREMISES is not available due to earthquakes, natural disasters, safety related issues, or outbreaks of pandemics, flus or other medical emergencies.

4.11 **City's Rights for Non Compliance by Contractor.** Notwithstanding the requirements of this Agreement, in the event **CITY** should determine from any source, that **PHANTOM** may not be in compliance with any provision of the Agreement, City may forward to Contractor written notice of same. Such notice shall specify with particularity the nature of the condition(s) or issue(s) that require(s) corrective action and may include a recommendation as to appropriate corrective action.

Within fifteen (15) days of City's request, **PHANTOM** shall submit its written response to the notice, which response shall set forth its view of the alleged violation and its proposed plan, if any, for corrective action. Upon request of either Party, the Parties shall meet within five (5) days thereafter to discuss the alleged violation and proposed corrective action.

## **SECTION 5. GENERAL PROVISIONS**

### **5.0 Transfer or Assignment.**

**PHANTOM** shall not under-let or sub-let the PREMISES or any part thereof or allow the same to be used or occupied by any other person or for other uses than that herein specified, or assign the AGREEMENT nor transfer, assign or in any manner convey any of the rights or privileges herein granted without the prior written consent of CITY.

### **5.1 Infractions, breach and termination**

Any infractions, large or small, will be treated as a material breach of the **AGREEMENT** and will be subject to all of the applicable laws, fines, and penalties imposed by the **CITY**. **CITY** shall give **PHANTOM** written notice of such a material breach, and if **PHANTOM** does not cure said breach within thirty (30) days after notice, or such longer period as is reasonably necessary to remedy such breach, but, in no case longer than an additional ninety (90) days, provided that **PHANTOM** shall continuously and diligently pursue such remedy at all times until such material breach is cured, **CITY** may terminate this **AGREEMENT**.

### **5.2 Fire/Life Testing of Premises**

**CITY**, through the Los Angeles County Fire Department, will perform an annual Fire Inspection at the Depot Theater. Any corrections required and identified during the inspection will need to be corrected immediately by **PHANTOM**. If **PHANTOM** is unable to make the immediate corrections, **PHANTOM**, must immediately report inability to correct to **CITY**.

### **5.3 Signs and Advertisements**

**PHANTOM** shall not erect, construct, or place any signs, banners, ads, or displays of any kind whatsoever ("Signs") upon any portion of **CITY** property without prior written approval from the Director of Community Services, who reserves the right in its sole discretion to approve any such Signs and who may require the removal or refurbishment of any previously approved Sign.

**PHANTOM** must maintain the Depot Theater Sign Board in a clean and professional manner at all times.

5.4 **Safety Conditions**

**PHANTOM** shall prepare an overall facility safety plan for employees and guests with specific training programs for all employees.

**PHANTOM** shall correct in a timely manner any hazardous conditions which have led or, could reasonably lead to, an injury. If **PHANTOM** is unable to correct the condition, **PHANTOM** shall immediately report the condition to **CITY**.

**SECTION 6. REPORTING**

6.1 **PHANTOM** shall submit annually a report to **CITY** which sets forth the activities and operations of **PHANTOM** from the prior year.

The following information must be submitted annually:

- Mission statement, organizational values, goals, strategic plans, or other similar documents as applicable; and
- Board of Directors, including contact information for Board Chair and Executive Director; and
- Basic financial information such as a “Consolidated Budget” current 990 Form, Profit and Loss Statement, professional annual audit and financials; and
- Any construction or improvements made to the Premises and any information related to funding source(s), date(s), description, etc. *Any construction or improvements to the Premises must have the prior written approval of CITY; and*
- Identification of programs and services provided to 1) La Habra community specifically; and 2) greater area, including number of participants in each; and
- Any other information that **PHANTOM** would like to share that might provide a better understanding regarding the contributions of **CONTRACTOR** to the community.

**SECTION 7. MAINTENANCE**

7.1 **CITY** has assessed the Depot Theater building and the following conditions will apply to the agreement:

7.2 Depot Theater Plumbing –

- A. **CITY** has inspected the Depot Theater plumbing and considers the plumbing to be in reasonable working condition at the time of the signing of this **AGREEMENT**.
- B. **PHANTOM** is responsible for all plumbing issues that arise during the term of this **AGREEMENT**.
- C. **CITY** will conduct bi-annual plumbing inspections and main-line service.
- D. **PHANTOM** must contract with a licensed plumbing vendor for all repairs.
- E. If a licensed plumbing vendor is unavailable and if City staff is contacted for a call out, **PHANTOM** is responsible for covering all costs associated with the repair and staff expenses and will be invoiced and payable to **CITY** within 30 days.

- 7.3 Air Conditioning –
- A. **CITY** has inspected the Depot Theater air conditioning and considers the air conditioning to be in reasonable working condition at the time of the signing of this **AGREEMENT**.
  - B. **CITY** is responsible for the air conditioning at the Depot Theater and will install electronic monitoring controls to the system at the commencement of this **AGREEMENT**.
  - C. **CITY** will set minimum/maximum temperature controls.
  - D. If **CITY** finds **PHANTOM** is not properly monitoring the air conditioning or is changing the City's predetermined settings, additional fees will be imposed for call outs, repairs (more than three times per year) and building maintenance staff costs and will be invoiced and payable within 30 days.
- 7.4 Rodent Control
- A. **CITY** will provide one basic rodent control treatment per year.
  - B. **PHANTOM** is responsible for removing all food, trash and other items that may attract rodents.
  - C. **PHANTOM** is responsible for ongoing rodent control.
- 7.5 Facility Improvements
- A. **PHANTOM** must get prior written approval from **CITY** for any major work to the building including changing lights, seating, stage, kitchen, lobby, and restrooms.
- 7.6 Train Car Maintenance
- A. The maintenance of the Train Cars is not included in this **AGREEMENT**.
  - B. **PHANTOM** may utilize train cars at this time, but this approval may be rescinded by **CITY** with 60-days notice to **PHANTOM**.
  - C. Insurance must include train cars.
  - D. **CITY** will make temporary fixes to the cars to alleviate leakage.
  - E. There is no additional charge for usage of cars.
  - F. Cars must comply with all fire and safety regulations.
- 7.7 Prop and Instrument Storage
- A. **PHANTOM** is responsible for properly and safely storing all scene sets and props. These items may not be left outside and unsecured.
- 7.8 General Maintenance Issues
- A. **PHANTOM** shall, throughout the term of this lease, keep and maintain the facility / premises (exterior and interior) in neat order, good condition and repair, and shall restore and rehabilitate any improvements, which may be destroyed or damaged by any cause whatsoever including any landscaping and irrigation.
  - B. **CITY** shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the said premises or improvements thereon except for the driveways and parking areas.
  - C. **PHANTOM** shall comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws, or any activity or conditions on or in such premises.
- 7.9 Inspection

- A. **CITY** retains the right to perform reasonable unannounced inspections at the Depot Theater at any time.

7.10 Cause for Termination or Shutdown

- A. It shall be a cause of termination of this **AGREEMENT** if all repairs and long-term maintenance issues have not been reasonably accomplished by **PHANTOM**.
- B. **CITY** maintains the right to close down the facility for any community health or safety issues. The City is not responsible for any expenses that are caused as a result of the closure. City will make every effort to make necessary repairs in a timely manner and is not responsible for relocating the program to a temporary site location.

**SECTION 8. UTILITIES**

8.1 All separately metered water, gas, electricity, trash service, telephone and other utility services used on or furnished to said premises during the term shall be paid for by **PHANTOM** for a minimum of 40 weeks of operation. **CITY** will assume the costs of utilities for up to twelve weeks if **CITY** chooses to exercise its right to sole use of the facility outlined in Section 1.

- A. Electrical – **CITY** is currently covering all electricity expenses until the SCE meter issue is resolved. Once the meter is identified for the Depot Theater, **PHANTOM** will be responsible for all metered electricity bills.
- B. Water and Gas – **PHANTOM** is solely responsible for all water and gas metered bills.
- C. Alarms – **CITY** is solely responsible for all facility alarms.

**SECTION 9. DEPOT THEATER SIGN BOARD**

9.1 No sign, notice or other advertisement shall be displayed on the outside premises without the prior written consent of **CITY**. All signage must be properly cared for and removed after performance season ends.

**SECTION 10. NAMING RIGHTS**

10.1 **PHANTOM** may consider naming opportunities for the Depot Theater during the time of this Agreement, with prior written approval from **CITY**.

**SECTION 11. LIENS**

11.1 **PHANTOM** shall keep the fee estate of said premises free and clear from all mechanics and material men liens and other liens for work or labor done, services performed, materials, appliances used, or furnished or to be used in or about the premises for or in connection with any operation of **PHANTOM**, for any repairs or improvements which **PHANTOM** may make or permit to cause to be made, or any work or construction by, for or permitted by **PHANTOM** on or about said PREMISES.

## **SECTION 12. INDEMNIFICATION**

- 12.1 **PHANTOM** agrees to defend, indemnify, hold free and harmless **CITY**, its elected officials, officers, agents, volunteers and employees, at **CONTRACTOR**'s sole expense, from and against any and all damages to property or injuries to or death of any person or persons, including attorney fees, and shall defend, indemnify, save and hold harmless **CITY**, its elected officials, officers, agents, volunteers and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, all civil claims, workers' compensation claims, and all other claims resulting from or arising out of the acts, errors or omissions of **PHANTOM**, its elected officials, officers, agents, volunteers, employees, occupants, visitors or other users and/or authorized subcontractors, whether intentional or negligent, during the term of this lease.

Likewise, **CITY** agrees to defend, indemnify, hold free and harmless **PHANTOM**, its elected officials, officers, agents, volunteers and employees, at **CITY**'s sole expense, from and against any and all damages to property or injuries to or death of any person or persons, including attorney fees, and shall defend, indemnify, save and hold harmless **CONTRACTOR**, its elected officials, officers, agents, volunteers and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, all civil claims, workers' compensation claims, and all other claims resulting from or arising out of the acts, errors or omissions of **CITY**, its elected officials, officers, agents, volunteers, employees, occupants, visitors or other users and/or authorized subcontractors, whether intentional or negligent, during the term of this AGREEMENT.

## **SECTION 13. ASSIGNMENT AND SUBLETTING**

- 13.1 **PHANTOM** shall not have the authority assign the rights or any portion of the rights granted under this AGREEMENT.

## **SECTION 14. ENCUMBRANCE OF AGREEMENT INTEREST**

- 14.1 **PHANTOM** may not encumber or mortgage by deed or trust or other instrument its Management Agreement interest and estate in said PREMISES.

## **SECTION 15. DEFAULT**

15. If **PHANTOM** shall fail or neglect to observe, keep or perform any of the covenants, terms or conditions herein contained on its part to be observed, kept or performed, and if such default shall continue for a period of thirty (30) calendar days after written notice from **CITY** setting forth the nature of the **CONTRACTOR**'s default, then and in such event, **CITY** shall have the right at its option to terminate this AGREEMENT and all rights of **PHANTOM** hereunder shall thereupon cease.

If **CITY** should find the need to terminate the AGREEMENT under the terms in this section, **CITY** will not be liable for any damages, including, but not limited to, loss of income from tickets or sponsorships, equipment rentals, staff costs or any other cost associated with termination of the AGREEMENT.

## **SECTION 16. NOTICES**

- 16.1 Wherever in this AGREEMENT it shall be required or permitted that notice be given by either party, such notice must be in writing, and must be given personally or forwarded by certified mail addressed as follows:

### **IF TO CONTRACTOR:**

Phantom Projects Theatre Group  
PO Box 250  
La Mirada CA 90637  
Attention: Steve Cisneros,  
Producing Artistic Director

### **IF TO CITY:**

City of La Habra  
110 E. La Habra Boulevard  
La Habra, CA 90631  
Attention: Jim Sadro,  
City Manager

The effective date of any notice or written communications sent by one party to the other shall be the date received if by personal service, or forty-eight (48) hours after deposit in the US Mail as reflected by official US postmark. Either party may change its address by giving notice in writing to the other party.

## **SECTION 17. FORFEITURE FOR INSOLVENCY**

- 17.1 If **PHANTOM** shall at any time during the term hereof become insolvent, or have proceedings in bankruptcy instituted by or against it, or have a receiver appointed over its property, it shall be lawful for **CITY** to enter and repossess said premises. All rights of **PHANTOM** shall be thereon terminated.

## **SECTION 18. ABANDONMENT BY CONTRACTOR**

- 18.1 If **PHANTOM** shall fail to use said premises, which is fit for occupancy, for a period of thirty (30) consecutive days, said premises shall be considered abandoned and the lease term forfeited.

## **SECTION 19. WAIVER**

- 19.1 The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

## **SECTION 20. INSURANCE**

- 20.1 **CITY** reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. If the existing policies do not meet the Insurance Requirements set forth herein, **PHANTOM** agrees to amend, supplement or endorse the policies to do so.

Without limiting the indemnity provisions of the agreement, **PHANTOM** shall procure and maintain in full force and effect during the term of the agreement, the following policies of insurance.

20.2 **MINIMUM SCOPE OF INSURANCE.**

- (a) **Commercial General Liability (CGL)** which affords coverage at least as broad as Insurance Services Office “occurrence” form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- (b) **Automobile Liability Insurance** with coverage at least as broad as Insurance Services Office Form CA 0001 covering “Any Auto” (Symbol 1) with limit no less than \$1,000,000 each accident for bodily injury and property damage. Such insurance shall include coverage for owned, hired and non-owned automobiles.
- (c) **Workers’ Compensation** as required by the State of California with statutory limits, and Employer’s Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury or disease.
- (d) **Sexual Abuse/Molestation Insurance** **PHANTOM** shall procure and maintain Sexual Abuse/Molestation Insurance Liability coverage with limits of not less than \$2,000,000 per occurrence and \$4,000,000 general aggregate. Coverage may be provided as part of Commercial General Liability coverage, Professional Liability coverage, or as a separate policy.

20.3 **Broader Coverage.** If **PHANTOM** maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by **PHANTOM**.

20.4 **Increase of Required Limits.** **CITY** reserves the right to review industry standards and a comparison of similar buildings in the area and impose a reasonable increase of the insurance limits every three (3) years from the Effective Date of this AGREEMENT.

20.5 **ENDORSEMENTS.** Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The insurance policies shall contain or be endorsed to contain, the following provisions:

- (a) Commercial General Liability
  - (1) **Additional Insured:** The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the CONTRACTOR including materials, parts or equipment furnished in connection with such work or operations.  
Additional Insured Endorsements shall not:

1. Be limited to "Ongoing Operations"
  2. Exclude "Contractual Liability"
  3. Restrict coverage to the "Sole" liability of contractor
  4. Exclude "Third-Party-Over Actions"
  5. Contain any other exclusion contrary to the Contract
- Additional Insured Endorsements shall be at least as broad as ISO Form(s) CG 20 10 11 85; or CG 20 10 and CG 2037.

(2) **Primary Insurance:** This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance. Coverage shall be at least as broad as ISO CG 20 01 04 13.

(b) Auto Liability

(1) **Additional Insured:** The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the CONTRACTOR.

(2) **Primary Insurance:** This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance.

(c) Workers' Compensation

(1) **Waiver of Subrogation:** A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

20.6 **INSURANCE OBLIGATIONS OF CONTRACTOR.** The Insurance obligations under this AGREEMENT shall be: (1) all the Insurance coverage and/or limits carried by or available to the CONTRACTOR; or (2) the minimum Insurance coverage requirements and/or limits shown in this agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the CITY. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the obligations of the CONTRACTOR under this lease agreement.

20.7 **NOTICE OF CANCELLATION.** Required insurance policies shall not be cancelled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon CITY except ten (10) days shall be allowed for non-payment of premium.

20.8 **WAIVER OF SUBROGATION.** Required insurance coverages shall not prohibit CONTRACTOR from waiving the right of subrogation prior to a loss. CONTRACTOR shall waive all rights of subrogation against the indemnified parties and Policies shall contain or be endorsed to contain such a provision. This provision applies regardless of whether the CITY has received a waiver of subrogation endorsement from the insurer.

20.9 **EVIDENCE OF INSURANCE.**

- (1) All policies, endorsements, certificates, and/or binders shall be subject to approval by the **CITY** as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the **CITY**. The **CITY** reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- (2) The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the **CITY**. If such coverage is cancelled or reduced, CONTRACTOR shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the **CITY** evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

20.10 **DEDUCTIBLE OR SELF-INSURED RETENTION.** Any deductible or self-insured retention must be approved in writing by the **CITY** and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. The **CITY** may require the CONTRACTOR to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention.

20.11 **CONTRACTUAL LIABILITY.** The coverage provided shall apply to the obligations assumed by the CONTRACTOR under the indemnity provisions of this contract.

20.12 **FAILURE TO MAINTAIN COVERAGE.** CONTRACTOR agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the **CITY**.

20.13 **ACCEPTABILITY OF INSURERS.** Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by the City.

20.14 **CLAIMS MADE POLICIES.** If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial CONTRACTOR's lease agreement with the **CITY** and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least five (5) years from termination or expiration of this lease agreement.

20.15 **INSURANCE FOR SUBCONTRACTORS.** CONTRACTOR shall be responsible for causing Subcontractors to purchase the same types and limits of insurance in compliance with the terms of this lease agreement, including adding the **CITY** as an Additional Insured, providing Primary and Non-Contributory coverage and Waiver of Subrogation to the

Subcontractor's policies. The Commercial General Liability Additional Insured Endorsement shall be on a form at least as broad as CG 20 38 04 13.

## **SECTION 21. TERMINATION**

- 21.1 **Cause for Termination.** At all times during this Agreement CONTRACTOR shall operate its organization consistent with the uses in section four (4).

If at any time during this lease CITY believes CONTRACTOR is in default of the lease it shall provide written notice to CONTRACTOR allowing thirty (30) calendar days to cure the default. If after receiving written notice of the default, CONTRACTOR fails to cure the default, CITY may terminate this Agreement immediately.

- 21.2 **Fiscal Emergency.** If CITY declares a fiscal emergency and determines that they are to liquidate assets of the city, including the underlying premises of this lease, CITY may terminate the lease upon thirty (30) days written notice. Upon receipt of the written notice of termination, CONTRACTOR will thereafter have thirty (30) days to provide CITY with a notice of intent to exercise its first right to purchase the underlying property at fair market value subject to the existing lease. If CONTRACTOR fails to timely provide said notice of intent then the lease shall immediately terminate upon expiration of the thirty (30) days. However, if CONTRACTOR timely provides CITY with said notice of intent, CONTRACTOR shall have six (6) months thereafter to exercise its right by funding its purchase of the underlying property, during which time the term of the lease shall continue unless otherwise terminated under this Agreement. In the event that CONTRACTOR fails to fund such purchase within six (6) months of providing its notice of intent, then its first right to purchase and the lease shall both immediately terminate.

- 21.3 **Exigent Circumstances.** Under exigent circumstances, for a legitimate governmental purpose, and in order to ensure the continuity of essential city programs and services CITY may terminate the lease. City Council is required to approve the termination with a 4/5 vote and a thirty (30) day notice to CONTRACTOR is required. At such time that use of the facility to ensure the continuity of essential City programs and services is no longer required, and under which the City Council exercised its right of termination, the terms and conditions of the lease shall be reinstated for the balance of the term of the lease.

## **SECTION 22. ATTORNEY'S FEES**

- 22.1 In the event that litigation is brought by any party in connection with this Lease, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

- 22.2 **Mediation-Arbitration Clause.** CITY and CONTRACTOR hereto agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration. Mediation fees shall be divided equally among the parties involved. If any party commences an action based on a dispute or claim to which this paragraph applies, without first attempting to resolve the matter through mediation, then that party shall not be entitled to recover attorney fees, even if fees would otherwise be available to the party in any such action.

22.3 **Arbitration of Disputes.** CITY and CONTRACTOR agree that any dispute or claim in law or equity arising between them out of this agreement, or any resulting transaction, which is not settled by mediation, shall be decided by neutral, binding arbitration. The arbitration shall be under the rules of the judicial arbitration and mediation services (jams). The arbitrator shall be a retired judge or justice, or an attorney with at least 10 years of real estate law experience, unless the parties mutually agree to a different arbitrator, who shall render an award with detailed findings and conclusions in accordance with the substantive California law. In all other respects, the arbitration shall be conducted in accordance with part iii, title 9 of the California code of civil procedure. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction. The parties shall have the right to discovery in accordance with code of civil procedures 1283.05. Except that each party shall be entitled as a matter of right to take one deposition of the other party without the requirement or consent of the arbitrator. In any controversy or dispute requiring legal litigation/attorneys, the prevailing party shall be entitled to reasonable attorney fees and costs.

**SECTION 23. REPRESENTATIVES**

23.1 The City Manager or his/her designee shall be the representative of CITY for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of CITY, called for by this lease, except as otherwise expressly provided in this Agreement.

The Producing Artistic Director shall be the representative of CONTRACTOR for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of CITY, called for by this Agreement, except as otherwise expressly provided in this Agreement.

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

CITY OF LA HABRA,  
A municipal corporation

\_\_\_\_\_  
Jim Sadro, City Manager

Date: \_\_\_\_\_

PHANTOM PROJECTS THEATRE GROUP

\_\_\_\_\_  
Steve Cisneros, Producing Artistic Director

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Laurie Swindell, CMC  
City Clerk

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Dick Jones, City Attorney

Date: \_\_\_\_\_

APPROVED AS TO INSURANCE:

\_\_\_\_\_  
Elvie, Balderrama, Risk Management

Date: \_\_\_\_\_