

## **AMENDMENT NO. 1 TO EXCLUSIVE NEGOTIATING AGREEMENT**

THIS AMENDMENT NO. 1 TO EXCLUSIVE NEGOTIATING AGREEMENT is made and entered in the City of San Luis Obispo on \_\_\_\_\_, by and between the City of San Luis Obispo, a charter municipal corporation (“the City”) and San Luis Obispo Repertory Theatre, a California non-profit organization (“SLO REP”). The City and SLO REP are jointly referred to as the “Parties”.

### **WITNESSETH:**

WHEREAS, on May 22, 2019, the City and SLO REP entered into an Exclusive Negotiating Agreement (“ENA”) that set forth certain parameters, conditions, milestones, and conditions precedent to entering into a long-term lease for SLO REP to use of a portion of City property to construct and operate a new theatre building adjacent to the City’s Cultural Arts District Parking Structure, and

WHEREAS, the ENA has a five-year term that may be extended by mutual agreement of the Parties and both the City and SLO REP have a desire to continue working together towards the construction and long-term operation of a new theatre building; and

WHEREAS, both the City and SLO REP have completed and will continue to maintain their respective obligations specified in the ENA, as well as satisfy the necessary conditions precedent to lease negotiations and execution (paragraphs 5, 6, and 8), and the Parties are presently working together to move towards the preparation of a mutually agreeable lease agreement.

NOW THEREFORE, in consideration of their mutual promises, obligations, and covenants hereinafter contained, the parties hereto agree as follows:

1. The Exclusive Negotiating Agreement is hereby amended as follows:

- i. The term shall be extended for a period of six (6) months from the date of this Amendment No. 1, provided that SLO REP shall disclose to City other sites or options, if any, that it may be considering for the theatre. The ENA may be extended for an additional six (6) month period thereafter with approval by the City Manager. The additional six (6) month extension may only be considered upon SLO REP delivering a written notice of intent to proceed with final lease negotiations with the City.

- ii. Paragraph 8a., General Lease Terms, shall be amended as follows: "SLO REP shall commence construction of the Theatre no later than one (1) year after the completion of the ~~Palm Nipomo~~ Cultural Arts District Parking Structure and shall complete construction of the Theatre within three (3) years after that. SLO REP shall not commence construction of the Theatre unless SLO REP demonstrates, to the City's Finance ~~Manager~~ Director's reasonable satisfaction prior to ~~expiration of the year within which SLO REP is to commencement of~~ construction, that SLO REP has all of the funds necessary to design and construct, ~~as well as operate for at least one (1) years after completion of construction,~~ the Theatre, plus a 15% construction contingency, available in cash or approved financing (the "Required Funds"), and SLO REP shall also submit to the City Manager (or their delegate) a written document that demonstrates an operating reserve of 20% for the first year of operating the new theatre and three year operating plan including the establishment of a fund for building and facilities maintenance and repair."
- iii. Paragraph 8b., General Lease Terms, shall be replaced as follows: "A lease term not-to-exceed ninety-nine (99) years."

2. All other terms and conditions of the Exclusive Negotiating Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first written above.

**CITY OF SAN LUIS OBISPO**

**SLO REPERTORY THEATRE**

---

Erica A. Stewart, Mayor

---

Kevin Harris, Managing Artistic Director

**ATTEST**

---

Teresa Purrington, City Clerk

**APPROVED AS TO FORM**

---

J. Christine Dietrick, City Attorney