

**GRANT AGREEMENT
SAN LUIS OBISPO
REPERTORY THEATRE**

This agreement dated 4/21/2022 | 2:47 PM PDT is between SAN LUIS OBISPO REPERTORY THEATRE, a California non-profit corporation (“SLO REP”) and CITY OF SAN LUIS OBISPO, a California Municipal Corporation and Charter City (“CITY”) (the “Grant Agreement”) with reference to the following:

WHEREAS, SLO REP and CITY previously entered into an Exclusive Negotiating Agreement (the “ENA”) on May 22, 2019, that identified a mutual interest in the development of a new theatre site, to be leased by SLO REP, and a new City parking structure to be located on CITY property, together with obligations to be performed by both CITY and SLO REP and recitation of conditions precedent for purposes of SLO REP entering into a long-term lease with CITY for a portion of CITY’s property; and

WHEREAS, SLO REP issued a written Challenge Grant Request to the City Council dated January 25, 2022, that set forth a rationale and basis for SLO REP’s request of CITY to contribute to the construction of its new downtown theatre project (the “Downtown Theatre”), to be located at the corner of Palm Street and Nipomo Street, San Luis Obispo, and contiguous with CITY’s planned Cultural Arts District Parking Structure (“Parking Structure”); and

WHEREAS, at its regularly scheduled meeting on February 15, 2022, the City Council appropriated \$3.94 million, as requested by SLO REP, as part of its approval of the FY 2021-2022 Mid-Year Budget Review; and

WHEREAS, CITY’s financial support towards construction of the Downtown Theatre to be leased and used by SLO REP is intended to be a challenge grant that will serve to motivate and catalyze other funders and donors in furtherance of SLO REP’s overall capital campaign and fundraising goals for the construction of the Downtown Theatre site development; and

WHEREAS, the new Downtown Theatre will ultimately be available to both residents of the City and visitors alike, thereby serving public purposes in furtherance of CITY’s goals for facilitating both arts and cultural amenities, as well as contributing to a thriving and prosperous downtown area through economic development activities, and

WHEREAS, SLO REP’s long-standing plans for construction of a new Downtown Theatre are consistent with CITY’s Downtown Concept Plan (2017) and its “Economic Recovery, Resiliency & Fiscal Sustainability” Major City Goal specified in the 2021-23 Financial Plan, and

WHEREAS, CITY completed environmental review as lead agency for both the development of the Parking Structure and the Downtown Theatre and certified a Final Environmental Impact Report by Resolution No. 10923 (2018 Series).

NOW, THEREFORE, CITY and SLO REP for and in consideration of the mutual benefits, promises and agreements set forth herein, do agree as follows:

1. Construction of the Downtown Theatre

On or before the date that is ten (10) years following the execution of this Grant Agreement, SLO REP shall complete construction of the Downtown Theatre. SLO REP's failure to comply with this term may result in amendment, provided substantial progress or extenuating circumstances can be documented, or termination of this Agreement as provided herein.

2. Grant Amount and Allowed Expenses

City agrees to pay SLO REP a one-time only grant in installments as provided in Section 4, the aggregate sum of \$3,940,000 ("Grant Funds"), to be used towards the construction of the Downtown Theatre, subject to the conditions set forth herein. The Grant Funds shall only be used for Eligible Costs directly related to construction of the Downtown Theatre as specified below.

CITY's Grant Funds may only be used for direct construction costs defined as contractor expenses for labor, project management, material, equipment, utilities and other direct construction costs ("Eligible Costs"). Payments for "soft" costs are not Eligible Costs and shall not be paid from CITY Grant Funds. "Soft" costs are expense items that are not considered direct construction costs such as architectural and engineering expenses or project fees associated with the project. If there is a dispute about whether a project cost is an Eligible Cost, CITY shall have final determination of whether the cost is an Eligible Cost.

SLO REP acknowledges that construction of the Downtown Theater is subject to payment of prevailing wages on the entirety of the project due to the City's contribution of funding to the project and that such obligation will be expressly conveyed by SLO REP to and will be binding on any covered contractor engaged to perform work on the Downtown Theatre project.

3. Conditions Precedent to Funding

SLO REP shall satisfy the following required conditions prior to any disbursement of Grant Funds by CITY. With respect to any requested reimbursement, SLO REP shall:

- a. Maintain its 501(c)(3) non-profit status.
- b. Shall secure all other grant funds, donations, pledges, or financing necessary to complete construction of the Downtown Theatre, inclusive of the amount of Grant Funds provided by the CITY pursuant to this Grant Agreement, and shall first utilize (or provide for first utilizing) all other grant funds, donations, or financing then available (collectively "Other Available Funding") for the construction of the Downtown Theatre prior to any request for reimbursement from CITY. However, SLO REP's initial reimbursement request for Grant Funds may be made prior to complete exhaustion of Other Available Funding, as necessary, to ensure continued availability of funding to complete construction of the Downtown Theatre in conformance with the construction schedule to be provided under Section 3(e) and the schedule of values to be provided under Section 3(f). However, in no instance shall reimbursement requests for CITY's Grant Funds exceed the estimated value of completed improvements.

- c. Continue to adhere to all of the requirements of the ENA, attached hereto as Exhibit A and hereby incorporated by reference, until such time as a long-term lease is entered into with CITY, as contemplated by the ENA. Once the long-term lease is in place, SLO REP shall abide by all lease terms and conditions.
- d. Have secured all necessary project entitlements and building permit(s) for construction of the Downtown Theatre that may be applicable as further described in Paragraph 6, below.
- e. Have submitted to the Public Works Director's reasonable satisfaction a critical path construction schedule that includes all Downtown Theatre project-related tasks, and thereafter update this critical path construction schedule and furnish the same to the City on a quarterly basis (4 times a year) until construction is complete and a certificate of occupancy for the Downtown Theatre is furnished.
- f. Submit to the Public Works Director's reasonable satisfaction a "schedule of values" for items of work the general contractor will thereafter be completing. Identify in the schedule of values each of the items that are proposed to be funded, and when, by CITY Grant Funds.

4. Reimbursement Requests

Upon satisfaction of the conditions identified in Section 3, reimbursement payment requests for Eligible Costs identified in the construction schedule required pursuant to Section 3(e) shall be submitted to CITY's Deputy City Manager. Reimbursement payment requests shall include supporting documentation including contractor invoices and the most current building inspection documentation available at that time, as well as a statement that the construction work progress has been accepted by SLO REP. Reimbursement payment requests may be submitted on a bi-monthly (twice per month) basis and will be reviewed and approved for reimbursement by the CITY in a timely manner, and CITY will make best efforts to process and pay reimbursement requests within fifteen (15) business days from the date of such payment request, provided that sufficient documentation supporting the reimbursement request is provided to CITY. Sufficiency of payment documentation shall be in the sole but reasonable discretion of the CITY and CITY reserves the right to request and receive additional reasonable documentation to support SLO REP's reimbursement requests and as may be appropriate to aid in City's determination of whether the requested reimbursement payment is for an Eligible Cost.

5. Construction at Other Sites

If SLO REP determines that construction of the Downtown Theatre at the specified site is impractical or inadvisable for any reason, then SLO REP may not use the Grant Funds for any other purpose without prior written approval of the City Council.

6. Permits

SLO REP shall apply for and obtain all necessary building and other related permits and project entitlements necessary to construct the Downtown Theatre in conformance with local, state, and federal laws. This Grant Agreement does not authorize the construction of the Downtown Theatre or otherwise alter or impact the exercise of the City's independent regulatory and land use authority.

7. Funding Source Recognition

SLO REP will ensure recognition of the role of CITY in providing funding through this Grant Agreement. CITY shall be identified as a funding source in all applicable publications, press releases, social media outreach and similar fundraising promotions.

8. Amendments

CITY and SLO REP may amend this Agreement at any time provided that such amendments make specific reference to this Grant Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the City Council. Such amendments will not invalidate this Agreement, nor relieve or release either CITY or SLO REP from its obligations under this Grant Agreement, except as expressly provided in writing in any such duly executed amendments.

9. Quarterly Reports and Financial Assurance

The SLO REP shall provide quarterly reports on both Downtown Theatre construction project progress including the use of CITY Grant Funds. These reports shall be due at the end of the first month after the end of the calendar quarter (i.e. January, April, July, and September) and submitted to the Deputy City Manager. The quarterly reports should include percentage of construction completion, other available funding on hand or then receivable, and work anticipated to be completed in the following quarter. CITY reserves the right to request and receive copies of invoices, account statements, or audits of SLO REP's financial records pertinent to the Downtown Theatre's construction and in CITY's sole discretion, to withhold reimbursement payments until satisfactory reports and supporting documentation are received.

10. Assignability

The SLO REP shall not assign or transfer any interest in this Grant Agreement without the prior written consent of the City Council.

11. Conflict of Interest

No member of the CITY's governing body and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning or carrying out of the Downtown Theatre project, will have any personal financial interest, direct or indirect, in this Grant Agreement; and the SLO REP will take appropriate steps to assure compliance.

SLO REP agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which require in part, that SLO REP to maintain a written code or standards of conduct that will govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

12. Severability

If any provision of this Grant Agreement is held invalid, the remainder of the Grant Agreement will not be affected thereby and all other parts of this Grant Agreement will nevertheless remain in full force and effect.

13. Entire Agreement

This Agreement constitutes the entire agreement between CITY and SLO REP for the use of funds received under this Grant Agreement and shall supersede all prior communications and proposals, whether electronic, oral, or written between CITY and SLO REP with respect to this Grant Agreement.

14. No Agency or Employment

The SLO REP is solely responsible for all activities supported by this Grant Agreement. Nothing in this Grant Agreement creates a partnership, agency, joint venture, employment, or any other type of relationship between SLO REP and CITY. SLO REP shall not represent itself as an agent of CITY for any purpose, and has no authority to bind CITY in any manner whatsoever. SLO REP and all of its agents, representatives, or participants in any manner in the performance of its obligations and duties hereunder, shall be employees, independent contractors, or volunteers solely of SLO REP. They shall not for any purpose be considered employees or agents of CITY.

15. Indemnification

The SLO REP agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless CITY its officers, directors, affiliates, employees, and agents (“City Indemnitees”), from and against any and all claims, liabilities, losses and expenses (including reasonable attorney’s fees) directly, indirectly, wholly or partially arising from or in connection with any act or omission of SLO REP, its employees or agents, in applying for, accepting, or use of the Grant Funds, or in carrying out the Downtown Theatre project as set forth. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from SLO REP’s performance under this Grant Agreement, SLO REP shall provide a defense to the City Indemnitees or at the City’s option, reimburse the City Indemnitees their costs of defense, including reasonable legal fees, incurred in defense of such claims.

16. Termination

The City Manager may, within his or her reasonable discretion, initiate termination of this Grant Agreement in the event of any material breach of the terms of this Grant Agreement by SLO REP. Material breach includes breach of Sections 1-7, 9 and 15 of this Grant Agreement, but does not include minor delays in reporting or other delays in obligations set forth herein caused through no fault of SLO REP as well as administrative or clerical errors made in good faith. Upon the City Manager’s written notice of breach, SLO REP shall have forty-five (45) calendar days to cure any such breach (the “Notice of Breach”). Should SLO REP fail to cure, or provide documentation of substantial progress towards curing such breach within forty-five (45) calendar days of the date of the Notice of Breach, the City Manager shall provide written notice of termination of this Grant Agreement (the “Notice of Termination”). Said termination shall be effective thirty (30) calendar days after the City Manager mails the Notice of Termination to SLO REP. Any remaining Grant Funds in excess of then unpaid Eligible Costs, as defined in Section 2, actually incurred as of the date of notice of termination shall revert to CITY upon the effective date of termination.

17. Notices

For purposes of notice under this agreement, all notices shall be considered effective upon being sent by certified mail to the following addresses:

CITY:

City of San Luis Obispo
990 Palm Street
San Luis Obispo, CA 93401
Attn: City Manager

SLO REP:

San Luis Obispo Repertory Theatre
888 Morro Street
San Luis Obispo, CA 93401
Attn: Managing Artistic Director

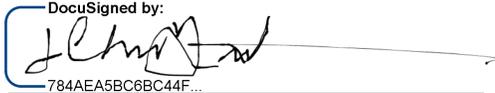
CITY OF SAN LUIS OBISPO, A MUNICIPAL CORPORATION

By: 
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Derek Johnson, City Manager

SAN LUIS OBISPO REPERTORY THEATRE, A CALIFORNIA NON-PROFIT CORPORATION

By: 
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Kevin Harris, Managing Artistic Director

APPROVED AS TO FORM:

By: 
784AEA5BC6BC44F...
J. Christine Dietrick, City Attorney