

LEASE AGREEMENT

City of San Luis Obispo and San Luis Obispo Repertory Theatre

THIS LEASE AGREEMENT (the “Lease”) is entered into between the City of San Luis Obispo a political subdivision of the State of California (hereinafter referred to as “City” or “Lessor”) and San Luis Obispo Repertory Theatre, Inc., a California non-profit corporation (hereinafter referred to as “Lessee” or “SLO REP”) and will replace and supersede all previous agreements between City and Lessee with respect to the Premises hereinafter described.

RECITALS

WHEREAS, the City owns certain real property located at the corner of Palm and Nipomo Streets in the City of San Luis Obispo, as shown on Exhibit “A” attached hereto and incorporated herein by reference (hereinafter referred to as the “Premises”); and

WHEREAS, Lessee is a 501(c)(3) non-profit corporation whose mission is to strengthen theatre’s cultural influence and enrich the Central Coast by producing professional theatre, nurturing artists and providing theatre education for children and adults; and

WHEREAS, the location of the Premises is ideal for the development of a new live performance theatre contiguous with the City’s planned Cultural Arts District Parking Structure; and

WHEREAS, development of the Premises in accordance with Lessee’s existing conceptual plan into a premiere live performance venue (the “Downtown Theatre”) will require substantial grant and private donor funding; and

WHEREAS, a stable Lease with a 99-year term will help to ensure the longevity of the Downtown Theatre and will provide the opportunity for the Downtown Theatre to qualify for a broader array of funding; and

WHEREAS, the City recognizes the public benefit associated with the development of the Downtown Theatre; and

WHEREAS, on the City completed environmental review as lead agency for both its Cultural Arts District Parking Structure and the Downtown Theatre and certified a Final Environmental Impact Report by Resolution No. 10923 (2018 Series) and subsequently approved the architectural designs and related improvements, with conditions, made by Resolution No. 11059 (2019 Series); and

WHEREAS, on May 22, 2019, the City and SLO REP entered into an Exclusive Negotiating Agreement (“ENA”) to set the parameters and conditions for SLO REP’s long-term use of a portion of the City property for construction and operation of a new live performance venue where the Cultural Arts District Parking Structure will also be located; and

WHEREAS, on January 25, 2022, SLO REP submitted to the City Council a formal

“Challenge Grant” request for funding in the amount of \$ 3,940,000 towards construction of the Downtown Theatre project. At its regularly scheduled meeting on February 15, 2022, the City Council appropriated the requested funding as part of the FY 2021-2022 Mid-Year Budget Review. On April 21, 2022, the City and SLO REP entered into a Grant Agreement for funding in the aggregate amount of \$3,940,000; and

WHEREAS, on January 23, 2024, the City Council made findings pursuant to the California Surplus Land Act, declaring the subject property surplus exempt under California Government Code sections 54221 and 54234 (Resolution No. 11471 (2024 Series); and

WHEREAS, on May 22, 2024, the City and SLO REP entered into Amendment No. 1 to the Exclusive Negotiating Agreement to extend the term for up to a one-year term in total, with additional provisions that require a written document that demonstrates an operating reserve of 20% for the first year of operating the new theatre and a three-year operating plan, including the establishment of a fund for building and facilities maintenance and repair; and

WHEREAS, on May 30, 2024, the City Council received from SLO REP an update to their Challenge Grant request. In making its request for additional funding, SLO REP’s letter describes the following investment rationale:

1. Direct economic impact of more than \$4 million annually once fully operational.
2. Attraction of 50,000 people annually to the downtown area.
3. Consistency with Major City Goals for arts and culture, as well as relevant DEI activities through multi-cultural programming, diverse casting, theatre offerings, and support of other local non-profits / community-based organizations.
4. Activation of “Theatre in the Park” events to reach new audiences at no-cost or low-cost at staged outdoor venues such as Mission Plaza or Mitchell Park.

WHEREAS, on June 4, 2024, the City Council adopted Resolution No. 11501 (2024 Series) approving the Fiscal Year 2024-25 Budget, including an additional \$2.76 million in grant funding to SLO REP towards the project, and on October 1, 2024, the City Council approved Amendment No. 1 to the Grant Agreement; and

WHEREAS, the City Council has adopted Resolution No. 11471 (2024 Series) declaring pursuant to Government Code Section 54221 that certain real property owned by the City, and specifically the Downtown Theatre site, is not necessary for the City’s use and is exempt surplus pursuant to Government Code Section 54234.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. Recitals. Each and every recital above is true and correct and hereby incorporated into this Lease.
2. Premises: City hereby leases to Lessee, and Lessee hereby hires and takes from City, for the term and upon the conditions hereinafter set forth, the Premises which shall be vacant and unimproved as of the commencement of the term. Any objection by Lessee to the

condition, improvements, or prior occupancy of the Premises shall be deemed waived if not made within sixty (60) days following the City's delivery of possession of the Premises to Lessee following completion of the construction of the Cultural Arts District Parking Structure ("Completion of the City Project.")

3. Quiet Possession: City shall place Lessee in quiet possession of the Premises following Completion of the City Project, and subject to Lessee performing and observing all applicable conditions and covenants as contained in this Lease, City shall secure to Lessee the quiet possession of the Premises during the term hereof against all persons claiming the same.

4. Term: The term of this Lease shall be for a period of ninety-nine (99) years, unless earlier terminated pursuant to the provisions of this Lease. The term shall commence upon Completion of the City Project and delivery of the Premises to Lessee following the execution of this Lease by the San Luis Obispo City Manager and shall terminate ninety-nine (99) years thereafter. In accordance with California Government Code Section 37380, as may be amended from time to time, Sections 5 and 15 of this Lease shall be subject to review every twenty (20) years by the City and shall take into consideration the then current market conditions and industry standards.

5. Consideration: As consideration for the use and occupancy of the Premises, Lessee shall establish, construct and hereafter maintain a venue for live performances. In further consideration for the use and occupancy of the Premises as identified in Paragraph 7 herein, the use of said Premises shall be for the benefit of the public and shall serve the cultural, educational, and recreational needs of the City's residents, their families and out-of-town visitors. Lessee shall pay rent of \$1.00/year, which in the event of a material and uncured breach by Lessee, at City's option, City may increase to an amount equal to the fair market rental value of the improved Premises as determined by averaging a qualified appraiser's appraisal selected by City with such appraisal selected by Lessee, or at the City's option, the City may pursue termination of the Lease for such material breach pursuant to Section 34. In further consideration of City's grant funds awarded towards construction of the Downtown Theatre, Lessee has offered to conduct new "Theatre in the Park" events at staged, outdoor venues, the terms and conditions of which shall be documented under separate agreement between Lessee and City.

6. Construction of Theatre: Lessee shall commence construction of the Downtown Theatre no later than one (1) year after delivery of possession of the Premises to Lessee and following the completion of the Cultural Arts District Parking Structure and Lessee shall complete construction of the Downtown Theatre within the three (3) years thereafter, unless extended by mutual agreement in writing by the parties, notwithstanding any conflicting prior term agreed upon by the parties. Lessee shall not commence construction of the Downtown Theatre unless Lessee demonstrates, to the City's Finance Director's reasonable satisfaction prior to commencement of construction, that Lessee has all of the funds necessary to design and construct the Theatre, plus a 15% construction contingency, available in cash or approved financing (the "Required Funds"), and Lessee shall also submit to the City Manager (or their delegate) a written document that demonstrates a 20% operating reserve for the first year of operating the Downtown Theatre together with a three year operating plan including the establishment of a building and facilities maintenance and repair reserve fund. Lessee's failure

to comply with this term upon requisite notice and opportunity to cure as stated in Section 34 would be considered a material breach of the Lease.

7. Use of Premises: The Premises shall be used for the primary purpose of establishing, constructing, managing, operating, and maintaining facilities for live performances that will serve the cultural, educational and recreational needs of local residents and out- of-town visitors and guests. Lessee shall also have the right to conduct and/or provide other related activities and events such as festivals, workshops, public speakers, educational outreach programs and special events (e.g., festivals, concerts, weddings, comedy nights, fund raisers, etc.), provided such uses are consistent with applicable City ordinances and regulations and Lessee complies with all applicable City permit requirements and processes, including but not limited to special event and use permitting requirements. Activities beyond those described above are subject to the prior written approval of the City Manager or their designee (hereinafter collectively referred to as "City Manager"). In the event that any activity or special event causes or creates an objective concern for life, health, safety or compatibility with the surrounding City facilities and adjacent private and public properties, City shall have the right to terminate authorization for such activity or event.

8. Admission Fees: Lessee shall have the right to charge admission or other fees for access to, and use of, the Premises as may from time to time be determined by Lessee. All admission, access and use fees charged by Lessee shall be retained by Lessee to offset operating and maintenance costs, or for such other purposes as may from time to time be designated by Lessee in the sole discretion of Lessee. City shall have a right to make use of the Downtown Theatre on two (2) one (1) day occasions per year with advance, reasonable notification and accommodation of SLO REP's then existing scheduling and calendar of events, at no cost to City.

9. Utilities: City shall not be required to furnish any service to the Premises, including but not limited to heat, water, electrical, natural gas and garbage disposal, and shall not be liable for any failure of water supply or of any service by any utility. Lessee shall be responsible for establishing all required utilities and all costs relative to the installation and use of such utility services. Lessee shall place all utilities in the name of Lessee, and Lessee agrees to promptly pay all charges for all utilities and services used or charges imposed in or about or supplied to the Premises, and shall defend, indemnify and hold harmless the City against any and all liability on such account.

10. Maintenance: Lessee, at Lessee's sole cost and expense, shall maintain and keep the Premises and every structural portion thereof, including all interior and exterior features, in a good state of repair during the term of this Lease and shall not, at any time, commit or suffer to be committed any waste, nuisance, or unlawful act thereon. City shall have the right to inspect the Premises at any reasonable time to protect the health, safety and welfare of individuals using the Premises. Lessee shall promptly repair or correct any such maintenance or repair problem(s) identified in writing by the City Manager. Should Lessee fail or neglect to make such repairs as necessary to protect the health, safety or welfare of individuals using the Premises, the City Manager may, after thirty (30) calendar days written notice to Lessee, make said repairs and charge Lessee for same, except in the event that such repairs cannot reasonably be completed within said thirty days, and Lessee timely commences such repairs and diligently

pursues completion of the same thereafter. Following completion of any such repairs by the City, Lessee shall reimburse City for said costs upon demand. City shall not forfeit any right under this Lease if it does not elect to make said repairs.

11. Signs: Lessee, at its sole cost, shall have the right to place, construct and maintain signs on the Premises, advertising the Theatre, as well as events and performances at the Theatre. However, no permanent signage, structures, or improvements shall be so placed without the prior written consent of the City Manager. Notwithstanding consent of the City Manager, any sign that Lessee has the right to place, construct, and maintain shall comply with all applicable federal, state and local laws and ordinances, and Lessee shall obtain any approval required by such laws and ordinances prior to such placement or construction. City makes no representation with respect to Lessee's ability to obtain such approval. Lessee agrees to place signage acknowledging City's financial contributions to the Downtown Theatre, which may be included with any other acknowledgement of major donors.

12. Construction on Premises: All construction on the premises shall be conducted and carried out in accordance with the certified Final Environmental Impact Report prepared for the Cultural Arts District Parking Structure and the Downtown Theatre approved by City Council Resolution No. 10923 (2018 Series) and the subsequent approval of the architectural designs and related improvements, with conditions, made by Resolution No. 11059 (2019 Series), as has been and may be amended or added from time to time.

All structural: (i) construction, (ii) capital improvements, or (iii) alteration made to the Premises, other than those that are incident to the maintenance and care of the Premises, or construction activities related solely to specific uses which do not require a building permit, shall be administered as follows:

A. Subject to subsection (C), Lessee shall have the right, at Lessee's sole cost and expense, to construct structural improvements and/or alterations of the Premises, or any portion thereof, in a manner consistent with the use of the Premises as set forth herein, subject to the prior review and written approval of the City Community Development Department.

B. Prior to such structural construction, improvements, and/or alterations, Lessee shall acquire all necessary building and construction permits including, but not limited to, required permits from the City Community Development Department and other applicable licenses through normal governmental procedures.

C. No such structural construction, improvements or alterations shall be made to the Premises or any portion thereof without the submission to, and prior written approval of, the plans by the City Manager. Lessee shall also submit such other documents, including, but not limited to, specifications, working drawings, and other information required by the City Manager covering the project to be constructed by Lessee. Lessee shall submit the plans to the City Manager at least thirty (30) days in advance of the application for permits for any such projects. If the City Manager objects to all or any portion of such plans, the City Manager shall state the objections specifically and in writing, and the Lessee shall make the changes specified and resubmit the plans as revised for the City Manager's approval as herein provided. The approval of any Plans by the City Manager shall constitute an action of the City in its proprietary capacity

only and shall in no way be construed as an approval of the development or building permit application as required by the Community Development Department or excuse Lessee from complying with any laws, rules, regulations and ordinances regarding the development and use of the Premises.

D. Nothing herein shall be construed to be a waiver of formal City building and land use review procedures and Lessee shall comply fully with same at Lessee's sole cost and expense.

E. The plans shall comply with industry standards for such construction, alterations, and/or improvements, and shall conform to such rules and regulations necessary to protect the health, safety, and welfare of the public.

F. Any contractor or subcontractor responsible to Lessee shall at all times be in compliance with the insurance requirements specified in Section 15.

13. Ownership of Improvements: The ownership of all approved improvements constructed by the Lessee shall remain vested in Lessee until expiration or sooner termination of the term of this Lease.

At the expiration or earlier termination of this Lease, all alterations, modifications, or improvements upon the Premises (except those "tenant improvements" referenced below), whether made by City or Lessee shall, absent any agreement between the City and Lessee to the contrary, or unless City otherwise elects, which election shall be made by giving a notice in writing not less than fifteen (15) working days prior to the expiration or other termination of this Lease, become the property of City and shall, without compensation to Lessee, become City property free and clear of all claims to or against the improvements by Lessee or any third person. Lessee shall defend, indemnify, and hold harmless the City against all liability and loss arising from such claims or from the City's exercise of the rights conferred by this paragraph; in the event the City so elects, City shall be responsible for the removal of said improvements after the termination of the expiration of the tenancy.

With respect to Lessee owned tenant improvements (such as signage) or fixtures, at the termination of this Lease, City may notify Lessee to remove any or all of the alterations, additions, fixtures, or tenant improvements made by Lessee. Lessee shall do so, at Lessee's sole cost and expense, and shall promptly repair any damage caused by such removal in a first-class manner. Removal is to be completed no later than sixty (60) days from the date of said notice or at such further time as City may agree to in writing. In the event Lessee fails to remove any or all of the alterations, additions, fixtures, or tenant improvements required by City, City may remove same and charge Lessee for the cost of such removals and Lessee hereby agrees to pay any and all such costs upon demand.

Notwithstanding the foregoing, City and SLO REP acknowledge that, once the Cultural Arts District Parking Structure and the Downtown Theatre construction is complete, that two (2) subterranean stormwater facilities will be in place below the Premises. One of the stormwater facilities is in service to the Cultural Arts District Parking structure and all maintenance and ownership responsibilities thereof shall be borne by City. The City shall have the right, upon

reasonable notice to the Lessee, or immediately in emergent situations, to enter the Premises as necessary to access such stormwater facility for annual inspection and maintenance or other legitimate purposes. The other stormwater facility is in service to the Downtown Theatre and all maintenance and ownership responsibilities thereof shall be borne by SLO REP. City's stormwater facility is shown on Exhibit A.

14. Protection on Premises: Lessee agrees to take all reasonable precautions to protect the Premises from damage, theft, vandalism and other such hazards. Reasonable precautions include but are not limited to Lessee consulting with the City of San Luis Obispo Police Department regarding increasing safety through environmental design.

15. Insurance: Lessee shall obtain and maintain for the entire term of this Lease insurance complying with the provisions of this paragraph. Lessee shall furnish to City a certificate from the insurance carrier showing insurance covering this Lease to be in full force and effect as a condition precedent to this Lease becoming effective.

Said policies shall be issued by companies authorized to do business in the State of California, and Lessee shall provide annual updates of its current Certificate of Insurance. Lessee shall provide the following coverage with the following features in accordance with Exhibit B, attached hereto and incorporated by reference. If Lessee fails or refuses to procure or maintain the insurance required by this Lease or fails or refuses to furnish City with the certifications required herein, City shall have the right, at its option, to terminate this Lease in accordance with Section 34.

16. Subordination: The City will not subordinate its interest in the Premises to any Lessee mortgages, deeds of trusts, or other financing that may be recorded against the Premises. Lessee shall not enter into any instrument or agreement purporting to subordinate the City's interest in the Premises.

17. Mechanic's Liens: Lessee shall keep the Premises free of mechanics and materialmen's liens and other liens of like nature other than liens created or claimed by reason of any work done by or at the insistence of the City, pursuant to the City's ability to do so under Section 10.

18. Indemnification: Lessee shall defend, indemnify and hold harmless the City, its officers, and employees from any and all claims and demands, costs, expenses, judgments, attorney fees or liabilities that may be asserted by any person or entity that arise out of or in connection with the acts or omissions relating to the performance of any obligation or duty provided for or relating (directly or indirectly) to this Lease, the tenancy created under this Lease, or the Premises hereunder. However, this indemnity will not extend to any claims or losses arising out of the gross negligence or willful misconduct of the City, its officers and employees. Furthermore, any deficiency for which the City is threatened or assessed with respect to the construction of the Downtown Theatre by Lessee, pursuant to Section 1720 of the California Labor Code (or its successor) shall be indemnified, defended, held harmless by Lessee.

The preceding paragraph applies to any theory of recovery relating to said act or omission by the Lessee, or its agents, employees or other independent contractors directly responsible to Lessee, including, but not limited to, the following:

- A. Violation of statute, ordinance, or regulation.
- B. Professional malpractice.
- C. Willful, intentional or other wrongful acts, or failures to act.
- D. Negligence or recklessness.
- E. Furnishing of defective or dangerous products.
- F. Premises liability.
- G. Strict liability.
- H. Violation of civil rights.
- I. Violation of any federal or state statute, regulation, or ruling resulting in a determination by the Internal Revenue Service, California Franchise Tax Board or any other California public entity responsible for collecting payroll taxes, when the Lessee is not an independent contractor.

It is the intent of the parties to provide the City the fullest indemnification, defense, and hold harmless rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this Lease and the remaining language shall be given full force and effect.

19. Taxes: During the term of this Lease, Lessee hereby agrees to pay, prior to delinquency, all taxes and assessments, including both general and special, properly levied or assessed against the Premises and in connection with the Premises and Lessee's operation thereof, including without limitation, taxes on Lessee's possessory interest hereunder or in the Premises, and taxes or assessments on all structures, improvements, and fixtures now or hereinafter existing on the Premises, and on any personal property situated in, on, or about the Premises, or in, on or about any structures or improvements thereon. Lessee is hereby informed that a possessory interest subject to property taxation may be created by this Lease and that the party to whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest. Lessee hereby agrees to pay such taxes prior to delinquency.

20. Assignment/Subletting/Short-Term Rental: Except as otherwise herein specifically provided, Lessee shall neither transfer nor execute an assignment of this Lease for the Premises, nor grant any interest or privilege whatsoever in connection with this Lease without the prior written consent of the City Council. An "assignment" or "transfer" is defined herein to mean the complete transfer of the leasehold interest and rental rights from Lessee to a third-party renter. Lessee shall have the right at all times to sublet the Premises to other entities with the consent of the City Manager, for a term not to exceed one (1) year, provided that the subletting entity's proposed uses comply with the Lessee's uses as provided herein and that the sublease contains insurance, defense and indemnification in substantial conformance with the terms of this Leases and the City is made an express beneficiary of such provisions. "Sublet" is defined herein to mean the partial transfer of rental rights under this Lease from Lessee to a third-party renter, for a temporary period of more than 30 days and for only a portion of the Premises. Lessee shall have the right, at all times, and in its sole discretion, to rent the Premises to other entities, on a short-term basis not to exceed 30 days, provided Lessee maintains all responsibilities and obligations of this Lease during such short-term rental.

21. Environmental Matters/Covenants Regarding Hazardous Materials: Lessee and

City shall at all times and in all respects comply with all federal, state and local laws, ordinances and regulations (“Hazardous Materials Laws”) relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including without limitation, any “hazardous substances,” “hazardous wastes,” “hazardous materials,” or “toxic substances” under such laws, ordinances or regulations (collectively, “Hazardous Materials”).

Lessee shall, except in the event of City’s negligence or intentional wrongdoing, indemnify, defend, protect, and hold City and each of City’s officers, City Manager, employees, agents, attorneys, successors and assigns, free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or expenses or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by:

A. The discharge in or from the Premises of any Hazardous Materials or Lessee’s use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials to, in, on, under, about or from the Premises, or

B. Lessee’s failure to comply with any Hazardous Materials Law. Lessee’s obligations hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, cleanup or detoxification or decontamination of the Premises, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith associated with conditions caused by Lessee shall survive the expiration or earlier termination of the term of this Lease. For purposes of the release and indemnity provisions hereof, any acts or omissions of Lessee, or by employees, agents, assignees, contractors or subcontractors of Lessee or others acting for or on behalf of Lessee (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Lessee.

22. Condemnation: If the whole of the Premises shall be taken or condemned by any competent authority under power of eminent domain for a public or a quasi-public use or purpose, then the leasehold estate hereby created shall cease and terminate as of the date actual physical possession of the Premises is taken by the condemnor. All compensation and damages awarded for such total taking shall belong to and be the sole property of City, provided, however, that Lessee shall be entitled to receive a sum attributable to the taking of: (i) the remaining value of the Premises’ improvements constructed by Lessee, adjusted for depreciation and less total grants provided by the City to Lessee towards construction of the same; and (ii) the damage to Lessee’s equipment, fixtures, or any improvements to the Premises which Lessee would have had, but for the condemnation, the right to remove on expiration or sooner termination of this Lease. Upon termination of the Lease by a total taking all rental and other charges payable by Lessee to or on behalf of City under the provisions of this Lease shall be paid up to the date on which actual physical possession of the leased Premises shall be taken by the condemnor, and the parties hereto shall thereafter be released from all further liability in relation thereto.

In the event that there shall be partial taking of the leased Premises during the lease term under the power of eminent domain, this Lease shall terminate as to the portion of the released premises so taken on the date when actual physical possession of said portion is taken by the

condemnor. At Lessee's option, this Lease shall continue in force and effect as to the remainder of the leased Premises. In the event of such partial taking, all compensation and damages for such partial taking shall belong to and be the sole property of City, provided, however, that Lessee shall be entitled to receive any award made for (i) the remaining value of the portion of the Premises' improvements constructed by Lessee, adjusted for depreciation and less total grants provided by the City to Lessee towards construction of the same; and (ii) the taking of, or damage to, Lessee's equipment, fixtures, and any improvements made by Lessee to the leased Premises which Lessee would have had, but for the condemnation, the right to remove on expiration or sooner termination of this Lease. In the event that this Lease is retained as to the portion of the leased Premises not condemned, any award made for alteration, modifications or repairs which may be reasonably required in order to place the remaining portion of the leased Premises not taken in a suitable condition for the continuance of Lessee's tenancy shall belong to and be the sole property of City, but shall be utilized by the City to perform such necessary alterations, modifications and repairs.

23. Destruction of Premises: Should any matter or condition beyond the control of the parties hereto, such as war, public emergency, or calamity, data breach or similar event, fire, earthquake, flood, act of God, strike, pandemic, or any other labor disturbance, prevent performance of this Lease in accordance with the rights and privileges granted herein, this Lease shall, at Lessee's option, be immediately be terminated and neither party shall be under any further legal obligation to the other by reason of said matter or condition.

Should any aforementioned matter or condition create eligibility for Federal, State, or any other governmental jurisdictional relief assistance and/or aid, both parties agree to take all reasonable steps necessary to procure such assistance and/or aid, in their respective capacities at the time of such application.

24. Law: This Lease has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Lease shall be determined and governed by the laws of the State of California.

25. Lessee's Responsibility for Compliance: Lessee shall at all times observe and comply with, and shall cause all their agents, employees and sub-contractors to observe and comply with all present and future laws, statutes, ordinances, regulations, rules, resolutions, or other binding enactments of any governmental authority, now or at any time during this Lease and any extensions thereof. If any future laws, rules, regulations or ordinances are passed by the City and said legislative enactment has any impact fiscal or otherwise on Lessee, and if Lessee does not make a timely objection to City during the course of legislative process, Lessee will be deemed to have waived any right to object at a later time and waives all damages flowing therefrom.

26. Venue: The duties and obligations of the parties created hereunder are performable in San Luis Obispo County, and such County shall be the venue for any action or proceeding that may be brought or arise out of or in connection with or by reason of this Lease.

27. Surrender: Lessee hereby acknowledges that upon expiration of the term of this Lease, neither Lessee or the City shall not be under any obligation to operate the Theatre or

provide any of the services mentioned in this Lease.

28. Employment Status: Neither Lessee nor any of Lessee's agents or contractors are or shall be considered to be employees or agents of City in connection with the performance of Lessee's rights and obligations under this Lease.

29. Non-Discrimination: Lessee and City shall not discriminate against any person or class of persons in violation of the Civil Rights Act of 1964 as amended or any other applicable laws prohibiting discrimination in the use of the Premises.

30. Drug Free Workplace: Lessee and Lessee's employees shall comply with City's policy of a drug free workplace. Neither Lessee nor Lessee's employees shall unlawfully manufacture, distribute, dispense, possess, or use controlled substances, including but not limited to marijuana, heroin, cocaine, methamphetamine, or amphetamines at any of Lessee's facilities or City facilities or work sites. If any employee of Lessee is found to be under the influence of or in possession of any illegal substance at or on City's premises, that employee may not return to any of City's premises. If Lessee becomes aware that any of Lessee's employees, during the course of their employ with Lessee, are convicted or plead nolo contendere to a criminal substance-abuse statute, Lessee shall be responsible for notifying the City Manager within seventy-two (72) hours of becoming aware of said conviction or plea. Violation of this notification provision shall constitute grounds for termination of this Lease.

31. Americans with Disabilities Act: The Lessee acknowledges the passage of the Americans With Disabilities Act of 1990, 42 U.S.C. sect. 12101 et seq., ("ADA"). Lessee, as required bylaw, hereby agrees and is required to install any and all equipment, perform any and all alterations, improvements or modifications to the Premises such that the Premises are in strict compliance with ADA requirements.

32. Holding Over: In the event that Lessee shall hold over after expiration of the term of this Lease or any extension or renewal thereof, with the consent, express or implied, of City, such holding over shall be deemed merely a tenancy from month-to-month on the terms, covenants, and conditions, so far as applicable, and subject to the same exceptions and reservations, as herein contained, until such tenancy is terminated in a manner prescribed by law.

33. Notices: All notices to Lessee shall be given in writing personally or by depositing the same in the United States mail, postage prepaid, or by certified or registered mail, return receipt requested, and addressed to Lessee at:

San Luis Obispo Repertory Theatre
3533 Empleo Street
San Luis Obispo, California, 93401
Attention: Managing Artistic Director

All notices to City shall be given in writing personally or by depositing the same in the United States mail, postage prepaid, or by certified or registered mail, return receipt requested, and addressed to:

City of San Luis Obispo
990 Palm Street
San Luis Obispo, California, 93401
Attention: City Manager

Either party can change address by notifying the other party in writing.

34. Breach: Notwithstanding any other provisions contained herein, City may cancel and terminate this Lease or, at the City's option, raise the rent to fair market rates for neighboring commercial uses if Lessee shall fail, neglect, or refuse to perform and obey any material term or condition set forth in this Lease, including but not limited to, failure to construct and thereafter operate the Premises as a live performance venue for the benefit of the public as herein provided, failure to maintain its non-profit corporate status in good standing or its tax-exempt status under applicable state and federal law, and failure to commence and complete construction of the Theatre as specified herein, or failure to comply with paragraph 15, provided the City Manager has given to Lessee written notice of thirty (30) days to do so, unless such failure, neglect, or refusal by nature cannot be remedied within thirty (30) days following said notice and Lessee has within thirty (30) days following the notice commenced and does thereafter continue diligent efforts to remedy such failure, neglect, or refusal. Minor administrative errors, oversights, or omissions related to the performance of this Lease shall not constitute a material breach but shall be subject to a thirty (30) day notice to correct. Any waiver by City of any failure by Lessee to comply with the terms and conditions of this Lease shall not be construed to be a waiver by City of any similar or other failure by Lessee to comply with any other term or condition hereof.

35. Waiver of Claim: Lessee hereby waives any claim against the City, its officers, agents or employees for damage or loss caused by any suit or proceeding directly or indirectly attacking the validity of this Lease, or any part thereof or by any judgment or award in any suit or proceeding declaring this Lease null, void or voidable, or delaying the same or any part thereof from being carried out.

36. Provisions Deemed Covenants and Conditions: The parties hereto agree that all the provisions hereof are to be construed as covenants and conditions as though the words importing such covenants and conditions are used in each instance, and that all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representative, successors and assigns.

37. Severability: The invalidity of any provision of this Lease shall not affect the validity, enforceability of any other provision of this Lease.

38. Entire Agreement and Modifications: This Lease embodies the whole Lease between the parties hereto as it pertains to the subject real property and there are no promised terms, conditions, or obligations referring to the subject matter hereof, other than as contained herein. Any alterations, changes or modifications to this Lease must be in writing and executed by both Lessee and City.

39. Lessee's Termination Rights: If, during the term of this Lease, Lessee is no longer financially capable of conducting the agreed uses at the Premises, or the Premises are no longer of a sufficient size for Lessee's projected agreed use of the Premises, Lessee shall have the right to surrender the Premises to the City upon one hundred and eighty (180) days written notice to the City, and shall thereafter have no further obligations to the City under the terms of this agreement, provided that the Premises are timely surrendered to the City in accordance with the terms of the notice, in a broom clean condition subject only to reasonable wear and tear.

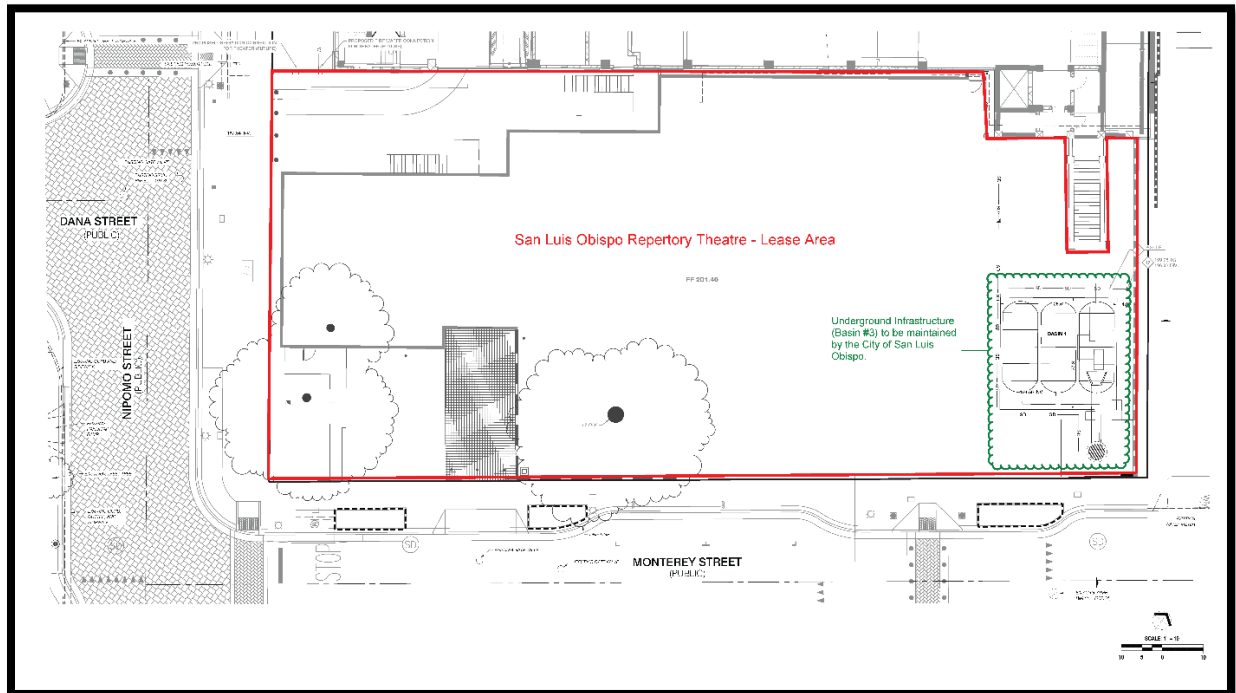
IN WITNESS WHEREOF, the parties hereto have executed this Lease this _____ day of _____ 2024.

<p>CITY OF SAN LUIS OBISPO, A MUNICIPAL CORPORATION</p> <p>By: _____ Whitney McDonald, City Manager</p>	<p>SAN LUIS OBISPO REPERTORY THEATRE, A CALIFORNIA NON- PROFIT CORPORATION</p> <p>By: _____ Kevin Harris, Managing Artistic Director</p>
<p>APPROVED AS TO FORM:</p> <p>By: _____ Christine Dietrick, City Attorney</p>	

Exhibit A

Lease Area

Certain real property located at 610 and 614 Monterey Street, a portion of 972 Nipomo Street, and a portion of City Parking Lot No. 14 identified as Assessor's Parcel Nos. 002-412-011, 002-412-012, 002-412-002 (portion) and 002-412-004 (portion), as depicted below.



 San Luis Obispo Repertory Theatre – Lease Area

EXHIBIT B

Lease Agreement

City of San Luis Obispo and San Luis Obispo Repertory Theatre

INSURANCE REQUIREMENTS

Without limiting San Luis Repertory Theatre's ("SLO REP") indemnification of the City of San Luis Obispo ("City"), and prior to commencement of the term of the Lease, SLO REP shall obtain, provide, and maintain at its own expense during the term of this Lease Agreement ("Agreement"), policies of insurance of the type and amounts described below in a form satisfactory to City.

General liability insurance. SLO REP shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Workers' compensation insurance. SLO REP shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000). SLO REP shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

Property insurance. Upon commencement of construction of SLO REP's improvements and betterments, or installation of equipment, with approval of City, SLO REP shall obtain and maintain insurance on SLO REP's improvements and betterments. Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy.

Commercial property insurance covering the leased premises, fixtures, equipment, building, all property situated in, on, or constituting a part of the premises and any improvements. Coverage shall be at least as broad as the Insurance Services Offices broad causes of loss form CP 10 20 and approved of in writing by City. Coverage shall be sufficient to insure 100% of the replacement value and there shall be no coinsurance provisions. The policy shall include an inflation guard endorsement, 100% rents coverage, contents coverage, coverage for personal property of others, ordinance or law and increased cost of construction coverage. City shall be included as an insured and as loss payee on any such insurance. City shall not be liable for any business income or other consequential loss sustained by SLO REP. City shall not be liable for any loss of SLO REP's personal property even if such loss is caused by negligence of City, City's employees, or agents.

Proof of insurance. SLO REP shall provide certificates of insurance and required endorsements to City as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of the term of the Lease. Current certification of insurance shall be kept on file with City for the contract period and any additional length of time required thereafter. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. SLO REP shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance of the activities allowed by the Lease by SLO REP, their agents, representatives, employees, or subconsultants.

Primary/noncontributing. Coverage provided by SLO REP shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by City will be promptly reimbursed by SLO REP. In the alternative, City may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow SLO REP or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. SLO REP hereby waives its own right of recovery against City and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). SLO REP acknowledges and agrees that any actual or alleged failure on the part of the City to inform SLO REP of non-compliance with any

requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the SLO REP maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the SLO REP. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Notice of cancellation. SLO REP agrees to oblige its insurance agent or broker and insurers to provide the City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. If any of the SLO REP's insurers are unwilling to provide such notice, then SLO REP shall have the responsibility of notifying the City immediately in the event of SLO REP's failure to renew any of the required insurance coverages or insurer's cancellation or non-renewal.

Additional insured status. General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that City and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that SLO REP's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass-through clause. SLO REP agrees to ensure that its subconsultants, subcontractors, assignees, sublessees, permittees, and any other party who is brought onto or involved in the project/service by SLO REP (hereinafter collectively "subcontractor"), provide the same minimum insurance coverage and endorsements required of SLO REP. SLO REP agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. However, in the event SLO REP's subcontractor cannot comply with this requirement, which proof must be submitted to the City, SLO REP shall be required to ensure that its subcontractor provide and maintain insurance coverage and endorsements sufficient to the specific risk of exposure involved with subcontractor's scope of work and services, with limits less than required of the SLO REP, but in all other terms consistent with the SLO REP's requirements under this agreement. This

provision does not relieve the SLO REP of its contractual obligations under the agreement and/or limit its liability to the amount of insurance coverage provided by its subcontractors. This provision is intended solely to provide SLO REP with the ability to utilize a subcontractor who may be otherwise qualified to perform the work or services but may not carry the same insurance limits as required of the SLO REP under this agreement given the limited scope of work or services provided by the subcontractor. SLO REP agrees that upon request, all agreements with subcontractors, and others engaged in the project, will be submitted to City for review.

City's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving SLO REP ninety (90) days advance written notice of such change. Notwithstanding the foregoing, pursuant to the Lease, SLO REP's insurance obligations as set forth in Section 15 of the Lease and as more fully discussed herein will be subject to review every twenty (20) years by the City taking into account market conditions and industry standards.

Self-insured retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible, or require proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention through confirmation from the underwriter.

Timely notice of claims. SLO REP shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from SLO REP's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. SLO REP shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection. SLO REP's personal property, fixtures, equipment, inventory, and vehicles are not insured by City against loss or damage due to fire, theft, vandalism, rain, water, criminal or negligent acts of others, or any other cause.

Verification of Coverage. Contractor shall furnish the City with a certificate of insurance showing maintenance of the required insurance coverage, as well as endorsements effecting general liability coverage. All endorsements are to be received and approved by the City before work commences.