

AN ORDINANCE

94991

AUTHORIZING THE EXECUTION OF (1) AN AMENDMENT TO THE EXISTING LEASE AGREEMENT WITH MAJIK THEATER BY MODIFYING THE PROVISIONS RELATED TO PAYMENT FOR CHILLED WATER USE, EXTENDING THE COMPLETION OF A MAJOR RENOVATION TO THE THEATER, AND CLARIFYING REPORTING REQUIREMENTS AND (2) A SECURITY AGREEMENT WITH MAJIK THEATER WHO WILL SIGN A PROMISSORY NOTE IN THE AMOUNT OF \$9,208.84 FOR CHILLED WATER CHARGES INCURRED DURING THE FIRST YEAR OF THE LEASE TERM.

(Amends Ordinance 86014, May 8, 1997)

* * * * *

WHEREAS, under authority granted by Ordinance No. 86014, passed and approved on May 8, 1997, the City of San Antonio and The Majik Theater ("Majik") entered into a Lease Agreement (the "Agreement") whereby Majik leases and occupies Beethoven Hall Theater, a performing arts venue owned by the City of San Antonio and located in HemisFair Park, at 418 S. Alamo Street, San Antonio, Bexar County, Texas; and

WHEREAS, the parties to the Agreement have identified numerous provisions which if amended will assist in the implementation of the Agreement and further facilitate the use of the premises including clarifying the methodology of how chilled water costs are charged to Majik and how past due costs owed the City will be collected, the manner and means by which Majik reports financial and other information to the City, and an extension of the dead line for Majik to complete a major renovation project to the City-owned facility; and

WHEREAS, City staff has negotiated and recommends approval of an amendment to the Agreement that further details the matters mentioned above, as well as a Security Agreement and Promissory Note in the amount of \$9,208.84 to compensate the City for past due chilled water costs owed by Majik; and

WHEREAS, the City Council of the City of San Antonio finds that it will be beneficial to the City to approve the amendments; **NOW, THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of a Lease Amendment between the City of San Antonio and the Majik Theater, including a Security Agreement and Promissory Note, are hereby approved and authorized.

SECTION 2. The City Manager or a designated representative is hereby authorized, for a forty-five (45) day period following the effective date of this ordinance, to execute the Lease Amendment, including the Security Agreement, approved in Section 1, a copy of which, in substantially final form, is set out in Attachment I. In the event an acceptable agreement cannot be reached in this time period, this matter shall be brought back to the City Council for further action.

SECTION 3. All proceeds collected for chilled water under the agreement approved by this Ordinance shall be deposited into Fund 11-000 entitled "General Fund", Index Code No. 316372 entitled "Chilled Water- SAWS."

SECTION 4. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocation to specific Index Codes and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 5. This ordinance shall be effective on and after the tenth (10th) day after passage hereof

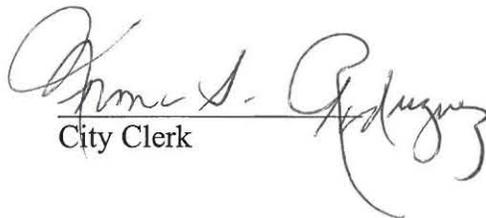
PASSED AND APPROVED THIS 13th day of December, 2001.



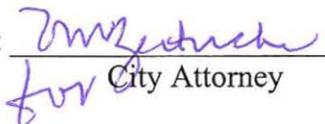
MAYOR

EDWARD D. GARZA

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

ALAMODOME
ASSET MANAGEMENT
AVIATION
CITY ATTORNEY
MUNICIPAL COURT
REAL ESTATE (FASSNIDGE)
REAL ESTATE (WOOD)
RISK MANAGEMENT
CITY MANAGER
SPECIAL PROJECTS
CITY PUBLIC SERVICE - GENERAL MANAGER
CITY PUBLIC SERVICE - MAPS AND RECORDS
CODE COMPLIANCE
COMMERCIAL RECORDER
COMMUNITY INITIATIVES
CONVENTION AND VISITORS BUREAU
CONVENTION CENTER EXPANSION OFFICE
CONVENTION FACILITIES
COUNCIL OFFICES
CULTURAL AFFAIRS
CUSTOMER SERVICE/311 SYSTEM
DEVELOPMENT SERVICES
HOUSE NUMBERING
LAND DEVELOPMENT SERVICES
TRAFFIC & DRAINAGE PLAN REVIEW
ECONOMIC DEVELOPMENT
ENVIRONMENTAL SERVICES
SOLID WASTE
EXTERNAL RELATIONS
PUBLIC INFORMATION OFFICE
FINANCE - DIRECTOR
FINANCE - ASSESSOR
FINANCE - CONTROLLER
FINANCE - GRANTS
FINANCE - PUBLIC UTILITIES SUPERVISOR
FINANCE- TREASURY
FIRE DEPARTMENT
HOUSING AND COMMUNITY DEVELOPMENT
HUMAN RESOURCES (PERSONNEL)
INFORMATION SERVICES
INTERNAL REVIEW
INTERNATIONAL AFFAIRS
LIBRARY
MANAGEMENT & BUDGET (OFFICE OF) OMB
MAYOR'S OFFICE
METROPOLITAN HEALTH DISTRICT
MUNICIPAL CODE CORPORATION
MUNICIPAL COURT
NEIGHBORHOOD ACTION
PARKS AND RECREATION
MARKET SQUARE
YOUTH INITIATIVES
PLANNING DEPARTMENT - NEIGHBORHOOD PLNG; URBAN DESIGN/HISTORIC PRESERVATION
DISABILITY ACCESS OFFICE
POLICE DEPARTMENT
GROUND TRANSPORTATION
PUBLIC WORKS DIRECTOR
CAPITAL PROJECTS
CENTRAL MAPPING
ENGINEERING
PARKING DIVISION
REAL ESTATE DIVISION
TRAFFIC ENGINEERING
PURCHASING AND GENERAL SERVICES
SAN ANTONIO WATER SYSTEMS (SAWS)
VIA

AGENDA ITEM NUMBER: 33

DATE: DEC 13 2001

MOTION: _____

ORDINANCE NUMBER: 94991

RESOLUTION NUMBER: _____

ZONING CASE NUMBER: _____

TRAVEL AUTHORIZATION: _____

NAME	ROLL	AYE	NAY
BOBBY PEREZ District 1			
JOHN H. SANDERS District 2			
ANTONIETTE "TONI" MOORHOUSE District 3			
ENRIQUE "KIKE" MARTIN District 4			
DAVID A. GARCIA District 5			
ENRIQUE M. BARRERA District 6			
JULIAN CASTRO District 7			
BONNIE CONNER District 8			
CARROLL W. SCHUBERT District 9			
DAVID CARPENTER District 10			
EDWARD D. GARZA Mayor			

AMENDS ORD. NO. 86014 OF 5/8/97

*Children's
Magick Theater*

FILE

01-44

CONSENT AGENDA

communications and notices among the PARTIES shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY: Asset Management Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

MAJIK: The Magik Theatre
418 S. Alamo Street
San Antonio, Texas 78205

Notice of change of address by either PARTY must be made in writing and mailed to the other PARTY's last known address within five (5) business days of such change.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.01 MAGIK warrants and represents that it will cooperate with CITY to obtain and maintain compliance with all Federal, State and Local laws and regulations pertaining to the objective and purposes of this CONTRACT. MAGIK agrees and acknowledges that its cooperation includes, but is not limited to, completion of and signing of any and all documentation deemed necessary by the CITY to protect and preserve the CITY's right to payment and/or its rights in all proceeds to ticket sales at Beethoven Hall, said proceeds being collateral to secure and assure payment of the debt.

IV. LEGAL AUTHORITY

4.01 MAGIK represents, warrants, assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this CONTRACT and to perform the responsibilities herein required.

4.02 The signer of this CONTRACT for MAGIK represents, warrants, assures and guarantees that he or she has full legal authority to execute this CONTRACT on behalf of MAGIK and to bind MAGIK to all terms, performances and provisions herein contained.

V. SECURITY INTEREST

5.01 MAGIK hereby grants to CITY a security interest in the following collateral, to-wit: all proceeds to ticket sales at Beethoven Hall, to secure payment and performance of MAGIK'S' obligation in this CONTRACT and all renewals and extensions, if any.

VI. MAGIK's WARRANTIES

6.01 Financing Statement. Except for that in favor of CITY, no financing statement covering the collateral is filed in any public office.

6.02 Ownership. MAGIK owns the collateral and has the authority to grant this security interest. Ownership is free from any setoff, claim, restriction, lien, security interest, or encumbrance except this security interest and liens, if any, for taxes not yet due.

6.03 Commingling. If a default occurs under this CONTRACT or the note, none of the collateral is to be or will be commingled with other funds, except as expressly provided in this CONTRACT or as subsequently agreed to by CITY in writing.

6.04 Financial Statements. All information about MAGIK's financial condition provided to CITY was accurate when submitted, as will be any information subsequently provided.

VII. MAGIK's COVENANTS

7.01 Protection of Collateral. MAGIK represents and warrants that it will diligently defend the collateral against all claims and demands adverse to CITY's interest in it and will keep it free from all liens except

those for taxes not yet due, if any, and from all security interests except this one. The collateral will remain in MAGIK's possession or control at all times, except as otherwise provided in this CONTRACT. MAGIK agrees to and shall notify CITY immediately, both orally and in writing, if and when any claim or demand adverse to CITY's interest is made.

7.02 CITY's Costs. MAGIK will pay all expenses incurred by CITY in obtaining, preserving, perfecting, and enforcing this security interest or the collateral and in collecting or enforcing the note. Expenses for which MAGIK is liable include, but are not limited to, taxes, assessments, reasonable attorney's fees, and other legal expenses. These expenses will bear interest from the dates of payments at the highest rate stated in notes that are part of the obligation, and MAGIK will pay CITY this interest on demand at a time and place reasonably specified by CITY. These expenses and interest will be part of the obligation and will be recoverable as such in all respects.

7.03 Additional Documents. MAGIK will sign any papers that CITY considers necessary to obtain, maintain, and perfect this security interest or to comply with any relevant law.

7.04 Notice of Changes. MAGIK will immediately notify CITY of any material change in the collateral; change in MAGIK's name, address, or location; change in any matter warranted or represented in this CONTRACT; change that may affect this security interest; and any event of default.

7.05 Use and Removal of Collateral. MAGIK will use the collateral primarily according to the proceeds normal day-to-day uses unless or until a default under this CONTRACT or the note occurs at which time MAGIK agrees to acquiesce and submit to the will and direction of the CITY. After a default occurs, MAGIK will not permit the collateral to be commingled with other monies, except as expressly provided in this CONTRACT or permitted by CITY, in writing.

7.06 Sale. MAGIK warrants and represents that it will not spend, transfer, or encumber any of the collateral without the prior written consent of CITY; except that, so long as MAGIK is not in default under this CONTRACT and adheres to the terms and conditions contained herein, MAGIK may spend collateral in the ordinary course of business under generally accepted business practices.

VIII. RIGHTS AND REMEDIES OF CITY

8.01 Generally. CITY may exercise the following rights and remedies either before or after default:

- a. take immediate and absolute control of MAGIK's operation(s) stepping into the "shoes" of MAGIK;
- b. release any collateral in CITY's possession to MAGIK, temporarily or otherwise;
- c. take immediate control of the proceeds and any and all funds generated by the collateral and reduce any part of the obligation accordingly or permit MAGIK to use such funds to operate; and
- d. demand, collect, convert, redeem, settle, compromise, receipt for, realize on, sue for, and adjust the collateral either in CITY's or MAGIK's name, as CITY desires.

8.02 Insurance. As determined necessary within the sole discretion of the CITY, CITY may purchase insurance coverage that will protect only CITY. If CITY purchases this insurance, its premiums will become part of the obligation owed by MAGIK to CITY.

8.03 Access to Records. At any reasonable time and as often as CITY may deem necessary, MAGIK shall make all of its records pertaining to this CONTRACT available to CITY or any of its authorized representatives, and shall permit CITY or any of its authorized representatives to audit, examine, and make excerpts and/or copies of same. Further, MAGIK agrees and represents that it will cooperate with CITY, at no charge to the CITY, to satisfy, to the extent required by law, any and all requests for information received by CITY under the Texas Public Information Act or related laws pertaining to this CONTRACT.

8.04 Monitoring. MAGIK agrees that CITY may carry out monitoring and evaluation activities so as to ensure compliance by MAGIK with this CONTRACT and with all other laws, regulations and ordinances related to the performance hereof.

IX. EVENTS OF DEFAULT

- 9.01 Each of the following conditions is an event of default:
- a. if MAGIK defaults in timely payment or performance of any obligation, covenant, or liability in under this CONTRACT;
 - b. if any warranty, covenant, or representation made to CITY by or on behalf of MAGIK proves to have been false in any material respect when made;
 - c. if a receiver is appointed for MAGIK;
 - d. if the collateral is assigned for the benefit of creditors or, to the extent permitted by law, if bankruptcy or insolvency proceedings are commence against or by MAGIK;
 - e. if any financing statement regarding the collateral but not related to this security interest and not favoring CITY is filed; and
 - f. if any lien attaches to any of the collateral.

X. REMEDIES OF CITY ON DEFAULT

10.01 During the existence of any event of default, CITY may declare the unpaid principal and earned interest of the obligation immediately due in whole or part, enforce the obligation, and exercise any rights and remedies granted by chapter 9 of the Texas Business and Commerce Code or by this CONTRACT, including the following:

- a. require MAGIK to deliver to CITY all books and records relating to the collateral;
- b. require MAGIK to continue operations and to pay into a designated account all funds generated as provided in paragraph 10.02;
- c. take possession of the premises and operate same taking possession of the collateral as it is received;
- d. apply any proceeds from disposition of the collateral after default in the manner specified in chapter 9 of the Texas Business and Commerce Code, including payment of CITY's reasonable attorney's fees and court expense; and
- e. if disposition of the collateral leaves the obligation unsatisfied, collect the deficiency from MAGIK;

10.02 On CITY's demand MAGIK agrees to and shall deposit all payments received as proceeds of collateral in a special bank account designated by CITY, who alone will have power of withdrawal. MAGIK will deposit the payments on receipt, in the form received, and with any necessary endorsements as security for the obligation. CITY may make any endorsements in MAGIK's name and behalf. Between receiving and depositing these payments, MAGIK will not mingle them with any of MAGIK's other funds or property but will hold them separate and in an express trust for CITY. CITY shall apply all or part of these funds against the obligation.

XI. GENERAL PROVISIONS

11.01 Parties Bound. CITY's rights under this CONTRACT shall inure to the benefit of its successors and assigns. Assignment of any part of the obligation and delivery by CITY of any part of the collateral will fully discharge CITY from responsibility for that part of the collateral. If MAGIK is more than one, all their representations, warranties, and agreements are joint and several. MAGIK's obligations under this CONTRACT shall bind MAGIK's personal representatives, successors, and assigns.

11.02 Waiver. Neither delay in exercise nor partial exercise of any of CITY's remedies or rights shall waive further exercise of those remedies or rights. CITY's failure to exercise remedies or rights does not waive subsequent exercise of those remedies or rights. CITY's waiver of any default does not waive further default. CITY's waiver of any right in this CONTRACT or of any default is binding only if it is in writing. CITY may remedy any default without waiving it.

11.03 Reimbursement. If MAGIK fails to perform any of MAGIK's obligations, CITY may perform those obligations and be reimbursed by MAGIK on demand at the place where the note is payable for any sums so paid, including attorney's fees and other legal expenses, plus interest on those sums from the dates of payment at the rate stated in the note for matured, unpaid amounts. The sum to be reimbursed shall be and is secured by this CONTRACT.

11.04 Interest Rate. Interest included in the obligation shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited to the principal of the obligation or, if that has been paid, refunded. On any acceleration or required or permitted prepayment of the obligation, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal amount of the obligation or, if the principal amount has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the obligation.

11.05 Modifications. No provisions of this CONTRACT shall be modified or limited except by written agreement.

11.06 Severability. The unenforceability of any provision of this CONTRACT will not affect enforceability or validity of any other provision.

11.07 After Acquired Proceeds. MAGIK agrees and understands that this security interest, by its nature, shall attach to after-acquired proceeds to the extent permitted by law.

11.08 Applicable Law. This CONTRACT shall be construed according to Texas law.

11.09 Place of Performance. This CONTRACT is to be performed in Bexar County, Texas.

11.10 Financing Statement. A carbon, photographic, or other reproduction of this CONTRACT or any financing statement covering the collateral is sufficient as a financing statement.

11.11 Singular and Plural. When the context requires, singular nouns and pronouns include the plural.

11.12 Priority of Security Interest. This security interest shall neither affect nor be affected by any other security for any of the obligation. Neither extensions of any of the obligation nor releases of any of the collateral will affect the priority or validity of this security interest with reference to any third person.

11.13 Cumulative Remedies. Foreclosure of this security interest by suit does not limit CITY's remedies. All remedies of CITY may be exercised at the same or different times, and no remedy shall be a defense to any other. CITY's rights and remedies include all those granted by law or otherwise, in addition to those specified in this CONTRACT.

11.14 Agency. MAGIK's appointment of CITY as MAGIK's agent is coupled with an interest and will survive any disability of MAGIK.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original, this the ___ day of _____, _____.

CITY OF SAN ANTONIO

THE MAGIK THEATRE

By: _____
TERRY BRECHTEL
City Manager

By: _____
RICHARD ROSEN
Executive Director

ATTEST: _____
CITY CLERK

ATTEST: _____

APPROVED:

CITY ATTORNEY

ATTACHMENTS:

Exhibit "A" Form of Promissory Note

EXHIBIT "A"
PROMISSORY NOTE

Magik Theater to City of San Antonio

\$9,208.84

For value received, THE MAGIK THEATRE, a Texas non-profit corporation ("Maker"), acting by and through its duly authorized Executive Director, promises to pay to the order of the CITY OF SAN ANTONIO, Bexar County, Texas, a Texas Municipal Corporation, ("Payee") \$9,208.84, with interest, at the rate of zero percent (0.00%) per annum, as follows:

Place of Payment

1. All payments are to be made at the office of the Director of Convention Center Facilities, located at 200 E. Market, San Antonio, Texas 78205.
2. The principal of this Note is payable in twenty-three (23) equal monthly installments of \$383.54, and one final installment in the amount of \$387.42. The first installment of principal is due and payable on the first day of the month following the effective date of Ordinance _____, and an installment is due and payable on the first of each following month until this Note is paid in full. Interest on this Note is payable as it accrues on the unpaid balance of this Note, on each date that an installment of principal becomes due and payable.

Prepayment

3. This Note may be prepaid in part or in full at any time without penalty.

Additional Interest

4. All past due interest and principal will bear interest after the due date at the highest rate allowed by law or 10% per annum, whichever is less.

Late Charge

5. If any installment payment is unpaid on the twentieth (20th) day after the due date, the parties agree it would be difficult to fix the actual resulting damages to the Payee. Therefore, Maker agrees to pay \$50.00 on any such default as liquidated damages and not as a penalty to compensate for the expense of administering the default. Only one such late charge will be collected on any installment regardless of the period during which it remains in default.

Disposition of Collateral

6. This Note is secured by certain personal property in the form of proceeds from the sale of tickets at Beethoven Hall as collateral that is more fully described in a Security Agreement of the same date as this Note between Maker and Payee. On the occurrence of any of the events that give rise to default under this Note, the holder of the collateral described in the security agreement has the right to exercise its dominion and control over the collateral as designated and described in said agreement.

Acceleration

7. It is understood and agreed that time is of the essence of this Note and that on default in the payment of any installment of principal or interest, or any part of principal or interest, when due, the holder of this Note, at the holder's election, may accelerate the unpaid balance of the principal and all accrued interest due and declare the balance due and payable immediately without presentment or demand for payment of any past-due installment of principal or interest or of any remaining unpaid balance of principal or interest, and without notice of intent to accelerate the payment of the unpaid balance of the principal or all accrued interest due on any parties to this

instrument. If any Maker, indorser, or guarantor or other surety of this Note becomes insolvent or commits an act of bankruptcy or some other form of default as described in the security agreement, or if for any other cause the protection of the holder, in the sole discretion of the holder, so requires, all liabilities of the undersigned to the holder, including this Note, will, at the option of the holder, mature and become due and payable without demand, grace, notice, presentment for payment, notice of intent to accelerate, and notice of acceleration, all of which are waived by any and all parties to this Note. The failure of the holder to exercise the holder's option to accelerate the maturity of this Note will not constitute a waiver of the right to exercise the option to accelerate at any other time.

Waiver of Rights, Concerning Acceleration or Extension of Due Date

8. Each Maker, indorser, and guarantor or other surety of this Note by signing this Note expressly waives demand, grace, notice of intent to accelerate, notice of acceleration, and presentment for payment, and further agrees that this Note and the Security Agreement securing its payment may be renewed, and the time for payment extended without notice, and without releasing any of the parties.

Costs of Collection

9. In the event this Note is placed in the hands of an attorney for collection, or in case the holder becomes a party either as plaintiff or defendant in any suit or legal proceeding in relation to the property described in the Security Agreement securing payment of this Note or for the recovery or protection of this indebtedness or for the recovery or protection of the indebtedness, the Maker of this Note will repay on demand all costs and expense arising from any legal proceeding, including reasonable attorney's fees, with interest on attorney's fees at the highest rate allowed by law or 10% per annum, whichever is less, until paid.

Effect of Waiver

10. No delay or omission on the part of the holder in exercising any right under this Note will operate as a waiver of such right or of any other right under this Note. A waiver on any one occasion will not be construed as a bar to or waiver of any right or remedy on any future occasion.

Definitions

11. As used in this Note, the term "holder" means the payee or other indorsee of this Note who is in possession of it, or the bearer of this Note if this Note is at the time payable to the bearers.

Executed this _____ day of _____, _____.

MAKER

**THE MAGIK THEATRE,
A Texas Non-Profit Corporation**

By: _____
RICHARD ROSEN
Executive Director

PROMISSORY NOTE

Magik Theater to City of San Antonio

\$9,208.84

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Prepayment

3. This Note may be prepaid in part or in full at any time without penalty.

Additional Interest

4. All past due interest and principal will bear interest after the due date at the highest rate allowed by law or 10% per annum, whichever is less.

Late Charge

5. If any installment payment is unpaid on the twentieth (20th) day after the due date, the parties agree it would be difficult to fix the actual resulting damages to the Payee. Therefore, Maker agrees to pay \$50.00 on any such default as liquidated damages and not as a penalty to compensate for the expense of administering the default. Only one such late charge will be collected on any installment regardless of the period during which it remains in default.

Disposition of Collateral

6. This Note is secured by certain personal property in the form of proceeds from the sale of tickets at Beethoven Hall as collateral that is more fully described in a Security Agreement of the same date as this Note between Maker and Payee. On the occurrence of any of the events that give rise to default under this Note, the holder of the collateral described in the security agreement has the right to exercise its dominion and control over the collateral as designated and described in said agreement.

Acceleration

7. It is understood and agreed that time is of the essence of this Note and that on default in the payment of any installment of principal or interest, or any part of principal or interest, when due, the holder of this Note, at the holder's election, may accelerate the unpaid balance of the principal and all accrued interest due and declare the balance due and payable immediately without presentment or demand for payment of any past-due installment of principal or interest or of any remaining unpaid balance of principal or interest, and without notice of intent to accelerate the payment of the unpaid balance of the principal or all accrued interest due on any parties to this

instrument. If any Maker, indorser, or guarantor or other surety of this Note becomes insolvent or commits an act of bankruptcy or some other form of default as described in the security agreement, or if for any other cause the protection of the holder, in the sole discretion of the holder, so requires, all liabilities of the undersigned to the holder, including this Note, will, at the option of the holder, mature and become due and payable without demand, grace, notice, presentment for payment, notice of intent to accelerate, and notice of acceleration, all of which are waived by any and all parties to this Note. The failure of the holder to exercise the holder's option to accelerate the maturity of this Note will not constitute a waiver of the right to exercise the option to accelerate at any other time.

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Costs of Collection

9. In the event this Note is placed in the hands of an attorney for collection, or in case the holder becomes a party either as plaintiff or defendant in any suit or legal proceeding in relation to the property described in the Security Agreement securing payment of this Note or for the recovery or protection of this indebtedness or for the recovery or protection of the indebtedness, the Maker of this Note will repay on demand all costs and expense arising from any legal proceeding, including reasonable attorney's fees, with interest on attorney's fees at the highest rate allowed by law or 10% per annum, whichever is less, until paid.

Effect of Waiver

10. No delay or omission on the part of the holder in exercising any right under this Note will operate as a waiver of such right or of any other right under this Note. A waiver on any one occasion will not be construed as a bar to or waiver of any right or remedy on any future occasion.

Definitions

11. As used in this Note, the term "holder" means the payee or other indorsee of this Note who is in possession of it, or the bearer of this Note if this Note is at the time payable to the bearers.

Executed this _____ day of _____, _____.

MAKER

**THE MAGIK THEATRE,
A Texas Non-Profit Corporation**

By: _____
RICHARD ROSEN
Executive Director

STATE OF TEXAS
COUNTY OF BEXAR

X
X
X

AMENDMENTS TO
THE MAGIK THEATER
LEASE

This Amendment is made and entered into by and between the City of San Antonio (CITY) and THE MAGIK THEATRE, a non-profit corporation (TENANT).

WHEREAS, under authority granted by Ordinance No. 86014, passed and approved on May 8, 1997, the CITY and TENANT entered into a Lease Agreement (Agreement") for the purpose of TENANT leasing and occupying Beethoven Hall Theater, a CITY-owned performing arts venue, located in HemisFair Park, at 418 S. Alamo Street, San Antonio, Bexar County, Texas; and

WHEREAS, the Parties have identified numerous amendments that will assist in the implementation of the Agreement and further facilitate the use of the Leased Premises as intended; **NOW THEREFORE, the Parties agree as follows:**

1.01 Subject to the terms and conditions set out in this Amendment and Ordinance ~~94991~~, the Parties hereto mutually agree to modify and amend the Agreement entered into upon authority granted in Ordinance No. 86014 as follows:

12-13-01

- (a) Exhibit "C-2", modifying the Parking Policy between the CITY and TENANT, is hereby approved and made part of the Agreement. A copy of Exhibit "C-2" is attached to this Amendment as Exhibit "A".
- (b) Paragraph 2.4 shall be and is hereby modified to define the term "Season" a/k/a "Lease Year" to be July 1st through June 30th of each year.
- (c) Paragraph 5.2(A) shall be and is hereby modified to require TENANT to deposit the Preservation fees into the Beethoven Hall/Magik Theatre Fund, monthly.
- (d) Paragraph 5.5 is hereby divided into the following two paragraphs:

5.5 (A) All payments to CITY shall be made by TENANT to CITY on a monthly basis in arrears on the tenth (10th) day of the month following the month in which such **Preservation Fees** are assessed and collected, by mail or hand-delivery to the CITY of San Antonio, Finance Department, Treasury Division, 506 Dolorosa, San Antonio, Texas 78205.

(B) TENANT shall provide to CITY, on a quarterly basis, a report containing total ticket sales and collections for the immediately preceding quarter.

- (e) Paragraph 5.7 shall now read as follows:

5.7(A) For purposes of this Lease, TENANT agrees to maintain all of its documentation, books and records utilizing generally accepted accounting principals and agrees to obtain the professional assistance of a Certified Public Accountant, at TENANT's sole cost and expense, to assist TENANT in establishing and maintaining proper record keeping and accounting systems.

(B) For purposes of this Lease and the obligations imposed, TENANT agrees to and shall maintain a complete and accurate set of books and records in accordance with accepted accounting principles. Such books and records shall be maintained in Tenant's files throughout the lease term and any extended term(s) hereof. TENANT agrees and understands that, as required



and provided in this Lease, City reserves the right to audit all TENANT's books and records upon three (3) days notice, which the City determines, in its sole discretion, to be relevant to this Lease, for the purpose of determining the accuracy of the reported Gross Income and TENANT's compliance with this Lease. City, if it elects, has the right to require that any or all such books and records be submitted for audit to City or to a Certified Public Accountant selected by City, or any other City designee. If it shall be determined, as a result of such audit, that there has been a deficiency in the Gross Income reported to the City or the payments due to City hereunder, then such deficiency shall become immediately due and payable with interest at the maximum legal rate under applicable law from the date when said payments should have been made. In addition, if Gross Income or payments have been understated by more than two percent (2%) of the Gross Income reported to the City during the previous reporting period, then the entire expense of the audit shall be borne by the TENANT.

(C) TENANT shall annually engage an independent Certified Public Accountant (CPA) to perform an audit of its financial statements in accordance with Generally Accepted Auditing Standards. Such audit shall include the performance of agreed-upon procedures by the CPA to analyze and assess the accuracy of TENANT's income related to this Lease as of the end of TENANT's Season (fiscal year), in accordance with the *Statements on Standards for Attestation Engagements*, as well as any other standards that may apply. The independent CPA shall furnish, within ninety (90) days of the end of the TENANT's fiscal year, the written audit report, including the results of the agreed-upon procedures, to the CITY, with a duplicate original to the Director, Office of Internal Review, City of San Antonio, 415 S. Main, San Antonio, Texas 78204. The independent CPA must state in his or her report an opinion whether the "Gross Revenues" generated and reported to the City under this Lease and whether the amounts paid to the City during the TENANT's fiscal year were made in accordance with the applicable terms of this Lease and are accurately stated.

(D) "Gross Income", as used in this Lease, shall mean the aggregate amount excluding sales taxes collected and documented refunds of the proceeds of all sales made for cash, credit or other compensation of any kind, name and nature received, directly or indirectly, by virtue of or in connection with this Lease and all monies received from other sources which shall include, but not be limited to, donations, gifts, fundraisers and reimbursed expenses.

(f) Paragraph 5.8 shall now read as follows:

5.8 TENANT agrees to and shall provide to CITY the following reports:

(A) A quarterly report, based on the Leased Year identified in Paragraph 2.4 of this Lease, which shall be due on or before the forty-fifth (45th) day after the end of the quarter, containing the following information for the previous contiguous three month period:

- Dates and number of Performances held during the quarter;
- Total number of each class of ticket sold per performance;
- Cost of each class of ticket sold;
- Preservation Fee collected per class of ticket;

- Total amount of Preservation fees deposited in the Beethoven Hall/Magik Theatre Fund;
- Total amount withdrawn from the Beethoven Hall/Magik Theatre Fund; and
- Written documentation from the financial institution for the Beethoven Hall/Magik Theatre Fund evidencing all activity in the Fund for the quarter.

(B) An annual report for each Season, due on or before August 15th of each year following the end of the just completed Season, containing the following information:

- Summation of the quarterly reports provided under paragraph 5.8(A);
- Annual Operating/Capital Budget for the applicable Season;
- A profit and loss statement detailing all income and expenditures;
- Summation of fundraising activities.

(C) An annual report for the upcoming Season, due on or before April 1st of each year, containing the following information:

- Projected operating budget for the new Season, identifying any and all problems and solutions thereto;
- Planned capital improvements to the Leased Premises for the next Season, if any;
- Detailed information on fundraising during the next Season to include projections and a marketing plan;
- A reasonable schedule for Capital Campaign funding for the renovation work referenced on paragraph 6.3 including, but not limited to, the manner and means by which the financial goals will be reached.

(g) Paragraph 6.3(A) shall now read as follows:

6.3 TENANT shall comply with the following in connection with **TENANT's** Work:

A) **TENANT AGREES TO AND SHALL PERFORM THE FOLLOWING ON OR BEFORE JUNE 30, 2005:**

- 1). Provide **CITY** for its review and approval, a preliminary phased-in renovation schedule by **TENANT**; such schedule shall consist of construction milestones. **CITY** reserves the right to extend the construction completion date, at its own discretion.
- 2). Provide **CITY** with a preliminary Pro Forma.
- 3). Submit Preliminary Plans and Specifications, and Preliminary Construction Costs Estimate to the **CITY's Department of Asset Management** for approval.

(h) Paragraph 6.4 shall now read as follows:

6.4 **CITY** agrees to examine and approve or disapprove and cause the **CITY** Asset Management Department and **CITY** Architect's Office to examine and approve or disapprove the above mentioned plans and specifications within thirty (30) days after receipt and to notify **TENANT** in writing when the same have been approved or disapproved and in the event of approval, **TENANT** agrees to commence **TENANT's** Work promptly thereafter, proceed with such work, and complete such work by June 30, 2007. In the event of disapproval, **CITY** agrees to

specify to **TENANT** in writing the nature of the deficiency in the plans and specifications, which warranted the **CITY's** disapproval. Within ten (10) days after receipt of such disapproval, **TENANT** agrees to meet with **CITY** to resolve such deficiencies and within thirty (30) days after such meeting **TENANT** will present revised plans and specifications to **CITY**. Thereafter **CITY** agrees to examine and approve or disapprove the revised plans and specifications, after which time, if revised plans and specifications are approved, **TENANT** will proceed in accordance with the completion date time frame set forth herein. If for any reason the revised plans and specifications are disapproved by **CITY** then in such instance, the same procedure set forth herein for notification as to disapproval shall apply.

- (i) Paragraph 6.9 shall now read as follows:

6.9 Failure by **TENANT** or its contractors or subcontractors to complete the **TENANT's** Work called for herein on or before June 30, 2007 shall constitute an act of default and shall be cause for immediate termination of said Agreement by **CITY**, unless such time is extended at **CITY's** sole discretion.

- (j) Paragraph 6.10 shall now read as follows:

6.10 Notwithstanding the time requirements specified above, if **TENANT** and **CITY** are unable to reach an agreement on plans and specifications for the proposed improvements for **TENANT'S** Work by December 31, 2005, then this Lease shall terminate and **TENANT** agrees to vacate the premises within thirty (30) days, with neither party having any further obligation or liability to the other party thereafter, unless such time is extended at the sole discretion of the **CITY**.

- (k) Article XI of the Lease shall now read as follows:

XI. UTILITIES, JANITORIAL AND SECURITY SERVICES

11.1 **TENANT** shall provide for and pay directly to the utility companies, all utility company connection charges, including the cost of installing a separate electric meter, telephone lines and connections and any cable/satellite television connection fees, and all charges incurred for heat, gas, electricity, water, sewer, garbage collection, telephone, cable/satellite TV, or any other utility services, including specific chilled water costs as set forth hereafter, used in or on the Leased Premises and **TENANT** shall furnish all electric light bulbs and tubes. **CITY** shall not be liable to **TENANT** in damages or otherwise if said services are interrupted or terminated because of necessary repairs, installations, improvements or any cause beyond the control of the **CITY**.

11.2 **TENANT** agrees to continue to use the current Chilled Water System and agrees to and acknowledges the following:

(A) **TENANT shall pay \$9,204.84** for its chilled water use between July 1, 1997 through June 30, 1998. **TENANT** further agrees to the terms and conditions of a Security Agreement and Promissory Note in substantially the form attached hereto as Exhibit "B", to secure payment of the amount owed as acknowledged under this paragraph 11.2(A).

(B) **TENANT's** failure to fulfill its obligations under paragraphs 11.2(A), shall be and is an event of default under Article XXIII of the Agreement.

(C) TENANT may research the feasibility of obtaining funding for, purchasing and installing a Heating, Ventilation and Air Conditioning ("HVAC") System on and for the Leased Premises. If such a system is installed by TENANT, upon installation, the HVAC System shall become CITY property. Furthermore, TENANT shall be solely responsible for the costs to maintain and operate the System during TENANT's tenancy under the Agreement, renewal thereof, and any holdover period.

(D) TENANT will not be obligated to pay for chilled water costs from the end of the first year of the lease term through June 30, 2007. At this time the CITY will reevaluate the TENANT's ability to reimburse chilled water costs to the CITY.

(E) Notwithstanding any other provision in this Lease, TENANT agrees to reimburse CITY all its extraordinary costs associated with chilled water. As used in this Lease, "Extraordinary cost" shall be defined as cost for the use of chilled water over and above the standard capacity ("cap"), as defined by the San Antonio Water System (SAWS) for Tenant, based on per 100 ton hour standard capacity per month. The calculation of extraordinary costs will be based on Tenant's use of chilled water. Chilled water used over and above this cap will be paid by Tenant at 100% of cost. Extraordinary costs will be calculated monthly and will be payable on the twenty-fifth day of each month. A late fee equal to 10% of the amount owed for the month, or the maximum amount allowed by law, whichever is less, will be assessed for any amounts not paid on or before the due date.

11.3 TENANT agrees to provide for (1) the cost of janitorial services and (2) in the event TENANT chooses to provide security services for the Leased Premises, TENANT will provide for the payment of all private security services for the Leased Premises and use the off-duty Police Employment of the San Antonio Police Department so long as it is required by the San Antonio Police Department Police Union Contract.

(I) Paragraph 29.2 shall now read as follows:

29.2 Entire **Agreement**. (A) This Agreement and authorizing Ordinances constitutes the entire agreement between the Parties. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

(B) It is understood and agreed by the Parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

2.01 The CITY and TENANT agree that any inconsistency in the Lease created or caused by this Amendment shall be conformed to the fullest extent possible to comply with this Amendment. To that extent, in the event of a conflict between this Amendment and the Lease as originally approved shall be resolved in favor of this Amendment.

3.01 The Parties agree and understand that, except as modified herein, all terms and conditions contained in the Lease entered into under the authority of Ordinance No. 86014 shall remain in full force and effect.

4.01 Tenant represents, warrants, assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Amendment and to perform the responsibilities herein required.

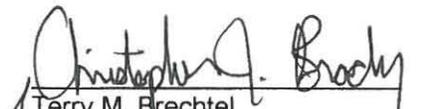
5.01 The signer of this Amendment for Tenant represents, warrants, assures and guarantees that he has full legal authority to execute this Amendment on behalf of Tenant and to bind Tenant to all terms, performances and provisions herein contained.

[SIGNATURE BLOCK FOR AMENDMENT IS ON THE NEXT PAGE]

EXECUTED AND SIGNED this 22nd day of January, 2002

CITY OF SAN ANTONIO

THE MAGIK THEATRE

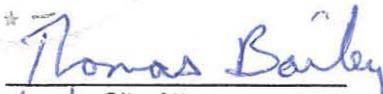

Terry M. Brechtel
City Manager
rew


Richard Rosen
Executive Director

ATTEST:


Norma Rodriguez
City Clerk

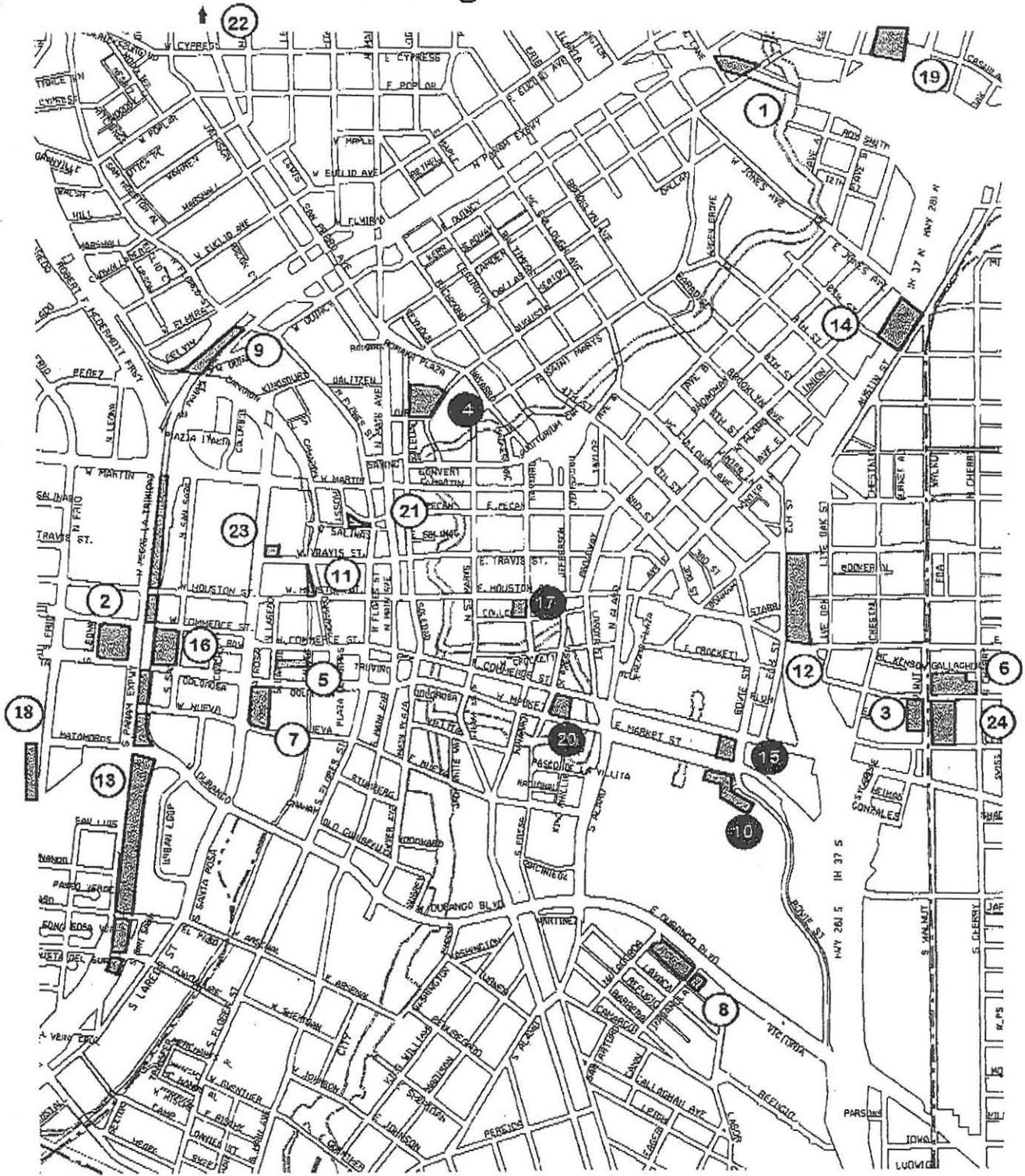
APPROVED:


Asst. City Attorney

ATTACHMENTS:

- Exhibit "A" - Exhibit "C-2" of the Agreement approved by Ordinance No. 86014 regarding the Parking Policy.
- Exhibit "B" - Drafts of a Security Agreement and Promissory Note between the Parties.

City of San Antonio - Parking Division Managed Locations



- Parking Structures
- Surface Lots

EXHIBIT "A"

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

MAGIK THEATRE SECURITY AGREEMENT

This CONTRACT is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "CITY"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. 94991 dated December 13, 2001, and THE MAGIK THEATRE (hereinafter referred to as "MAGIK"), a Texas non-profit corporation, acting by and through its Executive Director, hereto duly authorized (collectively referred to as the "Parties").

WITNESSTH

WHEREAS, the City Council authorized a Lease Agreement ("Lease") between the Parties in Ordinance No. 86014 passed and approved on May 8, 1997 for the Lease of a City owned building commonly known as "Beethoven Hall"; and

WHEREAS, the lease places a number of financial obligations on MAGIK, the breach of which may result in termination of the Lease and repossession of the leased premises by the CITY, including but not limited to the obligation of MAGIK to pay a portion of the chilled water costs as set out in Article XI of the Lease; and

WHEREAS, MAGIK hereby acknowledges and confesses that MAGIK has failed to pay its proportionate share of chilled water costs for the first year of the Lease in the amount of \$9,204.84; and

WHEREAS, CITY and MAGIK have determined that in lieu of termination and repossession, it is in the best interests of the Parties to allow MAGIK the opportunity to pay out the debt over a twenty-four (24) month period;

NOW THEREFORE, the PARTIES hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. PAYMENTS AND SECURITY

1.01 Except as may otherwise be provided in this CONTRACT, MAGIK agrees to and shall pay the monies owed by MAGIK to CITY in twenty-three (23) equal monthly installments of \$383.54 each and one (1) final installment of \$383.42 for a total of twenty-four (24) payments.

1.02 MAGIK agrees to and shall secure the \$9,204.84 debt to the CITY by both signing a promissory note, of even date herewith and substantially in the form attached hereto as Exhibit "A", and by assigning to CITY all proceeds to ticket sales at Beethoven Hall, as provided herein, as further security for the debt, until said debt is paid in full.

II. GENERAL RESPONSIBILITIES

2.01 MAGIK hereby accepts full responsibility for the performance of all obligations and activities described in this CONTRACT to fully repay the debt.

2.02 Unless written notification by MAGIK to the contrary is received and approved by CITY, MAGIK's Executive Director shall be MAGIK's designated representative responsible for the management of this CONTRACT.

2.03 City's Director of its Asset Management Department is responsible for the administration of this CONTRACT on behalf of the CITY.

2.04 Communications between CITY and MAGIK shall be directed to the designated representatives of each as set forth in paragraphs numbered 2.02 and 2.03 hereinabove. For purposes of this CONTRACT, all official communications and notices among the PARTIES shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY: Asset Management Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

MAJIK: The Magik Theatre
418 S. Alamo Street
San Antonio, Texas 78205

Notice of change of address by either PARTY must be made in writing and mailed to the other PARTY's last known address within five (5) business days of such change.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.01 MAGIK warrants and represents that it will cooperate with CITY to obtain and maintain compliance with all Federal, State and Local laws and regulations pertaining to the objective and purposes of this CONTRACT. MAGIK agrees and acknowledges that its cooperation includes, but is not limited to, completion of and signing of any and all documentation deemed necessary by the CITY to protect and preserve the CITY's right to payment and/or its rights in all proceeds to ticket sales at Beethoven Hall, said proceeds being collateral to secure and assure payment of the debt.

IV. LEGAL AUTHORITY

4.01 MAGIK represents, warrants, assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this CONTRACT and to perform the responsibilities herein required.

4.02 The signer of this CONTRACT for MAGIK represents, warrants, assures and guarantees that he or she has full legal authority to execute this CONTRACT on behalf of MAGIK and to bind MAGIK to all terms, performances and provisions herein contained.

V. SECURITY INTEREST

5.01 MAGIK hereby grants to CITY a security interest in the following collateral, to-wit: all proceeds to ticket sales at Beethoven Hall, to secure payment and performance of MAGIK'S' obligation in this CONTRACT and all renewals and extensions, if any.

VI. MAGIK'S WARRANTIES

6.01 Financing Statement. Except for that in favor of CITY, no financing statement covering the collateral is filed in any public office.

6.02 Ownership. MAGIK owns the collateral and has the authority to grant this security interest. Ownership is free from any setoff, claim, restriction, lien, security interest, or encumbrance except this security interest and liens, if any, for taxes not yet due.

6.03 Commingling. If a default occurs under this CONTRACT or the note, none of the collateral is to be or will be commingled with other funds, except as expressly provided in this CONTRACT or as subsequently agreed to by CITY in writing.

6.04 Financial Statements. All information about MAGIK's financial condition provided to CITY was accurate when submitted, as will be any information subsequently provided.

VII. MAGIK's COVENANTS

7.01 Protection of Collateral. MAGIK represents and warrants that it will diligently defend the collateral against all claims and demands adverse to CITY's interest in it and will keep it free from all liens except those for taxes not yet due, if any, and from all security interests except this one. The collateral will remain in MAGIK's possession or control at all times, except as otherwise provided in this CONTRACT. MAGIK agrees to and shall notify CITY immediately, both orally and in writing, if and when any claim or demand adverse to CITY's interest is made.

7.02 CITY's Costs. MAGIK will pay all expenses incurred by CITY in obtaining, preserving, perfecting, and enforcing this security interest or the collateral and in collecting or enforcing the note. Expenses for which MAGIK is liable include, but are not limited to, taxes, assessments, reasonable attorney's fees, and other legal expenses. These expenses will bear interest from the dates of payments at the highest rate stated in notes that are part of the obligation, and MAGIK will pay CITY this interest on demand at a time and place reasonably specified by CITY. These expenses and interest will be part of the obligation and will be recoverable as such in all respects.

7.03 Additional Documents. MAGIK will sign any papers that CITY considers necessary to obtain, maintain, and perfect this security interest or to comply with any relevant law.

7.04 Notice of Changes. MAGIK will immediately notify CITY of any material change in the collateral; change in MAGIK's name, address, or location; change in any matter warranted or represented in this CONTRACT; change that may affect this security interest; and any event of default.

7.05 Use and Removal of Collateral. MAGIK will use the collateral primarily according to the proceeds normal day-to-day uses unless or until a default under this CONTRACT or the note occurs at which time MAGIK agrees to acquiesce and submit to the will and direction of the CITY. After a default occurs, MAGIK will not permit the collateral to be commingled with other monies, except as expressly provided in this CONTRACT or permitted by CITY, in writing.

7.06 Sale. MAGIK warrants and represents that it will not spend, transfer, or encumber any of the collateral without the prior written consent of CITY; except that, so long as MAGIK is not in default under this CONTRACT and adheres to the terms and conditions contained herein, MAGIK may spend collateral in the ordinary course of business under generally accepted business practices.

VIII. RIGHTS AND REMEDIES OF CITY

8.01 Generally. CITY may exercise the following rights and remedies either before or after default:

- a. take immediate and absolute control of MAGIK's operation(s) stepping into the "shoes" of MAGIK;
- b. release any collateral in CITY's possession to MAGIK, temporarily or otherwise;
- c. take immediate control of the proceeds and any and all funds generated by the collateral and reduce any part of the obligation accordingly or permit MAGIK to use such funds to operate; and
- d. demand, collect, convert, redeem, settle, compromise, receipt for, realize on, sue for, and adjust the collateral either in CITY's or MAGIK's name, as CITY desires.

8.02 Insurance. As determined necessary within the sole discretion of the CITY, CITY may purchase insurance coverage that will protect only CITY. If CITY purchases this insurance, its premiums will become part of the obligation owed by MAGIK to CITY.

8.03 Access to Records. At any reasonable time and as often as CITY may deem necessary, MAGIK shall make all of its records pertaining to this CONTRACT available to CITY or any of its authorized representatives, and shall permit CITY or any of its authorized representatives to audit, examine, and make excerpts and/or copies of same. Further, MAGIK agrees and represents that it will cooperate with CITY, at no charge to the CITY, to satisfy, to the extent required by law, any and all requests for information received by CITY under the Texas Public Information Act or related laws pertaining to this CONTRACT.

8.04 Monitoring. MAGIK agrees that CITY may carry out monitoring and evaluation activities so as to ensure compliance by MAGIK with this CONTRACT and with all other laws, regulations and ordinances related to the performance hereof.

IX. EVENTS OF DEFAULT

9.01 Each of the following conditions is an event of default:

- a. if MAGIK defaults in timely payment or performance of any obligation, covenant, or liability in under this CONTRACT;
- b. if any warranty, covenant, or representation made to CITY by or on behalf of MAGIK proves to have been false in any material respect when made;
- c. if a receiver is appointed for MAGIK;
- d. if the collateral is assigned for the benefit of creditors or, to the extent permitted by law, if bankruptcy or insolvency proceedings are commence against or by MAGIK;
- e. if any financing statement regarding the collateral but not related to this security interest and not favoring CITY is filed; and
- f. if any lien attaches to any of the collateral.

X. REMEDIES OF CITY ON DEFAULT

10.01 During the existence of any event of default, CITY may declare the unpaid principal and earned interest of the obligation immediately due in whole or part, enforce the obligation, and exercise any rights and remedies granted by chapter 9 of the Texas Business and Commerce Code or by this CONTRACT, including the following:

- a. require MAGIK to deliver to CITY all books and records relating to the collateral;
- b. require MAGIK to continue operations and to pay into a designated account all funds generated as provided in paragraph 10.02;
- c. take possession of the premises and operate same taking possession of the collateral as it is received;
- d. apply any proceeds from disposition of the collateral after default in the manner specified in chapter 9 of the Texas Business and Commerce Code, including payment of CITY's reasonable attorney's fees and court expense; and
- e. if disposition of the collateral leaves the obligation unsatisfied, collect the deficiency from MAGIK;

10.02 On CITY's demand MAGIK agrees to and shall deposit all payments received as proceeds of collateral in a special bank account designated by CITY, who alone will have power of withdrawal. MAGIK will deposit the payments on receipt, in the form received, and with any necessary endorsements as security for the obligation. CITY may make any endorsements in MAGIK's name and behalf. Between receiving and depositing these payments, MAGIK will not mingle them with any of MAGIK's other funds or property but will hold them separate and in an express trust for CITY. CITY shall apply all or part of these funds against the obligation.

XI. GENERAL PROVISIONS

11.01 Parties Bound. CITY's rights under this CONTRACT shall inure to the benefit of its successors and assigns. Assignment of any part of the obligation and delivery by CITY of any part of the collateral will fully discharge CITY from responsibility for that part of the collateral. If MAGIK is more than one, all their representations, warranties, and agreements are joint and several. MAGIK's obligations under this CONTRACT shall bind MAGIK's personal representatives, successors, and assigns.

11.02 Waiver. Neither delay in exercise nor partial exercise of any of CITY's remedies or rights shall waive further exercise of those remedies or rights. CITY's failure to exercise remedies or rights does not waive subsequent exercise of those remedies or rights. CITY's waiver of any default does not waive further default. CITY's waiver of any right in this CONTRACT or of any default is binding only if it is in writing. CITY may remedy any default without waiving it.

11.03 Reimbursement. If MAGIK fails to perform any of MAGIK's obligations, CITY may perform those obligations and be reimbursed by MAGIK on demand at the place where the note is payable for any sums so paid, including attorney's fees and other legal expenses, plus interest on those sums from the dates of payment at the rate stated in the note for matured, unpaid amounts. The sum to be reimbursed shall be and is secured by this CONTRACT.

11.04 Interest Rate. Interest included in the obligation shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited to the principal of the obligation or, if that has been paid, refunded. On any acceleration or required or permitted prepayment of the obligation, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal amount of the obligation or, if the principal amount has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the obligation.

11.05 Modifications. No provisions of this CONTRACT shall be modified or limited except by written agreement.

11.06 Severability. The unenforceability of any provision of this CONTRACT will not affect enforceability or validity of any other provision.

11.07 After Acquired Proceeds. MAGIK agrees and understands that this security interest, by its nature, shall attach to after-acquired proceeds to the extent permitted by law.

11.08 Applicable Law. This CONTRACT shall be construed according to Texas law.

11.09 Place of Performance. This CONTRACT is to be performed in Bexar County, Texas.

11.10 Financing Statement. A carbon, photographic, or other reproduction of this CONTRACT or any financing statement covering the collateral is sufficient as a financing statement.

11.11 Singular and Plural. When the context requires, singular nouns and pronouns include the plural.

11.12 Priority of Security Interest. This security interest shall neither affect nor be affected by any other security for any of the obligation. Neither extensions of any of the obligation nor releases of any of the collateral will affect the priority or validity of this security interest with reference to any third person.

11.13 Cumulative Remedies. Foreclosure of this security interest by suit does not limit CITY's remedies. All remedies of CITY may be exercised at the same or different times, and no remedy shall be a defense to any other. CITY's rights and remedies include all those granted by law or otherwise, in addition to those specified in this CONTRACT.

11.14 Agency. MAGIK's appointment of CITY as MAGIK's agent is coupled with an interest and will survive any disability of MAGIK.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original, this the 22nd day of January, 2001.

CITY OF SAN ANTONIO

THE MAGIK THEATRE

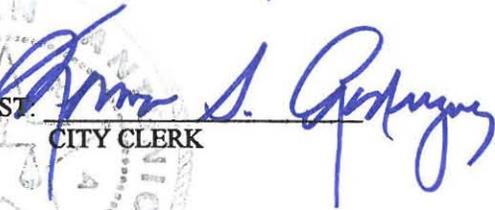
By:


TERRY BRECHTEL
City Manager

By:


RICHARD ROSEN
Executive Director

ATTEST:


CITY CLERK

ATTEST: _____

APPROVED:


Asst. CITY ATTORNEY

ATTACHMENTS:

Exhibit "A" Form of Promissory Note

PROMISSORY NOTE

Magik Theater to City of San Antonio

\$9,204.84

For value received, THE MAGIK THEATRE, a Texas non-profit corporation ("Maker"), acting by and through its duly authorized Executive Director, promises to pay to the order of the CITY OF SAN ANTONIO, Bexar County, Texas, a Texas Municipal Corporation, ("Payee") \$9,204.84, with interest, at the rate of zero percent (0.00%) per annum, as follows:

Place of Payment

1. All payments are to be made at the office of the Director of Convention Center Facilities, located at 200 E. Market, San Antonio, Texas 78205.
2. The principal of this Note is payable in twenty-three (23) equal monthly installments of \$383.54, and one final installment in the amount of \$383.42. The first installment of principal is due and payable on the first day of the month following the effective date of Ordinance 94991, and an installment is due and payable on the first of each following month until this Note is paid in full. Interest on this Note is payable as it accrues on the unpaid balance of this Note, on each date that an installment of principal becomes due and payable.

Prepayment

3. This Note may be prepaid in part or in full at any time without penalty.

Additional Interest

4. All past due interest and principal will bear interest after the due date at the highest rate allowed by law or 10% per annum, whichever is less.

Late Charge

5. If any installment payment is unpaid for at least twenty (20) days after the due date, the parties agree it would be difficult to fix the actual resulting damages. Therefore, Maker agrees to pay to the holder of this note \$50.00 on any such default, as liquidated damages and not as a penalty, to compensate the holder for the expenses of administering the default. Only one such late charge will be collected on any installment regardless of the period during which it remains in default.

Disposition of Collateral

6. This Note is secured by certain personal property in the form of proceeds from the sale of tickets at Beethoven Hall as collateral that is more fully described in a Security Agreement of the same date as this Note between Maker and Payee. On the occurrence of any of the events that give rise to default under this Note, the holder of the collateral described in the security agreement has the right to exercise its dominion and control over the collateral as designated and described in said agreement.

Acceleration

7. It is understood and agreed that time is of the essence of this Note and that on default in the payment of any installment of principal or interest, or any part of principal or interest, when due, the holder of this Note, at the holder's election, may accelerate the unpaid balance of the principal and all accrued interest due and declare the balance due and payable immediately without presentment or demand for payment of any past-due installment of

principal or interest or of any remaining unpaid balance of principal or interest, and without notice of intent to accelerate the payment of the unpaid balance of the principal or all accrued interest due on any parties to this instrument. If any Maker, indorser, or guarantor or other surety of this Note becomes insolvent or commits an act of bankruptcy or some other form of default as described in the security agreement, or if for any other cause the protection of the holder, in the sole discretion of the holder, so requires, all liabilities of the undersigned to the holder, including this Note, will, at the option of the holder, mature and become due and payable without demand, grace, notice, presentment for payment, notice of intent to accelerate, and notice of acceleration, all of which are waived by any and all parties to this Note. The failure of the holder to exercise the holder's option to accelerate the maturity of this Note will not constitute a waiver of the right to exercise the option to accelerate at any other time.

Waiver of Rights, Concerning Acceleration or Extension of Due Date

8. Each Maker, indorser, and guarantor or other surety of this Note by signing this Note expressly waives demand, grace, notice of intent to accelerate, notice of acceleration, and presentment for payment, and further agrees that this Note and the Security Agreement securing its payment may be renewed, and the time for payment extended without notice, and without releasing any of the parties.

Costs of Collection

9. In the event this Note is placed in the hands of an attorney for collection, or in case the holder becomes a party either as plaintiff or defendant in any suit or legal proceeding in relation to the property described in the Security Agreement securing payment of this Note or for the recovery or protection of this indebtedness or for the recovery or protection of the indebtedness, the Maker of this Note will repay on demand all costs and expense arising from any legal proceeding, including reasonable attorney's fees, with interest on attorney's fees at the highest rate allowed by law or 10% per annum, whichever is less, until paid.

Effect of Waiver

10. No delay or omission on the part of the holder in exercising any right under this Note will operate as a waiver of such right or of any other right under this Note. A waiver on any one occasion will not be construed as a bar to or waiver of any right or remedy on any future occasion.

Definitions

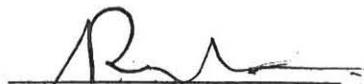
11. As used in this Note, the term "holder" means the payee or other indorsee of this Note who is in possession of it, or the bearer of this Note if this Note is at the time payable to the bearers.

Executed this _____ day of _____, 2001.

MAKER

**THE MAGIK THEATRE,
A Texas Non-Profit Corporation**

By:


RICHARD ROSEN
Executive Director

CITY OF SAN ANTONIO

DEPARTMENT OF ASSET MANAGEMENT
INTERDEPARTMENTAL CORRESPONDENCE SHEET

TO: City Manager's Office
FROM: Rebecca Waldman, Director of Asset Management
COPIES: File
SUBJECT: Magik Theater Lease Amendment
DATE: January 04, 2002

PROJECT TYPE: Lease Amendment Related to Chilled Water Use
ORDINANCE: 94991
ORDINANCE DATE: 12/13/01

BACKGROUND:

This ordinance amends the existing Lease Agreement with Magik theater by modifying the provisions related to payment for chilled water use, extending the completion of a major renovation to the theater, clarifying reporting requirements, and authorizes the City of San Antonio to enter into a Security Agreement with Magik Theater who will sign a Promissory Note for chilled water charges incurred during the first year (July 1997 – June 1998) of the lease term in the amount of \$9,208.84 to be paid out over a twenty-four month period. A copy of Ordinance No. 94991, dated December 13, 2001 is attached.

POLICY ANALYSIS:

This agreement is consistent with the City's policy of providing available space in City-owned facilities to non-profit organizations for a publicly beneficial use. This action amends the previously approved agreement.


Rebecca Waldman, Director
Department of Asset Management


Steven Arronge
(TRM) Acting City Attorney

CITY OF SAN ANTONIO
 DEPARTMENT OF ASSET MANAGEMENT
 INTERDEPARTMENTAL CORRESPONDENCE

TO: Mayor and City Council

FROM: Rebecca Waldman, Director, Department of Asset Management

THROUGH: Terry M. Brechtel, City Manager

COPIES: Christopher Brady, Frank Garza, and Edward Garcia

RE: Amending the Lease Agreement with Magik Theater and authorizing an associated Security Agreement and Promissory Note

DATE: December 13, 2001

SUMMARY AND RECOMMENDATIONS:

This ordinance amends the existing Lease Agreement with Magik Theater by modifying the provisions related to payment for chilled water use, extending the completion of a major renovation to the theater, clarifying reporting requirements, and authorizes the City of San Antonio to enter into a Security Agreement with Magik Theater who will sign a Promissory Note for chilled water charges incurred during the first year (July 1997 – June 1998) of the lease term in the amount of \$9,208.84 to be paid out over a twenty-four month period.

Staff recommends City Council’s approval of this request.

BACKGROUND INFORMATION:

The Magik Theater is a non-profit arts organization committed to bringing live theater productions to San Antonio children and their families at a reasonable cost. The company has 14 full time actors who perform over 300 productions yearly. The City leased the Beethoven Hall/Magik Theater to the Magik Theater (Tenant) on May 8, 1997, through Ordinance number 86014. The lease provided Magik a better facility for their performances and provided the City with a Tenant who would utilize and restore this City owned facility.

Under the terms of this Lease, which has an initial term of fifteen (15) years and a renewal option of ten (10) years, the Tenant is obligated to pay a preservation fee on tickets sold in lieu of rent. Tenant may use preservation fees with City approval for capital improvements and repair and maintenance if the costs of the repairs exceed the Tenant’s annual budget for those items. The Lease also obligates the Tenant to complete a major renovation to this City-owned facility of approximately \$2 million no later than June 30, 2001. This facility is serviced by the chilled water system that serves Hemisfair, La Villita, and other nearby facilities. The Lease also states that the Tenant is obligated to pay the greater

of 25% of chilled water use or 3% gross sales of the theater for the first year of the Lease term (July 1997-June 1998). The portion to be paid by the Tenant for subsequent years would be determined after the end of the first year.

The Amendment is needed to accomplish the following:

- Secure payment of the first year chilled water costs. The Tenant owes \$9,208.84 for the first year's chilled water usage in accordance with the Lease. Due to other operating expenses and the continuing need for repairs and improvements to the facility, they have been unable to pay this amount. A Security Agreement and Promissory Note will obligate the Tenant to pay twenty-four (24) monthly installments for a total of \$9,208.84 for the first year's chilled water costs. This becomes effective thirty days after the date of this ordinance. Tenant's failure to fulfill this obligation shall be an event of default and the City will be assigned all revenues from ticket sales at Beethoven Hall as security for the debt.
- Determine chilled water costs after the first year of the lease. Recent reviews of various Lease Agreements for City-owned property at Hemisfair concluded that Magik's chilled water lease obligations were not consistent with other non-profit tenants. The Amendment will allow the Magik Lease to be comparable to other City agreements with non-profit organizations utilizing City facilities. For this reason, and to allow Magik to use available funds for programming and other operating expenses, this amendment proposes that Magik not be obligated to pay for chilled water costs from the end of the first year through June 30, 2007. This date coincides with the date by which Tenant will have completed the renovations to the theater as described below. At that time, Staff can reevaluate the Tenant's ability to reimburse these costs to the City.
- Provide a threshold for chilled water. A threshold for chilled water use based on historical use of chilled water has been established. The Tenant will be obligated to pay 100% of the cost for chilled water above the set threshold, thereby encouraging the Tenant to use water conservatively.
- Obligate the Tenant to complete a major renovation of the facility by June 2007. Prior to opening their operation in 1997, the Tenant had invested over \$200,000 in improvements to the Beethoven facility. The Lease required the Tenant to provide an additional \$2 million dollar renovation to the theater by June 2001. Tenant's focus on programming, operational issues and the initial restoration to the facility have not allowed them to initiate a fund raising campaign to date. The amendment will extend the time period for the Tenant to complete the major improvements to June 2007.
- Clarify Tenant obligations to provide quarterly and annual reports of their income and expenditures and bank statements for preservation fees. The Amendment also includes a provision that Tenant will provide the City with audited financial statements each year. The Amendment will also address bus parking and bus loading and unloading issues that were identified by the Convention Facilities Department.

POLICY ANALYSIS:

This agreement is consistent with the City's Policy of providing available space in City-owned facilities to non-profit organizations for a publicly beneficial use. This action amends the previously approved agreement.

FISCAL IMPACT:

The City will receive \$9,208.84 due for chilled water costs as outlined in the Lease Agreement. The Tenant will enter into a Security Agreement with the City and will sign a Promissory Note to pay \$383.42 each month over the next twenty-four months. In order to allow the Tenant to use available funds for programming and other operating expenses, this amendment proposes that Magik not be obligated to pay for chilled water costs from the end of the first year through June 30, 2007. This will also provide Magik an opportunity to initiate a fund raising campaign to complete the theater renovations.

COORDINATION:

This item has been coordinated with the following departments: City Attorney's Office and Convention Facilities Department.

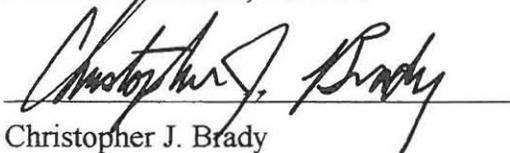
SUPPLEMENTARY COMMENTS:

Discretionary Contract Disclosure form is attached.

SIGNATURES:



Rebecca Waldman, Director



Christopher J. Brady
Assistant City Manager

Approved



Terry M. Brechtel
City Manager

CITY OF SAN ANTONIO

SAN ANTONIO		Date Considered	
<u>Finance</u>	Budget		Consent <input checked="" type="checkbox"/>]
Individual <input type="checkbox"/>			
[]	[]	Request for Ordinance	Item No. 33
<u>Legal</u>	Coordinator		Ord. No.
[]	[]		

Date:	Department	Contact Person/Phone No.:
November 29, 2001	Asset Management	Rebecca Waldman, Director - Ext. 7114

Date Council Consideration Requested:	Deadline for Action:	Dept. Head Signature:
December 13, 2001	December 13, 2001	<i>Rebecca Waldman</i>

SUMMARY OF ORDINANCE

This ordinance amends the existing Lease Agreement with Magik Theater by modifying the provisions related to payment for chilled water use, extending the completion of a major renovation to the theater, clarifying reporting requirements, and authorizes the City of San Antonio to enter into a Security Agreement with Magik Theater who will sign a Promissory Note for chilled water charges incurred during the first year (July 1997 – June 1998) of the lease term in the amount of \$9,208.84 to be paid out over a twenty-four month period.

Staff recommends City Council's approval of this request.

Other Depts. Boards, Committees Involved (please specify): Convention Facilities, City Attorney's Office, have agreed with this action.
Contract signed by other party Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

FISCAL DATA (If Applicable)	Budgetary Implications
-----------------------------	------------------------

Fund No. _____	Amt. Expended: _____	Funds/Staffing
Budgeted Yes <input type="checkbox"/> No <input type="checkbox"/>		
Activity No. _____	SID No.: _____	Positions Currently
Authorized Yes <input type="checkbox"/> No <input type="checkbox"/>		
Index Code: _____	Project No.: _____	Impact on future O&M:

Object Code: _____	If positions added, specify class and no.:	

Comments: CONSENT AGENDA

CITY OF SAN ANTONIO
Department of Asset Management

To: City Manager's Office
From: Rebecca Waldman, Director, Department of Asset Management
Copies: Christopher J. Brady, Assistant to the City Manager; File
Re: Funding Agreement for Children's Magik Theater
Date: February 22, 1999

Contract: CAPITAL IMPROVEMENT FUNDING AGREEMENT FOR CONSTRUCTION
RELATED EXPENSES FOR THE CHILDREN'S MAGIK THEATER

Ordinance Authorizing Agreement: Ordinance Number 88485, dated September 17, 1998

MAJOR PROVISIONS OF CONTRACT/POLICY ANALYSIS

Pursuant to Ordinance Number 88485, dated September 17, 1998, this agreement establishes the policies and procedures for reimbursement of construction related expenses to the Children's Magik Theater, a Texas non-profit corporation, for improvements made to the Beethoven Hall facility, a City owned facility.

FINANCIAL IMPACT

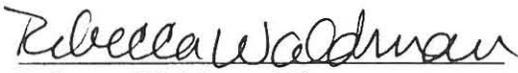
The reimbursement, in an amount not to exceed \$100,000.00, will be funded from the General Fund and the Hotel/Motel Fund.

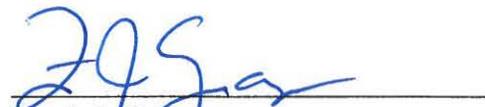
MANAGEMENT OF CONTRACT

The Department of Asset Management is responsible for the overall management of this agreement.

COORDINATION

This agreement has been coordinated with the following departments and is consistent with City Council policy as denoted by the signatures below:


Rebecca Waldman, Director
Department of Asset Management


Frank J. Garza
City Attorney


Eduardo Diaz, Director
Office of Cultural Affairs


Terry Brechtel, Director
Budget and Employee Services


David Griffith, Director
Office of Internal Review

**CAPITAL IMPROVEMENT FUNDING AGREEMENT FOR CONSTRUCTION
RELATED EXPENSES - FY 1998-FY 1999**
Between the CHILDREN'S MAGIK THEATER and the CITY OF SAN ANTONIO

Ordinance No. 88485 dated September 17, 1998

Prepared by:
CITY OF SAN ANTONIO
Department of Asset Management
City Attorney's Office
December 22, 1998 - Revised February 5, 1999

CAPITAL IMPROVEMENTS FUNDING AGREEMENT
For Construction - Related Expenses: Children's Magik Theater

This agreement is entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation of Bexar County, Texas, hereinafter referred to as "**CITY**", acting by and through its **CITY Manager** pursuant to Ordinance No. 88485 dated September 17, 1998, and the **CHILDREN'S MAGIK THEATER**, a Texas non-profit corporation, acting by and through its duly authorized Board of Directors, hereinafter referred to as "**CONTRACTOR**".

WITNESSETH:

WHEREAS, the **CITY** has been provided certain funds from the General Fund Operating Budget and the Hotel/Motel Funds and General Fund for payment of construction related facility maintenance improvements at the Magik Theater; (hereafter ("**PROJECT**")); and

WHEREAS, the **CITY** has adopted a **FY 1998-1999 Operating Budget** in which expenditure of such funds has been approved, and included therein as an allocation of funds for a project entitled "Construction"; and

WHEREAS, the **CITY** wishes to provide such funds for the purpose of paying for improvements made by **CONTRACTOR** to the Beethoven Hall facility;

NOW THEREFORE, the **CITY** and **CONTRACTOR**, in consideration of the foregoing and the terms and conditions herein do hereby agree as follows:

I. GENERAL PROVISIONS

1. **CONTRACTOR** is a non-profit organization incorporated under the laws of the State of Texas governed by an autonomous governing body acting in accordance with the governing instruments submitted in the application to **CITY** requesting funding and contractor holds meetings officially at least four times per year.
2. **CONTRACTOR** represents, warrants, assures and guarantees that it possess the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this **AGREEMENT** and to perform the responsibilities herein required.
3. The signer of this **AGREEMENT** for **CONTRACTOR** represents, warrants, assures and guarantees **CONTRACTOR** to bind **CONTRACTOR** to all terms, performances and provisions herein contained.
4. In the event that a dispute arises as to the legal authority of either the **CONTRACTOR**, or the person signing on behalf of **CONTRACTOR** to enter into this **AGREEMENT**, **CITY** shall have the right, at its option, to either temporarily suspend or permanently terminate this **AGREEMENT**. Should **CITY** suspend or permanently terminate this **AGREEMENT** pursuant to this paragraph, however, **CONTRACTOR** shall be liable to

CITY for any money it has received from CITY for performance of any of the provisions hereof.

5. **CONTRACTOR** understands that the funds provided it pursuant to the **AGREEMENT** are funds which have been made available by **CITY's** Capital Improvements Budget and **CONTRACTOR** will, therefore, comply with all rules, regulations, policies and procedures applicable to these funds as directed by **CITY**.
6. **CONTRACTOR** and **CITY** agree that **CONTRACTOR** is an **INDEPENDENT CONTRACTOR** and that **CONTRACTOR** shall be responsible to all parties for its respective acts and omissions, and that **CITY** shall in no way be responsible therefore and that neither has authority to bind the other or hold out to third parties it has the authority to bind the other.
7. **CONTRACTOR** understands and agrees that this **AGREEMENT** may be revised and updated by and at the discretion of the **City Council** of the City of San Antonio. Therefore, **CONTRACTOR** agrees that, at such time as any revisions are so made during the term hereof, this **AGREEMENT** will be amended to include such revisions. In the event that **CONTRACTOR** does not agree to any changes, **CONTRACTOR** shall have the option to terminate this **AGREEMENT** by giving thirty (30) day's notice.
8. **CONTRACTOR** expressly agrees and understands that this is a cost reimbursement contract and that the **CITY's** liability hereunder is limited to making reimbursements for construction related expenses incurred by **CONTRACTOR**, as evidenced by supporting invoices and other documentation.
9. In no event shall **CITY** be liable for any expense of **CONTRACTOR** not eligible for reimbursement hereunder, and in no event shall employees of **CONTRACTOR** be deemed to be employees of **CITY**.
10. If **CONTRACTOR** fails to fulfill in a timely and proper manner obligations under this **AGREEMENT**, or stipulations of this **AGREEMENT** then **CONTRACTOR** shall have the right to cure such failure within thirty (30) days after receipt by **CONTRACTOR** of written notice from **CITY** of such failure. **CITY** shall thereupon have the right to terminate this **AGREEMENT** if **CONTRACTOR** fails to cure within said thirty (30) day period and unless **CONTRACTOR** is granted an extended period in writing by **CITY**.
11. Notwithstanding the above, **CONTRACTOR** shall not be relieved of liability to **CITY** for damages sustained by **CITY** by virtue of any breach of this **AGREEMENT** and **CITY** may withhold funds otherwise due as damages.
12. In addition to the above provisions, the **CITY** shall have the right to terminate this **AGREEMENT** at any time upon a finding by Ordinance that **CONTRACTOR** activities, the **PROJECT** or **CONTRACTOR's** operations are no longer in the best interest of the **CITY** of San Antonio or its citizens. Adequate provisions shall be made for **CONTRACTOR** to be heard by the **CITY Council** prior to voting on such an Ordinance. The effective date of the termination shall be set in the Ordinance.
13. Should this **AGREEMENT** be terminated by either party for any reason and the **PROJECT** is not fully completed as solely determined by **CITY** after consultation with **CONTRACTOR**, **CONTRACTOR** shall refund any and all sums of money paid by **CITY** to **CONTRACTOR**, not already properly expended or obligated by **CONTRACTOR** in accordance with the terms of this **AGREEMENT**.

14. **CONTRACTOR** shall establish internal management procedures for the PROJECT to preclude theft, embezzlements, improper inducement, obstructions of investigation or other criminal action and to prevent fraud and PROJECT abuse.
15. **CONTRACTOR** is required to publicly acknowledge that its PROJECT is supported by the **CITY**.
16. This **AGREEMENT** shall begin on February 26, 1999 and shall terminate on June 28, 1999.
17. **CONTRACTOR** understands that certain funds provided pursuant to this **AGREEMENT** are funds which have been made available by **CITY** and that it will, therefore, comply with all rules, regulations policies and procedures applicable to these funds as directed by **CITY**. This section also incorporate, and the **CONTRACTOR** agrees to abide by, any and all future amendments or additions to such rules and regulations as may be promulgated.
18. **CITY** will have the authority to perform all accounting functions or delegate all or part of the responsibility to **CONTRACTOR**. All **CONTRACTOR** funds, accounts and payments to **CONTRACTOR** and subcontractor(s) will be subject to all **CITY**, state and federal laws ordinances, rules and regulations.
19. To the extent that this document conflicts with items ~~(a)~~ **CITY** Operational Guidelines or ~~(b)~~ provisions contained in this **AGREEMENT**, this document shall be controlling.
20. Ownership and possession of permanent, non-expendable property which is purchased under this **AGREEMENT** shall, upon termination of this **AGREEMENT** revert to and become the property of **CITY**.

II. PROJECT MANAGEMENT

1. **CONTRACTOR** will provide, oversee, administer and carry out the payment of said funds to sub-contractors who have substantially completed construction related work at the Beethoven Facility.

III. PAYMENT AND FINANCIAL TRANSACTIONS

1. Reimbursement for facility improvements hereunder shall not exceed the approved amount of \$100,000 from General Fund District One OA 88488D and Hotel Motel OA88486L.
2. Reimbursement of eligible expenses as determined by **CITY** shall be made upon receipt of invoices from **CONTRACTOR** and verification that work has been completed in accordance with approved plans and specifications and has been completed in accordance with local, state and federal regulations and accompanied by a bills paid affidavit and lien waivers.
3. **CONTRACTOR** shall also provide the **CITY**:
 1. A professional services contract, proposals and estimates submitted to **CONTRACTOR** from subcontractors;
 2. All request for reimbursement shall be accompanied with the following additional documentation:
 - (a) Plans and Specifications specifying work performed at the facility;
 - (b) Letter of verification that work conforms to plans and specifications;

- (c) Receipt of all required permits necessary for construction;
 - (d) Verification that invoices correctly reflect work specified in plans and specifications;
 - (e) Itemized statement of labor charges to include hours spent and hourly rate charged.
 - (f) Contractor shall disclose any related party transactions so that the **CITY** can determine if this relationship poses any actual or apparent risk to the **CITY**.
4. **CITY's** Department of Asset Management may from time to time request changes in the scope of services to be performed by **CONTRACTOR**. Such changes, including any increase or decrease in the amount of **CONTRACTOR's** compensation, must be incorporated into this **AGREEMENT** in writing by the **CITY**. Notwithstanding any other remedy contained herein or provided by law, the **CITY** may delay, suspend, limit, or cancel rights or privileges herein given the **CONTRACTOR** for failure to comply with the letter or spirit of this **AGREEMENT**. Specifically, **CITY** may withhold reimbursements in cases where it determines that **CONTRACTOR** is not in compliance with this **AGREEMENT** or has not shown satisfactory evidence that work has been completed in accordance with **CITY**, state or federal regulations; and written amendments to this **AGREEMENT**.
5. Upon completion or termination of this PROJECT, any unused funds, ~~returned~~ ^{Returned} or credits must be returned immediately upon receipt to **CITY**. *AS c9B*
6. Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any audit, **CONTRACTOR** will refund such amount to **CITY**. **CONTRACTOR** further authorizes **CITY** to deduct such amount or charge as a claim against future payments.
7. Notwithstanding any other remedy contained herein or provided by law, the **CITY** may delay, suspend withhold reimbursement, limit or cancel rights or privileges herein given the **CONTRACTOR** for failure to comply with the letter or spirit of this **AGREEMENT**.

IV. ACCOUNTING AND FISCAL MANAGEMENT

1. **CITY's** Department of Asset Management is assigned monitoring, fiscal control, and evaluation of this project. Therefore, at such times and in such form as may be required, **CONTRACTOR shall** furnish such statements, records, data and information and permit such interviews with personnel and board members pertaining to the matters covered by this **AGREEMENT**.
2. An accounting system using the accrual basis of generally accepted accounting principles which accurately reflects all chargeable costs (paid and unpaid) to the PROJECT should the project terminate the next day is mandatory. A Receipts and Disbursements Ledger must be maintained. A general ledger with Income and Expense Account for each budgeted line items is necessary. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed according to the expense account to which they were charged.
3. **CITY's** Office of Internal Review may review and approve **CONTRACTOR's** system of internal administrative and accounting controls prior to the release of funds.
4. All such records will be open for inspection and audit at any reasonable time during the term hereof by representatives of the **CITY** or the federal government, and shall

continue to be so available for a period of three (3) years after the termination date hereof.

5. **CONTRACTOR** will establish an account in a commercial bank as a depository for receipt and disbursement of funds provided hereunder;
6. The **CITY** shall not be obligated to any third parties including any subcontractors of the **AGREEMENT**.
7. **CONTRACTOR** and subcontractors are liable for compliance with all local, State and Federal laws including, but not limited to:
 - a) being a legal entity
 - b) possessing tax exempt status from the Internal Revenue Service and State Comptroller Office, where applicable
 - c) Worker's Compensation
 - d) Unemployment Insurance
 - e) timely deposits of payroll deduction
 - f) filing of Income Tax Return or Organization Exempt from Income Tax, Form 990 or 990T, Quarterly Tax Returns, Form 940, for W-2, for 1099 or individuals who received compensation other than wages, such as car allowance, or consultant work, etc.
 - g) minimum wage and discrimination laws
 - h) Occupational Safety and Health Act regulations
 - i) Payment to vendors for services or materials provided;
8. Equipment or major non-recurring expenses (\$200.00 or more) may not be paid without prior written consent from the Asset Management Department.
9. If applicable, **CONTRACTOR** shall furnish the Department of Asset Management with an audit, as described in the **CITY's** Operational Guidelines conducted by an outside independent auditor, within one hundred and twenty (120) days of the close of the accounting period or termination of this **AGREEMENT**.
11. In addition, when the **CONTRACTOR** has expended federal funds received through the CITY of San Antonio that exceed the Single Audit threshold amount in effect during the period of this **AGREEMENT**, the audit shall be made in accordance with the Single Audit Act amendments of 1996 and U.S. Office of Management and Budget Circular A-133 (June 1997 revision).

V. PROGRAM INCOME

1. A portion all income earned by the **CONTRACTOR** during the **AGREEMENT** period must be reported to **CITY's** Asset Management Department and upon mutual agreement applied towards payments of any past due construction related invoices remaining after expenditure of funds granted as part of this contract.

as follows:
RS CAB

 - a) committed to the agency by approval of **CITY's** Department of Asset Management and be used to further payment of past due construction expenditures; *KTB CAB*
 - b) utilized to make future Facility Maintenance Expenditures for the purpose of facility improvements or obtaining a Certificate of Occupancy.
2. **CITY** shall be entitled to receive from **CONTRACTOR** a copy of the Certificate of Occupancy for the Children's Magik Theater at Beethoven Hall within thirty (30) days before final allocation of funds to the **CONTRACTOR**. Ten percent (10%) of the

\$100,000 dollar allocation will be held in contingency and release to **CONTRACTOR** upon receipt of the Certificate of Occupancy.

3. **CITY** shall receive from **CONTRACTOR** a Capital Improvement and Preventive Maintenance Plan showing earned and raised income and future payments and expense related to facility repair.

VI. ADMINISTRATION OF AGREEMENT

1. This **AGREEMENT** shall be administered in accordance with the following:
 - a) Federal Management Circular A-87, entitled "Cost Principals for State and Local Governments";
 - b) Office of Management and Budget Circular A-133, entitled "Audits of states and local Governments, and Not for Profit Organizations Receiving Federal Awards";
 - c) Office of Management and Budget Circular A-102, entitled "Uniform Administrative Requirements for Grants in Aid to State and Local Governments";
 - d) Treasury Department Circular 1075, Title 31 CFR Part 205, as revised, entitled "Regulations Governing Withdrawal of Cash from the Treasury for Advance Under Federal Grant and Other Programs";
 - e) **CITY** of San Antonio Operational Guidelines;
 - f) **CITY** of San Antonio General Provisions;
 - g) United States Accounting Office "Government Auditing Standards - 1994 Revision" (a.k.a. yellow book standards);
 - h) Office of Management and Budget Circular A-122, entitled "Cost Principles for Non-profit Organizations"; and
 - i) Uniform Grant and Agreement Management Standards for State Agencies; and
 - j) **CITY** Public Works Department Professional and Construction contracts.
2. **CONTRACTOR** will adhere to all of the requirements of the Results Oriented Management and Accountability (ROMA), a system designed to measure results consistently through the **CONTRACTOR's** service delivery system, as mandated by TDHCA in CSBG Policy Insurance 98.12.8.

VII INSURANCE REQUIREMENTS

1. Prior to allocation of funds, **CONTRACTOR** shall furnish an original completed Certificate(s) of Insurance to **CITY's** Asset Management Department and City Clerk's Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to **CITY**.

2. **CITY** shall have no duty to pay or perform under this **AGREEMENT** until such certificate shall have been delivered to **CITY's** Asset Management Department and the **CITY** Clerk's Office, and no officer or employee, other than **CITY's** Risk Manager, shall have authority to waive this requirement.
3. If new construction is planned or for any other circumstance that may be cited by **CITY's** Risk Manager, **CITY** reserves the right to review the insurance requirements as set forth in the Master Lease Agreement a copy of which is attached hereto as **Exhibit "A"**. of this section during the effective period of this agreement and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by **CITY's** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this **AGREEMENT**, but in no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.
4. **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto, as they apply to the limits required by **CITY** under the Master Lease Agreement, and may make a reasonable request for deletion, revision, or modification of a particular policy term, condition, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by **CITY**, the **CONTRACTOR** shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.
5. **CONTRACTOR** agrees that with respect to the above required insurance, all insurance agreements and Certificate(s) of Insurance will contain the following required provisions:

- a) Name **CITY** and its officers, employees, ^{CAB}volunteers and elected representatives as an additional insureds as respects operations and activities of, or on behalf of, the named insureds performed under **AGREEMENT** with **CITY**, with the exception of the worker's compensation and professional liability policies; RR
- b) The **CONTRACTOR'S** insurance shall be deemed primary with respect to any insurance or self insurance carried by **CITY** of San Antonio for liability arising out of operations under the **AGREEMENT** with the **CITY** of San Antonio; and *
- c) Worker's compensation and employer's liability policy will provide a waiver of subrogation in favor of **CITY**.

6. **CONTRACTOR** shall notify **CITY** in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to **CITY** at the following address:

Director of Asset Management	City Clerk
City of San Antonio	City of San Antonio
Department of Asset Management	Office of City Clerk
P.O. Box 839966	P.O. Box 839966
San Antonio, Texas 78283-3966	San Antonio, Texas 78283-3966

7. If **CONTRACTOR** fails to maintain the insurance required under the Master Lease Agreement, or fails to secure and maintain therefore mentioned endorsements, **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such

As above mentioned

insurance from any sums due under this **AGREEMENT**, however, procuring of said insurance by **CITY** is an alternative to other remedies **CITY** may have, and is not the exclusive remedy for failure of **CONTRACTOR** to maintain said insurance or secure such endorsement. In addition to any other remedies, **CITY** may have upon **CONTRACTOR's** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, **CITY** shall have the right to order **CONTRACTOR** to stop work hereunder, and/ or withhold any payment(s) which become due to **CONTRACTOR**. **CONTRACTOR** may be held responsible for payments of damages to persons or property resulting from **CONTRACTOR's** or its subcontractor's performance of the work covered under this **AGREEMENT**.

8. It is expressly understood and agreed to by **CONTRACTOR** that additional insurance (e.g. professional liability, motor truck cargo insurance, payment and performance bonds, builders risk, pollution, a fuel storage tank, environmental, commercial crime/fidelity bond, or other insurance as required by the **CITY's** Risk Manger, may have to be purchased by the **CONTRACTOR** in the amounts determined by **CITY's** Risk Manager, if **CITY** determines at the time of execution of this **AGREEMENT** that such insurance is applicable.

VIII. INDEMNITY

1. **CONTRACTOR** covenants and agrees to **FULLY INDEMNIFY**, and **HOLD HARMLESS**, **CITY** and the elected officials, employees, agents, officers, directors, volunteers, and representatives of **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties proceedings. actions, demands, cause of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, and upon **CITY** directly or indirectly arising out of, resulting from or related to **CONTRACTOR's** activities under this **AGREEMENT**, including any acts or omissions of **CONTRACTOR**, any agent, officer, employees, directors, volunteers, contractors, subcontractors, consultants, and representatives and their respective officers, agents, employees, directors and representatives, while in the exercise of performance of the rights or duties under this **AGREEMENT** all without however, waiving any governmental immunity available to the **CITY** under Texas law and without waiving any defenses of the parties under Texas law. **IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, AGENTS. OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT.** The provisions of this **INDEMNITY** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **CONTRACTOR** shall promptly advise **CITY** in writing of any claim or demand against **CITY** or **CONTRACTOR** known to **CONTRACTOR** related to or arising out of **CONTRACTOR's** activities under this **AGREEMENT**

and shall see to the investigation of and defenses of such claims or demand at CONTRACTOR's cost.

2. It is the EXPRESSED intent of the parties to this AGREEMENT, that the INDEMNITY provided for in this section is an INDEMNITY extended by CONTRACTOR to INDEMNIFY, PROTECT and HOLD HARMLESS the CITY from the consequences of the CITY's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death or damage.

Contractor further AGREES TO DEFEND, AT ITS OWN EXPENSE, AND ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death or damage for which this INDEMNITY shall apply, as set forth above. CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this Article.

IV. NON-DISCRIMINATION CLAUSE / EMPLOYEE

1. CONTRACTOR and all subcontractors agree that they have complied and will comply with wage rates and labor standards as required by the Fair Labor Standards Act of 1938, as amended.
2. CONTRACTOR and all subcontractors agree that they have not and will not discriminate against any employee or applicant for employment because of race, creed, color, handicap, religion, gender, national origin, age, political affiliation or belief.
3. CONTRACTOR will adhere to CITY policies and procedures, as they now exist or as they may subsequently be adopted, in all respects, so that CONTRACTOR's policies will be equal to the CITY policy and procedures concerning non-discrimination. These are highlighted in Operation Guidelines for CITY of San Antonio funded projects, and may be amended from time to time to reflect any subsequent Operation Guidelines incorporating CITY policies and procedures.
4. CONTRACTOR warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this AGREEMENT upon CONTRACTORS understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warrant, the CITY shall have the right to annul this AGREEMENT without liability or, at its discretion, to deduct from the funds available to CONTRACTOR under this AGREEMENT or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.

X. TERMINATION

In addition to the other provisions herein for termination, the following apply:

1. Termination for Cause:

Should **CONTRACTOR** fail to fulfill, in a timely and proper manner obligations under this **AGREEMENT** to include payment of Facility Maintenance Expenditures or if this **CONTRACTOR** should violate any of the covenants, **AGREEMENT's** , or stipulations of the **AGREEMENT**, the **CITY** shall thereupon have the right to terminate this **AGREEMENT** by sending written notice to the **CONTRACTOR** of such termination and specify the effective day thereof, which date shall not be later than the end of thirty (30) days following the day on which such notice is sent.

2. **Termination for Convenience:**

This **AGREEMENT** may be terminated in whole or in part by the **CITY** when the **CITY** determines that continuation of the project would not produce beneficial results commensurate with the further expenditure of funds.

3. **Termination Rights of CONTRACTOR :**

CONTRACTOR shall also have the right to terminate this **AGREEMENT** and specify the date thereof, which date shall not be later than the end of thirty (30) days following the day on which notice is sent. **CONTRACTOR** shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by **CITY** alone, and its decision shall be final. It is further expressly understood and agreed by the parties that **CONTRACTOR's** performance upon which final payment is conditioned shall include but not be limited to, the **CONTRACTOR's** complete and satisfactory performance of its obligations.

4. Notwithstanding the above, **CONTRACTOR** shall not be relieved of liability to **CITY** for damages sustained by the **CITY** by virtue of any breach of this **AGREEMENT**, and the **CITY** may withhold funds otherwise due as damages.

XI. OTHER PROVISIONS

1. **CONTRACTOR** agrees that neither the program nor the funds provided therefore, nor the personnel employed in the administration of the program shall be in any way or in any extent engaged in the conduct of political activities. Prohibited activities include, but are not necessarily limited to, the assignment of any employee in the agency to work for or on behalf of a political activity, to take part in voter registration activities, to provide voters and prospective voters with transportation to the polls, or to participate in partisan political activities, such as lobbying, collecting funds, making speeches, assisting at meetings, doorbell ringing, and distributing political pamphlets in an effort to persuade others of any political view.
2. **CONTRACTOR** will comply with the terms and conditions of the Master Lease Agreement for the Magik Theater, approved by Ordinance No. 86014 with **CITY** of San Antonio. Said Agreement is included as Exhibit "A" to this Agreement. In the event of conflict between the terms of the Master Lease Agreement and this Agreement, this Agreement will control.
3. The funding level of this Agreement is based on the allocation of funds to the Children's Magik Theater. The Department of Asset Management will oversee the allocation of the General Fund and Hotel/Motel Funds. Funds will be expended for the sole purpose of payment for facility improvements initiated and related consultant

expenditures by the Children's Magik Theater. Under no circumstances will the funds received under this AGREEMENT be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against CITY or any other public entity. During the term of this AGREEMENT, if CONTRACTOR files and/or pursues an adversarial proceeding against CITY then, at the CITY's option, this AGREEMENT and all access to the funding provided for hereunder may terminate.

6. CONTRACTOR, at the CITY's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against CITY remains unresolved.
7. For purposes of this Article, 'adversarial proceedings' include any cause of action filed by CONTRACTOR in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

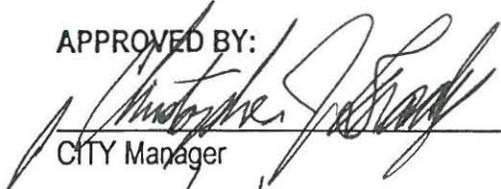
In witness of which this AGREEMENT has been executed effective the 23rd day of March 1999.

CITY OF SAN ANTONIO:

CONTRACTING AGENCY:

Children's Magic Theater
420 S. Alamo
San Antonio, Texas 78205

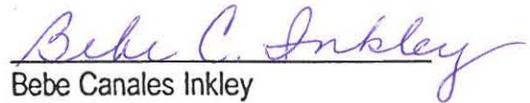
APPROVED BY:


CITY Manager

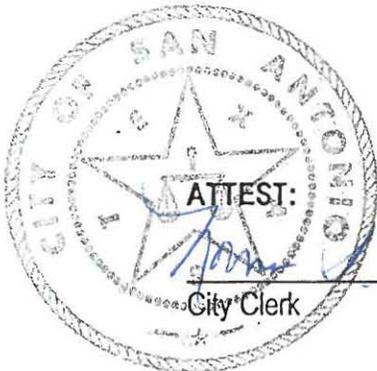
Date: 3/22/99


Richard Rosen, Executive Director

Date: _____


Bebe Canales Inkley
President of the Board of Directors

Date: 2/11/99



APPROVED AS TO FORM:


City Attorney

APPROVED AS TO FORM

Council for Contractor

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14. **CONTRACTOR** shall establish internal management procedures for the PROJECT to preclude theft, embezzlements, improper inducement, obstructions of investigation or other criminal action and to prevent fraud and PROJECT abuse.
15. **CONTRACTOR** is required to publicly acknowledge that its PROJECT is supported by the **CITY**.
16. This **AGREEMENT** shall begin on February 26, 1999 and shall terminate on June 28, 1999.
17. **CONTRACTOR** understands that certain funds provided pursuant to this **AGREEMENT** are funds which have been made available by **CITY** and that it will, therefore, comply with all rules, regulations policies and procedures applicable to these funds as directed by **CITY**. This section also incorporate, and the **CONTRACTOR** agrees to abide by, any and all future amendments or additions to such rules and regulations as may be promulgated.
18. **CITY** will have the authority to perform all accounting functions or delegate all or part of the responsibility to **CONTRACTOR**. All **CONTRACTOR** funds, accounts and payments to **CONTRACTOR** and subcontractor(s) will be subject to all **CITY**, state and federal laws ordinances, rules and regulations.
19. To the extent that this document conflicts with items in **CITY** Operational Guidelines, this document shall be controlling.
20. Ownership and possession of permanent, non-expendable property which is purchased under this **AGREEMENT** shall, upon termination of this **AGREEMENT** revert to and become the property of **CITY**.

II. PROJECT MANAGEMENT

1. **CONTRACTOR** will provide, oversee, administer and carry out the payment of said funds to sub-contractors who have substantially completed construction related work at the Beethoven Facility.

III. PAYMENT AND FINANCIAL TRANSACTIONS

1. Reimbursement for facility improvements hereunder shall not exceed the approved amount of \$100,000 from General Fund District One OA 88488D and Hotel Motel OA88486L.
2. Reimbursement of eligible expenses as determined by **CITY** shall be made upon receipt of invoices from **CONTRACTOR** and verification that work has been completed in accordance with approved plans and specifications and has been completed in accordance with local, state and federal regulations and accompanied by a bills paid affidavit and lien waivers.
3. **CONTRACTOR** shall also provide the **CITY**:
 1. A professional services contract, proposals and estimates submitted to **CONTRACTOR** from subcontractors;
 2. All request for reimbursement shall be accompanied with the following additional documentation:
 - (a) Plans and Specifications specifying work performed at the facility;
 - (b) Letter of verification that work conforms to plans and specifications;

(ORD. 88485
9-17-98)
"CHILDREN'S MAGIC
THEATER"

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- (c) Receipt of all required permits necessary for construction;
 - (d) Verification that invoices correctly reflect work specified in plans and specifications;
 - (e) Itemized statement of labor charges to include hours spent and hourly rate charged.
 - (f) Contractor shall disclose any related party transactions so that the **CITY** can determine if this relationship poses any actual or apparent risk to the **CITY**.
4. **CITY's** Department of Asset Management may from time to time request changes in the scope of services to be performed by **CONTRACTOR**. Such changes, including any increase or decrease in the amount of **CONTRACTOR's** compensation, must be incorporated into this **AGREEMENT** in writing by the **CITY**. Notwithstanding any other remedy contained herein or provided by law, the **CITY** may delay, suspend, limit, or cancel rights or privileges herein given the **CONTRACTOR** for failure to comply with the letter or spirit of this **AGREEMENT**. Specifically, **CITY** may withhold reimbursements in cases where it determines that **CONTRACTOR** is not in compliance with this **AGREEMENT** or has not shown satisfactory evidence that work has been completed in accordance with **CITY**, state or federal regulations; and written amendments to this **AGREEMENT**.
 5. Upon completion or termination of this PROJECT, any unused funds, returns or credits must be returned immediately upon receipt to **CITY**.
 6. Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any audit, **CONTRACTOR** will refund such amount to **CITY**. **CONTRACTOR** further authorizes **CITY** to deduct such amount or charge as a claim against future payments.
 7. Notwithstanding any other remedy contained herein or provided by law, the **CITY** may delay, suspend withhold reimbursement, limit or cancel rights or privileges herein given the **CONTRACTOR** for failure to comply with the letter or spirit of this **AGREEMENT**.

IV. ACCOUNTING AND FISCAL MANAGEMENT

1. **CITY's** Department of Asset Management is assigned monitoring, fiscal control, and evaluation of this project. Therefore, at such times and in such form as may be required, **CONTRACTOR shall** furnish such statements, records, data and information and permit such interviews with personnel and board members pertaining to the matters covered by this **AGREEMENT**.
2. An accounting system using the accrual basis of generally accepted accounting principles which accurately reflects all chargeable costs (paid and unpaid) to the PROJECT should the project terminate the next day is mandatory. A Receipts and Disbursements Ledger must be maintained. A general ledger with Income and Expense Account for each budgeted line items is necessary. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed according to the expense account to which they were charged.
3. **CITY's** Office of Internal Review may review and approve **CONTRACTOR's** system of internal administrative and accounting controls prior to the release of funds.
4. All such records will be open for inspection and audit at any reasonable time during the term hereof by representatives of the **CITY** or the federal government, and shall

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continue to be so available for a period of three (3) years after the termination date hereof.

5. **CONTRACTOR** will establish an account in a commercial bank as a depository for receipt and disbursement of funds provided hereunder;
6. The **CITY** shall not be obligated to any third parties including any subcontractors of the **AGREEMENT**.
7. **CONTRACTOR** and subcontractors are liable for compliance with all local, State and Federal laws including, but not limited to:
 - a) being a legal entity
 - b) possessing tax exempt status from the Internal Revenue Service and State Comptroller Office, where applicable
 - c) Worker's Compensation
 - d) Unemployment Insurance
 - e) timely deposits of payroll deduction
 - f) filing of Income Tax Return or Organization Exempt from Income Tax, Form 990 or 990T, Quarterly Tax Returns, Form 940, for W-2, for 1099 or individuals who received compensation other than wages, such as car allowance, or consultant work, etc.
 - g) minimum wage and discrimination laws
 - h) Occupational Safety and Health Act regulations
 - i) Payment to vendors for services or materials provided;
8. Equipment or major non-recurring expenses (\$200.00 or more) may not be paid without prior written consent from the Asset Management Department.
9. If applicable, **CONTRACTOR** shall furnish the Department of Asset Management with an audit, as described in the **CITY's** Operational Guidelines conducted by an outside independent auditor, within one hundred and twenty (120) days of the close of the accounting period or termination of this **AGREEMENT**.
11. In addition, when the **CONTRACTOR** has expended federal funds received through the CITY of San Antonio that exceed the Single Audit threshold amount in effect during the period of this **AGREEMENT**, the audit shall be made in accordance with the Single Audit Act amendments of 1996 and U.S. Office of Management and Budget Circular A-133 (June 1997 revision).

V. PROGRAM INCOME

1. A portion all income earned by the **CONTRACTOR** during the **AGREEMENT** period must be reported to **CITY's** Asset Management Department and upon mutual agreement applied towards payments as follows:
 - a) past due construction related invoices remaining after expenditure of funds granted as part of this contract.
 - b) utilized to make future Facility Maintenance Expenditures for the purpose of facility improvements or obtaining a Certificate of Occupancy.
2. **CITY** shall be entitled to receive from **CONTRACTOR** a copy of the Certificate of Occupancy for the Children's Magik Theater at Beethoven Hall within thirty (30) days before final allocation of funds to the **CONTRACTOR**. Ten percent (10%) of the

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2. **CITY** shall have no duty to pay or perform under this **AGREEMENT** until such certificate shall have been delivered to **CITY's** Asset Management Department and the **CITY** Clerk's Office, and no officer or employee, other than **CITY's** Risk Manager, shall have authority to waive this requirement.
3. If new construction is planned or for any other circumstance that may be cited by **CITY's** Risk Manager, **CITY** reserves the right to review the insurance requirements as set forth in the Master Lease Agreement a copy of which is attached hereto as **Exhibit "A"**. of this section during the effective period of this agreement and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by **CITY's** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this **AGREEMENT**, but in no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.
4. **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto, as they apply to the limits required by **CITY** under the Master Lease Agreement, and may make a reasonable request for deletion, revision, or modification of a particular policy term, condition, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by **CITY**, the **CONTRACTOR** shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.
5. **CONTRACTOR** agrees that with respect to the above required insurance, all insurance agreements and Certificate(s) of Insurance will contain the following required provisions:
 - a) Name **CITY** and its officers, employees, volunteers and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insureds performed under **AGREEMENT** with **CITY**, with the exception of the worker's compensation and professional liability policies;
 - b) The **CONTRACTOR'S** insurance shall be deemed primary with respect to any insurance or self insurance carried by **CITY** of San Antonio for liability arising out of operations under the **AGREEMENT** with the **CITY** of San Antonio; and
 - c) Worker's compensation and employer's liability policy will provide a waiver of subrogation in favor of **CITY**.
6. **CONTRACTOR** shall notify **CITY** in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to **CITY** at the following address:

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P.O. Box 839966	P.O. Box 839966
San Antonio, Texas 78283-3966	San Antonio, Texas 78283-3966
7. If **CONTRACTOR** fails to maintain the insurance required under the Master Lease Agreement, or fails to secure and maintain aforementioned endorsements, **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such