



City of Sunnyvale

Notice and Agenda

Parks and Recreation Commission

Wednesday, July 13, 2016

7:00 PM

Council Chambers, City Hall, 456 W. Olive
Ave., Sunnyvale, CA 94086

CALL TO ORDER

SALUTE TO THE FLAG

ROLL CALL

ORAL COMMUNICATIONS

This category provides an opportunity for members of the public to address the commission on items not listed on the agenda and is limited to 15 minutes (may be extended or continued after the public hearings/general business section of the agenda at the discretion of the Chair) with a maximum of up to three minutes per speaker. Please note the Brown Act (Open Meeting Law) does not allow commissioners to take action on an item not listed on the agenda. If you wish to address the commission, please complete a speaker card and give it to the Recording Secretary. Individuals are limited to one appearance during this section.

CONSENT CALENDAR

- 1 [16-0724](#) Approve the Parks and Recreation Commission Meeting Minutes of June 8, 2016

PUBLIC HEARINGS/GENERAL BUSINESS

- 2 [16-0725](#) Update on California Theatre Center Agreement
- 3 [16-0726](#) Review of Report to Council "Sister City Relationship"
- 4 [16-0727](#) Election of Officers

STANDING ITEM: CONSIDERATION OF POTENTIAL STUDY ISSUES

NON-AGENDA ITEMS & COMMENTS

-Commissioner Comments

-Staff Comments**ADJOURNMENT***Notice to the Public:*

Any agenda related writings or documents distributed to members of this meeting body regarding any item on this agenda will be made available for public inspection in the originating department or can be accessed through the Office of the City Clerk located at 603 All America Way, Sunnyvale, CA. during normal business hours and at the meeting location on the evening of the board or commission meeting, pursuant to Government Code §54957.5.

Agenda information is available by contacting Anna Lewis at (408) 730-7336. Agendas and associated reports are also available on the City's website at sunnyvale.ca.gov or at the Sunnyvale Public Library, 665 W. Olive Ave., Sunnyvale, 72 hours before the meeting.

Pursuant to the Americans with Disabilities Act, if you need special assistance in this meeting, please contact Anna Lewis at (408) 730-7336. Notification of 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (29 CFR 35.106 ADA Title II)



City of Sunnyvale

Agenda Item

16-0724

Agenda Date: 7/13/2016

Approve the Parks and Recreation Commission Meeting Minutes of June 8, 2016



City of Sunnyvale

Meeting Minutes - Draft Parks and Recreation Commission

Wednesday, June 8, 2016

7:00 PM

Braly Park, Park Building,
704 Daffodil Ct, Sunnyvale, CA 94086

LOCATION CHANGE

CALL TO ORDER

Chair Pasqua called the meeting to order at 7:07 p.m. in the Braly Park Building.

SALUTE TO THE FLAG

Chair Pasqua led the salute to the flag.

ROLL CALL

Present: 4 - Chair Craig Pasqua
Vice Chair Ralph Kenton
Commissioner Henry Alexander III
Commissioner Omar Din
Absent: 1 - Commissioner Robert Pochowski

Commissioner Alexander III arrived at 7:15 p.m.
Commissioner Pochowski's absence is excused.
Council Liaison Meyering (absent)

PRESENTATION

Mayor Hendricks requested that the presentation for Commissioner Recognition be taken out of order to allow Commissioner Alexander III time to arrive. Chair Pasqua agreed.

[16-0334](#) PRESENTATION - Park Building Renovations Presentation

Humza Javed, Sr. Engineer in the Department of Public Works, provided an update on the design work to renovate the Park Buildings at Washington, Raynor, DeAnza and Ponderosa Parks. The design and construction work is funded by park dedication funds and includes upgrades to accommodate ADA requirements. The design engineer has completed the estimates and the project is currently up for bid, with an anticipated cost of \$1.7 million.

Superintendent of Parks and Golf, James Stark, answered Commissioners' questions regarding funding, ADA compliance and if solar would be installed. Mayor Hendricks informed the Commission that the City is researching if they can get an aggregate utility bill, which could make the cost associated with solar installation feasible. Superintendent of Community Services Daniel Wax answered Commissioners' questions about user fees. He committed to follow up with the impact of closures to rental and program revenue. Sr. Engineer Javed answered questions regarding the contract award process. Superintendent Stark committed to follow up on the possibility of installing signage in multiple languages.

[16-0593](#) PRESENTATION - Commissioner Recognition

Mayor Hendricks presented Commissioner Alexander III a certificate of recognition for his first term of service on the Parks and Recreation Commission. He thanked all the Commissioners for their time and effort and expressed that Council values their service.

ORAL COMMUNICATIONS

None.

CONSENT CALENDAR

[16-0591](#) Approve the Parks and Recreation Commission Meeting
Minutes of April 13, 2016

Vice Chair Kenton moved and Commissioner Din seconded the motion to approve the minutes of April 13, 2016. Commissioner Alexander III abstained. The motion carried by the following vote:

Yes: 3 - Chair Pasqua
 Vice Chair Kenton
 Commissioner Din

No: 0

Absent: 1 - Commissioner Pochowski

Abstain: 1 - Commissioner Alexander III

[16-0592](#) Approve the Parks and Recreation Commission Meeting
Minutes of May 18, 2016

Vice Chair Kenton moved and Commissioner Din seconded the motion to approve the minutes of May 18, 2016. Commissioner Alexander III abstained. The motion carried by the following vote:

Yes: 3 - Chair Pasqua
Vice Chair Kenton
Commissioner Din

No: 0

Absent: 1 - Commissioner Pochowski

Abstain: 1 - Commissioner Alexander III

PUBLIC HEARINGS/GENERAL BUSINESS

[16-0598](#) Planning for “July is Parks and Recreation Month”

Superintendent Wax presented a social media campaign to highlight Sunnyvale parks in July. Commissioners provided feedback, they suggested using Instagram and including youth in the campaign.

STANDING ITEM: CONSIDERATION OF POTENTIAL STUDY ISSUES

None.

NON-AGENDA ITEMS & COMMENTS

-Commissioner Comments

Commissioner Alexander III and Chair Pasqua discussed how to engage the community with the Commission. Staff committed to provide contact information about neighborhood associations. Superintendent Wax invited Commissioner Alexander III to the quarterly Neighborhood Association meeting.

Vice Chair Kenton asked about the Braly Park location and Superintendent Stark provided information about the playground replacement plans, the donated Japanese cherry trees and the possibility of a sister city agreement with Iizuka, Japan. Commissioner Alexander III suggested that Chairs from the Sunnyvale and Japanese Parks and Recreation Commission have an exchange.

-Staff Comments

- Director of Library and Community Services Cynthia Bojorquez introduced Sandra Barajas, who will provide support to the Commission beginning in July. Anna Lewis was promoted to a position in the Information Technology Department.

Superintendent Stark made the following announcements:

- Staff will follow up with the Commission to identify a date to do volunteer work in a park, possibly in conjunction with the Kiwanis club.
- Chair Pasqua, in the last meeting, requested information about bench marking with other cities. Initial research identified that the level of effort would be enough

that the Commissioners would need to make the request via the study issue process.

- New technology has increased the number of drones flown at Baylands Park. Staff will provide information to those flying drones about the proper operations to protect the park, its users, and wildlife.
- Parks staff attended a playground inspection training.
- The Sunnyvale Golf Course restaurant vendor is obtaining the permits to open the restaurant, and may operate a beverage cart until the restaurant is operational.

Superintendent Wax made the following announcements:

- The State of City event is being promoted with 250 mailers to businesses and elected officials. Promotional materials include banners, posters, flyers, and posting on nextdoor.com. Commissioners are invited to a VIP reception at 10:00 a.m. The Mayor's address is at 11:00 a.m. The event is targeted to families and youth with a focus on sustainability and family activities. A virtual event bag will be provided to participants via a downloadable application.

Director Bojorquez made the following announcements:

- An 8-week summer reading program begins on Wednesday, June 22, at 7:00 p.m. in the Washington Park building.
- Staff attended a training by Harwood Institute to learn about turning outward to gather information from the community. She welcomed the Commissioners to be a Community Outreach Ambassador. Chair Pasqua requested a presentation to the Commission.

ADJOURNMENT

Chair Pasqua adjourned the meeting at 8:29 p.m.



City of Sunnyvale

Agenda Item

16-0725

Agenda Date: 7/13/2016

Update on California Theatre Center Agreement



City of Sunnyvale

Agenda Item

16-0590

Agenda Date: 6/14/2016

REPORT TO COUNCIL

SUBJECT

Approve an Agreement between the City of Sunnyvale and the California Theatre Center for Use of City Facilities from September 26, 2016 through May 31, 2017 at a Rental Rate Below Established Rental Fees

BACKGROUND

Each year, the City enters into an agreement with the California Theatre Center (CTC), a non-profit organization that utilizes City facilities to provide community theater programs. The FY2015/16 agreement generated approximately \$72,676 in facility revenue and expired on May 31, 2016.

The proposed agreement contains a rental rate below established facility use fees. While Council Policy 7.2.4 (Relationships with Outside Groups) allows the City to enter into special agreements with lower than established rates, such agreements require review by the appropriate Board and Commission as well as authorization by the City Council. Consequently, in an effort to align current practice with established policy, staff is seeking Council authorization to extend a special rate of \$74,130 to CTC for continued rental of City facilities for FY 2016/17.

EXISTING POLICY

Council Policy 7.2.4 Relationships with Outside Groups

General Plan - Community Character (CC)

- Policy CC-10.6 Leverage available resources by pursuing co-funded and/or cooperative agreements for provision and maintenance of programs, facilities, and services in order to maximize benefits to the community. Partners may include, but are not limited to, school districts, non-profit groups, governmental agencies and businesses.
- Policy CC -10.7 Encourage the use of recreational and open space facilities and services for educational activities of schools that serve Sunnyvale students first, and secondarily the schools that serve students of surrounding communities.

ENVIRONMENTAL REVIEW

The proposed agreement continues the use of the existing facility. The approval of this agreement is exempt from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15301 because the agreement involves existing facilities involving no expansion of use beyond that presently existing.

DISCUSSION

CTC has been a long time renter of City facilities and offers a wide array of community theater programs including their School and Family Series. Approximately 33,000 students have participated in these programs.

In recognition of the valuable services provided by CTC and the steady stream of revenue afforded by this rental during non-peak Theatre hours, the parties have operated under a flat rate agreement since FY 2012/13.

A summary of the revenue generated by CTC under the flat rate special agreement is as follows:

Fiscal Year	Fee Collected
2012/13	\$84,000
2013/14	\$88,000
2014/15	\$71,255
2015/16	\$72,676

Fees collected vary depending on the actual hours of utilization. For FY 2016/17, CTC has requested the use of 1,585 hours at the Sunnyvale Theatre and 100 hours of park building facility use. Utilizing established facility use rates, the fee for this rental would be \$313,575. Through discussions with CTC representatives, it is clear that the normal rental rate is cost prohibitive and could not be supported by the organization.

CTC has been a good partner and provides an important public benefit by virtue of their community performances, educational programs and site tours. Moreover, while the differential between established rates and the proposed rate appears to be significant, the variance is, in fact, primarily one of lost opportunity. The CTC rental enables the City to generate a stable stream of revenue during non-peak hours of Theatre operation which are generally hard to book and which would require significant effort on the part of the City to replace. For these reasons, it is requested that the City Council authorize continuance of the flat-rate agreement at a cost not to exceed \$74,130 for FY 2016/17 (a 2% increase over FY 2015/16).

In addition, staff requests that the Council waive the requirement to present this agreement to the Parks and Recreation Commission. The discrepancy in rental rates required additional research that delayed the approval process. CTC has informed staff that time is of the essence with respect to marketing programs for the upcoming production year, and taking the agreement to the PRC would result in a delay of several weeks. Staff will advise the Commission of the exception and answer any questions they may have at their next meeting. Should CTC wish to enter into agreement for future years, the special agreement would be brought to the Commission for their recommendation prior to bringing the item to the Council for final consideration.

FISCAL IMPACT

In preparing the proposed FY 2016/2017 budget, a 2% cost increase above the current flat rate special agreement was assumed. As such, continuance of the flat rate special agreement as proposed would have no direct fiscal impact. Should the Council decide not to authorize continuance of the flat rate special agreement, CTC has indicated that it lacks the ability to pay the full market rate and would in all likelihood negatively affect its ability to continue community theater programs in City facilities. While it is likely that the City could, in time, find alternative uses for the Theatre that might generate additional revenue, CTC provides a valuable service to the arts community in Sunnyvale that should be considered.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

STAFF RECOMMENDATION

Approve agreement and authorize the City Manager to execute the agreement between the City of Sunnyvale and the California Theatre Center for Use of City Facilities from September 26, 2016 through May 31, 2017 in an amount at a rental rate below established rental fees.

Prepared by: Daniel Wax, Superintendent of Community Services

Reviewed by: Cynthia E. Bojorquez, Director, Department of Library and Community Services

Reviewed by: Kent Steffens, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENT

1. Agreement between the City of Sunnyvale and the California Theatre Center for Use of City Facilities at the Sunnyvale Community Center from September 30, 2017 through May 31, 2017

**AGREEMENT BETWEEN CITY OF SUNNYVALE AND
CALIFORNIA THEATRE CENTER FOR
USE OF THEATER FACILITIES AT
THE SUNNYVALE COMMUNITY CENTER
FROM SEPTEMBER 26, 2016 – MAY 31, 2017**

THIS AGREEMENT dated _____, is by and between the CITY OF SUNNYVALE, a Municipal Corporation ("CITY"), and CALIFORNIA THEATRE CENTER, a nonprofit corporation ("CTC").

WHEREAS, CTC has for many years used theater facilities at the Sunnyvale Community Center of CITY for rehearsal and performance of its School and Family Series; and

WHEREAS, the parties desire to continue such arrangement through May 31, 2017, under the terms and conditions specified in this Agreement.

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. USE OF FACILITIES AND EQUIPMENT BY CTC

- (a) Authorized Uses of Theater Facilities: Subject to the terms and conditions of this Agreement, CITY hereby authorizes non-exclusive use by CTC of the areas of the theater building designated by the City ("Facilities") at the Sunnyvale Community Center, 550 East Remington Drive, Sunnyvale, California for a period commencing on September 26, 2016, and concluding on May 31, 2017. Such Facilities do not include staff offices and spaces currently designated by the City for other uses. Rehearsal, storage limited to shows under this agreement
- (b) Theater Scheduling:
 - (i) Tentative Schedule: CITY shall prepare and deliver to CTC a proposed schedule, subject to change as provided in this section, for CTC's use of the Facilities for summarizing approved dates and times for CTC use not later thirty (30) days after the execution of this agreement.
 - (ii) Schedule updates: CITY shall provide an updated theater schedule in writing or by email on a monthly basis. CTC shall provide a weekly schedule showing all activities scheduled to occur in the Facilities at least seven (7) days in advance of the first day of the week shown on the schedule. CITY's Theater Technical Director must approve any changes in the production schedule at least one (1) month in advance.
 - (iii) CTC understands that its use of the Facilities is non-exclusive and that City may reschedule CTC uses of the Facilities or other City buildings

as necessary to accommodate CITY purposes and functions needs, including but not limited to rentals to other members of the public or entities. If City determines that rescheduling CTC rehearsals is necessary, it will make all reasonable efforts to provide CTC one week's notice before any change in rehearsal schedule, except in the case of emergency issues. If CITY reschedules a rehearsal, CITY shall attempt to provide CTC an alternative rehearsal location depending upon availability. Use of alternate sites will not count toward the maximum number of hours allotted for rehearsals in the theatre.

- (c) Authorized Theater Productions: CTC may have use of theater facilities for the School and Family Series between September 26, 2016 and May 31, 2017. The School and Family Series shall consist of not more than ten (10) productions per year. However, due to physical space and calendar limitations, only nine productions may be new. If a tenth production is approved by the City to be scheduled in the season, it must be a remount or small set production requiring minimal technical rehearsal time of not more than one dress rehearsal and one technical rehearsal only. No set shop build time or set storage space is allowed for the tenth production. A tenth production show must be approved in advance by the CITY's Technical Coordinator.

School and Family Series shows will be performed Monday through Friday, at 9:30 a.m. and 11:00 a.m.; Saturday mornings at 11:00 a.m.; five (5) Saturday or Sunday afternoons at 2:00 p.m.; and five (5) evenings at 7:00 p.m. For morning performances, CTC shall have use of the Theatre beginning at 8:30 a.m. until 1 p.m. For afternoon performances, CTC shall have use of the Theatre beginning at noon until 4:00 p.m. For evening performances, CTC shall have use of the Theatre beginning at 5:00 p.m. until 9:00 p.m. CTC may request to add additional 12:30 p.m. and 2:00 p.m. performances as needed to accommodate demand; requests must be submitted in writing to the CITY and will be approved or denied within seven (7) business days of the request. Requests should be submitted a minimum of thirty (30) days in advance of the proposed show date.

- (d) Limitations on Use: In addition to any other limitations on use described in this agreement, CTC's use of the Facilities for on-site technical productions, performance rehearsals and storage shall be limited to three (3) productions ("shows") in the theater at any given time, with one (1) show performing on stage and two (2) shows in production. A show must perform in the theater a minimum of five (5) consecutive days in order for it to use any of the theater facilities.

CTC's use of space in the theater building for storage or fabrication of sets, costumes, and properties shall be subject to the approval of CITY's Theater

Technical Coordinator. Use of the Facilities for storage, set or costume fabrication, or any other work not associated with a production authorized by this agreement is prohibited.

- (e) Use of City Equipment: With the approval of CITY's Theatre Technical Coordinator, CTC may use equipment owned by CITY, consistent with the CITY's Theatre Policies and Procedures Handbook and other applicable rules.
- (f) Policies and Procedures: CTC shall follow all CITY policies and procedures set forth in the CITY's Theatre Policies and Procedures Handbook and/or communicated by the CITY's Community Services Manager or Technical Coordinator. In the event that CTC fails to adequately clean any of the CITY Facilities including the Set Shop or Concession Stand, per procedures, CITY staff will clean the facilities as necessary and invoice CTC at the CITY's published hourly rate for technical staff labor costs. CTC agrees to promptly pay any charges invoiced pursuant to this section.
- (g) Rehearsals in Theater: CTC shall be entitled to use the theater facility for rehearsals as outlined in section 1.c., subject to the following limitations. The maximum number of hours CTC may use the theater facilities for rehearsal purposes shall be as follows: Six hundred (600) hours during the performance season (September 26, 2016-May 31, 2017). If CTC requests any use of theater facilities in excess of the foregoing limits, it shall be subject to charges by CITY in accordance with CITY's theater building rental rates in effect at the time. CTC shall provide a minimum of one calendar week's notice on cancellation of Theater reservations. Late cancellations will be counted toward CTC's hourly allotment for the year.
- (h) Rehearsals in Other Park Buildings: CTC may use CITY park building facilities (other than the theater building) for rehearsal purposes only, subject to City approval and availability. CITY retains the right to reschedule or displace CTC to give priority over the use of such facilities to persons who pay the CITY for their use. The maximum hours of use by CTC for all non-theater rehearsal facilities shall be one hundred (100) hours during the School and Family Series performance season, subject to the foregoing availability requirements. If CTC requests any use of non-theater facilities in excess of the foregoing limits, it shall be subject to charges by CITY in accordance with CITY's park building rental rates in effect at the time. CTC shall provide a minimum of one week's notice on cancellation of park building reservations. Late cancellations will be counted toward CTC's hourly allotment for the year.
- (i) Non-Performance Public Activities at the Theatre: Non-performance public activities at the Theatre are defined as activities to which members of the public are invited, either at no charge or for a fee, including, but not limited

to, receptions, backstage tours, post-show workshops or children's birthday parties. CTC may conduct non-performance public activities that are one hour or shorter in duration per event. A rental charge will be levied for non-performance public activities which will extend an hour or more following the conclusion of a performance or program. The rental rate will be subject to current facility rental rates. For all activities, CTC will have a minimum of one staff member present at all times. For activities where food is served the facility must be left in good condition, or a cleaning fee will be assessed. All activities pursuant to this section must take place directly before, after or during scheduled rehearsals or performances.

- (j) Mutual Publicity – Printed Material: CTC must recognize the CITY on its website and on all printed materials advertising events to be held on CITY property and on all printed materials to be displayed on CITY property. Recognition in brochures shall consist of the CITY of Sunnyvale logo, printed not less than 7/16" high, and the phrase, "This program is supported in part by the City of Sunnyvale Community Services Division," printed in no less than 10 point type and appearing on either the front or back of the piece as displayed on the rack. Recognition on posters shall be sized proportionally, depending on the finished size of the piece and intended viewing distance. Materials to be displayed in the CITY flyer rack must be pre-approved by the CITY. Materials which do not have pre-approval may be removed from display. CITY will promote public events on the theatre calendar, bulletin board displays, and printed promotional items where appropriate. CTC will be granted the exclusive use of one theater lobby bulletin board and a shared external theater bulletin board to advertise its upcoming productions.
- (k) Mutual Publicity – Internet and Social Media: For CTC Facebook posts referencing the Sunnyvale Theatre, CTC will provide authorization to allow CITY Facebook page to be tagged in that post. For CITY Facebook posts referencing CTC, CITY will provide authorization to allow CTC Facebook page to be tagged in that post. On CTC's website, a link back to the CITY's website is required. The CITY reserves right of approval for all social media references made to the CITY, its property or programming. CITY will promote CTC performances open to the public on its website with a link back to CTC's website.

2. **DEPOSITS, PAYMENTS TO THE CITY, RECORDS AND ACCOUNTS**

- (a) Deposit: Upon execution of this Agreement, CTC shall provide CITY with a deposit of ten thousand dollars (\$10,000.00) to secure CTC's performance under this Agreement. The deposit shall be forfeited if CTC terminates this Agreement for any reason prior to its expiration date. Otherwise, the deposit shall be returned to CTC in a timely fashion upon conclusion of the Agreement. Forfeiture of the deposit shall not preclude CITY from pursuing any other available legal remedies for breach of contract, including, but not

limited to, an action for damages. However, the amount of the deposit shall be credited against any damages that may be recovered by CITY from CTC.

- (b) School and Family Series Fee: For the use of the Theatre for the School & Family Series during the 2016-17 season, CTC shall pay CITY a flat rate of \$74,130, split into four installment payments of \$18,532.50. The CITY will invoice on the following schedule. Payments are due within 30 days of the invoice date.
 - i: Sept/Oct usage = 1st payment due December 1
 - ii: Nov/Dec usage = 2nd payment due February 1
 - iii: Jan/Feb/Mar usage = 3rd payment due April 1
 - iv: Apr/May usage – 4th payment due June 1
- (c) High-maintenance Equipment Charges: For use of certain high-maintenance equipment CTC shall pay an additional charge. CTC shall pay one hundred dollars (\$100) per production run up to 15 performances to use the LCD Projector and one hundred dollars (\$100) per production run up to 15 performances to use the Grand Piano. Other equipment will be invoiced at the then-current rental rates.
- (d) Records and Accounts: CTC must install and maintain a system of records and accounts. CTC shall permit the CITY through its designated representatives to inspect such accounts and all other records of CTC at any time upon request for a period of three years following expiration of the agreement. On or before the 10TH day of each month this contract remains in force, CTC shall deliver to the CITY a statement showing the total amounts of paid attendance during preceding calendar month.
- (e) Late charge: CTC shall pay all fees due the CITY in a timely fashion. CTC shall be assessed late charges if payment is not received by the CITY within ten (10) days after the due date. An additional late fee shall be assessed each month that the fees owed by CTC remain unpaid. The late charge shall be assessed based on the following schedule:
 - i. 10 days after due date = 2% fee of current balance
 - ii. 40 days after due date = 3.5% + 1st late fee.
 The CITY does not waive its right to terminate this Agreement due to non-payment of fees.

3. COMPLIANCE WITH LAWS

- (a) CTC shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, gender, sexual orientation, age (persons 40 years of age or older), disability, national origin, or any other basis to the extent prohibited by federal, state or local law.

- (b) CTC shall comply with all federal, state and city laws; statutes, ordinances, rules, regulations, the orders and decrees of any courts or administrative bodies, or tribunals in any manner affecting the performance of the Agreement.

4. INDEPENDENT CONTRACTOR

CTC is acting as an independent contractor and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CTC. CTC is responsible for paying all required state and federal taxes.

5. INDEMNITY; DAMAGE TO CITY PROPERTY

- (a) CTC agrees to indemnify and hold harmless CITY, its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown; all costs, and expenses, including reasonable attorneys' fees in connection with any injury, damage to persons or property arising out of or in any way connected with the act, omission or negligence of CTC, its officers, employees, agents, contractors, subcontractors, or any officer, agent, or employee thereof in relation to CTC's use of facilities of CITY pursuant to this Agreement.
- (b) CTC shall not damage or deface the interior or exterior of CITY's theater facility, or the grounds upon which the facility is situated. In the event that during the term of this Agreement, CTC or any of its employees, agents, CTCs or invitees violate any of the theater policies and procedures, or damage or deface the interior, or exterior of CITY's theater facility, or the grounds upon which the facility is situated; CTC shall be obligated to reimburse CITY within thirty (30) days after presentation of an invoice for the actual expense of the repair of the damages, defaced facility or grounds. If CTC contests its responsibility for any alleged damage or defacement, the dispute shall be submitted to a neutral arbitrator mutually agreed upon by CITY and CTC. CTC shall not be obligated to reimburse CITY for the actual expense of the repair unless and until an arbitrator determines that CTC was responsible for the damage or defacement.

6. INSURANCE

CTC shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "A", attached and incorporated by reference, and shall provide all certificates and/or endorsements as specified in Exhibit "A."

7. CITY REPRESENTATIVE

The Superintendent of Community Services, as the City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

8. CTC REPRESENTATIVE

The General Director of California Theatre Center shall represent CTC in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of CTC pertaining to the services, or materials to be rendered under this Agreement, shall be coordinated through the CTC representative.

9. NOTICES

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class mail with postage prepaid, or by commercial courier, addressed as follows:

To CITY: Superintendent of Community Services
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CTC: General Director
California Theatre Center
753 East El Camino Real, Suite B
Sunnyvale, CA 94087

Nothing in this provision shall be construed to prohibit communication by more expedient means such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation, or an original of a facsimile transmission must be sent by first class mail, by commercial carrier, or hand-delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing unless such date is a date on which there is no mail service. In that event, communication is deemed to occur on the next mail service day.

10. ASSIGNMENT

This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the CTC's duties be delegated, without the written consent of the

City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.

11. TERMINATION

If CTC defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY may at its option give CTC written notice thereof and shall give CTC not less than thirty (30) days to cure the default. If CTC fails to cure the default, CITY may immediately terminate the Agreement and shall give prompt written notice of termination to CTC.

Upon expiration or termination of this Agreement, CTC shall remove all of its equipment and property from the theater facility and elsewhere on CITY premises. If CTC fails to do so, CITY may store such equipment and property at the expense of CTC and shall have a lien thereon until CTC shall have reimbursed CITY for any and all expenses of moving and storage of such equipment. If CTC fails to reclaim its property and equipment within thirty (30) days of storage, CITY shall have the right to sell it and retain the proceeds of sale as reimbursement of expenses.

12. ENTIRE AGREEMENT; AMENDMENT

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

13. MISCELLANEOUS

- (a) Time shall be of the essence in this Agreement.
- (b) Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.
- (c) This Agreement shall be governed and construed in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Santa Clara.
- (d) The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of CTC and the City.
- (e) This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

ATTACHMENT 1

- (f) If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY CLERK

CITY OF SUNNYVALE ("CITY")

City Clerk

By _____
City Manager

APPROVED AS TO FORM:

Assistant City Attorney

CALIFORNIA THEATRE CENTER ("CTC")

By _____
Gayle Cornelison, General Director

EXHIBIT "A"

INSURANCE REQUIREMENTS FOR CALIFORNIA THEATRE CENTER ("CTC")

CTC shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the use of the theater facility by CTC, his agents, representatives, or employees.

MINIMUM SCOPE AND LIMITS OF INSURANCE: CTC shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury, and property damage. If commercial general liability Insurance insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. ISO Occurrence Form CG 0001 is required.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 is required.
3. Workers' Compensation and Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. CTC shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

OTHER INSURANCE PROVISIONS

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of activities performed by or on behalf of the CTC; products and completed operations of CTC; premises owned, occupied or used by the CTC; or automobiles owned, leased, hired or borrowed by the CTC. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents, or volunteers.

2. For any claims related to this project, CTC's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents, and volunteers shall be in excess of CTC's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents, or volunteers.
4. CTC's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City of Sunnyvale.

VERIFICATION OF COVERAGE

CTC shall furnish the City of Sunnyvale with original a certificate of insurance affecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work.



City of Sunnyvale

Agenda Item

16-0726

Agenda Date: 7/13/2016

Review of Report to Council "Sister City Relationship"

Report and attachments (16-0240) are available at:

<https://sunnyvaleca.legistar.com/LegislationDetail.aspx?ID=2761620&GUID=F84EDE1F-00A6-4867-A148-3F317E252AA6&Options=&Search=&FullText=1>



City of Sunnyvale

Agenda Item

16-0727

Agenda Date: 7/13/2016

Election of Officers