

**FOURTH AMENDED AND RESTATED CIVIC CENTER IMPROVEMENT AND
MANAGEMENT SERVICES AGREEMENT**

BY AND AMONG

THE CITY OF OKLAHOMA CITY,

OKLAHOMA CITY PUBLIC PROPERTY AUTHORITY,

AND

CIVIC CENTER FOUNDATION

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THIS FOURTH AMENDED AND RESTATED CIVIC CENTER IMPROVEMENT AND SERVICES AGREEMENT, ("the **Agreement**"), is made and entered into this 31ST day of DECEMBER, 2024, by and among the CITY OF OKLAHOMA CITY ("the **City**"), a municipal corporation, the OKLAHOMA CITY PUBLIC PROPERTY AUTHORITY ("**OCPPA**"), an Oklahoma public OCPPA, and the CIVIC CENTER FOUNDATION ("**Foundation**"), an Oklahoma not-for-profit Corporation.

WHEREAS, the Civic Center Music Hall ("the **Civic Center**"), located in the downtown area of Oklahoma City, is owned by the City, and is leased to OCPPA pursuant to a lease between the City and OCPPA; and

WHEREAS, as a part of its Metropolitan Area Projects, the City renovated the Civic Center for the purpose of providing a superior quality, state-of-the-art facility to increase cultural, educational and entertainment opportunities for the residents of the City and surrounding communities; and

WHEREAS, the purposes of the Foundation are to enhance and support the Civic Center by: (i) engaging in fundraising activities, including, without limitation, participation in certain facets of the Civic Center as expressly described in this Agreement; (ii) providing certain services to the City and OCPPA in planning and funding improvements to the Civic Center; (iii) providing services in presenting or co-presenting the annual Broadway Show season; and (iv) providing operation and management services to OCPPA to facilitate the operation of the Civic Center for the benefit of the public; and

WHEREAS, Foundation is uniquely qualified to undertake management and operations of the Civic Center as specified in this Agreement, for the benefit of the City and OCPPA; and

WHEREAS, by entering into this Agreement for the Foundation to manage and operate the Civic Center and provide for the presentation of an annual Broadway Show season comprised of timely premium quality touring Broadway shows the City and OCPPA will receive substantial economic benefits resulting from an anticipated reduction in operating costs associated with the effective and efficient operation and enhanced sales tax revenue due to increased visitation to, and activities in, the Civic Center and benefits resulting from anticipated capital improvements to the Civic Center; and

WHEREAS, consistent with the not-for-profit purposes of Foundation, a key purpose of executing this Agreement is to increase revenues to enable Foundation to generate additional private funding and support for the Civic Center thereby enabling the parties to better maintain and upgrade the Civic Center, including maintaining and upgrading the Performance Spaces, Suites, and other entertainment-related spaces within the Civic Center, and to better manage overall costs associated with the operations at the Civic Center; and

WHEREAS, the City and/or OCPPA retain the sole right and authority to manage and operate the Civic Center; and

WHEREAS, the City and/or OCPPA and the Foundation entered into the AMENDED CIVIC CENTER IMPROVEMENT AND SUPPORT AGREEMENT on June 2, 2015; and

WHEREAS, the City and/or OCPPA and the Foundation entered into the AMENDED AND RESTATED CIVIC CENTER IMPROVEMENT AND SUPPORT AGREEMENT on September 12, 2017; and

WHEREAS, the City and/or OCPPA and the Foundation entered into the THIRDRAMENDED AND RESTATED CIVIC CENTER IMPROVEMENT AND MANAGEMENT SERVICES AGREEMENT on June 19, 2018;

WHEREAS, the City and/or OCPPA and the Foundation now wish to enter into this FOURTH AMENDED AND RESTATED CIVIC CENTER IMPROVEMENT AND SERVICES AGREEMENT effective on the Effective Date, as that term is defined herein; and

WHEREAS, the City and OCPPA deem it to be in the best interest of the citizens of Oklahoma City to continue to engage Foundation, and Foundation desires to continue the engagement described in this Agreement to manage and operate the Civic Center and the annual Broadway season as set forth and limited in this Agreement.

NOW THEREFORE, in consideration of mutual promises set forth herein, and intending to be legally bound, the parties agree as follows:

SECTION I. DEFINITIONS

All terms and phrases not expressly defined herein shall have their ordinary meanings, consistent with local and state law, except where the context clearly indicates a different meaning. For purposes of this Agreement, the following terms shall have the meaning ascribed herein.

- 1.1 **Broadway Show Series**: Shall be all of the shows contained in the Foundation's advertised Broadway Season and as listed in the Broadway Season permit issued each year and any replacement shows that might arise during the course of the Broadway Show Series.
- 1.2 **Capital Item(s)**: The repair or replacement of specific items, included as Exhibit A, which cost more than \$15,000.00 and has an expected life of more than five years.
- 1.3 **Capital Projects Fund Reserve Account**. An account holding funds to be solely used on Capital Improvements to the Civic Center.
- 1.4 **City Manager**: The City Manager of The City of Oklahoma City or his/her designee.
- 1.5 **Civic Center**: The Civic Center Music Hall, located at 201 North Walker Avenue, a performing arts center, including but not limited to, the following "Primary Spaces":
 - Main Performing Arts Theatre
 - Little Theatre
 - City Space Theatre

Meinders Hall of Mirrors
Rehearsal Hall
Donor Lounge
Balcony Lounge
Music Library
Various suites, lobbies, lounge areas
Dressing rooms, production offices, and performers lounge
Administrative offices
Public access areas
Storage and maintenance areas

Bicentennial Park is not included as part of the Civic Center.

- 1.6 **Civic Center Facility Improvements:** Facility Improvements for the Civic Center proposed by Foundation from time to time and approved by the City and OCPPA.
- 1.7 **Directors:** Members of Foundation having been duly appointed in accordance with the By-Laws of Foundation.
- 1.8 **Effective Date:** The date this Fourth Amended and Restated Agreement is fully executed which is the date included in the first paragraph of this document.
- 1.9 **Fiscal Year: July 1 through June 30.**
- 1.10 **Force Majeure:** means acts of God; flood, fire, earthquake, ice storm, blizzard, severe storm, or other weather event not reasonably anticipated, explosion; war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; government order, law, or actions; embargoes or blockades (that take effect on or after the date of this Agreement); national or regional public health emergency, including pandemic, epidemic, and other health emergencies; and other similar events beyond the reasonable control of the affected party.
- 1.11 **General Manager:** Except as may otherwise be specified, the General Manager of OCPPA, or his/her designee(s).
- 1.12 **Initial Term:** The period beginning on the Effective Date and ending on June 30, 2028.
- 1.13 **Intellectual Property:** shall include, but is not limited to, all patron information hosted on the ticketing system, the Broadway season subscribers lists for the current and all previous seasons, the website domain www.okcciviccenter.com and all current and future social media platforms including but not limited to @okcciviccenter (Twitter), @okcciviccenter and @okcciviccenerspecialevents (Instagram), and @okcciviccenter (Facebook page).
- 1.14 **Management Fee:** The compensation paid by OCPPA to the Foundation for providing the services and support contemplated by this Agreement, subject to the terms and conditions set forth in this Agreement and subject to annual appropriation by the City to OCPPA.

- 1.15 **Net Operating Revenues**: All revenues sources less all expenses also known as 'Income from operations' per the Foundation's annual audit report. Net Operating Revenues shall not include the Facility Fee charged on tickets for events held at the Civic Center.
- 1.16 **OCPA**: The Oklahoma City Public Property Authority.
- 1.17 **Performance Spaces**: The performance spaces within the Civic Center that are known as the Main Performing Arts Theatre, the Little Theatre and CitySpace.
- 1.18 **Renewal Term**: The four (4) additional five (5) year terms for which this Agreement can be renewed upon written acceptance by all Parties.
- 1.19 **Resident Companies**: Non-profit or not-for-profit organizations specifically designated by the OCPA, or its General Manager, as a Resident Company, which utilize specifically designated Performance Spaces within the Civic Center as its primary performing arts facility for a regularly scheduled annual season and whose principal offices are located within the corporate limits of the City. The current Resident Companies designated by the OCPA and General Manager are listed on Exhibit B attached hereto.
- 1.20 **Suite(s)**: The individual privately leasable interior spaces located on the North and South sides of the Grand Tier, and Mezzanine levels of the Civic Center, outside of the Main Performing Arts Theatre as well as the Donor Lounge and the Balcony Lounge to which each Suite Holder is assigned. "Suite" also shall include access to ticketed seats within a Box, which shall refer to the defined viewing space inside the Main Performing Arts Theatre of the Civic Center. Suites may include any space on the balcony level that is modified and becomes useable as suite space.
- 1.21 **Suite Holder**: The party which has entered into a use agreement with the Foundation for a Suite.
- 1.22 **Term**: The Initial Term and any Renewal Term.

SECTION II. OBJECTIVE

2.1 Engagement and Standard of Care

2.1.1 Engagement

The Foundation partnered with the City in June 2013 to obtain a Utilization Study, which proposed certain Facility Improvements to the Civic Center and focused on increasing revenue and helping the Civic Center remain relevant in a competitive marketplace. Consistent with its charitable purposes, the Foundation can, and is encouraged to, engage in fundraising activities which will assist in funding Civic Center Facility Improvements.

The City and OCPPA hereby continue to engage the Foundation to manage and operate the Civic Center and present the annual Broadway season in exchange for the consideration provided in this Agreement. The Foundation will be responsible for all expenses associated with the performance of its duties, services, and obligations under this Agreement, subject to a force majeure event. The professional services to be provided by the Foundation include all of those activities necessary or appropriate to manage, operate, administer, and maintain those services contemplated herein. In carrying out its obligations and duties under the terms of this Agreement, the Foundation shall have the ability to enter into agreements in its own name with third parties, in accordance with its By-Laws and with the approval of its Directors; however, such agreements may not be for periods longer than the term of this Agreement and shall be subject to termination or assignment, at the election of OCPPA, if this Agreement is terminated for any reason.

2.1.2 Standard of Care

In providing services herein for the duration of the Term, Foundation shall maintain the standard of reasonable care, skill, diligence and professional competency for such services. Foundation agrees to require all of its contractors, subcontractors, vendors and consultants, by the terms of their respective contracts, to provide services at the same standard of reasonable care, skill, diligence and professional competence required of Foundation.

2.2 Rights of OCPPA and the City

The parties agree that nothing in this Agreement shall be construed as preventing the City or OCPPA from entering the Civic Center at any time during the term of this Agreement (provided, the City and OCPPA agree to use reasonable efforts to minimize any disruption or interference in the ordinary course of business of the Foundation and/or Resident Companies), or, except as expressly provided in this Agreement, from resuming the operation and management of the Civic Center upon expiration or termination of the is Agreement. The parties further agree that the terms of this Agreement shall not deprive the City and/or OCPPA of the sole right and authority to manage and operate the Civic Center in accordance with City and OCPPA Policies and Procedures, the applicable laws and regulations of the State of Oklahoma and the United States, including the right to make and enforce such regulations and laws for protection of the rights of the public as the City or OCPPA may deem necessary. The parties also agree the data regarding ticket purchasers for any event, including season tickets, is the sole property of the OCPPA and nothing in this Agreement shall prohibit the OCPPA from taking or limiting control or possession of that data at any time.

SECTION III. TERM AND LEASE OF PROPERTY

3.1 Initial Term

Initial term of this Agreement shall begin on the Effective Date and end on June 30, 2028.

3.2 Renewal Term

This Agreement may be renewed for four (4) additional 5-year terms upon written acceptance by all Parties.

3.3 Demise

OCPPA hereby authorizes the Foundation to manage and operate the Civic Center subject to the provisions herein, effective upon the Effective Date, and the Foundation hereby agrees to accept the Civic Center at that time and agrees to be bound by the covenants, provisions and terms set forth in this Agreement. The Foundation expressly acknowledges and warrants that neither Foundation nor its Subcontractors shall prohibit or inhibit lawful public access as patrons to the higher art forms presented at the Civic Center except to the extent permitted by this Agreement or as may be reasonably necessary to protect the health, safety, and welfare of the community or any patron.

The Civic Center shall be accepted by Foundation in its "as-is" condition. Foundation acknowledges that the City has not made any representations whatsoever in connection with the condition of the Civic Center, or any portion thereof.

3.4 Consideration

The Parties agree that in consideration for the OCPPA's (i) approval of this Agreement and (ii) payment of the Management Fee, the Foundation will provide operation, management, and maintenance of the Civic Center as a whole pursuant to this Agreement at no additional cost to the City or OCPPA. The Management Fee shall be \$892,500 (eight hundred ninety-two thousand five hundred US dollars) annually through June 30, 2028 and will be determined by resolution approved by the OCPPA every fiscal year thereafter. OCPPA will pay the annual Management Fee on or before July 31st of each year in immediately available funds. In the event OCPPA fails to pay the Management Fee by July 31st of each year, the Foundation shall have the right to terminate this Agreement. The effective date of termination shall be 180 days following receipt of notice of said termination. The Parties agree that the Management Fee for the years ending June 30, 2024, and June 30, 2025, has already been paid by the OCPPA and accepted by the Foundation.

The Foundation further agrees and consents to accept and bear sole financial responsibility for adequately funding the efficient management and operation of the Civic Center, consistent with similar commercial buildings in the industry in Oklahoma City and Tulsa, including but not limited to, all operating costs, salaries and wages, and regular maintenance. The Foundation further agrees to underwrite any and all financial losses the Foundation may incur in its performance of this Agreement, holding the City and OCPPA harmless in connection with the Foundation's operation of the Facility, except to the extent any such losses arise primarily from the gross negligence or willful misconduct of the City and OCPPA in its performance of its obligations hereunder and/or any breach by the City and/or OCPPA of any of the terms hereof. The City and/or OCPPA's responsibility shall be limited to the extent allowed under all applicable Oklahoma laws.

As additional consideration for the Foundation's agreement to provide all necessary operating capital as well as accept this financial risk position, which the City and the OCPPA acknowledges shall constitute substantial consideration of which the City and OCPPA are beneficiaries, (and, for the avoidance of doubt, in addition to the approval

of this Agreement and the Management Fee) the City and OCPPA agree that the Foundation is entitled to receive and shall retain all Net Operating Revenues (if any) realized through the Foundation's operation, subject to the terms of this Agreement.

3.5 Purpose and Use

3.5.1 Use

The Civic Center is to be used for cultural, educational and entertainment opportunities for the residents of the City and surrounding communities.

The Main Performing Arts Theatre shall be used as a venue for the presentation of the higher performance art forms like Broadway, symphonies, ballet and etc., put on in the form of a season by Resident Companies. The additional available days may be filled with other events such as shows, graduations, concerts, and lectures.

3.5.2 Policies, Procedures and Event License Agreements

The Foundation shall maintain booking policies and procedures which include a first hold process for Resident Companies.

All users, including Resident Companies and the Foundation, must comply with the same booking procedure.

The Foundation maintains a practice of tentatively scheduling the seasons of work performed in the Main Performing Arts Theatre on a five-year rolling calendar. Resident Companies presenting the seasons of work are given preference in scheduling and then any open dates are filled with other bookings. Once seasons are confirmed, each resident company enters into an Event License Agreement for the upcoming season's shows.

All non-resident presenters and private events are also required to have executed Event License Agreements. A current version of the Event License Agreement shall be kept on file with the General Manager.

The Foundation also agrees that the following seasons shall occur unless approved in writing by the General Manager and all Resident Companies, except in a Force Majeure event:

- Broadway
- Symphony
- Opera
- Choral
- Regional Musical Theatre
- Ballet

3.5.3 OCPPA and City Use

The Parties agree and understand that nothing in this Agreement shall be construed as preventing the City or OCPPA from entering the Civic Center at any time during the Term of this Agreement for the purpose of satisfying the obligations of the City and OCPPA or ensure compliance with this Agreement. (provided, the City and OCPPA agree to use reasonable efforts to minimize any disruption or interference in the ordinary course of business of the Foundation and/or Resident

Companies).

Subject to the terms herein, the City may reserve and use, at no facility rental cost, the following areas within the Civic Center. All dates are subject to availability and shall not be reserved more than six (6) months in advance.

- Meeting and Event Spaces:
 - Rehearsal Hall, Donor Lounge or Meinders Hall of Mirrors –
 - Twenty-five (25) calendar dates during regular business hours Monday-Friday, 8am-5pm.
 - Meinders Hall of Mirrors – five (5) calendar dates on evenings and weekends.
- Performance Spaces:
 - Little Theatre – ten (10) consecutive calendar dates.
 - City Space Theatre – ten (10) consecutive calendar dates.

OCPA shall also have access to up to ten (10) complimentary tickets per performance (unless otherwise agreed to in writing by General Manager and Foundation Executive Director) at no charge upon advance written notice. Complimentary tickets shall be distributed in accordance to Management Bulletin 22-1 as issued on August 27, 2021 or in accordance with any revisions thereafter. Accommodation shall be made to exchange complimentary seats for accessible seating locations upon request and subject to availability.

3.6 Ownership of Assets

All property, improvements, and Intellectual Property associated with the operation and management of the Civic Center are solely the property of the OCPA unless otherwise provided in this Agreement or any amendments thereto. Any furniture, fixtures, and equipment (FF&E) initially provided upon Effective Date or any items purchased to replace such FF&E shall be considered the property of the OCPA. Upon termination or expiration of this Agreement all modifications or improvements to the Civic Center, whether constructed by the City, OCPA, or Foundation shall become property of OCPA. Notwithstanding the foregoing, any personal property or equipment provided by the Foundation or a Subcontractor of Foundation shall remain with the Foundation or such Subcontractor, as applicable.

3.7 Furniture, Fixtures, and Equipment

The Foundation must maintain as a minimum, the same quantity of FF&E provided as on the Effective Date (except surplus able items), throughout the Initial Term and any Renewal Term of this Agreement. The Foundation must maintain an inventory list of new FF&E obtained from and after the Effective Date which shall include the date each item is purchased. All items on the list may only be disposed of through the City of Oklahoma City surplus process. The Foundation is responsible for the maintenance of all FF&E. For clarity, FF&E are not considered Capital Items.

3.8 Subleases

Foundation shall be permitted to enter into subleases of the Civic Center with one or more Tenants with consent of the City Manager, whose approval shall not be unreasonably withheld, provided that Foundation and Tenant fully comply with all provisions and requirements of this Agreement. Foundation shall cause all subleases

to contain such provisions as may be necessary to cause said Tenant to abide by and conform to the requirements in this Agreement. Foundation shall provide the City Manager with notice of any sublease including, but not limited to, the name, address, telephone number, fax number, email, and name of the contact person for purposes of notices or other communications.

SECTION IV. OPERATION AND MANAGEMENT

4.1 Foundation Obligations

The Foundation will remain as the advocate of the Civic Center and continue as the primary liaison with the City for Civic Center Facility Improvements.

As the purpose of the Foundation's management of the Civic Center is to invest the net profits of the operation for the improvement and support of the Civic Center and as a recipient of the Management Fee from OCPPA, the Foundation shall not participate in disbursement of cash contributions to public charities or external agencies. In-kind donations of Foundation services, such as ticket donations or reduced fees on space rental should be considered in lieu of cash giving options.

The Foundation will establish and maintain constructive partnerships with local entities, including, by way of example, the Convention and Visitors Bureau, hoteliers, parking operators, and public safety entities, national and international event promoters and meeting planners and will report at regular industry meetings and assist in recruitment of conferences and special events for which the Civic Center venue is best suited.

4.1.1 Seasons Presented by Resident Companies

The Foundation will coordinate the presentation of each annual season by the Resident Companies. This includes but is not limited to the scheduling of seasons consistent with this Agreement and the permit process for the use of the Performance Spaces.

4.1.2 One Annual Broadway Show Series

In accordance with common industry practices nationwide, and consistent with the constructive policy of OCPPA over the years, and in order to achieve a varietal balance of types of performances at the Civic Center, Foundation understands that only one annual season (plus add-ons, as applicable) comprised of national touring Broadway shows ("Broadway Show Series") will be permitted in the Main Performing Arts Theatre. As previously agreed between the parties, commencing with the 2016-2017 Broadway Show season, the annual Broadway show season will be co-promoted by Foundation in partnership with a nationally or regionally recognized organization, selected through a competitive process. In partnership with its chosen co-promoter, Foundation agrees to present the one annual season of Broadway shows (the Broadway Show Series) and to secure national touring Broadway shows of a quality available to other comparable venues in major metropolitan areas. To encourage a competitive partnership arrangement between the Foundation and its selected co-presenter, unless otherwise agreed

by the City Council, the Foundation shall solicit request for proposals for a co-presenter every seven (7) to ten (10) years. Subject to a reasonable request, the Foundation shall have the right to request an extension of time through the General Manager for a period not to exceed two years. The General Manager shall have the discretion to approve or disapprove the request based on the reasons set forth in the request.

4.1.3 Single Night, Full Week and Split Week Broadway Performances

Foundation shall have the right of first refusal to co-present single night, full week and split week Broadway show performances. Foundation, by and through its Executive Director/Chief Executive Officer, will have five (5) business days from the date the presenter makes the request to Foundation to determine whether to co-present the Broadway show and to inform the presenter of its decision. Foundation agrees that the financial terms of any co-presentation shall not be more or less favorable than those with Foundation's partner, unless the Foundation and General Manager expressly agree to other terms in writing. If Foundation declines to co-present, the Foundation shall process the request for a permit according to the policy adopted by the Foundation and approved by the General Manager.

4.1.4 Single Night, Full week and Split Week Other Events/Performances

Foundation agrees to work in good faith fill the extra open dates in the Performance Spaces with other events or performances. All bookings shall be in accordance with the Foundation booking policies, including the permit process. Notwithstanding the foregoing, the Foundation shall not be required to present any of such shows/events and does not have a first right of refusal to promote or present Non-Broadway shows or events.

4.2 Agreed Conditions Relating to the Facility

4.2.1 Building Security

The Civic Center shall be secured and locked when not in service and use. A secure access system shall be utilized by the Foundation which shall include a monitored security system.

Event security shall be required for every event/performance presented at the Civic Center; this includes but is not limited to private rentals of portions of the facility like Hall of Mirrors.

4.2.2 Access

OCPPA's General Manger, or his/her designee, shall be provided access to the Civic Center, in the form of a key or access card/badge. Such person is free to access the Civic Center at any time necessary but shall endeavor to provide 24 hours' notice when appropriate.

4.3 Approval of Policies and Procedures

The Parties acknowledge that the Foundation will maintain Foundation policies and procedures, which address vital and routine functions associated with management and operation, including but not limited to rental/booking policies and procedures, and

a ticketing policy. A copy of these policies will be provided to the General Manager for review upon request. A correct and current copy of Foundation Policies and Procedures shall be maintained in the Executive Director's office at all times and shall include, but not be limited to the following topics:

- *Finance and Accounting Procedures* - including but not limited to: Accounting, Cash Management and Cash Control; Reports; Records Retention; and Risk Management Procedures.
- *Sales Procedures* – including credit card acceptance, recordkeeping relating to concessions and retail sales, rentals, ticketing, and similar transactions.
- *Concessions Operations* - including such permits and licenses as required to lawfully offer and sell alcoholic beverages, non-alcoholic beverages, food, and other retail goods.
- *Third party vendor, catering and retail sales outlets*, if any.
- *Booking Policies and Procedures* – including but not limited to the permit process and form.
- *Employee records*.
- *Safety Procedures* – including protocols for emergency response procedures, communications, and other policies and procedures having an impact on the safety of presenters, patrons, and staff.
- *Reporting Procedures* - as relates to formal complaints and related incidents arising from providing service to patrons of the Civic Center.

All material changes, additions, and modifications of the Foundation Policies and Procedures, as from time to time proposed and presented by Foundation must be provided to the General Manager.

4.4 Reporting/Outcome Measures

The Foundation will provide two reports to the City and OCPPA which will include key performance indicators. The Foundation shall provide a progress report to the General Manager in January of each year. The Foundation shall also provide an annual report to the OCPPA and the City in August of each year.

The progress report shall include:

- a financial report containing the budgeted and actual revenues and expenses for the fiscal year to date;
- the total amount of funds received year to date through fundraising efforts;
- the balance of the Capital Projects Fund Reserve Account
- a list of the Foundations planned improvements to the Civic Center Music Hall with dates of implementation;
- the to-date total sales made from the retail food and beverage services per event; and
- any other information reasonably requested by the General Manager.

The annual report shall include:

- all items required in the January progress report;
- the year-to-date actual revenues and expenses;

- Community Outreach Programs provided in the last fiscal year;
- the budget for the next fiscal year;
- attendance statistics;
- planned improvements to the Civic Center Music Hall;
- outcome and performance measures; and
- any other information reasonably requested by the General Manager.

Additionally, the Foundation shall provide monthly attendance counts for Civic Center events and quarterly outcome/performance measures.

4.5 Civic Center Facility Improvements

The City and/or OCPPA shall retain the sole right to approve any Civic Center Facility Improvements that Foundation may from time to time propose. Foundation shall cooperate in good faith with the General Manager to coordinate any approved Civic Center Facility Improvements. Upon the written approval of proposed Civic Center Facility Improvements by the City, OCPPA and the Directors, Foundation shall fund and complete the approved Civic Center Facility Improvements. If they elect to do so, the City and OCPPA may provide funding for approved Civic Center Facility Improvements and in such case the project shall comply with the Oklahoma Public Competitive Bidding Act, 61 O.S. §101 *et seq.*

4.6 Rental of the Areas other than Performance Spaces

The Foundation may rent the areas located in the Civic Center other than the Performance Spaces for private events on a first come, first served basis. Rental of any of these spaces shall comply with the Foundation's Rental/Booking Policies and Procedures as provided hereinabove. The Foundation shall have the exclusive right to collect service, rental, and usage fees associated with the rentals.

4.7 Vending, Catering, and Merchandising

The Foundation shall have the primary right and obligation to provide retail food and beverage services (including alcoholic and non-alcoholic beverages) for events occurring in the Civic Center. Foundation will be responsible for managing and operating fixed or portable points of sale.

Only a licensed caterer or alcohol service provider is authorized to provide bar services. Bar service is required to end no later than one (1) hour prior to the conclusion of the event.

4.8 Foundation Employees and Volunteers

The Foundation shall employ a competent, full-time Executive Director whose main duties shall be the day-to-day operation and management of the Civic Center. If at any time during the Term of this Agreement the General Manager believes that there is a performance problem with the Executive Director, the General Manager shall give written notice to the Foundation Board of Directors and the Foundation's Chairman shall, within fifteen (15) days of such notice, meet with the General Manager to discuss such problem and any steps that may be appropriate to address such problem.

The Foundation employees or contract volunteers shall not be considered employees of the City or OCPPA for any purpose. The sole responsibility for supervision, daily

direction and control of such employees and for setting and paying their compensation and any employee benefits, including all required workers' compensation benefits, shall be the obligation of the Foundation. All costs related to their employment shall be the responsibility of the Foundation.

4.8.1 Employment Policies and Procedures

The Foundation shall have employee policies and/or procedures to be used at the Facility and will provide a copy of those policies to the General Manager if requested.

4.8.2 Non-Discrimination of Employees and Volunteers

The Foundation shall not discriminate against any employee or applicant for employment because of age, race, religion, creed, color, sex, national origin, ancestry or disability as defined by the American with Disabilities Act of 1990, Section 3(2). The Foundation shall ensure that employees or applicants for employment are treated without regard to their age, race, religion, creed, color, national origin, sex, national origin, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination or cancellation, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Foundation shall agree to post, in a conspicuous place available to employees and applicants for employment, notices to be provided by the City Clerk of City setting forth provision of § 25-41 of the Oklahoma City Municipal Code, as may be amended.

The Foundation will, in all solicitations or advertisements for employees placed by or on behalf of the Foundation, state that all qualified applicants will receive consideration for employment without regard to age, race, religion, creed, color, national origin, sex, national origin, ancestry or disability.

In the event of the Foundation's noncompliance with this nondiscrimination clause, in addition to other remedies set forth in this Agreement, the City or OCPPA may immediately terminate this Agreement despite any notice requirement provided herein.

4.9 Foundation Subcontractors

The Foundation shall be solely responsible for the fees, work, and supervision of all subcontractor(s).

4.10 Fees to Users

Resident Companies shall continue to receive a discount rate for the use of the Main Performing Arts Theatre and any rehearsal areas needed. Fees to Resident Companies (including but not limited to fees for rental of the Facility, box office charges, users, security, medical, technicians and equipment rentals) may not increase more than a total of 10% each year unless specifically approved in writing

by the General Manager. Fees to other users (including but not limited to fees for rental of the Facility, box office charges, users, security, medical, technicians and equipment rentals) may not increase more than a total of 25% each year unless specifically approved in writing by the General Manager.

4.11 Naming Rights and Sponsorship Agreements

The Foundation is exclusively engaged to secure naming rights and sponsorships agreements (the "Naming Rights and Sponsorship Agreements") for the Civic Center building as well as the facilities within the Civic Center. The Foundation shall make a good faith effort to market and secure naming rights for the Civic Music Hall building as well as the Primary Spaces within the Civic Center. During the Term of this Agreement, the City and OCPPA acknowledge and agree that it will not contract with, license or engage any other party to secure naming rights and sponsorships agreements for the Civic Center.

Any naming or sponsorship agreement must be in writing and is subject to the written approval of the General Manager. Nothing herein shall prevent OCPPA from recommending potential naming rights sponsors to Foundation. Such agreements shall not prohibit advertising/signage for competitor's products for a special event that is required to display such competitive temporary signage pursuant to a contractual obligation.

Sixty percent (60%) of the proceeds from a Naming Rights and Sponsorship Agreements shall be placed in a restricted account, called Foundation Endowment Account. The remaining funds from each Naming Rights and Sponsorship Agreement, after direct expenditures related to the fulfillment of such agreement, shall be placed in the Capital Projects Fund Reserve account. The aforementioned contributions to restricted accounts may be waived on a case-by-case basis if requested by a donor or Sponsor. Such waiver must be agreed to in writing by the General Manager and Foundation Executive Director.

The Foundation is solely responsible for any expenses and maintenance associated with or incurred while fulfilling the expectations of or contractual obligations to a Naming Rights or Sponsor Agreement.

4.12 Operating Revenues and Facility Fees

A minimum of forty percent (40%) of Net Operating Revenues each year shall be placed in the Capital Projects Fund Reserve Account.

The Foundation will continue to charge and collect a Facility Fees of \$3 per ticket for tickets sold for all events held at the Civic Center, except the Philharmonic Discovery tickets which have a Facility Fee of \$1 per ticket. All Facility Fees collected will be used to pay the debt service for the new audio system, required in Section 4.13. The fee may be increased from time to time by mutual agreement of Foundation and General Manager. Following the repayment of the Debt Service required in Section 4.13, all of the Facility Fees collected shall be placed in the Capital Projects Fund Reserve Account.

4.13 Debt Service

The Foundation agrees to continue to pay the outstanding balance of the debt

incurred by OCPPA in 2017 for the purchase of a new audio system pursuant to that certain Agreement for Transfer of Funds by OCPPA in favor of the Oklahoma City Municipal Facility Authority (OCMFA), dated effective August 1, 2017 in the amount of \$3,706,000 and the subsequent related Refinancing Agreement dated September 15, 2020 (collectively, the "Loan Documents") documenting an outstanding balance of \$2,358,729.32 as of that date. Foundation agrees to make annual debt service payments according as provided in the Loan Documents and/or any refinance thereafter, provided, however, Foundation shall in no event be responsible for any penalties, fees, or defaults under the Loan Documents caused directly or indirectly by OCPPA.

OCPPA agrees to participate, as necessary, if the Foundation refinances or extends the term of the debt.

4.14 Procurement of Contracts

The Foundation agrees to maintain or procure any and all necessary contracts and/or accounts in the fulfillment of this Agreement. All contracts shall be consistent with the terms of this Agreement and shall not exceed the term of this Agreement unless terminable without cause. All contracts shall be assignable to OCPPA and include a termination without cause provision identical to that provided in this Agreement. A copy of all contracts concerning the Civic Center entered into by the Foundation, shall be provided to the General Manager upon request.

4.15 Data Security, Intellectual Property and Branding

The Foundation may not share OCPPA's data, including booking information to anyone for any reason unless expressly approved in writing by the General Manager.

The Foundation may share customer lists (names and email addresses) with independent promoters for those patrons who purchased tickets to the respective event(s), if requested in writing.

The Foundation agrees that it will ensure the segregation of the subscriber list for each Season and will not use or allow the use of any subscriber list unless expressly approved by the General Manager.

The Foundation agrees to provide OCPPA unrestricted access to its data through a user account if requested. The Foundation acknowledges and agrees that OCPPA can unilaterally revoke the use of its data and the Foundation must advise all contractors/subcontractors of OCPPA's right and include such authority in Foundation contracts related to OCPPA's data.

The Foundation currently owns and manages the Civic Center website domain, www.okcciviccenter.com. The content of the Civic Center website domain shall be managed through a reputable company selected by the Foundation. In the event of Termination of the Agreement, ownership of all Intellectual Property pertaining to the day-to-day operations of the Civic Center will be transferred from the Foundation to the City.

The Foundation may not change the Civic Center branding/emblem without prior written approval by the General Manager

4.16 Ungerboeck and Paciolan

The Foundation agrees that the City and OCPPA shall have unrestricted access to records and any and all information, materials and data of every kind and character in Ungerboeck and Paciolan that may, in the judgment of OCPPA's authorized representative, have any bearing on, or pertain to, any matters, rights, duties or obligations under this Agreement during reasonable business hours to the extent necessary to adequately permit evaluation and verification of Foundation's compliance with terms of this Agreement.

4.17 Records and Audits

4.17.1 Records

Foundation shall keep full and accurate accounting records relating to its services in accordance with generally accepted United States accounting principles and which are acceptable to the General Manager.

4.17.2 Audits

On or before November 30th following each Fiscal Year, the Foundation shall furnish the General Manager audited financial statements for the preceding Fiscal Year, prepared in accordance with generally accepted accounting principles and accompanied by an independent auditor's report from a reputable firm of certified public accountants selected by Foundation.

OCPPA's authorized representative, including the City Auditor or any independent auditor selected by OCPPA, shall have unrestricted access to books and records and any and all information, materials and data of every kind and character that may in the judgment of OCPPA's authorized representative have any bearing on, or pertain to, any matters, rights, duties or obligations under this Agreement during reasonable business hours to the extent necessary to adequately permit evaluation and verification of Foundation's compliance with terms of this Agreement.

SECTION V. MAINTENANCE, REPLACEMENT, AND MODIFICATIONS

5.1 General Maintenance and Replacements

The Foundation shall be responsible for all routine maintenance, general repairs, and the cost of any and all supplies necessary for the operation and maintenance of the Civic Center and shall document such using industry standards logs. The Foundation agrees to provide OCPPA unrestricted access to its electronic maintenance logs through a user account.

5.2 Repair/Replacement of Capital Items

OCPPA will repair or replace any Capital Item so long as the Foundation has properly maintained such items according to the industry standard of care. The Foundation shall submit to the General Manager or its designee, in writing, a rolling five-year Capital Items request on or before December 31st of each year. The City and/or OCPPA shall submit such request as part of the department's budget in February of each year and will notify the Foundation in writing on or before July 1st which Capital

Items were approved for that upcoming fiscal year's budget. The OCPPA shall use commercially reasonable efforts to complete such Capital Item repair and/or replacement in accordance with the Foundation's request. The scheduling of repairs or replacement of Capital Items shall be mutually agreed upon between the parties and shall be completed in accordance with standard City procedures and policies.

5.2.1 Emergency Repairs

In the event of an "emergency" as defined in Chapter 2, Article 1, Section 2-35 of the Oklahoma City Municipal Code, with respect to the safety, welfare and protection of the general public, should occur involving a Capital Item, the Foundation may act, with the consent of the General Manager, including expending funds, as necessary to alleviate the emergency. The Foundation shall prepare and retain adequate documentation as described in Chapter 2, Article 1 Sections 2-471 through 2-475 of the Oklahoma City Municipal Code concerning the circumstances surrounding the emergency and all funds related to that emergency. Reimbursement for such funds expended by Foundation shall be paid by OCPPA within sixty (60) days of approval of the request for reimbursement.

5.3 Deferred Maintenance List

The Foundation acknowledges the City and/or OCPPA has satisfied its requirements for the Deferred Maintenance List as documented in Exhibit G of the Third Amended and Restated Civic Center Improvement and Services Agreement. Any remaining funds that were previously allocated for such have been expended and are no longer available.

5.4 Additions, Modifications, or Renovations

The Foundation will not make any structural changes or structural alterations to the Civic Center without the express approval of the General Manager. Upon receiving such approval and prior to beginning construction, the Foundation shall submit all plans and specifications to the City Engineer of City for review and approval. After receipt of approval by the City Engineer of the plans and specifications, the Foundation shall also be required to obtain all building permits, other permits and licenses as required by municipal, state, or federal law. The Foundation shall submit the construction contract and bonds for the additions, modifications, or renovations of Civic Center to the City Engineer for approval, whose approval will not be unreasonably withheld. The Foundation must also notify the City Engineer of the commencement of any construction at least ten (10) days before beginning of any construction. It is agreed that the City Engineer shall have the right to inspect the construction at any time and has authority to issue stop work-orders at any time during construction. The Foundation is responsible for and shall barricade or secure any unsafe area pending such construction. Within thirty (30) days of completion of any construction, the Foundation shall obtain an unqualified Certificate of Completion from the Foundation's licensed architect or engineer for each additions, modifications, or renovations and provide such Certificate to the City Engineer with a request for a final inspection. Within forty-five (45) days of the completion of any construction, the Foundation shall provide to the City Engineer a complete set of "as-built" drawings for approval, including, but not limited to, structures, plumbing, heating, ventilating, air conditioning, mechanical and electrical systems, as may be necessary to document

all construction. Each addition, modification, or renovation of the Civic Center shall be submitted to the OCPPA and City for review and final acceptance after receipt of the "as-builts" and final inspection by the City Engineer.

Nothing herein shall be deemed to affect or waive any permits, approvals, or inspections of any activity, improvement or facility as required by City ordinances, or state law or federal law.

The areas and items described in Exhibit C shall not be altered, modified, or interfered with under any conditions.

SECTION VI. ADDITIONAL TERMS

6.1 Termination.

6.1.1 Termination for Cause.

This Agreement may be terminated by either party upon sixty (60) days prior written notice should the other party fail substantially to perform in accordance with the Agreement terms through no fault of the party initiating the termination after due notice and thirty (30) days within which to correct the default.

6.1.2 Termination Without Cause.

Each party reserves the right to terminate this Agreement at its sole discretion upon one hundred twenty (120) days prior written notice to the other party, with or without cause.

6.1.3 Termination Due to Use of Tax-Exempt Bond Funds.

The City may terminate this Agreement with sixty (60) days prior written notice if the City determines it would like to use Tax-Exempt Bond Funds for improvements to the Civic Center.

6.1.4 Financial Impact of Termination / Expiration.

In the event of the termination or expiration of this Agreement: (i) Foundation shall have no right to revenue thereafter accruing from the Civic Center events, performances, food and beverage, naming rights, Suite leases and other rental of Civic Center facilities, unless otherwise agreed to in writing by the parties; (ii) any amount committed by Foundation for a portion of the cost of any then-existing Civic Center Facility Improvement project shall be remitted by Foundation to OCPPA; (iii) OCPPA shall compensate Foundation any remaining unpaid balance for services rendered, if any, prorated up to the date of termination; and (iv) unless otherwise mutually agreed, and at the option of OCPPA, OCPPA shall assume Foundation's obligations under all agreements relating to Civic Center Facility Improvements and other agreements pertaining to the Civic Center that have been entered into by Foundation accordance with the terms of this Agreement or otherwise with the approval of the General Manager.

6.2 Indemnity.

To the fullest extent permitted by law, the Foundation agrees to release, defend, indemnify and save harmless the City and OCPPA, their officers, agents and employees, from and against any and all loss of or damage to property, injuries to or death of any person or persons and/or all claims, damages, suits, costs, expenses, liability, actions or proceedings of any kind or nature whatsoever resulting from negligent or willful misconduct of the Foundation, its officers, agents, employees, contractors, sub-contractors, consultants and sub-consultants, and expressly excluding, to the extent allowed by applicable Oklahoma law, any claims, damages, suits, costs, expenses, liability, actions or proceedings of any kind or nature whatsoever resulting primarily from negligent or willful misconduct of the City, OCPPA, or any of their officers, agents, employees, contractors, sub-contractors, consultants and sub-consultants. The provisions of this Section shall survive the termination of this Agreement.

6.3 Insurance.

The Foundation must provide, pay for, and maintain the types of insurance policies provided herein, in amounts of coverage not less than those set forth below. Certified, true and exact copies of all insurance policies required and endorsement pages shall be provided to the City and OCPPA on a timely basis if requested.

All insurance must be from responsible insurance companies which are authorized to do business in the State of Oklahoma and are acceptable to the City. The required insurance coverage and policies shall be performable in Oklahoma City, Oklahoma, and shall be construed in accordance with the laws of Oklahoma.

Nothing in this Section shall define or limit the rights of any party to this Agreement under any other provision of this Agreement, including but not limited to any indemnification provision.

6.3.1 Additional Insureds

All liability policies (except worker's compensation and employer's liability policies) shall specifically include the City and OCPPA as named additional insureds without reservation or restriction. All insurance coverage of the Foundation shall be primary to any insurance or self-insurance program carried by the City or OCPPA.

All insurance policies shall include a severability of interest provision wherein claims involving any insured hereunder, except with respect to limits of insurance, interests shall be deemed separate from any and all other interest herein, and coverage shall apply as though each such interest was separately insured.

6.3.2 Deductibles

All policies must be fully insured with any single policy deductible not exceeding \$25,000. All deductibles must be declared on the certificate of insurance. If no deductible is declared, the Foundation is stating a deductible does not exist and thus a deductible is not approved or accepted.

Self-insured retentions will not be accepted unless accompanied by a bond or irrevocable letter of credit guaranteeing payment of the losses, related

investigations, claim administration and defense expenses not otherwise covered by the Foundation's self-insured retention.

6.3.3 Policy Limits

The insurance coverage and limits required of the Foundation under this Agreement are designed to meet the minimum requirements of the City and OCPPA. Such coverage and limits are not designed as a recommended insurance program for the Foundation. The Foundation alone shall be responsible for the sufficiency of its own insurance program, this includes any decisions concerning the need for business interruption insurance and the like. Should the Foundation have any question concerning its exposures to loss under this Agreement or the possible insurance coverage needed therefore, the Foundation should seek professional assistance.

All policies shall be in the form of an "occurrence" insurance coverage or policy. If any insurance is written in a "claims-made" form, the Foundation shall also provide tail coverage that extends a minimum of one year from the expiration of this Agreement.

The minimum amounts of such insurance policies and continuing coverage shall be:

1. Worker's Compensation and Employer's Liability Insurance. Foundation shall provide and maintain, during the term of the Agreement, worker's compensation insurance as prescribed by the laws of the State of Oklahoma and employer's liability Insurance in an amount not less than One Hundred Thousand Dollars (\$100,000.00) each for all its employees employed at the Civic Center, and in case any work is subcontracted, Foundation shall require the subcontractor similarly to provide worker's compensation and employer's liability insurance for all the subcontractor's employees, unless such employees are covered by the protection afforded by Foundation. In the event any class of employees engaged in work/services performed at the Civic Center is not protected under such insurance heretofore mentioned, Foundation shall provide and shall cause each subcontractor to provide adequate insurance for the protection of the employees not otherwise protected.
2. Commercial General Liability Insurance. The Foundation shall provide and maintain commercial general liability insurance coverage sufficient to meet the maximum cumulative liability of all parties to this Agreement under the Governmental Tort Claims Act, 51 O.S. § 151 *et seq.*, (GTCA) and any amendment or addition thereto, unless otherwise specifically and expressly provided herein. Additionally, the Foundation shall provide and maintain commercial general liability insurance coverage for property damage at a minimum of \$2,000,000.
3. Automobile Liability Insurance. The Foundation shall provide and maintain comprehensive automobile liability insurance coverage as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles sufficient to meet the maximum cumulative liability of all parties to

this Agreement under the Governmental Tort Claims Act, 51 O.S. § 151 *et seq.*, (GTCA) and any amendment or addition thereto, unless otherwise specifically and expressly provided herein. Additionally, Foundation shall provide and maintain commercial general liability insurance coverage for property damage at a minimum of \$200,000.

4. Liquor Legal Liability (Dram Shop). The Foundation, as concessionaire, shall provide Liquor Legal Liability for One Million Dollars (\$1,000,000) per occurrence subject to an aggregate policy limit.
5. Fidelity and Crime Insurance. Fidelity and Crime Insurance, which includes but is not limited to Burglary, Theft and Employee Dishonesty with a blanket limit of One Million Dollars (\$1,000,000), shall be provided. Such insurance shall also include coverage for money and securities, valuable papers. The City and OCPPA shall be named as loss payee.
6. Private Event Insurance. Insurance necessary to cover the liability the Foundation incurs when renting portions of the Civic Center for private events.

6.3.4 Certificates

The insurance coverage and limits required must be evidenced by properly executed certificates of insurance on the form furnished by The City or on forms approved by the Oklahoma Insurance Commissioner. Copies of these certificates must be provided to the General Manager prior to Commencement Date and must be updated each year. The certificate(s) must be signed by the authorized representative of the insurance company(s) shown in the certificate(s). The certificate must include the designation of "Civic Center Management Agreement".

6.3.5 Cancellation

There may be no termination, non-renewal, reduction in coverage, or modification of such insurance coverage without the prior written consent of the General Manager. The Foundation authorizes the City and OCPPA to confirm all information so furnished as to the Foundation's compliance with its bonds and insurance requirements with the Foundation's insurance agents, brokers, surety and insurance carriers. The lapse of any insurance policy or coverage required by this Agreement is a breach of this Agreement. Regardless of any termination clause included in this Agreement, the City and OCPPA may at its option suspend this Agreement until there is full compliance with this Section or may cancel or terminate this Agreement and seek damages for the breach. The remedies in this paragraph shall not be deemed to waive or release any remedy available to the City or OCPPA. The City and OCPPA expressly reserve the right to pursue and enforce any other cause or remedy in equity or at law.

In the event of a reduction in any aggregate limit, the Foundation shall immediately notify the City and OCPPA and shall make reasonable efforts to have the full amount of the limits appearing on the certificate reinstated. If at any time the City or OCPPA requests a written statement from the insurance company(s) as to any impairments to or reduction of the aggregate limit, the Foundation hereby agrees to promptly authorize and have delivered to the City and OCPPA such statement.

6.3.6 Duration of Coverage.

All insurance coverage required under this Agreement shall be maintained in full force and effect for the Term. The requirements of the insurance provisions listed in herein shall survive the completion, expiration, cancellation or termination of this Agreement.

6.3.7 Subcontractors

Foundation shall require its contractors and subcontractors to furnish certificates of general liability and property damage insurance naming Foundation, the City and OCPPA as additional named insureds for injuries to persons caused by contractor or subcontractor's activities with respect to the Civic Center. Such insurance shall be in amounts of no less than \$25,000 for property damage, \$175,000 for injury to any one person or \$2,000,000 aggregate bodily injuries arising from a single occurrence or the then-current limits of liability under the Oklahoma Governmental Claims Act, 51 O. S §§ 151 et seq.

6.4 Appropriation Requirements

All or a portion of the payments promised hereunder by OCPPA may be financed or funded by monies received from the City. Financing or funds received from the City will be subject to annual appropriation and encumbrances of revenues by the City Council of the City, as mandated by Okla. Const. Art. 10, § 26, and the Oklahoma Municipal Budget Act, 11 O.S. §§ 17-201, et seq. However, under no circumstances does or shall the City incur any financial obligation to Foundation under this Agreement. The City is a beneficiary of OCPPA, and OCPPA remains solely responsible for all financial obligations hereunder. In the event OCPPA is unable to obtain any funds from the City to fund this Agreement or in the event of reduced funding which may be deemed unacceptable by the Foundation in its sole discretion, and other OCPPA funds are not available, Foundation may terminate this Agreement.

6.5 Notices.

All notices and orders given pursuant to this Agreement shall be in writing, delivered or mailed by United States certified mail, return receipt requested, postage prepaid or emailed/faxed (with hard copy follow up by mail or delivery) and addressed as follows:

To City/OCPPA:
City Clerk
200 North Walker – 2nd floor
Oklahoma City, Oklahoma 73102

With Copy To:
Parks & Recreation Department
Attn: Business Manager
420 W. Main Street, Suite 210
Oklahoma City, OK 73102

To Foundation:

Executive Director, Civic Center Foundation
201 N. Walker
Oklahoma City, Oklahoma 73102

All notices shall be deemed given when received or rejected via certified mail or, when transmitted via email on the date thereof, provided that a hard copy follows within thirty (30) days thereafter. The address of any person or party may be changed by notice to the other party, given in the manner described above. All such notices and orders shall be deemed received when delivered or when deposited in the United States mail, postage prepaid.

6.6 Compliance with Laws, Ordinances, and Regulations.

The Parties shall comply with all existing federal, state and local laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto, pertaining in any manner to the work and/or services provided by this Agreement.

6.7 Assignment.

This Agreement and each of the rights, duties and obligations hereunder, including the right to receive compensation, may not be assigned, pledged, transferred, sublet or otherwise disposed of, in whole or in part, by Foundation without the prior written approval of the City and OCPPA.

The Foundation shall ensure that all contracts it enters into related to the Civic Center shall be assignable to or terminable by the City and/or OCPPA should the City/OCPPA elect.

6.8 Nondiscrimination.

In connection with the performance of work and/or services under this Agreement, Foundation agrees as follows:

- A. Foundation shall not discriminate against any employee or applicant for employment because of age, race, creed, color, sex, national origin, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). Foundation shall take affirmative action to ensure that employees or applicants for employment are treated without regard to their age, race, creed, color, national origin, sex, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination or cancellation, rates of pay or other forms of compensation and selection for training, including apprenticeship. Foundation shall agree to post, in a conspicuous place available to employees and applicants for employment, notices to be provided by the City Clerk of the City of Oklahoma City setting forth provisions of § 25-41 of the Oklahoma City Municipal Code, 1999.

- B. In the event of Foundation's noncompliance with this nondiscrimination clause, this Agreement may be suspended, canceled or terminated by the City and/or OCPPA. Foundation may be declared by the City and OCPPA ineligible for further contracts or agreements until compliance, and/or satisfactory proof of intent to comply shall be made by Foundation.
- C. Foundation agrees to include this nondiscrimination clause in any subcontracts connected with the performance of this Agreement.

6.9 Severability.

In the event that any provision, clause, portion or section of this Agreement is unenforceable or invalid for any reason, such unenforceability or invalidity may not affect the enforceability or validity of any other provision or the remainder of this Agreement.

6.10 Amendment.

This Agreement constitutes the amendment and restatement in the entirety of that certain Amended and Restated Civic Center Improvement and Support Agreement, dated June 2, 2015, as further amended and restated on September 12, 2017, and as further amended and restated on June 19, 2018. This Agreement may be further modified only by a written amendment approved by the City, OCPPA and Foundation.

6.11 Execution in Counterparts.

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

6.12 Descriptive Headings.

The descriptive headings of the sections of this Agreement are inserted or annexed for convenience of reference only and shall not affect the meaning, construction, interpretation or effect of this Agreement.

6.13 Parties Bound.

This Agreement shall be binding upon and inure to the benefit of all parties. This Agreement is solely for the benefit of the parties and their successors in interest, and none of the provisions hereof are intended to benefit third parties.

6.14 Contract Construction and Enforcement.

This Agreement shall be construed and enforced in accordance with the laws of the State of Oklahoma. In the event of ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party on the basis that such party did or did not author the same.

6.15 Venue of Actions.

The parties agree that if any legal action is brought pursuant to this Agreement, such action shall be instituted in the district court of Oklahoma County.

6.16 Exhibits.

The following exhibits are incorporated as part of this Agreement:

- Exhibit "A" – Capital Items List
- Exhibit "B" – Resident Companies List
- Exhibit "C" - Prohibited Areas/Items List
- Exhibit "D"- Anti-Collusion Affidavit

6.17 Conflict of Interest.

Foundation represents that to the best of its information and belief that no officer of the City or OCPPA is either directly or indirectly a party to or in any manner interested in this Agreement except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

6.18 Prohibition Against Collusion

The Foundation warrants it has not employed or retained any company or person other than a bona fide employee working solely for the Foundation to solicit or secure this Agreement, and the Foundation further warrants it has not paid nor agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Foundation, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. In addition the Foundation must execute the Anti-Collusion Affidavit attached as Exhibit D.

6.19 Entire Agreement

The provisions of this Agreement, and the Exhibits listed below and attached hereto, shall constitute the complete and exclusive statement of understanding between the Parties, which supersedes all previous agreements, written or oral, and all communications between the Parties relating to the subject matter of this Agreement except as specifically set out in this Agreement.

Exhibits attached hereto are incorporated by reference and form a part of this Agreement. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or contents between the body of this Agreement and the Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the body of this Agreement and then to the Exhibits.

[Signature Pages Follow]

APPROVED by Civic Center Foundation this 6th day of December, 2024.

Gregg Henson
Gregg Henson, President

Philip Busey Jr.
Philip Busey Jr., Secretary

State of Oklahoma)
) SS.
County of Oklahoma)

This instrument was acknowledged before me on the 6th day of December, 2024, by Gregg Henson, as President and Philip Busey Jr., as Secretary of the Civic Center Foundation.



Ben Hawneman
Notary Public
Commission No.: 12000059

My Commission expires: 1/4/2028

APPROVED by the Oklahoma City Public Property Authority and **SIGNED** by the Chairman this 31ST day of DECEMBER 2024.

Amy K. Simpson
Secretary



David Holt

APPROVED by the Mayor and Council of The City of Oklahoma City and **SIGNED** by the Mayor this 31ST day of DECEMBER 2024.

Amy K. Simpson
City Clerk



David Holt

REVIEWED for form and legality

Jill Burnett
Assistant Municipal Counselor

EXHIBIT A CAPITAL ITEMS LIST

1. The building façade including tuck pointing, windows and masonry
2. The building roof, including the drainage, decking, flashing, sheathing, trusses, and aggregate
3. The building entry doors on the North, East, and South
4. The building elevators including drives, ropes/cables, seals, controls, doors, guides and other ancillary parts/equipment.
5. The HVAC units, chilled water and steam systems, pumps, and controls
6. Back-up generator and associated wiring/infrastructure
7. The fire monitoring, notification and suppression system
8. Stage decking and structural support including shaper wall and orchestra pit and all associated equipment.
9. Main building electrical feeds, distribution, transformers and breakers.

EXHIBIT B
RESIDENT COMPANIES

1. Civic Center Foundation, in conjunction with JN Oklahoma, LLC, d/b/a OKC Broadway.
2. Canterbury Voices
3. Lyric Theatre of Oklahoma
4. Oklahoma City Ballet
5. Oklahoma City Philharmonic

EXHIBIT C

PROHIBITED AREAS/ITEMS LIST

1. The DAS in the basement of the Civic Center that provides radio coverage may not be modified, disturbed, or used. This includes but is not limited to the BDA (DAS equipment) mounted on the wall of a network closet in the basement, the antennas mounted in ceiling tiles in the basement hallways, and the coaxial cables connecting the antennas.
2. The external yagi antenna, on the SE Corner of the building pointed at Oklahoma Tower may not be modified, disturbed or used.
3. The network fiber bulk head (south side basement) must not be modified, disturbed, or used. Any new wiring to be installed by the Foundation must use the City infrastructure cabling specification and standards.

EXHIBIT D

NON-COLLUSION AFFIDAVIT

The undersigned, of lawful age, being duly sworn, upon oath, deposes and says: That the undersigned has the lawful authority to execute the within and foregoing proposal/bid for, and on behalf of, the Proposer/Bidder; that the Proposer/Bidder has not, directly or indirectly, entered into any agreement, express or implied, with any Proposer/Bidder, having for its object the controlling of the price or amount of such proposal/bid, the limiting of the proposals/bids or the Proposers/Bidders, the parceling or farming out to any Proposer/Bidder or other persons, of any part of the Agreement or any part of the subject matter of the proposal/bid, or of the profits thereof, and that Proposer/Bidder has not and will not divulge the sealed proposal/bid to any person whomsoever, except those having a partnership or other financial interest with the Proposer/Bidder in the said proposal/bid, until after the said sealed proposals/bids are opened.

The undersigned further states that the Proposer/Bidder has not been a party to any collusion: among Proposer/Bidders in restraint of freedom of competition, by any agreement to bid at a fixed price or to refrain from proposing; or with any City/Trust official, City/Trust employee or City/Trust agent as to the quantity, quality, or price in the prospective Agreement, or any other terms of the said prospective Agreement; or in any discussions between the Proposers/Bidders or City/Trust official, City/Trust employee or City/Trust agent concerning the exchange of money or other thing of value for special consideration in the letting of Agreement. The Proposer/Bidder states that it has not paid, given or donated or agreed to pay, give or donate to any City/Trust official, officer or employee of the City or awarding agency, any money or other thing of value, either directly or indirectly, in the procuring of the award of Agreement pursuant to this Proposal/Bid.

Witness the hands of the parties hereto:

The undersigned states that the Proposer/Bidder will be bound by its proposal/bid, the specification, the terms and conditions of the Agreement, and the Requirements for Proposer/Bidders.

⇒ ⇒ THIS FORM TO BE COMPLETED BY THE PROPOSER/BIDDER PRIOR TO AGREEMENT APPROVAL ← ←

Elizabeth W. Gray Chief Executive Officer
Type Name of Authorized Agent/Representative Title
Signature
Civic Center Foundation Inc.
Company Name
201 North Walker Avenue, OKC, OK 73102
Address Zip Code
405-594-8264
Telephone Number and Fax Number, if any

TO BE COMPLETED BY THE NOTARY:

State of * Oklahoma)

County of * Oklahoma)

[*State and County where notarized must be written in for bid/proposal to be considered.]

SS.



Signed and sworn to before me on this 16 day of December by Elizabeth Gray
[Day] [Month] [Year] [Print the name of the agent/representative who signed above.]

My Commission Number: 12000059
[Oklahoma]

Ben Hanneeman
Type Name of Notary Public

My Commission Expires: 1/04/28
[Date/Year]

Signature of Notary Public

[49 Okla. Stat. 2011 §119]

