

**OPERATION
AND
MANAGEMENT AGREEMENT
FOR
THE CALIFORNIA CENTER FOR THE ARTS**

This Operation and Management Agreement ("Agreement") is made this
15th day of October 2014 ("Date of Execution").

Between: CITY OF ESCONDIDO
A California Public Agency
201 North Broadway
Escondido, California 92025
("City")

And: CALIFORNIA CENTER FOR THE ARTS, ESCONDIDO
FOUNDATION
A California Nonprofit Public Benefit Corporation
340 North Escondido Boulevard
Escondido, California 92025
("CCAEF")

RECITALS

A. As a part of its redevelopment plan, City, acting through its Community Development Commission ("CDC"), designed and constructed an arts complex which opened in 1994 to provide a focal point in North San Diego County for the presentation of a variety of visual and performing arts events, to encourage other cultural activities, and to provide a venue for local events and presentations. The total complex, located at 340 North Escondido Boulevard, Escondido, California 92025, consists of theaters, educational facilities and studios, a museum, a conference center, administrative offices, exterior gardens, plazas, and grounds, and a central plant, which are collectively referred to in this Agreement as "the Center." A satellite image outlining the entire Center is attached as "Exhibit 1" and incorporated by reference. Specific facilities and

venues comprising the Center, which are included in this agreement, include the Museum and Educational Facilities and Studios, the Conference Center, and the Performing Arts Theaters.

B. On April 12, 1989, City acting through CDC caused California Center for the Arts, Escondido Foundation ("CCAEF") to be incorporated as a California nonprofit public benefit corporation. City obtained state and federal determinations that CCAEF qualified for exemption from income tax under Revenue and Taxation Code Section 23701(d) and Internal Revenue Code Section 501(c)(3). City contemplated that CCAEF would assemble volunteer and professional personnel with special expertise, interest and commitment to the arts, and to support the facilities and activities of the Center.

C. City desires that the Center, (depicted on Exhibit 1) be managed with special expertise, to lessen the burdens of City with respect to the Center, while affording proper accountability to the citizens of Escondido on a long-term basis. The City further contemplates primary use of such facilities through rental to outside groups or promoters.

D. In 2007, the City issued new tax-exempt obligations (the "Bonds") to refinance certain debt, the proceeds of which financed the Center. The City desires that all of the Center be operated to comply with the restrictions of Treasury Regulation § 1.141-3(b)(4)(iii)(D), applicable to the Bonds.

E. Any reference herein to prior approval by or notification of the City, whether written or otherwise, is defined as the prior written approval or notice of the City Manager, or designee.

NOW, THEREFORE, the parties agree as follows:

LICENSE AND OPERATION

1. City hereby grants to CCAEF the right to use and operate the Center, as identified in Exhibit 1, and CCAEF so agrees to operate such facilities, subject to the terms and conditions set forth in the following paragraphs.

2. CCAEF Representation of Nonprofit Good Standing. CCAEF warrants that it is a validly existing corporation in good standing with the State of California, and that it has provided the City with a copy of the resolution of the Board of Trustees of the corporation, authorizing the execution of this Agreement on behalf of CCAEF. CCAEF also warrants that it has, in conjunction with its execution of this Agreement, provided City with copies of its Articles of Incorporation, its Bylaws, and a list of names of the current members of its Board of Trustees, and any other officers of the corporation. CCAEF agrees that it will provide City with copies of any of the above documents which change in form or scope at any time during the term of this Agreement, and with any other documents which may be reasonably required by City.

3. Operation of the Facilities.

a. City engages CCAEF to use and operate the Center on behalf of the City. CCAEF accepts such appointment as an operator subject to the terms of this Agreement. To further the purposes of the City, CCAEF shall use the Center for rental to outside groups and promotional entities that rent the facility for their own events, for the display of artistic exhibitions and for educational activities, or for other appropriate uses. CCAEF shall also use the two theaters for presentation of performing arts (dance, music, theater, and so forth) by

outside groups and promotional entities that rent the facility and stage their own productions, and shall have the right to enter into contracts with such groups to fulfill this purpose. In the event CCAEF uses the two performing arts theaters for its own programming or productions, such use shall occur according to the same fee schedule used for outside groups and promotional entities. CCAEF shall not directly use the Conference Center for its own programming or productions, other than for incidental internal administrative purposes such as staff meetings, training and related activities that do not interfere with or detract from the primary purpose.

b. On behalf of the City, CCAEF shall have the exclusive right to rent and control events at the Center, distribute tickets, operate a ticket office, and charge admission for events at the Museum and Theaters. CCAEF shall also have the exclusive right to sell or to contract for the right to sell, beverages, food, confections, clothing, novelties, and publications within the Museum and Theaters as appropriate. On behalf of the City, CCAEF shall assemble, safeguard, preserve and conserve objects of art for display at the Museum. The City recognizes that a permanent art collection may be held in trust by CCAEF.

c. On behalf of the City, CCAEF may offer to lease space at the Center to other entities sharing CCAEF's vision or purpose. Such leases shall be subject to the City's prior approval and shall be executed by and between the City and the entity selected by CCAEF. Such leases between the City and the entity shall be subject to and in accordance with all the terms and conditions set forth in this agreement.

d. Tax-sharing and Other Agreements. Under a variety of tax-sharing and other agreements between the City and other agencies, the City reserves, and CCAEF agrees to honor the reservation of, a certain number of days for the parties to the agreements, pursuant to these agreements and shall cooperate with the Districts in the advance scheduling of tours, visits, or other similar use of the Center.

e. Reservation for City Use. CCAEF understands that the City needs the availability of the Center, on twenty-four (24) hours prior notice, if those facilities are not scheduled for other use by CCAEF (on behalf of the City). The City Manager or his designee shall be the City's designated agent to coordinate with CCAEF staff for City use of these facilities.

f. Political Activities. The Center shall not be utilized directly by CCAEF for the purpose of working or campaigning for the nomination or election to any public office, whether partisan or non-partisan. However, CCAEF may rent all or part of the facilities to persons or entities for political activities.

g. Self-imposed Restrictions. On behalf of the City, CCAEF may develop reasonable restrictions for the use of the facilities which are consistent with the rights of the general public, and which are designed to enable CCAEF to use the facilities for the purposes of this Agreement.

4. City Property. At all times during the term of this Agreement, the Center shall remain the absolute property of the City. No legal title or leasehold interest in the Center shall be deemed or construed to have been created or vested in CCAEF by anything contained in this Agreement. Because CCAEF is an operator organized for the

purpose of reducing the burden on government, the parties intend that CCAEF shall have no liability of any sort for payment of property taxes.

5. CCAEF Property. City agrees that all furniture, equipment, and other similar property of a personal nature which is acquired by CCAEF solely with its own resources, shall be and remain the property of CCAEF. All fixtures, i.e. items which are attached to, affixed or otherwise become part of the Center shall be property of the City.

6. Center Naming Rights. CCAEF shall have the right to name or change the name of the Center, subject to the prior written approval of the City.

7. Improvements and Alterations. CCAEF agrees to care for all alterations, additions and improvements made by the City to the Center. CCAEF agrees not to alter any existing improvements, except in accordance with plans and specifications previously submitted and approved in writing by City's designated representative. Where applicable, City shall provide CCAEF with instructions for use of equipment, and train CCAEF personnel with respect to the care of any equipment installed by City. Interior decoration and alterations for the accommodation of the ongoing operation of the Center shall be the responsibility of CCAEF and shall be subject to the reasonable prior approval of the City. Any costs of said decoration and alterations shall be borne by City, but only where the City shall have first approved of such decorations and alterations. CCAEF may request additional funding from the City for capital improvements to the Center. The costs of additional capital improvements shall be borne by the City, but only where the City shall have first approved of such capital improvements and the additional funding.

8. Waste, Damage or Destruction of Center. CCAEF shall take all reasonable measures to assure that any tenants, users, or licensees of the Center

avoid any form of waste, damage, destruction of the facilities, or make any permanent alterations of the facilities without the City's prior written consent. Such measures shall include use of written agreements, provision of insurance, and if necessary, on-site monitoring of performances, conferences, events, and other uses of the Center. In the event of any waste, damage or destruction, CCAEF shall give prompt notice to the City of any damage to the facilities within five (5) days of such damage occurring. CCAEF shall not itself commit or allow any waste or damage to the Center, or permit or any public or private nuisance. CCAEF shall keep the Center clean and clear of refuse and obstructions, and shall assure that either itself or all licensees or users dispose of all garbage, trash, and rubbish and return the Center to the condition prior to use, in a manner satisfactory to City.

9. Maintenance and Repair. On behalf of the City, CCAEF agrees to maintain and repair the facilities. CCAEF may notify the City of any repair or maintenance issues or problems which it wishes City to undertake to repair or address within fifteen (15) days, and all expenses for repairs and maintenance are the responsibility of the City and those which City determines to undertake shall be paid for by the City. For purposes of carrying out day-to-day responsibilities in implementing this paragraph, CCAEF staff and City shall regularly meet and discuss those items of maintenance and repair that both parties expect CCAEF shall undertake as well as those items of maintenance and repair which the City shall undertake.

10. Obligation of Diligent Use. CCAEF covenants to diligently perform all of its obligations under this Agreement, and to use the Center solely for the purposes described in this Agreement.

11. Presentations. CCAEF shall produce, present, or provide a wide variety of performing arts and visual presentations, and Museum and Education Facilities for a wide variety of presentations, through its own efforts or in cooperation or by agreement with performing artists, other performing arts organizations, or commercial promoters, to the end that the Center will be in operation for the benefit of the public as continuously as is reasonably feasible. CCAEF may produce, present or provide performing arts and visual presentations, subject to the requirement that the productions and presentations provide no financial risk to the City and full funding is secured before producing, presenting or providing the production(s) and/or presentation(s). Revenue received from CCAEF productions that exceeds expenses shall be retained by CCAEF and used for additional programming at the Center.

Each year, the CCAEF Charitable Trust makes distributions exclusively to CCAEF, as required by law. In the event CCAEF chooses to fund a production or presentation solely with resources derived from the CCAEF Charitable Trust, CCAEF may deposit the revenues that exceed expenditures from the trust-funded presentation into the CCAEF Charitable Trust.

12. Special Events. CCAEF may request additional funding from the City for special events at the Center. The additional costs of such special events shall be borne by the City, but only where the City shall have first approved of such special event and the additional funding.

13. Production Assistance. During those periods when CCAEF is not fully utilizing the Center for presentation, production, rehearsal, exhibitions or programs, it shall be the prerogative of CCAEF to assist other non-profit or community performing artists or groups producing cultural events. Such assistance may include promotional,

production and technical assistance as is appropriate to the particular performing artist or group utilizing the Center. CCAEF shall charge fees for production management, labor, lighting design, sound engineering, production design, or other such production or support activities which it provides to performing artists and other organizations.

14. Renting of Museum and Education Facility. On behalf of the City, CCAEF shall rent the Museum and Education Facility, or any part of it, to corporations, organizations, individuals, or others who may use the Museum and Education Facility for its intended purposes, consistent with policies adopted by CCAEF (on behalf of the City). CCAEF may charge fees for such use and for any labor, services, equipment or other items used, provided that income derived from such sources is owned by the City pursuant to Section 28, but may be utilized to help offset the Museum and Education Facility's expenses, subject to the City's prior written approval. Any such renting of the Museum and Education Facility shall be subject to the terms of this Agreement.

15. Renting of Performing Arts Theaters. On behalf of the City, CCAEF shall rent the Performing Arts Theaters, or any part of them, to corporations, organizations, individuals, or others who may use the theaters for their intended purposes, consistent with policies adopted by CCAEF (on behalf of the City). CCAEF shall charge fees which shall at least be sufficient to offset the cost of any labor, services, equipment, utilities, or other items used, including a reasonable marketplace rent for such uses. Income derived from such sources is owned by the City pursuant to Section 28, but may be utilized to help offset overall Center expenses, subject to the City's prior written approval. Any such renting of the Theaters shall be subject to the terms of this Agreement. The City may provide discounts on rent to CCAEF for those productions underwritten and presented by CCAEF on a case by case basis.

The City may also request discounts for other rental activities. In such cases, unrealized revenues will be recorded and acknowledged as the action of the City.

16. Renting of Conference Center. On behalf of the City, CCAEF shall rent the Conference Center, or any part of it, to corporations, organizations, individuals, or others who may use the Conference Center for their intended purposes, consistent with policies adopted by CCAEF. CCAEF shall charge fees for such use and for any labor, services, equipment or other items used, provided that income derived from such sources is owned by the City pursuant to Section 28 but may be utilized to help offset the Conference Center expenses, subject to the City's prior written approval. Any such renting of the Conference Center shall be subject to the terms of this Agreement.

17. Catering. CCAEF shall be permitted to use, hire or retain any catering company or caterer it reasonably chooses, consistent with the terms of this Agreement.

18. Entry and Inspection. City reserves the right to enter the Center for the purpose of viewing and ascertaining its condition, or to protect City's interests in the facilities, or to inspect the operations conducted thereon, after reasonable prior notice to CCAEF. In secure areas (as designated from time-to-time by CCAEF), City's representatives must be accompanied by CCAEF security personnel at all times.

19. Facility Schedule.

a. Each year, CCAEF shall submit to City, for its review and approval, a projected Schedule ("Schedule") which will indicate the various anticipated renting or uses of the Center, including the Conference Center, each theater, and the Museums and Educational Facilities throughout a reasonable future period. The Schedule shall be substantially accurate, and City shall have the opportunity to review and approve the Schedule solely for the purpose of assuring that the

community has appropriate and reasonable access to the facilities, to presentations, and visual arts presentations and that the various parts of the Center are being utilized effectively throughout the year. It shall be the objective of the CCAEF to present at least 2 exhibition rotations in the Museums and Educational Facilities each year. Any substantial modifications shall be subject to the reasonable approval of the City.

b. Although the City shall have the authority to approve of the Schedule, CCAEF shall have control over leasing details such as artist or group approval, performance schedule and length, and other artistic or promotional matters, including but not limited to artist and performance selection, exhibition theme and schedule, presentation and production specifics, and artistic content.

20. Price and Fee Schedule. CCAEF shall make available to City upon request of the City Manager or his designee a schedule of prices or fees for all items or facilities sold or rented at the Center; City shall have the right to approve or disapprove of such schedule.

21. Financial Reports.

a. Periodic Reports. Upon request by the City and with reasonable time to prepare, representatives of CCAEF shall present to the City Council a periodic verbal report of its activities and current plans for use of the Center and make CCAEF officials available for questions at a public meeting. Said periodic report is intended to provide an opportunity for both City and CCAEF to communicate directly their concerns and expectations with respect to the operations of the facilities, and to provide for public information and comments.

b. Annual Report. On or before the filing deadline for its Federal Tax Return for each of CCAEF's fiscal years, CCAEF shall submit to City its financial statement audited by an independent certified public accountant, who shall be jointly agreed upon by City and CCAEF. Such audited financial statement shall include an audited supplemental statement that segregates operations of the Theaters, Conference Center, Museum and Education Facilities, and other overall CCAEF operations. The segregated operations to appear in the supplement shall each include all revenues and expenses with respect to the operation of the Theaters, Conference Center, Museum and Education Facilities including the following: 1) Revenues -- for single ticket sales, subscription sales, concessions, rental income, and facility charges; and 2) Expenses -- for utilities, repair and maintenance of premises, and repair and maintenance of equipment.

c. Regular Financial Reports. CCAEF shall submit to City such regular financial reports and status reports on operations which CCAEF, in the normal course of its operations, prepares for its Board of Trustees. Said reports shall adequately describe CCAEF's financial and operational status. Such reports shall include information sufficient to comply with Section 28.

City shall have the right to review and approve (which approval shall not be unreasonably withheld) CCAEF's proposed annual operating budget in a form agreed to by both parties for the next fiscal year and to request such changes as it believes are necessary.

d. Board and Committee Meetings. CCAEF shall notify the City Manager in advance of all meetings of its Board of Trustees, whether regular or special. The City Manager or his designee shall have the right to attend any of

such meetings at their discretion. The City Manager or his designee shall serve as a member ex-officio of the CCAEF Finance Committee.

e. Information Reporting. On an ongoing basis and upon request of the City, CCAEF shall provide such other reports or information reasonably necessary for the City to review the operations of the Center and the manner in which City funds are being utilized. Such reports shall be provided in either written or oral format. The requests shall be provided, and responded to as promptly as reasonably possible depending on the information requested, and all information shall be provided and used consistent with Section 21.f.

f. Confidentiality. Whenever CCAEF provides the City with information which is exempt from public disclosure under the California Public Records Act, Government Code Section 6250 et seq., City shall cooperate with CCAEF in a good faith effort to maintain the confidentiality of such documents, to the extent allowed by law.

22. Selection, Evaluation and Work of CCAEF's Executive Director. City and CCAEF recognize that the primary employee of CCAEF responsible for implementing this Agreement on behalf of CCAEF is the CCAEF Executive Director and therefore, CCAEF agrees to permit City to participate in the process of selecting and evaluating the Executive Director, and providing final approval of any individual selected for this position. If City does not approve the appointment of the prospective Executive Director, CCAEF shall make an alternative recommendation. CCAEF also agrees that City shall provide direction to this individual, through the City Manager, on operational and financial issues, procedures for submission and approval of expenditures related to this

Agreement as well as development of contracts, schedules, fees, and other items necessary to implement the purposes of Section 3.

23. Conference Center Sale or Lease for Hotel.

In the event the Conference Center is sold or leased for a hotel, the City may take any and all steps it deems reasonably necessary to facilitate the sale or lease, including, but not limited to, the quick turnover of the Conference Center and the area known as the Great Lawn (as shown on Exhibit 1) to the Hotel. Further, Paragraph 30, Subsection (d), of this Agreement shall not apply, such that the City may immediately terminate any and all terms of this Agreement related to the Conference Center, the Great Lawn or any other terms of this Agreement as reasonably necessary to facilitate the terms of the sale or lease.

In the event that the Conference Center is sold or leased by City for development as a hotel, CCAEF and the City shall meet and discuss impacts of the sale. The City acknowledges that the Conference Center is an integral element of the Center's overall operations. The City acknowledges that from time to time the Conference Center utilizes the Great Lawn (shown on Exhibit 1). The City further acknowledges that integration of operations between the Center and Hotel would be critical to the success of both entities. Therefore, in the event the Conference Center is sold or leased for a hotel, the City agrees to work with CCAEF in good faith to develop an operating agreement between CCAEF and the hotel which would address topics including financial, employee and marketing impacts on CCAEF.

24. Compliance with Law. CCAEF agrees to comply and secure compliance with all the requirements of all municipal, county, state, and federal laws pertaining to the Center and its operations. The judgment of any court of competent jurisdiction that

CCAEF has violated any law, or CCAEF's admission that it has done so, shall be conclusive of that fact as between City and CCAEF.

Notwithstanding the foregoing, CCAEF shall not be in breach of this Agreement and City shall have no right to terminate this Agreement in the event of a minor violation of a requirement or statute if CCAEF promptly complies with the requirement or statute upon learning of such violation.

CCAEF will not knowingly take any action that would in the judgment of the City's bond counsel, adversely affect the exclusion from gross income of interest on bonds financing the Center complex for federal income tax purposes, and will cooperate with respect to any changes in the operation of the Center complex necessary to preserve the tax-exemption with respect to such bonds.

25. Nondiscrimination. CCAEF agrees that it shall not discriminate in any manner against any person or persons on account of age, race, marital status, gender, religious creed, color, ancestry, national origin, physical handicap or medical condition in CCAEF's use of the Center.

26. Provision of Insurance.

a. It is the objective of CCAEF and City to cooperate and manage risks associated with the entire Center in the most efficient and fiscally prudent manner. The parties each desire to purchase such insurance and cooperate in the management of risk and claims to properly address the risks associated with the ownership and operation of the entire Center. To that extent, the parties agree as follows:

b. Annual Review. The City and CCAEF will meet annually to confer about insurance needs and agree on purchase of such insurance, either

comprehensive general liability or an umbrella policy to cover the interests of both parties. The City and CCAEF shall agree on the manner in which premiums are apportioned among them depending upon the nature and cost of the insurance. To the extent possible, insurance coverage shall be obtained in accordance with the management and operation related liabilities which are generally the responsibility of CCAEF, and in accordance with the City's ownership of the facilities.

c. Defense of Claims. CCAEF shall immediately investigate and prepare necessary documentation of all incidents occurring at the Center which may give rise to liability of either CCAEF or the City, and shall promptly report such incidents to the City.

To the extent claims arising out of incidents occurring at the Center are filed against City pursuant to the California Government Tort Claims Act (Government Code Section 810 et seq.), the City through its legal representatives shall process and defend such claims.

d. Workers' Compensation Insurance. CCAEF shall at all times maintain and demonstrate proof of Workers' compensation and employer's liability insurance as required by the California Labor Code, as amended.

27. Risk Management and Indemnification.

a. CCAEF shall engage in risk management activity to the greatest extent possible, to minimize the possibility of incurring liability. Such activities shall include, but not be limited to cooperating with the City's legal representatives to assure that both City and CCAEF are indemnified and held

harmless to the maximum extent possible in any agreements with third parties, and adjusting operations to avoid exposure to liability.

b. Mutual Indemnification. CCAEF shall indemnify, defend and hold harmless the City and its officers, employees and agents, from all liability or claim of liability arising by reason of injury or damage to property and/or persons, including death, occurring as a result of CCAEF's obligations under this Agreement, including any damage or liability arising out of the actions or negligence of CCAEF's agents or employees, or arising out of any condition of CCAEF property, or the conduct of CCAEF's operations, with or without regard to the performance of this Agreement.

c. City shall indemnify, defend, and hold harmless CCAEF and its officers, trustees, employees and agents, from all liability or claim of liability arising by reason of injury or damage to property and/or persons, including death, occurring as a result of City's obligations under this Agreement, including any damage or liability arising out of the actions or negligence of City's agents or employees, or arising out of any condition of City property.

28. City Payment.

a. Notwithstanding any other provision of this Agreement, the Center assets, and revenues derived therefrom, are owned by the City. Such revenues include, but are not limited to, revenues generated from ticketed events, concessions, leasing, and routine fundraising for which Center assets (and not CCAEF assets) are utilized to obtain funds. CCAEF shall use such revenues to pay the expenses of operating the Center in accordance with this Agreement such that there are no amounts retained by CCAEF with respect to the operation

of the Center under this Agreement that exceed expenses paid by CCAEF in operating the Center under this Agreement. In accordance with Section 11, revenues that exceed expenses from productions or presentations which are funded solely by the CCAEF Charitable Trust may be deposited into and retained by the CCAEF Charitable Trust.

For purposes of this paragraph, "expenses" shall include employee salaries and benefits and all other expenses of operating/programming the Center. CCAEF agrees that on an annual basis it will provide a report to the City detailing all such revenues and expenses of the Center. CCAEF agrees to annually remit to the City (or as to non-cash items of revenue, transmit to the City evidence of City's ownership thereof in form and substance reasonably satisfactory to City) any revenues received in excess of CCAEF expenses in operating the Center under this Agreement. CCAEF shall have the right to conduct special fundraising and seek to thereby obtain revenues over and above revenues derived from the operation of the Center for the purpose of creating and maintaining endowment funds, which shall be and remain the property of CCAEF.

b. In addition to the other support provided by the City to CCAEF, for the routine maintenance and upkeep of the Center as described in this Agreement and for the protection of the City's assets and interests by CCAEF, the City will make annual payments agreed upon by both parties for the term of this Agreement. Such payment to CCAEF for the fiscal year beginning July 1, 2014 shall be \$700,970. Contingent upon the availability of funds, as determined by the City, such payment in each subsequent fiscal year during the term of this

Agreement shall be adjusted by the change in the Consumer Price Index for all Urban Consumers, San Diego Metropolitan Area, published semi-annually by the Bureau of Labor Statistics. All amounts called for in this paragraph shall be contingent upon the availability of funds, as determined by the City, in the City's annual budget and shall occur as part of the City's normal budget process each fiscal year.

29. Coordination of Activities. CCAEF shall coordinate all activities that occur on the Center, whether or not engaged directly by CCAEF, and regardless which facility is being used, in a manner that the Center is maximized. If licensees or users, other than CCAEF, are engaged by the City to operate the Performing Arts Centers and/or the Conference Center, CCAEF shall take responsibility for coordinating use of the facilities between and among such licensees and users.

In order to avoid conflicts, CCAEF will notify the City and the City will notify CCAEF within a reasonable time after the scheduling of events in and improvements to Grape Day Park or the Great Lawn. City will consult with CCAEF and CCAEF will consult with the City in the planning of improvements or additions to park facilities.

30. Term of Operation and Management Agreement.

a. The Operation and Management Agreement shall commence upon the date executed by the City and CCAEF, and shall expire five (5) years from the date of execution.

b. Renewal Option. CCAEF is granted the option to extend the term of this Agreement upon and subject to all of the provisions contained herein for one (1) consecutive five (5) year period following expiration of the initial term. The

Renewal Option may be exercised only by CCAEF giving notice of the Renewal Option to City at least one (1) month before expiration of the term then in effect.

c. Holding Over. At the expiration of the term of this Agreement in the event the City permits CCAEF to continue to operate the Center, all other terms and conditions of this Agreement shall continue in full force and effect, on a month to month basis.

d. Termination. This Agreement may be terminated at any time for cause, provided written notice is provided to the other party. Either party may, at any time during the term of this Agreement, terminate this Agreement for any reason (i.e. without cause) by tendering six (6) months advance written notice to the other party. City may terminate this Agreement and/or withhold fees due to CCAEF under the terms of this Agreement without notice in the event of CCAEF being declared insolvent by a court of competent jurisdiction.

e. Any termination of this Agreement shall not have any effect on bona fide contracts, entered into in good faith by CCAEF and City shall make reasonable efforts to accept such contracts. CCAEF shall cooperate to diligently and promptly assign such agreements to the City.

GENERAL PROVISIONS

31. No Right to Assign or Transfer. As the City has relied on the particular expertise of CCAEF in entering into this Agreement, CCAEF shall not assign, delegate, or transfer any duty or right under this Agreement, except as specifically authorized, and any such purported assignment, delegation, or subletting shall be void, unless the City has approved such action in writing in advance.

32. Amendment of Agreement. All additions or changes to this Agreement shall be made in writing, and shall be executed by both parties.

33. Provisions Cumulative. The foregoing provisions are cumulative and in addition to and not in limitation of any other rights or remedies available to the City.

34. Merger Clause. This Agreement and its Exhibits, if any, are the entire understanding of the parties, and there are no other terms or conditions, written or oral, controlling this matter. In the event of any conflict between the provisions of this Agreement and its Exhibits, if any, the provisions of this Agreement shall prevail.

35. Anti-Waiver Clause. None of the provisions contained herein shall be waived because of previous failure to insist upon strict performance, nor shall any provision be waived because any other provision has been waived, in whole or in part.

36. Severability. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provisions of this Agreement.

37. Costs and Attorney's Fees. In the event that either party should bring suit against the other party to enforce any provisions of this Agreement, the prevailing party in such litigation shall pay the other party's costs and reasonable attorneys' fees incurred pursuant to said litigation.

38. Force Majeure. The time within which the parties hereto shall be required to perform any act under this Agreement, other than the payment of money, shall be extended by a period of time equal to the number of days during which performance of such act is delayed due to an act of God, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, or any other similar cause beyond the control of either of the parties.

39. Choice of Law. This Agreement shall be governed by the laws of the State of California. Venue for any action arising from this Agreement, including but not limited to matters concerning validity, construction, performance or enforcement shall be exclusively in the state located in north San Diego County, California or federal courts located in San Diego County.

40. Notice to Parties. Any statements, communications or notices to be provided pursuant to this Agreement shall be sent to the attention of the persons indicated below, until such time as notice of any changes of person to be notified or change of address is forwarded to both parties:

CCAEOF:

California Center for the Arts, Escondido
Foundation
340 North Escondido Boulevard
Escondido, CA 92025

Attn: _____

Phone: _____

CITY:

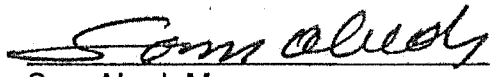
City of Escondido
201 N. Broadway
Escondido, CA 92025
Attn: Clay Phillips
760-839-4577

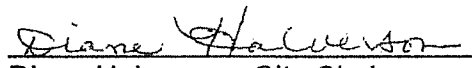
41. Business License. CCAEF shall be required to maintain a City of Escondido Business License during the term of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed on behalf of the CITY by its Officer thereunto authorized and by CCAEF, the date and year first above written.

CITY OF ESCONDIDO
a Municipal Corporation
201 North Broadway
Escondido, CA 92025-2798

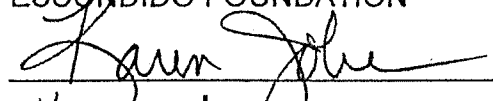
Date: 10-15-14


Sam Abed, Mayor


Diane Halverson, City Clerk

CALIFORNIA CENTER FOR THE ARTS,
ESCONDIDO FOUNDATION

Date: 10/8/14


Karen Jobe, Chair
Board of Trustees

(The above signatures should be notarized)

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
Jeffrey R. Epp, City Attorney

By: 

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San DiegoOn Oct. 8, 2014

Date

before me, Barbara Fischer

Here Insert Name and Title of the Officer

personally appeared Karen Jobe

Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Barbara Fischer

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached DocumentTitle or Type of Document: Operation Management AgreementDocument Date: Oct 8, 2014Number of Pages: 24Signer(s) Other Than Named Above: None**Capacity(ies) Claimed by Signer(s)**Signer's Name: Karen Jobe☐ Individual☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Attorney in Fact☐ Trustee☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer's Name: _____

☐ Individual☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Attorney in Fact☐ Trustee☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Exhibit 1

