

REEDLEY OPERA HOUSE USE AGREEMENT

This Reedley Opera House Use Agreement "Agreement" is entered into and between the City of Reedley "City", and River City Theatre Company, a California non-profit corporation "RCTC", as follows:

Recitals

1. The City owns and operates the Historic Reedley Opera House "Opera House" as a historic and cultural resource in the City of Reedley. The City desires to enter into this Agreement with RCTC to further enhance the use of the Opera House by augmenting its use for theatrical and other revenue-generating productions, while at the same time continuing its use for other private functions with theatre being its primary focus.
2. RCTC, a non-profit organization, is experienced in creating and managing theatrical productions and is presently using the venue provided by the Opera House for such productions, subject to the terms of this Agreement.

Now, therefore, in consideration of the recitals and the covenant and conditions and obligations of the parties described herein, the parties agree as follows:

A. OBLIGATIONS OF THE CITY

1. The City will make full use of the Opera House building available to RCTC.
2. The City will retain full ownership of the Opera House. City's responsibility to maintain and make repairs to the facility shall be subject to available annual appropriations approved by the City Council except to the extent such repairs may be caused by the misconduct, negligent actions or omissions of RCTC or RCTC's invitees.
4. The Community Services Department will work closely with the Community Services Commission to select Reedley based organizations who serve low income and/ or disadvantaged groups to attend a dress rehearsal of each upcoming play. Maximum of 85 guests. This invitation will be available for all RCTC Productions.

B. OBLIGATIONS OF RCTC

1. RCTC Board of Directors, or designated representative, shall be the Opera House Coordinator and shall report to and account for its management duties as provided in this Agreement, to the Community Services Director, or the designated City Representative. Those duties include:
 - a) Schedule all theatrical and non-theatrical events at the Opera House; and
 - b) Market the Theatre Company in conjunction with the Opera House to tourist, visitor and tour groups; and
 - c) Perform routine and general upkeep and maintenance of the Opera House.
 - d) Oversee the setup and take-down for all theatrical and non-theatrical events (excluding the 10-annual city-sponsored events). Actual setup and

- cleanup is the responsibility of the parties having the event, including the City events; and
- e) The designated representative of RCTC will be responsible for opening and closing the facility for all city-sponsored events; and
 - f) The designated representative of RCTC will provide lighting and sound equipment and assistance in operating this equipment when available for use at the 10 city-sponsored events; and
 - g) Maintain regular contact with the Community Services Director, or the designated City Representative, with respect to all of the foregoing matters.
2. RCTC shall retain full responsibility for all costs and expenses associated with theatrical and production projects carried out under this Agreement. RCTC shall provide all necessary financing for said productions out of the revenues generated thereby and will be personally responsible to repay all debts incurred in connection therewith. As part of RCTC's obligations, RCTC shall secure and provide, at no cost to the other parties hereto, a policy of liability insurance and workers compensation insurance, which satisfies the insurance requirements shown on Section K. The City will be named as an additional insured as part of the liability policy.
 3. RCTC shall be responsible for the cost of toiletry (toilet paper and paper towels) and cleaning supplies necessary for the building.
 4. RCTC shall be responsible for the cost of City services which include disposal, water and sewer fees associated to the Opera House and RCTC use of these services.
 5. Subject to the direction of the Community Services Director, or the designated City Representative, RCTC shall have full responsibility for the scheduling of the Opera House for the events not covered by this Agreement and will serve as the scheduling coordinator for all events in the Opera House, including the theatrical productions.
 6. In scheduling each of the scheduled and proposed theatrical events, RCTC will cooperate with the Community Services Director, or the designated City Representative, to ensure that there is optimal use of the Opera House. The City shall have the full right to use all areas of the Opera House for the 10 city-sponsored events on those days/nights not scheduled for rehearsals or productions and events described in Section B number 5 carried out under the supervision of RCTC with the understanding that theatrical sets and props for the current production will not be disturbed.
 7. RCTC shall not make physical changes to the Opera House except after written approval given by the Community Services Director, or the designated City Representative. In particular, none of the historic features of the Opera House shall be altered in any way without the prior written approval of the City. Fixtures and equipment purchases, including additions to the Opera House, may be made by RCTC following City approval, and if permanently affixed to the building, shall become the property of the City.

8. RCTC will also be solely responsible for all of the following functions: to produce and direct five (5) theatrical productions per year; to write material as needed for any original presentation at the Opera House (said material to remain the property of author) to maintain a non-profit organization to accept donations for theatrical productions; to develop additional entertainment in addition to theatrical productions to provide and to assist in providing service to customers in the lobby before and during intermissions for productions at the Opera House.
9. RCTC will work closely with the Community Services Department to create guidelines to assist with the selection process of the Reedley based organizations to attend a dress rehearsal of the upcoming play. RCTC will host the selected guest for the dress rehearsal and become the point person for the selected group as related to the dress rehearsal the group attends in the Opera House.
10. RCTC is responsible for providing quarterly reports to include financials to the City of Reedley of the activities offered or supported by the RCTC to ensure the integrity of the organization. These reports are due October, January, April and July by the 15th of each month.
11. All expenditures must be submitted and approved by the Community Services Director, or the designated City Representative. The City will reimburse for all approved expenditures.
12. Dishes, pots and pans, and all other items that belong to the Opera House must be washed and put back in their original location.
13. Caterer and wait staff, whether employed by the caterer or by RCTC, must be covered and listed in RCTC's insurance policy.
14. Caterer must follow all rules and regulations established by Fresno County Health Department.
15. All concerns and comments from the City will be directed to RCTC in regards to the caterer and the condition of the kitchen.
16. Statements B, numbers 12, 13, 14 and 15 are not applicable to RCTC when the Opera House kitchen is used by outside entities contracted by the City.
17. RCTC has the option to host nontheatrical events in the building to help offset the cost to operate. Event holders for nontheatrical events must provide proof of liability insurance listing the City of Reedley as additional insured per the City standard.
18. RCTC will be responsible for utilities cost that exceed \$13,000 for electrical and \$1,400 for natural gas costs. Any overage will be billed to RCTC at the end of the fiscal year and due within 30 days of the invoice date.

C. TERM OF THE AGREEMENT

This Agreement shall begin on November 1, 2019 and expire on October 31, 2024. This agreement may be extended for an additional 5 years with a mutually agreement from both parties. The parties may mutually agree to modify the terms and conditions of this Agreement at any time during the initial term or extended terms of this Agreement with a 30-day written notice to all other parties.

D. RENT

RCTC agrees to pay the City of Reedley \$1,000 per month as rent due and payable by the 5th day of each month beginning November 1, 2019 and \$1050 per month beginning November 1, 2020 through October 31, 2024. River City Theatre may sublet a portion of the facilities for temporary periods not to exceed the extent of this contract after City approval of the tenant. An agreed upon percentage of rental income from the sublet arrangement not to exceed 20% of monthly gross rents will be provided to the City for this privilege. Any sub lessee must agree to the indemnification provisions and provide proof of meeting the insurance requirements in Section J and K of this Agreement, respectively. All arrangements with sub lessees shall be approved by the City Manager and authorized in an MOU between the City, RCTC and the sub lessee.

E. TERMINATION

1. Any party may terminate this Agreement for cause at any time on 30 days written notice to all other parties. In terminating the Agreement "for cause", the party exercising its rights under provision shall provide detailed, written notice of those events, facts, or actions of the other parties which violated the terms of this Agreement and which constitute "cause" for termination.
2. If RCTC becomes unavailable to perform its duties hereunder, the City may terminate this agreement immediately.
3. Upon receipt of notice of termination, neither party shall incur additional obligations under the provisions of this Agreement without the prior written consent of the other.

F. ASSIGNABILITY

The parties agree that they shall not assign or transfer interest in this Agreement, nor the performance of any of their respective obligations hereunder, without the prior written consent of the other party, and any attempt to assign this Agreement or any rights, duties, or obligations arising hereunder shall be void and of no effect.

G. NONDISCRIMINATION

RCTC shall not discriminate, in any way, against any person on the basis of age, sex, sexual orientation, race, color, religion, ancestry, national origin, or disability in connection with or related to the performance of his duties and obligations under this Agreement.

H. COMPLIANCE WITH ALL LAWS

RCTC shall observe and comply with all applicable federal, state and local laws, ordinances, codes and regulations, in the performance of its duties and obligations under this Agreement. RCTC shall perform all services under this Agreement in accordance with these laws, ordinances, codes and regulations. RCTC shall release, defend, indemnify and hold harmless CITY, their officers, officials, employees, and volunteers from any and all damages, liabilities, penalties, fines and all other consequences from non-compliance or violation of any laws, ordinances, codes or regulations, except as to those laws, ordinances, codes or regulations the City is required to comply with in carrying out its duties as owner and landlord of the Opera House.

I. NO THIRD-PARTY BENEFICIARIES

The parties hereto do not intend, by any provision of this Agreement, to create in any third party, any benefit or right owned by one party, under the terms and conditions of this Agreement, to the other party.

J. INDEMNIFICATION

Except for the sole negligence of City, RCTC shall defend, indemnify and keep and hold City, including City's officers, employees, agents, their successors and assigns, harmless from any and all costs, liability, damage, or expense (including costs of suit and fees and expenses of legal services) claimed by anyone by reason of injury to or death of persons, or damage to or destruction of property, including property of RCTC, sustained in, on, or about the demised premises or arising out of RCTC's use or occupancy thereof, as a proximate result of the acts or omissions of RCTC, its employees and agents, or its contractors, licensees, invites or subtenants, their successors and assigns or arising out of the condition of the property. City shall, by appropriate, written notice to RCTC, advise RCTC as soon as practicable regarding any potential liability of RCTC under this Section.

K. INSURANCE REQUIREMENTS

RCTC shall obtain, provide, and continuously maintain at its own expense during the term of this Agreement, and shall require any consultants or contractors to obtain and maintain, policies of insurance of the type and amounts described below and in a form satisfactory to the City.

Commercial General Liability (CGL): RCTC shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, or equivalent, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. General liability policies shall provide or be endorsed using Insurance Services Office forms CG 20 10 to provide that the City and its officers, officials, employees, and agents shall be additional insureds under such policies.

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

If the RCTC maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained.

Proof of Insurance. RCTC shall provide to City, certificates of insurance and endorsements, as required, as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by the City, prior to commencement of performance. Current evidence of insurance shall be kept on file with the City at all times during the term of this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Other Insurance Provisions:

The policies are to contain, or be endorsed to contain, the following provisions:

- For General Liability, the City, its officers, officials, employees, and volunteers are to be **covered as additional insureds** with respect to liability arising out of ownership, maintenance, or use of that part of the premises leased to the RCTC.
- The RCTC insurance coverage shall be **primary insurance** as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the RCTC's insurance and shall not contribute with it.
- Each insurance policy required above shall contain, or be endorsed to contain, a waiver of all **rights of subrogation** against the City. This provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
- Each insurance policy shall be endorsed to state that coverage shall not be canceled except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the City.

Acceptability of Insurers

All insurance policies required by this Agreement shall be placed with insurers admitted in the State of California and with an AM Best rating of A- VII or higher.

Specifications not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

Special Risks or Circumstances. The City reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

L. **NOTICES**

All notices and other communication required or permitted to be given under this Agreement, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the

date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Service. Notice shall be given as follows:

CITY: City Manager
City of Reedley
1717 9th Street
Reedley, CA 93654

RCTC: River City Theatre Company
Board of Directors
1720 10th Street
Reedley, CA 93654

M. ENTIRE AGREEMENT - AMENDMENTS

1. The terms and conditions of this Agreement represent the entire Agreement of the parties with respect to the subject matter of the Agreement.
2. The terms and conditions under the current agreement dated will be in effect until October 31, 2024. At that time this written Agreement shall supersede all prior agreements, oral or written, regarding the subject matter between the parties.
3. No other agreement, promise or statement, written or oral, relating to the subject matter of the Agreement, shall be valid or binding, except by way of written amendment of this Agreement.
4. The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by the parties.

N. WAIVERS

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either party of any fee, performance, or other consideration, which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, condition, or covenant of this Agreement or any applicable law, ordinance, or regulation.

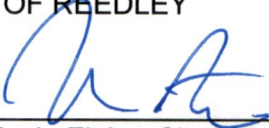
O. APPLICABLE LAW

The laws of the State of California shall govern this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of dates shown below.

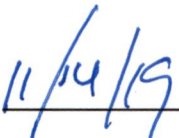
CITY OF REEDLEY

BY



Nicole Zieba, City Manager

DATE



11/14/19

RIVER CITY THEATRE PRODUCTIONS

BY



Mark Luzania, President

DATE



11/14/19



REEDLEY CITY COUNCIL

- ☒ Consent
- ☐ Regular Item
- ☐ Workshop
- ☐ Closed Session
- ☐ Public Hearing

ITEM NO: 3

DATE: November 12, 2019

TITLE: APPROVE AND AUTHORIZE THE CITY MANAGER TO SIGN THE REEDLEY OPERA HOUSE USE AGREEMENT WITH RIVER CITY THEATRE COMPANY (RCTC) FOR A FIVE-YEAR TERM.

SUBMITTED: Sarah Reid, Community Services Director

APPROVED: Nicole R. Zieba, City Manager

RECOMMENDATION

Approve and authorize the City Manager to sign the Reedley Opera House Use Agreement with River City Theatre Company (RCTC) for a five-year term.

EXECUTIVE SUMMARY

City staff has met with the RCTC Board of Directors President to discuss a new five-year agreement. The expectation from the City is that RCTC will continue to provide quality entertainment and promote cultural arts opportunities. In this new agreement, key changes have been identified for your review.

1. RCTC will now be responsible for the water and sewer fees associated with the Opera House. This is estimated at \$215 per month.
2. RCTC has requested the ability to host more than the allotted 10 non theater events. Staff is in favor of this but only with a cap on the electrical and natural gas that the City will cover. The amount reflected in the agreement is what was adopted in the 2019-20 budget for these two items and roughly what the cost has been the past 3 years.
3. The monthly rent will stay at \$1,000 the first year and increase to \$1,050 for the remaining years of the 5-year agreement.
4. The months the quarterly reports are due to the City are identified in the agreement.

This agreement will be a five-year agreement with a five-year extension option. Both parties feel this is a fair agreement and will move both entities forward in reducing the subsidies the City provides.

BACKGROUND

The City of Reedley has partnered with RCTC for the last 16 years. The current agreement with RCTC to offer live theatre out of the Reedley Opera House facility expires October 31, 2019. Throughout the years this partnership has served both organizations well.

FISCAL IMPACT

The total subsidy to the Opera House will be reduced in the new agreement. Currently, the City subsidizes the operations in the Opera House approximately \$19,250 annually. The majority of this subsidy is for electricity. Unanticipated capital expenses are covered by the City, and it is expected that the Opera House may need an air conditioning unit and walk-in refrigerator in the next 5 years. The expense for water and sewer has been covered by the City and with RCTC covering this cost it will relieve the City of a cost of roughly \$2,508 annually. Revenues will improve from the current \$12,000 to \$12,600 per year at the end of the term (October 31, 2024). At the end of the initial term, the rent can be renegotiated.

PRIOR COUNCIL ACTIONS

In October, 2014 the current agreement with RCTC was approved by City Council.

ATTACHMENTS

Reedley Opera House Use Agreement

Motion: _____

Second: _____