

Ordinance No. 119930

Council Bill No. 113173

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of an agreement with the Seattle International Children's Festival for the presentation of annual festivals at Seattle Center.

CF No. \_\_\_\_\_

Date Introduced: <u>4-24-00</u>		
Date 1st Referred: <u>4-24-00</u>	To: (committee) <u>Finance, Budget &amp; Economic Development</u>	<u>CULTURE, ARTS &amp; PARKS</u>
Date Re - Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage: <u>5-8-00</u>	Full Council Vote: <u>6-0</u>	
Date Presented to Mayor: <u>5-9-00</u>	Date Approved: <u>5-11-00</u>	
Date Returned to City Clerk: <u>5-11-00</u>	Date Published: <u>2p</u>	T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

The City of Seattle - Legislative Department  
Council Bill/Ordinance sponsored by: \_\_\_\_\_

**Committee Action**

5/3/00 FRED Depasse

5-8-00 Passed 6-0

(Excused: DL, PS, HW)

This file is complete and ready for presentation to Full Council. Co

*Law Department*

Law Dept. Review

OMP  
Review

☒ City Clerk  
Review

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: \_\_\_\_\_

*Neil Linton*  
Councilmember

Committee Action:

*5/3/00 FBED Depass amended 400 Drago*

*McIver*

*Carlin*

*5-8-00 Passed 6-0*

*(Excused: DL, PS, HW)*

This file is complete and ready for presentation to Full Council.

Committee: \_\_\_\_\_

(Initial/Date)

*Law Department*

*Oversized*

Law Dept. Review

OMP  
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City Clerk  
Review

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ORDINANCE 119930

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of an agreement with the Seattle International Children's Festival for the presentation of annual festivals at Seattle Center.

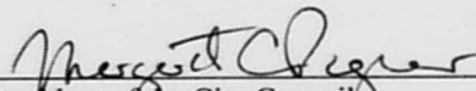
**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. As requested by the Seattle Center Director and recommended by the Mayor, said Director is hereby authorized to execute, for and on behalf of The City of Seattle, an agreement with the Seattle International Children's Festival substantially in the form attached hereto and identified as "AGREEMENT BETWEEN THE CITY OF SEATTLE AND SEATTLE INTERNATIONAL CHILDREN'S FESTIVAL" for purposes related to the presentation of annual festivals at Seattle Center from 2000 through 2004.

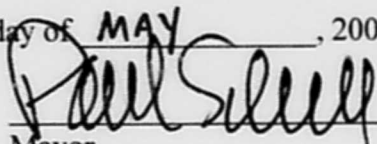
Section 2. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and confirmed.

Section 3. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 8<sup>th</sup> day of May, 2000, and signed by me in open session in authentication of its passage this 6<sup>th</sup> day of May, 2000.

  
President of the City Council

Approved by me this 11 day of MAY, 2000.

  
Mayor

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V #1

1 Filed by me this 11<sup>th</sup> day of May, 2000.

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City Clerk

(SEAL)

Attachments

AGREEMENT BETWEEN THE CITY OF SEATTLE AND SEATTLE  
INTERNATIONAL CHILDREN'S FESTIVAL  
Exhibit A - Office Space Lease Agreement

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To: Margaret Carter

From: Kerry Smith

Date: June 19, 2000

Subject: Signed Original Contracts for Seattle Center

Attached are the original signed contracts for two agreements recently approved by the City Council. The agreements are:

- Agreement Between the City of Seattle and Seattle International Children's Festival, approved by Ordinance Number 119930, and
- Second Amendment to Facility Use and Occupancy Agreement Between the City of Seattle and Seattle Children's Theatre Association, approved by Ordinance Number 119962

Please feel free to contact me at 615-0358 if you have any questions.

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CITY OF SEATTLE  
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CITY CLERK





## City of Seattle Legislative Information Service

Information  
updated  
as  
of  
June  
19,  
2000  
1:29  
PM

Council Bill Number: 113173  
Ordinance Number: 119930

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of an agreement with the Seattle International Children's Festival for the presentation of annual festivals at Seattle Center.

Date introduced/referred: Apr 24, 2000  
Date passed: May 8, 2000  
Status: Passed  
Vote: 6-0 (Excused: Licata, Steinbrueck, Wills)  
Date of Mayor's signature: May 15, 2000

Committee: Finance, Budget and Economic Development  
Sponsor: LICATA

Index Terms: SEATTLE-CENTER, LEASES

### Text

Note to users: {- indicates start of text that has been amended out  
-} indicates end of text that has been amended out  
{+ indicates start of text that has been amended in  
+} indicates end of text that has been amended in

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of an agreement with the Seattle International Children's Festival for the presentation of annual festivals at Seattle Center.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As requested by the Seattle Center Director and recommended by the Mayor, said Director is hereby authorized to execute, for and on behalf of The City of Seattle, an agreement with the Seattle International Children's Festival substantially in the form attached hereto and identified as "AGREEMENT BETWEEN THE CITY OF SEATTLE AND SEATTLE INTERNATIONAL CHILDREN'S FESTIVAL" for purposes related to the presentation of annual festivals at Seattle Center from 2000 through

FILED  
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**AGREEMENT  
BETWEEN THE CITY OF SEATTLE  
AND  
SEATTLE INTERNATIONAL CHILDREN'S FESTIVAL**

THIS AGREEMENT is entered into by and between THE CITY OF SEATTLE (hereinafter referred to as "City"), acting by and through its Seattle Center Department and the Director thereof (hereinafter referred to as the "Director") and the SEATTLE INTERNATIONAL CHILDREN'S FESTIVAL, a nonprofit corporation organized and existing under the laws of the State of Washington (hereinafter referred to as "SICF"), acting by and through the Chair of its Board of Trustees.

**RECITALS**

WHEREAS, SICF is responsible for planning, organizing and staging an annual arts festival and related educational and outreach activities for schools and the general public known as the Seattle International Children's Festival ("Festival"), as well as fund-raising to support the event; and

WHEREAS, the City is responsible for providing facilities, event staff and a fixed amount of financial support to SICF; and

WHEREAS, the purpose of the Festival is described in SICF mission statement as follows:

SICF is a celebration of world cultures through the performing arts. Its mission is to provide multicultural experiences, education, and exchange for the children and families of the Pacific Northwest by: presenting each May at Seattle Center, more than 100 performances by 15 - 20 different artists/groups from around the world; partnering with regional schools, cultural and civic organizations to provide multicultural arts curriculum support to teachers and students; fostering an appreciation of cultural diversity among nations and within our own diverse community; and providing equal access to the arts through low and subsidized tickets; and

WHEREAS, SICF recognizes that appropriate treatment of all Festival participants is important to ensuring a successful event. SICF is committed to the emotional, physical and psychological well-being of all children and will take these factors into consideration when making choices regarding which performances to stage and acts to book;

NOW, THEREFORE, the parties hereby enter into this Agreement in order to clearly delineate the areas of responsibility and terms and conditions for production of the Festival.

**I. TERM**

The Term of this Agreement shall commence January 1, 2000, and shall expire December 31, 2004, unless terminated earlier as provided herein. Each calendar year of the Term shall constitute a separate "Festival Year."

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## II. SCOPE OF SERVICES

### A. Production

SICF shall be responsible for planning, organizing and staging an annual Festival, including related educational and outreach activities for schools and the general public on the dates specified below. The responsibility includes, but is not limited to, contracting for artistic services; recruiting and maintaining a Board of Trustees, a professional staff and the volunteers required to produce the Festival; fund-raising and financial management; and coordination of all aspects of Festival production.

2000 Festival:	May 15 through 20
2001 Festival:	May 14 through 19
2002 Festival:	May 13 through 18
2003 Festival:	May 12 through 17
2004 Festival:	May 10 through 15

### B. Staffing

SICF shall employ or otherwise secure the services of whatever professional and technical staff are required to competently plan, organize, produce and evaluate each Festival. The Seattle Center shall make available to SICF such Seattle Center staff as are required by SICF to stage and produce the Festival outlined in the Event Service Order approved by the Director.

### C. SICF Deliverables

SICF shall annually submit to the Director the following planning, operational and evaluation documentation on or by the indicated dates. As used in this Section, the term "following year's Festival" (as opposed to the current year's Festival) shall mean the Festival to be held during the year following the current year. For example, during the 2000 calendar year, "the following year's Festival" shall mean the 2001 Festival.

#### 1. Documentation to be Submitted No Later than January 2 of Each Year

##### a. Proposed Facility Use Plan

SICF shall submit a written proposed Facility Use Plan for the following year's Festival describing the facilities and areas of the Seattle Center grounds that are proposed to be used and what general activities are anticipated to take place in each facility and area.

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The plan shall also state the estimated number of bus parking permits required and SICF's proposed use of curbside parking areas for bus loading and parking. The entire Facility Use Plan shall be subject to the Director's approval, which approval will not be unreasonably withheld. The Director shall notify SICF in writing of his/her approval or disapproval of the Proposed Facility Use Plan or any component thereof within thirty (30) days after receipt.

**b. Budget and Funding Plan**

SICF shall submit a written Budget and Funding Plan for the following year's Festival, detailing the total planned expenditures, by category; the amount and source of all funds to be used to produce the Festival; ticket prices; estimated total attendance (school, general public, scholarship); estimated attendance by performance by facility; and estimated revenues by facility by revenue source.

**c. Basic Labor Schedule**

SICF shall deliver the basic labor schedule for the following year's Festival. Said Schedule shall include an estimate by hours by labor category of Seattle Center labor to stage the following year's Festival. Should a change in the facilities to be provided under Section III.C herein become necessary due to a decision made by Seattle Center, SICF shall be given adequate time to amend the Basic Labor Schedule. The Director shall, in good faith, use his/her best efforts to notify SICF within thirty (30) days if a decision is made which would require amendment of the Basic Labor Schedule.

**d. Program Plan**

SICF shall submit a written Program Plan detailing the preliminary programmatic content of performances planned as part of the current year's Festival.

**e. Time Schedule for Move-In, Move-Out for Facilities and Programmed Space**

SICF shall deliver to the Director and the Seattle Center Festival Coordinator a schedule of specific times and functions for each facility and grounds area proposed for use during the current year's Festival.

**2. Other Required Documentation**

**a. Event Service Order**

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Not later than sixty (60) calendar days prior to the first Festival move-in day of each year during the Term hereof, SICF shall submit to the Director SICF's draft Event Service Order, describing the complete technical and facility set-up requirements desired for Seattle Center facilities and grounds, and shall identify all Seattle Center equipment, services, supplies and material within the specified facilities or available for use at specified "on-grounds areas", as indicated in the Seattle Center Event Service Manual or its successor publication then in effect, that are desired by SICF for Festival purposes. Such Manual and each successor publication are incorporated herein by reference. Any and all arrangements included in the draft Event Service Order but not identified in the Event Service Manual as being generally available from Seattle Center shall be subject to prior authorization by the Director, which authorization shall be provided or denied in writing within fourteen (14) calendar days of SICF's submission of the draft Event Service Order. SICF shall submit to Seattle Center a final Event Service Order not later than thirty (30) days prior to the first Festival move-in day of each year during the Term hereof.

**b. Revised Facility Use Plan**

On or by July 15 of each year, or earlier if available, SICF shall submit to the Director and the Festival Coordinator a Revised Facility Use Plan for the following year's Festival. Within 14 calendar days after receipt of the Revised Facility Use Plan, the Director shall advise SICF, in writing, which facilities the Seattle Center will book for SICF use on the dates and times requested by SICF in its Revised Facility Use Plan. SICF may rely on such written notice and other approved elements of the Revised Facility Use Plan in printing its festival brochure and selling tickets to the events described therein. In the event subsequent modifications to the Revised Facility Use Plan are required by the City due to construction projects and timelines or as a result of a force majeure event, the Director shall notify SICF of such changes as soon as possible and use his/her best efforts to minimize any and all resulting damages incurred by SICF as a result of such modifications. If, despite such efforts on the part of the Director, SICF does incur damages as a result of modifications to the approved Revised Facility Use Plan, all such damages shall be the responsibility of the City.

**c. Festival Final Report**

On or before August 15 of each year during the Term hereof, SICF shall deliver a Final Report for the current year's Festival, containing a complete financial and programmatic evaluation of the preceding Festival, together with a copy of representative programs. Detailed recommendations for future efforts toward the

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planning, organizing, staging, production and evaluation of the Festival shall also be included in the Final Report.

**D. Review of Proposed Reimbursable Charges**

During the two weeks following SICF's receipt of the invoice described in Section V.D. hereof, SICF shall have the option to schedule a meeting with the Event Service Representative(s), Festival Contract Administrator and any other Seattle Center staff mutually agreed upon, which meeting shall take place no later than thirty (30) days after SICF's receipt of the invoice. At such meeting Seattle Center staff shall explain any discrepancy between the labor hours billed by the City and the hours requested in the Event Service Order and subsequent change orders to SICF staff for discussion and review. Should the parties not be able to reach agreement on the final number of hours to be reimbursed, SICF may appeal to the Director to adjust the amount of hours to be invoiced.

**E. Approval of Plans or Documents**

Except as noted specifically within the foregoing paragraphs of this Section, in the event the Director determines that all or a portion of the documents or plans required to be submitted by SICF herein do not meet the requirements of this Section, the Director shall notify SICF of that determination, in writing, within thirty (30) calendar days after the Director's receipt of said documents. The Director's approval of such documents or plans shall not be unreasonably withheld.

In the event the Director notifies SICF of any such deficiencies, SICF shall have fourteen (14) calendar days after its receipt of such notice to make any modifications or corrections required by the Director. If the Director does not provide timely notice of any deficiencies in SICF plans or documents, or if no such Director's notice is given, such plans and documents are deemed acceptable.

**III. CITY OBLIGATIONS**

**A. Compensation**

**1. Production Fee**

**a. Amount**

The City shall pay SICF for the production of each Festival the sum of \$101,000.00 (the "Production Fee") in accordance with the following schedule:

- (1) Sixty-five percent (65%) of the Production Fee (\$65,650.00) shall be paid to SICF upon SICF's delivery and the Director's acceptance of the items listed in subsection II.C.1.a.-e. hereof and in accordance with Section III.A.1.b; and

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- (2) Ten percent (10%) of the Production Fee (\$10,100.00) shall be paid to SICF after SICF's delivery and the Director's acceptance of the items listed in paragraphs II.C.2.a. and b. hereof; and
- (3) The remaining twenty-five percent (25%) (\$25,250.00) of the Production Fee shall be paid to SICF upon SICF's reimbursement of labor costs provided, pursuant to Section V.C.

**b. Time and Place of City Payments**

SICF shall invoice the City for the partial payment of the Production Fee provided for in Section III.A.1.a. upon SICF's submission to the City of the SICF deliverables specified in Section II.C.1.a.-e. Payment shall be made after the beginning of the City's fiscal year, or approximately January 2, each year during the Term hereof.

All invoices shall be sent to the Seattle Center Festival Coordinator, 305 Harrison Street, Seattle, Washington 98109, or to such other address as the Director shall specify in writing.

**2. Office and Storage Space**

The City shall provide SICF with office space as provided in Exhibit A attached. In the event of any conflict between the terms and conditions contained in Exhibit A and this Agreement with regard to said office space, only, the terms and conditional contained in Exhibit A shall control.

**3. Parking**

- a. The Seattle Center shall provide to SICF, at the times specified and at no cost, the following parking permits that shall be used for persons on Festival business only:
  - (1) On or before January 1 of each year during the Term hereof, up to thirty (30) permits valid for two (2) days per month in the Fifth Avenue Parking Lot for the Board of Trustees; and
  - (2) On or before January 1 of each year during the Term hereof, up to twenty (20) permits in the Fifth Avenue Parking Lot or Mercer Street Garage for Festival volunteers and Festival coordinators. Permits will be effective for the period commencing January 15 of each year and ending ten (10) days after the final date of the Festival as indicated in Section II.A.

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(3) On or before April 1 of each year during the Term hereof for the Monday performance day of the Festival, up to one hundred (100) permits in the Fifth Avenue Parking Lot or the Mercer Street Garage for volunteers; for each additional performance day of the Festival, up to seventy-five (75) permits in the Fifth Avenue Parking Lot or the Mercer Street Garage for volunteers.

b. SICF shall be permitted to purchase, at the then-current all hours or off-peak Seattle Center employee rate, parking permits in First Avenue North Garage.

c. Notwithstanding any other provision hereof, upon written notice to SICF, the Director reserves the right to change the location(s) at which parking permits provided hereunder shall be valid. No permit issued hereunder shall be valid for First Avenue North Garage parking after 5 p.m. on Seattle SuperSonics game nights.

4. **Monorail Use**

SICF shall be permitted to purchase, at a weekly group rate negotiated between the Director, SICF, and the Monorail operating company, if any, an unlimited number of round-trip monorail passes to be used by Festival performers during the Festival dates and the week prior to each Festival. In the event the Director or the City has no authority to negotiate such a discounted rate for the Monorail, SICF is authorized to negotiate directly with monorail operational authorities.

B. **City Deliverables**

1. **Basic Equipment Inventory**

On or by January 15 of each year during the Term hereof, the Festival Coordinator shall deliver to SICF a then-current detailed inventory of all Seattle Center equipment (including but not limited to that related to Facility Support, Sound, and Stage services) that is then located on Seattle Center facilities and grounds (collectively, "the Premises") and available for Festival use. Further, the Festival Coordinator shall notify SICF in a timely manner, in writing, in the event any items on said inventory list become unavailable. If SICF is not notified otherwise prior to producing the final Event Service Order for each Festival, SICF is entitled to rely upon the availability of all items in the inventory and the City shall provide such equipment to SICF at no cost to SICF.

2. **Labor Rate Schedule**

On or by January 15 of each year during the Term hereof, the Director shall notify SICF of the Seattle Center's then-current labor rates for salary

and benefits only, and every change expected to occur thereto during the following year, and thereafter shall advise SICF in writing regarding any revisions to such rates immediately after such revisions are finally approved.

**C. Facilities and Equipment**

**1. Facilities**

The Premises requested by SICF in the Revised Facility Use Plan, as approved by the Director shall be provided to SICF by the City free of any license fee or rental charge. The following is a list of Premises that may be available. Additional or alternate facilities and grounds areas may be authorized for a particular year's Festival, subject to availability and subject to its inclusion in the approved Revised Facility Use Plan.

<u>FACILITY</u>	<u>SPECIAL CONDITION</u>
a. <u>Mercer Arena</u> :	For the year 2000, if such facility exists at the time and is functioning as a public use facility. For the year 2001 the facility will not be available for use unless construction timelines permit. For the year 2002, the facility may be available for use dependent upon City permits and also consistent with and subject to contracts between the City, the Seattle Opera and the Pacific Northwest Ballet. For the years 2003-2004, facility availability shall be determined by the Director.
b. <u>Opera House</u> :	For the years 2000, 2001, and 2004, consistent with and subject to contracts between the City, the Seattle Opera and the Pacific Northwest Ballet. For the years 2002 and 2003 the facility will not be available for use due to construction.
c. <u>Flag Pavilion</u> :	For the years 2000 and 2001, if such facility exists at the time and is functioning as a public use facility. For the year 2002, the facility will be demolished.
d. <u>Festival Pavilion</u> :	For the years 2003 and 2004, if such facility exists at the time and is function as a public use facility.
e. <u>Seattle Center Pavilion</u> :	If such facility exists at the time and is functioning as a public use facility.
f. <u>Northwest Rooms</u> :	If such facilities exist at the time and are functioning as public use facilities.
g. <u>Stage and public programming space on the second floor of Center House</u> :	If such facility exists at the time and is functioning as a public use facility.



- h. Performance Studio At The Children's Museum: Consistent with and subject to the contract between the City and The Children's Museum.
- i. Certain portions of the Bagley Wright Theatre Production Areas, as defined in the City's Premises Use and Occupancy Agreement with the Seattle Repertory Theatre, unless the same is unavailable due to Seattle Repertory Theatre schedule.
- j. Seattle Children's Theatre: Consistent with and subject to the Seattle Children's Theatre's contract with the City.
- k. Mural Amphitheater: If such area exists at the time and is functioning as a public use area.
- l. Other areas of the grounds of Seattle Center: If such areas exist at the time and are functioning as public use areas.

The availability and scheduling of the above facilities is subject to the provisions of Section II.E. hereof.

**2. Move-in and Move-out Use Time**

Unless otherwise specified herein or in the Revised Facility Use Plan approved by the Director, the City shall provide to SICF, free of any license fee or rental charge, two move-in days and one move-out day for each facility (other than the authorized portions of the Bagley Wright Theatre Production Areas, for which only one move-in day shall be provided); two move-in days and two move-out days for specified grounds areas; and five move-in days for the Flag Pavilion. Subject to facility availability, additional days may be added free of any license fee or rental charge if SICF performance requirements necessitate such time and if a subsequent user does not require use of such facility.

**3. Conference and Meeting Facilities**

The City shall provide to SICF at no license fee or rental charge such conference and meeting facilities as may be available throughout the Term of this Agreement for Festival-related activities. The availability of facilities shall not be confirmed by the City prior to forty-five (45) days in advance of their desired use by SICF.

**4. Readerboards and Mercer Street Overpass Use**

The City shall provide, free of any license fee or rental charge, the use of all Seattle Center public programming readerboards (located at 5th Avenue and Harrison Street and 1st Avenue and Thomas Street) and the Mercer Street Garage overpass for the advertising of the Festival two weeks immediately preceding the Festival, and continuing through the run

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of the Festival in each Festival year. Use of any other readerboard may be permitted at the discretion of the Director. With respect to the Mercer Street Garage overpass, the only advertising allowed thereon shall be a Festival banner provided at SICF's expense. Said banner shall be mounted and removed by Seattle Center staff at no additional cost to SICF.

**5. Equipment**

The SICF may use for any Festival, free of charge, those items of Seattle Center equipment that are identified in the Seattle Center Event Service Manual in accordance with Section III.B.1. All equipment made available for Festival use by SICF shall be returned to the Seattle Center's direct management and control on or by the end of the move-out period specified for each facility or grounds area with respect to which such equipment is associated or related. The Seattle Center shall cooperate with SICF to install, in a timely manner, all stage and production facilities and equipment needed for the Festival, as determined by SICF and as approved for such use by the Director.

The SICF is hereby authorized to supplement equipment provided by the Seattle Center and to provide its own labor to set-up, move-out and operate said equipment subject to the provisions of the agreement between The City of Seattle and Joint Crafts Council in effect at the time of the Festival.

**D. Labor Services**

The City shall provide SICF the following event-driven labor as specifically requested by SICF on the Event Service Order, or by Seattle Center should the Event Service Order be determined to be not operationally feasible as provided in Section V.B., and subsequent change orders:

1. **Stage Labor** which shall include move-in/out, rehearsal, performance, and pre- or post- Festival facility use labor;
2. **Sound Labor** which shall include move-in/out, rehearsal, performance and pre- or post-Festival facility use labor excluding labor for transport of equipment from shop to facility and equipment set-up/or breakdown in shop prior to or following each Festival;
3. **Emergency Services and Admissions Labor** which shall include all labor associated with the Festival, including move-in/out, rehearsal, performance and pre- or post-Festival facility use labor;
4. **Technical Facilities Management Labor** which shall include all labor associated with Festival requirements specifically requested by SICF in the Event Service Order and subsequent change orders.

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#### **IV. REDEVELOPMENT IMPACT REVIEW**

Consistent with Section II.C., the Director and SICF shall meet to review the on-going activities and any planned activity on the grounds and/or in the facilities with respect to redevelopment and the impact of such redevelopment on the following year's Festival. It is the intent of both parties to minimize any financial impact to either party for changes that may occur after approval of the Revised Facility Use Plan for each Festival year.

The parties agree to work together to modify the Premises in order to achieve SICF and Seattle Center common goals. Notwithstanding any other provision hereof, in the event the Director determines, in the exercise of his/her discretion, that in order to facilitate the redevelopment of the Seattle Center in a manner consistent with the "Seattle Center 2000 Plan" approved by Seattle City Council Resolution 28210, the grounds or any facility scheduled for Festival use are required for some use or purpose other than that contemplated by the parties under this Agreement, the Director, after consultation with SICF, shall have the right to modify this Agreement, including but not limited to the Premises provided for Festival purposes. However, such modifications must be made consistent with the provisions of Sections II.C.1.c, II.C.2, II.E, III.B.2, III.C.1.

#### **V. FEES AND CHARGES**

##### **A. Office and Telephone Services**

SICF shall pay to the City all costs reasonably incurred by the City in providing office and telephone services requested by SICF, including but not limited to postage, photocopying, the installation of telephone instruments and all local or long distance charges ("Office Services"). Office Services charges shall exclude time spent by Office Services staff to prepare invoices to SICF for such charges. The Office Services shall be invoiced to SICF monthly. Before being implemented, any telephone changes or moves shall be arranged with Seattle Center's Office Services staff.

##### **B. Event Service Order Not Operationally Feasible**

If, after all normal procedures as outlined in this Agreement to allow for the amendment, alteration and accommodation of the Event Service Order requests have been exhausted, the Director determines that the Event Service Order submitted by SICF is not operationally feasible, SICF shall pay any costs incurred by Seattle Center in negotiating workable changes to modify the Final Event Service Order to accommodate the needs of the Festival and the Seattle Center.

##### **C. Reimbursable Labor Fee**

SICF shall reimburse the City for all labor provided pursuant to Section III.D herein. Labor costs shall include but not be limited to salaries, wages, employee benefits, but shall not include Seattle Center administrative overhead and facility cost allocations. The City shall invoice SICF for all labor hours used by SICF, and thereafter adjust the City invoice as determined by the review, if any, provided for in Section II.D.

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**D. Time and Place of SICF Payments**

The City shall invoice SICF for the charges specified in this Section. These charges shall be due on or by the thirtieth (30th) day after the date of any City billing or invoice. All payments shall be delinquent if not paid on the due date. Delinquent sums shall bear interest at the simple annual rate of the current publicly announced prime rate established by the Federal Reserve Bank until paid. However, the City shall not charge a late fee or interest on any amounts until SICF has been in receipt of the invoice for thirty (30) days. Payments made after a delinquency shall be applied first to accrued interest, and then to principal.

All payments shall be sent to The City of Seattle, c/o Seattle Center Accounting, 305 Harrison Street, Seattle, Washington, 98109 or to such other address as the Director shall specify.

**VI. PUBLICITY AND MEDIA**

**A. Sponsorship References**

All Festival publicity shall identify the Seattle Center Department of The City of Seattle as a primary Festival sponsor consistent with the billing and design accorded other primary sponsors. Said publicity may alternatively include the wording, "Sponsored In Part by the Seattle Center", and shall include the Seattle Center logo whenever the Festival logo is used on all materials not mailed as non-profit material. Materials mailed at the non-profit rate are subject to Federal Postal regulations governing sponsor recognition.

**B. Media Rights**

Except as limited by the terms of the contracts between SICF and the artists, and with advance notice to SICF by the City, SICF grants the City the right to film, videotape, televise and record all events, appearances and performances occurring at or associated with the Festival. With advance notice to SICF, the City may use up to two (2) minutes of such non-commercial films, videotapes, recordings or reproductions of the performances by any other means, for promotional and publicity use without payment to SICF or the artists with whom SICF has contracted. Films, videotapes or recordings of the artist and/or its performances shall not be broadcast for commercial purposes in any medium unless SICF and the City execute a separate agreement providing for payment to SICF and/or participating artists in accordance with SICF contracts with the artists. The parties shall endeavor to come to such agreement(s) in good faith.

**C. Seattle Center Use of Graphics**

To the extent authorized by SICF and consistent with SICF's contractual obligations with its performers and graphic artists, Seattle Center may use any and all Festival graphics free of charge for any Seattle Center promotion effort or the co-promotion by SICF and the City of activities directly related to the annual

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"Seattle International Children's Festival." Seattle Center shall advise SICF in advance of any such usage.

**D. Publicity and Background Materials**

SICF shall furnish the Director with whatever backup material regarding the Festival, its participants, and related matters is requested by such Director and is reasonably available. The SICF shall produce a printed program, press releases, posters and flyers in such numbers as may be appropriate to publicize the Festival.

**VII. CONCESSION RIGHTS**

SICF is granted the following limited concession rights which may be exercised during each year's Festival, subject to existing Seattle Center concession and licensing contracts:

- A. to sell photographs, posters, art works, crafts, printed materials, and video and audio recordings or other media, all of which have an artistic base, theme or groundwork related to the Festival;
- B. to sell souvenir items related to the Festival but not to Seattle Center, generally, nor containing the Seattle Center logo;
- C. to sell food and beverages;
- D. to authorize others to sell such items.

These concession rights may be exercised on the Seattle Center grounds and in Seattle Center facilities other than the Center House. With respect to the Center House, SICF may negotiate concession rights with tenants on the second floor of the Center House, subject to the Director's approval, which approval may be conditioned on the payment by SICF of a fee or percentage of gross receipts.

**VIII. LIENS AND ENCUMBRANCES**

SICF shall keep the Premises free and clear of any liens and encumbrances arising or growing out of its use and occupancy of the Seattle Center. At the request of the Director, SICF shall deliver to the Director written proof of the payment of any items that could be the basis for such a lien, if not paid.

**IX. NO NUISANCES OR OBJECTIONABLE ACTIVITY**

SICF shall not permit any excessive or objectionable noise, odor, dust, vibration, or other similar substance or condition to remain on or emitted from the Premises as part of any Festival; shall not interfere with access from or to the Seattle Center or any part thereof, or with the traffic thereon; shall not create any nuisance in or adjacent to the Seattle Center, and shall not knowingly do anything at the Seattle Center that shall create a danger to life and limb.

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**X. COMPLIANCE WITH LAW**

**A. General Requirement**

SICF, at no expense to the Seattle Center, shall comply with all applicable laws of the United States and the State of Washington; the Charter, Municipal Code, and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof.

**B. Licenses and Similar Authorizations**

SICF, at no expense to the Seattle Center, shall secure and maintain in full force and effect during the Term of this Agreement, all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.

**C. Taxes**

SICF shall pay, before delinquency, all taxes, levies, and assessments arising from its activities and undertakings at and on Seattle Center premises, including, but not limited to taxes arising out of the activity or business conducted thereon such as the rental or sale of goods or services; taxes levied on its property, equipment and improvements on the premises; and taxes on SICF's interest in this Agreement and any leasehold interest deemed to have been created thereby under Ch. 82.29A RCW.

**D. Nondiscrimination and WMBE Utilization**

SICF will comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and the City of Seattle, including the Seattle Municipal Code (SMC), notably SMC 20.44, and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

**XI. INDEMNIFICATION**

SICF shall indemnify and hold the City and its agents and employees harmless from any and all losses, claims, actions, damages and expenses arising out of SICF's performance or lack of performance under this Agreement, except those arising as a result of the sole negligence of the City, its agents and employees. In the event that any suit based upon such a loss, claim, action, damage, or expense is brought against the City, SICF, upon notice of the commencement thereof, shall defend the same at its sole cost and expense, and if final judgement is adverse to the City, or the City and SICF jointly, SICF shall promptly satisfy the same. The liability described in this subsection shall not be diminished by the fact, if it be a fact, that any such death, injury, damage, loss, cost or expense may have been contributed to, or may be alleged to have been contributed to, in part, by the negligence of the City, its officers, employees, or agents.

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## **XII. INSURANCE**

Throughout the term of this Agreement SICF shall obtain, maintain, and otherwise comply with the requirements of Exhibit B pertaining Prior to the commencement of work under this Agreement, SICF shall secure and maintain at no expense to the City, policy or policies of insurance as enumerated below.

### **A. Coverage - Commercial General Liability**

A policy of Commercial General Liability Insurance written on an insurance industry standard occurrence form (CG 00 01) or equivalent, including all the usual coverages known as:

1. Premises/Operations Liability
2. Products/Completed Operations
3. Personal/Advertising Injury
4. Contractual Liability
5. Independent Contractors Liability
6. Elevator and Hoist Liability (as applicable)\*
7. Employers Liability (Stop Gap)
8. Explosion, Collapse and Underground (XCU) (as applicable)\*
9. Watercraft, owned and nonowned (as applicable)\*

\* These coverages are only required when SICF's work under this Agreement includes exposures to which these specified coverages respond.

Such policy(ies) shall provide the following minimum limit:

Bodily Injury and Property Damage

\$1,000,000 General Aggregate  
\$1,000,000 Products & Completed Operations Aggregate  
\$1,000,000 Personal & Advertising Injury  
\$1,000,000 Each Occurrence  
\$ 100,000 Fire Damage

Stop Gap Employers Liability

\$ 1,000,000 Each Accident  
\$ 1,000,000 Disease - Policy Limit  
\$ 1,000,000 Disease - Each Employee

Any deductible or self-insured retention must be disclosed and is subject to approval by the City's Risk Manager. The cost of any claim payments falling within the deductible shall be the responsibility of the SICF.

### **B. Coverage - Business Automobile**

A policy of Business Automobile Liability, including coverage for owned, non-owned, leased or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent.

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Such policy(ies) must provide the following minimum limit:  
Bodily Injury and Property Damage  
\$1,000,000 per accident

**C. Coverage – Excess Insurance**

A policy of Excess Insurance above the primary general liability policies that will provide a total limit of insurance of \$2,000,000. The excess policy must be at a minimum as broad as the primary policies.

**D. Coverage - Worker's Compensation**

SICF shall obtain and maintain Workers' Compensation insurance sufficient to secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. If SICF is qualified as a self-insurer in accordance with Chapter 51.14 of the Revised Code of Washington, SICF shall so certify by providing a copy of the state Certificate of Self-Insurance, and setting forth the limits of any policy of excess insurance covering its employees.

**E. Additional Insured, Cancellation and Primary Coverage Endorsements**

The insurance required pursuant to Sections A through C, above, shall be, (i) endorsed to include the City, its officers, elected officials, employees, agents and volunteers as additional insured; (ii) shall not be reduced or canceled without forty-five (45) days prior written notice to the City; and (iii) shall be primary as respects the City, and any other insurance maintained by the City shall be excess and not contributing insurance with the SICF's insurance.

**F. Changes of Coverage and/or Limits**

Coverage and/or limits of insurance may be altered or increased by the City as necessary from time to time, to reflect the type of or exposure to risk. The City shall have the right to periodically review the appropriateness of existing limits in view of the foregoing and of inflation and/or changing industry conditions and to require an increase in such limits upon ninety (90) days prior written notice to SICF.

**G. Evidence of Insurance**

The following documents must be provided as evidence of insurance coverage:

1. A copy of the policy's declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements.

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2. A copy of the endorsement naming The City of Seattle as an additional insured, showing the policy number, and signed by an authorized representative of the insurance company on Form CG2010 (ISO) or comparable.
3. A copy of the "Endorsements Form List" to the policy or policies showing endorsements issued on the policy, and including any company-specific or manuscript endorsements.
4. A copy of an endorsement stating that the coverages provided by the policy to the City or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to The City of Seattle as follows:

Seattle Center Director	Risk Manager
Seattle Center	Finance Department
Department	
The City of Seattle	The City of Seattle
305 Harrison Street	600 Fourth Avenue
Seattle, WA 98109	Seattle, WA 98104

5. A copy of a "Separation of Insureds" or "Severability of Interests" clause, indicating essentially that, except with respect to the limits of insurance and any rights or duties specifically assigned to the first named insured, the insurance applies as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought (Commercial General Liability & Business Automobile Liability Insurance).
6. If SICF is self-insured for items XII.A. and B., above, SICF shall supply a letter from its corporate risk manager or appropriate financial officer indicating whether such program is actuarially funded and the fund limits, together with copies of any excess declaration pages to meet the contract requirements. Further, this letter should advise how SICF would protect and defend the City of Seattle as an additional insured in its self-insured layer, and include claims handling directions in the event of a claim.

All evidence of insurance must be delivered to the following address:

Seattle Center Director  
Seattle Center Department  
The City of Seattle  
305 Harrison Street  
Seattle, WA 98109

#### H. Approval of City Risk Manager

All policies shall be subject to approval by the City's Risk Manager as to form, coverage and company (must be issued by companies rated A-VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of



Washington or issued as a surplus line by a Washington Surplus lines broker), and shall be primary to all other insurance.

**I. Adjustments of Claims**

The SICF shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of SICF under this Agreement. The SICF shall ensure that all such claims, whether processed by SICF or SICF's insurer, either directly or by means of an agent, shall be handled by a person with a permanent office in the Seattle area.

**J. Contractors and Subcontractors**

SICF shall include all of its contractors performing work at Seattle Center pursuant to this agreement as insureds under its policies or shall furnish separate evidence of insurance as stated above for each contractor. All coverages for contractors shall be subject to all the requirements stated herein and applicable to their profession.

**K. SICF's Responsibility**

SICF shall not keep or use in or about the Premises any article that is prohibited by any insurance policy. SICF shall pay immediately any increase in the City's premiums for insurance procured by the City during the term of this Agreement that results from SICF's use of the Premises. The procuring of the policies of insurance required by this Agreement shall not be construed to limit SICF's obligations under Section XI, hereof.

**L. City's Option to Terminate Upon Failure to Insure**

If SICF fails to maintain insurance required under this Agreement, the City may obtain the same and SICF shall reimburse City for the full expense thereof upon demand. Alternatively, the failure of SICF to maintain and otherwise comply with the provisions of this Section may subject this Agreement to immediate termination at the discretion of the Director and without the need for prior notice to SICF, in order to protect the public interest.

**XIII. CITY'S ACCESS TO PREMISES; INSPECTION, REPAIR, AND IMPROVEMENT OF PREMISES AND OTHER PROPERTY; WITHDRAWAL OF PREMISES**

**A. Access to Premises**

The City shall retain the right of access at all reasonable times to the Premises to inspect the same and to make any limited repair, improvement, alteration, or addition thereto or any other property owned by or under the control of the City deemed necessary by the Director, but this right of access shall not impose on the Seattle Center any obligation to make any repair, alteration, addition, or improvement except as specifically provided herein. Further, such access shall not interfere with the programs and events of the Festival but shall be subject to

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the provisions of Section II.C.2.b. The Director shall make every effort to give SICF thirty (30) days prior notice of such access need. Construction activity during subsequent Festivals shall be discussed on a case-by-case basis, and shall be addressed in conjunction with the Revised Facility Use Plan and shall be subject to the provisions of Section II.C.2.b.

**B. Permitted Interference**

In inspecting, and in making repairs, alterations, additions and improvements, the City may erect barricades and scaffolding in and outside of the affected portion of the Premises, and may otherwise interfere with the conduct of SICF's and Festival participants' business and operations where such action is of an emergency nature, and such interference shall not be deemed to be a breach or default under this Agreement. Seattle Center will not bill SICF for any activities undertaken in connection with this Section. The Seattle Center shall use its best efforts to minimize interference with access to and from the Premises and with SICF's activities and operations on or from the Premises, and shall make every effort to give SICF thirty (30) days' notice prior to such interference.

**C. Suspension of Activities and Operations**

In the event such inspection, repair, alteration, addition, or improvement work necessitates the temporary suspension of the Festival or any part thereof, or of SICF's activities and operations on the Premises, or any portion thereof, the Director shall notify SICF of such necessity and the anticipated beginning and ending dates of such suspension. Festival or Festival activity suspensions may be ordered with less notice in the event of an emergency as determined by the Director. The SICF hereby waives any and all rights to claims for damage for any injury to and interference with its operations, activity, or business and any loss occasioned by any such suspension except as provided in Section II.C.2.b. If, however, the Director could have given advance notice to SICF but failed to do so, the City is liable to SICF for any loss of revenue or costs generated resulting from the suspension of activities.

**XIV. SEATTLE CENTER'S CONTROL OF BUILDINGS, GROUNDS AND ACTIVITIES**

Notwithstanding any other provision of this Agreement, the Seattle Center, without liability of any kind, reserves the right to do any or all of the following:

- A. Increase, reduce, and change in any manner whatsoever the number, appearance, dimensions, and locations of the Seattle Center walks, buildings, landscaping, parking, and service areas, and may also make improvements, alterations, and additions to the common areas of any Seattle Center building.
- B. Regulate all traffic within and adjacent to the Seattle Center.
- C. Impose a reasonable charge for facilities not being used by SICF.

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- D. Erect, display and remove promotional exhibits and material and permit special events on the Seattle Center grounds, buildings and facilities.
- E. Promulgate, from time to time, reasonable rules and regulations regarding the use and occupancy of any area of the Seattle Center.
- F. Restrict or prohibit the parking on City-owned or leased property of motor vehicles owned or operated by SICF and any of its officers, employees, agents, suppliers, invitees, and Festival participants except as provided in Section III.A.3.c.
- G. Determine the days and hours the Seattle Center shall be open to the public.
- H. Change the size, number and type and identity of other concessions, stores, businesses, and operations being conducted or undertaken at Seattle Center.
- I. Exercise any other power or right authorized by law or ordinance.

**XV. SEATTLE CENTER'S RIGHT TO DISAPPROVE MERCHANDISE AND PRICES**

In order to protect the public visiting Seattle Center from price gouging, and to ensure that a variety and diversity of food, beverages, merchandise and entertainment are offered to the same, the Seattle Center reserves the right to:

**A. Prohibit Price Gouging**

Disapprove the price of any food, beverage, item of merchandise or service that is substantially higher than the price charged by a substantially similar business in the region, and prohibit the charging of such substantially higher price; and

**B. Prohibit the Sale of Objectionable Materials**

Prohibit the sale of any item of any food, beverage, item of merchandise or service that is unsafe; that portrays the City or Seattle Center or any aspect thereof in an incorrect or misleading manner; that is inappropriate for a family-oriented arts, recreation and entertainment facility such as Seattle Center; or that may create a substantial litter or other maintenance problem at Seattle Center; all of which shall be determined by the Director.

**XVI. FORCE MAJEURE**

Notwithstanding any other provision herein, neither party shall be liable to the other for any delay, hindrance or failure in the performance of any covenant, service, work or other act required under this Agreement when such delay, hindrance or failure is due to causes entirely beyond such party's control such as riots, insurrections, martial law, civil commotion, war, flood, fire, earthquake, or other casualty or acts of nature.

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All notices and other material to be delivered hereunder shall be in writing and shall be delivered or mailed to the following:

To Seattle Center:     Director, SEATTLE CENTER  
                                 305 Harrison Street  
                                 Seattle, Washington 98109

To SICF:                 Board of Trustees President,  
                                 SEATTLE INTERNATIONAL CHILDREN'S FESTIVAL  
                                 305 Harrison Street  
                                 Seattle, Washington 98109

or other such respective address(es) as either party may from time to time designate in writing.

**XVIII. DIRECTOR'S AUTHORITY**

The term "Director" as used throughout this Agreement in regard to permission, warrant, consent, approval, rights, interpretation, and discretionary matters shall mean the Director of the Seattle Center or his/her designee; provided, that the action of the Director and his/her designee pursuant to or in implementation of this Agreement does not constitute any official action by any other City Department or official that may be required by law, ordinance, rule or regulation before SICF may rightfully commence, suspend, enlarge, or terminate any particular undertaking or may obtain or exercise any particular right or privilege under this Agreement. Any decision to be made by the Director shall be left to his/her reasonable discretion.

**XIX. AMENDMENTS**

No modification or amendment of any of the provisions hereof shall be effective unless in writing and signed by an authorized representative of each of the parties hereto. The parties hereto expressly reserve the right to modify this Agreement, from time to time, by mutual agreement.

**XX. CAPTIONS**

The titles of sections and subsections are for convenience only and do not define or limit the contents.

**XXI. BINDING EFFECT**

The provisions, covenants and conditions in this Agreement apply to bind the parties, their legal representatives, successors, and assigns.

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**XXII. PREVIOUS AGREEMENTS SUPERSEDED**

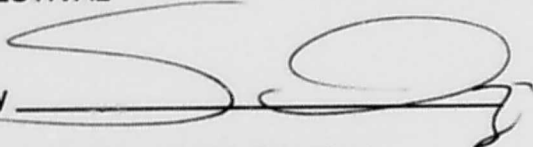
The terms and conditions of this Agreement supersede the terms, obligations and conditions of any existing or prior agreement between the parties regarding the subject matter of this Agreement.

**XXIII. ENTIRE AGREEMENT**

This Agreement, including the Exhibit attached hereto and forming a part hereof, are all of the covenants, promises, agreements, and conditions, either oral or written, between the parties. The parties acknowledge that they have negotiated the terms hereof and that they have had the opportunity to have this Agreement reviewed by their respective legal counsel. The terms and conditions of this Agreement shall not be construed against any party on the basis of that party's draftsmanship of any of the same.

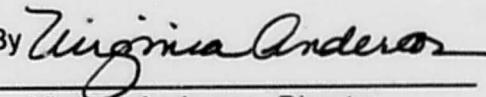
IN WITNESS WHEREOF, the parties hereto have executed this Agreement by having their authorized representatives affix their signatures below.

SEATTLE INTERNATIONAL CHILDREN'S  
FESTIVAL

By 

Carlo Scanduzzi, President  
SICF Board of Trustees

THE CITY OF SEATTLE

By 

Virginia Anderson, Director  
Seattle Center Department

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**Fiscal Note – Renewal of Seattle International Children's Festival Agreement**

<b>Department:</b> Seattle Center	<b>Contact Person/Phone:</b> Tom Israel 684-7290	<b>CBO Analyst/Phone:</b> Sara Levin 684-8691
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**Legislation Title:**

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of an agreement with the Seattle International Children's Festival for the presentation of annual festivals at Seattle Center.

**Summary of the Legislation:**

The attached legislation authorizes a renewal of Seattle Center's current agreement with the Seattle International Children's Festival. The proposed renewal does the following:

- extends the term of the agreement for five years, through the 2004;
- includes an increase in the level of City for the Festival by \$12,000 annually to \$101,000

**Background (Include justification for the legislation and any funding history, if applicable):**

The Seattle International Children's Festival began as a program of the Seattle Center in the 1980s. By 1991 the event achieved a size and level of quality which demonstrated that the Festival has garnered sufficient community interest and visibility to support the Festival in future years. During 1990 the Seattle Center Foundation Board of Directors and staff of the Children's Festival reviewed the relationship of the Festival to the City. It was their recommendation that the Festival be separated from the City organization. Early in 1991 a Board of Directors was assembled to serve as the managing structure for the Festival separate from the City of Seattle.

The Festival applied for, and received, 501(c)3 status as a non-profit corporation. This status allows the Festival to solicit donations, contract for services and conduct business as an independent organization. Previously these functions were supported by both the Seattle Center and the Seattle Center Foundation. Given these developments, the Seattle Center recommended that the International Children's Festival be made independent of the City. The Festival's Board concurred with this recommendation. As part of this recommendation it was proposed that the City would continue to provide support for the Festival. The continued City support has two functions. First, the City's contribution reduces the fund-raising burden on the Festival. Second, the City continues to

be a sponsoring partner in an event which celebrates the cultural diversity of Seattle consistent with the mission statement of the Center.

#### Current Agreement

The basic terms of the City's current agreement with the Festival are as follows:

1. The Festival is responsible for planning, organizing and staging an annual arts festival and related educational and outreach activities for schools and the general public as well as fund raising to support the event.
2. The City provides facilities (rent free), event staffing, parking (free) and cash support to the Festival.
3. The Festival reimburses the City for the actual cost of the event staff.
4. For 1999 the support amounts were as follows:
  - Cash support - \$89,000.
  - Estimated value of rent - \$51,000
  - Estimated value of parking - \$16,000
  - Estimated labor reimbursement - \$55,700

#### Recommended Agreement

- Increases annual support by \$12,000 to \$101,000
- All value added support will be consistent with last year.

Sustainability Issues (related to grant awards): N/A

#### Estimated Expenditure Impacts:

FUND	2000	2001	2002
Seattle Center Operating Fund	\$12,000	\$12,000	\$12,000
<b>TOTAL</b>	<b>\$12,000</b>	<b>\$12,000</b>	<b>\$12,000</b>

One-time \$ \_\_\_\_\_ On-going - \$12,000

#### Estimated Revenue Impacts:

FUND	1998	1999	2000
None			
<b>TOTAL</b>			

One-time \$ \_\_\_\_\_ On-going \$ \_\_\_\_\_

#### Estimated FTE Impacts:

FUND	1998	1999	2000
None			
TOTAL			

# Full Time \_\_\_\_\_ # Part Time \_\_\_\_\_ # TES \_\_\_\_\_

**Other Issues (including long-term implications of the legislation):**

Without the added financial support the Festival would have to consider reducing programming if other sources of funding could not be found.

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PAUL SCHELL, Mayor  
VIRGINIA ANDERSON, Director



April 12, 2000

The Honorable Margaret Pageler  
President, Seattle City Council  
1100 Municipal Building  
600 Fourth Avenue  
Seattle, Washington 98104-1876

Via: Mayor Paul Schell

Attention: Dwight Dively, Director, Executive Services Department

Subject: LEGISLATION RENEWING AN AGREEMENT WITH THE  
SEATTLE INTERNATIONAL CHILDREN'S FESTIVAL

Dear Councilmember Pageler:

I am pleased to forward to the City Council legislation authorizing Seattle Center to renew an agreement with the Seattle International Children's Festival for the presentation of this acclaimed children's festival at Seattle Center. The attached agreement extends the term of the current agreement for another five years, from 2000 through the 2004 festival. Seattle Center is proud to continue the City's involvement with bringing the arts into the lives of young people.

#### Background

The Seattle International Children's Festival (SICF) began as a program of the Seattle Center in the 1980's. By the early 1990's the Festival had achieved a size and level of quality which demonstrated that there was sufficient community interest to support the Festival in future years. At the recommendation of both Seattle Center and the Seattle Center Foundation Board of Directors, the Children's Festival separated from the City to become its own 501(c)3. This recommendation was conceived of as a strategy to help the continued growth and development of the Festival. In 1992, the City approved a three year agreement with the new Festival organization for use of Seattle Center facilities and provision of City support. In 1996, the agreement was renewed for an additional four years, through the 1999 Festival. The Festival has since grown into a week long event which attracts almost 50,000 youngsters (and adults) to over 130 high quality performances of music, theater, dance and other performing arts.

#### HOME TO...

##### THE ARTS

Intiman Theatre  
KCTS/Channel 9  
Northwest Craft Center  
Pacific Northwest Ballet  
Pottery Northwest  
Seattle Arts Commission  
Seattle Center Academy  
Seattle Children's Theatre  
Seattle Opera  
Seattle Repertory Theatre

##### SPORTS TEAMS

Seattle Storm  
Seattle SuperSonics  
Seattle Thunderbirds

##### ATTRACTIONS

Experience Music Project  
Fun Forest Amusement Park  
International Fountain  
Pacific Science Center  
Seattle Center House  
Seattle Center Monorail  
Space Needle  
The Children's Museum

##### FESTIVALS

artsEdge  
Bite of Seattle  
Bumbershoot  
Festál Cultural Festivals  
KING 5 Winterfest  
Northwest Folklife Festival  
Seattle International Children's Festival  
Whirligig

305 HARRISON STREET  
SEATTLE, WA 98109-4645  
TEL: 206.684.7200  
FAX: 206.684.7342  
www.seattlecenter.com

Accommodations for people with disabilities provided on request (206) 684-7200

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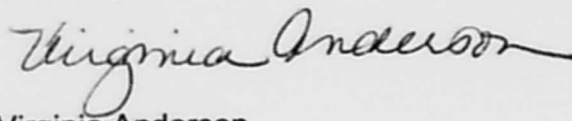
The Honorable Margaret Pageler  
April 12, 2000  
Page 2

The Children's Festival is one of "big four" major festivals annually held on the Seattle Center campus – SICF, Northwest Folklife Festival, Bite of Seattle, and Bumbershoot. Each festival has its own unique relationship with the City, ranging from the Bite of Seattle, which is a purely commercial event and produces net income for the City, to Bumbershoot which is produced by OneReel and structured to cover Seattle Center's marginal costs, to SICF and Folklife, both of which receive direct City support.

In the case of the Children's Festival, the City makes an annual cash contribution in addition to providing facilities rent free. This support has two functions. First, the City's contribution reduces the fund-raising burden on the Festival. Second, the City continues to be a sponsoring partner in an event which celebrates the cultural diversity of Seattle consistent with Mayor and Council goals and the Vision Statement of Seattle Center. The attached contract recommends increasing the amount of the City's annual contribution to SICF by \$12,000, from \$89,000 to \$101,000, in order to help the Festival keep pace with inflation. This amount corresponds to the increase in the Consumer Price Index since 1996. This \$101,000 amount remains fixed for the five-year term of the contract. Overall, the City's contribution helps to leverage a Festival budget which totals more than \$800,000 (cash) plus \$300,000 worth of in-kind support.

I believe the proposed contract extension is in the best interest of the City and the Seattle International Children's Festival. Since its inception as a City program, the SICF has built on modest beginnings to become one of the premier performing arts events in the United States. The attached agreement continues an ongoing relationship which recognizes the Children's Festival as an independent member of the Center's family of public festivals. I recommend your approval of this legislation. If you have any questions regarding the SICF agreement, please call me at 684-7330, or call Tom Israel at 684-7298.

Sincerely,



Virginia Anderson

Attachments

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**AGREEMENT  
BETWEEN THE CITY OF SEATTLE  
AND  
SEATTLE INTERNATIONAL CHILDREN'S FESTIVAL**

THIS AGREEMENT is entered into by and between THE CITY OF SEATTLE (hereinafter referred to as "City"), acting by and through its Seattle Center Department and the Director thereof (hereinafter referred to as the "Director") and the SEATTLE INTERNATIONAL CHILDREN'S FESTIVAL, a nonprofit corporation organized and existing under the laws of the State of Washington (hereinafter referred to as "SICF"), acting by and through the Chair of its Board of Trustees.

**RECITALS**

WHEREAS, SICF is responsible for planning, organizing and staging an annual arts festival and related educational and outreach activities for schools and the general public known as the Seattle International Children's Festival ("Festival"), as well as fund-raising to support the event; and

WHEREAS, the City is responsible for providing facilities, event staff and a fixed amount of financial support to SICF; and

WHEREAS, the purpose of the Festival is described in SICF mission statement as follows:

SICF is a celebration of world cultures through the performing arts. Its mission is to provide multicultural experiences, education, and exchange for the children and families of the Pacific Northwest by: presenting each May at Seattle Center, more than 100 performances by 15 - 20 different artists/groups from around the world; partnering with regional schools, cultural and civic organizations to provide multicultural arts curriculum support to teachers and students; fostering an appreciation of cultural diversity among nations and within our own diverse community; and providing equal access to the arts through low and subsidized tickets; and

WHEREAS, SICF recognizes that appropriate treatment of all Festival participants is important to ensuring a successful event. SICF is committed to the emotional, physical and psychological well-being of all children and will take these factors into consideration when making choices regarding which performances to stage and acts to book;

NOW, THEREFORE, the parties hereby enter into this Agreement in order to clearly delineate the areas of responsibility and terms and conditions for production of the Festival.

**I. TERM**

The Term of this Agreement shall commence January 1, 2000, and shall expire December 31, 2004, unless terminated earlier as provided herein. Each calendar year of the Term shall constitute a separate "Festival Year."

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## II. SCOPE OF SERVICES

### A. Production

SICF shall be responsible for planning, organizing and staging an annual Festival, including related educational and outreach activities for schools and the general public on the dates specified below. The responsibility includes, but is not limited to, contracting for artistic services; recruiting and maintaining a Board of Trustees, a professional staff and the volunteers required to produce the Festival; fund-raising and financial management; and coordination of all aspects of Festival production.

2000 Festival:	May 15 through 20
2001 Festival:	May 14 through 19
2002 Festival:	May 13 through 18
2003 Festival:	May 12 through 17
2004 Festival:	May 10 through 15

### B. Staffing

SICF shall employ or otherwise secure the services of whatever professional and technical staff are required to competently plan, organize, produce and evaluate each Festival. The Seattle Center shall make available to SICF such Seattle Center staff as are required by SICF to stage and produce the Festival outlined in the Event Service Order approved by the Director.

### C. SICF Deliverables

SICF shall annually submit to the Director the following planning, operational and evaluation documentation on or by the indicated dates. As used in this Section, the term "following year's Festival" (as opposed to the current year's Festival) shall mean the Festival to be held during the year following the current year. For example, during the 2000 calendar year, "the following year's Festival" shall mean the 2001 Festival.

#### 1. Documentation to be Submitted No Later than January 2 of Each Year

##### a. Proposed Facility Use Plan

SICF shall submit a written proposed Facility Use Plan for the following year's Festival describing the facilities and areas of the Seattle Center grounds that are proposed to be used and what general activities are anticipated to take place in each facility and area.

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The plan shall also state the estimated number of bus parking permits required and SICF's proposed use of curbside parking areas for bus loading and parking. The entire Facility Use Plan shall be subject to the Director's approval, which approval will not be unreasonably withheld. The Director shall notify SICF in writing of his/her approval or disapproval of the Proposed Facility Use Plan or any component thereof within thirty (30) days after receipt.

b. **Budget and Funding Plan**

SICF shall submit a written Budget and Funding Plan for the following year's Festival, detailing the total planned expenditures, by category; the amount and source of all funds to be used to produce the Festival; ticket prices; estimated total attendance (school, general public, scholarship); estimated attendance by performance by facility; and estimated revenues by facility by revenue source.

c. **Basic Labor Schedule**

SICF shall deliver the basic labor schedule for the following year's Festival. Said Schedule shall include an estimate by hours by labor category of Seattle Center labor to stage the following year's Festival. Should a change in the facilities to be provided under Section III.C herein become necessary due to a decision made by Seattle Center, SICF shall be given adequate time to amend the Basic Labor Schedule. The Director shall, in good faith, use his/her best efforts to notify SICF within thirty (30) days if a decision is made which would require amendment of the Basic Labor Schedule.

d. **Program Plan**

SICF shall submit a written Program Plan detailing the preliminary programmatic content of performances planned as part of the current year's Festival.

e. **Time Schedule for Move-In, Move-Out for Facilities and Programmed Space**

SICF shall deliver to the Director and the Seattle Center Festival Coordinator a schedule of specific times and functions for each facility and grounds area proposed for use during the current year's Festival.

2. **Other Required Documentation**

a. **Event Service Order**



Not later than sixty (60) calendar days prior to the first Festival move-in day of each year during the Term hereof, SICF shall submit to the Director SICF's draft Event Service Order, describing the complete technical and facility set-up requirements desired for Seattle Center facilities and grounds, and shall identify all Seattle Center equipment, services, supplies and material within the specified facilities or available for use at specified "on-grounds areas", as indicated in the Seattle Center Event Service Manual or its successor publication then in effect, that are desired by SICF for Festival purposes. Such Manual and each successor publication are incorporated herein by reference. Any and all arrangements included in the draft Event Service Order but not identified in the Event Service Manual as being generally available from Seattle Center shall be subject to prior authorization by the Director, which authorization shall be provided or denied in writing within fourteen (14) calendar days of SICF's submission of the draft Event Service Order. SICF shall submit to Seattle Center a final Event Service Order not later than thirty (30) days prior to the first Festival move-in day of each year during the Term hereof.

**b. Revised Facility Use Plan**

On or by July 15 of each year, or earlier if available, SICF shall submit to the Director and the Festival Coordinator a Revised Facility Use Plan for the following year's Festival. Within 14 calendar days after receipt of the Revised Facility Use Plan, the Director shall advise SICF, in writing, which facilities the Seattle Center will book for SICF use on the dates and times requested by SICF in its Revised Facility Use Plan. SICF may rely on such written notice and other approved elements of the Revised Facility Use Plan in printing its festival brochure and selling tickets to the events described therein. In the event subsequent modifications to the Revised Facility Use Plan are required by the City due to construction projects and timelines or as a result of a force majeure event, the Director shall notify SICF of such changes as soon as possible and use his/her best efforts to minimize any and all resulting damages incurred by SICF as a result of such modifications. If, despite such efforts on the part of the Director, SICF does incur damages as a result of modifications to the approved Revised Facility Use Plan, all such damages shall be the responsibility of the City.

**c. Festival Final Report**

On or before August 15 of each year during the Term hereof, SICF shall deliver a Final Report for the current year's Festival, containing a complete financial and programmatic evaluation of the preceding Festival, together with a copy of representative programs. Detailed recommendations for future efforts toward the

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planning, organizing, staging, production and evaluation of the Festival shall also be included in the Final Report.

**D. Review of Proposed Reimbursable Charges**

During the two weeks following SICF's receipt of the invoice described in Section V.D. hereof, SICF shall have the option to schedule a meeting with the Event Service Representative(s), Festival Contract Administrator and any other Seattle Center staff mutually agreed upon, which meeting shall take place no later than thirty (30) days after SICF's receipt of the invoice. At such meeting Seattle Center staff shall explain any discrepancy between the labor hours billed by the City and the hours requested in the Event Service Order and subsequent change orders to SICF staff for discussion and review. Should the parties not be able to reach agreement on the final number of hours to be reimbursed, SICF may appeal to the Director to adjust the amount of hours to be invoiced.

**E. Approval of Plans or Documents**

Except as noted specifically within the foregoing paragraphs of this Section, in the event the Director determines that all or a portion of the documents or plans required to be submitted by SICF herein do not meet the requirements of this Section, the Director shall notify SICF of that determination, in writing, within thirty (30) calendar days after the Director's receipt of said documents. The Director's approval of such documents or plans shall not be unreasonably withheld.

In the event the Director notifies SICF of any such deficiencies, SICF shall have fourteen (14) calendar days after its receipt of such notice to make any modifications or corrections required by the Director. If the Director does not provide timely notice of any deficiencies in SICF plans or documents, or if no such Director's notice is given, such plans and documents are deemed acceptable.

**III. CITY OBLIGATIONS**

**A. Compensation**

**1. Production Fee**

**a. Amount**

The City shall pay SICF for the production of each Festival the sum of \$101,000.00 (the "Production Fee") in accordance with the following schedule:

- (1) Sixty-five percent (65%) of the Production Fee (\$65,650.00) shall be paid to SICF upon SICF's delivery and the Director's acceptance of the items listed in subsection II.C.1.a.-e. hereof and in accordance with Section III.A.1.b; and

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- (2) Ten percent (10%) of the Production Fee (\$10,100.00) shall be paid to SICF after SICF's delivery and the Director's acceptance of the items listed in paragraphs II.C.2.a. and b. hereof; and
- (3) The remaining twenty-five percent (25%) (\$25,250.00) of the Production Fee shall be paid to SICF upon SICF's reimbursement of labor costs provided, pursuant to Section V.C.

**b. Time and Place of City Payments**

SICF shall invoice the City for the partial payment of the Production Fee provided for in Section III.A.1.a. upon SICF's submission to the City of the SICF deliverables specified in Section II.C.1.a.-e. Payment shall be made after the beginning of the City's fiscal year, or approximately January 2, each year during the Term hereof.

All invoices shall be sent to the Seattle Center Festival Coordinator, 305 Harrison Street, Seattle, Washington 98109, or to such other address as the Director shall specify in writing.

**2. Office and Storage Space**

The City shall provide SICF with office space as provided in Exhibit A attached. In the event of any conflict between the terms and conditions contained in Exhibit A and this Agreement with regard to said office space, only, the terms and conditions contained in Exhibit A shall control.

**3. Parking**

- a. The Seattle Center shall provide to SICF, at the times specified and at no cost, the following parking permits that shall be used for persons on Festival business only:
  - (1) On or before January 1 of each year during the Term hereof, up to thirty (30) permits valid for two (2) days per month in the Fifth Avenue Parking Lot for the Board of Trustees; and
  - (2) On or before January 1 of each year during the Term hereof, up to twenty (20) permits in the Fifth Avenue Parking Lot or Mercer Street Garage for Festival volunteers and Festival coordinators. Permits will be effective for the period commencing January 15 of each year and ending ten (10) days after the final date of the Festival as indicated in Section II.A.

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(3) On or before April 1 of each year during the Term hereof for the Monday performance day of the Festival, up to one hundred (100) permits in the Fifth Avenue Parking Lot or the Mercer Street Garage for volunteers; for each additional performance day of the Festival, up to seventy-five (75) permits in the Fifth Avenue Parking Lot or the Mercer Street Garage for volunteers.

b. SICF shall be permitted to purchase, at the then-current all hours or off-peak Seattle Center employee rate, parking permits in First Avenue North Garage.

c. Notwithstanding any other provision hereof, upon written notice to SICF, the Director reserves the right to change the location(s) at which parking permits provided hereunder shall be valid. No permit issued hereunder shall be valid for First Avenue North Garage parking after 5 p.m. on Seattle SuperSonics game nights.

**4. Monorail Use**

SICF shall be permitted to purchase, at a weekly group rate negotiated between the Director, SICF, and the Monorail operating company, if any, an unlimited number of round-trip monorail passes to be used by Festival performers during the Festival dates and the week prior to each Festival. In the event the Director or the City has no authority to negotiate such a discounted rate for the Monorail, SICF is authorized to negotiate directly with monorail operational authorities.

**B. City Deliverables**

**1. Basic Equipment Inventory**

On or by January 15 of each year during the Term hereof, the Festival Coordinator shall deliver to SICF a then-current detailed inventory of all Seattle Center equipment (including but not limited to that related to Facility Support, Sound, and Stage services) that is then located on Seattle Center facilities and grounds (collectively, "the Premises") and available for Festival use. Further, the Festival Coordinator shall notify SICF in a timely manner, in writing, in the event any items on said inventory list become unavailable. If SICF is not notified otherwise prior to producing the final Event Service Order for each Festival, SICF is entitled to rely upon the availability of all items in the inventory and the City shall provide such equipment to SICF at no cost to SICF.

**2. Labor Rate Schedule**

On or by January 15 of each year during the Term hereof, the Director shall notify SICF of the Seattle Center's then-current labor rates for salary





and benefits only, and every change expected to occur thereto during the following year, and thereafter shall advise SICF in writing regarding any revisions to such rates immediately after such revisions are finally approved.

**C. Facilities and Equipment**

**1. Facilities**

The Premises requested by SICF in the Revised Facility Use Plan, as approved by the Director shall be provided to SICF by the City free of any license fee or rental charge. The following is a list of Premises that may be available. Additional or alternate facilities and grounds areas may be authorized for a particular year's Festival, subject to availability and subject to its inclusion in the approved Revised Facility Use Plan.

<u>FACILITY</u>	<u>SPECIAL CONDITION</u>
a. <u>Mercer Arena</u> :	For the year 2000, if such facility exists at the time and is functioning as a public use facility. For the year 2001 the facility will not be available for use unless construction timelines permit. For the year 2002, the facility may be available for use dependent upon City permits and also consistent with and subject to contracts between the City, the Seattle Opera and the Pacific Northwest Ballet. For the years 2003-2004, facility availability shall be determined by the Director.
b. <u>Opera House</u> :	For the years 2000, 2001, and 2004, consistent with and subject to contracts between the City, the Seattle Opera and the Pacific Northwest Ballet. For the years 2002 and 2003 the facility will not be available for use due to construction.
c. <u>Flag Pavilion</u> :	For the years 2000 and 2001, if such facility exists at the time and is functioning as a public use facility. For the year 2002, the facility will be demolished.
d. <u>Festival Pavilion</u> :	For the years 2003 and 2004, if such facility exists at the time and is function as a public use facility.
e. <u>Seattle Center Pavilion</u> :	If such facility exists at the time and is functioning as a public use facility.
f. <u>Northwest Rooms</u> :	If such facilities exist at the time and are functioning as public use facilities.
g. <u>Stage and public programming space on the second floor of Center House</u> :	If such facility exists at the time and is functioning as a public use facility.

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- h. Performance Studio At The Children's Museum: Consistent with and subject to the contract between the City and The Children's Museum.
- i. Certain portions of the Bagley Wright Theatre Production Areas, as defined in the City's Premises Use and Occupancy Agreement with the Seattle Repertory Theatre, unless the same is unavailable due to Seattle Repertory Theatre schedule.
- j. Seattle Children's Theatre: Consistent with and subject to the Seattle Children's Theatre's contract with the City.
- k. Mural Amphitheater: If such area exists at the time and is functioning as a public use area.
- l. Other areas of the grounds of Seattle Center: If such areas exist at the time and are functioning as public use areas.

The availability and scheduling of the above facilities is subject to the provisions of Section II.E. hereof.

**2. Move-in and Move-out Use Time**

Unless otherwise specified herein or in the Revised Facility Use Plan approved by the Director, the City shall provide to SICF, free of any license fee or rental charge, two move-in days and one move-out day for each facility (other than the authorized portions of the Bagley Wright Theatre Production Areas, for which only one move-in day shall be provided); two move-in days and two move-out days for specified grounds areas; and five move-in days for the Flag Pavilion. Subject to facility availability, additional days may be added free of any license fee or rental charge if SICF performance requirements necessitate such time and if a subsequent user does not require use of such facility.

**3. Conference and Meeting Facilities**

The City shall provide to SICF at no license fee or rental charge such conference and meeting facilities as may be available throughout the Term of this Agreement for Festival-related activities. The availability of facilities shall not be confirmed by the City prior to forty-five (45) days in advance of their desired use by SICF.

**4. Readerboards and Mercer Street Overpass Use**

The City shall provide, free of any license fee or rental charge, the use of all Seattle Center public programming readerboards (located at 5th Avenue and Harrison Street and 1st Avenue and Thomas Street) and the Mercer Street Garage overpass for the advertising of the Festival two weeks immediately preceding the Festival, and continuing through the run

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of the Festival in each Festival year. Use of any other readerboard may be permitted at the discretion of the Director. With respect to the Mercer Street Garage overpass, the only advertising allowed thereon shall be a Festival banner provided at SICF's expense. Said banner shall be mounted and removed by Seattle Center staff at no additional cost to SICF.

**5. Equipment**

The SICF may use for any Festival, free of charge, those items of Seattle Center equipment that are identified in the Seattle Center Event Service Manual in accordance with Section III.B.1. All equipment made available for Festival use by SICF shall be returned to the Seattle Center's direct management and control on or by the end of the move-out period specified for each facility or grounds area with respect to which such equipment is associated or related. The Seattle Center shall cooperate with SICF to install, in a timely manner, all stage and production facilities and equipment needed for the Festival, as determined by SICF and as approved for such use by the Director.

The SICF is hereby authorized to supplement equipment provided by the Seattle Center and to provide its own labor to set-up, move-out and operate said equipment subject to the provisions of the agreement between The City of Seattle and Joint Crafts Council in effect at the time of the Festival.

**D. Labor Services**

The City shall provide SICF the following event-driven labor as specifically requested by SICF on the Event Service Order, or by Seattle Center should the Event Service Order be determined to be not operationally feasible as provided in Section V.B., and subsequent change orders:

1. **Stage Labor** which shall include move-in/out, rehearsal, performance, and pre- or post- Festival facility use labor;
2. **Sound Labor** which shall include move-in/out, rehearsal, performance and pre- or post-Festival facility use labor excluding labor for transport of equipment from shop to facility and equipment set-up/or breakdown in shop prior to or following each Festival;
3. **Emergency Services and Admissions Labor** which shall include all labor associated with the Festival, including move-in/out, rehearsal, performance and pre- or post-Festival facility use labor;
4. **Technical Facilities Management Labor** which shall include all labor associated with Festival requirements specifically requested by SICF in the Event Service Order and subsequent change orders.

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#### IV. REDEVELOPMENT IMPACT REVIEW

Consistent with Section II.C., the Director and SICF shall meet to review the on-going activities and any planned activity on the grounds and/or in the facilities with respect to redevelopment and the impact of such redevelopment on the following year's Festival. It is the intent of both parties to minimize any financial impact to either party for changes that may occur after approval of the Revised Facility Use Plan for each Festival year.

The parties agree to work together to modify the Premises in order to achieve SICF and Seattle Center common goals. Notwithstanding any other provision hereof, in the event the Director determines, in the exercise of his/her discretion, that in order to facilitate the redevelopment of the Seattle Center in a manner consistent with the "Seattle Center 2000 Plan" approved by Seattle City Council Resolution 28210, the grounds or any facility scheduled for Festival use are required for some use or purpose other than that contemplated by the parties under this Agreement, the Director, after consultation with SICF, shall have the right to modify this Agreement, including but not limited to the Premises provided for Festival purposes. However, such modifications must be made consistent with the provisions of Sections II.C.1.c, II.C.2, II.E, III.B.2, III.C.1.

#### V. FEES AND CHARGES

##### A. Office and Telephone Services

SICF shall pay to the City all costs reasonably incurred by the City in providing office and telephone services requested by SICF, including but not limited to postage, photocopying, the installation of telephone instruments and all local or long distance charges ("Office Services"). Office Services charges shall exclude time spent by Office Services staff to prepare invoices to SICF for such charges. The Office Services shall be invoiced to SICF monthly. Before being implemented, any telephone changes or moves shall be arranged with Seattle Center's Office Services staff.

##### B. Event Service Order Not Operationally Feasible

If, after all normal procedures as outlined in this Agreement to allow for the amendment, alteration and accommodation of the Event Service Order requests have been exhausted, the Director determines that the Event Service Order submitted by SICF is not operationally feasible, SICF shall pay any costs incurred by Seattle Center in negotiating workable changes to modify the Final Event Service Order to accommodate the needs of the Festival and the Seattle Center.

##### C. Reimbursable Labor Fee

SICF shall reimburse the City for all labor provided pursuant to Section III.D herein. Labor costs shall include but not be limited to salaries, wages, employee benefits, but shall not include Seattle Center administrative overhead and facility cost allocations. The City shall invoice SICF for all labor hours used by SICF, and thereafter adjust the City invoice as determined by the review, if any, provided for in Section II.D.

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**D. Time and Place of SICF Payments**

The City shall invoice SICF for the charges specified in this Section. These charges shall be due on or by the thirtieth (30th) day after the date of any City billing or invoice. All payments shall be delinquent if not paid on the due date. Delinquent sums shall bear interest at the simple annual rate of the current publicly announced prime rate established by the Federal Reserve Bank until paid. However, the City shall not charge a late fee or interest on any amounts until SICF has been in receipt of the invoice for thirty (30) days. Payments made after a delinquency shall be applied first to accrued interest, and then to principal.

All payments shall be sent to The City of Seattle, c/o Seattle Center Accounting, 305 Harrison Street, Seattle, Washington, 98109 or to such other address as the Director shall specify.

**VI. PUBLICITY AND MEDIA**

**A. Sponsorship References**

All Festival publicity shall identify the Seattle Center Department of The City of Seattle as a primary Festival sponsor consistent with the billing and design accorded other primary sponsors. Said publicity may alternatively include the wording, "Sponsored In Part by the Seattle Center", and shall include the Seattle Center logo whenever the Festival logo is used on all materials not mailed as non-profit material. Materials mailed at the non-profit rate are subject to Federal Postal regulations governing sponsor recognition.

**B. Media Rights**

Except as limited by the terms of the contracts between SICF and the artists, and with advance notice to SICF by the City, SICF grants the City the right to film, videotape, televise and record all events, appearances and performances occurring at or associated with the Festival. With advance notice to SICF, the City may use up to two (2) minutes of such non-commercial films, videotapes, recordings or reproductions of the performances by any other means, for promotional and publicity use without payment to SICF or the artists with whom SICF has contracted. Films, videotapes or recordings of the artist and/or its performances shall not be broadcast for commercial purposes in any medium unless SICF and the City execute a separate agreement providing for payment to SICF and/or participating artists in accordance with SICF contracts with the artists. The parties shall endeavor to come to such agreement(s) in good faith.

**C. Seattle Center Use of Graphics**

To the extent authorized by SICF and consistent with SICF's contractual obligations with its performers and graphic artists, Seattle Center may use any and all Festival graphics free of charge for any Seattle Center promotion effort or the co-promotion by SICF and the City of activities directly related to the annual

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"Seattle International Children's Festival." Seattle Center shall advise SICF in advance of any such usage.

**D. Publicity and Background Materials**

SICF shall furnish the Director with whatever backup material regarding the Festival, its participants, and related matters is requested by such Director and is reasonably available. The SICF shall produce a printed program, press releases, posters and flyers in such numbers as may be appropriate to publicize the Festival.

**VII. CONCESSION RIGHTS**

SICF is granted the following limited concession rights which may be exercised during each year's Festival, subject to existing Seattle Center concession and licensing contracts:

- A. to sell photographs, posters, art works, crafts, printed materials, and video and audio recordings or other media, all of which have an artistic base, theme or groundwork related to the Festival;
- B. to sell souvenir items related to the Festival but not to Seattle Center, generally, nor containing the Seattle Center logo;
- C. to sell food and beverages;
- D. to authorize others to sell such items.

These concession rights may be exercised on the Seattle Center grounds and in Seattle Center facilities other than the Center House. With respect to the Center House, SICF may negotiate concession rights with tenants on the second floor of the Center House, subject to the Director's approval, which approval may be conditioned on the payment by SICF of a fee or percentage of gross receipts.

**VIII. LIENS AND ENCUMBRANCES**

SICF shall keep the Premises free and clear of any liens and encumbrances arising or growing out of its use and occupancy of the Seattle Center. At the request of the Director, SICF shall deliver to the Director written proof of the payment of any items that could be the basis for such a lien, if not paid.

**IX. NO NUISANCES OR OBJECTIONABLE ACTIVITY**

SICF shall not permit any excessive or objectionable noise, odor, dust, vibration, or other similar substance or condition to remain on or emitted from the Premises as part of any Festival; shall not interfere with access from or to the Seattle Center or any part thereof, or with the traffic thereon; shall not create any nuisance in or adjacent to the Seattle Center, and shall not knowingly do anything at the Seattle Center that shall create a danger to life and limb.

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**X. COMPLIANCE WITH LAW**

**A. General Requirement**

SICF, at no expense to the Seattle Center, shall comply with all applicable laws of the United States and the State of Washington; the Charter, Municipal Code, and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof.

**B. Licenses and Similar Authorizations**

SICF, at no expense to the Seattle Center, shall secure and maintain in full force and effect during the Term of this Agreement, all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.

**C. Taxes**

SICF shall pay, before delinquency, all taxes, levies, and assessments arising from its activities and undertakings at and on Seattle Center premises, including, but not limited to taxes arising out of the activity or business conducted thereon such as the rental or sale of goods or services; taxes levied on its property, equipment and improvements on the premises; and taxes on SICF's interest in this Agreement and any leasehold interest deemed to have been created thereby under Ch. 82.29A RCW.

**D. Nondiscrimination and WMBE Utilization**

SICF will comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and the City of Seattle, including the Seattle Municipal Code (SMC), notably SMC 20.44, and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

**XI. INDEMNIFICATION**

SICF shall indemnify and hold the City and its agents and employees harmless from any and all losses, claims, actions, damages and expenses arising out of SICF's performance or lack of performance under this Agreement, except those arising as a result of the sole negligence of the City, its agents and employees. In the event that any suit based upon such a loss, claim, action, damage, or expense is brought against the City, SICF, upon notice of the commencement thereof, shall defend the same at its sole cost and expense, and if final judgement is adverse to the City, or the City and SICF jointly, SICF shall promptly satisfy the same. The liability described in this subsection shall not be diminished by the fact, if it be a fact, that any such death, injury, damage, loss, cost or expense may have been contributed to, or may be alleged to have been contributed to, in part, by the negligence of the City, its officers, employees, or agents.

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## **XII. INSURANCE**

Throughout the term of this Agreement SICF shall obtain, maintain, and otherwise comply with the requirements of Exhibit B pertaining Prior to the commencement of work under this Agreement, SICF shall secure and maintain at no expense to the City, policy or policies of insurance as enumerated below.

### **A. Coverage - Commercial General Liability**

A policy of Commercial General Liability Insurance written on an insurance industry standard occurrence form (CG 00 01) or equivalent, including all the usual coverages known as:

1. Premises/Operations Liability
2. Products/Completed Operations
3. Personal/Advertising Injury
4. Contractual Liability
5. Independent Contractors Liability
6. Elevator and Hoist Liability (as applicable)\*
7. Employers Liability (Stop Gap)
8. Explosion, Collapse and Underground (XCU) (as applicable)\*
9. Watercraft, owned and nonowned (as applicable)\*

\* These coverages are only required when SICF's work under this Agreement includes exposures to which these specified coverages respond.

Such policy(ies) shall provide the following minimum limit:

#### Bodily Injury and Property Damage

\$1,000,000 General Aggregate  
\$1,000,000 Products & Completed Operations Aggregate  
\$1,000,000 Personal & Advertising Injury  
\$1,000,000 Each Occurrence  
\$ 100,000 Fire Damage

#### Stop Gap Employers Liability

\$ 1,000,000 Each Accident  
\$ 1,000,000 Disease - Policy Limit  
\$ 1,000,000 Disease - Each Employee

Any deductible or self-insured retention must be disclosed and is subject to approval by the City's Risk Manager. The cost of any claim payments falling within the deductible shall be the responsibility of the SICF.

### **Coverage - Business Automobile**

A policy of Business Automobile Liability, including coverage for owned, non-owned, leased or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent.

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Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage  
\$1,000,000 per accident

**C. Coverage – Excess Insurance**

A policy of Excess Insurance above the primary general liability policies that will provide a total limit of insurance of \$2,000,000. The excess policy must be at a minimum as broad as the primary policies.

**D. Coverage - Worker's Compensation**

SICF shall obtain and maintain Workers' Compensation insurance sufficient to secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. If SICF is qualified as a self-insurer in accordance with Chapter 51.14 of the Revised Code of Washington, SICF shall so certify by providing a copy of the state Certificate of Self-Insurance, and setting forth the limits of any policy of excess insurance covering its employees.

**E. Additional Insured, Cancellation and Primary Coverage Endorsements**

The insurance required pursuant to Sections A through C, above, shall be, (i) endorsed to include the City, its officers, elected officials, employees, agents and volunteers as additional insured; (ii) shall not be reduced or canceled without forty-five (45) days prior written notice to the City; and (iii) shall be primary as respects the City, and any other insurance maintained by the City shall be excess and not contributing insurance with the SICF's insurance.

**F. Changes of Coverage and/or Limits**

Coverage and/or limits of insurance may be altered or increased by the City as necessary from time to time, to reflect the type of or exposure to risk. The City shall have the right to periodically review the appropriateness of existing limits in view of the foregoing and of inflation and/or changing industry conditions and to require an increase in such limits upon ninety (90) days prior written notice to SICF.

**G. Evidence of Insurance**

The following documents must be provided as evidence of insurance coverage:

1. A copy of the policy's declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements.

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2. A copy of the endorsement naming The City of Seattle as an additional insured, showing the policy number, and signed by an authorized representative of the insurance company on Form CG2010 (ISO) or comparable.
3. A copy of the "Endorsements Form List" to the policy or policies showing endorsements issued on the policy, and including any company-specific or manuscript endorsements.
4. A copy of an endorsement stating that the coverages provided by the policy to the City or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to The City of Seattle as follows:

Seattle Center Director Seattle Center Department The City of Seattle 305 Harrison Street Seattle, WA 98109	Risk Manager Finance Department  The City of Seattle 600 Fourth Avenue Seattle, WA 98104
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5. A copy of a "Separation of Insureds" or "Severability of Interests" clause, indicating essentially that, except with respect to the limits of insurance and any rights or duties specifically assigned to the first named insured, the insurance applies as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought (Commercial General Liability & Business Automobile Liability Insurance).
6. If SICF is self-insured for items XII.A. and B., above, SICF shall supply a letter from its corporate risk manager or appropriate financial officer indicating whether such program is actuarially funded and the fund limits, together with copies of any excess declaration pages to meet the contract requirements. Further, this letter should advise how SICF would protect and defend the City of Seattle as an additional insured in its self-insured layer, and include claims handling directions in the event of a claim.

All evidence of insurance must be delivered to the following address:

Seattle Center Director  
Seattle Center Department  
The City of Seattle  
305 Harrison Street  
Seattle, WA 98109

#### H. Approval of City Risk Manager

All policies shall be subject to approval by the City's Risk Manager as to form, coverage and company (must be issued by companies rated A-:VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of

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Washington or issued as a surplus line by a Washington Surplus lines broker), and shall be primary to all other insurance.

**I. Adjustments of Claims**

The SICF shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of SICF under this Agreement. The SICF shall ensure that all such claims, whether processed by SICF or SICF's insurer, either directly or by means of an agent, shall be handled by a person with a permanent office in the Seattle area.

**J. Contractors and Subcontractors**

SICF shall include all of its contractors performing work at Seattle Center pursuant to this agreement as insureds under its policies or shall furnish separate evidence of insurance as stated above for each contractor. All coverages for contractors shall be subject to all the requirements stated herein and applicable to their profession.

**K. SICF's Responsibility**

SICF shall not keep or use in or about the Premises any article that is prohibited by any insurance policy. SICF shall pay immediately any increase in the City's premiums for insurance procured by the City during the term of this Agreement that results from SICF's use of the Premises. The procuring of the policies of insurance required by this Agreement shall not be construed to limit SICF's obligations under Section XI, hereof.

**L. City's Option to Terminate Upon Failure to Insure**

If SICF fails to maintain insurance required under this Agreement, the City may obtain the same and SICF shall reimburse City for the full expense thereof upon demand. Alternatively, the failure of SICF to maintain and otherwise comply with the provisions of this Section may subject this Agreement to immediate termination at the discretion of the Director and without the need for prior notice to SICF, in order to protect the public interest.

**XIII. CITY'S ACCESS TO PREMISES; INSPECTION, REPAIR, AND IMPROVEMENT OF PREMISES AND OTHER PROPERTY; WITHDRAWAL OF PREMISES**

**A. Access to Premises**

The City shall retain the right of access at all reasonable times to the Premises to inspect the same and to make any limited repair, improvement, alteration, or addition thereto or any other property owned by or under the control of the City deemed necessary by the Director, but this right of access shall not impose on the Seattle Center any obligation to make any repair, alteration, addition, or improvement except as specifically provided herein. Further, such access shall not interfere with the programs and events of the Festival but shall be subject to

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the provisions of Section II.C.2.b. The Director shall make every effort to give SICF thirty (30) days prior notice of such access need. Construction activity during subsequent Festivals shall be discussed on a case-by-case basis, and shall be addressed in conjunction with the Revised Facility Use Plan and shall be subject to the provisions of Section II.C.2.b.

**B. Permitted Interference**

In inspecting, and in making repairs, alterations, additions and improvements, the City may erect barricades and scaffolding in and outside of the affected portion of the Premises, and may otherwise interfere with the conduct of SICF's and Festival participants' business and operations where such action is of an emergency nature, and such interference shall not be deemed to be a breach or default under this Agreement. Seattle Center will not bill SICF for any activities undertaken in connection with this Section. The Seattle Center shall use its best efforts to minimize interference with access to and from the Premises and with SICF's activities and operations on or from the Premises, and shall make every effort to give SICF thirty (30) days' notice prior to such interference.

**C. Suspension of Activities and Operations**

In the event such inspection, repair, alteration, addition, or improvement work necessitates the temporary suspension of the Festival or any part thereof, or of SICF's activities and operations on the Premises, or any portion thereof, the Director shall notify SICF of such necessity and the anticipated beginning and ending dates of such suspension. Festival or Festival activity suspensions may be ordered with less notice in the event of an emergency as determined by the Director. The SICF hereby waives any and all rights to claims for damage for any injury to and interference with its operations, activity, or business and any loss occasioned by any such suspension except as provided in Section II.C.2.b. If, however, the Director could have given advance notice to SICF but failed to do so, the City is liable to SICF for any loss of revenue or costs generated resulting from the suspension of activities.

**XIV. SEATTLE CENTER'S CONTROL OF BUILDINGS, GROUNDS AND ACTIVITIES**

Notwithstanding any other provision of this Agreement, the Seattle Center, without liability of any kind, reserves the right to do any or all of the following:

- A. Increase, reduce, and change in any manner whatsoever the number, appearance, dimensions, and locations of the Seattle Center walks, buildings, landscaping, parking, and service areas, and may also make improvements, alterations, and additions to the common areas of any Seattle Center building.
- B. Regulate all traffic within and adjacent to the Seattle Center.
- C. Impose a reasonable charge for facilities not being used by SICF.

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- D. Erect, display and remove promotional exhibits and material and permit special events on the Seattle Center grounds, buildings and facilities.
- E. Promulgate, from time to time, reasonable rules and regulations regarding the use and occupancy of any area of the Seattle Center.
- F. Restrict or prohibit the parking on City owned or leased property of motor vehicles owned or operated by SICF and any of its officers, employees, agents, suppliers, invitees, and Festival participants except as provided in Section III.A.3.c.
- G. Determine the days and hours the Seattle Center shall be open to the public.
- H. Change the size, number and type and identity of other concessions, stores, businesses, and operations being conducted or undertaken at Seattle Center.
- I. Exercise any other power or right authorized by law or ordinance.

**XV. SEATTLE CENTER'S RIGHT TO DISAPPROVE MERCHANDISE AND PRICES**

In order to protect the public visiting Seattle Center from price gouging, and to ensure that a variety and diversity of food, beverages, merchandise and entertainment are offered to the same, the Seattle Center reserves the right to:

**A. Prohibit Price Gouging**

Disapprove the price of any food, beverage, item of merchandise or service that is substantially higher than the price charged by a substantially similar business in the region, and prohibit the charging of such substantially higher price; and

**B. Prohibit the Sale of Objectionable Materials**

Prohibit the sale of any item of any food, beverage, item of merchandise or service that is unsafe; that portrays the City or Seattle Center or any aspect thereof in an incorrect or misleading manner; that is inappropriate for a family-oriented arts, recreation and entertainment facility such as Seattle Center; or that may create a substantial litter or other maintenance problem at Seattle Center; all of which shall be determined by the Director.

**XVI. FORCE MAJEURE**

Notwithstanding any other provision herein, neither party shall be liable to the other for any delay, hindrance or failure in the performance of any covenant, service, work or other act required under this Agreement when such delay, hindrance or failure is due to causes entirely beyond such party's control such as riots, insurrections, martial law, civil commotion, war, flood, fire, earthquake, or other casualty or acts of nature.

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All notices and other material to be delivered hereunder shall be in writing and shall be delivered or mailed to the following:

To Seattle Center: Director, SEATTLE CENTER  
305 Harrison Street  
Seattle, Washington 98109

To SICF: Board of Trustees President,  
SEATTLE INTERNATIONAL CHILDREN'S FESTIVAL  
305 Harrison Street  
Seattle, Washington 98109

or other such respective address(es) as either party may from time to time designate in writing.

**XVIII. DIRECTOR'S AUTHORITY**

The term "Director" as used throughout this Agreement in regard to permission, warrant, consent, approval, rights, interpretation, and discretionary matters shall mean the Director of the Seattle Center or his/her designee; provided, that the action of the Director and his/her designee pursuant to or in implementation of this Agreement does not constitute any official action by any other City Department or official that may be required by law, ordinance, rule or regulation before SICF may rightfully commence, suspend, enlarge, or terminate any particular undertaking or may obtain or exercise any particular right or privilege under this Agreement. Any decision to be made by the Director shall be left to his/her reasonable discretion.

**XIX. AMENDMENTS**

No modification or amendment of any of the provisions hereof shall be effective unless in writing and signed by an authorized representative of each of the parties hereto. The parties hereto expressly reserve the right to modify this Agreement, from time to time, by mutual agreement.

**XX. CAPTIONS**

The titles of sections and subsections are for convenience only and do not define or limit the contents.

**BINDING EFFECT**

The provisions, covenants and conditions in this Agreement apply to bind the parties, their legal representatives, successors, and assigns.

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**XXII. PREVIOUS AGREEMENTS SUPERSEDED**

The terms and conditions of this Agreement supersede the terms, obligations and conditions of any existing or prior agreement between the parties regarding the subject matter of this Agreement.

**XXIII. ENTIRE AGREEMENT**

This Agreement, including the Exhibit attached hereto and forming a part hereof, are all of the covenants, promises, agreements, and conditions, either oral or written, between the parties. The parties acknowledge that they have negotiated the terms hereof and that they have had the opportunity to have this Agreement reviewed by their respective legal counsel. The terms and conditions of this Agreement shall not be construed against any party on the basis of that party's draftsmanship of any of the same.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by having their authorized representatives affix their signatures below.

SEATTLE INTERNATIONAL CHILDREN'S THE CITY OF SEATTLE  
FESTIVAL

By \_\_\_\_\_

Carlo Scanduzzi, President  
SICF Board of Trustees

By \_\_\_\_\_

Virginia Anderson, Director  
Seattle Center Department

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**OFFICE SPACE LEASE AGREEMENT BETWEEN  
THE SEATTLE CENTER  
AND  
SEATTLE INTERNATIONAL CHILDREN'S FESTIVAL**

**EXHIBIT 'A'**

THIS LEASE is entered into by THE CITY OF SEATTLE (hereinafter called "City"), a municipal corporation of the State of Washington, acting by and through the Director of the Seattle Center Department, and SEATTLE INTERNATIONAL CHILDREN'S FESTIVAL (hereinafter called "SICF"), a Non-profit Tax-exempt Washington Corporation and WITNESSES THAT:

1. **INITIAL TERM OF LEASE:** The term of this Lease shall commence January 1, 2000 and shall expire on December 31, 2004, unless terminated earlier pursuant to the provisions hereof.

2. **PREMISES DESCRIPTION:**

- a. **Legal Description of Premises:** In consideration of the payment of rent and SICF's performance of and compliance with the other covenants, conditions, and terms of this Lease, City hereby leases to SICF, and SICF hereby leases from City, a portion of the building at Seattle Center located on the following property:

A portion of Lot 6, Block 36, D.T. Denny's Third Addition to North Seattle, according to plat recorded in Vol. 1 of Plats, Page 145, Records of King County, Washington, which portion is currently identified as Storage Unit 4 and Suites 25-27, 158 Thomas St. (Blue Spruce Bldg.) the floor/site plan for which is attached hereto, labeled "Attachment A" (which portion hereinafter shall be referred to as the "Premises").

- b. **Approximate Area of Premises as of Term Commencement:** 1395 Square Feet.

3. **MONTHLY BASE RENT:**

The SICF shall remit to the City as the monthly rent, the following:

- a. **Monthly Amount Due Between January 1, 2000, and December 31, 2004**

Five-Hundred Forty Six Dollars and xx/100 (\$546.00)

- b. **CPI increase:** The monthly base rent shall be increased effective each January 1st during the term hereof by the percentage increase (if any) in the Consumer Price Index for All Urban Consumers ("CPI-U" / 1982-84 = 100) Seattle Tacoma Metropolitan Area, as published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor, that occurred during the immediately preceding calendar year; Provided, that in the event of a change in the index base of (1982-84 = 100) or other modification of such index, the City shall apply whatever conversion factors are necessary to establish an adjusted CPI-U that produces the percentage increase in the CPI-U for each such annual period that would have been produced had no change been made in such index by its publisher; and in the event such index is discontinued, the Director shall select and use for such rent adjustment purpose a similar index that reflects consumer price changes.

- c. **Additional Rent Increases:** If the non-profit rent rate for office space is increased by ordinance, then the Monthly Rent may increase accordingly.

- d. **Services in Lieu of Rent:** In lieu of rent, the Seattle Center shall have the option to accept "a portion of the planning, organizing and staging services of the annual children's entertainment festival known as the Seattle International Children's Festival held at the Seattle Center" as payment

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#### LEASE AGREEMENT BETWEEN THE SEATTLE CENTER AND SICF

for a portion or all of the rent due under this agreement. These planning, organizing and staging services received shall have a maximum value of five hundred forty six dollars and no/100's (\$546.00) per month and may from time to time be revised by the City due to changes in the CPI-U or value of SICF services

e. The City hereby accepts, until the termination date of this lease agreement or termination of the City's agreement with SICF for Seattle International Children's Festival event services, whichever occurs first, the maximum value of said services at five hundred forty six dollars and no/100's (\$546.00) per month in lieu of the rent described herein.

#### 4. PERFORMANCE GUARANTEE:

a. The SICF shall deliver to the City, Seattle Center Accounting Office at the City address referenced in Subsection 5.b hereof, within five (5) days after the SICF's execution of this Lease, as a performance guarantee, One Thousand Ninety Two Dollars and xx/100 (\$1,092.00). Said performance guarantee constitutes additional consideration for the City's execution of this Lease and shall be fully earned by the City as of the commencement date of this Lease, and may be commingled with other City funds and invested to generate additional earnings for the City's benefit as the City desires. The City may (but shall not be required to) use, apply or retain all or any part of this performance guarantee for the payment of any rent or additional rent or any sum alleged to be or actually in default, or for the payment of any amount that the City may expend by reason of any alleged or actual default by the SICF, or to compensate the City for any other loss or damage that the City may have suffered by reason of any alleged or actual SICF default. If any portion of said performance guarantee is so used or applied, the SICF, within seven (7) calendar days after the date of notice thereof, shall deliver to the City, the Seattle Center Accounting Office, additional cash in the amount sufficient to restore the performance guarantee to the amount set forth above. If the SICF fully and faithfully performs every provision of this Agreement to be performed by it, the performance guarantee or any balance thereof after any application of the same by the City hereunder shall be refunded to the SICF within forty-five (45) days after the expiration or earlier termination of this Lease. The SICF shall have no right to contest any withdrawal, use, retention or application by the City of any portion of such performance guarantee at the time of the City's taking such action; *Provided*, that nothing herein shall prejudice the SICF's right to demand through arbitration or litigation the refund of such portion if, and only if, the SICF has fully complied with and satisfied all of its obligations hereunder. The SICF waives prior notice and opportunity for a hearing on any withdrawal, use, application, or retention by the City of such performance guarantee or any portion thereof.

b. The City hereby waives the performance guarantee requirements of this section.

#### 5. TIME AND PLACE OF PAYMENT

a. Due Date for Monthly Rent: The monthly base or adjusted base rent specified in Section 3 hereof, and any leasehold taxes due pursuant to Sub-section 13.c hereof, are due and payable to the City, in advance, without setoff or deduction of any kind or nature or City invoice, on or before the first (1st) day of each month of the term hereof; *Provided*, that until the City notifies the SICF of the amount of the annual CPI adjustment in the monthly base or adjusted base rent, the SICF shall remit as a partial payment, the rental amount specified in this section or in the City's most recent rent increase notice, whichever is higher, and within seven (7) days after the date of the City's notice of the amount of each such annual increase and its invoice for the amount retroactively due, the SICF shall remit such retroactive rent and thereafter remit on a monthly basis the newly adjusted base rent.

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#### LEASE AGREEMENT BETWEEN THE SEATTLE CENTER AND SICF

b. Place of Payment: All payments shall be delivered to The City of Seattle, Seattle Center Accounting Office, 305 Harrison Street, Seattle, Washington, 98109, or to such other address as the Director shall specify by notice to SICF.

c. Delinquencies: All sums due and owing to the City shall be delinquent if not paid on or before the Fifth (5th) day after the date due; in the event of any delinquency, the SICF shall also owe to the City a service charge of Fifty Dollars (\$50.00), or such larger sum as is established by ordinance, each time such delinquency is invoiced plus interest on such delinquent sum at a rate of one and one-half percent (1½%), or such larger percent as is established by ordinance, per month from the date due to the date of payment.

d. Returned Check, Non-Sufficient Funds: In the event any payment or check for payment is returned for non-sufficient funds, the SICF shall owe as an administrative charge an additional \$20.00, or such larger sum as is established by ordinance.

6. **USE OF PREMISES**. SICF shall use the Premises for office space only. SICF may use the Premises for other purposes only with the prior, written approval of the Director. SICF shall use the entire Premises for the conduct of its business in a first-class manner, continuously during the entire term of this Agreement, with the exception of temporary closures for such periods as may be necessary for repairs or redecorating or for reasons beyond either party's reasonable control.

7. **OBJECTIONABLE MERCHANDISE OR MATERIAL**. Notwithstanding any other provision of this Lease, the Lessee shall not display, or allow to be displayed, on the Premises, any material that is unsafe; that portrays the City or Seattle Center or any aspect thereof in an incorrect, misleading, or unfavorable manner; that depicts or suggests in words, symbols, illustrations, or other forms, any act of violence, or any lewd, immoral, or obscene activity; or that is inconsistent with the image of a first-class, family-oriented retail and entertainment development, or is otherwise inappropriate for a family-oriented recreation and entertainment facility such as Seattle Center; or that may create a substantial litter or other maintenance problem at Seattle Center; all of which shall be determined by the Director in the exercise of such official's sole discretion.

8. **UTILITY SERVICES AND PARKING**

a. Extent of City Service: The City shall provide basic utility service including but not limited to electricity, sewer, water, and heating for such location.

b. Limitation on City Liability Regarding Utility Service: The City shall not be liable for the interruption of any utility service when such interruption is caused by maintenance work, or when the interruption is not due to City negligence.

c. Special Services and Facilities Subject to Prior City Approval, and at Lessee's Cost: The Lessee, directly or through a third party, may install, secure, maintain and repair, at no expense to the City, any utility service related to the Lessee's operations and its use of the Premises that is not provided or maintained by the City. Any special utility or waste disposal facility, item of equipment, or service beyond that provided to the Premises by the City, must be installed only in accordance with plans and specifications approved by the Director and other appropriate City officials, in writing, in advance of such installation. The Lessee shall not install on the Premises any fixture, furnishing, or trade equipment that exceeds the capacity of any utility or waste facility for such location. The Lessee shall pay, before delinquency, all fees and charges for the installation, change, and relocation of any point or means of service by any utility or waste line or system. The Lessee shall make arrangements with the utility service provider for the separate metering, where possible, of such service and the direct billing to the Lessee for the delivery of such service.

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## LEASE AGREEMENT BETWEEN THE SEATTLE CENTER AND SICF

d. Cooperative Parking: As of the commencement date of this Lease, the Seattle Center has a "Cooperative Parking Status" under Title 23 of the Seattle Municipal Code. Accordingly, unless otherwise specifically provided herein, the City does not provide any parking that is specifically for or associated with the Premises (including but not limited to that required by or for the Lessee's staff, suppliers or customers), and whatever general, non-reserved parking the City makes available for Seattle Center tenants and their respective staffs, suppliers, and customers shall be shared on a first-come, first-served basis.

### 9. ADVERTISING & PUBLICITY

a. Prohibited Promotion & Other Material; Removal of Same: The Lessee shall not display, post, or distribute any sign, symbol, advertising of any nature, or any printed material (including but not limited to posters) on any part of the Seattle Center, including but not limited to the Premises, except after receiving written permission therefor from the Director, and may undertake such activity only in or on location(s) approved by the Director. On or before the expiration or termination date of this Lease, whichever is earlier, or in the case of unauthorized material, on or before the date specified in the Director's notice to remove the same, the Lessee shall remove, at no expense to the City, all such signs, symbols, advertising and printed material; and correct any unsightly condition, and repair any damage or injury to City property caused by such signs, symbols, advertising and printed material, and the removal thereof. In the event any such unauthorized material is not removed from City property by the date required herein, such material may be treated as Lessee property subject to removal and storage pursuant to Subsection 20.c hereof.

b. Use of Photos & Similar Materials: Each party hereto may make photographs, video tapes, and motion pictures of the Premises and the activity, people, displays and exhibits thereon; *Provided*, that in the event such visual material is to be used for commercial advertising purposes, prior to making the same, the Lessee shall obtain the written approval of the Director for such use, which approval may be conditioned upon, among other things, the payment by the Lessee to the City of additional consideration; and prior to the use of any such photography, video tape, or motion picture, a written release shall be obtained from every individual identifiable in the same.

### 10. INSTALLATION OR INTEGRATION OF ANY WORK OF VISUAL ART ON PREMISES

a. Reservation of Rights by City; Prohibition Against Installation or Integration of Any Work of Visual Art on Premises Without City's Consent: The City reserves to and for itself the right to approve or disapprove of the installation or integration on or in the Premises of any "work of visual art," as that term is defined in the Visual Artists Rights Act of 1990, as now existing or as later amended, and to approve or disapprove of each and every agreement regarding any such installation or integration. The Lessee shall not install on or integrate into, or permit any other person or entity to install on or integrate into, the Premises any such work of visual art without the prior, express, written consent of the Director. The Director's consent to the installation of any such art work may be granted, granted upon one or more conditions, or withheld in the Director's discretion; *Provided*, however, that the Director's consent to the installation by or for the Lessee of any such art work shall not be required under the following three (3) circumstances:

(1) If such art work (a) weighs less than fifty (50) pounds; and (b) is of a size and has such dimensions and material composition that makes its passage through an open 32" x 78" or larger doorway a simple and easy maneuver; and (c) is to be installed on the floor, a piece of furniture, or similar surface without further anchoring of any kind or nature, or on a wall using no more than two (2) simple picture hooks and wire; all so that the easy removability from the Premises of such art work without its destruction, distortion, mutilation or other modification by reason of such removal is undeniable; or

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(2) If the Lessee delivers to the Director a waiver appropriately executed by the art work creator, for the benefit of the City and its successors and assigns as the owner of the Premises, of the creator's right of integrity regarding such art work, in a form of waiver that satisfies both the Director and the requirements of 17 U.S.C. §106A(e), as the same now exists or is hereafter modified; or

(3) If the Director executes with the creator of a work of visual art to be installed in the Premises a consent agreement of the type contemplated by 17 U.S.C. §113(d)(1), as the same now exists or is hereafter amended, and in the form and manner specified by the Director.

(4) In the event the creator of any work of visual art installed in the Premises by or for the Lessee has not executed a waiver, or such creator and the City have not executed a consent agreement, each as described herein, the Lessee shall ensure that, prior to removing or allowing the removal from the Premises of any such art work, such creator is given both notice, as contemplated in 17 U.S.C. §113(d)(2), of the intended removal of such art work, and the time required by that statutory provision to respond to such notice, and that the Lessee takes whatever other action(s) may be required by such legislation to ensure that no claim, action or suit alleging a violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended, and arising out of any act or omission of or for the Lessee or any of its officers, employees, or agents, is filed or lodged against the City in its capacity as the Premises owner.

b. Lessee's Indemnification of City Against Liability under Visual Artists Rights Act of 1990  
The Lessee shall protect, defend, and hold the City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising as a consequence of (a) the installation or integration of any work of visual art on or into the Premises; (b) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or (c) any breach of Subsection 10.a. of this Lease; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by the Lessee or any of its officers, employees or agents. This indemnification obligation shall exist regardless of whether the Director or any other person employed by the City has knowledge of such installation, integration, or removal or has consented to any such action or is not required to give prior consent to any such action. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Lease.

11. **ACCEPTANCE OF PREMISES:** Lessee has inspected and examined the physical condition of the Premises and accepts the Premises in their present condition as of the commencement date of the Term hereof. The City disclaims all representations, statements or warranties, expressed or implied, have been made by or on behalf of the City with respect to the condition of the Premises or the use or occupancy authorized other than those contained in this Lease. An election by the City to provide or pay for any maintenance or repair shall not be construed to be an obligation on the part of the City to make such repairs in the future.

12. **POSSESSION:** If the City shall be unable for any reason to deliver possession of the Premises, or any portion thereof, at the time of the commencement of the term of this Agreement, City shall not be liable for any damage caused thereby to Lessee, nor shall this Agreement thereby become void or voidable, nor shall the term specified herein be in any way extended, but in such event, Lessee shall not be liable for any rent until such time as City can deliver possession; Provided, that if Lessee shall, in the interim take possession of any portion of Premises, it shall pay as rental the full rental specified herein reduced pro rata for the portion of the Premises not available for possession; And provided further, that if City shall be unable to deliver possession of said Premises, Lessee shall have the option to terminate this Agreement by providing to the City written notice thereof at least thirty (30) days prior to the effective date of termination, unless the

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City shall deliver possession of the Premises prior to the effective date of termination specified in such notice. If Lessee shall, with the City's consent, take possession of all or any part of the Premises prior to the commencement of the term of this Agreement, all of the terms and conditions of this Agreement shall immediately become applicable, with the exception that Lessee shall be obligated to pay a pro-rated rental for the period prior to the commencement of the term of this Agreement or such sum as may otherwise be mutually agreed upon.

13. **CONSTRUCTION, ALTERATIONS, IMPROVEMENTS, AND ADDITIONS:** Lessee shall not make any alteration in, or addition or improvement to, the Premises without the prior written consent of City. Any change or alteration made shall be at the expense of Lessee. All alterations to or improvements upon the Premises, or the building of which the Premises form a part, made by either party (except furniture put in at the expense of Lessee, and movable without defacing or injuring the building or Premises) shall become the property of the City and shall remain upon and be surrendered with the Premises as a part thereof at the end of the term, without disturbance, molestation or injury thereof, except as provided herein.

Lessee's building plans must set forth improvements and equipment of the highest quality and, in all respects, of sound and safe structure, and in accordance with the policies, motifs, designs and overall planning for the Seattle Center and the particular area in which such structure and equipment shall be installed. City shall have the right to approve and/or disapprove Lessee's plans or portions thereof and Lessee shall not commence construction and/or installation of equipment or improvements until City has approved said plans in writing. Any expenditures in connection with said construction and equipment installation prior to the aforementioned approval of City, will be at the risk and expense of Lessee. Lessee shall remove any such improvements at its own expense at the end of lease term, if so requested by City.

Any expense incurred in mutually agreed upon alterations, improvements or repairs or new construction necessary for Lessee's use and occupancy shall be borne by Lessee.

14. **LIABILITY:**

- a. **Indemnification:** The Lessee shall indemnify and hold the City harmless from any and all losses, claims, actions, damages, costs and expenses (including attorneys' fees) suffered by any person or entity by reason of or resulting from any negligent, reckless or intentional act or omission of the Lessee or any of its agents, employees, contractors, or invitees in connection with use or occupancy of the Premises, including trademark, patent, and copyright infringement; and except in connection with or collateral to the demolition, construction, alteration, addition, improvement, repair, or maintenance of the Premises or the moving thereto and therefrom, any concurrent, negligent act or omission of the Lessee or any of its officers, employees, agents, or invitees, and of the City or any of its officers, employees, agents, or invitees. In the event any suit or action is brought against the City, the Lessee, upon notice of the commencement thereof, shall defend the same, at no cost and expense to the City, and promptly satisfy any final judgment adverse to the City or to the City and the Lessee jointly; *Provided*, that in the event the Director determines that one or more principles of governmental or public law are involved, the City retains the right to participate in such action. Nothing contained in this section shall be construed as requiring the Lessee to indemnify the City against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City or any of its officers, employees, or agents. Notwithstanding any provision to the contrary herein, in the event any bodily injury or damage to property results from or arises out of any construction, alteration, repair, addition to, subtraction from improvement to, or maintenance of, any excavation, building, structure, project, development or improvement attached to real estate, including moving and demolition in connection therewith, that has been undertaken or performed by or on behalf of the Lessee, the indemnification provided pursuant to this subsection shall be limited to the extent of the negligence of the Lessee and those

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acting by or for the Lessee. The indemnification provided in this subsection shall survive the expiration or earlier termination of this Agreement.

b. Liability Insurance: The Lessee shall secure and maintain in full force and effect at all times during the Term of this Lease, at no cost or expense to the City, one or more policies of commercial general liability insurance as required below:

(1) Liability Limits: The limitations of liability shall not be less than One Million Dollars (\$1,000,000), per occurrence, Combined Single Limit (bodily injury and property damage) and One Million Dollars (\$1,000,000) Annual Aggregate with a deductible or self-insurance retention of no more than Two Thousand Five Hundred Dollars (\$2,500) for property damage, only; *Provided*, that in the event the Director deems such insurance to be inadequate to fully protect the interests of the City and the Lessee hereunder, the Lessee shall increase said coverage limits to such amounts as the Director shall deem reasonably adequate to provide such protection, which increase shall be completed within sixty (60) days after the date of notice that the Lessee's insurance coverage is deemed to be inadequate. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Lessee from liability in excess of such coverage.

(2) Coverage: Coverage shall be provided for liability for any injury, death, damage and/or loss of any sort sustained by any person, organization or corporation (including the Lessee and any of its officers, employees and agents) in connection with or arising out of any act or omission of (a) the Lessee; or (b) any of the Lessee's officers, employees, agents, assigns or invitees; or (c) the Lessee and City or any of their officers, employees, agents, assigns, or invitees, jointly, upon the Premises; and for any activity performed by the Lessee under this Lease and shall include, but need not be limited to the following types (described in insurance industry terminology):

- (a) Premises operations liability (O, L & T or M & C);
- (b) Blanket contractual liability;
- (c) Broad form property damage;
- (d) Independent contractor (O & CP.);
- (e) Automobile liability for owned, leased, hired or non-owned vehicles;
- (f) Products and/or completed operations;
- (g) Personal injury, including coverages A, B, and C with no employee exclusion;
- (h) Fire legal liability.

All such insurance shall provide coverage on a "per occurrence" rather than on a "claims made" basis, and shall be primary to any other insurance that may be valid and collectible. The Lessee is not required to provide insurance coverage against City's sole negligence.

c. Fire and Extended Coverage: The Lessee shall secure and maintain at all times during the Term of this Lease, at no cost or expense to the City, one or more policies of fire, and extended coverage equal to not less than ninety percent (90%) of the value of the Lessee's additions, alterations and improvements to the Premises which value shall be determined by the Director, from time to time, and identified in a notice to the Lessee. Under such insurance, any loss payment shall be made payable to the City, which shall hold the same in trust for the rebuilding, repairing, replacing or restoring of the Premises, including all improvements, additions and alterations thereto.

d. Business Interruption Insurance: The Lessee shall secure and maintain during the Term of this Lease, business interruption insurance with sufficient coverage to provide for the payment of rent and other fixed costs during any interruption of the Lessee's business because of fire or other cause.

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e. Authorized Carriers: The insurance described in Subsections 12.b and 12.c shall be obtained from one or more insurance companies duly authorized to issue such policies in the State of Washington, and having a rating of at least "A", as rated in Best's Key Rating Guide or a successor or substitute rating service accepted by the Lessee and Director.

f. Naming of City As Additional Insured: The City shall be named as an additional insured in the policies to be secured under Subsections 12.b and 12.c, hereof, by an endorsement declaring that the coverages provided by such policy to the City or any other named insured shall not be terminated, reduced or otherwise changed as to face value without providing at least thirty (30) days prior written notice to the following:

Contracts & Concessions  
Seattle Center Department  
The City of Seattle  
305 Harrison  
Seattle, WA 98109

Risk Manager  
Finance Department  
The City of Seattle  
750 Arctic Bldg.  
Seattle, WA 98104

or to such other addressees and addresses as the City may hereafter specify.

g. Evidence of Insurance: The Lessee shall deliver to City's Risk Manager, or such official's functional successor or designee(s), a copy of all policies required under Subsections B-5.b and B-5.c, hereof, and all endorsements thereto to the reasonable satisfaction of the City's Risk Manager that the Lessee has secured or renewed and is maintaining insurance as required by this Lease, as follows:

- (1) On or before the first Premises use by the Lessee or any of its sublessees under this Lease; and
- (2) Within seven (7) calendar days prior to the expiration or renewal date of each such insurance policy; and
- (3) Within seven (7) calendar days after the Lessee's receipt of a written request therefor.

h. Assumption of Risk: The placement and storage of personal property in the Premises or any other Seattle Center facility shall be the responsibility, and at the sole risk, of the Lessee.

i. No Entry onto Premises upon Failure to Insure: The Director shall notify the Lessee whenever the Director has a reasonable belief that the Lessee has failed to secure or maintain insurance as required by this Lease. Notwithstanding any other provision of this Lease, after its receipt of any such notice, the Lessee shall not enter upon any Seattle Center facility until the Lessee has secured and is maintaining insurance as required by this Lease.

j. Workmen's Compensation: In addition to the above coverage, Lessee shall provide Workmen's Compensation coverage for its employees in accordance with the Washington State laws and Department of Labor and Industries regulations.

### 15. COMPLIANCE WITH LAW

a. General Requirements: The Lessee, at no cost to the City, shall perform and comply with all applicable, current and future laws of the United States and the State of Washington; the Charter and Municipal Code of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. The Lessee shall use its best efforts to ensure that every person it admits to the Premises similarly performs and complies with the same. Whenever the Lessee or its authorized representative is informed of any violation of any

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such law, ordinance, rule, regulation, license, permit, or authorization committed by it or any person admitted to the Premises, the Lessee shall immediately desist from and/or prevent or correct such violation.

b. Licenses & Other Authorizations: The Lessee, at no cost to the City, shall secure and maintain in full force and effect during the term of this Lease, all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.

c. Taxes: The Lessee shall pay, before delinquency, all taxes, levies, and assessments arising from its activities on or occupancy of the Premises, including but not limited to taxes arising out of the activity or business conducted on the Premises; taxes levied on its property, equipment and improvements on the Premises; and taxes on the Lessee's interest in this Lease and any leasehold interest deemed to have been created thereby under RCW Ch. 82.29A; and in the event the State of Washington makes any demand upon the City for payment of leasehold excise taxes resulting from the Lessee's occupancy of the Premises or withholds funds due to the City to enforce collections of leasehold excise taxes, the Lessee shall remit the taxes demanded together with any interest and penalties associated therewith or, at no expense to the City, contest such collection action and indemnify the City for all sums expended by, or withheld by the State of Washington from the City in connection with such taxation.

d. Nondiscrimination and WMBE Utilization - General: Notwithstanding any other provision in this Lease, City women- and minority-owned business (WMBE) utilization requirements shall not be applicable from and after December 3, 1998, and no minimum level of WMBE subtenant, consultant, contractor or supplier participation shall be required as a condition of the City's execution of this Lease.

(1) Nondiscrimination: Lessee shall not create barriers to open and fair opportunities for WMBEs to participate in all City contracts and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with contractors and suppliers, Lessee shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

(2) Record-keeping: Lessee shall maintain, for at least twelve (12) months after the expiration or earlier termination of this Lease, relevant records and information necessary to document Lessee's utilization of WMBEs and other businesses as contractors and suppliers under this Lease and in its overall public and private business activities. Lessee shall also maintain all written quotes, bids, estimates, or proposals submitted to Lessee by all businesses seeking to participate as contractors or suppliers under this Lease. The City shall have the right to inspect and copy such records.

(3) Affirmative Efforts to Utilize WMBEs: The City encourages the utilization of minority owned businesses ("MBEs") and women-owned businesses ("WBEs") (collectively, "WMBEs"), in all City contracts. The City encourages the following practices to open competitive opportunities for WMBEs:

(a) Attending a pre-solicitation conference, if scheduled by the City, to provide project information and to inform WMBEs of Lessee contracting and subcontracting opportunities.

(b) Placing all qualified WMBEs attempting to do business in the City of Seattle on solicitation lists, and providing written notice of contracting and subcontracting opportunities to WMBEs capable of performing the work, including

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without limitation all businesses on any list provided by the City, in sufficient time to allow such businesses to respond to the written solicitations.

(c) Breaking down total requirements into smaller tasks or quantities, where economically feasible, in order to permit maximum participation by small businesses including WMBEs.

(d) Establishing delivery schedules, where the requirements of this Lease permit, that encourage participation by WMBEs.

(e) Providing WMBEs that express interest with adequate and timely information about plans, specifications, and requirements of this Lease.

(f) Utilizing the services of available minority community organizations, minority contractor groups, local minority assistance offices, The City of Seattle, and other organizations that provide assistance in the recruitment and placement of WMBEs.

(4) **Sanctions for Violation:** Any violation of the mandatory requirements of the provisions of Subsections B-11.d(1) and (2) shall be a material breach of contract for which Lessee may be subject to damages and sanctions provided for by the Lease and by applicable law.

f. **Recycling of Waste Materials:** The Lessee, at no cost to the City, shall collect, sort and separate into such categories as may be legally required, all solid waste products on the Premises, and recycle all such products that are locally accepted for recycling. Each separately sorted category of waste products shall be placed in separate receptacles reasonably approved by the City, which receptacles shall be dumped or removed from the Seattle Center at such minimum frequency as is specified by the Director. The City reserves the right to refuse to collect or accept from the Lessee any waste product that is not sorted and separated as required by law, ordinance, rule or regulation, and to require the Lessee to arrange for the collection of the same at the Lessee's sole cost and expense using a contractor satisfactory to the City. The Lessee shall pay all costs, fines, penalties, and damages that may be imposed on City or the Lessee as a consequence of the Lessee's failure to comply with the provisions of this subsection.

g. **Environmental Standards:**

1) **Definitions:** For the purpose of this subsection, the following terms shall be defined as provided below unless the context clearly requires a different meaning:

(a) "Laws or Regulation" shall mean any environmentally related local, state or federal law, regulation, ordinance or order (including without limitation any final order of any court of competent jurisdiction of which the Lessee has knowledge), now or hereafter in effect including but not limited to the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act as amended by the Superfund Amendments and Re-authorization Act of 1986, the Resource Conservation and Recovery Act as amended by the Solid and Hazardous Waste Amendments of 1984, the Occupational Safety and Health Act, the Emergency Planning and Community Right-to-Know Act of 1986, and the Solid Waste Disposal Act.

(b) "Hazardous Substances" shall mean any hazardous, toxic, or dangerous substance, waste, or material that is regulated under any federal, state, or local statute, ordinance, or regulation relating to environmental protection, contamination or cleanup.

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2) Restrictions on Lessee Activities: The Lessee shall not cause to occur upon the Premises or permit the Premises to be used to generate, produce, manufacture, refine, transport, treat, store, handle, dispose, transfer, or process Hazardous Substances except in compliance with all applicable Laws and Regulations. The Lessee shall provide the Director with the Lessee's USEPA Waste Generator Number (if any), and with a copy of every Material Safety Data Sheet (MSDS), Generator Annual Dangerous Waste Report, environmentally related regulatory permit or approval (including every revision or renewal thereof) and any correspondence the Lessee receives from, or provides to, any governmental unit or agency in connection with the Lessee's handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance on the Premises.

3) Correction of Violations: If the Lessee violates any of the terms of this section concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, the Lessee shall promptly take such action as is necessary to mitigate and correct the violation. If the Lessee does not act in a prudent and prompt manner, the City reserves the right, but not the obligation, to act in place of the Lessee (for which purpose the Lessee hereby appoints the City as its agent), to come onto the Premises and to take such action as the City deems necessary to ensure compliance or to mitigate the violation. If the Director has a reasonable belief that the Lessee is in violation of any law or regulation, or that any action or inaction of the Lessee presents a threat of violation or a threat of damage to the Premises, the City reserves the right to enter onto the Premises and take such corrective or mitigating action as the Director deems necessary. All costs and expenses incurred by the City in connection with any such action shall become immediately due and payable by the Lessee upon presentation of an invoice therefor.

4) Testing: The Lessee shall provide the City with access to the Premises to conduct an annual environmental inspection in January of each year of the term hereof or at such other time(s) as may be mutually agreed upon. In addition, the Lessee shall permit the City access to the Premises at any time, upon reasonable notice, for the purpose of conducting environmental testing at the City's expense. The Lessee shall not conduct or permit others to conduct environmental testing on the Premises without first obtaining the Director's written consent, which shall not be unreasonably withheld. The Lessee shall promptly inform the Director of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Premises whenever the same becomes known to the Lessee, and the Lessee shall provide a written copy of the same to the Director within thirty (30) days after the preparation of any such material.

5) Removal of Hazardous Substances Prior to Vacation of Premises: Prior to vacation of the Premises, in addition to all other requirements under this Lease, the Lessee shall remove any Hazardous Substances placed on the Premises during the term of this Lease or the Lessee's possession of the Premises, and shall demonstrate such removal to the Director's reasonable satisfaction.

6) Reimbursement of City Costs: In addition to any remedy provided above, the City shall be entitled to full reimbursement from the Lessee whenever the City incurs any cost resulting from the Lessee's violation of any of the terms of this Subsection B-11 g, including, but not limited to, the cost of clean-up or any other remedial activity, fines, penalties assessed directly against the City, injuries to third persons or other property, and loss of revenue resulting from an inability to re-lease or market the Premises due to its environmental condition as the result of the Lessee's violation of the terms of this

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Lease (even if such loss of revenue occurs after the expiration or earlier termination of this Lease).

7) Indemnification: In addition to all other indemnities provided in this Lease, and notwithstanding the expiration or earlier termination of this Lease, the Lessee agrees to and shall defend, indemnify and hold the City free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the existence or discovery of any Hazardous Substance on the Premises resulting from a violation of the terms of this section, or the migration of any Hazardous Substance from the Premises to other property or into the surrounding environment that is the result of a violation of the terms of this section, whether (a) made, commenced or incurred during the term of this Lease, or (b) made, commenced or incurred after the expiration or termination of this Lease if arising out of an event occurring during the term of this Lease.

16. **CITY'S CONTROL OF BUILDINGS, GROUNDS & ACTIVITIES:** Notwithstanding any other provision of this Lease, the City, without liability of any kind, may:

- a. Physical Appearance: Increase, reduce or change, in any manner and any extent whatsoever, the number, appearance, dimensions, and location of any and every Seattle Center walkway, landscaping element, parking, service area, and building as desired by the City;
- b. Traffic & Parking Regulation: Regulate all traffic within and adjacent to the Seattle Center, and restrict or prohibit the parking on City-owned or leased property of motor vehicles owned or operated by the Lessee or any of its officers, employees, agents, suppliers, and invitees;
- c. Admission Charges: Impose a reasonable charge for admission to the Seattle Center and any of the facilities therein, including parking facilities;
- d. Promotions & Events: Erect, display and remove promotional exhibits and materials and permit special events on the Seattle Center grounds and in or at any or every building and facility thereof;
- e. Rules & Regulations: Promulgate, from time to time, reasonable rules and regulations regarding the use and occupancy of any area of Seattle Center;
- f. Hours of Operation: Determine the days and hours that the Seattle Center and the various business operations therein will be open to the public;
- g. Other Businesses & Operations: Change the size, number, and type and identity of other businesses and operations being conducted or undertaken at Seattle Center, and authorize other lessees, licensees, and the sponsors of special events at Seattle Center, directly or indirectly, to offer for sale food and beverages, and for sale or rent any merchandise and service, including any that may be identical or similar to that offered by the Lessee;
- h. Signage: Place "For Rent" or similar signs in the Premises for thirty (30) days prior to the expiration or termination date of this Lease, whichever is earlier.
- i. Interference: Interfere with light, air or view, or the Lessee's operations or use and occupancy of the Premises, either in connection with or as a result of operations by or for City in the construction of any public work or its subsequent use and occupancy, or the repair and maintenance

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of any City facility or improvement. The City will make a good faith effort, however, to minimize such interference to the extent it is reasonably economical for the City to do so.

### 17. CITY ACCESS TO, & INSPECTION, REPAIR & IMPROVEMENT OF PREMISES & OTHER PROPERTY

a. Access to Premises: The Lessee shall provide the City and its contractors and consultants, their subcontractors, subconsultants and agents with access to the Premises at all reasonable times to inspect the same and to make any inspection, repair or improvement deemed necessary by the Director, but this right of access shall not impose on the City any obligation to make any repair, alteration, addition, or improvement except as specifically provided herein.

b. Permitted Interference With Lessee's Operations: In inspecting, and in making repairs, alterations, additions, and improvements, the City may erect barricades and scaffolding in and outside of the Premises, and may otherwise interfere with the conduct of the Lessee's business and operations where such action is reasonably required by the nature of the City's work; and such interference shall not be deemed to be a breach or default under this Lease.

c. Suspension of Lessee's Operations and Obligation to Pay Monthly Base Rent: In the event such inspection, repair, alteration, addition, or improvement work necessitates the temporary suspension of the Lessee's business or operations in, on, or from the Premises, the Director shall notify the Lessee of such necessity and the anticipated beginning and ending dates of such suspension. Monthly Base or Adjusted Base Rent due to City pursuant to Section 3 hereof shall be prorated during each month in which the Lessee's business or operations are required by City to be suspended pursuant to this subsection, and the Lessee shall have no obligation to pay such prorated rent during the period that the Lessee's business or operations are suspended; such cancellation of the obligation to pay the prorated Monthly Base or Adjusted Base Rent shall constitute the totality of relief available, and the Lessee waives all claims for damages and for any injury to and interference with its operations or business and losses occasioned by any such suspension.

d. City's Retention & Use of Key to Premises: The City shall have the option to core all exterior and interior locks to Seattle Center core series and issue keys to SICF according to Seattle Center key and lock procedures. Should the City allow SICF to use its own key cores, the Lessee shall provide the Director with a key with which to unlock all of the doors in, upon, and about the Premises, excluding the Lessee's vaults, safes, and files, for each of the aforesaid purposes. The City shall have the right to use any and all means that the Director deems proper to open said doors in an emergency, in order to obtain entry to the Premises, without liability to the Lessee except for any failure to exercise due care for the Lessee's property. Any entry to the Premises obtained by the City by any of said means, or otherwise, shall not be construed or deemed to be an eviction of the Lessee or a forcible or unlawful entry into, or a detainer of, the Premises or any portion thereof.

### 18. ASSIGNMENTS, SUBLEASES & OTHER INTEREST TRANSFERS

a. Director's Prior Written Consent Required for Assignment & Subleases: No purported assignment, sublease or other transfer of the Premises or any portion thereof or of any aspect of the Lessee's interest in this Lease shall be effective without the prior written consent of the Director which the Director shall have the option to grant or not grant. Every proposed sublease, assignment, or other interest-transferring agreement shall be submitted to the Director for review and approval or disapproval after execution by the proposed subtenant, assignee, or transferee, and not less than sixty (60) calendar days prior to the commencement date of the proposed sublessee's, assignee's, or transferee's intended use of any portion of the Premises under such agreement or the assumption of any right or interest in any portion of the Premises or this Lease. No assignment or sublease of this Lease, with or without the Director's consent, shall release or relieve the Lessee of

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or from any of the obligations on the Lessee's part to be kept and performed under this Lease, and the Lessee shall remain jointly and severally liable for the performance of all obligations of the Lessee hereunder regardless of any (i) agreement that modifies any of the rights or obligations of the parties to this Lease; (ii) stipulation that extends the time within which an obligation under this Lease is to be performed; (iii) waiver of the performance of any obligation under this Lease; or (iv) failure to enforce any obligation under this Lease. Every approved assignment and sublease shall be subject to all the terms and provisions of this Lease.

b. Lease Interests Not Transferable by Action of Law or Court: Neither this Lease, nor any right, privilege, or other interest conferred by this Lease shall pass to any trustee or receiver in bankruptcy or to any receiver or assignee for the benefit of creditors; nor shall this Lease or any rights, privilege, or interest be transferable by operation of law or proceeding of any court.

c. Change of Lessee's Organizational Structure or Ownership Constitutes Assignment: If the Lessee is a partnership, limited or general, a withdrawal of a general partner, or change, voluntary or involuntary, by operation of law or otherwise, or a general partner thereof, shall be deemed an assignment. If the Lessee is a corporation, the merger, consolidation, or liquidation of the Lessee or any change in the ownership of or power to vote thirty-three and one-third percent (33 1/3%) or more of its capital stock, as held as of the date of execution of this Lease, shall be deemed as assignment.

d. Lessee's Authorization to Use Premises Constitutes Assignment or Sublease: In the event the Lessee in any manner permits anyone to occupy all or any portion of the Premises for any purpose including but not limited to the conduct of any business or other activity, whether or not business-related, not within the intent of this Lease or any sublease, such permission shall be deemed an assignment or sublease, as deemed appropriate by the Director. Every sublease shall require the sublessee to submit to the Director and the Lessee not more than ten (10) days after the end of each month during the term of its sublease and the month after the expiration or earlier termination of such sublease, a written statement identifying the amount of gross receipts generated by such sublessee on and from the portion of the Premises used and occupied by such sublessee during the immediately preceding month. In the event of any assignment of this Lease, the Lessee shall cause to be delivered to the Director simultaneously with such assignment, an instrument, in writing, executed by the assignee, in which the assignee shall assume and agree to perform all of the terms and provisions of this Lease on the Lessee's part to be kept and performed that theretofore have not been fully performed.

19. **EXCUSE & SUSPENSION OF OBLIGATIONS (FORCE MAJEURE):** Whenever a party's performance under this Lease is prevented by an act of nature; war or war-like operations; civil commotion; riot; labor dispute including a strike, lockout, or walkout; sabotage; Federal or State regulation or control; or other condition beyond the reasonable control of such party, performance of any affected obligation shall be suspended, but only for the duration of such condition but shall not be excused. The existence of more than one (1) such condition on a given day shall result in only a one (1) day extension.

20. **DAMAGE OR DESTRUCTION**

a. Report of Damage or Destruction: The Lessee shall submit a written report to the Director, in care of the Contracts and Concessions Office, regarding the circumstances of any damage to the Premises, within twenty-four (24) hours after its discovery.

b. Rent Obligation in Event of Damage or Destruction: In the event the Premises are destroyed by fire or other casualty not occasioned by an act or omission of the Lessee, or are damaged so extensively as to render the Premises unusable, the Lessee's obligation to pay rent shall be suspended until the Premises are made usable; but in the event only a portion of the

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#### LEASE AGREEMENT BETWEEN THE SEATTLE CENTER AND SICF

Premises are damaged or destroyed by fire or other casualty not occasioned by an act or omission of the Lessee and the remainder of the Premises remains usable, the Lessee shall pay only a prorated rent that is proportionate to the extent of the Premises that remains usable for the purposes identified in Sub-section 18.d hereof.

c. Rebuilding, Repair & Restoration: In the event the Premises are damaged or destroyed, the City shall have the option, in its sole discretion, to rebuild, repair, or restore the same. Upon the rebuilding, repair and reconstruction of the Premises, the Lessee shall immediately re-occupy the Premises and again pay rent and additional rent for the right granted herein to use and occupy such area through the expiration or termination date of this Lease, whichever is earlier.

d. Termination Rights in Event of Damage or Destruction:

(1) By Lessee: Notwithstanding any other provision in this Lease to the contrary, in the event that fifty percent (50%) or more of the Premises is damaged or destroyed by fire or other casualty not occasioned by an act or omission of the Lessee, the Lessee may terminate this Lease by providing notice thereof to the Director.

(2) By City: Notwithstanding any other provision in this Lease to the contrary, in the event that fifty percent (50%) of the Building on which the Premises are located is destroyed or is so damaged by fire or other casualty as to be untenable or unusable, or if the City desires to discontinue the Lessee's operations because of substantial destruction of the Building or other part of Seattle Center, regardless of whether the Premises are destroyed, damaged, or otherwise, the City may terminate this Lease by providing prior written notice thereof to the Lessee.

(3) Notice of Termination: Any notice of termination pursuant to this section shall be provided within sixty (60) days after the occurrence of the damage or destruction and shall specify the effective date of such termination.

#### 21. DEFAULT & BREACH

a. Default & Breach by Lessee: The following acts and omissions shall constitute a default and material breach of this Lease by the Lessee:

- (1) The failure to remit rent or additional rent due and payable to the City, before such sum become delinquent;
- (2) The failure to comply with all of the requirements of Section 12 hereof, regarding insurance; or
- (3) The violation of any law, Charter provision, ordinance, rule, regulation, governmental authority's order or directive; or
- (4) The abandonment or vacating of the Premises; or
- (5) After the Lessee's receipt of notice of any deduction from the Lessee's Performance Guarantee for a City use or application, or the failure of the Lessee to deliver cash as required by Section 4 hereof, to restore the Performance Guarantee to its original amount; or
- (6) The repeated failure to perform or the violation of any single condition or covenant of this Lease on two or more occasions in any twelve (12) month period; or
- (7) The assignment of the Lessee's interest in this Lease without the prior written consent of the Director; or the use of any sublease without the prior written consent of the Director; or the filing of a voluntary or involuntary petition in bankruptcy, or for reorganization or an arrangement; or the adjudication of the Lessee as being bankrupt or insolvent; or the appointment of a receiver of or for the Lessee if such appointment, adjudication or similar order or ruling remains in force or unstayed for a period of thirty (30) days; or
- (8) The failure to perform or the violation of any other condition or covenant of this Lease where such default or deficiency in performance was not remedied within a reasonable time.

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LEASE AGREEMENT BETWEEN THE SEATTLE CENTER AND SICF

b. City's Notice of Default & Breach: The Director shall provide written notice to the Lessee in the event the Lessee commits any act or omission specified in Subsection 21.a hereof, specifying the nature of the act or omission, the reasonable number of days (but not more than sixty (60) days) after the date of the notice within which such failure must be corrected or the violation must be ceased or remedied to avoid termination, and the City's intention to terminate this Lease in the event such act or omission has not been corrected within such stated period. The notice shall also describe special procedures (if any) provided by law, Charter, ordinance, rule, or regulation permitting the Lessee to have a hearing on such failure or violation.

c. Remedies: In the event the Lessee fails to correct, remedy, or cease such failure or violation within the time specified in the Director's notice, the City may thereafter terminate this Lease without any further proceedings, re-enter the Premises, lease and license others to use said Premises during any portion of the period of use remaining under this Lease had it not been terminated, and receive rent, additional rent and license fees therefor; *Provided*, that notwithstanding such termination and re-entry, the Lessee's liability for the rent and additional rent to be paid to the City hereunder shall not be extinguished, and the Lessee shall pay to the City the difference between said rent and additional rent and the sum the City receives for the use of the Premises by one or more other users during the period beginning on the date the Lessee's rights under this Agreement are terminated and ending on the scheduled expiration date of this Lease. Such payment shall be made monthly, within fifteen (15) days after the date of the City's invoice to the Lessee. Such termination and payments shall not relieve the Lessee from liability to the City for any damages caused by the Lessee's default and breach and expenses incurred in the leasing or relicensure of the Premises.

d. Criteria for Substitute Tenant: The City's obligation to mitigate damages after a default by the Lessee under this Lease that results in the City's regaining possession of all or part of the Premises shall be satisfied in full if the City undertakes to lease the Premises to another tenant (a "Substitute Tenant") in accordance with the following criteria:

- (1) The City shall have no obligation to solicit or entertain negotiations with any other prospective tenants for the Premises until the City obtains full and complete possession of the Premises including, without limitation, the final and unappealable legal right to re-let the Premises free of any claim of the Lessee.
- (2) The City shall not be obligated to offer the Premises to any prospective tenant when other Premises suitable for that prospective tenant's use are currently available, or will be available within the next three months.
- (3) The City shall not be obligated to lease the Premises to a Substitute Tenant for a rental less than the current fair market rental then prevailing for similar comparable office space.
- (4) The City shall not be obligated to enter into a new lease under terms and conditions that are unacceptable to the City under the City's then current leasing policies for comparable space.
- (5) The City shall not be obligated to enter into a lease with any proposed Substitute Tenant that does not have in the Director's reasonable opinion, sufficient financial resource or operating experience to operate the Premises in a first-class manner.
- (6) The City shall not be required to expend any amount of money to alter, remodel, or otherwise make the Premises suitable for use by a Substitute Tenant unless:

- (a) The Lessee pays any such sum to the City in advance of the City's execution of a lease with such Substitute Tenant (which payment shall not be in lieu of any damages or other sums to which the City may be entitled to as a result of the Lessee's default under this Lease); or

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(b) The City, in the Director's sole discretion, determines that any such expenditure is financially justified in connection with entering into any lease with such Substitute Tenant.

(7) The following applies to Center House Tenants only:

The City shall not be obligated to enter into a lease with any Substitute Tenant whose use would:

- (a) Disrupt the tenant mix or balance of the Center House building;
- (b) Violate any restriction, covenant, or requirements contained in the lease of another tenant of the Center House building;
- (c) Adversely affect the reputation of the Seattle Center or Center House building;
- (d) Be incompatible with the operation of the Center House building as a first-class shopping center.

e. Default by City: The City shall not be in default of any obligation to perform under this Lease unless the City fails to perform such obligation within a reasonable time, which time shall not extend more than thirty (30) days after written notice by the Lessee to the Director specifying the particular obligation that the City has failed to perform; *Provided*, however, that if the nature of the City's obligation is such that more than thirty (30) days are required for performance, then the City shall not be in default if the City commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

#### SURRENDER OF PREMISES; HOLDING OVER:

a. Surrender & Delivery: Upon the expiration or termination date of this Lease, whichever is earlier, the Lessee shall surrender the Premises and promptly deliver to the Director all keys the Lessee, and any of its officers, agents, and employees have to the Premises or any other part of the Seattle Center.

b. Removal of Lessee's Property: Prior to the expiration date of this Lease, or in the event this Lease is terminated, within fifteen (15) days after the termination date, whichever is earlier, the Lessee shall remove, at its sole expense, all trade equipment and personal property owned or installed by the Lessee in, on, or from the Premises, as well as those improvements, alterations and additions to the Premises that are specified in the Director's notice provided pursuant to Section 11 hereof. In performing such removal work, the Lessee shall take due care to not unreasonably injure or damage the Premises, and shall make such repairs to the Premises as shall be necessary to restore the same to their condition as of the commencement date of this Lease, ordinary wear and tear and improvements, additions, and alterations, approved by the City excepted.

c. Storage of Lessee's Property: In the event the Lessee fails to remove personal property and the improvements, alterations and additions specified in the Director's notice on or by the time specified in such notice, the City may, but shall not be required to remove such material from the Premises and store the same, all at the Lessee's expense; and in the event the City removes or arranges for the storage of such material, the City shall be reimbursed its costs therefor, including any administrative costs, which reimbursement shall constitute a claim upon the Lessee or, at the City's option, may be invoiced to the Lessee or deducted from the Performance Guarantee provided pursuant to Section 4 hereof.

d. Hold-over Use & Occupancy of Premises: In the event the Lessee, with the Director's consent, holds over after the date the Term expires or is terminated, whichever is earlier, the resulting use and occupancy shall be on a monthly basis, during which time the Lessee shall be

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## LEASE AGREEMENT BETWEEN THE SEATTLE CENTER AND SICF

bound by all of the provisions of this Lease other than the amount of the monthly base or adjusted base rent specified herein, which amount shall be the greater of the amount charged for the month immediately preceding the expiration or termination date, whichever is earlier, or the fair market value for the Premises. If, however, the Lessee holds over, without Director's consent, after the expiration or termination date of this Lease, whichever is earlier, whether by failing to remove its personal property or any addition, alteration or improvement specified by the Director, or otherwise, the Lessee shall pay to the City, as liquidated damages, twice the amount of the most recently applicable periodic and percentage rents specified in Sections 3 and 4, hereof, and shall be bound by all of the other provisions of this Lease.

e. **No Claim for Removal:** In no event shall the Lessee make any claim or demand upon the City nor shall the City be liable for any inconvenience, annoyance, disturbance, or loss of business or any other damage suffered by the Lessee arising out of removal operations under Subsections 20.b and 20.c hereof.

f. **Inspection Upon Surrender of Premises:** Immediately following the vacating of the Premises and the surrender of the same to the City, a representative of the Lessee shall inspect the Premises with the Director to determine the condition of the Premises and whether or not the Lessee is then eligible for the return of the Performance Guarantee provided pursuant to Section 4 hereof, and if not then eligible, what actions must be taken by the Lessee to establish eligibility for the future return of such deposit. The results of such inspection shall be summarized by the Director on a Premises inspection report, a copy of which shall be provided to the Lessee. Such additional actions detailed in the Premises inspection report, must be undertaken within ten (10) days of the Lessee's receipt of the report.

23. **NOTICES:** All notices from either party to the other shall be in writing and delivered or mailed, postage prepaid, to the intended recipient at the address specified on the signature page hereof, or to such other address as may be specified, from time to time, by either party, by notice to the other party.

24. **NO RELATIONSHIP ESTABLISHED:** The City shall in no event be construed to be a partner, associate, or joint venturer of the Lessee, or any party associated with the Lessee. The Lessee is not an agent of City for any purpose whatsoever. The Lessee shall not create any obligation or responsibility on behalf of the City or bind the City in any manner.

26. **DEFINITION AND AUTHORITY OF "DIRECTOR":** The term "Director," as used throughout this Lease in regard to permission, warrant, consent, approval, rights, interpretation, and discretionary matters, shall mean the Director of the City's Seattle Center Department or such official's functional successor or designee; *Provided*, that the action of the Director pursuant to or in implementation of this Lease does not constitute any official action by any other City Department or official that may be required by law, ordinance, rule or regulation before the Lessee may rightfully commence, suspend, enlarge, or terminate any particular undertaking or may obtain or exercise any particular right or privilege under this Lease. Any approval, consent or permission required of the Director by this Lease may be granted, conditioned or withheld by the Director in the exercise of such official's sole discretion.

27. **AMENDMENTS:** No modification or amendment of the terms hereof shall be effective unless in writing and signed by authorized representative of each of the parties hereto. The parties hereto expressly reserve the right to modify this Lease from time to time, by mutual agreement.

28. **NO WAIVER:** Nothing other than a written document signed personally by the Director and specifically declaring a City intent to waive a particular breach or default by the Lessee shall constitute a waiver of such breach or default. No such document shall waive the Lessee's failure to fully comply with any term or condition of this Lease not specifically referenced therein, irrespective of any knowledge any City officer or employee may have of such breach, default, or noncompliance. No waiver by either party shall be construed to be, or operate as, a waiver of any subsequent default in full performance of any provision of this

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**LEASE AGREEMENT BETWEEN THE SEATTLE CENTER AND SICF**

Lease. The payment or acceptance of rent, additional rent, delivery or acceptance of services, or other compensation, whether after a default or from a sublessee or assignee, shall not be deemed to constitute consent to or acceptance of such default or acceptance of defective or incomplete performance in the future or any such subtenancy or assignment.

**29. REMEDIES CUMULATIVE:** Rights under this Lease are cumulative; failure to exercise on any occasion any right shall not operate to forfeit such right on another occasion. Each party shall also have any other remedy given by the law. The use of one remedy shall not be taken to exclude or waive the right to use another.

**30. JOINT & SEVERAL LIABILITY:** In the event the Lessee is composed of more than one person, entity, or corporation, each of the persons, entities, and corporations composing the Lessee shall be jointly and severally liable under this Lease.

**31. USE OF LANGUAGE:** Terms used in the neuter gender include the masculine and feminine; and terms used in the singular or plural include the other, as the context may require.

**32. CAPTIONS:** The titles of sections are for convenience only and do not define or limit the contents.

**33. INVALIDITY OF PARTICULAR PROVISIONS** Should any term, provision, condition, or other portion of this Lease or the application thereof be held to be inoperative, invalid or unenforceable, the remainder of this Lease or the application of such term or provision to person or circumstances other than those to which it is held invalid or unenforceable shall not be affected hereby and shall continue in full force and effect.

**34. ACKNOWLEDGMENT OF NEGOTIATED LEASE** The parties to this Lease acknowledge that it is a negotiated lease, that they have had the opportunity to have this Lease reviewed by their respective legal counsel, and that the terms and conditions of this Lease are not to be construed against any party on the basis of such party's draftsmanship thereof.

**35. ORDINANCE:** This Agreement is executed for and on behalf of The City of Seattle pursuant to the authority of Ordinance 108090.

**IN WITNESS WHEREOF,** the parties hereto have executed this Lease by having their authorized representative(s) sign his/her/their name(s) in the spaces below:

**SEATTLE INTL. CHILDRENS FESTIVAL**

By \_\_\_\_\_, President  
SICF Board of Trustees

**THE CITY OF SEATTLE**

By \_\_\_\_\_  
Virginia Anderson, Director  
Seattle Center Department

**BUSINESS ADDRESSES FOR NOTICES:**

Andrea Wagner, Executive Director  
Seattle International Children's Festival  
158 Thomas St., Suite 25  
Seattle, WA 98109  
PHONE NO.: 206-685-7338

Manager, Contracts & Concessions  
Seattle Center Department  
305 Harrison, Room 111  
Seattle, WA 98109  
PHONE NO.: 206-684-7114

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**AGREEMENT  
BETWEEN THE CITY OF SEATTLE  
AND  
SEATTLE INTERNATIONAL CHILDREN'S FESTIVAL**

THIS AGREEMENT is entered into by and between THE CITY OF SEATTLE (hereinafter referred to as "City"), acting by and through the Seattle Center Department and its the Director thereof (hereinafter referred to as the "Director") and the SEATTLE INTERNATIONAL CHILDREN'S FESTIVAL, a nonprofit corporation organized and existing under the laws of the State of Washington (hereinafter referred to as "SICF"), acting by and through the Chair of its Board of Trustees.

**RECITALS**

WHEREAS, SICF is responsible for planning, organizing and staging an annual arts festival and related educational and outreach activities for schools and the general public known as the Seattle International Children's Festival ("Festival"), as well as fund-raising to support the event; and

WHEREAS, the City is responsible for providing facilities, event staff and a fixed amount of financial support to SICF; and

WHEREAS, the purpose of the Festival is described in SICF mission statement as follows:

SICF is a celebration of world cultures through the performing arts. Its mission is to provide multicultural experiences, education, and exchange for the children and families of the Pacific Northwest by: presenting each May at Seattle Center, more than 100 performances by 15 - 20 different artists/groups from around the world; partnering with regional schools, cultural and civic organizations to provide multicultural arts curriculum support to teachers and students; fostering an appreciation of cultural diversity among nations and within our own diverse community; and providing equal access to the arts through low and subsidized tickets; and

WHEREAS, SICF recognizes that appropriate treatment of all Festival participants is important to ensuring a successful event. SICF is committed to the emotional, physical and psychological well-being of all children and will take these factors into consideration when making choices regarding which performances to stage and acts to book;

NOW, THEREFORE, the parties hereby enter into this Agreement in order to clearly delineate the areas of responsibility and terms and conditions for production of the Festival.

**I. TERM**

The Term of this Agreement shall commence January 1, 2000, and shall expire December 31, 2004, unless terminated earlier as provided herein. Each calendar year of the Term shall constitute a separate "Festival Year."

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## II. SCOPE OF SERVICES

### A. Production

SICF shall be responsible for planning, organizing and staging an annual Festival, including related educational and outreach activities for schools and the general public on the dates specified below. The responsibility includes, but is not limited to, contracting for artistic services; recruiting and maintaining a Board of Trustees, a professional staff and the volunteers required to produce the Festival; fund-raising and financial management; and coordination of all aspects of Festival production.

2000 Festival:	May 15 through 20
2001 Festival:	May 14 through 19
2002 Festival:	May 13 through 18
2003 Festival:	May 12 through 17
2004 Festival:	May 10 through 15

### B. Staffing

SICF shall employ or otherwise secure the services of whatever professional and technical staff are required to competently plan, organize, produce and evaluate each Festival. The Seattle Center shall make available to SICF such Seattle Center staff as are required by SICF to stage and produce the Festival outlined in the Event Service Order approved by the Director.

### C. SICF Deliverables

SICF shall annually submit to the Director the following planning, operational and evaluation documentation on or by the indicated dates. As used in this Section, the term "following year's Festival" (as opposed to the current year's Festival) shall mean the Festival to be held during the year following the current year. For example, during the 2000 calendar year, "the following year's Festival" shall mean the 2001 Festival.

#### 1. Documentation to be Submitted No Later than January 2 of Each Year

##### a. Proposed Facility Use Plan

SICF shall submit a written proposed Facility Use Plan for the following year's Festival describing the facilities and areas of the Seattle Center grounds that are proposed to be used and what general activities are anticipated to take place in each facility and area.

The plan shall also state the estimated number of bus parking permits required and SICF's proposed use of curbside parking areas for bus loading and parking. The entire Facility Use Plan

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shall be subject to the Director's approval, which approval will not be unreasonably withheld. The Director shall notify SICF in writing of his/her approval or disapproval of the Proposed Facility Use Plan or any component thereof within thirty (30) days after receipt.

**b. Budget and Funding Plan**

SICF shall submit a written Budget and Funding Plan for the following year's Festival, detailing the total planned expenditures, by category; the amount and source of all funds to be used to produce the Festival; ticket prices; estimated total attendance (school, general public, scholarship); estimated attendance by performance by facility; and estimated revenues by facility by revenue source.

**c. Basic Labor Schedule**

SICF shall deliver the basic labor schedule for the following year's Festival. Said Schedule shall include an estimate by hours by labor category of Seattle Center labor to stage the following year's Festival. Should a change in the facilities to be provided under Section III.C herein become necessary due to a decision made by Seattle Center, SICF shall be given adequate time to amend the Basic Labor Schedule. The Director shall, in good faith, use his/her best efforts to notify SICF within thirty (30) days if a decision is made which would require amendment of the Basic Labor Schedule.

**d. Program Plan**

SICF shall submit a written Program Plan detailing the preliminary programmatic content of performances planned as part of the current year's Festival.

**e. Time Schedule for Move-In, Move-Out for Facilities and Programmed Space**

SICF shall deliver to the Director and the Seattle Center Festival Coordinator a schedule of specific times and functions for each facility and grounds area proposed for use during the current year's Festival.

**2. Other Required Documentation**

**a. Event Service Order**

Not later than sixty (60) calendar days prior to the first Festival move-in day of each year during the Term hereof, SICF shall submit to the Director SICF's draft Event Service Order, describing the complete technical and facility set-up requirements desired for Seattle Center facilities and grounds, and shall identify all Seattle

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Center equipment, services, supplies and material within the specified facilities or available for use at specified "on-grounds areas", as indicated in the Seattle Center Event Service Manual or its successor publication then in effect, that are desired by SICF for Festival purposes. Such Manual and each successor publication are incorporated herein by reference. Any and all arrangements included in the draft Event Service Order but not identified in the Event Service Manual as being generally available from Seattle Center shall be subject to prior authorization by the Director, which authorization shall be provided or denied in writing within fourteen (14) calendar days of SICF's submission of the draft Event Service Order. SICF shall submit to Seattle Center a final Event Service Order not later than thirty (30) days prior to the first Festival move-in day of each year during the Term hereof.

b. **Revised Facility Use Plan**

On or by July 15 of each year, or earlier if available, SICF shall submit to the Director and the Festival Coordinator a Revised Facility Use Plan for the following year's Festival. Within 14 calendar days after receipt of the Revised Facility Use Plan, the Director shall advise SICF, in writing, which facilities the Seattle Center will book for SICF use on the dates and times requested by SICF in its Revised Facility Use Plan. SICF may rely on such written notice and other approved elements of the Revised Facility Use Plan in printing its festival brochure and selling tickets to the events described therein. In the event subsequent modifications to the Revised Facility Use Plan are required by the City due to construction projects and timelines or as a result of a force majeure event, the Director shall notify SICF of such changes as soon as possible and use his/her best efforts to minimize any and all resulting damages incurred by SICF as a result of such modifications. If, despite such efforts on the part of the Director, SICF does incur damages as a result of modifications to the approved Revised Facility Use Plan, all such damages shall be the responsibility of the City.

c. **Festival Final Report**

On or before August 15 of each year during the Term hereof, SICF shall deliver a Final Report for the current year's Festival, containing a complete financial and programmatic evaluation of the preceding Festival, together with a copy of representative programs. Detailed recommendations for future efforts toward the planning, organizing, staging, production and evaluation of the Festival shall also be included in the Final Report.

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**D. Review of Proposed Reimbursable Charges**

During the two weeks following SICF's receipt of the invoice described in Section V.D. hereof, SICF shall have the option to schedule a meeting with the Event Service Representative(s), Festival Contract Administrator and any other Seattle Center staff mutually agreed upon, which meeting shall take place no later than thirty (30) days after SICF's receipt of the invoice. At such meeting Seattle Center staff shall explain any discrepancy between the labor hours billed by the City and the hours requested in the Event Service Order and subsequent change orders to SICF staff for discussion and review. Should the parties not be able to reach agreement on the final number of hours to be reimbursed, SICF may appeal to the Director to adjust the amount of hours to be invoiced.

**E. Approval of Plans or Documents**

Except as noted specifically within the foregoing paragraphs of this Section, in the event the Director determines that all or a portion of the documents or plans required to be submitted by SICF herein do not meet the requirements of this Section, the Director shall notify SICF of that determination, in writing, within thirty (30) calendar days after the Director's receipt of said documents. The Director's approval of such documents or plans shall not be unreasonably withheld.

In the event the Director notifies SICF of any such deficiencies, SICF shall have fourteen (14) calendar days after its receipt of such notice to make any modifications or corrections required by the Director. If the Director does not provide timely notice of any deficiencies in SICF plans or documents, or if no such Director's notice is given, such plans and documents are deemed acceptable.

**III. CITY OBLIGATIONS**

**A. Compensation**

**1. Production Fee**

**a. Amount**

The City shall pay SICF for the production of each Festival the sum of \$101,000.00 (the "Production Fee") in accordance with the following schedule:

- (1) Sixty-five percent (65%) of the Production Fee (\$65,650.00) shall be paid to SICF upon SICF's delivery and the Director's acceptance of the items listed in subsection II.C.1.a.-e. hereof and in accordance with Section III.A.1.b; and
- (2) Ten percent (10%) of the Production Fee (\$10,100.00) shall be paid to SICF after SICF's delivery and the



Director's acceptance of the items listed in paragraphs II.C.2.a. and b. hereof; and

- (3) The remaining twenty-five percent (25%) (\$25,250.00) of the Production Fee shall be paid to SICF upon SICF's reimbursement of labor costs provided, pursuant to Section V.C.

**b. Time and Place of City Payments**

SICF shall invoice the City for the partial payment of the Production Fee provided for in Section III.A.1.a. upon SICF's submission to the City of the SICF deliverables specified in Section II.C.1.a.-e. Payment shall be made after the beginning of it's the City's fiscal year, or approximately January 2, each year during the Term hereof.

All invoices shall be sent to the Seattle Center Festival Coordinator, 305 Harrison Street, Seattle, Washington 98109, or to such other address as the Director shall specify in writing.

**2. Office and Storage Space**

The City shall provide SICF with office space as provided in Exhibit A attached. In the event of any conflict between the terms and conditions contained in Exhibit A and this Agreement with regard to said office space, only, the terms and conditional contained in Exhibit A shall control.

**3. Parking**

- a. The Seattle Center shall provide to SICF, at the times specified and at no cost, the following parking permits that shall be used for persons on Festival business only:

- (1) On or before January 1 of each year during the Term hereof, up to thirty (30) permits valid for two (2) days per month in the Fifth Avenue Parking Lot for the Board of Trustees; and
- (2) On or before January 1 of each year during the Term hereof, up to twenty (20) permits in the Fifth Avenue Parking Lot or Mercer Street Garage for Festival volunteers and Festival coordinators. Permits will be effective for the period commencing January 15 of each year and ending ten (10) days after the final date of the Festival as indicated in Section II.A.
- (3) On or before April 1 of each year during the Term hereof for the Monday performance day of the Festival, up to one hundred (100) permits in the Fifth Avenue Parking Lot or the Mercer Street Garage for volunteers; for each

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additional performance day of the Festival, up to seventy-five (75) permits in the Fifth Avenue Parking Lot or the Mercer Street Garage for volunteers.

- b. SICF shall be permitted to purchase, at the then-current all hours or off-peak Seattle Center employee rate, parking permits in First Avenue North Garage.
- c. Notwithstanding any other provision hereof, upon written notice to SICF, the Director reserves the right to change the location(s) at which parking permits provided hereunder shall be valid. No permit issued hereunder shall be valid for First Avenue North Garage parking after 5 p.m. on Seattle SuperSonics game nights.

4. **Monorail Use**

SICF shall be permitted to purchase, at a weekly group rate negotiated between the Director, SICF, and the Monorail operating company, if any, an unlimited number of round-trip monorail passes to be used by Festival performers during the Festival dates and the week prior to each Festival. In the event the Director or the City has no authority to negotiate such a discounted rate for the Monorail, SICF is authorized to negotiate directly with monorail operational authorities.

B. **City Deliverables**

1. **Basic Equipment Inventory**

On or by January 15 of each year during the Term hereof, the Festival Coordinator shall deliver to SICF a then-current detailed inventory of all Seattle Center equipment (including but not limited to that related to Facility Support, Sound, and Stage services) that is then located on Seattle Center facilities and grounds (collectively, "the Premises") and available for Festival use. Further, the Festival Coordinator shall notify SICF in a timely manner, in writing, in the event any items on said inventory list become unavailable. If SICF is not notified otherwise prior to producing the final Event Service Order for each Festival, SICF is entitled to rely upon the availability of all items in the inventory and the City shall provide such equipment to SICF at no cost to SICF.

2. **Labor Rate Schedule**

On or by January 15 of each year during the Term hereof, the Director shall notify SICF of the Seattle Center's then-current labor rates for salary and benefits only, and every change expected to occur thereto during the following year, and thereafter shall advise SICF in writing regarding any revisions to such rates immediately after such revisions are finally approved.

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C. Facilities and Equipment

1. Facilities

The Premises requested by SICF in the Revised Facility Use Plan, as approved by the Director shall be provided to SICF by the City free of any license fee or rental charge. The following is a list of Premises that may be available. Additional or alternate facilities and grounds areas may be authorized for a particular year's Festival, subject to availability and subject to its inclusion in the approved Revised Facility Use Plan.

- | <u>FACILITY</u>   | <u>SPECIAL CONDITION</u>  |
|---|---|
| a. <u>Mercer Arena:</u>   | For the year 2000, if such facility exists at the time and is functioning as a public use facility. For the year 2001 the facility will not be available for use unless construction timelines permit. For the year 2002, the facility may be available for use dependent upon City permits and also consistent with and subject to contracts between the City, the Seattle Opera and the Pacific Northwest Ballet. For the years 2003-2004, facility availability shall be determined by the Director. |
| b. <u>Opera House:</u>  | For the years 2000, 2001, and 2004, consistent with and subject to contracts between the City, the Seattle Opera and the Pacific Northwest Ballet. For the years 2002 and 2003 the facility will not be available for use due to construction.  |
| c. <u>Flag Pavilion:</u>  | For the years 2000 and 2001, if such facility exists at the time and is functioning as a public use facility. For the year 2002, the facility will be demolished.   |
| d. <u>Festival Pavilion:</u>  | For the years 2003 and 2004, if such facility exists at the time and is function as a public use facility.  |
| e. <u>Seattle Center Pavilion:</u>  | If such facility exists at the time and is functioning as a public use facility.  |
| f. <u>Northwest Rooms:</u>  | If such facilities exist at the time and are functioning as public use facilities.  |
| g. <u>Stage and public programming space on the second floor of Center House:</u> | If such facility exists at the time and is functioning as a public use facility.  |
| h. <u>Performance Studio At The Children's Museum:</u>                            | Consistent with and subject to the contract between the City and The Children's Museum.   |
| i. <u>Certain portions of the Bagley Wright Theatre Production Areas:</u>         | as defined in the City's Premises Use and Occupancy Agreement   |

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with the Seattle Repertory Theatre, unless the same is unavailable due to Seattle Repertory Theatre schedule.

- j. Seattle Children's Theatre: Consistent with and subject to the Seattle Children's Theatre's contract with the City.
- k. Mural Amphitheater: If such area exists at the time and is functioning as a public use area.
- l. Other areas of the grounds of Seattle Center: If such areas exist at the time and are functioning as public use areas.

The availability and scheduling of the above facilities is subject to the provisions of Section II.E. hereof.

**2. Move-in and Move-out Use Time**

Unless otherwise specified herein or in the Revised Facility Use Plan approved by the Director, the City shall provide to SICF, free of any license fee or rental charge, two move-in days and one move-out day for each facility (other than the authorized portions of the Bagley Wright Theatre Production Areas, for which only one move-in day shall be provided); two move-in days and two move-out days for specified grounds areas; and five move-in days for the Flag Pavilion. Subject to facility availability, additional days may be added free of any license fee or rental charge if SICF performance requirements necessitate such time and if a subsequent user does not require use of such facility.

**3. Conference and Meeting Facilities**

The City shall provide to SICF at no license fee or rental charge such conference and meeting facilities as may be available throughout the Term of this Agreement for Festival-related activities. The availability of facilities shall not be confirmed by the City prior to forty-five (45) days in advance of their desired use by SICF.

**4. Readerboards and Mercer Street Overpass Use**

The City shall provide, free of any license fee or rental charge, the use of all Seattle Center public programming readerboards (located at 5th Avenue and Harrison Street and 1st Avenue and Thomas Street) and the Mercer Street Garage overpass for the advertising of the Festival two weeks immediately preceding the Festival, and continuing through the run of the Festival in each Festival year. Use of any other readerboard may be permitted at the discretion of the Director. With respect to the Mercer Street Garage overpass, the only advertising allowed thereon shall be a Festival banner provided at SICF's expense. Said banner shall be mounted and removed by Seattle Center staff at no additional cost to SICF.

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5. **Equipment**

The SICF may use for any Festival, free of charge, those items of Seattle Center equipment that are identified in the Seattle Center Event Service Manual in accordance with Section III.B.1. All equipment made available for Festival use by SICF shall be returned to the Seattle Center's direct management and control on or by the end of the move-out period specified for each facility or grounds area with respect to which such equipment is associated or related. The Seattle Center shall cooperate with SICF to install, in a timely manner, all stage and production facilities and equipment needed for the Festival, as determined by SICF and as approved for such use by the Director.

The SICF is hereby authorized to supplement equipment provided by the Seattle Center and to provide its own labor to set-up, move-out and operate said equipment subject to the provisions of the agreement between The City of Seattle and Joint Crafts Council in effect at the time of the Festival.

D. **Labor Services**

The City shall provide SICF the following event-driven labor as specifically requested by SICF on the Event Service Order, or by Seattle Center should the Event Service Order be determined to be not operationally feasible as provided in Section V.B., and subsequent change orders:

1. **Stage Labor** which shall include move-in/out, rehearsal, performance, and pre- or post- Festival facility use labor;
2. **Sound Labor** which shall include move-in/out, rehearsal, performance and pre- or post-Festival facility use labor excluding labor for transport of equipment from shop to facility and equipment set-up/or breakdown in shop prior to or following each Festival;
3. **Emergency Services and Admissions Labor** which shall include all labor associated with the Festival, including move-in/out, rehearsal, performance and pre- or post-Festival facility use labor;
4. **Technical Facilities Management Labor** which shall include all labor associated with Festival requirements specifically requested by SICF in the Event Service Order and subsequent change orders.

IV. **REDEVELOPMENT IMPACT REVIEW**

Consistent with Section II.C., the Director and SICF shall meet to review the on-going activities and any planned activity on the grounds and/or in the facilities with respect to redevelopment and the impact of such redevelopment on the following year's Festival. It is the intent of both parties to minimize any financial impact to either party for changes that may occur after approval of the Revised Facility Use Plan for each Festival year.

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The parties agree to work together to modify the Premises in order to achieve SICF and Seattle Center common goals. Notwithstanding any other provision hereof, in the event the Director determines, in the exercise of his/her discretion, that in order to facilitate the redevelopment of the Seattle Center in a manner consistent with the "Seattle Center 2000 Plan" approved by Seattle City Council Resolution 28210, the grounds or any facility scheduled for Festival use are required for some use or purpose other than that contemplated by the parties under this Agreement, the Director, after consultation with SICF, shall have the right to modify this Agreement, including but not limited to the Premises provided for Festival purposes. However, such modifications must be made consistent with the provisions of Sections II.C.1.c, II.C.2, II.E, III.B.2, III.C.1.

**V. FEES AND CHARGES**

**A. Office and Telephone Services**

SICF shall pay to the City all costs reasonably incurred by the City in providing office and telephone services requested by SICF, including but not limited to postage, photocopying, the installation of telephone instruments and all local or long distance charges ("Office Services"). Office Services charges shall exclude time spent by Office Services staff to prepare invoices to SICF for such charges. The Office Services shall be invoiced to SICF monthly. Before being implemented, any telephone changes or moves shall be arranged with Seattle Center's Office Services staff.

**B. Event Service Order Not Operationally Feasible**

If, after all normal procedures as outlined in this Agreement to allow for the amendment, alteration and accommodation of the Event Service Order requests have been exhausted, the Director determines that the Event Service Order submitted by SICF is not operationally feasible, SICF shall pay any costs incurred by Seattle Center in negotiating workable changes to modify the Final Event Service Order to accommodate the needs of the Festival and the Seattle Center.

**C. Reimbursable Labor Fee**

SICF shall reimburse the City for all labor provided pursuant to Section III.D herein. Labor costs shall include but not be limited to salaries, wages, employee benefits, but shall not include Seattle Center administrative overhead and facility cost allocations. The City shall invoice SICF for all labor hours used by SICF, and thereafter adjust the City invoice as determined by the review, if any, provided for in Section II.D.

**D. Time and Place of SICF Payments**

The City shall invoice SICF for the charges specified in this Section. These charges shall be due on or by the thirtieth (30th) day after the date of any City billing or invoice. All payments shall be delinquent if not paid on the due date. Delinquent sums shall bear interest at the simple annual rate of the current publicly announced prime rate established by the Federal Reserve Bank until paid. However, the City shall not charge a late fee or interest on any amounts

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until SICF has been in receipt of the invoice for thirty (30) days. Payments made after a delinquency shall be applied first to accrued interest, and then to principal.

All payments shall be sent to The City of Seattle, c/o Seattle Center Accounting, 305 Harrison Street, Seattle, Washington, 98109 or to such other address as the Director shall specify.

VI. **PUBLICITY AND MEDIA**

A. **Sponsorship References**

All Festival publicity shall identify the Seattle Center Department of The City of Seattle as a primary Festival sponsor consistent with the billing and design accorded other primary sponsors. Said publicity may alternatively include the wording, "Sponsored In Part by the Seattle Center", and shall include the Seattle Center logo whenever the Festival logo is used on all materials not mailed as non-profit material. Materials mailed at the non-profit rate are subject to Federal Postal regulations governing sponsor recognition.

B. **Media Rights**

Except as limited by the terms of the contracts between SICF and the artists, and with advance notice to SICF by the City, SICF grants the City the right to film, videotape, televise and record all events, appearances and performances occurring at or associated with the Festival. With advance notice to SICF, the City may use up to two (2) minutes of such non-commercial films, videotapes, recordings or reproductions of the performances by any other means, for promotional and publicity use without payment to SICF or the artists with whom SICF has contracted. Films, videotapes or recordings of the artist and/or its performances shall not be broadcast for commercial purposes in any medium unless SICF and the City execute a separate agreement providing for payment to SICF and/or participating artists in accordance with SICF contracts with the artists. The parties shall endeavor to come to such agreement(s) in good faith.

C. **Seattle Center Use of Graphics**

To the extent authorized by SICF and consistent with SICF's contractual obligations with its performers and graphic artists, Seattle Center may use any and all Festival graphics free of charge for any Seattle Center promotion effort or the co-promotion by SICF and the City of activities directly related to the annual "Seattle International Children's Festival." Seattle Center shall advise SICF in advance of any such usage.

D. **Publicity and Background Materials**

SICF shall furnish the Director with whatever backup material regarding the Festival, its participants, and related matters is requested by such Director and is reasonably available. The SICF shall produce a printed program, press releases, posters and flyers in such numbers as may be appropriate to publicize the Festival.

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**VII. CONCESSION RIGHTS**

SICF is granted the following limited concession rights which may be exercised during each year's Festival, subject to existing Seattle Center concession and licensing contracts:

- A. to sell photographs, posters, art works, crafts, printed materials, and video and audio recordings or other media, all of which have an artistic base, theme or groundwork related to the Festival;
- B. to sell souvenir items related to the Festival but not to Seattle Center, generally, nor containing the Seattle Center logo;
- C. to sell food and beverages;
- D. to authorize others to sell such items.

These concession rights may be exercised on the Seattle Center grounds and in Seattle Center facilities other than the Center House. With respect to the Center House, SICF may negotiate concession rights with tenants on the second floor of the Center House, subject to the Director's approval, which approval may be conditioned on the payment by SICF of a fee or percentage of gross receipts.

**VIII. LIENS AND ENCUMBRANCES**

SICF shall keep the Premises free and clear of any liens and encumbrances arising or growing out of its use and occupancy of the Seattle Center. At the request of the Director, SICF shall deliver to the Director written proof of the payment of any items that could be the basis for such a lien, if not paid.

**IX. NO NUISANCES OR OBJECTIONABLE ACTIVITY**

SICF shall not permit any excessive or objectionable noise, odor, dust, vibration, or other similar substance or condition to remain on or emitted from the Premises as part of any Festival; shall not interfere with access from or to the Seattle Center or any part thereof, or with the traffic thereon; shall not create any nuisance in or adjacent to the Seattle Center, and shall not knowingly do anything at the Seattle Center that shall create a danger to life and limb.

**X. COMPLIANCE WITH LAW**

**A. General Requirement**

SICF, at no expense to the Seattle Center, shall comply with all applicable laws of the United States and the State of Washington; the Charter, Municipal Code, and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof.

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**B. Licenses and Similar Authorizations**

SICF, at no expense to the Seattle Center, shall secure and maintain in full force and effect during the Term of this Agreement, all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.

**C. Taxes**

SICF shall pay, before delinquency, all taxes, levies, and assessments arising from its activities and undertakings at and on Seattle Center premises, including, but not limited to taxes arising out of the activity or business conducted thereon such as the rental or sale of goods or services; taxes levied on its property, equipment and improvements on the premises; and taxes on SICF's interest in this Agreement and any leasehold interest deemed to have been created thereby under Ch. 82.29A RCW.

**D. Nondiscrimination and WMBE Utilization**

SICF will comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and the City of Seattle, including the Seattle Municipal Code (SMC), notably SMC 20.44, and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

**XI. INDEMNIFICATION**

SICF shall indemnify and hold the City and its agents and employees harmless from any and all losses, claims, actions, damages and expenses arising out of SICF's performance or lack of performance under this Agreement, except those arising as a result of the sole negligence of the City, its agents and employees. In the event that any suit based upon such a loss, claim, action, damage, or expense is brought against the City, SICF, upon notice of the commencement thereof, shall defend the same at its sole cost and expense, and if final judgement is adverse to the City, or the City and SICF jointly, SICF shall promptly satisfy the same. The liability described in this subsection shall not be diminished by the fact, if it be a fact, that any such death, injury, damage, loss, cost or expense may have been contributed to, or may be alleged to have been contributed to, in part, by the negligence of the City, its officers, employees, or agents.

**XII. INSURANCE**

Throughout the term of this Agreement SICF shall obtain, maintain, and otherwise comply with the requirements of Exhibit B pertaining Prior to the commencement of work under this Agreement, SICF shall secure and maintain at no expense to the City, policy or policies of insurance as enumerated below.

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**A. Coverage - Commercial General Liability**

A policy of Commercial General Liability Insurance written on an insurance industry standard occurrence form (CG 00 01) or equivalent, including all the usual coverages known as:

1. Premises/Operations Liability
2. Products/Completed Operations
3. Personal/Advertising Injury
4. Contractual Liability
5. Independent Contractors Liability
6. Elevator and Hoist Liability (as applicable)\*
7. Employers Liability (Stop Gap)
8. Explosion, Collapse and Underground (XCU) (as applicable)\*
9. Watercraft, owned and nonowned (as applicable)\*

\* These coverages are only required when SICF's work under this Agreement includes exposures to which these specified coverages respond.

Such policy(ies) shall provide the following minimum limit:

Bodily Injury and Property Damage

\$1,000,000 General Aggregate  
\$1,000,000 Products & Completed Operations Aggregate  
\$1,000,000 Personal & Advertising Injury  
\$1,000,000 Each Occurrence  
\$ 100,000 Fire Damage

Stop Gap Employers Liability

\$ 1,000,000 Each Accident  
\$ 1,000,000 Disease - Policy Limit  
\$ 1,000,000 Disease - Each Employee

Any deductible or self-insured retention must be disclosed and is subject to approval by the City's Risk Manager. The cost of any claim payments falling within the deductible shall be the responsibility of the SICF.

**B. Coverage - Business Automobile**

A policy of Business Automobile Liability, including coverage for owned, non-owned, leased or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent.

Such policy(ies) must provide the following minimum limit:

Bodily Injury and Property Damage

\$1,000,000 per accident

**C. Coverage - Excess Insurance**

A policy of Excess Insurance above the primary general liability policies that will provide a total limit of insurance of \$2,000,000. The excess policy must be at a minimum as broad as the primary policies.

**D. Coverage - Worker's Compensation**

SICF shall obtain and maintain Workers' Compensation insurance sufficient to secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. If SICF is qualified as a self-insurer in accordance with Chapter 51.14 of the Revised Code of Washington, SICF shall so certify by providing a copy of the state Certificate of Self-Insurance, and setting forth the limits of any policy of excess insurance covering its employees.

**E. Additional Insured, Cancellation and Primary Coverage Endorsements**

The insurance required pursuant to Sections A through C, above, shall be, (i) endorsed to include the City, its officers, elected officials, employees, agents and volunteers as additional insured; (ii) shall not be reduced or canceled without forty-five (45) days prior written notice to the City; and (iii) shall be primary as respects the City, and any other insurance maintained by the City shall be excess and not contributing insurance with the SICF's insurance.

**F. Changes of Coverage and/or Limits**

Coverage and/or limits of insurance may be altered or increased by the City as necessary from time to time, to reflect the type of or exposure to risk. The City shall have the right to periodically review the appropriateness of existing limits in view of the foregoing and of inflation and/or changing industry conditions and to require an increase in such limits upon ninety (90) days prior written notice to SICF.

**G. Evidence of Insurance**

The following documents must be provided as evidence of insurance coverage:

1. A copy of the policy's declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements.
2. A copy of the endorsement naming The City of Seattle as an additional insured, showing the policy number, and signed by an authorized representative of the insurance company on Form CG2010 (ISO) or comparable.

3. A copy of the "Endorsements Form List" to the policy or policies showing endorsements issued on the policy, and including any company-specific or manuscript endorsements.
4. A copy of an endorsement stating that the coverages provided by the policy to the City or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to The City of Seattle as follows:

Seattle Center Director	Risk Manager
Seattle Center	Finance Department
Department	
The City of Seattle	The City of Seattle
305 Harrison Street	600 Fourth Avenue
Seattle, WA 98109	Seattle, WA 98104

5. A copy of a "Separation of Insureds" or "Severability of Interests" clause, indicating essentially that, except with respect to the limits of insurance and any rights or duties specifically assigned to the first named insured, the insurance applies as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought (Commercial General Liability & Business Automobile Liability Insurance).
6. If SICF is self-insured for items XII.A. and B., above, SICF shall supply a letter from its corporate risk manager or appropriate financial officer indicating whether such program is actuarially funded and the fund limits, together with copies of any excess declaration pages to meet the contract requirements. Further, this letter should advise how SICF would protect and defend the City of Seattle as an additional insured in its self-insured layer, and include claims handling directions in the event of a claim.

All evidence of insurance must be delivered to the following address:

Seattle Center Director  
 Seattle Center Department  
 The City of Seattle  
 305 Harrison Street  
 Seattle, WA 98109

**H. Approval of City Risk Manager**

All policies shall be subject to approval by the City's Risk Manager as to form, coverage and company (must be issued by companies rated A-:VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington or issued as a surplus line by a Washington Surplus lines broker), and shall be primary to all other insurance.

**I. Adjustments of Claims**

The SICF shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of SICF under

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this Agreement. The SICF shall ensure that all such claims, whether processed by SICF or SICF's insurer, either directly or by means of an agent, shall be handled by a person with a permanent office in the Seattle area.

**J. Contractors and Subcontractors**

SICF shall include all of its contractors performing work at Seattle Center pursuant to this agreement as insureds under its policies or shall furnish separate evidence of insurance as stated above for each contractor. All coverages for contractors shall be subject to all the requirements stated herein and applicable to their profession.

**K. SICF's Responsibility**

SICF shall not keep or use in or about the Premises any article that is prohibited by any insurance policy. SICF shall pay immediately any increase in the City's premiums for insurance procured by the City during the term of this Agreement that results from SICF's use of the Premises. The procuring of the policies of insurance required by this Agreement shall not be construed to limit SICF's obligations under Section XI, hereof.

**L. City's Option to Terminate Upon Failure to Insure**

If SICF fails to maintain insurance required under this Agreement, the City may obtain the same and SICF shall reimburse City for the full expense thereof upon demand. Alternatively, the failure of SICF to maintain and otherwise comply with the provisions of this Section may subject this Agreement to immediate termination at the discretion of the Director and without the need for prior notice to SICF, in order to protect the public interest.

**XIII. CITY'S ACCESS TO PREMISES; INSPECTION, REPAIR, AND IMPROVEMENT OF PREMISES AND OTHER PROPERTY; WITHDRAWAL OF PREMISES**

**A. Access to Premises**

The City shall retain the right of access at all reasonable times to the Premises to inspect the same and to make any limited repair, improvement, alteration, or addition thereto or any other property owned by or under the control of the City deemed necessary by the Director, but this right of access shall not impose on the Seattle Center any obligation to make any repair, alteration, addition, or improvement except as specifically provided herein. Further, such access shall not interfere with the programs and events of the Festival but shall be subject to the provisions of Section II.C.2.b. The Director shall make every effort to give SICF thirty (30) days prior notice of such access need. Construction activity during subsequent Festivals shall be discussed on a case-by-case basis, and shall be addressed in conjunction with the Revised Facility Use Plan and shall be subject to the provisions of Section II.C.2.b.

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**B. Permitted Interference**

In inspecting, and in making repairs, alterations, additions and improvements, the City may erect barricades and scaffolding in and outside of the affected portion of the Premises, and may otherwise interfere with the conduct of SICF's and Festival participants' business and operations where such action is of an emergency nature, and such interference shall not be deemed to be a breach or default under this Agreement. Seattle Center will not bill SICF for any activities undertaken in connection with this Section. The Seattle Center shall use its best efforts to minimize interference with access to and from the Premises and with SICF's activities and operations on or from the Premises, and shall make every effort to give SICF thirty (30) days' notice prior to such interference.

**C. Suspension of Activities and Operations**

In the event such inspection, repair, alteration, addition, or improvement work necessitates the temporary suspension of the Festival or any part thereof, or of SICF's activities and operations on the Premises, or any portion thereof, the Director shall notify SICF of such necessity and the anticipated beginning and ending dates of such suspension. Festival or Festival activity suspensions may be ordered with less notice in the event of an emergency as determined by the Director. The SICF hereby waives any and all rights to claims for damage for any injury to and interference with its operations, activity, or business and any loss occasioned by any such suspension except as provided in Section II.C.2.b. If, however, the Director could have given advance notice to SICF but failed to do so, the City is liable to SICF for any loss of revenue or costs generated resulting from the suspension of activities.

**XIV. SEATTLE CENTER'S CONTROL OF BUILDINGS, GROUNDS AND ACTIVITIES**

Notwithstanding any other provision of this Agreement, the Seattle Center, without liability of any kind, reserves the right to do any or all of the following:

- A. Increase, reduce, and change in any manner whatsoever the number, appearance, dimensions, and locations of the Seattle Center walks, buildings, landscaping, parking, and service areas, and may also make improvements, alterations, and additions to the common areas of any Seattle Center building.
- B. Regulate all traffic within and adjacent to the Seattle Center.
- C. Impose a reasonable charge for facilities not being used by SICF.
- D. Erect, display and remove promotional exhibits and material and permit special events on the Seattle Center grounds, buildings and facilities.
- E. Promulgate, from time to time, reasonable rules and regulations regarding the use and occupancy of any area of the Seattle Center.
- F. Restrict or prohibit the parking on City-owned or leased property of motor vehicles owned or operated by SICF and any of its officers, employees, agents,

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To SICF: Board of Trustees President,  
SEATTLE INTERNATIONAL CHILDREN'S FESTIVAL  
305 Harrison Street  
Seattle, Washington 98109

or other such respective address(es) as either party may from time to time designate in writing.

**XVIII. DIRECTOR'S AUTHORITY**

The term "Director" as used throughout this Agreement in regard to permission, warrant, consent, approval, rights, interpretation, and discretionary matters shall mean the Director of the Seattle Center or his/her designee; provided, that the action of the Director and his/her designee pursuant to or in implementation of this Agreement does not constitute any official action by any other City Department or official that may be required by law, ordinance, rule or regulation before SICF may rightfully commence, suspend, enlarge, or terminate any particular undertaking or may obtain or exercise any particular right or privilege under this Agreement. Any decision to be made by the Director shall be left to his/her reasonable discretion.

**XIX. AMENDMENTS**

No modification or amendment of any of the provisions hereof shall be effective unless in writing and signed by an authorized representative of each of the parties hereto. The parties hereto expressly reserve the right to modify this Agreement, from time to time, by mutual agreement.

**XX. CAPTIONS**

The titles of sections and subsections are for convenience only and do not define or limit the contents.

**XXI. BINDING EFFECT**

The provisions, covenants and conditions in this Agreement apply to bind the parties, their legal representatives, successors, and assigns.

**XXII. PREVIOUS AGREEMENTS SUPERSEDED**

The terms and conditions of this Agreement supersede the terms, obligations and conditions of any existing or prior agreement between the parties regarding the subject matter of this Agreement.

**XXIII. ENTIRE AGREEMENT**

This Agreement, including the Exhibit attached hereto and forming a part hereof, are all of the covenants, promises, agreements, and conditions, either oral or written, between the parties. The parties acknowledge that they have negotiated the terms hereof and that they have had the opportunity to have this Agreement reviewed by their respective

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legal counsel. The terms and conditions of this Agreement shall not be construed against any party on the basis of that party's draftsmanship of any of the same.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by having their authorized representatives affix their signatures below.

SEATTLE INTERNATIONAL CHILDREN'S THE CITY OF SEATTLE  
FESTIVAL

By \_\_\_\_\_

Carlo Scandiuzzi, President  
SICF Board of Trustees

By \_\_\_\_\_

Virginia Anderson, Director  
Seattle Center Department

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OFFICE SPACE LEASE AGREEMENT BETWEEN  
THE SEATTLE CENTER  
AND  
SEATTLE INTERNATIONAL CHILDREN'S FESTIVAL

EXHIBIT 'A'

THIS LEASE is entered into by THE CITY OF SEATTLE (hereinafter called "City"), a municipal corporation of the State of Washington, acting by and through the Director of the Seattle Center Department, and SEATTLE INTERNATIONAL CHILDREN'S FESTIVAL (hereinafter called "SICF"), a Non-profit Tax-exempt Washington Corporation and WITNESSES THAT:

1. **INITIAL TERM OF LEASE:** The term of this Lease shall commence January 1, 2000 and shall expire on December 31, 2004, unless terminated earlier pursuant to the provisions hereof.

2. **PREMISES DESCRIPTION:**

- a. **Legal Description of Premises:** In consideration of the payment of rent and SICF's performance of and compliance with the other covenants, conditions, and terms of this Lease, City hereby leases to SICF, and SICF hereby leases from City, a portion of the building at Seattle Center located on the following property:

A portion of Lot 6, Block 36, D.T. Denny's Third Addition to North Seattle, according to plat recorded in Vol. 1 of Plats, Page 145, Records of King County, Washington, which portion is currently identified as Storage Unit 4 and Suites 25-27, 158 Thomas St. (Blue Spruce Bldg.) the floor/site plan for which is attached hereto, labeled "Attachment A" (which portion hereinafter shall be referred to as the "Premises").

- b. **Approximate Area of Premises as of Term Commencement:** 1395 Square Feet.

3. **MONTHLY BASE RENT:**

The SICF shall remit to the City as the monthly rent, the following:

- a. **Monthly Amount Due Between January 1, 2000, and December 31, 2004**

Five-Hundred Forty Six Dollars and xx/100 (\$546.00)

- b. **CPI increase:** The monthly base rent shall be increased effective each January 1st during the term hereof by the percentage increase (if any) in the Consumer Price Index for All Urban Consumers ("CPI-U" / 1982-84 = 100) Seattle Tacoma Metropolitan Area, as published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor, that occurred during the immediately preceding calendar year; Provided, that in the event of a change in the index base of (1982-84 = 100) or other modification of such index, the City shall apply whatever conversion factors are necessary to establish an adjusted CPI-U that produces the percentage increase in the CPI-U for each such annual period that would have been produced had no change been made in such index by its publisher; and in the event such index is discontinued, the Director shall select and use for such rent adjustment purpose a similar index that reflects consumer price changes.

- c. **Additional Rent Increases:** If the non-profit rent rate for office space is increased by ordinance, then the Monthly Rent may increase accordingly.

- d. **Services in Lieu of Rent:** In lieu of rent, the Seattle Center shall have the option to accept "a portion of the planning, organizing and staging services of the annual children's entertainment festival known as the Seattle International Children's Festival held at the Seattle Center" as payment

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for a portion or all of the rent due under this agreement. These planning, organizing and staging services received shall have a maximum value of five hundred forty six dollars and no/100's (\$546.00) per month and may from time to time be revised by the City due to changes in the CPI-U or value of SICF services

e. The City hereby accepts, until the termination date of this lease agreement or termination of the City's agreement with SICF for Seattle International Children's Festival event services, whichever occurs first, the maximum value of said services at five hundred forty six dollars and no/100's (\$546.00) per month in lieu of the rent described herein.

4. PERFORMANCE GUARANTEE:

a. The SICF shall deliver to the City, Seattle Center Accounting Office at the City address referenced in Subsection 5.b hereof, within five (5) days after the SICF's execution of this Lease, as a performance guarantee, One Thousand Ninety Two Dollars and xx/100 (\$1,092.00). Said performance guarantee constitutes additional consideration for the City's execution of this Lease and shall be fully earned by the City as of the commencement date of this Lease, and may be commingled with other City funds and invested to generate additional earnings for the City's benefit as the City desires. The City may (but shall not be required to) use, apply or retain all or any part of this performance guarantee for the payment of any rent or additional rent or any sum alleged to be or actually in default, or for the payment of any amount that the City may expend by reason of any alleged or actual default by the SICF, or to compensate the City for any other loss or damage that the City may have suffered by reason of any alleged or actual SICF default. If any portion of said performance guarantee is so used or applied, the SICF, within seven (7) calendar days after the date of notice thereof, shall deliver to the City, the Seattle Center Accounting Office, additional cash in the amount sufficient to restore the performance guarantee to the amount set forth above. If the SICF fully and faithfully performs every provision of this Agreement to be performed by it, the performance guarantee or any balance thereof after any application of the same by the City hereunder shall be refunded to the SICF within forty-five (45) days after the expiration or earlier termination of this Lease. The SICF shall have no right to contest any withdrawal, use, retention or application by the City of any portion of such performance guarantee at the time of the City's taking such action; *Provided*, that nothing herein shall prejudice the SICF's right to demand through arbitration or litigation the refund of such portion if, and only if, the SICF has fully complied with and satisfied all of its obligations hereunder. The SICF waives prior notice and opportunity for a hearing on any withdrawal, use, application, or retention by the City of such performance guarantee or any portion thereof.

b. The City hereby waives the performance guarantee requirements of this section.

5. TIME AND PLACE OF PAYMENT

a. Due Date for Monthly Rent: The monthly base or adjusted base rent specified in Section 3 hereof, and any leasehold taxes due pursuant to Sub-section 13.c hereof, are due and payable to the City, in advance, without setoff or deduction of any kind or nature or City invoice, on or before the first (1st) day of each month of the term hereof, *Provided*, that until the City notifies the SICF of the amount of the annual CPI adjustment in the monthly base or adjusted base rent, the SICF shall remit as a partial payment, the rental amount specified in this section or in the City's most recent rent increase notice, whichever is higher, and within seven (7) days after the date of the City's notice of the amount of each such annual increase and its invoice for the amount retroactively due, the SICF shall remit such retroactive rent and thereafter remit on a monthly basis the newly adjusted base rent.

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c. Delinquencies: All sums due and owing to the City shall be delinquent if not paid on or before the Fifth (5th) day after the date due; in the event of any delinquency, the SICF shall also owe to the City a service charge of Fifty Dollars (\$50.00), or such larger sum as is established by ordinance, each time such delinquency is invoiced plus interest on such delinquent sum at a rate of one and one-half percent (1½%), or such larger percent as is established by ordinance, per month from the date due to the date of payment.

d. Returned Check, Non-Sufficient Funds: In the event any payment or check for payment is returned for non-sufficient funds, the SICF shall owe as an administrative charge an additional \$20.00, or such larger sum as is established by ordinance.

6. USE OF PREMISES. SICF shall use the Premises for office space only. SICF may use the Premises for other purposes only with the prior, written approval of the Director. SICF shall use the entire Premises for the conduct of its business in a first-class manner, continuously during the entire term of this Agreement, with the exception of temporary closures for such periods as may be necessary for repairs or redecorating or for reasons beyond either party's reasonable control.

7. OBJECTIONABLE MERCHANDISE OR MATERIAL. Notwithstanding any other provision of this Lease, the Lessee shall not display, or allow to be displayed, on the Premises, any material that is unsafe; that portrays the City or Seattle Center or any aspect thereof in an incorrect, misleading, or unfavorable manner; that depicts or suggests in words, symbols, illustrations, or other forms, any act of violence, or any lewd, immoral, or obscene activity; or that is inconsistent with the image of a first-class, family-oriented retail and entertainment development, or is otherwise inappropriate for a family-oriented recreation and entertainment facility such as Seattle Center; or that may create a substantial litter or other maintenance problem at Seattle Center; all of which shall be determined by the Director in the exercise of such official's sole discretion.

8. UTILITY SERVICES AND PARKING

a. Extent of City Service: The City shall provide basic utility service including but not limited to electricity, sewer, water, and heating for such location.

b. Limitation on City Liability Regarding Utility Service: The City shall not be liable for the interruption of any utility service when such interruption is caused by maintenance work, or when the interruption is not due to City negligence.

c. Special Services and Facilities Subject to Prior City Approval, and at Lessee's Cost: The Lessee, directly or through a third party, may install, secure, maintain and repair, at no expense to the City, any utility service related to the Lessee's operations and its use of the Premises that is not provided or maintained by the City. Any special utility or waste disposal facility, item of equipment, or service beyond that provided to the Premises by the City, must be installed only in accordance with plans and specifications approved by the Director and other appropriate City officials, in writing, in advance of such installation. The Lessee shall not install on the Premises any fixture, furnishing, or trade equipment that exceeds the capacity of any utility or waste facility for such location. The Lessee shall pay, before delinquency, all fees and charges for the installation, change, and relocation of any point or means of service by any utility or waste line or system. The Lessee shall make arrangements with the utility service provider for the separate metering, where possible, of such service and the direct billing to the Lessee for the delivery of such service.

d. Cooperative Parking: As of the commencement date of this Lease, the Seattle Center has a "Cooperative Parking Status" under Title 23 of the Seattle Municipal Code. Accordingly, unless otherwise specifically provided herein, the City does not provide any parking that is specifically for or associated with the Premises (including but not limited to that required by or for the Lessee's staff, suppliers or customers), and whatever general, non-reserved parking the City makes

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available for Seattle Center tenants and their respective staffs, suppliers, and customers shall be shared on a first-come, first-served basis.

9. ADVERTISING & PUBLICITY

a. Prohibited Promotion & Other Material; Removal of Same: The Lessee shall not display, post, or distribute any sign, symbol, advertising of any nature, or any printed material (including but not limited to posters) on any part of the Seattle Center, including but not limited to the Premises, except after receiving written permission therefor from the Director; and may undertake such activity only in or on location(s) approved by the Director. On or before the expiration or termination date of this Lease, whichever is earlier, or in the case of unauthorized material, on or before the date specified in the Director's notice to remove the same, the Lessee shall remove, at no expense to the

b. City, all such signs, symbols, advertising and printed material; and correct any unsightly condition, and repair any damage or injury to City property caused by such signs, symbols, advertising and printed material, and the removal thereof. In the event any such unauthorized material is not removed from City property by the date required herein, such material may be treated as Lessee property subject to removal and storage pursuant to Subsection 20.c hereof.

c. Use of Photos & Similar Materials: Each party hereto may make photographs, video tapes, and motion pictures of the Premises and the activity, people, displays and exhibits thereon; *Provided*, that in the event such visual material is to be used for commercial advertising purposes, prior to making the same, the Lessee shall obtain the written approval of the Director for such use, which approval may be conditioned upon, among other things, the payment by the Lessee to the City of additional consideration; and prior to the use of any such photography, video tape, or motion picture, a written release shall be obtained from every individual identifiable in the same.

10. INSTALLATION OR INTEGRATION OF ANY WORK OF VISUAL ART ON PREMISES

a. Reservation of Rights by City; Prohibition Against Installation or Integration of Any Work of Visual Art on Premises Without City's Consent The City reserves to and for itself the right to approve or disapprove of the installation or integration on or in the Premises of any "work of visual art," as that term is defined in the Visual Artists Rights Act of 1990, as now existing or as later amended, and to approve or disapprove of each and every agreement regarding any such installation or integration. The Lessee shall not install on or integrate into, or permit any other person or entity to install on or integrate into, the Premises any such work of visual art without the prior, express, written consent of the Director. The Director's consent to the installation of any such art work may be granted, granted upon one or more conditions, or withheld in the Director's discretion; *Provided, however*, that the Director's consent to the installation by or for the Lessee of any such art work shall not be required under the following three (3) circumstances:

(1) If such art work (a) weighs less than fifty (50) pounds; and (b) is of a size and has such dimensions and material composition that makes its passage through an open 32" x 78" or larger doorway a simple and easy maneuver; and (c) is to be installed on the floor, a piece of furniture, or similar surface without further anchoring of any kind or nature, or on a wall using no more than two (2) simple picture hooks and wire; all so that the easy removability from the Premises of such art work without its destruction, distortion, mutilation or other modification by reason of such removal is undeniable; or

(2) If the Lessee delivers to the Director a waiver appropriately executed by the art work creator, for the benefit of the City and its successors and assigns as the owner of

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the Premises, of the creator's right of integrity regarding such art work, in a form of waiver that satisfies both the Director and the requirements of 17 U.S.C. §106A(e), as the same now exists or is hereafter modified; or

(3) If the Director executes with the creator of a work of visual art to be installed in the Premises a consent agreement of the type contemplated by 17 U.S.C. §113(d)(1), as the same now exists or is hereafter amended, and in the form and manner specified by the Director.

(4) In the event the creator of any work of visual art installed in the Premises by or for the Lessee has not executed a waiver, or such creator and the City have not executed a consent agreement, each as described herein, the Lessee shall ensure that, prior to removing or allowing the removal from the Premises of any such art work, such creator is given both notice, as contemplated in 17 U.S.C. §113(d)(2), of the intended removal of such art work, and the time required by that statutory provision to respond to such notice, and that the Lessee takes whatever other action(s) may be required by such legislation to ensure that no claim, action or suit alleging a violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended, and arising out of any act or omission of or for the Lessee or any of its officers, employees, or agents, is filed or lodged against the City in its capacity as the Premises owner.

b. Lessee's Indemnification of City Against Liability under Visual Artists Rights Act of 1990  
The Lessee shall protect, defend, and hold the City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising as a consequence of (a) the installation or integration of any work of visual art on or into the Premises; (b) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or (c) any breach of Subsection 10.a. of this Lease; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by the Lessee or any of its officers, employees or agents. This indemnification obligation shall exist regardless of whether the Director or any other person employed by the City has knowledge of such installation, integration, or removal or has consented to any such action or is not required to give prior consent to any such action. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Lease.

11. **ACCEPTANCE OF PREMISES:** Lessee has inspected and examined the physical condition of the Premises and accepts the Premises in their present condition as of the commencement date of the Term hereof. The City disclaims all representations, statements or warranties, expressed or implied, have been made by or on behalf of the City with respect to the condition of the Premises or the use or occupancy authorized other than those contained in this Lease. An election by the City to provide or pay for any maintenance or repair shall not be construed to be an obligation on the part of the City to make such repairs in the future.
12. **POSSESSION:** If the City shall be unable for any reason to deliver possession of the Premises, or any portion thereof, at the time of the commencement of the term of this Agreement, City shall not be liable for any damage caused thereby to Lessee, nor shall this Agreement thereby become void or voidable, nor shall the term specified herein be in any way extended, but in such event, Lessee shall not be liable for any rent until such time as City can deliver possession; Provided, that if Lessee shall, in the interim take possession of any portion of Premises, it shall pay as rental the full rental specified herein reduced pro rata for the portion of the Premises not available for possession; And provided further, that if City shall be unable to deliver possession of said Premises, Lessee shall have the option to terminate this Agreement by providing to the City written notice thereof at least thirty (30) days prior to the effective date of termination, unless the City shall deliver possession of the Premises prior to the effective date of termination specified in such notice. If Lessee shall, with the City's consent, take possession of all or any part of the Premises prior to the commencement of the term of this Agreement, all of the terms and conditions of this Agreement shall immediately become applicable, with the exception that Lessee

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shall be obligated to pay a pro-rated rental for the period prior to the commencement of the term of this Agreement or such sum as may otherwise be mutually agreed upon.

13. **CONSTRUCTION, ALTERATIONS, IMPROVEMENTS, AND ADDITIONS:** Lessee shall not make any alteration in, or addition or improvement to, the Premises without the prior written consent of City. Any change or alteration made shall be at the expense of Lessee. All alterations to or improvements upon the Premises, or the building of which the Premises form a part, made by either party (except furniture put in at the expense of Lessee, and movable without defacing or injuring the building or Premises) shall become the property of the City and shall remain upon and be surrendered with the Premises as a part thereof at the end of the term, without disturbance, molestation or injury thereof, except as provided herein.

Lessee's building plans must set forth improvements and equipment of the highest quality and, in all respects, of sound structure, and in accordance with the policies, motifs, designs and overall plan of the Center and the particular area in which such structure and equipment are to be located. City shall have the right to approve and/or disapprove Lessee's plans or equipment. Lessee shall not commence construction and/or installation of equipment until City has approved said plans in writing. Any expenditures in connection with construction and equipment installation prior to the aforementioned approval of City, will be at the risk and expense of Lessee. Lessee shall remove any such improvements at its own expense at the end of lease term, if so requested by City.

Any expense incurred in mutually agreed upon alterations, improvements or repairs or new construction necessary for Lessee's use and occupancy shall be borne by Lessee.

14. **LIABILITY:**

- a. **Indemnification:** The Lessee shall indemnify and hold the City harmless from any and all losses, claims, actions, damages, costs and expenses (including attorneys' fees) suffered by any person or entity by reason of or resulting from any negligent, reckless or intentional act or omission of the Lessee or any of its agents, employees, contractors, or invitees in connection with use or occupancy of the Premises, including trademark, patent, and copyright infringement; and except in connection with or collateral to the demolition, construction, alteration, addition, improvement, repair, or maintenance of the Premises or the moving thereto and therefrom, any concurrent, negligent act or omission of the Lessee or any of its officers, employees, agents, or invitees, and of the City or any of its officers, employees, agents, or invitees. In the event any suit or action is brought against the City, the Lessee, upon notice of the commencement thereof, shall defend the same, at no cost and expense to the City, and promptly satisfy any final judgment adverse to the City or to the City and the Lessee jointly; *Provided*, that in the event the Director determines that one or more principles of governmental or public law are involved, the City retains the right to participate in such action. Nothing contained in this section shall be construed as requiring the Lessee to indemnify the City against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City or any of its officers, employees, or agents. Notwithstanding any provision to the contrary herein, in the event any bodily injury or damage to property results from or arises out of any construction, alteration, repair, addition to, subtraction from improvement to, or maintenance of, any excavation, building, structure, project, development or improvement attached to real estate, including moving and demolition in connection therewith, that has been undertaken or performed by or on behalf of the Lessee, the indemnification provided pursuant to this subsection shall be limited to the extent of the negligence of the Lessee and those acting by or for the Lessee. The indemnification provided in this subsection shall survive the expiration or earlier termination of this Agreement.

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shall be obligated to pay a pro-rated rental for the period prior to the commencement of the term of this Agreement or such sum as may otherwise be mutually agreed upon.

13. **CONSTRUCTION, ALTERATIONS, IMPROVEMENTS, AND ADDITIONS:** Lessee shall not make any alteration in, or addition or improvement to, the Premises without the prior written consent of City. Any change or alteration made shall be at the expense of Lessee. All alterations to or improvements upon the Premises, or the building of which the Premises form a part, made by either party (except furniture put in at the expense of Lessee, and movable without defacing or injuring the building or Premises) shall become the property of the City and shall remain upon and be surrendered with the Premises as a part thereof at the end of the term, without disturbance, molestation or injury thereof, except as provided herein.

Lessee's building plans must set forth improvements and equipment of the highest quality and, in all respects, of sound and safe structure, and in accordance with the policies, motifs, designs and overall planning for the Seattle Center and the particular area in which such structure and equipment shall be installed. City shall have the right to approve and/or disapprove Lessee's plans or portions thereof and Lessee shall not commence construction and/or installation of equipment or improvements until City has approved said plans in writing. Any expenditures in connection with said construction and equipment installation prior to the aforementioned approval of City, will be at the risk and expense of Lessee. Lessee shall remove any such improvements at its own expense at the end of lease term, if so requested by City.

Any expense incurred in mutually agreed upon alterations, improvements or repairs or new construction necessary for Lessee's use and occupancy shall be borne by Lessee.

14. **LIABILITY:**

- a. **Indemnification:** The Lessee shall indemnify and hold the City harmless from any and all losses, claims, actions, damages, costs and expenses (including attorneys' fees) suffered by any person or entity by reason of or resulting from any negligent, reckless or intentional act or omission of the Lessee or any of its agents, employees, contractors, or invitees in connection with use or occupancy of the Premises, including trademark, patent, and copyright infringement; and except in connection with or collateral to the demolition, construction, alteration, addition, improvement, repair, or maintenance of the Premises or the moving thereto and therefrom, any concurrent, negligent act or omission of the Lessee or any of its officers, employees, agents, or invitees, and of the City or any of its officers, employees, agents, or invitees. In the event any suit or action is brought against the City, the Lessee, upon notice of the commencement thereof, shall defend the same, at no cost and expense to the City, and promptly satisfy any final judgment adverse to the City or to the City and the Lessee jointly; *Provided*, that in the event the Director determines that one or more principles of governmental or public law are involved, the City retains the right to participate in such action. Nothing contained in this section shall be construed as requiring the Lessee to indemnify the City against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City or any of its officers, employees, or agents. Notwithstanding any provision to the contrary herein, in the event any bodily injury or damage to property results from or arises out of any construction, alteration, repair, addition to, subtraction from improvement to, or maintenance of, any excavation, building, structure, project, development or improvement attached to real estate, including moving and demolition in connection therewith, that has been undertaken or performed by or on behalf of the Lessee, the indemnification provided pursuant to this subsection shall be limited to the extent of the negligence of the Lessee and those acting by or for the Lessee. The indemnification provided in this subsection shall survive the expiration or earlier termination of this Agreement.

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b. **Liability Insurance:** The Lessee shall secure and maintain in full force and effect at all times during the Term of this Lease, at no cost or expense to the City, one or more policies of commercial general liability insurance as required below:

(1) **Liability Limits:** The limitations of liability shall not be less than One Million Dollars (\$1,000,000), per occurrence, Combined Single Limit (bodily injury and property damage) and One Million Dollars (\$1,000,000) Annual Aggregate with a deductible or self-insurance retention of no more than Two Thousand Five Hundred Dollars (\$2,500) for property damage, only; *Provided*, that in the event the Director deems such insurance to be inadequate to fully protect the interests of the City and the Lessee hereunder, the Lessee shall increase said coverage limits to such amounts as the Director shall deem reasonably adequate to provide such protection, which increase shall be completed within sixty (60) days after the date of notice that the Lessee's insurance coverage is deemed to be inadequate. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Lessee from liability in excess of such coverage.

(2) **Coverage:** Coverage shall be provided for liability for any injury, death, damage and/or loss of any sort sustained by any person, organization or corporation (including the Lessee and any of its officers, employees and agents) in connection with or arising out of any act or omission of (a) the Lessee; or (b) any of the Lessee's officers, employees, agents, assigns or invitees; or (c) the Lessee and City or any of their officers, employees, agents, assigns, or invitees, jointly, upon the Premises; and for any activity performed by the Lessee under this Lease and shall include, but need not be limited to the following types (described in insurance industry terminology):

- (a) Premises operations liability (O, L & T or M & C);
- (b) Blanket contractual liability;
- (c) Broad form property damage;
- (d) Independent contractor (O & CP.);
- (e) Automobile liability for owned, leased, hired or non-owned vehicles;
- (f) Products and/or completed operations;
- (g) Personal injury, including coverages A, B, and C with no employee exclusion;
- (h) Fire legal liability.

All such insurance shall provide coverage on a "per occurrence" rather than on a "claims made" basis, and shall be primary to any other insurance that may be valid and collectible. The Lessee is not required to provide insurance coverage against City's sole negligence.

c. **Fire and Extended Coverage:** The Lessee shall secure and maintain at all times during the Term of this Lease, at no cost or expense to the City, one or more policies of fire, and extended coverage equal to not less than ninety percent (90%) of the value of the Lessee's additions, alterations and improvements to the Premises, which value shall be determined by the Director, from time to time, and identified in a notice to the Lessee. Under such insurance, any loss payment shall be made payable to the City, which shall hold the same in trust for the rebuilding, repairing, replacing or restoring of the Premises, including all improvements, additions and alterations thereto.

d. **Business Interruption Insurance:** The Lessee shall secure and maintain during the Term of this Lease, business interruption insurance with sufficient coverage to provide for the payment of rent and other fixed costs during any interruption of the Lessee's business because of fire or other cause.

e. **Authorized Carriers:** The insurance described in Subsections 12.b and 12.c shall be obtained from one or more insurance companies duly authorized to issue such policies in the State

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of Washington, and having a rating of at least "A", as rated in Best's Key Rating Guide or a successor or substitute rating service accepted by the Lessee and Director.

f. Naming of City As Additional Insured: The City shall be named as an additional insured in the policies to be secured under Subsections 12.b and 12.c, hereof, by an endorsement declaring that the coverages provided by such policy to the City or any other named insured shall not be terminated, reduced or otherwise changed as to face value without providing at least thirty (30) days prior written notice to the following:

Contracts & Concessions  
Seattle Center Department  
The City of Seattle  
305 Harrison  
Seattle, WA 98109

Risk Manager  
Finance Department  
The City of Seattle  
750 Arctic Bldg.  
Seattle, WA 98104

or to such other addressees and addresses as the City may hereafter specify.

g. Evidence of Insurance: The Lessee shall deliver to City's Risk Manager, or such official's functional successor or designee(s), a copy of all policies required under Subsections B-5.b and B-5.c, hereof, and all endorsements thereto to the reasonable satisfaction of the City's Risk Manager that the Lessee has secured or renewed and is maintaining insurance as required by this Lease, as follows:

- (1) On or before the first Premises use by the Lessee or any of its sublessees under this Lease; and
- (2) Within seven (7) calendar days prior to the expiration or renewal date of each such insurance policy; and
- (3) Within seven (7) calendar days after the Lessee's receipt of a written request therefor.

h. Assumption of Risk: The placement and storage of personal property in the Premises or any other Seattle Center facility shall be the responsibility, and at the sole risk, of the Lessee.

i. No Entry onto Premises upon Failure to Insure: The Director shall notify the Lessee whenever the Director has a reasonable belief that the Lessee has failed to secure or maintain insurance as required by this Lease. Notwithstanding any other provision of this Lease, after its receipt of any such notice, the Lessee shall not enter upon any Seattle Center facility until the Lessee has secured and is maintaining insurance as required by this Lease.

j. Workmen's Compensation: In addition to the above coverage, Lessee shall provide Workmen's Compensation coverage for its employees in accordance with the Washington State laws and Department of Labor and Industries regulations.

15. COMPLIANCE WITH LAW

a. General Requirements: The Lessee, at no cost to the City, shall perform and comply with all applicable, current and future laws of the United States and the State of Washington; the Charter and Municipal Code of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof. The Lessee shall use its best efforts to ensure that every person it admits to the Premises similarly performs and complies with the same. Whenever the Lessee or its authorized representative is informed of any violation of any such law, ordinance, rule, regulation, license, permit, or authorization committed by it or any person admitted to the Premises, the Lessee shall immediately desist from and/or prevent or correct such violation.

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b. Licenses & Other Authorizations: The Lessee, at no cost to the City, shall secure and maintain in full force and effect during the term of this Lease, all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.

c. Taxes: The Lessee shall pay, before delinquency, all taxes, levies, and assessments arising from its activities on or occupancy of the Premises, including but not limited to taxes arising out of the activity or business conducted on the Premises; taxes levied on its property, equipment and improvements on the Premises; and taxes on the Lessee's interest in this Lease and any leasehold interest deemed to have been created thereby under RCW Ch. 82.29A; and in the event the State of Washington makes any demand upon the City for payment of leasehold excise taxes resulting from the Lessee's occupancy of the Premises or withholds funds due to the City to enforce collections of leasehold excise taxes, the Lessee shall remit the taxes demanded together with any interest and penalties associated therewith or, at no expense to the City, contest such collection action and indemnify the City for all sums expended by, or withheld by the State of Washington from the City in connection with such taxation.

d. Nondiscrimination and WMBE Utilization - General: Notwithstanding any other provision in this Lease, City women- and minority-owned business (WMBE) utilization requirements shall not be applicable from and after December 3, 1998, and no minimum level of WMBE subtenant, consultant, contractor or supplier participation shall be required as a condition of the City's execution of this Lease.

(1) Nondiscrimination: Lessee shall not create barriers to open and fair opportunities for WMBEs to participate in all City contracts and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with contractors and suppliers, Lessee shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

(2) Record-keeping: Lessee shall maintain, for at least twelve (12) months after the expiration or earlier termination of this Lease, relevant records and information necessary to document Lessee's utilization of WMBEs and other businesses as contractors and suppliers under this Lease and in its overall public and private business activities. Lessee shall also maintain all written quotes, bids, estimates, or proposals submitted to Lessee by all businesses seeking to participate as contractors or suppliers under this Lease. The City shall have the right to inspect and copy such records.

(3) Affirmative Efforts to Utilize WMBEs: The City encourages the utilization of minority owned businesses ("MBEs") and women-owned businesses ("WBEs") (collectively, "WMBEs"), in all City contracts. The City encourages the following practices to open competitive opportunities for WMBEs:

(a) Attending a pre-solicitation conference, if scheduled by the City, to provide project information and to inform WMBEs of Lessee contracting and subcontracting opportunities.

(b) Placing all qualified WMBEs attempting to do business in the City of Seattle on solicitation lists, and providing written notice of contracting and subcontracting opportunities to WMBEs capable of performing the work, including without limitation all businesses on any list provided by the City, in sufficient time to allow such businesses to respond to the written solicitations.

(c) Breaking down total requirements into smaller tasks or quantities, where economically feasible, in order to permit maximum participation by small businesses including WMBEs.

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(d) Establishing delivery schedules, where the requirements of this Lease permit, that encourage participation by WMBEs.

(e) Providing WMBEs that express interest with adequate and timely information about plans, specifications, and requirements of this Lease.

(f) Utilizing the services of available minority community organizations, minority contractor groups, local minority assistance offices, The City of Seattle, and other organizations that provide assistance in the recruitment and placement of WMBEs.

(4) Sanctions for Violation: Any violation of the mandatory requirements of the provisions of Subsections B-11.d(1) and (2) shall be a material breach of contract for which Lessee may be subject to damages and sanctions provided for by the Lease and by applicable law.

f. Recycling of Waste Materials: The Lessee, at no cost to the City, shall collect, sort and separate into such categories as may be locally required, all solid waste products on the Premises, and recycle all such products that are locally accepted for recycling. Each separately sorted category of waste products shall be placed in separate receptacles reasonably approved by the City, which receptacles shall be dumped or removed from the Seattle Center at such minimum frequency as is specified by the Director. The City reserves the right to refuse to collect or accept from the Lessee any waste product that is not sorted and separated as required by law, ordinance, rule or regulation, and to require the Lessee to arrange for the collection of the same at the Lessee's sole cost and expense using a contractor satisfactory to the City. The Lessee shall pay all costs, fines, penalties, and damages that may be imposed on City or the Lessee as a consequence of the Lessee's failure to comply with the provisions of this subsection.

g. Environmental Standards:

1) Definitions: For the purpose of this subsection, the following terms shall be defined as provided below unless the context clearly requires a different meaning:

(a) "Laws or Regulation" shall mean any environmentally related local, state or federal law, regulation, ordinance or order (including without limitation any final order of any court of competent jurisdiction of which the Lessee has knowledge), now or hereafter in effect including but not limited to the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act as amended by the Superfund Amendments and Re-authorization Act of 1986, the Resource Conservation and Recovery Act as amended by the Solid and Hazardous Waste Amendments of 1984, the Occupational Safety and Health Act, the Emergency Planning and Community Right-to-Know Act of 1986, and the Solid Waste Disposal Act.

(b) "Hazardous Substances" shall mean any hazardous, toxic, or dangerous substance, waste, or material that is regulated under any federal, state, or local statute, ordinance, or regulation relating to environmental protection, contamination or cleanup.

2) Restrictions on Lessee Activities: The Lessee shall not cause to occur upon the Premises or permit the Premises to be used to generate, produce, manufacture, refine, transport, treat, store, handle, dispose, transfer, or process Hazardous Substances except in compliance with all applicable Laws and Regulations. The Lessee shall provide the Director with the Lessee's USEPA Waste Generator Number (if any), and with a copy

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of every Material Safety Data Sheet (MSDS), Generator Annual Dangerous Waste Report, environmentally related regulatory permit or approval (including every revision or renewal thereof) and any correspondence the Lessee receives from, or provides to, any governmental unit or agency in connection with the Lessee's handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance on the Premises.

3) Correction of Violations: If the Lessee violates any of the terms of this section concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, the Lessee shall promptly take such action as is necessary to mitigate and correct the violation. If the Lessee does not act in a prudent and prompt manner, the City reserves the right, but not the obligation, to act in place of the Lessee (for which purpose the Lessee hereby appoints the City as its agent), to come onto the Premises and to take such action as the City deems necessary to ensure compliance or to mitigate the violation. If the Director has a reasonable belief that the Lessee is in violation of any law or regulation, or that any action or inaction of the Lessee presents a threat of violation or a threat of damage to the Premises, the City reserves the right to enter onto the Premises and take such corrective or mitigating action as the Director deems necessary. All costs and expenses incurred by the City in connection with any such action shall become immediately due and payable by the Lessee upon presentation of an invoice therefor.

4) Testing: The Lessee shall provide the City with access to the Premises to conduct an annual environmental inspection in January of each year of the term hereof or at such other time(s) as may be mutually agreed upon. In addition, the Lessee shall permit the City access to the Premises at any time, upon reasonable notice, for the purpose of conducting environmental testing at the City's expense. The Lessee shall not conduct or permit others to conduct environmental testing on the Premises without first obtaining the Director's written consent, which shall not be unreasonably withheld. The Lessee shall promptly inform the Director of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Premises whenever the same becomes known to the Lessee, and the Lessee shall provide a written copy of the same to the Director within thirty (30) days after the preparation of any such material.

5) Removal of Hazardous Substances Prior to Vacation of Premises: Prior to vacation of the Premises, in addition to all other requirements under this Lease, the Lessee shall remove any Hazardous Substances placed on the Premises during the term of this Lease or the Lessee's possession of the Premises, and shall demonstrate such removal to the Director's reasonable satisfaction.

6) Reimbursement of City Costs: In addition to any remedy provided above, the City shall be entitled to full reimbursement from the Lessee whenever the City incurs any cost resulting from the Lessee's violation of any of the terms of this Subsection B-11.g, including, but not limited to, the cost of clean-up or any other remedial activity, fines, penalties assessed directly against the City, injuries to third persons or other property, and loss of revenue resulting from an inability to re-lease or market the Premises due to its environmental condition as the result of the Lessee's violation of the terms of this Lease (even if such loss of revenue occurs after the expiration or earlier termination of this Lease).

7) Indemnification: In addition to all other indemnities provided in this Lease, and notwithstanding the expiration or earlier termination of this Lease, the Lessee agrees to and shall defend, indemnify and hold the City free and harmless from any and all claims,

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causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the existence or discovery of any Hazardous Substance on the Premises resulting from a violation of the terms of this section, or the migration of any Hazardous Substance from the Premises to other property or into the surrounding environment that is the result of a violation of the terms of this section, whether (a) made, commenced or incurred during the term of this Lease, or (b) made, commenced or incurred after the expiration or termination of this Lease if arising out of an event occurring during the term of this Lease.

**16. CITY'S CONTROL OF BUILDINGS, GROUNDS & ACTIVITIES:** Notwithstanding any other provision of this Lease, the City, without liability of any kind, may:

- a. Physical Appearance: Increase, reduce or change, in any manner and any extent whatsoever, the number, appearance, dimensions, and location of any and every Seattle Center walkway, landscaping element, parking, service area, and building as desired by the City;
- b. Traffic & Parking Regulation: Regulate all traffic within and adjacent to the Seattle Center, and restrict or prohibit the parking on City-owned or leased property of motor vehicles owned or operated by the Lessee or any of its officers, employees, agents, suppliers, and invitees;
- c. Admission Charges: Impose a reasonable charge for admission to the Seattle Center and any of the facilities therein, including parking facilities;
- d. Promotions & Events: Erect, display and remove promotional exhibits and materials and permit special events on the Seattle Center grounds and in or at any or every building and facility thereof;
- e. Rules & Regulations: Promulgate, from time to time, reasonable rules and regulations regarding the use and occupancy of any area of Seattle Center;
- f. Hours of Operation: Determine the days and hours that the Seattle Center and the various business operations therein will be open to the public;
- g. Other Businesses & Operations: Change the size, number, and type and identity of other businesses and operations being conducted or undertaken at Seattle Center; and authorize other lessees, licensees, and the sponsors of special events at Seattle Center, directly or indirectly, to offer for sale food and beverages, and for sale or rent any merchandise and service, including any that may be identical or similar to that offered by the Lessee;
- h. Signage: Place "For Rent" or similar signs in the Premises for thirty (30) days prior to the expiration or termination date of this Lease, whichever is earlier.
- i. Interference: Interfere with light, air or view, or the Lessee's operations or use and occupancy of the Premises, either in connection with or as a result of operations by or for City in the construction of any public work or its subsequent use and occupancy, or the repair and maintenance of any City facility or improvement. The City will make a good faith effort, however, to minimize such interference to the extent it is reasonably economical for the City to do so.

**17. CITY ACCESS TO, & INSPECTION, REPAIR & IMPROVEMENT OF PREMISES & OTHER PROPERTY**

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a. Access to Premises: The Lessee shall provide the City and its contractors and consultants, their subcontractors, subconsultants and agents with access to the Premises at all reasonable times to inspect the same and to make any inspection, repair or improvement deemed necessary by the Director, but this right of access shall not impose on the City any obligation to make any repair, alteration, addition, or improvement except as specifically provided herein.

b. Permitted Interference With Lessee's Operations: In inspecting, and in making repairs, alterations, additions, and improvements, the City may erect barricades and scaffolding in and outside of the Premises, and may otherwise interfere with the conduct of the Lessee's business and operations where such action is reasonably required by the nature of the City's work; and such interference shall not be deemed to be a breach or default under this Lease.

c. Suspension of Lessee's Operations and Obligation to Pay Monthly Base Rent: In the event such inspection, repair, alteration, addition, or improvement work necessitates the temporary suspension of the Lessee's business or operations in, on, or from the Premises, the Director shall notify the Lessee of such necessity and the anticipated beginning and ending dates of such suspension. Monthly Base or Adjusted Base Rent due to City pursuant to Section 3 hereof shall be prorated during each month in which the Lessee's business or operations are required by City to be suspended pursuant to this subsection, and the Lessee shall have no obligation to pay such prorated rent during the period that the Lessee's business or operations are suspended; such cancellation of the obligation to pay the prorated Monthly Base or Adjusted Base Rent shall constitute the totality of relief available, and the Lessee waives all claims for damages and for any injury to and interference with its operations or business and losses occasioned by any such suspension.

d. City's Retention & Use of Key to Premises: The City shall have the option to core all exterior and interior locks to Seattle Center core series and issue keys to SICF according to Seattle Center key and lock procedures. Should the City allow SICF to use its own key cores, the Lessee shall provide the Director with a key with which to unlock all of the doors in, upon, and about the Premises, excluding the Lessee's vaults, safes, and files, for each of the aforesaid purposes. The City shall have the right to use any and all means that the Director deems proper to open said doors in an emergency, in order to obtain entry to the Premises, without liability to the Lessee except for any failure to exercise due care for the Lessee's property. Any entry to the Premises obtained by the City by any of said means, or otherwise, shall not be construed or deemed to be an eviction of the Lessee or a forcible or unlawful entry into, or a detainer of, the Premises or any portion thereof.

18. **ASSIGNMENTS, SUBLEASES & OTHER INTEREST TRANSFERS**

a. Director's Prior Written Consent Required for Assignment & Subleases: No purported assignment, sublease or other transfer of the Premises or any portion thereof or of any aspect of the Lessee's interest in this Lease shall be effective without the prior written consent of the Director which the Director shall have the option to grant or not grant. Every proposed sublease, assignment, or other interest-transferring agreement shall be submitted to the Director for review and approval or disapproval after execution by the proposed subtenant, assignee, or transferee, and not less than sixty (60) calendar days prior to the commencement date of the proposed sublessee's, assignee's, or transferee's intended use of any portion of the Premises under such agreement or the assumption of any right or interest in any portion of the Premises or this Lease. No assignment or sublease of this Lease, with or without the Director's consent, shall release or relieve the Lessee of or from any of the obligations on the Lessee's part to be kept and performed under this Lease, and the Lessee shall remain jointly and severally liable for the performance of all obligations of the Lessee hereunder regardless of any (i) agreement that modifies any of the rights or obligations of the parties to this Lease; (ii) stipulation that extends the time within which an obligation under this Lease is to be performed; (iii) waiver of the performance of any obligation under this Lease; or (iv)

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failure to enforce any obligation under this Lease. Every approved assignment and sublease shall be subject to all the terms and provisions of this Lease.

b. Lease Interests Not Transferable by Action of Law or Court: Neither this Lease, nor any right, privilege, or other interest conferred by this Lease shall pass to any trustee or receiver in bankruptcy or to any receiver or assignee for the benefit of creditors; nor shall this Lease or any rights, privilege, or interest be transferable by operation of law or proceeding of any court.

c. Change of Lessee's Organizational Structure or Ownership Constitutes Assignment: If the Lessee is a partnership, limited or general, a withdrawal of a general partner, or change, voluntary or involuntary, by operation of law or otherwise, or a general partner thereof, shall be deemed an assignment. If the Lessee is a corporation, the merger, consolidation, or liquidation of the Lessee or any change in the ownership of or power to vote thirty-three and one-third percent (33 1/3%) or more of its capital stock, as held as of the date of execution of this Lease, shall be deemed as assignment.

d. Lessee's Authorization to Use Premises Constitutes Assignment or Sublease: In the event the Lessee in any manner permits anyone to occupy all or any portion of the Premises for any purpose including but not limited to the conduct of any business or other activity, whether or not business-related, not within the intent of this Lease or any sublease, such permission shall be deemed an assignment or sublease, as deemed appropriate by the Director. Every sublease shall require the sublessee to submit to the Director and the Lessee not more than ten (10) days after the end of each month during the term of its sublease and the month after the expiration or earlier termination of such sublease, a written statement identifying the amount of gross receipts generated by such sublessee on and from the portion of the Premises used and occupied by such sublessee during the immediately preceding month. In the event of any assignment of this Lease, the Lessee shall cause to be delivered to the Director simultaneously with such assignment, an instrument, in writing, executed by the assignee, in which the assignee shall assume and agree to perform all of the terms and provisions of this Lease on the Lessee's part to be kept and performed that theretofore have not been fully performed.

19. **EXCUSE & SUSPENSION OF OBLIGATIONS (FORCE MAJEURE):** Whenever a party's performance under this Lease is prevented by an act of nature; war or war-like operations; civil commotion; riot; labor dispute including a strike, lockout, or walkout; sabotage; Federal or State regulation or control; or other condition beyond the reasonable control of such party, performance of any affected obligation shall be suspended, but only for the duration of such condition but shall not be excused. The existence of more than one (1) such condition on a given day shall result in only a one (1) day extension.

20. **DAMAGE OR DESTRUCTION**

a. Report of Damage or Destruction: The Lessee shall submit a written report to the Director, in care of the Contracts and Concessions Office, regarding the circumstances of any damage to the Premises, within twenty-four (24) hours after its discovery.

b. Rent Obligation in Event of Damage or Destruction: In the event the Premises are destroyed by fire or other casualty not occasioned by an act or omission of the Lessee, or are damaged so extensively as to render the Premises unusable, the Lessee's obligation to pay rent shall be suspended until the Premises are made usable; but in the event only a portion of the Premises are damaged or destroyed by fire or other casualty not occasioned by an act or omission of the Lessee and the remainder of the Premises remains usable, the Lessee shall pay only a prorated rent that is proportionate to the extent of the Premises that remains usable for the purposes identified in Sub-section 18.d hereof.

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c. Rebuilding, Repair & Restoration: In the event the Premises are damaged or destroyed, the City shall have the option, in its sole discretion, to rebuild, repair, or restore the same. Upon the rebuilding, repair and reconstruction of the Premises, the Lessee shall immediately re-occupy the Premises and again pay rent and additional rent for the right granted herein to use and occupy such area through the expiration or termination date of this Lease, whichever is earlier.

d. Termination Rights in Event of Damage or Destruction:

(1) By Lessee: Notwithstanding any other provision in this Lease to the contrary, in the event that fifty percent (50%) or more of the Premises is damaged or destroyed by fire or other casualty not occasioned by an act or omission of the Lessee, the Lessee may terminate this Lease by providing notice thereof to the Director.

(2) By City: Notwithstanding any other provision in this Lease to the contrary, in the event that fifty percent (50%) of the Building on which the Premises are located is destroyed or is so damaged by fire or other casualty as to be untenable or unusable, or if the City desires to discontinue the Lessee's operations because of substantial destruction of the Building or other part of Seattle Center, regardless of whether the Premises are destroyed, damaged, or otherwise, the City may terminate this Lease by providing prior written notice thereof to the Lessee.

(3) Notice of Termination: Any notice of termination pursuant to this section shall be provided within sixty (60) days after the occurrence of the damage or destruction and shall specify the effective date of such termination.

21. **DEFAULT & BREACH**

a. Default & Breach by Lessee: The following acts and omissions shall constitute a default and material breach of this Lease by the Lessee:

(1) The failure to remit rent or additional rent due and payable to the City, before such sum become delinquent;

(2) The failure to comply with all of the requirements of Section 12 hereof, regarding insurance; or

(3) The violation of any law, Charter provision, ordinance, rule, regulation, governmental authority's order or directive; or

(4) The abandonment or vacating of the Premises; or

(5) After the Lessee's receipt of notice of any deduction from the Lessee's Performance Guarantee for a City use or application, or the failure of the Lessee to deliver cash as required by Section 4 hereof, to restore the Performance Guarantee to its original amount; or

(6) The repeated failure to perform or the violation of any single condition or covenant of this Lease on two or more occasions in any twelve (12) month period; or

(7) The assignment of the Lessee's interest in this Lease without the prior written consent of the Director; or the use of any sublease without the prior written consent of the Director; or the filing of a voluntary or involuntary petition in bankruptcy, or for reorganization or an arrangement; or the adjudication of the Lessee as being bankrupt or insolvent, or the appointment of a receiver of or for the Lessee if such appointment, adjudication or similar order or ruling remains in force or unstayed for a period of thirty (30) days; or

(8) The failure to perform or the violation of any other condition or covenant of this Lease where such default or deficiency in performance was not remedied within a reasonable time.

b. City's Notice of Default & Breach: The Director shall provide written notice to the Lessee in the event the Lessee commits any act or omission specified in Subsection 21.a hereof, specifying the nature of the act or omission, the reasonable number of days (but not more than sixty (60) days)

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after the date of the notice within which such failure must be corrected or the violation must be ceased or remedied to avoid termination, and the City's intention to terminate this Lease in the event such act or omission has not been corrected within such stated period. The notice shall also describe special procedures (if any) provided by law, Charter, ordinance, rule, or regulation permitting the Lessee to have a hearing on such failure or violation.

c. **Remedies:** In the event the Lessee fails to correct, remedy, or cease such failure or violation within the time specified in the Director's notice, the City may thereafter terminate this Lease without any further proceedings, re-enter the Premises, lease and license others to use said Premises during any portion of the period of use remaining under this Lease had it not been terminated, and receive rent, additional rent and license fees therefor; *Provided*, that notwithstanding such termination and re-entry, the Lessee's liability for the rent and additional rent to be paid to the City hereunder shall not be extinguished, and the Lessee shall pay to the City the difference between said rent and additional rent and the sum the City receives for the use of the Premises by one or more other users during the period beginning on the date the Lessee's rights under this Agreement are terminated and ending on the scheduled expiration date of this Lease. Such payment shall be made monthly, within fifteen (15) days after the date of the City's invoice to the Lessee. Such termination and payments shall not relieve the Lessee from liability to the City for any damages caused by the Lessee's default and breach and expenses incurred in the leasing or relicensure of the Premises.

d. **Criteria for Substitute Tenant:** The City's obligation to mitigate damages after a default by the Lessee under this Lease that results in the City's regaining possession of all or part of the Premises shall be satisfied in full if the City undertakes to lease the Premises to another tenant (a "Substitute Tenant") in accordance with the following criteria:

- (1) The City shall have no obligation to solicit or entertain negotiations with any other prospective tenants for the Premises until the City obtains full and complete possession of the Premises including, without limitation, the final and unappealable legal right to re-let the Premises free of any claim of the Lessee.
- (2) The City shall not be obligated to offer the Premises to any prospective tenant when other Premises suitable for that prospective tenant's use are currently available, or will be available within the next three months.
- (3) The City shall not be obligated to lease the Premises to a Substitute Tenant for a rental less than the current fair market rental then prevailing for similar comparable office space.
- (4) The City shall not be obligated to enter into a new lease under terms and conditions that are unacceptable to the City under the City's then current leasing policies for comparable space.
- (5) The City shall not be obligated to enter into a lease with any proposed Substitute Tenant that does not have in the Director's reasonable opinion, sufficient financial resource or operating experience to operate the Premises in a first-class manner.
- (6) The City shall not be required to expend any amount of money to alter, remodel, or otherwise make the Premises suitable for use by a Substitute Tenant unless:
  - (a) The Lessee pays any such sum to the City in advance of the City's execution of a lease with such Substitute Tenant (which payment shall not be in lieu of any damages or other sums to which the City may be entitled to as a result of the Lessee's default under this Lease); or
  - (b) The City, in the Director's sole discretion, determines that any such expenditure is financially justified in connection with entering into any lease with such Substitute Tenant.
- (7) The following applies to Center House Tenants only:

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The City shall not be obligated to enter into a lease with any Substitute Tenant whose use would:

- (a) Disrupt the tenant mix or balance of the Center House building;
- (b) Violate any restriction, covenant, or requirements contained in the lease of another tenant of the Center House building;
- (c) Adversely affect the reputation of the Seattle Center or Center House building;
- (d) Be incompatible with the operation of the Center House building as a first-class shopping center.

e. **Default by City:** The City shall not be in default of any obligation to perform under this Lease unless the City fails to perform such obligation within a reasonable time, which time shall not extend more than thirty (30) days after written notice by the Lessee to the Director specifying the particular obligation that the City has failed to perform; *Provided*, however, that if the nature of the City's obligation is such that more than thirty (30) days are required for performance, then the City shall not be in default if the City commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

**SURRENDER OF PREMISES; HOLDING OVER:**

a. **Surrender & Delivery:** Upon the expiration or termination date of this Lease, whichever is earlier, the Lessee shall surrender the Premises and promptly deliver to the Director all keys the Lessee, and any of its officers, agents, and employees have to the Premises or any other part of the Seattle Center.

b. **Removal of Lessee's Property:** Prior to the expiration date of this Lease, or in the event this Lease is terminated, within fifteen (15) days after the termination date, whichever is earlier, the Lessee shall remove, at its sole expense, all trade equipment and personal property owned or installed by the Lessee in, on, or from the Premises, as well as those improvements, alterations and additions to the Premises that are specified in the Director's notice provided pursuant to Section 11 hereof. In performing such removal work, the Lessee shall take due care to not unreasonably injure or damage the Premises, and shall make such repairs to the Premises as shall be necessary to restore the same to their condition as of the commencement date of this Lease, ordinary wear and tear and improvements, additions, and alterations, approved by the City excepted.

c. **Storage of Lessee's Property:** In the event the Lessee fails to remove personal property and the improvements, alterations and additions specified in the Director's notice on or by the time specified in such notice, the City may, but shall not be required to remove such material from the Premises and store the same, all at the Lessee's expense; and in the event the City removes or arranges for the storage of such material, the City shall be reimbursed its costs therefor, including any administrative costs, which reimbursement shall constitute a claim upon the Lessee or, at the City's option, may be invoiced to the Lessee or deducted from the Performance Guarantee provided pursuant to Section 4 hereof.

d. **Hold-over Use & Occupancy of Premises:** In the event the Lessee, with the Director's consent, holds over after the date the Term expires or is terminated, whichever is earlier, the resulting use and occupancy shall be on a monthly basis, during which time the Lessee shall be bound by all of the provisions of this Lease other than the amount of the monthly base or adjusted base rent specified herein, which amount shall be the greater of the amount charged for the month immediately preceding the expiration or termination date, whichever is earlier, or the fair market value for the Premises. If, however, the Lessee holds over, without Director's consent, after the expiration or termination date of this Lease, whichever is earlier, whether by failing to remove its

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LEASE AGREEMENT BETWEEN THE SEATTLE CENTER AND SICF

personal property or any addition, alteration or improvement specified by the Director, or otherwise, the Lessee shall pay to the City, as liquidated damages, twice the amount of the most recently applicable periodic and percentage rents specified in Sections 3 and 4, hereof, and shall be bound by all of the other provisions of this Lease.

e. No Claim for Removal: In no event shall the Lessee make any claim or demand upon the City nor shall the City be liable for any inconvenience, annoyance, disturbance, or loss of business or any other damage suffered by the Lessee arising out of removal operations under Subsections 20.b and 20.c hereof.

f. Inspection Upon Surrender of Premises: Immediately following the vacating of the Premises and the surrender of the same to the City, a representative of the Lessee shall inspect the Premises with the Director to determine the condition of the Premises and whether or not the Lessee is then eligible for the return of the Performance Guarantee provided pursuant to Section 4 hereof, and if not then eligible, what actions must be taken by the Lessee to establish eligibility for the future return of such deposit. The results of such inspection shall be summarized by the Director on a Premises inspection report, a copy of which shall be provided to the Lessee. Such additional actions detailed in the Premises inspection report, must be undertaken within ten (10) days of the Lessee's receipt of the report.

23. **NOTICES**: All notices from either party to the other shall be in writing and delivered or mailed, postage prepaid, to the intended recipient at the address specified on the signature page hereof, or to such other address as may be specified, from time to time, by either party, by notice to the other party.

24. **NO RELATIONSHIP ESTABLISHED**: The City shall in no event be construed to be a partner, associate, or joint venturer of the Lessee, or any party associated with the Lessee. The Lessee is not an agent of City for any purpose whatsoever. The Lessee shall not create any obligation or responsibility on behalf of the City or bind the City in any manner.

26. **DEFINITION AND AUTHORITY OF "DIRECTOR"**: The term "Director," as used throughout this Lease in regard to permission, warrant, consent, approval, rights, interpretation, and discretionary matters, shall mean the Director of the City's Seattle Center Department or such official's functional successor or designee; *Provided*, that the action of the Director pursuant to or in implementation of this Lease does not constitute any official action by any other City Department or official that may be required by law, ordinance, rule or regulation before the Lessee may rightfully commence, suspend, enlarge, or terminate any particular undertaking or may obtain or exercise any particular right or privilege under this Lease. Any approval, consent or permission required of the Director by this Lease may be granted, conditioned or withheld by the Director in the exercise of such official's sole discretion.

27. **AMENDMENTS**: No modification or amendment of the terms hereof shall be effective unless in writing and signed by authorized representative of each of the parties hereto. The parties hereto expressly reserve the right to modify this Lease from time to time, by mutual agreement.

28. **NO WAIVER**: Nothing other than a written document signed personally by the Director and specifically declaring a City intent to waive a particular breach or default by the Lessee shall constitute a waiver of such breach or default. No such document shall waive the Lessee's failure to fully comply with any term or condition of this Lease not specifically referenced therein, irrespective of any knowledge any City officer or employee may have of such breach, default, or noncompliance. No waiver by either party shall be construed to be, or operate as, a waiver of any subsequent default in full performance of any provision of this Lease. The payment or acceptance of rent, additional rent, delivery or acceptance of services, or other compensation, whether after a default or from a sublessee or assignee, shall not be deemed to constitute consent to or acceptance of such default or acceptance of defective or incomplete performance in the future or any such subtenancy or assignment.

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29. **REMEDIES CUMULATIVE:** Rights under this Lease are cumulative; failure to exercise on any occasion any right shall not operate to forfeit such right on another occasion. Each party shall also have any other remedy given by the law. The use of one remedy shall not be taken to exclude or waive the right to use another.

30. **JOINT & SEVERAL LIABILITY:** In the event the Lessee is composed of more than one person, entity, or corporation, each of the persons, entities, and corporations composing the Lessee shall be jointly and severally liable under this Lease.

31. **USE OF LANGUAGE:** Terms used in the neuter gender include the masculine and feminine; and terms used in the singular or plural include the other, as the context may require.

32. **CAPTIONS:** The titles of sections are for convenience only and do not define or limit the contents.

33. **INVALIDITY OF PARTICULAR PROVISIONS** Should any term, provision, condition, or other portion of this Lease or the application thereof be held to be inoperative, invalid or unenforceable, the remainder of this Lease or the application of such term or provision to person or circumstances other than those to which it is held invalid or unenforceable shall not be affected hereby and shall continue in full force and effect.

34. **ACKNOWLEDGMENT OF NEGOTIATED LEASE** The parties to this Lease acknowledge that it is a negotiated lease, that they have had the opportunity to have this Lease reviewed by their respective legal counsel, and that the terms and conditions of this Lease are not to be construed against any party on the basis of such party's draftsmanship thereof.

35. **ORDINANCE:** This Agreement is executed for and on behalf of The City of Seattle pursuant to the authority of Ordinance 108090.

IN WITNESS WHEREOF, the parties hereto have executed this Lease by having their authorized representative(s) sign his/her/their name(s) in the spaces below:

SEATTLE INTL. CHILDRENS FESTIVAL

By \_\_\_\_\_, President  
SICF Board of Trustees

THE CITY OF SEATTLE

By \_\_\_\_\_  
Virginia Anderson, Director  
Seattle Center Department

**BUSINESS ADDRESSES FOR NOTICES:**

Andrea Wagner, Executive Director  
Seattle International Children's Festival  
158 Thomas St., Suite 25  
Seattle, WA 98109  
PHONE NO.: 206-685-7338

Manager, Contracts & Concessions  
Seattle Center Department  
305 Harrison, Room 111  
Seattle, WA 98109  
PHONE NO.: 206-684-7114

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**STATE OF WASHINGTON - KING COUNTY**

118351

City of Seattle, City Clerk

—ss.

No. ORD. TITLES 0

**Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CTOT: 119930-119934

was published on

05/18/00

The amount of the fee charged for the foregoing publication is the sum of \$ \_\_\_\_\_, which amount has been paid in full.

Subscribed and sworn to before me on

05/18/00

Notary Public for the State of Washington,  
residing in Seattle

Affidavit of Publication

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## City of Seattle

### TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on May 8, 2000, and published here by title only, will be mailed upon request, or can be accessed electronically at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 206-435-4444.

#### ORDINANCE NO. 118938

AN ORDINANCE relating to the Seattle Center Department; authorizing the Seattle Center Department to enter into an agreement with the Seattle International Children's Festival for the presentation of annual festivals at Seattle Center.

#### ORDINANCE NO. 118939

AN ORDINANCE relating to the Seattle Center Department; authorizing the Seattle Center Department to enter into an agreement with the Seattle Center Foundation regarding the raising of private funds for Seattle Center Redevelopment Phase II.

#### ORDINANCE NO. 118940

AN ORDINANCE relating to the Community Development Block Grant Flood Loan Program; authorizing reserved advances on existing loans after early repayments are required to support other Block Grant activities pending availability to the City of annual entitlement funds; authorizing the Director of Economic Development to enter into related modification agreements, including an agreement with Rose & Associates, L.L.C. for the Promenade Red Apple Market; appropriating Community Development Block Grant funds for such advances; and ratifying and confirming prior acts.

#### ORDINANCE NO. 118941

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Publication ordered by JUDITH PIP-PIN, City Clerk.

Date of official publication in Daily Journal of Commerce, Seattle, May 18, 2000.  
5/18/118941

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