

Ordinance No. 121805

Council Bill No. 115241

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:	APR 25 2005	
Date 1st Referred:	APR 25 2005	To: (committee) Parks, Neighborhoods & Education
Date Re - Referred:		To: (committee)
Date Re - Referred:		To: (committee)
Date of Final Passage:	5-9-05	Full Council Vote: 7-0
Date Presented to Mayor:	5-10-05	Date Approved: 5/14/05
Date Returned to City Clerk:	5/20/05	Date Published: 2/28/05
Date Vetoed by Mayor:		Date Veto Published:
Date Passed Over Veto:		Veto Sustained:

# The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: DELLA  
Councilmember

## Committee Action:

Motion: PS Y: DD, PS, JG; N: ~~Ø~~  
2nd: JG

5-9-05 Passed 7-0 (Excused: Della, Steenbruech)

This file is complete and ready for presentation to Full Council. Committee: \_\_\_\_\_  
(initial/date)

**Law Department**

Law Dept. Review      OMP Review      City Clerk Review      Electronic Copy Loaded      Indexed

ORDINANCE 121805

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.

NOW, THEREFORE,

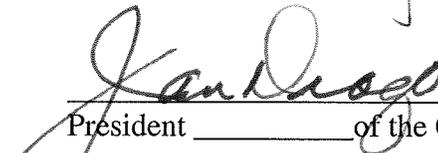
**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

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" (Attachment 1) for purposes related to the presentation of annual festivals at Seattle Center from 2005 through 2009.

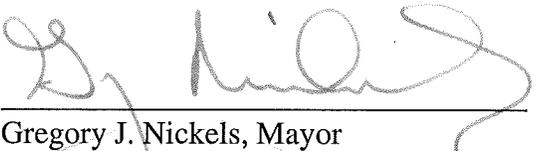


1 Section 2. This ordinance shall take effect and be in force thirty (30) days from and after  
2 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days  
3 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

4 Passed by the City Council the 9<sup>th</sup> day of May, 2005, and signed by me in  
5 open session in authentication of its passage this 9<sup>th</sup> day of May, 2005.

6  
7   
8 \_\_\_\_\_  
9 President \_\_\_\_\_ of the City Council

10 Approved by me this 18<sup>th</sup> day of May, 2005.

11   
12 \_\_\_\_\_  
13 Gregory J. Nickels, Mayor

14 Filed by me this 20<sup>th</sup> day of May, 2005.

15   
16 \_\_\_\_\_  
17 City Clerk

18 (Seal)

19 Attachment 1 - Agreement Between the City of Seattle and Seattle International Children's  
20 Festival.

21 Exhibit A to Attach. 1 - Lease Agreement Between the City of Seattle and Seattle International  
22 Children's Festival  
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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, approximately 80 – 90 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, 2005, and shall expire December 31, 2009, unless terminated earlier as provided herein. Each calendar year of the Term shall constitute a separate "Festival Year."



**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.

2005 Festival:	May 9 through 14
2006 Festival:	May 15 through 20
2007 Festival:	May14 through 19
2008 Festival:	May 12 through 17
2009 Festival:	May11 through 16

**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 2005 calendar year, "the following year's Festival" shall mean the 2006 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 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. 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.

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

SICF shall deliver to the Director and the Seattle Center Festival Representative 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 Representative 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.

**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 Festival 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, the parties shall employ the dispute resolution mechanism described in Section XIX of this Agreement.

**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 a fee for the production of each Festival (the "Production Fee"). For 2005, the Production Fee shall be \$109,510. For 2006 through 2009, the annual Production Fee shall be \$111,710. The City shall pay the Production Fee in accordance with the following schedule:

- (1) Sixty-five percent (65%) of the Production Fee 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 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%) 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 Representative, 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) For parking in the Fifth Avenue Parking Lot or the Mercer Street Garage, for volunteers, the City shall provide SICF with parking permits as follows, on or before April 1<sup>st</sup> of each year during the term

- 15 permits for the period beginning seven days prior to the first performance day of the Festival through the last performance day of the Festival;
- 85 permits for the Monday performance day of the Festival;
- 75 permits for each additional performance day of the festival.

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.

**B. City Deliverables**

**1. Basic Equipment Inventory**

On or before February 15 of each year during the Term hereof, SICF shall provide the City with a list of Seattle Center-owned equipment that SICF desires to use during that year's Festival. By the following March 1, Seattle Center personnel shall review the list and shall inform SICF of any gaps in the available inventory and which equipment shall be available for Festival use. Further, the Festival Representative shall notify SICF in a timely manner, in writing, if 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 of any revisions to such rates immediately after such revisions are finally approved. Unless the Mayor or City Council requires otherwise, the City shall not implement any changes to established Festival billing practices for the following year's Festival (e.g., billing for items previously provided free of charge, or billing for venues not previously billed) after September 1.

**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 their inclusion in the approved Revised Facility Use Plan.

FACILITY

SPECIAL CONDITION

- a. Mercer Arena: As of the date of this Agreement, the Mercer Arena is not functioning as a public assembly space and the parties acknowledge that it is unlikely that use of facility will resume. Notwithstanding the foregoing, the parties agree that if the facility is re-opened as a public assembly facility and the City has dates



available, SICF may request use of the Mercer Arena in its Facility Use Plan.

- b. Marion Oliver McCaw Hall: SICF's use of McCaw Hall, including the lecture hall, shall be subject to the facility's use by the Seattle Opera and the Pacific Northwest Ballet. Festival use of Marion Oliver McCaw Hall may occur on either Monday and Tuesday of the Festival week, or on Thursday of said week, but not both. Festival use of the Lecture Hall may occur on any day of the festival week.
- c. Fisher Pavilion: SICF shall be entitled to use this facility so long as such facility exists at the time and is functioning as a public use facility.
- d. Seattle Center Pavilion: SICF shall be entitled to use this facility so long as such facility exists at the time and is functioning as a public use facility.
- e. Northwest Rooms: SICF shall be entitled to use these facilities so long as such facilities exist at the time and are functioning as public use facilities. The parties anticipate that these facilities will be unavailable for some of the term of this Agreement due to construction of the new monorail.
- f. Stage and public programming space on the second floor of Center House: SICF shall be entitled to use this facility so long as such facility exists at the time and is functioning as a public use facility.
- g. Center House Theater: SICF shall be entitled to use this facility so long as it exists at the time and is functioning as a public use facility.
- h. 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 shall be available for SICF's use, unless the same is unavailable due to Seattle Repertory Theatre schedule.
- i. Seattle Children's Theatre: SICF's use of this Facility shall be consistent with and subject to the Seattle Children's Theatre's contract with the City.
- j. Mural Amphitheater: SICF shall be entitled to use such area if it exists at the time and is functioning as a public use area.
- k. Other areas of the grounds of Seattle Center: SICF shall be entitled to use such areas to the extent they exist at the time and are functioning as public use areas.



- I. Exhibition Hall: Subject to and consistent with the agreement between the City and the Pacific Northwest Ballet, SICF may use such facility if it exists at the time and is functioning as a public use area.

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 Fisher Pavilion. In addition, SICF shall have up to five move-in days to install the SICF "base station" in a single specified facility, provided the requested space is available. 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. The City shall provide SICF with up to six bollard keys and/or electronic key cards one day prior to the first move-in day.

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 City shall confirm the availability of facilities during the forty-five (45) days before SICF's requested use date.

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

For so long as they exist and solely for the purpose of advertising the current year's Festival, the City shall allow SICF to use the Mercer Street overpass and the Seattle Center readerboards at Fifth and Mercer Streets, First Ave. and Thomas St., Fisher Pavilion and McCaw Hall, free of any license fee or rental charge. Such use may commence two weeks immediately preceding each Festival, and continue 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.

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.

**E. Security Planning**

The City and SICF shall jointly conduct a security planning meeting 60 days prior to each Festival. Either party may request the attendance of representatives of the Seattle Fire Department and Seattle Police Department. The purpose of such meeting is to identify and discuss potential security concerns related to the upcoming Festival including, but not limited to, other events in the City which might impact the Festival, any planned protests in the vicinity of the Seattle Center grounds, grounds access issues, planned gate staffing, venue evacuation, known threats (if any) and construction activities which might impact visitor safety.

**IV. REDEVELOPMENT IMPACT REVIEW**



Consistent with Section II.C., the Director and SICF shall meet on or about July 1 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, 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 secure and pay all costs of office and telephone services, postage and photocopying.

SICF may choose their own telephone provider, including use of Department of Information Technology (DoIT) with the City of Seattle. If DoIT is the provider, then such services are to be arranged directly with DoIT. Any requests, changes or service issues need to be communicated promptly. All charges billed must be paid promptly or service may be discontinued. SICF shall arrange for and use the services of the Seattle Center communications provider, currently, Convention Communications Provisioners, Inc. ("CCPI") for all event-related telephone needs.

SICF shall also be responsible for delivering all bulk mailings (i.e. more than 20 pieces of substantially similar mail) directly to a post office. If using City supplied office services, charges by the City shall exclude time spent by City staff to prepare invoices to SICF for such charges. Payment shall be made upon receipt of invoices.

**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 due to causes directly attributable to SICF, 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 or routine cleaning of the Seattle Center Facilities. 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. Notwithstanding the foregoing, for each year of this Agreement, SICF shall pay all outstanding invoices not in dispute on or before December 29. In the event of a dispute, the parties shall employ the dispute resolution procedure described in Section XIX of this Agreement. 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, SICF shall also pay the City a service charge of Fifty Dollars (\$50.00), or such larger sum as is established by ordinance, for each month the delinquency continues, 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. 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.

**E. In-Kind Estimate**

Together with the invoice specified in Section V.D, Seattle Center will provide an estimate of the value of in-kind services provided to SICF during the Festival. For the purposes of this section, in-kind services are defined as rent, readerboards, Event Services Representative time, parking and equipment provided free of charge.

**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.

**E. Promotional Opportunities**

SICF agrees to provide to Seattle Center, free of charge, one promotional performance, consistent with the terms of the contracts between SICF and Festival artists, for the purpose of enhancing the image and awareness of Seattle Center in the community. Time, location, and technical requirements shall be negotiated between SICF and Seattle Center. Unless otherwise agreed by both parties, Seattle Center shall bear any additional expenses related to presenting such performances. In addition, SICF shall provide complimentary tickets, and ticket discounts offered to all City employees consistent with those accorded other primary sponsors.

For the duration of each Festival, SICF shall provide the City with one on-site location for a promotional booth for Seattle Center, the Seattle Center Foundation or Seattle Center's sponsorship partners. SICF shall have the right to approve the booth location and the promotional activity to be conducted.

**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 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.

**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 maintain at no expense to the City, insurance coverage and minimum limits of liability as specified below.

**A. Coverage - Commercial General Liability**

Commercial General Liability insurance including:

1. Premises/Operations
2. Products/Completed Operations
3. Personal/Advertising Injury
4. Contractual
5. Independent Contractors
6. Elevator and Hoist Liability (as applicable)
7. Stop Gap/Employers Liability

Such insurance shall provide a minimum limit of liability of \$1,000,000 each occurrence combined single limit bodily injury and property damage except:



\$1,000,000 each offense Personal/Advertising Injury  
\$ 100,000 each occurrence Fire/Tenant Legal Damage

Stop Gap/Employers Liability

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

A deductible or self-insured retention in excess of \$10,000 must be disclosed and is subject to approval by the City's Risk Management Division. The cost of any claim payments falling within the deductible shall be the sole responsibility of the SICF.

**B. Coverage - Automobile Liability**

Automobile Liability insurance, including coverage for owned, non-owned, leased or hired vehicles as appropriate with a minimum limit of liability of \$1,000,000 each occurrence combined single limit bodily injury and property damage.

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

SICF shall 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 (RCW). If SICF is qualified as a self-insurer in accordance with Chapter 51.14 of the RCW, 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.

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

The insurance required pursuant to Sections A and B above, shall include the City of Seattle as an additional insured; (ii) shall not be reduced or canceled without thirty (30) days prior written notice to the City or otherwise as in accordance with the provisions of RCW 48.18.290 ("Cancellation by insurer."); and (iii) shall be primary insurance as respects the City, and any other insurance maintained by the City shall be excess and not contributing insurance with the SICF's insurance.

**E. 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.

**F. 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 commercial general liability endorsement or policy wording documenting that the City of Seattle is an additional insured.
3. A copy of the schedule of forms and endorsements to the commercial general liability insurance policy.
4. Evidence that prior written notice will be provided to the City of Seattle as follows:

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

City of Seattle  
 Risk Management Division  
 P.O. Box 94669  
 Seattle, WA 98124-4669

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

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

**G. Approval of City Risk Management Division; Security of Insurers**

All policies shall be subject to approval by the City's Risk Management Division as to form, coverage and insurer. Except for Washington State statutory workers compensation under Title 51, insurers must be currently rated A-VII or higher by A.M. Best's and licensed to do business in the State of Washington or issued as a surplus line by a Washington Surplus lines broker under the provisions of chapter 48.15 RCW, unless otherwise approved by the City's Risk Management Division

**H. Contractors and Subcontractors**

SICF shall include all of its contractors and subcontractors 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.

**I. 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 insurance



required by this Agreement shall not be construed to limit SICF's obligations under Section XI and the minimum limits of liability shall not be construed as capping the liability of any insurer; the City, where required to be an additional insured, shall be covered up to the total available limits of liability of all applicable SICF liability insurance, whether primary, excess, contingent or otherwise.

**J. 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.

**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, 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.



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. DISPUTE RESOLUTION PROCESS**

In the event that either party to the Agreement remains aggrieved following the process set forth in Section II.D, invoices are disputed under V.D., or at other times when the parties mutually agree, the parties shall mediate their dispute. Written notice of intent to mediate shall be provided to the other party within sixty (60) days following completion of the charge review process or receipt of invoice. The parties agree to use the services of a mediator from Judicial Dispute Resolution or JAMS. The parties shall share the cost of the mediator equally, and each shall bear its own fees and expenses.

**XX. 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.

**XXI. CAPTIONS**

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



**XXII. BINDING EFFECT**

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

**XXIII. 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.

**XXIV. 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 \_\_\_\_\_

John Vadino, Co-President  
SICF Board of Trustees

By \_\_\_\_\_

Virginia Anderson, Director  
Seattle Center Department



**LEASE AGREEMENT  
BETWEEN THE CITY OF SEATTLE AND  
SEATTLE INTERNATIONAL CHILDRENS FESTIVAL**

THIS LEASE is entered into by and between THE CITY OF SEATTLE ("City"), a municipal corporation of the State of Washington, acting by and through the Director of the Seattle Center Department ("Director"), and SEATTLE INTERNATIONAL CHILDRENS FESTIVAL, ("Tenant"), a Washington non-profit organization.

In consideration of their mutual promises, the parties mutually agree as follows:

**1. PREMISES**

**A. Grant:** The City hereby leases to Tenant those certain premises (the "Premises") consisting of approximately 1395 square feet and identified as Suites 25-27 and storage Unit 4 and located at 158 Thomas St., Seattle, WA and commonly referred to as the Blue Spruce Building at Seattle Center located on the following property, and legally described as:

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.

The site plan depicting the Premises is attached as Exhibit A.

**B. Condition:** City shall deliver and Tenant accepts the Premises "AS IS." Tenant shall undertake no tenant improvements without first obtaining written permission from the Director, whose permission shall not be unreasonably withheld. Furniture is not included in this lease.

**C. Permitted Use:** Tenant shall use the Premises for office space only. Tenant may use the Premises for other purposes only with the prior, written approval of the Director, whose approval shall be granted or withheld in the Director's sole discretion. Tenant shall conduct its activities in a manner that is consistent with the Seattle Center Vision Statement, attached as Exhibit B, and shall comply with the Rules and Regulations regarding the use of the Premises, attached as Exhibit C.

**D. 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 Tenant.



**E. Common Areas:** During the term of this Lease, Tenant and its licensees, invitees, customers and employees shall have the non-exclusive right to use the Building and all entrances, lobbies, elevators, stairs, corridors, restrooms and other public areas of the Building (the "Common Areas") in common with City, other Building tenants and their respective licensees, invitees, customers and employees. City shall at all times have exclusive control and management of the Common Areas, except for Tenant's maintenance responsibilities hereunder, and no diminution thereof shall be deemed a constructive or actual eviction or entitle Tenant to compensation or a reduction or abatement of rent. City, in its discretion, may increase, decrease or change the number, locations and dimensions of any Common Areas and other areas or improvements that are not within the Premises. City reserves the right from time to time (i) to install, use, maintain, repair, relocate and replace pipes, ducts, conduits, wires and appurtenant meters and equipment for service to the Premises or to other parts of the Building in areas above the suspended ceiling surfaces, below the floor surfaces, within the walls and in the central core areas of the Building within the Premises and elsewhere in the Building; (ii) to alter or expand the Building; and (iii) to alter, relocate or substitute any of the Common Areas. Current Common Areas are exterior balconies, hallways, and stairwells.

## **2. LEASE TERM**

This Lease shall be for a term of five (5) years, (the "Term") beginning on January 1, 2005 ("Commencement Date"), and ending on December 31, 2009 ("Expiration Date"), unless extended or sooner terminated as provided in this Lease.

## **3. RENT**

**A. Fixed Rent.** Office rents on comparable properties are currently estimated at \$18,000 for 1,395 square feet, or an average of \$13 per square foot. Seattle Center is providing the premises as defined above as part of the mutual consideration supporting the Agreement Between The City of Seattle and Seattle International Children's Festival, of which agreement this Lease forms a part.

**B. Additional Rent.** All amounts, which Tenant is required to pay to City pursuant to this Lease, shall constitute additional rent ("Additional Rent") whether or not the same be designated as Additional Rent. Tenant shall perform all its obligations under this Lease at its sole cost and expense, and shall promptly pay to City all Additional Rent. Tenant shall also promptly pay to all third parties any other sums required to be paid by Tenant under this Lease, when the same shall be due and payable and in all events prior to delinquency, without notice or demand, deduction or offset, except as otherwise expressly provided in this Lease.

**C. Time and Manner of Payment.** Tenant shall pay to City Additional Rent as



specified elsewhere in this Lease, but if not so specified, then within ten (10) days after demand. "Rent" shall mean Additional Rent and any other monetary sum Tenant is required to pay under this Lease.

**D. Place of Payment:** All payments shall be delivered to The City of Seattle, Seattle Center Fiscal Services & Accounting, 305 West Harrison Street, Seattle, Washington, 98109, or to such other address as the Director shall specify by notice to Tenant.

#### **4. LATE CHARGE; INTEREST**

If Tenant fails to pay any Additional Rent due under this Lease within five (5) days after the due date, a service charge of Fifty Dollars (\$50.00), or such larger sum as may be established by ordinance, shall be assessed for each month or portion of a month that the delinquency continues. Such assessment(s) is/are immediately due and payable. In addition, interest on such delinquent amount(s) shall accrue at the rate of one and one-half percent (1 ½ %) or the maximum legal rate in Washington, whichever is lower, per month from the date due until paid. In the event any check for payment is returned for insufficient funds, Tenant shall pay an administrative charge of \$20.00. If Tenant defaults in making any payment of Additional Rent or other sums due, City shall have the right to require that Tenant pay Additional Rent or other sums due by cashier's or certified check.

#### **5. PERFORMANCE GUARANTEE**

The City hereby waives any performance guarantee requirements.

#### **6. WAIVER; INDEMNIFICATION**

Tenant shall indemnify, defend, and hold the City and its agents and employees harmless from any and all losses, claims, actions, damages and expenses (including reasonable attorneys' fees and costs) arising from or alleged to arise from: (i) Tenant's breach of its obligations hereunder or violation of law, or (ii) any negligent act or omission of Tenant or any subtenant, licensee, assignee, or concessionaire of Tenant, or of any officer, agent, employee, guest, or invitee of any of the same in or about the Premises or Building. The City shall indemnify, defend, and hold SICF and its agents and employees harmless from any and all losses, claims, actions, damages and expenses (including reasonable attorneys' fees and costs) arising from or alleged to arise from: (i) the City's breach of its obligations hereunder or violation of law, or (ii) any negligent act or omission of the City in or about the Premises or Building. The parties agree that the foregoing indemnity specifically covers actions brought by their own employees. The foregoing indemnity is specifically and expressly intended to constitute a waiver of immunity under Washington's Industrial Insurance Act, RCW Title 51, as to the parties hereto only, and shall survive the termination or expiration of



this Lease. Tenant shall promptly notify City of casualties or accidents occurring in or about the Premises or Building. CITY AND TENANT ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS LEASE WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

## 7. INSURANCE

**A. Tenant-Furnished Insurance.** Tenant shall maintain in full force and effect at all times during the Term of this Lease, at no expense to City, insurance as follows:

- (i) COMMERCIAL GENERAL LIABILITY INSURANCE, including:
- Premises/Operations
  - Products/Completed Operations
  - Personal/Advertising Injury
  - Contractual
  - Independent Contractors
  - Stop Gap/Employers Liability
  - Fire/Tenant Legal
  - Liquor Liability/Host Liquor Liability (if applicable)
  - Elevator & Hoist Liability (if applicable)

Such insurance must provide the following minimum limits of liability:

\$1,000,000 Combined Single Limit each Occurrence Bodily Injury and Property Damage except:

- \$1,000,000 each Offense Personal/Advertising Injury
  - \$1,000,000 each Common Cause Liquor Liability (if applicable)
  - \$1,000,000 each Accident/Disease Stop Gap/Employers Liability
  - \$ 100,000 each Occurrence Fire/Tenant Legal
- (ii) WORKER'S COMPENSATION INSURANCE in accordance with the provisions of Title 51 of the Revised Code of Washington.
- (iii) PROPERTY INSURANCE covering "all risks" of direct physical loss or damage to Tenant's furniture, fixtures, equipment and inventory ("Business Personal Property") and all tenant improvements that it makes to the Premises ("Tenant Improvements") on a replacement cost basis. Such property insurance shall, in addition, insure against: (a) loss or damage from water damage, or sprinkler systems; and (b) Business Interruption and Extra Expense



with sufficient limits of liability to provide for the payment of rent and other fixed costs during any interruption of Tenant's business because of fire or other cause. Tenant shall waive its insurer's rights of subrogation in favor of the City but the City shall reimburse Tenant to the extent to which the City's negligence caused or contributed to any loss Tenant sustains under its deductible.

**B. City-Furnished Insurance.** The City shall maintain in full force and effect at all times during the Term of this Lease property insurance covering "all risks" of direct physical loss or damage, including earthquake and flood, to the Blue Spruce Building, 158 Thomas St., Seattle, WA. Tenant understands and agrees that no coverage is afforded under City-furnished property insurance for Tenant's Business Personal Property or Tenant Improvements. The City shall waive its insurer's rights of subrogation in favor of Tenant and, in addition, waive the City's rights of recovery except to the extent to which (i) Tenant's negligence may have caused or contributed to any loss, and (ii) Tenant's Fire/Tenant Legal liability insurance applies to such liability. Upon Tenant's request in writing, the City will provide evidence of such insurance coverage.

**C. Tenant-Furnished Insurance General Terms and Conditions (does not apply to Workers Compensation).**

- (i) Commercial General Liability insurance shall include the City of Seattle as an additional insured for primary and non-contributory limits of liability.
- (ii) Coverages shall not be canceled nor limits changed, without forty-five (45) days prior written notice to the City, except thirty (30) days' with respect to surplus lines placements and ten (10) days with respect to cancellation for non-payment of premium.
- (iii) Insurers shall have an A.M. Best's rating of not less than A- VII unless placed as a surplus lines placement by a Washington State licensed surplus lines broker or otherwise approved by the City.
- (iv) Any deductibles or self-insured retentions shall be disclosed to, and shall be subject to the approval of, the City.
- (v) The City shall have the right to annually review insurance coverages and/or limits of liability requirements and to reasonably modify such coverages and/or limits of liability upon ninety (90) days' prior written notice.

**D. Evidence of Insurance.** The following documents must be provided as evidence of Tenant's insurance coverage:

- (i) A copy of each policy's declarations page showing the insurer, policy period, coverages and limits of liability, and a copy of the schedule of forms and endorsements.
- (ii) A copy of the endorsement or policy wording documenting that the City of Seattle is an additional insured under the Commercial General Liability insurance for



primary and non-contributory limits of liability.

- (iii) A copy of the policy provision documenting that coverage shall not be canceled without forty-five (45) days prior written notice to the City, except thirty (30) days' with respect to surplus lines placements and ten (10) days with respect to cancellation for non-payment of premium.

**E. Failure to Maintain Insurance.** Should Tenant fail to maintain insurance as required hereunder, at the City's sole option the City may, but is not required to, secure and maintain such insurance on Tenant's behalf. Tenant shall reimburse City for the full expense thereof upon demand. Tenant shall not keep or use in or about the Premises any article that is prohibited by City's insurance.  
Tenant

## **8. COVENANTS REGARDING OPERATION OF TENANT'S BUSINESS**

**A. No Nuisances or Objectionable Activity:** Tenant shall not permit any noise, odor, dust, vibration or similar substance or condition that the Director determines to be excessive or objectionable, to remain on or be emitted from the Premises; shall not interfere with access to or from the Premises or the Seattle Center or any part thereof, or with the traffic thereon, or with any Seattle Center facility, business, activity or utility on or off Seattle Center grounds. Tenant shall not create any nuisance in or adjacent to the Premises and shall not do anything on the Premises that will create a danger to life or limb.

**B. Fire Extinguisher Within Premises:** During the Term (which includes any Option Period(s)) the Tenant shall secure, maintain and install in the Premises, in a prominent location, a 2A-10BC class fire extinguisher or an alternative approved by the Fire Marshall, and Tenant shall instruct all of its employees regarding its appropriate use. Such fire extinguisher shall be recharged not less than once a year and immediately following any use.

**C. Objectionable Merchandise or Material:** Notwithstanding any other provision of this Lease, the Tenant shall not display or offer for sale or rent, or allow to be displayed or offered for sale or rent, on the Premises, any merchandise or other material that the Director, in the exercise of such official's sole discretion, determines 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; 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.

**D. Core and Key Charge:** Seattle Center has provided keys for the entry locks. Additional keys must be paid for at the posted rate determined by the department. All



keys must be returned at the end of the lease. No refunds will be made for any keys. If Tenant loses exterior keys, Seattle Center will re-core the exterior locks and provide new keys for all Tenants sharing the exterior door at the cost of Tenant at the posted rate. All locks and keys must be ordered through and provided by Seattle Center.

## 9. UTILITY SERVICES

**A. Service provided by City.** City shall furnish the Premises with water, sewer, gas, and refuse pick up, and electricity for office use, including lighting and low power usage (110 volt) for office machines, and elevator services. City shall furnish the Premises with heat and existing air conditioning services.

**B. Tenant's Share of Cost of Service Provided by City.** Beginning on January 1, 2006 the City may review the cost to City of providing Tenant's Share of these Section 9.A. services. Tenant's Share is the percentage determined by dividing the Rentable Area of the Premises by the Rentable Area of the Building. The Rentable Area of the Building, for purposes of this Lease, shall be assumed to be and remain 19,530 square feet. On January 1, 2006 and any year thereafter, the City reserves the right to notify Tenant of City's estimate of Tenant's Share of these Section 9.A. costs for the ensuing prior year to the extent such costs exceed that of the basis year of expenses of 2004, adjusted upward to reflect increases in the CPI-U for the Seattle-Tacoma area. If so notified, the following shall apply:

Tenant shall pay as an Additional Rent one-twelfth (1/12th) of Tenant's Share of such excess in advance on the first day of each month of the ensuing and each succeeding year. Following the end of each year, City will compute Tenant's Share due under this section for such year based on actual costs and, if Tenant's Share for such year is greater than the amount already paid by Tenant for such year, Tenant shall pay City the deficiency within ten (10) days after Tenant's receipt of an invoice therefore. If the total amount paid by Tenant for a year exceeds Tenant's Share, then City shall credit such excess to the payment of Additional Rent thereafter coming due; provided, however, upon the expiration or sooner termination of the Lease Term, if Tenant has otherwise complied with all other terms and conditions of this Lease, City shall refund such excess to Tenant. If during a year City obtains information regarding Section 9.A. costs that alters its prior estimates, City may adjust the amount due from Tenant under this section during the balance of that year to reflect such new information by giving Tenant notice thereof.

**C. Tenant's Responsibility.** Tenant shall be solely responsible for and shall promptly pay when due all charges for telephone and all other utilities that are separately metered and supplied to the Premises.

**D. Interruption.** City shall not be liable for any loss, injury or damage to person or



property caused by or resulting from any variation, interruption or failure of services due to any cause whatsoever, including, but not limited to, electrical surges, or from failure to make any repairs or perform any maintenance. No temporary interruption or failure of such services incident to the making of repairs, alterations or improvements or due to accident, strike or conditions or events beyond City's reasonable control shall be deemed an eviction of Tenant or to relieve Tenant from any of Tenant's obligations hereunder or to give Tenant a right of action against City for damages. City has no obligation to provide emergency or backup power to Tenant. The provision of emergency or backup power to the Premises or to enable the equipment therein to properly function shall be the sole responsibility of Tenant.

**E. Special Services and Facilities Subject to Prior Director's Approval, and at Tenant's Cost:** Tenant, directly or through a third party, may install, secure, maintain and repair, at no expense to the City, any utility service related to Tenant's operations and its use of the Premises that is not provided or maintained by the City; however, any 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. Tenant 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. Tenant 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.

## **10. PARKING**

As of the Commencement Date, 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 Tenant'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.

## **11. SIGNAGE, ADVERTISING & PUBLICITY**

**A. Prohibited Promotion & Other Material; Removal of Same:** Tenant 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 approval therefore from the Director, whose approval shall be given or withheld in his/her sole discretion; 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, Tenant 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 Tenant property subject to removal and storage pursuant to Section 21 hereof.

Any approved signs or other advertising matter shall be in compliance with all applicable laws, regulations and rules.

**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, Tenant shall obtain the written approval of the Director for such use, which approval may be conditioned upon, among other things, the payment by the Tenant 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.

## **12. MAINTENANCE, CLEANING & REPAIR**

**A. City Responsibilities:** The City shall maintain, clean and repair the exterior and structural aspects of the Building, but not the interior areas of the Building. The City's maintenance, cleaning and repairing shall be to the ordinary standard of work performed on other, major use facilities at Seattle Center, to keep the same in good condition, normal wear and tear and damage and destruction by fire or other extraordinary casualty excepted. In connection therewith, the City shall remove garbage and other refuse from locations designated by the Director for such purpose, and repair potable water, sewer, and storm water lines connecting with similar lines on the Premises. In undertaking such maintenance, the City shall make a good faith effort to not unreasonably interfere with Tenant's business on the Premises. Tenant waives all claims for damages, including for any loss of business, resulting from City maintenance, cleaning and repair work except to the extent of City gross negligence. There shall be no abatement or reduction of rent arising by reason of City's making of any repairs, alterations, or improvements.

**B. Tenant's Responsibilities:** Tenant, at its own cost and expense, shall at all times keep the Premises and Common Areas, including all of Tenant's improvements, alterations, and additions thereto, and Tenant's personal property, in good repair and in a serviceable and sanitary condition. Notwithstanding Section 11.A., Tenant's responsibilities include repairing *all* damage done to the Premises, Common Areas, and the Building by Tenant or any of Tenant's officers, contractors, agents, invitees, licensees or employees. In carrying out Tenant's responsibilities under this section,



Tenant, among other things, shall:

- (1) Clean the interior glass in the windows and doors, on the Premises at least once a month, and replace any such glass immediately if it should crack or break
- (2) Keep all drainage pipes free and open;
- (3) Have all plumbing and plumbing fixtures inspected at least once every year; repair all damage resulting from any plumbing fixture, any equipment connected to plumbing, or pipe not installed in the Premises by the City or caused by Tenant's failure to keep such fixture or pipe in good operating condition; and in the event of any failure by Tenant to satisfy this repair obligation within four (4) hours after receipt of notice from the Director of any such damage, the City reserves the right to undertake such repair, the cost of which shall be reimbursed by the Tenant;
- (4) In a timely and careful manner, periodically remove all debris generated by or peculiar to the Tenant's operations on the Premises and place in an area designated by the Director;
- (5) Tenant shall arrange and pay all expense associated with the provision of janitorial and cleaning services in the Premises. City will not provide these services.
- (6) Tenant shall arrange and pay all expense associated with the provision of janitorial and cleaning services in the Common Areas. Tenant may seek reimbursement from other second floor Tenants. City will not provide these services.

In the event the Tenant fails to satisfy, in a timely manner after its receipt of notice from the Director of the need for such work, any of the obligations specified in this Section, the City reserves the right (but shall have no obligation) to undertake such work. City shall have the right to enter the Premises for such purposes. In the event the City undertakes such work for the Tenant pursuant to this Section, the Tenant shall promptly pay the City, upon receipt of a written statement, the actual expenses incurred by the City in undertaking such work (including but not limited to Seattle Center labor and project management) plus an administrative charge of \$250.00.

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

**A. Access to Premises:** The Tenant shall provide the City and its contractors and consultants, their subcontractors, sub consultants 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 Tenant'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 Tenant'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 Tenant'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 Tenant's business or operations in, on, or from the Premises, the Director shall notify the Tenant of such necessity and the anticipated beginning and ending dates of such suspension. Monthly Fixed Rent due to City pursuant to this Lease shall be prorated during each month in which the Tenant's business or operations are required by City to be suspended pursuant to this section, and the Tenant shall have no obligation to pay such prorated rent during the period that the Tenant's business or operations are suspended; such cancellation of the obligation to pay the prorated Monthly Fixed Rent shall constitute the totality of relief available, and Tenant 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:** Tenant shall provide the Director with a key with which to unlock all of the doors in, upon, and about the Premises, excluding Tenant'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 Tenant except for any failure to exercise due care for Tenant'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 Tenant or a forcible or unlawful entry into, or a detainer of, the Premises or any portion thereof.

#### **14. COMPLIANCE WITH LAW**

**A. General Requirements:** Tenant, at no cost to the City, shall perform and comply with all applicable, current and future laws of the United States; 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. Tenant shall use its best efforts to ensure that every person it admits to the Premises similarly performs and complies with the same. Whenever Tenant 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, Tenant shall immediately desist from and/or prevent or correct such violation.

**B. Licenses, & Other Authorizations:** Tenant shall obtain and maintain all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.

**C. Taxes:** The Tenant 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 Tenant'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 Tenant's occupancy of the Premises or withholds funds due to the City to enforce collections of leasehold excise taxes, Tenant 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:** Tenant shall 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. SMC 20.44.040 is incorporated into this Lease by reference.

**E. Recycling of Waste Materials:** Tenant, 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 Tenant any waste product that is not sorted and separated as required by law, ordinance, rule or regulation, and to require Tenant to arrange for the collection of the same at Tenant's sole cost and expense using a contractor satisfactory to the City. Tenant shall pay all costs, fines, penalties, and damages that may be imposed on City or Tenant as a consequence of Tenant's failure to comply with the provisions of this subsection.

## **15. ENVIRONMENTAL STANDARDS**

Tenant shall not, without City's prior written consent, keep on or about the Premises or Building any substance designated as, or containing any component now or hereafter



designated as hazardous, dangerous, toxic or harmful and/or subject to regulation under any federal, state or local law, regulation or ordinance ("Hazardous Substances"), except customary office supplies in normal quantities handled in compliance with applicable laws. With respect to any Hazardous Substances stored with City's consent, Tenant shall promptly, timely and completely comply with all governmental requirements for reporting and record keeping; submit to City true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities; within five (5) days after City's request therefore, provide evidence satisfactory to City of Tenant's compliance with all applicable governmental rules, regulations and requirements; and comply with all governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment and disposal of Hazardous Substances. Tenant shall provide the Director with the Tenant'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 Tenant receives from, or provides to, any governmental unit or agency in connection with Tenant's handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance on or about the Premises.

If Tenant violates any of the terms of this section concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, Tenant shall promptly take such action as is necessary to mitigate and correct the violation. If Tenant does not act in a prudent and prompt manner, the City reserves the right, but not the obligation, to act in place of Tenant (for which purpose Tenant 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 Tenant is in violation of any law or regulation, or that any action or inaction of Tenant 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 as Additional Rent by Tenant upon presentation of an invoice therefore.

Any and all costs and expenses incurred by City and associated with City's inspections of the Premises and City's monitoring of Tenant's compliance with this Section 15, including City's attorneys' fees and costs, shall be Additional Rent and shall be due and payable to City within ten (10) days after City's demand therefore. Tenant shall be fully and completely liable to City for any and all cleanup costs and expenses and any and all other charges, expenses, fees, fines, penalties (both, civil and criminal) and costs imposed with respect to Tenant's use, disposal, transportation, generation and/or sale of Hazardous Substances in or about the Premises or Building. In addition to all other indemnity provisions of this Lease, Tenant shall indemnify, defend, and hold City harmless from any and all costs, fees, penalties, charges and expenses, claims, suits,



and liabilities assessed against, or imposed upon City, 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) as a result of Tenant's use, storage, disposal, transportation, generation and/or sale of Hazardous Substances. This indemnity shall survive termination or expiration 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 Tenant 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. 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, 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 Tenant;

**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 Tenant'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. ASSIGNMENTS, SUBLEASES & OTHER INTEREST TRANSFERS

A. **Director's Prior Written Consent Required:** Tenant shall not assign, mortgage, or encumber, or otherwise transfer this Lease or sublet the whole or any part of the Premises without the prior written consent of the Director, whose consent may be withheld in the Director's sole discretion. In no event shall an assignment, sublease, or other transfer of the Lease relieve Tenant of any of its obligations under this Lease. Consent to any particular assignment, subletting, or transfer shall not operate as a waiver of the necessity for consent to any subsequent assignment, subletting or transfer.

B. **Transferee's Obligations; Documentation:** As a condition of the Director's approval of an assignment or transfer, any potential assignee or transferee otherwise acceptable to the Director shall assume, in writing, all of Tenant's obligations under the Lease; and Tenant and such assignee or transferee, shall agree, in writing, to be jointly and severally liable for the performance of all of Tenant's obligations under this Lease. As a condition of the Director's approval of any sub lessee otherwise acceptable to the Director, such subtenant shall assume, in writing, all of Tenant's obligations under this Lease as to the subleased portion of the Premises; and Tenant and such subtenant shall agree, in writing, to be jointly and severally liable with Tenant for Rent and performance of all of the terms, covenants, and conditions of such approved sublease. Tenant and any assignee, sub lessee, or transferee shall remain jointly and severally liable 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 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 other transferee, and not less than fourteen (14) calendar days prior to the commencement date of the proposed subtenant'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. Every sublease shall require the subtenant to submit to the Director and Tenant 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 subtenant



on and from the portion of the Premises used and occupied by such subtenant during the immediately preceding month.

**C. Change of Tenant's Organizational Structure or Ownership Constitutes**

**Assignment:** If Tenant is a corporation, the merger, consolidation, or liquidation of the Tenant 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 an assignment.

**D. Tenant's Authorization to Use Premises Constitutes Assignment or Sublease:**

If Tenant 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.

**18. EXCUSE & SUSPENSION OF OBLIGATIONS (FORCE MAJEURE)**

If a party's performance (other than any monetary obligations) under this Lease is prevented by an unforeseeable 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, then performance of such affected obligation shall be suspended (excluding, however, any monetary obligations), but only for the duration of such condition. The existence of more than one (1) such condition on a given day shall result in only a one (1) day extension.

**19. DAMAGE OR DESTRUCTION**

**A. Report of Damage or Destruction:** The Tenant 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 or any of the Tenant's improvements thereto, within twenty-four (24) hours after its discovery.

**B. Rent Obligation in Event of Damage or Destruction:** In the event the Premises are destroyed or damaged by fire or other casualty not occasioned by an act or omission of the Tenant or any of its officers, employees, contractors, agents, invitees, or guests, and such destruction or damage is so extensive as to render such Premises and improvements unusable (either because of the need to rebuild or to clean and refurbish the same) and the Tenant has given timely notice of such destruction or damage as provided by this section, Tenant's obligation to pay rent shall be abated until the date that such Premises and improvements are made usable or should have been made usable had the Tenant diligently prosecuted such repair, rebuilding, and restoration work. The unusability of the Premises and the duration of any such rent abatement shall be reasonably determined by the Director and confirmed by one or



more notices to Tenant. In the event only a portion of the Premises is damaged or destroyed by fire or other casualty not occasioned by an act or omission of Tenant or any of its officers, employees, contractors, agents, invitees, or guests but the remainder of such Premises and improvements remains usable, as reasonably determined by the Director, and Tenant has given timely notice of such destruction or damage as provided by this section, Tenant shall pay a reduced amount of rent that is proportionate to the extent of the Premises that remains usable for the purposes identified in Section I hereof, which reduced rent amount shall be reasonably determined by the Director and identified by notice to Tenant, and paid by Tenant through the date reasonably specified by the Director in such notice or the later date specified in any subsequent notice.

**C. Rebuilding, Repair & Restoration:** In the event that insurance proceeds payable to the City will provide sufficient funds to enable the City to rebuild, repair and restore the Premises after their damage or destruction, and neither Tenant nor the City elects to terminate this Lease pursuant to this section, the City shall diligently prosecute such rebuilding, repair, and restoration. Tenant shall replace or repair in a timely manner and at no cost or expense to the City, all damaged or destroyed business personal property and Tenant Improvements that prior to such damage or destruction had been located on the Premises unless otherwise permitted by the Director. Upon the rebuilding, repair and reconstruction of the Premises, Tenant shall immediately re-occupy the whole of the Premises. The rent abatement or reduction provided pursuant to this section shall be discontinued and the full Fixed Rent and Additional Rent shall again be due and payable from and after the date specified in the notice given by the Director. The City shall not be liable to Tenant for damages, compensation or any other sum for inconvenience, loss of business, or disruption arising from any repair to or restoration of any portion of the Premises or the Building in which the Premises are located.

**D. Termination Rights in Event of Damage or Destruction:**

**By Tenant:** 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 Tenant, its officers, employees, contractors, agents, invitees, or guests, Tenant may terminate this Lease by providing notice thereof to the Director.

**By City:** Notwithstanding any other provision in this Lease to the contrary, in the event that fifty percent (50%) of the Premises is destroyed or is so damaged by fire or other casualty as to be untenable or unusable, or if the City desires to discontinue Tenant's operations because of substantial destruction of the Premises, 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 Tenant.



**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.

## 20. DEFAULT & BREACH

**A. Definition:** If Tenant violates or breaches or fails to keep or perform any covenant, term or condition of this Lease, or if Tenant files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for Tenant's assets or if Tenant makes an assignment for the benefit of creditors, or if Tenant is adjudicated insolvent, Tenant shall be deemed in default hereunder (a "Default").

**B. City's Notice of Default & Breach:** If Tenant is in Default, City shall provide written notice to Tenant, specifying the nature of the Default, the reasonable number of days (but not more than thirty (30) days) after the date of the notice within which such Default must be cured to avoid termination, and the City's intention to terminate this Lease if the Default is not corrected within such stated period.

**C. Remedies:** If Tenant fails to cure any Default 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 and other sums therefore; Provided, that notwithstanding such termination and/or re-entry, Tenant's liability for the rent and any other sums due under the Lease to be paid to the City hereunder shall not be extinguished, and Tenant shall pay to the City the difference between said rent and any other sums due under the Lease and the sum the City receives (if any) for the use of the Premises by one or more other users during the period beginning on the date Tenant's rights under this Lease 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 Tenant. Tenant's liability for rent and any other sums due pursuant to this Section shall be subject to the late fees and interest provided for in Section 4 of this Lease. Tenant shall also be liable for and shall reimburse City for any other amount necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease, including but not limited to, any costs or expenses incurred by City in retaking possession of the Premises, maintaining or preserving the Premises after such Default, preparing the Premises for reletting to a new tenant, including repairs or alterations to the Premises for such reletting, leasing commissions, and any other costs necessary or appropriate to relet the Premises, and such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington. If the City re-enters the Premises, City shall have the right, but not the obligation, to remove there from all or any part of the personal property located therein and may place the same in storage at a public warehouse at the expense and risk of Tenant.



**D. Adequate Security:** If a petition is filed by or against Tenant under any provision of the Bankruptcy Code or successor act, City reserves the right to require Tenant to post a cash bond with City equal to six (6) months' Fixed Rent and additional sums to provide City with adequate security for Tenant's performance of its obligations under this Lease.

**E. Criteria for Substitute Tenant:** The City's obligation to mitigate damages after a default by Tenant 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:

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 Tenant.

The City shall not be obligated to offer the Premises to any prospective tenant when other Premises on the Seattle Center suitable for that prospective tenant's use are currently available, or will be available within the next three months.

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 facilities in the same market area as the Seattle Center.

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 at the Seattle Center.

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. 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) Tenant 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 Tenant'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.



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 Seattle Center;
- (b) Violate any restriction, covenant, or requirements contained in the lease of another tenant of the Seattle Center;
- (c) Adversely affect the reputation of the Seattle Center;
- (d) Be incompatible with the operation of the Seattle Center as a first-class event and cultural community gathering center.

**F. 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 Tenant 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.

## **21. 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.

## **22. SURRENDER OF PREMISES; HOLDING OVER**

**A. Surrender & Delivery:** Upon the expiration or termination date of this Lease, whichever is earlier, Tenant shall surrender the Premises in a broom clean condition, reasonable wear and tear excepted. Tenant shall promptly deliver to the Director all keys Tenant, and any of its officers, agents, and employees have to the Premises or any other part of the Seattle Center. Immediately following the vacating of the Premises and the surrender of the same to the City, a representative of the Tenant shall inspect the Premises with the Director to determine the condition of the Premises. The Director shall summarize the results of such inspection on a Premises inspection report, a copy of which shall be provided to Tenant. If the Director determines that Tenant has failed to surrender the Premises in a broom clean condition the Director shall have the right to restore the Premises to a broom clean condition at the expense of Tenant. Tenant shall reimburse the City for its costs therefore, including any administrative costs.



**B. Removal of Tenant'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, Tenant shall remove, at its sole expense, all trade equipment and personal property owned or installed by Tenant in, on, or from the Premises, unless the Director agrees in writing that any requested items may stay. Tenant shall take due care to not 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 Tenant's Property:** In the event Tenant fails to remove trade equipment and personal property owned or installed by Tenant by the expiration date or within fifteen (15) days after the termination date, the City may, but shall not be required to remove such material from the Premises and store the same, all at Tenant's risk and expense; and in the event the City removes or arranges for the storage of such material, Tenant shall reimburse the City for its costs therefore, including any restoration and administrative costs.

**D. Hold-over Use & Occupancy of Premises:** In the event Tenant, with the Director's consent, holds over after the expiration or sooner termination of the Lease Term, the resulting use and occupancy shall be on a monthly basis, during which time Tenant shall be bound by all of the provisions of this Lease other than the amount of the monthly Fixed Rent, 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, Tenant holds over without the Director's consent, after the expiration or sooner termination of the Lease Term, whether by failing to remove its trade equipment or personal property or otherwise, Tenant shall pay to the City, as damages twice the amount of (a) the Fixed Rent and Additional Rent due the month prior to expiration or sooner termination of the Lease Term or (b) the fair market rent and Additional Rent due the month prior to expiration or sooner termination, whichever is higher, and shall be bound by all of the other provisions of this Lease. If Tenant fails to surrender the Premises upon the expiration or sooner termination of this Lease without the Director's consent, Tenant shall, in addition to all other indemnity provisions of this Lease, indemnify, defend, and hold harmless the City from all losses, damages, liabilities, and expenses resulting from such failure, including without limiting the generality of the foregoing, any claims made by any succeeding tenant arising out of such failure.

**E. No Claim for Removal:** In no event shall Tenant 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 Tenant arising out of removal operations under this Section. .



## **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 of this Lease, 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 Tenant, or any party associated with the Tenant. The Tenant is not an agent of City for any purpose whatsoever. The Tenant shall not create any obligation or responsibility on behalf of the City or bind the City in any manner.

## **25. AUTHORITY OF "DIRECTOR"**

No action of the Director pursuant to or in implementation of this Lease shall constitute any official action by any other City department or official that may be required by law, ordinance, rule or regulation before Tenant 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 reasonable discretion.

## **26. AMENDMENTS**

No modification or amendment of the terms hereof shall be effective unless in writing and signed by the authorized representative of each of the parties hereto.

## **27. NO WAIVER**

Nothing other than a written document signed personally by the Director or such official's designee and specifically declaring a City intent to waive a particular breach or Default by Tenant shall constitute a waiver of such breach or Default. No such document shall waive Tenant'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 any Rent, other sums due, or other compensation, whether after a Default or from a sub lessee 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.

## **28. 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.

## **29. CAPTIONS**

The titles of sections or other parts of this Lease are for convenience only and do not define or limit the contents.

## **30. 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.

## **31. BINDING EFFECT**

The provision, covenants, and conditions contained in this Lease apply to bind the parties, their legal heirs, representatives, successors, and assigns.

## **32. NO BROKER.**

Tenant represents and warrants that there is no claim for any brokerage commission or finder's fee in connection with the execution of this Lease.

## **33. INSTALLATION OR INTEGRATION OF VISUAL ART WORKS PROHIBITED WITHOUT DIRECTOR'S CONSENT**

A. 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. Tenant 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 Director's consent to the installation by or for Tenant 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 Tenant delivers to City 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 City and the requirements of 17 U.S.C. §106A(e), as the same now exists or is hereafter modified; or

(3) If the City 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 City.

B. In the event the creator of any work of visual art installed in the Premises by or for Tenant has not executed a waiver, or such creator and the City have not executed a consent agreement, each as described herein, Tenant 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 Tenant 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 Tenant or any of its officers, employees, or agents, is filed or lodged against the City in its capacity as the Premises owner.

C. Tenant's Indemnification of the City Against Liability under Visual Artists Rights Act of 1990. In addition to all other indemnity provisions of this Lease, the Tenant 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 this section; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by Tenant or any of its officers, employees or agents. This indemnification obligation shall exist regardless of whether the City 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.



#### **34. ATTORNEYS FEES**

If an action is brought to enforce the terms of the Lease, each party agrees to bear its own attorneys' fees and costs.

#### **35. ACKNOWLEDGEMENT OF NEGOTIATED LEASE; APPLICABLE LAW**

The parties to this Lease acknowledge that it is a negotiated lease, that they have had the opportunity to have the 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. This Lease shall be governed by, and construed in accordance with the laws of the State of Washington. The venue of any action brought to enforce the terms of this Lease shall be King County Superior Court.

#### **36. EMINENT DOMAIN**

**A. Total Taking.** In the event of a Total Taking, this Lease shall terminate as of the date of the taking of physical possession of the Premises. A "Total Taking" shall be defined as when (i) the entire Building is taken or appropriated under the power of eminent domain (other than by The City of Seattle), or (ii) when less than the entire Building is taken or appropriated under the power of eminent domain (other than by The City of Seattle), but where the Tenant's use of the Premises is materially interfered with. Upon the date of such taking or transfer, the Term of this Lease shall expire as fully and completely as if such date were the date hereinabove set forth for the end of the Term of this Lease and Tenant shall thereupon vacate the Premises, without prejudice to any rights and remedies accrued to City under this Lease prior to such termination and any Rent paid or payable by Tenant shall be adjusted as of the date of such termination.

**B. Partial Taking.** In the event there is a "Partial Taking," defined as a taking or appropriation under the power of eminent domain (other than by The City of Seattle) other than a Total Taking, then the Lease shall continue in full force and effect; provided, however, that City shall proceed as promptly as is practicable to restore the Building to an architectural unit as nearly comparable as is reasonable to the unit existing just prior to such taking or transfer to the extent that such restoration can be accomplished with the available condemnation proceeds, and the Fixed Rent shall be abated in the ratio which the part of the floor area of the Premises so taken or transferred, if any, bears to the entire floor area of Premises immediately prior to such taking or transfer.

**C. Condemnation Award.** The entire award for the taking under any right of condemnation or eminent domain or any transfer in lieu thereof shall belong to City, and Tenant shall not be entitled to any part thereof or entitled to recover damages for the loss of its leasehold estate or other interest in the Premises and hereby assigns to City



all of its right, title and interest in and to any such award. Tenant shall have the right, however, to independently claim and recover from the condemning authority compensation for any loss to which Tenant may be put for Tenant's moving expenses or taking of Tenant's personal property (not including Tenant's leasehold interest) provided that such damages may be claimed only if they are awarded separately in the eminent domain proceedings and not out of or as part of the damages recoverable by City.

### **37. CONSTRUCTION, ALTERATIONS, IMPROVEMENTS AND ADDITIONS.**

Tenant shall not make any alteration in, or addition or improvement to the Premises unless the same has been specifically approved in writing by the Director. Any expense incurred in performing mutually agreed-upon alterations, improvements, repairs or new construction necessary for Tenant's use and occupancy shall be borne solely by Tenant.

### **38. EXHIBITS**

The following exhibits are made a part of this Lease:

- Exhibit A: Premises Floor Plan/Map
- Exhibit B: Seattle Center Vision Statement
- Exhibit C: Seattle Center Rules and Regulations



**IN WITNESS WHEREOF**, the parties hereto have executed this instrument the day and year indicated below:

**LESSEE:**

SEATTLE INTERNATIONAL  
CHILDRENS FESTIVAL

By \_\_\_\_\_

\_\_\_\_\_, President  
Seattle International Children's Festival  
Board of Trustees

**LESSOR:**

THE CITY OF SEATTLE

By \_\_\_\_\_

Virginia Anderson, Director  
Seattle Center Department

**BUSINESS ADDRESSES FOR NOTICES**

**TENANT:**

Andrea Wagner, Executive Director  
Seattle International Children's Festival  
305 Harrison  
Seattle, WA 98109  
PHONE NO.: 206-684-7335

**THE CITY OF SEATTLE:**

Manager, Contracts & Concessions  
Seattle Center Department  
305 Harrison, Room 322  
Seattle, WA 98109  
PHONE NO.: 206-684-7114



STATE OF WASHINGTON)

) ss (Acknowledgment for Tenant, Seattle International Children's Festival)

COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me, a Notary Public in and for the State of

\_\_\_\_\_, duly commissioned and sworn, personally appeared Andrea Wagner, to me known to be the Executive Director of SEATTLE INTERNATIONAL CHILDREN'S FESTIVAL, the entity that executed the foregoing Lease as Tenant; and acknowledged to me that he/she signed the same as the free and voluntary act and deed for said entity, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument for said entity.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgement is the person whose true signature appears on this document.

WITNESS MY HAND AND OFFICIAL SEAL the day and year in this certificate above written.

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*(Print or Type Name)*

NOTARY PUBLIC in and for the State of Washington,

Residing at \_\_\_\_\_

My commission expires: \_\_\_\_\_



STATE OF WASHINGTON)

) ss (Acknowledgment for the City of Seattle)

COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me, a Notary Public in and for the State of

\_\_\_\_\_, duly commissioned and sworn, personally appeared Virginia Anderson, to me known to be the Seattle Center Director of the CITY OF SEATTLE, the entity that executed the foregoing Lease; and acknowledged to me that he/she signed the same as the free and voluntary act and deed for said entity, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument for said entity.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgement is the person whose true signature appears on this document.

WITNESS MY HAND AND OFFICIAL SEAL the day and year in this certificate above written.

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*(Print or Type Name)*

NOTARY PUBLIC in and for the State of Washington,

Residing at \_\_\_\_\_

My commission expires: \_\_\_\_\_



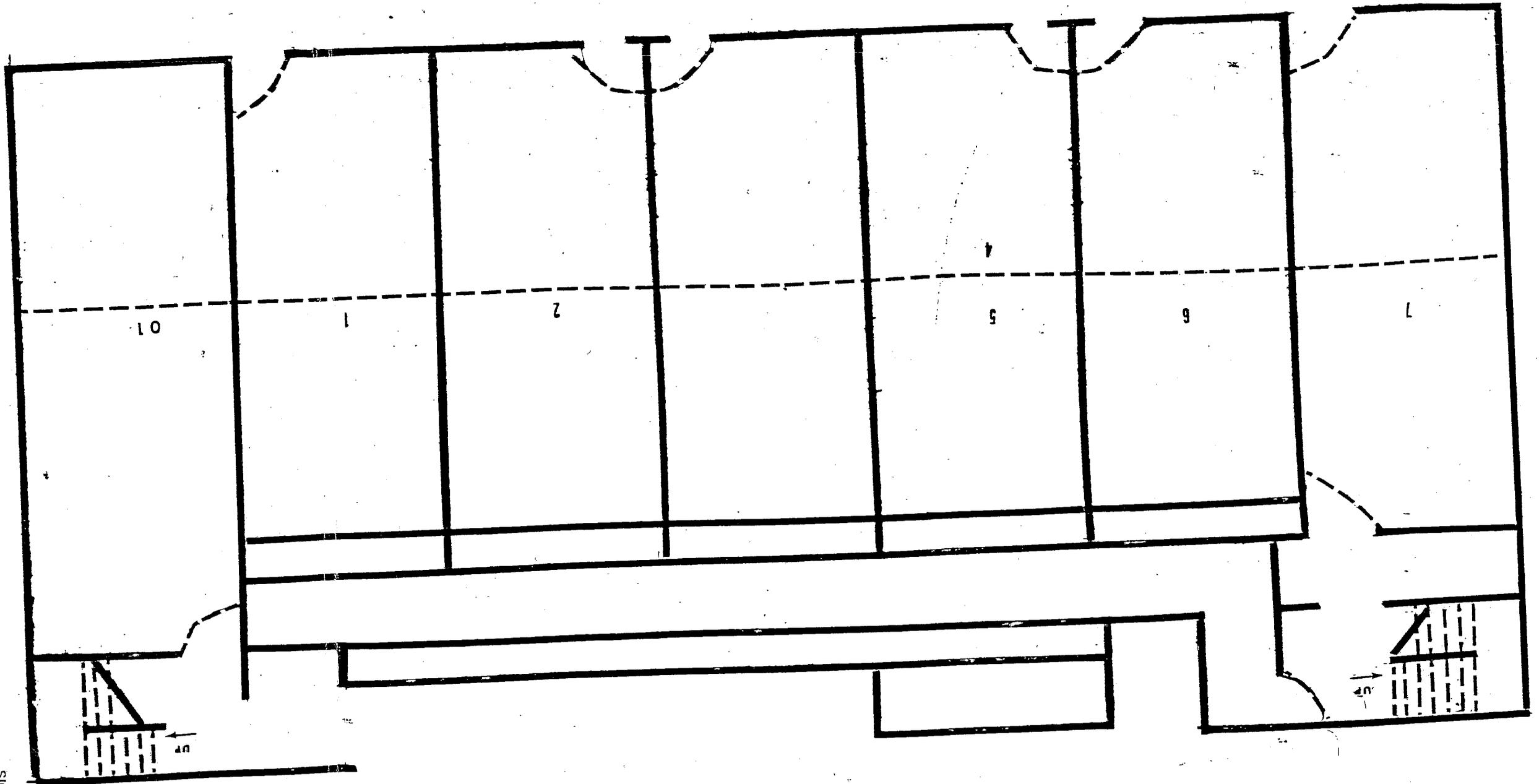


EXHIBIT 'A'  
ATTACHMENT 'A'

SICF (8/1/96)



FILED  
CITY OF SEATTLE

05 DEC 28 PM 2:02

CITY CLERK

ORDINANCE

121805

1  
2  
3 AN ORDINANCE relating to the Seattle Center Department; authorizing execution of an  
4 agreement with the Seattle International Children's Festival for the presentation of annual  
festivals at Seattle Center.

5 NOW, THEREFORE,

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

7  
8 Section 1. As requested by the Seattle Center Director and recommended by the Mayor,  
9 said Director is hereby authorized to execute, for and on behalf of The City of Seattle, an  
10 agreement with the Seattle International Children's Festival substantially in the form attached  
11 hereto and identified as "AGREEMENT BETWEEN THE CITY OF SEATTLE AND  
12 SEATTLE INTERNATIONAL CHILDREN'S FESTIVAL" (Attachment 1) for purposes related  
13 to the presentation of annual festivals at Seattle Center from 2005 through 2009.  
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CITY CLERK

**City of Seattle Legislative Information Service**

*Information updated as of November 15, 2005 1:39 PM*

**Council Bill Number: 115241**  
**Ordinance Number: 121805**

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:** April 25, 2005  
**Date passed:** May 9, 2005  
**Status:** Passed  
**Vote:** 7-0 (Excused: Della, Steinbrueck)  
**Date of Mayor's signature:** May 18, 2005

**Committee:** Parks, Neighborhoods & Education  
**Sponsor:** DELLA

**Index Terms:** SEATTLE-CENTER, LEASES, **CHILDREN, FESTIVALS**

**Text**

ORDINANCE \_\_\_\_\_

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.

NOW, THEREFORE,

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" (Attachment 1) for purposes related to the presentation of annual festivals at Seattle Center from 2005 through 2009.

Section 2. 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.

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, approximately 80 - 90 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, 2005, and shall expire December 31, 2009, unless terminated earlier as provided herein. Each calendar year of the Term shall constitute a separate "Festival Year."

#### 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.

2005 Festival:	May 9 through 14
2006 Festival:	May 15 through 20
2007 Festival:	May14 through 19
2008 Festival:	May 12 through 17
2009 Festival:	May11 through 16

## 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 Representative 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.

### 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 Festival Representative(s), Festival

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 Representative, 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) For parking in the Fifth Avenue Parking Lot or the Mercer Street Garage, for volunteers, the City shall provide SICF with parking permits as follows, on or before April 1st of each year during the term

\* 15 permits for the period beginning seven days prior to the first performance day of the Festival through the last performance day of the Festival;

\* 85 permits for the Monday performance day of the Festival;

\* 75 permits for each additional performance day of the festival.

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.

## B. City Deliverables

### 1. Basic Equipment Inventory

d. Seattle Center Pavilion: SICF shall be entitled to use this facility so long as such facility exists at the time and is functioning as a public use facility.

e. Northwest Rooms: SICF shall be entitled to use these facilities so long as such facilities exist at the time and are functioning as public use facilities. The parties anticipate that these facilities will be unavailable for some of the term of this Agreement due to construction of the new monorail.

f. Stage and public programming space on the second floor of Center House: SICF shall be entitled to use this facility so long as such facility exists at the time and is functioning as a public use facility.

g. Center House Theater: SICF shall be entitled to use this facility so long as it exists at the time and is functioning as a public use facility. {

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h. 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 shall be available for SICF's use, unless the same is unavailable due to Seattle Repertory Theatre schedule.

i. Seattle Children's Theatre: SICF's use of this Facility shall be consistent with and subject to the Seattle Children's Theatre's contract with the City.

j. Mural Amphitheater: SICF shall be entitled to use such area if it exists at the time and is functioning as a public use area.

k. Other areas of the grounds of Seattle Center: SICF shall be entitled to use such areas to the extent they exist at the time and are functioning as public use areas.

l. Exhibition Hall: Subject to and consistent with the agreement between the City and the Pacific Northwest Ballet, SICF may use such facility if it exists at the time and is functioning as a public use area.

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 Fisher Pavilion. In addition, SICF shall have up to five move-in days to install the SICF "base station" in a single specified facility, provided the requested space is available. Subject to facility availability, additional days may be added free of any license fee or

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.

#### E. Security Planning

The City and SICF shall jointly conduct a security planning meeting 60 days prior to each Festival. Either party may request the attendance of representatives of the Seattle Fire Department and Seattle Police Department. The purpose of such meeting is to identify and discuss potential security concerns related to the upcoming Festival including, but not limited to, other events in the City which might impact the Festival, any planned protests in the vicinity of the Seattle Center grounds, grounds access issues, planned gate staffing, venue evacuation, known threats (if any) and construction activities which might impact visitor safety.

#### IV. REDEVELOPMENT IMPACT REVIEW

Consistent with Section II.C., the Director and SICF shall meet on or about July 1 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, 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 secure and pay all costs of office and telephone services, postage and photocopying.

SICF may choose their own telephone provider, including use of Department of Information Technology (DoIT) with the City of Seattle. If DoIT is the provider, then such services are to be arranged

#### E. In-Kind Estimate

Together with the invoice specified in Section V.D, Seattle Center will provide an estimate of the value of in-kind services provided to SICF during the Festival. For the purposes of this section, in-kind services are defined as rent, readerboards, Event Services Representative time, parking and equipment provided free of charge.

### 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.

#### E. Promotional Opportunities

#### 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 [SC1]

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 maintain at no expense to the City, insurance coverage and minimum limits of liability as specified below.

The insurance required pursuant to Sections A and B above, shall include the City of Seattle as an additional insured; (ii) shall not be reduced or canceled without thirty (30) days prior written notice to the City or otherwise as in accordance with the provisions of RCW 48.18.290 ("Cancellation by insurer."); and (iii) shall be primary insurance as respects the City, and any other insurance maintained by the City shall be excess and not contributing insurance with the SICF's insurance.

E. Changes of Coverage and/or Limits

C.

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.

F. 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 commercial general liability endorsement or policy wording documenting that the City of Seattle is an additional insured.
3. A copy of the schedule of forms and endorsements to the commercial general liability insurance policy.
4. Evidence that prior written notice will be provided to the City of Seattle as follows:

Seattle Center Director

City of Seattle

Seattle Center

Risk Management Division

The City of Seattle

P.O. Box 94669

305 Harrison Street

Seattle, WA 98124-4669

Seattle, WA 98109

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

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.

#### 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.

casualty or acts of nature.

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. DISPUTE RESOLUTION PROCESS

In the event that either party to the Agreement remains aggrieved following the process set forth in Section II.D, invoices are disputed under V.D., or at other times when the parties mutually agree, the parties shall mediate their dispute. Written notice of intent to mediate shall be provided to the other party within sixty (60) days following completion of the charge review process or receipt of invoice. The parties agree to use the services of a mediator from Judicial Dispute Resolution or JAMS. The parties shall share the cost of the mediator equally, and each shall bear its own fees and expenses.

#### XX. 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.

#### XXI. CAPTIONS

The titles of sections and subsections are for convenience only and

THIS LEASE is entered into by and between THE CITY OF SEATTLE ("City"), a municipal corporation of the State of Washington, acting by and through the Director of the Seattle Center Department ("Director"), and SEATTLE INTERNATIONAL CHILDRENS FESTIVAL, ("Tenant"), a Washington non-profit organization.

In consideration of their mutual promises, the parties mutually agree as follows:

1. PREMISES

A. Grant: The City hereby leases to Tenant those certain premises (the "Premises") consisting of approximately 1395 square feet and identified as Suites 25-27 and storage Unit 4 and located at 158 Thomas St., Seattle, WA and commonly referred to as the Blue Spruce Building at Seattle Center located on the following property, and legally described as:

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.

The site plan depicting the Premises is attached as Exhibit A.

B. Condition: City shall deliver and Tenant accepts the Premises "AS IS." Tenant shall undertake no tenant improvements without first obtaining written permission from the Director, whose permission shall not be unreasonably withheld. Furniture is not included in this lease.

C. Permitted Use: Tenant shall use the Premises for office space only. Tenant may use the Premises for other purposes only with the prior, written approval of the Director, whose approval shall be granted or withheld in the Director's sole discretion.

Tenant shall conduct its activities in a manner that is consistent with the Seattle Center Vision Statement, attached as Exhibit B, and shall comply with the Rules and Regulations regarding the use of the Premises, attached as Exhibit C.

D. 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 Tenant.

E. Common Areas: During the term of this Lease, Tenant and its licensees, invitees, customers and employees shall have the non exclusive right to use the Building and all entrances, lobbies, elevators, stairs, corridors, restrooms and other public areas of the Building (the "Common Areas") in common with City, other Building tenants and their respective licensees, invitees, customers and employees. City shall at all times have exclusive control and management of the Common Areas, except for Tenant's maintenance responsibilities hereunder, and no diminution thereof shall be deemed a constructive or actual eviction or entitle Tenant to compensation or a reduction or abatement of rent. City, in its discretion, may increase, decrease or change the number, locations and dimensions of any Common Areas and other areas or improvements that are not within the Premises. City reserves the right from time to time (i) to install, use, maintain, repair, relocate and replace pipes, ducts, conduits, wires and appurtenant meters and equipment for service to

## 5. PERFORMANCE GUARANTEE

The City hereby waives any performance guarantee requirements.

## 6. WAIVER; INDEMNIFICATION

Tenant shall indemnify, defend, and hold the City and its agents and employees harmless from any and all losses, claims, actions, damages and expenses (including reasonable attorneys' fees and costs) arising from or alleged to arise from: (i) Tenant's breach of its obligations hereunder or violation of law, or (ii) any negligent act or omission of Tenant or any subtenant, licensee, assignee, or concessionaire of Tenant, or of any officer, agent, employee, guest, or invitee of any of the same in or about the Premises or Building. The City shall indemnify, defend, and hold SICF and its agents and employees harmless from any and all losses, claims, actions, damages and expenses (including reasonable attorneys' fees and costs) arising from or alleged to arise from: (i) the City's breach of its obligations hereunder or violation of law, or (ii) any negligent act or omission of the City in or about the Premises or Building. The parties agree that the foregoing indemnity specifically covers actions brought by their own employees. The foregoing indemnity is specifically and expressly intended to constitute a waiver of immunity under Washington's Industrial Insurance Act, RCW Title 51, as to the parties hereto only, and shall survive the termination or expiration of this Lease. Tenant shall promptly notify City of casualties or accidents occurring in or about the Premises or Building. CITY AND TENANT ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS LEASE WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

## 7. INSURANCE

A. Tenant-Furnished Insurance. Tenant shall maintain in full force and effect at all times during the Term of this Lease, at no expense to City, insurance as follows:

(i) COMMERCIAL GENERAL LIABILITY INSURANCE, including:

- Premises/Operations
- Products/Completed Operations
- Personal/Advertising Injury
- Contractual
- Independent Contractors
- Stop Gap/Employers Liability
- Fire/Tenant Legal
- Liquor Liability/Host Liquor Liability (if applicable)
- Elevator & Hoist Liability (if applicable)

Such insurance must provide the following minimum limits of liability:

licensed surplus lines broker or otherwise approved by the City.

(iv) Any deductibles or self-insured retentions shall be disclosed to, and shall be subject to the approval of, the City.

(v) The City shall have the right to annually review insurance coverages and/or limits of liability requirements and to reasonably modify such coverages and/or limits of liability upon ninety (90) days' prior written notice.

D. Evidence of Insurance. The following documents must be provided as evidence of Tenant's insurance coverage:

(i) A copy of each policy's declarations page showing the insurer, policy period, coverages and limits of liability, and a copy of the schedule of forms and endorsements.

(ii) A copy of the endorsement or policy wording documenting that the City of Seattle is an additional insured under the Commercial General Liability insurance for primary and non-contributory limits of liability.

(iii) A copy of the policy provision documenting that coverage shall not be canceled without forty-five (45) days prior written notice to the City, except thirty (30) days' with respect to surplus lines placements and ten (10) days with respect to cancellation for non-payment of premium.

E. Failure to Maintain Insurance. Should Tenant fail to maintain insurance as required hereunder, at the City's sole option the City may, but is not required to, secure and maintain such insurance on Tenant's behalf. Tenant shall reimburse City for the full expense thereof upon demand. Tenant shall not keep or use in or about the Premises any article that is prohibited by City's insurance.

Tenant

#### 8. COVENANTS REGARDING OPERATION OF TENANT'S BUSINESS

A. No Nuisances or Objectionable Activity: Tenant shall not permit any noise, odor, dust, vibration or similar substance or condition that the Director determines to be excessive or objectionable, to remain on or be emitted from the Premises; shall not interfere with access to or from the Premises or the Seattle Center or any part thereof, or with the traffic thereon, or with any Seattle Center facility, business, activity or utility on or off Seattle Center grounds. Tenant shall not create any nuisance in or adjacent to the Premises and shall not do anything on the Premises that will create a danger to life or limb.

B. Fire Extinguisher Within Premises: During the Term (which includes any Option Period(s) the Tenant shall secure, maintain and install in the Premises, in a prominent location, a 2A-10BC class fire extinguisher or an alternative approved by the Fire Marshall, and Tenant shall instruct all of its employees regarding its appropriate use. Such fire extinguisher shall be recharged not less than once a year and immediately following any use.

C. Objectionable Merchandise or Material: Notwithstanding any other provision of this Lease, the Tenant shall not display or offer for

C. Tenant's Responsibility. Tenant shall be solely responsible for and shall promptly pay when due all charges for telephone and all other utilities that are separately metered and supplied to the Premises.

D. Interruption. City shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption or failure of services due to any cause whatsoever, including, but not limited to, electrical surges, or from failure to make any repairs or perform any maintenance. No temporary interruption or failure of such services incident to the making of repairs, alterations or improvements or due to accident, strike or conditions or events beyond City's reasonable control shall be deemed an eviction of Tenant or to relieve Tenant from any of Tenant's obligations hereunder or to give Tenant a right of action against City for damages. City has no obligation to provide emergency or backup power to Tenant. The provision of emergency or backup power to the Premises or to enable the equipment therein to properly function shall be the sole responsibility of Tenant.

E. Special Services and Facilities Subject to Prior Director's Approval, and at Tenant's Cost: Tenant, directly or through a third party, may install, secure, maintain and repair, at no expense to the City, any utility service related to Tenant's operations and its use of the Premises that is not provided or maintained by the City; however, any 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. Tenant 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. Tenant 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.

#### 10. PARKING

As of the Commencement Date, 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 Tenant'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.

#### 11. SIGNAGE, ADVERTISING & PUBLICITY

A. Prohibited Promotion & Other Material; Removal of Same: Tenant 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 approval therefore from the Director, whose approval shall be given or withheld in his/her sole discretion; 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

(2) Keep all drainage pipes free and open;

(3) Have all plumbing and plumbing fixtures inspected at least once every year; repair all damage resulting from any plumbing fixture, any equipment connected to plumbing, or pipe not installed in the Premises by the City or caused by Tenant's failure to keep such fixture or pipe in good operating condition; and in the event of any failure by Tenant to satisfy this repair obligation within four (4) hours after receipt of notice from the Director of any such damage, the City reserves the right to undertake such repair, the cost of which shall be reimbursed by the Tenant;

(4) In a timely and careful manner, periodically remove all debris generated by or peculiar to the Tenant's operations on the Premises and place in an area designated by the Director;

(5) Tenant shall arrange and pay all expense associated with the provision of janitorial and cleaning services in the Premises. City will not provide these services.

(6) Tenant shall arrange and pay all expense associated with the provision of janitorial and cleaning services in the Common Areas. Tenant may seek reimbursement from other second floor Tenants. City will not provide these services.

In the event the Tenant fails to satisfy, in a timely manner after its receipt of notice from the Director of the need for such work, any of the obligations specified in this Section, the City reserves the right (but shall have no obligation) to undertake such work. City shall have the right to enter the Premises for such purposes. In the event the City undertakes such work for the Tenant pursuant to this Section, the Tenant shall promptly pay the City, upon receipt of a written statement, the actual expenses incurred by the City in undertaking such work (including but not limited to Seattle Center labor and project management) plus an administrative charge of \$250.00.

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

A. Access to Premises: The Tenant shall provide the City and its contractors and consultants, their subcontractors, sub consultants 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 Tenant'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 Tenant'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 Tenant'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 Tenant's business or operations in, on, or from the Premises, the Director shall notify the Tenant of such necessity and the anticipated

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. SMC 20.44.040 is incorporated into this Lease by reference.

E. Recycling of Waste Materials: Tenant, 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 Tenant any waste product that is not sorted and separated as required by law, ordinance, rule or regulation, and to require Tenant to arrange for the collection of the same at Tenant's sole cost and expense using a contractor satisfactory to the City. Tenant shall pay all costs, fines, penalties, and damages that may be imposed on City or Tenant as a consequence of Tenant's failure to comply with the provisions of this subsection.

#### 15. ENVIRONMENTAL STANDARDS

Tenant shall not, without City's prior written consent, keep on or about the Premises or Building any substance designated as, or containing any component now or hereafter designated as hazardous, dangerous, toxic or harmful and/or subject to regulation under any federal, state or local law, regulation or ordinance ("Hazardous Substances"), except customary office supplies in normal quantities handled in compliance with applicable laws. With respect to any Hazardous Substances stored with City's consent, Tenant shall promptly, timely and completely comply with all governmental requirements for reporting and record keeping; submit to City true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities; within five (5) days after City's request therefore, provide evidence satisfactory to City of Tenant's compliance with all applicable governmental rules, regulations and requirements; and comply with all governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment and disposal of Hazardous Substances. Tenant shall provide the Director with the Tenant'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 Tenant receives from, or provides to, any governmental unit or agency in connection with Tenant's handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance on or about the Premises.

If Tenant violates any of the terms of this section concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, Tenant shall promptly take such action as is necessary to mitigate and correct the violation. If Tenant does not act in a prudent and prompt manner, the City reserves the right, but not the obligation, to act in place of Tenant (for which purpose Tenant hereby appoints the City as its agent), to come onto the

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, 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 Tenant;

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 Tenant'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. ASSIGNMENTS, SUBLEASES & OTHER INTEREST TRANSFERS

A. Director's Prior Written Consent Required: Tenant shall not assign, mortgage, or encumber, or otherwise transfer this Lease or sublet the whole or any part of the Premises without the prior written consent of the Director, whose consent may be withheld in the Director's sole discretion. In no event shall an assignment, sublease, or other transfer of the Lease relieve Tenant of any of its obligations under this Lease. Consent to any particular assignment, subletting, or transfer shall not operate as a waiver of the necessity for consent to any subsequent assignment, subletting or transfer.

B. Transferee's Obligations; Documentation: As a condition of the Director's approval of an assignment or transfer, any potential assignee or transferee otherwise acceptable to the Director shall assume, in writing, all of Tenant's obligations under the Lease; and Tenant and such assignee or transferee, shall agree, in writing, to be jointly and severally liable for the performance of all of Tenant's obligations under this Lease. As a condition of the Director's approval of any sub lessee otherwise acceptable to the Director, such subtenant shall assume, in writing, all of Tenant's obligations under this Lease as to the subleased portion of the Premises; and Tenant and such subtenant shall agree, in writing, to be jointly and severally liable with Tenant for Rent and performance of all of the terms, covenants, and conditions of such approved sublease. Tenant and any assignee, sub lessee, or transferee shall remain jointly and severally liable 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 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

duration of any such rent abatement shall be reasonably determined by the Director and confirmed by one or more notices to Tenant. In the event only a portion of the Premises is damaged or destroyed by fire or other casualty not occasioned by an act or omission of Tenant or any of its officers, employees, contractors, agents, invitees, or guests but the remainder of such Premises and improvements remains usable, as reasonably determined by the Director, and Tenant has given timely notice of such destruction or damage as provided by this section, Tenant shall pay a reduced amount of rent that is proportionate to the extent of the Premises that remains usable for the purposes identified in Section I hereof, which reduced rent amount shall be reasonably determined by the Director and identified by notice to Tenant, and paid by Tenant through the date reasonably specified by the Director in such notice or the later date specified in any subsequent notice.

C. Rebuilding, Repair & Restoration: In the event that insurance proceeds payable to the City will provide sufficient funds to enable the City to rebuild, repair and restore the Premises after their damage or destruction, and neither Tenant nor the City elects to terminate this Lease pursuant to this section, the City shall diligently prosecute such rebuilding, repair, and restoration. Tenant shall replace or repair in a timely manner and at no cost or expense to the City, all damaged or destroyed business personal property and Tenant Improvements that prior to such damage or destruction had been located on the Premises unless otherwise permitted by the Director. Upon the rebuilding, repair and reconstruction of the Premises, Tenant shall immediately re-occupy the whole of the Premises. The rent abatement or reduction provided pursuant to this section shall be discontinued and the full Fixed Rent and Additional Rent shall again be due and payable from and after the date specified in the notice given by the Director. The City shall not be liable to Tenant for damages, compensation or any other sum for inconvenience, loss of business, or disruption arising from any repair to or restoration of any portion of the Premises or the Building in which the Premises are located.

D. Termination Rights in Event of Damage or Destruction:

By Tenant: 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 Tenant, its officers, employees, contractors, agents, invitees, or guests, Tenant may terminate this Lease by providing notice thereof to the Director.

By City: Notwithstanding any other provision in this Lease to the contrary, in the event that fifty percent (50%) of the Premises is destroyed or is so damaged by fire or other casualty as to be untenable or unusable, or if the City desires to discontinue Tenant's operations because of substantial destruction of the Premises, 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 Tenant.

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.

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:

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 Tenant.

The City shall not be obligated to offer the Premises to any prospective tenant when other Premises on the Seattle Center suitable for that prospective tenant's use are currently available, or will be available within the next three months.

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 facilities in the same market area as the Seattle Center.

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 at the Seattle Center.

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. 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) Tenant 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 Tenant'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.

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 Seattle Center;

(b) Violate any restriction, covenant, or requirements contained in the lease of another tenant of the Seattle Center;

(c) Adversely affect the reputation of the Seattle Center;

(d) Be incompatible with the operation of the Seattle Center as a first-class event and cultural community gathering center.

F. 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 Tenant to the Director specifying the particular obligation that the City has failed to perform; Provided, however, that if the nature of the City's

date, whichever is earlier, or the fair market value for the Premises. If, however, Tenant holds over without the Director's consent, after the expiration or sooner termination of the Lease Term, whether by failing to remove its trade equipment or personal property or otherwise, Tenant shall pay to the City, as damages twice the amount of (a) the Fixed Rent and Additional Rent due the month prior to expiration or sooner termination of the Lease Term or (b) the fair market rent and Additional Rent due the month prior to expiration or sooner termination, whichever is higher, and shall be bound by all of the other provisions of this Lease. If Tenant fails to surrender the Premises upon the expiration or sooner termination of this Lease without the Director's consent, Tenant shall, in addition to all other indemnity provisions of this Lease, indemnify, defend, and hold harmless the City from all losses, damages, liabilities, and expenses resulting from such failure, including without limiting the generality of the foregoing, any claims made by any succeeding tenant arising out of such failure.

E. No Claim for Removal: In no event shall Tenant 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 Tenant arising out of removal operations under this Section. .

#### 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 of this Lease, 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 Tenant, or any party associated with the Tenant. The Tenant is not an agent of City for any purpose whatsoever. The Tenant shall not create any obligation or responsibility on behalf of the City or bind the City in any manner.

#### 25. AUTHORITY OF "DIRECTOR"

No action of the Director pursuant to or in implementation of this Lease shall constitute any official action by any other City department or official that may be required by law, ordinance, rule or regulation before Tenant 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 reasonable discretion.

#### 26. AMENDMENTS

No modification or amendment of the terms hereof shall be effective unless in writing and signed by the authorized representative of each of the parties hereto.

#### 27. NO WAIVER

granted upon one or more conditions, or withheld in the Director's discretion; Provided, however, that Director's consent to the installation by or for Tenant 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 Tenant delivers to City 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 City and the requirements of 17 U.S.C. section 106A(e), as the same now exists or is hereafter modified; or

(3) If the City 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. section 113(d)(1), as the same now exists or is hereafter amended, and in the form and manner specified by City.

B. In the event the creator of any work of visual art installed in the Premises by or for Tenant has not executed a waiver, or such creator and the City have not executed a consent agreement, each as described herein, Tenant 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. section 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 Tenant 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 Tenant or any of its officers, employees, or agents, is filed or lodged against the City in its capacity as the Premises owner.

C. Tenant's Indemnification of the City Against Liability under Visual Artists Rights Act of 1990. In addition to all other indemnity provisions of this Lease, the Tenant 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 this section; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by Tenant or any of its officers, employees or agents. This indemnification obligation shall exist regardless of whether the City 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.

of the damages recoverable by City.

37. CONSTRUCTION, ALTERATIONS, IMPROVEMENTS AND ADDITIONS.

Tenant shall not make any alteration in, or addition or improvement to the Premises unless the same has been specifically approved in writing by the Director. Any expense incurred in performing mutually agreed-upon alterations, improvements, repairs or new construction necessary for Tenant's use and occupancy shall be borne solely by Tenant.

38. EXHIBITS

The following exhibits are made a part of this Lease:

Exhibit A: Premises Floor Plan/Map

Exhibit B: Seattle Center Vision Statement

Exhibit C: Seattle Center Rules and Regulations

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year indicated below:

LESSEE: LESSOR:

SEATTLE INTERNATIONAL CHILDRENS FESTIVAL THE CITY OF SEATTLE

By

*[Signature]*

By

*Virginia Anderson*  
Director/Seattle Center  
President Seattle Center

International Children's Festival Board of Trustees Virginia Anderson,  
Director Seattle Center Department

BUSINESS ADDRESSES FOR NOTICES

TENANT: THE CITY OF SEATTLE:

Andrea Wagner, Executive Director Manager, Contracts & Concessions  
Seattle International Children's Festival Seattle Center Department  
305 Harrison 305 Harrison, Room 322  
Seattle, WA 98109 Seattle, WA 98109

PHONE NO.: 206-684-7335 PHONE NO.: 206-684-7114

STATE OF WASHINGTON)

) ss (Acknowledgment for Tenant, Seattle International  
Children's Festival)

COUNTY OF KING )

On this 13th day of December, 2005, before me,  
a Notary Public in and for the State of

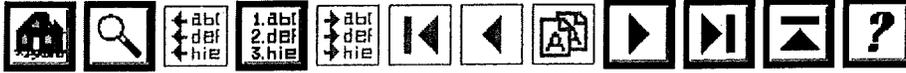
Washington, duly commissioned and sworn, personally  
appeared Andrea Wagner, to me known to be the Executive Director of

NOTARY PUBLIC in and for the State of Washington,

Residing at King Co.

My commission expires: 1.14.00

Fiscal Note



Form revised December 9, 2004

**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>DOF Analyst/Phone:</b>
Seattle Center	Tom Israel 684-7298	Eve Sternberg 386-1119

**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 2009 festival;
- includes an increase in the level of City cash support for the Festival by \$8,510 to \$109,510 for 2005 to reflect the rising cost of inflation. There has not been an increase in the annual support amount since 2000. The annual support increases to \$111,710 for 2006 and remains at this level amount thereafter.
- updates the agreement to reflect current City standards for items such as insurance and dispute resolution

• **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and 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 had garnered substantial community interest and support. 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 some 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 for volunteers, artists and production vehicles) and cash support to the Festival.
3. The Festival reimburses the City for the actual cost of the event staff.
4. For 2004 the support amounts were as follows:
  - Cash support - \$101,000.
  - Estimated value of rent - \$75,000
  - Estimated value of parking - \$14,000
  - Estimated value of office space - \$7,000
  - Estimated labor reimbursement - \$46,000 (Seattle Center provides event staffing; Festival pays for this staffing.)

### Recommended Agreement

The recommended agreement basically holds stable all features of the current agreement. The amount of cash support is increased to keep pace with inflation and maintain the value of the City's support to the Festival. Specifically, the agreement:

- Increases annual support by \$8,500 to \$109,510 in 2005 to reflect the rising cost of inflation. There has not been an increase in the annual support amount since 2000.
- The annual support is increased by another \$2,200 to \$111,710 and held constant for the remainder of the agreement term.
- The office space lease recognizes the increased value of space provided due to market conditions. Value is increased from approximately \$5/sq. ft. to \$13/sq. ft.
- All value added support will be consistent with previous years.

- Please check one of the following:

**This legislation does not have any financial implications.** (Stop here and delete the remainder of this document prior to saving and printing.)

**This legislation has financial implications.** (Please complete all relevant sections that follow.)



**Appropriations:** This table should reflect appropriations that are a direct result of this legislation. In the event that the project/ programs associated with this ordinance have appropriations that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below.

Fund Name and Number	Department	Budget Control Level*	2005 Appropriation	2006 Anticipated Appropriation
11410	Seattle Center		\$0 (see note)	\$0 (see note)
<b>TOTAL</b>				

\*See budget book to obtain the appropriate Budget Control Level for your department.

**Notes:**

Seattle Center's 2005 Adopted Budget and 2006 Endorsed Budget anticipated the renewal of this agreement. Increased funding levels were included in those budgets already approved by Council.

**Anticipated Revenue/Reimbursement: Resulting From This Legislation:** This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.

Fund Name and Number	Department	Revenue Source	2005 Revenue	2006 Revenue
11410	Seattle Center		\$0 (see note)	\$0 (see note)
<b>TOTAL</b>				

**Notes:**

The Children's Festival reimburses the Seattle Center for the cost of labor support to the event. The amount of revenue anticipated (\$46,000) is therefore offset by an equivalent amount of labor expense already budgeted in the department's 2005 Adopted and 2006 Endorsed budgets. Seattle Center's 2005 Adopted Budget and 2006 Endorsed Budget anticipated the renewal of this agreement. Reimbursement revenue from the Festival was included in those budgets already approved by Council.



**Total Regular Positions Created Or Abrogated Through This Legislation, Including FTE**

**Impact:** This table should only reflect the actual number of positions created by this legislation. In the event that positions have been, or will be, created as a result of previous or future legislation or budget actions, please provide details in the Notes section below the table.

Position Title and Department*	Fund Name	Fund Number	Part-Time/ Full Time	2005 Positions	2005 FTE	2006 Positions **	2006 FTE**
None							
<b>TOTAL</b>							

\* List each position separately

\*\* 2006 positions and FTE are total 2006 position changes resulting from this legislation, not incremental changes. Therefore, under 2006, please be sure to include any continuing positions from 2005

**Notes:**

- **Do positions sunset in the future?** (If yes, identify sunset date):

**Spending/Cash Flow:** This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.

Fund Name and Number	Department	Budget Control Level*	2005 Expenditures	2006 Anticipated Expenditures
<b>TOTAL</b>				

\* See budget book to obtain the appropriate Budget Control Level for your department.

**Notes:**

- **What is the financial cost of not implementing the legislation?** (Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented.)



Without financial support from the City the Festival would have to reduce programming or potentially cease operations if other sources of funding could not be found.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** (Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.)

The Seattle Center could use the \$109,510 in funding to produce other youth oriented programming. However, the City is able to leverage an estimated \$900,000 in value by supporting the Children's Festival.

- **Is the legislation subject to public hearing requirements:** (If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future.)

No

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

None.

**Please list attachments to the fiscal note below:**



# City of Seattle

Gregory J. Nickels, Mayor

## Office of the Mayor

April 12, 2005

Honorable Jan Drago  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Drago:

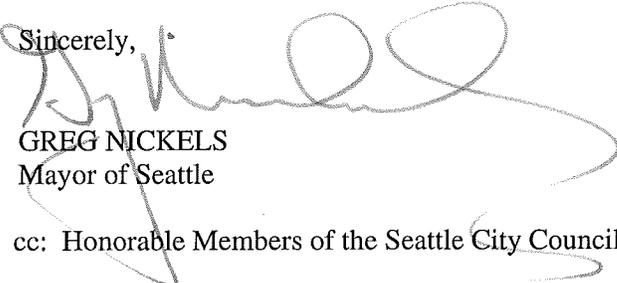
I am pleased to transmit the attached proposed Council Bill authorizing Seattle Center to renew an agreement with the Seattle International Children's Festival for the presentation of its acclaimed children's festival at Seattle Center. The attached agreement extends the term of the current agreement for another five years, from 2005 through the 2010 festival. Seattle Center is proud to continue the City's involvement with bringing the arts into the lives of young people.

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 separated from the City to become its own 501(c)3. Since that time, the Festival has grown into a week-long event held in May, which attracts almost 50,000 youngsters (and adults) to over 130 high quality performances of music, theater, dance and other performing arts. The Children's Festival is one of the "big four" major festivals annually held on the Seattle Center campus – SICF, Northwest Folklife Festival, Bite of Seattle, and Bumbershoot.

In the case of the Children's Festival, the City makes an annual cash contribution in addition to providing facilities rent free. There are two key reasons for providing this support. 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 \$8,510 from \$101,000 to \$109,510 in 2005, and \$111,710 annually from 2006-2009, in order to help the Festival keep pace with inflation. This amount corresponds to the increase in the Consumer Price Index since 2000. Overall, the City's contribution helps to leverage a Festival budget which totals nearly \$1,000,000 (cash) plus \$300,000 worth of in-kind support.

Thank you for your consideration of this legislation. If you have any questions regarding the SICF agreement, please call Virginia Anderson at 684-7330 or Tom Israel at 684-7298.

Sincerely,



GREG NICKELS  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7<sup>th</sup> Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 684-8811 Fax: (206) 684-5360, E:mail: mayors.office@seattle.gov

An equal employment opportunity, affirmative action employer. Accommodations for people with disabilities provided upon request.



STATE OF WASHINGTON - KING COUNTY

--SS.

186070  
CITY OF SEATTLE, CLERKS OFFICE

No. ORDINANCES IN FULL

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 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

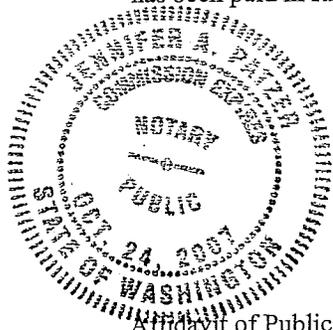
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:121802-121811

was published on

05/25/05

The amount of the fee charged for the foregoing publication is the sum of \$ 145.75, which amount has been paid in full.



*[Signature]*

Subscribed and sworn to before me on

05/25/05

*[Signature]*

Notary public for the State of Washington,  
residing in Seattle

# State of Washington, King County

## City of Seattle

### TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on May 9, 2005, 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 684-8344.

#### ORDINANCE NO. 121811

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

#### ORDINANCE NO. 121807

AN ORDINANCE relating to the City's capital budget, abandoning certain unspent appropriations and increasing Capital Improvement Program allocations for purposes of Ordinance 121660.

#### ORDINANCE NO. 121809

AN ORDINANCE authorizing the Department of Executive Administration to close certain funds and subfunds; authorizing the transfer of all unexpended and unencumbered balances and other assets and liabilities of those funds and subfunds; and abandoning appropriation authority from those funds and subfunds.

#### ORDINANCE NO. 121796

AN ORDINANCE amending the 2005 Adopted Budget, including the 2005-2010 Capital Improvement Program (CIP); changing appropriations to various departments and from various funds in the Budget; making cash transfers between various City funds and subfunds; removing a 2005 budget proviso; and creating positions; all by a three-fourths vote of the City Council.

#### ORDINANCE NO. 121808

AN ORDINANCE amending the 2004 Adopted Budget, including the 2004-2009 Capital Improvement Program (CIP); changing appropriations to various departments and from various funds in the Budget; amending the total dollar amount allocated for a project in 2004 in the 2004-2009 CIP; and lifting various budget provisos, all by a three-fourths vote of the City Council.

#### ORDINANCE NO. 121810

AN ORDINANCE authorizing, in 2005, acceptance of funding from non-General-Subfund sources; authorizing the Department of Parks and Recreation, the Human Services Department, the Office of Housing, the Office of Sustainability and Environment, the Seattle City Light, the Seattle Department of Transportation, the Seattle Fire Department, the Seattle Municipal Court, the Seattle Police Department, and the Department of Information Technology to accept specified grants and private funding.

#### ORDINANCE NO. 121806

AN ORDINANCE relating to the 2006 Budget; carrying forward certain unexpended appropriations from the 2004 budget of various departments and funds for both capital and non-capital purposes, all by a three-fourths vote of the City Council.

#### ORDINANCE NO. 121805

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.

#### ORDINANCE NO. 121804

AN ORDINANCE relating to City real property; transferring jurisdiction of certain property in Block 46, Gilman Park, commonly referred to as KNO, to the Department of

#### ORDINANCE NO. 121804

AN ORDINANCE relating to City real property; transferring jurisdiction of certain property in Block 46, Gilman Park, commonly referred to as KNO, to the Department of

4278 Ballard Safeway), from the Fleets and Facilities Department to the Department of Parks and Recreation for park and recreation purposes.

#### ORDINANCE NO. 121803

AN ORDINANCE relating to housing for low-income households; adopting the 2005-2006 Administrative and Financial Plan for 2002 Housing Levy Financing Plan adopted by Ordinance 120823; adopting certain policies for use of funds from the 1986 Housing Levy and 1995 Housing Levy; and ratifying and confirming prior acts.

#### ORDINANCE NO. 121802

AN ORDINANCE relating to the sale of City real property for multifamily development; authorizing the sale of Dearborn-Hiawatha Parcel 2c in the I-90 Redevelopment Project area, at Hiawatha Place South and South Charles Street, to Artspace Projects, Inc. or its designee; authorizing the Director of the Office of Housing to execute, deliver, and administer the contract for sale of land, deed and related documents; and ratifying and confirming prior acts.

Publication ordered by JUDITH PIPPIN,  
City Clerk

Date of publication in the Seattle Daily  
Journal of Commerce, May 25, 2005.

5/25(186070)