

**SECOND AMENDMENT TO OPERATOR AND USE AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
SAN JOSE STATE UNIVERSITY**

This SECOND AMENDMENT TO AGREEMENT is entered into this ____ day of _____, 2018, by THE CITY OF SAN JOSE, a municipal corporation (“City”) and SAN JOSE STATE UNIVERSITY, a California public state agency (“SJSU”).

RECITALS

WHEREAS, on December 15, 2015, City and SJSU entered into an agreement entitled “Operator and Use Agreement Between the City of San Jose and San Jose State University” (“Agreement”); and

WHEREAS, on October 16, 2016, City and SJSU executed a first amendment to the Agreement to extend the term in order to allow sufficient time to evaluate actual operational experienc; and

WHEREAS, City and SJSU desire to enter into a longer-term contract and require additional time to fully explore and evaluate if any contract modifications are necessary for a longer-term arrangement; and

WHEREAS, City and SJSU, on a trial basis, desire to allow limited courses in the Theatre during times that support practical training in technical theater and performing arts to equip the next generation of artists and theater professionals;

NOW, THEREFORE, the parties agree to further amend the Agreement as follows:

SECTION 1. Section 4, “Term” is amended to read as follows:

“The term of this Use Agreement will commence as of December 1, 2015 regardless of the date of execution (“Commencement Date”) and will expire on June 30, 2020 (“Expiration Date”) unless sooner terminated as provided elsewhere in this Use Agreement.”

In year two of this Use Agreement, City and SJSU may begin negotiations to extend the term of this Use Agreement for up to fifteen (15) years, with agreed-upon modifications based on actual operational experience during the initial term. This Use Agreement will not be amended, changed, or extended except by written agreement signed by both parties hereto.

SECTION 2. Section 5, “Guiding Principles for Facility Operations” is amended to read as follows:

“SJSU shall operate the Theatre Facility in accordance with the following principle objectives and parameters approved by City Council:

1. SJSU, with input from the City and a Theatre Advisory Group, shall develop an evolving and sustainable programming and operational model that emphasizes co-creation and ongoing iterative improvement based on actual operational experience before considering a longer-term agreement.
2. SJSU, with input from the City and a Theatre Advisory Group, shall develop and evaluate the model developed for the following elements: financial sustainability, robust programming, full facility activation, community engagement and community use, and a management system for facility maintenance.
3. The core programmatic model is expected to have three main building block elements: a) SJSU cultural and other events, chiefly related to student education; b) co-production of cultural programming between the SJSU and outside cultural organizations; and c) rentals to cultural and other organizations with a tiered rental rate structure. The theater will not be used for regularly scheduled SJSU lecture courses except when the courses directly support practical training in technical theater, performing arts and related arts disciplines (“Theatre and Arts Courses”) and when Theatre and Arts Courses do not negatively impact the ability of the

Theatre auditorium to be rented as a performance or event venue. At least 60 days prior to scheduling Theatre and Arts Courses, SJSU must submit to City for written approval, not to be unreasonably withheld, a description of the proposed course(s), expected meeting days/times and location in the Theatre.

4. In addition to SJSU programming, the Hammer Theatre will achieve a financially sustainable model for co-created programs and a presenting model through rentals. The rental program will prioritize professional theater, in recognition of the history and design of the facility.
5. Availability for use by community-based cultural organizations at financially accessible rental rates on desirable dates is important in order to enable robust diversified cultural offerings and financial sustainability.
6. A percentage of offerings will be curated, providing a cohesive set of high-quality offerings rather than purely generated by unsolicited renters.
7. The goal is to maintain and operate the facility as a high-quality, destination-worthy regional arts facility.
8. A goal is to build a pipeline of audience, artistic excellence, and arts leadership in the San Jose arts and cultural sector through SJSU arts education offerings and opportunities.”

SECTION 3. All of the terms and conditions of the amended Agreement not modified by this Second Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year first written above.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

ARLENE SILVA
Deputy City Attorney

By _____

“SJSU”

SAN JOSE STATE UNIVERSITY, a California public state agency

By _____

Charlie Faas
San Jose State University
VP for Administration & Finance