

**RESOLUTION NO. 16-2021**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA  
APPROVING THE LEASE AGREEMENT BETWEEN THE CITY OF PACIFICA AND  
PACIFICA PERFORMANCES FOR THE PREMISES LOCATED AT 1220 LINDA MAR  
BOULEVARD (LOCATED IN THE PACIFICA CENTER FOR THE ARTS FACILITY) AND  
FINDING THE LEASE CATEGORICALLY EXEMPT FROM THE CALIFORNIA  
ENVIRONMENTAL QUALITY ACT (“CEQA”).**

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**WHEREAS**, City is the owner of the property located at 1220 Linda Mar Boulevard, Pacifica, California, depicted on Exhibit A attached hereto (“Premises”); and

**WHEREAS**, Pacifica Performances has leased the Premises located on this property for over 20 years, performing arts event center; and

**WHEREAS**, Pacifica Performances wishes to continue to lease the Premises from the City for another year, with four options to extend for additional one year terms (for a total of five years); and

**WHEREAS**, the City desires to implement a new Tenant Lease Agreement with Pacifica Performances for use of the Premises.

**NOW, THEREFORE, THE PACIFICA CITY COUNCIL HEREBY RESOLVES AS FOLLOWS:**

1. The City Council hereby finds that the Lease is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to the statute (Public Resources Code Section 21000, et seq.) and the CEQA Guidelines (14 Cal. Code Regs. 15000 et. seq.), under Section 15301 as a Class 2 Categorical Exemption as there will be no expansion of previous use beyond that existing at the time of the City’s determination.
2. The City Council hereby approves the Tenant Lease Agreement with Pacifica Performances in substantially in the same form attached hereto as Exhibit B.
3. The City Manager is hereby authorized to execute the Tenant Lease Agreement in the form attached hereto as Exhibit B, with minor revisions that may be approved by the City Manager and City Attorney, and to execute any other necessary documents to effectuate the terms of the Tenant Lease Agreement and take all steps necessary to carry it into effect.

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**PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Pacifica, California, held on the 22<sup>nd</sup> day of March 2021, by the following vote:

**AYES**, Councilmembers: Beckmeyer, Bier, Bigstyk, O'Neill, Vaterlaus.

**NOES**, Councilmembers: n/a

**ABSENT**, Councilmembers: n/a

**ABSTAIN**, Councilmembers: n/a



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Sue Beckmeyer, Mayor

ATTEST:



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Sarah Coffey, City Clerk

APPROVED AS TO FORM:



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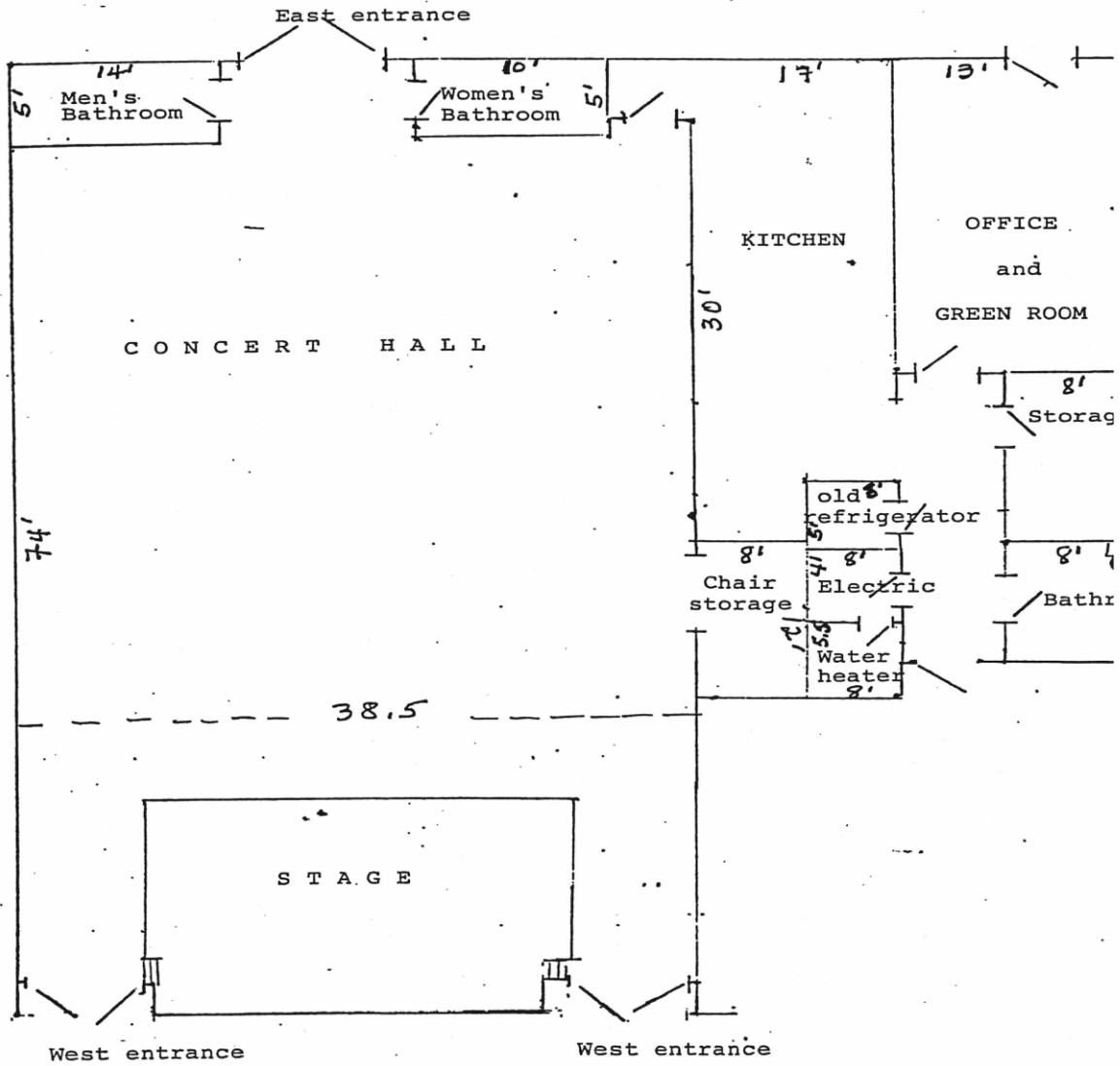
Michelle Kenyon, City Attorney

# EXHIBIT A

## EXHIBIT A

### SANCHEZ CONCERT HALL

1220 LINDA MAR BOULEVARD PACIFICA, CA 94044



# EXHIBIT B

## LEASE AGREEMENT

### BETWEEN THE CITY OF PACIFICA AND PACIFICA PERFORMANCES FOR THE LEASING OF PREMISES

This LEASE AGREEMENT, is made and entered into this [THIS DATE SHOULD BE THE DATE OF APPROVAL BY COUNCIL], by and between the CITY OF PACIFICA, a municipality, hereinafter referred to as “City”, and **PACIFICA PERFORMANCES**, a California non-profit corporation, hereinafter referred to as “Tenant.”

#### RECITALS

A. City is the owner of real property formerly known as the Sanchez Elementary School, located at 1220 Linda Mar Blvd., Pacifica, California, APN#: 023-281-130, hereinafter referred to as “the Property.”

B. Tenant desires to lease from City a portion of the Property consisting of approximately 4,000 square feet, comprised of a multipurpose room, commonly referred to as a Concert Hall, a kitchen, restrooms and an administrative office, hereinafter referred to as “the Premises,” more particularly described in Exhibit “A”, attached hereto and incorporated herein by reference. A copy of Tenant’s articles of incorporation are attached as Exhibit “B”.

C. City desires to lease the Premises to Tenant pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and the performance of these promises, City and Tenant hereby mutually agree and promise as follows:

#### AGREEMENT

##### **1. LEASE AGREEMENT**

City shall lease the Premises to Tenant and Tenant shall lease the Premises from City, pursuant to the terms of this Agreement.

##### **2. TERM**

A. The term shall commence on January 1, 2021 and shall be for a period of one (1) year (“Initial Term”), with four (4), one year options for renewal of the Initial Term (“Renewal Term”) expiring on December 31, 2025.

B. Tenant is given the option to extend the term on all provisions contained in this Agreement by giving written notice of Tenant’s exercise of the option for renewal (“Option Notice”) to City. For the first Renewal Term (January 1, 2022 through December 31, 2022) the Tenant shall provide the Option Notice to City at least four (4) months prior to expiration of the Initial Term in order to exercise its option for renewal. For any subsequent Renewal Term the Tenant shall provide the Option Notice to City at least six (6) months prior to the expiration of

the Renewal Term in order to exercise its option for renewal. Provided that, if Tenant is in default on the date of giving and Option Notice, the Option Notice shall be totally ineffective and this Agreement shall expire and not renew or if Tenant is in default on the date the Renewal Term is to commence, the Renewal Term shall not commence and this Agreement shall expire at the end of the initial Term. If Tenant fails to give the Option Notice for any Renewal Term in a timely manner, Tenant shall lose the ability to exercise its option for renewal. The City Manager, may, at his or her sole discretion, waive such failure to provide the Option Notice in a timely manner.

### **3. RENT AND REPORTING**

A. Tenant shall pay to City Base Rent for the Premises at the initial rate of Three hundred twenty eight dollars (\$328.00) (“Base Rent”). Base Rent shall be payable commencing on **January 1, 2021**, and on the first day of each calendar month thereafter. On January 1, 2022 (the “Adjustment Date”), and on each anniversary of the Adjustment Date, the Base Rent shall increase by two and one-half percent (2.50%).

B. On January 1, April 1, July 1 and October 1 of each calendar year, Tenant shall pay to City twenty five (25%) of all rents received by Tenant from sublessees for the preceding calendar quarter. For purposes of this provision, the term “rents” means money received by Tenant from sublessees for rental of the Premises. “Rents” does not include money received by Tenant for use of Tenant's personal property, including but not limited to, Tenant's sound system, piano, and sound engineer services. Tenant shall provide City with an accounting of each item of personal property for which Tenant received money for use of Tenant’s personal property and the amount received for the use of said personal property at the same time Tenant submits financial reports to the City pursuant to the requirements of section C.

C. Commencing upon January 1, 2021, Tenant shall submit semi-annual (six months) written financial reports by February 1 and August 1 of each calendar year to the City’s Finance Director in a format designated by the Finance Director. These reports shall include, at a minimum, a balance sheet and income statement, a separate accounting of ticket sales, income from sublessees, money received from sublessees for the use of Tenant’s personal property and costs and status reports of building maintenance expenditures incurred by Tenant and such other information as may be required by the Finance Director. City has the right to inspect, review and audit Tenant’s books and financial documents during City business hours.

D. Tenant shall provide annual written proof by December 31 of each calendar year to City of Tenant’s nonprofit status pursuant to Internal Revenue Code 26 U.S.C. Section 501(c)(3).

E. All payments due under this Agreement shall be made without demand, deduction or offset and shall be paid in cash, check or money order to the City of Pacifica, Attention: Finance Director, 170 Santa Maria Avenue, Pacifica, CA 94044.

### **4. UTILITIES**

Tenant agrees that Tenant shall be responsible for the payment, prior to delinquency, of electricity, water and sewer service utilities (“Utilities”) to the City. The City shall provide the

Tenant with bill(s) for the Utilities every month indicating the amount which Tenant owes for the Utilities, which shall be calculated based upon Tenant's percentage of use of the Property, which has been determined to be 13.8%. City agrees to provide Tenant reasonable notice of the bill(s) prior to the date payment of the Utilities is due. All other utilities obtained directly by Tenant including but not limited to, internet, television cable, and telephone services, shall be Tenant's sole responsibility and shall be paid directly by Tenant to the utility provider.

**5. LATE FEE**

Tenant hereby acknowledges that the late payment by Tenant to City of rent and other sums due hereunder will cause City to incur costs not contemplated in this Agreement. Such costs include, but are not limited to, processing and accounting charges and loss of interest income. In the event Tenant fails to pay to City any payment owing to City within five (5) days of the due date pursuant to this Agreement, a penalty of 10% of the late amount plus interest of 1% per month or fraction thereof shall accrue and shall immediately become due and payable. If Tenant submits a check which is dishonored by a banking institution, tenant shall be obligated to pay a fee of \$25.00 in addition to the late fee prescribed by this paragraph.

**6. USE OF PREMISES**

A. Tenant shall use the Premises exclusively for the purpose of conducting the business of the Tenant, presenting and providing sublessees a venue for concerts, performances and related community activities, and an administrative office, and shall not use or permit the Premises to be used for any other purpose without the prior written consent of the City. "Related community activities" includes, but is not limited to, events hosted by other local non-profit organizations, including churches, community groups, and other arts organizations and private parties and events.

B. Tenant shall have unlimited use of space leased during the term of this agreement to the extent permitted by law.

C. Tenant shall maintain the Premises in a clean, neat, sanitary and orderly condition.

D. City does not guarantee that any particular use of property is permissible under applicable law. Tenant shall assume the burden, risk and expense of confirming that his/her use of the Premises is permitted by existing ordinances and/or the securing of necessary government approvals, variances, use permits, or rezonings.

E. Tenant shall submit to City evidence that any necessary permits and/or licenses have been obtained within thirty (30) days of taking possession of the leased Premises.

F. Use of Premises will also be governed by, and Tenant shall comply with, all applicable federal, state and local laws.

G. At the expiration or termination of this Agreement, Premises shall be surrendered to City in good, clean condition and repair, reasonable wear and tear excepted.

H. The City reserves the right to utilize any portion or all of the multipurpose room for events/occasions on a pre-arranged basis at no cost to the City. The City shall indemnify, defend and hold harmless Tenant, its officers, agents, employees and representatives from any and all claims, lawsuits or actions of every name, kind and description, for injuries to or death of any person, or damage to property of any kind whatsoever arising out of the City's use of the Premises for any City event/occasion.

**7. CONDITION OF PREMISES AT TIME OF OCCUPANCY**

A. Tenant accepts the condition of Premises at the time of occupancy as satisfactorily meeting its occupancy requirements. By entry hereunder, Tenant accepts the leased Premises as being in good and sanitary order, condition and repair. Tenant is fully acquainted with the nature and condition of the premises and the condition of existing improvements. Tenant acknowledges that the Property is known to contain asbestos.

B. City makes no representations or warranties as to the repair or condition of the Premises. Tenant accepts the leased premises in their existing condition as is.

C. It shall be Tenant's responsibility to assure that the Premises is in proper and safe condition for the proposed use.

**8. ASSIGNMENT AND SUBLETTING**

A. Tenant shall not assign this lease or sublet all or any portion of the Premises without prior written consent of the City. Any such assignment or subletting without consent shall be void and, at the option of the City, City may terminate this Agreement.

B. Notwithstanding the above, Tenant may sublet the Premises for concerts, performances and Related Community Activities to sublessees for periods of less than thirty consecutive calendar days, without prior written consent of the City. Sublets of the Premises in excess of thirty (30) consecutive calendar days or assignments of this lease must be approved in advance by the Pacifica City Council.

C. Should the City Council consent to any such assignment or subletting, none of the restrictions of this section shall be waived, but the same shall apply to each successive assignment or subletting hereunder.

D. In the event City Council gives consent and approval to any assignment or subletting, then before such transfer or subletting becomes effective for any purpose, the transferees and assignees must, in writing, assume all the obligations of this Agreement, and agree to be bound by all terms of the Agreement without in any way limiting, releasing, or discharging the original Tenant from any liability under any provisions of this Agreement on account of such assignment or subletting.

**9. ORDINANCES AND STATUTES**

Tenant shall comply with all statutes, ordinances and requirements of all municipal, county, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, occasioned by or affecting the use thereof by Tenant. The commencement or pendency of any county, state or federal court abatement proceeding affecting the use of the Premises shall, at the option of the City, be deemed a breach hereof.

**10. MAINTENANCE AND REPAIRS**

A. Throughout the term of this Agreement, Tenant shall, at Tenants sole cost and expense, maintain the Premises and all improvements in good condition and repair, ordinary wear and tear excepted, and in accordance with all applicable laws, rules, ordinances, orders and regulations of federal, state or local governmental agencies having or claiming jurisdiction and all insurance companies insuring any and all part of the Premises.

B. City shall not be required or obligated to make any changes, alterations; additions, improvements or repairs in, on or about the Premises, or any part thereof, during the term of this Agreement.

**11. CUSTODIAL**

A. Tenant shall make all arrangements for and pay for all custodial work and supplies required to maintain Premises in clean, orderly, and sanitary condition at all times during the term of this Agreement.

B. If Tenant does not maintain Premises in clean, orderly, and sanitary condition, City may, but shall not be obligated to, have the Premises cleaned and charge all costs associated with such cleaning to the Tenant.

C. City shall not be responsible for any loss, inconvenience, annoyance, or damage to Tenant because of such cleaning.

**12. ENTRY AND INSPECTION**

Tenant shall permit City or City's agents to enter upon the Premises upon reasonable notice, for the purpose of inspecting the same, and shall permit City at any time within sixty (60) days prior to the expiration of this Agreement, to place upon the Premises any usual "To Let" or "For Lease" signs, and permit persons desiring to lease the same to inspect the Premises thereafter. City shall have the right to enter the Premises as necessary in the sole discretion of City in connection with this Agreement, or in case of emergency. Except in case of emergency, City shall give Tenant telephone notice at least two hours in advance of exercising City's right to enter. In case of emergency, no notice is required.

**13. INDEMNIFICATION**

Except with respect to claims solely caused by City's active negligence or willful misconduct, Tenant shall indemnify, protect, defend, and hold harmless City and its elected and



appointed officers, officials, employees, volunteers, lenders, agents, and contractors and each of their successors and assigns from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the Term directly or indirectly as a result of or in connection with (i) any default in the performance or the performance of any obligation on Tenant's part to be performed under the terms of this Lease; (ii) use of the Premises or the Property by Tenant or any of its sublessees, including the conduct of Tenant's or any sublessees' business or any activity, work or things done, permitted or suffered by Tenant or any of its sublessees in or about the Premises, common areas or other portions of the Property; (iii) any act, error or omission of Tenant or of any sublessee, invitee, licensee or guest of Tenant, in or about the Premises, common areas or other portions of the Property; (iv) loss of, injury, or damage to or destruction of property caused by Tenant or any of its sublessees (including loss of use resulting from that loss, injury, damage or destruction); (v) all resulting economic losses, consequential and/or exemplary damages; and (vi) any subleases, assignments and related activities, (all of the foregoing, collectively, the "Indemnification"). Tenant shall provide such Indemnification by and through counsel reasonably acceptable to City. The obligations of Tenant under this Section shall survive the expiration or sooner termination of this Lease.

#### **14. INSURANCE**

A. Tenant agrees to provide insurance coverage as follows:

1. Comprehensive General Liability Insurance with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence and a one million dollar (\$1,000,000) aggregate.

2. Property damage liability of not less than one hundred thousand dollars (\$100,000) on Property owned by Tenant.

3. City, its officers and employees shall be named as an additional insured on the policy referenced in Subparagraph 1. The policy shall contain language stating that it is primary and noncontributing with any policy carried by City. The policy must be issued by an insurance company authorized to do business in the State of California which has a financial rating of at least A: VII or better as rated in the most recent edition of Best's Insurance Reports.

B. Tenant is required to maintain insurance on programs and events solely sponsored by the Tenant offered on the Premises as follows:

- \$1 million combined single limit coverage applying to Bodily and Personal Injury Liability and Property Damage Liability.
- Broad Form Property Damage, including Host Liquor Liability if any alcoholic beverages are to be served or handled.
- The City of Pacifica, its officers and employees shall be added as an Additional Insured.

- Coverage shall be Primary, stating that no other protection effected by the City of Pacifica will be called upon to contribute to loss under this coverage.
- Tenant shall require any sublessee to obtain the above-referenced insurance.

C. If Tenant shall fail to procure and maintain any of the above described insurance coverage, City may, but shall not be required to, procure and maintain same, but at the expense of Tenant. Tenant shall deliver to City, prior to right of entry, copies of policies of liability and property damage insurance required herein or certificates evidencing the existence and amount of such insurance with loss payable clauses satisfactory to City. No policy shall be cancelable or subject to reduction of coverage except upon thirty (30) days prior written notice to City.

D. If Tenant has employees, Tenant must insure themselves against liability for workers' compensation pursuant to California Labor Code §§3700, et seq. Tenant shall at all times upon demand of CITY furnish proof that workers' compensation insurance is being maintained in force and effect in accordance with the California Labor Code.

E. To the maximum extent permitted by insurance policies which may be owned by City or Tenant, and City, for the benefit of each other, may waive any and all rights of subrogation which might otherwise exist.

**15. WASTE/PUBLIC NUISANCE**

A. Tenant shall not commit or suffer to be committed any waste upon the leased Premises or any public or private nuisance. Private nuisance includes, but not limited to, lack of control over any person or persons who are on the leased Premises because of Tenant or Tenant's business.

B. Tenant shall refrain from dumping, disposal, reduction, incineration or other burning of any trash, papers, refuse or garbage of any kind in or about the Premises and parking areas except in designated trash areas.

**16. TOXIC WASTE**

A. Tenant shall not keep or allow others to keep, or sell, or use any gasoline, distillate or other petroleum products or any other material that is explosive, inflammable, noxious, toxic, caustic or of a radiological nature which may endanger any part of the Premises or its occupants, or that could endanger any part of the premises or occupants, or that could cause any unusual fire, explosion, contamination, or other hazard.

B. This will include prohibition of the use or storage of any other item or substance that is prohibited by the standard form of fire insurance.

C. Tenant shall maintain locked storage facility for all paints and dispose of used paint(s) and/or paint cans in a manner prescribed by San Mateo County.

**17. ABANDONMENT OF PREMISES**

If the Tenant abandons the premises during the term of the lease, or is removed by process of law, any personal property of the Tenant left on the premises may be considered by the City to be abandoned. The term “abandonment” shall have the meaning as set forth in California Civil Code Section 1951.3 or successor legislation.

**18. SIGNS**

Tenant shall not place any sign upon the Premises without City’s prior written consent, and shall not construct any projecting sign or awning without the prior written consent of City. All signage must comply with local ordinances.

**19. DAMAGE TO PERSONAL PROPERTY**

City will not be responsible for loss or damage of personal property of Tenant used or stored on the leased Premises unless such loss or damage is solely and directly caused by wrongful acts of the City, its employees or agents.

**20. MECHANICS’ AND OTHER LIENS**

A. A. Tenant shall not suffer or permit to be enforced against the Premises, or any part thereof, any mechanic’s, material- people’s, contractor’s or subcontractor’s liens arising from or any claim for damage growing out of the work of any construction, repair restoration, replacement, or improvement, or any other claim or demand howsoever the same may arise, but Tenant shall pay or cause to be paid all of such liens, claims or demands before any action is brought to enforce the same against the Premises; and Tenant agrees to indemnify and hold City and Premises free and harmless from all liability for any and all such liens, claims and demands together with reasonable attorney’s fees and all costs and expenses in connection therewith.

B. Nothing in this Agreement shall be deemed or construed in any way as constituting the consent or request of City expressed, or implied, by inference or otherwise, to any contractor, subcontractor, laborer or material person for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Premises, or any part thereof. City shall have the right to post and keep posted on the Premises such notices of non-responsibility as City may deem necessary for the protection of City.

C. If Tenant shall in good faith contest the validity of any liens, claims, or demands, then Tenant shall, at its expense, defend itself and City against the same and shall pay and satisfy any adverse judgement that may be rendered thereon before the enforcement thereof against City or the Premises, upon the condition that if City shall require, Tenant shall furnish to City a surety bond satisfactory to City in an amount equal to such contested lien, claim, or demand indemnifying City against liability for the same, and holding the Premises free from the effect of such lien or claim or if City shall request, Tenant shall procure and record a bond freeing the Premises from the effect of such lien or claims or action thereon.

## **21. CONDEMNATION**

If any part of the Premises shall be taken or condemned for public use, and a part thereof remains which is susceptible of occupation hereunder, this Agreement shall, as to the part taken, terminate as of the date the condemnor acquires possession, and thereafter Tenant shall be required to pay such proportion of the rent for the remaining term as the value of the Premises remaining bears to the total value of the Premises at the date of condemnation; provided, however, that Tenant may at his/her option, terminate this Agreement as of the date the condemnor acquired possession. In the event that the demised Premises are condemned in whole, or that such portion is condemned that the remainder is not susceptible for use hereunder this Agreement shall terminate upon the date upon which the condemnor acquires possession. All sums which may be payable on account of any condemnation shall belong to the City, and Tenant shall not be entitled to any part thereof, provided, however, that Tenant shall be entitled to retain any amount awarded to him/her for trade fixtures or moving expenses.

## **22. ALTERATIONS AND IMPROVEMENTS**

A. Tenant shall not make or suffer to be made any alterations additions or improvements to or of the Premises or any part thereof without the written consent of City being first obtained, and any alterations, additions or improvements to or of the Premises, including, but not limited to, wall covering, paneling and built-in cabinet work, but excepting moveable furniture and equipment, shall on the expiration or termination of this Agreement become a part of the Premises and belong to the City, and shall be surrendered with the Premises.

B. In the event City consents to the making of any alterations, additions or improvements to the Premises by Tenant, the same shall be made by Tenant at Tenant's sole expense, and any contractor or person selected by Tenant to make the same must first be approved by City.

C. Any alterations, improvements, upgrades, repairs, renovations or remodeling, must comply with all municipal, county, state and Federal codes that are in force at the time of the alteration or improvement.

D. The City Manager may, at his or her sole discretion, waive any building permit fees for alterations or improvements made by Tenant.

## **23. DESTRUCTION OF PREMISES**

A. In the event of a partial destruction of the Premises during the term hereof, from any cause, City may, at its sole discretion, elect to repair the same, provided that such repairs can be made within sixty (60) calendar days. If the City makes such an election, Tenant shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the number of days which the 'making of such repairs shall interfere with the business of Tenant on the Premises. If City determines that such repairs cannot be made within said sixty (60) calendar days, City, at its option, may make the same within a reasonable time, and this Agreement shall continue in effect with the rent proportionately abated. In the event that City elects not to make such repairs, this Agreement may be terminated at the option of either party upon thirty calendar days written notice to the other party.

B. In the event that the building in which the demised Premises may be situated is destroyed to an extent of not less than one-third of the replacement costs thereof, City may elect to terminate this Agreement whether the demised Premises be injured or not. A total destruction of the building in which the Premises may be situated shall terminate this Agreement.

## **24. EVENTS OF DEFAULT**

### **A. Default by Tenant**

The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Tenant:

1. The abandonment of the Premises by Tenant.
2. The failure by Tenant to make any payment of rental or utilities, or any other payment, such as late charges or additional rental, required to be made by Tenant hereunder, as and when due.
3. The failure by Tenant to observe or perform any of the terms, covenants or conditions of this Agreement to be observed or performed by Tenant, other than described in Sub-sections (1) and (2) hereinabove, where such failure shall continue for a period of thirty (30) days after written notice thereof by City to Tenant; provided, however, that if the nature of Tenant's default and breach is such that more than thirty (30) days are required for its cure, then Tenant shall not be deemed to be in default and breach if Tenant commences such cure within said thirty (30) day period after the notice and thereafter diligently prosecutes such cure to completion within ninety (90) days.
4. Tenant's loss of non-profit status as defined by Internal Revenue Code 26 U.S.C. Section 501(c)(3).
5. Tenant ceases to be an active status non-profit California corporation in good standing.
6. Any of the following: A general assignment by Tenant for the benefit of Tenant's creditors; any voluntary filing, petition, or application by Tenant under any law relating to insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise; or the dispossession of Tenant from the Premises (other than by the City) by process of law or otherwise.
7. The appointment of a trustee or receiver to take possession of all or substantially all of Tenant's assets; or the attachment, execution or other judicial seizure of all or substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Agreement, unless the appointment or attachment, execution, or seizure is discharged within thirty (30) days; or the involuntary filing against Tenant of
  - a. A petition to have Tenant declared bankrupt, or

b. A petition for reorganization or arrangement of Tenant under any law relating to insolvency or bankruptcy, unless, in the case of any involuntary filing, it is dismissed within sixty (60) days.

B. Remedies of City on Tenant Default

Upon the event of Tenant default as described in subparagraph (A), City shall have the following remedies, in addition to all other rights and remedies provided by law to which City may resort cumulatively, or in the alternative.

1. City shall be entitled to keep this Agreement in full force and effect (whether or not Tenant shall have abandoned the Premises) and to enforce all of its rights and remedies under this Agreement, including the right to recover rent and other sums as they become due, plus default interest at the maximum rate allowed by law from the due date of each installment or rent or other sum until paid.

2. In the event of any breach of this Agreement by Tenant, the City, besides other right and remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the Premises. Such property may be moved and stored in a public warehouse or elsewhere at the cost of, and for the account of Tenant. Should City elect to re-enter or should it take possession pursuant to legal proceedings or any notice provided by law, it may either terminate this Agreement or may from time to time, without terminating this Agreement relet said Premises or any part thereof, for such term or terms (which may be for a term extending beyond the term of this Agreement) and at such rental or rentals and upon such other terms and conditions as City in its sole discretion may deem advisable with the right to alter or repair the Premises upon such reletting. In such event, Tenant shall be immediately liable to pay to City, in addition to any other amounts due hereunder:

a. the cost and expense of such reletting and such alterations or repairs, and any amount by which the rent reserved herein for the period of such reletting, but not beyond the term hereof, exceeds the amount agreed to be paid as rent for such period; or

b. at the option of the City, rents received by City from such reletting shall be applied first to the repayment of indebtedness other than rent due hereunder, second to costs and expenses of reletting and alterations or repairs, and third to the payment of rent due and unpaid hereunder, and the residue, if any, shall be held by City and applied in payment of future rent as the same may become due and payable. Tenant shall be credited only with rent actually received by City. Tenant shall, in such event, pay any deficiency between the amount due from Tenant to City and the amount credited.

3. No such re-entry or taking possession by City shall be construed as an election to terminate this Agreement unless written notice of such intention is given, or unless termination be decreed by a court of competent jurisdiction.

4. City may elect to terminate this Agreement on account of the breach by giving Tenant thirty days written notice of termination. Should City at any time terminate this

Agreement for any breach, in addition to any other remedy it may have, it may recover from Tenant all damages it may incur by reason of such breach, including the cost of recovering the Premises, and including the worth at the time of such termination or at the time of an award if suit be instituted to enforce this provision, of the amount by which the unpaid rent for the balance of the term exceeds the amount of the rental loss for the balance of the term which the Tenant proves could be reasonably avoided.

5. City shall have all other remedies available in law or equity.

C. Default by City

City shall be in material default and breach of this Agreement if it fails or refuses to perform any of the terms, covenants or conditions of this Agreement that it is obligated to perform if the failure to perform is not cured within thirty (30) days after written notice of the default and breach has been given to City by Tenant; provided, however, that if the nature of the default and breach of City is such that more than thirty (30) days are reasonably required or its cure, the City shall not be deemed in default and breach if City commences such cure within thirty (30) days after the notice and thereafter diligently prosecutes such cure to completion within ninety (90) days.

D. Tenant's Remedies described in subparagraph (C)

In the event of any such material default and breach by City, Tenant may at any time thereafter:

1. Terminate this Agreement upon thirty calendar days written notice to City and vacate the Premises on the date of termination; and/or
2. Pursue any other remedy now or hereafter available to Tenant under the applicable laws and judicial decisions.

E. California Law Notice Requirements

The notice requirements set forth in this Section modify and supersede the notice requirements of the unlawful detainer statutes of California.

## 25. GENERAL PROVISIONS

A. Any provision of this Agreement which shall prove to be invalid, void, illegal, or unenforceable shall in no way affect, impair or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

B. This Agreement and the obligation of Tenant hereunder shall not be affected or impaired because City is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of City.

C. This Agreement contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Agreement; and no prior agreements or understanding pertaining to any such matters shall be in effect for any purpose. This Agreement supersedes any prior lease or agreement. No provision of this Agreement may be amended or added to except by an Agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall not be in effect or be binding on any party until fully executed by both parties hereto.

D. In the event of any sale or transfer of the Premises or the Property, City shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Agreement arising out of any act, occurrence or omission occurring after the consummation of such sale or transfer; and the purchaser or transferee, at such sale or transfer or any subsequent sale or transfer of the Premises shall be deemed, without any further Agreement between the parties or their successors in interest or between the parties and any such purchaser or transferee, to have assumed and agreed to carry out any and all of the covenants and obligations of City under this Agreement.

E. No use shall be made or permitted of the Premises, or any part thereof, nor any acts done, which will violate, make imperative, or increase the existing rate of any insurance policy at any time held by or in any way for the benefit of City pursuant to any provision of this Agreement.

F. Smoking is prohibited on the Premises.

G. Tenant shall not, in any activity conducted on the leased Premises, or in any other manner, discriminate against any person on the grounds of race, color, religion, age, sex, sexual orientation, or national origin. Failure to comply with this provision shall be deemed a breach of this Agreement.

H. Campers, boats, mobile homes, recreational vehicles, inoperable vehicles or unlicensed or unregistered vehicles may not be parked on the Property for more than three (3) consecutive days.

## **26. TERMINATION BY CITY OR TENANT**

A. Upon the expiration or termination of this Agreement, Tenant shall, at Tenant's sole expense, remove any moveable equipment, furnishings or personal property owned by the Tenant, and Tenant shall, forthwith and with all due diligence, at its sole expense repair any damage to the Premises caused by such removal. If the items are not removed within ten (10) calendar days of the expiration or termination of the Agreement, they shall be deemed abandoned, and shall become property of the City. The City may remove them at Tenant's expense and dispose of them at City's sole discretion.

B. City shall have the right to terminate this Agreement upon ninety (90) calendar days' prior written notice to Tenant if City, at City's sole discretion, elects to sell or transfer any or all of the Property.



C. City shall have the right to terminate this Agreement upon ninety (90) calendar days' prior written notice to Tenant if City, at City's sole discretion, elects to use the Premises for other governmental or Naylor Act purposes.

D. Tenant may seek a termination of this Agreement at any time during the Term or Renewal Term of this Agreement by providing City ninety (90) calendar days' prior written notice and providing City written documentation showing that the Lease has become a demonstrable financial burden to the Tenant. If the City Manager, in his or her sole discretion, determines that the Lease has become a demonstrable financial burden, the City and Tenant may agree to negotiate an alternative rent structure or termination of this Agreement. Prior to any such negotiation or termination, Tenant must pay all outstanding amounts owed pursuant to this Agreement to City.

**27. ATTORNEY'S FEES**

In case suit should be brought for recovery of the Premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the Premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorneys' fees. The term "prevailing party" shall mean the party who received substantially the relief requested, whether by settlement, dismissal, summary judgment, judgment or otherwise. In case of dispute, venue shall reside in the court of appropriate jurisdiction in San Mateo County, California. This Agreement shall be interpreted in accordance with California Law.

**28. WAIVER**

The waiver by City or Tenant of any breach of any covenant or condition contained herein shall not be deemed to be a waiver of such covenant or condition of any subsequent acceptance or payment of rent hereunder by either party shall not be deemed to be a waiver of any preceding breach by either party of any covenant or condition of this Agreement.

**29. NOTICES**

Any notice which either party may or is required to give, shall be given by mailing the same, postage prepaid, to Tenant at the Premises, or City at the address shown below, or at such other places as may be designated by the parties from time to time. Notice shall be deemed received forty-eight hours after it is mailed.

IF TO CITY:

City Manager  
City of Pacifica  
170 Santa Maria Avenue  
Pacifica, CA 94044  
Fax: (650) 359-6038, with a copy to the Director of Parks,

Beaches and Recreation

IF TO TENANT:

President  
Pacifica Performances  
1220 Linda Mar Blvd.  
Pacifica, CA 94044

**30. TAXES**

Tenant shall pay or cause to be paid, before delinquency, any and all taxes and assessments, or other charges of any description levied or assessed on or against the Premises Leased by Tenant and which becomes payable during the term of this Agreement. Tenant understands and agrees that this Agreement may create a possessory interest; such possessory interest may be subject to property taxation if created, and that Tenant may be subject to the payment of property taxes levied on such interest. In the event property leased by Tenant is taxed, it is agreed that Tenant shall pay such tax.

**31. TIME**

Time is hereby expressly declared to be of the essence of this Agreement.

**32. HEIRS, ASSIGNS, SUCCESSORS**

This Agreement is binding upon and inures to the benefit of the heirs, assigns and successors in interest to the parties.

**33. AUTHORIZATION**

The person or persons signing on behalf of Tenant warrant and represent that he, she or they are authorized to sign the Agreement on behalf of Tenant and to bind Tenant to the terms of this Agreement. The person or persons signing on behalf of City warrant and represent that he, she or they are authorized to sign the Agreement on behalf of City and to bind City to the terms of this Agreement.

\*\*\*\*\*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

City of Pacifica

**Pacifica Performances**

By: \_\_\_\_\_  
Kevin Woodhouse, City Manager

By: Thomas J O'Toole  
Thomas J O'Toole, Board Chair

ATTEST:

By: \_\_\_\_\_

Sarah Coffey, City Clerk

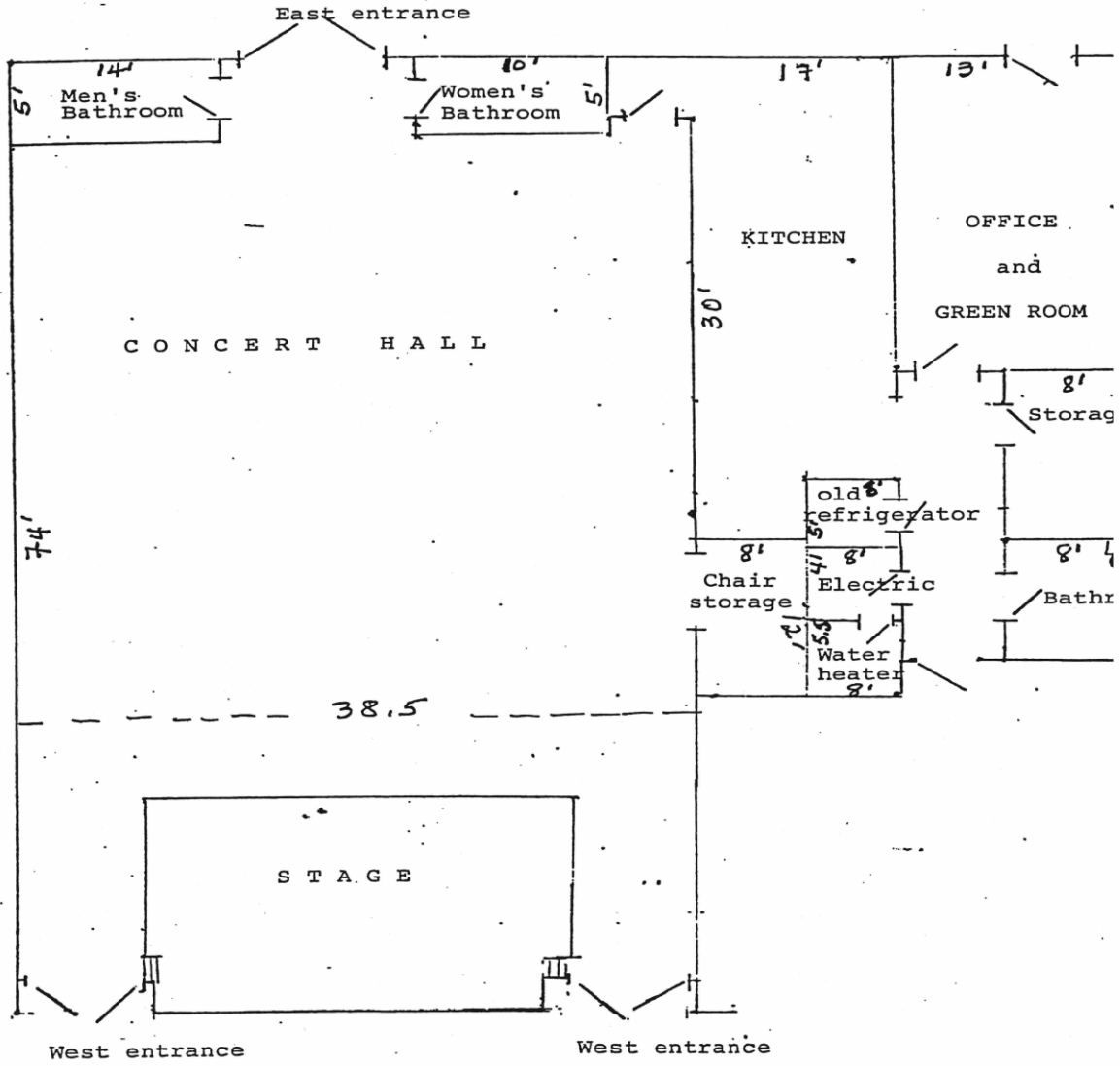
Approved as to form:

By: \_\_\_\_\_  
Michelle Marchetta Kenyon, City Attorney

EXHIBIT A

SANCHEZ CONCERT HALL

1220 LINDA MAR BOULEVARD PACIFICA, CA 94044











# For Signature: ResolutionNo16-2021\_PacificaPerformancesLeaseAgreement-Approved

Final Audit Report

2021-03-29

Created:	2021-03-29
By:	Sarah Coffey (coffeys@ci.pacifica.ca.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAhLgSsBRQqZKnNB3L95mrJdMnVVspRUh

## "For Signature: ResolutionNo16-2021\_PacificaPerformancesLeaseAgreement-Approved" History

-  Document created by Sarah Coffey (coffeys@ci.pacifica.ca.us)  
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