

NOW, THEREFORE, the City and Tenant, in consideration of the terms and conditions contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, hereby agree to amend the original lease agreement and the first amendment as follows:

1.

With the exceptions of Section 8.0 entitled "USE BY THE CITY OF DALLAS" and Section 34.0 entitled "REMEDIES FOR ANY VIOLATIONS" of the original lease agreement, the original lease agreement and the first amendment are hereby amended to change the term "Park and Recreation Board" wherever it appears to read and provide "Office of Cultural Affairs."

2.

The original lease agreement and the first amendment are hereby amended to change the terms "building" or "building and other improvements" whenever it appears to read and provide "buildings" or "buildings and other improvements."

3.

The description of the premises leased to the Tenant contained in Section 1.0 entitled "LEASE" of the original lease agreement, as amended by the first amendment, is hereby further amended by adding the following provision to Section 1.0:

"4. The term "leased premises" or "premises" is deemed to also include the office and rehearsal facility, known as the Annex Building, located on the acreage leased by the Tenant shown on Exhibit "A (Revised)."

4.

Section 7.0 entitled "OPERATION OF THE CENTER" of the original lease agreement is hereby amended to read and provide "OPERATION OF THE CENTER AND ANNEX BUILDING."

Subsection 7.0.(1) of the original lease agreement is hereby amended to read and provide as follows:

"1. Throughout the term of this lease and any extension thereof, Tenant shall operate the Center and Annex Building for the purpose set forth in Section 6.0."

5.

Section 8.0 entitled "USE BY THE CITY OF DALLAS" of the original lease agreement is hereby amended to read and provide as follows:

"Notwithstanding the other terms hereof, the City shall have the right, authority, and power to use and occupy the premises and/or to cause or permit others to use and occupy the premises, including but not limited to the Center and the Annex Building, a maximum of twice a year for a reasonable length of time per use, free of charge, and

subject to availability. The City shall give the Tenant a minimum of thirty (30) days advance notice before using such premises. Such notice shall be in writing and describe the area, buildings, or improvements of the premises desired to be used and the time of such usage by or under the City. Prior to giving such notice the City shall contact the Tenant to establish the dates that the premises will be available."

6.

Section 14.0 entitled "CHILDREN'S THEATER" of the original lease agreement is hereby deleted in its entirety.

7.

Section 15.0 entitled "INSURANCE" of the original lease agreement is hereby amended to read and provide as follows:

- "1. The City shall maintain until the expiration or termination of this lease or any renewal hereof, all-risk property insurance on the building. Tenant shall cooperate with City's insurer on matters including, but not limited to, facility inspections and loss adjustments.
2. Subject to Tenant's right to maintain reasonable deductibles in such amounts as are approved by City, Tenant shall obtain and maintain in full force and effect for the duration of this lease, and any extension hereof, at Tenant's sole expense, insurance coverage written by companies approved by

the State of Texas and acceptable to City, in the following type(s) and amount(s):

<u>TYPE</u>	<u>AMOUNT</u>
I. Workers' Compensation and Employers Liability	Statutory \$100,000/500,000/100,000
II. Commercial General (public) Liability insurance including coverage for the following:	Combined single limit for bodily injury and property damage of \$6,000,000 per occurrence or its equivalent
a. Premises operations	
b. Independent contractors	
c. Products/completed operations	
d. Personal and advertising injury liability	
e. Contractual liability	
f. Medical payments	
g. Fire legal liability	\$250,000
h. City's property in Tenant's care, custody, or control	
i. Endorsement CG2504; Amendment - Aggregate limits of insurance (per location)	
III. Comprehensive Automobile Liability insurance, including coverage for loading and unloading hazards, for:	Combined single limit for bodily injury and property damage of \$600,000 per occurrence or its equivalent
a. Owned/leased vehicles	
b. Non-owned vehicles	
c. Hired vehicles	
IV. Liquor Liability insurance	\$1,000,000 each common cause
V. If valet parking is provided by the Tenant:	
Garagekeepers Legal Liability	\$100,000 limit
VI. Property Insurance on an All- Risk basis, to include coverage of all Tenants' contents and improvements and Betterments (and non-owned property, if required by agreement)	100% of the defined property's replacement cost

ADDITIONAL POLICY ENDORSEMENTS

City shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by City, Tenant shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.

REQUIRED PROVISIONS:

Tenant agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain the following required provisions:

- a. Name the City of Dallas and its officers, employees, and elected representatives as additional insureds, (as the interests of each insured may appear) as to all applicable coverage;
- b. Provide for 45 days notice to City for cancellation, nonrenewal, or material change;
- c. Provide for an endorsement that the "other insurance" clause shall not apply to the City of Dallas where City is an additional insured shown on the policy;

- d. Provide for notice to City at the two addresses shown below by registered mail;
- e. Tenant agrees to waive subrogation against the City of Dallas, its officers and employees for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance;
- f. Provide that all provisions of this contract concerning liability, duty, and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

NOTICES

Tenant shall notify City in the event of any change in coverage and shall give such notices not less than 45 days prior to the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE; all such insurance notices shall be given to City at the following addresses:

Director
Office of Cultural Affairs
Majestic Theater
1925 Elm St., Ste 500
Dallas, Texas 75201

Director of Risk Management
City of Dallas
1500 Marilla, 1C-North
Dallas, Texas 75201

Approval, disapproval, or failure to act by the City regarding the agreed upon amount of insurance supplied by the Tenant shall not relieve the Tenant of liability for damages and accident as set forth in the contract documents. The bankruptcy insolvency, or denial of liability by the insurance company shall not exonerate the Tenant from liability.

Within ten days of execution of this second amendment to the original lease agreement, the Tenant shall furnish a completed Insurance Certificate to the Directors' offices, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT OR AGREEMENT UNTIL SUCH CERTIFICATE SHALL HAVE BEEN DELIVERED TO THE DIRECTOR'S OFFICE, and no officer or employee shall have authority to waive this requirement.

City reserves the right to review the insurance requirements of this section during the effective period of the contract and to adjust insurance coverages and their limits when deemed necessary and prudent by City's Office of Risk Management based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Tenant."

8.

Section 18.0 entitled "UTILITY SERVICES" of the original lease agreement is hereby amended to read and provide as follows:

"City through its Office of Cultural Affairs shall pay the cost of water and electricity to the leased premises. Tenant shall pay the cost of gas and any other utility services to the leased premises. In the event the City Council adopts a change in policy related to the responsibility for payment of electrical service at City-owned cultural facilities, this section shall be modified in conformance with the adopted policy."

9.

Section 19.0 entitled "INDEMNIFICATION AND HOLD HARMLESS" of the original lease agreement is hereby amended to read and provide as follows:

"INDEMNITY

Tenant agrees to defend, indemnify and hold City, its officers, agents, and employees harmless against any and all claims, lawsuits, judgements, costs, and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought that may arise out of or be occasioned by Tenant's breach of any of the terms or provisions of this Lease Agreement, as amended, or by any other negligent or strictly liable act or omission of Tenant, its officers, agents, employees, or subcontractors, in the performance of this Lease Agreement, as amended; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of City, its officers, agents, employees, or separate contractors. In the event of joint

and concurrent negligence of the Tenant and the City, responsibility, if any, shall be apportioned comparatively in accordance with the law of the State of Texas, without waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Notwithstanding the above indemnifications, the Tenant shall give the City notice of any matter covered hereby and it shall forward to the City every demand, notice, summons, or other process received in any claim or legal proceedings covered hereby."

10.

Section 29.0 entitled "NOTICES" of the original lease agreement, as amended by the first amendment, is hereby further amended to reflect that all notices, communications and documents to be given to the parties shall be mailed or delivered at the address shown below:

City of Dallas: Office of Cultural Affairs
City of Dallas
1925 Elm Street
Dallas, Texas 75201
Attn: Director

Tenant: Dallas Theater Center
3636 Turtle Creek Boulevard
Dallas, Texas 75219
Attn: ~~Managing Director~~
Chairman, Facilities *RNO*

and

Mr. Calvin Chaney, Attorney at Law
c/o Dallas Theater Center
~~Lomas Financial Group~~ 3636 Turtle Creek Blvd.
~~2001 Bryan Tower~~
~~35th Floor~~ Dallas, TX 75219
~~Dallas, Texas 75201~~

11.

Section 34.0 entitled "REMEDIES FOR ANY VIOLATIONS" of the original lease agreement is hereby amended to read and provide as follows:

"In the event of default hereunder, the Office of Cultural Affairs shall direct in writing that such violation be corrected or abated, which order shall be complied with by Tenant within the time specified therein. Failure or refusal of Tenant to comply within the time period established by any such order shall authorize the City to give immediate notice of cancellation of this lease, as amended, or any extension thereto and shall authorize the Office of Cultural Affairs to assume full control of the operation and direction of the leased premises."

12.

Section 42.0 entitled "PARKING" of the original lease agreement, as amended by the first amendment, is hereby further amended to read and provide as follows:

"Notwithstanding any other provisions of this lease agreement, the City of Dallas Park Department shall retain control of appurtenant parking areas associated with the leased premises; however, Tenant shall have primary right of use and the City of

Dallas Park Department will coordinate thirty (30) days in advance with Tenant for any special uses of the parking area to accommodate Park Department activities."

13.

All of the terms, provisions, conditions, and obligations of the original lease agreement between the City and Tenant, dated September 26, 1973 and of the first amendment to the original lease agreement between the City and Tenant, dated November 17, 1982, hereinabove amended, and the original lease agreement, along with the first amendment and this Second Amendment thereto, shall hereinafter be construed together as a single contractual agreement.

EXECUTED this the 27th day of March, 1991.

ATTEST:

CITY OF DALLAS
JAN HART, City Manager

[Signature]
ROBERT T. SLOAN, City Secretary

BY [Signature]
Assistant City Manager

APPROVED AS TO FORM:
SAM LINDSAY, Acting City Attorney

BY [Signature]
Assistant City Attorney
Submitted to City Attorney

ATTEST:

DALLAS THEATER CENTER

[Signature]
Secretary
3315E

[Signature]
President
TK

DALLAS THEATER CENTER - AMENDMENT TO LEASE/CONTRACT

WHEREAS, the City of Dallas (City) and the Dallas Theater Center (DTC) heretofore have entered into a lease agreement, dated September 26, 1973, relating to the operation of the Dallas Theater Center facility (Kalita Humphries), located at 3636 Turtle Creek Boulevard on land owned by the City; and

WHEREAS, the City and DTC entered into a First Amendment to the lease agreement, dated November 17, 1982 (82-4006), pursuant to which the parties agreed to a renewal option of an additional term of twenty (20) years, under the same terms, conditions, and covenants contained in the original agreement; and

WHEREAS, on December 11, 1985, the City passed a resolution entitled "Cultural Policy and Program" pursuant to which the City established a uniform policy with regard to the support of cultural institutions in the City; and

WHEREAS, on April 12, 1989, the City passed Ordinance #20266, pursuant to which the City established the Office of Cultural Affairs (OCA) and empowered the OCA to perform many of the duties previously performed by the Park and Recreation Board with regard to the DTC; and

WHEREAS, on October 24, 1990, pursuant to Resolution 90-3410, the DTC signed a Cultural Services Contract agreeing to provide certain specified services to the City, and the amount of \$126,827 was provided by the City to purchase said services in fiscal year 1990-91; and

WHEREAS, in light of the above circumstances, the City and DTC desire to further amend the lease for the purposes of 1) reflecting changes in administrative responsibility for the lease, 2) adding the recently constructed Heidt Office/Rehearsal Building to the facilities covered by the lease, 3) allowing the City through the OCA to pay the DTC's electric utilities costs, and (4) effecting other necessary changes to the agreement; and

WHEREAS, the City and DTC also desire to amend the DTC's 1990-91 Cultural Services Contract to reduce the total contract amount from \$126,827.00 to \$76,827.00, with the remaining \$50,000.00 to be used by the City to pay the DTC's electric utility costs for the remainder of the 1990-91 fiscal year. Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1: That the lease agreement dated September 26, 1973, and amended on November 17, 1982, be further amended to 1) reflect changes in administrative responsibility for the lease from the Park and Recreation Board to the Office of Cultural Affairs, 2) include the Heidt Office/Rehearsal Building, and 3) provide for payment of DTC electric utilities costs by the City through the Office of Cultural Affairs.

APPROVED _____ APPROVED _____ APPROVED _____
HEAD OF DEPARTMENT DIRECTOR OF FINANCE CITY MANAGER

March 27, 1991


SECTION 2: That the 1990-91 Cultural Services Contract between the City and DTC be amended to reduce the total contract amount from \$126,827 to \$76,827, and that the City use the remaining \$50,000 to pay electric utility costs for the DTC.

SECTION 3: That the City Manager be authorized to execute the lease amendment and contract amendment after approval as to form by the City Attorney.

SECTION 4: That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

**APPROVED BY
CITY COUNCIL**

MAR 27 1991


City Secretary

APPROVED


HEAD OF DEPARTMENT

APPROVED


DIRECTOR OF FINANCE

APPROVED

CITY MANAGER

THE STATE OF TEXAS)
)
COUNTY OF DALLAS)

RECEIVED
1993 APR 30 PM 2:20
CITY SECRETARY
DALLAS TEXAS
SECOND AMENDMENT TO LEASE AGREEMENT

THIS AMENDMENT to that certain Lease Agreement dated September 26, 1973, by and between the CITY OF DALLAS, a municipal corporation, then acting by and through its Park and Recreation Board and now acting by and through its Office of Cultural Affairs, herein sometimes referred to as "City", and the DALLAS THEATER CENTER, a corporation organized under the Texas Non-Profit Corporation Act, herein sometimes referred to as "Tenant."

W I T N E S S E T H:

10/7/91

WHEREAS, the City entered into a lease agreement dated September 26, 1973, with Tenant (hereinafter called "original lease agreement") to lease certain land and improvements to the Dallas Theater Center for the purpose of operating a theater center and thereafter executed the First Amendment to the original lease agreement (hereinafter called "first amendment") on November 17, 1982; and

WHEREAS, the City and Tenant desire to amend the original lease agreement and the first amendment, which are construed together as a single contractual agreement, as specifically provided herein;

NOW, THEREFORE, the City and Tenant, in consideration of the terms and conditions contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, hereby agree to amend the original lease agreement and the first amendment as follows:

1.

With the exceptions of Section 8.0 entitled "USE BY THE CITY OF DALLAS" and Section 34.0 entitled "REMEDIES FOR ANY VIOLATIONS" of the original lease agreement, the original lease agreement and the first amendment are hereby amended to change the term "Park and Recreation Board" wherever it appears to read and provide "Office of Cultural Affairs."

2.

The original lease agreement and the first amendment are hereby amended to change the terms "building" or "building and other improvements" whenever it appears to read and provide "buildings" or "buildings and other improvements."

3.

The description of the premises leased to the Tenant contained in Section 1.0 entitled "LEASE" of the original lease agreement, as amended by the first amendment, is hereby further amended by adding the following provision to Section 1.0:

"4. The term "leased premises" or "premises" is deemed to also include the office and rehearsal facility, known as the Annex Building, located on the acreage leased by the Tenant shown on Exhibit "A (Revised)."

4.

Section 7.0 entitled "OPERATION OF THE CENTER" of the original lease agreement is hereby amended to read and provide "OPERATION OF THE CENTER AND ANNEX BUILDING."

Subsection 7.0.(1) of the original lease agreement is hereby amended to read and provide as follows:

"1. Throughout the term of this lease and any extension thereof, Tenant shall operate the Center and Annex Building for the purpose set forth in Section 6.0."

5.

Section 8.0 entitled "USE BY THE CITY OF DALLAS" of the original lease agreement is hereby amended to read and provide as follows:

"Notwithstanding the other terms hereof, the City shall have the right, authority, and power to use and occupy the premises and/or to cause or permit others to use and occupy the premises, including but not limited to the Center and the Annex Building, a maximum of twice a year for a reasonable length of time per use, free of charge, and

subject to availability. The City shall give the Tenant a minimum of thirty (30) days advance notice before using such premises. Such notice shall be in writing and describe the area, buildings, or improvements of the premises desired to be used and the time of such usage by or under the City. Prior to giving such notice the City shall contact the Tenant to establish the dates that the premises will be available."

6.

Section 14.0 entitled "CHILDREN'S THEATER" of the original lease agreement is hereby deleted in its entirety.

7.

Section 15.0 entitled "INSURANCE" of the original lease agreement is hereby amended to read and provide as follows:

- "1. The City shall maintain until the expiration or termination of this lease or any renewal hereof, all-risk property insurance on the building. Tenant shall cooperate with City's insurer on matters including, but not limited to, facility inspections and loss adjustments.
2. Subject to Tenant's right to maintain reasonable deductibles in such amounts as are approved by City, Tenant shall obtain and maintain in full force and effect for the duration of this lease, and any extension hereof, at Tenant's sole expense, insurance coverage written by companies approved by

the State of Texas and acceptable to City, in the following type(s) and amount(s):

<u>TYPE</u>	<u>AMOUNT</u>
I. Workers' Compensation and Employers Liability	Statutory \$100,000/500,000/100,000
II. Commercial General (public) Liability insurance including coverage for the following:	Combined single limit for bodily injury and property damage of \$6,000,000 per occurrence or its equivalent
a. Premises operations	
b. Independent contractors	
c. Products/completed operations	
d. Personal and advertising injury liability	
e. Contractual liability	
f. Medical payments	
g. Fire legal liability	\$250,000
h. City's property in Tenant's care, custody, or control	
i. Endorsement CG2504; Amendment - Aggregate limits of insurance (per location)	
III. Comprehensive Automobile Liability insurance, including coverage for loading and unloading hazards, for:	Combined single limit for bodily injury and property damage of \$600,000 per occurrence or its equivalent
a. Owned/leased vehicles	
b. Non-owned vehicles	
c. Hired vehicles	
IV. Liquor Liability insurance	\$1,000,000 each common cause
V. If valet parking is provided by the Tenant:	
Garagekeepers Legal Liability	\$100,000 limit
VI. Property Insurance on an All-Risk basis, to include coverage of all Tenants' contents and improvements and Betterments (and non-owned property, if required by agreement)	100% of the defined property's replacement cost

ADDITIONAL POLICY ENDORSEMENTS

City shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by City, Tenant shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.

REQUIRED PROVISIONS:

Tenant agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain the following required provisions:

- a. Name the City of Dallas and its officers, employees, and elected representatives as additional insureds, (as the interests of each insured may appear) as to all applicable coverage;
- b. Provide for 45 days notice to City for cancellation, nonrenewal, or material change;
- c. Provide for an endorsement that the "other insurance" clause shall not apply to the City of Dallas where City is an additional insured shown on the policy;

- d. Provide for notice to City at the two addresses shown below by registered mail;
- e. Tenant agrees to waive subrogation against the City of Dallas, its officers and employees for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance;
- f. Provide that all provisions of this contract concerning liability, duty, and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

NOTICES

Tenant shall notify City in the event of any change in coverage and shall give such notices not less than 45 days prior to the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE; all such insurance notices shall be given to City at the following addresses:

Director
Office of Cultural Affairs
Majestic Theater
1925 Elm St., Ste 500
Dallas, Texas 75201

Director of Risk Management
City of Dallas
1500 Marilla, 1C-North
Dallas, Texas 75201

Approval, disapproval, or failure to act by the City regarding the agreed upon amount of insurance supplied by the Tenant shall not relieve the Tenant of liability for damages and accident as set forth in the contract documents. The bankruptcy insolvency, or denial of liability by the insurance company shall not exonerate the Tenant from liability.

Within ten days of execution of this second amendment to the original lease agreement, the Tenant shall furnish a completed Insurance Certificate to the Directors' offices, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT OR AGREEMENT UNTIL SUCH CERTIFICATE SHALL HAVE BEEN DELIVERED TO THE DIRECTOR'S OFFICE, and no officer or employee shall have authority to waive this requirement.

City reserves the right to review the insurance requirements of this section during the effective period of the contract and to adjust insurance coverages and their limits when deemed necessary and prudent by City's Office of Risk Management based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Tenant."

8.

Section 18.0 entitled "UTILITY SERVICES" of the original lease agreement is hereby amended to read and provide as follows:

"City through its Office of Cultural Affairs shall pay the cost of water and electricity to the leased premises. Tenant shall pay the cost of gas and any other utility services to the leased premises. In the event the City Council adopts a change in policy related to the responsibility for payment of electrical service at City-owned cultural facilities, this section shall be modified in conformance with the adopted policy."

9.

Section 19.0 entitled "INDEMNIFICATION AND HOLD HARMLESS" of the original lease agreement is hereby amended to read and provide as follows:

"INDEMNITY

Tenant agrees to defend, indemnify and hold City, its officers, agents, and employees harmless against any and all claims, lawsuits, judgements, costs, and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought that may arise out of or be occasioned by Tenant's breach of any of the terms or provisions of this Lease Agreement, as amended, or by any other negligent or strictly liable act or omission of Tenant, its officers, agents, employees, or subcontractors, in the performance of this Lease Agreement, as amended; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of City, its officers, agents, employees, or separate contractors. In the event of joint

and concurrent negligence of the Tenant and the City, responsibility, if any, shall be apportioned comparatively in accordance with the law of the State of Texas, without waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Notwithstanding the above indemnifications, the Tenant shall give the City notice of any matter covered hereby and it shall forward to the City every demand, notice, summons, or other process received in any claim or legal proceedings covered hereby."

10.

Section 29.0 entitled "NOTICES" of the original lease agreement, as amended by the first amendment, is hereby further amended to reflect that all notices, communications and documents to be given to the parties shall be mailed or delivered at the address shown below:

City of Dallas: Office of Cultural Affairs
 City of Dallas
 1925 Elm Street
 Dallas, Texas 75201
 Attn: Director

Tenant: Dallas Theater Center
 3636 Turtle Creek Boulevard
 Dallas, Texas 75219
 Attn: ~~Managing Partner~~ *PAB*
 Chairman, FACILITIES

and

Mr. Calvin Chaney, Attorney at Law
 c/o Dallas Theater Center

~~Lomas Financial Group~~
~~2001 Bryan Tower~~
~~35th Floor~~
~~Dallas, Texas 75201~~

3636 Turtle Creek Blvd.
 Dallas, TX 75219

11.

Section 34.0 entitled "REMEDIES FOR ANY VIOLATIONS" of the original lease agreement is hereby amended to read and provide as follows:

"In the event of default hereunder, the Office of Cultural Affairs shall direct in writing that such violation be corrected or abated, which order shall be complied with by Tenant within the time specified therein. Failure or refusal of Tenant to comply within the time period established by any such order shall authorize the City to give immediate notice of cancellation of this lease, as amended, or any extension thereto and shall authorize the Office of Cultural Affairs to assume full control of the operation and direction of the leased premises."

12.

Section 42.0 entitled "PARKING" of the original lease agreement, as amended by the first amendment, is hereby further amended to read and provide as follows:

"Notwithstanding any other provisions of this lease agreement, the City of Dallas Park Department shall retain control of appurtenant parking areas associated with the leased premises; however, Tenant shall have primary right of use and the City of

Dallas Park Department will coordinate thirty (30) days in advance with Tenant for any special uses of the parking area to accommodate Park Department activities."

13.

All of the terms, provisions, conditions, and obligations of the original lease agreement between the City and Tenant, dated September 26, 1973 and of the first amendment to the original lease agreement between the City and Tenant, dated November 17, 1982, hereinabove amended, and the original lease agreement, along with the first amendment and this Second Amendment thereto, shall hereinafter be construed together as a single contractual agreement.

EXECUTED this the 27th day of March, 1991.

ATTEST:

[Signature]
ROBERT T. SLOAN, City Secretary

CITY OF DALLAS
JAN HART, City Manager

BY [Signature]
Assistant City Manager

APPROVED AS TO FORM:
SAM LINDSAY, Acting City Attorney

BY [Signature]
Assistant City Attorney
Submitted to City Attorney [Initials]

ATTEST:

[Signature]
Secretary
3315E

DALLAS THEATER CENTER
[Signature]
President

STATE OF TEXAS
COUNTY OF DALLAS

ADDENDUM TO CULTURAL SERVICES
SUPPLEMENTAL AGREEMENT: DALLAS
THEATER CENTER

WHEREAS, the Dallas Theater Center and the City of Dallas executed a Cultural Services Supplemental Agreement dated October 24, 1990, as authorized by City Council Resolution No. 90-3410, providing for payment by the City of Dallas to the Dallas Theater Center of an amount not to exceed \$126,827.00 in compensation for the provisions of certain specified cultural services as specifically described in said Supplemental Agreement; and

WHEREAS, as evidenced and authorized by City Council Resolution No. 91-1043, approved March 27, 1991, the parties have mutually agreed to the reduction of the Contract amount from \$126,827.00 to the amount of \$76,827.00; NOW THEREFORE,

W I T N E S S E T H

This Addendum to the Cultural Services Supplemental Agreement heretofore made and entered into by and between the City of Dallas, a municipal corporation, hereinafter called "City" and the Dallas Theater Center, hereinafter called "Cultural Agency", shall be as follows:

I.

In accordance with the provisions of City Council Resolution No. 91-1043, approved March 27, 1991, the payment amount specified in Paragraph II of the Cultural Services Supplemental Agreement between the parties executed October 24, 1990, be and is hereby changed by mutual agreement from \$126,827.00 to \$76,827.00. Cultural Agency agrees to refund to City the overpaid amount of \$50,000.00, which City agrees to use for payment of electrical utility costs as provided in Section 2 of City Council Resolution No. 91-1043.

II.

All other terms and conditions of the Cultural Services Supplemental Agreement between the Dallas Theater Center and the City of Dallas executed October 24, 1990, as authorized by the City Council Resolution No. 90-3410, shall remain in full force and effect except to the extent expressly amended herein.

EXECUTED this the 7th day of October, 1991.

Submitted to City Attorney *JMB*

APPROVED AS TO FORM:
ANALESLIE MUNCY
City Attorney

CITY OF DALLAS
JAN HART
City Manager

BY *Galen M Sparks*
Galen M. Sparks
Assistant City Attorney

BY *Luiz H. Junin* 10-7-91
Assistant City Manager

DALLAS THEATER CENTER

BY *Jeff West*
Jeff West, Executive Managing
Director

OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

March 27, 1991

91-1043

Agenda item 45: Authorize second amendment to lease agreement with Dallas Theater Center to reflect changes in administrative responsibility, addition of the Helot Office/Rehearsal Building, payment of electric utilities by the City of Dallas, and deletion of irrelevant provisions; and amendment to Dallas Theater Center's FY 1990-91 Cultural Services Contract to reduce allocation from \$126,827 to \$76,827 and provide the \$50,000 needed by the City to pay Dallas Theater Center's electric utility costs for remainder of 1990-91 fiscal year - Financing: No additional cost consideration to the City

Councilman Lipscomb to approve the amendment with the understanding that the agreement would contain language that would allow the City the right to use facilities covered by the lease "several" times per year, rather than "1-2" times per year as stated in the Agenda Information Sheet on this item.

Motion seconded by Councilman Buerger and unanimously adopted. (Strauss, Box absent when vote taken)

AGENDA INFORMATION SHEET

AGENDA: March 27, 1991

DEPARTMENT: Office of Cultural Affairs

ACM: Levi Davis x-3390

COUNCIL DISTRICTS: All

SUBJECT

Authorize second amendment to lease agreement with Dallas Theater Center to reflect changes in administrative responsibility, addition of the Heldt Office/Rehearsal Building, payment of electric utilities by the City of Dallas, and deletion of irrelevant provisions; and amendment to Dallas Theater Center's FY 1990-91 Cultural Services Contract to reduce allocation from \$126,827 to \$76,827 and provide the \$50,000 needed by City to pay Dallas Theater Center's electric utility costs for remainder of 1990-91 fiscal year.

Financing: No additional cost consideration to the City.

RECOMMENDATION

Approval by the City Council.

BACKGROUND

In September, 1973, the City of Dallas (City) entered into a lease agreement with the Dallas Theater Center (DTC) relating to the operation of the Kalita Humphries Theater Building in William Dean Park. That agreement was first amended on November 17, 1982 (82-4006) reflecting DTC's option to renew the lease for an additional term of twenty (20) years, thereby, extending the lease to September 26, 2013.

On April 12, 1989, the City passed Ordinance #20266, establishing the Office of Cultural Affairs (OCA) and empowering it to perform many of the duties previously performed by the Park and Recreation Board relating to the DTC. The proposed amendment will formally transfer administrative responsibility for the DTC lease agreement from the Park Board to the OCA, and will also add the new City-owned Heldt Office/Rehearsal Building (built with 1982 bond funds) to the facilities covered under the lease. Finally, the amendment will allow the City (through the OCA) to pay electric utility costs for the facilities covered by the lease. Not only is this consistent with other leases/contracts with cultural institutions managing City facilities, but it will result in reduced utilities costs since the City would be eligible to pay a lower rate than has been charged to the DTC.

In addition, the Council will be asked to authorize the amendment of the DTC's FY 1990-91 Cultural Services Contract to reduce the contract amount from \$126,827 to \$76,827. This will provide the \$50,000 needed by the City to pay the DTC's electric utility costs for the remainder of the fiscal year.

In summary, the amendment to the DTC lease would:

- a) Transfer administrative responsibility from Park Board to OCA.
- b) Add new office/rehearsal facility (Heldt Bldg.) to the lease.
- c) Allow City (OCA) to pay electric utilities for facilities covered by lease.
- d) Allow City the right to use facilities 1-2 times per year, free of charge, subject to availability and with minimum 30 days advance notice.
- e) Delete all irrelevant provisions in the current lease.

The amendment to the DTC'S FY 1990-91 Cultural Services Contract would:

Reduce the contract amount from \$126,827 to \$76,827 to provide the \$50,000 needed by City to pay DTC's electric utility bills for remainder of fiscal year.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

Recommendation for Approval

Cultural Affairs Commission - January 17, 1991

No prior City Council action.

BOND ISSUE INFORMATION

N/A

BID INFORMATION

N/A

M/WBE INFORMATION

N/A

ETHNIC COMPOSITION

N/A

ESTIMATED SCHEDULE OF PROJECT

N/A

PRIOR EXPERIENCE WITH AWARDEE

N/A

FISCAL INFORMATION

The 1990-91 Cultural Services Contract between the City and DTC states that \$126,827 will be paid to DTC for certain services. The contract amount will be reduced to \$76,827, with the remaining \$50,000 to be held in the OCA budget and used to pay the DTC's electric utility bills for the remainder of the fiscal year. The number of services to be provided by the DTC through the contract will not change.

In the future, the DTC's total annual allocation from the City will be divided between funds needed for indirect (utilities) costs and direct payment for services as is done with other cultural institutions managing city facilities.

VENDOR/PRODUCT DATA

N/A

March 27, 1991

DALLAS THEATER CENTER - AMENDMENT TO LEASE/CONTRACT

WHEREAS, the City of Dallas (City) and the Dallas Theater Center (DTC) heretofore have entered into a lease agreement, dated September 26, 1973, relating to the operation of the Dallas Theater Center facility (Kalita Humphries), located at 3636 Turtle Creek Boulevard on land owned by the City; and

WHEREAS, the City and DTC entered into a First Amendment to the lease agreement, dated November 17, 1982 (82-4006), pursuant to which the parties agreed to a renewal option of an additional term of twenty (20) years, under the same terms, conditions, and covenants contained in the original agreement; and

WHEREAS, on December 11, 1985, the City passed a resolution entitled "Cultural Policy and Program" pursuant to which the City established a uniform policy with regard to the support of cultural institutions in the City; and

WHEREAS, on April 12, 1989, the City passed Ordinance #20266, pursuant to which the City established the Office of Cultural Affairs (OCA) and empowered the OCA to perform many of the duties previously performed by the Park and Recreation Board with regard to the DTC; and

WHEREAS, on October 24, 1990, pursuant to Resolution 90-3410, the DTC signed a Cultural Services Contract agreeing to provide certain specified services to the City, and the amount of \$126,827 was provided by the City to purchase said services in fiscal year 1990-91; and

WHEREAS, in light of the above circumstances, the City and DTC desire to further amend the lease for the purposes of 1) reflecting changes in administrative responsibility for the lease, 2) adding the recently constructed Heldt Office/Rehearsal Building to the facilities covered by the lease, 3) allowing the City through the OCA to pay the DTC's electric utilities costs, and (4) effecting other necessary changes to the agreement; and

WHEREAS, the City and DTC also desire to amend the DTC's 1990-91 Cultural Services Contract to reduce the total contract amount from \$126,827.00 to \$76,827.00, with the remaining \$50,000.00 to be used by the City to pay the DTC's electric utility costs for the remainder of the 1990-91 fiscal year. Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1: That the lease agreement dated September 26, 1973, and amended on November 17, 1982, be further amended to 1) reflect changes in administrative responsibility for the lease from the Park and Recreation Board to the Office of Cultural Affairs, 2) include the Heldt Office/Rehearsal Building, and 3) provide for payment of DTC electric utilities costs by the City through the Office of Cultural Affairs.

APPROVED _____

HEAD OF DEPARTMENT

APPROVED _____

DIRECTOR OF FINANCE

APPROVED _____

CITY MANAGER

March 27, 1991

SECTION 2: That the 1990-91 Cultural Services Contract between the City and DTC be amended to reduce the total contract amount from \$126,827 to \$76,827, and that the City use the remaining \$50,000 to pay electric utility costs for the DTC.

SECTION 3: That the City Manager be authorized to execute the lease amendment and contract amendment after approval as to form by the City Attorney.

SECTION 4: That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

**APPROVED BY
CITY COUNCIL**

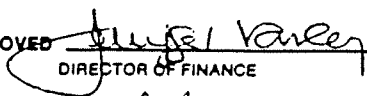
MAR 27 1991


City Secretary

APPROVED


HEAD OF DEPARTMENT

APPROVED


DIRECTOR OF FINANCE

APPROVED

CITY MANAGER