

THE STATE OF TEXAS      § AGREEMENT BETWEEN THE CITY OF DALLAS  
   §  
   AND  
COUNTY OF DALLAS      § THE BLACK ACADEMY OF ARTS & LETTERS, INC.

**THIS AGREEMENT** is made and entered into by and between the CITY OF DALLAS, TEXAS, a Texas municipal corporation ("City") and THE BLACK ACADEMY OF ARTS AND LETTERS, INC. ("Academy"), a nonprofit corporation chartered and existing under the laws of the State of Texas, with its principal place of business at 650 South Griffin (Physical Address: 1309 Canton Street, Dallas, Texas 75201), Dallas, Texas, 75202, and Dallas County, Texas.

**W I T N E S S E T H:**

**WHEREAS**, the City holds title to the building and grounds located at 650 S. Griffin, known as the "Kay Bailey Hutchinson Convention Center" (hereinafter referred to as "KBHCC"), which includes a theater complex suitable to the needs of the Academy; and

**WHEREAS**, the Academy is a nonprofit corporation dedicated to preserving, promoting, perpetuating, fostering and cultivating the arts and letters of African Americans;

**WHEREAS**, the City and Academy desire to jointly enter into an agreement whereby the Academy would continue to be the primary operator in various areas comprising the current KBHCC Theater Complex ("Theater") which to date, based on a prior agreement, has provided a home for the institution's administrative offices, performances, exhibitions, archives, rehearsals, classes, seminars, festivals and workshops in accordance with the institution's mission.

**NOW, THEREFORE**, the City and the Academy, in consideration of the mutual covenants and agreements contained herein, hereby agree as follows:

**SECTION 1: PURPOSE AND PREMISES**

The purpose of this agreement is to facilitate the continuation of the Academy's occupancy, use, and operations in the KBHCC located in Dallas, Dallas County, Texas, under modified occupancy and operating terms to enable the Academy to continue to designate permanent facilities in portions of the KBHCC Theater complex for

the Academy to establish and promote beneficial multi-discipline cultural arts and educational programs in Dallas, Dallas County, Texas. It is agreed by the parties that the Academy shall as its initial premises occupy only those portions of KBHCC Theater Complex depicted on Exhibit A, B and C, attached hereto and incorporated by reference as part of this agreement (hereinafter the "Premises"). Notwithstanding that the theater portion of the KBHCC Theater complex commonly known as the Naomi Bruton Main Stage or KBHCC Theater (as depicted on Exhibit C attached hereto and incorporated by reference as part of this Agreement) shall be part of Premises, Academy's occupancy, use, and operation of the KBHCC Theater is subject to and shall be in accordance with the terms of Section 6 of this Agreement. It is further agreed by the parties that at such time as the City has (i) secured Dallas City Council approval for funding needed to finish out the basement level to expand the Academy's operations; and, (ii) secured relocation premises for KBHCC Management's current basement level located operations, Premises shall be redefined to include that portion of the basement level indicated on Exhibit E, attached hereto and incorporated by reference as part of this agreement (the "Expansion Area"). Upon the occurrence of the (i) and (ii) events described in the foregoing, it being acknowledged that time is of the essence with regard to said events, KBHCC Management shall coordinate with Academy to facilitate the turnover of the Expansion Area whereupon thereafter, unless otherwise provided, anytime and anywhere in this Agreement the term "Premises" is mentioned it shall be deemed to include the Expansion Area.

## **SECTION 2: TERM**

The term of this agreement shall be for a period of thirty years (30) years commencing on the date of execution hereof ("effective date"), subject to renewal or earlier termination as herein provided ("Term"). The period beginning on the effective date and continuing for twelve months, and each twelve month period thereafter during the Term shall constitute a Term year ("Term Year").

## **SECTION 3: RENEWAL OPTION**

The Academy shall have two (2) options to extend the Lease Term, each for an additional five (5) year period from the date upon which the Lease Term would otherwise expire, subject to the approval of and authorization by the Dallas City Council and provided Academy shall not then be in default of any material provision in this agreement beyond any

applicable grace or notice periods when Academy elects to exercise its option and at the beginning date of the extension of the term for which such notice is given. The Academy will provide the City at least 120 days but not more than 360 days' notice of its intent to exercise the renewal option(s). Unless otherwise agreed to by the parties in writing or provided in this Agreement, all the then-current conditions and covenants of the Agreement shall remain in full force and effect during any extension period.

#### **SECTION 4: TERMINATION FOR CONVENIENCE**

City may, at its option and without prejudice to any other remedy it may be entitled at law or in equity, or elsewhere under this agreement, terminate this agreement, in whole or in part for cause or for convenience of the City by giving at least 180 days prior written notice thereof to Academy. Academy shall not, however, be entitled to lost or anticipated profits should City choose to exercise its option to terminate.

#### **SECTION 5: GROSS RENT**

- A. **Gross Rent:** Commencing on the effective date, Academy agrees to pay City an annual gross rental rate of \$135,000, payable monthly in equal installments of \$11,250, for (i) the use of the KBHCC Theater (only that area defined in Exhibits C), for public performances reserved for such use in accordance with Section 6 of this Agreement; and for (ii) the use of those portions of the KBHCC Theater Complex areas depicted on Exhibits A & B. for administrative offices, rehearsal space, exhibition space, archives spaces, restaurant space (Muse Café), gift and costume shops and an educational and cultural development training center. The Academy acknowledges and agrees that the rent payment of the \$135,000 does not (i) create any rights of occupancy in the KBHCC Theater (area defined in Exhibits C) or the Expansion Area; nor does it (ii) create any obligation on the City or KBHCC Management to provide and pay for staffing or temporary equipment for Academy events. The \$135,000 payment for rent does however include all electrical utility cost and those relating to heating and cooling. And, the parties also agree that annually, \$20,000 of the gross fixed rents received by City shall be allocated by KBHCC Management directly to Academy's credit for items necessary to support its cultural and educational programming (ie. telephone, internet services, site marketing and promotions, food and beverage or technical support personnel, or other maintenance and janitorial services, that may be requested from the KBHCC Management). The

Academy shall be responsible for all other costs arising out of Academy operations and events.

- B. Effective and commencing on the date that the KBHCC Management delivers the Expansion Area to the Academy, the parties are agreed and Academy shall thereafter, in lieu of the gross rent described in subparagraph D(i) above, pay City the gross rent at an increased annual rental rate of \$155,000 payable monthly in equal installments of \$12,916.67.
- C. If the gross rent shall be payable for a fraction of a month, or a fraction of a Term Year, or a fraction of a calendar year as the case may be, the amount payable shall be a pro rata share of a full month's rent, or a pro rata share of an entire Term Year, or a pro rata share of an entire calendar year, as may be applicable.
- D. Should the City, at its option, enter into a contract with Academy to provide cultural services to the public via the Office of Cultural Affairs (OCA) as set forth and therein receive direct payment support for its operations as further described in Section 8 of this Agreement, the City may, at its option, retain any payments due to Academy under such agreement in lieu of the Academy making rental payments, to the extent that Academy is due payment under that agreement, and only to the extent that Academy owes City rent under this Section 5. Academy agrees that if City elects to retain any payments due to Academy as set forth in the preceding sentence, Academy shall take all necessary steps to direct the OCA that in lieu of Academy receipt, OCA shall forward to the City c/o KBHCC Management on a monthly basis, a sufficient payments to cover the Academy's monthly gross rent obligation under this Agreement. Thereafter, KBHCC Management shall credit said payments upon receipt to Academy's monthly rental obligations, subject however first to any reductions for any non-rental obligations due and owing by Academy to the City, including but not limited to settle any demands for non-payment made to the City or KBHCC Management by third parties for goods and services rendered for the benefit of Academy operations (non-rent costs). The Academy agrees to remit prompt payment for any non-rent costs (within 7 days of receipt of City's payment demand) to the City or KBHCC Management.
- E. The parties acknowledge hereto that the Academy's rental obligations set forth in this Agreement are anticipated to be covered by an OCA direct payment support.

The Academy therefore agrees that it shall secure direct payment support from the OCA equal to an amount sufficient to satisfy Academy's annual gross fixed rent obligation, and a failure to secure said direct support shall be an event of default under this Agreement. To the extent said support is at any time during the term of this Agreement reduced or increased by the OCA, the parties agree to cooperate to adjust the rental obligations accordingly only if a reduction in support occurs such that the Academy will not receive sufficient support to pay the gross rent due and owing to the City. In said event it is agreed by the parties that the gross rent obligation shall be adjusted to be equal and not exceed the reduced support amount. An increase in OCA support shall have no effect on the Academy's gross rent obligation set forth hereinabove. It is further agreed that all of Academy's non-rental obligations set forth in this Agreement shall be solely the responsibility and liability of Academy. Academy shall take any and all necessary steps to operate and manage said obligations so that all related demands for payment are directed and delivered to the Academy. It shall be a default of this Agreement that any demands for payment incurred for Academy obligations under this Agreement, including but not limited to mechanic's and materialmen's liens, shall be made upon or demanded upon the City or KBHCC Management.

## **SECTION 6: EVENT SCHEDULING AND COORDINATION**

- A. Academy shall be authorized to schedule up to 275 days per year of Theater use in the KBHCC Theater (Naomi Bruton Main Stage, area depicted on Exhibit C) for rehearsals, performances, pre-event planning and set up, or other theater venue type events. Should Academy need additional dates for rehearsals, performances or other events, Academy shall work with the Director of the KBHCC to secure additional performance and rehearsal dates, as may be needed, subject to availability, to fulfill the institution's mission and purpose to serve the public citizens of Dallas and visitors. The Academy will be considered a priority user of the KBHCC Theater and primary tenant of the KBHCC Theater Complex, and not the KBHCC.
- B. For the purpose of this agreement, the parties established the Academy "performance season" to be the period beginning on September 1 of each year and ending August 31 of the following year.

- C. In September of each year, one year in advance of each performance season, Academy and the KBHCC Management will meet to collaborate to schedule and secure dates per standards set forth in subparagraph A above, for Academy use of the KBHCC theater for its following performance season, such that Academy and KBHCC shall at any given time have a confirmed schedule for up to two consecutive Academy performance seasons. Academy shall indicate to KBHCC Management which dates are a priority for reservation and use by the Academy and a specific schedule of these priority reservation dates shall be agreed upon for scheduling ("Priority Reserved Dates"). All unscheduled or reserved remaining dates in the respective performance season year shall be deemed non-Priority Reserved Dates.
- D. All non-Priority Reserved Dates shall be deemed released and available only for booking by KBHCC Management. Notwithstanding that the non-Priority Reserved Dates shall be under KBHCC Management control and not part of the performance season, the Academy may make a written request to KBHCC Management for additional dates, which request shall be subject to availability and approval by KBHCC Management.
- E. In the event that the City of Dallas, acting through KBHCC Management or the Director of the Office of the Cultural Affairs, requests that the Academy release the theater and lobby areas of the KBHCC Theater on a Priority Reserved Date, and Academy releases the reserved date to the City of Dallas without reserving a replacement date, Academy shall not receive any rental credit for each date so released. Academy shall also not be entitled to receive any rental credit for any released date(s) that is rescheduled.
- F. Academy and City mutually agree to make every good faith effort to cooperate and coordinate the scheduling of the KBHCC Theater use for the mutual benefit of the both parties.

## **SECTION 7: RESPONSIBILITIES- ACADEMY AND CITY**

- A. Academy Responsibilities
  1. The Academy shall, at its sole cost and expense, be responsible for all Academy activities conducted on the premises of the KBHCC Theater Complex;

2. The Academy shall, at its sole cost and expense, be responsible for all Academy activities and operations including but not limited to performances, educational, technical (on and off stage) rehearsals, workshops and other events conducted on the premises of the KBHCC Theater Complex on Levels one, two and three;
3. The Academy shall, at its sole cost and expense, have sole authority for hiring, firing, supervising and directing all personnel related to all Academy programs, performances, technical (on and off stage) and other Academy events on the premises of the Theater; except for those personnel under KBHCC Management who by agreement of the parties is providing support services to the Academy. This shall not be construed in any way to lessen the authority of the KBHCC Management to manage the KBHCC and or the KBHCC Theater Complex;
4. The Academy shall, at its sole cost and expense, be responsible to pay for the cost of telephone service, and all personnel wages and salaries, (including Academy event security and Academy event crowd management personnel) incidental to and related to all Academy operations;
5. The Academy shall, at its sole cost and expense, be responsible to provide for Personal Property Insurance as may be deemed necessary in Academy's sole discretion. Neither the City nor the KBHCC Management shall be responsible to provide personal property insurance for the benefit of the Academy or any individuals, performers, or other third parties, related to any Academy activities and operations in the KBHCC Theater Complex. Academy releases the City and KBHCC Management from any claim arising out of any loss or damage to any personal property in the KBHCC Theater Complex; further agreeing to defend, indemnify, and hold City and KBHCC Management harmless for any such claims;
6. The Academy shall, at its sole cost and expense, be responsible for and shall maintain and provide all Academy program(s)/event(s) with

appropriate security and all professional stage technical (on and off stage) staff;

7. The Academy, being the primary user of the KBHCC Theater Complex (areas depicted on Exhibits A, B, C, and the Expansion Area depicted on Exhibit E as applicable), shall, at its sole cost and expense, be responsible to ensure that all technical House equipment (i.e. lighting and sound systems, film equipment, etc. within the KBHCC Theater Complex) used and operated for and during all Academy events/programs/performances is in good, working condition prior to and following each Academy event. Within a reasonable time, but not later than seventy-two hours following any incident or irregularity experienced with the technical House equipment, Academy shall be responsible to provide written notice of said incidents and irregularities to the KBHCC Director. In addition, Academy shall assist in helping to maintain the upkeep of the technical House equipment (i.e. light system, sound system, film equipment, etc.);
8. Subject to prior written KBHCC Management approval, the Academy may at its sole cost and expense perform minor improvements to the KBHCC Theater Complex;
9. The Academy, being the primary user of the KBHCC Theater Complex (areas depicted on Exhibits A, B, C, and the Expansion Area depicted on Exhibit E as applicable), shall be responsible to provide, at its sole cost and expense, all professional Technicians as needed on every date it has reserved during the performance season. At the Academy's discretion, Academy shall also have the right, at its sole cost and expense, to have a technical director available for all non-Academy performances in the KBHCC Theater;
10. During any Academy event, be responsible to provide all additional cleaning/janitorial services on a daily basis for the KBHCC Theater Complex. The parties acknowledge and agree that during non-Academy



events KBHCC Management is responsible for the basic cleaning and janitorial services within the Premises; and

11. During any Academy event, be responsible to provide on a daily basis a minimum of two rotating security and crowd management personnel for the KBHCC Theater Complex. The parties acknowledge and agree that during non-Academy events KBHCC Management is responsible to provide two rotating security personnel for the KBHCC Theater Complex.

- B. City Responsibilities

1. City shall, at its sole cost and expense, be responsible for all of the following maintenance and repairs:

- a. All structural, interior and exterior, maintenance and repairs of the KBHCC Theater Complex building, building systems and any future improvements. With regard to any future improvements City shall, in consideration that said improvements may impact Academy operations, invite Academy's input; provided however said input shall not be controlling or give rise to any additional City obligation regarding future improvements;

- b. Minor, nonstructural repairs and improvements;

- c. Maintenance of all landscaping on the grounds surrounding the KBHCC Theater Complex;

- d. Without limiting the Academy's responsibilities in subparagraph 7A(10) above, provide all cleaning/janitorial services for non-Academy scheduled events at the KBHCC Theater; and

- e. Without limiting the Academy's responsibilities in subparagraph 7A(11) above, provide a minimum of two rotating security and crowd management personnel during non-Academy scheduled events at the KBHCC Theatre Complex.

2. The City will be responsible to pay the cost of all heating/ air conditioning, electric, gas, sewer, waste disposal and water utility services.

3. The City will be responsible to maintain in full force and effect for the duration of this agreement, standard fire and extended coverage insurance covering the KBHCC Theater Complex building in amounts at least equal to the full replacement cost.
4. City shall, at Academy's sole cost and expense, and upon Academy's written request, provide technician(s) to work with Academy professional technical staff to oversee the technical House equipment (i.e. lighting system, sound system, film equipment, etc.) whenever appropriate.

### **SECTION 8: DIRECT AND INDIRECT PAYMENT SUPPORT/CITY RIGHT TO TERMINATE**

Without limiting any of the terms of Section 5 of this Agreement, and notwithstanding that the Academy may pursue other sources of funding for its operations (ie. independent fund raising, or as set forth in Sections 10 and 11 of this Agreement), the parties acknowledge and agree that the Academy's operations are dependent on its continued receipt of direct and indirect payment support from the City made pursuant to the Academy's annual cultural service agreement with the City c/o the City's Office of Cultural Affairs (OCA). The direct payment support funds received comprise that portion of all support received from the OCA that the Academy has allocated toward Premises related costs and therefore comprise the primary operating budget funds the Academy relies upon to satisfy and perform the Academy's occupancy obligations (ie. gross rent) set forth in this Agreement. The indirect payment support funds received comprise that portion of all support received from the OCA that the Academy has allocated toward the cultural programming operating budget costs but, unlike the direct support, the indirect payment support comprises only a portion of the total operating budget needed by the Academy to satisfy the Academy's cultural services and cultural programming obligations set forth in this Agreement. Nonetheless, notwithstanding any of the foregoing, including but not limited to any reductions in the Academy's direct payment support during the Term, Academy shall be solely responsible to pay and perform all obligations, monetary or otherwise as set forth in this Agreement. Academy shall be solely responsible for any failure on its part to underestimate the operating budget needed for Academy to fully comply with or perform the terms of this Agreement; and, Academy therefore agrees to make all diligent and commercially reasonable efforts to secure suitable direct payment support pursuant to Section 5 of this Agreement. Academy shall promptly notify City c/o KBHCC management of

the direct payment support received from the Office of Cultural Affairs and whether or not Academy will be able to fully perform under the terms of this Agreement. In the event the direct payment support is insufficient to fund all of Academy's Premises obligations (gross rent) under this Agreement, City shall have the right to terminate this Agreement, and at City's exercise of its right to terminate this Agreement Academy shall vacate and surrender the Premises 30 days thereafter, unless otherwise agreed to by the parties.

## **SECTION 9: REPORTS AND PROPOSED OPERATING BUDGET**

Without limiting the terms of Section 8 above and Section 5 of this Agreement, the Academy agrees that it shall do the following to secure sufficient direct payment support to pay all its monetary obligations pursuant to this Agreement:

1. As soon as direct payment support requests are eligible for submittal to the Office of Cultural Affairs, the Academy must submit an annual proposal for services to the Office of Cultural Affairs.
2. The proposal must reflect the income and expenditures for the past and current fiscal years and proposed income and expenditures for the next fiscal year; provided however the proposal must not be for any amount insufficient to fully fund the Academy's monetary obligations due and payable to the City under this Agreement.
3. Payments for annual service agreements will be provided to the Academy.
4. Cumulative payments for any fiscal year or twelve (12) month period will not exceed the total Academy service contract amount approved by City Council.
5. The Academy must provide an annual audit prepared by an independent certified public accounting firm.

## **SECTION 10: PUBLIC ACCESS AND ADMISSION FEES**

It is expressly understood and agreed to by and between the parties that the Academy shall have the authority to charge an admission fee to any and all Academy scheduled performances, Academy sponsored exhibits or events, presented and /or produced by the Academy in the KBHCC Theater Complex; provided however no fee shall be charged to any KBHCC personnel or non-KBHCC personnel present at the event at the request of or secured by the KBHCC Management. The Academy shall not have any authority to charge an admission fee of any kind to non-Academy sponsored or related events that are scheduled by the KBHCC Management.

## **SECTION 11: CONCESSIONS**

The Academy shall, at its sole cost and expense, be responsible, but not obligated, for providing and operating, or causing the provision and operation of all food and beverage concession sales and merchandise sales as it deems appropriate for its programs, performances, events. The Academy shall retain all revenues derived there from.

## **SECTION 12: OWNERSHIP OF PROPERTY**

- A. The Theater and all improvements thereto are and shall remain the property of the City. All personal property acquired or owned by the City and placed in the KBHCC Theater Complex shall remain the property of the City and be controlled and managed by KBHCC Management. The KBHCC Management shall maintain an account of all such personal property, which list shall be updated annually. The property shall be audited and inspected annually by an authorized representative of the City.
- B. All personal property owned by the Academy and placed in the KBHCC Theater Complex shall remain the property of the Academy. Specifically, any furnishings or physical equipment installed in the facility as part of the renovation or rehabilitation effort shall remain the property of the Academy, except to the extent that such equipment is permanently installed and becomes a fixture and a part of the KBHCC Theater building. The Academy shall file a full and complete account of all personal property placed in the Dallas Theater Complex and shall update a list at least once a year, and provide such list to KBHCC Management promptly within seven (7) days following KBHCC Management's request. The property shall be audited and inspected annually by an authorized representative of the City.
- C. It may become necessary or desirable from time to time for the Academy to transfer the ownership of some of its personal property placed in the Theater to the KBHCC and/or other City departments to the City. The City shall have the right, but not the obligation, to accept such transfer of ownership when tendered by the Academy on the condition that such personal property shall be free and clear of all encumbrances, liens and indebtedness, including rights of use or otherwise of third parties, in good working condition for its intended purpose, and that such transfer of ownership is approved by the KBHCC Director and the Director of the Office of Cultural Affairs, or their respective designee, if required by any other contract. Any such transfers of ownership of property shall be documented to the satisfaction of

City, and Academy shall cooperate to execute all necessary documents including but not limited to a Bill of Sale, and the City department receiving the property shall maintain a record of such transaction.

### **SECTION 13: CITY RIGHT OF ENTRY**

City, by and through the KBHCC Management and its designated staff shall have access at all times to every part of the KBHCC Theater Complex for general visitation, and as required for the full performance of its rights and obligations under this agreement, and also for the purpose of the performance of the duties delegated to it by the Charter and Ordinances of the City of Dallas and the laws of the State of Texas. Notwithstanding that the Academy under this agreement has been granted tenancy rights, the City shall at no time be limited in the exercise of its police power, which police power of the City shall extend to and through the KBHCC Theater Complex facility. The Academy may appoint, direct, control and remove (i) all persons employed by the Academy within the KBHCC Theater Complex and (ii) all persons employed by the Academy for and in and about the care of the KBHCC Theater building and exhibits therein contained. The Academy shall not have the same authority over persons employed by and assigned by the City or the KBHCC Management.

### **SECTION 14: PARKING**

City agrees to provide the following parking facilities to Academy for Academy events:

- A. 25 spaces in the KBHCC on Dock 2, Level 2 for Academy officers and staff at no charge;
- B. 35 spaces in the KBHCC parking garage for Academy volunteers and guests at no charge.
- C. Academy patrons members shall be permitted to park in the 102 metered parking spaces located behind (south) of City Hall after 5:00p.m. and on weekends. The 102 parking spaces at that location shall be available for Academy events on a non-reserved basis. Overflow parking shall be available without charge in the City Hall basement, parking garage for Academy events and for identified Academy members and patrons only when all metered parking spaces behind City Hall first have been filled.

## **SECTION 15: INSURANCE AND INDEMNIFICATION**

Academy shall maintain, with respect to the KBHCC Theater Complex for the duration of this agreement and any extensions thereof, insurance issued by a company or companies qualified to do business in the State of Texas, in the types and amounts specified in Exhibit D. Academy shall comply with the terms and conditions of Exhibit D as if written word for word herein.

## **SECTION 16: ALTERATIONS, ADDITIONS AND IMPROVEMENTS**

- A. To the extent reasonably necessary or desired for the Academy to utilize the Theater, the Academy may erect or install any temporary alterations, additions, or equipment which do not alter the structural integrity or basic configuration of the building, or require permanent affixing thereto, provided that the Academy complies with all applicable governmental laws, statutes, ordinances, codes, and regulations. Any alterations or improvements may be subject to prior approval by the KBHCC Management.
- B. The Academy may remove all such non-City owned alterations, additions, and equipment it installed within the KBHCC Theater Complex, at the expiration or earlier termination of this agreement, provided such removal does not cause any material damage to the KBHCC Theater Complex building.
- C. If the City elects to erect or install at its own expense any additional improvements, whether of a temporary or permanent nature, to or within the KBHCC Theater Complex, such improvements shall be maintained in accordance with the terms of this agreement.
- D. All improvements of a permanent nature which are presently situated or which may be hereafter be erected within the KBHCC Theater Complex by either the City or Academy under this agreement, irrespective of how same may have been financed, shall be and remain the property of the City, subject to the use by the Academy in accordance with the terms of this agreement.
- E. All improvements submitted to open competitive bidding or which require the provision of statutory performance and payment bonds, when such improvements are undertaken by City, shall be so administered whether undertaken by the City or by the Academy, performance and payment bonds for contracts awarded and administered by the Academy shall name the City as a co-obligee.

F. The City and the Academy will conduct all major renovation efforts in accordance with city building ordinance and codes.

### **SECTION 17: SIGNS**

To the extent that such signs comply with existing or future sign ordinances, the City will permit the Academy to permanently display signs designating the facility as home for The Black Academy of Arts and Letters, Inc. Any special temporary promotional banners or flags required by the Academy to promote its activities at the KBHCC Theater Complex shall also comply with existing or future sign ordinances.

### **SECTION 18: PERSONNEL**

The Academy shall provide all personnel necessary to perform its obligations under this agreement by using its own personnel or by contracting for services and personnel to be supplied by others.

### **SECTION 19: NONDISCRIMINATION**

During the term of this agreement and any extension thereof, Academy shall not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, disability, ancestry, national origin, or place of birth, military or veteran status, or sexual orientation; nor shall any person be denied admittance nor be prevented from participating in any portion of any public function or activity, including the Academy sponsored performances and events at the KBHCC Theater Complex because of race, age, color, religion, sex, disability, ancestry, national origin, or place of birth, military or veteran status, or sexual orientation.

### **SECTION 20: ABATEMENT OF NUISANCES**

The Academy shall comply with all governmental orders and directives for the correction, prevention, and abatement nuisances caused by the Academy, its officers, agents, or employees, in or upon or connected with the KBHCC Theater Complex, and shall pay for the costs of compliance.

### **SECTION 21: REMEDIES FOR BREACH OR VIOLATIONS OR DISPUTES**

Without limiting the City's right to terminate this Agreement pursuant to Section 8 hereinabove, in the event the City finds that the provisions of this Agreement are being

violated by the Academy or its employees, the KBHCC Management or designee shall communicate with the Academy President/Founder or in his absence the Chief Executive Director in writing and further discuss any violations. If there are any violations, the Academy agrees that it shall cause such violations to be promptly corrected or abated within a reasonable time as specified and agreed by the Academy and KBHCC Management. If Academy and KBHCC Management cannot reach a mutually satisfactory agreement on the violations, Academy may appeal to the KBHCC Director for a ruling. Academy shall submit its written appeal to the KBHCC Director within a reasonable time as specified by KBHCC Management. The KBHCC Director may review the subject matter of the controversy and, in their sole discretion may pass on the matter or grant a hearing thereon. In every case, the decision of the KBHCC Director shall be final and binding and not subject to review by the Courts. Failure or refusal of the Academy to comply within the time periods established by KBHCC Management or the KBHCC Director, shall authorize KBHCC Management to give Academy notice of cancellation of this Agreement. In addition if the KBHCC Director shall in review of Academy's appeal find that the Academy is in violation of this Agreement and has not diligently commenced to cure its violation within 30 days of its receipt of the KBHCC Director's ruling, Academy will have an additional 30 days to complete a cure of the violation, after which the KBHCC Management on behalf of City may assume full control of the KBHCC Theater Complex and all other property to which the City has title and neither party shall have any further obligation to the other, except as otherwise provided in this Agreement.

Where public safety is an issue, the Academy shall take immediate action as directed by the KBHCC Management or City Manager's office, or their designee, pending the appeal process, notwithstanding the foregoing remedies for breach or violation and provisions for disputed.

## **SECTION 22: REPRESENTATION AND NOTICE**

For purposes of this Agreement, the Director of the KBHCC or their authorized designee shall represent City in all matters, including but not limited to those matters involving the operation, maintenance, and joint scheduling of the KBHCC Theater. Any notices and written communications in connection with this Agreement shall be hand delivered or mailed as follows:



**To the City**

Director, Kay Bailey Hutchinson Convention Center  
City of Dallas, Kay Bailey Hutchinson Convention Center  
650 South Griffin Street  
Dallas, TX 75202

**To the Academy**

President & Founder  
The Black Academy of Arts and Letters, Inc.  
650 South Griffin Street  
(corner of Canton and Akard Street)  
Dallas, Texas 75202

**Copy To**

Chairperson, Board of Director  
The Black Academy of Arts and Letters, Inc.  
650 South Griffin Street  
(corner of Canton and Akard Streets)  
Dallas, Texas 75202

or such other address as the parties may designate from time to time in writing in accordance with this provision.

**SECTION 23: USE OF PREMISES**

The KBHCC Theater Complex is leased to the Academy for the Academy to conduct multi-discipline arts, cultural and educational programs, exhibits and theatrical performances pursuant to the terms of this Agreement, including but not limited to the qualified use of the KBHCC Theater on predetermined dates pursuant to Section 6 of this Agreement. The Academy shall not permit the KBHCC Theater Complex or any part thereof to be used for: (a) the conduct of any offensive, noisy or dangerous activity; (b) the creation of maintenance of a public nuisance; (c) any use which is against public regulations or rules of any public authority at any time applicable to the facility; or, (d) any purpose or in any matter which will obstruct, interfere with, or infringe on the rights or tenants of adjoining property.

**SECTION 24: COMPLIANCE WITH LAWS**

The Academy agrees that in the performance of its undertaking of this Agreement, it will strictly observe and abide by the policies and regulations of the KBHCC, the laws of the State of Texas and the United States of America as the same now exist or as the same may hereafter be amended, and any new ordinances or laws which may be enacted and will observe and abide by the highest principles of civic responsibility to the end that neither public funds nor public property shall be used in any manner which is inimical to public confidence in the administration of the Office of Cultural Affairs. In particular, Academy agrees to require such performance and payment bonds to be provided as required by state law for public contracts, naming the City as a co-obligee.

#### **SECTION 25: CONFLICT OF INTEREST OF CITY EMPLOYEES**

The following section of the Charter of the City of Dallas shall be one of the conditions of, and a part of, the consideration of this contract, to wit:

"CHAPTER XXII, Sec.11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED-

No officer or employee shall have any financial interest, direct or indirect, in any contract with the City or be financially interested, directly or indirectly in sale to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit his office, or position with the City. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the City shall render the contract involved voidable by the City Manager or the City Council.

The alleged violations of this section shall be matters to be determined either by the Trial Board in the case of employees who have the right to appeal to the Trial Board, and by the City Council in the case of other employees.

The prohibitions of this section shall not apply to the participation by City employees in federally-funded housing programs, to the extent permitted by applicable federal or state law."

#### **SECTION 26: GIFT TO PUBLIC SERVANT**

- (a) City may terminate this Contract immediately if the Academy has offered, conferred or agreed to confer any benefit on a City employee or official that the City employee or official is prohibited by law from accepting. The City has been advised by the prosecuting authorities that the Section 36.10(4) exception to Section 36.08 and 36.09 of Texas Penal Code is not available to public servants who have no legal reporting requirement.
- (b) For purposes of this section, "benefit" means anything reasonably regarded as economic gain or economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.
- (c) Notwithstanding any other legal remedies, the City may require Academy to remove any employee of the Academy from the KBHCC Theater Complex who has violated the restrictions of this section or any similar state or federal law, and obtained reimbursement for any expenditures made to Academy as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

#### **SECTION 27: TAX EXEMPTION STATUS**

Academy certified that it is a tax-exempt organization pursuant to the provisions of the Federal Internal Revenue Code, and that it holds a letter of determination from the Federal Internal Revenue Service dated May 1, 1979, which determination is full force and effect as of the date of execution of this agreement. Academy conveys and agrees to keep City fully informed of any changes in its tax-exempt status, and agrees to promptly notify City of any changes in such status. City expressly reserves the right to terminate this agreement in the event Academy ceases to be recognized as a federally tax-exempt organization for any reason.

#### **SECTION 28: ASSIGNMENT**

The Academy shall not assign this agreement, in whole or in part, without the express prior written consent of the City. Assignment of this agreement shall not relieve the Academy from its obligations under this agreement. Approval of the City to one such assignment shall not constitute approval to any other or further assignment of this agreement.

#### **SECTION 29: APPROVAL**

Approval shall be by the City Council where required by law, ordinance or the City Charter. Approval shall be by the KBHCC Manager or Director where authorized by this Contract or City Code.

### **SECTION 30: AMENDMENTS AND REFORMATION**

This agreement may be amended from time to time, upon mutual written consent of the parties hereto and approval of any such amendments shall be subject to approval by the City Council acting by resolution, unless otherwise authorized by ordinance or the City Charter.

### **SECTION 31: SUCCESSOR AND ASSIGNS**

This agreement shall be binding upon and inure to benefit of the parties hereto and their respective successors and, except as otherwise provided in this agreement, their assigns.

### **SECTION 32: GOVERNING LAWS**

This agreement is made subject to the charter and ordinances of the City, as amended, and all applicable laws of the United States and State of Texas, and this agreement shall be governed and construed in accordance with the laws and court decisions of the State of Texas.

### **SECTION 33: NO PARTNERSHIP**

Nothing contained in this agreement shall be deemed or construed to constitute the City and the Academy as partners or joint venturers with each other.

### **SECTION 34: NO WAIVER**

No waiver by the City or any default or breach of any term, covenant, or condition of this agreement shall be treated as a waiver of any subsequent default or breach of the same or any other term, covenant, or condition of this agreement.

### **SECTION 35: FORCE MAJEURE**

If (a) the KBHCC Theater Complex or any portion thereof shall be destroyed or damaged by fire or other calamity so as to prevent the use of the facility for the purposes and during the periods specified in the agreement, or (b) the use of the facility by the

Academy shall be prevented by an act of God, restrictions by any governmental authority, civil riot, flood or any other cause beyond the control of the Academy and the City, then, depending on the extent of damages to the facility, the City shall notify the Academy within sixty(60) days that either (a) The parties hereto shall be excused from performance hereunder for such period of time is reasonably necessary after such occurrence to remedy the effects thereof, or (b) this agreement shall terminate and the City shall not be liable for any claim by the Academy for damages or loss by reason of such termination.

### **SECTION 36: VENUE**

The obligations of the parties under this agreement are performable in Dallas County, Texas, and if legal action is necessary to enforce same, exclusive venue shall lie in Dallas County, Texas.

### **SECTION 37: LEGAL CONSTRUCTION**

In case any one or more of the provisions contain in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof and this agreement shall be considered as if such invalid, illegal, or unenforceable provision has never been contained in this agreement.

### **SECTION 38: CAPTION**

The captions to the various clauses of this agreement are for informational purposes only and shall not alter the substance of the terms and condition of this agreement.

### **SECTION 39: COMPLETE AGREEMENT**

This agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this agreement.

### **SECTION 40: HOLDING OVER**

This Agreement shall terminate without further notice at the expiration of the Term. Any holding over by the Academy without the express written consent of City shall not

constitute a renewal or extension of this Agreement or give Academy any rights in or to the Premises, and such occupancy shall be construed to be a tenancy from month to month on all the same terms and conditions as set forth herein, insofar as they are applicable to a month-to-month tenancy, except that the Daily Rent Rate and the Additional Rent Rate, respectively, shall increase to an amount equal to 150% of the then current rent rate in effect at the expiration of the Term.

#### **SECTION 41: LIENS AND ENCUMBRANCES**

Academy shall not do any act which shall in any way encumber the title of City or subject the interest or estate of City in the Premises or any interest in, under or by reason of this Agreement to any claim by way of lien or encumbrance, whether by operation of law or by virtue of any express or implied contracts by Academy. Any claim to, or lien upon, the Premises arising from any act or omission of Academy shall accrue only against the leasehold estate of Academy and shall be subject and subordinate to the paramount title and right of City in and to the Premises.

#### **SECTION 42: AS IS, WHERE IS, AND WITH ALL FAULTS; DISCLAIMER AND WAIVER**

The parties agree that this Agreement is to provide for the continuation of previously agreed to occupancy and use of the Premises by the Academy; and that the Academy is currently operating under a month to month holdover tenancy; therefore at no time before the effective date of this Agreement has City or the KBHCC Management assumed responsibility for the Premises from Academy. Accordingly therefore, Academy agrees and acknowledges that it has been in occupancy of the Premises and releases the City from any obligation as to the adequacy of the Premises.

Academy acknowledges and agrees that City has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to (a) the value, nature quality or condition of the Premises, including without limitation, the water, soil and geology, (b) the income to be derived from the Premises, (c) the suitability of the Premises for any and all activities and uses which Academy may conduct thereon, (d) the compliance of the Premises or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body, (e) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Premises, (f) the manner or quality of

the construction or materials, if any, incorporated into the Premises, (g) the manner, quality, state of repair or lack of repair of the Premises, (h) any other matter with respect to the Premises, and specifically, that City has not made, does not make and specifically disclaims any representations regarding compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including the existence in or on the Premises of hazardous substances or materials. Academy further acknowledges and agrees that, having been given the opportunity to inspect the Premises, Academy is relying solely on its own investigation of the Premises and not on any information provided or to be provided by City and agrees to accept the Premises and waive all objections or claims against City arising from or related to the Premises or to any hazardous materials on the Premises. Academy further acknowledges and agrees that any information provided or to be provided with respect to the Premises was obtained from a variety of sources and that City has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information. City is not liable for or bound in any manner by any verbal or written statements, representations or information pertaining to the Premises, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person. Academy further acknowledges and agrees that to the maximum extent permitted by law, the lease of the Premises as provided for herein is made on an "AS IS, WHERE IS, AND WITH ALL FAULTS BASIS."

"Hazardous Substance or Hazardous materials" for purposes of this Lease will be interpreted broadly to include, but not be limited to, any material or substance that is defined, regulated or classified under any applicable federal, state or local laws and the regulations promulgated thereunder as (i) a "hazardous substance" pursuant to section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601(14), or the Federal Water Pollution Control Act, 33 U.S.C. §1321(14), as now or hereafter amended; (ii) a "hazardous waste" pursuant to section 1004 or section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6903(5), 6921, as now or hereafter amended; (iii) a "toxic pollutant" under section 307(a)(1) of the Federal Water Pollution Control Act, 33 U.S.C. §1317(a)(1) as now or hereafter amended; (iv) a "hazardous air pollutant" under section 112 of the Clean Air Act, 42 U.S.C. §7412(a)(6), as now or hereafter amended; (v) a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990, 49 U.S.C. §5102(2), as now or hereafter amended; (vi) toxic or hazardous pursuant to regulations promulgated now or hereafter under the aforementioned laws or any state or local counterpart to any of the

aforementioned laws; or (vii.) presenting a risk to human health or the environment under other applicable federal, state or local laws, ordinances or regulations, as now or as may be passed or promulgated in the future.

**SECTION 43: NOTICE OF CONTRACT CLAIM**

This Agreement is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Agreement as if written word for word in this Agreement. Academy shall comply with the requirements of this ordinance as a precondition of any claim relating to this Agreement, in addition to all other requirements in this Agreement related to claims and notice of claims.

[SIGNATURE PAGE TO FOLLOW]



EXECUTED this 2nd day of July 2014.

**CITY OF DALLAS**

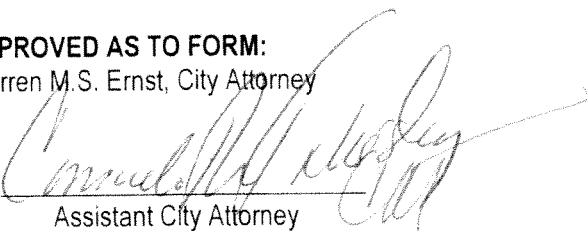
A.C. Gonzalez, City Manager

By:   
Assistant City Manager

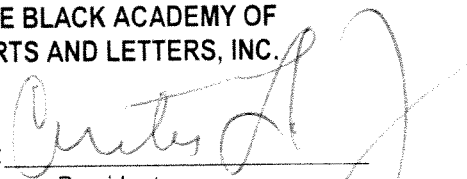
Date: July 2nd, 2014.

**APPROVED AS TO FORM:**

Warren M.S. Ernst, City Attorney

By:   
Assistant City Attorney

**THE BLACK ACADEMY OF  
ARTS AND LETTERS, INC.**

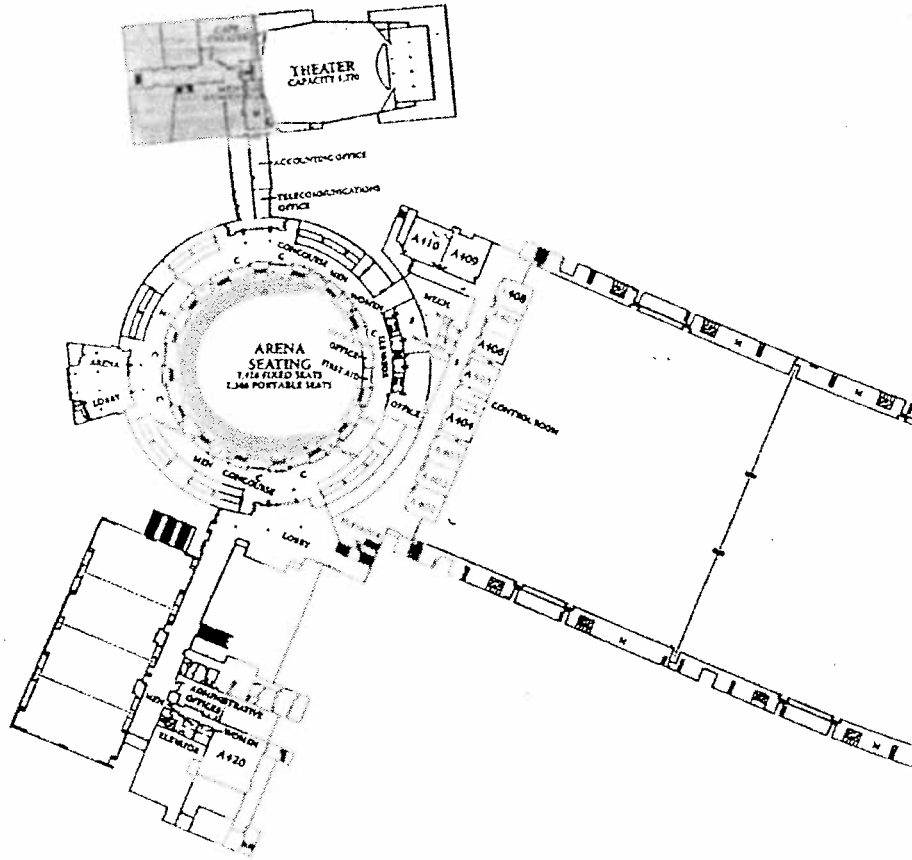
By:   
President

Date: June 27, 2014

ATTEST:  
Secretary

By

**EXHIBIT A**



# EXHIBIT B

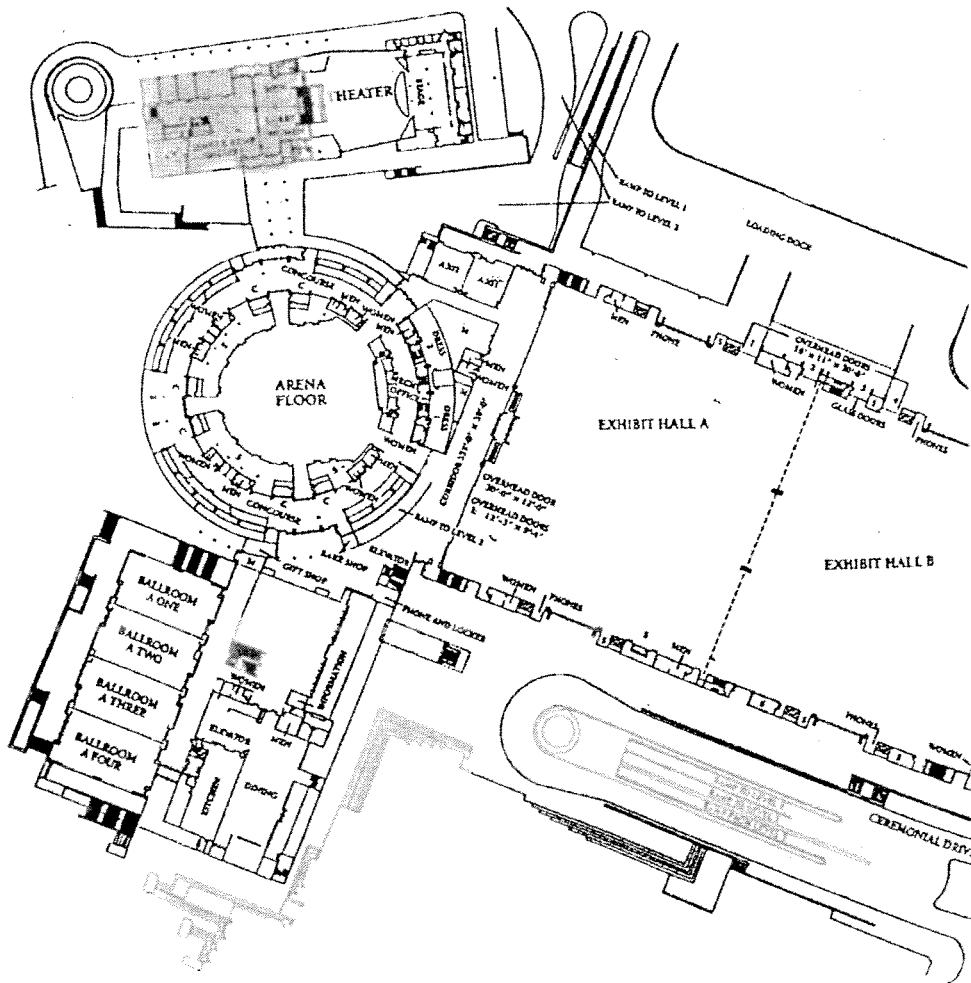
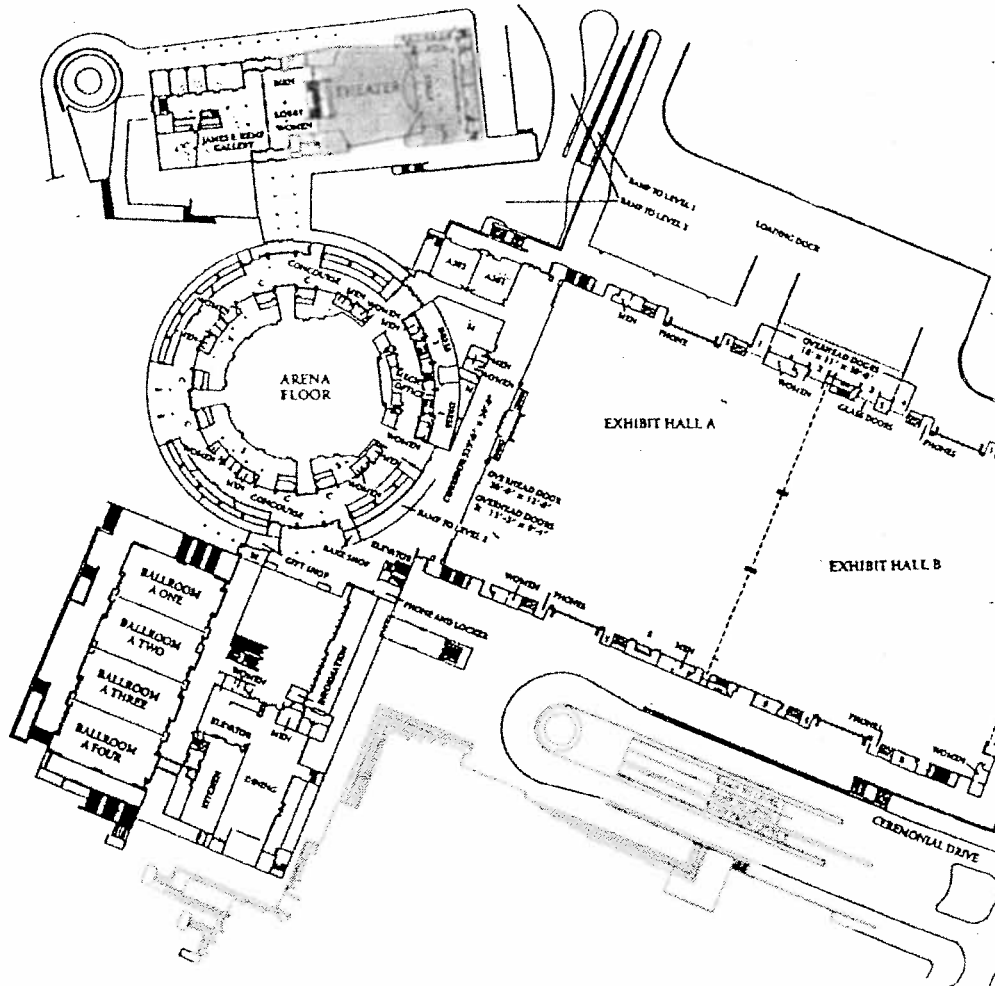


EXHIBIT C



# EXHIBIT D

DALLAS CONVENTION CT

Section 15

## INSURANCE REQUIREMENTS

### **SECTION A.**

Prior to the approval of this contract by the CITY, THE BLACK ACADEMY OF ARTS AND LETTERS, INC. (THE ACADEMY) shall procure, pay for and maintain the following insurance written by companies approved by the States of Texas and acceptable to CITY. The insurance shall be evidence by delivery to the CITY of certificates of insurance executed by the insurer or its authorized agent stating coverage's, limits, expiration dates and compliance with all applicable required provisions. Upon request, the CITY shall be entitled to receive without expense, copies of the policies and all endorsements. CITY HAS NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT OR AGREEMENT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY and no officer or employee shall have authority to waive this requirement.

### **SECTION B.**

The CITY reserves the right to review the insurance requirements of this section during the effective period of the contract and to adjust insurance coverage's and their limits when deemed necessary and prudent by City's Risk Management Division of the Human Resources Department based upon changes in statutory law, court decisions or the claims history of the industry as well as THE ACADEMY. THE ACADEMY agrees to make any reasonable request for deletion, revisions or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either party to the contract or upon the underwriter of any such policy provisions). Upon request by CITY, THE ACADEMY shall exercise reasonable efforts to accomplish such changes in policy coverage's and shall pay the cost.

## INSURANCE COVERAGE REQUIRED

### **SECTION C.**

Subject to THE BLACK ACADEMY OF ARTS AND LETTERS, INC. (THE ACADEMY)'S right to maintain reasonable deductibles, THE ACADEMY shall obtain and maintain in full force and effect for the duration of this contract and any extension hereof, at THE ACADEMY'S sole expense, insurance coverage in the following type(s) and amounts:

1. Workers' Compensation with statutory limits; Employers Liability with minimum limits for bodily injury: a) by accident, \$100,000 per each accident b) by disease, \$100,000 per employee with a per policy aggregate of \$500,000.
2. Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of \$1,000,000 per occurrence. Such insurance shall include coverage for loading and unloading hazards.
3. If THE ACADEMY provides valet parking, then Garage keepers Legal Liability Insurance with limit of \$100,000.
4. Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/ Completed Operations, Independent Contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$1,000,000 per occurrence, \$1,000,000 general aggregate, and \$250,000 fire legal liability limit.

The City of Dallas shall be named as an additional insured by using endorsement CG2026 or broader.

5. If alcoholic beverages are sold, given, dispensed or otherwise made available to the public by THE ACADEMY or for THE ACADEMY, then Liquor Liability Insurance with \$1,000,000 limit each claim. NOTE: If the alcoholic beverages are made available by a CONCESSIONNAIRE to provide evidence of the Liquor Liability Insurance.
6. Umbrella or Excess Liability Insurance providing coverage to follow form of the primary liability coverage's required in #1, #2 and #4 with a minimum combined bodily injury (including death) and property damage limit of \$1,000,000 per occurrence and \$1,000,000 annual aggregate.

NOTE: If the insurance described in #4, #5 or #6 is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than twenty- four (24) months following completion of the contract and acceptance by the City. Coverage, including any renewals, shall contain the same retroactive date as the original policy applicable to this contract.

### **REQUIRED PROVISIONS**

THE BLACK ACADEMY OF ARTS LETTERS, INC. (THE ACADEMY) agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

- a. Name the City of Dallas and its officers, employee and elected representatives as addition insured to all applicable coverage's.
- b. State that coverage shall not be canceled, nonrenewed or materially changed except after sixty (60) days written notice by certified mail to:

- (i) Event Services/Convention Center, Dallas convention Center, 650 S. Griffin, Dallas, Texas 75202 and
  - (ii) Assistant Director, Risk Management Division Human Resources Department, 1500 Marilla, 1C-North, Dallas, Texas 75201.
- c. Waive subrogation against the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.
- d. Provide that THE ACADEMY'S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.
- e. 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.
- f. Ensure that all certificates of insurance identify the service or product being provided and the name of responsible City department.

#### **SECTION D.**

(1) Without limiting any of the other obligations or liabilities of THE BLACK ACADEMY OF ARTS AND LETTERS, INC. (THE ACADEMY), THE ACADEMY shall require each Subcontractor performing work under the contract, at the Subcontractor's own expense, to maintain during the term of the contract, the same stipulated minimum insurance including the required provisions and additions policy conditions as shown above in Section C. As an alternative, THE ACADEMY may include its Subcontractors as additional insureds on its own coverage as prescribed under these requirements. THE ACADEMY'S certificate of insurance shall note in such event that the Subcontractor are included as additional insureds and that THE ACADEMY agrees to provide Workers' Compensation for the Subcontractors and their employees. (2) THE ACADEMY shall obtain and monitor the insurance requirements. THE ACADEMY must retain the certificates of insurance requirements among its subcontractors. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

#### **SECTION E.**

Approval, disapproval or failure to act by the CITY regarding any insurance supplied by THE BLACK ACADEMY OF ARTS AND LETTERS, INC. (THE ACADEMY) or its subcontractors shall not relieve THE ACADEMY of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency nor denial of liability by the insurance company exonerate THE ACADEMY from liability.

#### **INDEMNITY**

THE BLACK ACADEMY OF ARTS AND LETTERS, INC. (THE ACADEMY) agrees to defend, indemnify and hold CITY, its officers, agents and employees, harmless against any and

all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by THE ACADEMY'S breach of any of the terms or provisions of this contract, or by any negligent or strictly liable act or omission of THE ACADEMY, its officers, agents, employees, or subcontractors, in the performance of this contract: except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of CITY, its officers, agents employees and the event of joint and concurrent negligence or fault of THE ACADEMY and CITY, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without waive 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 are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.



# EXHIBIT E

