

CEDAR STREET THEATRE

AGREEMENT FOR USE OF PERFORMING ARTS CENTER

THIS AGREEMENT is made and entered into this 20th day of July 2008 by and between the CITY OF LANCASTER, (hereinafter referred to as the "City") and the CEDAR STREET THEATRE (hereafter referred to as CST).

WITNESSETH:

WHEREAS, the City desires to support community repertory theatre as part of total cultural arts program deliver, and

WHEREAS, CST for several years has been recognized as the local repertory theatre in Lancaster, and

WHEREAS, the City and CST have found that it will be in the public interest, economically and practically, to cooperate with regard to the use of City-owned facilities, and therefore desire to enter into an agreement,

NOW, THEREFORE, in consideration of the mutual promises and conditions of the parties hereto, as hereinafter set forth, it is agreed as follows:

Section 1. General Provisions.

- .01 The City agrees to grant to CST the right to use the Performing Arts Center for CST performing arts programs. The Center facilities shall include the Main Stage and J.P. Eliopulos Family Theatre, backstage, dressing rooms, green room, lobby, musician room, and coat room. The right granted to CST herein is subject to prior existing agreements between the City and third parties for the use of the same facilities.
- .02 Building maintenance and custodial services shall be furnished for the Performing Arts Center by the City during the times such programs and activities are conducted by CST. The determination of which party pays the cost of unusual expenses, such as large set-up or

clean-up work, or unusually large audience events that require large amounts of staff work or other costs must be agreed upon by both parties prior to the scheduling of such an event.

- .03 Each party shall be responsible for any damage caused by it or any of its officers, agents, or employees during the time of use of the facility and/or equipment by the City or CST and directly attributable to abuse by the City or CST. Whoever the responsible party is shall replace or repair the damage done to the facility and/or equipment during its use. Each party shall inform the other of any dangerous condition of property, including equipment and the facility, used by each party.
- .04 Each party shall be solely responsible for the hiring and termination of all personnel necessary to the conduct of the programs each party institutes as a result of this agreement and shall absorb all costs for such personnel. It is specifically agreed that personnel hired by each party shall be employees of that party and shall not be construed as an employee of the other party for any purpose whatsoever. If CST or the City wishes to use the other party's employees beyond the scope of this agreement in the conduct of programs, the use of said employees shall be subject to a separate agreement to be negotiated by the parties on terms to be mutually agreed upon.
- .05 CST, its officers, agents and employees shall not be deemed to assume any liability for the negligence of the City or any of its officers or employees and the City shall hold CST and its officers and employees harmless from and it shall defend CST and its officers and employees against any claim for damages resulting in a negligent act or omission of the City or any of its officers and employees while engaged in the performance of the City's programs under this agreement.
- .06 The City, its officers, agents and employees shall not be deemed to assume any liability for the negligence of CST or any of its officers or employees and CST shall hold the City and its officers and employees harmless from and it shall defend the City and its officers and employees against any claim for damages resulting in a negligent act or omission of CST or any of its officers and employees while engaged in the performance of CST's programs under this agreement.
- .07 CST shall provide to the City a certificate of liability insurance evidencing an amount of no less than one million dollars (\$1,000,000) combined single limit per occurrence as a result of any accident due to negligence or omission of CST, its officers, agents and employees, resulting in bodily injury or property damage for the use of the Performing Arts Center under this Agreement. It is hereby understood and agreed that the City of Lancaster, Parks, Recreation and Arts Department, its officers, agents, servants and employees are added as additional insured.
- .08 The term of this agreement shall commence on the date of execution and shall continue in force and govern all transactions between the parties hereto for a period of one year. For purposes of this contract, the performance year covered by the annual contract period shall be **August 2, 2008 to August 1, 2009.**

- .09 This agreement may only be modified or changed by written amendment thereto executed by both parties.
- .10 This agreement shall be binding upon the City and CST and on their respective successors, executors, administrators, and assigns. Neither the City nor CST may assign or transfer their respective rights or interests under this agreement without the written consent of the other.

Section 2. Organizational Identity

- .01 CST shall maintain exclusive control of the following:
- a. All organizational procedures, as provided in its by-laws and operational guidelines, including those of its officers, board of directors, and finances.
 - b. The use and singular authority to permit the use of CST's name and logo. The CST name and logo shall not be used without the expressed permission of the CST Board of Directors. The City shall have the right to use the CST name when describing the scope of activities engaged in at the Center.
 - d. Complete and total artistic control of all elements of CST productions. This control shall extend to script selection, direction, casting, production staffing, programs, and all technical aspects of production, including lighting, sound, costume and set design and construction. The City reserves the right to veto the usage of equipment which it deems to violate common accepted safety practices. Further, the City reserves the right to disallow any actions or practices which it deems unsafe or unlawful.
 - e. The sale and use of revenues generated from the sale of program advertisements.
 - f. Establishing prices for both individual performances and season tickets. CST shall retain eighty-five percent (85%) of the income, if any, generated from CST ticket sales for the Black Box events and the City shall receive fifteen percent (15%) of said ticket sales. The City shall waive ticketing charges for the Black Box events described in Section 3, Paragraphs .01 and .02. City shall waive ticket charges for Black Box events with the exception of credit card charges. CST will pay credit card charges associated with that event.
 - g. Donations and use of all funds and property received by donation.
 - h. The option of operating events in locations other than City facilities.

Section 3 Scheduling/Calendar.

- .01 CST shall be allowed to schedule at least four (4) season productions in the Black Box and/or main stage limited to a maximum of two (2) productions in each venue. Each

Black Box production may run a maximum of (2) consecutive weekends with mid-week performances to be mutually determined by CST and the City. CST may schedule an additional week for a non-season performance with approval from the LPAC Manager.

- .02 CST Black Box productions are limited to two (2) productions of two (2) weeks. Productions can be extended with approval of the Performing Arts Center Manager.
- .03 Ticket proceeds for Main Stage productions shall be split seventy-five percent (75%) to CST and twenty-five percent (25%) to the City. CST will pay credit card charges associated with their event.
- .04 The City shall be diligent in attempting to avoid scheduling Main Stage performances during Friday, Saturday, and Sunday of a CST performance. The City may schedule City-sponsored events on the Main Stage during the five(5) days immediately preceding the opening of a CST production. The City reserves the right to schedule a rental in the Main Stage during the seven (7) days preceding the opening of CST production in the Black Box and on the same days as CST Black Box productions.
- .05 CST shall submit a proposed usage calendar no later than February 1 of the year preceding the season. This calendar shall reflect preferred and alternate dates for both rehearsal and performance.
- .06 The City shall evaluate the proposed CST calendar and attempt to work the requested dates into the schedule. The City shall advise CST no later than April 11 of a tentative schedule. Additional charges for unexpected equipment requirements beyond the original contract requirements will not exceed an annual charge of one thousand dollars (\$1,000). The exact amount will be mutually negotiated by both parties during the month of June of each performance year. CST will bear the cost of unexpected equipment requirements associated with the performance.
- .07 CST and the City will make every effort to avoid overtime costs. An analysis of labor costs will be conducted during each season. CST and the City agree to participate in a post season review of labor and equipment costs.

Section 4 Services and Items to be Provided by the City.

- .01 The City agrees to furnish the Lancaster Performing Arts Center Main Stage or Black Box Theatre for the usage hereunder.
- .02 The City shall supply the equipment described below for the use of CST during its performances in the Center. In most cases, equipment shall be operated by CST personnel only under the direct supervision of CST's Technical Supervisor. Under no circumstances shall anyone operate equipment without the presence of the appropriate CST staff trained by the City Technical Director.

- .03 CST shall provide an orientation and training program for anyone interested in working on the CST productions in the Center. This orientation shall be in conjunction with the City Technical Director.
- .04 The Center shall make ticketing services for CST events available at no cost with the exception of credit card charges.
- .05 Upon availability the equipment which the City shall provide for the use of CST includes, but is not necessarily limited to the following:
- Eighty (80) 2.4Kw dimmers
 - One (1) ETC computerized lighting control board
 - Forty (40) Altman 6" Fresnels
 - Twenty (20) Altman 6"x9" ellipsoidal reflecting spotlights
 - Twelve (12) Altman 3.5"x6" ellipsoidal reflecting spotlights
 - One (1) 24 in by 6 out professional quality audio mixing control board
 - Six (6) 400 watt/per channel professional amplifiers
 - Three (3) stereo 1/3 octave equalizers
 - One (1) professional quality cassette audio tape recorder
 - One (1) professional quality digital audio tape recorder
 - Eight (8) professional quality microphones
 - Twenty-five (25) 25' lengths of microphone cable.
 - Sufficient portable staging platforms to construct a 32' by 20 stage
 - Risers and chairs to provide safe comfortable seating for up to one hundred 100 people.
 - Additional Center equipment and seating shall be available upon request and subject to prior scheduling.
- .06 Pursuant to General Operating Policy, City staff person will be present at all times during CST use of the facility.

Section 5. General Operating Policy.

- .01 The attached General Operating Policy is to be considered an integral part of this Agreement, and all conditions, procedures and terms contained in said Policy, except those mutually agreed upon as noted below, apply to the usage hereunder unless excepted by the City Manager.

Section 6. Oral Representation.

- .01 No representation, warranty, conditions or agreements of any kind or nature whatsoever, shall be binding upon the parties hereto unless incorporated into this Agreement, and no other agreements, oral or otherwise regarding the subject matter of this contract, shall be deemed to exist or bind any of the parties hereto.

Section 7. Exceptions to the General Operating Policy

Section 7. Concessions/House Program

01. CST requests the right to provide periodicals, programs, and other merchandise, and to take photographs in connection with all events conducted at the Center by CST under this agreement.
Acceptance of this agreement indicates City approval of this request. If CST is unable or does not desire to provide services as noted, the City will have the right to approve alternate concessionaires.
- .02 The City reserves the right to exclusive sale of food and beverage items at all CST productions and performances.
- .03 CST requests the right to engage in or undertake the sale of merchandise or similar articles of services, and that the City shall waive its right to assess a fifteen percent (15%) fee of the gross sales of all items sold by CST. City and state sales tax will be collected by CST.
- .04 CST will annually provide the City in writing those events where light refreshments will be served. These will be provided in areas where food and drink are permitted. The refreshment period shall not extend the operating hours of the Center and place Center staff into overtime. No additional fees beyond those fixed in the annual agreement will be assessed for these activities.
- .05 The joint use contract between the City/CST shall be deemed to comply with this requirement.
- .06 The City Manager shall receive a copy of all press releases, publicity and advertising materials relating to any Main Stage or Black Box event a minimum of one (1) week prior to the media release dates to verify factual information concerning use of the Center. Material must be marked "for content approval" and contain a name and phone number for notification and approval.

- .07 For those CST events covered under the City/CST joint use agreement, CST requests the right to exclusive distribution of a house program including the right to sell advertising therein. CST reserves the right to program layout. The City requires that the stipulations under Section 20.03 and 20.04 of the General Operating Policy be followed by CST. Acceptance of this agreement shall constitute granting of this request by the City.

Section 8. Box Office/Ticketing

- .01 The Center will operate Box Office at no charge for Black Box events described in Section 3, paragraphs .01 and .02 and Main Stage events described in Section 3, Paragraph .03. CST will be allowed to offer ticket sales sixty (60) days prior to the opening performance date.
- .02 CST requests the right to waive ticket use at its discretion for performance events covered under the City/CST joint use agreement in the Black Box Theatre only. Acceptance of this agreement shall constitute granting of this request by the City.
- .03 The City shall determine the number of house seats for each show. CST must receive approval from the Performing Arts Center Manager for comps in excess of ten (10) seats per Main Stage performance.

Section 9. Seating

With the exception of sub-paragraphs .01 and .05, these requirements shall only apply to Main Stage events.

Section 10. Opening Doors/Intermission

- .01 CST will have sufficient personnel to supervise the same for the duration of the performance.
- .02 CST shall determine the required intermission periods and duration's for performances covered under the City/CST joint use agreement.

Section 11. Advertising/Publicity/Media Materials and Coverage

- .01 CST shall not advertise any performance or appearance of any recognized performer, unless and until written agreements between all parties have been executed.

Section 12. Protection Clause

- .01 No one shall be granted use of the Center in such a manner as to constitute a monopoly for the benefit of any person or organization. Only City-sponsored or co-sponsored, or events covered under the City/CST joint use agreement may be scheduled on a recurring basis.

Section 13. Refusal/Cancellation/Interruption

Mutual approval by the City and CST of the proposed production calendar of events and the productions to be produced shall pre-empt this section.

Section 14. Camera/Audio Recording

- .01 Photographic or video cameras for educational, promotional and/or archival purposes will be allowed in the Center during CST performances covered under the joint agreement. All license requirements which apply to photographic, video, audio or other mechanical broadcast must be complied with. All such activities must be coordinated with the Center Technical Director.

Section 15. Facility Modification/Utility

- .01 CST may undertake painting, carpentry and electrical work in the Center with permission of the City Technical Director and coordination through CST Technical Director has been reached.

Section 16. Security/Visitors

- .01 In general, restricted areas shall be properly marked and access limited to Center and CST personnel .
- .02 Post performance greeting of performers shall be allowed after CST performances.

IN WITNESS WHEREOF, the City has caused this agreement to be signed by its duly authorized agent and CST has signed this agreement by its duly authorized agent as of the day hereinabove written.

CITY OF LANCASTER

CEDAR STREET THEATRE

BY _____
Mark V. Bozigian
City Manager

Jim Tarlton
President

Date _____

Date _____

DEPARTMENT HEAD APPROVAL: _____

APPROVED AS TO FORM:
CITY OF LANCASTER

APPROVED AS TO FORM:
CEDAR STREET THEATRE

BY _____
David R. McEwen, City Attorney

BY _____, CST Attorney

ATTEST:

City Clerk