

PROGRAMMING FUNDING AGREEMENT
Shakespeare Orange County

THIS AGREEMENT is made and entered into this 1st day of March, 2017, by and between the CITY OF GARDEN GROVE, a municipal corporation, hereinafter referred to as "CITY," and SHAKESPEARE ORANGE COUNTY, a California nonprofit public benefit corporation, hereinafter referred to as "SOC."

RECITALS

- A) CITY owns a 540-seat Amphitheater, known as the "Strawberry Bowl Festival Amphitheater," located at 12762 Main Street, Garden Grove, California, 92840 (the "Amphitheater").
- B) Commencing March 1, 2017, CITY has entered into a contract with LFA Group, LLC, to use, operate and manage the Amphitheater.
- C) Under a prior agreement, CITY contracted with SOC to produce live Shakespeare performances at the Amphitheater.
- D) CITY's agreement with LFA requires LFA to contract with SOC to continue to produce up to 24 live Shakespeare performances at the Amphitheater.
- E) CITY desires to continue to support SOC's production of live Shakespeare performances at the Amphitheater as provided for herein.

AGREEMENT

SUBJECT TO THE TERMS AND CONDITIONS HEREIN, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 1) FUNDING AND PROGRAMMING. Subject to City Council annual budget allocations, CITY agrees to allocate up to \$20,000.00 annually from the Cultural Arts Fund to be used to subsidize the costs of production of live Shakespeare performances at the Amphitheater subject to the following conditions:
 - a) During the months of May 1 through September 30, SOC shall produce a minimum 2 full theatrical productions and a minimum of 24 performance dates, 18 of which must be Shakespeare.
 - b) Payment shall be made per monthly invoice. To be eligible for payment, costs must be necessary and reasonable, authorized or not prohibited under local laws and regulations, and be adequately documented. Cost must have been incurred during the term this Agreement is in effect. Allowable costs include production/event materials, office supplies, marketing materials, and minor equipment deemed viable for the production of performances. Unallowable costs include coffee,

bottled water, or any other beverage, candy, donuts, snacks, or food items and costs of fundraising.

- c) SOC shall keep complete and accurate records of all expenses to be submitted for reimbursement. Copies of these records will be submitted with the appropriate reimbursement invoice.
 - d) SOC agrees to establish and maintain an accounting system adhering to generally accepted accounting practices, and shall provide an annual financial statement to CITY.
 - e) At the end of each calendar year, SOC will provide a financial and performances report covering the prior programming year.
 - f) SOC shall maintain its nonprofit status in good standing.
 - g) Should SOC fail to meet the obligations herein, CITY may terminate this Agreement without any funding obligation to SOC, or establish a reduced funding for a reduced number of performances.
- 2) TERM. This Agreement shall be effective commencing on March 1, 2017, and shall continue through December 31, 2018 (the "Term"). The Parties may extend the term for an additional 5-year period by mutual consent.
- 3) TERMINATION. Either party may terminate this Agreement without cause by giving written notice of such termination at least one ninety (90) days prior to the intended date of termination.
- 4) INSURANCE REQUIREMENTS. SOC shall secure the following insurance during the term of this Agreement.
- a) Workers Compensation Insurance in the amount and type required by law, if applicable.
 - b) Commercial general liability in the amount of \$1,000,000 per occurrence; (claims made and modified occurrence policies are not acceptable); Insurance companies must be admitted and licensed in California and have a Best's Guide Rating of A- Class VII or better.
 - c) Automobile liability in the amount of \$1,000,000 per occurrence; (claims made and modified occurrence policies are not acceptable) Insurance companies must be admitted and licensed in California and have a Best's Guide Rating of A-, Class VII or better.
 - d) An Additional Insured Endorsement, ongoing and completed operations, for the policy under subsection (b) and (c) shall designate the City of Garden Grove,

its officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of SOC.

- e) SOC shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements.
 - f) For any claims related to this Agreement, SOC's insurance coverage shall be primary insurance as respects to CITY, and its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY and its officers, officials, employees, agents, or volunteers shall be excess of SOC's insurance and shall not contribute with it.
- 5) INDEPENDENT CONTRACTOR. It is agreed that in the performance of the services to be performed by LFA, LFA shall act and be an independent contractor and not an agent or employee of CITY, and shall obtain no rights to any benefits which accrue to CITY's employees.
- 6) NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF CITY. No official or employee of CITY shall be personally liable to SOC in the event of any default or breach by CITY, or for any amount, which may become due to SOC, or any obligation under the terms of this Agreement.
- 7) ASSIGNABILITY. SOC shall not have the right to assign this Agreement to any person or entity without the prior written permission of CITY. Any attempted assignment, sublet or transfer made in violation of this provision shall be void.
- 8) NOTICES. All notices, demands and requests which may be given or which are required to be given by any party to this Agreement, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed effective either: (1) on the date personally delivered to the address below prior to 5:00 p.m. (Pacific Standard Time), as evidenced by written receipt therefor, whether or not actually received by the person to whom addressed; (2) on the third (3rd) business day after being sent, by certified or registered mail, return receipt requested, addressed to the intended recipient at the address specified below; (3) on the first (1st) business day after being deposited into the custody of a nationally recognized overnight delivery service (i.e., FedEx, UPS, or DHL) addressed to such party at the address specified below; or (4) on the business day sent via electronic transmission to the address below, as evidenced by confirmation of the successful electronic transmission of the message prior to 2:00 p.m. (Pacific Standard Time), or otherwise delivery shall be considered to be on the following business day. For purposes of this section, the addresses of the parties for all notices are as follows:

Address of SOC is as follows:

Shakespeare Orange County
c/o John Walcutt
9095 Central Avenue, 11C
Garden Grove, CA 92844
email: yesmrlee@aol.com

Address of CITY is as follows:

City of Garden Grove
Attn: Community Services Director
11222 Acacia Parkway
Garden Grove, CA 92840
email: kihuy@ci.garden-grove.ca.us

- 9) AUTHORITY TO EXECUTE. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of the entity for which they are signing, and that by executing this Agreement, the party for which each is signing is bound by this Agreement.
- 10) INDEMNIFICATION. SOC agrees to protect, defend, and hold harmless CITY and its elective or appointive boards, officials, officers, agents, employees, and volunteers from any and all claims, liabilities, expenses or damages of any nature, including attorney's fees, for injury or death of any person, damage to property, interference with the use of property and any other monetary damage claims, arising out of, or in any way connected with performance of the Agreement by SOC, SOC's agents, officers or employees, subcontractors, or independent contractors. The only exception to SOC's responsibility to protect, defend and hold harmless CITY is due to the sole negligence or intentional wrongful conduct of CITY, or any of its elective or appointive boards, officials, officers, agents, employees, or volunteers, in the case of which CITY agrees to protect, defend, and hold harmless SOC and its elective or appointive boards, officials, officers, agents, employees, and volunteers from any and all claims, liabilities, expenses or damages of any nature, including attorney's fees, for injury or death of any person, damage to property, interference with the use of property and any other monetary damage claims, arising out of, or in any way connected with performance of the Agreement by CITY, CITY's agents, officers or employees, subcontractors, or independent contractors. The provisions of this Section shall survive the termination of this Agreement.
- 11) MODIFICATION. This Agreement constitutes the entire Agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by SOC and CITY.
- 12) WAIVER. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of CITY or SOC, as appropriate.

- 13) CALIFORNIA LAW. This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced pursuant to this Agreement shall be initiated in the central or main branch of the Orange County Superior Court.
- 14) INTERPRETATION. This Agreement shall be interpreted as though prepared by both parties.
- 15) PRESERVATION OF AGREEMENT. Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provisions found to be invalid or unenforceable, and all remaining interpreted and all remaining provisions shall remain enforceable.
- 16) COUNTERPARTS AND FACSIMILES. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. Any facsimile of any original document shall be treated as an original document. The party submitting any facsimile must also submit a copy of the original to the other party within a reasonable time after the transmission of the facsimile.
- 17) TERMINATION OF 2014 FACILITIES USAGE AGREEMENT. The Facilities Usage Agreement dated January 1, 2014, between CITY and SOC is hereby terminated effective immediately upon the effective date of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS THEREOF, the parties have executed this Agreement on the day and year first referenced herein.

Date: _____

“CITY”
CITY OF GARDEN GROVE

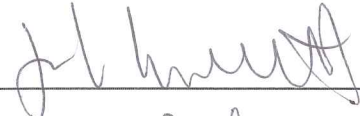
By: _____
Scott C. Stiles,
City Manager

ATTESTED:

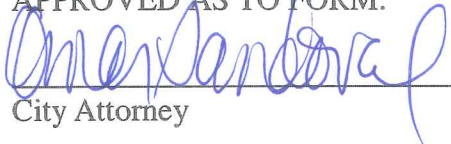
City Clerk

Date: _____

“SOC”
SHAKESPEARE ORANGE COUNTY

By: 
Title: CEO, Producing
Artistic Director

APPROVED AS TO FORM:


City Attorney