

**Cultural Arts Funding Program
Appeals Process Conference Report for Daniel Llanes**

**Submitted to: Daniel Llanes, Individual Artist
Lilia Rosas, Fiscal Sponsor, Red Salmon Arts**

**Submitted by: Meghan Wells, Cultural Arts Division Manager
Jesús Pantel, Contract Compliance Specialist Senior**

Date: 11/27/17

Summary:

At the informal review stage of his cultural funding appeal, Daniel Llanes provided more detail on some of the concerns raised in his intent to appeal letter. Cultural Arts Division staff and Daniel Llanes met in person and discussed the concerns. This report outlines the discussion, presents key areas of concern, and puts forward a finding and results.

Detail:

On Thursday, November 16, 2017, Daniel Llanes met with Cultural Arts Division staff members Meghan Wells and Jesús Pantel for an Informal Conference meeting, the third step in the Cultural Funding appeals process. At the Informal Conference, Daniel Llanes presented reasons why he believed his Core Cultural Funding decision should be reconsidered on the appealable bases of 1) Arts Commission or staff administrative error and 2) presentation of misinformation.

The discussion highlighted several of the points listed in the appeal request, including panelists reviewing only the written application, interpretation of applicant's website and social media information, content and format of the peer panel interaction, and presentation and understanding of budget information by applicant.

Finding:

Although the subjective opinions of panelists are not appealable, there is an expectation that panelists will have access to a broad range of information to support their scoring decisions. Since the ZoomGrants system was limiting the number of documents Daniel Llanes could upload and does not currently allow for hard copies of materials (such as books and other publications that do not reside online), panelists may have been limited in their understanding of Daniel Llanes' body of work and depth of portfolio. Peer panelists in a multidisciplinary panel who may not have substantial experience or background in a particular art form may need additional forms of support of particular projects to make an informed score. The Cultural Arts Division will continue to ensure that peer panelists focus on the content and quality of the artistic product and the experience of the applicant artist, especially those with deep ties to Austin's creative community, in order to maintain support of a broad range of cultural expressions.

For these reasons, Cultural Arts staff finds support for this appeal request.

Result:

Cultural Arts Division staff recommend a \$12,525 Cultural Funding award for Daniel Llanes. To arrive at this amount, Cultural Arts staff utilized the same financial data and FY 18 Funding Matrix parameters that would have been used had Daniel Llanes' application initially scored a 75, which is high enough to receive funding.

It is recommended that Daniel Llanes continue to work closely with Cultural Arts Division staff to examine the cultural funding application and process, and also to consider the feedback and implement the suggestions provided by past peer panelists to strengthen his application for future submittal.

**Red Salmon Arts/Daniel Llanes
FY 18 Core Funding Appeal**

Summary Report

October 18, 2017

The peer review panel did not score the application high enough to receive funding because they had concerns about how some of the application questions were answered. They felt some answers were broad or vague with little specific information. An answer to one of the questions in the application included “Not sure I understand the question” as part of the response, so a panelist wondered why the applicant did not seek clarification from staff or if the application was rushed.

To appeal the panel decision, the applicant must be able to show that there was: 1) Arts Commission or staff administrative error; 2) conflict of interest; or 3) presentation of misinformation. However, please keep in mind that the subjective opinions of application reviewers are not subject to appeal nor is the assigned score. If you believe one or more of the three aspects applies, please submit a written “intent to appeal” letter within 30 days as outlined in Step 2 of the appeal process on page 19 of the FY 2018 Core Funding Programs Guidelines.

City of Austin: Cultural Arts Funding Program

Guidelines for the "Core Funding Programs: Interim Application Fiscal Year 2018"

Pages 18-20

Reports

A final report will be required annually within thirty days of the programming cessation which shall be no later than October 30 of any given fiscal year.

The report will require proof of award and match monies expended, a variety of demographics data, and proof the funded programming was executed, as well as the use of required publicity verbiage and logo. Prior year Final Report documents are available for review at www.austincreates.com.

PROCESS FOR APPEAL for PS III Applications only

Operational Procedure

The Arts Commission and the City of Austin Cultural Arts Division of the Economic Development Department (EDD) have adopted a policy that provides for a process of appeal by an organization or individual whose application for funding was not approved. The City Manager makes final decisions in all matters in dealing with the award of cultural contracts based on the recommendations of the peer review process, staff input, and the Arts Commission recommendations. Arts Commission meetings are public meetings held throughout the year, and provide opportunities for citizen comments to funding program guidelines, general and specific Arts Commission and Division policies, objectives, budget requests, and other matters. During these meetings, public comment from organizations, artists and members of the public is encouraged.

Grounds for Appeal

An organization or individual whose application for requested funding in excess of \$5,000 has been reviewed and not approved for funding shall be entitled to pursue a process of appeal based upon technical aspects of the application review and determination process. Requests for an appeal must be grounded in consideration of the following technical aspects of the application/review/award process: 1) Arts Commission or staff administrative error, 2) conflict of interest, or 3) presentation of misinformation.

The subjective opinions of application reviewers, panels, and commission are not subject to appeal, nor are the scores assigned in the application review process grounds for appeal. Issues of eligibility, guidelines, policy, or funding amounts are NOT part of the Funding Determination Appeal Process. Grounds for appeal are based on the peer panel review process; therefore, there is no appeal process during the interim year.

Appeal Process

The appeal process is a review of decisions reached on an application as originally submitted or as amended in response to Cultural Arts staff inquiries. New application information and subsequent application clarification are not considered in the appeal process. The following six steps of the appeal process are outlined below:

1. Preparation for Appeal

Contact the Cultural Arts staff to request a summary report which describes the basis on which the decision was made and to discuss the review/determination process. This should be accomplished immediately upon notification of award.

Based upon discussions with staff and further study of the determination, if there is a decision to continue appeal then immediately proceed to the next step.

2. Notification of Intent to Appeal

Submit a written "intent to appeal" within 30 days from the date of the City funding notification letter. This correspondence must be addressed to the Cultural Arts Program Manager and should include information identifying the applicant and specific project, and a brief discussion on the basis on which an appeal is being made (administrative error, conflict of interest, or presentation of misinformation). Submission of a written "intent to appeal" within 30 days from receipt of the funding notification will initiate step 3.

3. Conference

Following receipt and review of the "intent to appeal", the Cultural Arts Program Manager will schedule a staff/appellant conference. The purpose of this conference is to informally review and discuss the recommendations of the peer review panel and the action taken by the Austin Arts Commission.

In response to a written statement of intent to appeal, City staff will provide appropriate guidelines and questions to determine the basis for appeal in preparation for the staff/appellant conference. At least two days prior to the meeting, the Appellant must provide the Cultural Arts Program Manager written answers to the questions.

Based upon the findings of the conference, a report is developed which outlines the discussion (e.g. key facts, areas of consensus, agreement, and concern, etc.) The report will be made available to the Appellant as soon as possible (within one week of the meeting). If the appellant's concerns are not resolved, the Appellant may proceed to the next step.

4. Formal Review

Within two weeks after the receipt of the meeting report, should the appellant's concern remain unresolved, the appellant should submit a written request for formal review. A letter, based only upon those appealable issues and evidence considered at the informal review that remain unresolved, should be submitted to the ED Director. The issue(s) must be specific and clearly set forth in the letter. The appellant should give care to determine if correction of the error would likely result in a positive funding determination before requesting a formal review. (For example: If the correction of the error would likely provide an additional ten points to the application score, and the application score was forty points below the funding mark, proceeding with a formal review would not be productive.)

5. Appeal Hearing

After receipt of the request for a formal review, the ED Director will schedule a formal appeal meeting with the Austin Arts Commission's Appeal Working Group within sixty (60) days. The working group will be chaired by the Austin Arts Commission Vice Chairperson or his/her designee, a member of the review panel, and any others appointed by the Austin Arts Commission Chairperson. A maximum of three (3) appellant representatives may attend the meeting.

After review of the materials presented, the Appeal Working Group will prepare a recommendation to the Austin Arts Commission for consideration at its next scheduled meeting. A copy of the working group report and notification of the date of the Austin Arts Commission meeting at which the recommendation will be made will be provided to the appellant. If a finding in favor of the appellant is determined, a recommendation to initiate the final step in the process will be forwarded to the ED Director.

6. Appeal Funding Approval

The City will reverse the previous funding decision and provide priority funding from its next available resources, with the following considerations: at a level commensurate with other similar contracts, at a special level based on City priorities, at a reduced level based upon the current status of the activity, or at an adjusted level based on funds available.

ROLES AND RESPONSIBILITIES

Austin City Council

- Establishes overall cultural funding policy and annual program budget;
- Authorizes all contracts made under the Cultural Arts Funding Programs to arts and cultural organizations; and
- Appoints members of the Austin Arts Commission

Austin Arts Commission

The Austin Arts Commission is responsible for the following tasks:

- Serves as an advisory body to the City Council in all arts-related matters, including long range planning, allocations process, and coordination with the comprehensive plan;
- Promotes close cooperation between the City and all private citizens, institutions, and agencies interested in or conducting activities relating to the arts in the city, so that all art resources within the city may be coordinated to maximize promotion and support of the arts in the city;
- Facilitates communication between arts organizations; and
- Fosters and assist the development of the arts in the city.

Review Panels

- Participates in training on scoring applications using established evaluation criteria;
- Evaluates applications using established criteria and within guidelines established in the Panel Handbook; and
- Performs other tasks as assigned to panels or individual panelists.

City Staff

- Administers policies under direction of the ED Director and City Manager;
- Provides support to the Austin Arts Commission and it's working groups;
- Facilitates peer review panels, documents and verifies panel findings, and reports to the Arts Commission; and
- Administers cultural contracts with organizations and individual artists.



M E M O R A N D U M

**City of Austin
Financial Services Department
Purchasing Office**

DATE: December 15, 2017
TO: Memo to File
FROM: Liz Lock, Procurement Specialist II
RE: MA 5500 NA180000031

This Master Agreement Contract was created and administered by Economic Development for the Fiscal Year 2018 Cultural Arts Contracts. All original documents are located with the department. The Purchasing Office is not responsible for any procurement action for this Master Agreement Contract other the creation of the payment mechanism for accounting purposes.

RESOLUTION NO. 20170928-016

WHEREAS, the City allocates fifteen percent of the funds received from the hotel occupancy tax to the Cultural Arts Fund for the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and applied fields, painting, sculpture, photography, graphic and creative arts, motion pictures, radio, television, tape and sound recording and other arts related to the presentation, performance, execution and exhibition of a major art form; and

WHEREAS, the City, through its Economic Development Department Cultural Arts Division, serves to encourage, develop, and facilitate an enriched environment of artistic, creative, cultural activity in the City; and

WHEREAS, the Cultural Arts Division manages the Cultural Arts Fund in compliance with Chapter 351 of the Texas Tax Code which authorizes funds to be spent to encourage the promotion of tourism and the hotel and convention industry; and

WHEREAS, the City Arts Commission, along with the Cultural Arts Division, developed a funding plan based on the model adopted by the City Council on August 18, 2005; and

WHEREAS, the Commission and the Division have recommended the cultural arts services contracts for Fiscal Year 2017-2018 to be funded in the amounts shown in Exhibit

“A”, and forwarded their recommendation for City Council approval as required by the August 18, 2005 Council action; and

WHEREAS, the City and the Zachary Scott Theatre have entered into an operation agreement in which the City pays the Theatre \$60,000 for maintenance, and it is sourced from the Cultural Arts Funds and

WHEREAS, Council reaffirms its support of language in the agreements for Zachary Scott Theatre regarding labor matters in the contract for the upcoming year, but also gives direction to the City Manager to add a provision to that operating agreement grant and in the award of the cultural arts grant to require return of funds paid to Zachary Scott Theatre from the City in the event that there is a determination of a violation of labor law by a federal court of appeal with competent jurisdiction over the matter; **NOW THEREFORE**,

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

The City Council approves the award of contracts for cultural arts services for Fiscal Year 2017-2018 to the contractors listed in the attached Exhibit “A” in the corresponding amounts, subject to adjustment as set out below, in a total amount not to exceed \$8,624,405, and authorizes the City Manager to negotiate and execute these contracts with terms and conditions as may be favorable, necessary, or required; and

BE IT FURTHER RESOLVED:

The Council authorizes payment in the amount of \$60,000 for Zachary Scott Theatre Center for maintenance and operations per a separate current operations agreement, to be paid

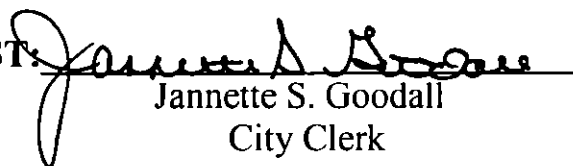
from the Cultural Arts Fund with the additional direction to the City Manager that the labor peace language from the 2016-2017 agreement be included in the new agreement, and that language also be added to that agreement and in the award of the cultural arts grant to require return of funds paid to Zachary Scott Theatre from the City in the event of a determination of violation of labor law by a federal court of appeals with competent jurisdiction over the matter; and

BE IT FURTHER RESOLVED:

The City Manager or her designee is authorized to make formula-based adjustments to funding amounts not to exceed the amount of her administrative authority, based on the arts funding matrix approved by Council and as necessary to correct mathematical or categorization errors, or based on updated financial information.

ADOPTED: September 28, 2017

ATTEST:


Jannette S. Goodall
City Clerk

OPERATING AGREEMENT

This Agreement is by and between the City of Austin, a home rule city, municipal corporation and political subdivision of the State of Texas (hereinafter referred to as the "City") and Zachary Scott Theatre Center, Inc., a Texas non-profit corporation (hereinafter referred to as "ZSTC").

R E C I T A L S:

WHEREAS, the City is the owner of the performing arts facilities located at 1421 West Riverside Drive, Austin, Texas 78704 (hereinafter referred to as the "Theatre"); and

WHEREAS, the City and ZSTC have entered into a General Agreement Between the City of Austin and Zachary Scott Theatre Center, Inc., dated Nov. 17th, 1987, pursuant to which the City and ZSTC have agreed to enter into an Operating Agreement whereby ZSTC shall be the operator of the Theatre and provide services at the Theatre; and

WHEREAS, City and ZSTC desire to enter into such Operating Agreement setting forth the respective rights and obligations of the City and ZSTC with respect to ZSTC's operations, all on the terms and conditions hereinafter set forth.

AGREEMENT

NOW, THEREFORE, the City and ZSTC agree as follows:

1. Appointment of Operator. The City hereby grants to ZSTC, subject to the terms and conditions hereinafter set forth, the exclusive right to operate the Theatre. During the term of this agreement the Theatre shall be leased to ZSTC for \$1.00 per year, during which time ZSTC shall have the exclusive right of possession of the Theatre and the property on which it is located. The parties agree that the operation of the Theatre shall not affect ZSTC's right to provide programs and services at other locations, all as ZSTC may determine from time to time. The right to operate the Theatre shall include the authority over the administration, operation and management of the Theatre and the programs and services provided at other sites, and all decisions in connection therewith, including but not limited to such matters as policy and procedure, programming, personnel, budget and fiscal matters, except to the extent expressly limited by the terms of this Agreement. Provided, however, ZSTC agrees to receive, review

and give consideration to suggestions and recommendations from the City on such matters.

2. Term. The term of this Agreement shall be a period of ninety-nine (99) years from and after the date of this Agreement; provided, however, that after the first five (5) years of such term, ZSTC shall have the right to terminate this Operating Agreement by giving written notice of its intent to terminate to the City at least twelve (12) months prior to the effective date of such termination.

3. Operating and Maintenance Costs. All operating and maintenance costs for the Theatre, including without limitation normal repair and maintenance of the premises, janitorial services, landscaping, utility costs, security, furnishings, advertising and promotional expenses, public information costs, salaries, insurance, ZSTC's overhead and administrative expenses, development expenses, and program costs (hereinafter collectively "the Theatre Costs"), shall be paid by ZSTC, subject to the City's obligations to ZSTC as provided in paragraph 4, below.

4. City's Funding Obligation. Pursuant to the City's current Cultural Arts Major Facilities Policy, the City agrees to provide the following services for the Theatre. The following described services may be expanded or reduced to reflect any amendments made by City Council to the Cultural Arts Major Facilities Policy.

- (a) Repair and maintenance of the Theatre and the site where it is located;
- (b) Minor modifications to the Theatre;
- (c) Janitorial services at the Theatre;
- (d) Insurance for the Theatre (and all improvements, furniture, fixtures and equipment), including fire and extended coverage and other casualty insurance (including theft) and liability insurance; and
- (e) All uninsured losses from fire and casualty losses (including theft).

In the event the City fails to provide the above-described services in a timely manner, ZSTC shall notify the City, in writing, of the required services and the time period within which these services are needed. If the City fails to respond to ZSTC within thirty (30) days following its receipt of said notice, ZSTC

may secure said services from another source and submit to the City a report outlining the services provided and costs incurred. The City shall pay its share of such costs within thirty (30) days after receipt of such written report.

In addition to the above reimbursement, ZSTC shall be entitled to receive from the City an amount equal to not less than 5.29% of the Cultural Arts Portion of the City's Hotel Occupancy Tax beginning in the fiscal year of 1988/89 and continuing during the term of this Agreement, to support ZSTC's operation of the Theatre, which amount shall be paid to ZSTC in monthly installments. As used herein, the "Cultural Arts Portion of the City's Hotel Occupancy Tax" shall mean that portion of such tax collected by the City equal to 1% of the consideration paid by the occupant of the sleeping room to the hotel as established by state law. The percentage of said tax revenue to be allocated to ZSTC shall be subject to review after five (5) years and may be adjusted based on available revenue and/or changes in ZSTC's operating budget.

The City and ZSTC agree to use due diligence to locate additional sources of supplemental funding for Theatre's operations, including but not limited to (i) a voluntary, downtown district with specific commitments to the support of ZSTC; (ii) creation of a special art district with taxing authority through the passage of special enabling legislation; (iii) additional non-general fund tax revenues of the City; and (iv) contracts with the City for the delivery of cultural arts programs as may be agreed to from time to time.

The City, at its option, may contribute funds specifically dedicated to acquisitions, capital construction and/or special projects, in addition to its foregoing funding obligations.

5. Theatre Programming. In consideration of the City's provision of payments and services under this agreement, ZSTC shall provide theatrical performances at the Theatre to the public throughout the year. Prior to each fiscal year ZSTC will submit to the City a detailed description of the programs planned for that fiscal year. ZSTC shall have the sole authority to determine the programs that will be presented to the public at the Theatre. No person, entity or organization shall have the authority to program the Theatre, or any other location at which ZSTC may provide programs, or have the right to approve or disapprove programs presented by ZSTC at any location. ZSTC may, at its

option, permit other arts organizations to prepare and present programs if done in consultation with ZSTC and ZSTC approves such programs prior to presentation to the public.

6. Use of Theatre. ZSTC will provide access for non-profit theatre and dance organizations and other members of the public to the Theatre on a space available basis as determined by ZSTC on a first-come, first-serve basis. ZSTC shall adopt procedures to ensure that non-profit theatre and dance organizations have reasonable access to such facilities. Notwithstanding the foregoing, ZSTC may adopt procedures to ensure that events sponsored by ZSTC will be given first priority in scheduling the use of the Theatre. No organization other than ZSTC shall have the right to conduct fund raising events at the Theatre, except with the prior written consent of the City Manager and ZSTC. ZSTC may charge third parties using the Theatre a fee based on a fee schedule to be established annually by ZSTC in accordance with guidelines as specified in Exhibit "A" which is attached hereto and incorporated herein. The income derived from such fees shall be used to defray ZSTC's share of Theatre Costs. ZSTC shall have the right to adopt rules and regulations governing the use of the Theatre, which rules and regulations may address any and all aspects of such use, including without limitation the following issues:

- (a) Required insurance coverage for users;
- (b) Content of printed programs;
- (c) Advertising which uses the name "Zachary Scott Theatre Center" or any variation thereof;
- (d) Assurances of payment for user expenses, such as payments to ZSTC, promotion fees, artists fees, artist expenses, advertising expenses, costs of printed programs and payment for insurance coverage;
- (e) Service of food and beverages; and
- (f) Handling of ticket sales and box office.

ZSTC agrees to provide to the City copies of the fee schedule established annually by ZSTC, and all rules and regulations adopted by ZSTC governing the use of the Theatre.

The City shall have the right to use the Theatre, but not ZSTC staff, free of charge of the base rate for use of the facility, for up to eighteen (18) facility use days per year

(based upon the City's fiscal year), beginning in fiscal year 1989/90 or when two (2) spaces become available, whichever occurs first, and provided further that such space is available pursuant to the normal booking procedures then in force by ZSTC. The City and ZSTC shall negotiate in good faith to determine the sequencing and space to be provided to the City. Days to be provided to the City free of charge may be changed annually by mutual agreement of the City and ZSTC.

7. Admission Fees. ZSTC may charge admission fees in connection with performances or activities at the Theatre. In addition, ZSTC shall have the right to charge user fees for special services, such as educational classes. The amount of such admission and user fees shall be used to defray ZSTC's share of Theatre Costs. Upon receipt, ZSTC shall furnish no less than six (6) complimentary tickets to any ZSTC sponsored event, for use by the City; provided that the number of complimentary tickets may be changed annually by mutual agreement of the City and ZSTC.

8. Hours of Operation. ZSTC shall keep the Theatre open a minimum of thirty-five (35) hours per week, subject to reduction as is reasonably necessary to permit repairs to the Theatre, to permit installation and removal of sets, or in observation of normal holidays.

9. Name of Theatre. During the term of this Agreement, the Theatre shall be called "Zachary Scott Theatre Center".

10. Collateral Uses of the Theatre. ZSTC shall have the right to use portions of the Theatre for collateral uses, including without limitation, restaurant, catering services, beverage service, coffee shop, or gift shop purposes, or for ZSTC's administrative offices, in which event the income, if any, derived from such uses shall be used to defray ZSTC's share of Theatre Costs; provided, however, such collateral uses, excluding ZSTC's administrative offices, shall not use more than Ten Thousand (10,000) square feet of the theatre unless authorized by the prior written consent of the City, and ZSTC's administrative offices shall not use more than Ten Thousand (10,000) square feet of the Theatre unless authorized by the prior written consent of the City. Provided, however, that if the amount of area allocated to collateral uses should, in the reasonable opinion of the City's Bond Counsel, cause the City's bonds to become taxable, in whole or in part, the City and ZSTC agree to reduce the area devoted to collateral uses to such extent as may be necessary to preserve the tax exempt status of said bonds. By the word "bonds" is meant only those outstanding bonds issued or sold by the City to finance the Theatre identified and defined in the General Agreement, of even date herewith, between the City and ZSTC.

11. Subcontracting Theatre Services. ZSTC, at its option, may contract with third parties to provide some of the services involved in the collateral uses at the Theatre. Any such contract shall be subject to City requirements relating to nondiscrimination.

12. Reports to City. During the term of this Agreement, ZSTC agrees to provide to the City through the Parks and Recreation Department the following information:

- (a) A true and correct copy of ZSTC's corporate charter, with amendments, if any, and an accurate, complete copy of its bylaws, and any amendments thereto, together with true and correct copies of subsequent amendments to the charter or the bylaws as they become effective.
- (b) The names and addresses of all members of the Board of Directors of ZSTC, and the names of all future directors, as they are elected.
- (c) Copies of ZSTC's personnel rules and regulations governing the conduct of its employees, and any subsequent amendment thereto as such amendment is adopted.
- (d) True and correct copies of the minutes of meetings of the Board of Directors, as finally approved by the Board of Directors.
- (e) Quarterly reports within thirty (30) days after the end of a quarter reflecting all performances at the Theatre during that quarter and all other programmatic services that have been provided to the public during that quarter.
- (f) Quarterly reports within thirty (30) days after the end of a quarter setting forth financial and attendance information with respect to the programs and other services provided by ZSTC, together with copies of pertinent publicity and programs in connection therewith, and any newsletter published by ZSTC during such quarter.

- (g) When requested by the City, separate event reports containing financial and attendance information with respect to each separate event presented by ZSTC within sixty (60) days after completion of the event.
- (h) ZSTC's annual budget, and any amendment thereto, within fifteen (15) days after the same is adopted.

Quarterly reports and event reports specified in this Section will be made on forms provided by the City.

13. Financial Information. In addition to the monthly reports of Theatre Costs, as set forth above, ZSTC annually shall provide to the City a financial audit of ZSTC's operations for ZSTC's most recently completed fiscal year. Such audit shall be provided to the City within fifteen (15) days after such audit is accepted by the Board of Directors of ZSTC.

ZSTC's financial records shall be available for inspection and copying by the City during ZSTC's normal business hours and at ZSTC's business office, or at the office of its accountants, upon three (3) days written notice from the City to ZSTC.

14. Ex Officio Members. During the term of this Agreement, the City's Mayor, City Manager, and Director of Parks and Recreation Department or his designee shall be non-voting ex officio members of the Board of Directors of ZSTC. ZSTC agrees to amend its by-laws to provide for such ex officio positions.

15. Acknowledgment of City Support. ZSTC will acknowledge City support in all printed materials and other advertisement pertinent to the programs presented by ZSTC in substantially the following form: "This program is funded in part by the City of Austin," or in such other form as the City may reasonably request in the future. ZSTC will also acknowledge City support in the construction of the Theatre by placing a plaque adjacent to the main entrance to the Theatre, or by other means agreed upon by the parties.

16. Termination. This Agreement may be terminated under the following conditions, but no others:

- (a) By the non-defaulting party in the event of any default under this Agreement by the other party, provided that the non-defaulting party has first provided to the defaulting party written notice specifying such event of default, and provided further that the defaulting party has failed to cure such event of default within thirty

(30) days after receipt of such written notice; provided, however, that if the event of default is such that, by its nature, cannot reasonably be cured within such thirty (30) day period, then the defaulting party shall not be deemed to be in default for purposes of this subsection if it has, within such thirty (30) day period, begun reasonable efforts to cure such default and pursues such efforts with reasonable diligence thereafter until such default is cured.

(b) By ZSTC as provided in Section 2, above.

(c) By either party upon termination of the Lease of the Theatre of even date herewith between the City and ZSTC.

17. Relationship Between the City and ZSTC. In acting as operator pursuant to this Agreement, ZSTC shall be an independent contractor, and nothing herein shall be deemed to constitute the City and ZSTC as partners or joint venturers. Nothing in this Agreement shall alter in any manner the status of personnel employed by ZSTC, who shall in no event be deemed to be employees of the City.

18. Nondiscrimination. ZSTC hereby acknowledges its commitment not to discriminate on account of race, color, sex, age, handicap, religion or national origin, in employment practices (unless age or handicap is a bona fide occupational qualification) or in the use of, or admission to ZSTC programs.

19. ZSTC Directors. It is recognized that it is the intent of ZSTC that the Directors elected to its board shall provide broad representation of the community interests in the promotion and presentation of the arts, consistent with ZSTC's purpose and policies as set forth in ZSTC's by-laws.

20. Tax Exempt Status. ZSTC warrants (i) that it is a tax exempt entity pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, (ii) that ZSTC will maintain such status at all times during the term of this Agreement, and (iii) that its use of the Theatre shall, during the term of this Agreement, be in furtherance of ZSTC's exempt purposes under said Section.

21. Compliance with Laws. ZSTC agrees that it will strictly observe and abide by all applicable laws and ordinances of the City of Austin, the State of Texas, United States of America, and any other applicable political subdivision, as the

same now exist or as may hereafter be amended; provided, however, that nothing herein shall permit the City to amend the terms of this Agreement by ordinance or other action.

22. Notices. Any notice, payment, report or other matter required or permitted to be given by either party to the other may be effected either by a personal delivery to the address set forth below, or by certified mail, postage prepaid, return receipt requested, properly addressed to the appropriate address set forth below.

If to the City, to:

The City of Austin
c/o City Manager
P. O. Box 1088
Austin, Texas 78767-8828

With a copy to:

Parks and Recreation Dept.
P. O. Box 1088
Austin, Texas 78767-8828

If to ZSTC, to:

Zachary Scott Theatre Center, Inc.
P. O. Box 244
Austin, Texas 78767
Attention: Elota Patton

Either party may change its address by written notice to the other in accordance with the terms of this section.

23. Parties Bound. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

24. Legal Construction. In case any one or more of the provisions contained 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 provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

25. Applicable Law. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created by this Agreement are performable in Travis County, Texas.

26. Prior Agreements Superseded. This Agreement constitutes the sole and only agreement of the parties to this Agreement

with respect to the subject matter contained herein, and super-
sedes any prior understandings, or written or oral agreements
between the parties concerning such subject matter.

27. Amendment. This Agreement may be amended only by
written document, duly executed by the City and ZSTC.

EXECUTED as of the 24th day of November, 1987.

THE CITY OF AUSTIN, TEXAS

RW

By *Libby Watson*

Name: LIBBY WATSON

Title: AUSTIN City Manager

ZACHARY SCOTT THEATRE CENTER, INC.

By *Philip Maxwell*

Name: PHILIP MAXWELL

Title: Legal Counsel

EXHIBIT "A"

Guidelines for Setting Rates for Use of
ZSTC Theatre Facilities

1. In setting rates, the following factors will be considered:
 - type of user (profit or non-profit)
 - type of event (performance/film/meeting/workshop/etc.)
 - actual costs to operate
 - market (rates charged by similar facilities for similar events)
 - time of week (weekday vs. weekend)
 - time of day (day vs. night)
 - extraordinary utility or security requirements
2. The rate structure will be tiered as follows:
 - non-profits will be charged less (15-20%) than profit groups
 - a lower rate will be charged for certain daytime events (lectures, meetings, etc.) which require very little overhead costs
 - a lower rate may be charged for weekday events (Mon.-Thurs.)
3. The base rate for use of the facilities will be competitive with similar facilities.
4. Extra costs will be added to the base rate for "extra" services such as:
 - stage lighting
 - stage labor and services (technicians, labor)
 - house labor and services (house manager, usher)
 - video/audio equipment and technician services
 - dance floor
 - alcohol and food catering
 - (ordinary custodial maintenance will be provided as part of the base rate)
5. Box office may initially be handled by user group (unless in co-sponsorship with ZSTC) although ZSTC shall have the right to develop or contract for a box office service which users must employ.