

**FOURTH AMENDMENT
TO
FACILITY USE AND OCCUPANCY AGREEMENT
BETWEEN
SEATTLE REPERTORY THEATER
AND
THE CITY OF SEATTLE**

This FOURTH AMENDMENT TO FACILITY USE AND OCCUPANCY AGREEMENT (this "Amendment") is effective as of the date of the last signature below (the "Effective Date") and is entered into by the CITY OF SEATTLE (hereinafter referred to as "City"), a Washington municipal corporation, acting by and through its Seattle Center Department, and the SEATTLE REPERTORY THEATER (hereinafter referred to as "SRT" or "Seattle Rep"), a not-for-profit corporation organized under the laws of the State of Washington.

RECITALS

WHEREAS, SRT was founded in 1963 and began operations in the Seattle Center Playhouse before moving to the Bagley Wright Theatre, making it one of the longest standing resident organizations at Seattle Center; and

WHEREAS, the City and SRT are parties to that certain Facility Use and Occupancy Agreement, authorized by Ordinance 118109 and amended by First Amendment, Second Amendment, and Third Amendment (the "1996 Agreement"), which governs SRT's use, occupancy and financial obligations with respect to the Bagley Wright Theatre; and

WHEREAS, the 1996 Agreement requires SRT to establish and maintain the SRT Replacement Trust Fund (the "SRT Fund"), to be used exclusively for the replacement, maintenance and repair of the Bagley Wright Theatre and required the City to establish and maintain the Bagley Wright Theatre Maintenance, Repair & Replacement Fund (the "BWTMRR Fund") to be used exclusively for replacement and repair of the Bagley Wright Theatre; and

WHEREAS, the 1996 Agreement requires SRT to make annual contributions to the SRT Fund each year during the term in the amounts set forth in Exhibit 8 to the 1996 Agreement, including contributions of \$174,836 for the 2021 SRT fiscal year and \$179,206 for the 2022 SRT fiscal year; and

WHEREAS, the 1996 Agreement required the City to make annual contributions to the BWTMRR Fund until 2009 and the City made each required annual payment into the BWTMRR Fund; and

WHEREAS, the Third Amendment to the 1996 Agreement made, among other things, an allowance for SRT to temporarily draw upon funds existing in the SRT Fund for operating expenses if necessary to provide SRT with financial relief during the Covid-19 pandemic emergency and provided that SRT was not required to make the annual contributions for SRT fiscal years 2019 and 2020 to the SRT Fund; and

WHEREAS, the Third Amendment to the 1996 Agreement incorrectly stated that SRT's annual contribution for SRT Fiscal Year 2019 was \$170,571 and SRT's annual contribution for

SRT Fiscal Year 2020 was \$174,836, while the correct amount for SRT Fiscal Year 2019 was \$166,411 and for SRT Fiscal Year 2020 was \$170,571; and

WHEREAS, in 2021, SRT began a renovation project to make the Bagley Wright Theatre space more accessible (the "Renovation Project"), and has completed the first two phases (Phases I and II) of the Renovation Project, including regrading ramps, replacing seating on the main floor of the Bagley Wright Theatre, adding more wheelchair-accessible locations, renovating lobby restrooms, adding an all-gender/family restroom, increasing circulation space for patrons on the mezzanine, and upgrading the production and administrative offices, which cost \$3,920,110; and

WHEREAS, the Renovation Project was financed and paid for by SRT with sources other than the SRT Fund in order to not deplete the Fund as a source of emergency financial relief pursuant to the Third Amendment during the same time period; and

WHEREAS, the final phase of SRT's Renovation Project is set to begin in summer 2024, which will include streamlining the main lobby staircase at Bagley Wright Theatre, adding acoustical ceiling tiles, and completing cosmetic renovations to the Bagley Wright Theatre mezzanine, and is expected to cost about \$1.1M million; and

WHEREAS, the City is currently undertaking a major maintenance project to replace the exterior cladding and select areas of the roof of the Bagley Wright Theatre (the "Roof Project") as recommended in the Seattle Center Roof, Cladding, and Fenestration Surveys (2021) to extend the lifespan of the roof and exterior; and

WHEREAS, the current balance of the SRT Fund is \$871,586 and the current balance of the BWTMRR Fund is \$119,669; and

WHEREAS, SRT and City agree that as of March 28, 2024 the total funds owed in annual SRT contributions into the SRT Fund according to Exhibit 8 of the 1996 Agreement is \$918,994.00; and

WHEREAS, SRT has provided City with documentation that the Renovation Project Phases I and II were completed and that at least \$871,586 was paid by SRT for construction of the Renovation Project between 2021 and 2023;

NOW, THEREFORE, the parties agree to amend the 1996 Agreement as follows:

AGREEMENT

Notwithstanding Subsection 13.F of the 1996 Agreement, the City and SRT agree to the following exceptions concerning the Fund to address the SRT's expenditures for its Renovation Project:

1. SRT may draw down the current balance of the SRT Fund to reimburse SRT for its expenditures for Phases I and II of the Renovation Project.
2. SRT and City agree that, for the remainder of the term of the 1996 Agreement, SRT shall spend at least \$918,994.00 – equal to the total outstanding payments remaining to be contributed into the SRT Fund – on improvements to the BWT that will be mutually agreed to by SRT and the City.

3. SRT will provide documentation including invoices and project plans or equipment spec sheets as applicable to City on a quarterly basis until both parties confirm that the total funds set forth in Section 2 have been spent.
4. SRT and the City agree that the City will spend the current balance of the BWTMRR Fund in the amount of \$119,669.00 on the Roof Project.
5. The City will provide documentation including invoices and project plans as applicable to SRT on a quarterly basis until both parties confirm that the total funds set forth in Section 4 have been spent.
6. Paragraph 1 of the Third Amendment to the 1996 Agreement is amended to read as follows, thereby replacing paragraph 1 of the Third Amendment:

“1. SRT shall not be required to make the following minimum annual deposits to the Fund:
A. The contribution for the 2019 SRT fiscal year in the amount of \$166,411;
and
B. The contribution for the 2020 SRT fiscal year in the amount of \$170,571.”
7. Except to the extent modified by this Amendment, all terms of the 1996 Agreement shall remain in full force and effect.
8. Capitalized terms used but not defined in this Amendment shall have the meanings given to such terms in the 1996 Agreement.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by having their authorized representatives affix their signatures in the spaces below.

THE CITY OF SEATTLE

SEATTLE REPERTORY THEATER

By _____

By _____

Marshall Foster, Director
Seattle Center Department

Jeffrey Herrmann
Managing Director

Date _____

Date _____