

**THE WASHINGTON CENTER OPERATING AGREEMENT
2016 Amendment**

This Agreement is entered into by and between the City of Olympia, a Washington municipal corporation, hereinafter referred to as "City" and the Washington Center for the Performing Arts, Incorporated, a Washington non-profit corporation, hereinafter referred to as "Washington Center" and is effective as of the date of the last authorizing signature affixed hereto.

WITNESSETH:

WHEREAS, the City is the owner of a performing arts theater, hereinafter referred to as the "Center", which is situated upon the real property located in Thurston County, State of Washington, more fully described in Exhibit A attached hereto; and

WHEREAS, the goal of The Washington Center is to operate a quality and financially sound performing arts center to be enjoyed and supported by the entire community; and

WHEREAS, the Washington Center has been organized for the express purpose of occupying, managing and operating the Center as provided by this agreement; and

WHEREAS, both parties desire that the Center be managed and operated as a place for public entertainment, meetings and cultural events in accordance with the provisions, terms and conditions of this Agreement, so that the Center will serve as an economic and cultural stimulant for the community and the people of the City of Olympia and the environs, and so that the City may be relieved of the responsibility of operating the Center,

WHEREAS, the City and the Washington Center first entered into an Operating Agreement dated December 17, 1992, which was thereafter amended in January of 2006; and

WHEREAS the parties wish to update their operating Agreement; and

WHEREAS this updated Agreement shall supersede any and all prior operating agreements between the City and the Washington Center;

NOW, THEREFORE, in consideration of the mutual undertakings and promises contained herein and the benefits to be realized by each party, and in further consideration of the benefit to the general public by the enhancement of the economic climate of the City and its environs to be realized by the performance of this Agreement, and as a direct benefit to the City, the parties agree as follows:

A. RESPONSIBILITIES OF WASH1NGTON CENTER

1. Occupy, Operate and Manage: The Washington Center shall occupy, manage and operate the Center according to the provisions, terms and conditions of this Agreement, and in accordance with all applicable laws as shall relate thereto. The Washington Center shall promote the Center through brochures or other means of advertising designed to attract performances and stage events to the Center and shall schedule, rent and book such performances, exhibits and events to occur at the Center.

Except as specifically set forth herein, the Washington Center shall be solely responsible for the costs of administration and daily operations as the same shall directly relate to such facility's use as a performing arts theater. The Washington Center shall be the sole operator of the facility and shall do all things necessary for such operation, including but not limited to approving or denying requests for the use of said facility, operating concessions, obtaining a liquor license and adopting complimentary ticket policies. The Washington Center shall be solely responsible for the control and security of the Center and all property pertaining thereto.

The Washington Center shall allow the City to tastefully display artifacts and gifts from the City's sister cities, so long as such display does not interfere with the operation of the Center and in co-operation with the Washington Center's own visual art program. The City shall consult with the Center and be responsible for setting up and removing the displays.

Further, the Washington Center shall allow the City use of the Center when it is available and when reserved in advance in accordance with the policy set out in **Exhibit "A"** attached hereto and incorporated herein by reference. The City shall be responsible for all reasonable out-of-pocket expenses incurred by the Washington Center related to said rent-free use of Center.

2. Facility Maintenance:

a. Category 1/General Maintenance: The Washington Center shall be responsible for general maintenance of the Center building and premises including, but not limited to day-to-day janitorial and cleaning services and removal of snow, ice and debris from pedestrian walkways. The Washington Center shall pay for the above mentioned services as part of its annual operating budget.

In addition, the Washington Center shall withhold an amount from each ticket service charge collected, and with those proceeds will carry comprehensive hardware and software maintenance agreements on the Box Office/Data Base computer system.

b. Category 2/Performance Related Maintenance and Repair: The Washington Center shall be responsible for repair and maintenance of Center premises, property and equipment which are considered "performance related". For purposes of this agreement, performance related shall mean such items as the stage rigging system, the sound system, the stage lighting system and other items which uniquely relate to performances within the Center. Olympia and the Washington Center shall establish a list of property and equipment with a value of more than \$5,000 which shall be considered performance related. In addition, The Washington Center shall be allowed to execute emergency repairs to non-performance related components of the structure, and may, following approval by the City's Public Works Facilities Department, perform or cause to be performed any Category 3 maintenance set forth in Section B below as a City responsibility.

c. Category 4/Major Repair and Replacement: The Washington Center shall withhold an amount from each ticket service charge collected, which shall be deposited and retained in a separate account by the Washington Center and designated as the "Equipment Repair & Replacement Fund". These funds are to be used for stage equipment replacement and purchase, carpet replacement, seat repair and replacement, and other major repair and replacement or capital items. In this regard, the Washington Center shall by October 1 of each year submit to Olympia for its concurrence a multi-year capital plan which outlines proposed major capital purchases and/or repairs for the years indicated in said plan. The Washington Center shall obtain City approval, and comply with all applicable bidding and procurement requirements, prior to making any

improvement, alteration, repair or changes to the Center, except for work which qualifies as ordinary maintenance under RCW 39.04.010. All documentation related to such work shall be maintained in compliance with applicable public records requirements. By way of example, work or improvements requiring prior City approval include but are not limited to additions or removal of walls, electrical, plumbing systems or other fixtures.

d. The Washington Center shall perform its maintenance duties hereunder at the same level and in accordance with the same standards the City applies to other City-owned property. This shall include a reasonable program of preventative maintenance.

3. Insurance:

The Washington Center shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with The Washington Center's operation and use of the premises.

The Washington Center shall obtain insurance of the types as describe below:

Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. The City shall be named as an insured on the Washington Center's Commercial General Liability insurance policy using ISO Additional Insured-Managers of Lessors of Premises Form CG 20 11 or substitute endorsement providing equivalent coverage.

The Washington Center shall maintain the following insurance limits:

Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence, \$6,000,000 annual aggregate.

The insurance policies are to contain, or be endorsed to contain, the following provisions for Commercial General Liability insurance:

a. The Washington Center's insurance coverage shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Washington Center s insurance and shall not contribute with it.

b. The Washington Center's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

4. Indemnification: the Washington Center shall indemnify, defend and hold harmless Olympia from any claims, actions, suits or liability whatsoever arising due to the Washington Center's occupancy, management, operation or maintenance of the Center; provided, that this section shall not apply to any claims, actions, suits or liability arising due to defects in the conditions of the building caused by a party other than the Washington Center to perform hereunder.

5. Rules and Regulations: the Washington Center, for information purposes, shall adopt policies, rules and regulations, rental procedure, charges, hours of operation, uses to which the Center may be put, together with sample license agreements and contracts entered into with the performers, concessionaires and so forth.

6. Complimentary Tickets: The rules and regulations adopted by the Washington Center shall specifically address the issue of complimentary tickets or other free entry to performances or events.

7. Fiscal Responsibility: The Washington Center agrees that it shall maintain fiscal records and accounts in accordance with systems and procedures prescribed by law or regulation as applicable to financial affairs of the City. The Washington Center shall, annually, provide an independent audited financial report to the City within 90 days of the end of its fiscal year. The Washington Center shall also submit to the City a quarterly financial report in a form acceptable to the City with cash flow, revenue, and expenditure information for both the operations and capital funds for the Center. In like manner, the Washington Center shall submit to the City an annual activity report that includes facility usage.

Further, the Washington Center shall submit to the City its operating budget for its fiscal year July 1 to June 30 on or before July 1 of each year. In the event the Washington Center changes its fiscal year, the Washington Center shall submit to the City on or before September 1, its proposed budget for the Washington Center's next succeeding fiscal year.

If the Washington Center fails to timely submit any or all reports, plans or budgets, the City shall have the option to withhold payment provided under Section (C)(4) herein until receipt of said report(s) or Budget(s).

8. Books and Records- Inspection: the Washington Center agrees that its books and records pertaining to Center management shall be open and available for examination at all times by the Olympia City Manager, Director of Administrative Services and other City personnel designated by either of them. The City Manager and others designated by him/her shall have the right to enter upon and inspect the premises at any reasonable time.

9. Nonassignable Duties: the Washington Center shall not subcontract or assign to any person, firm or corporation any rights or obligations of the Washington Center under this Agreement.

10. Nondiscrimination: the Washington Center agrees and promises to manage and operate the Center and afford its services to the public on a fair, equal and non-discriminatory basis to all users thereof, and further agrees and promises it will not, on the grounds of race, color, national origin, religion, age, sex, sexual orientation, or gender identity, discriminate against any person or group of person(s) in any manner prohibited by local, state or federal laws and regulations.

11. Equal Benefits: the Washington Center shall comply as a contractor with Olympia Municipal Code Chapter 3.18 and submit an Equal Benefits Compliance Declaration as a part of this Agreement.

12. Clean Clothes: the Washington Center shall comply with the Resolution No. 1545 with respect to purchases made with funds received from the City of Olympia under this Agreement.

B. RESPONSIBILITY OF CITY

1. Fire Insurance: The City shall maintain any and all fire casualty and extended coverage insurance, or self-insurance plan, on the building and its contents in such amount as the City deems appropriate. Any funds derived from such insurance shall be used to repair or replace the damaged items or property; except should said property as a whole be damaged to an extent of over fifty percent (50%) of its value, either party may cancel this Agreement by notice in writing within sixty (60) days of the date of damage. the Washington Center and City hereby release and discharge each other from and against all liability arising either from fire loss or extended coverage or damage caused by any of the perils covered by insurance policies which are in force and effect at the time of such loss or damage, even though such loss or damage may be due to the negligence, acts or neglect of either party. It is expressly understood and agreed that it is the intention of the parties that this provision constitutes a waiver and release of any and all subrogation rights which the insurance companies might have under such insurance policies. It is also agreed that the foregoing shall apply to self-insurance or pooled self-insurance.

2. Category 3 Maintenance and Repair: The City shall perform or cause to be performed by contract all other repair, maintenance or upkeep of the Center property premises and equipment not identified in Section A.2 as Category 1 and Category 2 maintenance, including but not limited to general maintenance repair, repair of all Center heating, ventilating, and air conditioning equipment, the exterior surface of the Center and all roof surfaces.

No later than December 31, 2017, the City and the Washington Center agree to negotiate in good faith, an amended operating agreement to provide improved clarity related to facility maintenance and repair responsibility. This amended agreement will not affect the terms of the lease.

3. Maintenance Funding and Payments: On or about January 1 of any year within the term of this agreement, the City shall allocate an amount equal to \$31,000, and shall deposit this sum in a separate "the Washington Center Maintenance Account", hereinafter referred to as the "Maintenance Account". The amount allocated to the Maintenance Account under this Section shall be considered a part of the compensation paid by the City to Washington Center for the same year pursuant to Section (C)(4) of this Agreement. The Washington Center shall keep records of repairs and maintenance for which payment is made hereunder and shall report same to the City.

C. MISCELLANEOUS TERMS OF AGREEMENT

1. Term: This Agreement shall be in full force and effect until December 31, 2034; provided that the City and the Washington Center shall review this agreement in 2021 and each five years thereafter. If said review does not result in agreed amendments on or before the anniversary date for which said notice is given, the Agreement shall continue in full force and effect as then written for at least another five-year period. Provided further, that either party may terminate this Agreement during its initial term, or after extension thereof, by giving the other party at least one year's notice thereof.

2. Termination: In the event the Washington Center shall fail to perform the terms and conditions of this Agreement, then and in that event, City shall be entitled to terminate this Agreement by giving the Washington Center ninety (90) days written notice by registered or certified mail, return receipt required, at the address provided in Paragraph C. 7. below, of its desire to terminate the Agreement, which notice shall contain a complete and itemized list of all matters in which Center is in default. During said ninety (90) day period, the Washington Center shall be entitled to reinstate itself by correcting such default.

3. Independent Contractor: the Washington Center shall be considered as an independent contractor in the operation of the Center, and this Agreement shall not be construed as creating any form of partnership between City and the Washington Center. Employees of the Washington Center shall not be employees of the City of Olympia.

4. Compensation: The City and the Washington Center agree that the success of the Center is dependent on the Endowment Fund and that, therefore, only the interest of the Endowment Fund is to be utilized to meet any component of this Agreement, and the principal of the Endowment Fund is to be left intact.

In consideration for the services provided herein, the City shall pay or allocate, as provided herein, to the Washington Center during each calendar year of the agreement an amount equal to the 2% Lodging Tax authorized by R.C.W. 67.28.180 and collected by the City from all lodging establishments located within the City limits. Additionally, the City shall pay to the Washington Center interest earnings of the Washington Center Endowment Fund.

The amount of Lodging Tax and interest earnings of the Washington Center Endowment Fund payable to the Washington Center shall be equal to the amount of tax collected and interest earned thereon for the 12 months ending September 30 of the preceding year.

All payments hereunder shall be paid on a monthly basis, based on vouchers submitted by the Washington Center which outline budgeted expenditures included therein.

Compensation shall be limited to those costs incurred for which the Washington Center has not been reimbursed or paid by another source. Further, in no case shall the City reimburse or pay the Washington Center for donated, pro-bono, in-kind or like services.

The Washington Center shall also seek operating grants, endowment funds and contributions from private and public sources.

5. Voluntary Termination: In the event the Washington Center cannot operate the Center within a balanced budget, the Washington Center may terminate this Agreement by giving at least six (6) months advance written notice to the City.

6. Arbitration: In the event that any dispute shall arise as to the interpretation of this Agreement, or in the event of a notice of default as to whether such default does constitute a breach of the contract and if the parties hereto cannot mutually settle such differences, then either party hereto shall be entitled to submit the determination of such matters to arbitration as provided by the laws of the State of Washington, or to seek such relief as may be available by the laws of the State of Washington in the Superior Court for Thurston County.

7. Notices: Any notice herein provided to be given to the City shall be addressed and delivered to the Olympia Administrative Services Director, Olympia City Hall, 601 East 4th Avenue, Olympia, Washington 98501. Any notice to be given to the Washington Center shall be addressed and delivered to the Washington Center, 512 Washington Street SE, Olympia, Washington 98501.

