REDEVELOPMENT AGENCY OF CENTERVILLE CITY/DAVIS CENTER FOR THE PERFORMING ARTS ADMINSTRATIVE CONTROL BOARD MEETING AGENDA

NOTICE IS HEREBY GIVEN THAT THE REDEVELOPMENT AGENCY OF CENTERVILLE CITY BOARD AND THE ADMINISTRATIVE CONTROL BOARD OF THE DAVIS CENTER FOR THE PERFORMING ARTS WILL HOLD A COMBINED PUBLIC MEETING AT 7:30 PM ON April 15, 2015 AT THE CENTERVILLE CITY COMMUNITY CENTER AND CITY HALL COUNCIL CHAMBERS, 250 NORTH MAIN STREET, CENTERVILLE, UTAH. THE AGENDA IS SHOWN BELOW.

Tentative Time: - The times shown below are tentative and are subject to change during the meeting.

7:30 PM **A. ROLL CALL**

B. NEW BUSINESS

1. Minutes Review and Acceptance
   March 17, 2015 RDA meeting minutes
2. 2014 Financial Report for CPT
3. Report on the status of the Theatre Reserve Fund, Operations Reserve Fund (ORF) and Maintenance Reserve Fund (MRF)
4. Proposal to amend Operating Lease to authorize a capital projects reserve account
5. Approval of CPT funds to be transferred into the ORF and MRF, based on 2014 financial report
6. HVAC maintenance issues
   a. Recommend contract to service and maintain the HVAC systems
   b. Approve expenditure from Theatre Reserve Fund for HVAC systems repairs

C. ADJOURNMENT

CENTERVILLE
RDA/ACB MEETING
Staff Backup Report
4/15/2015

Item No. 1.

Short Title: Minutes Review and Acceptance

Initiated By:

Scheduled Time:

SUBJECT

March 17, 2015 RDA meeting minutes

RECOMMENDATION

BACKGROUND

ATTACHMENTS:

Description

- March 17, 2015 RDA meeting minutes

PRELIMINARY DRAFT

Minutes of the **Redevelopment Agency of Centerville** meeting held Tuesday, March 17, 2015 at 10:43 p.m. in the Centerville City Hall Council Chambers, 250 North Main Street, Centerville, Utah.

DIRECTORS PRESENT	Paul A. Cutler, Chair Tamilyn Fillmore Stephanie Ivie Lawrence Wright
DIRECTORS ABSENT	Ken S. Averett John T. Higginson, Vice Chair
STAFF PRESENT	Steve Thacker, RDA Executive Director Blaine Lutz, Finance Director Lisa Romney, City Attorney Katie Rust, Recording Secretary

MINUTES REVIEW AND ACCEPTANCE

The minutes of the March 3, 2015 RDA meeting were reviewed. Director Ivie made a **motion** to approve the minutes. Director Fillmore seconded the motion, which passed by unanimous vote (4-0).

PEDESTRIAN BRIDGE BETTERMENTS

The City has been charging City engineering costs for the pedestrian bridge project to the RDA. Mr. Lutz stated that eventually the funds will be reimbursed from the Barnard Creek and Legacy Crossing project areas to the Parrish Gateway project area.

Chair Cutler made a **motion** to authorize funding for upgraded fencing for the pedestrian bridge at Parrish Lane, and authorize the Betterment Agreement with UDOT, with the understanding that other project management/engineering costs will be charged to the RDA. Director Wright suggested adding a dollar limit, and the RDA Board discussed an appropriate amount. Mayor Cutler amended the motion to authorize a maximum of $120,000, with additional for engineering costs if necessary. Director Wright seconded the motion, which passed by unanimous vote (4-0).

ADJOURNMENT

At 10:53 p.m. Director Wright made a **motion** to adjourn the RDA meeting. Chair Cutler noted that CenterPoint Theatre received Legislative funding for capital improvements. Director Ivie seconded the motion, which passed by unanimous vote (4-0).

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Steve Thacker, RDA Executive Director   Date Approved

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Katie Rust, Recording Secretary

CENTERVILLE
RDA/ACB MEETING
Staff Backup Report
4/15/2015

Item No. 2.

Short Title: 2014 Financial Report for CPT

Initiated By:

Scheduled Time:

SUBJECT

RECOMMENDATION

Review the 2014 financial statements for CenterPoint Theatre (CPT) and ask questions of the Executive Director, Jan Davis.

BACKGROUND

The Operating Lease between the RDA and CPT requires CPT to submit audited financial statements within 120 days of the end of their fiscal year. Since CPT's fiscal year ends December 31, they are to submit the audited statements by April 30. The audited statements are not yet available; therefore, the Executive Director has submitted the attached statements as the ***unaudited*** final statements for 2014. When the audited statements are received, those will be forwarded via email to the RDA and ACB Directors.

Reviewing the 2014 financial statements will be a foundation for several other items on the April 15 agenda--hence the reason for making this the first item of business after approval of RDA meeting minutes.

CenterPoint Legacy Theatre
Income Statement
Compared with Budget
As of 12/31/2014

	Actual	2014 Annual Budget	Variance	Actual as % of
Revenues				
Season Ticket Sales	**711,610**	**715,228**	(3,618)	99%
Individual Ticket Sales	**400,241**	**327,000**	73,241	122%
Corporate Memberships	**6,000**	**12,000**	(6,000)	50%
Show Sponsorship	**60,000**	**70,000**	(10,000)	86%
Leishman Hall Revenue	**33,071**	**33,140**	(69)	100%
Academy	**147,607**	**129,150**	18,457	114%
Facility Rental	**18,419**	**16,000**	2,419	115%
Costume/Prop Rental	**18,510**	**16,800**	1,710	110%
Concessions	**60,015**	**48,000**	12,015	125%
Annual Fund Raising Gala	**102,057**	**80,000**	22,057	128%
Events	**9,252**	**11,500**	(2,248)	80%
Miscellaneous Income	**6,847**	**9,600**	(2,753)	71%
Total Revenues	**1,573,630**	**1,468,418**	**105,212**	**107.17%**
Expenses				
Total Barlow Theatre Expenses	**455,400**	**416,419**	**38,981**	109%
Total Leishman Hall Expenses	**24,148**	**33,140**	(8,992)	73%
Total Academy Expenses	**103,036**	**99,885**	3,151	103%
Total Rental Expenses (Costume, Props, Facil	**13,524**	**10,200**	3,324	133%
Total Concessions Expenses	**50,106**	**40,897**	9,209	123%
Total Other Production Expenses	**189,321**	**157,108**	32,213	121%
Total Marketing Expenses	**93,795**	**86,694**	7,102	108%
Total Development Expenses	**94,046**	**82,105**	11,940	115%
Total Box Office Expenses	**94,680**	**97,299**	(2,619)	97%
Total Adminstrative Expenses	**175,893**	**164,908**	10,986	107%
Total Facilities Expenses	**284,429**	**278,754**	5,675	102%
Total Expenses	**1,578,377**	**1,467,408**	**110,969**	**108%**
Net Operating Income	**(4,747)**	**1,010**	(5,757)	-470%
Donations	**90,654**	**23,500**	67,154	386%
Grants	**62,500**	**49,000**	13,500	128%
Total Donations	**153,154**	**72,500**	80,654	**211%**
Interest	**742**	**-**	742	
Income before debt payment	**149,149**	**73,510**	**75,639**	
Depreciation	**11,207**	**15,000**		
Debt Payment	**56,000**	**26,000**		
Net Income / (Loss)	**$ 81,942**	**$ 32,510**	**$ 49,432**	
Maintenance reserve funding	15,562	**15,000**		
Operations reserve funding	-	**15,000**		
Net Income/(Loss) after fund contribution	66,380			

CenterPoint Legacy Theatre

4th Quarter Facility Expenses

Compared with Budget

December 31, 2014

	4th Qtr Actual	4th Qtr Budget	4th Qtr Variance	Year to Date Actual	Year to Date Budget	Year to Date Variance
Facilities Expense						
Debt payment	39,750.00	0.00	39,750.00	56,000.00	26,000.00	30,000.00
Safety Program Expense	0.00	0.00	0.00	67.08	950.00	(882.92)
Contract Repairs & Maintenance	2,244.20	840.00	1,404.20	9,430.40	10,080.00	(649.60)
Repairs & Maintenance	18,863.76	1,000.00	17,863.76	25,546.30	17,400.00	8,146.30
Janitorial Expense	2,957.77	3,000.00	(42.23)	35,482.24	40,000.00	(4,517.76)
Janitorial Supplies	1,128.58	260.00	868.58	4,548.52	3,120.00	1,428.52
Gas	2,539.94	2,870.00	(330.06)	15,392.80	19,090.00	(3,697.20)
Electricity	4,043.45	4,155.00	(111.55)	61,574.11	63,944.00	(2,369.89)
HVAC	5,517.66	1,000.00	4,517.66	15,353.04	12,000.00	3,353.04
Lamps/Ballast/Fixtures	278.25	400.00	(121.75)	2,564.71	4,800.00	(2,235.29)
Seat & Paver Expenses	0.00	0.00	0.00	14.00	0.00	14.00
Facility Lease Expense	6,100.45	6,060.00	40.45	73,205.40	72,720.00	485.40
Miscellaneous	2,801.59	150.00	2,651.59	2,611.59	1,800.00	811.59
Grounds/Snow Removal/MTC	3,612.86	800.00	2,812.86	38,638.91	32,850.00	5,788.91
Total Facilities Expenses	89,838.51	20,535.00	69,303.51	340,429.10	304,754.00	35,675.10

CENTERVILLE
RDA/ACB MEETING
Staff Backup Report
4/15/2015

Item No. 3.

Short Title: Report on the status of the Theatre Reserve Fund, Operations Reserve Fund (ORF) and Maintenance Reserve Fund (MRF)

Initiated By:

Scheduled Time:

SUBJECT

RECOMMENDATION

Receive an update from RDA staff and the CPT Executive Director regarding the current balances in the Theatre Reserve Fund (TRF), Maintenance Reserve Fund (MRF) and Operations Reserve Fund (ORF).

BACKGROUND

RDA staff will report on the current balance of the TRF. Jan Davis will report on the current balances of the MRF and ORF--prior to adding amounts resulting from the 2014 operations.

CENTERVILLE
RDA/ACB MEETING
Staff Backup Report
4/15/2015

Item No. 4.

Short Title: Proposal to amend Operating Lease to authorize a capital projects reserve account

Initiated By:

Scheduled Time:

SUBJECT

RECOMMENDATION

Direct staff to draft amendments to the Operating Lease that will allow the creation and use of a capital projects reserve account.

BACKGROUND

On March 11, 2015, City/RDA staff (Steve Thacker, Blaine Lutz and Lisa Romney) met with CPT Executive Director (Jan Davis) and two CPT Board members (Kathleen Gilbert and Dave Baugh) to discuss practical issues relating to the application of several Lease provisions to the expenditure of donated funds. Out of that discussion comes the recommendation to amend the Operating Lease to allow for a capital projects reserve account.

The Lease (Section 20) requires a monthly Base Rent payment from CPT which goes into the Theatre Reserve Fund (TRF). The Lease (Section 21) also requires the payment of Annual Variable Rent into the TRF, if applicable. Annual Variable Rent is based on "Annual Profits", which is defined as:

- ". . . any and all revenue generated by the operation of the Theatre, including, but not limited to, ticket sales, sponsorship, concessionaires, gift shop sales, etc., less all operating and production costs, expenses, and authorized reserves for each calendar year ("Annual Profits"). Annual Profits shall also include donations except as otherwise provided in Section 27 regarding donations earmarked for specified purposes."

CPT is also required to make certain annual allocations to the Operations Reserve Fund (ORF) and Maintenance Reserve Fund (MRF), including an annual Minimum MRF contribution equal to 1% of CPT's previous year's Annual Revenues (as defined in Section 33) until these reserve funds reach their limits as expressed in Sections 22 and 23, respectively. The purposes for which ORF and MRF funds can be used, however--as defined in the Lease--do not include capital improvements.

Section 27 of the Lease is intended to encourage donations by stating, in part:

- ". . . any legitimate private donation specifically earmarked for a particular specified purpose . . . may be used for the designated purpose without such donation being required to be designated as revenue for purposes of calculating Annual Profits. In addition, donations earmarked specifically to the Operations Reserve Fund or the Maintenance Reserve Fund shall not be subject to the maximum fund balance restrictions set forth in Section 22 or Section 23 . . . . In order to qualify for this exception, *the donation must be expended or allocated in the budget for the designated purpose within the calendar year the funds are received. (Italics added)"*

According to the CPT representatives who met with RDA staff on March 11, the several Lease provisions mentioned above do not allow sufficient flexibility for CPT to spend donations for special projects or capital improvements. Their concerns are summarized as follows:

- They need the ability to spend in *subsequent* years any donations received for specific purposes. This issue was illustrated by what happened at the end of 2014, when CPT wanted to spend some donated funds to install a movable partition in the mezzanine--using donated funds--but would not be able to do so until 2015. To accomodate this situation, the Mayor and City Manager instructed CPT to include funding for this project in their 2015 allocation into the MRF, even though Section 23 does not specifically allow the MRF to be used for capital improvements (this was reported to the RDA Board soon thereafter).

- They want to be able to program the use of non-earmarked donations for special projects or capital improvements without such donations flowing first to the TRF (as Variable Rent) and then seeking permission of the RDA to spend such funds and the funds then flowing back to CPT. This would include the ability to spend such non-earmarked donations in subsequent years.

One way to provide such flexibility is to create a capital projects account as another authorized reserve fund. After the close-out of each fiscal year, CPT would propose allocations into the MRF, ORF and the Capital Projects Fund. CPT's recommendation for allocating surplus revenues for capital projects would be subject to approval by the RDA and ACB, as is now required for allocations into the MRF and ORF. The allocation into the MRF would still have to meet or exceed the minimum required annual contribution for maintenance purposes as stated in Section 33--or 1% of "Annual Revenues" as defined in that section. As another control over the capital projects reserve, the RDA/ACB could require that the allocation into this reserve each year be tied to a list of specific projects, and each year CPT could be required to provide an accounting of how past allocations have been used.

ATTACHMENTS:

Description

- Operating Lease - Sections 20-33

under this Agreement shall be paid by the Association to the RDA at the RDA's office at 250 North Main, Centerville, Utah, 84014, or at such other place as may from time to time be designated in writing by the RDA.

20. Monthly Base Rent Payment. Commencing six (6) months from the Possession Date, the Association shall pay to the RDA a minimum monthly base rent and use fee ("Base Rent") in the amount of $6,000 per month. Except as provided herein for the first month's rent, Base Rent shall be paid monthly in advance due on the 20th day of the month for the next month's rent. For the first month, or any portion thereof commencing six (6) months from the Possession Date, the Association shall pay to the RDA a prorated portion of the current month's Base Rent and the next month's Base Rent in advance on the first day following six (6) months from the Possession Date. The Base Rent shall be adjusted annually each January beginning in 2014 using the Consumer Price Index for all Urban Consumers ("CPI-U") for the West Urban Area (Index Base Period 1982-84=100), as published by the United States Department of Labor, Bureau of Labor Statistics. The increase in the amount of each monthly Base Rent payment shall be directly proportional to the percentage change in the CPI-U index between the specified time periods; provided that under no circumstances shall the monthly Base Rent be less than the previous year's monthly Base Rent ("Adjusted Base Rent"). The Adjusted Base Rent shall be calculated using the average of the CPI-U for the current twelve (12) month period from October to September as compared to the previous twelve (12) month period from October to September. Starting in 2013, the RDA shall calculate the Adjusted Base Rent for the coming year and provide the Association with thirty (30) days notice of the Adjusted Base Rent for the coming year. Such notice is provided as a courtesy only. If the RDA does not send the notice of Adjusted Base Rent or the Association does not receive such notice, the Association is still bound and obligated to pay the Adjusted Base Rent when due and owing. If the United States Department of Labor revises the CPI-U or the index base period, the parties shall accept the method of revision or conversion recommended by said Department. If the CPI-U is discontinued or revised, such government indices or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the indices had not been discontinued or revised. [iii]

21. Annual Variable Rent. In addition to the Base Rent, for the reasons set forth in Section 18 regarding the public funding and purpose of the Theatre, the Association shall pay to the RDA a variable annual rental and use fee in an amount equal to the Association's previous year's annual profits as more particularly provided herein Variable Rent"). For purposes of this Section, annual profits shall be defined as any and all revenue generated by the operation of the Theatre, including, but not limited to, ticket sales, sponsorship, concessionaires, gift shop sales, etc., less all operating and production costs, expenses, and authorized reserves for each calendar year ("Annual Profits"). Annual Profits shall also include donations except as otherwise provided in Section 27 regarding donations earmarked for specified purposes. For purposes of determining Variable Rent, the parties expressly agree that part of the operating and production costs and expenses may include reasonable and necessary reservation of funds for purposes of funding the Association's Operations Reserve Fund and Maintenance Reserve Fund as more particularly defined in Section 22 and Section 23. Variable Rent for the current year shall be calculated based on the Annual Profits of the Association for the immediately preceding calendar year. Subject to the waiver period provided herein, Variable Rent shall be due annually on June 30'" of each calendar year. The Association shall be responsible for determining and calculating its Annual Profits in order to make timely payment of annual Variable Rent. Each annual Variable Rent payment shall be accompanied by a written statement, certified to be true, correct, and complete by an independent accountant or officer of the Association, showing for the previous calendar year the revenue, expenses, reserve funds and Annual Profit calculations. The parties acknowledge that the expenses and operating and maintenance costs will be difficult to estimate or predict for the first year of operation of the Theatre and until some experience and history of operations and financial data is available. It is further intended by the parties that the first year of any available revenue should be used to build up the Operations Reserve Fund and Maintenance Reserve Fund as more particularly defined in Section 22 and Section 23. For these reasons, the RDA agrees that the Variable Rent shall not be due and owing until June 30, 2013, accruing for the calendar year 2012 as more particularly provided herein. In consideration of the waiver of Variable Rent until 2013, the Association hereby agrees to use any excess revenues during the first year or partial years of operation to build up the fund balances in the Operations Reserve Fund and the Maintenance Reserve Fund in accordance with Sections 22 and 23 regarding reserve funds. [iv]

22. Association's Operations Reserve Fund. The Association shall create a reserve fund for purposes of funding the Association's current and future operations obligations set forth in this Lease and Operating Agreement ("Operations Reserve Fund"). The Association shall retain the Operations Reserve Fund in a specially created fund to be maintained by the Association and used solely for operations and production costs as more particularly provided herein. The Association shall use its best efforts to allocate funds to the Operations Reserve Fund in an amount that is reasonably adequate and necessary for purposes of fulfilling its operations obligations under this Lease and Operating Agreement; provided, the fund balance in the Operations Reserve Fund shall not exceed an amount equal to Two Hundred Thousand Dollars ($200,000). The Operations Reserve Fund shall only be used to fund the Association's operations obligations set forth in this Lease and Operating Agreement. In accordance with the provisions of Section 32, until and unless the Maintenance Reserve Fund is fully funded to the maximum fund balance for such fund, a minimum of fifty percent (50%) of the combined annual reservation of funds to both the Operations Reserve Fund and the Maintenance Reserve Fund shall be allocated to the Maintenance Reserve Fund, exclusive of earmarked donations. The combined amount calculations and percentage allocation requirements set forth herein may include the Minimum MRF Contribution set forth in Section 33. Allocations to the Operations Reserve Fund and the Maintenance Reserve Fund shall be subject to review and approval by the RDA and ACB in accordance with the provisions of Section 28. The Association may be required by the RDA as part of the budget process to utilize funds in the Operations Reserve Fund to pay for current or future operations obligations. The Association shall provide the RDA and ACB with at least thirty (30) days prior written notice of any proposed withdrawal and/or use of funds within the Operations Reserve Fund.

23. Association's Maintenance Reserve Fund. The Association shall create a reserve fund for purposes of funding the Association's current and future maintenance and repair obligations set forth in this Lease and Operating Agreement ("Maintenance Reserve Fund"). The Association shall retain the Maintenance Reserve Fund in a specially created fund to be maintained by the Association and used solely for maintenance and repair obligations as more particularly provided herein. The Association shall use its best efforts to allocate funds to the Maintenance Reserve Fund in an amount that is reasonably adequate and necessary for purposes of fulfilling its maintenance and repair obligations under this Lease and Operating Agreement; provided, the fund balance in the Maintenance Reserve Fund shall not exceed Three Hundred Thousand Dollars ($300,000). The Maintenance Reserve Fund shall only be used to fund the Association's maintenance and repair obligations set forth in this Lease and Operating Agreement, including, but not limited to, the maintenance, repair or replacement of any buildings, grounds, landscaping, facilities and improvements associated with the Theatre and the Site. The primary purpose and intent of the Maintenance Reserve Fund is to create a substantial and sufficient reserve fund to be used for major, non-routine or unexpected maintenance, repairs and replacement obligations of the Association. Routine and preventative maintenance and recurring repair and replacement projects should be budgeted for and funded out of the Annual Operating Budget In accordance with the provisions of Section 32, until and unless the Maintenance Reserve Fund is fully funded to the maximum fund balance for such fund, a minimum of fifty percent (50%) of the combined annual reservation of funds to both the Operations Reserve Fund and the Maintenance Reserve Fund shall be allocated to the Maintenance Reserve Fund, exclusive of earmarked donations. The combined amount calculations and percentage allocation requirements set forth herein may include the Minimum MRF Contribution set forth in Section 33. Allocations to the Operations Reserve Fund and the Maintenance Reserve Fund shall be subject to review and approval by the RDA and ACB in accordance with the provisions of Section 28. The Association may be required by the RDA as part of the budget process to utilize funds in the Maintenance Reserve Fund to pay for current or future maintenance and repair obligations. The Association shall provide the RDA and ACB with at least thirty (30) days prior written notice of any proposed withdrawal and/or use of funds within the Maintenance Reserve Fund.

24. RDA Rent Proceeds. Monthly Base Rent and the annual Variable Rent shall be paid to the RDA. Base Rent and Variable Rent proceeds shall first be used to reimburse the RDA for any actual expenditures or expenses incurred by the RDA for the construction, financing, maintenance, repair, alteration, or operation of the Theatre or the Site. Such reimbursement amounts may be retained by the RDA from the Rent without prior approval of the ACB. The RDA shall be required to provide the ACB with itemized statements regarding any and all such reimbursements from Rent proceeds. Any remaining Base Rent or Variable Rent proceeds shall be used to fund the RDA's Theatre Reserve Fund as more particularly provided in Section 25. Use of funds within the Theatre Reserve Fund shall be subject to the specific conditions and limitations set forth in this Lease and Operating Agreement regarding the Theatre Reserve Fund as set forth in Section 25.

25. RDA Theatre Reserve Fund. The RDA shall create a reserve fund to be used solely for the Theatre and Site as more particularly provided herein ("Theatre Reserve Fund"). The RDA shall retain the Theatre Reserve Fund in a specially created fund to be maintained by the RDA and used solely for the purposes set forth herein. The Theatre Reserve Fund shall be funded with remaining Base Rent or Variable Rent proceeds as set forth in Section 24. Nothing herein is intended to or shall obligate the RDA to separately fund the Theatre Reserve Fund. The parties expressly acknowledge that the funding of the Theatre Reserve Fund is solely dependent upon the calculation and amount of Annual Profits and the payment of Base Rent and Variable

Rent under the terms of this Lease and Operating Agreement. It is the intent of the parties to fund not only the Association's Operations Reserve Fund and Maintenance Reserve Fund, but also the RDA's Theatre Reserve Fund, in order to provide an equitable distribution of funds for the long-term success and viability of the Theatre operations and the long-term maintenance, repair and replacement of the Theatre and the Site. As such, the Association agrees to use its good faith best efforts to accurately and fairly allocate funds and expenses and to calculate Annual Profits in accordance with the stated intent of the parties as more particularly discussed herein and in Section 18 regarding the use of public funds for the project. The Theatre Reserve Fund shall only be used for investment, financing, maintenance, repair, replacement, expansion, alteration, enhancement, betterment or operation of any buildings, grounds, facilities, improvements, programs, fixtures and related equipment and accessories associated with the Theatre and the Site. Use of any portion of the Theatre Reserve Fund shall be pre-approved by the ACB, which approval shall not be unreasonably withheld. The parties, together with the ACB, may adopt policies for prioritizing projects, repairs, replacements, betterments, capital improvements, etc., with respect to the use and expenditures of the Theatre Reserve Fund. For purposes of prioritizing the use of the Theatre Reserve Fund it is the parties' intent to create a substantial and sufficient Theatre Reserve Fund for the primary purpose of providing for future repair, replacement and capital improvements associated with the Theatre and the Site. Standard calculations for repair and replacement costs for a building the size and quality of the Theatre suggest an annual fund contribution equal to one and one-half percent (1.5%) of the replacement value of the facility. Although permitted under the terms of this Lease and Operating Agreement, it is not the parties' intent that the Theatre Reserve Fund be used for routine maintenance until and unless a sufficient Theatre Reserve Fund is established and/or the use of such funds for routine maintenance is deemed necessary and appropriate under the circumstances. It is not the intent, and the RDA shall not use any Rent proceeds or the Theatre Reserve Fund for debt retirement or service with respect to the tax-exempt bonds.

26. Flow of Funds. Consistent with the provisions set forth in Sections 18-25, the allocation of revenues from the operation of the Theatre shall be distributed and allocated in the following order of intended priority: (1) payment of Base Rent; (2) payment of current operations, production and maintenance costs and expenses; (3) allocation of funds to the Maintenance Reserve Fund; (4) allocation of funds to the Operations Reserve Fund; and (5) distribution of Annual Profits as Variable Rent due to the RDA.

27. Exception for Earmarked Donations. It is the intent of the parties to encourage the donation of private funds to the Theatre to the broadest extent possible. In order to encourage such donations, the parties desire to provide an exception to Annual Profit calculations and reserve fund maximum cap limitations for earmarked donations and the ability to use such donations for the intended purpose. The parties hereby agree that any legitimate private donation specifically earmarked for a particular specified purpose, such as donations for a specified capital improvement, specialized accessory or particular performance, may be used for the designated purpose without such donation being required to be designated as revenue for purposes of calculating Annual Profits. In addition, donations earmarked specifically to the Operations Reserve Fund or the Maintenance Reserve Fund shall not be subject to the maximum fund balance restrictions set forth in Section 22 or Section 23, but shall be utilized to determine whether the fund balance cap has been reached for purposes of calculating Annual Profits. In order to qualify for this exception, the donation must be expended or allocated in the budget for the designated purpose within the calendar year the funds are received. Any reservation of such earmarked donated funds shall be placed in a restricted account earmarked for the specified purpose in accordance with standard and acceptable accounting practices regarding the same. Any donations that are not earmarked for a particular specified purpose shall be deemed revenue for purposes of calculating Annual Profits in the calendar year they are received.

28. Budget Review and/or Approval. The Association shall prepare and abide by an annual budget or budgets, as more particularly required herein, setting forth a plan of financial operations for the fiscal period, including an estimate of proposed expenditures for given purposes and the proposed means of financing them. All budgets shall be prepared in accordance with standard and generally accepted accounting principles. The Association shall prepare for each budget period, an annual overall operating budget ("Annual Operating Budget") and a budget for the following budgetary funds: (1) the Operations Reserve Fund; and (2) the Maintenance Reserve Fund (collectively referred to as "Annual Budgets"). The Annual Budgets of the Association and any amendments thereto shall be submitted to and reviewed by the RDA and the ACB prior to becoming final. The Association shall prepare budgets for the coming year and submit the same to the RDA and ACB by November 25th. Prior to November 25th, the Association's staff will meet with RDA staff to review those portions of the Annual Budget relating to facilities maintenance. The RDA and ACB shall have until December loth to review the budgets and to submit any recommended changes to the Association. The final Annual Budgets, as reviewed by the RDA and ACB, shall be adopted by the Association by December 20th of each year. Notwithstanding the forgoing, and for the reasons set forth herein, the final budget for the Maintenance Reserve Fund and any portion of the Annual Operating Budget dealing with or relating to the current, future and on-going maintenance, repair or replacement of any portion of the Theatre or the Site, or any improvements, fixtures, equipment or accessories related thereto, shall be subject to approval by the RDA prior to [mal adoption by the Association. Such approval shall be provided in accordance with the above-described budget review process and time periods. The required budgetary review and/or approval by the RDA and the ACB as provided herein is not intended to micro-manage operations of the Theatre or to prioritize programs, but is intended to provide the RDA and the ACB with meaningful oversight in order to accomplish the goals and intent for the Theatre, to provide for timely, appropriate and sufficient maintenance and repair of the Theatre and its facilities, and to have review and oversight regarding the calculation of Annual Profits as used to determine annual Variable Rent. Any amendments to the Annual Budgets shall be subject to review and approval by the RDA prior to final adoption by the Association. [v]

29. No Excessive Salaries. The parties expressly acknowledge that various decisions and factors will impact Annual Profits, such as, salaries, improvement projects, donations, ticket sales, ticket prices, repairs, equipment purchases, repair and maintenance reserves, etc. The RDA and the ACB shall have input regarding such matters as part of the annual budget process. The Association shall not pay any excessive salaries or wages, including benefits, to its executives, board members or staff. In order to determine what is deemed excessive under the provisions of this Section, the salaries or wages paid by the Association to its officers and employees shall not exceed the average salary and/or wage paid to similarly situated officers or employees of public community theatres and nonprofit theatre associations or entities in Utah of like size, budget and experience to the Association and the Theatre.

30. Preventative Maintenance Obligations. The RDA has a long-term interest in preserving its building asset and desires to ensure through the provisions of this Lease and Operating Agreement that proper maintenance practices are used for the inspection and upkeep of the Theatre. Preventative maintenance is widely recognized to extend the life of buildings and equipment, prevent premature breakdown of systems and ensure efficient operation of systems and equipment In consideration of the minimal Base Rent and for the purposes set forth in Section 18 regarding public funds used for the construction of the building, the Association's maintenance obligations set forth herein shall be a priority and shall be subject to the oversight and direction of the RDA. Specifically, the Association shall be required to pursue all of its repair and maintenance obligations under this Lease and Operating Agreement with due diligence and on a pro-active and preventative maintenance basis in order to ensure the long-term sustainability and maintenance of the Theatre. All maintenance and repairs shall be conducted in accordance with the approved Maintenance Plan as set forth in Section 31. All maintenance and repairs shall be performed by manufacturer authorized technicians and in accordance with the manufacturer's recommended maintenance schedule and warranty requirements for the particular equipment, improvement or system. Annual service contracts regarding maintenance and repair services shall be subject to review and approval of the RDA.

31. Comprehensive Maintenance Plan. As part of the budget process each year, the Association shall be required to prepare a long-range comprehensive maintenance plan ("Maintenance Plan"), which plan shall include at least a five (5) year projection and plan for dealing with and paying for all current, future and on-going maintenance and repair obligations and issues with respect to the Theatre and the Site. The Maintenance Plan shall include, but is not limited to, addressing the Association's maintenance and repair obligations regarding parking facilities, drive aisles, landscaping, plumbing, electrical, mechanical, HV AC Systems, carpeting, painting, stage facilities, lighting, telecommunications, seating, etc. The Maintenance Plan shall include scheduled maintenance and inspection programs and documentation of maintenance work performed. The Maintenance Plan shall be based on manufacturer's recommended maintenance schedules, warranty requirements, industry standards, benchmarks and best practices for asset management and shall include maintenance modeling that considers the size, design, life expectancy, age and replacement cost of the Theatre. The Association is encouraged to invest in computer software program(s) that will assist in establishing and implementing the Maintenance Plan. The Maintenance Plan shall also address and provide recommendations regarding how to best estimate and use the reserve funds for known and unknown repairs and maintenance obligations which may arise. The Association shall implement and comply with the maintenance schedules and requirements set forth in the approved Maintenance Plan. The Maintenance Plan shall be reviewed and is subject to approval by the RDA as part of the annual budget approval process. Drafts of the Maintenance Plan shall be prepared by the Association and submitted annually to the RDA with the tentative budget and reviewed in accordance with the review and approval schedule for the budgets as set forth in Section 28. Any amendments to the Maintenance Plan shall be subject to the review and approval of the RDA.

32. Maintenance Budgeting and Funding Priorities. The Association shall be required to provide for current maintenance and repair obligations in its Annual Operating Budget, which allocations and budgeting shall be subject to the review and approval of the RDA in accordance with Section 28. The Association shall also be required to provide for known and unknown future and on-going maintenance and repair obligations in its annual Maintenance Reserve Fund budget, which allocations and budgeting shall be subject to the review and approval of the RDA in accordance with Section 28. The Association shall be required to actually transfer funds to the Maintenance Reserve Fund, including required minimum contributions set forth in Section 33, in accordance with the approved budget, on an annual basis. The purpose of the annual funding of the Maintenance Reserve Fund is to ensure that sufficient funds are reserved to pay for known and unknown current, future and on-going maintenance and repair obligations as provided herein. All budgeting and allocations for maintenance and repairs shall be sufficient to meet the Association's obligations set forth in this Lease and Operating Agreement and shall be provided in accordance with the Maintenance Plan as approved by the RDA. As indicated in Section 26 regarding flow of funds, the funding of current maintenance obligations and the reservation of funds for future maintenance obligations is a priority of the parties and an express requirement of this Lease and Operating Agreement. [vi]

33. Minimum Maintenance Reserve Fund Contribution. In order to ensure that maintenance spending is addressed on a continuous basis, rather than waiting until a problem occurs, the Association shall be required to contribute a minimum amount of funds to the Maintenance Reserve Fund on an annual basis as more particularly set forth herein. Starting in the calendar year 2012, and until and unless the maximum fund balance is met for the Maintenance Reserve Fund, the Association shall be required to contribute to the Maintenance Reserve Fund on an annual basis an amount equal to one percent (1 %) of the Association's previous year's annual revenues ("Minimum MRF Contribution"). For purposes of this Section, annual revenue shall be defined as the gross revenues generated by the operation of the Theatre, including, but not limited to, ticket sales, sponsorship, concessions, gift shop sales, etc. ("Annual Revenues"). Annual Revenues shall also include donations except as otherwise provided in Section 27 regarding donations earmarked for specified purposes. The Minimum MRF Contribution shall be addressed in the budget and shall be paid annually on or by May 1st. The Association shall be responsible for determining and calculating its Annual Revenues in order to make timely payment of the annual Minimum MRF Contributions to the Maintenance Reserve Fund. [vii], [viii]

34. Financial Transparency. It is the intent of the parties that in order to accomplish the long-term viability of and the goals for the Theatre, financial information, budgets, salaries and expenditures of the Association relating to the operation of the Theatre must be transparent. The Association shall be required to hire and retain a professional accountant and/or financial advisor to assist the Association in fulfilling its obligations under this Agreement. In addition to the record keeping provisions of Section 35, the Association shall provide the RDA and ACB with quarterly financial reports of its operations. The RDA and ACB shall have the right and authority to review and obtain copies of the Association's financial records and documents at any time during regular business hours upon twenty-four (24) hours notice to the Association in accordance with the provisions of Section 35. [ix]

CENTERVILLE
RDA/ACB MEETING
Staff Backup Report
4/15/2015

Item No. 5.

Short Title: Approval of CPT funds to be transferred into the ORF and MRF, based on 2014 financial report

Initiated By:

Scheduled Time:

SUBJECT

RECOMMENDATION

Receive CPT's recommendations for allocations into the ORF and MRF based on the financial statements for 2014. If these allocations appear appropriate, approve such allocations as required by the Operating Lease, including a portion of the MRF allocation specifically designated for the mezzanine partition.

BACKGROUND

Jan Davis, CPT Executive Director, has reported that 2014 operations and fundraising efforts resulted in substantial surplus revenues available to be allocated into the ORF and MRF, greater than the minimum amounts required by the Operating Lease. However, as explained in the item just before this one on the agenda, CPT is including in their MRF allocation a sum to pay for the installation of a movable partition in the mezzanine.

CENTERVILLE
RDA/ACB MEETING
Staff Backup Report
4/15/2015

Item No. 6.

Short Title: HVAC maintenance issues

Initiated By: CenterPoint Theatre and RDA staff

Scheduled Time:

SUBJECT

a. Recommend contract to service and maintain the HVAC systems
b. Approve expenditure from Theatre Reserve Fund for HVAC systems repairs

RECOMMENDATION

a. Receive an update regarding the condition of the HVAC systems in the performing arts center. Become familiar with the levels of maintenance program options offered by Harris Service pertaining to these systems. Authorize RDA funding to contract for the "Silver" level option, with the intent of using other sources of revenue, such as RAP tax, in future years to pay for an on-going HVAC maintenance program, whether it be the "Silver" level or another level.

b.

BACKGROUND

a. Blaine Lutz has attached a document showing the various maintenance program options available from Harris Service--and associated costs--and will address these options at the meeting.

The building has a very complex HVAC system. The maintenance of the equipment has been of concern since the building was completed. Staff believe participation in a maintenance program as recommended will not only prolong the life of the HVAC equipment but will also result in significant energy savings and will minimize the discomfort of patrons caused by HVAC system failures/poor performance.

b. There is an immediate need for repair and re-engineering of the boiler system. Staff recommends the use of approximately $21,000 from the Theatre Reserve Fund to cover this cost. $16,400 is needed for the Harris Service proposal (attached). There is also approximately $5,000 needed for engineering and immediate adjustments that are not included in the proposal.

ATTACHMENTS:

Description

- Harris Proposal
- Boiler repair

CENTER POINT MAINTENANCE OPTIONS	Bronze	Silver	Gold	Platinum
SUMMARY OF SERVICES AND COVERAGE				
Air Filter Service "SEE BELOW"	***IN-HOUSE***	***IN-HOUSE***	***IN-HOUSE***	***IN-HOUSE***
Equipment Inspection	HARRIS	HARRIS	HARRIS	HARRIS
Electrical System Service	HARRIS	HARRIS	HARRIS	HARRIS
Lubrication	HARRIS	HARRIS	HARRIS	HARRIS
Written Report After Inspection	HARRIS	HARRIS	HARRIS	HARRIS
Belts	CUSTOMER	HARRIS	HARRIS	HARRIS
Condenser Coil Cleaning	CUSTOMER	HARRIS	HARRIS	HARRIS
Evaporator Coil Cleaning	CUSTOMER	HARRIS	HARRIS	HARRIS
Energy Savings	CUSTOMER	HARRIS	HARRIS	HARRIS
Combustion Analysis	CUSTOMER	HARRIS	HARRIS	HARRIS
Tube Cleaning	CUSTOMER	HARRIS	HARRIS	HARRIS
Calibrations	CUSTOMER	HARRIS	HARRIS	HARRIS
Parts Replacement Labor	CUSTOMER	CUSTOMER	HARRIS	HARRIS
Parts Replacement	CUSTOMER	CUSTOMER	HARRIS	HARRIS
Compressor Replacement & Labor	CUSTOMER	CUSTOMER	HARRIS	HARRIS
Refrigerant Replacement	CUSTOMER	CUSTOMER	HARRIS	HARRIS
Equipment Replacement	CUSTOMER	CUSTOMER	CUSTOMER	HARRIS
Coil Replacement	CUSTOMER	CUSTOMER	CUSTOMER	HARRIS
Coil Replacement Labor	CUSTOMER	CUSTOMER	CUSTOMER	HARRIS
Leak Repair	CUSTOMER	CUSTOMER	CUSTOMER	HARRIS
Tube Replacement	CUSTOMER	CUSTOMER	CUSTOMER	HARRIS
Annual Investment	$ 6,000.00	$ 15,000.00	$ 29,000.00	$ 39,000.00
Monthly Investment	$ 475.00	$ 1,200.00	$ 2,400.00	$ 2,800.00
Annual Investment / With Filters Service	***$ 8,700.00***	***$ 17,700.00***	***$ 31,700.00***	***$ 41,700.00***
Monthly Investment / With Filters Service	***$ 725.00***	***$ 1,475.00***	***$ 2,641.67***	***$ 3,475.00***
Emergency Service	BILLABLE	BILLABLE	24/7 - NC	24/7-NC
Harris Risk	25%	50%	80%	95%
Customer Risk	75.0%	50.0%	20.0%	5.0%
ENVIROMENTAL / ENERGY IMPACT	Not Addressed	Positive	Positive	Positive

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MAINTENANCE AGREEMENT FOR ENVIRONMENTAL SYSTEMS

Proposal Date: 12/15/2014
Proposal Number: P01045
Agreement Number: ________

Company

Harris Intermountain Service
1925 South Milestone Drive Ste:E
Salt Lake City, UT 84104

Ph: (801)433-2798

Bill To Identity

Centerpoint Legacy Theatre
525 North 400 West
Centerville, Utah 84014
Attn: Jansen Davis

Agreement Location

Centerpoint Legacy Theatre
525 North 400 West
Centerville, Utah 84014
Attn: Jansen Davis

Harris Intermountain Service will provide the services described in the maintenance program indicated below.

MAINTENANCE PROGRAM: ***Gold***

Schedules Included: *(Only Items Checked Apply)*

- [x] Equipment Schedule
- [ ] Air Filter Service
- [ ] Water Treatment
- [ ] Building Automation
- [ ] Customized Service
- [x] Special Conditions Service

Agreement coverage will commence on ~~4/1/2016~~ 5/1/2015.

The Agreement price is $ ~~34,632.00~~ 17,700 per year, payable in advanced installments of $ ~~2,886.00~~ per Month beginning on the effective date of ~~4/1/2016~~ 5/1/2015.

This Agreement is the property of Harris Intermountain Service and is provided for Customer's use only. Harris Intermountain Service guarantees the price stated in this Agreement for thirty (30) days from proposal date above. This Agreement is for an initial term of 3 years and shall renew for successive one year terms unless either party gives written notice to the other of intention not to renew thirty (30) days prior to any anniversary date. Upon execution as provided below, this Agreement, including the following pages attached hereto (collectively, the "Agreement"), shall become a binding and enforceable agreement against both parties hereto. Customer, by execution of this Agreement, acknowledges that it has reviewed and understands the attached terms and conditions and has the authority to enter into this Agreement.

Company

____
Signature (Sales Consultant

Accepted for Company By: _______________
Signature

____
Name & Title

12/15/2014 (801)433-2798
Date / Phone / Fax

Customer

____
Signature (Authorized Representative)

____
Name (Print/Type)

____
Title

____
Date

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Equipment Schedule

QTY	EQUIPMENT	MANUFACTURER	MODEL	SERIAL#	RATING	LOCATION
	Chiller Systems					
1	Chiller #1	McQuay	ACS170DSSNN-BR 10	STNU100400102		PIT AREA
	2 - Compressors				85 Tons	
	10 - Condenser Fans				2 HP	CHILLER
1	Chill Water Pump	Bell & Gossett	C099469		10 HP	Boiler Room
1	Chill Water Pump002	Bell & Gossett	C099469		10 HP	Boiler Room
1	HOT WATER PUMP 003	Bell & Gossett	C099479		5 HP	Boiler Room
1	HOT WATER PUMP 2	Bell & Gossett	C099479		5 HP	Boiler Room
1	Hot Water Pumps	Armstrong	NA	N/A	0.5 HP	Boiler Room
1	Hot Water Pumps002	Armstrong	NA		0.5 HP	Boiler Room
	Boiler System					
1	BOILER 002	Aerco Modulex	43094		60 Blr HP	Boiler Room
1	BOILER 1	Aerco Modulex	43094		60 Blr HP	Boiler Room
	Air Handler(s)					
1	AHU 1	Temtrol	ITF-DH79	T003443-001-00		Mech Rm 1
	9 - Supply Fan Motors				5 HP	
1	AHU 2	Temtrol	ITF-DH31	T003443-002-00		Mech Rm 1
	4 - Supply Fan Motors				3 HP	
1	AHU 3	Temtrol	ITF-DH20			Mech Rm 1
	2 - Supply Fan Motors				3 HP	
1	RRAF 1	Temtrol	TFCF80	T003444-001-00		Mech Rm 1
	9 - Supply Fan Motors				2 HP	
1	RRAF 2	Temtrol	ITF-CF33	T0034444-002-00		Mechanical Room
	2 - Supply Fan Motors				5 HP	
1	RRAF 3	Temtrol	ITF_CF15	T003444-003-00		Mech Rm 1
	1 - Supply Fan Motor				2 HP	
	1 - Return Fan Motor				2 HP	
	Package Unit(s)					
1	AHU 4	Temtrol	ITF-RDHRE22	T003443-004-00	2 Tons	Roof

Equipment Schedule

QTY	EQUIPMENT	MANUFACTURER	MODEL	SERIAL#	RATING	LOCATION
	2 - Supply Fan Motors 2 - Return Fan Motors 1 - Heating Section 1 - Compressor				5 HP 2 HP 2 Tons	
	Special Fan(s)					
1	Exhaust Fan	Greenheck	CUBE-180-15-X	119451391001	0.75 HP	Roof
1	Exhaust Fan	Greenheck	Cube-130-15-X	119451331001	1 HP	Roof
1	Exhaust Fan	Greenheck	GRS16QD	11920608	1 HP	Roof
1	Exhaust Fan	Greenheck	Cube-3000Hp-7-x	119451401001	7.5 HP	Roof
1	Exhaust Fan002	Greenheck	CUBE-180-15-X		0.75 HP	Roof
1	Exhaust Fan003	Greenheck	CUBE-180-15-X		0.75 HP	Roof
	Misc. Equipment					
1	Evaporative Cooler	Champion Cooler	15012W	TD45567		Roof
1	Evaporative Cooler	Champion Cooler	15012W	TD45568		Roof

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This maintenance program includes three years of maintenance starting April 1, 2015. The first year of maintenance is a Silver Contract for the annual cost of $17,700.00 and will roll into a Gold Contract for the annual cost of $34,632.00 starting April 1, 2016. This contract does excludes filters and filter replacements.

This agreement is designed to provide the Customer with an ongoing maintenance agreement. This agreement will be initiated, scheduled, administered, monitored and updated by the Service Provide. The service activities will be directed and scheduled, on a regular basis, by our comprehensive equipment maintenance scheduling system based on manufacturers' recommendations, equipment location, application, type, run time, and Service Provider's own experience. The Customer is informed of the agreement's progress and results on a continuing basis via a detailed Service Report, presented after each service call for Customer's review, approval signature and record.

SERVICE PROVIDE WILL PROVIDE THE FOLLOWING PROFESSIONAL MAINTENANCE SERVICES FOR THE BUILDING ENVIRONMENTAL MECHANICAL SYSTEM(S) COMPRISED OF THE EQUIPMENT LISTED ON SCHEDULE 1 (INVENTORY OF EQUIPMENT):

TEST AND INSPECT: On-Site labor, travel labor and travel and living expenses required to visually INSPECT and TEST equipment to determine its operating condition and efficiency. Typical activities include:

- TESTING for excessive vibration; motor winding resistance; refrigerant charge; fan RPM; refrigerant oil (acid); water condition; flue gas analysis; safety controls, combustion and draft; crankcase heaters, control system(s), etc.
- INSPECTING for worn, failed or doubtful parts; mountings, drive couplings; oil level; rotation soot;
  flame composition and shape; pilot and igniter; steam, water, oil and/or refrigerant leaks, etc.

PREVENTIVE MAINTENANCE: On-Site labor, travel labor and travel and living expenses required to clean, align, calibrate, tighten, adjust, lubricate and paint equipment. These activities are intended to extend equipment life and assure proper operating condition and efficiency. Typical activities include:

- CLEANING coil surfaces; fan impellers and blades; electrical contacts; burner orifices; passag and nozzles; pilot and igniter; cooling tower baffles, basin, sump and float; chiller, condenser and boiler tubes, etc.
- ALIGNING belt drives; drive couplings; coil fins, etc.
- CALIBRATING safety controls; temperature and pressure controls, etc.
- TIGHTENING electrical connections; mounting bolts; pipe clamps; refrigerant piping fittings; damper sections, etc.
- ADJUSTING belt tension; refrigerant charge; super heat; fan RPM; water chemical feed and feed rate; burner fuel/air ratios; gas pressure; set point of controls and limits; compressor cylinder unloaders; damper close-off; sump floats, etc.
- LUBRICATING motors; fan and damper bearings; valve stems; damper linkages; fan vane linkages, etc.
- PAINTING, for corrosion control, as directed by our scheduling system and on an as-needed basis.

1. Customer shall permit Service Provider free and timely access to areas and equipment, and allow Service Provider to start and stop the equipment as necessary to perform required services. All planned work under this Agreement will be performed during the Service Provider's normal working hours.

2. In case of any failure to perform its obligations under this Agreement, Service Provider's liability is limited to repair or replacement at its option and such repair or replacement shall be Customer's sole remedy. This warranty is conditioned upon proper operation and maintenance by Customer and shall not apply if the failure is caused or contributed to by accident, alteration, abuse or misuse, and shall not extend beyond the term of this Agreement.

3. The annual Agreement price is conditioned upon the system(s) covered being in a maintainable condition. If the initial inspection or initial seasonal start-up indicates repairs are required, a firm quotation will be submitted for Customer's approval. Should Customer not authorize the repairs, Service Provider may either remove the unacceptable system(s), component(s) or part(s) from its scope of responsibility and adjust the annual agreement price accordingly or cancel this Agreement.

4. The annual Agreement price is subject to adjustment on each commencement anniversary to reflect increases in labor, material and other costs.

5. Customer shall be responsible for all taxes applicable to the services and/or materials hereunder.

6. Customer will promptly pay invoices within ten (10) days of receipt. Should a payment become thirty (30) days or more delinquent, Service Provider may stop all work under this Agreement without notice and/or cancel this Agreement, and the entire Agreement amount shall become due and payable immediately upon demand.

7. Any alteration to, or deviation from, this Agreement involving extra work, cost of materials or labor will become an extra charge (fixed price amount to be negotiated or on a time-and-material basis at Service Provider's rates then in effect) over the sum stated in this Agreement.

8. Service Provider will not be required to move, replace or alter any part of the building structure in the performance of this Agreement.

9. Customer shall permit only Service Provider's personnel or agent to perform the work included in the scope of this Agreement. Should anyone other than Service Provider's personnel perform such work, Service Provider may, at its option, cancel this Agreement or eliminate the involved item of equipment from inclusion in this Agreement.

10. In the event Service Provider must commence legal action in order to recover any amount payable under this Agreement, Customer shall pay Service Provider all court costs and attorneys' fees incurred by Service Provider.

11. Any legal action against the Service Provider relating to this Agreement, or the breach thereof, shall be commenced within one (1) year from the date of the work.

12. Service Provider shall not be liable for any delay, loss, damage or detention caused by unavailability of machinery, equipment or materials, delay of carriers, strikes, including those by Service Provider's employees, lockouts, civil or military authority, priority regulations, insurrection or riot, action of the elements, forces of nature, or by any cause beyond its control.

13. To the fullest extent permitted by law, Customer shall indemnify and hold harmless Service Provider, its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of work hereunder, provided that such claim, damage, loss or expense is caused in whole or in part by an active or passive act or omission of Customer, anyone directly or indirectly employed by Customer, or anyone for whose acts Customer may be liable, regardless of whether it is caused in part by the negligence of Service Provider. Further and notwithstanding the preceding sentence, Service Provider shall be held harmless and shall not be liable to Customer for any claims, liabilities, damages, losses and expenses related to mold or the creation of mold at Customer's location(s) and shall have no obligation to treat, identify or remove such mold.

14. Customer shall make available to Service Provider's personnel all pertinent Material Safety Data Sheets (MSDS) pursuant to OSHA'S Hazard Communication Standard Regulations.

15. Service Provider expressly disclaims any and all responsibility and liability for the indoor air quality of the customer's facility, including without limitation injury or illness to occupants of the facility or third parties, arising out of or in connection with the Service Provider's work under this agreement.

16. Service Provider's obligation under this proposal and any subsequent contract does not include the identification, abatement or removal of asbestos or any other toxic or hazardous substances, hazardous wastes or hazardous materials. In the event such substances, wastes and materials are encountered, Service Provider's sole obligation will be to notify the Owner of their existence. Service Provider shall have the right thereafter to suspend its work until such substances, wastes or materials and the resultant hazards are removed. The time for completion of the work shall be extended to the extent caused by the suspension and the contract price equitably adjusted.

17. UNDER NO CIRCUMSTANCES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY OR OTHERWISE, WILL SERVICE PROVIDER BE RESPONSIBLE FOR LOSS OF USE, LOSS OF PROFIT, INCREASED OPERATING OR MAINTENANCE EXPENSES, CLAIMS OF CUSTOMER'S TENANTS OR CLIENTS, OR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES.

18. This Agreement does not include repairs to the system(s), the provisions or installation of components or parts, or service calls requested by the Customer. These services will be charged for at Service Provider's rates then in effect.

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1. Customer shall permit Service Provider free and timely access to areas and equipment, and allow Service Provider to start and stop the equipment as necessary to perform required services. All planned work under this Agreement will be performed during the Service Provider's normal working hours.

2. In case of any failure to perform its obligations under this Agreement, Service Provider's liability is limited to repair or replacement at its option and such repair or replacement shall be Customer's sole remedy. This warranty is conditioned upon proper operation and maintenance by Customer and shall not apply if the failure is caused or contributed to by accident, alteration, abuse or misuse, and shall not extend beyond the term of this Agreement.

3. The annual Agreement price is conditioned upon the system(s) covered being in a maintainable condition. If the initial inspection or initial seasonal start-up indicates repairs are required, a firm quotation will be submitted for Customer's approval. Should Customer not authorize the repairs, Service Provider may either remove the unacceptable system(s) component(s) or part(s) from its scope of responsibility and adjust the annual Agreement price accordingly or cancel this Agreement.

4. The annual Agreement price is subject to adjustment on each commencement anniversary to reflect increases in labor, material and other costs.

5. Customer shall be responsible for all taxes applicable to the services and/or materials hereunder.

6. Customer will promptly pay invoices within ten (10) days of receipt. Should a payment become thirty (30) days or more delinquent, Service Provider may stop all work under this Agreement without notice and/or cancel this Agreement, and the entire Agreement amount shall become due and payable immediately upon demand.

7. This Agreement applies only to the maintainable portions of the system(s). Repair or replacement of non-maintainable parts such as duct work, boiler shell and tubes, cabinets, boiler refractory material, heat exchangers, main power service and electrical wiring, structural supports, piping, tube bundles, oil storage tanks and other similar items are excluded.

8. Any alteration to, or deviation from, this Agreement involving additional work, cost of materials or labor will become an additional charge (fixed price amount to be negotiated or on a time-and-material basis) over the sum stated in this Agreement.

9. Service Provider will not be required to move, replace or alter any part of the building structure in the performance of this Agreement.

10. This Agreement does not include responsibility for the design of the system, obsolescence, safety test, removal and reinstallation of valve bodies and dampers, repair or replacement necessitated by freezing weather, electrical power failure, low voltage, burned-out main or branch fuses, low water pressure, vandalism, misuse or abuse of the system(s), negligence of others (including Customer), failure of Customer to properly operate the system(s), requirements of governmental, regulatory or insurance agencies, or other causes beyond control of Service Provider.

11. If a trouble call is made at Customer's request and inspection indicates a condition which is not covered under this Agreement, Service Provider may charge Customer at the rate then in effect for such services.

12. Customer shall permit only Service Provider's personnel or agent to perform the work included in the scope of this Agreement. Should anyone other than Service Provider's personnel perform such work, Service Provider may, at its option, cancel this Agreement or eliminate the involved item of equipment from inclusion in this Agreement.

13. In the event Service Provider must commence legal action in order to recover any amount payable under this Agreement, Customer shall pay Service Provider all court costs and attorneys' fees incurred by Service Provider.

14. Any legal action against the Service Provider relating to this Agreement, or the breach thereof, shall be commenced within one (1) year from the date of the work.

15. Service Provider shall not be liable for any delay, loss, damage or detention caused by unavailability of machinery, equipment or materials, delay of carriers, strikes, including those by Service Provider's employees, lockouts, civil or military authority, priority regulations, insurrection or riot, action of the elements, forces of nature, or by any cause beyond its control.

16. To the fullest extent permitted by law, Customer shall indemnify and hold harmless Service Provider, its agent and employees from and against all claims, damages, losses and expenses (including but not limited to attorneys' fees) arising out of or resulting from the performance of work hereunder, provided that such claim, damage, loss or expense is caused in whole or in part by an active or passive act or omission of Customer, anyone directly or indirectly employed by Customer, or anyone for whose acts Customer may be liable, regardless of whether it is caused in part by the negligence of Service Provider. Further and notwithstanding the preceding sentence, Service Provider shall be held harmless and shall not be liable to Customer for any claims, liabilities, damages, losses and expenses related to mold or the creation of mold at Customer's location(s) and shall have no obligation to treat, identify or remove such mold.

17. Customer shall make available to Service Provider's personnel all pertinent Material Safety Data Sheets (MSDS) pursuant to OSHA'S Hazard Communication Standard Regulations.

18. Service Provider expressly disclaims any and all responsibility and liability for the indoor air quality of the customer's facility, including without limitation injury or illness to occupants of the facility or third parties, arising out of or in connection with the Service Provider's work under this agreement.

19. Service Provider's obligation under this proposal and any subsequent contract does not include the identification, abatement or removal of asbestos or any other toxic or hazardous substances, hazardous wastes or hazardous materials. In the event such substances, wastes and materials are encountered, Service Provider's sole obligation will be to notify the Owner of their existence. Service Provider shall have the right thereafter to suspend its work until such substances; wastes or materials and the resultant hazards are removed. The time for completion of the work shall be extended to the extent caused by the suspension and the contract price equitably adjusted.

20. UNDER NO CIRCUMSTANCES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY OR OTHERWISE, WILL SERVICE PROVIDER BE RESPONSIBLE FOR LOSS OF USE, LOSS OF PROFIT, INCREASED OPERATING OR MAINTENANCE EXPENSES, CLAIMS OF CUSTOMER'S TENANTS OR CLIENTS, OR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES.

This agreement provides the Customer with an ongoing, comprehensive preventive maintenance agreement. This agreement will be implemented, scheduled, administered, monitored, and kept current by the Service Provider. The service activities will be planned and scheduled, on a regular basis, by our comprehensive maintenance scheduling and tasking system based on manufacturers' recommendations, equipment location, application, type, run time, and Service Provider's expertise. The Customer will be kept informed of the agreement's status on a continuing basis utilizing a detailed Service Report, presented after each service visit for the Customer's review, approval signature and record.

SERVICE PROVIDER WILL PROVIDE THE FOLLOWING PROFESSIONAL MAINTENANCE SERVICES FOR THE FACILITY MECHANICAL SYSTEM(S) COMPRISED OF THE EQUIPMENT LISTED ON SCHEDULE 1 (INVENTORY OF EQUIPMENT):

TEST AND INSPECT: On-Site labor, travel labor and travel and living expenses required to visually INSPECT and TEST the equipment to determine its operating condition and efficiency. Typical activities include:

- TESTING for motor winding resistance; excessive vibration; fan rpm; refrigerant charge; refrigerant oil (acid); water condition; flue gas analysis; safety controls, crankcase heaters; combustion and draft; control system(s), etc.
- INSPECTING for worn, failed, or doubtful parts; mountings, drive couplings; oil level; rotation; soot; flame composition and shape; pilot and igniter; steam, water, oil and/or refrigerant leaks, etc.

PREVENTIVE MAINTENANCE: On-Site labor, travel labor and travel and living expenses required to clean, align, tighten, calibrate, adjust, lubricate and paint equipment. These activities are intended to extend equipment life and assure proper operating condition and efficiency. Typical activities include:

- CLEANING fan impellers & blades; coil surfaces; electrical contacts; burner orifices; passages and nozz pilot and igniter; cooling tower baffles, basin, sump and float; boiler, chiller and condenser tubes.
- ALIGNING belt drives; drive couplings; coil fins.
- CALIBRATING safety controls; temperature and pressure controls.
- TIGHTENING electrical connections; mounting bolts; pipe clamps; refrigerant piping fittings; damper sections.
- ADJUSTING belt tension; refrigerant charge; super heat; fan RPM; burner fuel/air ratios; gas pressure; control setpoints and limits; compressor cylinder unloaders; damper close-off; sump floats.
- LUBRICATING motors; fan and damper bearings; valve stems; damper linkages; fan vane linkages.
- PAINTING, for corrosion control, as directed by our scheduling and tasking system and on an as-neede basis.

REPAIR AND REPLACE: On-Site labor, travel labor, parts procurement labor (locating, ordering, expediting and transporting) and travel and living expenses required to REPAIR or REMOVE AND REPLACE broken, worn and/or doubtful components and/or parts.

TROUBLE CALLS: On-Site labor and travel labor, including overtime, plus travel and living expenses required for unscheduled work resulting from an abnormal condition.

COMPONENTS, PARTS AND SUPPLIES: The cost of COMPONENTS, PARTS AND SUPPLIES required to keep the equipment operating properly and efficiently.

HARRIS

Harris Service

Proposed Project Agreement

Proposal Date:

April 07, 2015

Proposal Number:

P04264

Prepared for:

CENTERPOINT LEGACY THEATRE
525 N 400 W
CENTERVILLE, UT 84014

Phone #: (801)-298-1302

Prepared by:

Bryce Tyler

(801) 433-2640

btyler@hmcc.com

Leadership through innovative & responsible solutions.

H RRIS

PROJECT PROPOSAL

Proposal Date: April 07, 2015

Proposal Number: P04264

Company
Harris Service
1925 S. Milestone Dr., STE E
SLC, UT 84104

Phone: (801) 433-2640
Fax: (801) 433-2641

Bill To Identity
CENTERPOINT LEGACY THEATRE
525 N 400 W
CENTERVILLE, UT 84014

Agreement Location
CENTERPOINT LEGACY THEATRE
525 N 400 W
CENTERVILLE, UT 84014

WE ARE PLEASED TO SUBMIT OUR PROPOSAL TO PERFORM THE FOLLOWING :

MIXED-AIR CONTROL PRICE: $1,820.00
Troubleshoot the mixed-air control for Air Handlers 1, 2, and 3. Adjust programming as needed to mitigate returning cold water back to the boiler.

BOILERS AND PUMPS LEAD-LAG PRICE: $1,820.00
Troubleshoot the lead-lag sequence for Boilers 1 and 2 and Heating Pumps 1 and 2. Adjust programming as needed to properly sequence this equipment.

AHU 1 HEATING CONTROL VALVE PRICE: $3,460.00
Provide and install 3-way heating control valve for Air Handler 1. The control signal and wiring for the existing valve will be used for the new valve.

BOILER BLOCKING VALVES PRICE: $9,880.00
Provide and install one blocking valve for each of the two boilers to isolate each boiler automatically when not in use. Each valve will be controlled by the existing start-stop signal for its respective boiler.

TOTAL PRICE IF ALL THE ABOVE WORK IS PERFORMED CONCURRENT: $16,400.00

OUR PROPOSAL EXCLUDES: See "Scope of Work" page.

TERMS OF PAYMENT: Monthly Progress Billing. Material and equipment furnished under this proposal shall remain the property of the seller until final payment has been received.

Upon execution as provided below, this agreement, including the following pages attached hereto (collectively, the "Agreement"), shall become a binding and enforceable agreement against both parties hereto. Customer, by execution of this Agreement, acknowledges that it has reviewed and understands the attached terms and conditions and has the authority to enter into this Agreement.

CONTRACTOR	**CUSTOMER**
Signature (Authorized Representative)	Signature (Authorized Representative)
Bryce Tyler Name (Print/Type)	Name (Print/Type)
Phone:(801) 433-2640 Fax: (801) 433-2641	Title
4/7/2015 Date	Date

H RRIS

Proposal Date: April 07, 2015

Proposal Number: P04264

Scope:	Us	Others	N/A
Premium Labor		X	
Permits or fees			X
Hazardous material handling, testing, transportation, removal or disposal		X	
Complete engineering and updating of drawings		X	
Complete project management	X		
Complete installation of the stated systems(s)	X		
Final Adjustment, calibration and start up	X		
System training program			X
Predictive maintenance agreement			X
Insulation	X		
Concrete pad			X
Roof penetration, curbing, pipe jack or other roofing work necessary			X
Any finish work, plaster, patching, or painting		X	
Electrical wiring except as stated		X	
Controls or building automation except as stated		X	
Setting of valve bodies or wells as stated	X		
Air balancing			X
Setting of dampers			X
Asbestos sampling, testing, removal or disposal		X	
Any work not specifically stated in this proposal		X	
Warrants equipment, under the same terms as offered by original manufacturer	X		
Warrants all craftsmanship for one year	X		

PROJECT AGREEMENT TERMS AND CONDITIONS

The following terms and conditions are incorporated into and a part of the agreement between Contractor and Customer (the "Agreement"):

1. Customer shall permit Contractor free and timely access to areas and equipment, and allow Contractor to start and stop the equipment as necessary to perform required services. All planned work under this Agreement will be performed during the Contractor's normal working hours.

2. Contractor warrants that the workmanship hereunder shall be free from defects for thirty (30) days from date of installation. If any replacement part or item of equipment proves defective, Contractor will extend to Customer the benefits of any warranty Contractor has received from the manufacturer. Removal and reinstallation of any equipment or materials repaired or replaced under a manufacturer's warranty will be at Customer's expense and at the rates in effect. CONTRACTOR MAKES NO OTHER WARRANTIES, EXCEPT AS DESCRIBED HEREIN, AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

3. Contractor may invoice Customer on a monthly basis. Customer will promptly pay invoices within thirty (30) days of receipt. Should a payment become thirty (30) days or more delinquent, Contractor may stop all work under this Agreement without notice and/or cancel this Agreement, and the entire Agreement amount shall become due and payable immediately without notice or demand. In addition, if Contractor does not receive payment of a properly submitted invoice within thirty (30) days, Customer shall accrue a late charge on the balance outstanding at the lesser of (a) 1 1/2% per month of (b) the highest rate allowed by law, in each case coupounded monthly to the extent allowed by law.

4. Customer shall be responsible for all taxes applicable to the services and/or materials hereunder.

5. Any alteration to, or deviation from, this Agreement involving extra work, cost of materials or labor will become an extra charge (fixed price amount to be negotiated or on a time-and-materials basis at Contractor's rates then in effect) over the sum stated in this Agreement.

6. In the event Contractor must commence legal action in order to recover any amount payable or owed to Contractor under this Agreement, Customer shall pay Contractor all court costs and attorneys' fees incurred by Contractor.

7. In the event of a breach by Contractor of the terms of this Agreement, including without limitation Section 2, or in the event Customer incurs any liability in connection with the rendering of services by Contractor, Customer's sole remedy against Contractor shall be for Contractor to re-perform the services in accordance with the warranty or, if such services cannot be re-performed or such re-performance does not cure the breach or the liability, to refund to Customer the amount paid to Contractor under this Agreement, up to Customer's direct damages caused by such breach or liability. Notwithstanding the foregoing, in no event shall the liability of Contractor in connection with any products or services, whether by reason of breach of contract, tort (including without limitation negligence), statute or otherwise exceed the amount of fees paid by Customer to Contractor for those products or services. Further, in no event shall Contractor have any liability for loss of profits, loss of business, indirect, incidental, consequential, special, punitive, indirect or exemplary damages, even if Contractor has been advised of the possibility of such damages. In furtherance and not in limitation of the foregoing, Contractor shall not be liable in respect of any decisions made by Customer as a result of Contractor's services. Any action, regardless of form, against the Contractor relating to this Agreement, or the breach thereof, must be commenced within one (1) year from the date of the work.

8. Contractor shall not be liable for any delay, loss, damage or detention caused by acts or circumstances beyond its control including, without limitation, unavailability of machinery, equipment or materials, delay of carriers, strikes, including those by Contractor's employees, lockouts, civil or military authority, priority regulations, insurrection or riot, war, acts of terrorism, action of the elements, forces of nature, or by any cause beyond its control.

PROJECT AGREEMENT TERMS AND CONDITIONS

9. To the fullest extent permitted by law, Customer shall indemnify and hold harmless Contractor, its agent and employees from and against all claims, liabilities, damages, losses and expenses (including but not limited to attorneys' fees) arising out of or resulting from the performance of work hereunder or any act or omission arising out of or related to this Agreement, provided that such claim, damage, loss or expense is caused in whole or in part by an active or passive act or omission of Customer, anyone directly or indirectly employed by Customer, or anyone for whose acts Customer may be liable, regardless of whether it is caused in party by the negligence of Contractor. Further, and notwithstanding the preceding sentence, Contractor shall be held harmless and shall not be liable to Customer for any claims, liabilities, damages, losses and expenses related to mold or to the creation of mold at Customer's location(s) and shall have no obligation to treat, identify or remove such mold.

10. Customer shall make available to Contractor's personnel all pertinent Material Safety Data Sheets (MSDS) pursuant to OSHA'S Hazard Communication Standard Regulations.

11. Contractor's obligation under this proposal and any subsequent contract does not include the identification, abatement or removal of asbestos, mold or any other toxic or hazardous substances, hazardous wastes or hazardous materials. In the event such substances, wastes and materials are encountered, Contractor's shall have the right thereafter to suspend its work until such substances, wastes or materials and the resultant hazards are removed. The time for completion of the work shall be extended to the extent caused by the suspension and the contract price equitably adjusted. As previously provided, Contractor shall be held harmless and shall not be liable for any claims, liabilities, damages, losses and expenses related to such substances, wastes and materials, including the failure to identify or notify Customer of such substances, wastes and materials.

12. This Agreement is between Contractor and Customer alone, and neither intends that there be any third party beneficiaries to this Agreement. Without limiting the generality of the foregoing, by entering into this Agreement and providing services on Customer's behalf, Contractor is not assuming any duty or obligation to any of Customer's employees, vendors, clients, subcontractors, agents, shareholders, partners or members. Customer agrees to indemnify and hold Contractor harmless from and against any and all liabilities, losses, claims, costs, expenses and damages (including without limitation reasonable attorneys' fees) incurred by Contractor by reason of a claim brought against Contractor by any of Customer's employees, vendors, clients, subcontractors, agents, shareholders, partners or members with respect to the services provided by Contractor on Customer's behalf.

13. Each of the parties hereto is an independent contractor and neither party is, nor shall be considered to be, an agent, distributor or representative of the other. Neither party shall act or present itself, directly or indirectly, as an agent of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other.

14. These terms and conditions, together with the attached documents, constitutes the entire agreement and understanding among the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof. It sets forth the terms for the provision of any products or services Contractor may provide Customer, whether in connection with the particular engagement that is identified as the subject of this Agreement or otherwise, unless and until a written instrument is signed by an authorized representative of Contractor agreeing to different terms. This Agreement shall not be assignable by Customer and Contractor without the express prior written consent of either party. This Agreement shall be governed by and construed in accordance with the laws of the State of the Contractor's headquarters are located, without giving effect to that State's conflicts of laws principles.

CENTERVILLE
RDA/ACB MEETING
Staff Backup Report
4/15/2015

Item No. 7.

Short Title: Lease amendment pertaining to the obligation to pay for building insurance

Initiated By:

Scheduled Time:

SUBJECT

RECOMMENDATION

Approve Amendment No. 8 to the Lease and Operating Agreement for the Davis Center for the Performing Arts, pertaining to the obligation to pay for property insurance for the building.

BACKGROUND

In an earlier RDA/ACB meeting, the Boards were informed that the RDA has been paying for property insurance coverage for the Performing Arts Center, as a part of the public buildings coverage provided for the City through URMMA. The Operating Lease, Section 64.e., currently states in part:

- "The Association [i.e. CPT] is required to obtain property and general liability insurance for the Theatre. If agreed to by the RDA, the RDA may obtain such insurance for the building and bill the Association for the cost of such insurance."

Since the building was constructed, the RDA has been obtaining property insurance for this facility but has not been billing CPT for the cost. In their December 2, 2014 meeting, the RDA Board agreed it would be appropriate for the RDA to continue to pay for property insurance as the "owner" of this facility, and instructed staff to bring back a Lease amendment that would make this cost a responsibility of the RDA.

The FY 2014-2015 premium for property insurance coverage for this facility is $1,367--for building value of $11,440,000, business personal property coverage of $100,000, and business interruption coverage of $500,000. Staff recommends the possibility of using RAP tax or other revenue to pay this cost beginning in FY 2017. Looking long-term for a funding source for this cost, the Parrish Gateway Project Area (i.e. RDA funding) is set to expire in 2021, but a RAP Tax renewal (if approved by the voters) would extend to 2026. Using RAP Tax revenues to pay for not only this property insurance--but also the HVAC systems maintenance program mentioned in another agenda item--would, in staff's opinion, be appropriate costs to ask Bountiful City to cost-share from their RAP Tax revenues.

Amendment No. 8 (attached) would not relieve CPT of obtaining insurance coverage for property or equipment owned by the Association. The amendment would also not relieve CPT of obtaining general liability insurance, which would still be clearly required in Section 64.a. ($5,000,000 limit).

ATTACHMENTS:

Description

- Amendment No. 8
- Current Section 64 of Operating Lease

AMENDMENT NO. 8 TO THE LEASE AND OPERATING AGREEMENT FOR THE DAVIS CENTER FOR THE PERFORMING ARTS

THIS AMENDMENT NO. 8 TO THE LEASE AND OPERATING AGREEMENT FOR THE DAVIS CENTER FOR THE PERFORMING ARTS ("Amendment") is entered into this _____ day of, January, 2015, by and between the **REDEVELOPMENT AGENCY OF CENTERVILLE CITY** ("RDA"), a community development and renewal agency and public body organized and existing under the Limited Purpose Local Government Entities – Community Development and Renewal Agencies Act of the State of Utah, with principal offices located at 250 North Main, Centerville, Utah 84014, and the **DAVIS PERFORMING ARTS ASSOCIATION, dba CENTERPOINT LEGACY THEATRE** ("Association"), a Utah nonprofit corporation, with principal offices located at 525 North 400 West, Centerville, Utah 84014.

RECITALS

WHEREAS, the RDA and the Association have previously entered into that certain Lease and Operating Agreement for the Davis Center for the Performing Arts dated May 5, 2009, regarding the lease and operation of a performing arts theatre on property located at approximately 525 North 400 West, Centerville, Utah, as amended by Amendment No. 1 through Amendment No. 7, adopted by the parties (collectively "Lease and Operating Agreement"); and

WHEREAS, the RDA and the Association desire to amend the Lease and Operating Agreement to revise the provisions regarding property insurance; and

WHEREAS, the RDA and the Association are willing to amend the Lease and Operating Agreement regarding property insurance as more particularly set forth in this Amendment;

NOW, THEREFORE, in consideration of the mutual promises and covenants of the parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **Amendment.** The Lease and Operating Agreement is hereby amended to revise Subsection 64(e) regarding property insurance to read in its entirety as follows:

64. Insurance Coverage.

* * *

e. <u>The RDA will obtain and maintain property insurance for the Theatre building as part of its public buildings coverage. The RDA's policy does</u>

not provide coverage for property or equipment owned by the Association. The Association shall obtain and maintain additional insurance for personal property or other specialty fixtures or equipment within the Theatre as deemed necessary and appropriate by the Association. ~~The Association is required to obtain property and general liability insurance for the Theatre. If agreed to by the RDA, the RDA may obtain such insurance for the building and bill the Association for the cost of such insurance. The Association shall pay such invoices within thirty (30) days from the date of receipt.~~

* * *

2. **Full Force and Effect.** The terms of this Amendment are hereby incorporated as part of the Lease and Operating Agreement. All other terms and conditions of the Lease and Operating Agreement not modified by this Amendment shall remain the same and are hereby ratified and affirmed. To the extent the terms of this Amendment modify or conflict with any provisions of the Lease and Operating Agreement, the terms of this Amendment shall control.

3. **Binding Effect.** This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective officers, employees, representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first above written.

"RDA"
Redevelopment Agency of Centerville City

By: ______________________________
Paul A. Cutler, Chair

ATTEST:

____
Executive Director

"Association"
Davis Performing Arts Association
dba Centerpoint Legacy Theatre

By: ______________________________
Its: ______________________________

ATTEST:

____
Secretary

Approved as to Form:

Administrative Control Board

By: ______________________________
Its: ______________________________

RDA ACKNOWLEDGMENT

STATE OF UTAH)
:ss
COUNTY OF DAVIS)

On the ______ day of __________________, 2015, personally appeared before me Paul A. Cutler, who being duly sworn by me did say that he is the Chairperson of the **REDEVELOPMENT AGENCY OF CENTERVILLE CITY,** a community development and renewal agency and public body organized and existing under the Limited Purpose Local Government Entities – Community Development and Renewal Agencies Act of the State of Utah, and that the forgoing instrument was signed on behalf of said Agency by authority of its Board and said Chairperson acknowledged to me that said Agency executed the same.

____
Notary Public

My Commission Expires: Residing at:

______________________________ ______________________________

ASSOCIATION ACKNOWLEDGMENT

STATE OF UTAH)
:ss
COUNTY OF DAVIS)

On the ______ day of __________________, 2015, personally appeared before me ____________________________, who being duly sworn by me did say that (s)he is the ____________________________ of the **DAVIS PERFORMING ARTS ASSOCIATION, dba CENTERPOINT LEGACY THEATRE,** a Utah non-profit corporation, and that the forgoing instrument was signed on behalf of said non-profit corporation by authority of a resolution of its Board of Directors and that said non-profit corporation executed the same.

____
Notary Public

My Commission Expires: Residing at:

______________________________ ______________________________

applicable provisions of this Lease and Operating Agreement and Centerville City Ordinances.

h. Unless specifically authorized to do so by this Lease and Operating Agreement, knowingly allow or authorize, directly or through an Affiliate, by action or inaction, without the prior written consent of the RDA: (a) any material or substantial extension of time for, or excuse of use or operating covenants under this Lease and Operating Agreement; (b) any substantial modification, deferral, or waiver of payments, revenue sharing, or other business terms of this Lease and Operating Agreement; (c) any Assignment or transfer of interest requiring the RDA's consent under this Lease and Operating Agreement; (d) any action that would invalidate or cause a default by the Association under this Lease and Operating Agreement or excuse performance by the other party; (e) any termination of this Lease and Operating Agreement prior to the expiration of its term; or (f) any action to be taken as an agent or representative of the RDA.

64. Insurance Coverage. The Association, prior to the time of the Association's first use of the Theatre as of Possession Date and thereafter throughout the term of this Lease and Operating Agreement, shall maintain the following insurance coverage. All insurance policies required by this Section or this Lease and Operating Agreement shall comply with the Insurance Policy Requirements set forth in **Exhibit "C."**

a. Commercial general liability insurance against claims for bodily injury, personal injury, or death or damage to property occurring upon, in, or about the Theatre or Site in a minimum amount of Five Million Dollars ($5,000,000) combined single limit per occurrence, and not less than Five Million Dollars ($5,000,000) in the aggregate. The general aggregate limit shall apply separately to the Theatre and Site (or to the activities to be performed pursuant to this Lease and Operating Agreement), or the general aggregate limit shall be two (2) times the required occurrence limit. The coverage shall be at least as broad as Commercial General Liability, ISO Form CG 0001 (edition date of 2001 or newer) and shall specifically include an Additional Insured Endorsement naming the RDA and Centerville City, their officers, employees, representatives and agents.

b. If the Association owns any automobiles or uses automobiles in its normal course of business, it shall obtain automobile liability insurance against claims for death bodily injury, personal injury, and property damage in a minimum amount of Two Million Dollars ($2,000,000) combined single limit per occurrence and shall specifically include, at minimum, the following types of coverage: (i) Owned Automobiles; (ii) Hired Automobiles; and (iii) Non-Owned Automobiles.

c. Workers' compensation coverage in a minimum amount at no times less than as required by the workers' compensation laws of the State of Utah, and Employer's Liability limits of Two Million Dollars ($2,000,000) per injury.

d. Business interruption insurance in an amount ten percent (10%) greater than the projected Base Rent and Variable Rent for the first year of this Lease and

Operating Agreement, and in an amount ten percent (10%) greater than the previous year's total combined Base Rent and Variable Rent for each year thereafter.

e. The Association is required to obtain property and general liability insurance for the Theatre. If agreed to by the RDA, the RDA may obtain such insurance for the building and bill the Association for the cost of such insurance. The Association shall pay such invoices within thirty (30) days from the date of receipt.

f. All coverage provided under the terms of this Lease and Operating Agreement shall be written on a "replacement cost basis" to ensure that coverage adjusts at least annually to meet current requirements for adequate insurance coverage.

g. Notwithstanding anything to the contrary herein, the Association shall provide and maintain insurance in a form and amount that, at a minimum, meets the immunity caps set forth in the Utah Governmental Immunity Act, as set forth in Utah Code Ann. SS 63G-7-IOl, et seq., and any future amendments thereto. As provided under current law, the governmental immunity limits are adjusted each even numbered year based on the methodology set forth in Utah Code Ann. S 63G-7-604, as amended, and adopted by rule no later than July I. The Association shall be required to annually review such governmental immunity caps and to annually increase its insurance coverage under the terms of this Agreement accordingly.

h. Insurance coverage required herein shall be with a company licensed or authorized to do business in Utah. The insurance coverage shall be with a company or companies that maintain a Bests' Rating of at least A-XI.

i. All policies shall contain an endorsement listing the RDA and Centerville City, and their officers, employees, representatives and agents as additional insureds and shall contain a provision that such insurance shall not be canceled without a minimum of thirty (30) days prior written notice to the RDA Proof of insurance shall be provided to the RDA prior to Possession of the Theatre. If the Association fails to maintain the insurance required by this Lease and Operating Agreement and in accordance with Exhibit "C," the RDA is authorized to purchase such insurance coverage and to bill the Association for the cost of the same. The Association shall be required to pay for any invoiced insurance costs incurred by the RDA within thirty (30) days from the date of invoice.

j. The Association shall obtain and maintain any casualty or other insurance deemed desirable by the Association to protect the Association's facilities, equipment and property. The RDA shall have no liability for loss or damage to any of the Association's facilities, equipment or property, unless caused by the RDA's tortious conduct.

k. All insurance policies and coverage shall be written on a primary basis.

l The Association shall provide the RDA, upon request, a copy of all insurance policies for the purpose of ascertaining their compliance with the requirements contained herein.

65. Indemnification.

a. To the fullest extent permitted by law, the Association shall indemnify, hold harmless, and, at the RDA's option, defend the RDA from and against all claims, damages, losses, and expenses, including, but not limited to, attorney's fees or other liability, for death or injury to any person or damage to property caused, or alleged to have been caused, directly or indirectly, or arising from any willful or negligent act or omission of the Association, including its agents, employees, independent contractors, concessionaires, invitees and performance patrons, in or about the Theatre or Site in connection with the Association's use of the Theatre and/or Site under this Lease and Operating Agreement. Employees of the RDA attending Association performances in their individual capacity shall be considered members of the general public.

b. As part of the consideration for this Lease and Operating Agreement, to the fullest extent permitted by law, the Association shall indemnify, hold harmless, and, at the RDA's option, defend the RDA from all claims, causes of action, lawsuits, losses, liability, costs, expenses, damages, and judgment that are brought, caused, alleged to arise, or obtained as a result of the Association's use or administration of its right to control the presentation of performances in the Theatre.

c. If the RDA, pursuant to the provisions of this Section, exercises its option to require the Association to defend the RDA, then the Association may participate in said defense for the purpose of ensuring that the attorney's fees and costs of defense are reasonable and necessary.

d. To the fullest extent permitted by law, the RDA shall indemnify, hold harmless, and, at the Association's option, defend the Association from and against all claims, causes of action, lawsuits, losses, liability, costs, expenses, damages, and judgment, including, but not limited to, attorney's fees or other liability, that are brought, caused, alleged to arise, or obtained for death or injury to any person or property caused, or alleged to have been caused, directly or indirectly, or arising from any willful or negligent acts or omissions of the RDA, including its agents or employees, when acting in their official capacity, in or about the Theatre.

e. Nothing in this indemnification provision shall be construed to prevent the RDA and/or the Association from raising any defense under the Governmental Immunity Act with regard to claims from persons not a party to this Lease and Operating Agreement.

f. Notwithstanding anything contained herein, the indemnity provisions of this Section shall not require the indemnitor to indemnify the indemnitee against its sole negligence, gross negligence and/or intentional tortious conduct.