

ARTIST OR ATTRACTION: _____

PERFORMANCE DATE(S): _____

DATES OF OCCUPANCY: _____

**CITY OF POWAY
COMMUNITY SERVICES DEPARTMENT
POWAY CENTER FOR THE PERFORMING ARTS**

----- FACILITY USE AGREEMENT -----

THIS AGREEMENT, made and entered into this (today's date) _____ and between the City of Poway, (hereinafter referred to as "City"), _____, hereinafter referred to as "Licensee").

WHEREAS, the City owns and operates the Poway Center for the Performing Arts, (hereinafter referred to as "PCPA"), under a Joint Use Agreement with the Poway Unified School District; and

WHEREAS, the Licensee desires to present a public entertainment, or other event or activity at the PCPA..

NOW, THEREFORE, in consideration of the provisions set forth hereinabove, and the covenants and agreements contained hereinafter, the parties hereto agree as follows:

1. Premises. The Licensee is hereby granted a license for the use of the PCPA located at 15498 Espola Road in the City of Poway, County of San Diego, State of California, on the date or dates set forth hereinafter, and in the specific areas of the PCPA as set forth hereinafter, on the terms and conditions set forth in this Agreement. **(During events, initial access to PCPA will be exclusively through the marked Artist Entrance, located at the Southwest corner of the premises).**

- Standard Uses:
- Tobb
 - Stage
 - Backstage
 - Dressing Rooms
 - Green Room

2. Use Description. Licensee's use of the PCPA is specifically described as follows: Dance. The City must approve any changes to the Licensee's proposed use in writing in advance.
3. Special Conditions. In connection with the use and occupancy of the premises for the purposes of presenting this event, the Licensee shall be responsible for the following:

All rights, royalties, and copyright requirements associated with musical compositions used during the event. Licensees hereby covenants and agrees that at all times that it uses and occupies the premises it will fully and completely

comply with this requirement. Upon the request of City Licensees shall provide proof of possession of such licenses from the music licensing companies applicable to Licensees' productions. Licensees shall further indemnify, defend, and hold City harmless from any claims of violations of state or federal laws related to the use of copyrighted materials.

4. Personnel and Equipment. City will provide and supervise all theatre use and services. The cost of services, established by the City Council, shall be charged to the Licensee.

It is understood and agreed that the number and types of technical and other personnel required for the safe and effective presentation of the event(s) agreed to herein shall be fixed by the Community Services Manager, (hereinafter referred to as "Manager") or the designee. A minimum of two (2) stage technicians is always required.

The cost of personnel, established by the City Council, shall be charged to the Licensee.

Any private security, parking attendants, additional janitorial, or other personnel as may be required in the sole judgment of the Manager for the safety and convenience of the event participants or the public, will be billed as additional costs to Licensee.

Except as specifically provided herein, City does not expressly nor impliedly warrant any equipment or trade fixtures used with said premises. It is understood that there are no implied warranties of merchantability or fitness for purpose arising under this Agreement.

Licensee expressly accepts responsibility for the safety, welfare, and appropriate supervision of Licensee's employees, contractors, volunteers, participants, or invitees, and in particular, minor children, while they are on the PCPA premises.

5. Licensee Not City Employee(s). Nothing in this Agreement shall be construed as creating an employer/employee relationship between City and Licensee or any of Licensee's employees or contractors. Nothing in this Agreement shall be construed as creating a partnership or joint venture between City and Licensee.

6. Box Office and Tickets. PCPA Box Office staff services are available to Licensee **only** if City is conducting all ticket sales for the event(s) agreed to herein.

a.) Seating: Seats may be sold as "Reserved" or "General Admission."

b) Consignment: If so elected by Licensee, once the tickets have been printed and audited by PCPA Box Office staff, the City shall release tickets to Licensee's duly authorized representative. A two dollar (\$2.00) per ticket fee applies to each ticket requested on consignment. Licensee must adhere to the PCPA Ticketing Guidelines and Procedures.

c) Box Office Hours: If PCPA sells tickets the day of show, the Box Office will be available one hour prior to curtain, in addition to the regular box office hours. PCPA Box Office closes one hour after the scheduled curtain time of the last performance of the day.

d) Capacity: The seating capacity of PCPA is 809. There are 800 fixed seats (which includes nine wheelchair companion seats), plus nine (9) wheelchair only spaces. Disposal or sale of tickets, or admission of individuals in excess of the PCPA's posted capacity, is not permitted.

e) House Seats. PCPA will hold eight (8) complimentary tickets designated by the Manager for each performance agreed to herein to be used at Manager's discretion as house seats.

f) Chargebacks and cancelled checks. **The Box Office does not refund or exchange tickets.** The City of Poway will make every attempt to resolve any issues of credit card chargebacks or returned checks from patrons of the Licensee. If unable to resolve, the Licensee will be responsible for both chargebacks and cancelled check fees and any associated charges.

7. Time Schedule. Licensee agrees to arrive on, use and occupy, and vacate the premises of the PCPA in accordance with the established schedule.

Licensee is prohibited from having personnel or property on the premises at the PCPA for any purpose prior to or following the stated schedule, unless approved by the Manager. Licensee is responsible for payment of all fees associated with said extension.

8. Rental Fees. Fees for use of the PCPA, established by the City Council, shall be charged to the Licensee based on classification as a Non-Profit or Profit. **A six (6) hour minimum rental is required.** Additional hours, in accordance with the established fee schedule, shall be charged to the Licensee.

9. Rental Deposit. The sum of **\$200.00** for first or single day, plus **\$150.00** for any subsequent days in the form of cash, certified check or bank cashier's check (as may be required by City), made payable to the City of Poway, as a deposit to cover rental costs and incidental expenses, has been received by the City of Poway

10. Cancellation Fee. Cancellations made less than 90 days before the scheduled event start date will result in Licensee's forfeiture of the entire Rental Deposit.

11. Cleaning/Damage Deposit. A deposit in the amount of **Three Hundred Dollars (\$300.00)** in the form of cash, certified check, or bank cashier's check (as may be required by the City) has been received by the City of Poway. City may retain the cleaning/damage deposit to apply to all cleaning, repair/damage, and incidental expenses.

Prior to final departure from the facility, Licensee shall return the premises to the condition in which it was found upon entry into the facility. This includes any necessary cleaning, other than ordinary janitorial tasks, and the removal of all items including trash, food, drinks, rubbish, costumes, props, scenery, personal belongings, and any other items which Licensee, its agents, employees, contractors, volunteers, or invitees brought onto the premises during Licensee's use of the facility agreed to herein.

Failure for Licensee to restore premises as specified above will result in Licensee's forfeiture of the cleaning/damage deposit. Should damage occur to PCPA facilities or equipment as a result of acts, errors, or omissions by Licensee, his agents, participants, invitees, or admittees during the Licensee's use and occupancy of the premises in an amount that is in excess of the cleaning/damage deposit, Licensee shall also be responsible for payment to City for those costs.

If City determines that no damage has occurred and has been restored to its pre-rental condition, the cleaning/damage deposit will be applied toward Licensee's fees due to the City at the close of the event.

12. Concessions and Marketing. All concession rights are reserved to City, and City and its assigns and concessionaires shall have the privilege of canvassing, promoting, advertising, selling, and delivering programs, wares, novelties, food/beverage program insertions, and other PCPA related information or merchandise during the events scheduled hereinabove.

13. Intermission/Concession Non-Use Fee: Should Licensee not provide an intermission of at least twenty (20) minutes in length for each scheduled event(s)/performance, the Licensee shall pay the City Council established non-intermission fee.

Licensee shall also pay the fee for requests to keep the concession closed during event(s)/performances, unless otherwise stated in this agreement. This provision does not apply to daytime event(s)/performances specifically designated for school children.

14. Merchandise Sales/Fundraising, Collection or Donations: Prior to engaging in merchandise sales, fundraising, or collection of donations, Licensee must have a resale tax identification number from the state of California, if applicable. Licensee is responsible for the payment of gross proceeds to the City before, during, or after performances such as, but not limited to, program records, video tapes, souvenir items, auction items, and collection of donations at a rate of:

Your Rate: _____

- 15% for Non-Profit Organizations
- 20% for Profit Organizations

In the event the Manager, or duly authorized representative, is not present to collect the City's percentage from the gross proceeds, the Licensee will be held responsible to the City for payment of the amount due. A written statement of gross proceeds shall be presented to PCPA staff at the close of last event date or within five (5) days agreed to herein. Licensee is responsible for collection and depositing of state sales tax.

15. Final Settlement and Closeout. PCPA will provide all sums due to Licensee, including: ticket sales revenue, rental charges, technical fees, and other fees for services provided during your event. The Final Event Report, which includes all the applicable charges, will be mailed within twenty-one (21) working days from close of the event.

16. Payment to City. City shall have first priority to be paid from the ticket sale receipts from the scheduled event(s) to cover rental technical labor, incidental expenses, copyright license fees, and any other obligation incurred by the Licensee under the terms and conditions of this Agreement. Final settlement shall be made, and final payment due by Licensee within twenty-one (21) calendar days from the date of the Final Event Report agreed to herein unless advance arrangements are made with the Manager. The City reserves the right to demand final settlement and all amounts due immediately following the final performance.

17. Television Broadcasting Audio and Video Recording Rights. The Licensee shall not televise, broadcast, or make visual or audio recordings for future broadcast of any event presented in the PCPA under the terms of this Agreement without the prior written approval of the Manager.

18. Insurance and Indemnification. In addition to the indemnification obligations set forth in sections 3 (above), 19 (below), and 20 (below) Licensee shall also indemnify, defend, and hold harmless the City, its officers, officials, employees, and agents from and against all claims, damages, losses, and expenses arising out of Licensee's use of the PCPA, including (but not limited to) injuries (including death or illness) including but not limited to any and all claims relating to COVID-19, damages and losses to, or sustained by, Licensee's employees, agents, volunteers, participants, and audience members; and violations of local ordinances, or state or federal laws and regulations (including those arising from claims of discrimination and compliance with state and local COVID-19 regulations and other related protocols and requirements). Licensee agrees that it is solely responsible for compliance with all applicable COVID-19 regulations, protocols and other requirements. Expenses shall include attorney fees arising out of Licensee's use of the PCPA; damages for the failure to provide for such safety, welfare and appropriate supervision of its employees, contractors, volunteers, participants, and invitees; or involvement with the event described herein, caused in whole or in part by any negligent act or omission of the Licensee or and any of the Licensee's officers, employees, agents or contractors.

Licensee shall provide to City written proof no earlier than 30 days prior to the event that Licensee has in force at its own cost and expense, current **commercial general liability in the amount of \$1,000,000 Bodily Injury and Property Damage combined each occurrence and \$2,000,000 aggregate with the City of Poway, its elected and appointed boards, officers, employees, and agents specifically named as additional insured there under by separate endorsement. A Primary and Noncontributory endorsement is required for the general liability insurance.** Access to the PCPA by the Licensee will not be granted until the policy has been approved by the City's Risk Management Division. If proof of insurance is not received twenty-one (21) days prior to the use of the PCPA, Licensee shall be required to purchase and pay for event insurance from the City of Poway.

19. Non-Discrimination Policy. The Licensee herein covenants by and for itself, himself or herself, its, his or her heirs, executors, administrators, assigns, officers, shareholders, members, and all persons claiming under or through it, him or her, that there shall be no

discrimination against or segregation of any person or group of persons, on account of race, color, religion, sex, sexual orientation, sexual identification, familial status, marital status, disability, national origin, source of income, or ancestry.

20. Compliance With All Applicable Laws, Rules, and Regulations. The Licensee shall comply with all local, state, and federal laws and regulations related to the use of the PCPA and public gatherings. The Licensee agrees to abide by all applicable local, federal, and state accessibility standards and regulations. The Licensee agrees it is solely responsible for reviewing and ensuring compliance with all applicable public health rules, regulations, orders, and/or guidance in effect at the time of the use of the FACILITY, for example, use of appropriate sanitation practices, physical distancing, limits on the size of gatherings, etc. City reserves the right to immediately revoke the Licensee's right to use of the PCPA should the Licensee fail to comply with any provision of this section.

21. Taxes and License Fees. The Licensee hereby agrees to comply with all Federal, State and City ordinances, rules and regulations applicable to the use of the PCPA and to pay all taxes and license fees imposed by law in connection with the Licensee's use and occupancy of the premises, including but not limited to, copyright laws.

In the absence of a signed and binding agreement between Licensee and the Performance Rights Organization having jurisdiction over the material used in Licensee's performance (i.e. BMI, ASCAP, Dramatist's Play Service, Samuel French, etc.), City may be required to pay a license fee to the Performance Rights Organization, and shall have the right to be reimbursed for the amount of the fee by Licensee.

22. Fire/Pyrotechnical Devices. The use of pyrotechnical devices, fire or flame is strictly prohibited without the prior written permission of the Fire Marshal from the City of Poway Fire Department and the Community Services Manager or designee from the Community Services Department (see Poway Center for the Performing Arts Special Effect Policy).

23. Promotions. The posting of advertising and other materials, and the use of any loudspeaker system, is prohibited without the Manager's prior written approval.

24. Existing Displays. Official PCPA related displays of information, art exhibits, or other items meant for permanent or temporary display that are present at the time of Licensee's occupancy, shall not be altered, covered, removed or otherwise disturbed without the Manager's prior written approval.

25. City Access. The Manager, or a duly authorized representative, retains the right at all times to enter, perform duties in, and inspect any area of, the PCPA.

26. Conformity of Use. Licensee agrees to abide by all facility rules, regulations, and policies for use of the PCPA and the purpose of use as stated in this Agreement. This Agreement may be unilaterally canceled by City immediately upon written notice delivered to Licensee without any liability, whatsoever, to Licensee, if the events or activities planned by Licensee are determined to be substantially different than is stated hereinabove, or if, in the sole judgment of City, events or activities subsequently planned or announced by Licensee for presentation at PCPA, under the terms of this Agreement, are, or could be,

in conflict with, or deleterious to, events or activities planned for presentation at PCPA by City, the Poway Center for the Performing Arts Foundation or the Poway Unified School District.

In the event of such cancellation, Licensee shall be reimbursed the difference between the fees contained in this Agreement, and any and all actual expenses and charges incurred by the City to date of cancellation assessed pursuant to Paragraph 9.

27. Removal From Premises. The Manager, or a duly authorized representative(s), reserves the right to remove from the premises any person or persons, deemed objectionable by the Manager, or his duly authorized representative(s) for the reason that they may be causing a disturbance on the premises or damage to the building or its facilities.
28. Unforeseen Circumstances. At any time in the event any disaster or emergency that affects the use of the PCPA, or upon the determination that the PCPA is rendered unfit for occupancy this Agreement shall be suspended, and the City shall return to the Licensee any advance payment, excluding out of pocket expenses incurred by the City, without further liability or obligation upon or by the City arising out of such suspension. The City may forthwith repossess the premises and move or remove any and all persons or property without instituting any action or proceeding at law or equity, or may pursue summary eviction procedures.
29. Severability. It is understood that if any section or provision of this Agreement is found to be invalid or unenforceable, that fact shall in no way affect the validity and enforceability of all other sections and provisions of this Agreement.
30. Entire Agreement. This Agreement shall constitute the entire understanding between City and Licensee, and shall only be amended by mutual written agreement of the parties.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF:

CITY OF POWAY
Community Services Department

LICENSEE

PCPA Manager

Licensee Signature

Date

Date

Name (Please Print)

Title (Please Print)

Street Address (Please Print)

City, State, Zip (Please Print)

Telephone

SAMPLE

PCPA Administration Office (858) 668-4691