

## *St. Louis City Ordinance 63956*

FLOOR SUBSTITUTE

BOARD BILL NO. [95] 228

INTRODUCED BY ALDERMAN PAUL M. BERCKERLE

An ordinance pertaining to Forest Park; authorizing and directing the execution of a lease reviewed and recommended by the Board of Public Service and approved by the City Counselor as to form and as consistent except as expressly noted with Ordinance 59741 (Chapter 22.42, St. Louis City Code) of certain property in Forest Park to the Municipal Theatre Association of St. Louis (MUNY); establishing a MUNY Parking Lot Account in the Special Park Fund established by Ordinance 51336; directing the revocation of permits previously issued by the Board of Public Service to the MUNY upon the effective date of such lease; with an emergency provision.

WHEREAS, the Municipal Theatre Association of St. Louis (the **◆MUNY◆**) has occupied property referred to as the Municipal Opera or Munny Opera in Forest Park for many years pursuant to permits issued by the Board of Public Service; and

WHEREAS, the MUNY has requested the City to lease such property to the MUNY; and

WHEREAS, the City**◆**s 1995 Master Plan for Forest Park calls for **◆**the continuation of leasing or otherwise contracting for the operation of public facilities to non-city agencies/organizations to assist in supplying needed services and/or producing revenue for Forest Park**◆** and recommends that a lease be negotiated with the MUNY; and

WHEREAS, in the City**◆**s 1995 Master Plan for Forest Park proposed improvements of the Municipal Opera by the MUNY are described; and

WHEREAS, the Board of Aldermen finds that it is in the best interests of the City and its residents to lease such property to the MUNY on the terms and conditions hereinafter set forth;

BE IT ORDAINED BY THE CITY OF SAINT LOUIS AS FOLLOWS:

SECTION ONE. The Mayor and the Comptroller are hereby authorized and directed to enter into that certain Lease Agreement, attached hereto as Exhibit 1, which is incorporated herein and made a part of this ordinance by this

reference, by and between the City of St. Louis, Lessor, and the Municipal Theatre Association of St. Louis (MUNY), Lessee, for certain City-owned land and improvements thereon in Forest Park, as therein described.

SECTION TWO. All rental payments under said Lease Agreement shall be held by the Comptroller of the City of St. Louis in an account for the use and benefit of the Department of Parks, Recreation and Forestry of the City of St. Louis as provided in the Lease.

SECTION THREE. A MUNY Parking Lot Account is hereby established in the Special Park Fund established by Ordinance 51336 and referred to as the Forest Park Fund by Ordinance 61988.

SECTION FOUR. The Board of Public Service is directed to revoke permits previously issued to the MUNY for occupancy of the theatre property in Forest Park upon the effective date of the lease authorized hereby.

SECTION FIVE. This being an ordinance providing in part for public improvements or repairs thereof, it is hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis, and shall become effective upon its passage and approval by the Mayor or its adoption over the Mayor's disapproval.

LEASE AGREEMENT  
EXHIBIT 1  
C.S.A.A. BB 228 #2  
12/11/96  
CITY OF ST. LOUIS, MISSOURI  
TO  
MUNICIPAL THEATRE ASSOCIATION OF ST. LOUIS

This Lease ("Lease") dated \_\_\_\_\_, 1996 ("the Date of this Lease") is between the CITY OF ST. LOUIS, MISSOURI, a municipal corporation organized and existing under its Charter and the constitution and laws of the State of Missouri ("City") and the MUNICIPAL THEATRE ASSOCIATION OF ST. LOUIS, a Missouri pro forma corporation, by decree of the Circuit Court of the City of St. Louis on June 10, 1919, Cause Number 2693 ("MUNY").

WHEREAS, the MUNY has occupied land in Forest Park since its organization and currently occupies the land pursuant to a permit issued by the City of St. Louis Board of Public Service; and

WHEREAS, said land is improved with outdoor theatrical structures and facilities and related buildings, including dressing areas, storage areas and office facilities, all of which facilities are sometimes referred to as the Municipal Theatre or the Muny Opera; and

WHEREAS, the MUNY is willing to provide funds for improvement, renovation and expansion of such buildings and facilities and desires to obtain a long-term lease before funding and commencing such improvements, renovations and expansions; and

WHEREAS, the Mayor and Comptroller of the City, acting for and on behalf of the City pursuant to the City Charter and Ordinance \_\_\_\_\_ (Board Bill 228) have been authorized and directed to execute this Lease to the MUNY for land situated in Forest Park described on Exhibit A and depicted on Exhibit B attached hereto together with the improvements thereon; and

WHEREAS, this Lease was reviewed and favorably recommended in writing by the Board of Public Service, and has been approved by the City Counselor as to form and as being, except as otherwise expressly noted herein, in all respects consistent with Chapter 22.42 of the Revised Code of the City of St. Louis, 1994, Annotated ("Code") prior to adoption of Ordinance \_\_\_\_\_ (Board Bill 228);

NOW, THEREFORE, in consideration of the mutual covenants in this Lease, the City and the MUNY agree as follows:

1. LEASED PREMISES. The City hereby leases and rents to the MUNY, and the MUNY hereby leases and rents from the City, the land described on Exhibit A and depicted on Exhibit B attached hereto, each incorporated herein by this reference, together with the improvements thereon. Said land and improvements are hereinafter collectively referred to as the Leased Premises. Subject to the terms and provisions of this Lease, the MUNY shall be entitled to quiet enjoyment and sole and exclusive possession of the Leased Premises and to continued access for vehicles, pedestrians and utility service adequate for its operations as presently conducted. The MUNY, its employees and patrons shall be entitled to use and operate the Leased Premises notwithstanding any Forest Park closing time provisions to the contrary. The Leased Premises are subject to easements, rights of way, restrictions or covenants of record, if any, and existing rights of way for sewers, pipelines,

conduits and utilities. The City reserves the right to enter or allow entry by third parties upon the Leased Premises for the purpose of repairing and reconstructing existing sewers, water pipes and mains, pipelines and utility conduits running through the Leased Premises, in which event the City shall be responsible for the costs of any such repairs and for reconstructing and restoring the Leased Premises in the event of any damage therefrom. Except in the case of emergencies, all such repairs and reconstruction shall be performed at such times and in such manner as do not unreasonably interfere with the operations of the MUNY. The MUNY acknowledges that it is taking the Leased Premises in their current, "as is", condition.

2. TERM. The initial term of this Lease shall run from the Date of this Lease through September 30, 2031. This Lease may be renewed thereafter by the MUNY under all the terms, covenants and conditions contained in this Lease, except for those pertaining to Rent and Forest Park Improvements for one (1) or more successive renewal terms of twenty (20) years each, by the MUNY giving notice to the City no sooner than two (2) years and at least one (1) year prior to the end of the initial or any renewal term, provided, however, that exercise of the options provided for under this paragraph shall be contingent upon agreement of the parties as to Rent and Forest Park Improvements for the renewal term in question, and approval of each such renewal term by ordinance effective not less than thirty (30) days prior to the end of the preceding initial or renewal term as the case may be. If for any reason this Lease is not so renewed, at the option of the MUNY in its sole discretion upon notice to the City within such thirty (30) day period, the Lease term shall carry over for up to three (3) additional years beyond the initial or last renewal term in order to permit the MUNY to effect an orderly relocation. Anything herein to the contrary notwithstanding, if at any time, or from time to time, after December 31, 2005 the MUNY reasonably determines that access and parking are not adequate for its operations as a result of an act or omission of the City or one or more agents of the City, the MUNY may notify the City of such concerns which notice shall specify the act or omission in question. For 90 days after such notice the City and the MUNY shall negotiate in good faith to satisfy the MUNY's concerns. If after such 90 day period the MUNY's concerns about parking and access have not been resolved to the MUNY's satisfaction then for 60 days after such 90 day period the MUNY may terminate this Lease upon 30 days' notice to the City, provided that such election to terminate by the MUNY shall be without prejudice to any rights either party may have under this Lease. In the event of such termination by the MUNY, in order to effect an orderly relocation the MUNY may continue to use and occupy the Leased Premises for up to three

years after such notice of termination. During such period the MUNY shall fulfill all of its obligations hereunder other than under subparagraph 4(b).

3. RENT. The MUNY shall pay rent of One Dollar (\$1.00) per year to the City's Comptroller to be held in a special fund for the account of the City's Department of Parks, Recreation and Forestry, to wit, the Special Park Fund established by Ordinance 51336 and referred to as the Forest Park Fund by Ordinance 61988. As additional rent the MUNY shall pay all expenses for the maintenance and repair of all the improvements and landscaping now on or hereafter installed by the MUNY on the Leased Premises.

4. OTHER CONSIDERATION. (a). FOREST PARK IMPROVEMENTS. As partial consideration for this Lease, the MUNY agrees, commencing on October 31, 1997, and annually thereafter on October 31 (or the next succeeding business day if October 31 is a holiday) of each year, to make contributions to the MUNY Parking Lot Account in the Special Park Fund established by Ordinance 51336 and referred to as the Forest Park Fund by Ordinance 61988, or to such other fund or account as the City may designate by subsequent ordinance, the proceeds of which shall be used for Forest Park Improvements as hereinafter provided. The MUNY's initial annual contribution shall be the amount of \$20,000, which annual contribution shall be increased by \$5,000 every sixth year during the initial term and any renewal term of this Lease. Monies in such fund or account shall be used by the City Director of Parks, Recreation and Forestry, after consultation with the MUNY, only to pay for the reconstruction, landscaping and ongoing annual maintenance of the Upper MUNY Lot, the Lower MUNY Lot and the Twin Lots ("Forest Park Improvements"). The City may, in its sole discretion, use funds available to it from sources other than the MUNY to pay a portion of the cost of any such improvement. No payment shall be due from the MUNY for any year in which two or more weeks of the MUNY's regular season are canceled, provided that the MUNY shall be in default under this Lease if it fails to make such payment for two consecutive years. In the event of a bond issue or other financing by or on behalf of the City for the cost of improvements or repairs in Forest Park, the City may in connection with such bond issue or financing pledge, assign, or otherwise encumber the obligations of the MUNY under this Paragraph 4

(a) and may direct the MUNY to make its payments to a trustee or other third party, provided that no such pledge, assignment or encumbrance shall increase the obligations of the MUNY under this Lease.

(b) REQUIRED IMPROVEMENTS. As additional consideration for this Lease, the MUNY agrees to commence promptly after the Date of this Lease

those projects listed in Exhibit C hereto and specifically designated as projects to be completed by January 1, 2011, and to complete said projects on or before January 1, 2011, provided, however, that time may be extended for delays beyond the MUNY's reasonable control upon notice to and approval by the City's Board of Public Service.

Furthermore, upon the application by the MUNY to the City's Board of Aldermen, before the completion date required above, said Board, by Resolution, shall have the authority to extend the time limits for completion to a time certain, of all of said specified projects in Exhibit C hereto upon finding that the MUNY, its successors or assigns have exercised reasonable care to insure commencement and completion of all of said projects, or that the delay in completing said projects was not caused by an unreasonable act or failure to act on the part of the MUNY, its successors or assigns.

As projects listed on Exhibit C hereto are completed, the MUNY shall report such completion in its annual report required by Paragraph 19 of this Lease. The MUNY shall give written notice to the City when the specified projects required above in this subparagraph (b) have been completed. The City's Director of Parks, Recreation and Forestry shall make an inspection of the Leased Premises to determine whether the projects required in this Lease have been completed, and if same have been, said Director shall issue a certificate of completion to the MUNY and file a copy thereof with the Board of Public Service.

5. EXPECTANCY. The MUNY acknowledges that neither expenditures of funds by the MUNY, nor construction of improvements by the MUNY, nor any representation by any City official or employee, shall create any valid expectancy or right in the MUNY to renewal of this Lease, or obligation by the City to renew this Lease, except as provided in this Lease. The MUNY's performance of all its undertakings in this Lease, over the term of the Lease, is a valid factor for consideration by the City in determining whether this Lease shall be renewed.

6. USE. The Leased Premises shall be held and maintained by the MUNY for the operation of a theatre for concerts, performances and events for the benefit of, or of interest to, the public generally, as well as offices, parking on the existing backstage lot, concession, food and beverage services, gift shop and other facilities ancillary thereto; provided, however, that no such permitted uses shall produce sounds (with the exception of legally permitted fireworks) which can be heard from outside Forest Park, nor produce crowd or traffic control problems within Forest Park which sounds, crowd or traffic conditions are

reasonably determined to constitute a nuisance by both the City Director of Parks, Recreation and Forestry and the Chief of the St. Louis Metropolitan Police Department. To defray part of the cost of its operations, the MUNY shall have the right to charge for the use of the facilities and to sell tickets. Any part of, or facility on, the Leased Premises may in the discretion of the MUNY be made available for use by third parties at such times, for such charges and in such manner as the MUNY determines. The MUNY shall be entitled to all revenues from use or operation of the Leased Premises. The MUNY shall not rename the Leased Premises without the prior approval of the City's Board of Aldermen by Resolution, provided that nothing herein shall prohibit the MUNY from naming buildings or other facilities within the Leased Premises as tributes or memorials or in recognition of contributions to the MUNY.

7. INDEMNIFICATION. The MUNY shall indemnify and hold harmless the City, and all its departments, boards, officers, agents, and employees from all suits, actions, loss, expense, or claims of any kind whatsoever, including attorneys' fees or expenses, arising out of or relating in any way to the execution, performance, or non-performance of this Lease or the operation, use or occupancy of the Leased Premises, whether or not covered by insurance. The MUNY shall, at the City's option, defend the City, at the MUNY's sole expense, against any such claim, suit or action. This provision shall not apply, however, to any such liability as may be the result of the direct and proximate negligence or willful misconduct of the City or the City's employees or agents acting within the scope of their employment or agency.

8. REPAIRS, MAINTENANCE AND EXPENSES. The MUNY shall be responsible for and pay all expenses of any kind or description relating to the Leased Premises and all improvements thereon, including, without limitation, all utilities, and all costs of maintenance, repair and operation of all improvements on the Leased Premises now or hereafter installed by the MUNY and any sidewalks bordering on the Leased Premises. The MUNY shall not be responsible for maintenance, repair or operation of any culverts, waterways, lagoons or any public streets or thoroughfares on or through the Leased Premises, provided that the City shall have no liability to the MUNY for any flooding, leaking or seeping from, or erosion, collapse or subsidence caused by, any such culvert, waterway or lagoon, except as may be the result of the direct and proximate negligence or willful misconduct of the City or the City's employees or agents acting within the scope of their employment or agency, provided that in the event of any such collapse or subsidence the City will make such repairs as may be necessary for the MUNY to repair or rebuild any affected improvements on the Leased Premises. The MUNY will maintain the Leased Premises in good order and in clean and safe condition and will not

commit or permit any waste on the Leased Premises or on the improvements on the Leased Premises.

9. **NONDISCRIMINATION.** The MUNY agrees that in the use of the Land and the improvements on the Leased Premises, it will not exclude or discriminate against any person solely because of race, color, creed, gender or sexual orientation or for any reason not sanctioned by law and not applicable alike to persons generally in the use of the Leased Premises.

10. **LICENSES AND PERMITS.** The MUNY will secure and keep in force all licenses and permits required for its use of the Leased Premises. Except as otherwise specifically provided in this Lease, nothing in this Lease shall be construed to exempt the MUNY from the provisions of any City ordinance of general applicability.

11. **COMMERCIAL ADVERTISING.** No commercial advertising or identification shall be readable or identifiable from streets or parking lots outside the Leased Premises, nor shall any commercial advertising or identification be placed above the height of existing structures on the Leased Premises, or on exterior walls facing the perimeter of the Leased Premises, or in any area between the exterior walls and the perimeter of the Leased Premises, provided that nothing in this Paragraph 11 shall prohibit the MUNY from displaying the name, "THE MUNY", or signs, banners, plaques or flags setting forth information about ticket purchases, pending or scheduled productions or events, show sponsorship or the history of the MUNY.

12. **INSPECTION.** Authorized personnel of the City shall during normal business hours at times that do not interfere with rehearsals or other operations of the MUNY have access to the Leased Premises to ascertain whether the Leased Premises are being maintained in accordance with this Lease. Such entry and inspection shall be upon reasonable notice to the MUNY, but not less than three (3) days, and shall be limited to twice in any calendar year unless the MUNY is in default hereunder, provided that with respect to matters affecting health and safety the City shall have such access and inspection rights as are applicable to other properties within the City.

13. **CONSTRUCTION OR WORK.** Any and all construction or work on the Leased Premises by the MUNY shall be done in complete compliance with all applicable City, State and Federal Codes and pursuant to plans and specifications approved by the City's Board of Public Service, the Commission on Heritage and Urban Design and subject to approval by or permit of any other City department or agency whose approval or permission may be required

under the City Charter or ordinance prior to the commencement of any construction or work and subject to any review or procedure required under the City's 1995 Forest Park Master Plan.

The MUNY is expressly authorized, subject to the preceding sentence, to complete those projects set forth on Exhibit C hereto, incorporated herein by this reference, generally as proposed by the MUNY during the development of the 1995 Forest Park Master Plan in the "Long Term Planning Summary for the MUNY", incorporated as an appendix thereto. In the event the MUNY wishes to make any other alteration, including construction, demolition, or an increase in height, of any permanent or temporary structure on the Leased Premises, or to excavate beneath any existing temporary or permanent building on the Leased Premises, the MUNY shall apply for a permit to the Board of Public Service. If such application is for permits to make or perform interior alterations, routine maintenance, replacement of existing facilities in kind, or is an alteration expressly contemplated or authorized by this Lease, such application shall be granted or denied by the Board of Public Service in accordance with its customary procedures. Any other such application shall be processed in the manner provided by Sections 22.42.070 to 22.42.140, St. Louis City Code 1994 Anno., as if such sections were applicable to the MUNY as Lessee under this Lease.

#### 14. INSURANCE.

(a) The MUNY shall at its sole cost, procure and maintain on file with the City's Comptroller at all times during the initial term and any renewal term of this Lease certificates or other evidence of insurance as hereafter specified. The policies shall name "The City of St. Louis and its officers, agents, and employees" as additional insureds and be issued by financially sound insurers.

(b) Insurance in the initial minimum amounts, below, shall be provided:

(1) Worker's Compensation: Missouri statutory.

(2) Comprehensive Liability (to include premises, operations, products, and completed operations and personal and bodily injury including death:

Each  
Occurrence Aggregate

Combined Bodily Injury  
and Property Damage \$1,000,000 \$1,000,000

Umbrella Coverage \$10,000,000

(3) All Risk Property Coverage: The MUNY shall maintain, at its sole expense, a standard form all risk property coverage insurance policy, subject to reasonable deductibles, on the Leased Premises and related buildings of not less than \$10,000,000, and maintain its own insurance on personal property, furnishings and equipment owned by the MUNY.

(c) Prior to cancellation of any insurance policy, the City shall be given thirty (30) days written notice by registered mail, return receipt requested.

(d) From time to time, but not more frequently than once every five (5) years, the levels of insurance required to be maintained by the MUNY under this Lease shall be reviewed upon the written request of the City's Comptroller to determine whether such levels of coverage are consistent with those maintained by other parties engaged in similar activities in similar locations, and the levels of required coverage shall be reasonably adjusted.

15. DAMAGE AND RESTORATION. If any of the improvements on the Leased Premises should be partially damaged or totally destroyed by fire or other casualty, the MUNY will use the insurance proceeds, if any, to promptly and diligently restore the damaged or destroyed improvements to substantially the same condition as they were in immediately before such destruction, provided that restoration can be made under existing laws. To the extent insurance proceeds are not adequate to so restore, the City may, but need not, require the restoration to be performed with the costs in excess of insurance proceeds to be paid by the City. If existing laws do not permit the restoration, or if insurance proceeds are insufficient and the City does not elect to restore, or if the parties should agree that restoration is not warranted, then either party may elect to terminate this Lease by giving 120 days' notice to the other. Such termination shall release and discharge both parties hereto from any further obligations or liabilities under this Lease except for the payment of sums due and owing by the MUNY to the City as of the termination date. If this Lease is terminated as a result of the Leased Premises not being restored, all available casualty insurance proceeds shall be applied as follows: (i) demolition of structures, removal of rubble and debris and restoration of the land to an open field for park purposes; (ii) payment to the City of \$250,000 to compensate it for the adjusted cost of past improvements made by it on the Leased Premises; and (iii) payment of all remaining proceeds to the MUNY.

16. PARKING AND ACCESS.

(a) The MUNY shall at all times have use of the Lower MUNY Lot for unimpeded vehicular and emergency access to the Leased Premises. The MUNY shall have the exclusive use of the Lower MUNY Lot during May through August unless the MUNY shall give written notice that it waives this specific requirement of this Lease, provided, however, that the public may at all times during May through August use the Lower MUNY Lot on a "non-permitted" basis unless the MUNY barricades and/or posts the lot otherwise pursuant to subparagraph (c) below and its exclusive rights granted in this subparagraph (a). The MUNY may waive the specific requirements of this subparagraph (a) upon request of the City Director of Parks, Recreation and Forestry.

(b) On each MUNY Subscription Performance Night, the MUNY shall have the exclusive use of the Upper MUNY Lot and the Twin Lots from 6:00 p.m. until conclusion of the performance and dispersal of the audience. If the City grants permits to any other person for the use of either or both of said lots before 6:00 p.m. on the date of any MUNY Subscription Performance Night, each such permit shall state that "the permit holder shall totally vacate the permitted area at or before 6:00 p.m." on the date of any such permit.

As used herein, "Subscription Performance Night" means any night on which there is an event on the Leased Premises during June through August which is included as part of a series in which tickets for at least two (2) events in a series of two (2) or more events can be purchased on a subscription basis. The MUNY shall notify in writing the City Director of Parks, Recreation and Forestry, the Missouri Historical Society and the Dwight Davis Tennis Foundation of the dates of Subscription Performance Nights on or before May 1 of each year.

(c) Subject to the approval of the City Director of Parks, Recreation and Forestry, such approval not to be unreasonably withheld, the MUNY shall have the right to place barricades, parking restriction signs and parking directional signs and markings (i) on the Lower MUNY Lot during May through August and (ii) on the Upper MUNY Lot and Twin Lots and in the roads within Forest Park to such three lots and the Leased Premises for direction and traffic and parking control on any MUNY Subscription Performance Night.

(d) The parties acknowledge that the City's 1995 Forest Park Master Plan proposes: the removal of various streets and roads, or sections thereof, within Forest Park, including that section of Government Drive east of the MUNY to Union Drive, which the Master Plan proposes be replaced by a fifteen foot (15') wide pedestrian promenade, which will be available for use by MUNY patrons

as a one-way exit route for vehicular traffic on MUNY Subscription Performance Nights; the reconstruction and landscaping of the Upper MUNY Lot to an increased total capacity of approximately eight hundred forty five (845) parking spaces, the lower MUNY Lot to a decreased total capacity of approximately two hundred twenty five (225) parking spaces, and the Twin Lots to an increased total capacity of approximately four hundred fifty (450) parking spaces; and the modification of parking restrictions on Government Drive west of the MUNY to allow approximately one hundred eighty (180) vehicles to park thereon, if needed on MUNY Subscription Performance Nights to compensate for any lost street parking due to street removals.

The parties further acknowledge that said Master Plan states that: this design is intended to maintain existing parking quality and quantity for the MUNY with a net gain of approximately eighty (80) parking spaces within one quarter mile of the MUNY (approximately 1,973 total parking spaces), and no projected net change in the approximately 3,807 total parking spaces within one-half mile of the MUNY; and that the removal of roads which result in loss of MUNY parking will not occur until adequate replacement parking is created pursuant to said Plan. As used in this Lease, "adequate" means adequate in terms of capacity, accessibility and proximity.

(e) The City agrees not to modify substantially its plans acknowledged above in subparagraph (d) before December 31, 2005 unless the MUNY shall give written notice that it waives this specific requirement of this Lease. In any event, no modification of such plans shall deprive the MUNY of adequate access and parking as reasonably necessary for its operations as presently conducted. The MUNY acknowledges that implementation by the City of the 1995 Forest Park Master Plan is subject to funding and other variables, and agrees that the City is not by this Lease incurring any contractual obligation to the MUNY to implement any aspect of, or in any way relating to, the Master Plan.

(f) The City agrees to confer with the MUNY prior to removal of any streets or roads, or sections thereof in Forest Park, prior to designing access routes in Forest Park, and prior to any modification or redesign of the Upper MUNY Lot and the Lower MUNY Lot except as recommended in the City's 1995 Forest Park Master Plan. The City further agrees that construction projects in Forest Park will be scheduled in a way so as not to disrupt or impair normal operation of the MUNY during June through August unless the MUNY shall give written notice that it waives this specific requirement of this Lease.

(g) The City agrees that it will not make any changes in Forest Park street parking restrictions and parking lots within one-half mile of the MUNY nor to any streets within Forest Park without at least thirty (30) days notice to the MUNY, provided that no such changes shall be made during June through August unless the City gives written notice of such changes to the MUNY on or before April 15 of the affected year, or unless the MUNY shall give written notice that it waives this specific requirement of this Lease.

17. **MINORITY PARTICIPATION.** The MUNY agrees to conform to all applicable federal, state and local equal opportunity laws. In addition, the MUNY agrees to seek and encourage participation of businesses owned and controlled by minorities and women in construction work within the Leased Premises pursuant to its "Policy Statement of the Municipal Theatre Association of St. Louis Regarding Disadvantaged Business Enterprise Participation" attached as Exhibit D hereto, incorporated herein by this reference. The MUNY agrees to designate one of its employees as a Minority Participation Administrator, and to notify the City of the name, business address and telephone number of such administrator. During periods of major construction on the Leased Premises the MUNY shall report monthly to the City's contract compliance officer the level of MBE and WBE participation in such construction projects. Such reports shall identify the MBE and WBE participants and set forth the amounts paid to such participants and the total project cost.

18. **MISCELLANEOUS MATTERS.**

(a) **FREE SEATS.** The MUNY shall make at least ten percent (10%) of the theatre seats for all performances on Subscription Performance Nights (as hereinafter defined) available to individual members of the public at no cost in a location determined by it. The users of such free seats shall have access to a concession stand and restrooms.

(b) **RIGHT OF FIRST REFUSAL.** The MUNY shall have the right of first refusal to purchase the Leased Premises if at any time the City shall receive a bona fide offer for the purchase of the Leased Premises which the City desires to accept. The City shall promptly deliver to the MUNY, a complete copy of the offer and the MUNY may within sixty (60) days thereafter, elect to purchase the Leased Premises on the same terms as set forth in such offer, subject to any required ordinance authorization. An offer by the City for the sale or transfer of the Leased Premises shall give the MUNY the same rights as if an offer to the City.

19. ANNUAL REPORT. The MUNY will submit to the City Director of Parks, Recreation and Forestry and the City's Forest Park Advisory Board created by Ordinance 63769 on or before March 31 of each year a written annual report describing in detail the activities and operations of the MUNY on the Leased Premises in the preceding calendar year and an update of its current long range plans.

20. DEFAULT AND REMEDIES. Notwithstanding any provision of Section 5.d of Ordinance 59741 to the contrary:

(a) The following conditions will constitute a default under this Lease:

(1) If the MUNY fails to make any payment or contribution when due the City or fails to maintain required insurance, and the MUNY fails to cure such default within thirty (30) days after written notice from the City to the MUNY of such default.

(2) If either party fails to perform any of its other non-monetary obligations under this Lease when due or called for and fails to cure such default within sixty (60) days after written notice of such default.

(3) If the MUNY shall fail to satisfy any final judgment against it arising out of its operations at the Leased Premises within thirty (30) days after such judgment becomes payable and all appeals have been exhausted.

(4) The levy of any attachment or execution or the appointment of any receiver or the execution of any other process of any court which directly or indirectly substantially interferes with the MUNY's operations under this Lease and which attachment, execution, receivership, or other process of such court (or the effect thereof) is not vacated, dismissed or set aside within a period of one hundred twenty (120) days.

(5) If the MUNY shall be adjudged bankrupt, or a receiver be appointed for the MUNY's property, or if the MUNY's interest in this Lease shall pass by operation of law to any person other than the MUNY and such adjudication, appointment or order is not vacated, dismissed, or set aside within one hundred twenty (120) days from its entry.

(6) If the City commits an act, or fails to act, so as to interfere with or prevent the MUNY's operation of the Leased Premises as contemplated under this Lease and such default is not cured within thirty (30) days after written notice of such default by the MUNY to the City.

(7) If the MUNY shall make any assignment, sublease, or encumbrance of this Lease or any interest of the MUNY under this Lease, without the City's approval and such default is not cured within thirty (30) days after written notice of such default by the City to the MUNY.

(8) If the MUNY shall fail to use the Leased Premises for the presentation of theatrical performances or concerts to the general public for two successive calendar years.

(b) If any of the events identified in subparagraphs(a)(1) through (a)(8) of this paragraph should occur, such event shall constitute a breach of this Lease if the defaulting party fails to cure such default within the applicable cure period; provided, however, that if the nature of the non-monetary breach is the result of a force majeure occurrence or is otherwise of a nature such that it cannot be fully cured within the applicable cure period, the party in default shall have such additional time as is reasonably necessary to cure the breach so long as the party in default is proceeding diligently to complete the necessary cure after service of notice by the non-defaulting party.

(c) If the MUNY shall be in breach of this Lease, as provided above, this Lease and the MUNY's interest and rights thereunder shall cease, terminate, and be forfeited and the MUNY shall surrender the Leased Premises forthwith. In addition, if any of the conditions identified in subparagraph (a) above should occur and the party in default does not cure the default within the applicable cure period, the non-defaulting party may elect to terminate this Lease immediately (unless the Lease has been terminated under the preceding sentence) and seek all remedies as provided at law or in equity, provided that either party may seek injunctive relief to prevent any default or threatened default without regard to any cure period.

(d) Anything herein to the contrary notwithstanding, the MUNY's remedies against the City for any breach of this Lease shall be limited to injunctive or other equitable relief except in the case of an intentional or willful breach by the City.

**21. SURRENDER OF POSSESSION.** Upon any termination of the Lease, the MUNY shall surrender possession of the Leased Premises to the City with all permanent improvements in place. The MUNY shall have the right to remove all furnishings, equipment and personal property of the MUNY from the Leased Premises.

22. EMINENT DOMAIN. If at any time during the term of this Lease the Leased Premises shall be taken by eminent domain, this Lease shall terminate on the date of such taking. The MUNY shall have a right to an apportionment of the eminent domain award for the value of its leasehold estate and all improvements made by the MUNY on the Leased Premises.

23. SUCCESSORS AND ASSIGNS. The agreements and covenants in this Lease shall bind and inure to the benefit of the successors and permitted assigns of the parties. References herein to officers and departments of the City shall include the successors to their respective functions.

24. GOVERNING LAW. This Lease and the rights and liabilities of the parties to this Lease shall be governed by the laws of the State of Missouri. If any provision of this Lease is invalidated by judicial decision or statutory enactment, the invalidity of any such provision will not affect the validity of any other provisions of this Lease.

25. CAPTIONS. Captions in this Lease are included for convenience only and are not to be taken into consideration in any construction or interpretation of this Lease or any of its provisions.

26. NON-WAIVER. No failure of either party to exercise any power given under this Lease or to insist upon strict compliance with the undertakings, duties and obligations of the other party hereunder, and no custom or practice of either party at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the provisions, covenants, terms and conditions of this Agreement.

27. PEACEABLE TERMINATION. The MUNY shall peaceably and immediately give up and surrender to the City the Leased Premises and every part thereof upon termination of this Lease.

28. TIME OF ESSENCE. Time is of the essence of each provision of this Lease.

29. INTEGRATED AGREEMENT. This Lease contains or refers to all of the agreements of the parties and cannot be amended or modified except by written agreement.

30. NOTICES. All notices, demands, requests or responses required by this Lease shall be in writing and may be delivered by personal delivery or certified mail, return receipt requested to the following addresses:

To the City:  
Mayor, City of St. Louis  
Room 200, City Hall  
St. Louis, MO 63103

with copies to:

Comptroller, City of St. Louis  
Room 212 City Hall  
St. Louis, MO 63103

Director of Parks, Recreation and Forestry  
5600 Clayton Avenue  
St. Louis, MO 63110

To the MUNY:

General Manager, Chief Executive Officer  
Municipal Theatre Association of St. Louis  
Forest Park  
St. Louis, MO 63112

with a copy to:

Armstrong, Teasdale, Schlafly & Davis  
One Metropolitan Square  
St. Louis, MO 63102-2740  
Attn: Raymond R. Fournie, Esq.

Each party shall have the right to designate a different address or recipient for notices by giving notice in conformity with this section.

IN WITNESS WHEREOF, this Lease is executed as of the day and year at the beginning of the Lease by the:

CITY OF ST. LOUIS MUNICIPAL THEATRE ASSOCIATION OF ST. LOUIS

By: \_\_\_\_\_ By: \_\_\_\_\_  
Freeman R. Bosley, Jr. Chairman of the Board  
Mayor

By: \_\_\_\_\_  
Darlene Green

Comptroller

APPROVED AS TO FORM:

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City Counselor

EXHIBIT A

A TRACT OF LAND BEING THE MUNICIPAL THEATER GROUNDS PROPER BEING PART OF FOREST PARK, CITY OF SAINT LOUIS, MISSOURI, REFERENCED TO THE MISSOURI GEOGRAPHIC REFERENCE SYSTEM, NAD 1983, ADOPTED BY THE CITY OF SAINT LOUIS, MISSOURI AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERN CORNER OF THE TRACT HEREIN DESCRIBED, SAID POINT HAVING COORDINATE N 797,563.374, E 689,446.773; THENCE ALONG SAID BOUNDARY, NORTH 38 DEGREES 30 MINUTES 29 SECONDS WEST, 491.44 FEET TO COORDINATE POSITION N 797,863.629, E 689,207.872; THENCE NORTH 66 DEGREES 31 MINUTES 46 SECONDS WEST, 282.89 FEET TO COORDINATE POSITION N 797,951.598, E 689,005.273 NEAR THEATRE DRIVE; THENCE ALONG AND NEAR THEATRE DRIVE, NORTH 50 DEGREES 57 MINUTES 50 SECONDS EAST, 635.10 FEET TO COORDINATE POSITION N 798,263.897, E 689,390.432; THENCE NORTH 74 DEGREES 15 MINUTES 29 SECONDS EAST, 294.24 FEET TO COORDINATE POSITION N 798,326.224, E 689,611.547; THENCE LEAVING SAID LINE ALONG AND NEAR THEATRE DRIVE, SOUTH 04 DEGREES 36 MINUTES 32 SECONDS EAST, 324.81 FEET TO COORDINATE POSITION N 798,071.572, E 689,633.024; THENCE NORTH 70 DEGREES 18 MINUTES 26 SECONDS EAST, 84.31 FEET TO COORDINATE POSITION N 798,095.625, E 689,693.900; THENCE NORTH 63 DEGREES 50 MINUTES 21 SECONDS EAST, 100.88 FEET TO COORDINATE POSITION N 798,130.350, E 689,764.592; THENCE SOUTH 29 DEGREES 57 MINUTES 28 SECONDS EAST, 68.00 FEET TO COORDINATE POSITION N 798,084.353, E 689,791.109; THENCE SOUTH 56 DEGREES 30 MINUTES 43 SECONDS WEST, 104.31 FEET TO COORDINATE POSITION N 798,039.418, E 689,723.189; THENCE SOUTH 20 DEGREES 32 MINUTES 23 SECONDS WEST, 157.71 FEET TO COORDINATE POSITION N 797,924.109, E 689,679.985; THENCE SOUTH 36 DEGREES 51 MINUTES 44 SECONDS EAST, 22.72 FEET TO COORDINATE POSITION N 797,780.607, E 689,787.581 NEAR SUMMIT DRIVE; THENCE ALONG AND NEAR SUMMIT DRIVE, SOUTH 79 DEGREES 09 MINUTES 41 SECONDS

WEST, 78.88 FEET TO COORDINATE POSITION N 797, 769.028, E 689,727.097;  
THENCE SOUTH 53 DEGREES 44 MINUTES 07 SECONDS WEST, 445.30 FEET  
TO THE POINT OF BEGINNING, CONTAINING 495,317 SQUARE FEET OR  
11.371 ACRES, MORE OR LESS.

THE DISTANCES SHOWN ARE IN FEET AND THE COORDINATES ARE  
SHOWN IN METERS PER THE GEOGRAPHIC REFERENCE SYSTEM.

## EXHIBIT C

### APPROVED MUNY PROJECTS

(\*Projects to be completed by January 1, 2011)

#### Concession Stands & Toilet Facilities

- \*Expand and improve, or replace east & west concession stands
- \*Provide additional cashier locations at east & west concession stands Construct new back-stage concession stand on west ramp
- \*Expand and improve, or replace east & west toilet facilities Improve west ramp toilet facilities
- \*Improve disabled access to concessions & toilet facilities
- \*Improve lighting

#### Culver Pavilion & East Lawn Area

- Improve concession stand
- Expand, replace or relocate toilet facilities
- Expand and improve, or replace catering kitchen
- Improve lighting, landscaping and storm-water drainage in lawn area

#### South Entry Area

- \*Relocate Summit Drive
- \*Construct and landscape new entry plaza
- \*Renovate, replace or relocate concession stand
- \*Renovate, replace or relocate toilet facilities
- \*Renovate, replace or relocate ticket booth
- \*Renovate, replace or relocate spotlight booth
- \*Repair or reconstruct east & west retaining walls
- \*Structurally repair or reconstruct south pergola

#### Auditorium Area

- \*Restore or replace concrete auditorium surface

- \*Replace seats
  - \*Increase seating capacity for the disabled
- Restore east & west pergolas

#### Stage Area

- \*Resurface wooden revolving stage floor

Replace light bridge

#### Back-Stage Area

- \*Repair or replace concrete structures

Construct additional roofs over carpenters' and painters' work areas

#### Administration & Dressing Room Buildings

Reallocate space in both buildings

Renovate the Administration Building

Repair and renovate the Dressing Room Building

Repair the roof on Dressing Room Building

Renovate air handling unit siding

Restore north pergola

- \*Implement new signage program throughout theater complex

Improve landscaping around theater and pavilion perimeters

## EXHIBIT D

### POLICY STATEMENT OF THE MUNICIPAL THEATRE ASSOCIATION OF ST. LOUIS REGARDING DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

It is the policy of The Municipal Theatre Association of St. Louis (the "MUNY") to ensure the maximum utilization of qualified minority business enterprises ("MBEs") and qualified women's business enterprises ("WBEs) in the MUNY's proposed capital improvements project, while at the same time achieving a competitive contract price for goods and services of high quality.

A MBE is defined as a business which is at least fifty-one percent (51%) owned and controlled by minority group members. Controlled means that the minority ownership must exercise actual day-to-day management of the business. Minority groups covered by this policy include Black-Americans, Hispanic-Americans, Native-Americans and Asian-Pacific Americans.

A WBE is defined as an independent business concern which is at least fifty-one percent (51%) owned by a woman or women, who also control and operate it. Determination of whether a business is at least fifty-one percent (51%)

owned by a woman or otherwise qualified WBE which is fifty-one percent (51%) owned by a married woman in a community property state will not be disqualified because her husband has a fifty percent (50%) interest in her share.

Maximum utilization means, with respect to the proposed improvement project, that the general contractor shall take all reasonable steps: (i) to provide MBEs and WBEs (collectively referred to as Disadvantaged Business Enterprises or "DBE") with the maximum opportunity to compete for all construction contracts and subcontracts, and to furnish supplies and labor ("Subcontracts"); and (ii) to provide, as reference points, that at least twenty-five (25%) of all work for the project as a whole will be performed by MBEs and that at least five percent (5%) of all work on the project will be performed by WBEs.

Ordinarily, the main criteria to be used in selection of the successful general contractor for a particular project are: (i) competitive price; (ii) quality of work; (iii) ability to meet or exceed reference points; (iv) favorable contract terms, and (v) qualifications of contractor. In selecting the successful bidder, the MUNY's management may give such relative weight to each criterion as it deems appropriate.

The general contractor shall make a good faith effort to replace with another DBE any DBE subcontractor who is unable to perform satisfactorily. Replacement firms must be approved by the MUNY.

Each general contract shall make adequate provisions to compensate the MUNY for damages in the event the actual dollar amount paid to DBE falls short of the amount to be paid as set forth in the bid as awarded. The foregoing policy shall be implemented, and DBE utilization shall be evaluated in the context of the dollar value of the following factors:

- a. A contract or subcontract awarded to DBEs.
- b. A subcontractor with a joint venture eligible under the DBE standards equal to the percentage of the ownership and control of the DBE partner in the joint venture.
- c. Expenditures to DBEs who perform a commercially useful function in the contract. A DBE is considered to perform a commercially useful function when responsible for the execution of a distinct element of the work of a contract and the carrying out of the responsibilities by actually performing, managing and supervising the work involved.

d. Expenditures to a DBE manufacturer.

e. Expenditures for materials and supplies required under a contract and obtained from a DBE regular dealer.

(1) A regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a principal business and in its own name, the purchase and sale of products in question.

(2) A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment. Brokers and packages shall not be regarded as manufacturers or regular dealers within the meaning of this section (i.e., a truck hauler is a regular dealer when the firm owns, operators, maintains, or leases, operates and maintains, the distribution equipment for the delivery of the above products to the public in the usual course of business; ad hoc performance for one contractor or select group of contractors does not qualify as a regular dealer).

(3) A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor (i.e., a supplier who produces goods from raw materials or substantially alters them before resale).

f. The following expenditures to DBE firms that are not regular dealers or manufacturers: the fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler or trucker is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the MUNY to be reasonable as compared with fees customarily allowed for similar services.

A contractor's good faith efforts to meet the DBE reference point may include, but are not limited to, such items as the following:

1. Attended a pre-bid meeting, if any, scheduled by the MUNY to inform DBEs of contracting and subcontracting opportunities;
2. Advertised in general circulation trade association and socially and economically disadvantaged business-directed media concerning the subcontracting opportunities;

3. Provided written notice to a reasonable number of specific DBEs that their interest in the contract is solicited, in sufficient time to allow the DBEs to participate effectively;
4. Followed up on initial solicitations of interest by contracting DBEs to determine with certainty whether the DBEs were interested;
5. Selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goal (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
6. Provided interested DBEs adequate information about plans, specifications and requirements of the contract;
7. Negotiated in good faith with interested DBEs not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;
8. Made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by the MUNY, or by the bidder; and
9. Made effective use of the services of available disadvantaged business trade organizations, minority contractors' groups, local, state and federal disadvantaged business assistance offices and other organizations that provide assistance in the recruitment and placement of DBEs.

The general contractor shall make a good faith effort to replace with another DBE any DBE subcontractor who is unable to perform satisfactorily. Replacement firms must be approved by the MUNY.

Each general contract for a project shall provide a reasonable retainage to be withheld until the date of substantial completion. Pending completion of the contract, amounts paid to DBEs shall be reported to the MUNY on a monthly basis. Prior to the release of the retainage, the general contractor shall file a list with the MUNY showing the DBEs used and the work performed. The list shall show the actual dollar amount paid to each DBE that is applicable to the percentage participation established in the contract. The general contract shall provide that in the event the actual dollar amount paid to DBE falls short of the amount to be paid as set forth in the bid as awarded, the MUNY may sustain damages, the exact extent of which would be difficult or impossible to ascertain. Therefore, in order to liquidate such damages, the contract shall

provide that the monetary difference between the amount to be paid to the DBEs as set forth in the bid as awarded less the amount actually paid to the DBEs for performing a commercially useful function will be deducted from the contractor's payments as liquidated damages. No such deduction will be made when, for reasons beyond the reasonable control of the contractor, the stated DBE participation is not met. Any amount so deducted will be donated to organizations offering scholarship and/or internship programs for disadvantaged or disabled youth, with preference given to scholarship and/or internship programs as may be sponsored or operated by the MUNY. The MUNY shall report to the City's contract compliance officer the occurrence and amount of any such deduction and the organization to which the money is donated or the use made thereof by the MUNY for scholarship and/or internship programs.

<b>Legislative History</b>					
<b>1ST READING</b>	<b>REF TO COMM</b>	<b>COMMITTEE</b>	<b>COMM SUB</b>	<b>COMM AMEND</b>	<b>VOTE</b>
<b>10/11/96</b>	<b>10/11/96</b>	<b>PARK</b>	<b>12/11/96</b>	<b>12/11/96</b>	
<b>2ND READING</b>	<b>FLOOR AMEND</b>	<b>FLOOR SUB</b>	<b>VOTE</b>	<b>PERFECTN</b>	<b>PASSAGE</b>
<b>12/13/96</b>				<b>12/13/96</b>	<b>12/20/96</b>
<b>ORDINANCE</b>	<b>VETOED</b>		<b>VETO OVR</b>		<b>EFFECTIVE</b>
<b>63956</b>					