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APPROVED
BY THE CITY COUNCIL

AG 8/12/88

MAR 8 1988

OFFICE OF THE
CITY CLERK

COMMUNITY/CONVENTION CENTER
City of Sacramento
ADMINISTRATION OFFICES

February 29, 1988

City Council
Sacramento, California

CITY MANAGER'S OFFICE

RECEIVED

MAR 2 1988

Honorable Members in Session:

SUBJECT: Licensee Agreement Contract for Community/Convention Center

SUMMARY

This report recommends revisions to the Community/Convention Center Licensee Agreement.

BACKGROUND INFORMATION

The Licensee Agreement form is the contract between a Center user and the Sacramento Community/Convention Center. This Agreement has been in use since the building opened in 1974. Periodic revisions have been made with the last revision in 1985.

In 1987, it was necessary for the Center to cancel a performance due to a possible public safety concern. Unfortunately, the cancellation by City Clause required a 30-day notice, which was not possible. This resulted in the City bearing the cancellation costs. In order to avoid a similar situation the Licensee agreement has been revised.

Significant changes to the Licensee Agreement include:

1. Clarification of license fee. (paragraph #4)
2. Insurance requirements changed to reflect increased coverage.
3. The termination by City is expanded to include "(c) at any time when the City determines that termination is necessary to preserve the public peace, prevent damage to public property, or prevent riots, mobs or violence. Upon such termination, Licensee shall be refunded any license fee paid. Except for such refund, neither

City, nor its officers, agents or employees shall be liable to Licensee for any expenses or damages whatsoever arising from the cancellation. In no event shall City, its officers, agents or employees be liable for lost profit." (paragraph #34)

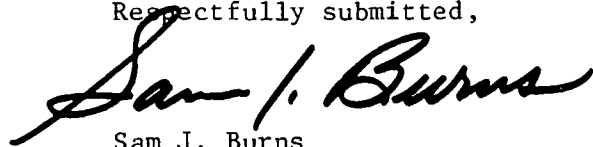
FINANCIAL DATA

No financial impact.

RECOMMENDATION

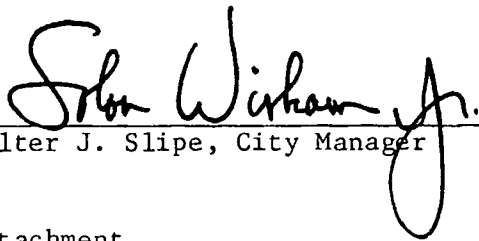
It is recommended that the City Council approve, by resolution, the revised Licensee Agreement.

Respectfully submitted,



Sam J. Burns
Director

Recommendation Approved:



for: Walter J. Slipes, City Manager

Attachment

March 8, 1988

All Districts

12

RESOLUTION No.

88-194

Adopted by The Sacramento City Council on date of

March 8, 1988

**RESOLUTION APPROVING LICENSEE AGREEMENT FOR
THE SACRAMENTO COMMUNITY/CONVENTION CENTER**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF
SACRAMENTO:

That the Licensee Agreement, Exhibit A, attached hereto and by
reference incorporated herein, is hereby approved.

MAYOR

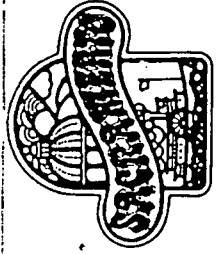
APPROVED
BY THE CITY COUNCIL

MAR 8 1988

OFFICE OF THE
CITY CLERK

ATTEST:

CITY CLERK



CITY OF SACRAMENTO COMMUNITY/CONVENTION CENTER LICENSE AGREEMENT

EXHIBIT A

Contract No. _____
The license agreement is made and entered into by and between the City of Sacramento, hereinafter referred to as "City" and hereinafter referred to as "Licensee" this _____ day of _____, 19____.

WITNESSETH:
Whereas, City has constructed the Sacramento Community Center, hereinafter referred to as "Center," to be used by various groups and persons for conventions, trade shows, exhibitions, theatrical performances, concerts, sporting events and similar activities;
Whereas, City desires to make available said Community Center on a license basis;
Now therefore, for and in consideration of the following promises, covenants and conditions, the parties hereto agree as follows:

1. FACILITIES USED:

City hereby agrees to grant Licensee a license to use the following areas of the Sacramento Community Center: _____

ADDENDUM _____ made part of this agreement.

2. LICENSE PERIOD:
Licensee is to use those areas noted together with standard furnishings, equipment and services. City will provide the basic facility for Licensee's use which shall include: normal custodial services, utilities, use of dressing rooms, and stage area. Said use shall be permitted on the following dates, during the hours specified below.

MOVE IN	_____ 19____	_____ M	to	_____ M
MOVE OUT	_____ 19____	_____ M	to	_____ M
MOVE IN	_____ 19____	_____ M	to	_____ M
MOVE OUT	_____ 19____	_____ M	to	_____ M
REHEARSALS	_____ 19____	_____ M	to	_____ M
EVENT	_____ 19____	_____ M	to	_____ M
EVENT	_____ 19____	_____ M	to	_____ M
EVENT	_____ 19____	_____ M	to	_____ M

3. PROPOSED PURPOSE:

The event to be presented shall consist of _____
and no other purpose.

4. LICENSE FEE:

Licensee will pay to City for use of the Community Center described above a license fee in the area of _____ dollars (\$ _____) or _____ percent (_____ %) to a maximum of _____ dollars (\$ _____) of the gross paid admission receipts per event, or _____ cents (\$ _____) per square foot of exhibit space per day in the _____ building, whichever is greater. Final license payment will be computed on actual net square footage used, said computation will be made on the opening day of event. License fee to be paid in the amount of _____ dollars (\$ _____).
Deposit to be paid _____ due _____
Deposit to be paid _____ due _____

If for any reason said fee (and additional items) is not paid as aforesaid, it is agreed that box office receipts may be applied to the payment of said fee (and additional items), and Licensee waives all rights to that portion of the box office receipts which are normally the responsibility of the Licensee or guarantee monies from the Box Office or make payment before any work is performed. **USE OF THE FACILITIES IN EXCESS OF THE TIME SET FORTH ABOVE MAY, AT THE DISCRETION OF THE DIRECTOR, RESULT IN OVERTIME FEES BEING CHARGED. THIS DATE IS THE LAST DATE SET FORTH ABOVE.**

5. EXTRA SERVICES - EQUIPMENT:

City will provide at Licensee's cost and expense, ticket sellers, usher, guards, stagehands, city police or firemen, or other personnel as may be necessary. Licensee agrees to provide the Community Center Director at least fourteen (14) days written notice as to add personnel requirements. LICENSEE SHALL FILE WITH THE DIRECTOR AT LEAST FOURTEEN (14) DAYS PRIOR TO ANY EVENT AUTHORIZED BY THIS AGREEMENT A FULL AND DETAILED OUTLINE OF THE FACILITIES REQUIRED, INCLUDING THE FLOOR SET-UP AND SUCH OTHER INFORMATION AS MAY BE REQUIRED BY THE DIRECTOR. If Licensee desires additional rental equipment, electrical equipment, compressed air, gas, steam wipers, etc., and if City is in a position to furnish the same, the rates of such services and equipment are on file in the office of the Director of the Sacramento Community Center. Before any additional facilities are furnished or extra services rendered, Licensee must furnish to the Director a written request describing the additional facilities and/or equipment to be furnished or extra services to be rendered, and Licensee must furnish to the Director a written request describing the additional facilities and/or equipment to be furnished or extra services to be rendered. All employees shall be paid the prevailing wage as determined by the Director.

6. SERVICE FEE:

Should Licensee or its authorized representatives fail to meet its contractual obligation with the act, agencies, sound or light companies, or any other subcontractor, which would render the contract void or possibly cancel the event, and if the City is required to hire other facilities which are normally the responsibility of the Licensee or guarantee monies from the Box Office or make payment before any work is performed, the Licensee shall pay to the City a service fee equal to ten percent (10%) of the net due from the Licensee under this agreement.

7. INDEMNITY:

Licensee shall assume all responsibility for its activity and operation and shall bear all losses and damages directly or indirectly resulting to the City of Sacramento, County of Sacramento, Sacramento City Public Facilities Financing Corporation, Sacramento Convention and Visitors Bureau, their officers, employees and agents that are the result of the performance or character of the activities, exhibitions, accidents, occurrences or other causes not precluded on active negligence of the City. Licensee shall assume the defense of and indemnify and save harmless the City of Sacramento, County of Sacramento, Sacramento City Public Facilities Financing Corporation, Sacramento Convention and Visitors Bureau, their officers, employees and agents from all claims, loss, damage, injury, and liability of every kind, nature, and description, including punitive damages and attorney fees reasonably incurred, directly or indirectly arising from the performance of the event under this license agreement.

8. INSURANCE:

Licensee shall maintain in full force and effect during Licensee's use and occupation of said facilities as herein provided, and any extension thereof, all Licensee's expense, bodily injury, personal liability and property damage insurance. Said policy shall not be less than \$1,000,000 Single Limit per occurrence, issued by an admitted insurer or insurer as defined by the California Insurance Code, and shall be in the name of the City of Sacramento, County of Sacramento, Sacramento City Public Facilities Financing Corporation, Sacramento Convention and Visitors Bureau, their officers, employees and agents. Licensee shall provide a certificate of insurance showing such insurance to be in full force and effect during the term of this agreement. The policy is due prior to execution of this contract by the Director, but in no case less than 30 days prior to occupancy.

9. WORKERS COMPENSATION:

Licensee, by executing this license agreement certifies that he is aware of the provisions of Section 3700 of the Labor Code of the State of California which renders every employer to be insured against liability of Workers' Compensation or to undertake self-insurance in accordance with the provisions of that code, and certifies that he will comply with such provisions before commencing performance of the event. The licensee shall provide adequate evidence to the Director of the existence of Workers' Compensation insurance policy or of the Licensee's ability to undertake self-insurance prior to the execution of this agreement. Limits of coverage shall be no less than: \$15,000,000.00.

10. EXPIRATION OF LICENSE:

Licensee shall not be permitted to use the facilities all property, goods and effects belonging to Licensee or caused by them to be brought upon the premises. If such property is not removed within the time of use of the facilities hereinabove set forth, City shall have the right to sell the same in such manner as it may deem advisable, or City may store, or cause to be stored any such property for which Licensee shall pay a reasonable fee, plus all expenses incurred therefor.
At the expiration of the term of use of the facilities hereinabove set forth, Licensee shall pack the facilities of City and return to Director all equipment and facilities procured from Director, which premises, equipment and facilities shall be in as good condition and repair as before Licensee's use thereof except for ordinary wear and use.
Licensee agrees to pay cost of repair or replacement for any and all damages to property of City of whatever origin or nature resulting from the performance or character of the event, unforeseen difficulties, accidents, occurrences, or other causes not precluded on active negligence of City. City may withhold from box office receipts before settlement a reasonable amount to cover the costs arising from such damages. City shall refund to Licensee any amount withheld in excess of actual damages.

11. COMPLIANCE OF LAWS

Licensee, its officers, agents, and employees, shall comply with all rules and regulations prescribed by Director or his authorized representative, for the use and occupancy of the facilities of City and with all applicable rules and regulations, laws and ordinances adopted or established, from time to time, by any governmental agency or department thereof.

12. ASSIGNMENT:

No assignment of this agreement shall be made by Licensee without prior written consent of the Director of the Sacramento Community Center.

13. TICKETS:

City shall be the exclusive issuer of all tickets. All tickets shall be purchased by the Box Office Supervisor upon approval of the Director of the Sacramento Community Center. The Box Office Supervisor shall purchase tickets from a licensed ticket printing company only. Said tickets shall be manufactured, counted and distributed by the Box Office Supervisor. City shall have the right to offer tickets for sale at all of its regular outlets. Licensee shall be responsible for the sale of all tickets for the event.

Tickets shall be sold to City without refund or request.

Tickets shall be sold to the general public by the Box Office Supervisor, and shall not be sold

removed from the ticket market by the Box Office Supervisor, and shall not be sold in the handling, control, custody, and keeping of third. City is acting for the accommodation of Licensee, and as to such funds City shall not be liable to Licensee or to any other person for any loss, theft, or defalcation thereof whether such loss, theft, or defalcation is caused or done by employees of City or otherwise, nor shall any officer or employee of City be liable for any loss, theft, or defalcation of such funds unless it was caused or permitted the same or unless it was proximately caused by City's own gross negligence.

14. TICKET PRICE:

Licensee is required to set all tickets at the prices advertised, and no deviation will be allowed without the written consent of the Director.

15. OPENING HOURS:

Licensee shall open the doors as advertised unless otherwise agreed upon as necessary indicates.

16. INTERMISSION:

Every public performance which is to exceed one hour, excepting religious services or other events specifically excluded, shall schedule an intermission of not less than fifteen (15) minutes nor more than thirty (30) minutes.

17. CONCESSION SALES:

City reserves the right to operate or contract for operation and receive the income from concessions for the events to be covered by this agreement. Such concessions shall include, but not be limited to, the dispensing or sale of food, drink, tobacco products, programs, novelties, and novelties. In the event City permits Licensee to operate or contract for the operation of concessions for the sale of programs, records, tapes, novelties for any other items, Licensee shall pay from the gross receipts of such sale to City a percentage to be determined by the Director. All such concessions and sales must be approved by City in advance. Licensee, its officers or persons cause by them to come on the premises may distribute free samples of food stuffs or beverages only upon receipt of written permission from the Director of the Sacramento Community Center.

18. BROADCASTING:

No event presented in the facilities shall be broadcasted, televised, or in any manner recorded for reproduction without the written consent of City, and then only upon the express condition that all expenses pertaining thereto will be paid in advance. Licensee shall indemnify and hold harmless the City of Sacramento, County of Sacramento, Sacramento City Public Facilities Financing Corporation, Sacramento Convention and Visitors Bureau, their officers, employees, and agents as provided in Paragraph 7 of this license agreement, against any and all claims, demands, causes of action, damages, costs, and liabilities arising from such broadcasting activity. Licensee shall furnish, in addition to that required by Paragraph 9 of this agreement, any additional insurance which City may require in connection with such broadcasting activities.

19. COPYRIGHTS:

Licensee agrees, represents and warrants that nothing contained in the program, performance, exhibition or in any other way connected with Licensee's activities under this agreement shall violate or infringe upon any copyright, patent, right of privacy or other statutory or common law right of any person, firm or corporation. Licensee shall secure a copyright license to cover the performance(s) described in Paragraph 3 hereof and deliver proof of the copyright license to City ten (10) days prior to performance. Licensee shall indemnify and hold harmless the City of Sacramento, County of Sacramento, Sacramento City Public Facilities Financing Corporation, Sacramento Convention and Visitors Bureau, their officers, employees, and agents as provided in Paragraph 7 of this license agreement, against any and all claims, demands, causes of action, damages, costs, and liabilities arising from such broadcasting activity. Licensee shall furnish, in addition to that required by Paragraph 9 of this agreement, any additional insurance which City may require in connection with such broadcasting activities.

20. ILLEGALITY:

No performance, exhibition or entertainment shall be given or held in the Center which is illegal.

21. ADVERTISING:

It is agreed that no signs or advertisements shall be placed in, on, or about the Sacramento Community Center without the consent of the Director and only then for the event authorized by this agreement. Licensee shall not publish, nor cause to be published in any manner, performance or event contemplated by this agreement prior to the execution of this agreement.

22. SEATING CAPACITY:

Licensee shall not sell or permit to be sold or distributed, tickets or passes in excess of the capacity of those facilities heretofore described nor admit thereto a larger number of persons than can safely and freely move about therein. The decision of the Director in this respect shall be final.

23. CONDUCT OF PERSONS:

Licensee shall be solely responsible for the orderly conduct of all persons using the premises by its invitation, either expressed or implied, during all times covered by this agreement. City reserves the right to eject or cause to be ejected from the premises any person or persons objectionable due to unlawful conduct. City shall provide at Licensee's expense adequate security protection to maintain order on and about the premises. City shall determine the number of security officers necessary for a particular event.

24. CONTROL OF BUILDING:

The entrance and exits of said premises shall be locked and unlocked at such times as may be required for Licensee's use, but Licensee shall at all times place proper watchmen at all entrances and exits when same are unlocked. The keys to the premises shall at all times be in the possession and control of the Director. City and all duly authorized representatives of City shall have the right to enter the Sacramento Community Center and all parts thereof at all times.

25. LOST ARTICLES:

City shall have the sole right to collect and have custody of articles left in the building by persons attending any performance, exhibition, or activity given or held in the Center and Licensee or any person in Licensee's employ shall not collect nor trespass with the collection or custody of such articles.

26. FLAMMABLE MATERIALS:

No flammable materials such as kerosene, turpentine, gasoline, paint, oil, or other flammable liquids, or any other flammable materials shall be used for decorative purposes shall be treated with flame proofing and approved by the Fire Department. No open flames shall be permitted.

27. UTILITY CONNECTIONS:

Unless otherwise authorized by the Director, all plumbing, electrical or carpenter's work required to be done on the premises of the Center in connection with Licensee's use thereof, and all electrical current or domestic gas required for Licensee's use excepting normal heating and lighting shall be done or furnished by City or approved representative. For such, Licensee shall pay City on the basis of the rates set forth in the schedule of rates on file in the office of the Director.

28. STORAGE:

In the event, handling, care or custody of property of any kind shipped or otherwise delivered to the premises either prior to, during, or subsequent to the use of the facilities by any Licensee hereunder, City and its officers, agents and employees shall not be liable for the accommodation of the Licensee, and neither City nor its officers, agents or employees shall be liable for any loss, damage or injury to such property.

29. OBSTRUCTIONS:

Licensee shall not do, nor permit to be done, anything which may interfere with the effectiveness or accessibility of utility, heating, ventilating or air conditioning systems or portions thereof in the Center, nor do, or permit to be done, anything which may interfere with fire access and passage thereof, or to the public ways adjacent thereto, or to the street or sidewalks adjoining.

30. SCHEDULING:

Unless otherwise specified in writing, Director shall be privileged to schedule other similar events both before, during and after dates of this agreement without notice or obligation to Licensee.

31. DEBIT ENTRANCE:

All articles, exhibits, resources, materials, displays, etc. shall be brought into or out of the building at such entrances and exits as may be designated by the Director.

32. OCCUPANCY INTERFERENCES:

In case the Center or any part thereof shall be destroyed or damaged by fire or any other cause, or if any casualty or unforeseen occurrence, including strikes, labor disputes, war or acts of military authorities, shall occur which will result in the destruction or damage of the Center or any part thereof, the agreement shall be terminated, and Licensee shall be held liable or responsible to Licensee for any damage caused by said destruction and City shall be released from any further liability by the termination of this agreement. Licensee shall be held liable for any damage caused by the destruction or damage of the Center or any part thereof, and the termination of this agreement shall, under such circumstances be voided by Licensee that City is a lessee of the Community Center Complex and that all the agreements, contracts and licenses are subject to the terms and conditions of City's lease, with the Sacramento City Public Facilities Financing Agency and that should City's lease be terminated or expire or should City be unable to perform any of the conditions or covenants of its agreements because of other lease provisions, that there be no liability to Licensee.

33. DEFAULT OR CANCELLATION BY LICENSEE:

Should Licensee default in the performance of any of the terms and conditions of this agreement, or should Licensee cancel the event described in Paragraph 3 of this agreement, City may, at its sole option, elect (1) to cancel the license, in which event Licensee shall be released from all liability and obligations under this agreement; or (2) to enforce all the provisions, terms, and conditions of this agreement, in which event Licensee shall be liable for the full amount of the license fee provided for herein, plus all reimbursable expenses incurred by City in connection with the event.

Should City elect to enforce the provisions of this agreement pursuant to the paragraph, City reserves the right to execute a subsequent license agreement with a third party for the same period as described in Paragraph 2 hereof and hold Licensee liable for the full amount of the license fee provided for herein, less the total amount of fees received under the subsequent license agreement, plus all cost and expenses. The execution of a subsequent license agreement pursuant to the provisions of this paragraph shall not constitute a cancellation of this license agreement unless City so notifies Licensee in writing. Any deposit made by Licensee to City under this agreement shall be held in escrow and shall be used to pay the license fee and other obligations under this agreement.

34. TERMINATION BY CITY:

The Director shall have the right to terminate all or part of this agreement without liability to City as follows:

(1) if Licensee fails to pay the license fee (20) days after the date of the license;

(2) if Licensee fails to pay the license fee (20) days after the date of the license;

(3) at any time when the facilities are required for public necessity or emergency use;

(4) at any time when the City determines that termination is necessary to preserve the public peace, prevent damage to public property, or prevent riots, mobs or violence. Upon such termination, Licensee shall be refunded any license fee paid. Except for such refund, neither City, nor its officers, agents or employees shall be liable to Licensee for any expenses or damages whatsoever arising from the cancellation. In no event shall City, its officers, agents, or employees be liable for lost profit.

35. SIGNATURES REQUIRED:

This license agreement shall have no force or effect whatsoever unless and until it has been executed by the Sacramento Community Center Director on behalf of the City of Sacramento and by the Licensee, and by its execution, Licensee consents and agrees that it will faithfully perform and abide by each and every term, condition, and limitation of this license, each of which shall be a condition subsequent to the continuance in effect of this license. Licensee is not authorized to bind City to any contracts or other obligations. City shall not be liable for any acts of Licensee or the assistants or employees in executing the license granted herein. It is further expressly agreed that the portion of the Center assigned to Licensee is not leased to Licensee, that he is a Licensee and not a Lessee thereof, that his right to occupy the same shall continue only so long as each and all understandings, provisions, covenants, agreements, stipulations, and conditions herein contained on the part are strictly and promptly complied with.

By: _____ LICENSEE

CITY OF SACRAMENTO

By: _____ TITLE

By: _____ COMMUNITY CENTER DIRECTOR

Date: _____

Date: _____