

CITY OF POMONA AGREEMENT FOR FOX THEATER IMPROVEMENT PROGRAM

This Fox Theater Improvement Program Agreement (“Agreement”) dated as of April 1, 2026 (“Effective Date”), is entered between the City of Pomona, a California charter city and municipal corporation (“City”), and the Pomona Fox Theater LLC, a California Limited Liability Company, located at 191 W. 4th St., Pomona, CA 91766 (“Recipient”). City and Recipient may be individually referred to herein as the “Party” and collectively as the “Parties.”

RECITALS

- A. On August 7, 2000, the City Council adopted the Redevelopment Plan for the Merged Redevelopment Project Area to alleviate economic and physical blight through the revitalization of commercial anchors.
- B. On February 5, 2007, the Parties entered into a Disposition and Development Agreement (“DDA”) which established the Fox Theater as a performance venue in the City.
- C. The 2006 Subordinate Revenue Bonds, Series, AX/AI, and 2007 Subordinate Revenue Bonds, Series AW (“Bond Issuance”), were issued specifically to finance “programs and projects designed to improve and expand the commercial and industrial segments of the Project Area economy.”
- D. The Fox Theater qualifies as a commercial segment of the Project Area economy
- E. The Fox Theater is located within the Project Area economy
- F. The Fox Theater is in need of commercial improvement through the increased calendaring of performances and events to generate revenue for its economic viability and a positive economic multiplier effect on the entire Project Area economy, and the City desires to rent the facility for up to 30 individual nights for community-based programming;
- G. The Fox Theater is in need of commercial improvement through increased market penetration through marketing and promotion and competitively securing performances within its market segment in the industry, which also secures its economic viability and a positive economic multiplier effect on the entire Project Area economy;
- H. The City’s economic subsidy of performances as part of this agreement will remain below \$100,000 in consistency with the thresholds for Government Code 53083 pertaining to economic subsidies.
- I. The Parties seek to establish the Fox Theater Improvement Program, consistent with the purpose of the Bond Issuance.

Now, therefore, in consideration of the above recitals, which are hereby fully incorporated into this Agreement, and the mutual covenants contained herein, City and Recipient agree as follows:

ARTICLE 1: SCOPE OF WORK

1-1 GENERAL

City and Recipient agree to the following:

- a. **Facility Rental for Community Events.** Recipient grants City rights to 30 Community Event days during the Term, that meet the following requirements:
 1. Community Event means a single-day event whose fair market value cost is fully compensated by this Agreement. Single days may be aggregated into a multi-day event.
 2. City and Recipient shall enter into an Event Agreement covering those Community Events hosted and/or produced by the City, which will establish City and Fox responsibilities, indemnity and insurance, and other provisions.
 3. Estimated Attendance of at least 25% of total theater capacity.
 4. Be free and open to the General Public, except when necessary to cover Event Operator overhead, the maximum individual ticket admission price for non-sponsored non-donor tickets may not exceed \$25.00.
 5. Meet the thematic classification of one or more of the following community benefits:
 - i. **Civic**, meaning a City-initiated or City-led event intended to showcase local economics, innovation, sustainability, resilience, community resources, public meetings, among other subjects.
 - ii. **Cultural Arts**, meaning an event intended to showcase cultural arts and/or cultural awareness. This includes events related to LA28 Olympic Games and Cultural Olympiad.
 - iii. **Visual Performing Arts**, meaning an event intended to showcase visual performing arts, such as music, film, dance, and other visual performing art mediums.
- i. **Exclusion:** Events initiated or led by another public agency are not considered a Community Event for the purposes of this Agreement.

6. **Selection of Community Events.** Community Events will be selected jointly by the City of Pomona and the Recipient. City and Recipient will each designate (1) representative as liaison for selection. The City reserves the right to reject a request for a Community Event that it deems inconsistent with the thematic classifications or Recitals defined herein. Requests for Community Events will be solicited through a procedure adopted jointly by the City and Recipient, and will be reviewed monthly for the duration of the term.
 - b. **Promoter Incentivized Events.** Recipient will deliver a minimum of 12 Promoter Incentivized Event days, during the Term, meeting the following requirements:
 1. Promoter Incentivized Event means a single-day event that is incentivized by the City through this Agreement through one or more of the following: marketing and promotion credits, rent abatement, production subsidy, or other economic incentives beyond the baseline of existing 2025 annual programming and Community Events. Single days may be aggregated into a multi-day event.

1-2 TERM

The term of this Agreement begins on April 1, 2026, and continues through September 30, 2028, unless modified or terminated in accordance with this Agreement.

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2-1 AGREEMENT AMOUNT

The City shall pay the Recipient an amount not to exceed Six Hundred Thousand Dollars (\$600,000), which will constitute full compensation and payment for all services to be performed under this Agreement.

2-2 DISBURSEMENT AND REPORTING

- a. **Community Events** shall follow the following disbursement and reporting schedule, with City issuing disbursement checks within 14 business days of start of each quarter:

Disbursement	Amount
Quarter 1 (4/1/2026-6/30/2026)	\$51,000 ¹
Quarter 2 (7/1/2026-9/30/2026)	\$51,000
Quarter 3 (10/1/2026-12/31/2026)	\$51,000
Quarter 4 (1/1/2027-3/31/2027)	\$51,000

Quarter 5 (4/1/2027-6/30/2027)	\$51,000
Quarter 6 (7/1/2027-9/30/2027)	\$51,000
Quarter 7 (10/1/2027-12/31/2027)	\$51,000,000
Quarter 8 (1/1/2028-3/31/2028)	\$51,000,000
Quarter 9 (4/1/2028-6/30/2028)	\$51,000
Quarter 10 (7/1/2028-9/30/2028)	\$51,000
Total	\$510,000

¹This amount represents the fair market value of \$17,000 per day, for 3 individual days.

- b. **Promoter Incentivized Events** shall follow the following disbursement and reporting schedule, not to exceed \$90,000:
- i. **Disbursement 1, \$50,000**, issued upon Execution of Agreement. as initial payment to immediately initiate incentivizing Promoter Events.
 - ii. **Remaining Disbursement(s), \$40,000**, issued on a reimbursable basis upon written request by Recipient to City with evidence of event(s) and only after evidence of expending the entirety of Disbursement 1.
 - iii. **Use of Funds.** Funds may be used for marketing and promotion credits, event rental rate abatement, production subsidy, or other economic incentives related to an event.
 - iv. **Incentive Reporting.** At the end of Quarter 2, Recipient shall provide a report on the use of Disbursement 1 and progress made towards realizing promoter incentivized events, including listing of events, number of attendees, types of incentive(s) deployed, cost per incentive, and contact information for lead promoter or entity. Any remaining reimbursable disbursement is subject to reporting at the end of the quarter in which the event takes place.
 - v. **Profit/Loss Reporting.** Recipient shall provide the City with a profit/loss statement as part of Reporting for Quarter 4, 8, and 10. In the event that the profit/loss statement reflects profitability exceeding the lender-required debt coverage ratio and above any debt repayments at Quarter 4 or Quarter 8, City reserves the right to withhold future disbursements.

ARTICLE 3: INDEMNITY AND INSURANCE

Indemnity. Recipient will hold City and its employees, officers, and agents free and harmless from all losses, claims, liens, demands, and causes of action of every kind and character, including, but not limited to, the amounts of judgment, interests, court costs, legal fees, expert costs, expert fees, and all other expenses incurred by City to the maximum extent allowed by law arising in favor of any party, including claims, liens,

debts, personal injuries, including employees of City, death or damages to property (including property of City) and without limitation by enumeration, all other claims or demands of every character occurring or arising directly out of or as a consequence of the performance of the Services performed hereunder, except only such injury to persons or damage to property due or claimed to be due to the sole negligence of City. This provision is not intended to create any cause of action in favor of any third party against Recipient or City or to enlarge in any way Recipient's liability but is intended solely to provide for indemnification of City for liability for damages or injuries to third persons or property arising from Recipient's negligent performance hereunder. **Insurance.** Recipient shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1. A policy or policies of **Comprehensive General Liability Insurance**, with minimum limits of \$1,000,000 per occurrence against any personal injury, death, loss, or damage resulting from the wrongful or negligent acts by the Recipient. The general liability insurance shall contain an **additional insured endorsement** naming the City, including its elected or appointed officials, officers, directors, employees, agents, and volunteers as additional insureds. The insurance documents shall be comprised of and submitted as a certificate of insurance that names the City as the certificate holder and a separate insured endorsement.
2. The City's Risk Manager may, in writing, amend and/or waive the insurance provisions set forth in Section 4-1 herein. In such case, the Recipient shall comply with the insurance provisions required by the City's Risk Manager.
3. The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A-;VII in the latest edition of Best's Insurance Guide.
4. At all times during the term of this Agreement, the Recipient shall maintain on file with the Office of Economic and Business Affairs of the City of Pomona a certificate or certificates of insurance on the form approved by the City's Risk Manager, showing that the aforesaid policies are in effect in the required amounts. The Recipient shall, prior to commencement of work under this Agreement, file with the Office of Economic and Business Affairs such certificate or certificates. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.
5. The insurance provided by the Recipient shall be primary to and will not seek contribution from any insurance available to the additional insured. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

ARTICLE 4: ASSIGNMENT, TRANSFER AND RIGHT OF FIRST REFUSAL

Neither the City nor the Recipient shall assign or transfer any interest in this Agreement without prior written consent of the other. Recipient grants City a Right of First Refusal to match any third-party purchase offer should the property be sold during the Term by, upon receiving notification from Recipient of any potential sale, matching price, terms and closing date of any potential third-party purchase within 21 business days, along with a non-refundable \$500,000 deposit.

ARTICLE 5: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill, in a timely or proper manner, or otherwise violate any of the covenants or agreements material to this Agreement, then the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate, specifying the grounds for termination, for cause, at least 90 calendar days prior to termination. The defaulting party shall have ten (10) days after receipt of the notice to cure the default. Recipient may terminate for convenience at any time, however shall be required to return any unused funds and forfeits any future unpaid disbursements.

ARTICLE 6: CONTRACT ADMINISTRATOR

The Contract Administrator for this Agreement shall be Ata Khan of the City of Pomona, or his or her designee.

ARTICLE 7: NONDISCRIMINATION

In carrying out the performance of the services designated, the Recipient shall not discriminate as to race, religion, sex, age, sexual orientation, national origin, the presence of any physical, mental or sensory handicap, or any other basis prohibited by applicable law.

ARTICLE 8: COMPLIANCE

The Recipient shall be required to comply with all federal and state laws and City statutes, ordinances, and regulations applicable to the performance of the Recipient services under this Agreement, including but not limited to, the Pomona Municipal Code.

ARTICLE 9: ENTIRE AGREEMENT

This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

ARTICLE 10: MODIFICATION

No alteration, change, amendment, or modification of the term of this Agreement shall be valid, unless made in writing and signed by both parties hereto and approved by appropriate action

of the City. City recognizes that through the course of this Agreement the Recipient may seek to modify the ratio of Community Events (30 days) relative to Promoter Incentivized Events (12 days), given market interest and feasibility. In the event that Recipient seeks such a modification, it may initiate it such a modification in writing. Also in the Event that Recipient is successful in hosting more than three Event per Quarter on average, then Recipient may request in writing to the Contract Administrator an acceleration of quarterly payments due to the Recipient.

ARTICLE 11: WAIVER

No waiver of performance by either party shall be construed as or operate as a waiver of any subsequent default of any terms, covenants, or conditions in this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right nor an acceptance of performance.

ARTICLE 12: GOVERNING LAW

This Agreement, regardless of where executed or performed, shall be governed by and construed in accordance with the laws of the State of California.

ARTICLE 13: HEIRS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of the City and of the Recipient and of their respective heirs, personal representatives, successors, and permitted assigns.

ARTICLE 14: NOTICES

All notices, requests, demands, and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon delivery and receipt thereof, as the case may be, if delivered personally or sent by certified mail, return receipt requested, postage-prepaid as follows:

City:
c/o
Ata Khan
Office of Economic and Business Affairs
City of Pomona
505 S. Garey Avenue
Pomona, CA 91766

Recipient:
c/o
Jerry Tessier
Pomona Fox Theater, LLC
191 W. 4th St.

Pomona, CA 91766

ARTICLE 15: ATTORNEY'S FEES

Should any action or proceeding be brought to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

In Witness Whereof, the parties hereto have caused this Agreement to be executed by his respective authorized officers or representatives as of the day and year set forth on page one of this Agreement.

CITY OF POMONA:

POMONA FOX THEATER, LLC:

Anita D. Scott

Jerry Tessier

City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

City Attorney