




Office of the City Manager

CONSENT CALENDAR  
November 27, 2012

To: Honorable Mayor and Members of the City Council  
From:  Christine Daniel, City Manager  
Submitted by: Scott Ferris, Acting Director, Parks, Recreation & Waterfront  
Subject: Lease Agreement: TheatreFIRST, Inc. for the Live Oak Theatre at the Live Oak Community Center

RECOMMENDATION

Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement with TheatreFIRST, Inc. for the use and management of the Live Oak Theatre at the Live Oak Community Center located at 1301 Shattuck Avenue for a term of five years with one five-year option.

FISCAL IMPACTS OF RECOMMENDATION

TheatreFIRST will pay zero rent for the first three years and commence with capital improvements to the theatre over a ten year period, which are valued at \$125,000. Starting in the fourth year of the lease agreement, the monthly rent will be \$500 per month. Commencing in the fifth year of the lease agreement, the monthly rent will increase by 4% and the City shall receive 5% of the net box office revenue. In exchange for a favorable rent, TheatreFIRST will perform a list of capital improvements to the theatre as described in Exhibit "C" of the lease. Lease revenue will be deposited in Budget Code 010-5981-363.10-70. CMS Number PRPZA.

CURRENT SITUATION AND ITS EFFECTS

In the fall of 2011, the City conducted a competitive Request For Proposal (RFP) process to solicit proposals for the lease of Live Oak Theatre at the Live Oak Community Center, located at 1301 Shattuck Avenue (Specification No. 12-10604-C). The theatre is located inside the Live Oak Community Center and access to the theatre is through the main doors of the Community Center. At the four Open Houses during the RFP process, there was a great deal of interest from other theatre groups. The City subsequently received two written proposals for consideration for a lease agreement for the Live Oak Theatre at the Live Oak Community Center. A review panel comprised of two independent theatre professionals and three City staff from different departments was convened to review the proposals. The review panel identified TheatreFIRST as receiving the highest rank according to the criteria contained in the RFP. The panel also recommended that interviews be conducted to clarify the financial stability and financial planning of the two proposals. After conducting the interviews, staff concurred with the recommendation of the panel.

On October 22, 2012, at a regular meeting of the Parks and Recreation Commission, an item called "Live Oak Theater Update" was placed on the agenda for discussion. Despite the lack of quorum, commissioners led a discussion with members of the public who were present for the meeting, which included representatives from Actor's Ensemble and from TheatreFIRST. During the discussion, Actor's Ensemble representatives explained that their main concern was the "transition" and that they wanted to make sure that "community theater" will still have a place at Live Oak Theatre. They also indicated that TheaterFIRST has been very accommodating during the transition. The TheatreFIRST representative explained that they were committed to community theater and they would accommodate the needs of community and other local private theater groups.

For the past two months, TheatreFIRST and Actor's Ensemble have met several times regarding the transition and Actor's Ensemble's scheduling needs, and TheaterFIRST has indicated that almost all of the private local groups' scheduling needs can be met as well. The two theater groups will continue to work together to ensure a smooth transition to the new lease. As a result, staff therefore recommends Council approval of a lease agreement with TheatreFIRST for the Live Oak Theatre at the Live Oak Community Center.

The proposed lease agreement with TheatreFIRST will be for a term of five years with one five-year option. The new lease requires TheatreFIRST to provide no less than three shows per year with public performances running five weeks in duration for each show; to manage the rental spaces of the theatre; to take over the responsibility for building maintenance, utilities, refuse and janitorial expenses of the theatre from the City; and to perform capital improvements to the theatre over a ten year period as described in Exhibit C of the lease agreement. A summary of the capital improvement includes the following: create a more accessible interior route to the restrooms by either installing a lift or building a restroom; bring a ticket sales booth and concession area into compliance with the Americans with Disabilities Act (ADA); level all floor thresholds within the theatre to comply with ADA requirements; install all ADA-required signage; create an office and storage space within the leased premises; create a seating area for disabled and ambulatory patrons; upgrade all railings and install any ADA-required railings; replace the flooring in the theatre and lobby area; improve the interior slope grade and landing area of all the aisles to comply with ADA requirements and fix the stair leading to the front of the stage, or install a ramp to comply with ADA requirements; repair or replace the roof, as required; replace all door hardware and light switches to comply with ADA requirements; paint the entire interior of the theatre; replace and refurbish theatre seats, as necessary; replace ceiling tiles, as necessary; and renovate the backstage restrooms to comply with ADA requirements, including replacing fixtures and flooring.

BACKGROUND

With the passing of Proposition 13 in 1978, the Community Arts Division of the Recreation Department was terminated and the Live Oak Theatre at the Live Oak Community Center was closed. Based on interest from the community, the City entered into an agreement with Actor's Ensemble (AE) to operate and manage the theatre. The agreement between AE and the City expired in 1986 and has been on a month-to-month basis since that time. In the fall of 2011, the City conducted a competitive RFP process to solicit proposals for the lease of the Live Oak Theatre at the Live Oak Community Center.

RATIONALE FOR RECOMMENDATION

TheatreFIRST, Inc. is a non-profit 501 (c) (3) professional community theatre company dedicated to bringing works of international productions to East Bay audiences in an intimate setting. Founded in 1993, the company was originally based in Berkeley, and is currently operating in Oakland. TheatreFIRST agrees to take over the responsibility for building maintenance, utilities, refuse and janitorial expenses of the theatre from the City, and perform capital improvements over a ten year period.

CONTACT PERSON

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Terri Geser, Real Property Agent, Public Works, Facilities, 981-6337

Attachments:

- 1: Ordinance  
    Exhibit A: Lease Agreement

ORDINANCE NO. -N.S.

LEASE AGREEMENT WITH THEATREFIRST, INC. FOR THE USE AND MANAGEMENT OF THE LIVE OAK THEATRE AT THE LIVE OAK COMMUNITY CENTER AT 1301 SHATTUCK AVENUE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The City Manager, or designee, is hereby authorized to execute a five-year lease agreement with one-five year option and any amendments thereto with TheatreFIRST, INC. for the use and management of the Live Oak Theatre at the Live Oak Community Center at 1301 Shattuck Avenue, Berkeley, CA. Such lease shall be on substantially the terms set forth in Exhibit A.

Section 2. The rent for the first three years will be zero. Commencing on the fourth year the monthly rent will be \$500. On the fifth year of the lease agreement, the monthly rent will be increased by 4% and the City shall receive five percent of TheatreFIRST's net box office revenue. In exchange for favorable rent, TheatreFIRST will take over the responsibility for the building maintenance, utility cost, and janitorial costs of the theatre from the City. In addition, TheatreFIRST will perform a list of capital improvements to the theatre as described in Exhibit C of the lease. CMS Number PRPZA.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Attachment:

Exhibit A: Lease Agreement