

# **AGENDA**

**CITY COUNCIL WORK SESSION  
City of Garland  
Work Session Room, City Hall  
200 North Fifth Street  
Garland, Texas  
July 16, 2013**

**6:00 p.m.**

## **DEFINITIONS:**

**Written Briefing:** Items that generally do not require a presentation or discussion by the staff or Council. On these items the staff is seeking direction from the Council or providing information in a written format.

**Verbal Briefing:** These items do not require written background information or are an update on items previously discussed by the Council.

**Regular Item:** These items generally require discussion between the Council and staff, boards, commissions, or consultants. These items are often accompanied by a formal presentation followed by discussion.

**[Public comment will not be accepted during Work Session  
unless Council determines otherwise.]**

**NOTICE:** The City Council may recess from the open session and convene in a closed executive session if the discussion of any of the listed agenda items concerns one or more of the following matters:

(1) Pending/contemplated litigation, settlement offer(s), and matters concerning privileged and unprivileged client information deemed confidential by Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct. Sec. 551.071, TEX. GOV'T CODE.

(2) The purchase, exchange, lease or value of real property, if the deliberation in an open meeting would have a detrimental effect on the position of the City in negotiations with a third person. Sec. 551.072, TEX. GOV'T CODE.

(3) A contract for a prospective gift or donation to the City, if the deliberation in an open meeting would have a detrimental effect on the position of the City in negotiations with a third person. Sec. 551.073, TEX. GOV'T CODE.

(4) Personnel matters involving the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee or to hear a complaint against an officer or employee. Sec. 551.074, TEX. GOV'T CODE.

(5) The deployment, or specific occasions for implementation of security personnel or devices. Sec. 551.076, TEX. GOV'T CODE.

(6) Discussions or deliberations regarding commercial or financial information that the City has received from a business prospect that the City seeks to have locate, stay, or expand in or near the territory of the City and with which the City is conducting economic development negotiations; or

to deliberate the offer of a financial or other incentive to a business prospect of the sort described in this provision. Sec. 551.087, TEX. GOV'T CODE.

(7) Discussions, deliberations, votes, or other final action on matters related to the City's competitive activity, including information that would, if disclosed, give advantage to competitors or prospective competitors and is reasonably related to one or more of the following categories of information:

- generation unit specific and portfolio fixed and variable costs, including forecasts of those costs, capital improvement plans for generation units, and generation unit operating characteristics and outage scheduling;
- bidding and pricing information for purchased power, generation and fuel, and Electric Reliability Council of Texas bids, prices, offers, and related services and strategies;
- effective fuel and purchased power agreements and fuel transportation arrangements and contracts;
- risk management information, contracts, and strategies, including fuel hedging and storage;
- plans, studies, proposals, and analyses for system improvements, additions, or sales, other than transmission and distribution system improvements inside the service area for which the public power utility is the sole certificated retail provider; and
- customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies. Sec. 551.086; TEX. GOV'T CODE; Sec. 552.133, TEX. GOV'T CODE]

**(6:00) 1. Written Briefings:**

**a. 2013 Edward Byrne Memorial Justice Assistance Grant (JAG)**

*Council is requested to authorize the Police Department to apply to the Bureau of Justice Assistance (BJA) for an estimated direct award of \$41,279 under the 2013 Edward Byrne Memorial Justice Assistance Grant (JAG) program for the purpose of reducing crime and improving public safety. The Attorney General has certified Garland as a disparate jurisdiction, requiring Garland to enter into an agreement to share 30% (or approximately \$12,383.70) with Dallas County. The estimated award to Garland will be approximately \$28,895.30, less a mandated 7% administration fee to be paid to the City of Dallas as the area grant manager for all involved entities, which results in an estimated net award of \$26,872.63. This item is scheduled for formal consideration at the July 16, 2013 Regular Meeting.*

**b. Creating a Driver Position**

*Council is requested to consider authorizing the creation of a Driver position in exchange for a Firefighter position. This would increase the number of Driver positions from 71 to 72 and decrease the Firefighter positions from 121 to 120. The Fire Marshal's Office has an opening due to the retirement of a Fire Inspector. A Firefighter holding the rank of Driver that is currently assigned to Operations has requested a transfer to Fire Inspections. If Council concurs, this item will be scheduled for formal consideration at the August 6, 2013 Regular Meeting.*

**c. Amendment to Section 19 of the TMPA Power Sales Contract**

*Council is requested to consider amending Section 19 of the Texas Municipal Power Agency (TMPA) Power Sales Contract to better specify the date by which a member city must provide notice to TMPA of its intent to receive services for the useful life of the TMPA System. If Council concurs, this item will be scheduled for formal consideration at the August 6, 2013 Regular Meeting.*

Item	Key Person
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**(6:15) 2. Verbal Briefings:**

**a. Revisions to Watering Schedule** **Baker**

*Staff will provide an update on revisions to the City's watering schedule. On July 8, 2013, the City implemented a new watering schedule for both its residential and business customers. Customers will be allowed to water their lawns just once per week based on residential trash pickup schedules. Garland businesses will base their watering day on the residential schedule at their specific locations. This item is scheduled for formal consideration at the July 16, 2013 Regular Meeting.*

**b. Purchase of Property** **Glenn**

*Council is requested to consider purchasing Lots 2 and 3 of Block 2, and Part of Lot 1, in the Embree Addition, City of Garland, commonly known as 102 – 108 N. Sixth St. from the Garland Civic Theatre. The building and land consist of approximately 17,000 square feet. The City will lease back the property to the Garland Civic Theatre. This item is scheduled for formal consideration at the July 16, 2013 Regular Meeting.*

**3. Discuss Appointments to Boards and Commissions** **Council**

*Morgan Manning – Garland Youth Council (Mayor Athas)  
Elizabeth Sinclair – Garland Youth Council (Cahill)  
James Austin Grimes – Garland Youth Council (Cahill)*

**4. Consider the Consent Agenda** **Council**

*A member of the City Council may ask that an item on the consent agenda for the next regular meeting be pulled from the consent agenda and considered separate from the other consent agenda items. No substantive discussion of that item will take place at this time.*

**5. Announce Future Agenda Items**

**Council**

*A member of the City Council, with a second by another member, or the Mayor alone, may ask that an item be placed on a future agenda of the City Council or a committee of the City Council. No substantive discussion of that item will take place at this time.*

**(6:45) 6. Adjourn**

**Council**

**(Estimated time to consider)**



**Meeting: Work Session**

**Date: July 16, 2013**

# Policy Report

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## **2013 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG)**

### **ISSUE**

The Director of the Bureau of Justice Assistance (BJA) has made funds available to units of local government under the 2013 Edward Byrne Memorial Justice Assistance Grant (JAG) program for the purpose of reducing crime and improving public safety.

The Garland Police Department is eligible to apply to BJA for an estimated direct award of \$41,279.00 under this grant program. However, the Attorney General of the State of Texas has “certified” Garland as a disparate jurisdiction, thereby requiring us to enter into an agreement to share a portion of these funds with Dallas County. Currently, the agreement is for the City of Garland to share 30%, or approximately \$12,383.70, with Dallas County, which results in an award to the City of Garland in the amount of approximately \$28,895.30. From this amount, there will be a mandated 7% Administration Fee which is to be paid to the City of Dallas as they have designated as the area grant manager for all involved entities. The resulting estimated net award to the City of Garland will be approximately \$26,872.63.

This Justice Assistance Grant replaced the Local Law Enforcement Block Grant (LLEBG). JAG does not require any matching funds or contributions.

### **OPTIONS**

1. Authorize submission of the grant application, which if approved by the federal government will pay an estimated \$26,872.63.
2. Disapprove submission of the grant application.

### **RECOMMENDATION**

Staff recommends that Council approve submission of the application to the Bureau of Justice Assistance. This item is scheduled for formal consideration at the July 16, 2013 Regular Meeting.

### **COUNCIL GOAL**

Safe, Family-Friendly Neighborhoods

## **BACKGROUND**

This will be the sixth year that the Garland Police Department has applied for funds under the new JAG program. The Bureau of Justice Assistance (BJA) has replaced the Edward J. Byrne Memorial State (Byrne Formula) and the Local Law Enforcement Block Grant (LLEBG) with the Justice Assistance Grant. The joining of the two grants allows states and local governments to support a broad range of activities to prevent and control crime and to improve the criminal justice system. The Garland Police Department received the following grant awards from JAG over the past five years:

- 2007 - \$46,150.69
- 2008 - \$14,090.90
- 2009 - \$51,369.76
- 2010 - \$51,111.96
- 2011 - \$42,553.92
- 2012 - \$31,050.75

## **CONSIDERATION**

Pending negotiations with Dallas County, the Justice Assistance Grant should provide \$26,872.63 in funding. The grant will be for a 48-month period. At the conclusion of that time period, any unallocated funds must be returned to the federal government.

Funds must be used to supplement existing funds for program activities and cannot replace, or supplant, nonfederal funds that have been appropriated for the same purpose.

## **Purpose**

JAG funds can be used for state and local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support and information systems for criminal justice for any one or more of the following purpose areas:

- Law Enforcement programs
- Prosecution and court programs
- Prevention and education programs
- Corrections and community corrections programs
- Drug treatment and enforcement programs
- Planning, evaluation, technology improvement programs
- Crime victim and witness programs (other than compensation)

Submitted By:

Mitchel L. Bates  
Chief of Police

Date: July 9, 2013

Approved By:

William E. Dollar  
City Manager

Date: July 9, 2013



Meeting: Work Session

Date: July 16, 2013

# Policy Report

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## CREATING A DRIVER POSITION

### ISSUE

Council is requested to consider authorizing the creation of a Driver position in exchange for a firefighter position. This would increase the number of Driver positions from 71 to 72 and decrease the firefighter positions from 121 to 120.

### OPTIONS

1. Authorize the Fire Department to add a Driver position.
2. Do not authorize adding a Driver position.

### RECOMMENDATION

Option 1: Staff recommends Council authorize the Fire Department to add a Driver position. If Council concurs, this item will be scheduled for formal consideration at the August 6, 2013 Regular Meeting.

### COUNCIL GOAL

Consistent Delivery of Reliable City Services

### BACKGROUND

The Fire Marshal's Office has an opening due to the retirement of a Fire Inspector. A firefighter holding the rank of Driver that is currently assigned to Operations has requested a transfer to Fire Inspections. In order to complete the transfer, Council approval must be met to add a Driver to Administration.

### CONSIDERATION

Fire inspectors undergo specialized training and must meet annual continuing education requirements to maintain their certification. It is advantageous to have a firefighter who wishes to pursue a career as an inspector due to the rigors of the job.

The firefighter requesting the transfer currently holds the rank of Driver. The cost differential is \$5,692, benefits are basically the same.

**ATTACHMENT**

None

Submitted By:

Raymond Knight  
Fire Chief

Date: July 9, 2013

Approved By:

William E. Dollar  
City Manager

Date: July 9, 2013



**Meeting: Work Session**

**Date: July 16, 2013**

# **Policy Report**

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## **AMENDMENT TO SECTION 19 OF THE TMPA POWER SALES CONTRACT**

### **ISSUE**

Amend Section 19 of the Texas Municipal Power Agency (TMPA) Power Sales Contract to better specify the date by which a Member City must provide notice to TMPA of its intent to receive services for the useful life of the TMPA System.

### **OPTIONS**

- 1) Amend Section 19 of the TMPA Power Sales Contract as submitted
- 2) Amend Section 19 of the TMPA Power Sales Contract with modifications
- 3) Do not Amend Section 19 of the TMPA Power Sales Contract

### **RECOMMENDATION**

Amend Section 19 of the TMPA Power Sales Contract as submitted. If Council concurs with this recommendation, staff will submit a resolution for consideration at the August 6, 2013 Regular Council Meeting.

### **COUNCIL GOAL**

The proposed recommendation provides for a consistent delivery of reliable City services.

### **BACKGROUND**

Section 19 of the TMPA Power Sales Contract provides that following the termination date of the Contract, each Member City not electing to withdraw from TMPA shall have the right to the continued performance of services provided under the provisions of the Contract for the useful life of the TMPA System by giving written notice to TMPA at least five (5) years prior to the scheduled termination of the Contract.

**CONSIDERATION**

Under one interpretation of Section 19 of the Power Sales Contract, if a Member City chooses to exercise the option to continue receiving service for the useful life of the TMPA System, it must provide a written notice to TMPA at least five (5) years prior to the scheduled termination date of the Contract. The Contract is currently scheduled to expire on September 1, 2018; therefore, the deadline for exercising this option under this interpretation would be September 1, 2013.

Staff and legal counsel believe it would be beneficial to extend the September 1, 2013 deadline to September 30, 2016. This will allow Member Cities time to develop a consensus with respect to TMPA following the expiration of the Power Sales Contract.

**ATTACHMENT**

Proposed amendment to Section 19 of the TMPA Power Sales Contract

Submitted By:

Approved By:

Jeff Janke  
GP&L Managing Director

William E. Dollar  
City Manager

Date: July 16, 2013

Date:

AMENDMENT TO POWER SALES CONTRACT  
BETWEEN  
TEXAS MUNICIPAL POWER AGENCY  
AND  
CITY OF BRYAN, TEXAS  
CITY OF DENTON, TEXAS  
CITY OF GARLAND, TEXAS  
CITY OF GREENVILLE, TEXAS

This Amendment to Power Sales Contract (this “Amendment”), made and entered into as of the Amendment Date (as hereinafter defined), by and between the Texas Municipal Power Agency, a municipal corporation and political subdivision of the State of Texas and herein referred to as the “Agency” and the City of Bryan, Texas, the City of Denton, Texas, the City of Garland, Texas and the City of Greenville, Texas, each of which cities is a municipal corporation of the State of Texas and a home rule city, and herein collectively called the “Cities” and individually called “City.”

WHEREAS, the Agency and the Cities are the parties to that certain Power Sales Contract (the “Power Sales Contract”) made and entered into as of the September 1, 1976, which Power Sales Contract was amended by and between the Agency and the Cities as of September 1, 1976, November 5, 1997 and June 24, 2010 (such amendments together with the Power Sales Contract being herein called the “Contract”); and

WHEREAS, Section 19 of the Contract provides that following the termination date of the Contract each City not electing to withdraw from the Agency shall have the right to the continued performance of services provided under the provisions of the Contract for the useful life of the System by giving written notice to that effect to the Agency at least 5 years prior to the scheduled termination of the Contract (the “Future Services Notice”); and

WHEREAS, as of the Amendment Date, taking into account all outstanding Bonds and Subordinated Indebtedness of the Agency, the Contract is scheduled to terminate on September 1, 2018; and

WHEREAS, the Agency and the Cities desire to amend the Contract to modify the notice requirements of said Section 19 of the Contract to allow the Future Services Notice to be given by a City to the Agency by not later than September 30, 2016; and

WHEREAS, the Agency and the Cities mutually agree to the amendment of the Contract for the purposes and upon the terms hereinafter provided; and

WHEREAS, the Agency has obtained the consents and given the notices required to be obtained or given prior to entering into this Amendment; and

WHEREAS, the “Amendment Date” shall be, assuming the approval and execution of this Amendment by the Agency and each of the Cities, the date that this Amendment is executed by the last party to execute this Amendment; and

WHEREAS, all other capitalized terms used herein but not defined herein shall have the meanings set forth for such terms in the Contract or in the Bond Resolution (as defined in the Contract); and

WHEREAS, the modification effected to the Contract by this Amendment does not modify in any respect the obligation of each City and the Agency to perform their respective obligations under the terms of the Contract to the date of the scheduled termination thereof, and the amendment to the Contract effected hereby does not modify the termination date of the Contract; and

WHEREAS, the modification effected to the Contract by this Amendment does not affect, and in particular does not adversely affect, the rights and interests of any of the bondholders, noteholders, insurers, credit banks and other beneficiaries or interested persons or entities having interests in the Agency's outstanding Bonds or Subordinated Indebtedness (collectively, the “Interested Parties”) and, more specifically, no modification effected by this Amendment adversely affects the security of the Interested Parties by lessening the amount to be paid to the Agency by the Cities or any other person or entity under the Contract, or by changing the source or nature of such payment; and

WHEREAS, the Cities hereby reaffirm their respective commitments to the Agency and to the holders of the outstanding Bonds or Subordinated Indebtedness to provide the payments required under the Contract to assure that the obligations of the Agency are timely paid in accordance with the provisions of the Contract;

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, the Agency and each of the Cities hereby agree as follow:

## ARTICLE I

Section 1.1. Section 19 of the Contract is hereby amended to read as follows:

**Section 19: Continuation of Services.** A City, unless it elects an option under Section 13 or withdraws under Section 16, shall have the right to the continued performance of services provided under the provisions of this Contract for the useful life of the System by giving written notice to the Agency by not later than September 30, 2016. Such City shall be obligated to continue paying its proportionate share of the Annual System Costs.

## ARTICLE II

Section 2.1. All other terms, provisions, conditions and obligations of the Contract shall remain in full force and effect, and said Contract, as amended hereby, shall be construed together as a single contractual agreement.

Section 2.2. The Amendments made hereby shall be effective upon the Amendment Date.

[Signature pages follow.]

TEXAS MUNICIPAL POWER AGENCY

By: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

CITY OF BRYAN, TEXAS

By: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

CITY OF DENTON, TEXAS

By: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

CITY OF GARLAND, TEXAS

By: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

CITY OF GREENVILLE, TEXAS

By: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

GEUS, ACTING ON BEHALF OF THE  
CITY OF GREENVILLE PURSUANT TO  
ITS CHARTER

By: \_\_\_\_\_

David Dreilling  
Chairman, Board of Trustees of  
Electric Utility Board

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_



# City Council Item Summary Sheet

Work Session

Date: July 16, 2013

Agenda Item

## Revisions to Watering Schedule

### Summary of Request/Problem

On July 8, 2013, the City implemented a new watering schedule for both its residential and business customers. Customers will be allowed to water their lawns just once per week based on residential trash pickup schedules. Garland businesses will base their watering day on the residential schedule at their specific location(s).

### Recommendation/Action Requested and Justification

Approve an ordinance amending the watering schedule for both residential and business customers.

**Submitted By:**

**John Baker  
Managing Director of Public Utilities**

**Approved By:**

**William E. Dollar  
City Manager**

**ORDINANCE NO.**

**AN ORDINANCE AMENDING CHAPTER 51, "GENERAL UTILITY PROVISIONS", OF THE CODE OF ORDINANCES OF THE CITY OF GARLAND, TEXAS; PROVIDING A PENALTY CLAUSE, A SAVINGS CLAUSE, AND A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GARLAND, TEXAS:**

**SECTION 1**

That Section 51.93 (3)(g)(i) of Chapter 51, "General Utility Provisions", of the Code of Ordinances of the City of Garland, Texas, is hereby amended to read as follows:

- “(i) Between April 1 and October 31 of each year, irrigation of landscape areas, foundations, trees and lawns with hose-end sprinklers or automatic irrigations systems is limited to one day per week on the day designated for residential trash pickup in customer’s area; and from November 1 to March 31 the irrigation of landscaped areas, foundations, trees and lawns with hose-end sprinklers or automatic irrigation systems is limited to one day every other week on the day designated for collection of recyclable materials in customer’s area.”

**SECTION 2**

That, except as otherwise provided in this Ordinance, a violation of any provision of this Ordinance shall be a misdemeanor punishable in accordance with Sec. 10.05 of the Code of Ordinances of the City of Garland, Texas. The City's authority to seek injunctive or other civil relief available under the law is not limited by this section.

**SECTION 3**

That Chapter 51, "General Utility Provisions", of the Code of Ordinances of the City of Garland, Texas, as amended, shall be and remain in full force and effect save and except as amended by this Ordinance.

**SECTION 4**

That terms and provisions of this Ordinance are severable and are governed by Sec. 10.06 of the Code of Ordinances of the City of Garland, Texas.

**SECTION 5**

The City Manager or his designee is hereby directed to file a copy of this Ordinance with the Texas Commission on Environmental Quality, and to provide a copy of the ordinance to the Chairman of the Region C Water Planning Group and the Texas Water Development Commission.

**SECTION 6**

That this Ordinance shall be and become effective immediately upon and after its passage and approval.

**PASSED AND APPROVED** this the \_\_\_\_ day of \_\_\_\_\_, 2013.

**CITY OF GARLAND, TEXAS**

\_\_\_\_\_

Mayor

**ATTEST:**

\_\_\_\_\_

City Secretary



# City Council Item Summary Sheet

**Work Session**

Date: July 16, 2013

**Agenda Item**

## Purchase of Property

### Summary of Request/Problem

Council is requested to consider purchasing Lots 2 and 3 of Block 2, and Part of Lot 1, in the Embree Addition, City of Garland, commonly known as 102 – 108 N. Sixth Street from the Garland Civic Theatre. The building and land consist of approximately 17,000 square feet. The City will lease back the property to the Garland Civic Theatre.

### Recommendation/Action Requested and Justification

Approve by minute action authorizing the City Manager to execute all documents necessary for the purchase and lease of 102 – 108 N. Sixth Street.

**Submitted By:**

**Martin E. Glenn  
Deputy City Manager**

**Approved By:**

**William E. Dollar  
City Manager**

## **EARNEST MONEY CONTRACT**

This Earnest Money Contract (“Contract”) is made and entered into by and between **Garland Civic Theatre, a Texas Non-profit Corporation** (“Seller”) and the **City of Garland, Texas**, a Texas home-rule municipality (“Buyer”).

### **W I T N E S S E T H:**

For and in consideration of the respective undertakings and agreements of Seller and Buyer set forth herein, the sufficiency of which are hereby mutually acknowledged, Seller and Buyer hereby agree as follows:

**1. Property.** Seller hereby agrees to sell and convey and Buyer hereby agrees to purchase and take from Seller, upon and subject to all of the terms and conditions set forth hereinafter all of that property located in Dallas County, Texas commonly known as 102-108 Sixth Street , more particularly described as,

**Lots 2 and 3 of Block 2, and Part of Lot 1, in the Embree Addition, City of Garland, Dallas County, Texas.**

**2. Purchase Price.** Subject to adjustment as hereinafter provided, the total consideration for the sale of the Land (the “Purchase Price”) shall be Four Hundred Twenty Five Thousand and No/100 U.S. Dollars (**\$425,000.00**), all of such Purchase Price to be paid at closing on the closing date (same day funds).

**3. Earnest Money.** Within ten (10) business days following the date when this Contract is fully executed by both parties, Buyer shall deliver to **Mel Morgan, Republic Title Company of Dallas, 2626 Howell Street, 10<sup>th</sup> Floor, Dallas, Texas 75024, Phone 214-855-8823** (the “Title Company”) as earnest money, the sum of Four Thousand Two Hundred Fifty and No/100 Dollars (**\$4,250.00**) in cash or immediately available funds (the “Earnest Money”). If for any reason the sale contemplated herein is not consummated, then all of the Earnest Money shall be paid either to Buyer or Seller in conformity with the terms of this Contract. If the sale contemplated herein is consummated, the Earnest Money shall be applied toward the balance due of the Purchase Price.

**4. Survey.** Within fifteen (15) days following the date when this Contract is fully executed, Buyer, at its cost and expense, may make arrangements to obtain a current on-the-ground survey of the Land prepared by an engineer or surveyor acceptable to Buyer (the “Survey”). Seller agrees to provide full and unlimited access to the surveyor performing the Survey.

**5. Title Binder.** Within fifteen (15) days following the date when this Contract is fully executed, Buyer has the option, at Buyer’s sole cost and expense, to obtain a title binder or commitment to issue a title insurance policy in the amount of the total Purchase Price of the

Land by the Title Company (the "Title Binder"). If Buyer exercises its option, Buyer shall, within ten (10) days after receipt of the Title Binder and legible copies of all exceptions shown on the Title Binder and the Survey, advise Seller in writing of any and all objections to title, encumbrances, encroachments or other matters shown on the Title Binder or the Survey. If Buyer timely objects to such matters, then Seller shall have a reasonable time after the date of receipt of Buyer's objections, but in no event to exceed thirty (30) days, within which to cure any and all objections in that notice. If Buyer timely objects to such matters, Seller shall use its best efforts to cure such objections but in no event shall Seller be obligated to engage in litigation in effecting such curative work. If Buyer fails to object within such time period, it shall be conclusively presumed that Buyer has no objections to any matters shown on the Title Binder or the Survey.

**6. Encumbrances and Exceptions.** Seller agrees to convey to Buyer by means of a general warranty deed, good and indefeasible title to the Land, free and clear of all liens and encumbrances which will not be satisfied out of the sales proceeds except as set forth in this Paragraph 6. The Land shall be conveyed to Buyer, and Buyer shall accept title subject only to those exceptions to title shown on the Title Binder or the Survey as to which Buyer fails to timely raise any objections as required in Paragraph 5 above or any exceptions to title shown on the Title Binder or the Survey if waived by Buyer as provided in Paragraph 7 below (all of such matters being hereinafter collectively referred to as the "Permitted Exceptions"). As used in this Contract, the term "Permitted Exceptions" shall include the standard printed exceptions contained in Schedule B of the Title Binder for (i) standby fees, taxes, and assessments; (ii) discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements; (iii) marital rights; and (iv) waters, tidelands, beaches, streams and related matters. Notwithstanding anything else contained in this Contract, Buyer shall not have to object in writing or otherwise to any monetary lien affecting the Land or to any of the matters contained in Schedule C of the Title Binder, all of which shall be deemed objectionable for purposes of this Agreement.

**7. Failure to Cure Objections to Title Binder.** If, within fifteen (15) days from the date of receipt by Seller of Buyer's written objections to matters shown on the Title Binder or the Survey (other than the Permitted Exceptions), Seller notifies Buyer in writing that Seller is unable to cure such objections then, unless Buyer notifies Seller in writing within ten (10) days of such written notice to Buyer that Buyer waives all such uncured objections to the Title Binder or the Survey, the Earnest Money shall be refunded to Buyer, whereupon all parties shall be released from all further obligations hereunder.

**8. Title Policy.** At the closing, as hereinafter defined, the Title Company shall issue to Buyer an Owner's Policy of Title Insurance on the Land in face amount equal to the Purchase Price subject only to the Permitted Exceptions, with the exception for taxes being limited to the year of closing and subsequent years endorsed "Not Yet Due and Payable". At Buyer's sole option and expense, the survey exception may be deleted except for "Shortages in Area".

**9. Seller's Representations and Warranties.** Seller represents and warrants to Buyer (which representations and warranties shall survive closing) that:

- (A) Seller has good and indefeasible title to the Land.
- (B) There is no action, suit or proceeding pending or, to Seller's actual knowledge, threatened against or affecting the Land or any portion thereof or relating to or arising out of the ownership or use of the Land or any portion thereof in any court or before any administrative body or governmental authority.
- (C) There are no adverse or other parties in possession of the Land.
- (D) Neither the entering into of this Contract nor the consummation of the transaction contemplated hereby will constitute a violation or breach by Seller of (i) any contract or other instrument to which Seller is a party, or to which Seller is subject or by which any of Seller's assets or properties may be affected, or (ii) any judgment, order, writ, injunction or decree issued against or imposed upon Seller, nor result in a violation of any applicable law, order, rule or regulation of any governmental authority affecting Seller.
- (E) Seller is not a "foreign person" as such term is used in Section 1445 of the Internal Revenue Code.
- (F) Except as disclosed in writing attached to this Contract as Exhibit "C", to the best of Seller's knowledge: (1) the Land does not presently contain any Hazardous Materials (as defined below) in an amount, condition, location, manner of storage, degree or concentration in violation of any Environmental Laws (as defined below); (2) neither the Land nor Seller are currently in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or any remedial obligations under any Environmental Laws; (3) Seller is not aware of any condition that could create liability to any party, public or private, of any environmental nature relating to the Land or due to the presence of any Hazardous Material on the Land; (4) Seller is in compliance with all applicable Environmental Laws with respect to the Land; (5) Seller is not aware of any release, spill, leak, discharge, disposal of, pumping, pouring, emitting, emptying, injecting, leaching, dumping or escape into or through the environment of any Hazardous Materials at, on, to or from the Land that is or could be a violation of any Environmental Law. In this Contract, the term "Environmental Laws" includes, but is not limited to, (a) with respect to federal law, CERCLA, the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 *et seq.*), the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. §§ 2701 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §§ 11001

*et seq.*), the Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*), the Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*), the Surface Mine Conservation and Reclamation Act (30 U.S.C. §§ 1251-1279), and regulations adopted pursuant thereto, and counterpart state and local laws, regulations adopted pursuant thereto; and (b) with respect to Texas law the Solid Waste Disposal Act (TEX. HEALTH & SAFETY CODE, Chap. 361 *et seq.*), the Texas Clean Air Act (TEX. HEALTH & SAFETY CODE, Chap. 382 *et seq.*), the Texas Water Code (TEXAS WATER CODE, Chap. 1 *et seq.*) and the regulations promulgated pursuant thereto. The term “Hazardous Materials” shall mean any hazardous, toxic or dangerous waste, substance, contaminant or material defined as such in any of the foregoing statutes and also includes lead-based paint, asbestos, radioactive materials, urea formaldehyde insulation or other substance considered to be hazardous by a reasonably prudent purchaser of real property.

- (G) This Contract constitutes the legal, valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, and Seller has full power and authority to execute and deliver this Contract and to consummate the transactions contemplated hereby. The execution and delivery of this Contract and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate, partnership, trust or other action required on the part of Seller and this Contract has been duly and validly executed and delivered by Seller.

**10. Conditions Precedent to Buyer’s Obligation.** The following matters shall constitute absolute conditions precedent to Buyer’s obligation to purchase the Land:

- (A) Seller’s representations and warranties shall be true and correct as of the closing date.
- (B) The Land is in the same or similar condition as it was when this Contract was fully executed.
- (C) Title to the Land shall remain as initially approved by Buyer in the Title Binder and on the Survey as set forth in the provisions of this Contract such that good and indefeasible title shall be conveyed to Buyer at closing.

In the event that the conditions set forth above are not satisfied at closing, then Buyer may either obtain a refund of all Earnest Money plus accrued interest thereon following which neither party shall thereafter have any further liability to the other hereunder, or Buyer may waive in writing the nonfulfillment of such condition and purchase the Land pursuant to the terms and provisions hereof without any reduction in the Purchase Price.

## **11. Feasibility Period; Remediation of Hazardous Wastes.**

- (A) Buyer shall have the right for a period of forty-five (45) days (the “Feasibility Period”) after the effective date (as provided below) of this Contract to enter onto the Land and to have full access the Land for the purpose of conducting such inspections, investigations, studies and tests as Buyer may deem fit. On or before the commencement of the Feasibility Period, Seller shall furnish Buyer with a copy of any hazardous waste reports or other environmental assessments, audits or test results obtained by Seller relative to any portion of the Land. In the event that Buyer determines, in its sole discretion, based upon its inspections, investigations, studies or tests, that the Land is not satisfactory for Buyer’s purposes or is not suitable for Buyer’s intended use, then Buyer shall deliver written notice of such determination to Seller on or before the expiration of the Feasibility Period. In the event of such termination, and provided that Buyer is not otherwise in default of any provision of this Contract, all Earnest Money together with any accrued interest shall be returned to Buyer by the Title Company, and thereafter this Contract shall terminate and neither party shall have any further obligation or liability to the other under this Contract.
- (B) If Buyer’s inspections, investigations, studies or tests disclose the existence of any Hazardous Materials in, on or under the Land, then Buyer may either:
- . 1 Terminate this Contract (in which event the Earnest Money together with any accrued interest shall be paid or returned Buyer and thereafter this Contract shall terminate and neither party shall have any further obligation or liability to the other under this Contract); or
  - . 2 Waive, in writing, its objections to the existence of Hazardous Materials and proceed to closing without adjustment of the Purchase Price.

## **12. Closing.**

- (A) The closing of the purchase and sale of the Land shall take place on **July 30, 2013**, unless extended by written agreement or necessitated by unplanned circumstances. The closing shall take place at the offices of the Title Company or at such other place as the parties may mutually agree.
- (B) At the closing, Seller shall deliver to Buyer:
- . 1 One or more general warranty deeds, in the form of attached exhibit “A” conveying title to the Land to Buyer, its successors and assigns, duly executed and acknowledged by Seller;

- . 2 All such other instruments of assignment, transfer or conveyance as shall, in the reasonable opinion of Buyer and its counsel, be necessary to transfer to Buyer the Land in accordance with this Agreement and where necessary or desirable in recordable form.

At the closing, the Earnest Money shall be applied to the Purchase Price and Buyer shall pay the balance of the Purchase Price subject, however, to the adjustments and prorations provided herein. Exclusive possession of the Land shall be delivered to Buyer in accordance with the terms hereof on the date of closing.

### **13. Closing Adjustments and Prorations.**

- (A) Real Estate Taxes. Real estate taxes and assessments for the calendar year of closing shall be prorated between Seller and Buyer as of the date of closing, taking into consideration that Buyer is a tax-exempt entity. If the amount of such taxes for the year of closing is not yet available, the proration shall be based upon the amount of such taxes for the previous year.
- (B) Recording Fees. Buyer shall pay all recording fees and any similar fees or assessments imposed by state or local law and payable in respect of the sale or transfer of the Land.
- (C) Title Insurance and Survey. Buyer shall pay all premiums and other costs respecting the Title Binder and the Owner's Policy of Title Insurance. Buyer shall pay for the cost of the Survey (if necessary), and Buyer shall pay any additional premium due for the deletion of the survey exception from the Owner's Policy of Title Insurance.
- (D) Escrow Fees. Buyer shall pay equally any escrow or closing fee charged by the Title Company.

**14. Remedies.** If Seller shall have fully complied with all covenants, conditions and matters hereunder by Seller to be performed or Buyer has waived such compliance in writing, Buyer's conditions precedent are satisfied or waived, and the Title Company is ready, willing and able to issue its Owner's Policy of Title Insurance in the form herein prescribed, and Buyer shall then fail and refuse to close this transaction, then all Earnest Money deposited hereunder together with accrued interest thereon shall be paid to Seller as Seller's sole and exclusive remedy. If Buyer shall have fully complied with all covenants, conditions and matters hereunder by Buyer to be performed, or Seller has waived such compliance in writing, and the Title Company is ready, willing and able to issue its Owner's Policy of Title Insurance in the form herein prescribed, and Seller shall then fail and refuse to close this transaction, then at Buyer's election Buyer may either obtain a refund of all Earnest Money together with accrued interest thereon whereupon all parties shall be released from all further obligations hereunder or Buyer may sue Seller for specific performance, it being hereby acknowledged that Buyer's

remedies at law are inadequate. Buyer and Seller hereby waive any and all other remedies available to either or any of them at law or in equity.

**15. Brokerage Commission.** Each of the parties hereto represents and warrants to the other that there are no other brokers or finders involved in this transaction and that there are no real estate commissions or finder's fees due in connection with this Contract and each of the parties agrees to indemnify and hold harmless the other from any other claims or liability for any other such commission or brokerage fee brought on account of the action or conduct of the indemnifying party. This paragraph shall survive the closing or termination of this Contract.

**16. Time, Calculation.** Time is of the essence in this Contract. If the final date in any provision of this Contract falls on a Saturday, Sunday or legal holiday (when national banks are closed), then, and in such event, the duration of such period shall be extended so that it shall end on the next succeeding day that is not a Saturday, Sunday or legal holiday.

**17. Real Estate License Act of Texas.** Buyer acknowledges that, in accordance with the terms of the Real Estate License Act of Texas, it has been advised that it should have an abstract covering the Land examined by an attorney of Buyer's selection or that Buyer should be furnished with or obtain a policy of title insurance.

**18. Notices.** Any notice required or desired to be given from one party to the other party to this Contract shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, postage prepaid, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

**19. No Assignment.** Neither party shall have the right to assign that party's interest in this Contract without the prior written consent of the other party.

**20. Severability.** If any term or provision of this Contract is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Contract shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Contract a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

**21. Waiver.** Either Seller or Buyer shall have the right to waive any requirement contained in this Contract which is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended and specifically identifying the provision or provisions being waived. No waiver of any breach or violation of any term of this Contract shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

**22. Governing Law; Venue.** This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Dallas County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Dallas County, Texas.

**23. Paragraph Headings; Construction.** The paragraph headings contained in this Contract are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Contract and this Contract shall not be construed either more or less strongly against or for either party.

**24. Binding Effect.** Except as limited herein, the terms and provisions of this Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

**25. Gender.** Within this Contract, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

**26. Counterparts.** This Contract may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

**27. Exhibits.** All exhibits to this Contract are incorporated herein by reference for all purposes wherever reference is made to the same.

**28. Entire Agreement.** It is understood and agreed that this Contract contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Contract exist. This Contract cannot be changed or terminated orally and may be modified only by a written document signed by an authorized representative both parties.

**29. Relationship of Parties; No Third-Party Beneficiaries.** Nothing contained in this Contract shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Contract nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Contract. There are no third-party beneficiaries to this Contract and no third-party beneficiaries are intended by implication or otherwise.

**EXECUTED** on the dates indicated below but deemed to be effective as of the \_\_\_\_\_ day of June, 2013 (the "Effective Date").

**SELLER:**

Garland Civic Theatre, a Texas Non-profit Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**BUYER:**

City of Garland

By: \_\_\_\_\_

Name: Martin E. Glenn

Title: Deputy City Manager

Date: \_\_\_\_\_

Republic Title of Texas, Inc. hereby acknowledges receipt of this Contract on \_\_\_\_\_, 2013, and agrees to abide by and perform in accordance with the terms and conditions of escrow contained in the Contract. Upon receipt of the Earnest Money provided for in the Contract, Title Company agrees to notify Seller and Purchaser thereof and to hold and disburse the Earnest Money pursuant to the terms and provisions of the Contract.

REPUBLIC TITLE OF TEXAS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ADDRESS FOR NOTICE:**

**Seller:**

Garland Civic Theatre  
705 West Ave B  
Suite 110  
Garland, Texas 75040

**Buyer:**

Martin Glenn, Deputy City Manager  
P.O. Box 469002  
Garland, Texas 75046-9002

With a copy to:  
City Attorney  
200 N. Fifth St., 4<sup>th</sup> Floor  
P.O. Box 469002  
Garland, Texas 75046-9002  
(972) 205-2380  
(972) 205-2389 [FAX]

**EXHIBITS:**

Exhibit "A" - Form of General Warranty Deed  
Exhibit "B" - Environmental Disclosures

**EXHIBIT "A"**  
FORM OF GENERAL WARRANTY DEED

**GENERAL WARRANTY DEED**

STATE OF TEXAS                   §  
  §           **KNOW ALL BY THESE PRESENTS:**  
COUNTY OF DALLAS           §

That **Garland Civic Theatre, a Texas Non-profit Corporation** (“Grantor”), for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration to Grantor, the receipt and sufficiency of which is hereby acknowledged, paid in hand by the **City of Garland, Texas**, a Texas home-rule municipality (“Grantee”), has **GRANTED, SOLD AND CONVEYED**, and by these presents does **GRANT, SELL AND CONVEY** unto Grantee all that certain lot, tract, or parcel of land situated in the County of Dallas, State of Texas, commonly known as 102-108 Sixth Street, more particularly described as,

**Being Lots 2 and 3 of Block 2, and Part of Lot 1, in the Embree Addition, City of Garland, Dallas County, Texas (“Property”), and being more fully described on Exhibit A attached hereto and incorporated herein.**

**TO HAVE AND TO HOLD** the Property, together with all and singular the rights and appurtenances thereto and in anywise belonging unto Grantee, its successors and assigns forever; and Grantor does hereby bind itself, its successors, and assigns to **WARRANT AND FOREVER DEFEND** all and singular the Land unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Grantor.

**EXECUTED** this the \_\_\_\_ day of \_\_\_\_\_, 2013.

**GRANTOR:**

Garland Civic Theatre, a Texas Non-profit Corporation

By: \_\_\_\_\_

Name/Title: \_\_\_\_\_

STATE OF TEXAS                   §  
  §  
COUNTY OF DALLAS           §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE** this the \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My Commission Expires: \_\_\_\_\_

**LEASE AGREEMENT**

This Lease Agreement ("Lease") is made and entered between the City of Garland, Texas, a Texas home-rule municipality ("Lessor"), and Garland Civic Theatre, a Texas nonprofit corporation ("Lessee"(collectively, the "Parties").

**W I T N E S E T H**

1. **Agreement to Lease.** Lessor hereby grants, demises and lets to Lessee, and Lessee hereby hires and takes as tenant of Lessor, the premises located in Garland, Dallas County, Texas, and more particularly described as 102-108 Sixth Street , more particularly described as,

Lots 2 and 3 of Block 2, and Part of Lot 1, in the Embree Addition, City of Garland, Dallas County, Texas. (the "Premises").

2. **Term.** The term of this Lease shall commence upon Closing of the real property purchase transaction between the Parties pursuant to that certain Earnest Money Contract dated October \_\_, 2013 (the "Effective Date"), and shall end at midnight on the same date three (3) years thereafter (the "Termination Date"), unless sooner terminated as provided herein.

3. **Use.** The Premises leased are to be used and occupied by Lessee as a non-profit community theatre under the name "Garland Civic Theatre" and for no other uses or purposes whatsoever. Lessee shall not use or permit the use of the Premises, or any part thereof, for any purpose other than as stipulated without the written consent of Lessor.

4. **Rent.** Lessee shall pay Lessor as rent the amount of **\$600.00 per month.**

5. **As Is Condition.** After execution of this Agreement, but prior to the Effective Date, Lessee shall have the right to enter onto the Premises and to have full access to the Premises for the purpose of conducting such inspections, investigations, studies and tests as Lessee may deem fit. In the event that Lessee determines, in its sole discretion, based upon its inspections, investigations, studies or tests, that the Premises is not

satisfactory for Lessee's purposes or is not suitable for Lessee's intended use, then Lessee shall deliver written notice of such determination to Lessor on or before the Effective Date. Lessee, by entry of the Premises under this Lease, accepts the Premises **"AS IS - WHERE IS, WITH ALL FAULTS"** in the present state of repair. Lessee has been given the opportunity to perform, such inspections, investigations, studies, and tests as Lessee has deemed appropriate and Lessee has satisfied itself, without any representation or warranty on the part of Lessor or anyone acting on Lessor's behalf, that the Premises are fit and satisfactory in all respects for Lessee's purposes.

Lessee is not being charged, nor has Lessee made a security deposit for the occupancy and use of the Premises under this Lease. In consideration of the waiver of the payment of a security deposit and for other good and valuable consideration, **Lessee acknowledges that Lessor expressly disclaims and Lessee expressly waives, any warranty or representation, express or implied, including without limitation any warranty of condition, habitability, merchantability, useability, or fitness for a particular purpose of the Premises, and Lessee further acknowledges that Lessor has not made any other representations to Lessee as to whether or not the Premises are fit and satisfactory for the use intended by Lessee. Lessor disclaims responsibility as to the accuracy or completeness of any information relating to the Premises, whether provided by Lessor or otherwise. Without limiting the foregoing, Lessor makes no representations of any nature regarding the Premises and specifically disclaims any warranty, guaranty or representation, oral or written, express or implied, past, present, or future, concerning:** (i) the nature and condition of the Premises, including without limitation, the water, soil and geology, and the suitability thereof and the Premises for any and all activities and uses which Lessee may elect to conduct thereon, and the existence of any environmental substances, hazards or conditions or presence of any endangered or protected species thereon or compliance with all applicable laws, rules or regulations; (ii) the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or otherwise; (iii) the compliance of the Land or its operation with any law, ordinance or regulation of any federal, state, or local governmental authority; and (iv) whether or not the Property can be developed or utilized for any purpose. For

purposes hereof, "environmental substances" means the following: (a) any "hazardous substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. Section 9601 et. seq., as amended, (b) any "hazardous substance" under the Texas Hazardous Substances Spill Prevention and Control Act, Tex. Water Code, Section 26.261, et. seq., as amended, (c) petroleum or petroleum-based products (or any derivative or hazardous constituents thereof or additives thereto), including without limitation, fuel and lubrication oils, (d) any "hazardous chemicals" or "toxic chemicals" under the Occupational Safety and Health Act, 29 U.S.C.A. Section 651 et. seq., as amended, (e) any "hazardous waste" under the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 6901 et. seq., as amended, (f) asbestos, (g) polychlorinated biphenyls, (h) underground storage tanks and wells, whether empty, abandoned, capped, uncapped, filled, or partially filled with any substance, (i) any substance, the presence of which is prohibited by federal, state or local laws and regulations, and (j) any other substance which by federal, state or local laws and regulations requires special handling or notification of governmental authorities in its collection, storage, treatment or disposal. References to particular acts or codifications in this definition include all past and future amendments thereto, as well as applicable rules and regulations as now or hereafter promulgated thereunder.

To the fullest extent of the law, Lessee waives and disclaims any cause of action that Lessee may now or hereafter have or obtain against Lessor, its agents, employees or servants arising from the use, occupation or condition of the Premises or the existence of this Lease.

Lessee further agrees to indemnify and hold Lessor and all of its present, future and former agents, employees, officials and representatives harmless in their official, individual and representative capacities from any and all claims, demands, causes of action, judgments, liens and expenses (including attorney's fees), costs and damages (whether common law or statutory, and whether characterized as actual, punitive, consequential, incidental or based on strict liability and expressly including those caused by the negligence or other fault of any party indemnified herein), of any conceivable character, due to or arising from injuries to persons (including death) or to property (both real and personal) created by, arising from or in any

manner relating to the use, occupation or condition of the Premises or the existence of this Lease.

6. **Liability for Loss or Damage to Property.** All fixtures, improvements, and personal property placed in or on the Premises shall be at the sole risk of Lessee or the owner of such property.

7. **No Waste or Contamination.** Lessee shall commit no waste of the Premises and shall be responsible for any damages to the Premises caused by the activities of Lessee. Lessee shall, on the Termination Date or any earlier termination of this Lease, surrender the Premises clean, free of debris, and in substantially the same condition as received, except for normal wear and tear. Lessee may not discharge any waste or hazardous materials on the Premises. Any use of fertilizers, herbicides, pesticides or other similar chemicals by Lessee shall be done in strict accordance with all applicable federal, state and local laws. Lessee shall, upon request, provide Lessor with copies of all chemical constituents and MSDS sheets prior to the application of any fertilizer, herbicide, pesticide or other chemicals to the Premises.

8. **Maintenance.** Subject to the provisions of paragraph 7, Lessee may make any necessary improvements or repairs to operate as a civic theatre. Maintenance, including any necessary repairs to operate as a civic theatre, of the Premises shall be at the sole expense of Lessee and Lessor shall have no maintenance responsibility regarding the Premises whatsoever, such responsibilities being fully assumed by Lessee. Lessee shall maintain the Premises in a neat and orderly fashion and in compliance with all applicable laws including, but not limited to, mowing, weed control, and trash and litter removal.

9. **Loss or Destruction of Property Leased.** If the Premises become, as a practical matter, totally untenable after a casualty loss such as fire, storm, explosion, earthquake, or other casualty, and if the casualty loss is not due to the negligence or fault of the Lessee or the Lessee's employees, guests or invitees, either Lessor or Lessee may terminate the Lease at any time by giving written notice to the other.

10. **Lessee to Provide Insurance.** Lessee agrees to carry, during the term of this Lease, comprehensive general

liability insurance insuring against bodily injury - including death - and property damage with a company or companies qualified to do business and to write insurance in the State of Texas. The policy or policies shall name Lessor as an additional insured and shall provide coverage of at least \$1,000,000.00 for bodily injury or death, per occurrence, and \$250,000.00 for property damage, per occurrence. The cost of premiums for all such policies shall be paid by Lessee and the policy or policies shall bear an endorsement providing at least ten (10) days written notice to Lessor of cancellation or material alteration.

11. **Assignment or Sublease.** Lessee shall not assign this Lease or sublet the Premises, or any part thereof, without the prior written consent of the Lessor.

12. **Utilities.** Lessee shall pay, during Lessee's occupancy of the Premises, for all utilities and services, if any, supplied to the Premises, and Lessee shall not cause or suffer the imposition of any lien against the Premises arising from the provision of any utility or related services.

13. **Termination.**

A. Lessor shall have the right to terminate this lease twelve (12) months after the Commencement Date to be effective on the date given to the Lessee by written notice from Lessor (the "Early Termination Date"), provided Lessor has given Lessee written notice of such termination at least ninety (90) days prior to the Early Termination Date.

B. This Lease may be terminated by Lessor, for cause, upon sixty (60) days written notice to Lessee. "Cause" shall be deemed to be any of the following, separately or in any combination:

(i) Failure to maintain insurance coverage on the Premises or provide Lessor proof thereof upon demand;

(ii) Failure to maintain the Premises in accordance with the provisions of paragraph 8 or applicable laws, rules or regulations;

(iii) Use of the Premises in violation of paragraph 3;  
or

(iv) Failure to comply with any material provision of  
this Lease.

14. **Severability.** If any term or provision of this Lease is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Lease shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Lease a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

15. **Waiver.** Either Lessor or Lessee shall have the right to waive any requirement contained in this Lease which is intended for the waiving party's benefit but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended.

16. **Governing Law.** This Lease and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Lease are performable in Dallas County, Texas such that exclusive venue for any action arising out of this Lease shall be in Dallas County, Texas.

17. **Paragraph Headings; Construction.** The paragraph headings contained in this Lease are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Lease and this Lease shall not be construed either more or less strongly against or for either party.

18. **Complete Agreement.** This Lease contains the entire agreement between Lessor and Lessee with respect to the Premises and, except as set forth herein and in written instruments executed in connection herewith, neither Lessor nor Lessee has made any agreements, covenants, warranties or representations of any kind or character, express or implied, oral or written, with respect to the Premises including, without limitation, any warranties of

habitability, merchantability, workmanship, income to be derived from the Premises, expenses to be incurred in connection with the Premises or with respect to any other conditions, facts or requirements relating or pertaining to the Premises.

19. **Binding Effect.** Except as limited herein, the terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

20. **Gender.** Within this Lease, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

21. **Counterparts.** This Lease has been executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

22. **Exhibits.** All exhibits to this Lease are incorporated herein by reference for all purposes wherever reference is made to the same.

23. **No Waiver of Immunity or Defense.** No party, by execution of this Agreement, waives nor shall be deemed to have waived, any immunity or defense that would otherwise be available to it including, without limitation, immunity from liability and suit for damages to one another or to any third-party except as otherwise provided by law.

24. **Relationship of Parties.** Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Lease nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of Lessor and Lessee as those terms are understood herein.

**EXECUTED** as of the \_\_\_ day of July, 2013.

**LESSOR:**

**CITY OF GARLAND, TEXAS**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**Address:**

City of Garland  
200 N. Fifth Street  
P. O. Box 469002  
Garland, Texas 75046-9002  
Attn: City Manager

With a copy to:

Office of the City Attorney  
City of Garland  
200 N. Fifth Street, 4<sup>th</sup> Floor  
P.O. Box 469002  
Garland, Texas 75046-9002

**LESSEE:**

**GARLAND CIVIC THEATRE**

By: \_\_\_\_\_

Title: \_\_\_\_\_

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