

MANAGEMENT AGREEMENT

THIS AGREEMENT is made and entered into as of _____ by and between the City of Laconia, New Hampshire, a municipal corporation duly organized under the laws of the State of New Hampshire with a mailing address of 45 Beacon Street East, Laconia, New Hampshire 03246, (hereinafter called the "City") and Spectacle Management, a Massachusetts Corporation with offices at 1775 Massachusetts Avenue, Second Floor, Lexington, MA 02420 (hereinafter called Spectacle).

WITNESSETH:

WHEREAS, the City and Spectacle have entered into this Agreement pursuant to which the City and Spectacle have defined their relative rights, duties and liabilities concerning the operation of the Colonial Theatre (the "Facility") located at 609 Main Street, Laconia, NH

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

1. Facility The term "Facility" as used in this Agreement shall mean the entire Colonial Theatre together with the furniture, fixtures, machinery, appliances, operating

equipment and other personal property belonging to the City and located at the Facility in Laconia, NH.

2. City Events and Activities The term “City Events and Activities” as used in this Agreement shall mean use of the Facility by the City for events for which no admission is charged and/or to which the general public or groups are invited at a discounted admission rate, including but not limited to commencement exercises, musical concerts, recitals, public addresses, debates, conferences, auditions, seminars, and other cultural commercial, athletic, civic, instructional or ceremonial functions of the City,

3. Other Events and Activities The term “Other Events and Activities” as used in this Agreement will mean all other operations conducted by Spectacle at the Facility other than City events and activities.

4. Advisory Board The term “Advisory Board” as used in this Agreement refers to a 5 member board appointed by the City Council to serve as a liaison and sounding board with Spectacle, a conduit to the City Council and City Manager, and an evaluator of ideas and recommendations concerning the Facility to the City Manager. Its role will include the stewardship of the Facility, consideration of structural alterations and improvements to the Facility, and the expenditure of any excess funds that Spectacle might generate under this Agreement for capital improvements; however, its role shall not extend to programming within the Facility. This Board will meet regularly on a schedule to be determined. Spectacle hereby acknowledges that this body does not have authority to make binding agreements on behalf of the City. All City decisions will be made by the City Manager or Council.

ARTICLE II

TERM

The term of this Agreement shall be for five years and six months (5.5 years) beginning on January 1, 2021 continuing through June 30, 2026.

ARTICLE III

FACILITY SERVICES PROVIDED BY CITY

1. The City will provide the necessary utility connections for services, including water, electricity, telephone, waste and sewerage disposal, heat, ventilation and air conditioning, and fire and security monitoring systems, at the Facility for Spectacle's operations pursuant to this Agreement; provided, however that City does not warrant against interruption in or failure of any such utility connections and service and the City will not be accountable to Spectacle or others for any liability, loss, damage, costs or expense which may result or arise from any such interruptions or failure.

2. The City will perform all grounds keeping, custodial, and maintenance services in the streets and parking lots constituting, adjoining or adjacent to the Facility.

ARTICLE IV

MANAGEMENT SERVICES TO BE PROVIDED BY SPECTACLE

1. Spectacle, in cooperation with the City and local organizations and businesses, will seek to maximize the economic impact of the Colonial Theatre on downtown Laconia and the surrounding community.

2. Spectacle will be the exclusive manager of the Colonial Theatre and provide year-round marketing, ticketing, booking, food and beverage services, calendar management, technical services, and facility management services for the Theatre.

3. Spectacle will provide a full-time operations manager to be based at the

Theatre.

4. Spectacle will train and hire professional event staff (box office associates, house managers, security, technical and food/beverage staff) and develop a volunteer usher staff from the local community as shall be required in connection with all Events and Activities.

5. Spectacle shall develop and maintain a professional web site, social media presence, ticketing system and other digital assets consistent with a professional Theatre operation.

6. Spectacle will pay for all the Facility's utilities, as well as internet and communications services and day to day facility cleaning and cleaning supplies.

7. Spectacle will deposit the greater of \$7,500 or 10% of concession revenue annually into a Colonial Theatre Expense Fund which, beginning July 1, 2022, will be used toward repairs, preventative maintenance, systems inspections (elevator, fire systems, etc.), capital improvement initiatives and to subsidize municipal and Laconia based non-profit events. Spectacle will quarterly provide to the City a concession income statement, with a copy to the Advisory Board.

(a) Spectacle shall provide all custodial and ordinary maintenance services required to maintain the Facility in good order and repair and in a clean and sanitary condition during the term of this Agreement. Spectacle will promptly notify City's representatives of the need for the repair of, or any apparent defect, malfunction or other inadequacy in, any HVAC, mechanical, electrical and plumbing systems, including seating, elevator, public address, lighting and fire and security monitoring systems. Any ordinary maintenance and day-to-day cleaning shall be made by Spectacle to the extent of operational funds (City appropriation and earned revenues) available. Items which

costs are in excess of \$500.00 will be reviewed by Spectacle and the Advisory Board to determine if an item is a repair or a capital repair or capital improvement. Spectacle shall not be responsible for any capital improvements, extraordinary repairs and any repairs required due to operational neglect which occurred prior to the commencement of this Agreement, unless caused by Spectacle.

(b) If Spectacle refuses or neglects to perform any services required under Article IV then the City shall have the right to perform such services for the account of Spectacle, and Spectacle will reimburse City for the cost thereof out of the budgeted operational funds received by Spectacle hereunder; provided, that the City will first give Spectacle five (5) days advance written notice of its intention to perform such services for the account of Spectacle to enable Spectacle to perform such services.

ARTICLE V

SPECTACLE RIGHTS AND RESPONSIBILITIES

1. Grant of Exclusive Right. City hereby grants to and confers upon Spectacle and Spectacle hereby accepts from City the exclusive right to occupy, operate and use the Facility, subject to all the terms and conditions herein. Spectacle shall have the exclusive right during the term of this Agreement to provide the services set forth in Article IV of this Agreement.

2. Other Rights and Responsibilities. Spectacle shall have the following additional rights and responsibilities:

(a) Spectacle will have the exclusive rights to promote and operate the Facility in connection with Other Events and Activities, whether promoted or co-promoted by City and/or other sublicensee of Spectacle. Spectacle will contract with national touring artists, at Spectacle's own financial risk, to perform at The Colonial Theatre.

(b) The exclusive right to control, sell, rent, supervise or give away (or assign to others the right to do so) advertising, refreshments, beverages, candies, food, snacks, souvenirs, T-shirts, programs and all other merchandise, catering and concessions (the Concession Activity) in connection with City Events and Activities and Other Events and Activities, and the non-exclusive likeness and image of the Colonial Theatre for such events.

(c) The exclusive right to charge admission to patrons of Other Events and Activities with the exception that non-profit organizations may be permitted to retain gate revenue from their events, less all applicable and mutually agreed upon expenses (ex: credit card fees).

(d) Municipal Uses: Spectacle shall make the Facility available to the City for City events and activities as directed by the City; for example, use by the School Department, City government uses, library events, Putnam Fund, etc.) as well as use of the theatre by non-profit organizations . With regard to municipal uses of the theatre:

i.) Such events will last for no more than three consecutive days;

ii.) There will be no more than fifteen (15) days of Municipal use per year and no more than five (5) Thursdays or Sundays and (5) Friday or Saturdays with no two Friday or Saturdays falling in the same month;

iii.) Spectacle will provide a sound/lighting technician at no cost for the event and will cover post-event cleaning costs. These expenses will be covered by the Colonial Theatre Expense Fund described below.

iv.) Two (2) of the fifteen (15) annual event days may be booked up to eighteen (18) months in advance based on available dates at that time. Six (6) of the fifteen (15) annual event days may be booked up to six (6) months in advance based on available

dates at that time, and the other seven (7) of the fifteen (15) annual event days may be booked no more than thirteen weeks in advance, so as to minimize loss of potential revenue-generating dates;

(e) Laconia Based Non-Profit Organization use of Theatre:

i.) Laconia based non-profit organizations may have use of the Facility by reservation. The Facility may be reserved by such groups on Mondays, Tuesdays and Wednesdays up to six (6) months in advance and on Thursdays, Fridays, Saturday or Sundays up to four (4) months in advance of the event date.

ii.) Laconia based non-profit organizations will pay a fee of \$250 for each rehearsal day and \$500 per performance day with an equal amount being funded from the Colonial Theatre Expense Fund to help cover expenses for these events. This rental fee shall include one event manager, box office services (if needed) and post event cleaning. Additional staffing and services shall be made available from Spectacle at an additional cost if requested by the renting organization.

(f) Spectacle will enter into an agreement with Bryan and Johanna Halperin to facilitate community Theatre programming at the Facility. This agreement will designate that Powerhouse Theatre Collaborative (under the auspices of the Belknap Mill) will create a resident Theatre company for the Colonial Theatre either by expanding their programming as the Theatrical-Artists-in-Residence at the Belknap Mill or by creating a new non-profit entity. Powerhouse Theatre Collaborative's community theater programming, as the "resident company" shall be rent-free for performance days and shall have rent-free access to the theater for rehearsals on days that the theater is not in use for other events. As the "resident company", it may reserve dates as far in advance as necessary. Spectacle will provide \$12,500 in start-up seed money for the

resident theatre company, paying Artists in Residence \$6,250 per year for the first two years of this Agreement.

ARTICLE VI

OTHER TERMS AND CONDITIONS

Spectacle will have the sole responsibility for and the sole right of control and supervision of its employees and the methods, details and all other aspects of its management of the Facility, subject, however, to the terms of this Agreement and the following additional terms and conditions:

(a) The City will provide Spectacle with an operating subsidy, which Spectacle shall use to cover utilities, cleaning and day-to-day maintenance not covered by the Colonial Theatre Expense Fund, and overall operational costs for the Colonial Theatre.

This annual operating subsidy shall be as follows:

- i.) January 1, 2021-June 30, 2021: \$72,000
- ii.) July 1, 2021- June 30, 2022: \$144,000
- iii.) July 1, 2022- June 30, 2023: \$148,320
- iv.) July 1, 2023- June 30, 2024: \$152,769
- v.) July 1, 2024- June 30, 2025: \$157,352
- vi.) July 1, 2025- June 30, 2026 \$162,073

(b) These payments shall be made in monthly installments, no later than the 15th day of each month for the previous month.

(c) The City's obligation for funding of this subsidy will be subject to annual appropriation. If such appropriation falls below the amount necessary to fund the payments described in (a) above, Spectacle shall have the option of terminating this Agreement.

(d) Spectacle shall market the Colonial Theatre to potential renters, engage renters, engage clients in rental agreements, set rental rates and policies, provide services to rental clients and receive all revenues resulting from operation and management of the Facility. These revenues shall be used to cover the costs to operate the Facility that are over and above those covered by the operating subsidy, and to create an opportunity for Spectacle to make a profit.

(e) The City will support Spectacle's application to the State of New Hampshire for a full liquor license and food service permits and will provide all other city-issued permits related to operation of the Facility at no cost to Spectacle.

(f) Spectacle agrees to maintain separate accounting and bookkeeping records for the services which it provides pursuant to this Agreement and to utilize generally accepted accounting principles and practices in such accounting records. Upon reasonable notice, the City will have the right to inspect records of concession revenues and expense fund transactions as pertains to the management of the Colonial Theatre Expense fund, and to make physical inventories of equipment, furnishing and materials to assure that actual inventories agree with records. Spectacle will keep all records for at least two (2) years after the expiration or termination of this Agreement.

(g) Spectacle will operate and conduct its operations so that all persons who patronize the Facility will be treated in an orderly, safe and satisfactory manner.

(h) Subject to the provisions of this Agreement, Spectacle will not allow any waste, nuisance or hazardous activities at the Facility, or engage, or permit others to engage, in any activity which may cause damage to the Facility.

(i) Spectacle will use its best efforts to ensure that its employees, agents, and licensees observe and obey all laws, ordinances, regulations and rules of the City, or of

any county, state or federal governments which are applicable to Spectacle and its management operations at the Facility.

(j) Spectacle will post, observe and enforce the requirements of NO SMOKING in the Facility.

(k) Spectacle will not sell or distribute, or permit to be sold or distributed, tickets or passes in excess of the capacity of the Facility, nor admit thereto a larger number of persons than can safely and freely move about therein.

(l) Spectacle will have the sole responsibility for the control over the distribution, posting, exhibition and removal of all signs, advertisements, show bills, lithographs, posters or cards of any description at, in or about the Facility. The Facility will be known by the name of, and will be referred to in all signs, advertisements, promotional materials, show bills, and the like as the Colonial Theatre.

(m) The City will entrust Spectacle with duplicate keys to the Facility. Spectacle will have control of the entrances and exits of the Facility and will assure that same are locked and unlocked at such times as will accommodate uses of the Facility. The City will have the right to enter the Facility and all parts thereof at reasonable times to make inspections of the Facility and all parts thereof.

(n) Spectacle will use its best efforts to ensure that nothing involved in any Event or Activity at the Facility violates or infringes any copyright, patent, right of privacy or other statutory or common law right of any person, firm or corporation, and that all copyrighted materials to be performed in connection with such Events and Activities has been duly licensed or otherwise authorized by the owners of such copyright or the owner s authorized representative.

(o) Spectacle will at all times maintain an adequate staff of employees on duty at

the Facility and will provide adequate supervision of such employees. Spectacle will employ or otherwise contract with only those persons who, by training, appearance and habits, are judged by Spectacle to be suitable workers in the atmosphere of a public institution. Spectacle agrees to employ, train and promote as much student labor as practical in its operations hereunder. All employees employed at the Facility will be on Spectacle payroll, and Spectacle will be responsible to the appropriate authority for all payroll taxes, Worker's Compensation Insurance, employer's portion of state and federal unemployment compensation tax, social security tax, and where applicable to eligible employees, accident and health insurance, life insurance. Spectacle will furnish its employees with appropriate uniforms, which will be laundered as necessary, all to the end that Spectacle operations and employees will present at all times a neat and attractive appearance.

(p) Spectacle will bear any loss resulting from dishonest acts on the part of its officers, employees and agents.

(q) Spectacle will be responsible for its labor relations with any trade or union representative among its employees and will negotiate and be responsible for adjusting all of the disputes between itself and its employees or any union representing such employees. Whenever Spectacle has knowledge that any actual or potential labor dispute is delaying or threatening to delay the timely performance of this Agreement, Spectacle will immediately give notice thereof to the City.

(r) Spectacle agrees, represents and warrants that it will not discriminate against any employee, applicant for employment, agent, sub-licensee, invitee or contractor because of race, color, religion, sex, age, national origin, handicap, or status as a disabled veteran.

(s) Spectacle will not do, or permit to be done, anything which may interfere with the effectiveness or accessibility of any utility connections or service in, on, or about the Facility, including water, electricity, telephones, waste and sewerage disposal, heat ventilation and air conditioning, and fire and security monitoring systems, or portions thereof, nor do, or permit to be done, anything which may interfere with free access and passage in the Facility and the adjacent and adjoining public areas, streets and sidewalks.

(t) Spectacle will not dispose of sweepings, rubbish or other substances in toilets or washbasins, nor otherwise use any equipment, furnishings and other property provided by the City other than for the intended purpose of such equipment, furnishings and other property.

(u) Spectacle will not, without the advance written approval of City's representative, remove from the Facility, or permit the removal of, any equipment, furnishings and other property of the City. If at any time the City supplies Spectacle with labels, plates, or other markings identifying equipment, furnishings and other property of the City, Spectacle will affix and keep the same in a prominent place on such equipment, furnishings and other property. Spectacle will not alter, disfigure or cover up any marks of identification displayed on any such equipment, furnishings and other property of the City.

(v) Spectacle will not install or remove any fixtures, partitions, equipment, furnishings or other property where to do so will deface, injure or damage the floors, walls, or ceilings of the Facility, and will not cause any structural alteration or other substantial physical change in the Facility, without in each case having obtained the advance written approval of the City Manager. A consent to a particular alteration,

addition, improvement or change will not be deemed a consent to alterations, additions, improvements, or changes in the future.

ARTICLE VII

INSURANCE

1. Worker's Compensation: Employer Liability. Spectacle will maintain in force, during the term of this Agreement, Worker's Compensation Insurance at New Hampshire statutory limits, and Employer's Liability Insurance at coverage of not less than \$1,000,000 per injury/disease.

2. General Liability. Spectacle will maintain in force, during the term of this Agreement, General Liability insurance applicable to services provided by Spectacle under this Agreement, at limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, including but not limited to business automobile liability. Such policies will name the City as an additional insured. The cost of such insurance will be paid for out of the operational funds received by Spectacle hereunder and the revenues derived from performances held in the Facility.

3. Delivery of Certified Copy to City. Spectacle or its insurance company/companies will complete, execute and deliver to the City, in advance of the commencement of Spectacle's operations pursuant to this Agreement, a certified copy of each of the insurance policies required by this Article, or a certificate or certificates evidencing the existence thereof, or binders. In the event any binder is delivered, it will be replaced within a reasonable period by a certified copy of the insurance policy or a certificate in lieu thereof. Each policy or certificate will contain a valid provision or endorsement showing (excepting Worker's Compensation) that the City has been included as an additional insured, and providing that the insurance policy may not be

canceled, terminated, or modified without giving thirty (30) days advance written notice thereof to City. All insurers must be satisfactory to City. Upon request, Spectacle will furnish to City satisfactory evidence of payment of premiums.

4. The City agrees that it will continue to adequately insure the physical structure of the Facility including, without limitation, to provide adequate fire insurance under its own insurance plan. To the best of its knowledge, the City is in compliance with all building codes, fire codes and any other similar codes, rules, regulations or statutes applicable to the Facility. During the term of this Agreement, the City will remain in compliance with such aforementioned codes, rules, regulations and statutes.

ARTICLE VIII

INDEMNIFICATION

To the fullest extent permitted by law, Spectacle shall protect, indemnify, save, defend and hold harmless the City, including its officials, agents, volunteers and employees (“Indemnified Parties”), from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs, interest and expenses, including but not limited to reasonable attorney and paralegal fees, which Indemnified Parties may become obligated or suffer by reason of any accident, bodily injury, personal injury, death of person, economic injury or loss of or damage to property, arising indirectly or directly under, out of, in connection with, or as a result of this Agreement or the activities of Spectacle or its agents, employees, contractors or subcontractors, and even if caused in part by any negligent act or omission of Indemnified Parties.

In addition, and regardless of respective fault, Spectacle shall defend, indemnify and hold harmless the Indemnified Parties for any costs, expenses and liabilities arising

out of a claim, charge or determination that Spectacle's officers, employees, contractors, subcontractors or agents are employees of the Indemnified Parties, including but not limited to claims or charges for benefits, wages, fees, penalties, withholdings, damages or taxes brought in connection with laws governing worker's compensation, unemployment compensation, social security, Medicare, state or federal taxation, and/or any other similar obligation associated with an employment relationship. Spectacle's obligations to defend, indemnify and hold harmless the Indemnified Parties hereunder shall survive the term of this Agreement.

The City shall not be required to defend or indemnify Spectacle, any subcontractor or any professional service provider.

ARTICLE IX

TERMINATION

1. Each term and condition of this Agreement is material and any breach or default by Spectacle or the City, as the case may be, in the performance of any such term and condition will be a material breach or default of the entire Agreement, for which the City or Spectacle will have the right to terminate this Agreement immediately, without penalty, except for , in the case of a termination by the City, payment of amounts owed to Spectacle (including, without limitation, expenses and fees) hereunder accrued to the date of such termination.

2. In addition, either party shall have the right to terminate this Agreement, for cause, by giving ninety (90) days advance written notice of the termination to the other party. Payment of amounts owed to either party (including, without limitation, expenses and fees accrued to the date of such termination), shall be made at the end of the

ninety (90) day notice period.

3. If, regardless of fault of the City, the Facility or any substantial part thereof is destroyed or damaged by fire or other cause, or if, irrespective of fault of the City, any casualty or unforeseen occurrence, including but not limited to acts of God, strikes, labor disputes, war or acts of governmental authorities, renders the Facility unoccupiable and/or unusable or otherwise render this Agreement impossible or impractical of performance by the City and/or Spectacle; the City will have the right to terminate this Agreement immediately and without penalty except for payment of amounts owed to Spectacle (including, without limitation, expenses and fees) to the date of such termination, and the personnel costs of Spectacle at the Facility for a period of 30 days thereafter.

ARTICLE X

SURRENDER: REMOVAL OF PROPERTY

1. Spectacle shall, upon the expiration or termination of this Agreement, peacefully surrender to the City possession of the Facility and all equipment, furnishings and other property at the Facility in good order, condition and repair, ordinary wear and tear and depreciation excepted, and Spectacle will forthwith remove all of its property from the Facility.

2. Spectacle agrees that if it fails to remove its property from the Facility within five (5) days following the expiration or termination of this Agreement, the City may, at its option, as agent for Spectacle and at Spectacle's risk and expense, remove such property to a public warehouse or storage facility or retain the same in its own possession and, upon the expiration of thirty (30) days after notice to Spectacle, City

may sell said property at public auction, the proceeds of which will be applied: first, to the expense of the sale, and second, to any sums owed by Spectacle to City. Any balance remaining will be paid to Spectacle.

ARTICLE XI

CITY'S REPRESENTATIVES

The City's representative for purposes of this Agreement shall be the City Manager and Spectacle's representatives for purposes of this Agreement shall be the President of Spectacle or his/her designee.

ARTICLE XII

GOVERNING LAWS: FORUM

This Agreement shall be governed by the laws of the State of New Hampshire, both as to interpretation and performance. Any action at law, suit in equity, or other judicial proceeding for the enforcement of this Agreement or any provision thereof will be instituted only in the courts of the State of New Hampshire located in Belknap County, New Hampshire.

ARTICLE XIII

INDEPENDENCE OF PARTIES

It is understood and agreed that nothing herein contained is intended or should be construed as creating or establishing a partnership between Spectacle and the City, or as constituting Spectacle as agent or representative of the City for any purpose or in any manner whatsoever. Spectacle is not authorized to bind the City to any contracts or other obligations. Spectacle will not expressly or impliedly represent to any party, including but not limited to co-promoters and third-party sub-licensees, that Spectacle and the City are partners or that Spectacle is the agent or representative of the City for

any purpose or in any manner whatsoever.

ARTICLE XIV

SEVERABILITY

Determination by a court of competent jurisdiction of the invalidity of any provision of this Agreement will not affect the validity of the remainder of the Agreement.

ARTICLE XV

NON-WAIVER

No failure to exercise or delay in exercising any right, power or remedy accruing to either party on account of any breach or default of the other party hereunder will impair any such right, power or remedy, or be construed as a waiver of any such breach or default or any similar breach or default thereafter occurring; nor will any waiver of any single breach or default be construed as a waiver of any other breach or default theretofore or thereafter occurring.

ARTICLE XVI

PARAGRAPH HEADING

The paragraph headings appearing herein will not be deemed to govern, limit, modify or in any manner affect the scope, meaning, or intent of the provisions of this Agreement.

ARTICLE XVII

NOTICES

All notices to be given under this Agreement will be deemed to be duly given when mailed by registered or certified mail, postage prepaid, to the City at:

Office of the City Manager
Laconia City Hall

45 Beacon Street East
Laconia, NH 03246

And at:

Spectacle Management
1775 Massachusetts Avenue, Second Floor
Lexington, MA 02420

ARTICLE XVIII

ENTIRE AGREEMENT

This Agreement embodies the entire Agreement of the parties and there are no other representations, promises, agreements, conditions or understandings, either oral or written, between them other than as set forth herein and therein. No subsequent alteration, amendment, change or addition to this Agreement will be binding upon either party unless reduced to writing and signed by both Parties.

ARTICLE XIX

SUBLICENSES: OTHER CONTRACTS

Spectacle shall have the right to enter into such sublicenses and other contracts as it deems appropriate or necessary to perform the services to be provided herein in accordance with the terms and conditions of this Agreement; provided that all such sublicenses are in good standing with the City, and that such sublicenses and other contracts are expressly subject to this Agreement and the sublicensee agrees to be bound by the terms and provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on this _____ day of _____, 2020.

CITY OF LACONIA

APPROVED:

Scott Myers , City Manager

SPECTACLE MANAGEMENT:

APPROVED:

Peter Lally, President