

RESOLUTION 13-14

Passed: March 11, 2013

AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS TO SIGN AN AMENDED AGREEMENT WITH PRESERVATION OF THE EGYPTIAN THEATRE (P.E.T.) FOR THE PURPOSE OF FINANCING FACILITY IMPROVEMENTS TO THE EGYPTIAN THEATRE WITH TAX INCREMENT FINANCING FUNDS NOT TO EXCEED \$890,000.

BE IT RESOLVED BY THE CITY COUNCIL of the City of DeKalb, Illinois, as follows:

Section 1. That the agreement entered into in May 2011 with the Preservation of the Egyptian Theatre (P.E.T.) be amended to allow for the purchase of a sprinkler system in lieu of air conditioning, a copy of which is attached hereto and made a part hereof as Exhibit "A," "subject to any changes acceptable to the Mayor with the advice of the City Manager.

Section 2. That the City Clerk of the City of DeKalb be authorized and directed to attest the Mayor's signature.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a regular meeting thereof held on the 11th day of March, 2013 and approved by me as Mayor on the same day. Passed on roll call vote 5-1-2. Aye: Teresinski, Gallagher, Baker, O'Leary, Povlsen. Nay: Jacobson. Absent: Lash, Naylor.

ATTEST:



DIANE K. WRIGHT, City Clerk



KRIS POVLSSEN, Mayor



**FY12-FY13
EGYPTIAN THEATRE
AMENDED TIF AGREEMENT**

AGREEMENT made this 11th day of March, 2013, by and between the City of DeKalb, Illinois, an Illinois Municipal Corporation, (hereinafter referred to as "City") and the Preservation of the Egyptian Theatre, Inc. (hereinafter referred to as "P.E.T."), a not for profit corporation.

RECITALS

WHEREAS, the City is implementing a Tax Increment Redevelopment Plan (hereinafter referred to as the "Plan") pursuant to the Illinois Tax Increment Allocation Redevelopment Act (hereinafter referred to as the "Act"); and,

WHEREAS, the City wishes to assist other agencies with projects that will enhance the overall redevelopment of the project area and the community; and,

WHEREAS, in 2010, the City issued a Ten Million Eight Hundred Thousand (\$10,800,000) General Obligation bond to finance the costs associated with the public streetscape improvements outlined in the Downtown Revitalization Plan which is repaid by Tax Increment Financing Funds; and,

WHEREAS, the City anticipates that the total cost of the public streetscape improvements will be significantly lower than originally estimated; and,

WHEREAS, P.E.T. is a local not for profit agency and needs assistance with improvements at the facility located within the Redevelopment Project Area covered by the Plan; and,

WHEREAS, said building improvements are eligible redevelopment project costs under the Act; and,

WHEREAS, to assist P.E.T. with these redevelopment projects thereby promoting the goals and objectives of the tax increment finance program of the City, the City desires to grant to the P.E.T. funding in a cumulative amount not to exceed Eight Hundred Ninety Thousand and No/100 Dollars (\$890,000) for Fiscal Years 2012 and Fiscal Year 2013 to pay for projects as they are identified herein.

WHEREAS, P.E.T. has Fifteen Thousand Nine Hundred Sixty One and 01/100 dollars (\$15,961.01) remaining from the FY11 TIF agreement and is requesting that this amount be carried over to FY12 to pay the costs associated with the air conditioning consultant.

WHEREAS, in 2012, P.E.T. publicly bid the air conditioning project and has

determined that the costs to complete are significantly higher than initially anticipated; and,

WHEAREAS, P.E.T. has requested that the funds which remain available in their FY12-FY13 agreement with the City of DeKalb be re-allocated to pay for the installation of a sprinkler system & associated plaster repairs and other capital projects. The City of DeKalb has determined this request is lawful; and,

NOW THEREFORE, the parties agree as follows:

I. FUNDING. For Fiscal Year 2012 and Fiscal Year 2013, the City shall grant to P.E.T. a cumulative amount not to exceed Eight Hundred Ninety Thousand and No/100 Dollars (\$890,000).

In addition, the City will carry over the amount of Fifteen Thousand Nine Hundred Sixty One and 01/100 dollars (\$15,961.01) which remains from the FY11 TIF agreement into Fiscal Year 2012. These monies shall be used solely and exclusively to pay the invoices associated with the air conditioning consultant and air conditioning installation.

As of January 28, 2013, Three Hundred Seventy Four Thousand Eighty and No/100 Dollars (\$374,080) in TIF funds remain unspent from FY12/FY13 agreement, The City hereby grants FY13 TIF funds in the amount of One Hundred Thousand Dollars and No/100 (\$100,000). The total amount of funds available is Four Hundred Seventy Four Thousand Eighty and No/100 Dollars (\$474,080). These monies shall be used to pay the invoices associated with the installation of a sprinkler system and related plaster repairs, followed by items listed in the prioritized list of capital expenditures provided in Exhibit "A".

A. All invoices for the installation of a sprinkler system and associated plaster repairs completed in Fiscal Year 2013 shall be forwarded to the City of DeKalb no later than October 1, 2013.

B. Notwithstanding the above, TIF funds which remain available after the sprinkler system has been paid for in full may be used as outlined below. All remaining TIF funds shall be invoiced and forwarded to the City of DeKalb no later than October 1, 2013. All monies provided through this agreement must be expended by October 15, 2013.

P.E.T. hereby certifies that no portion of the monies to be received from the City through this Agreement shall be used for payment of any debt owed by the P.E.T. at the time of execution of this document nor for any other purpose than the purposes which are specifically provided for payment by the City as identified within this agreement. P.E.T. further agrees and acknowledges that it shall comply with all applicable laws and regulations governing the use of the funds allocated herein.

II. ELIGIBLE USE OF FUNDS: All monies allocated by the City to P.E.T. through its Tax Increment Finance program shall be used solely and exclusively for the following described projects:

FY2012:

- A. Replacement of Auditorium seats
- B. Replacement of Sound System
- C. Air Conditioning Consultant

FY2013:

- A. Installation of a sprinkler system and associated plaster repairs
- B. Other repairs to the building as listed on the priority capital repair list shown in Exhibit "A". All funds authorized to be utilized in accordance with this Agreement shall be applied to projects in the order listed on Exhibit A (the priority capital repair list), with projects being completed sequentially, in order of listed priority. In the event that P.E.T. wishes to deviate from this priority listing and fund projects in an alternate order, or to fund a project not listed on Exhibit A, it shall submit the same to the City Manager for consideration. The City Manager may: 1) approve of such alternate project or order; b) reject such alternate project or order and require adherence to the prioritization listing in Exhibit A; or, 3) require the same to be submitted to the City Council for review and consideration, and for amendment of this Agreement.

P.E.T. hereby certifies it shall comply with all provisions for the public bidding of projects whose cost shall exceed twenty thousand dollars (\$20,000) and shall obtain a minimum of two (2) cost quotes for all projects under that amount, unless specifically permitted otherwise by the City of DeKalb. The Auditorium seat replacement project is excluded from this requirement due to its unique nature and limited number of contractors who can meet the project's specifications. The Auditorium seat replacement project will be completed by Irwin Seating.

P.E.T. certifies that all contractors employed to complete the improvements described herein shall pay their employees the appropriate prevailing wage as provided in the State of Illinois Prevailing Wage Act. Further, Owner agrees and acknowledges that: 1) it shall have all contractors and bidders complete a set of Certifications in the form attached hereto as Exhibit "B".

III. PAYMENT. All requests for payment of bills associated with the work noted in Section II of this Agreement shall first be submitted in writing to the Economic Development Coordinator for the City of DeKalb, who shall be responsible for the timely review and approval of all requests for payment, and shall be charged with the oversight provisions contained within this Agreement. The City of DeKalb is obligated to reimburse only those TIF eligible expenses incurred with all applicable requirements and to the extent that budgeted funds are available.

IV. STATUS REPORT. P.E.T. shall make an oral year end status report to the City Council no later than the first City Council meeting in May 2012 and May 2013 which shall summarize all activities and rehabilitation projects undertaken by the organization during the term of this Agreement.

V. FAILURE TO PERFORM. In the event that either party fails to perform any of its obligations under this Agreement, if the non-defaulting party delivers written notice of non-

performance to the defaulting party and the defaulting party fails or refuses to cure the default within 28 days of receipt of the written notice of default, then the non-defaulting party may declare this Agreement null, void and of no further effect and the Parties shall have no further obligations between each other under this Agreement. Alternatively, the not-defaulting party may seek any relief it considers appropriate at law or in equity in a court of competent jurisdiction.

VI. EQUAL OPPORTUNITY. P.E.T. shall not discriminate in its employment, operations, or business practices on the basis of race, creed, color, sex, military service status, age, national origin, matriculation, sexual orientation or disability.

VII. DRUG FREE WORKPLACE. P.E.T. shall operate under the terms and conditions of the City's adopted Drug Free Workplace policy during the term of this Agreement.

VIII. SUBMISSION OF ANNUAL BUDGET, YEAR END FINANCIAL STATEMENTS, AUDITOR'S REPORT & MEETING MINUTES: P.E.T. shall annually submit a copy of their approved annual budget, Year end financial statements, Auditor's Report and copies of any board meeting minutes of any meeting where the receipt or use of City funding is discussed or acted upon within thirty (30) days of the approval of such documents.

IX. P.E.T. hereby certifies it shall comply with the Open Meetings Act when the receipt or use of City funding is discussed or acted upon.


X. INSURANCE AND INDEMNIFICATION:

P.E.T. agrees that it shall indemnify, defend and hold harmless the City, its agents, employees, contractors, elected and appointed officials, and related parties from any and all claims of any nature relating to the use, maintenance or operation of the Egyptian Theater, the funding of any expenses contemplated by this Agreement, the conduct of any repairs or improvements to the Egyptian Theater, or in any way relating to or arising out of this Agreement or the funding contemplated herein. Any defense or indemnity of the City under the terms of this Agreement shall be performed by parties acceptable to the City in its discretion. Further, P.E.T. shall provide the City of DeKalb with a certificate of insurance naming the City as additional primary insured without right of subrogation, on a policy of insurance for commercial general liability, from an issuer and with policy limits acceptable to the City Manager. Such insurance shall be maintained for the full duration of this Agreement. P.E.T. shall also require any contractors performing work, maintenance, repairs or upgrades to the Egyptian Theater to provide adequate and appropriate insurance which names P.E.T. and the City of DeKalb as additional primary insureds without right of subrogation. Further, P.E.T. shall provide and maintain any form of insurance required by law, and the City may demand proof of such other insurance upon request.

XI. TERM OF AGREEMENT. This Agreement shall be in effect from July 1, 2011 to October 15, 2013.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date so shown at the beginning.

CITY OF DEKALB

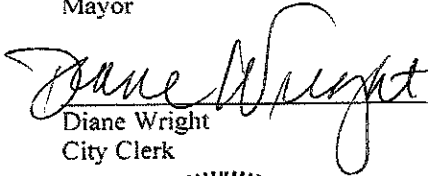


Kris Povisen
Mayor

PRESERVATION OF THE
EGYPTIAN THEATRE *INC.*



Ryan Weckerly
President



Diane Wright
City Clerk



Exhibit "A" Prioritized List of Capital Expenditures for the Egyptian Theatre.

FY2013:

Sprinkler System Install
Plasterwork & Painting repairs in
auditorium
Replace Interior Fire Doors
Replace Stage Fire Curtain
Replace Stage Skirt
Repair lighting in mezzanine women's
restroom
Complete final phase of sound system
Install Sound System Electrical Panel
Replace Stage Door Alley
Repair Marquee Electrical circuits
Repair Auditorium Fans
Add Emergency Lighting on stage (USR &
USL)
Exterior tuckpointing
Replace aisle lights
Replace ladders to ceiling
Install access to auditorium ceiling attic
Replace Auditorium Ceiling Lights
Replace water heaters
Security Cameras

Future Projects:

Replace Main Curtain, Main Border, and
Valance
Repair Organ Lofts for Wurlitzer Organ
Restore and Install Wurlitzer Theatre Organ
Replace Front Doors
Replace carpet
Install shore power outside
Security System (Alarm)
Install keyless entry system
Replace Lighting Dimmer Racks
Replace Lighting Electrical Panel
Plasterwork & Painting in office
Replace stage loading doors
South Expansion
Air Conditioning
Bathroom Expansion (main floor and
mezzanine)
Concessions Renovation (main floor and
mezzanine)
New Box Office Area
Office Area
Storage Area
Multi-purpose Meeting Area
Elevator
Stage Expansion
More Backstage Space
Loading Docks
Storage
Additional Dressing Rooms
Laundry Facilities
Rehearsal Space
Black Box Theatre & Screening Room
Install new lift in orchestra pit
Replace Marquee

Exhibit "B" Certifications

Employment Status : The Bidder certifies that if any of its personnel are an employee of the State of Illinois, they have permission from their employer to perform the service.

Anti-Bribery : The Bidder certifies it is not barred under 30 Illinois Compiled Statutes 500/50-5(a) - (d) from contracting as a result of a conviction for or admission of bribery or attempted bribery of an officer or employee of the State of Illinois or any other state.

Loan Default : If the Bidder is an individual, the Bidder certifies that he/she is not in default for a period of six months or more in an amount of \$600 or more on the repayment of any educational loan guaranteed by the Illinois State Scholarship Commission made by an Illinois institution of higher education or any other loan made from public funds for the purpose of financing higher education (5 ILCS 385/3).

Felony Certification : The Bidder certifies that it is not barred pursuant to 30 Illinois Compiled Statutes 500/50-10 from conducting business with the State of Illinois or any agency as a result of being convicted of a felony.

Barred from Contracting : The Bidder certifies that it has not been barred from contracting as a result of a conviction for bid-rigging or bid rotating under 720 Illinois Compiled Statutes 5/33E or similar law of another state.

Prevailing Wage: The Bidder certifies that it shall comply with all applicable provisions of the Prevailing Wage Act, and further certifies that it is not in violation of said Act and has not been barred from bidding on this proposal by virtue of a past violation of the Act.

Drug Free Workplace : The Bidder certifies that it is in compliance with the Drug Free Workplace Act (30 Illinois Compiled Statutes 580) as of the effective date of this contract. The Drug Free Workplace Act requires, in part, that Bidders, with 25 or more employees certify and agree to take steps to ensure a drug free workplace by informing employees of the dangers of drug abuse, of the availability of any treatment or assistance program, of prohibited activities and of sanctions that will be imposed for violations; and that individuals with contracts certify that they will not engage in the manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.

Non-Discrimination, Certification, and Equal Employment Opportunity : The Bidder agrees to comply with applicable provisions of the Illinois Human Rights Act (775 Illinois Compiled Statutes 5), the U.S. Civil Rights Act, the Americans with Disabilities Act, Section 504 of the U.S. Rehabilitation Act and the rules applicable to each. The equal opportunity clause of Section 750.10 of the Illinois Department of Human Rights Rules is specifically incorporated herein. The Bidder shall comply with Executive Order 11246, entitled Equal Employment Opportunity, as amended by Executive Order 11375, and as supplemented by U.S. Department of Labor regulations (41 C.F.R. Chapter 60). The Bidder agrees to incorporate this clause into all subcontracts under this Contract.

International Boycott: The Bidder certifies that neither it nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated under that Act (30 ILCS 582).

Record Retention and Audits : If 30 Illinois Compiled Statutes 500/20-65 requires the Bidder (and any subBidders) to maintain, for a period of 3 years after the later of the date of completion of this Contract or the date of final payment under the Contract, all books and records relating to the performance of the Contract and necessary to support amounts charged to the City under the Contract. The Contract and all books and records related to the Contract shall be available for review and audit by the City and the Illinois Auditor General. If this Contract is funded from contract/grant funds provided by the U.S. Government, the Contract, books, and records shall be available for review and audit by the Comptroller General of the U.S. and/or the Inspector General of the federal sponsoring agency. The Bidder agrees to cooperate fully with any audit and to provide full access to all relevant materials.

United States Resident Certification : (This certification must be included in all contracts involving personal services by non-resident aliens and foreign entities in accordance with requirements imposed by the Internal Revenue Services for withholding and reporting federal income taxes.) The Bidder certifies that he/she/it is a: United States Citizen or Corporation Resident Alien Non-Resident Alien The Internal Revenue Service requires that taxes be withheld on payments made to non resident aliens for the performance of personal services at the rate of 30%.

Tax Payer Certification : Under penalties of perjury, the Bidder certifies that its Federal Tax Payer Identification Number or Social Security Number is _____ and is doing business as a (check one): Individual Real Estate Agent Sole Proprietorship Government Entity Partnership Tax Exempt Organization (IRC 501(a) only) Corporation Not for Profit Corporation Trust or Estate Medical and Health Care Services Provider Corp.