

RESOLUTION 2015-070

PASSED: JULY 27, 2015

AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS TO ENTER INTO A FY2016 TAX INCREMENT FINANCING AGREEMENT WITH PRESERVATION OF THE EGYPTIAN THEATRE (PET) FOR FACILITY IMPROVEMENTS TO THE EGYPTIAN THEATRE IN AN AMOUNT NOT TO EXCEED \$330,000 BEGINNING JULY 1, 2015 THROUGH JUNE 30, 2016.


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

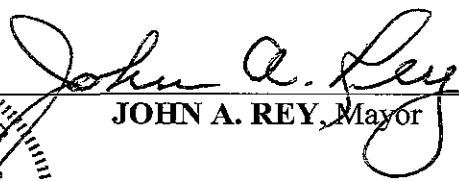
Section 1. That the Mayor of the City of DeKalb be authorized and directed to execute an Agreement with Preservation of the Egyptian Theatre (P.E.T.) for Tax Increment Financing (TIF) funds in the amount of Three Hundred Thirty Thousand No/100 Dollars (\$330,000) for FY16 (and rollover of any unspent funds from preceding years' allotment) for facility improvements at the Egyptian Theatre, a copy of which is attached hereto and made a part hereof as Exhibit "A," subject to such changes as shall be acceptable to the Mayor on 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 27th day of July, 2015 and approved by me as Mayor on the same day. Passed by a roll call vote of 6-2. Aye: Finucane, Marquardt, Snow, Noreiko, Baker, Rey. Nay: Jacobson, O'Leary. Absent: None.

ATTEST:


JENNIFER JEEP JOHNSON, City Clerk


JOHN A. REY, Mayor



**FY16 EGYPTIAN THEATRE
TIF AGREEMENT**

AGREEMENT made this 22nd day of June, 2015, 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, 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 Three Hundred Thirty Thousand and No/100 Dollars (\$330,000) for Fiscal Year 2016 to pay for projects as they are identified herein; and

NOW THEREFORE, the parties agree as follows:

I. FUNDING. For Fiscal Year 2016 the City shall grant to P.E.T. an amount not to exceed Three Hundred Thirty Thousand and No/100 Dollars (\$330,000). These monies shall be used to pay the invoices associated with an operations feasibility study (\$50,000), updating air conditioning engineering documents (\$180,000), and the items listed in the prioritized list of capital expenditures (\$100,000) provided in Exhibit "A". The updating of air conditioning engineering documents project shall not commence until the operations feasibility study has been completed and reviewed by the City Council. All invoices for work associated with the operations feasibility study, air conditioning engineering, and the items listed in Exhibit "A" completed in Fiscal Year 2016 shall be forwarded to the City of DeKalb no later than July 15, 2016. Any portion of the \$100,000 allocated to the prioritized list of capital expenditures that goes unspent within a given year may be rolled over to the following or subsequent years, with the City reserving the right to limit such future rollover in its sole discretion.

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 an operations feasibility study, updating air conditioning engineering documents, and the items listed in the prioritized list of capital expenditures provided in Exhibit "A."

All funds authorized to be utilized in accordance with this Agreement shall be applied to an operations feasibility study, updating air conditioning engineering documents, and 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.

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 second City Council meeting in June 2016 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 not 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. 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.

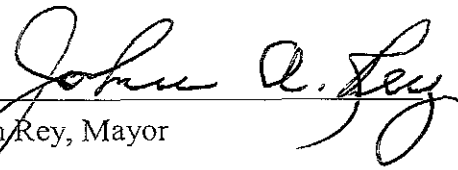
X. WAIVER OF MASS GATHERING PERMIT FEE FOR THE HAUNTED HOUSE EVENT: P.E.T. agrees to complete all documentation required for the issuance of a mass gathering permit by the City for the Haunted House event in October-November, 2015. The fee associated with said permit is hereby waived.

XI. TERM OF AGREEMENT. This Agreement shall be in effect from July 1, 2015 to June 30, 2016.

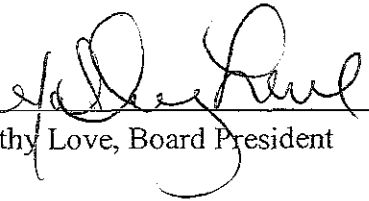
IN WITNESS WHEREOF, the parties have executed this Agreement on the date so shown at the beginning.

CITY OF DEKALB

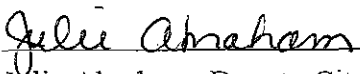
PRESERVATION OF THE EGYPTIAN
THEATRE



John Rey, Mayor



Kathy Love, Board President



Julie Abraham, Deputy City Clerk



Exhibit "A"

Prioritized List of Capital Expenditures for the Egyptian Theatre.

Future Projects:

Install air conditioning
Replace aisle lighting
Stage rigging repairs
Fall arrest safety system for front of house truss
Replace stage cyc lights and controls
Replace lighting electrical panel
Boiler & plumbing repairs
Building electrical repairs
Plaster repairs in auditorium
Replace movie screen/frame
Replace ceiling lights in balcony
Replace ceiling lights in under balcony
Refinish stage floor
Plasterwork & painting restoration in auditorium
Replace front of house raceway and cabling
Replace lighting dimmer racks
Replace main curtain, border and valance
Replace ceiling lights in lobby and foyer
Replace architectural lighting in theatre with LED lighting
Upgrade and restore marquee
Replace rear lobby ceiling lights
Install security cameras
Install security system
Replace carpet
Plasterwork & painting restoration in office
Replace stage loading doors

Installation of Wurlitzer Theatre Organ (can't be completed until Theatre has AC)

Future Building Addition(s) to include:

Larger restrooms
Renovated and additional concessions with ADA access
Larger box office area with ADA access
Office area
Storage
Elevator
Multi-purpose and meeting rooms
Dressing rooms with ADA access
Additional backstage space
Loading dock
Laundry facilities
Production facilities and storage

Exhibit "B"
Bidder Certifications

Sexual Harassment: The Bidder certifies that it is in compliance with the Illinois Human Rights Act 775 ILCS 5/1.101, et seq. including establishment and maintenance of sexual harassment policies and program.

Tax Delinquency: The Bidder certifies that it is not delinquent in payment of any taxes to the Illinois Department of Revenue in accordance with 65 ILCS 5/11-42.1, and is not delinquent in the payment of any tax, charge or obligation to the City of DeKalb.

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 ILCS 5/33E-3 (Bid Rigging) or 720 ILCS 5/33-4 (Bid Rotating) or a similar law of another state or of the federal government.

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. A copy of the most recent available list of prevailing wages is attached hereto or has been provided to the Bidder. The Bidder is responsible for regularly updating said list as new prevailing wage rates are made available by the City or by the Illinois Department of Labor. The Illinois Department of Labor posts regular updates to prevailing wage rates on its official website, which is currently www.illinois.gov/idol. This notice is given pursuant to 820 ILCS 130/4 and the balance of the Illinois Prevailing Wage Act, which is incorporated herein by reference as if fully restated.

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. The Bidder further certifies that it maintains a substance-abuse program and provide drug testing in accordance with 820 ILCS 130/11G, Public Act 095-0635

Responsible Bidder Requirements: The Bidder certifies that it complies with the Illinois Procurement Code and the provisions of Section 30-22 thereof relating to apprenticeship and training, if applicable.

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.

Authorized in Illinois: The Bidder that it is authorized to lawfully transact business in the State of Illinois, under all applicable Illinois laws and regulations. The Bidder certifies that it shall comply with the Corporate Accountability for Tax Administration Act, 20 ILCS 715/1, *et. seq.* Where applicable, the Bidder certifies that it is not barred from bidding by virtue of having been adjudicated to have committed a willing or knowing violation of Section 42 of the Environmental Protection Act within the five years preceding this bid, pursuant to 415 ILCS 5/1, *et. seq.* The Bidder further certifies that it is in compliance with all applicable requirements of the Business Enterprise for Minorities, Females and Persons with Disabilities Act, 30 ILCS 575/1, *et.seq.*

Export Administration, Supplies, Labor: The Bidder certifies that neither it nor any substantially owned affiliate is participating, nor shall participate, in an international boycott which is in violation of the provisions of the US Export Administration Act of 1979 or the regulations of the US Department of Commerce promulgated under the Act, including but not limited to the requirements of 30 ILCS 582/5. The Bidder further certifies that no foreign made equipment, materials or supplies furnished under the proposal or agreement have been or will be produced in whole or in part by forced labor, convict labor, or indentured labor, nor made in whole or in part by the labor of any child under the age of 12, under penal sanction pursuant to 30 ILCS 583/1 and 30 ILCS 584/1. The Bidder certifies that steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in

the United States, unless the City Manager grants an exception to said requirement, pursuant to 30 ILCS 565/1, *et. seq.*

General Compliance and Certification: The Bidder certifies that it has and will comply with all other applicable laws, regulations, ordinances or restrictions applicable to any component of the bidding process, agreement, or any services or materials provided in connection therewith. The Bidder acknowledges that it is responsible for identifying and complying with all applicable laws, ordinances, rules and regulations, and that it shall indemnify and hold harmless the City of DeKalb from any claim, liability or damages arising out of the failure to identify or comply with any such applicable legal restriction.