

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE DEPARTMENT OF GENERAL SERVICES TO ENTER INTO AN AGREEMENT WITH THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES LOCAL 140 FOR STAGE, TECHNICAL, AND CREW SERVICES DURING SCHEDULED EVENTS AT THE SOLDIERS AND SAILORS MEMORIAL AUDITORIUM, TIVOLI THEATRE, AND THE ROBERT KIRK WALKER COMMUNITY THEATRE, WITH SERVICE FEES BILLABLE TO CIVIL FACILITIES LICENSEES IN FULFILLMENT OF LICENSE AGREEMENTS.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Department of General Services to enter into an agreement with the International Alliance of Theatrical Stage Employees Local 140 for stage, technical, and crew services during scheduled events at the Soldiers and Sailors Memorial Auditorium, Tivoli Theatre, and the Robert Kirk Walker Community Theatre, with service fees billable to civil facilities licensees in fulfillment of license agreements.

ADOPTED: _____, 2013

/mms

City of Chattanooga



Resolution/Ordinance Request Form

Date Prepared: 5/15/2013

Preparer: Thaddeus Oliver

Department: General Services

Brief Description of Purpose for Resolution/Ordinance: Res./Ord. # _____ Council District # 7

A resolution authorizing the Director of General Services to enter into an agreement with the International Alliance of Theatrical Stage Employees Local 140 for stage technical and crew services during scheduled events at the Soldiers & Sailors Memorial Auditorium, Tivoli Theatre, and the Robert Kirk Walker Community Theatre, with service fees billable to civic facilities licensees in fulfillment of license agreements.

Name of Vendor/Contractor/Grant, etc.	<u>I.A.T.S.E. Local 140</u>	New Contract/Project? (Yes or No)	<u>Yes</u>
Total project cost \$	<u>0</u>	Funds Budgeted? (YES or NO)	<u>NO</u>
Total City of Chattanooga Portion \$	<u>0</u>	Provide Fund	<u>_____</u>
City Amount Funded \$	<u>0</u>	Provide Cost Center	<u>_____</u>
New City Funding Required \$	<u>0</u>	Proposed Funding Source if not budgeted	<u>Facilities licensees</u>
City's Match Percentage %	<u>_____</u>	Grant Period (if applicable)	<u>_____</u>

List all other funding sources and amount for each contributor.

<u>Amount(s)</u>
<u>\$ _____</u>
<u>\$ _____</u>
<u>\$ _____</u>

<u>Grantor(s)</u>
<u>_____</u>
<u>_____</u>
<u>_____</u>

Agency Grant Number _____

CFDA Number if known _____

Other comments: (Include contingency amount, contractor, and other information useful in preparing resolution)

FEES WILL BE CHARGED DIRECTLY TO FACILITIES RENTERS AT THE TIME OF EVENT SETTLEMENT.

Approved by: _____

Reviewed by: FINANCE OFFICE

DESIGNATED OFFICIAL/ADMINISTRATOR

Please submit completed form to @budget, City Attorney and City Finance Officer

Revised: October, 2011

**Stage Crew Staffing Services
For
Soldier's and Sailor's Memorial Auditorium,
Tivoli Theatre,
and
Robert Kirk Walker Community Theatre**

THIS AGREEMENT, is made and entered into this ____ day of _____, 2013, by and between Local 140 of the International Alliance of Theatrical Stage Employees, a Tennessee labor organization, with its principal place of business located at 913 Mt. Vernon Avenue Chattanooga, Tennessee 37405 ("Contractor"), and the CITY OF CHATTANOOGA, TENNESSEE, a municipal corporation ("City").

RECITALS

WHEREAS, City Council Resolution No. _____ authorized the Department of General Services (the "Department") to enter into an Agreement with the Contractor for stage staffing services during scheduled events at the Soldier's & Sailor's Memorial Auditorium, Tivoli Theatre, and Robert Kirk Walker Community Theatre.

WHEREAS, Contractor has been selected by the Department to provide stage crew staffing services as more particularly described below.

NOW, THEREFORE, in consideration of the faithful performance of the terms, covenants, and conditions and the mutual obligations of the parties as set forth herein, the parties agree as follows:

1. Statement of Intent. This Agreement provides for stage crew staffing services during scheduled events at the Soldier's and Sailor's Memorial Auditorium, Tivoli Theatre and Robert Kirk Walker Community Theatre (collectively, the "Facilities").

2. Background. The Facilities consist of three theatres, a multi-use exhibit hall, as well as meeting and rehearsal rooms. The Facilities host a wide range of events, including concerts, Broadway theatre, cultural events, public and private meetings, dance, symphony and opera. There is a three (3) year, two hundred sixty (260) performance average for the Facilities.

3. Scope of Services. Contractor agrees to provide City with the following stage crew staffing services: stage management, stage technical coordination, including without limitation rigging, wardrobe services, sound and light and board operation, and other back of house coordination (the "Services").

4. Staffing. For each event held at the Facilities, show promoters and venue renters shall determine the number of staff necessary to provide the Services. City will notify Contractor of upcoming scheduled events prior to the beginning of each month and the staffing level required within three (3) days of each event.

Contractor shall fulfill the Services by providing professional, experienced staff to the venue on a per event basis. The Services shall include the following staffing positions: Stage Manager/Crew Manager/Steward, Stagehand, Wardrobe Personnel, Stage Rigger, Truck Loader, Stage Technicians, Sound and Lighting Board Operators meeting the job descriptions as set forth in City’s Request for Proposal, attached hereto as **Exhibit A** and incorporated herein by reference.

5. Term. This Agreement shall be for a period of twelve (12) months from the Effective Date (the “Initial Term”). Upon expiration of the Initial Term, this Agreement may be renewed, at City’s sole option and subject to availability of funding, for two (2) additional twelve-month periods.

6. Payment. Contractor shall be compensated for the Services described herein as follows:

<u>Job Designation</u>	<u>Rate (in dollars)</u>
Stagehand and Wardrobe personnel	15.00 Per hour each, 4-hour minimum
Rigger	20.00 Per hour each, 4-hour minimum
Rigger for Open Steel Rigging	28.00 Per hour each, 4-hour minimum
Loader for trucks less than 20’, vans, and buses	20.00 Flat rate per loader
Loader for one truck only, 48’ and 52’ in length	60.00 Flat rate per loader
Loader for 2+ trucks, 48’ and 52’ in length	25.00 Per hour each, 4-hour minimum

With the following specifications:

- A. Work conducted after 8 hours in one day will be charged at 150% of the above hourly rates.
- B. Rehearsals and performances are \$60.00 each, with a four (4) hour maximum. After four hours, time will be charged by the hourly rate. Performance call begins thirty (30) minutes prior to curtain call.
- C. Any combination of more than two rehearsal or performance calls in one day will be charged at 150% the above rates for the additional rehearsal or performance.
- D. Stage crew will receive a 15-minute break after two (2) hours of the commencement of work, and a one (1) hour break four (4) hours after the commencement of work. If no meal break is taken by the fifth hour of work, one additional hour will be charged.
- E. A job steward will be compensated at stagehand rate on productions that require ten (10) or more personnel.
- F. In addition to the above rates, an administrative fee of 22% will be charged by Contractor to the total stage invoice.

Payment shall be made to Contractor within seven (7) days of City's receipt of an invoice that details the Services provided following each event held at the Facilities. Invoices shall be sent to:

City's accounts payable office by mail:
City of Chattanooga, Accounts Payable Division
101 East 11th Street, Suite 101
Chattanooga, TN 37402

OR

Soldiers and Sailors Memorial Auditorium by facsimile: (423) 757-5326

OR

Civic Facilities Management by electronic mail:
stone_mark@chattanooga.gov or mcglasson_m@chattanooga.gov

It is understood and agreed by the parties that City is contracting with Contractor as an agent for promoters of individual events or performances held at the Facilities and, therefore, the fees charged for Contractor's Services will be passed to the individual promoters.

Contractor agrees to pay all federal, state and local taxes incurred in the performance of this Agreement.

7. Operations and Personnel.

- A. The public's right shall not be infringed upon by any activity of the Contractor or any of its employees. The activities of the Contractor shall be such as to render the Services to the public in a dignified manner. Contractor shall provide the Services pursuant to the laws of the State of Tennessee and shall in no way interfere with the orderly operation of any event.
- B. The Contractor shall not advertise in any manner or form, on or about the Facilities.
- C. Programming for all events held at the Facilities requiring Contractor's Services shall be performed by the Director/General Manager or an authorized representative or designee. Any and all programming offered by the Contractor utilizing the Facilities shall be accepted and incorporated into the official calendar of events, provided, however, that such activities are consistent with the policies of the Director/General Manager and the City and further provided that said events are not in competition or conflict with the Facilities' sponsored events.

- D. The Contractor shall provide any additional personnel requested by the Director/General Manager if in the Director/General Manager's discretion the level of service to the public is deemed unsatisfactory.
- E. Employee appearance reflects upon both the Contractor and the Facilities. Therefore, employees of the Contractor shall at all times be neatly attired in uniforms which will be clean, professional in appearance, and which properly identify the Contractor. Uniforms must be consistent in appearance for all employees. If "street attire" is incorporated into the uniform, standards of uniformity in appearance and quality will apply without exception.
- F. The Contractor shall employ and compensate its own employees or subcontractors and all employees or subcontractors of Contractor shall meet all requirements set out in this Agreement.
- G. Contractor's employees shall be courteous toward the patrons, the public, and their fellow employees.
- H. All of Contractor's employees shall enter and leave the Facilities via the entrance(s) so designated by the Director/General Manager.
- I. Only those employees of Contractor actually working shall be permitted in the Facilities without charge. The Director/General Manager or his designee may request that the Contractor remove any employees observed in the Facilities attending events for which they are not scheduled to work. At no time will the Contractor or its employees permit the free entrance of any person not a bona fide employee for such event or events, and no surplus of employees will be permitted for any event. Violations of this policy on the part of either the Contractor or its employees will be subject to termination of this Agreement.
- J. The Contractor shall at all times enforce by adequate supervision and training of its supervisory personnel a safe working environment for all employees, including the supervision of the Services provided under this Agreement. Furthermore, the Contractor agrees to conduct all of its operations with due diligence and care for the safety of all persons at all times.
- K. The Contractor agrees to fully cooperate with City and any employee and public safety program sponsored by the Director/General Manager.
- L. The Director/General Manager shall decide any and all questions which may arise as to the acceptability of the Services rendered by Contractor and as to the manner of performance by Contractor.

8. Compliance with Laws; Accounting, Auditing, Records

- A. **Compliance with Laws** - All Contractor's operations must conform to the laws and ordinances of the City, State of Tennessee and federal laws, and such operations must be conducted so as not to interfere with any person or organization which has properly engaged the Facilities or patrons' enjoyment of the premises. Contractor shall be subject to any reasonable rules and regulations which may be set up by the Director/General Manager or duly authorized representative or designee.

- B. **Audit Provisions** – The City or its assigns may audit all financial and related architect records (including digital) associated with the terms of the contract or agreement, including timesheets, reimbursable out-of-pocket expenses, materials, goods and equipment claimed by the Contractor's records to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the contract or agreement) or to identify conflicts of interest.

The Contractor shall, at all times during the term of the contract or agreement and for a period of seven (7) years after the end of the Agreement, as required by MTAS Records Retention Manual adopted by the Owner, keep and maintain records of the work performed pursuant to this Contract or Agreement. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the Contractor. Documents shall be maintained by the Contractor necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. The Contractor shall, at its own expense, make such records available for inspection and audit (including copies and extracts of records as required) by the City at all reasonable times and without prior notice.

The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between the Contractor and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to the City.

Costs of any audits conducted under the authority of this Section and not addressed elsewhere will be borne by the City unless the audit identifies significant findings that would benefit the City. The Contractor shall reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City.

This Section shall not be construed to limit, revoke, or abridge any other rights, powers or obligations relating to audit which the City may have by

federal, state or municipal law, whether those rights, powers or obligations are express or implied.

- C. **Records** - All records relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Contractor or the Contractor's Contractors, shall be made available for inspection and copying upon written request to the Owner. Additionally, said records shall be made available, upon request by the Owner, to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the Project, its design and its construction. Said records expressly include those documents reflecting the time expended by the Contractor and its personnel to perform the obligations of this Agreement and the records of expenses incurred by the Contractor in its performance under said Agreement. The Contractor shall maintain and protect these records for no less than seven (7) years after final completion of the Project, or for any longer period of time as may be required by applicable law, good architectural practice, and upon notice during the pendency of any claims or litigation arising from the Project.

9. Insurance. At no additional cost to the City, Contractor will procure and maintain for the duration of this Contract insurance of the types and in the amounts described below against claims for injuries to persons or damages to property which may arise from or in connection with the performance of this Agreement by Contractor, its agents, representatives, employees, volunteers, or subcontractors.

A. Commercial General Liability Insurance.

Contractor agrees during the term of this Agreement to maintain occurrence version commercial general liability insurance or equivalent form with a limit of not less than One Million Dollars (\$1,000,000) each occurrence for bodily injury, personal injury and property damage. If such insurance contains a general aggregate limit, it will apply separately to this Agreement, or be no less than two (2) times the occurrence limit. Contractor agrees to provide the insurance policies at its sole expense, with commercially reasonable increases in coverage, but in no event shall the insurance coverage be less than the limits set by the Tennessee Governmental Tort Liability Act, as may be amended. Such insurance will:

- (1) Contain or be endorsed to contain a provision that includes the City, its officials, officers, and employees as insureds with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. The coverage will contain no special limitations on the scope of protection afforded to the above listed insureds. Liability coverage

can be provided in the form of an endorsement to Contractor's insurance or as a separate owner's policy; and

- (2) For any claims related to this Agreement, be primary insurance as respects the City, its officials, officers and employees. Any insurance or self-insurance programs covering the City, its officials, officers and employees will be in excess of insurance and will not contribute with it.

B. Workers' Compensation and Employer's Liability Insurance.

Contractor shall maintain workers' compensation insurance with statutory limits as required by the State of Tennessee and employers' liability insurance with limits of not less than One Million Dollars (\$1,000,000). Contractor shall require each of its subcontractors to provide workers' compensation for all of the subcontractor's employees to be engaged in such work unless such employees are covered by Contractor's workers' compensation insurance coverage.

C. Automobile Insurance.

Contractor shall maintain automobile liability insurance for owned vehicles, hired and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.

D. Professional Liability Insurance.

Contractor shall maintain in full force and effect through the term of this Agreement professional liability insurance coverage appropriate to the Contractor's profession of not less than One Million Dollars (\$1,000,000.00) for each claim and \$1,000,000.00 policy aggregate limit.

E. Additional Insurance Requirements.

Contractor shall include the City as additional insured on all business and property insurance. Proof of said insurance shall be provided to the City's Risk Manager.

Contractor shall:

- (1) Prior to commencement of services, furnish City with original certificates of insurance and any amendatory endorsements effecting coverage required by this Section, and provide that such insurance will not be cancelled, allowed to expire, or be materially reduced in coverage except on thirty (30) days' prior written notice to the City Attorney and Risk Manager of City;
- (2) If requested by City, provide certified copies of endorsements and policies in lieu of or in addition to certificates of insurance;

- (3) Replace certificates, policies and endorsements for any such insurance expiring prior to completion of services;
- (4) Maintain such insurance from the time services commence until services are satisfactorily completed, and note that failure to maintain or renew coverage or to provide evidence of renewal may be treated by City as a breach of contract;
- (5) Place such insurance with an insurer that is licensed to do business in Tennessee and has an A.M. Best Company rating of no less than AV; and
- (6) Require all subcontractors to maintain during the terms of this Agreement, Commercial General Liability insurance, Business Automobile Liability insurance and Workers' Compensation/ Employers' Liability insurance (unless subcontractor's employees are covered by Contractor's insurance) in the same manner as specified for Contractor, and furnish subcontractor's certificates of insurance to City prior to the commencement of work.

Furthermore, any deductibles or self-insured retentions must be declared to and approved by City.

10. Representations of Contractor. Contractor represents, warrants and covenants to City that:

- A. Contractor has full power and authority to enter into this Agreement and to perform the Services described herein. Execution of this Agreement by Contractor will not violate any other Agreement with a third party. The person signing this Agreement on behalf of Contractor has been properly authorized and empowered to enter into this Agreement.
- B. There are no pending or threatened suits, legal proceedings, claims, or investigations against or with respect to Contractor relating to the provision of the Services, as more specifically described in this Agreement.
- C. All statements made and materials supplied by Contractor regarding its qualifications to perform the Services contemplated under this Agreement, including, without limitations, Contractor's response to City's request for proposals, are true and correct and are not misleading or incomplete for any reason, including by reason of omission.

11. Indemnification. Contractor agrees to protect, defend, indemnify, and hold City and its officers, employees, and agents free and harmless from and against any and all losses, penalties, damages, injuries, settlements, costs, charges, professional fees or other expenses or

liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with the performance of the Services provided by Contractor, its agents, servants, employees or subcontractors, or anyone directly employed by any of them for his acts any of them may be liable. This indemnification shall survive the expiration or sooner termination of this Contract.

12. Independent Contractor. Contractor agrees to provide the Services enumerated hereinabove as an independent contractor and not as an employee of City. It is understood and agreed that City will not withhold any amount for payment of taxes from the compensation of Contractor hereunder. Contractor shall not represent to be or hold itself out or any of its employees to be an employee of City. Nothing herein contained shall create or be construed as creating a partnership or joint venture between City and Contractor. Contractor is not an agent of City. It is understood and agreed by the parties that the relationship of Contractor and City is to be and shall remain that of an independent contractor with respect to the Services performed under this Agreement.

13. Termination. Either party may terminate this Agreement without cause for any reason. A termination of the Agreement shall not be deemed a breach of the Agreement. Each party shall give the other party at least ninety (90) days written notice before the effective termination date. The Contractor shall be entitled to compensation for authorized completion of satisfactory Services as of the termination date, but in no event shall City be liable to Contractor for compensation for any service not rendered. The final decision as to the amount for which Contractor may be entitled for completion of Services shall be determined by City. Should City exercise its right to terminate this Agreement, the Contractor shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

14. Assignment. Contractor may not assign this Agreement, or any part hereof, without prior written approval of the City. Any attempt to assign without such approval shall be void and shall constitute grounds for termination of this Agreement at City's option.

15. Non-discrimination. Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the employment practices of Contractor on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by the federal, state or other laws. Contractor shall, upon request, show proof of such non-discrimination and shall post in conspicuous places, available to all employees and applicants, notices of non-discrimination; and further, there shall be no discrimination regarding any use, service, maintenance, or operation of the Facilities, nor will Contractor allow any subcontractors to so discriminate.

16. Notice. Any notice or communication permitted or required by this Agreement shall be deemed effective when personally delivered or deposited, postage prepaid, in the First Class Mail of the United States, properly addressed to the appropriate party at address set forth below:

Contractor
Business Agent
I.A.T.S.E. LOCAL 140
P.O. Box 132
Chattanooga, Tennessee 37401

City of Chattanooga
Director, Civic Facilities
City of Chattanooga
399 McCallie Avenue
Chattanooga, Tennessee 37402

17. Miscellaneous.

- A. The City is not obligated to third parties, and the City shall not be obligated or liable hereunder to any party other than the Contractor.
- B. If any provision of this Agreement is determined to be unenforceable or invalid, such determination shall not affect the validity of other provisions contained in this Agreement. Failure to enforce any provision of this Agreement does not affect the rights of the parties to enforce such provision in another circumstance, nor does it affect the right of the parties to enforce any of the provision of this Agreement at any time.
- C. This Agreement shall be governed and construed in accordance with the laws of the State of Tennessee.
- D. This Agreement shall be binding upon and shall inure to the benefit of Contractor and City and to their respective successors and assigns.
- E. This Agreement forms the entire agreement between the City and the Contractor. Any prior representations, promises, agreements, or otherwise, between the parties, which are not embodied in this writing, will be of no force and effect.
- F. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have by their duly authorized representatives set their signatures.

CONTRACTOR

CITY

By: _____

Its: _____

Its: _____

Printed Name: _____

Printed Name: _____

Date: _____

Date: _____