

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF ARCATA AND PLAYHOUSE ARTS

This **MEMORANDUM OF UNDERSTANDING** (“MOU”) is hereby made and entered into by and between the City of Arcata, a California municipal corporation (“City”) and Playhouse Arts, a California 501(c)3 non-profit organization (“Playhouse”), serving as the fiscal sponsor for the community program commonly known as Comunidad Unida de Norte Arcata (“CUNA”). City and Playhouse may each be referred to herein individually as a “Party” or collectively as the “Parties”. There are no other parties to this MOU.

RECITALS

A. **WHEREAS**, the City and Playhouse desire to continue a partnership for continued efforts to sponsor Playhouse’s community services in the Valley West neighborhood through community engagement and strategic collaboration.

B. **WHEREAS**, in collaboration with the City, Playhouse hopes to build trust among the city government, residents and local businesses in the Valley West community through the continued development of CUNA.

C. **WHEREAS**, Playhouse and the City desire to expand community networks within Valley West and identify community needs and priorities in order to create services, outlets and employment for community members who are in need of support.

NOW THEREFORE, in consideration of the mutual promises herein contained, and other good and valuable consideration, the Parties agree as follows:

AGREEMENT

Section 1. Recitals. The recitals set forth above (“Recitals”) are true and correct and are hereby incorporated into and made part of this MOU by this reference. In the event of any inconsistency between the Recitals and Sections 1 through 10 of this MOU, Sections 1 through 10 shall prevail.

Section 2. Term. The term of this MOU shall be for one (1) year, commencing on December 1, 2023, and terminating on November 30, 2024 (the “Term”). The Parties may agree to renew this MOU, annually based on mutually agreeable conditions by the express written consent of both Parties. Either Party may terminate this MOU with sixty (60) days written notice, pursuant to the notice requirements set forth in this MOU.

Section 3. Statement of Mutual Benefit and Interest. The Parties have demonstrated an interest in building a stronger community by investing in the Valley West community to enhance social and economic health in the area. Some shared objectives include:

- A. Undertaking beautification projects to create an enhanced sense of community well-being, and to support the economic advancement of local businesses, including travel and hospitality industries negatively impacted by the COVID-19 pandemic that are prominently located in this neighborhood;

- B. Fostering community connections between residents and local businesses that have expertise in Valley West's needs and assets in order to identify what resources and services are necessary to support community members in need.
- C. Providing services that support community members' physical, and mental health, and well-being, to assist households, and support local businesses.

This collaborative partnership will mutually benefit the City and Playhouse's collective intent to assist the Valley West community by addressing the needs of residents and helping with improvements to the neighborhood.

Section 4. City Funding Assistance. The City agrees to provide funding to Playhouse during the Term of this MOU in the following amount: \$71,500.

Section 5. Funding Limitations. This partnership and its programs are intended to respond to the COVID-19 public health emergency and its negative economic impacts to households, small businesses, and nonprofits in the Valley West neighborhood, and to aid the impacted tourism, travel, and hospitality industries that are prominently located in this neighborhood. Programs funded through the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) may not be used in the following ways: as non-Federal cost share or match, where prohibited; deposited into a pension fund; or used directly to service debt, satisfy a judgment or settlement, or contribute to a "rainy day" fund.

Section 6. Mutual Obligations of the Parties.

- A. Playhouse agrees to perform the following services as part of the partnership with the City by and through this MOU:
 - 1. Maintain and expand networks within Valley West through monthly CUNA meetings. Playhouse is encouraged to conduct three (3) meetings per month with Latinx community members to be held in Spanish (such as with the Pacific Union District English Learner Advisory Committee); with a bilingual one with community organization partners; and one with City staff.
 - 2. Expand engagement and leadership development within Valley West neighborhoods, particularly within the Spanish-speaking community in Valley West.
 - 3. Continue to cultivate relationships with several Valley West businesses.
 - 4. Explore opportunities for further community health supports and social services in Valley West in partnership with Cumbre Humboldt and other local health/education nonprofits, e.g. language interpretation services, food or diaper drop-offs, vaccine clinic (i.e. creating "resiliency hub" services prior to the creation of a physical center).
 - 5. Host and outreach for 1-2 community engagement events per quarter targeted towards bringing together the Valley West community and inviting participation in Valley West from the broader community.
 - 6. Conduct community cleanups. Host a community cleanup/continue adopt-a-park cleanup events at Hallen Park or Carlson Park.
 - 7. Publish/distribute and maintain an appropriate community news outlet whether through social media, a community bulletin or newsletter delivered door-to-door.

Tie media posts/newsletters to the newly created Valley West webpage on the City's website.

8. Assist the City in outreaching and research for specific projects as requested by the City.
9. Provide quarterly summaries of milestones and work products (community engagement events, attendance, etc.) to the City Manager, due every three (3) months from the start date of this MOU, through the Term.

B. The City agrees to perform the following as part of the partnership with Playhouse by and through this MOU:

1. Provide clear direction through this MOU and any amendments as to the priorities for work.
2. Provide regular feedback surrounding the effectiveness of the partnership and any desired changes to the scope of work.
3. Designate a primary communication lead and liaison with other City Departments.
4. Provide financial support to Playhouse during the Term as set forth in this MOU.
5. Support appropriate grant opportunities applied for by Playhouse in support of the Valley West community.
6. Remove or provide free access to a disposal location within Valley West for solid waste gathered through community cleanups.
7. Continue to explore the possibility of hosting a summer camp session or pop-up recreational programming in Valley West.

C. It is mutually agreed by and between the Parties to the following:

1. Playhouse and the City will communicate openly about any matter regarding the partnership outlined herein in a timely manner.
2. Any change in the MOU or the protocols developed under this MOU will require the joint approval of Playhouse and the City.
3. It is the intention of Playhouse and the City that this partnership will continue for the full MOU term, but should it not be deemed satisfactory, this MOU can be modified or terminated at any time by either Party with sixty (60) days' notice.

Section 7. Indemnification. To the fullest extent permitted by law, Playhouse agrees to indemnify, defend and hold harmless, the City, and any and all boards, officers, employees, volunteers, and agents through legal counsel reasonably acceptable to the City, from and against any and all claims, losses, demand and expenses, including but not limited to, reasonable attorney's fees and cost of litigation, on account of bodily injury, including death, or property damage arising out of or in any way connected to the services performed by Playhouse under this MOU.

Playhouse further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at Playhouse's sole expense and agrees to bear all other costs and expenses related thereto. Without affecting the rights of the City under any provision of this MOU, Playhouse shall not be required to indemnify and hold harmless City for liability attributable to

the active negligence of the City, provided such active negligence is determined by agreement between the Parties or by the findings of a court of competent jurisdiction.

To the fullest extent permitted by law, the City agrees to indemnify, defend and hold harmless, Playhouse, and any and all boards, officers, employees, assigns and successors in interest through legal counsel reasonably acceptable to Playhouse, from and against any and all claims, losses, demand and expenses, including but not limited to, reasonable attorney's fees and cost of litigation, on account of bodily injury, including death, or property damage arising out of or in any way connected to the services performed by the City under this MOU.

The City further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at City's sole expense and agrees to bear all other costs and expenses related thereto. Without affecting the rights of Playhouse under any provision of this agreement, City shall not be required to indemnify and hold harmless Playhouse for liability attributable to the active negligence of Playhouse, provided such active negligence is determined by agreement between the Parties or by the findings of a court of competent jurisdiction.

Section 8. Insurance. Playhouse shall maintain throughout the duration of the MOU, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of work hereunder by Playhouse, its agents, representatives, employees or subcontractors.

Coverage shall be at least as broad as:

- A. *Commercial General Liability (CGL):* Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent on an "occurrence" basis. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits shall be no less than \$2,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate. Additional insured coverage for the City shall not be limited to its vicarious liability. Defense costs must be paid in addition to limits. Playhouse's policy shall contain no endorsements limiting coverage beyond the basic policy coverage granted.
- B. *Automobile Liability:* ISO Form Number CA 00 01, covering Code 1 (Any Auto) or if Playhouse has no owned autos, Code 8 (hired) and 9 (non-owned). Limits are subject to review, but in no event to be less than \$2,000,000 per accident for bodily injury and property damage. If City approves Playhouse or Playhouse's employees use of personal autos on this project, Playhouse shall provide evidence of personal auto liability coverage for each such person.
- C. *Workers Compensation Insurance:* covering all employees and volunteers as required by the State of California on a state-approved policy form, and Employer's Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.
- D. *General Conditions Pertaining to Insurance:* The insurance policies are to contain, or be endorsed to contain, the following provisions:
 1. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Playhouse including materials, parts, or

equipment furnished in connection with such work or operations.

- i. General liability coverage can be provided in the form of an endorsement to the Playhouse's insurance at least as broad as one of the following ISO ongoing operations Forms: CG 20 10 or CG 20 26 or CG 20 33 (not allowed from subcontractors), or CG 20 38; and one of the following ISO completed operations Forms: CG 20 37, 2039 (not allowed from subcontractors), or CG 20 40.
2. It is a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage and/or limits required in this section shall be available to the City as an additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.
3. For any claims related to this contract, Playhouse's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of Playhouse's insurance and shall not contribute with it.
4. All self-insured retentions (SIR) must be disclosed to the City for approval and shall not reduce the limits of liability. Policies containing any SIR shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.
5. The City reserves the right to obtain a full certified copy of any insurance policy and any endorsement. Failure to exercise this right shall not constitute a waiver of the City's right.

Playhouse shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, Playhouse shall forthwith obtain and submit proof of substitute insurance.

6. Playhouse hereby grants to City a waiver of any right to subrogation which any insurer of said Playhouse may acquire against the City by virtue of the payment of any loss under such insurance. Playhouse agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. However, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Playhouse, its employees, agents and subcontractors. Playhouse agrees to require that all subcontractors and sub-subcontractors do likewise.

7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all required coverages and an additional insured endorsement to Playhouse's general liability policy, shall be delivered to the City at or prior to the execution of the Agreement.
8. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Playhouse shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect the City's protection without the City's prior written consent.

Section 9. Notice. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this MOU or by law to be served on or given to either Party hereto by the other Party hereto, shall be in writing and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier.

Notices will be addressed to the Parties as follows:

If to City: City of Arcata
 Attn: Karen Diemer, City Manager
 736 F Street, Arcata, CA 95521
 Phone: (707) 825-2200
 Fax: (707) 822-8018
 E-mail: kdiemer@cityofarcata.org

If to Playhouse: _____

Either Party may change its address for the purpose of this section by giving thirty (30) days prior written notice of such change to the other Party in the manner provided in this section.

Section 10. General Provisions.

- A. *Governing Law and Venue.* This MOU shall in all respects be interpreted, enforced, and governed by and under the laws of the State of California, applicable to instruments, persons, and transactions having legal context and relations solely within the State of

California. Venue for any action to enforce this MOU shall be in the California Superior Court, in and for the County of Humboldt.

B. *Headings*. The descriptive headings of the sections and paragraphs contained in this MOU are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions.

C. *Severability*. If this MOU, in its entirety, is determined by a court to be invalid or unenforceable, this MOU shall automatically terminate as of the date of final entry of judgment. If any provision of this MOU shall be determined by a court to be invalid and unenforceable, or if any provision of this MOU is rendered invalid or unenforceable according to the terms of any federal or state statute, which becomes effective after the Effective Date of this MOU, the remaining provisions shall continue in full force and effect and shall be construed to give effect to the intent of this MOU.

D. *Waiver*. Any Party's failure to require compliance with the conditions of this MOU, or to exercise any right provided herein, shall not be deemed a waiver by such Party of such condition or right.

E. *Sole and Only Agreement*. This instrument constitutes the sole and only agreement between the City and Playhouse with respect CUNA as herein specified, and correctly sets forth the obligations of the Parties to each other as of its date. Any agreements or representations which are not expressly set forth in this MOU, are null and void.

F. *Amendment/Waiver*. This MOU cannot be amended, modified, or revised unless done in writing and signed by the Parties. No provision may be waived except in a writing signed by both Parties. The failure by a Party to enforce any provision of this MOU or to require performance by the other Party will not be construed to be a waiver, or in any way affect the right of either Party to enforce such provision thereafter.

G. *Mandatory and Permissive*. "Shall" and "will" and "agrees" are mandatory. "May" or "can" are permissive.

H. *Successors and Assigns*. All representations, covenants, and warranties specifically set forth in this MOU, by or on behalf of or for the benefit of any or all the Parties hereto, shall be binding upon and inure to the benefit of such Party, its successors, and assigns.

I. *Counterparts*. This MOU may be executed in counterparts, and also executed shall constitute an agreement that shall be binding upon the Parties.

J. *Other Documents*. The Parties agree that they shall cooperate in good faith and agree to execute and deliver such other instruments or documents as may be necessary and convenient to fulfill the purposes and intentions of this MOU.

K. *Time is of Essence*. Time is expressly declared to be the essence of this MOU.

L. *Authority*. The Parties have full and complete authority to enter into this MOU and to perform all acts and incur all obligations created under this MOU without the consent or approval of any other person or entity. The Parties warrant that each is legally competent to execute this MOU. When duly executed and delivered, this MOU shall be valid and binding upon the Parties and shall be fully enforceable against the Parties in accordance with its terms.

M. *Document Preparation.* The language of this MOU shall be construed as a whole according to its fair meaning, and not strictly for or against either of the Parties.

N. *Advice of Legal Counsel.* Each Party acknowledges that it has reviewed this MOU with its own legal counsel and, based upon the advice of that counsel, freely entered into this Agreement.

O. *No Joint Venture.* This MOU shall not constitute or create any form of association, joint venture, partnership, or cooperative activity, of any nature whatsoever, for any purpose between the Parties. This MOU shall not constitute or create a trust, express or implied, for the benefit of Playhouse or any other persons.

[Signatures on following page]

IN WITNESS WHEREOF, this MOU has been entered into by and between City and Playhouse this ____ day of _____ 20__.

CITY OF ARCATA, a municipal corporation

PLAYHOUSE ARTS

Karen Diemer, City Manager

[Authorized Signatory]

DATED: _____

DATED: _____