

RESOLUTION NO. 20-2021

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA
APPROVING THE SECOND AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE
CITY OF PACIFICA AND THE PACIFICA SPINDRIFT PLAYERS FOR PREMISES LOCATED
AT 1050 CRESPI DR (COMMONLY KNOWN AS THE PACIFICA SPINDRIFT THEATER).**

WHEREAS, the City of Pacifica owns property located at 1050 Crespi Drive (“Property”);
and

WHEREAS, the Pacifica Spindrift Players (PSP) currently lease a building on the Property
(also known as the Spindrift Theater and formerly known as the Pacifica Cultural Arts Center)
 (“Building”); and

WHEREAS, PSP has leased the Building from the City since 1994, the current lease
agreement was entered into on January 1, 2015 (the “Lease”) with an initial term for five years
and an additional five-year option, which will expire December 31, 2024; and

WHEREAS, the current Lease does not include the parking lot on the Property as part of
the leased space and the Lease specifically prohibits PSP from conducting certain activities on
the Property outside of the Building; and

WHEREAS, the Pacifica Spindrift Players are not able to produce its typical 7-show
season of theatrical productions inside and has therefore submitted to the City a Temporary COVID-
19 Outdoor Activities Application as part of the Temporary COVID-10 Outdoor Activities Program
established pursuant to Emergency Order No. 2020-02 (and amended by Emergency Order No.
2020-04); and

WHEREAS, the Temporary COVID-19 Outdoor Activities Program allows businesses within
the City to conduct outdoor commercial activity for a temporary period during the Local Emergency
due to COVID-19; and

WHEREAS, in July, 2020 PSP submitted a Temporary COVID-19 Outdoor Activities
Application to present a series of outdoor theatrical readings in the parking lot on the Premises, to
be held over eight (8) weekends in August, September and October, 2020; and

WHEREAS, on October 12, 2020, the Council approved the First Amendment to the
Lease, to allow PSP use the parking lot only for the outdoor performances during weekends in
August, September and October, 2020; and

WHEREAS, as of March 17, 2021, San Mateo County is in Tier 3 (Orange) of the state’s
four-tiered, color-coded reopening system, “Blueprint for a Safer Economy”; and

WHEREAS, PSP has submitted a second Temporary COVID-19 Outdoor Activities
Application to present a series of outdoor theatrical performances to begin May 15, 2021 and

continuing until San Mateo County has deemed it safe to return to indoor theatrical productions (“Outdoor Activities”); and

WHEREAS, the City desires to implement a Second Amendment to the Lease Agreement with PSP to allow for temporary usage of the parking lot for the outdoor theatrical performances for the Outdoor Activities.

NOW, THEREFORE, THE PACIFICA CITY COUNCIL HEREBY RESOLVES AS FOLLOWS:

1. The City Council hereby approves the Second Amendment to the Lease Agreement between the City of Pacifica and the Pacifica Spindrift Players, attached hereto.
2. The City Manager is hereby authorized to execute the Second Amendment to the Lease Agreement in the form attached hereto as Exhibit A, with minor revisions that may be approved by the City Manager and City Attorney, and to execute any other necessary documents to effectuate the terms of the Second Amendment to the Lease Agreement and take all steps necessary to carry it into effect.

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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Pacifica, California, held on April 26, 2021 by the following vote of the members thereof:

AYES, Councilmembers: Beckmeyer, Bier, Bigstycck, O’Neill, Vaterlaus.

NOES, Councilmembers: n/a

ABSENT, Councilmembers: n/a

ABSTAIN, Councilmembers: n/a



Sue Beckmeyer, Mayor

ATTEST:

APPROVED AS TO FORM:



Sarah Coffey, City Clerk



Michelle Marchetta Kenyon, City Attorney

Exhibit A

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE (this “**Second Amendment**”) is made and entered into as of April 28, 2021 (the “**Effective Date**”), by and between the **CITY OF PACIFICA**, a municipal corporation of the State of California (“**Landlord**” or “**City**”), and **PACIFICA SPINDRIFT PLAYERS**, a California non-profit corporation (“**Tenant**”).

RECITALS

- A. Landlord is the owner of certain property located at 1050 Crespi Drive, Pacifica, California 94044 (“**Property**”). Pursuant to that certain Lease Agreement entered into as of January 1, 2015 (the “**Lease**”), Landlord currently leases to Tenant and Tenant leases from Landlord the building located on the Property (“**Building**”), an approximately 7,463 contiguous square foot building commonly known as the Pacifica Spindrift Theater, together with Improvements (if any) as described in Section 9.1 of the Lease (collectively, the “**Premises**”).
- B. Pursuant to the Lease, the Premises does not include the parking lot on the Property, and the Lease specifically prohibits Tenant from conducting certain activities on the Property outside of the Premises.
- C. As a result of the COVID-19 pandemic, Tenant is not currently able to produce its typical 7-show season of theatrical productions inside the Building.
- D. Tenant submitted to the City a Temporary COVID-19 Outdoor Activities Application seeking to obtain authorization for outdoor activities to present a series of outdoor theatrical readings, to be held over eight (8) weekends in August, September and October, 2020. The City and Tenant entered into an Outdoor Activities and Encroachment Agreement on September 11, 2020, which was contingent on the Landlord’s approval of a First Amendment to the Lease to allow the use of the parking lot for the outdoor activities.
- E. On October 12, 2020, the Landlord approved the First Amendment to the Lease via Resolution 63-2020, to amend the terms of the Lease to allow a series of outdoor theatrical readings in the parking lot on the Premises, to be held over eight (8) weekends in August, September and October, 2020.
- F. As a result of the ongoing COVID-19 pandemic, Tenant is not currently able to produce its typical 7-show season of theatrical productions inside the Building, and Tenant must again seek authorization from the City to present a series of outdoor theatrical performances to begin May 15, 2021 and continuing until San Mateo County has deemed it safe to return to indoor theatrical productions, as further described in the Application and in Appendix 1; the Application and Appendix 1 are attached to this Second Amendment collectively, as **Exhibit A**.
- G. Tenant is seeking authorization to conduct outdoor theatrical performances (“**Outdoor Activity**”) in a portion of the parking lot on the Property, as depicted on **Exhibit B**, attached hereto (the “**Temporary Use Area**”). In order for the City to approve the Outdoor Activity, Tenant must obtain Landlord’s consent to use the Temporary Use Area for the Outdoor Activity and Tenant must enter into an outdoor activities and encroachment agreement with the City, a sample form agreement is depicted in **Exhibit C**, attached hereto.
- H. Landlord is willing to consent to Tenant’s use of the Temporary Use Area for the Outdoor Activity, pursuant to the terms and conditions of this Second Amendment, and Tenant is willing to agree to use the Temporary Use Area for the Outdoor Activity pursuant to the terms and conditions of this Second Amendment.

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

- 1. **Permit to use Temporary Use Area.** As of the Effective Date of this Second Amendment and continuing until the earlier of: (a) the date that the Lease terminates; or (b) the date the Landlord terminates Tenant’s use of the Temporary Use Area, as is Landlord’s right as set forth in this paragraph (the “**Term of Temporary Use**”). Landlord permits Tenant to use the Temporary Use Area, as part of the Premises, so long as Tenant uses the Temporary Use Area in accordance with the terms and conditions of this Second Amendment. Landlord has the absolute right to revoke

Tenant's use of the Temporary Use Area at any time for any reason, in Landlord's sole and absolute discretion.

2. **Use of the Temporary Use Area.** Tenant shall use the Temporary Use Area only for Outdoor Activity authorized by the City through an outdoor activity and encroachment agreement(s), in substantially the same form as Exhibit C attached hereto or some other land use permit. Use of the Temporary Use Area shall at all times be in accordance with the terms and conditions of the Lease, this Second Amendment, the terms set forth in the outdoor activity and encroachment agreement(s) between the parties, including but not limited to compliance with the all of the orders, directives and guidelines of San Mateo County, the State of California order regarding COVID-19 and any other conditions imposed by the City.
3. **Temporary Use Area is Part of the Premises during the Term of Temporary Use.** During the Term of Temporary Use, the Temporary Use Area shall be deemed a part of the Premises under the Lease, and all provisions, and terms and conditions of the Lease regarding the Premises shall apply as equally to the Temporary Use Area as they do to the Premises. To the extent necessary to effectuate the Temporary Use, Landlord temporarily waives the restrictions on Tenant set forth in Rules 13 and 16.6 of the Rules and Regulations set forth in Exhibit C to the Lease.
4. **Insurance.** In addition to Tenant's obligations under Section 6 of the Lease, Tenant shall procure commercial general liability insurance coverage (occurrence form) for the Temporary Use Area, and Tenant shall provide Landlord with an additional insured endorsement attached to the certificate of insurance, naming Landlord as an additional insured on the commercial liability insurance policy.
5. **Spindrift School of Performing Arts (SSPA).** Tenant shall obtain a written acknowledgment from SSPA, acknowledging that Tenant has the right to use the Temporary Use Area pursuant to this Second Amendment.
6. **Tenant's Obligations after Each Performance and at the End of the Temporary Use Term.** Within twelve (12) hours of the end of each performance in the Temporary Use Area, Tenant shall clear the Temporary Use Area of all furniture, equipment, debris and other materials, except the stage, to allow for complete unobstructed access to the parking lot on the Property. At the end of the Temporary Use Term, Tenant shall remove any markings, signs, the stage and any other evidence of the Outdoor Activity to comply with the terms of Section 9.5 of the Lease with regard to the Temporary Use Area.
7. **Landlord's Rights.** Landlord reserves and maintains all rights, power and authority Landlord has pursuant to the terms of the Lease, including but not limited to Landlord's rights under the Indemnity provisions of Section 7 of the Lease, and all rights, powers and authorities it has as a landlord and as a municipal corporation under applicable law.
8. **Miscellaneous.**
 - 8.1 The Lease, First and Second Amendment and any outdoor activity agreement(s) entered into between the parties set forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. Under no circumstances shall Tenant be entitled to any rent abatement, improvement allowance, leasehold improvements, or other work to the Premises, or any similar economic incentives that may have been provided Tenant in connection with entering into the Lease, unless specifically set forth in this Amendment.
 - 8.2 Except as herein modified or amended, the provisions, conditions and terms of the Lease and the First Amendment shall remain unchanged and in full force and effect. The capitalized terms used in this Second Amendment shall have the same definitions as set forth in the

Lease, to the extent that such capitalized terms are defined therein and not redefined in this Second Amendment.

- 8.3 Submission of this Second Amendment by Landlord is not an offer to enter into this Second Amendment but rather is a solicitation for such an offer by Tenant. Landlord shall not be bound by this Second Amendment until Landlord has executed and delivered the same to Tenant.
- 8.4 Tenant hereby represents to Landlord that Tenant has dealt with no broker in connection with this Second Amendment. Tenant agrees to indemnify and hold Landlord and the Landlord Entities harmless from all claims of any brokers claiming to have represented Tenant in connection with this Second Amendment.
- 8.5 This Second Amendment and the Lease shall be construed as a whole in order to effectuate the intent of the parties to amend the Lease in the manner specified in this Second Amendment. All provisions of the Lease that are affected by this Second Amendment shall be deemed amended regardless of whether or not specified in this Second Amendment. In the case of any inconsistency between the provisions of the Lease and this Second Amendment, the provisions of this Second Amendment shall govern and control.
- 8.6 Each signatory of this Second Amendment represents hereby that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting. Tenant hereby represents and warrants that neither Tenant, nor any persons or entities holding any legal or beneficial interest whatsoever in Tenant, are (i) the target of any sanctions program that is established by Executive Order of the President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury (“**OFAC**”); (ii) designated by the President or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56, Executive Order 13224 (September 23, 2001) or any Executive Order of the President issued pursuant to such statutes; or (iii) named on the following list that is published by OFAC: “List of Specially Designated Nationals and Blocked Persons.” If the foregoing representation is untrue at any time during the Term of the Lease, an Event of Default under the Lease will be deemed to have occurred, without the necessity of notice to Tenant.
- 8.7 Pursuant to California Civil Code Section 1938, Landlord hereby notifies Tenant that as of the date of this Second Amendment, the Premises have not undergone inspection by a “Certified Access Specialist” (“**CASp**”) to determine whether the Premises meet all applicable construction-related accessibility standards under California Civil Code Section 55.53. Landlord hereby discloses pursuant to California Civil Code Section 1938 as follows: “A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.” Landlord and Tenant hereby acknowledge and agree that in the event that Tenant elects to perform a CASp inspection of the Premises hereunder (the “**Inspection**”), such Inspection shall be (a) performed at Tenant’s sole cost and expense, (b) limited to the Premises and (c) performed by a CASp who has been approved or designated by Landlord prior to the Inspection. Any Inspection must be performed in a manner which minimizes the

disruption of business activities on the Property, and at a time reasonably approved by Landlord. Landlord reserves the right to be present during the Inspection. Tenant agrees to: (i) promptly provide to Landlord a copy of the report or certification prepared by the CASp inspector upon request (the “**Report**”), (ii) keep the information contained in the Report confidential, except to the extent required by Law, or to the extent disclosure is needed in order to complete any necessary modifications or improvements required to comply with all applicable accessibility standards under state or federal Law, as well as any other repairs, upgrades, improvements, modifications or alterations required by the Report or that may be otherwise required to comply with applicable Laws or accessibility requirements (the “**Access Improvements**”). Tenant shall be solely responsible for the cost of Access Improvements to the Premises or the Building necessary to correct any such violations of construction-related accessibility standards identified by such Inspection as required by Law, which Access Improvements may, at Landlord’s option, be performed in whole or in part by Landlord at Tenant’s expense, payable as Additional Rent within ten (10) days following Landlord’s demand.

- 8.8 This Second Amendment may be executed in counterparts, which when taken together shall constitute one and the same instrument. The parties contemplate that they may be executing counterparts of this Second Amendment and transmitting the signatures by facsimile or email. The parties agree and intend that a signature communicated by facsimile or email shall bind the party so signing with the same effect as though the signature were an original signature.

[Signatures on following page]

IN WITNESS WHEREOF, Landlord and Tenant have entered into and executed this Second Amendment as of the Effective Date.

LANDLORD:

CITY OF PACIFICA, a municipal corporation of California

By: _____
Kevin Woodhouse, City Manager

Approved as to Form

By: _____
Michelle Marchetta Kenyon, City Attorney

Attest

By: _____
Sarah Coffey, City Clerk

TENANT:

SPINDRIFT PLAYERS, a California non-profit corporation

By: _____
Its: _____
President, Executive Board of Directors

By: _____
Its: _____

EXHIBIT A

APPLICATION AND APPENDIX 1: Proposed Outdoor Activities

CITY OF PACIFICA

TEMPORARY COVID-19 OUTDOOR ACTIVITIES APPLICATION

1. Business Identification.

Business Name (Permittee): **Pacifica Spindrift Players**

Mailing Address: **1050 Crespi Drive Pacifica, CA 94044**

Business Address:

Phone Number: **650-359-8002 / cell (board president) 203-927-1444**

Email: cat@pacificaspindriftplayers.org

Other Contact Information:

2. Type of Business. Check one: Restaurant

Retail

Other, please describe: **community theater**

3. Proposed Encroachment into Public Right-of-Way. Businesses seeking to encroach into the Public Right-of-Way for purposes of conducting Outdoor Activities in compliance with State and County orders, check one or more if applicable to your operations:

Outdoor Dining Outdoor Food Sales Outdoor Retail Sales Outdoor Retail Display Other, please describe:

Not applicable

4. Is Permittee the owner of the property where proposed outdoor activity will be conducted?

Yes No

If response to above question is no, has Permittee obtained written authorization (including but not limited to written agreements, licenses, and/or leases) to use said private property for proposed outdoor activity?

(pending) Yes No

5. Proposed Outdoor Activities. Please provide the following information on separate attachment: (1) a description of the Business, (2) proposed outdoor activities, (3) a description of all improvements, structures and/or materials to be used to facilitate outdoor activities, (4) description of area in which proposed outdoor activities will take place along with a drawing, map or other visual depiction showing said area, improvements, structures and/or materials to be placed in said area.

6. Requested Start Date of Outdoor Activities: 5/15/2021

7. Proposed Duration of Outdoor Activities: through end of COVID-19 pandemic_

8. Permittee will be required to enter into a written agreement (“Temporary COVID-19 Outdoor Activities and Encroachment Agreement”) to be eligible to engage in Outdoor Activities. The City reserves the right to amend the form of the Temporary COVID-19 Outdoor Activities and Encroachment Agreement to provide additional requirements and/or standards, if appropriate.

Appendix 1: Proposed Outdoor Activities

- (1) Description of Business: Pacifica Spindrift Players (PSP) is a nonprofit, volunteer-run community theatre organization founded in Pacifica in 1958 which typically produces a full 7-show season of fully staged theatrical productions for Pacifica and the surrounding communities each year.
- (2) Description of the Outdoor Activity: While COVID-19 infection rates continue to gradually improve as access to vaccination increases, it remains likely that outdoor theater will remain substantially safer than indoor theatre for both performers and patrons for some time - particularly when it comes to particularly high-transmission-risk performance elements like singing and dancing - core elements of many types of theater.

In light of this evidence, as well as PSP’s unique location within the middle of Oddstad Park - which provides both a large usable outdoor space within its parking lot, and substantial densely wooded distance from the surrounding residential neighborhoods - Pacifica Spindrift Players proposes producing and presenting a series of outdoor performances through the remainder of the COVID-19 pandemic, starting with a 7-week outdoor staged reading series beginning May 15, 2021.

PROTECTIONS FOR PERFORMERS:

- PSP is proposing to produce a series of outdoor performances with small casts and limited movement and blocking, rather than fully staged performances indoors, since the fresh air and ventilation that come with outdoor activities have been conclusively proven by now to dramatically decrease the risk of COVID-19 transmission.
- In addition to the protection conferred by staging productions outdoors, 6 foot social distancing, ventilation protocols for the limited use of indoor spaces (e.g. restrooms), and surface sanitation protocols will be implemented, and face covering use will be mandated for all audience members, volunteers, and staff. The use of face coverings by performers will also be mandated whenever not actively engaged in performing (e.g. delivering lines). Costumes and props will be dedicated to individual performers, limiting the risk of fomite cross contamination via shared objects.
- Performers will be asked upon arrival for each performance about the presence of known symptoms of COVID-19 (currently listed by the CDC at <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>). Unvaccinated performers will also be asked about any known or suspected contact with COVID-19 in the previous 14 days (per current CDC guidelines for quarantine following COVID-19 exposure: <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>). If either of these elements are present, the performer will be asked to remain at home and seek medical attention, and the theater (PSP) will provide an understudy to perform in their place.
- All rehearsals will be held either remotely from individuals' homes via Zoom or outdoors, in order to further limit possible risk of COVID-19 transmission.

PROTECTIONS FOR AUDIENCES:

- Total audience attendance will be limited according to state guidelines for the San Mateo County COVID-19 Tier at the time of the production. Outdoor seating areas will be clearly marked to allow

individual patrons and/or households to maintain a minimum of 6 feet apart from all other patrons for the duration of the show.

- Patrons will be asked to bring their own chair or other seating apparatus in order to eliminate the risk of transmission through contact with shared seating.
- All patrons will be mandated to wear face coverings at all times while on premises, when not actively consuming food or beverage items.
- Patrons will be screened individually for symptoms of or known exposure to COVID-19 prior to or upon their arrival at the performance, and will be asked not to attend the performance if they respond affirmatively to either question.
- Food and beverage sales will be held entirely outdoors, and will be limited to prepackaged refreshment and hygiene items (individually packaged snack and beverage items, individual bottles of hand sanitizer, cloth face masks).
- Since patrons will have access to PSP's indoor restrooms, risk during these brief periods spent indoors will be further reduced by keeping all lobby doors and windows open throughout the event, and supported by the use of HEPA air filters placed in the lobby and each individual restroom, to be kept operational at high speed at all times.

PROPOSED SITE DESIGN AND ASSOCIATED STRUCTURES

- A simple elevated wooden platform will be erected in the corner of the PSP/SSPA parking lot between the theater entrance and storage sheds (see diagram) to serve as a stage.
- Since the stage is relatively small and the audience size will be limited, one-half of the parking lot will remain available for disabled and ADA accessible parking, as well as for use by the Spindrift School of Performing Arts (SSPA), while other patrons and all performers will be asked to park in lower Oddstad Park parking lot. This design allows free and open ingress and egress for both patrons and emergency responders if needed.

**EXHIBIT B
TEMPORARY USE AREA**

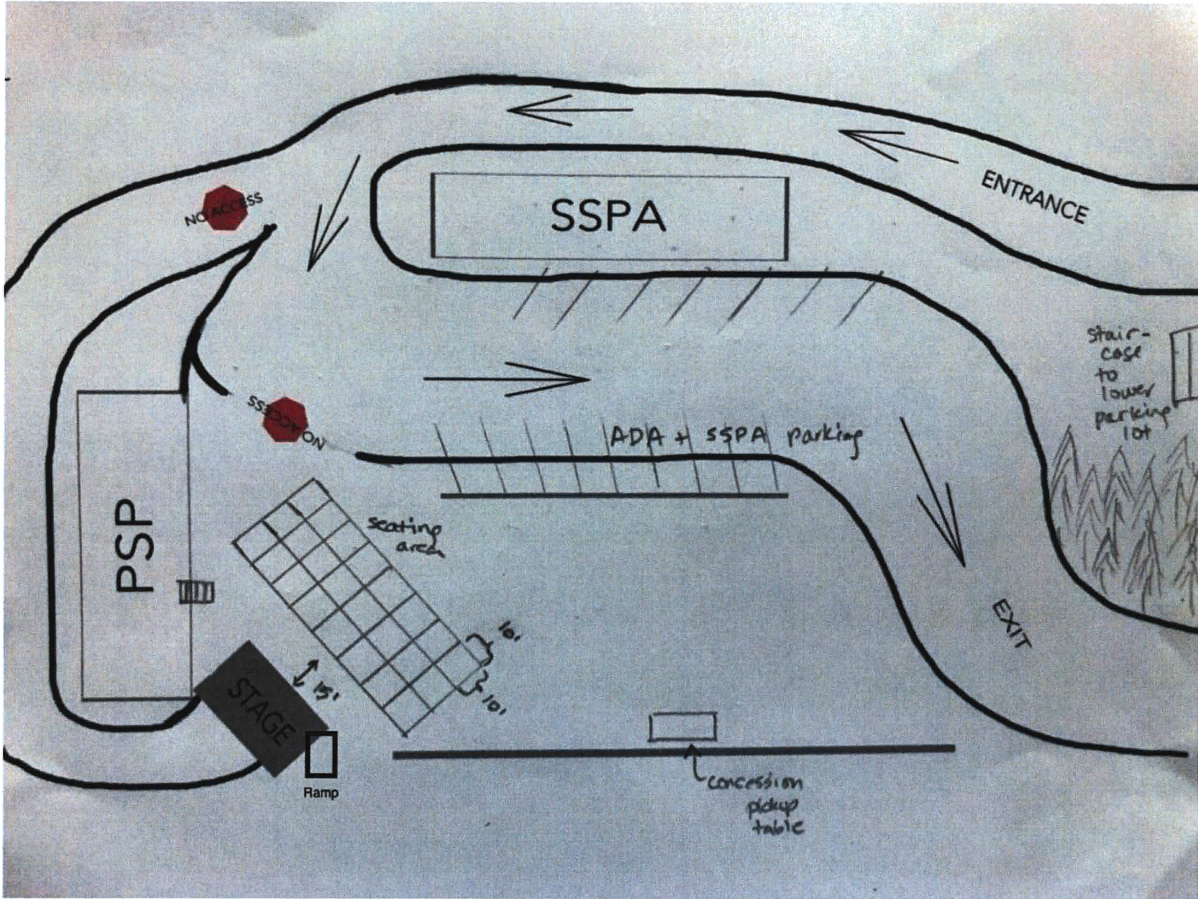


EXHIBIT C

**TEMPORARY COVID-19 OUTDOOR ACTIVITIES AND ENCROACHMENT
DRAFT AGREEMENT**

Outdoor Activities and Encroachment Agreement Between
Pacifica Spindrift Players

The City of Pacifica ("City") and Pacifica Spindrift Players, ("Permittee") enter into this Outdoor Activities and Encroachment Agreement ("Agreement") on this ____ day of _____, 2021.

WHEREAS, the City desires to allow Permittee to conduct certain outdoor activities in conjunction with its business located inside Oddstad Park at 1050 Crespi Drive ("Property") on a temporary basis until such time as the City rescinds Order No. 2020-02 or terminates the local emergency regarding COVID-19; and

WHEREAS, the City is the owner of the Property. Permittee currently leases the facility on the Property pursuant to the terms of a lease agreement dated January 1, 2015; and

WHEREAS, the parties desire to set forth the terms and conditions so as to allow the conduct of such outdoor activities on the Property.

NOW THEREFORE, the parties do hereby agree as follows:

A. The following outdoor activities will be allowed to occur on the Property:

**Outdoor activities include installation of a temporary outdoor theater for outdoor performances fronting the Pacifica Spindrift Players building. Food sales in conjunction with the outdoor theater will take place during performances.
(Collectively referred to as "Outdoor Activities")**

The Outdoor Activities are more fully described in the attached application, received on April 13, 2021, which is hereinafter incorporated by reference as Exhibit A.

B. This Agreement for the Outdoor Activities is conditioned upon the Permittee entering into an amendment to the lease agreement dated January 1, 2015 to permit use of the Property parking lot where the Outdoor Activities will take place as indicated in the attached application, received on April 13, 2021 attached hereto and hereinafter incorporated by reference as Exhibit A.

C. All Outdoor Activities shall be subject to the following conditions:

1. The Outdoor Activity use area shall be contiguous to commercial structures or walkways immediately adjacent to structures. Businesses on private property shall utilize outdoor space contiguous to their tenant space unless authorized by the landlord to use other space contiguous to commercial structures or walkways immediately adjacent to structures.

Notwithstanding the foregoing, a landlord may designate an alternative location for consolidated outdoor dining of take-away meals provided all provisions of the County Health Orders are followed.

2. The Outdoor Activity area must remain clear of drive aisles and fire lanes necessary to provide adequate vehicular circulation and access by public safety vehicles in the event of a fire, medical, or other emergency.
3. A temporary accessible ramp from curb to Outdoor Activity area is required if a permanent ramp is not already available.
4. Accessible parking stalls, accessible van loading areas, and associated paths of travel shall not be impeded by Outdoor Activity.
5. Restaurants shall not be permitted to expand beyond pre-Covid-19 seating capacity.
6. No permanent item or structures shall be installed on the Outdoor Activities area.
7. The Outdoor Activities area must be sufficiently clear for ingress and egress and sufficient drive aisles and fire lanes as necessary to provide adequate vehicular circulation and access by public safety personnel and vehicles to the Outdoor Activities area in the event of a fire, medical, or other emergency.
8. All walkways and sidewalks shall maintain a four-foot clear path of travel at all times.
9. All Outdoor Activities conducted on private property must be done with written consent of property owner.
10. Permittee shall, at all times, comply with the following terms in operating the Outdoor Activities:
 - a) All Outdoor Activities shall be consistent with applicable State Guidelines, Executive Orders and County Health Requirements issued by the State and County in response to COVID-19 ("State and County Orders"). Outdoor Activities must, at all times, be operated in accordance with State, and County Orders, including but not limited to, health guidelines regarding number of patrons, disinfectants, table spacing, use of shared materials, staff hygiene, and social distancing.
 - b) All Outdoor Activities shall be done in compliance with all applicable, local, state and federal laws, including Americans with Disabilities Act. Any outdoor alcohol consumption shall be in compliance with the rules and regulations of the Department of Alcoholic Beverage Control and County Health Orders.
 - c) Hours of operation for Outdoor Activities shall not exceed the normal hours of operation for the corresponding business with which the outdoor use is associated.
 - d) Outdoor Activity use areas shall be maintained free of trash and debris.
 - e) No outdoor music or entertainment is permitted where the sound from the music or entertainment is amplified.

- f) Outdoor, low volume, acoustic performances, entertainment and cultural events, which may be permitted as part of the Outdoor Activity and shall be reviewed on a case by case basis in accordance with the then applicable City, State and County Health Orders and Guidelines. Any outdoor, low volume, acoustic performances, entertainment or cultural events, which are permitted as part of the Outdoor Activity shall terminate by 8:00 p.m.
- g) No permanent item or structures shall be installed on City of Pacifica property. No permanent or temporary signage shall be affixed to any publicly owned structure, including but not limited to streetlights, benches, bus shelters, or similar appurtenances. Signage erected in violation of this provision is subject to immediate removal by the City of Pacifica.
- h) The City of Pacific reserves the right to inspect all Outdoor Activities locations and require that operations cease or stipulate modifications to operations if found to not be in compliance with the requirements of this Agreement or State and County Orders.
- i) If temporary canopies or tents are being utilized for Outdoor Activities, they must comply with fire requirements. Permits from the North County Fire Department are required for canopies or tents over 400 Sq Ft.
- j) Outdoor cooking or grilling is not permitted.

D. Permittee agrees to accept all responsibility for loss, including personal injury, wrongful death or damage to any person or entity and shall indemnify, hold harmless, and defend and release the City of Pacifica, its agents, employees and officials from and against any and all liability actions, claims, damages, costs, or expenses (collectively "Claims") which may be asserted by any person or entity, including Permittee, arising out of or in connection with the subject approval and Agreement, including without limitation the Permittee's outdoor activities. The City may, but is not obligated to, defend such Claims as City, in its sole discretion, determines appropriate, all at Permittee's sole cost and expense. This indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and costs of suit, attorney's fees and other costs, liabilities and expenses of the City in connection with such proceeding. If the Permittee is required to defend the City as set forth above, the City shall retain the right to select the counsel who shall defend the City. Per Government Code Section 66474.9, the City shall promptly notify Permittee of any proceeding and shall cooperate fully in the defense.

E. The City reserves the right to order the removal or relocation of the improvements made to conduct the Outdoor Activities in the public right-of-way and/or public easement area, at any time at Permittee's cost in the event same is required by the City and/or a Utility. Whether or not said removal or relocation is required shall be left to the unfettered discretion of the City and/or a Utility. Permittee hereby grants to the City the right to remove or relocate said improvements and to come upon Permittee's land to effect said removal or relocation if deemed necessary by the City and/or a Utility. Permittee waives any claim or right he/she/it may have for inverse condemnation, damages, or loss of income or business resulting from said removal. However, the City will be responsible for repairing any physical damage caused to Permittee's property by the City's but not a Utility's removal or relocation of said improvements. Upon removal or relocation of said improvements, all rights of Permittee under this agreement and the permit itself shall terminate.

- F. Permittee shall comply with all applicable local, State, and Federal laws and regulations at all times during the effective period of this agreement, including but not limited to laws regarding the obstruction of vehicular traffic, the Americans with Disabilities Act and County health laws regarding provision of food services, noise ordinances, alcoholic beverage sales and any orders issued by the Director of Emergency Services, including but not limited to Order No 2020-02.
- G. If Permittee's Outdoor Activities encroach into public right-of-way and/or a public easement, Permittee shall procure and maintain for the duration of this Agreement, and furnish proof of along with this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with this Agreement, as set forth in this section. The cost of such insurance shall be borne by Permittee. A Permittee whose activities do not encroach into public right-of-way and/or a public easement, shall not be required to obtain said insurance.

Minimum Scope of Insurance. Permittee shall obtain and all times during duration of this Outdoor Activities Agreement maintain coverage at least as broad as:

- (a) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- (b) Workers' Compensation insurance as required by the State of California and Employer's Liability insurance (for Permittees with employees).
- (c) Property insurance against all risks of loss to any tenant improvements or betterments.
- (d) Permittee shall maintain limits no less than:
 - (i) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - (ii) Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
 - (iii) Property Insurance: Full replacement cost with no coinsurance penalty provision.

Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Permittee shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions.

The general liability policy is to contain, or be endorsed to contain, the following provisions:

(a) The City, its officers, officials, employees and volunteers are to be covered as insureds with respect to liability arising out of ownership, maintenance or use of the premises/property owned by or leased to the Permittee.

(b) The Permittee's insurance coverage shall be primary insurance 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 the Permittee's insurance and shall not contribute with it.

(c) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII unless prior approval is received from the City Attorney.

Liquor Liability Coverage.

If Permittee proposes to sell or serve alcohol as a part of a its Outdoor Activities, Permittee shall furnish, along with this Agreement, proof of a liquor liability coverage endorsement or policy.

- H. Violation of Agreement. Any violation of this Agreement or any other local, State, or Federal law shall constitute an imminent threat to the public health and is hereby declared to be a public nuisance and shall be subject to enforcement as such; violations of this Agreement and/or Resolution No. 35-2020 (ratifying Emergency Order No. 2020-02) may result in the immediate termination of this Agreement and the cessation of any activities authorized by this Agreement and Resolution No. 35-2020.
- I. No Vested or Ongoing Rights Conferred. Permittee understands and agrees that this Agreement and Order No. 2020-02 and Resolution No. 35-2020 confer no vested rights to any ongoing or continued activities, and any and all activities authorized by this Agreement are temporary in nature and granted solely to enable businesses to operate in compliance with State and local orders regarding social distancing and COVID-19. All improvements, structures and installments approved pursuant to this Agreement shall be removed in their entirety upon expiration of this Agreement.
- J. Non-Transferable. This Agreement is non-transferable. Only the permittee with whom this Agreement was entered shall be permitted to engage in the activities authorized herein.
- K. Entire Agreement. This instrument, including the attached exhibits contains the entire agreement between

the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations of modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing, signed by the party to be charged.

- L. Termination. This Agreement may be terminated by the City or Permittee at any time, upon written notice to the other party of the termination

THE UNDERSIGNED AGREES THAT THE PROPOSED OUTDOOR ACTIVITIES DESCRIBED ABOVE SHALL BE IN ACCORDANCE WITH AND SUBJECT TO THIS AGREEMENT'S TERMS AND CONDITIONS AND ALL OTHER APPLICABLE LOCAL, STATE AND FEDERAL LAWS, INCLUDING BUT NOT LIMITED TO STATE AND COUNTY EMERGENCY ORDERS REGARDING THE COVID-19 PANDEMIC.

Permittee – Pacifica Spindrift Players

Date

City Manager, City of Pacifica

Date

Attest:

Sarah Coffey, City Clerk

Approved as to Form

Michelle Marchetta Kenyon, City Attorney