

METROPOLITAN  
EXPOSITION-RECREATION COMMISSION

Portland Center for the Performing Arts  
1111 SW Broadway  
Portland, Oregon

RESOLUTION NO. 140


Approving a three-year contract with Oregon Shakespearean Festival Association (OSF) for the use of the Portland Center for the Performing Arts, and authorizing the Commission Chairman and Secretary-Treasurer to execute this agreement.


The Metropolitan Exposition-Recreation Commission finds:

1. That the Oregon Shakespearean Festival Association has established residency in the City of Portland in the Portland Center for the Performing Arts.
2. It is critically important to the success of the Portland Center for the Performing Arts, and is in the best interest of the Portland community, that OSF establish a residence theatre in the City of Portland.
3. The Commission and OSF have reached an agreement on the terms of a lease.


BE IT THEREFORE RESOLVED that the Metropolitan Exposition-Recreation Commission approves the agreement attached hereto as Exhibit A, and authorizes the Commission's Chairman and Secretary-Treasurer to execute that document.

Passed by the Commission on August 7, 1991.

  
\_\_\_\_\_  
Chair

  
\_\_\_\_\_  
Secretary/Treasurer

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Metro General Counsel

# OSF/MERC AGREEMENT

## Reference Guide

	<u>Page Number</u>	<u>Section</u>
1. Season	1	1-A
	9	14-G
2. Office, Storage, Workspace	2	3
3. Stage Labor	5	4
4. Stage Floor	5	5
5. Box Office Fees, Charges	5,6	6,7,8
	9	14-F
6. Advertising	6,7	10, 11
	9	14-J
7. Rental Rates/Deposits	7	12
	8	14-D
8. Utilities	7	13
	9	14-K
9. Miscellaneous Provisions	8,9,10	14
Souvenir Sales, Displays		14-A,C
Intermissions		14-B
Change Notices		14-E
Audience Control		14-H
Cleaning		14-I
Stagedoor		14-L
10. Termination	10	17
11. Indemnification	10	19
12. Liability Insurance	11	20
13. Workers Compensation	11,12	21
14. Subcontracting	12	22,23
15. Breach of Contract	13	24
16. Arbitration	13	25
17. Notice	14	26
18. Severability	14	27
19. Non-Waiver	15	28

**AGREEMENT FOR USE OF THE  
INTERMEDIATE THEATRE OF THE  
PORTLAND CENTER FOR THE PERFORMING ARTS**

This agreement is made by and between the Oregon Shakespeare Festival Association ("OSF") and the Metropolitan Exposition-Recreation Commission ("MERC") of the Metropolitan Service District, and recognizes the status of the Oregon Shakespeare Festival as resident company of the Intermediate Theatre of the Portland Center for the Performing Arts. In consideration of the mutual obligations described below, the parties agree as follows:

1. SEASONS OF PLAYS.

- A. OSF will produce a twenty-five week season of plays ("the season") during the period November through April. Prior to the Preview for the first show, there will be nine days of set-up, and two days of uninterrupted strike at the conclusion of the season. During the first season (1991-92) five of which will be uninterrupted. For the seasons of 1992-93 and 1993-94 the nine days of set-up shall be uninterrupted. During the season, the Sunday between each production will be made available to other organizations. MERC may request that OSF remove the special stage masking and rake. MERC will give OSF a least six weeks notice if it is necessary for these items to be removed. Except in the case of the Portland Gay Men's Chorus performance in December, MERC will agree to pay 1/2 (or \$500 whichever is the smaller amount) of the cost for removal and re-installation of the stage masking and rake during the first season of the contract and the entire amount during the second and third season of the contract. MERC may pass on a portion or all of this cost to the lessee using the facility on these Sundays between each production.
- B. In discussion with MERC, OSF may be permitted, in the second and third years of this agreement to expand the season to 30 performing weeks. MERC, however, would want OSF to explore utilizing the full seating capacity with tickets sold at regular prices prior to expanding to 30 performance weeks. In any case, if the season is expanded beyond the 25 weeks MERC will not pay for any labor costs associated with the expansion such as stagehands and stagedoor personnel.
- C. The OSF will provide MERC with a schedule of set up dates, closing dates, dark days, etc., for the upcoming season at least nine months prior to commencement of each season.

2. USE OF THE INTERMEDIATE THEATRE.

- A. Except as noted in subsection 1A above and sub-sections B, C and D below, the OSF will have full and exclusive use of the stage area of the Intermediate Theatre from the day of load-in for the first production until the second day following the final performance of the season.
- B. The MERC shall have the right to occupy the stage area of the Intermediate Theatre for the purpose of maintenance, cleaning, making repairs, and other normal and customary activities that do not interfere with the OSF's use of this area.
- C. Each play produced by OSF shall end on a Saturday so that the Intermediate Theatre will be available on the following Sunday for other events or performing arts organizations. Under these circumstances, OSF shall not be required to remove the special stage masking and rake unless so requested by MERC. MERC will contact OSF six weeks prior to the close of a production if it wishes to use the Sunday between productions. The conditions as stated in Section 1A shall apply.
- D. The MERC shall have the right to rent the Intermediate Theatre to other parties on dark Mondays, provided that the stage set-up utilized shall not interfere with OSF's sets. For example, lecterns or tables may be placed on the stage for other events. The OSF, when the OSF determines it is feasible, shall design the sets for its productions so that all set materials can be struck and moved upstage of the proscenium arch behind the curtain when the Intermediate Theatre is used by other parties on Mondays. The OSF shall not be charged any rental for the Intermediate Theatre on dark Mondays when the theatre is rented to other parties. Cost of moving sets and materials will be the responsibility of the MERC.

3. OFFICE, STORAGE AND WORKSHOP SPACE.

- A. Subject to the exceptions contained in subsection B and C below, the OSF will have full and exclusive use of the office, storage and workshop spaces specified below for the time periods specified herein. The location of the office and workshop space is more specifically described in the floor diagram attached hereto as Exhibit "A". Rent for the below-described spaces shall be due and payable in advance on the first day of each month. The OSF shall give the MERC thirty days written notice if OSF varies from the occupancy schedule below:
  - 1. Office space (Room 628), containing 1797.75 square feet. The OSF shall have use of this space from April 1, 1991 through March 31, 1994. The OSF shall pay a rental of \$1,423.22 in the first year of the contract;

\$1,423.22 in the second year of the contract; and, \$1,495.13 in the third year of the contract per month for the use of this space, in accordance with the schedule attached hereto as Exhibit "B".

2. Costume workshop (Room 515), containing 319.5 square feet. The OSF shall have use of this space from April 1, 1991 through the end of the 91/92 season after which MERC may extend the lease for the full year in year two and three of the contract. If the lease is not extended for a full year, OSF will have use of the space beginning October 1 in each year of the contract through the closing of the last show of each season. The OSF shall pay a rental of \$133.12 in the first year of the contract; \$133.12 in the second year of the contract; \$139.78 in the third year of the contract per month for the use of this space, in accordance with the schedule attached hereto as Exhibit "B".
3. Design studio (Room 517), containing 808 square feet. The OSF shall have use of this space from approximately six weeks prior to opening through the last show of the season, with actual dates as agreed by mutual consent. The OSF shall pay a rental rate of \$336.66 in the first year of the contract; \$336.66 in the second year of the contract; and, \$353.50 in the third year of the contract per month for use of this space, in accordance with the schedule attached hereto as Exhibit "B".
4. Production manager/stage manager office (Room 519), containing 306.25 square feet. The OSF shall have use of this space from April 1, 1991 through the end of the 91/92 season after which MERC may extend the lease for the full year in year two and three of the contract. If the lease is not extended for a full year, OSF will have use of the space beginning October 1 in each year of the contract through the closing of the last show of each season. The OSF shall pay a rental of \$127.60 in the first year of the contract; \$127.60 in the second year of the contract; \$133.98 in the third year of the contract per month for the use of this space, in accordance with the schedule attached hereto as Exhibit "B".
5. Canteen/toilet (Rooms 518/516), containing 58 square feet. The OSF shall have use of this space from approximately six weeks prior to opening through the last show of the season, with actual dates as agreed by mutual consent. The OSF shall pay a rental rate of \$24.16 in the first year of the contract; \$24.16 in the second year of the contract; and, \$25.38 in the third year of the contract per month for use of this space, in accordance with schedule attached hereto as Exhibit "B".

6. Rehearsal hall/lobby (Rooms 502/522), containing 4,322 square feet. OSF shall have the use of this space for six weeks prior to the first Preview of the first show through the close of the last show in each season, unless OSF's rental of this space is canceled pursuant to subsection C below. The OSF shall pay a rental of \$360.17 per month for the use of this space for the entire term of the contract, in accordance with the schedule attached hereto as Exhibit "B". In the rehearsal area, the OSF shall be responsible for providing temporary space heaters, lighting and floor covering consistent with applicable state and city safety codes and with the prior approval of the MERC. OSF will take whatever measures are reasonably necessary to ensure that noise does not intrude into the Winningstad Theatre below. If adequate sound insulation cannot be achieved, the MERC may restrict OSF's use of this space when events or dress rehearsals are in progress in the Winningstad Theatre. The MERC and OSF agree to negotiate an adjustment to the rental rate for this space if restrictions on the use of the space are imposed pursuant to this subsection.
7. Ticket Manager's Office, table/chair storage, (Room 116), Containing 97 square feet. The OSF shall have use of this space from April 1, 1991 through March 31, 1994. The OSF shall pay a rental rate of \$76.79 in the first year of the contract; \$76.79 in the second year; and, \$80.67 in the third year of the contract per month for use of this space, in accordance with schedule attached hereto as Exhibit "B".
8. Subscription office (Room 141) containing 279.5 square feet. OSF shall have the use of this space from April 1, 1991 through March 31, 1994. The OSF shall pay a rental rate of \$221.27 in the first year of the contract; \$221.27 in the second year of the contract; and, \$232.45 in the third year of the contract per month for use of this space, in accordance with the schedule attached hereto as Exhibit "B".
9. Basement Storage (Room B48) containing 435.5 square feet. OSF shall have the use of this space from April 1, 1991 through the end of the 91/92 season after which MERC may extend the lease for the full year in year two and three of the contract. If the lease is not extended for a full year, OSF will have use of the space beginning October 1 in each year of the contract through the closing of the last show of each season. The OSF shall pay a rental of \$145.16 in the first year of the contract; \$145.16 in the second year of the contract; \$152.43 in the third year of the contract per month for use of this space, in accordance with the schedule attached hereto as Exhibit "B".

- B. The MERC shall have the right to enter into the above-described areas for purposes of maintenance, cleaning, repairs, and other ordinary and customary purposes, but not to interfere with OSF for operations.
- C. The MERC reserves the right to cancel the OSF's rental of the rehearsal area, on prior written notice of 120 days or at the end of the season, whichever comes last, if the MERC becomes financially able to finish off that space and use it for other purposes. If the MERC exercises this option, the OSF will receive a prorated refund on any previously paid rental for the rehearsal area.
- D. The OSF shall be responsible for securing all rented areas, and shall not hold the MERC responsible for any loss or damages to OSF property located in such areas. The OSF shall be responsible for maintaining any personal property insurance needed for OSF property located in MERC facilities.

4. STAGE LABOR.

The MERC will provide the OSF with stage labor services, which could be a sound technician, a lighting technician and/or a carpenter, up to a total of 80 hours per week in the first year of the contract, 40 hours per week in the second year of the contract, and 20 hours per week in the third year of the contract at the straight time rate, for ordinary and customary stage hand functions. OSF will specify the hour and duration of the stage labor call, in conjunction with the PCPA stage manager. This labor will be provided as part of the rental of the Intermediate Theatre, at no additional cost to the OSF. Overtime labor required, which shall include any work in excess of 8 hours per person per day or 40 hours per person per week, or any other overtime or premium pay required by federal or state law and/or the terms of the MERC's agreement with the union involved, will be paid for at the required rates by the OSF. MERC will keep OSF informed of the progress of any negotiations regarding stage labor rates and working conditions.

5. ATTACHMENTS TO STAGE FLOOR.

The MERC will allow the OSF to attach scenery pieces to the theatre stage floor in a reasonable manner, as agreed to by the MERC and the OSF, as needed.

6. USER FEES.

The standard user fees charged to patrons of the Portland Center for the Performing Arts by the MERC will be paid on all tickets sold for the OSF productions, whether subscription or single event ticket sales. The MERC shall be provided by the OSF with a box office report for each performance detailing all ticket sales and the disposition of

user fees collected by the OSF on its ticket sales, and shall have the right to review the OSF records as necessary to confirm the collection and disposition of such user fees. The MERC will not make any changes in the user fees without full discussion with the OSF at least nine months prior to the beginning of the OSF's next season at the Intermediate Theatre.

7. BOX OFFICE ASSISTANCE.

The OSF Subscriptions Manager will be permitted to assist in the Portland Center for the Performing Arts box office with specific ticket problems and other related ticketing activities.

8. BOX OFFICE SERVICE CHARGE.

The OSF will pay a five percent commission on all tickets sold at the PCPA box office in the New Theatre Building to cover the cost of MERC labor. The five percent commission shall also apply to subscription ticket exchanges handled by the PCPA box office once single ticket sales begin. Tickets sold at MERC outlets will carry a convenience charge subject to rates in effect at the time of the sale of the tickets. The MERC will not make any changes in the standard box office and ticket outlet service charges without full discussion with the OSF at least three months prior to the beginning of the OSF's next season at the Intermediate Theatre.

9. TOURS.

The MERC will provide the OSF contributing subscribers with the opportunity for free backstage tours, in accordance with whatever tour program is currently in effect at the Portland Center for the Performing Arts. In addition, OSF staff will have the opportunity to conduct ad hoc tours of the Center for school, senior and other special groups with the prior approval of the Center's Director. At least three days prior notice will be required.

10. ADVERTISING OF OSF PRODUCTIONS.

The MERC will advertise the OSF productions in the following manner:

- A. The OSF productions will be listed in the MERC's bi-monthly calendar of events at the Portland Center for the Performing Arts.
- B. The OSF productions will be included in any Ticketmaster calendar, if those productions are sold through the Ticketmaster system.



- C. The OSF productions will be included on the electronic reader board of the New Theatre Building, in accordance with established Portland Center for the Performing Arts procedures for use of the marquee.
- D. The MERC will make available to OSF year-round one display case on Broadway. The MERC shall have the option of changing the location of the display case on Broadway that is assigned to OSF use.
- E. MERC shall make its best efforts to carry out the above, but shall not be deemed in material breach of contract for any casual or inadvertent failure to comply with 10A through 10D.

11. DISPLAY ADVERTISING.

When requested by the OSF, the MERC will purchase advertising space for display advertising in The Oregonian, to be used for advertising the OSF productions. The OSF agrees to pay the MERC its actual cost in acquiring this space, plus the MERC's fifteen percent standard commission, such payment to be made prior to the MERC's purchase of the display advertising.

12. RENTAL FOR THE INTERMEDIATE THEATRE.

The rental for use of the Intermediate Theatre will be as follows:

	<u>91/92</u>	<u>92/93</u>	<u>93/94</u>
Evening	\$525	\$575	\$625
Matinee	\$325	\$375	\$425
Dark Days	\$350	\$400	\$450
Set-Up Days	\$350	\$400	\$450

These rates are based upon a three-quarters house rental, constituting use of the orchestra level and first balcony. The second balcony will be made available to OSF at a rental rate of \$50 for each evening or matinee performance to allow OSF the use of the second balcony and provide OSF the ability to sell seats in the second balcony at a special reduced ticket price. Should OSF change the price structure of these special reduced rate tickets, rent for the use of the second balcony shall be the applicable rates for use of the second balcony at the time of use.

13. UTILITIES.

The MERC will provide all normal and standard utilities used by the OSF, the cost of such utilities to be included in the rental rates specified in section 3 above. However, the MERC shall not be required to pay for electricity consumed by any electric area

heaters used by the OSF in the rehearsal hall. If the OSF makes use of electric area heaters in the rehearsal hall, it shall pay a monthly utility charge based on the demand/consumption of the units being utilized to reimburse the MERC for the actual costs to the MERC of the electricity used.

14. MISCELLANEOUS PROVISIONS.

The OSF will be bound by all terms and conditions in the standard rental, operational, stage labor, admissions and box office policies applicable to the Portland Center for the Performing Arts, except to the extent that such standard rental and admission policies conflict with the following:

- A. The OSF agrees to pay the MERC twenty percent of the gross proceeds from sale of merchandise only for events that it may book in and are not part of OSF's regular producing season.
- B. The OSF shall not be required to have an intermission for any play in its season, provided that the play in question is of such limited duration that an intermission is inappropriate or is written or directed in a way which OSF determines would make an intermission inappropriate. If a play is to be presented without an intermission, the OSF shall give the MERC fourteen days notice prior to the play's opening night that no intermission will be provided. In such event, no buy-out payments as required by the Standard Permit Agreement will be paid.
- C. The OSF will have the right to place a display table and board in the lobby of the Portland Center for the Performing Arts for promotion of membership or for any other purpose that is consistent with the OSF's objectives. The size, location and appearance of the table and board shall be approved by the MERC.
- D. Prior to opening night of each season, the OSF will pay rental deposit of \$10,000. The MERC will hold the rental deposit for the duration of the season. The rental deposit will be returned, less any appropriate adjustments, at the settlement of the last show of the season.
- E. Prior to commencement of each season, the MERC will provide the OSF with the schedule of extra charges, box office policies and procedures, etc., that may be applicable for that season. The MERC will give the OSF at least thirty days written notice prior to changing the schedule of extra charges for subsequent seasons. The MERC will notify the OSF of any changes in labor contracts as soon as possible after they have been determined through the collective bargaining process.

- F. Box office receipts applicable to the OSF performances will be held by the MERC until settlement with the OSF. There shall be a settlement between the MERC and the OSF at the end of each week during the OSF's season.
- G. Once the OSF has announced its season in the Portland Center for the Performing Arts, the MERC will not permit in either the Intermediate or Winningstad Theatres any other productions of those plays until ninety days after the OSF season is concluded.
- H. The OSF management will have full and absolute control over when the audience enters the auditorium, and when the show starts, except that the MERC (through the Portland Center for the Performing Arts House Manager) can exercise crowd control authority in the event of security, medical or public safety emergencies. MERC shall retain supervisory control over its employees and volunteers working OSF events. MERC will notify OSF in advance of any temporary or permanent security changes.
- I. The MERC will be responsible for cleaning all facilities operated by the OSF in the Portland Center for the Performing Arts, office cleaning, in accordance with the standard cleaning practices of the Portland Center for the Performing Arts. Final stage clean up following the close of each production, as well as pre-performance stage cleaning, will be done by Portland Center for the Performing Arts stage technicians as part of the labor supplied pursuant to section 4 of this agreement. All cleaning charges are included in the rental. Removal of sets shall be the OSF's obligation and shall not be regarded as "cleaning" within the meaning of this subsection. OSF shall be responsible for restoring the Intermediate Theatre's house hanging and lighting plot at the end of the season, unless requested not to do so by the MERC.
- J. The MERC will not have the right to object to an OSF poster or sign, or require its removal, unless removal is required for other permittees' use of the space.
- K. The OSF shall have the right to run water, electricity and gas to the stage for use in individual productions, as long as such installations and usage comply with all applicable codes and regulations. The MERC will be given two weeks notice prior to such usage.
- L. The MERC shall provide stage door access on Broadway during normal business hours 8:00am to 5:00pm, Monday through Friday. Additionally, the MERC shall provide stage door personnel on Broadway at no charge to the OSF six or seven days a week as needed from 8:00am to 12:00 midnight for performance or rehearsal activity as determined by the MERC and OSF from the commencement of the production season through the final performance. Any stage door labor incurred due to OSF activity between the hours of 12:00 midnight and 8:00am

shall be charged back at time-and-one-half (1-1/2) the applicable hourly rate. Any other stage door labor required for OSF activities not covered above shall be charged back to the OSF at the applicable hourly rate. During the third year of the contract stage door labor required for performances shall be charged back at the rate as per the schedule of extra charges.

15. TERM.

The term of this agreement shall be for three years.

16. INTEGRATION.

Per consolidation agreement with the City of Portland, this agreement contains the entire agreement between the MERC and the OSF and supersedes all prior written or oral discussions or agreements.

17. EARLY TERMINATION.

The OSF and the MERC recognize that a successful residency in the Portland Center for the Performing Arts is possible only if both parties have a mutual desire to be associated. In the event of severe adverse economic conditions, the OSF may withdraw from this agreement by giving the MERC six months prior notice in writing.

18. COMPLIANCE WITH LAWS.

In connection with their activities under this agreement, both parties shall comply with all applicable federal, state, and local laws and regulations.

19. INDEMNIFICATIONS.

The OSF shall hold harmless, defend and indemnify the MERC, the Metropolitan Service District, the City of Portland and its Exposition-Recreation Commission, and their members, directors, officers, agents and employees against all claims, demands, actions and suits (including all attorney fees and costs) brought against any of them arising from the OSF's activities under this agreement. Claims, demands, actions and suits arising from the alleged negligence of MERC officers, agents or employees shall be the responsibility of the MERC and/or the Metropolitan Service District.

20. LIABILITY INSURANCE.

- A. The OSF shall maintain public liability and property damage insurance that protects the OSF, the MERC, the Metropolitan Service District, the City of Portland and its Exposition-Recreation Commission, and their members, directors, officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury, including death, arising from the OSF's activities under this agreement. The insurance shall provide coverage for not less than \$100,000 for personal injury to each person, \$500,000 for each occurrence and \$500,000 for each occurrence involving property damage; or a single limit policy of not less than \$500,000 covering all claims per occurrence.

The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of this agreement. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insured the Metropolitan Service District, the City of Portland and its Exposition-Recreation Commission, and their members, officers, directors, agents and employees. Notwithstanding the naming of additional insured, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only the one person or interest had been named as insured. The coverage must apply as to claims between insured on the policy. The insurance shall provide that the insurance shall not terminate or be canceled without 30 days written notice first being given to the MERC. If the insurance is canceled or terminated prior to completion of this agreement, the OSF shall provide a new policy with the same terms. The OSF agrees to maintain continuous, uninterrupted coverage for the duration of this agreement. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the OSF.

- B. The OSF shall maintain on file with the MERC a certificate of insurance certifying the coverage required under subsection A. The certificate of insurance shall be subject to the approval of the Metro General Counsel.

21. WORKERS' COMPENSATION INSURANCE.

- A. The OSF shall obtain workers' compensation insurance coverage for all of its workers, employees and contractors either as a carrier-insured employer or a self-insured employer, as provided by Chapter 656 of the Oregon Revised Statutes,

before occupancy of the Portland Center for the Performing Arts by the OSF. A certification of insurance, or copy thereof, shall be attached to this agreement as Exhibit "C" and shall be incorporated herein and made a term and part of this agreement. The OSF further agrees to maintain workers' compensation insurance coverage for the duration of this agreement.

- B. In the event the OSF's workers' compensation insurance coverage is due to expire during the term of this agreement, the OSF agrees to timely renew its insurance, either as a carrier-insured employer of a self-insured employer as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration, and the OSF agrees to provide the MERC such further certification of workers' compensation insurance as renewals of said insurance occur.

22. SUBCONTRACTING.

The following OSF activities under this agreement shall not be subcontracted, in whole or in part, without the written approval of the MERC:

- A. Performance of plays in the Intermediate Theatre;
- B. Any other activity involved in the productions of plays in the Intermediate Theatre that entails alteration or modification of the building or any of its systems.

Other OSF activities relating to the production of plays in the Intermediate Theatre, excluding the activities enumerated in A and B above, can be subcontracted to other parties, if consistent with any limitations contained in collective bargaining agreements, without the written consent of the MERC. The OSF shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the OSF as specified in this agreement. Notwithstanding the MERC approval of subcontractor, the OSF shall remain obligated for full performance hereunder, and to the OSF hereunder. The OSF agrees that if subcontractors are employed in the performance of this agreement, the OSF and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

23. ASSIGNMENT.

The OSF shall not assign this agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the MERC.

24. BREACH OF AGREEMENT.

- A. The MERC or the OSF shall breach this agreement if it fails to perform any substantial obligation under this agreement, except as provided in subsection B of this section.
  
- B. Neither the MERC nor the OSF shall have breached this agreement by reason of any failure to perform a substantial obligation under this agreement if the failure arises out of causes beyond its control and without its fault or negligence. Such causes may include, without limitation, acts of God or the public enemy, acts of the federal, state or local governments, fires, floods and strikes. Should either the MERC or the OSF fail to perform because of a clause described in this subsection, the MERC and the OSF shall make a mutually acceptable revision in the obligations specified in this agreement.

25. ARBITRATION.

- A. Any dispute under this agreement which is not settled by mutual agreement of the MERC and the OSF within 60 days of notification in writing by either party shall be submitted to an arbitration panel. The panel shall be composed of three persons, one of whom shall be appointed by the OSF, one of whom shall be appointed by the MERC, and one of whom shall be appointed by the two arbitrators appointed by the MERC and the OSF. In the event the two cannot agree on the third arbitrator, then the third shall be appointed by the Presiding Judge (Civil) of the Circuit Court of the State of Oregon for the County of Multnomah. The arbitrators shall be selected within 30 days of the expiration of the 60 day period. The arbitration shall be conducted in Portland Oregon, shall be governed by the rules of the Arbitration Service of Portland and shall be as speedy as is reasonably possible. The arbitrators shall render their decision within 45 days of their first meeting with the MERC and the OSF. In so far as the MERC and the OSF legally may do so, they shall be bound by the decision of the panel.

- B. Notwithstanding any dispute under this agreement, whether before or during arbitration, the OSF and the MERC shall continue to perform their respective obligations pending resolution of the dispute.

26. NOTICE.

Any notice provide for under this agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

If to the MERC:

Lee Fehrenkamp  
MERC General Manager  
P.O. Box 2746  
1401 N. Wheeler  
Portland, OR 97208

If to the OSF:

William W. Patton  
Executive Director  
Oregon Shakespeare Festival Assoc.  
P.O. Box 158  
Ashland, OR 97520

27. SEVERABILITY.

If any provision of this agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.



28. NON-WAIVER.

The MERC and the OSF shall not be deemed to have waived any breach of this agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1991.

OREGON SHAKESPEARE FESTIVAL  
ASSOCIATION

By: \_\_\_\_\_

METROPOLITAN  
EXPOSITION-RECREATION COMMISSION

By: \_\_\_\_\_  
Chair

By: \_\_\_\_\_  
Secretary-Treasurer

APPROVED AS TO FORM:

\_\_\_\_\_  
Metro General Counsel

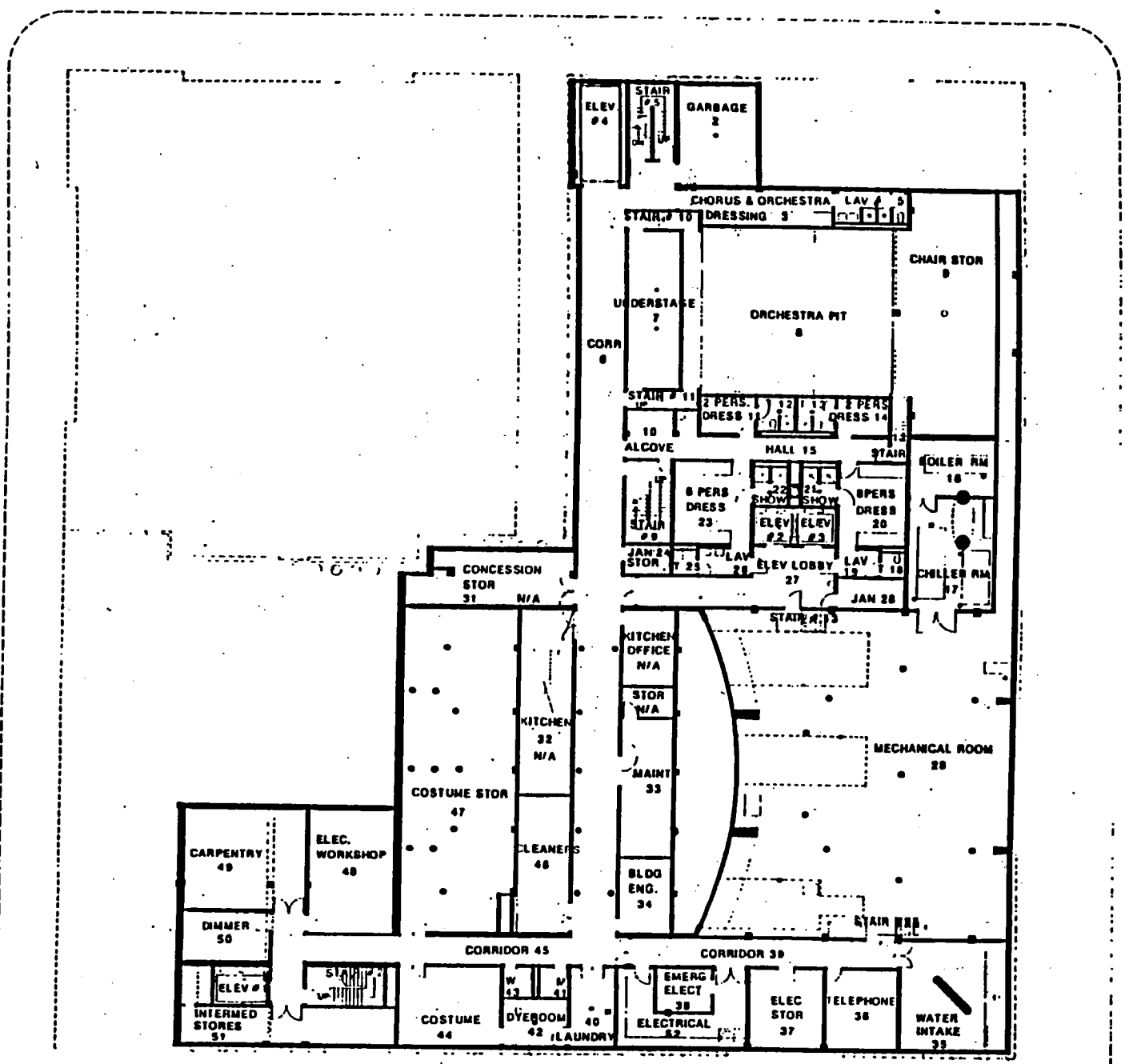
1/32 = 1 (ARCH)

**Portland Center  
for the  
Performing Arts**

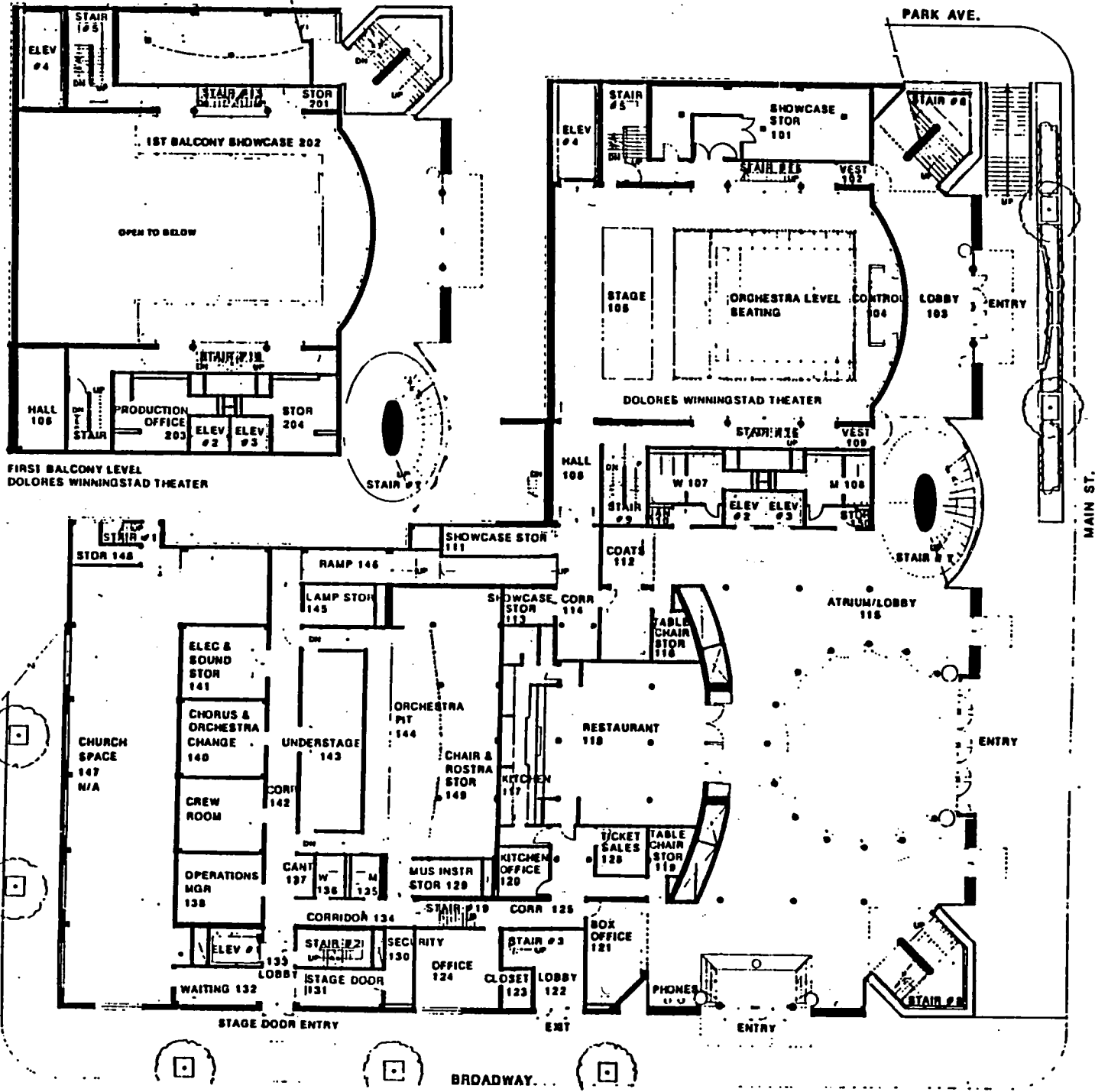
**The City of Portland**

Director: Robert G. Taylor  
 Executive Director: Robert G. Taylor  
 Board of Directors:  
 Robert G. Taylor  
 Robert G. Taylor  
 Robert G. Taylor  
 Robert G. Taylor  
 Robert G. Taylor

**Architect:**  
 Skidmore, Brown, Johnson & Associates  
 225 Broadway  
 New York, N.Y.  
 10038  
 Phone: (212) 512-2000  
 Telex: 251 2000  
 Fax: (212) 512-2000  
**Contractor:**  
 The City of Portland  
 1000 Commercial  
 Portland, OR 97204  
**Scale:**  
 1/32" = 1'-0"



**NEW THEATRE BUILDING**  
**FLOOR PLAN**  
**BASEMENT LEVEL**



# Portland Center for the Performing Arts

The City of Portland  
 Executive Director & General  
 & Administration of the Center  
 Board of Directors  
 Executive Director & General  
 Administration

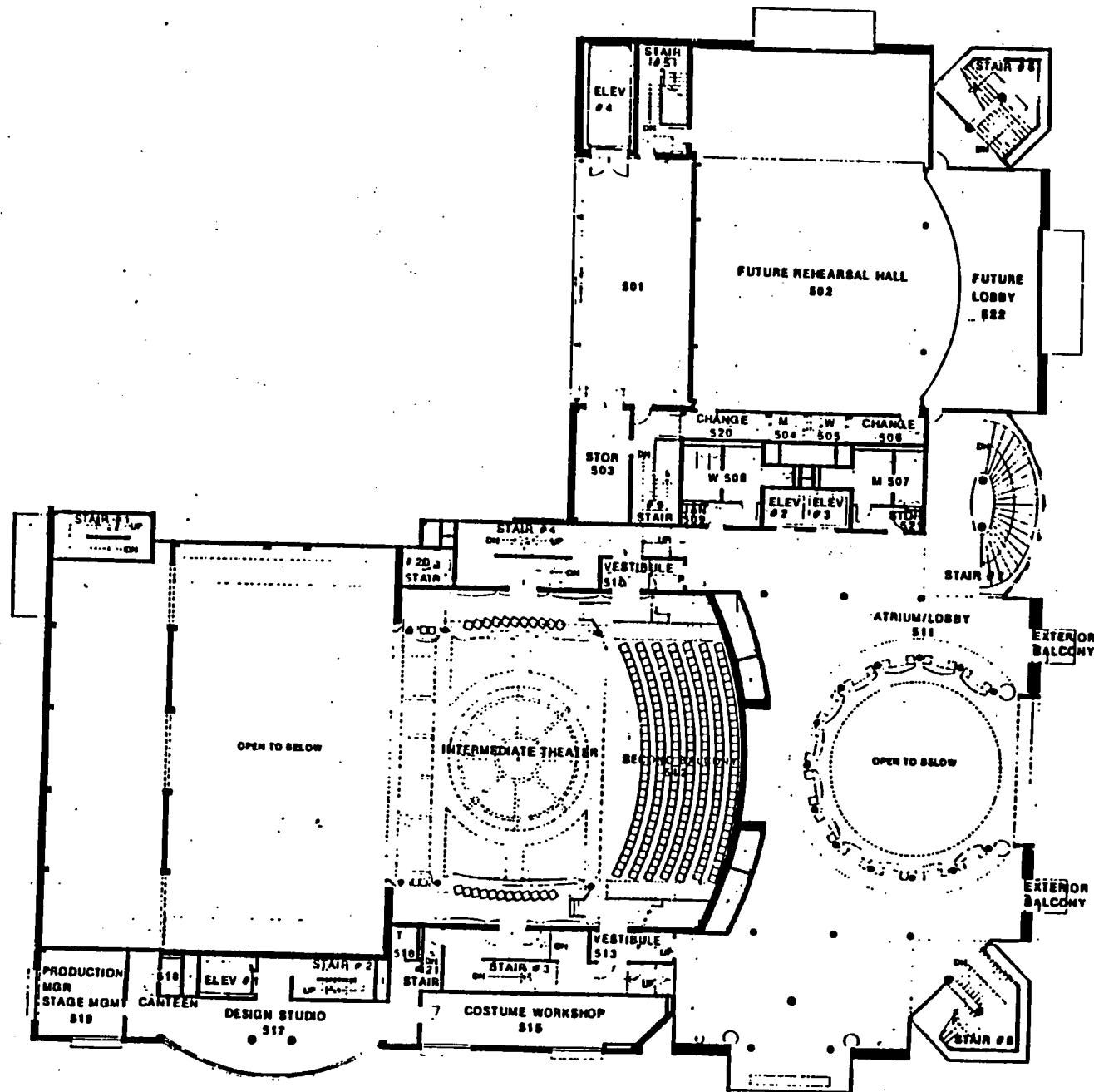
Architect  
 Seattle Architecture Firm  
 2111 Broadway Street  
 Seattle, WA  
 Project # 1000  
 1111 N. 10th Avenue  
 Portland, Oregon 97227  
 Phone: 503-241-1111

Contractors  
 Pacific Project Inc.  
 Project # 1000  
 1111 N. 10th Avenue  
 Portland, Oregon 97227  
 Phone: 503-241-1111

## NEW THEATRE BUILDING

FLOOR PLAN  
 FIRST LEVEL  
 (STAGE DOOR, MAIN ST.  
 & BROADWAY ENTRIES)

Date: \_\_\_\_\_  
 Scale: \_\_\_\_\_  
 Drawing No. 4.3



# Portland Center for the Performing Arts

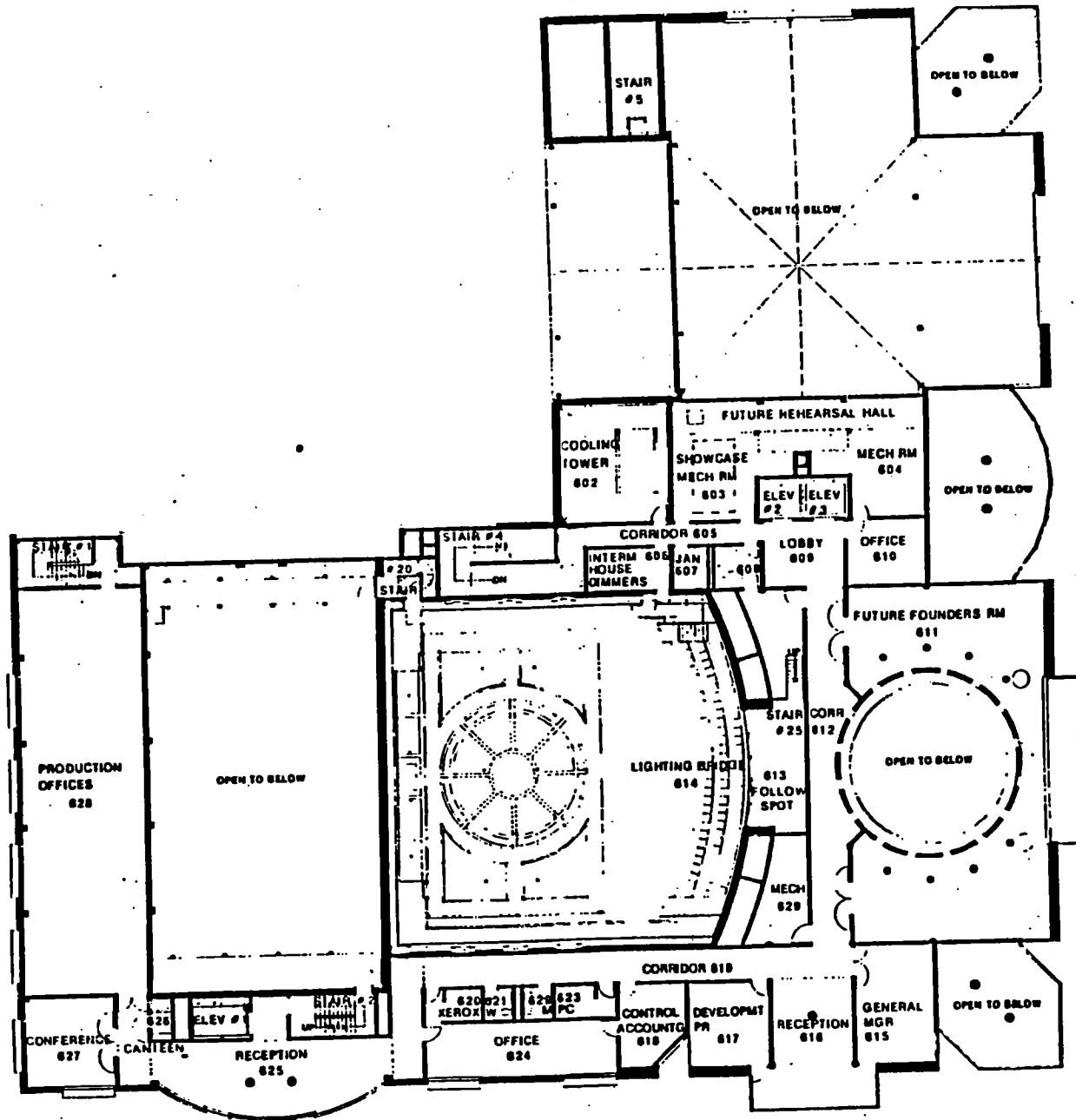
## The City of Portland

Commissioned by: City of Portland  
 Architect: [Name]  
 Designer: [Name]  
 Date: [Date]

Architect:  
 [Name]  
 [Address]  
 [City, State, Zip]  
 Designer:  
 [Name]  
 [Address]  
 [City, State, Zip]  
 Date:  
 [Date]

## NEW THEATRE BUILDING

FLOOR PLAN  
 FOURTH LEVEL  
 SECOND BALCONY -  
 INTERMEDIATE THEATER



# Portland Center for the Performing Arts

**The City of Portland**

Executive Director: [Name]  
 Director of Administration: [Name]  
 Director of Finance: [Name]  
 Director of Human Resources: [Name]  
 Director of Information Systems: [Name]  
 Director of Legal Affairs: [Name]  
 Director of Marketing: [Name]  
 Director of Operations: [Name]  
 Director of Public Affairs: [Name]  
 Director of Real Estate: [Name]  
 Director of Safety: [Name]  
 Director of Technical Services: [Name]  
 Director of Training: [Name]

**NEW THEATRE BUILDING**

FLOOR PLAN  
 FIFTH LEVEL  
 ADMINISTRATION OFFICES

Scale: 1/8" = 1'-0"

DATE: 4.90

## EXHIBIT "B"

To the Agreement Between  
Oregon Shakespeare Association  
and  
Portland Center for the Performing Arts

April 1, 1991 to March 31, 1993:

<u>Square Feet</u>	<u>Per Square Feet</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>	<u>Estimated # of Months</u>	<u>Contract Rent</u>
1,797.75	\$9.50	\$17,078.63	\$1,423.22	12	\$17,078.63
319.50	5.00	1,597.50	133.13	12	1,597.50
808.00	5.00	4,040.00	336.67	7	2,356.69
306.25	5.00	1,531.25	127.60	12	1,531.25
58.00	5.00	290.00	24.17	7	169.19
4,322.00	1.00	4,322.00	360.17	7	2,521.19
97.00	9.50	921.50	76.79	12	921.50
279.50	9.50	2,655.25	221.27	12	2,655.25
<u>435.50</u>	4.00	<u>1,742.00</u>	<u>145.17</u>	12	<u>1,742.00</u>
8,423.50		\$34,178.13	\$2,848.19		\$30,573.20

April 1, 1993 to March 31, 1994:

<u>Square Feet</u>	<u>Per Square Feet</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>	<u>Estimated # of Months</u>	<u>Contract Rent</u>
1,797.75	\$9.98	\$17,941.55	\$1,495.13	12	\$17,941.55
319.50	5.25	1,677.38	139.78	12	1,677.38
808.00	5.25	4,242.00	353.50	7	2,474.50
306.25	5.25	1,607.81	133.98	12	1,607.81
58.00	5.25	304.50	25.38	7	178.00
4,322.00	1.00	4,322.00	360.17	7	2,521.19
97.00	9.98	968.06	80.67	12	968.06
279.50	9.98	2,789.41	232.45	12	2,789.41
<u>435.50</u>	4.20	<u>1,829.10</u>	<u>152.43</u>	12	<u>1,829.10</u>
8,423.50		\$35,681.81	\$2,973.49		\$31,987.00



# Portland Center for the Performing Arts

Robert A. Freedman, Director / Portland Civic Auditorium • Arlene Schnitzer Concert Hall • Intermediate Theatre • Dolores Winningstad Theatre

October 21, 1991

Paul Nicholson  
Oregon Shakespeare Festival/Ashland  
P.O. Box 158  
Ashland, OR 97520

Dear Paul,

Subject: OSF/MERC Agreement

As we discussed, enclosed are two copies of the revised OSF/MERC Agreement. This three-year contract commenced April 1991.

The revisions to the Agreement were housekeeping matters. In Items 19 and 20, I corrected the language to include the Metropolitan Service District, the City of Portland and its Exposition-Recreation Commission, and their members, directors, officers, agents and employees. The changes are as follows:

**Page 4**

Item 9, line 2: "From" changed to lower case.

**Page 5**

Item C, lines 2-3: Was changed to read, "...on prior written notice of 120 days or at the end of the season, whichever comes last...".

**Page 6**

Item 8, lines 4-5: The word "charge" was inserted before the word "convenience".

Item 10A: Capitalized "the".

**Page 7**

Item D: Hyphenated "year-round".

Item E, line 1: Added the words "its" and "the".

**Page 9**

Item J: Added an apostrophe at the end of the word "permittees".

Item K: Changed "complies" to "comply".

**Page 10**

Item 19: Added the Metropolitan Service District, the City of Portland and its Exposition-Recreation Commission, and their members, directors, officers, agents and employees.

OSF/MERC Revised Agreement  
October 22, 1991  
Page Two

Page 11

Item 20: Added title "LIABILITY INSURANCE". Added the Metropolitan Service District, the City of Portland and its Exposition-Recreation Commission, and their members, directors, officers, agents and employees.

Thank you.

Sincerely,

*Robert A. Freedman*

Robert A. Freedman  
Director

kg

enclosures