

**Veterans Committee
War Memorial Board of Trustees
October 10, 2024**

**STAFF REPORT
Renewal of Agreement with American Legion War Memorial Commission**

American Legion War Memorial Commission (“ALWMC”):

The San Francisco Posts of the American Legion (the “Posts”) are collectively named as a beneficiary of the 1921 War Memorial Trust Agreement. Under the Trust Agreement, the Posts have rights and obligations with respect to use and occupancy of space in the Veterans Building. In 1932, there were approximately 32 American Legion Posts in San Francisco; currently in 2024 there are 10 Posts with 786 members. The San Francisco American Legion Posts comprise the American Legion Eighth District.

Since 1932, the Posts have acted through the American Legion War Memorial Commission (“ALWMC”) with respect to their rights under the War Memorial Trust Agreement. The ALWMC is currently a standing committee of the American Legion Eighth District Council with authority to exercise the power to act for the Posts in the conduct of the War Memorial Veterans Building and to carry out and exercise all of the rights and privileges granted to the Posts under the Trust Agreement. The ALWMC is comprised of one commissioner from each Post, each commissioner entitled to one vote.

Background of Agreement between the War Memorial and ALWMC:

The War Memorial Trust Agreement provides that the beneficiaries are under no obligation to pay rent and the War Memorial Board of Trustees has never assessed security or janitorial charges to the Posts, and all utilities and services have been provided to the Posts by the War Memorial in kind (now totaling approximately \$425,000 in space and services per year).

Since 1932, ALWMC funded its office expenses from three sources: Veterans Auditorium (now Herbst Theatre) rentals, donations from the American Legion Department of California (ALDC), and contributions from veterans’ organizations. However, by the 1970s, revenues declined due to under-utilization of the Veterans Auditorium and reduced donations from Posts. By 1977, ALWMC’s revenue streams had dropped to a level that was no longer sufficient to cover its office and administrative expenses.

To address these challenges, in 1977, then-Mayor Joseph Alioto informed the Board of Trustees of an offer from the Herbst estate to donate \$650,000 for the renovation of the Veterans Auditorium. This generous offer came with several conditions: the War Memorial would assume management and control of the auditorium, the venue would be renamed the Herbst Theatre, and any annual revenue generated from the theatre above \$35,000 would be directed toward its operation, repairs, and improvements. In return for the renovation funding and management transfer, ALWMC agreed to relinquish its control of the Veterans Auditorium and Green Room to the War Memorial Board of Trustees.

To compensate ALWMC for the loss of rental revenue from the auditorium, the Trustees agreed to provide an annual sum to cover ALWMC’s office expenses, ensuring a more stable source of income for administering the veterans’ spaces in the building.

Annual sum paid to ALWMC:

In 1977, the Trustees and ALWMC entered into an agreement with the Trustees paying ALWMC up to \$35,000 annually from Herbst Theatre rental revenues. Over time, as ALWMC staffing and expenses decreased, payments were adjusted, and the agreement was renewed periodically. During the Veterans Building’s seismic renovation (2013–2015), payments were paused but resumed with the reopening in 2015.

Despite the COVID-19 shutdown in 2020 and subsequent revenue loss, Trustees continued to make monthly payments of \$2500 to the ALWMC, despite the venues being closed. In 2021, a renewal agreement set payments

at \$37,800, reflecting reduced activity due to the pandemic. In 2022, the Board approved a two-year renewal (2023–2024) with a \$53,400 annual sum, factoring in pre-pandemic expenditures and increased staff hours.

2024-2026 Renewal Agreement – Staff Recommendations.

Moving forward, the War Memorial proposes aligning ALWMC’s payments more closely with the original Trust Agreement by tying the annual payment to actual revenues generated by the Herbst Theatre. Under this new structure, ALWMC would receive 15% of the theatre’s gross revenue, ensuring that their funding has the potential to increase in accordance with the financial success of the venue.

This approach would not only provide a more sustainable and predictable revenue stream for ALWMC but also incentivize efficient management and programming of the Herbst Theatre. When the theatre performs well—through increased bookings, ticket sales, and other revenue-generating activities—ALWMC will directly benefit, potentially receiving more than the fixed annual payments of recent years. This model revisits the intent of the original agreement while adapting to the current economic realities and future opportunities for growth.

Term of Renewal Agreement: January 1, 2024, through December 31, 2026, total 24-months.

- Annual Sums to be paid to ALWMC:
 - Calendar Years 2024-26: Payments to be based on a percentage of sales model of 15% of gross sales of revenue from the Herbst Theatre, based on an average of historical payments paid to ALWMC.
 - Payment calculations will be based on actual bookings for the fiscal year, rather than projections. The January 2024 payment rate will be set to 15% of actual Herbst bookings from July 2023-June 2024. The annual payment amount will be re-calculated each January for the term of the Agreement.
 - The 15% monthly amount for 2025 is \$4,450 per month (total of \$53,400 dollars annually).
 - January 1, 2026 - December 31, 2026: The 15% will be calculated based on actual sales from July 2024 - June 2025 and will be rendered in 12 equal monthly installments.
- Other Terms of Agreement: Pursuant to this Agreement, the War Memorial will not require ALWMC to provide the Department with their yearly budget or be required to spend all the money each year in order to avoid a carry-over. ALWMC will be solely responsible for management of these funds. There will be a basic income guarantee, for worst case scenarios where the theatre must be shutdown (like another pandemic), which will guarantee the payment of funds at a minimum of \$2500 per month.

Annual Payments to American Legion War Memorial Commission by Fiscal Year

Fiscal Year	Sum of Recognized Revenue	Payments to ALWMC by Fiscal Year	Percentage of Gross Revenue	Notes
2018 Total	\$ 331,205.00	\$ 36,870.00	10%	
2019 Total	\$ 368,014.39	\$ 39,510.00	10%	
2020 Total	\$ 212,245.13	\$ 40,428.00	16%	
2021 Total	\$ 22,750.00	\$ 37,714.00	62%	Pandemic. Reduced payments to \$2500/month
2022 Total	\$ 181,718.70	\$ 34,550.00	16%	
2023 Total	\$ 289,968.00	\$ 46,900.00	14%	
2024 Total	\$ 296,350.00	\$ 53,400.00	15%	15% recommended for new lease agreement

AGREEMENT

The parties to this Agreement are the American Legion War Memorial Commission, a standing committee of the American Legion Eighth District Council, hereinafter referred to as "Legion," and the Board of Trustees of the San Francisco War Memorial, hereinafter referred to as "Trustees." The term of this Agreement is January 1, 2025, to December 31, 2026.

RECITALS

- A. In July 1977, the Trustees received a grant from the Herbst Foundation, Inc. for the renovation of the Veterans Auditorium. The Herbst Foundation, Inc. and the Trustees entered into an agreement dated July 18, 1977 setting out conditions of the grant award which included that the Trustees agree to maintain direct and exclusive control over all aspects of the use and enjoyment of the theatre including all functions involved in arranging bookings for the theatre and to receive the revenue therefrom; and to rename and maintain the name of the Auditorium upon completion of the renovation as the "Herbst Theatre."
- B. In order that the Trustees be able to comply with the condition of the Herbst Foundation grant, the Legion agreed to relinquish management and control of the Veterans Auditorium to the Trustees. Simultaneously, the Legion agreed to relinquish any rights it had to manage and control the Green Room to the Trustees, and the use and occupancy of basement Room #1 and Auditorium #2 in the Veterans Building to the San Francisco Museum of Modern Art ("Museum").
- C. On September 22, 1977, an agreement was entered into between the Legion and the Trustees setting forth the transfer to the Trustees by the Legion of any rights it had to manage and control the Veterans Auditorium and The Green Room, including the right to receive all revenue therefrom; and the transfer of the use and occupancy of Room #1 and Auditorium #2 in the Veterans Building to the Museum. This agreement specified an annual sum to be paid by the Trustees to the Legion for a four-year period to offset the Legion's office expenses for administering and scheduling uses of Veterans Building space allocated for use by the Legion. The agreement provided that at the end of the four-year period, the sum, if any, would be "renegotiated based on the needs and requirements of the Legion at that time, but in no event shall said sum exceed the sum of Thirty-Five Thousand Dollars (\$35,000.00) annually, including such sum as is paid by the Museum to the Legion for the use and occupancy of Room #1 and Auditorium #2." At a Special Meeting on November 10, 2021, the Trustees enacted Resolution 21-35, which eliminated the Not-to-Exceed Amount for agreements between the Trustees and the Legion previously established by Resolution 4487.
- D. On each of September 22, 1981, September 22, 1983, September 22, 1985, September 22, 1987, September 22, 1989, September 22, 1991, September 22, 1993, September 22, 1995, September 22, 1997, September 22, 1999, September 22, 2001, January 1, 2005, December 14, 2006, February 11, 2011, November 10, 2011, September 10, 2015, October 13, 2016, October 11, 2018, October 8, 2020, November 10, 2021, and November 10, 2022, the Legion and the Trustees renewed an agreement for additional payment of sums to be made to the Legion by the Trustees, each renewal specifying the renegotiated annual sum to be paid by the Trustees to the Legion for an additional period.

- E. The Trustees approved the renewal agreement with the Legion on October 10, 2024, subject to the terms and conditions provided herein.

TERMS OF AGREEMENT

1. PAYMENT TO LEGION BY TRUSTEES.

The Trustees agree to pay the Legion the sums provided herein from the revenue received from the rental of the Herbst Theatre to support the Legion's mission.

- A. January 1, 2025 – December 31, 2025: A total sum to be based on a calculation of 15% of gross revenue sales at the Herbst Theatre. The 15% will be calculated based on actual sales from July 2023 - June 2024 and rendered in twelve (12) equal monthly installments. The monthly amount for 2025 is \$4,450 per month (total of \$53,400 dollars annually).
- B. January 1, 2026 - December 31, 2026: A total sum to be based on a calculation of 15% of gross revenue sales at the Herbst Theatre. The 15% will be calculated based on actual sales from July 2024 - June 2025 and rendered in 12 equal monthly installments.

2. LEGION BUDGETS AND REPORTS.

- A. Legion Budget: The Legion is no longer required to submit its budget to the Trustees for consideration. The Legion is entrusted to manage and spend these funds to further its mission. The Legion may also carry-forward any unused funds to the following year.

3. LEGION USE OF VETERANS BUILDING VENUES.

At the sole discretion of the Trustees, the Legion shall be granted the use of the venues in the Veterans Building, including the Herbst Theatre, The Green Room, the Thomas L. Horn Bar & Lounge, and the Memorial Court without rental charge. The Legion must submit a request for use of a venue to the Board of Trustees for consideration and approval prior to the date of any proposed event.

4. FORCE MAJEURE.

In the event of a force majeure, including any governmental action or proceeding related to COVID-19 or other pandemic, fire, strike, war, act of war, terrorism, act of public authorities, earthquake, flood, or other cause beyond the parties' reasonable control that requires an unforeseen extensive closure of the Herbst Theatre, as determined by the Trustees in their reasonable discretion, the Trustees will pay a guaranteed amount of \$2500 a month to the Legion under this Agreement.

5. RENEWAL OF AGREEMENT.

This Agreement shall expire on December 31, 2026. After the expiration of this Agreement, the Trustees may evaluate whether to enter into a renewal agreement, and, if so determined, the sum to be paid by the Trustees to the Legion under a renewal agreement shall be renegotiated based on the needs and requirements of the Legion at that time.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

BOARD OF TRUSTEES
WAR MEMORIAL OF SAN FRANCISCO

AMERICAN LEGION
WAR MEMORIAL COMMISSION,
A standing committee of the American
Legion Eighth District Council

By: _____

By: _____

Date: _____

Date: _____

Approved as to form:
DAVID CHIU, City Attorney

By: _____

Date: _____

Lauren Curry
Deputy City Attorney

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