



City of Palo Alto

City Council Staff Report

(ID # 5169)

Report Type: Consent Calendar

Meeting Date: 11/10/2014

Summary Title: West Bay Opera Partnership Agreement

Title: Approval of the Renewal of a Public-Private Partnership Agreement Between the City of Palo Alto and West Bay Opera for the use of the Lucie Stern Community Theatre

From: City Manager

Lead Department: Community Services

Recommendation

Staff recommends that Council approve the renewal of a public-private partnership agreement between the City of Palo Alto and West Bay Opera for cooperative use of the Lucie Stern Community Theatre (Attachment B) for the period September 1, 2014 to June 30, 2015.

Background

The Lucie Stern Community Theatre is used by three local companies: West Bay Opera, TheatreWorks and Palo Alto Players, which produce approximately 15 productions annually. These partnerships provide the companies with an artistic home, an essential component of their ongoing existence, offering stability through the up and downs of the economy, especially during times when cutbacks in government, foundation and corporate funding for the arts are the national norm. In return, the companies collectively provide culturally enriching theatrical experiences for more than 45,000 audience members annually.

West Bay Opera was founded by Henry Holt in 1955. Originally called the Little Opera Guild, the company began presenting fully staged operatic performances. Under the leadership of Mr. Holt, who was succeeded by his wife, Maria Holt, and then by the present director, Jose Luis Moscovich, West Bay Opera has grown steadily. In 1974, the West Bay Orchestra was established. In 1982, the company acquired space for rehearsals, offices, a costume shop and storage on Lambert Avenue in Palo Alto. Annually, West Bay Opera (WBO) presents three fully staged productions at the Lucie Stern Theatre, attended by over four thousand audience members in the 2013 -2014 Season.

Discussion

West Bay Opera's usage of the Lucie Stern Community Theatre is covered by a public-private partnership agreement.

Given the long history of the partnership and the cultural benefits of providing the Palo Alto community with a diverse range of artistic events, staff recommends that the City Council approve the modification of the existing public-private partnership. The key terms of this agreement are discussed below:

Term: In order to align the term of the agreement with the fiscal year, the new agreement is for Fiscal Year 2015, effective September 1, 2014 and terminates on June 30, 2015. Similar agreement extensions are intended for subsequent years.

Revenue: In accordance with the Municipal Fee Schedule and in exchange for providing pro-bono facility usage, the West Bay Opera shall remit to the City a surcharge in the amount of \$2.00 for each ticket sold. This fee is effectively passed down to patrons and is applied to all subscription, group, individual, promotional, and other tickets sold. Complimentary tickets are excluded, and the sum of the surcharge revenue for each production is due to the City within 30 calendar days after the closing of the production. The City received [\\$8,316 from West Bay Opera in Fiscal Year 2014](#) from this ticket surcharge and [approximately \\$90,000](#) in total from the three theatre partnerships. Among other functions, the proposed agreement acts as a revenue contract which governs the application, collection, and accounting of associated revenue.

Responsibilities of City: The contract outlines the responsibilities of the City, using the standard terms of public-private and “joint-venture” partnerships (Attachment A, Policy 1-25: Public Private Partnerships), including specifying notice requirements for contract termination, and affirming non-discrimination, insurance, and property guidelines. The City is also responsible for allowing and providing access to the Lucie Stern Community Theatre during designated hours, providing basic maintenance of capital equipment, monitoring production safety, and providing information regarding other scheduled facility uses (such as City-sponsored events or private rentals).

Responsibilities of Company: Additionally, the agreement stipulates the responsibilities of the theatre company, including their duty to abide by City and department policies and procedures (specifically including and as related to, without limitation, conduct in community centers, injury and illness prevention, sale of alcoholic beverages, operations, building emergency procedures, zero waste, and facility use). Other responsibilities include timely remittance of fees and surcharges, requirements for sufficient building supervision/staffing, recordkeeping of ticket sales and surcharge remittance for compliance with audits, and adherence to standard practices for facility security.

RESOURCE IMPACT

No additional City resources are required and it is anticipated that this partnership will lead to enhanced program over the life of the agreement.

POLICY IMPLICATIONS

This partnership would be categorized as a public/private partnership under the City's Public-Private Partnership Policy (Policy 1-25: Public/Private Partnerships).

Attachments:

- Attachment A - Public Private Partnership Policy (PDF)
- Attachment B - FY15 West Bay Opera Agreement (PDF)

POLICY AND PROCEDURES 1-25/MGR
REVISED: AUGUST 2007

PUBLIC/PRIVATE PARTNERSHIPS

POLICY STATEMENT

The City of Palo Alto encourages the formation of public/private partnerships for the benefits the community receives. For the purposes of this policy, “public/private” also encompasses “public/nonprofit” partnerships.

Definitions

Public/private partnership: A public/private partnership is an agreement between the City and a nonprofit or private organization to provide services or to assist in funding of public facilities and programs. Such partnerships may take various forms, including:

- Acceptance of or solicitation of service or facility proposals
- Facilitation of such proposals through the City's regulatory process
- Waiver of City General Fund fees to help reduce project costs.
- Contributions of City matching funds for construction of facilities to be owned and controlled or operated by the City.
- Provision of facilities to the private partner at no charge or at a subsidized rent.

Public/private partnerships typically fall into one of three categories: co-sponsorship, alliances or joint ventures.

Co-Sponsorships: This is the most common type of public/private partnership. An organization furthers the mission of the City by supporting a City activity or program in conjunction with pursuit of that organization’s own mission or program. Co-sponsorships can take the form of one-time events or annual agreements. Some examples of co-sponsorships include the Palo Alto Tennis Club use of City courts to provide a youth tennis program and American Youth Soccer Organization’s use of space in a City facility to train referees. Co-sponsorships are entered into by staff and normally have no or minimal financial impact.

Alliances: This type of public/private partnership involves organizations that have been created for the sole purpose of supporting a City program or an array of City programs. The organization does not expect to receive any direct financial benefit or to alter City policy and/or operations, but undertakes to work closely and cooperatively with staff to implement City goals. Alliance organizations include the Recreation Foundation, the Art Center Foundation (Project Look or Cultural Kaleidoscope), the Friends of the Children’s Theatre (the Magic Castle), the Library Foundation and the Friends of the Palo Alto Library (financial assistance with the renovation and expansion of the Children’s Library). Alliances are approved by the Council if there are any staffing or budgetary implications to the partnership.

POLICY AND PROCEDURES 1-25/MGR
REVISED: AUGUST 2007

Joint Ventures: This type of partnership involves organizations which have programs or missions independent of the City and involve the City entering into a contractual relationship with the public or nonprofit organization with both parties contributing to the partnership for their mutual benefit. Each joint venture is uniquely negotiated by the staff and approved by the City Council. Examples of Joint Ventures include TheatreWorks, Palo Alto Players and West Bay Opera's use of the Community Theatre and use of the former police station by older adult service provider, Avenidas.

PROCEDURES

Initiation of partnerships: Public/private partnerships may be initiated in one of three ways:

- By staff: Staff identifies an opportunity for such a partnership and undertakes an informal or formal request for proposal process to identify partners.
- By Council: The City Council directs staff to work with a private or nonprofit organization to develop such a partnership.
- By a private or nonprofit organization: An organization makes a partnership proposal to the staff or City.

City Manager Review: If the partnership proposal involves more than one City department, the City Manager's Office will appoint a team with representatives of all City departments who are stakeholders in the partnership proposal. The team will analyze the proposal and inform the City Manager of the resource implications of the proposal, including staffing and monetary commitments. This would include proposed fee waivers. If the proposal will require a re-ordering of department priorities that have already been approved by the Council in setting its annual priorities or in the budget process, Council approval will be required prior to commitment to the partnership. Council approval will also be required if the partnership requires a new or adjusted allocation of operating or capital funding. Note: Co-sponsorships usually only involve a single department and do not necessitate the formation of an interdepartmental committee, the involvement of the City Manager's Office or the approval of the City Council.

City-Initiated Partnerships: Such partnerships will be guided by existing policies and procedures governing purchasing and outsourcing, using "requests for proposals" and/or bid processes as the method of initiating a partnership. A City-initiated partnership may incorporate incentives including naming rights, waiver of non-enterprise fund building and planning fees, reduced lease rates, free use of space, subsidies, and staff resources. All incentives may be negotiated on a case-by-case basis.

POLICY AND PROCEDURES 1-25/MGR

REVISED: AUGUST 2007

Evaluation of Viability of Partnering Organization: Staff will provide the City Manager and/or City Council with its assessment of the viability of the proposed partnership, based on the partnering organization's possession of sound organizational, administrative and fiscal management, and its demonstrated experience to achieve and sustain project tasks, such as fundraising and building community support. For proposed facility improvement or expansion initiatives, the nonprofit or private organization should have the ability and commitment to make a substantial pledge to the project's cost.

Facilities Proposals:

- If a City facility is to be renovated, expanded or otherwise be directly affected by the partnership, the Infrastructure Management Plan will have to be adjusted appropriately.
- Long-term staffing, operational and maintenance costs must be identified in the proposal. The project's applicable costs and funding sources for furnishings, fixtures and equipment will be identified.
- The parties will negotiate the joint or separate financial responsibility for any project cost overruns on a project-by-project basis.
- Staff may recommend that any standard City processing or use fee authorized under the Municipal Fee Schedule, excluding fees and charges levied by City of Palo Alto Utilities or other City enterprise fund programs, should be waived as a condition of the City's participation. Waiver of fees may be granted by the Council and limited to those fees associated with a construction or capital improvement project which, upon its completion, results in a new or improved public facility, building or park, or some portion thereof, that will be solely owned or controlled by the City. In the event that only a portion of a construction or capital improvement project will result in a new or improved City facility, building or park, or portion thereof, then the Council may waive only that portion of any associated fee directly relating to the construction, improvement or enhancement of the City facility, building or park. As appropriate, the summary and recommendation in the report to the Council will include a staff recommendation on waiving fees which the Council can approve or reject.
- The City will determine whether the nonprofit or private organization shall use or may forego a formal or informal competitive selection process in the hiring of professionals who will perform the management, design and/or construction phases of the project. The City shall review and approve the requirements for and the performance of all phases of design, planning and construction work for the project.

AGREEMENT FOR PERFORMING ARTS SERVICES

THIS AGREEMENT FOR PERFORMING ARTS SERVICES (“**Agreement**”) is made and entered into as of the 1st day of September, 2014 by and between **THE CITY OF PALO ALTO**, a municipality chartered under the laws of the State of California (“**City**”) and **WEST BAY OPERA (“CORPORATION”)**, a California nonprofit public benefit corporation, located at 221 Lambert Ave, Palo Alto, CA (telephone: 650-843-3900) (“**Contractor**”) (individually, a “**Party**” and, collectively, the “**Parties**”). In consideration of their mutual covenants, the Parties hereby agree as follows:

1. **SERVICES**: During the Term of this Agreement, as defined in Section 5 below, Contractor shall present that portion of Contractor’s 2014-2015 theatrical performances (the “**Services**”) that are produced at City’s Lucie Stern Community Center.
2. **FACILITY**: For purposes of this Agreement, the defined term “Facility” is deemed to mean those portions of the Lucie Stern Community Center comprising the theatre, lobby, green room, dressing rooms, scene shop, paint shop, light and sound booth, flat storage, rehearsal hall and costume shop.
3. **FEE**: Pursuant to the Municipal Fee Schedule (Exhibit G), the services to be performed under this Agreement constitute a “Class I” use of the Facility.
4. **EXHIBITS**: The Exhibits listed below, Appendices A through L and Attachments 1 through 5 are attached hereto and are incorporated herein by this reference. The Parties acknowledge that this Agreement shall have no force or effect unless all such Exhibits, Appendices and Attachments are attached hereto.

Exhibit A: Responsibilities of Contractor
Exhibit B: Responsibilities of City
Exhibit C: General Conditions
Exhibit D: West Bay Opera Addendum
Exhibit E: Non-Discrimination Form
Exhibit F: Proof of Liability Insurance
Exhibit G: Municipal Fee Schedule
Exhibit K: City of Palo Alto Non-discrimination Policy

5. **TERM**: The services under this Agreement shall commence as of September 1, 2014 and shall terminate on June 30, 2015 (the “**Term**”).
6. **COMPENSATION**: During the Term, Contractor shall pay City: (a) Two Dollars (\$2.00) for each ticket sold and (b) compensation for the Facilities Attendant present at each performance, at prevailing rates as set forth in the Municipal Fee Schedule, a copy of which is attached hereto as Exhibit G. Contractor shall send payment in accordance with Exhibit C to City, Attn: Project Manager.
7. **HOLD HARMLESS**: Contractor shall indemnify, defend and hold harmless City, its

Council Members, officers, employees and agents from and against any and all demands, claims or liability of any nature, including wrongful death, caused by or arising from the acts, errors, omissions, willful misconduct, or gross negligence during the Term by Contractor, its officers, directors, employees, subcontractors or agents, except to the extent such demands, claims or liability of any nature arise from the acts, errors, omissions, willful misconduct, or gross negligence of City, its Council Members, officers, employees, contractors or agents.

8. ENTIRE AGREEMENT: This Agreement and the terms and conditions set forth in the attached Exhibits, Appendices and Attachments represent the entire agreement between the Parties with respect to the Services. All prior agreements, representations, statements, negotiations and undertakings whether oral or written are superseded hereby.

9. QUIET ENJOYMENT: Contractor, upon payment of the consideration required hereunder and Contractor’s performance of all obligations of Contractor hereunder and Contractor’s observance of City’s policies referenced herein, shall and may peacefully and quietly have, hold and enjoy the Premises during the Term.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT THE DAY, MONTH, AND YEAR FIRST WRITTEN ABOVE

THE City OF PALO ALTO, a municipality chartered under the laws of the State of California

WEST BAY OPERA, a California non-profit public benefit corporation

By: _____
 Judge Luckey
 Its: **PROJECT MANAGER** AND
 REPRESENTATIVE FOR City

By: _____
 José Luis Moscovich
 Managing Director

I.R.S. Number: 94-2831245
 Address: P.O. Box 10250
 Palo Alto, CA 94303
 Telephone: (650) 329-2519

City OF PALO ALTO APPROVALS: (ROUTE FOR SIGNATURES ACCORDING TO NUMBERS IN APPROVAL BOXES BELOW)

City DEPARTMENT <input type="checkbox"/> Funds Have Been Budgeted (1)	PURCHASING & CONTRACT ADMINISTRATION INSURANCE REVIEW (2)	APPROVAL OVER \$25,000
		(3) PURCHASING MANAGER
APPROVAL OVER \$25,000	APPROVAL OVER \$85,000	
City OF PALO ALTO BY: _____ City ATTORNEY	ATTEST: BY: _____ MAYOR _____ City CLERK	

EXHIBIT A
RESPONSIBILITIES OF CONTRACTOR

During the Term, Contractor shall:

- (1) Abide by the policies/procedures established by City and City's Arts and Sciences Division and the Department of Community Services for the use of City facilities, equipment, costumes, props, furniture, scenery and other production elements. These shall include, but are not limited to, Regulations of the City of Palo Alto Regarding Prohibited Conduct In Community Centers and Theaters (Appendix A), the City of Palo Alto Injury and Prevention program (Appendix B), Policy for Sale of Alcoholic Beverages (Appendix C), Operations Manual (Appendix D), Safety Procedures and Guidelines (Appendix E), Building Emergency Procedures (Appendix F), procedure for adjusting the Forestage height, including use of the Scissor lift (Appendix G), House Manager's Guide (Appendix H), Zero Waste Plan (Appendix I), Costume Room Guidelines (Appendix J), City Report of Accident/Property Damage (Appendix K), and City's Danger Policy (Appendix L). Follow safety procedures for the use of power and hand tools, mechanical lifts, etc. including the use of safety goggles, ear protection, face shields, safety cables, outriggers, etc.
- (2) Obtain, supervise, and pay all necessary related fees for the services of all professional assistance needed to produce Contractor's productions (the "**Productions.**") Such assistance may include, but is not limited to the following: Production Directors, all Designers, Carpenters, Painters, Production Assistants, Music Directors, Choreographers, Musicians and other Front of House, Artistic or Administrative personnel.
- (3) Pay all fees and costs for materials, supplies, scripts, royalties, licenses and other fees and expenses connected with the Productions, including all make-up removal supplies.
- (4) Bear sole responsibility for the control and supervision of all production activities and personnel connected therewith, and notify all personnel of their obligations and responsibilities pertaining to their respective responsibilities, having primary responsibility for building security when Contractor is occupying City facilities.
- (5) Provide Project Manager or his/her designee with a list of all pyrotechnic effects (including the use of open flames), all hydro technical effects, all use of fog or haze, all loud noises (e.g., gunshots), and all use of strobe lights at least twenty-one (21) days prior to first use on stage. No flames shall be permitted on stage without the required fire permits from City. Smoking by any of the actors on stage as an integral part of the Production is deemed a pyrotechnic effect. Safety precautions approved by a City Fire Inspector and Project Manager or his/her designee will be taken when smoking is occurring on stage, and the audience shall be notified beforehand that smoking, loud noises (e.g., gunshots) or use of strobe lights will occur on the stage. All Fire Department fees for "Open Flame Permits" and "Candles and Open Flames in Assembly Areas Permits" shall be the responsibility of Contractor.
- (6) Provide Project Manager with the rehearsal schedule, performance schedule, shop

schedule and any requests for the use of City facilities (including but not limited to the Facility, as defined in Article 2, rooms located in the Lucie Stern complex and the Lucie Stern Courtyard and patio) for any purpose. Space reservations for the Facility are specified in Attachment 1. Space reservations for rooms other than the Facility should be made at least six (6) weeks in advance. No performance shall begin earlier than 9:00 a.m. nor end later than midnight. In no event shall Contractor conduct rehearsals or other activities, or otherwise occupy City facilities from 12 midnight to 8:00 a.m. unless prior written permission is obtained from Project Manager or a designated employee of City is on site. Contractor shall observe all facility security rules and regulations as established by City (Appendix A).

- (7) Designate as Project Director for the length of this Agreement an employee or sub-contractor to manage or supervise all areas, Contractor personnel and Contractor property in this Agreement, including production, technical, house personnel and any and all support groups and to be Contractor's liaison with Project Manager or his/her designee in all matters relating to the City in any way.
- (8) Arrange for auditions and casting for the Productions and have sole responsibility for the supervision and control of all performers. With respect to casting, Contractor shall have sole discretion to choose and approve the qualifications and select the cast. In personnel decisions, Contractor shall agree to and comply with the provisions of the City's non-discrimination policy (Exhibit K).
- (9) Engage the services and train crew members in appropriate areas of theatre production activity and utilize crew members in a safe and effective manner in the presentation of the Productions. Contractor shall be solely responsible for the control and supervision of such participants and shall indemnify, defend, and hold harmless the City from and against any claims or liabilities arising from the acts or omissions of such personnel. All such personnel shall be deemed the sole agents and employees of Contractor and shall be notified by Contractor of this circumstance.
- (10) Exercise safe practices in the use of City facilities and equipment, maintain and clear work areas, and, within twenty-four (24) hours, report, on a form provided by City (Appendix K), information regarding accidents. Immediately report to Project Manager or his/her designee on a form provided by City any breakage, malfunction, deterioration or loss of any of the City's resources (including musical instruments, tools, lights, sound equipment, props, curtains, etc.). Contractor shall not attempt repair of City equipment without prior consultation with the Project Manager. Contractor shall immediately discontinue any activity in which an unsafe or dangerous condition exists. Contractor shall train and supervise Contractor's staff and volunteers on safe theatre practices and adhere to City's safety procedures and guidelines. If, in the opinion of any City or Contractor employee, Contractor is conducting an activity in an unsafe manner, Contractor or its agents shall be informed and shall immediately discontinue such activity until such activity is able to be conducted in a safe manner approved by City staff.
- (11) In conformance with the Americans with Disabilities Act (ADA) of 1990 guidelines and requirements, Contractor shall bear responsibility for providing appropriate auxiliary

aids, interpretive services and accommodations where they are necessary to achieve an equal opportunity for patrons to participate in and enjoy the benefits of public performances produced under the Agreement. Printed programs shall include the following statement required by the Americans with Disabilities Act: "Persons with disabilities who require information on auxiliary aids or services in using City facilities, services, or programs or who would like information on the City's compliance with the Americans with Disabilities Act (ADA) of 1990, may contact: ADA Coordinator, City of Palo Alto, 650-463-4952 (Voice) or ada@Cityofpaloalto.org (Internet).

- (12) Maintain its existence as an independent, non-profit corporation under the laws of the State of California.
- (13) Submit all signs or displays to be located on or in the Facility to Project Manager or his/her designee for approval at the first production meeting. All displays may be put up at load-in and must be removed during strike. Inside the Facility, no display materials may be placed upon stucco walls. Lobby displays may be placed only on the lobby display boards, and all fasteners must be removed at the time display is taken down. Nothing may be posted on the exterior walls or doors of the Facility or in the Stern courtyard, except for items in the display case and an approved production name sign hung from the theatre balcony. Marquee signs must be constructed of light weight material, and shall be secured in such a way that the sign is unlikely to become dislodged by normal vibration or seismic activity. Signs shall be of a standard size no larger than ten feet in length and eight feet in height. All marquee signage must be attached to the theatre balcony with rigging so that the sign may be easily removed for limited periods during photography shoots, special events, or building maintenance.
- (14) Clean and clear the auditorium, stage, paint shop, scene shop, flat dock, and costume shop, green room, dressing rooms, rehearsal hall, hallways and outdoor areas adjacent to theatre and shop. Disassemble and store, to Project Manager's or his/her designee's reasonable satisfaction, scenery, properties, and other production elements, within six hours after the final performance or on such other time schedule mutually agreed upon between Contractor and Project Manager or his/her designee and the incoming authorized user of the facilities, if any. The stage shall always be returned to its basic set-up as established by Project Manager or his/her designee unless there is a mutual agreement with the incoming group that has been approved by Project Manager or his/her designee. All items on the STRIKE CHECKLIST are to be performed unless there is a mutual agreement with the incoming group that has been approved by the Project Manager or his/her designee. The Project Manager or his/her designee will sign a copy of the STRIKE CHECKLIST form at the completion of the strike to signify acceptance of clean and neat facilities.
- (15) Leave storage, paint, scene, and costume spaces clean and clear of Contractor's materials other than those materials necessary for the ongoing maintenance and repair of the sets and costumes by the Monday following opening performance.
- (16) Leave all spaces clear, clean and orderly at the end of each use. Rehearsal Hall is to be cleared of all materials, except major set pieces and any rehearsal props, after each daily

use. Rehearsal Hall is to be completely cleared within twenty-four (24) hours of final use. Kitchen, restrooms and dressing rooms are to be cleaned and cleared after each daily use. Trash, recycling and compostable materials are to be removed from all areas daily. Recyclables and compostable materials are to be placed in the recycling and composting carts near the trash dumpster and garbage and trash are to be placed into the dumpster. Contractor is required to reduce waste, reuse and recycle per the City's Zero Waste Plan (Appendix I). Office space and hallways are to be kept continually clear, clean and orderly and neither space shall be used for the purpose of set, prop, or costume storage. Materials may not be left or stored any place out-of-doors overnight or when unattended by Contractor's personnel.

- (17) Enforce current regulations as established by City with regard to smoking, food and drink in City facilities (Appendix A). Contractor shall provide ushers at all previews and performances to enforce such regulations. Smoking is not permitted inside any City facility. No person shall bring any animal into the theatre. This regulation shall not apply to service animals assisting individuals with disabilities or to animals in training to become service animals. Use of animals on the stage is subject to approval by Project Manager or his/her designee. Food and drink are not permitted in the auditorium, light/sound booth or on stage, unless used as part of a production scene. Food and drink shall be permitted only in approved areas such as the green room and lobby. Contractor shall clean up all food and drink containers daily after use.
- (18) Contractor will be responsible for cleaning the Lucie Stern hallway restrooms for weekend performances.
- (19) Comply with City TB test requirement for employees and volunteers of Contractor at any time the City Risk Manager deems it necessary. If minors are involved in the Production, Contractor shall comply with all of the State of California's rules and regulations regarding Child Labor.
- (20) Comply with City sound ordinance levels for any outdoor activities, including load-in, strike, dismantling, or disposal. Shop doors facing Hopkins and Harriet Streets shall be closed between 8:00 p.m. and 8:00 a.m.
- (21) In addition to the Facilities Attendant referenced in Section 5 of the Agreement, pay any additional Attendant according to prevailing rates as set forth in the Municipal Fee Schedule attached as Exhibit G, pursuant to the following
 - (a) For a period of one (1) hour prior to until at least one half (1/2) hour after the completion of each Performance listed in West Bay Opera Production and Exclusive Use Schedule, 2014 – 2015 (Attachment 1).
 - (b) For any Performance not included in Attachment 1, Contractor may add additional performances of the Productions listed in Attachment 1 upon thirty (30) days' advance notice to City.
 - (c) When using other City facilities at the same time as a Performance listed in ATTACHMENT 1.

- (22) Provide house manager and ushers for every Performance or event whenever the public is in attendance. Contractor shall only engage the services of ushers have been trained in theatre emergency, safety and use procedures usher. Contractor shall submit a list of its trained personnel to Project Manager prior to public performances for each Production. Ushers must be available to assist patrons under all circumstances and must be aware of and able to assist disabled persons. Contractor's House Manager and ushers must also be available to assist in emergency situations throughout the entire Performance until the audience has left the theatre. Ushers must ensure that wheelchairs, walkers, etc. are not blocking any of the aisles or exits. Ushers shall return seats to the upright position and remove litter from the auditorium and restrooms at the conclusion of each performance.
- (23) Install and/or remove the removable auditorium seats in designated areas to accommodate wheelchair patrons and as required due to the needs of the Production.
- (24) Remove from the Facility, at the conclusion of each Production, costumes, properties and sets created by Contractor with Contractor-owned materials, which costumes, properties and sets will remain the property of Contractor. All office equipment, construction tools, special effects and lighting equipment purchased and owned by Contractor will remain the private property of Contractor and City assumes no responsibility or liability for the loss or maintenance of such materials. All equipment, instruments, costumes and any other materials rented, borrowed or owned by any subcontractor, agent or person for Contractor is the responsibility of Contractor and/or its subcontractors, and City assumes no responsibility or liability for their maintenance or loss. Contractor assumes all liability and responsibility for any default on Production expenses.
- (25) Replace or repair or cause to be replaced or repaired by factory authorized technicians City-owned equipment, instruments or materials identified by Project Manager or his/her designee as having been lost, damaged or destroyed by Contractor or its agents. A written report must be made on a City form whenever City equipment is lost, damaged, or destroyed by Contractor.
- (26) Upon written application to Project Manager or his/her designee and upon express approval and written authorization of Project Manager or his/her designee, use City-owned properties, sets, costumes, scenery, furniture and equipment for Productions not scheduled in the Agreement. Approval, if any, shall be given to Contractor in writing. In the event any of such items are damaged or destroyed, Contractor shall bear responsibility for the repair or replacement of such items to the reasonable satisfaction of Project Manager.
- (27) Upon written application to Project Manager or his/her designee at least sixty (60) days prior to the applicable date, request approval to use the Facility for classes, camps or workshops. No later than thirty (30) days prior to the applicable date, the Project Manager or his/her designee shall deliver to Contractor in writing his/her approval or disapproval. Failure to respond shall be deemed approval. In the event of disapproval, then he/she shall briefly explain the reasons therefor. No such activity will be advertised or promoted until it has been approved by the Project Manager or the time for review has passed, whichever occurs first.

- (28) Comply with all State and City laws relating to the sale and consumption of alcoholic beverages. Alcohol is permitted at the Facility if approved by Project Manager, whose approval will not be unreasonably withheld. Unless otherwise specifically permitted and pursuant to City policy, the only alcoholic beverages that may be sold or served at City facilities are wines, including champagne and sparkling wine. If alcoholic beverages are to be sold or distributed free of charge, Contractor must possess a valid On-Sale General Theatre License for the Facility. [TW COMMENT: This is the type of license that is required.] A copy of Contractor's permit for the sale or distribution of alcoholic beverages shall be provided to Project Manager. Proof of liquor liability insurance where City is named as co-insured with liability of at least One Million Dollars (\$1,000,000.00) shall be required. Permits are to be displayed as required by law. It is the responsibility of Contractor to ensure that no alcoholic beverage is served to a minor. Identification must be checked if the person appears to be under thirty (30) years of age. After each performance, Contractor shall remove all items, including cups, glasses, bottles, napkins and food from the lobby and other areas within the Facility as well as the courtyard. Contractor is required to adhere to City's Recycling and Zero Waste Program (Appendix D).
- (29) Shall cause to have present at the Facility at all times when Contractor or any of its employees, subcontractors or volunteers is in the Facility one of Contractor's designated and City-approved key and/or proximity card holders. Any exceptions to the foregoing requirement must be approved, in writing, by Project Manager or his/her designee. Any exceptions must be approved by Project Manager or his/her designee in writing.
- (30) Prevent any modifications of a permanent or disfiguring nature of or to the Facility. Contractor may not install or attach anything in or on the Facility without having first submitted a written request to Project Manager and having received written permission from Project Manager or his/her designee. The approval of Project Manager does not relieve Contractor from any responsibility to obtain necessary City permits or Building Department approvals for the modification. Should Contractor violate the provisions of this Paragraph (30), Contractor shall be charged for all repairs necessary to restore the Facility to its original condition and for any additional costs arising from such violation.
- (31) Immediately report to the police any incidents of a criminal or suspicious nature occurring on City property, and notify Project Manager or his/her designee within twelve hours. If initial notification is verbal, Contractor must subsequently submit the information in writing to Project Manager or his/her designee on a form provided by City.
- (32) Ensure that the doors to the Scene Shop, Rehearsal Hall, and Costume Shop, as well as any other exterior access doors to any area of the Facility, are not left open, unlocked or left with the locking mechanism disabled, even if only briefly, at any time when the immediate area secured by the door is unoccupied by Contractor. Failure to do this may result in the imposition of greater restrictions imposed on Contractor for access to the Facility, including the possible forfeiture of keys/proximity cards by Contractor and/or restricted access times.

- (33) Complete a City Report of Accident/Property Damage report (Appendix K) for any and all accidents, injuries or property damage if a City employee is not present to fill out the report.
- (34) Operate and conduct business in compliance with City's Zero Waste Plan (Appendix I) for all activities including, but not limited to, set construction and strike, food and beverage service, and office activities. The City Recycling Program department can assist with resources for achieving this goal. The goal is to send as little waste to landfill as possible through waste reduction, reuse and recycling. To achieve this goal Contractor must first reduce waste whenever possible.
- (35) Avoid the use for food/beverage service of disposables, including, but not limited to, Styrofoam and other plastics. Reusable food/beverage service ware should be utilized to the maximum extent possible. Where a reusable food/beverage service option is not available, Contractor shall choose items that are recyclable. For concessions, choose product packaging that is recyclable.
- (36) Practice reuse before, during and after Production. City shall provide a list of reuse resources to avoid the disposal of construction materials, sets and props. Contractor must recycle construction debris from set materials (e.g. wood, metal).
- (37) Recycle all materials included in the City's Recycling Program including paper (all types), plastic containers #1-#7, cardboard, glass bottles and jars, and metal cans. Compostable materials will be disposed of in designated compost waste receptacles.
- (38) Include on the title page of all production and event programs the following credit: "Use of this facility is made possible through support from The City of Palo Alto, Community Services Department, Division of Arts and Sciences," and include the official City of Palo Alto logo on the title page or prominent placement within event programs; print in all publicity for the Productions, including, but not limited to, mailings, flyers, posters, brochures, and paid or public service advertising, the statement: "In cooperation with the City of Palo Alto Community Services Department, Division of Arts and Sciences." The City of Palo Alto, Community Services Department, Division of Arts and Sciences shall also be credited in the Contractor's list of funders as a "Civic Sponsor."

EXHIBIT B
RESPONSIBILITIES OF CITY

During the Term, City shall:

- (1) Allow Contractor the exclusive use of the Facility, as defined in Article 2, as scheduled in Attachment 1 for the preparation and presentation of Productions performed under this agreement provided that Contractor submits specific rehearsal schedules, performance schedules and shop use schedules. Any use of City facilities and equipment other than those listed in the Agreement and the Exhibits thereto, which facilities and/equipment are nonetheless required to allow Contractor to perform its Services hereunder are subject to a different contract between City and Contractor. (“**Non-Facility Contracts**”).
- (2) Allow the use of the auditorium and the stage for performances and brush-up rehearsals within the period described in Exhibit A, Paragraph 6.
- (3) Allow the use of the exclusive use of the stage and the auditorium prior to the opening night of the Productions , with the exception of necessary maintenance procedures that may require access to the stage and auditorium during this period, according to the production schedule set forth in Attachment 1. Allow the use of the rehearsal hall, box office, scene shop, paint shop and costume shop according to the schedule as set forth in Attachment 1. Additional facility use may be provided as specified in item (Exhibit B (1); Exhibit A (27)) above; however, priority use of the room will always be given to actual rehearsals of productions covered by a contract with City. City reserves the right to allow other uses of space within the Facility when not in actual, scheduled use by Contractor on a non-interference basis and with at least seventy-two (72) hours’ prior notice to Contractor.
- (4) Allow Contractor to use all operational production equipment in City’s inventory as requested by Contractor and approved in writing by City. Contractor shall take such equipment "as is" and is responsible for ensuring that such equipment is in a safe condition prior to use and is returned in working condition at the conclusion of its use or of the Production.
- (5) Monitor all aspects of production with respect to safety issues (Appendix E). If Project Manager or any designee(s) deem(s) that any procedure followed by Contractor is unsafe, he or she has the authority to require the immediate suspension of such procedure. City and Contractor will work together to prevent or quickly mitigate any fire hazards or any items identified by the Fire Department during facility inspections.
- (6) Provide persons designated by Contractor and approved by Project Manager or his/her designee with keys, proximity cards (up to a maximum of six), and alarm codes for access to the Facility for the sole purpose of carrying out the requirements of the Agreement. Keys, proximity cards, and alarm codes shall not be loaned or transferred and shall be used only by the designated persons. In the event that Contractor fails to properly open or lock and secure City facilities leading to a false alarm call-out or leaves areas of the facility unlocked and unattended, a Two Hundred Dollar (\$200.00) penalty

shall be paid to City on each such occasion. In the event that a designated key holder loses any key or proximity card issued by City, Contractor shall be assessed a Seventy-Five Dollar (\$75.00) replacement charge for each key or proximity card or pay for the cost of rekeying or reprogramming the locks of the facility if circumstances indicate it as determined in City's reasonable judgment. Contractor will be responsible and held accountable for all personnel, properties and activities of Contractor.

- (7) Have the right, with no notice, to suspend the Agreement if the Facility should be declared uninhabitable for reasons of safety by the proper authorities (e.g., if the building should be damaged in an earthquake and be declared unsafe for occupancy). If there is an outbreak of pandemic flu or other medical emergency and places of public gatherings are closed, City will not assume any financial responsibility for loss of revenue by Contractor. If the Facility is not available due to earthquake, other disaster, or safety related issues, City will not assume any financial responsibility for loss of revenue by Contractor.
- (8) Have the right to borrow available Community Theatre-owned properties, sets, costumes and scenery for productions scheduled in this Agreement. Costumes, properties and sets created by Contractor with Contractor-owned materials will remain the property of Contractor, and shall be removed from the Facility at the conclusion of the production in which the materials are used. The Project Manager or his/her designee may, on a case-by-case basis, authorize exceptions. All office equipment, construction tools, special effects and lighting equipment purchased and owned by Contractor will remain the private property of Contractor and the City assumes no responsibility or liability for the loss or maintenance of such materials. All equipment, instruments, costumes and any other materials rented, borrowed or owned by any subcontractor, agent or person for the Contractor is the responsibility of the Contractor and/or its subcontractors, and the City assumes no responsibility or liability for its maintenance or loss.

EXHIBIT C
GENERAL CONDITIONS

- (1) City. The Manager Arts-Children's Theatre is hereby designated Project Manager for City, who shall render overall supervision of the progress and performance of this Agreement by City. All City services set forth in this Agreement shall be performed by City under the overall supervision of Project Manager or his/her designee. Contractor shall go through Project Manager or his/her designee in all matters dealing with City policies, funding, facilities, equipment and other City departments outside the Facility.
- (2) Contractor. Contractor shall assign a single Project Director who shall have overall responsibility for the compliance of Contractor with the Agreement. Should circumstances or conditions subsequent to the execution of this Agreement require a different Project Director, Contractor shall notify City immediately of same. The Project Director shall be responsible for all actions of Contractor. The Project Director shall also be responsible for disseminating to appropriate personnel all communication and information from City.
- (3) Access. Contractor shall not prevent Project Manager, facility maintenance personnel, and/or others specifically designated by Project Manager from access to the Facility; provided, however, that City shall use its best efforts not to disrupt the activities of Contractor as permitted by the Agreement. The Project Manager and others specifically designated by Project Manager shall attempt to coordinate such access if possible.

Notwithstanding the foregoing, except in the case of emergency or if they are present on the premises as members of the audience or specifically invited into the backstage areas of the theatre, Project Manager, facility maintenance personnel and/or others specifically designated by the Project Manager shall not enter the auditorium or backstage areas during public performances of a production.

- (4) Days Defined. The term "days" shall mean calendar days.
- (5) Qualifications. Contractor represents that it is qualified to furnish the Services described under the Agreement.
- (10) Ticket Sales:
 - (a) Contractor's budget for the Term of the Agreement is attached hereto, marked "Attachment 2" and incorporated herein by reference as though fully set forth herein.
 - (b) Contractor shall be responsible for sale of season tickets and single tickets, depositing of revenue and reporting of revenue and expenditures, and shall place available tickets for each Production for sale at the theatre box office one hour prior to each performance. Until one (1) hour prior to the beginning of a Performance, Contractor shall not sell (a) seat numbers C1, C2, D1, D2, D3, and D4; (b) either (i) the block of seats T2, T4, T6, T8, T10, U2, U4, U6, U8 and U10

or (ii) the block of seats T1, T3, T5, T7, T9, U1, U3, U5, U7 and U9 for the purpose of making such seats available for the disabled; provided, however, that this Section 10(b) shall not apply to the sale of tickets for such seats to persons who identify themselves as disabled when they purchase their ticket.

- (c) Contractor agrees the price of admission for the season shall be as set forth in Attachment 3.
 - (d) Contractor shall remit to City a surcharge in the amount of Two Dollars (\$2.00) for each and every ticket sold either through subscription, group, individual, promotional or any other means. The foregoing surcharge is due within thirty (30) calendar days the closing date of the Production. The word "sold" as used in this Paragraph (10)(d) is to include any tickets given in exchange for monetary consideration, including donations. City may, in its discretion, add a three percent (3%) surcharge levied for payments received between 31 days and 60 days after the closing date of the Production, a four percent (4%) surcharge levied for payments received between 61 days and 90 days after the closing date of the Production, and a five percent (5%) surcharge levied for payments received in excess of 90 days of the closing date of the Production. Payment must be accompanied by the production report specified in section C(13), "PRODUCTION REPORTS AND RECORDS," item (a) before payment will be considered to have been made.
 - (e) Contractor shall provide City, when requested by Project Manager or his/her designee, with at least six (6) complimentary tickets for each Production on the date(s) requested. Best available seating will be provided to City if any seats are available at the time of the request.
 - (f) Contractor may operate an intermission snack concession during each Performance under this Agreement. Contractor shall conduct such operation in a safe, clean manner and shall hold City harmless from any claim or demand or liability of any nature whatsoever which may arise out of such operation. If alcoholic beverages are to be sold or distributed free of charge, Contractor shall have on display a California State A.B.C. Permit and provide Project Manager with proof of liquor liability where City is named as co-insured with liability of at least one million dollars (\$1,000,000.00) (See Exhibit A (29) above). It is the responsibility of Contractor to ensure that no alcoholic beverage is served to a minor by checking I.D.'s if the person appears to be under thirty years of age. Food and drink may not be taken into the Auditorium or the Light/Sound Booth at any time. Contractor shall remove all cups, glasses, bottles, napkins and food from the lobby, green room, and any other affected areas, including the courtyard, after each performance. Contractor is required to adhere to City's Zero Waste Plan (Appendix I).
- (11) Composition of Contractor. Throughout the term of this Agreement, Contractor shall remain an independent, non-profit public benefit corporation under the laws of California and be governed by a Board of Trustees. Any changes in Contractor's Articles of

Incorporation, By-Laws, or tax-exempt status shall be reported by Contractor immediately to Project Manager. Not more than twenty-five percent (25%) of the persons serving on the governing board of Contractor may be interested persons. "Interested persons" means any person currently being compensated by Contractor for services rendered to it, whether as a full or part-time employee, independent or otherwise, but excluding any reasonable compensation paid to a director as director.

(12) Fiscal Responsibilities of Contractor.

- (a) Fiscal Agent. Contractor shall appoint a fiscal agent who shall be responsible for the financial and accounting activities of Contractor, including the receipt and disbursement of Contractor funds. Contractor shall provide City with the name of a fiscal agent (Attachment 4) and notify Project Manager within five (5) business days of any changes occurring during the Term. Contractor shall have sole responsibility for the safekeeping of Contractor tickets and monies.
- (b) System of Accounts. Contractor and its fiscal agent shall establish and maintain a system of accounts that shall be in conformance with generally accepted principles of accounting for budgeted funds. Such system of accounts shall be subject to the review and approval of City staff.
- (c) Financial Records. In support of its system of accounts, Contractor shall maintain complete and accurate records of all financial transactions, including, but not limited to, contracts, invoices, time cards, cash receipts, vouchers, canceled checks, and bank statements. City may inspect these records at Contractor's office upon reasonable advance notice and during normal business hours upon request. NOTE: Contractor's cash receipts are not to be stored on the Premises between Productions.
- (d) Audit of surcharge payments. Contractor shall retain for a period of at least three (3) years bar-coded electronic records of tickets sold, sales records, and a verified report of sold and unsold tickets which must be made available to City of Palo Alto Auditor upon request.

(13) PRODUCTION REPORTS AND RECORDS.

- (a) Reports. On reasonable notice and with reasons specified, Contractor shall grant Project Manager and/or City's Auditor access to all Contractor records relating to this Agreement, including performance records, data, statements, and reports.
- (b) Tax Form 199. A copy of Contractor's most recently filed California State Tax Form 199, "California Exempt Organizations Annual Information Return" must be filed with Project Manager or his/her designee within fifteen (15) days of when it is due to the State of California and shall also be attached to this agreement prior to its final approval (Attachment 5).

(14) CORRECTIVE ACTION REQUIREMENT. Notwithstanding the requirements of this Agreement, in the event City should determine from any source, including but not limited

to reports submitted by Contractor under this Agreement or any evaluation report from any source, that Contractor may not be in compliance with any provision of the Agreement, City may forward to Contractor written notice of same. Such notice shall specify with particularity the nature of the condition(s) or issue(s) that require(s) corrective action and may include a recommendation as to appropriate corrective action. Within fifteen (15) days of City's request, Contractor shall submit its written response to the notice, which response shall set forth its view of the alleged violation and its proposed plan, if any, for corrective action. Upon request of either Party, the Parties shall meet within five (5) days thereafter to discuss the alleged violation and proposed corrective action.

- (15) CONTRACTS WITH OTHER AGENCIES. Contractor agrees not to enter into any contract or agreement with another person or agency that will materially interfere with or inhibit the full performance of the Services to be provided by Contractor under this Agreement. Contractor agrees to terminate as soon as legally possible any contract or agreement which will materially interfere with or inhibit the full performance of the services to be provided by Contractor to City under this Agreement. Nothing herein is intended to prohibit Contractor from applying for, and receiving, supplementary funding from other than City sources so long as any agreement required for such funding does not materially interfere with or inhibit the full performance of the services to be provided by Contractor under this Agreement. Contractor is specifically encouraged to seek such supplementary funding. Any agreement between Contractor and the Mountain View Center for the Performing Arts or any other theatrical venue shall not be deemed to violate this Section (15).
- (16) INTEREST OF CONTRACTOR. Contractor covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of its Services hereunder. Contractor further covenants that, to the best of Contractor's knowledge and belief, in the performance of its Services under the Agreement, no subcontractor or person having such an interest shall be employed by Contractor. It is expressly agreed that, in the performance of the Services hereunder, Contractor shall at all times be deemed an independent contractor and not an agent or employee of City.
- (17) ASSIGNMENT. Both Parties shall give their personal attention to the faithful performance of this Agreement and shall not assign, transfer, or convey the Agreement or any right, title, or interest in or to the same or any part thereof without the prior written consent of the other Party, and then only subject to such terms and conditions as the other Party may require. Consent to one assignment shall not be deemed to be consent to any subsequent assignment. Any assignment without such approval shall be void and, at the option of the other Party, shall terminate this Agreement and any license or privilege granted herein. This Agreement and the Parties' respective interests herein shall not be assignable by operation of law without the prior written consent of the other Party.
- (18) SUBCONTRACTORS. Contractor shall be responsible for employing or engaging all persons necessary to perform the Services of Contractor hereunder. All subcontractors are deemed to be employees of Contractor and Contractor agrees to be responsible for

their performance. Contractor shall give its personal attention to the fulfillment of the provisions of the Agreement by all of its employees, participants, volunteers, and subcontractors.

- (19) INDEMNITY. Except to the extent the same arise from the negligence or willful misconduct of City, its officers, contractors, agents, employees, or persons brought onto the Premises by or through City, Contractor shall defend, indemnify and hold harmless City, its officers, contractors, agents, and employees and the Premises from and against (a) any injury or death or property damage arising from the use or occupancy of the Premises by Tenant, its officers, agents, employees or any persons brought onto the Premises by or through Contractor, (b) any claims or demands made against City, its officers, agents or employees by reason of any infringement or alleged infringement of any copyright or trademark caused by or alleged to have been caused by Contractor or any subcontractor under this Agreement, (c) any penalties imposed on account of the violation of any law or regulation or of any term or condition of any permit in connection with this Agreement, or (d) any damage arising under this Agreement from any loss or damage to materials and equipment owned, rented or borrowed by Contractor, its employees, subcontractors, participants, volunteers, sponsors or any others engaged in connection with the Services rendered by Contractor under the Agreement.
- (20) INTOXICATION. Contractor agrees to be responsible for injuries or damage caused by any of its directors, officers, employees, agents, subcontractors, or volunteers who are under the influence of alcohol, drugs, hallucinogens or narcotics, whether or not legally prescribed. Neither Contractor nor City shall permit any of Contractor's employees or volunteers discovered to be under the influence of any of the foregoing substances from remaining in any facility used under the terms of this Agreement and City reserves the right of denying such persons further participation in the Productions. Consumption of alcoholic beverages or use of illegal drugs at the Facility is expressly forbidden by any person working for Contractor, paid or volunteer. This includes all staff, actors, crew and musicians.
- (21) WORKER'S COMPENSATION. Contractor certifies that it is aware of the provisions of the Labor Code of the State of California, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and it certifies that it will comply with such provisions during the Term of the Agreement.
- (22) INSURANCE. Contractor, at its sole cost and expense, shall obtain and maintain in full force and effect throughout the Term of the Agreement insurance coverage insuring not only Contractor and its subcontractors, if any, but also, with the exception of workers' compensation and employer's liability insurance, City, its officers, agents, and employees and each of them. City is to be named as Additional Insured with liability coverage of at least One Million Dollars (\$1,000,000.00).

A copy of the certificate(s) of insurance shall be attached to the Agreement and shall be filed with City concurrently with the execution of this Agreement. Said certificate shall be subject to the approval of City Attorney and shall contain an endorsement stating that

said insurance is primary coverage and will not be canceled or altered by the insurer except after filing with City Clerk thirty (30) days' written notice of such cancellation or alteration. Current certificates of such insurance shall be kept on file at all times during the Term of the Agreement.

- (23) WEAPONS. No firearms or other weapons, whether loaded or not, shall be allowed in the Facility or any other City property. Stage weapons and firearms designed solely for the use of blank cartridges will be allowed if they are being used as a prop in the current Production, but must be stored, when not being used, in a secure manner by Contractor's stage manager or his/her designee. (Please reference City's Danger Policy, Appendix L.)
- (24) LEGAL COMPLIANCE. Contractor and all its paid employees, subcontractors, and volunteer participants are required to abide by all applicable federal, state and local laws and ordinances.

EXHIBIT D
WEST BAY OPERA ADDENDUM

Contractor's (WEST BAY OPERA's) personnel shall be permitted to manage, distribute and collect the hearing-impaired devices ("headsets") that City owns for use by hearing-impaired persons at all Performances at the Facility, subject to the following restrictions:

- (a) Contractor shall verify that all headsets and batteries are present and functioning normally and shall report to Project Manager or his/her designee any missing or broken items before taking control of them for the run of the Production.
- (b) For any damage or loss of any headset while under Contractor's control, Contractor shall promptly, upon request, pay City the fair market price for any necessary replacement or repair of any component of the headsets, as such replacement or repair is reasonably determined by Project Manager or his/her designee.
- (c) Contractor will diligently ensure the security of the headsets, in a manner approved by Project Manager or his/her designee, when the headsets are not in use. When the headsets are not so secured, Contractor will not leave the headsets unattended.
- (d) Contractor will provide at least one (1) person in the Facility lobby, whose sole responsibility will be to distribute and collect the headsets, as the case may be, pursuant to the following:
 - (i) Beginning one-half (1/2) hour before each Performance until ten (10) minutes after the Performance begins;
 - (ii) At all times during any and all intermissions; and
 - (iii) From the end of the Performance until all of the headsets have been returned.
- (e) Contractor shall collect a Driver's License or credit card as security for the loan of a headset, which Driver's License or credit card will be returned to its owner upon return of the headset. Contractor will implement procedures for the safe handling of the Driver's Licenses and credit cards and their return to their owners.
- (f) Contractor's responsibility at the end of each performance will include the following:
 - (i) Clean and otherwise sanitize all the earpieces by swabbing them with isopropyl alcohol swabs.
 - (ii) Turn off the on/off/volume switches on all returned headsets and remove the batteries, placing the batteries into the battery charger.
 - (iii) Return all headsets and batteries to their storage case.

- (iv) Verify the presence of all twenty (20) headsets and batteries.
- (v) Return the headset storage case to its place in the rolling cart.
- (vi) Return the rolling cart to the House Manager's Closet.
- (vii) Be sure the rolling cart is plugged into an electrical outlet.
- (viii) Make sure the battery charger is getting power, as indicated by the red light on the top of the case.
- (ix) Padlock the rolling cart's doors shut, using either the padlock provided by City or a padlock supplied by Contractor, provided that Project Manager or his/her designee has been given a copy of the key or the combination.
- (x) Immediately report to City's attendant at the Facility any missing headsets, and turn over to the attendant any malfunctioning headsets.

The provisions of this Exhibit D may be terminated upon reasonable notice at any time by Project Manager or his/her designee, and may be terminated upon thirty (30) days' prior written notice by Contractor.

**EXHIBIT E
NON-DISCRIMINATION FORM**

Certification of Nondiscrimination:

As suppliers of goods or services to City of Palo Alto, the firm and individuals listed below certify that they do not discriminate in employment with regard to age, race, color, religion, sex, national origin, ancestry, disability, or sexual preference and that they are in compliance with all federal, state, and local directives and executive orders regarding nondiscrimination in employment.

THE INFORMATION HEREIN IS CERTIFIED CORRECT BY SIGNATURE(S) BELOW.

WEST BAY OPERA, a California non-profit public benefit corporation

Signature: _____

By: José Luis Moscovich
Managing Director

Signature: _____

By:
Board Officer

**EXHIBIT F
INSURANCE REQUIREMENTS**

CONTRACTORS TO THE CITY OF PALO ALTO (City), AT THEIR SOLE EXPENSE, SHALL, FOR THE TERM OF THE CONTRACT. OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW AND **AFFORDED BY COMPANIES WITH AM BEST’S KEY RATING OF A-:VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY’S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER’S COMPENSATION EMPLOYER’S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
NO	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	\$1,000,000	
YES	THE City OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS’ COMPENSATION, EMPLOYER’S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.			

- I. INSURANCE COVERAGE MUST INCLUDE:
 - A. A PROVISION FOR A WRITTEN THIRTY (30) DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
 - B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR’S AGREEMENT TO INDEMNIFY CITY.
 - C. DEDUCTIBLE AMOUNTS IN EXCESS OF \$5,000 REQUIRE CITY’S PRIOR APPROVAL.
- II. CONTACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.
- III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO “ADDITIONAL

INSUREDS”

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSUREDS.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CONTRACTOR AS INSUREDS UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDS, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

NOTICES SHALL BE MAILED TO:

**PURCHASING AND
CONTRACT ADMINISTRATION
City OF PALO ALTO
P.O. BOX 10250
PALO ALTO, CA 94303**

EXHIBIT K

CITY OF PALO ALTO NON-DISCRIMINATION POLICY

LIST OF APPENDICES

Appendix A	Regulations Of The City Of Palo Alto Regarding Prohibited Conduct in Community Centers and Theatres
Appendix B	The City of Palo Alto Injury and Prevention Program
Appendix C	Policy for Sale of Alcoholic Beverages
Appendix D	Operations Manual
Appendix E	Safety Procedures and Guidelines
Appendix F	Building Emergency Procedures
Appendix G	Procedure for Adjusting the Forestage Height Including Use of the Scissor Lift
Appendix H	House Manager's Guide
Appendix J	Costume Room Guidelines
Appendix K	City Report of Accident/Property Damage
Appendix L	City's Danger Policy

LIST OF ATTACHMENTS

ATTACHMENT 1	West Bay Opera Production and Exclusive Use Schedule, 2014 – 2015
ATTACHMENT 2	Contractor's Budget for the Term
ATTACHMENT 3	Contractor's Pricing Policy
ATTACHMENT 4	Name of Contractor's Fiscal Agent
ATTACHMENT 5	Contractor's Most Recently Filed California State Tax Form 199