DATE: March 6, 2017

TO: City Council

FROM: Stephen Fischer
City Attorney

SUBJECT: Performing Arts Center Agreement Renewal (5/5/10)

CONTACT: Stephen Fischer, City Attorney
Stephen.Fischer@oxnard.org, 385-7483

RECOMMENDATION:

That City Council approve a resolution for the renewal of the agreement between the City and the Oxnard Performing Arts Center Corporation (A-5904) for the operation, maintenance and management of the Performing Arts And Convention Center

BACKGROUND

In the year 2000, the City entered into an operating agreement with the Oxnard Performing Arts Center Corporation (“Corporation”) for the operation, maintenance and management of the Performing Arts and Convention Center (“PACC”). The agreement had an initial term of 10 years and was drafted with two additional 10 year renewal terms contemplated. However, although renewal of the agreement has been before both the Corporation board and City Council, the renewal was never formalized. However, the terms of the agreement under which the Corporation manages operations of the PACC have continued under the same course of conduct between the City and Corporation over the intervening years. However, concern has been raised that an extension has not been formalized. The attached resolution will approve renewal of the agreement for the intervening period and for a six month extension.

A new operating agreement is in the drafting stages with the involved parties and should be presented to both the City Council and Corporation for approval within the next six months.
Also, it is anticipated that once the internal auditor has been appointed and reviews the Performing Arts Center operation that there may be recommendations for modification of the current agreement terms.

**STRATEGIC PRIORITIES**

This agenda item supports the Quality of Life strategy. The purpose of the Quality of Life strategy is to build relationships and create opportunities within the community for safe and vibrant neighborhoods, which will showcase the promising future of Oxnard.

**FINANCIAL IMPACT**

No financial impact at this time.

**ATTACHMENTS:**

Attachment A PACC renewal resolution

Attachment B PACC Agreement (A-5904)

WHEREAS, City previously constructed a civic auditorium and community center commonly referred to as the Performing Arts and Convention Center ("PACC"); and

WHEREAS, the Performing Arts and Convention Center was designed for artistic performances, conferences, exhibitions, conventions, trade shows, public gatherings, meetings, cultural, educational and recreational programs, and other similar events for the benefit and enjoyment of the public and the community; and

WHEREAS, the City Council entered into an agreement with the Oxnard Performing Arts Center Corporation ("Corporation") for the operation of the Performing Arts and Convention Center in 2000 (Agreement); and

WHEREAS, although the Agreement was drafted with an initial term of ten years and two additional 10 year renewal terms contemplated, such a renewal was never formalized by the City or Corporation; and

WHEREAS, however the operation of the PACC by the Corporation has continued in the intervening years along with corresponding annual budget appropriations by the City; and

WHEREAS, the City wishes to document its assent to the continuation of the term of the Agreement during the intervening period and renewal of the Agreement for an additional six month period while a new operating agreement between the City and Corporation is negotiated.

NOW, THEREFORE, the City Council of the City of Oxnard resolves that the Agreement (A-5904) is hereby renewed retroactive to the date of expiration and for a period of six months from the date of passage of this resolution unless a replacement agreement is approved at an earlier date. The Mayor is authorized to sign a renewal agreement consistent with this resolution which shall be presented to the Corporation board for its consideration and approval.

PASSED AND ADOPTED this ___th day of ______, 2017, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

____________________________________
Tim Flynn, Mayor
ATTEST:

Michelle Ascencion, City Clerk

APPROVED AS TO FORM:

Stephen M. Fischer, City Attorney
LIST OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS IN THE CITY SERVICE EFFECTIVE ______ 2017 IN ACCORDANCE WITH THE OPERATING BUDGET FOR THE 2016-17 FISCAL YEAR
AGREEMENT
FOR OPERATION, MAINTENANCE AND MANAGEMENT
OF THE OXNARD PERFORMING ARTS AND CONVENTION CENTER

This Agreement for Operation, Maintenance and Management of the Oxnard Performing Arts and Convention Center ("Agreement"), is entered into in Ventura County, California by and between the CITY OF OXNARD, a municipal corporation ("City"), and the OXNARD PERFORMING ARTS CENTER CORPORATION, a nonprofit corporation ("Operator").

WHEREAS, City previously constructed a civic auditorium and community center commonly referred to as the Performing Arts and Convention Center; and

WHEREAS, the Performing Arts and Convention Center was designed for artistic performances, conferences, exhibitions, conventions, trade shows, public gatherings, meetings, cultural, educational and recreational programs, and other similar events for the benefit and enjoyment of the public and the community; and

WHEREAS, City previously constructed a building in Peninsula Park with several meeting rooms; and

WHEREAS, the City Council of City desires that the Performing Arts and Convention Center and the Peninsula Park Building in the future be operated, maintained and managed by Operator.

NOW, THEREFORE, City and Operator agree as follows:

1. Facilities

The facilities governed by this Agreement consist of the Oxnard Auditorium, the Community Center, all other structures located at 800 Hobson Way, Oxnard, California and the surrounding grounds and parking lot as depicted in Exhibit A attached hereto and incorporated in full herein by this reference and the Peninsula Park Building and meeting rooms located at 3333 Peninsula Road (collectively "PACC").

2. Governing Policy

City and Operator agree that the PACC shall be operated, maintained and managed so as to maximize artistic performances, conferences, exhibitions, conventions, trade shows, public gatherings, meetings, cultural, educational, and recreational programs and other similar events for the use and benefit of the public and the community.
3. **Operation, Maintenance and Management**

   a. Operator shall operate, maintain and manage the PACC in accordance with the standard terms and conditions set forth in this Agreement.

   b. City shall cooperate with Operator to enable Operator to operate, maintain and manage the PACC in an efficient and economical manner so as to generate maximum revenue from the PACC, to encourage maximum utilization of the PACC and to protect the PACC as a significant public asset.

4. **General Standards of Performance**

   The following general standards of performance shall be satisfied by Operator:

   a. Operator shall timely pay Operator’s financial obligations required by this Agreement.

   b. Operator shall promptly discharge all claims for labor, materials, supplies, and equipment furnished for or in connection with the PACC.

   c. Operator shall adopt and enforce rules and regulations governing the PACC.

   d. Operator shall comply with all valid requirements of any authority governing the PACC and shall require all persons using the PACC or attending events to comply with such valid requirements.

   e. Operator shall pay reasonable wages and benefits to employees performing services in connection with the PACC.

   f. Operator shall maintain reasonable operating policies and procedures to govern various aspects of the PACC such as administrative functions, sales policies, maintenance, repair, and accounting practices.

   g. During the first or second month of the calendar year, the Board of Directors of Operator and the City Council shall conduct a joint meeting. During this meeting, the following matters will be discussed:

      (1) Annual Goals and Objectives for the PACC with specific measurable indicators for Operator.

      (2) PACC Annual Report with statements of PACC revenue and expenses and details on the utilization of the PACC.

      (3) Annual Marketing Plan for the PACC to reflect the specific performance goals for Operator.
5. Fee Schedules

No later than April 1 of each year, Operator shall prepare and submit to City for approval by the City Council, a schedule of maximum and minimum fees to be charged persons and organizations using the PACC. User fees shall be within the limits of the schedule unless, at the discretion of the Operator, a discounting or waiver of the fees offers a significant marketing advantage to the PACC and will produce positive benefit for City.

6. Term

a. City hereby grants to Operator an exclusive right to operate, maintain and manage the PACC for a period beginning December 1, 2000, and ending June 30, 2010 (“Initial Term”). City further grants Operator an opportunity to request renewal of this Agreement for two (2) additional terms of ten (10) years each.

b. Any additional terms of this Agreement shall be effective only with the mutual consent of the City Council and the PACC Board of Directors.

7. Operator as Exclusive Manager

Operator shall have the exclusive responsibility, discretion, and authority to determine policies, procedures, standards of operation, special rights or privileges, programs, standards of service and maintenance affecting the PACC.

8. City Manager

The City Manager, or designee, shall be the person generally responsible for administering and monitoring this Agreement on behalf of City.

9. PACC Manager

a. Operator shall provide a person to be the Executive Director of the PACC. The Executive Director shall be available during customary working hours to meet with the City Manager, and such additional times as may be necessary to perform the duties of Executive Director as may be prescribed by Operator.

b. The Executive Director shall have full authority to act for Operator on all matters relating to the performance of services under this Agreement and shall be the principal contact person with the City Manager.

10. Quality of Goods and Services

a. The primary mutual concern of City and Operator is to provide quality events, goods and services to the public using the PACC, at affordable prices, while striving to reduce operating subsidies provided by City.
b. Operator shall use its best efforts to operate, manage and maintain the PACC as a first-class performing arts center and meeting room facilities.

11. Payments to Operator

   a. City agrees to grant Operator for operating, maintaining, and managing the PACC a minimum yearly amount ("Operating Subsidy"), by minimum monthly payments, as provided for in the Operating Budget.

   b. City agrees to provide Operator the Operating Subsidy in minimum monthly payments before the fifth (5\textsuperscript{th}) day of the calendar month following each month of the term provided herein.

12. Marketing

   a. Operator shall reasonably promote and advertise the PACC using the name Oxnard Performing Arts and Convention Center and City approved logo and logo colors. Operator shall develop all publicity material in a professional manner.

   b. During the course of performance of this Agreement, Operator, its employees, agents and subcontractors shall not publish or disseminate commercial advertisements, press releases, opinions or feature articles, using the legal name of City without the prior consent of City Manager provided that Operator may include in any such material the phrase "Oxnard Performing Arts and Convention Center" without such prior approval. City Manager shall not unreasonably withhold such consent.

13. Financial Management and Budgets

   a. Operator shall prepare and maintain all books, records, accounting statements, income and loss statement, balance sheets, and other data associated with the financial affairs of the PACC, in a form approved by City Manager ("Operating Statements").

   b. The Operating Statements shall be maintained in accordance with generally accepted accounting principals which will accurately reflect the gross receipts and expenses of the Operator. No less frequently than annually, the Operating Statements shall be audited by an independent certified public accountant and the result of such audit shall be made available to both Operator and City for review and approval.

   c. Operator shall make available to City the Operating Statements at all times upon reasonable request of City Manager.

14. Capital Budgets

   Operator shall prepare and submit to City Manager an annual capital improvement budget for the PACC ("Capital Budget"). Operator shall submit the Capital Budget each year on the same schedule and at the same time as City Manager requires City departments to submit
their budgets. The Capital Budget shall be presented in reasonable detail and in a format approved by City Manager. Upon approval of the Capital Budget by the City Council, City shall make available the requested funds in such amounts and at such times as may be described in the Capital Budget during that succeeding fiscal year.

15. **Annual Operating Budget**

An annual Operating Budget setting forth the projected revenues and expenses associated with the operations, maintenance and management of the PACC shall be prepared by Operator and submitted to City Manager, together with such other information and plans as may be reasonably requested by City Manager. Operator shall submit the Operating Budget each year on the same schedule and at the same time as City Manager requires City departments to submit their budgets. The Operating Budget shall be subject to the prior approval of the City Council, which approval shall not be unreasonably withheld, delayed or conditioned. Upon the approval of the Operating Budget, City shall make available to Operator the Operating Subsidy as requested in the Operating Budget.

16. **Endowment Funds**

a. City and Operator shall cooperate in a joint effort to create a segregated endowment fund, exclusively for the benefit of the PACC ("Endowment Fund") the principal of which shall be retained by City and not used in connection with the operations of the PACC. No less than 70% of the interest, earnings and income from the Endowment Fund shall be made available to Operator to defray the ordinary costs and expenses incurred in the operation of the PACC.

b. The Endowment Fund shall be held and maintained by City and City shall be permitted to invest and reinvest the Endowment fund as the City Council may determine in its reasonable discretion. City and Operator further agreed that no portion of the interest, earnings or income from the Endowment Fund shall be made available to Operator until such time as the principal of the endowment fund has reached a sum equal to $100,000.

17. **Advances of Working Capital**

In the event that any operating working capital reserves, improvement capital reserves, and/or the net revenue from operations of the PACC are insufficient to pay the costs and expenses as set forth in the Operating Budget or Capital Budget, Operator shall present City Manager with a written request for an advance of working capital adequate to cover such costs and expenses. Subject to City Council approval, the City shall advance funds requested by Operator.

18. **Reallocation of Funds**

a. City agrees that the annual Operating Budget and Capital Budget are intended to be reasonable estimates, and accordingly, Operator shall be entitled to increase these budgets in an amount equal to ten percent (10%) of the respective budgets to cover any expenditures that
were not anticipated at the time of preparation of the budgets but which are reasonable and necessary to carry out the provisions of this Agreement. Operator is authorized to take all reasonable actions deemed necessary by Operator to implement, perform or cause the performance of the items set forth in the Operating Budget and Capital Budget.

b. Operator may reallocate all or any portion of any amount budgeted with respect to any one item in either the Operating Budget or Capital Budget to another item budgeted therein. Operator shall not be deemed to have made any guarantee, warranty or representation whatsoever in connection with the Operating Budget or Capital Budget.

19. Inspection of Records

a. Upon fifteen (15) days’ advance written notice to Operator setting forth the time of inspection and records to be inspected, City or its authorized auditors and representatives shall have access to and the right to audit and reproduce any of Operator’s records related to this Agreement.

b. Operator shall maintain and preserve all such records for a period of at least five (5) years from date of production. If Operator fails to make such records available within the city limits of City or at a mutually agreed upon place, Operator shall promptly reimburse City for all reasonable costs incurred in conducting the inspection at another location, including but not limited to expenses for personnel, salaries, private auditors, travel, lodging, meals and overhead.

20. Condition of PACC

Operator agrees to accept the PACC in an “as is” condition as of December 1, 2000.

21. Retention of Ownership by City

a. During and after the term of this Agreement, City shall retain ownership of the PACC and all facilities constructed at the PACC by City in the future.

b. In the event of destruction of any or all of the PACC, Operator shall have no obligation to repair or replace any or all of the PACC.

22. Federal and State Taxes

For purposes of federal and state tax law, City and Operator agree that Operator shall be considered as “owner,” of all equipment, furnishing, fixtures and inventory held for resale or rental, purchased by Operator during the term of this Agreement.

23. Purchase of Equipment, Supplies and Materials by Operator

a. Operator shall have the responsibility and authority to purchase such equipment, operating supplies and materials, furnishings, and fixtures as Operator requires for the operation, maintenance and management of the PACC; provided that City shall retain the title to and
ownership of such equipment supplies, materials, furnishings and fixtures.

b. Operator agrees to adopt written purchasing policies and procedures and submit them to the City Manager.

24. Licenses, Permits, and Accreditations

a. Operator shall apply for, obtain, and maintain all licenses, permits and accreditations required in connection with the operation, maintenance and management of the PACC. To the extent possible, City agrees to waive all fees or charges in connection with the issuance by the City of any licenses and permits required by Operator.

b. Operator agrees that, where required by law, the employees of Operator, performing services under this Agreement, shall possess the appropriate and currently valid licenses, certificates and accreditations.

25. Management Prerogatives

a. City hereby grants Operator all the prerogatives ordinarily accorded to management in the ordinary course of commerce, including, but not limited to, the collection of proceeds, the incurring of trade debts, the approval and payment of checks and the negotiating and signing of licenses and agreements. Operator shall have no prerogatives, without the prior written approval of City Manager, in each instance, to pledge the credit of City, to lease or otherwise grant, mortgage, pledge, sign, transfer, or convey any interest in any part of the PACC, any appurtenance thereto, or any furnishings, fixtures and equipment or to affect any zoning related to the PACC.

b. Operator shall have the duty, responsibility, and authority to perform any act necessary to operate, maintain and manage the PACC in a manner consistent with good performing arts center management practices.

26. Employee Conduct

Operator agrees that its employees shall perform services in a courteous and businesslike fashion.

27. Subcontracting

Operator agrees to be responsible for the performance of any subcontractor. Operator agrees to ensure that the work or services performed by any subcontractor shall satisfy the terms of this Agreement. Operator agrees that no subcontract shall relieve Operator of any obligation under this Agreement.

28. Staffing

In order to reduce the costs and expenses incurred by Operator in operating,
maintaining and managing the PACC, City and Operator agree to share staff, personnel and employees to the extent possible. Accordingly, to the extent Operator requests that City personnel perform such services, City agrees to provide at City's direct cost and to the extent consistent with the availability of City forces, the following:

a. City's regular employees shall perform all accounting, clerical, bookkeeping and related record keeping functions for and on behalf of Operator.

b. City shall provide all security personnel and appropriate fire prevention services to the extent that the cost of such services are not paid by the customers of Operator using the PACC.

c. City personnel shall perform all regular and ordinary grounds maintenance, landscaping, gardening and related services for the preservation of the exterior of the PACC.

d. City personnel shall perform the ordinary and regular janitorial, maintenance and repair functions to preserve the operating functions of the PACC.

29. Easements

City shall provide to Operator a Preliminary Title Report, and one copy of all of the exceptions listed thereon, of the PACC prior to the commencement of this Agreement. Operator shall recognize all existing easements on the PACC and shall not obstruct their use subject to modification by City.

30. Cooperation Between Operator and City

City agrees that the City Manager, or his designee, shall have the responsibility to work with Operator to assure that Operator obtains the full cooperation and assistance of City subject to the terms of this Agreement and all applicable laws.

31. Indemnity

Operator agrees to indemnify, hold harmless, and defend City, its City Council and each member thereof, and every officer and employee of City, from any and all liability, claims, demands, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses of litigation or arbitration, that result or are claimed to have resulted directly or indirectly from the wrongful or negligent acts, errors or omissions of Operator or its agents, employees, subcontractors or consultants while they are performing services under this Agreement, or from the use of City's property by Operator or its agents, employees, subcontractors or consultants, except in cases of sole negligence on the part of the City, its officers, employees, agents, or subcontractors.
32. **Insurance**

a. Operator shall obtain and maintain during the Term of this Agreement the following insurance coverages issued by a company satisfactory to City Manager.

(1) Commercial general liability insurance including a contractual liability endorsement, products, and completed operations liability, in an amount not less than $5,000,000 combined single limit for bodily injury and property damage for each claimant for general liability;

(2) Business automobile liability insurance in an amount not less than $5,000,000 combined single limit for bodily injury and property damage for each claimant for automobile liability;

(3) Workers' compensation insurance in compliance with the laws of the State of California, including employer's liability insurance in an amount not less than $5,000,000 per claimant.

(4) Property insurance which shall provide coverage for the full insurable replacement value of real property improvements and structures covered by this Agreement and shall insure against the hazards of fire, extended coverage, other property related losses, flood, vandalism, malicious mischief and earthquake.

(5) Directors and officers liability insurance for the protection of the directors and officers of Operator having limits of no less than $5,000,000 per occurrence.

b. **Operator shall bear its allocated costs of the insurance procured by City under this Agreement.** These costs shall be reflected in the annual Operating Budget.

33. **Bonds**

a. Operator shall furnish the City Attorney with a performance bond of a corporate surety in an appropriate amount conditioned upon faithful performance of each project having a cost in excess of $100,000 as described in the Capital Budget prior to Operator commencing the performance of such project or subprojects. This bond shall continue in effect for ninety (90) days after the completion of the particular capital improvement program project. The amount of such bond shall be to the reasonable satisfaction of City Manager.

b. Operator shall furnish the City Attorney with a blanket fidelity bond covering Operator’s employees and officers in an amount not less than $50,000. Operator shall maintain this bond in effect at all times during the term of this Agreement.

34. **Utilities**

Operator agrees to pay for all utilities required to perform this Agreement including gas, water, electricity, telephone services, wastewater and trash collection. In connection
therewith, City shall designate Operator and the use of the PACC facility as a City approved facility in order to permit Operator to obtain the lowest possible rate available for all utility services.

35. Default and Cure

a. When City Manager determines that Operator has violated any term or condition of this Agreement, City Manager shall notify Operator, in writing, of the defect or deficiency and shall give Operator not less than thirty (30) days in which to cure the defect or deficiency. If Operator fails to cure the defect or deficiency within thirty (30) days, or in the event such defect or deficiency cannot be cured within thirty (30) days for such additional time so long as Operator shall have commenced such cure within thirty (30) days and continued to prosecute the cure with reasonable diligence, then City and Operator agree to follow the dispute resolution procedure provided in paragraph 36 of this Agreement.

b. When Operator determines that City has violated any term or condition of this Agreement, Operator shall notify City Manager, in writing, of the defect or deficiency and shall give City not less than thirty (30) days in which to cure the defect or deficiency. If City fails to cure the defect or deficiency within thirty (30) days, or in the event such defect or deficiency cannot be cured within thirty (30) days for such additional time so long as City shall have commenced such cure within thirty (30) days and continued to prosecute the cure with reasonable diligence, then Operator and City agree to follow the dispute resolution procedure provided in paragraph 36 of this Agreement.

36. Dispute Resolution Procedure

a. In the event a dispute exists after Operator alleges to have cured a defect or deficiency designated by City Manager, City and Operator agree to submit the dispute to binding determination by a third person. City and Operator agree to request the Presiding Judge of the Superior Court, County of Ventura, State of California to provide a list of the names of three (3) persons qualified under the circumstances to resolve the particular dispute. Both City and Operator may eliminate one person from such list, the remaining person shall resolve the dispute.

b. City and Operator agree that the person selected to resolve the dispute shall establish the procedures, rules, methods and processes by which the dispute shall be resolved and that City and Operator agree to cooperate with such person in good faith to ascertain the facts necessary to resolve the dispute. City and Operator agree that without mutual consent to extend the time this dispute resolution procedure shall conclude not more than thirty (30) days after its initiation.

37. Termination for Cause

Operator and City agree that if, at the conclusion of the dispute resolution procedure specified in paragraph 36 above, either Operator or City refuses or fails to comply with the decision of the person resolving the dispute then either Operator or City may terminate this Agreement upon sixty (60) days' notice, in writing, one party to the other as appropriate.
38. **Force Majeure**

Operator and City agree that neither party shall be liable to the other party for any non-performance, in whole or in part, of its obligations under this Agreement caused by the occurrence of any contingencies beyond the control of Operator or City, including but not limited to declared or undeclared war, sabotage, insurrection, riot or other act of civil disobedience, acts of a public enemy, acts of governments or agencies affecting the terms of this Agreement, labor disputes, shortages of fuel, accidents, fires, explosions, floods, earthquakes or other acts of God. In the event that any such contingencies occur, the party whose performance is affected shall have a reasonable time in which to resume performance and such party’s non-performance shall not constitute material breach hereof unless the party fails to make a reasonable attempt to resume full performance.

39. **User Forms**

Operator agrees to supply and have readily available at the PACC, at all times, appropriate forms for users to present their comments, criticisms, recommendations or complaints regarding Operator’s operation, maintenance and management of the PACC. On a regular basis, Operator shall provide the Project Manager with copies of such forms returned to Operator by users.

40. **Independent Contractor**

a. City and Operator agree that in the performance of this Agreement, Operator shall be, and is, an independent contractor, and that Operator and its employees are not employees of City. Operator has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Operator.

b. Operator shall be solely responsible for, and shall save City harmless from, all matters relating to the payment of Operator’s employees, agents, subcontractors and consultants, including compliance with Social Security requirements, federal and state income tax withholding and all other regulations governing employer-employee relations.

c. Operator acknowledges that Operator and Operator’s employees are not entitled to receive from City any of the benefits or rights afforded employees of City, including but not limited to reserve leave, sick leave, vacation leave, holiday leave, compensatory leave, Public Employees Retirement System benefits, or health, life, dental, long-term disability and workers’ compensation insurance benefits.

41. **Operator Not Agent**

Except as City may specify in writing, Operator, and its agents, employees, subcontractors and consultants shall have no authority, expressed or implied, to act on behalf of City in any capacity, as agents or otherwise, or to bind City to any obligation.
42. **Conflict of Interest**

Operator shall promptly inform City Manager of any contract, agreement, arrangement, or interest that Operator may enter into or have during the performance of this Agreement that may conflict with City’s interests. This requirement includes contracts, agreements and arrangements with manufacturers, suppliers, contractors or other persons whose interests might be served by the services performed under this Agreement and Operator’s interest in land that might be affected by the services. Operator shall take such measures as are necessary in the performance of this Agreement to prevent actual or appearances of conflicts of interest.

43. **Assignability of Agreement**

Operator agrees that this Agreement contemplates personal performance by Operator and its employees and is based upon a determination of such persons unique competence and experience and upon their specialized personal knowledge. Assignments of any or all rights, duties, or obligations of Operator under this Agreement will be permitted only with the express written consent of City Manager, which consent may be withheld for any reason.

44. **Successors and Assigns**

Subject to any provisions to the contrary herein, Operator and City agree that this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of Operator and City.

45. **Fair Employment Practices**

   a. Operator agrees that all persons employed by Operator shall be treated equally by Operator without regard to or because of race, color, religion, ancestry, national origin, handicap, sex, marital status, age, or sexual orientation and in compliance with all antidiscrimination laws of the United States of America, the State of California, and City.

   b. Operator agrees that, during the performance of this Agreement, Operator and any other parties with whom Operator may subcontract shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, color, religion, ancestry, national origin, handicap, sex, marital status, age or sexual orientation.

   c. **Operator agrees to state in all of its solicitations or advertisements for applicants for employment that Operator is an “Equal Opportunity Employer” or that all qualified applicants shall receive consideration for employment without regard to their race, color, religion, ancestry, national origin, handicap, sex, marital status, age or sexual orientation.**

   d. Operator shall, if requested to do so by City, certify to City that Operator has not, in the performance of this Agreement, discriminated against applicants or employees because of their membership in a protected class and to recruit vigorously and encourage businesses owned by persons in a protected class to bid subcontracts.
e. Operator shall provide City with access to and, upon request, provide copies to City, at City’s expense, of all of Operator’s records pertaining or relating to Operator’s employment practices, to the extent such records are not confidential or privileged under state or federal law.

46. Time of Essence

Operator and City agree that time is of the essence in regard to performance of any of the terms and conditions of this Agreement.

47. Covenants and Conditions

Operator and City agree that each term and each provision of this Agreement to be performed by Operator shall be construed to be both a covenant and a condition.

48. Governing Law

City and Operator agree that the construction and interpretation of this Agreement and the rights and duties of City and Operator hereunder shall be governed by the laws of the State of California.

49. Compliance with Laws

Operator agrees to comply with all City, state, and federal laws, rules, and regulations, now or hereafter in force, pertaining to the services performed by Operator pursuant to this Agreement.

50. Severability

City and Operator agree that the invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

51. Waiver

City and Operator agree that no waiver of a breach of any provision of this Agreement by either Operator or City shall constitute a waiver of any other breach of the same provision or any other provision of this Agreement. Failure of either City or Operator to enforce at any time, or from time to time, any provision of this Agreement, shall not be construed as a waiver of such provision or breach.

52. Counterparts

City and Operator agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original.
53. **Expenses of Enforcement**

Operator and City agree that the prevailing party’s reasonable costs, attorneys’ fees (including the reasonable value of the services rendered by the City Attorney’s Office) and expenses, including investigation fees and expert witness fees, shall be paid by the non-prevailing party in any dispute involving the terms and conditions of this Agreement.

54. **Authority to Execute**

a. City acknowledges that the Mayor has been duly authorized by City Council to execute this Agreement on behalf of City.

b. Operator acknowledges that the President of its Board of Directors has been duly authorized by Operator to execute this Agreement on behalf of Operator.

55. **Notices**

a. Any notices to Operator may be delivered personally or by mail addressed to 800 Hobson Way, Oxnard, California 93030, Attention: Executive Director.

b. Any notices to City may be delivered personally or by mail addressed to City of Oxnard, 300 West Third Street, Oxnard, California 93030, Attention: City Manager.

56. **Headings**

The paragraph headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.

57. **Amendment**

City and Operator agree that the terms and conditions of this Agreement may be reviewed or modified at any time. Any modifications to this Agreement, however, shall be effective only when agreed to in writing by both City and Operator.
58. **Entire Agreement**

City and Operator agree that this Agreement constitutes the entire agreement of the parties regarding the subject matter described herein and supersedes all prior communications, agreements, and promises, either oral or written.

Dated: November 14, 2000

CITY OF OXNARD

Dr. Manuel M. Lopez  
Mayor

OXNARD PERFORMING ARTS CENTER CORPORATION

Irma Lopez  
President

ATTEST:

Daniel Martinez  
City Clerk

APPROVED AS TO FORM:

Gary L. Gillig  
City Attorney

Gary Arnold  
General Counsel

APPROVED AS TO CONTENT:

Edmund F. Sotelo  
City Manager