



FILED
OFFICE OF THE CITY CLERK
OAKLAND

2014 JUN 26 PM 3:05

AGENDA REPORT

TO: HENRY L. GARDNER
INTERIM CITY ADMINISTRATOR

FROM: Audree V. Jones-Taylor

SUBJECT: Producers Associates, Inc. Agreement

DATE: June 5, 2014

City Administrator
Approval

Date

6/25/14

COUNCIL DISTRICT: # 4

RECOMMENDATION

Approve a Resolution authorizing the City Administrator or his designee to execute an agreement with Producers Associates, Inc. to provide summer musical theater at Woodminster Amphitheatre for a ten-year term from 2014 through 2023 with one three-year option to renew.

EXECUTIVE SUMMARY

Staff has prepared a resolution authorizing the City Council to execute an agreement (*Attachment A*) with Producers Associates, Inc. (Producers) to provide traditional American musical theater at Woodminster Amphitheater for a ten-year term with one three-year option to renew. A typical season consists of 1) four days in April for auditions and callbacks, 2) seven days a week from June 1 through the third week in September, and 3) three different productions with seven performances in July, August and September.

OUTCOME

If authorization is granted for Producers to continue the use of Woodminster Amphitheater for musical theater, it will allow more successful plays for the public's enjoyment, and revenue generation to Oakland Parks and Recreation (OPR) for improvement of the Amphitheater and Cultural Arts Programs from the adult ticket surcharge.

Item: _____
Life Enrichment Committee
July 8, 2014

BACKGROUND/LEGISLATIVE HISTORY

Woodminster Amphitheater, located at 3300 Joaquin Miller Road, is an outdoor amphitheater that was built as a federal Works Project Administration (WPA) project in 1939. The concrete structure and adjoining cascade was completed and dedicated in 1941.

The Amphitheater seats over 2,000 people and is used to stage amateur and professional musicals, graduations, and concerts. The Cascade is the Amphitheater's waterfall feature that was dedicated to California writers.

In 1967, an Oakland arts organization called Producers Associates, Inc. contracted with the City of Oakland to produce musical series known as Woodminster Summer Musicals. Producers Associates Inc. was founded by Harriet Schalder and the late Jim Schlader. From its founding, the organization has been dedicated to bringing classic American musical theatre to new generations.

Most recently in 2004 the City Council approved an agreement authorizing Producers to use Woodminster Amphitheater for public theatrical performances for a five year term that began January 1, 2004 and ended December 31, 2008. Producers has been operating in a hold over capacity since this time while a new agreement is negotiated.

The City has been responsive in many ways to address the capital improvement needs of this aging facility and meeting the needs of all users. To date, the following projects have been completed or are underway:

- 2007: A ramp was installed from the lower parking lot to the backstage entrance to assist patrons entering the stage area. The project for the ramp installation was funded by the ADA Programs Division. Also in 2007 the City Council approved a resolution authorizing the City Administrator to accept a gift of handrails for the Amphitheater by Producers, and authorizing the City to enter into a contract to install the handrails. The handrails assist patrons in moving up and down the aisles during events.
- 2008: The City of Oakland amended the procedures, responsibility and accountability regarding compliance of City special events and City facilities rental programs in compliance with the Americans with Disabilities Act of 1990 (ADA). Producers is required to comply with all City regulations under the Declaration of ADA Compliance for Facility Use Agreements and Other Special Event Agreements.
- 2009-2012: Oakland Public Works made several minor improvements, i.e. replaced dilapidated wood planks, repaired seats, and made repairs on floors in concession stand.

Item: _____
Life Enrichment Committee
July 8, 2014

- May 2013: ADA improvements were made to Woodminster that include reconstruction of four wheelchair seating platforms and service shelves on the concession and ticket booths.
- March 2014: Current ADA improvements started at Woodminster to include re-grading and re-paving the road section and pedestrian pathway from the road to the upper theater entrance and all of the upper area paving between the entrance and the restrooms. Improvements will also be made to partition and fixture adjustments in the restrooms.

Funding for the 2013 and 2014 ADA Improvements came from three funding sources: 1) City's General Fund ADA Transition Plan; 2) On-call ADA Capital Improvement Project Fund; and 3) Woodminster Trust Fund. Additional ADA Improvements will be done at Woodminster with funding coming from the City's General Liability Fund and other sources of funding, such as the Woodminster Trust Fund.

ANALYSIS

In 2006, Producers began an extensive outreach and partnership with OPR by offering free performance tickets to participants in OPR's children and youth recreational programs with a goal of serving 150 OPR children and their parents annually. From 2006 to 2012, an average of 300 families attended Woodminster productions through the outreach partnership. The goal will be to serve 400 OPR children and their parents annually.

To increase the exposure of OPR's children and parents to the cultural experience of theater, Producers has also targeted outreach to Oakland schools, including charter schools, theater clubs and associations in Oakland and the Bay Area.

To encourage attendance of senior citizens and youth, Producers offers a \$2.00 discount on all single performance tickets for senior citizens, students and children under 16 years of age, and a 50% discount plus facility fee on all single performance tickets for groups of 25 people or more on Thursdays, Fridays and Sundays only. Producers single performance tickets will range from \$28.00 to \$59.00 in the 2014 summer season. Producers also has a "Kids Come Free" program that applies to children 16 years of age and younger. Each child must be accompanied by a paying adult to participate in the "Kids Come Fee" program for any performance.

PUBLIC OUTREACH/INTEREST

This report did not require any public outreach.

Item: _____
Life Enrichment Committee
July 8, 2014

COORDINATION

Producer's Associates, Inc., Public Works Department, City Attorney's Office, and the Budget Office were consulted in preparation of this report.

COST SUMMARY/IMPLICATIONS

There is no negative fiscal impact on the General Fund. Custodial services provided by OPR are estimated at \$7,000.00 annually, and are absorbed by OPR's 1820 Self-Sustaining Account through the Central Reservation Unit. Revenue generated through ticket surcharge and parking fees are collected by OPR to help offset this cost. The Public Works Department provides maintenance service that is absorbed from the Internal Service Fund. Electricity and water costs are also paid by the City as part of the cost in the Internal Service Fund.

The adult ticket facility use surcharge will increase to \$2.25 per adult ticket for the 2014 and 2015 seasons, \$2.50 per adult ticket for the 2016 through 2018 seasons, \$3.00 per adult ticket for the 2019 through 2023 seasons and \$4.00 per adult ticket for the 2024 through 2026 seasons. The adult ticket surcharge is placed in a restricted account and is specifically used for Woodminster repairs, Cultural Arts programming and staffing for Recreation Attendants. The adult ticket surcharge has generated approximately \$30,000 in revenue on average per year.

SUSTAINABLE OPPORTUNITIES

Economic: The continued operation of Producers Associates, Inc. at Woodminster Amphitheater will generate revenue to Oakland Parks and Recreation through the adult ticket surcharge. Producers long term success is an indicator that the community-based program is socially and economically sustainable.

Environmental: Exposure to this location within Joaquin Miller Park creates respect for the environment and the wonderment of the natural resources within City parks.

Social Equity: Producer's Associates, Inc. musical theater is a valuable program that enhances theater art activity and provides a social venue for the community to come together. The recent improvements have played a significant role in increasing access to the rustic and rural venue, thereby, making the facility much more accessible.

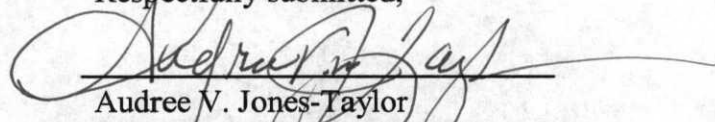
Item: _____
Life Enrichment Committee
July 8, 2014

CEQA

This report does not require review of CEQA.

For questions regarding this report, please contact Gail McMillon, Office Manager at (510) 238-3186.

Respectfully submitted,



Audree V. Jones-Taylor
Director, Oakland Parks and Recreation

Prepared by:
Gail McMillon, Office Manager
Oakland Parks and Recreation

Attachment A - *Producers Associates, Inc. Draft Agreement*

Item: _____
Life Enrichment Committee
July 8, 2014

MANAGEMENT/OPERATIONS AGREEMENT

BETWEEN THE CITY OF OAKLAND

AND

PRODUCERS ASSOCIATES INC.

THIS MANAGEMENT/OPERATION AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2014 ("Effective Date") between the City of Oakland, a municipal corporation, ("City") and Producers Associates, Inc., a California Non-profit Corporation, ("PRODUCERS") for the management and operation of the Woodminster Amphitheater located at 3300 Sanborn Drive in Joaquin Miller Park, Oakland ("WOODMINSTER" or "Property").

RECITALS

- A. City is the fee owner of that certain real property located at 3390 Sanborn Drive in Joaquin Miller Park, Oakland California known as the Woodminster Amphitheater; and
- B. The Oakland Parks and Recreation ("OPR") is the City's custodial agency for the Property; and
- C. Pursuant to Resolution No. _____ C.M.S., the City Council has authorized the City Administrator to enter into this Agreement;

THEREFORE, in consideration of the above recitals and performance of the respective covenants herein described, City and PRODUCERS (collectively, the "Parties") agree to the following terms and conditions:

PRODUCERS shall operate, manage, maintain and promote WOODMINSTER during the term of the Agreement and perform the tasks as described in detail below.

1. TERM. The term of this Agreement is for ten (10) years with one three-year option on the part of City to renew. The Agreement commences on _____, 2014 and terminates on September 30, 2023. Prior to the expiration of this Agreement, upon the mutual satisfaction of the Parties' performances pursuant to the terms of this Agreement, City may execute a new contract or an extension of this Agreement. Should PRODUCERS hold over and desire to produce performance and musical productions after the end of the term of the Agreement, with the expressed or implied consent of the City, such holding over shall be construed as a continuation of the Agreement from month-to-month and upon the same terms and conditions as herein provided for the previous Agreement. Any holdover shall terminate upon the execution of a new Agreement.

2. PERMISSIBLE USES OF THE PROPERTY. Except with the prior written consent of City, the use of the Property by PRODUCERS and any sub-concessionaires shall be

restricted to the normal activities of a summer musical theater program and cultural enrichment programs limited to the following:

2.1 Four (4) days in the month of April for Auditions and Callbacks at no charge to PRODUCERS. Auditions are between the time period of 10:00 a.m. to 7:00 p.m. and the Callbacks are between the time period of 10:00 a.m. to 4:00 p.m., subject to the availability of the Property as determined by City.

2.2 Seven (7) days a week during the summer months including June, July, August and through Friday of the third week in September at no charge to PRODUCERS, excluding days in the month of June for Graduations.

2.3 Any use inconsistent with the above purposes shall constitute a breach of this Agreement upon notice and right to cure as provided herein.

3. WOODMINSTER OPERATIONS AND PROGRAMMING.

3.1 PRODUCERS RESPONSIBILITIES. PRODUCERS shall, at no cost to City, except as expressly provided for herein, operate and manage its summer musical productions at WOODMINSTER. PRODUCERS shall maintain a balanced and diverse schedule of musical theater productions as more particularly described in Section 1 of Exhibit A ("Scope and Special Conditions and Services") attached hereto and incorporated herein by reference. PRODUCERS shall operate during specified hours and months in accordance with Exhibit A, Section 2. Any proposed changes to the attached Exhibit A that are material, must be approved by City Administrator or his/her designee before they are implemented.

3.2 CITY APPROVALS. Any approvals by City required by this Agreement shall be granted or disapproved within thirty (30) business days of receipt of the request for such approval, and if City does not grant or deny such approval within that time, or any other specific time limit provided for a specific approval in this Agreement, the approval will be deemed not to have been granted. All approvals by City and by PRODUCERS required by this Agreement shall be given reasonably except where this Agreement specifically states a different standard.

4. CHARGES AND FEES. PRODUCERS will set and collect all charges and admission fees, as approved by City through the Master Fee Schedule process, related to PRODUCERS summer musicals series as more specifically described on Exhibit A. City shall set and collect all charges and admission fees for all other activities at WOODMINSTER conducted by the City.

5. WOODMINSTER BUDGETS, REVENUE COLLECTION AND EXPENDITURES AND REVENUE SHARING.

5.1 OPERATING BUDGETS. PRODUCERS shall prepare and administer WOODMINSTER Operating and Capital Budgets, collect revenues and make operating expenditures. PRODUCERS shall deposit one-hundred percent (100%) of all revenues collected from all aspects of PRODUCERS operations, except for those revenues covered by this Section and Section 5.3. PRODUCERS shall be responsible for and shall pay one-hundred percent (100%) of PRODUCERS Operating Expenses from the operating account.

5.2 Bank Accounts, Reporting Requirements and Audits. PRODUCERS agrees to establish and utilize the bank accounts and to comply with City reporting accounting and audit requirements, including any commercially reasonable updates and modifications, set forth by the Finance Director, City Auditor and City Administrator during the term of the Agreement as more specifically described in Section 12 of Exhibit A.

5.3 Licenses and permits. PRODUCERS shall be responsible for obtaining, at its own expense, all permits and licenses necessary to conduct its operations on the Property, and shall maintain all necessary permits and licenses during the term of this Agreement. PRODUCERS shall obtain and keep current a valid City of Oakland Business Tax License. PRODUCERS shall be solely responsible for adhering to and complying with all federal, state and local laws, codes, ordinances, regulations, etc. in its operations and performance pursuant to this Agreement, except as otherwise provided in this Agreement. The costs of all necessary licenses and permits and compliance with laws shall be operating costs of PRODUCERS for purposes of this Agreement.

5.4 Subcontracts. PRODUCERS may subcontract to sub-concessionaires approved by City pursuant to written sub-agreements approved by City. Each sub-contractor must agree to abide by the terms and conditions of this Agreement, including the insurance requirements herein. Each sub-contractor agreement must state that the sub-contract shall terminate automatically upon expiration or termination, with or without cause, of this Agreement. Sub-contractors must obtain and keep current a valid City of Oakland Business Tax License.

5.5 Taxes. This Agreement does not create a possessory interest subject to property taxation. City represents and warrants that as a publicly owned property there are no property taxes due or that may be imposed on the Property.

6. CITY'S RIGHT TO UTILIZE PROPERTY.

6.1 PRODUCERS understands and agrees that City may enter on and operate its own programs on the Property without obtaining the permission of PRODUCERS, however, City will provide thirty (30) days notice to PRODUCERS of such use, i.e., to include, but not limited, to OPR's Sundays in the Redwoods program. PRODUCERS understand that City will have access as early as Wednesday of the third week in the month of September. PRODUCERS must have stage clear for the installment of the roof by Friday of the third week in September. City acknowledges that some events may have been scheduled in advance of City's thirty (30) day request, and under those circumstances City's request may be denied.

6.2 PRODUCERS understands and agrees that in the event of a natural disaster when an immediate response is required and local capacity is insufficient to address and manage traumatic events caused by such disaster such as, but not limited to, deaths, injuries, displacement of people, disease, disability, food insecurity, damage or loss of infrastructure, weakened or destroyed public administration and reduced public safety and security, City may

enter on and take temporary possession of all or part of the Property without obtaining the permission of PRODUCERS.

7. IMPROVEMENTS, MAINTENANCE AND REPAIRS.

7.1 Title to improvements. PRODUCERS shall not make any improvements or adjustments to the Property. If PRODUCERS is granted approval to make any improvements or adjustments to the Property, City shall have the option to require PRODUCERS to remove any such improvements or adjustments made prior to the end of this Agreement at no cost to City, provided that such determination is made at the time the particular improvements and adjustments are approved by City. If any improvements or adjustments are not removed, such improvements or adjustments shall become part of the Property, and PRODUCERS shall not have any claim or interest in such improvements or adjustments.

PRODUCERS agrees that all permanent structures, fixtures, repairs, alterations, installed equipment and/or improvements affixed to the Property by either of the parties hereto, are the property of City, and shall remain upon and be surrendered with the Property upon termination of this Agreement. PRODUCERS understand that all props that change the character significantly from the Property must be removed by the end of each production season.

PRODUCERS shall speak directly with the Oakland Parks and Recreation Department regarding recommendations to the Property prior to speaking with outside agencies. PRODUCERS understands that it does not have authorization to speak on behalf of the City under any circumstances unless given written authorization by the Director of Parks and Recreation.

7.2 Maintenance and repairs. City shall, at its own cost and expense, except as it relates to routine and minor repairs and cleaning as set forth in Exhibit A, Section 6, keep and maintain in good order the structural and mechanical elements of buildings on the Property consistent with the current condition of said buildings, except for any maintenance or repairs resulting from misuse by, or primary negligence of, PRODUCERS, any of its agents, employees, contractors, invitees, or residents and users of the Property. For purposes of this Agreement, structural and mechanical elements shall mean: foundations, structural supports, bearing and exterior walls, sub-flooring, exterior roofs, window frames, the unexposed electrical, plumbing, water and sewage systems, gutters and downspouts, solar panels and solar heating equipment, and all other items which would be considered capital improvements under standard Generally Accepted Accounting Principles (collectively and individually "Capital Improvements").

Repairs to Capital Improvements shall be known as "Capital Repairs" and is defined as maintenance or any repairs the City has to contract out for that is beyond what in-house staff can do, and which shall be the responsibility of City for payment thereof, to be paid for and drawn from the Capital Improvement Account, as funds are available, except as otherwise expressly provided in this Agreement. PRODUCERS shall immediately notify City of any incident or condition within its knowledge that is or may lead to a hazard to the Property or its occupants, or that may otherwise indicate the need for Capital Repairs at the Property. City shall have no obligation to make Capital Repairs until notice from PRODUCERS of the need for such repairs and City has agreed to fund them. PRODUCERS also shall submit to City appropriate

documentation detailing the scope and costs of suggested repairs, unless it is an emergency. "Emergency" is defined as a sudden and unforeseen event that calls for immediate measures to minimize its adverse consequences and occurs when an immediate response is required such as, but not limited to, deaths, injuries, displacement of people, disease, disability, damage or loss of infrastructure, danger to public safety and security (collectively and individually "Emergency Repairs"). In the event of an emergency, PRODUCERS shall notify City as soon as possible but may undertake Emergency Repairs and bill City for such costs.

Except for Capital Repairs as provided above and except for any maintenance or repairs resulting from misuse by or negligence of City or any of City's agents, employees, or contractors, and except for costs required to bring the Property into building and fire code compliance at the inception of this Agreement, PRODUCERS shall, as a cost of operation, keep and maintain all portions of the Property and all improvements located on the Property in good order and repair consistent with the uses of the buildings contemplated by this Agreement and in as safe and clean a condition as they were when received from City, reasonable wear and tear excepted. PRODUCERS shall reasonably prevent all nuisance conditions that could arise out of PRODUCERS operations of WOODMINSTER. PRODUCERS maintenance and repair obligations are more specifically described in Section 6 of Exhibit A.

7.3 Capital Improvements.

(a) **Condition of the Property.** PRODUCERS accepts the Property "as is" and in good condition. PRODUCERS shall not make any Capital Improvements to the Property without first obtaining City's written approval. PRODUCERS must request in writing to the Director of Parks and Recreation all Capital Improvements for approval(s).

(b) **Capital Improvements and Major Repair Projects.** The Parties will work cooperatively to determine the nature, extent and costs of any future Capital Improvement and major Capital Repair projects, as they occur, and with the understanding and intent to complete such improvements and repairs in the most effective and cost-efficient manner that least disrupts planned and general use of the Property. In making such determination, City and PRODUCERS will take into consideration the reasonable life of the relevant Capital Improvements, the availability of City's capital resources, including available funding in the Capital Improvement Account, and will utilize standard industry practices but may not, unless they otherwise agree, utilize best industry practice. The parties commit to working together to determine any schedule for implementing any repair and replacement related to the facility with the understanding and intent to accomplish this in the most efficient manner that is least disruptive of planned and general use of the Property.

(c) **Subsequent Capital Improvements.** PRODUCERS and City shall complete any Capital Improvements to WOODMINSTER required by this Agreement in accordance with Section 6 of Exhibit A.

(d) **Contribution to Cost of Capital Improvements.** PRODUCERS shall conduct fundraising activities to support in raising funds for Capital Improvements. All Capital Improvement contributions from PRODUCERS and City shall be deposited in a Friends

the Capital Budget shall be payable out of the Friends of Oakland Parks and Recreation custodial account with the understanding that an administrative fee will be assessed.

(e) In accordance with WOODMINSTER Capital Budget from the City, all contracts greater than Fourteen Thousand Nine Hundred Ninety-Nine Dollars (\$14,999) in informal bids must be directed to OPR and approved by the City Administrator.

7.4 Right to Inspect Property. City reserves the right to enter WOODMINSTER at any time to inspect the property and to make any repairs that it may consider necessary to the preservation of WOODMINSTER. City shall provide reasonable advance notice prior to inspection and the making of any repairs. On discovery of needed repairs, City must inform PRODUCERS of the needed repair and the Parties shall discuss the repair and if the repair is not a Capital Repair, PRODUCERS shall implement required repairs in a timely manner. Should PRODUCERS then fail to make the repairs, City shall have the right to implement the repairs, after written notice to PRODUCERS and PRODUCERS shall reimburse the cost of repairs to City within thirty (30) days. If the repair is not to a Capital Improvement that is the responsibility of City, then such reimbursement shall be at a cost of operation of PRODUCERS. However, the making of such repairs by City shall not be construed as a waiver of City's right to require PRODUCERS to keep the Property in repair as required by this Agreement.

8. COMMUNITY OUTREACH. PRODUCERS shall perform the community outreach duties and obligations as more specifically described in Exhibit C-1.

9. MARKETING. PRODUCERS shall market and promote its summer musicals series for WOODMINSTER.

10. MISCELLANEOUS DUTIES AND OBLIGATIONS. PRODUCERS shall perform miscellaneous duties and obligations to include:

10.1 Meetings with City. PRODUCERS shall meet with City when requested by City with a minimum three (3) business days' notice. Such meetings shall take place in Oakland, California, or such other place as shall be agreed upon between City and PRODUCERS.

11. WASTE, NUISANCE, UNLAWFUL ACTS AND HOLD HARMLESS. PRODUCERS shall not commit, or permit the commission by others (including, but not limited to, sub-concessionaires and customers) of any waste or nuisance on the Property. PRODUCERS shall not use or permit others (including, but not limited to, sub-concessionaires and customers) to use the Property for any unlawful purpose, and shall comply with all local, state, and federal laws in connection with the use and occupancy of the Property.

12. HAZARDOUS SUBSTANCES. No material shall be kept, stored, used or disposed of on the Property that is explosive or hazardous. However, PRODUCERS shall not be precluded from bringing, keeping or using on the Property such materials or supplies as are necessary or customary in carrying out the uses expressly authorized by this Agreement. In the event such uses include the keeping or storage of flammable, hazardous or explosive substances, the substances shall be stored in closed containers and shall be stored, used or disposed of in the

manner prescribed by the public body having authority in the matter, and in any event, in the safest possible manner. City will turn the Property over to PRODUCERS without the presence of any hazardous materials, except to the extent hazardous materials are a necessary and integral part of any of the Capital Improvements at the Property.

13. INDEMNIFICATION.

13.1 PRODUCERS Indemnification. Notwithstanding any limits of liability set forth in the insurance requirements herein, PRODUCERS agrees to defend, hold harmless and indemnify City (including its respective Council members, officers, agents and employees) of and from any and all claims, losses, damage, injury, actions, causes of action and liability of every kind, nature and description, directly or indirectly arising out of PRODUCERS' negligent failure or willful misconduct in performing any of its obligations as and when required by this Agreement, any negligent act or omission reasonably under the control or responsibility of PRODUCERS or any subcontractor or agent of PRODUCERS. PRODUCERS shall also indemnify City for damages arising from any breach of any warranty or covenant made by PRODUCERS in this Agreement. The duty of PRODUCERS to indemnify includes the duty to defend City in any court action, administrative action, or other proceeding brought by any third party arising from the Property or this Agreement. These obligations of PRODUCERS shall not apply to any such loss, damage, injury or death caused solely, or in part, by the negligence or willful misconduct of City or any of City's agents, employees, or contractors. The duty to indemnify and defend shall survive the term of this Agreement. Defense counsel retained under this section shall be subject to City's Attorney's reasonable approval.

13.2 City Indemnification. Notwithstanding any limits of liability set forth in the insurance requirements herein, City agrees to defend, hold harmless and indemnify PRODUCERS (including its respective directors, members, officers, agents and employees) of and from any and all claims, losses, damage, injury, actions, causes of action and liability of every kind, nature and description, directly or indirectly arising out of City's negligent failure and/or willful misconduct in performance any of its obligations as and when required by this Agreement, any negligent act or omission reasonably under the control or responsibility of City or any subcontractor or agent of City. Further, City warrants that as of the beginning of the Term the Property will be free and clear of any liens, litigation or encumbrances. City shall also indemnify PRODUCERS for damages arising from any breach of any warranty or covenant made by City in this Agreement. The duty of City to indemnify includes the duty to defend PRODUCERS in any court action, administrative action, or other proceeding brought by any third party regarding arising from the Property or this Agreement for such Claims. These obligations of City shall not apply to any such loss, damage, injury or death caused solely, or in part, by the negligence or willful misconduct of PRODUCERS or any of PRODUCERS' agents, employees, or contractors. The duty to indemnify and defend shall survive the term of this Agreement. Defense counsel retained under this section shall be subject to PRODUCERS' reasonable approval.

14. NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. No Councilmember, official, employee, or agent of City shall be personally liable to any party for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

15. INSURANCE REQUIREMENTS. At all times during the term of this Agreement, PRODUCERS shall maintain or cause to be maintained in full force and effect as an operating cost the following policies of insurance with companies doing business in California and acceptable to City as more specifically described in Exhibit D (Schedule Q). PRODUCERS shall provide City with copies of all certificates of insurance for the required coverage, or, upon the request of City, copies of all insurance policies.

The insurance, at a minimum, shall include:

(a) Workers' compensation insurance as required by the laws of the State of California. The policy may include Employees Liability coverage with limits not less than One Million Dollars (\$1,000,000).

(b) Commercial general liability insurance, broad form, including but not limited to, bodily injury coverage, property damage coverage, premises and operations (including off-site operations), blanket contractual liability, products and completed operations, personal injury, and owners and contractors protective liability in an amount not less than Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. The policy shall contain a severability of interest clause or cross liability clause or the equivalent thereof. The policy shall be endorsed to include the following:

(i) That City and its directors, officers, agents and employees are additional insured.

(ii) That coverage afforded on behalf of City shall be primary insurance and any other insurance available to City under any other policies shall be excess over the insurance required hereby.

(c) Notification of cancellation, which at a minimum requires insurer's notification to City in writing within thirty (30) days of the expiration of any "claims made" insurance policy which is canceled or not renewed by PRODUCERS. PRODUCERS further agrees to comply with all the policy terms and conditions, obtain a timely quote for the extended reporting or discovery period and promptly pay the full premium required to purchase the required extended reporting or discovery periods as required by this Agreement. Fire and casualty insurance coverage for the Property shall be the responsibility of City. However, City shall not be responsible for insuring the personal property of PRODUCERS or any sub-contractors.

16. NO AGENCY. The relationship of City and PRODUCERS is solely contained in this Agreement, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. City neither undertakes nor assumes any responsibility or duty to PRODUCERS (except as provided for herein) or to any third party with respect to the Property or its activities and operation, except as City may specify in writing. PRODUCERS shall have no authority to act as an agent of City or to bind City to any obligation.

17. DEFAULT. The occurrence of any of the following shall constitute a material default and breach of this Agreement by PRODUCERS:

(a) Failure by PRODUCERS to make any payment required to be made under this Agreement; or

- (b) Failure to maintain the required insurance coverage; or
- (c) Assignment of this Agreement or encumbering the Property without the prior written consent of City; or
- (d) Use of the Property for purposes not specified in this Agreement; or
- (e) Failure by PRODUCERS to perform its obligations to operate WOODMINSTER up to the standards specified in this Agreement; or
- (f) Failure by PRODUCERS to meet standards provided in the Scope of Services, Exhibit A; or
- (g) Failure of PRODUCERS to maintain the Property as required by this Agreement; or
- (h) Damaging the Property or permitting others to damage the Property; or
- (i) Failure to comply with all applicable laws; or
- (j) The abandonment or vacation of the Property by PRODUCERS during the term of this Agreement for a period in excess of thirty (30) consecutive days; provided, however, that no closure to the public of WOODMINSTER or portions thereof for required repairs shall be deemed an abandonment or vacation; or
- (k) PRODUCERS': 1) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or sixty (60) days after the filing; 2) making a general assignment for the benefit of creditors; 3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or sixty (60) days after the filing; 4) insolvency; or 5) failure, inability or admission in writing of its inability to pay its debts as they become due; or
- (l) Substantial failure by PRODUCERS to observe and perform other provisions of this Agreement.

City shall give written notice to PRODUCERS or its agent of any default by specifying (a) the nature of the event or deficiency giving rise to the default, (b) the action required to cure the deficiency, if an action to cure is possible, and (c) a date, which shall be not less than thirty (30) days from the mailing of the notice, by which such action to cure, if a cure is possible, must be taken. PRODUCERS shall not be in default if it cures such default within the specified cure period, or, if such default is not reasonably capable of cure within the specified period, PRODUCERS begins to cure the default within the cure period and thereafter diligently prosecutes the cure to completion, or if the default is de minimis or otherwise not material to accomplish the purposes of this Agreement.

18. TERMINATION OF AGREEMENT FOR CAUSE. In the event of any default by PRODUCERS under this Agreement, including but not limited to the obligations contained in Exhibit A, that has not been cured within the specified time or that is not capable of cure, in addition to any other remedies available to City at law or in equity or under this Agreement, City shall have the right to terminate this Agreement and all rights of PRODUCERS under this Agreement by giving written notice of the termination. No act of City shall be construed as terminating this Agreement except such written notice. PRODUCERS shall have

fifteen (15) days to file any contest or objection to the notice of termination, and if the matter is not resolved within thirty (30) days from the date of notice of termination, PRODUCERS shall have the right to have the matter heard and resolved by City's Governing Body. On termination, City may recover from PRODUCERS any amount due under this Agreement to the date of termination. All sub-contract agreements with respect to the Property or the operations thereon shall automatically terminate upon any termination of this Agreement by City, whether such termination is with or without cause. City and PRODUCERS shall make reasonable efforts to resolve any differences prior to termination for cause.

19. CITY'S RIGHT TO CURE DEFAULTS. If PRODUCERS breaches or fails to perform any of its obligations under this Agreement, and the notice and opportunity to cure has been given to PRODUCERS as provided above, City may, but shall be under no obligation to, cure PRODUCERS' breach. Prior to effecting such cure, City shall give PRODUCERS written notice of its intent to cure. Any amount expended by City, along with the maximum legal rate of interest not to exceed ten percent (10%) per annum, shall be reimbursable by PRODUCERS to City, and such costs shall be a cost of operation of WOODMINSTER, except for interest paid to City.

20. CITY'S DEFAULT AND PRODUCERS'S REMEDIES. Any substantial failure by City to observe and perform its obligations under this Agreement shall constitute a material default and breach of this Agreement by City. PRODUCERS shall give written notice to City or City's agent of any default by specifying (a) the nature of the event or deficiency giving rise to the default, (b) the action required to cure the deficiency, if an action to cure is possible, and (c) a date, which shall be not less than thirty (30) days from the mailing of the notice, by which such action to cure, if a cure is possible, must be taken. City shall not be in default if City cures such default within the specified cure period, or, if such default is not reasonably capable of cure within the specified period, City begins to cure the default within the cure period and thereafter diligently prosecutes the cure to completion. In the event of any default by City under this Agreement that has not been cured within the specified time or that is not capable of cure, in addition to any other remedies available to PRODUCERS at law or in equity or under this Agreement, PRODUCERS shall have the right to terminate this Agreement by giving not less than thirty (30) days written notice of the termination. PRODUCERS also may, but shall be under no obligation to, cure City's breach. Prior to effecting such cure, PRODUCERS shall give City written notice of its intent to cure. Any amount expended by PRODUCERS, along with the maximum legal rate of interest not to exceed ten percent (10%) per annum, shall be reimbursable by City to PRODUCERS. City and PRODUCERS shall make reasonable efforts to resolve any differences prior to termination for cause. If City has not reimbursed any amounts required under this Section by the end of a fiscal year of this Agreement, PRODUCERS may retain the amount of required reimbursement from funds to be distributed to City.

21. REMEDIES CUMULATIVE. The remedies granted to the Parties to this Agreement shall not be exclusive, but shall be cumulative and in addition to all remedies allowed by law or this Agreement, except as expressly provided herein.

22. WAIVER. The waiver by either party of any breach or default by the other party of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach by a party of the same or another provision.

23. SURRENDER OF THE PROPERTY. At the expiration of the term of this Agreement or earlier termination, PRODUCERS shall surrender its occupancy of the Property and deliver the Property, including any personal property of City that is located on the Property as indicated by the agreed upon inventory of such property, to City in as good a condition as it is on the date of this Agreement, excluding reasonable wear and tear, reasonably clean and free of debris. Upon expiration or termination of this Agreement, PRODUCERS shall have terminated and removed any sub-concessionaires and other occupants of the Property, unless permission for continued occupancy is expressly granted by City in writing to such persons prior to termination. PRODUCERS shall repair any damage to the Property caused by the installation or removal of its trade fixtures, furnishings, and equipment.

24. DESTRUCTION OF THE PROPERTY. If the Property, or any essential part thereof, is destroyed by fire or other casualty, this Agreement shall in case of total destruction terminate at the sole discretion of City. If the available insurance and allocated self insurance reserves of City are sufficient to replace the Property within one-hundred-eighty (180) days, then City may in its sole discretion determine to rebuild and restore the Property unless otherwise mutually agreed by the parties. In case of partial destruction or injury, resulting in the condition of the Property being such that portions can be reasonably operated by PRODUCERS, including a reasonable expectation of positive economic return, then this Agreement shall not terminate unless otherwise mutually agreed by the parties. A partial destruction or injury that results in the condition of the Property being such that no portion can reasonably be operated by PRODUCERS, including a reasonable expectation of positive economic return shall be treated as total destruction. The Parties shall meet as soon as possible after any destruction and determine whether the destruction is total or partial under this paragraph. If the Parties cannot agree, City's determination of total or partial destruction shall prevail. Should City elect, in such event, not to terminate this Agreement, it will, with reasonable diligence and in no event in less than one-hundred-eighty (180) days, restore the Property as nearly as practicable to its former condition.

25. CONDEMNATION. If at any time during the term of this Agreement, title and possession of all of the Property is taken under the power of eminent domain by any public or quasi-public City or entity, this Agreement shall terminate as of the date actual physical possession of the Property is taken by City or entity exercising the power of eminent domain, and both City and PRODUCERS shall thereafter be released from all obligations under this Agreement. If at any time during the term of this Agreement, title and possession of only a portion of the Property is taken under the power of eminent domain by any public or quasi-public City or entity, City may, at its option, terminate this Agreement if more than twenty-five percent (25%) of the Property is taken under the power of eminent domain. If at any time during the term of this Agreement, title and possession of all or any portion of the Property is taken under the power of eminent domain by any public or quasi-public City or entity, the compensation or damages for the taking shall be awarded to and be the sole property of City; provided, however, that PRODUCERS shall keep any separate award for relocation expenses, loss of its personal property or fixtures, loss of good will, the value of its license to operate WOODMINSTER and similar damages. Good will for purposes of this paragraph will be based upon the profit that PRODUCERS would have made during the remaining part of the term of this Agreement after the condemnation based upon reasonable projections derived from the profits made or earned by PRODUCERS during the term of this Agreement prior to the condemnation.

26. ACCESS TO RECORDS AND MEETINGS.

26.1 PRODUCERS shall provide requested records to City within ten (10) working days of receipt of City's request and shall allow City access to books and records at all reasonable times. At the option of City, PRODUCERS shall provide payroll tax reports, sales tax reports, income tax reports, hazardous materials reports, and other reports filed with federal, state and local government.

26.2 PRODUCERS acknowledges that Oakland Municipal Code Section 2.20.040 applies to the meetings of its governing board and that it will comply with the terms of that Section.

27. NON-DISCRIMINATION/EQUAL EMPLOYMENT PRACTICES In carrying out the operation and management of WOODMINSTER, PRODUCERS shall endeavor to establish programs and charges that will make the subject property and facilities attractive and available to all levels of economic, racial and academic interest in the community.

27.1 PRODUCERS agrees that it shall not discriminate against any employee or applicant for employment because of race, creed, religion, sex, sexual preference, color, national origin, age, marital status, Acquired Immune Deficiency Syndrome (AIDS), AIDS Related Complex (ARC) or disability, handicap and that such provisions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other form of compensation, and selection for training, including apprenticeship.

27.2 PRODUCERS and PRODUCERS subcontractors shall state in all solicitations or advertisements for employees that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.

27.3 PRODUCERS shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing Schedule C-1 Declaration of Compliance with the Americans with Disabilities Act, attached hereto as Exhibit E and incorporated herein.

27.4 If applicable PRODUCERS shall send to each labor union or representative of workers with whom PRODUCERS has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of PRODUCERS' commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

28. EQUAL BENEFITS. This Agreement is subject to the Equal Benefits Ordinance, Municipal Code, Chapter 2.32 of the Oakland Municipal Code and its implementing regulations requiring contractors on City contracts of Twenty-Five Thousand Dollars (\$25,000) or more to provide employee benefits to their employees with domestic partners equivalent to those provided to their employees with spouses. The purpose of this Ordinance is to protect and further the public, health, safety, convenience, comfort, property and general welfare by

requiring that public funds be expended in a manner so as to prohibit discrimination in the provision of employee benefits by City contractors or consultants between employees with spouses and employees with domestic partners and/or between domestic partners and spouses of such employees. The ordinance covers all benefits that an employer offers its employees and their spouses, which include but are not limited to, health benefits, bereavement leave, family leave, retirement benefits, travel and other benefits. If PRODUCERS does not provide employees with spousal benefits they are not required to change their benefits policies. PRODUCERS shall execute an "Equal Benefits Declaration of Non-Discrimination" which shall be incorporated herein and attached as Exhibit H, Schedule N-1 to this Agreement.

29. LIVING WAGE REQUIREMENTS. This Agreement is subject to the Living Wage Ordinance of Chapter 2.28 of the Oakland Municipal Code ("the Ordinance") and its implementing regulations. The Ordinance requires among other things, submission of the Declaration of Compliance attached and incorporated herein as Exhibit G, Schedule N and made part of this Agreement, and, unless specific exemptions apply or a waiver is granted, that PRODUCERS provide the following to its employees who perform services under or related to this Agreement:

(a) **Minimum Compensation.** Said employees shall be paid an initial hourly wage rate of Eleven Dollars and ninety-six cents (\$11.96) with health benefits or Thirteen Dollars and seventy-five cents (\$13.75) without health benefits. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor.

(b) **Health Benefits.** Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least One Dollar and seventy-nine cents (\$1.79) per hour. PRODUCERS shall provide proof that health benefits are in effect for those employees no later than thirty (30) days after execution of the contract or receipt of City or City of Oakland financial assistance.

(c) **Compensated Days Off.** PRODUCERS will comply with Federal, State, local and Ordinance requirements for compensated days off.

(d) **Federal Earned Income Credit (EIC).** PRODUCERS shall inform employees that he or she may be eligible for EIC and shall provide forms to apply for advance EIC payments to eligible employees.

(e) **Living Wage Notice.** PRODUCERS shall provide to all employees and to the Office of Contract Compliance, written notice of its obligation to eligible employees under the City of Oakland's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.

(f) **Language of Notices and Forms.** PRODUCERS shall provide all written notices and forms required above in English, Spanish and other languages spoken by a significant number of employees within thirty (30) days of employment under this Agreement.

(g) **Reporting.** PRODUCERS shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees at WOODMINSTER. PRODUCERS shall provide a copy of said list to the Office of Contract Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within ten (10) days of the due date for the applicable quarter will result in liquidated damages of Five Hundred Dollars (\$500) for each day that the list remains outstanding. PRODUCERS shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.

(h) **Living Wage Contractors' Compliance.** PRODUCERS shall require contractors and subcontractors that provide services pursuant to this Agreement to comply with the above Living Wage provisions. Such contractor(s) shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Office of Contract Compliance.

30. LOCAL AND SMALL LOCAL BUSINESS ENTERPRISE PROGRAM – FOR PROFIT AND NOT FOR PROFIT (L/SLBE)

(a) **Requirement –** For qualifications based professional services there is a 50% Local and Small Local Business Enterprise Program (L/SLBE): There is a fifty percent (50%) minimum participation requirement for all professional services contracts of \$50,000 or more.. The 50% local business participation requirement must be met with a minimum participation of 25% for Local Business Enterprises (LBE)/Local Not for Profit Business Enterprise (L/NFPBE) and 25% for Small Local Business Enterprises (SLBE)/Small Local Not for Profit Business Enterprise (S/LNFPBE). SLBE and SLNFPBE may meet the full 50% requirement and Very Small Business participation is double counted. Consultant status as an Oakland certified local or small local firm and subcontractor status as an Oakland certified local or small local firm are taken into account in the calculation.

(b) The requirement may be satisfied by a certified prime contractor and/or subcontractor(s) or a small local certified firm may meet the twenty percent requirement. A business must be certified by City of Oakland in order to earn credit toward meeting the twenty percent requirement. The City has waived the 25% small local business enterprise (SLBE) subcontracting requirements for Oakland certified local businesses that apply for professional services contracts as the prime consultant with the City. The SLBE requirements still apply for non-certified LBEs and non-local business enterprises.

(c) **Good Faith Effort –** In light of the fifty percent requirement, good faith effort documentation is not necessary.

(d) **Preference Points –** Preference points are earned based on the level of participation proposed prior to the award of a contract. Upon satisfying the fifty percent requirement, a consultant will earn two (2) preference points. Three additional preference points

may be earned at a rate of one point for every additional ten percent participation up to eighty percent participation of the total contract dollars attributable to local certified firms.

(e) A firm may earn up to five (5) preference points for local Oakland business participation and additional preference points for being a long term certified business in Oakland regardless of size and for having an Oakland workforce.

(f) In those instances where VSLBE participation is evident, the level of participation will be double-counted towards meeting the requirement.

(g) Additional Preference Points. For request for Proposal (RFP) and Request for Qualifications (RFQ), additional Preference Points may be earned for having an Oakland workforce on non-construction contracts.

(h) Earning extra preference points for having an existing workforce that includes Oakland residents is considered added value. The Request for Proposal "evaluation" process allows for additional preference points over and above the number of points earned for technical expertise. Typically 100 points may be earned for the technical elements of the RFP. Preference points are awarded over and above the potential 100 points.

(i) The Exit Report and Affidavit (ERA) – This report declares the level of participation achieved and will be used to calculate banked credits. The prime consultant must complete the Exit Report and Affidavit for, and have it executed by, each L/SLBE sub consultant and submitted to the City Administrator's Office of Contract Compliance & Employment Services along with a *copy* of the final progress payment application.

(j) Joint Venture and Mentor Protégé Agreements – If a prime contractor or prime consultant is able to develop a Joint Venture or "Mentor-Protégé" relationship with a certified LBE or SLBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. In order to earn credit for Joint Venture or Mentor-Protégé relationships, the Agreement must be submitted for approval to Contract Compliance and Employment Services prior to the project bid date for construction, and by proposal due date for professional services contracts. Joint Venture Applications and elements of City approved Mentor Protégé relation are available upon request.

(k) PRODUCERS shall submit information concerning the ownership and workforce composition of PRODUCERS firm as well as its subcontractors and suppliers, by completing **Schedule D ("Professional Services Questionnaire")**, **Schedule E ("Project Consultant Team")**, and **Schedule F ("Employment Questionnaire")**, attached altogether as Exhibit J and incorporated herein and made a part of this Agreement.

(l) All affirmative action efforts of Contractor are subject to tracking by City. This information or data shall be used for statistical purposes only. All contractors are required to provide data regarding the make-up of their subcontractors and agents who will perform City contracts, including the race and gender of each employee and/or contractor and his or her job title or function and the methodology used by Contractor to hire and/or contract with the individual or entity in question.

(m) In the recruitment of subcontractors, City requires all contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland's business community. The City Administrator will track the City's MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.

(n) In the use of such recruitment, hiring and retention of employees or subcontractors, City requires all contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland's business community.

31. CITY OF OAKLAND CAMPAIGN CONTRIBUTION LIMITS. This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires Council approval. The City of Oakland Campaign Reform Act prohibits contractors that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either one hundred-eighty (180) days after completion of, or termination of, contract negotiations.

This Agreement requires Council approval, therefore PRODUCERS must sign and date an Acknowledgment of Campaign Contribution Limits Form attached hereto and incorporated herein as Exhibit I, Schedule O.

32. NUCLEAR FREE ZONE DISCLOSURE. PRODUCERS represents pursuant to Schedule P ("Nuclear Free Zone Disclosure Form") that it is in compliance with the City of Oakland's restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this agreement PRODUCERS shall complete Schedule P, attached hereto as Exhibit E and incorporated herein.

33. POLITICAL PROHIBITION. Subject to applicable law, funds received pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, or for publicity or propaganda designed to support or defeat legislation and ballot measures pending before federal, state, or local government. PRODUCERS shall not use the property for political purposes, including, but not limited to, political fundraising and campaigning.

34. RELIGIOUS PROHIBITION. There shall be no religious worship, instruction, or proselytizing as part or, or in connection with the performance of this Agreement.

35. CONFLICT OF INTEREST. The following protections against conflict of interest will be upheld:

(a) PRODUCERS certifies that no member of or delegate of the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising here from.

(b) PRODUCERS certifies that no member, officer, or employee of City, the City of Oakland, or its designees or agents, and no other public official of City or City of Oakland who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, indirect or direct in this Agreement or in its proceeds during his/her tenure or for one year thereafter.

(c) PRODUCERS certifies that no one who has any financial interest in this Agreement or receives compensation for the services from PRODUCERS is related by blood or marriage within the third degree to the Mayor or any one or more of the members of the City Council, City Administrator, or the head of the department to which these services are to be provided pursuant to this Agreement.

36. NON-ASSIGNMENT OF INTEREST. The Parties to this Agreement shall not assign or otherwise transfer any rights, duties, or obligations or interest in this Agreement, either in whole or in part, without the prior written approval of the other party.

37. BANK ACCOUNTS AND REPORTING REQUIREMENTS. PRODUCERS shall create, maintain and deliver to City the financial and operational reports more specifically described in Exhibit A.

38. BINDING ON HEIRS AND SUCCESSORS. This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of City and PRODUCERS.

39. RESTRICTION AGAINST ENCUMBRANCE OR ASSIGNMENT. PRODUCERS shall not encumber, assign, or otherwise transfer this Agreement or any right or interest in this Agreement, without first obtaining the express written consent of City. PRODUCERS shall not allow any other person, other than its agents, employees, and authorized sub-concessionaires, to occupy the Property or any part of the Property without the prior written consent of City, except with respect to authorized concession uses and as otherwise authorized herein. Any assignment without the prior written consent of City, whether voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of City, terminate this Agreement.

40. ATTORNEYS' FEES. Should any party hereto institute any action or proceeding in court to enforce any provision hereof or for damages by reason of an alleged breach of any provision of this Agreement, the prevailing party shall be entitled to receive from the non-prevailing party, in addition to the Court costs incurred by the prevailing party, such amount as the Court may adjudge to be reasonable out-of-pocket costs and expenses incurred by the prevailing party including, without limitation, the disbursements and reasonable fees of such party's outside counsel, and all court costs and other reasonable litigation and expenses, including, without limitation, expert witness fees, document copying expenses, exhibit preparation costs, courier expenses, postage and communication expenses incurred by such prevailing party in connection with such enforcement.

41. SOLE AND ONLY AGREEMENT. This instrument constitutes the sole and only Agreement between City and PRODUCERS regarding the Property and its operation and management, except for separate license agreements between the parties regarding the operation

of WOODMINSTER, and correctly sets forth the obligations of City and PRODUCERS to each other as of its date.

Any agreements or representations regarding the Property not expressly set forth in this instrument are null and void.

42. TIME OF ESSENCE. Time is expressly declared to be of the essence in this Agreement.

43. NO INTEREST IN LAND CREATED. PRODUCERS understands and agrees that this Agreement establishes only the management and operation of WOODMINSTER and not a lease with respect to the Property, and that no interest or estate in real property or any improvements thereon is created hereby. PRODUCERS understands and agrees that it shall not have exclusive possession of the Property by virtue of this Agreement, and that City retains possessory rights over the Property and may freely enter and use the Property as it chooses, so long as any City uses are consistent with this Agreement.

44. WAIVER OF BREACH. The waiver by either party to this Agreement of any breach by the other party of any of the provisions of the Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or a different provision of this Agreement.

45. NOTICES. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to City by PRODUCERS or PRODUCERS by City shall be in writing and shall be deemed duly served and given when deposited in the United States mail, first-class postage prepaid, addressed as follows:

City:
Attn.: Director
Oakland Parks and Recreation
250 Frank H. Ogawa Plaza, Suite 3330
Oakland, CA 94612

PRODUCERS:
Attn.: Harriet Schlader
Producers Associates, Inc.
P.O Box 13008
Oakland, CA 94661

46. SEVERABILITY. In the event that any covenant, term or condition herein contained is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect any other valid covenant, term or condition herein contained.

47. GOVERNING LAW. This Agreement shall be deemed to be made and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, City Administrator of the City of Oakland has caused the name of City to be affixed hereto and Producer's Associates, Inc. has caused its name to be affixed.

CITY OF OAKLAND, a municipal corporation

PRODUCERS ASSOCIATES, INC., a California Nonprofit Corporation

By: _____

By: _____

Date: _____

Date: _____

Title: City Administrator

Title: _____

OAKLAND PARKS AND RECREATION, a department of the City of Oakland

By: _____

Date: _____

Title: Director

Approved as to Form and Legality:

OFFICE OF CITY ATTORNEY

By: _____

Date: _____

Title: _____

DRAFT

TABLE OF EXHIBITS

EXHIBIT	DESCRIPTION
A	A-1. Scope and Special Conditions of Services A-2. Informational Fee Schedule
B	Calendar for Producer's Associates Inc. Woodminster Summer Musicals 2014
C	Community Participation Outreach Program C-1. Description & OPR-Specific Component C-2. Reporting Matrix for Community Outreach Program
D	Schedule Q: Insurance Requirements
E	Schedule C-1: Declaration of Compliance with the Americans with Disabilities Act (ADA) Schedule P: Nuclear Free Disclosure Form Schedule U: Compliance Commitment Agreement Schedule V: Affidavit of Non-Disciplinary or Investigatory Action
F	Schedule C-2: Declaration of ADA Compliance for Facility Use Agreements and Other Special Event Agreements
G	Schedule N: Declaration of Compliance – Living Wage Ordinance
H	Schedule N-1: Equal Benefits Declaration of Nondiscrimination
I	Schedule O: Acknowledgement of Campaign Contribution Limits Form
J	Schedule D: Professional Services Questionnaire Schedule E: Project Consultant Team Schedule E-2: Oakland Workforce Verification Form
K	Producer's Associates Inventory List of Personal Property at Woodminster Amphitheater

EXHIBIT A

A-1

SCOPE AND SPECIAL CONDITIONS OF SERVICES

1. Productions

- a. PRODUCERS shall organize, develop, produce, present and promote three (3) different musical theater productions for a total of twenty-one (21) performances each performance season of this Agreement from July through September.
- b. In an effort to protect the historical name "Woodminster Amphitheater" for the facility governed by this Agreement, and to protect PRODUCERS name and logo, the PRODUCERS program will be called "Woodminster Summer Musicals" (hereinafter "WSM") in all publicity, brochures, flyers, posters, letterhead and any other written or verbal communications.
- c. City of Oakland, Oakland Parks and Recreation shall be named in all written promotional, publicity and advertising materials. Exceptions can be made for very small ads where there is insufficient space.
- d. During the term of this Agreement, PRODUCERS shall obtain all appropriate licenses and approvals and pay any royalties that may be required by law for the use of any materials, including but not limited to, songs, musical scores, and scripts for its performances. City shall not be held liable for any claims, losses, damage, lawsuits, injury, or liability of any kind arising from third parties.
- e. PRODUCERS shall pay for its telephone service, and any equipment, material, or other services necessary to carry out such performances, including but not limited to stage sets.
- f. PRODUCERS shall also provide, and be responsible for, publicity, advertising, programs and tickets, non-structural maintenance and repairs, and personnel for all productions of the PRODUCERS at the PROPERTY.
- g. PRODUCERS shall comply with all applicable Federal, State, Local, and City laws, ordinances, and regulations, including the Declaration of ADA Compliance for Facility Use Agreements and Other Special Event Agreements.
- h. Declaration of ADA Compliance for Facility Use Agreements and Other Special Event Agreements (Exhibit F). The American with Disabilities Act (ADA) requires that state and local government and private entities make public programs, activities and services accessible to people with disabilities. The City of Oakland (City) requires that all public events, programs, activities and services provided at City-owned buildings and facilities be conducted in compliance with the ADA. The City requires that all outside groups verify such compliance when entering into facility use agreements with the City by signing the Declaration of ADA Compliance for Facility Use Agreements and Other Special Event Agreements provided.

2. **PROPERTY Use and Performance Schedule**

- a. PRODUCERS shall have a non-exclusive license to use the PROPERTY for set construction, auditions, rehearsals and performances for the term of this Agreement pursuant to the schedule listed in Exhibit B, attached hereto and incorporated by reference. Exhibit B shall be updated each year and provided to City no later than February 1 of each year.
- b. PRODUCERS shall determine the schedule and dates for the upcoming production season and provide City with that year's schedule no later than February 15th of each year. PRODUCERS is encouraged to provide the information to City as early as possible to facilitate inclusion of the information in the Oakland Parks and Recreation annual brochure.
- c. The schedule and dates shall include 4 days in April for Auditions and Callbacks and PRODUCERS production season of June 1st through the third week in September which includes the final performance and cleanup and breakdown of set.
- d. PRODUCERS shall solicit patron feedback regarding the consideration of particular productions for future seasons by distributing audience surveys at all performances of the final program each year and by providing a method by which to cast a ballot on PRODUCERS website.

3. **PROPERTY Scheduling and Reservations**

- a. CITY shall retain sole responsibility for scheduling and reserving the PROPERTY for any and all events, including but not limited to Woodminster Summer Musicals, festivals, concerts, filming projects, and graduation ceremonies.
- b. CITY shall notify PRODUCERS immediately upon receipt of any request to use or schedule PROPERTY to discuss feasibility during PRODUCERS production season.
- c. Requests received by City for the use of the PROPERTY by outside groups during the term of this Agreement shall be referred to the Director, Oakland Parks and Recreation or her/his designee. Director or her/his designee and PRODUCERS shall coordinate and minimize scheduling conflicts with outside groups if the request is in the timeframe that the PRODUCERS are assigned.

4. **Use of PROPERTY by Outside Groups/Entities**

Should the PROPERTY be used by outside group(s) during the term of this Agreement, PRODUCERS may independently assess any fees for use of PRODUCERS-owned equipment. PRODUCERS may also independently assess any fees for professional and/or technical services provided by PRODUCERS to the outside group(s). Such equipment and services, plus fees, may be agreed to mutually by PRODUCERS and the outside group(s). The outside group(s) will be provided an "Informational Fee Schedule" for PRODUCERS services and equipment.

The Informational Fee Schedule (Exhibit A-2) shall state that the outside group may, but is not required to, use the equipment or technical services (e.g. lighting, sound system, and patron services) of PRODUCERS. Any agreement or arrangement between PRODUCERS and any outside group(s) is separate and independent from this agreement and the City shall not be responsible for any obligations or held accountable for any damage or loss arising from such agreement or arrangement.

PRODUCERS shall not be entitled to any rental/use fees from outside groups' use of the PROPERTY, including, but not limited to, the sound, concession, and ticket booths. PRODUCERS may receive rental/use fees only for personal property such as PRODUCERS-owned equipment and any professional/technical services provided by PRODUCERS to an outside group(s) as described in the above paragraph.

Should the PROPERTY be used by outside group(s) during the term of this Agreement, PRODUCERS's employees, contractors, volunteers, family members, etc., shall not have access to the PROPERTY other than by prior agreement with the outside group(s) or by paid admission.

Should the PROPERTY be used by outside group(s) during the term of this Agreement, City will instruct the outside group(s) not to use the PRODUCERS's official name and/or logo in any written or verbal communications. City will also instruct the outside group(s) to establish a separate working telephone number to handle inquiries from the public regarding ticket sales and/or other information relative to the event being presented.

5. PROPERTY Operations and Equipment Usage

Except as otherwise provided in this Agreement, City, not PRODUCERS, will be responsible for overall management, operation, and rental of the PROPERTY.

City shall make available to PRODUCERS all areas within the fenced PROPERTY, including lighting and sound booth, concession stands, dressing rooms, box office, workshop, stage, restrooms, and seating and storage areas, plus permanent illumination equipment and electrical lighting.

PRODUCERS shall provide an inventory list (Exhibit K) of all lighting, sound equipment, concession equipment and other personal property belonging to PRODUCERS. PRODUCERS shall have the use of all other theater equipment, furnishings and other personal property owned by City and shall return the same in as good condition and repair as received, allowing for reasonable use and wear; and shall leave the PROPERTY at the termination of the scheduled occupation in a clean and presentable condition with all such items neatly stored, or shall be liable to the City for the costs of such necessary repair, replacement, or clean-up.

6. PROPERTY Utilities, Maintenance and Improvements

During the term of this Agreement, City shall provide general facility maintenance as follows:

- (1) Cleaning services and supplies for PROPERTY, including regular servicing of the restrooms;

- (2) Cleanup of the PROPERTY seating area prior to each performance and removal of accumulated trash and debris provided that such is placed by PRODUCERS in containers and containers are placed in established area outside the PROPERTY;
- (3) General landscape maintenance;
- (4) All utilities including water, natural gas, electricity and garbage;
- (5) Recreation attendants or other OPR staff, for parking and traffic control on performance dates;
- (6) Directional signs, to include ADA directional signs, and barricades essential to the comfort and safety of patrons.

PRODUCERS acknowledges and agrees to keep the PROPERTY in a neat and orderly condition.

PRODUCERS is not authorized to make any physical improvements at the PROPERTY without prior City approval. PRODUCERS must request in writing to the Director of Parks and Recreation any and all PROPERTY improvements for approval(s) no less than thirty (30) days prior to the proposed start date of the work.

7. **Damage or Loss to Property**

PRODUCERS shall be liable to City for any and all loss and/or damage to City furnishings, property, equipment, etc., during the term of this Agreement, except on dates that the PROPERTY is being used by outside group(s). Should PRODUCERS take any performances off-site, no City furnishings, properties, or equipment may be removed without prior approval from the Director of Parks and Recreation. PRODUCERS shall return all borrowed furnishings, personal property, and equipment in good condition, allowing for reasonable use and wear, and will be liable for any loss and/or damage.

City shall not be answerable or accountable in any manner for any loss or damage that may occur to PRODUCERS' or its subcontractor's personal property, including but not limited to, equipment or materials during the term of this Agreement. City shall have no responsibility to protect or safeguard the person or property of PRODUCERS' employees, agents, officers, or directors.

8. **Storage of Materials and Equipment**

PRODUCERS shall provide storage of PRODUCERS-owned costumes, props and other supplies and equipment when the PROPERTY is being used by other group(s) during the term of this Agreement. All such items must be cleared from the two dressing rooms and neatly stored or removed by PRODUCERS.

PRODUCERS also agrees to remove the wood flooring from the stage within five (5) days of the final performance of the Woodminster Summer Musicals.

9. **Concessions**

During the term of this Agreement, PRODUCERS, for its performances only, shall have the right to use, or subcontract the existing concession stand only for serving food, beverages and other items. All proposed agreements for subcontracting of concessions must be submitted to the Director of Oakland Parks and Recreation for appropriate approval(s) at least sixty (60) days prior to the planned operation.

PRODUCERS shall be responsible for requiring by written agreement with experienced vendors that all food and beverage items be served in a sanitary, orderly and professional manner.

The proposed concession agreements must provide the following:

- a. Name, address, day/evening telephone of subcontractor;
- b. Copies of health certificate(s) required by the Alameda County Health Services Agency;
- c. Insurance coverage, including, but not limited to, products liability coverage as specified in this Agreement for PRODUCERS;
- d. Other permits and licenses required by the City or other governmental entities including an Oakland business tax license; and
- e. List of all items to be sold and prices.

If PRODUCERS subcontracts any concession, all terms of this Agreement applicable to PRODUCERS shall apply to each concessionaire and be included in the subcontracts between PRODUCERS and all its concessionaires and subcontractors at any tier.

All revenue generated by concessions must be included in PRODUCERS' annual financial statement submitted to City.

10. **Facility Ticket Surcharge**

PRODUCERS shall assess a facility surcharge of \$2.25 per adult ticket for the 2014 and 2015 seasons, \$2.50 per adult ticket for the 2016 through 2018 seasons, \$3.00 per adult ticket for the 2019 through 2023 seasons, \$4.00 per adult ticket for the 2024 through 2026 seasons.

PRODUCERS shall remit total funds collected from this surcharge to City within three (3) months of the close of each season. Funds received will be deposited in a trust account of Oakland Parks and Recreation and shall be restricted to security, maintenance and minor capital expenses related to the Woodminster Amphitheater.

11. **Admission Prices**

PRODUCERS agree that the admission prices charged for the Woodminster Summer Musicals shall be exclusive of any taxes:

Tickets are \$18.00 for all seats with open seating, on the preview/final dress held on the first Thursday evening of July, August and September. Ticket prices are \$28 to \$59 for seating on performance dates.

There shall be a \$2.00 discount on all single performance tickets for senior citizens, students, and children under 16 years of age.

There shall be a 50% discount plus facility fee on all single performance tickets for groups of twenty-five (25) or more on Thursdays, Fridays and Sundays only.

PRODUCERS shall offer the "Kids come free" promotion, which provides that children 16 and younger that are accompanied by a paying adult may enter any performance for free, one free kid per adult.

12. **Inspection of Books and Records/Right to Audit/Offset**

- (a) During the term of this Agreement, and for a period of four (4) years after the termination of this Agreement, or two (2) years after the closure of any disputed matter, whichever occurs later, (the "Audit Period"), PRODUCERS shall maintain financial and operational records related to this Agreement or to any other agreement with City. PRODUCERS shall make all books and records open to inspection by the City, City Auditor or their individually assigned designee during normal business hours at a location within a twenty-five (25) mile radius of the City of Oakland for the period of this contract and for a period of four years after the close of each contract year.
- (b) During the Audit Period, PRODUCERS hereby grants to City or its designee(s), upon one (1) day prior notice to PRODUCERS, access to and the right to make copies of any of PRODUCERS' books, statements, documents, papers or records ("Financial Information") which arise from or relate to the terms and conditions of this Agreement and performance of any services pursuant to this Agreement, or any other agreement between the Parties, in order to permit City to conduct audits, examinations, excerpts and transition audits (collectively hereafter referred to as "Audits or Audits). PRODUCERS authorizes the City Auditor or his designee to obtain such information directly for these sources. City's right to Audit and to make copies shall apply whether such Financial Information is located at PRODUCERS offices or at PRODUCERS banks, financial institutions or lenders, or at the offices of PRODUCERS financial consultants, accountants or bookkeepers. For the purposes of such Audit, PRODUCERS waives its right to the confidentiality of all Financial Information and PRODUCERS authorizes the City or its designee(s) to access, obtain and make copies of Financial Information directly from PRODUCERS banks, financial institutions or lenders, or from PRODUCERS financial consultants, accountants or bookkeepers.
- (c) Such Audits may be performed by City through its employees or by its designees including, without limitation, a third party auditor retained by City. City's right to Audit under this Section is independent, separate and distinct from any right to audit such books and records reserved by law or contract, or as a condition of funding, by the City, county, state or federal government.

If any Audit of PRODUCERS invoices or other records reveals any variance from any invoice to City, or of any amount of any grant or loan funds provided to PRODUCERS by City which is in excess of the amount actually due to or granted to PRODUCERS by City, then PRODUCERS

shall immediately refund any excess payment or funds received from City. In addition, if any Audit reveals any variance from any invoice or funds received from City in excess of one percent (1%) of the amount shown on such invoice or the amount of funds actually due to or granted to PRODUCERS by City, PRODUCERS shall immediately reimburse City for all costs and expenses incurred in conducting such Audit. Failure to pay such variance and the cost of the Audit as required herein shall constitute a material breach of the Agreement by PRODUCERS and will subject PRODUCERS to termination of the Agreement by City and to a breach of contract claim for damages by City and the return of all contract, grant or loan funds provided to PRODUCERS by City.

13. **Fiscal Year End Audit**

PRODUCERS, within seventy-five (75) days after the end of the fiscal year, shall provide to the City and the City Auditor a compilation financial statement prepared by a Certified Public Accounting firm acceptable to the City Auditor. The Statement shall be prepared in accordance with Generally Accepted Accounting Principles. Where applicable, such statements shall conform to the Single Audit Act, Circular OMB A-133. This audit provision shall conform to the Table of Contract Clauses Related to Financial Responsibilities.

In addition, a copy of the Management Letter from the CPA firm shall be provided to City.

PRODUCERS agrees to comply with all audit requirements as follows:

- A. PRODUCERS agrees to comply with the City's audit requirements for nonprofit organizations:
 1. For agencies receiving annually less than \$100,000 in cumulative funding from all sources (government or private), the Oakland Parks and Recreation, in conjunction with the City Auditor's Office, will determine agencies to be selected for audit oversight of grant funded activities by the City Auditor's Office or a designated auditor.
 2. For agencies receiving annually at least \$100,000 but less than \$300,000 in cumulative funding from all sources (government or private), an audited financial by a CPA is to be provided to the oversight agency and the City Auditor.
 3. For agencies receiving annually \$300,000 or more in cumulative funding from all sources (government or private) a single audit report shall be provided if requested by the City.
- B. PRODUCERS agrees to comply with the following general requirements for audits:
 1. All audits must be conducted in accordance with Government Auditing Standards (1988 and subsequent revisions) prescribed by the U.S. Comptroller General.
 2. PRODUCERS is encouraged to extent feasible to procure its audits from small, local, and minority and women-owned Oakland audit firms.
 3. A management letter shall be requested from the Certified Public Accountants and be presented to the City Auditor and the oversight committee.

When PRODUCERS is not subject to the City's audit requirements but obtains its own audit, a copy must be provided for the City's files within sixty (60) days after the audit has been completed by PRODUCERS auditor along with the management letter.

DRAFT

EXHIBIT A

A-2

**PRODUCERS ASSOCIATES, INC.
Use of Woodminster by Outside Groups/Entities
Informational Fee Schedule**

A member of PRODUCERS Tech Staff will be on-site for any rental of PRODUCERS-owned equipment and professional and/or technical services. Charges for the equipment and services are as follows:

Charge for a Tech Staff: \$25.00 per hour per person

Use of the control booth: \$100.00 per event

Use of ticket booth: \$25.00 per event

Use of concession booth, no equipment: \$100 per event

Equipment rental: coffee pots, popcorn maker, etc. to be negotiated

Use of PRODUCERS' sound equipment to be negotiated.

Use of any lighting equipment to be negotiated based on the need and usage at least one month before the date of the event.

A rental fee for the use of a piano to be negotiated based on the need and usage at least one month before the date of the event.

If lighting equipment needs to be hung, the rate will be \$25.00 per technician per hour, take down for lighting equipment will be billed at the same rate.

If the equipment is already hung, refocusing of the equipment for the event and after the event will be \$25.00 per technician per hour.

If the sound equipment needs to be installed before PRODUCERS needs to install if for their use, a fee of \$25.00 per technician per hour will be charged. A cable needs to be run from the stage to the control booth in order to run sound equipment.

If the wooden floor needs to be installed in advance of the normal Woodminster Summer Musicals Season, it takes five technicians four eight-hour days to do so. To remove it takes the same number of technicians three days to remove it and store it. The rate will be \$25.00 per hour per technician (the floor is in place for PRODUCERS the first week in June of each season and removed the week after the closing performance: Monday through Wednesday or Thursday.)

Use of PRODUCERS computers, telephones, printers and backstage box office will not be available to anyone.

All fees shall be paid to Producers Associates, Inc. in advance of the event, no later than one week before the event.

EXHIBIT B

Calendar for Producer's Associates, Inc. Woodminster Summer Musicals 2014
(Attached)

DRAFT

EXHIBIT C

C-1 COMMUNITY PARTICIPATION OUTREACH PROGRAM Description

The purpose of the Community Participation Outreach Program is to increase access and use of the WOODMINSTER Estate for all Oakland residents, especially families, children and youth. PRODUCERS shall work with City, OPR, Department of Human Services, Oakland Unified School District, and local community organizations in order to implement the program and gain participation from the diverse communities of Oakland. PRODUCERS is encouraged to partner with other Oakland program providers to offer the required activities.

PRODUCERS commit to and shall perform on-going and annual Program Evaluation of the Community Participation Outreach Program. The outreach program shall include the following activities on the part of PRODUCERS:

1. Collaboration with OPR to offer performance attendance access to participants in OPR's children and youth recreational programs with a goal of serving up to 400 OPR children annually. OPR groups brought to Woodminster productions shall have a ratio of one adult for every five children. Participants in the "Kids Come Free" program who are also OPR participants may be counted toward the annual total.
2. Targeted outreach to Oakland schools, including charter schools, to recruit participation in Woodminster Summer Musicals.
3. Targeted outreach to theater clubs and associations in the Bay Area to attract volunteers to assist in maintaining and improving the beauty of Woodminster Amphitheater.

COMMUNITY PARTICIPATION OUTREACH PROGRAM OPR-Specific Component

The PRODUCERS' Community Outreach Program shall include delivery of the following services to or with the City of Oakland Parks and Recreation (OPR) and are not included as part of "Special Use by City":

- I. Coordination with OPR's recreation centers to provide group tickets for OPR participants at least five (5) times per year (counted in the total of community group visits for the year).

EXHIBIT C

C-2

Reporting Matrix for Community Outreach Program

PROGRAM ACTIVITIES DESCRIPTION

Advertise online 'Kids Come Free Program'. Kids Come Free tickets are available the night of any performance. One child or teen, 16 years old or younger can attend the show for free with an adult who pays full price.

Distribute flyers to Oakland Unified School District (OUSD) and Libraries once before school is out and at Libraries all summer.

Distribute Woodminster brochures at Montclair, Temescal and Lake Shore Farmers Markets once before each show.

PROGRAM DELIVERABLES

Component Programs	Annual Targets	Year to Date
Kids Come Free Program	2000	2004 Youth in 2011 2000-3000 Youth in 2012

OAKLAND POPULATIONS SERVED

- Low-Moderate Income Families
- Seniors
- Limited Mobility/Disabled Patrons

Component Participants	Annual Targets	Yearly
OUSD/Charter Schools	500	Even though school is out, between 2000-3000 youth attend each year.
Oakland Parks & Recreation	150	Recreation Centers participants' and family members.
Oakland Family Members	2000	65% of all audience lives in Oakland.
Seniors (1/3 of all guests are seniors)	2000	7000 or more from 2004-2012
Limited Mobility/Disabled Patrons	50	Approximately 50 wheelchairs per summer since 2004
TOTALS	4700	

EXHIBIT D

Schedule Q: Insurance Requirements
(Attached)

DRAFT

Schedule Q

INSURANCE REQUIREMENTS

(Revised 01/01/14)

a. General Liability, Automobile, Workers' Compensation and Professional Liability

Contractor shall procure, prior to commencement of service, and keep in force for the term of this contract, at Contractor's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the City. If requested, Contractor shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

- i. **Commercial General Liability insurance** shall cover bodily injury, property damage and personal injury liability for premises operations, independent contractors, products-completed operations personal & advertising injury and contractual liability. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01)

Limits of liability: Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

- ii. **Automobile Liability Insurance.** Contractor shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be at least as broad as Insurance Services Office Form Number CA 0001.
- iii. **Worker's Compensation insurance** as required by the laws of the State of California, with statutory limits, and statutory coverage may include Employers' Liability coverage, with limits not less than \$1,000,000 each accident, \$1,000,000 policy limit bodily injury by disease, and \$1,000,000 each employee bodily injury by disease. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

- iv. **Professional Liability/Errors and Omissions insurance** appropriate to the contractor's profession with limits not less than \$2,000,000 each claim and \$2,000,000 aggregate. If the professional liability/errors and omissions insurance is written on a claims made form:
 - a. The retroactive date must be shown and must be before the date of the contract or the beginning of work.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
 - c. If coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the contract effective date, the contractor must purchase extended period coverage for a minimum of three (3) years after completion of work.

b. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

- i. **Insured Status (Additional Insured):** Contractor shall provide insured status naming the City of Oakland, its Councilmembers, directors, officers, agents, employees and volunteers as insured's under the Commercial General Liability policy. General Liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 (11/85) or both CG 20 10 and CG 20 37 forms, if later revisions used). If Contractor submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on an ISO form CG 20 10 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT; and
- ii. Coverage afforded on behalf of the City, Councilmembers, directors, officers, agents, employees and volunteers shall be primary insurance. Any other insurance available to the City Councilmembers, directors, officers, agents, employees and volunteers under any other policies shall be excess insurance (over the insurance required by this Agreement).
- iii. **Cancellation Notice:** Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the Entity;
- iv. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the contractor, its employees, agents and subcontractors.

- v. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and
- vi. Insurer shall carry insurance from admitted companies with an A.M. Best Rating of A VII, or better.

c. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Contractor, such insurance in the name of Contractor as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement.

d. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

e. Proof of Insurance

Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of Contractor's insurance policies if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

f. Subcontractors

Should the Contractor subcontract out the work required under this agreement, they shall include all subcontractors as insured's under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, the Contractor may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Schedule. If this option is exercised, both the City of Oakland and the Contractor shall be named as additional insured under the subcontractor's General Liability policy. All coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the course of the project to verify compliance with requirements.

g. Deductibles and Self-Insured Retentions

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

h. Waiver of Subrogation

Contractor waives all rights against the City of Oakland and its Councilmembers, officers, directors, employees and volunteers for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

i. Evaluation of Adequacy of Coverage

The City of Oakland maintains the right to modify, delete, alter or change these requirements, with reasonable notice, upon not less than ninety (90) days prior written notice.

J. Higher Limits of Insurance

If the contractor maintains higher limits than the minimums shown above, The City shall be entitled to coverage for the higher limits maintained by the contractor.

EXHIBIT E

Schedule C-1: Declaration of Compliance with the Americans with Disabilities Act (ADA)

Schedule P: Nuclear Free Zone Disclosure Form

Schedule U: Compliance Commitment Agreement

Schedule V: Affidavit of Non-Disciplinary or Investigatory Action

(Attached)

DRAFT



COMBINED SCHEDULES

C-1, P, U & V

SCHEDULE C-1: Declaration of Compliance with the Americans with Disabilities Act.

The Americans with Disabilities Act (ADA) requires that private organizations serving the public make their goods, services and facilities accessible to people with disabilities. Furthermore, the City of Oakland requires that all of its Contractors comply with their ADA obligations and verify such compliance by signing this Declaration of Compliance.

I certify that I will comply with the Americans with Disabilities Act by:

- A. Adopting policies, practices and procedures that ensure non-discrimination and equal access to Contractor's goods, services and facilities for people with disabilities;
 - B. Providing goods, services and facilities to individuals with disabilities in an integrated setting, except when separate programs are required to ensure equal access;
 - C. Making reasonable modifications in programs, activities and services when necessary to ensure equal access to individuals with disabilities, unless fundamental alteration in the nature of the Contractor's program would result;
 - D. Removing architectural barriers in existing facilities or providing alternative means of delivering goods and services when removal of barriers is cost-prohibitive;
 - E. Furnishing auxiliary aids to ensure equally effective communication with persons with disabilities;
 - F. If contractor provides transportation to the public, by providing equivalent accessible transportation to people with disabilities.
-

SCHEDULE P: Nuclear Free Zone Ordinance

I have read Ordinance 11478 C.M.S. titled "An Ordinance Declaring the City of Oakland a Nuclear Free Zone and Regulating Nuclear Weapons Work and City Contracts with and Investment in Nuclear Weapons Makers", as provided on the City's website, Contracts and Compliance (<http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/policies/index.htm>). I certify that my firm conforms with the conditions as defined in Ordinance 11478 C.M.S.

SCHEDULE U: Compliance Commitment Agreement

I have read the City of Oakland's Local/Small Local Business Enterprise Program (L/SLBE) and declare that **I will achieve the 50% L/SLBE participation requirement as described in the L/SLBE program including 50% of the total trucking dollars to certified Oakland Local Truckers.** If I fail to satisfy the proposed 50% L/SLBE participation requirement, I may be assessed a penalty equal to 1 and ½ times the shortfall.

As prime contractor for this project, I agree to use the City of Oakland's Labor Compliance Program tracker (LCP Tracker) a web based electronic payroll system to input ALL certified payroll reports including all tiers of subcontractors for this project. I acknowledge that invoice payments will not be released until and unless all certified payrolls are current.

I agree to submit with the final payment request a completed "Exit Report and Affidavit form" located on the City's website at

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm>.

SCHEDULE V: Affidavit of Non-Disciplinary or Investigatory Action

I certify that the following entities: Equal Employment Opportunity Commission (EEOC), Department of Fair Employment & Housing (DFEH) or the Office of Federal Contract Compliance Programs (OFCCP) have not taken disciplinary or investigatory action against the Firm. If such action has been taken, attached hereto is a detailed explanation of the reason for such action, the party instituting such action and the status or outcome of such action.

PLEASE NOTE: *By signing and submitting this form the prospective primary participant's authorized representative hereby obligates the proposer(s) to the stated conditions referenced in Schedules C-1, P, U and V.*

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

I am in compliance with the above referenced Schedules:

Date

Signature of Authorized Representative

Type or Print Title

Type or Print Name

Email

Contact Number

I am not in compliance with the following Schedule(s) _____.

Date

Signature of Authorized Representative

Type or Print Title

Type or Print Name

Email

Contact Number

EXHIBIT F

Schedule C-2: Declaration of ADA Compliance for Facility Use Agreements and Other
Special Events Agreements

(Attached)

DRAFT

DECLARATION OF ADA COMPLIANCE FOR
FACILITY USE AND OTHER SPECIAL EVENTS AGREEMENTS

The Americans with Disabilities Act (ADA) requires that state and local government and private entities make public programs, activities and services accessible to people with disabilities. The City of Oakland (City) requires that all public events, programs, and services provided at City-owned buildings and facilities be conducted in compliance with the ADA. The City further requires that all outside agencies verify ADA compliance by signing this Declaration of ADA Compliance for professional services, facility use, and other agreements that concern the delivery of special events to the public.

_____ certifies that it will comply with the ADA and the City's ADA Special Events Policy by:

- A. Adopting policies, practices and procedures that ensure non-discrimination and equal access for people with disabilities to public events, programs, activities and services provided at City facilities;
- B. Providing public events, programs, activities and services at fully accessible facilities as defined by U.S. Department of Justice ADA regulations;
- C. Making reasonable modifications in public events, programs, activities and services when necessary to ensure equal access to individuals with disabilities, unless fundamental alteration in the nature of the program would result;
- D. Adhering to any special disability access policies, practices and procedures set out by the City ADA Special Events Policy for use of City facilities and the delivery of special events to the public;
- E. Ensuring effective communications with persons with disabilities through provision of auxiliary aids and services, such as American Sign Language interpreting services; and
- F. When providing transportation to the public, by providing equivalent accessible transportation to people with disabilities.

The undersigned authorized representative hereby obligates the applicant to the above stated conditions. I understand that failure to comply with these conditions may constitute a breach of the subject agreement with the City.

Agency Name

Signature of Authorized Representative

Address

Type or Print Name

Phone

Date

Type or Print Title

EXHIBIT G

Schedule N: Declaration of Compliance – Living Wage Ordinance

(Attached)

DRAFT



Schedule N

DECLARATION OF COMPLIANCE – LIVING WAGE ORDINANCE

The Oakland Living Wage Ordinance (the "Ordinance"). Codified as Oakland Municipal Code provides that certain employers under contracts for the furnishing of services to or for the City that involve an expenditure equal to or greater than \$25,000 and certain recipients of City financial assistance that involve receipt of financial assistance equal to or greater than \$100,000 shall pay a prescribed minimum level of compensation to their employees for the time their employees work on City of Oakland contracts. The Redevelopment Agency of the City of Oakland adopted the City's Living Wage policy as its own policy Agency Resolution No. 98-13 C.M.S.

The contractor or city financial assistance recipient (CFAR) agree as described in Section 3-C "Health Benefits" of the Ordinance, to pay employees a wage no less than the minimum compensation of \$11.96 per hour with health benefits, or \$13.75 per hour without benefits and to provide for annual increases pursuant to Section 3-A "Wages" of the Ordinance. **Note: Effective July 1, of each year, Contractor shall pay the adjusted wage rates.**

- (a) To provide at least twelve compensated days off per year for sick leave, vacation or personal necessity at the employees request, and, at least ten additional days per year of uncompensated time off pursuant to Section 3- B "Compensated Days Off" of the Ordinance.
- (b) To inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist you. Web sites include but are not limited to: (1) <http://www.irs.gov> for current guidelines as prescribed by the Internal Revenue Service and (2) the Earned Income Tax Outreach Kit at <http://eitcoutreach.org>.
- (c) To permit access to work sites for authorized City representatives to review the operation, payroll and related documents, and to provide certified copies of the relevant records upon request by the City; and
- (d) Not to retaliate against any employee claiming non-compliance with the provisions of this Ordinance and to comply with federal law prohibiting retaliation for union organizing.

Employment Questionnaire: Please respond to the following questions:		
Questions	Responses	Comments
(1) How many permanent employees are employed with your company? (If less than 5, stop here)		
(2) How many of your permanent employees are paid above the Living Wage rate?		
(3) How many of your permanent employees are paid below the Living Wage rate?		
(4) Number of compensated days off per employee?(Refer to item "a" above)		
(5) Number of trainees in your company?		
(6) Number of employees under 21 years of age, employed by a nonprofit corporation for after school or summer employment for a period not longer than 90 days.		

The undersigned authorized representative hereby obligates the proposer to the above stated conditions under penalty of perjury.

Company Name

Signature of Authorized Representative

Address

Type or Print Name

Area Code

Phone

Date

Type or Print Title

EXHIBIT H

Schedule N-1: Equal Benefits Declaration of Nondiscrimination

(Attached)

DRAFT

**Schedule N-1: Equal Benefits – Declaration of
Nondiscrimination/Equal Access
(Completed by the Prime Contractor ONLY)**

Section A. Vendor/Contractor/Consultant/CFAR¹ Information

Name of Company _____

Name of Company Contact _____

Address _____
Street

City _____ State _____ Zip _____

Phone _____ Fax _____ Email _____

Vendor number _____ Federal ID or Social Security Number _____

Approximate Number of Employees in the U.S. _____

Are any of your employees covered by a collective bargaining agreement or union trust fund? Yes No
(Please circle one)

Union name(s) _____

Section B. Compliance

Does your company provide or offer access to any benefits to employees with spouses or to spouses of employees? (Please circle one) Yes No

Does your company provide or offer access to any benefits to employees with domestic partners²? (Please circle one) Yes No

Section C. Compliance

Please check each benefit that applies

Benefit	Offered to Employees only	Offered to Employees and their spouses	Offered to Employees and their Domestic Partners	Not Offered at all	Documentation attached
Health	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dental	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Retirement (Pension, 401K, etc)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bereavement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Family Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parental Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employee Assistance Program	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Relocation & Travel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Company Discount, Facilities & Events	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Credit Union	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Child Care	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

¹ CFAR is a City Financial Recipient

² Domestic Partner is defined as a same sex couples or opposite sex couples registered as such with a state or local government domestic partnership registry

EXHIBIT I

Schedule O: Acknowledgement of Campaign Contribution Limits Form

(Attached)

DRAFT



**CONTRACTOR ACKNOWLEDGEMENT OF CITY OF OAKLAND CAMPAIGN CONTRIBUTION LIMITS
FOR CONSTRUCTION, PROFESSIONAL SERVICE & PROCUREMENT CONTRACTS**

To be completed by City Representative prior to distribution to Contractor

City Representative _____ Phone _____ Project Spec No. _____

Department _____ Contract/Proposal Name _____

This is an ___ Original ___ Revised form (check one). If Original, complete all that applies. If Revised, complete Contractor name and any changed data.

Contractor Name _____ Phone _____ - _____ - _____

Street Address _____ City _____, State _____ Zip _____

Type of Submission (check one) Bid Proposal Qualification Amendment

Majority Owner (if any). A majority owner is a person or entity who owns more than 50% of the contracting firm or entity.

Individual or Business Name _____ Phone _____ - _____ - _____

Street Address _____ City _____, State _____ Zip _____

The undersigned Contractor's Representative acknowledges by his or her signature the following:

The Oakland Campaign Reform Act limits campaign contributions and prohibits contributions from contractors doing business with the City of Oakland and the Oakland Redevelopment Agency during specified time periods. Violators are subject to civil and criminal penalties.

I have read Oakland Municipal Code Chapter 3.12, including section 3.12.140, the contractor provisions of the Oakland Campaign Reform Act and certify that I/we have not knowingly, nor will I /we make contributions during the period specified in the Act.

I understand that the contribution restrictions also apply to entities/persons affiliated with the contractor as indicated in the Oakland Municipal Code Chapter 3.12.080.

If there are any changes to the information on this form during the contribution-restricted time period, I will file an amended form with the City of Oakland.

_____/_____/_____
Signature Date

Print Name of Signer Position

To be Completed by City of Oakland after completion of the form

Date Received by City: ___/___/___ By _____

Date Entered on Contractor Database: ___/___/___ By _____

EXHIBIT J

Schedule D: Professional Services Questionnaire

Schedule E: Project Consultant Team

Schedule E-2: Oakland Workforce Verification Form

(Attached)

DRAFT



DEPARTMENT OF CONTRACTING AND
PURCHASING
Social Equity Division
Phone: 510-238-3970 Fax: 510-238-3363

SCHEDULE D
OWNERSHIP, ETHNICITY and GENDER
QUESTIONNAIRE

Part I: OWNERSHIP & ETHNICITY of PRIME:

Firm or Individual Name _____ Phone (____) _____
 Street Address _____ City _____ State _____ Zip _____ Federal ID # _____
 City of Oakland Business License Number _____ Completed by: _____ Phone if different from above _____

(Please check one and explain below)

- Self Employed, Name of Owner _____ Corporation, State of Incorporation _____
 Partnership, General or Limited _____ Names of Partners _____
 Joint Venture, Names of Participants _____

Ownership Interests

All owners must be listed
in this information

Ethnicity	African American	American Indian/ Alaskan Native	Asian or Pacific Islander	Caucasian	Filipino	Hispanic	Other
Number of Owners							
% Of Total Ownership							
Women							
Joint Venture Ownership							

Part II: CERTIFICATIONS

Please attach a copy of the
certification letter or provide the
certification number and expiration
date.

- Minority-owned Business Enterprise (MBE)? Cert # _____ Expiration Date _____
 Woman-Owned Business Enterprise (WBE) Cert # _____ Expiration Date _____
 Disadvantaged Business Enterprise (DBE) Cert # _____ Expiration Date _____
 Oakland Certified Local Business Enterprise Cert # _____ Expiration Date _____
 Other _____ Cert # _____ Expiration Date _____

Part III: Ethnicity and Gender of Employees

Employment Category	Total Employees	Male						Female						
		Oakland Residents	African American	American Indian/Alaskan Native	Asian/ Pacific Islander	Caucasian	Hispanic	Other	African American	American Indian/Alaskan Native	Asian/ Pacific Islander	Caucasian	Hispanic	Other
Project Management														
Professional														
Technical														
Clerical														
Trades														

AFFIRMATIVE ACTION INFORMATION I certify that I/we shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, sexual orientation, national origin, age, disability, Acquired Immune Deficiency Syndrome (AIDS) AIDS related complex, or any other arbitrary basis and shall insure compliance with all provisions of Executive Order No. 11246 (as amended by Executive Order No. 11375). I certify that I/we shall not discriminate against any employee or applicant for employment because they are disabled veteran of the Viet Nam era and shall insure compliance with all provisions of 41CFR60-250.4 where applicable.

I declare under penalty of perjury that the foregoing is true and correct. Signature _____

Print Name _____ Title _____ Date _____

Please be advised that the ethnicity and gender information contained in this Schedule D will be used for reporting and tracking purposes ONLY.

SCHEDULE E

PROJECT CONSULTANT TEAM LISTING

To be completed by prime consultants only.

Date _____



Note:
The consultant herewith must list all subconsultants regardless of tier and their respective percentages of the project work. No other subconsultants, other than those listed below shall be used without prior written approval by the City of Oakland. Provide all information listed and check the appropriate boxes. Firms must be certified with the City of Oakland in order to receive Local/Small Local Business Enterprise credits.

Company Name: _____

Signed: _____

Type of Work	Company Name	Address and City	Phone Number	% of Project Work	Dollar Amount	Subcontractor	Local (LBE)	Small Local (SLBE)	* Ethnicity	** Gender

Attach additional page(s) if necessary.

Contractors are required to identify the ethnicity and gender of all listed firms majority owner. This information will be used for tracking purposes only.

* (AA=African American) (AI=Asian Indian) (AP=Asian Pacific) (C=Caucasian) (H=Hispanic) (NA=Native American) (O=Other) (NL=Not Listed)

** (M = Male) (F = Female)



Oakland Workforce Verification

Schedule E-2

Date Submitted: _____ Consultant/Service Provider: _____ Phone: _____

Address: _____ email: _____ # additional sheets attached: _____

PLEASE NOTE: All prime consultants seeking additional preference points for Oakland workforce must complete this form and submit with "required attachments" to Contracts and Compliance no later than four (4) days after proposal due date. For questions, please contact the assigned Compliance Officer named in the RFP/RFQ.

REQUIRED ATTACHMENTS

Please check box below to confirm attachments

EMPLOYEE Use additional sheets if needed	CURRENT STREET ADDRESS	DATE OF HIRE	LAST 4 DIGITS OF Soc. Sec. #	WORK CLASSIFICATION	REQUIRED ATTACHMENTS		
					1 Valid Photo ID	2 Other Proof of Oakland Residency	3 DE6/DE9
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

PLEASE NOTE BELOW:

1) A valid photo ID is required to prove Oakland residency. If the employee does not have a valid photo ID, the employer must submit at least two (2) other acceptable forms of ID/Other acceptable proofs of residency. Valid photo IDs include: a) U.S. Passport, b) Employment Authorization Document, c) State Driver's license or ID Card, d) School ID Card, and or e) U.S. Military Card.

2) Other Acceptable Proofs of Oakland Residency: Utility Bills, Bank Account Statements, Auto Registration, Mortgage Statements, Rental Agreements, and/or Public Assistance. Verif

3) DE6 /DE9- Quarterly Wage and Withholding Report.

EXHIBIT K

Producer's Associates Inventory List of Personal Property at Woodminster Amphitheater

DRAFT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

M. M. ...
City Attorney

2014 JUN 26 PM 3: 05 RESOLUTION No. _____ C.M.S.

**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR HIS
DESIGNEE TO EXECUTE AN AGREEMENT WITH PRODUCERS
ASSOCIATES, INC. TO PROVIDE SUMMER MUSICAL THEATER AT
WOODMINSTER AMPHITHEATER FOR A TEN-YEAR TERM FROM
2014 THROUGH 2023 WITH ONE THREE-YEAR OPTION TO RENEW**

WHEREAS, Producers Associates, Inc. ("Producers") is a non-profit organization founded in 1967 dedicated to providing classic American musical theater at Woodminster Amphitheater; and

WHEREAS, Producers provides a valuable community program that is enjoyed by many Oakland and Bay Area residents; and

WHEREAS, the City co-sponsors the summer musical theater by providing the venue, cleaning services, maintenance support and collection of parking revenue; and

WHEREAS, Producers completed a successful 2012 and 2013 season and served over 21,000 patrons each year; and

WHEREAS, the most recent five year agreement between Producers and the City has expired and a proposed ten year agreement from 2014 through 2023, with one three year option to renew has been prepared; and

WHEREAS, Producers theater season shall include four days in April for auditions and callbacks, rehearsals seven days a week from June 1 through the third week in September, excluding days in the month of June for Graduations, and three different productions with seven performances in July, August and September; and

WHEREAS, Producers will collect a \$2.25 per adult ticket surcharge in the 2014 and 2015 seasons, \$2.50 per adult ticket surcharge for the 2016 through 2018 seasons, \$3.00 per adult ticket for the 2019 through 2023 seasons, and \$4.00 per adult ticket surcharge from 2024 through 2026; and

WHEREAS, the per adult ticket surcharge shall be submitted to the City where it will be placed in a Woodminster maintenance, program and repair fund; and

WHEREAS, Producers understands that the City may enter on and operate its own programs on the property as a means to increase revenue, such as the Sundays in the Redwoods program and other programs and services deemed appropriate by City; and

WHEREAS, Producers understands that the City has full rights to the property including but not limited to the sound room, dressing rooms, concession stand and storage areas; and

WHEREAS, Producers shall comply with the City's Special Event Access for People with Disabilities as stated in the Declaration of ADA Compliance for Facility Use Agreements and Other Special Events Agreements; and

WHEREAS, Producers shall not make any improvements or adjustments at the property without written approval by the City Administrator or designee; and

WHEREAS, Producers shall not represent the City in resolving litigation liabilities or conflicts created by patrons; now, therefore, be it

RESOLVED: That the Oakland City Council authorizes the City Administrator or his designee to execute an agreement with Producers Associates, Inc. to produce musical theater at Woodminster Amphitheater during the summer seasons for a ten-year term from 2014 through 2023, with one three-year option to renew; and be it

FURTHER RESOLVED: That said agreement shall be approved as to form and legality by the Office of the City Attorney and placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF and PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California