

February 19, 2013
Community Services

TITLE: APPROVE THE SERVICES AGREEMENT WITH THE BAY AREA CHILDREN'S THEATRE IN THE AMOUNT OF \$109,000 FOR CHILDREN'S THEATRICAL PRODUCTION SERVICES

SUMMARY

Since 1999, the City has provided a range of children's theatrical programming and since 2010; this has been coordinated through an agreement with a private theater production company. The current agreement will expire on June 30, 2013, and in anticipation of that expiration the City has been conducting a Request for Proposal Process to select the most qualified vendor to continue and expand this program. On February 4, 2013, the Civic Arts Commission held a public meeting on this matter and based on its review, that included utilizing a screening subcommittee formed to review the proposals and interview the applicants and public comment, it is recommending awarding an agreement to the Bay Area Children's Theatre (BACT) for FY 2013/14. Services provided include: professional, artistic, technical and administrative support for three (3) annual children's theatrical productions.

CIVIC ARTS COMMISSION RECOMMENDATION

Approve the Services Agreement with the Bay Area Children's Theatre for children's theatrical production services.

RECOMMENDATION

Approve the Services Agreement (Attachment 1) with the Bay Area Children's Theatre in the amount of \$109,100 for one (1) year commencing July 1, 2013 to provide children's theatrical production services.

FINANCIAL STATEMENT

The proposed Services Agreement with the Bay Area Children's Theatre is in the amount not to exceed \$109,100 annually and it's anticipated that these expenses will be offset by revenues derived from ticket sales, school concerts, and participation fees. Funding will be included as part of the FY 2013/14 Operating Budget process.

BACKGROUND

In 1999, the City of Pleasanton's Civic Arts Division developed and implemented a children's theatre based program known as the "Civic Arts Stage Company". At that time, all professional, artistic, technical and administrative support was provided by City of Pleasanton staff. As a result of the City producing the "Civic Arts Stage Company" program for over nine years, public interest in programming grew more than the City could accommodate on its own. To address this situation, the City initiated discussions about the feasibility of having San Francisco Shakespeare Festival (SFSF) assist with the program.

In 2008, the City began to contract with SFSF to produce shows. However, since it was still considered a trial period, the contract(s) only covered one (1) show at a time. Under separate contracts, the City hired SFSF to produce "Sleepy Hollow", "Ramona Quimby" and "Cinderella."

In 2010, the Firehouse Arts Center opened and the City initiated a Request for Proposal (RFP) process for a "Shakespeare" based outdoor theater production and children's theatrical production services. The San Francisco Shakespeare Festival was the only theatre company to submit a proposal. Although there was one (1) proposal received, the City felt confident in recommending SFSF based on their past performance.

The current Service Agreement with the San Francisco Shakespeare Festival expires on June 30, 2013. However, to assure that the City can continue to provide children's theatrical production services without interruption, it conducted a Request for Proposal (RFP) process. As a result, two (2) theatre companies responded to the City's RFP for the children's theatrical production services; the San Francisco Shakespeare Festival and the Bay Area Children's Theatre.

On October 26, 2012 a Screening Committee consisting of two (2) Civic Arts Commissioners and City staff reviewed the proposals and interviewed both of the two (2) theatre companies. Although the Screening Committee acknowledged the service the San Francisco Shakespeare Festival had provided in the past, the Screening Committee unanimously voted to recommend the Bay Area Children's Theatre based on the facts that the Bay Area Children's Theater has proposed a more comprehensive range of programming, that it was more responsive to the overall requirements of the program, and that it could result in improved program administration and management.

Overall, the Committee and Commission were impressed with the Bay Area Children's Theatre's vast experience working with multiple cities in the Bay Area, including currently providing similar programming for the City of San Ramon. They also felt strongly that the Bay Area Children's Theatre would not only continue the excellent level of children's theater that the community had come to expect, but with their knowledge of children's theater, the City's program would continue to grow and the experiences for the community would be more enriched. It should also be noted that while there was initially significant public concern regarding this matter, much of this was related to concerns that the change in vendor was intended to reduce or minimize the children's theatrical programming. However, the Commission and staff view this recommendation as a way of both continuing and improving the program overall.

DISCUSSION

Bay Area Children's Theatre

Bay Area Children's Theatre (BACT) was founded by five (5) arts educators in 2004 as "Active Arts Theatre for Young Audiences". Bay Area Children's Theatre (BACT) is a 501(c) (3) non-profit organization and serves 22,000 people annually throughout the San Francisco Bay Area. They encourage children to explore literature, language, and the arts by producing stage adaptations of great children's books, as well as creating new work that brings literature to life on stage.

Theatre Arts Programs

Currently, Bay Area Children's Theatre (BACT) offers both main-stage productions and a youth education program.

Main Stage Productions

Since their first performance in 2004, BACT's Main Stage Productions has grown significantly. Last season, they produced six (6) shows of which three (3) shows were world premieres, and one toured nationally. A variety of their Main Stage Productions are offered at Freight & Salvage and The Osher Studio in Berkeley; Front Row Theatre and Dougherty Valley Performing Arts Center in San Ramon; and Children's Fairyland in Oakland.

Youth Education Program

The Youth Education Program (YEP) includes classes, school tours, after-school enrichment programs, and camps. The Youth Education Program (YEP) gives children special opportunities to perform, enabling them to learn the art & craft of theatre as participants as well as observers. In addition to performing, children gain experiences that can build their self-confidence, impart self-reliance, and prepare them for success in the future.

Bay Area Children's Theatre also offers a school based program known as "Crocodile Junction". This program connects creative writing and theatre arts in the classroom by bringing arts educators to grades 1-5 for 18 week residencies. The curriculum meets the California state educational content standards and includes weekly teacher guides. Depending on the grade level, the program culminates in a final in-class presentation or performances at a school assembly as well as an evening performance for their families.

The thriving and successful "Youth Education Program" complements BACT's main stage productions by giving children and teens' performance opportunities in theatre arts, enabling them to learn the art and craft of theatre as participants as well as observers. The Youth Education Program is currently being conducted in the cities of Alameda, Piedmont, Alamo and San Ramon.

Community Outreach

In addition to the Youth Education Program, BACT also takes selected shows on tour to local schools, libraries and community centers. With the support of several foundations which include Clorox Community Foundation, Rogers Foundation, Safeway Foundation, East Bay Community Foundation, Bernard E. & Alba Witkin Charitable Foundation; BACT is able reach children who are not able to attend their main stage productions because of financial or geographical barriers.

Last season with the support of their foundations and the Community Access Ticketing Service (CATS), BACT donated more than \$6,000 in tickets to children who would not have otherwise been able to attend their performances.

The program cost of \$109,100 for FY 2013/14 is consistent with FY 2012/13 program costs of \$108,500 and as indicated, staff anticipates that participation fees will offset program costs. As indicated, the recommended Service Agreement is for a period of one year with the option for a total of two one year extensions. Staff will monitor the program any extension will be based on quality of service, cost and feedback from participants. The Service Agreement is based on the City's standard form and is consistent with other service agreements with other City programs.

Submitted by:



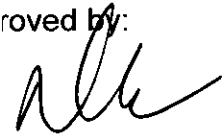
Susan Andrade-Wax
Community Services Director

Fiscal Review:



Emily Wagner
Finance Director

Approved by:



Nelson Fialho
City Manager

Attachment:

1. Services Agreement with the Bay Area Children's Theatre for Children's Theatrical Production Services

SERVICES AGREEMENT

**Children's Theatrical Production Services for
Civic Arts Stage Company and Civic Arts Presents Programs**

THIS SERVICES AGREEMENT ("Agreement") is entered into this 18th day of January 2013, between the CITY OF PLEASANTON, a municipal corporation ("City"), and Bay Area Children's Theatre, a non-profit corporation ("Consultant"), whose address is 6114 La Salle Ave. Ste. 43, Oakland, CA 94611-2802 and telephone number is 510-296-4433.

RECITALS

A. Consultant is qualified to and experienced in providing Children's Theatrical Production Services for Civic Arts Stage Company and Civic Arts Presents Programs for the purposes specified in this Agreement.

B. City finds it necessary and advisable to use the services of the Consultant for the purposes provided in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions in this Agreement, City and Consultant agree as follows:

1. **Consultant's Services.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in Exhibit A. Consultant shall provide said services at that time, place and in the manner specified in Exhibit A.
2. **City Assistance, Facilities, Equipment and Clerical Support.** Except as set forth in Exhibit A, Consultant shall, at its sole cost and expense, furnish all labor and materials that may reasonably be required for furnishing services pursuant to this Agreement. City shall furnish to Consultant only the facilities and equipment listed in Exhibit A according to the terms and conditions set forth in Exhibit A.
3. **Term.** This Agreement shall commence on the date written above and shall expire on June 30, 2014. This Agreement may be extended by mutual agreement of the parties for additional one (1) year terms for a total of two (2) such extensions on such terms and conditions as may be agreed upon.
4. **Compensation.** City shall pay Consultant for services rendered pursuant to this Agreement as described more particularly in Exhibit A. The payments shall be made on a monthly basis upon receipt and approval of Consultant's invoice. Total compensation for services and reimbursement for costs shall not exceed \$109,100.00.

a. Invoices submitted by Consultant to City must contain a brief description of work performed, time used and City reference number. Payment shall be made within thirty (30) days of receipt of Consultant's invoice and approved by City.

b. Upon completion of work and acceptance by City, Consultant shall have sixty (60) days in which to submit final invoicing for payment. An extension may be granted by City upon receiving a written request thirty (30) days in advance of said time limitation. The City shall have no obligation or liability to pay any invoice for work performed which the Consultant fails or neglects to submit within sixty (60) days, or any extension thereof granted by the City, after the work is accepted by the City.

5. **Sufficiency of Consultant's Work.** All work product of Consultant shall be adequate and sufficient to meet the purposes for which they are required.

6. **Ownership of Work.** All work product, completed or partially completed by Consultant in the performance of this Agreement shall become the property of the City with the exception of any licensed script, music, or lyrics, theatrical scenery, costumes and stage props, and all other documents, including graphic designs. Both parties agree that each party may take photographs or videos of the work (unless enrolled participants advise the City that such participants do not want to be photographed, videotaped or otherwise recorded). Consultant shall provide to City copies of any photographs or videos taken by Consultant of the work. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Consultant agrees to execute any additional documents that may be necessary to evidence such assignment. All materials shall be delivered to the City upon completion or termination of the work under this Agreement. If any materials are lost, damaged or destroyed before final delivery to the City, the Consultant shall replace them at its own expense.

7. **Changes.** City may request changes in the scope of services to be provided by Consultant. Any changes and related fees shall be mutually agreed upon between the parties and subject to a written amendment to this Agreement.

8. **Consultant's Status.** In performing the obligations set forth in this Agreement, Consultant shall have the status of an independent contractor and Consultant shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Consultant are its agents and employees and are not agents or employees of City.

9. **Termination for Convenience of City.** The City may terminate this Agreement at any time by mailing a notice in writing to Consultant. The Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the work actually completed, or ordered and paid for by Consultant, at the time the notice of termination is received.

10. **Non-Assignability.** The Consultant shall not assign, sublet, or transfer this Agreement or any interest or obligation in the Agreement without the prior written consent of the City, and then only upon such terms and conditions as City may set forth in writing. Consultant shall be solely responsible for reimbursing subcontractors.

11. Indemnity and Hold Harmless. Consultant shall defend, indemnify, and hold harmless, the City and its officers, agents and employees from and against all claims, losses, damage, injury, and liability for damages arising from, or alleged to have arisen from, errors, omissions, negligent or wrongful acts of the Consultant in the performance of its services under this Agreement, regardless of whether the City has reviewed or approved the work or services which has given rise to the claim, loss, damage, injury or liability for damages. This indemnification shall extend for a reasonable period of time after completion of the project as well as during the period of actual performance of services under this Agreement. The City's acceptance of the insurance certificates required under this Agreement does not relieve the Consultant from its obligation under this paragraph.

12. Insurance. During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense the following insurance coverage with insures with an A.M. Best's rating of no less than A: VII:

a. **General Liability and Bodily Injury Insurance.** Commercial general liability insurance with limits of at least \$1,000,000 combined limit for bodily injury and property damage that provides that the City, its officers, employees and agents are named additional insureds under the policy as evidenced by an additional insured endorsement satisfactory to the City Attorney. The policy shall state in writing either on the Certificate of Insurance or attached rider that this insurance will operate as primary insurance for work performed by Consultant and its sub consultants, and that no other insurance effected by City or other named insured will be called on to cover a loss.

b. **Automobile Liability Insurance.** Automobile liability insurance with limits not less than \$1,000,000 per person/per occurrence.

c. **Workers' Compensation Insurance.** Workers' Compensation Insurance for all of Consultant's employees and subcontractors, in strict compliance with State laws, including a waiver of subrogation and Employer's Liability Insurance with limits of at least \$1,000,000.

d. **Certificate of Insurance.** Consultant shall file a certificate of insurance with the City prior to the City's execution of this Agreement, and prior to engaging in any operation or activity set forth in this Agreement. The Certificate of Insurance shall provide in writing that the insurance afforded by this Certificate shall not be suspended, voided, canceled, reduced in coverage or in limits without providing thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. In addition, the insured shall provide thirty (30) days prior written notice to the City of any suspension, cancellation, reduction of coverage or in limits, or voiding of the insurance coverage required by this agreement. The City reserves the right to require complete certified copies of policies.

e. **Waiver of Subrogation.** The insurer agrees to waive all rights of subrogation against the City, its officers, employees and agents.

f. **Defense Costs.** Coverage shall be provided on a “pay on behalf of” basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusions.

g. **Subcontractors.** Consultant shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited naming additional insureds.

13. Notices. All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

To Consultant: Executive Director
Bay Area Children’s Theatre
6114 La Salle Ave Ste 431
Oakland, CA 94611-2802

To City: City Manager
City of Pleasanton
P.O. Box 520
Pleasanton, CA 94566

14. Conformance to Applicable Laws - Background Checks. Consultant shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Consultant shall not discriminate in the employment of persons or in the provision of services under this Agreement on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person. All employees of Consultant and any of its subcontractors who will work with minors pursuant to this Agreement shall submit and pass the background check required by California Public Resources Code §5164 prior to any contact with minors.

15. Licenses, Certifications and Permits. Prior to the City’s execution of this Agreement and prior to the Consultant’s engaging in any operation or activity set forth in this Agreement, Consultant shall obtain a City of Pleasanton business license, which must be kept in effect during the term of this Agreement. Consultant covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Agreement.

16. Records and Audits. Consultant shall maintain all records regarding this Agreement and the services performed for a period of three years from the date that final payment is made. At any time during normal business hours, the records shall be made available to the City to inspect and audit.

17. Confidentiality. Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information.

18. Conflicts of Interest. Consultant covenants that other than this Agreement, Consultant has no financial interest with any official, employee or other representative of the City.

19. **Waiver.** In the event either City or Consultant at any time waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or of any other covenant, condition or obligation.

20. **Governing Law.** California law shall govern any legal action pursuant to this Agreement with venue in the applicable court or forum for Alameda County.

21. **No Personal Liability.** No official or employee of City shall be personally liable to Consultant in the event of any default or breach by the City or for any amount due Consultant.

22. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

23. **Scope of Agreement.** This writing constitutes the entire Agreement between the parties. Any modification to the Agreement shall be in writing and signed by both parties.

THIS AGREEMENT executed the date and year first above written.

CITY OF PLEASANTON

CONSULTANT
Bay Area Children’s Theatre

Nelson Fialho, City Manager
Nina Meehan

By: _____

Title: Executive Director

ATTEST:

[Note: If Consultant is a corporation signature(s) must comply with Cal. Corporations Code §313.]

Karen Diaz, City Clerk

APPROVED AS TO FORM:

Jonathan P. Lowell, City Attorney

Scope of Services

- 1) Bay Area Children's Theatre (BACT) will produce three productions in partnership with the City of Pleasanton's Civic Arts Stage Company.
- 2) BACT shall secure the rights for pre-existing scripts and adaptations of pre-existing work.
- 3) For the 2013/2014 Season BACT will produce the following three shows:
 - a. Fall: Schoolhouse Rock Live! JR
 - b. Winter: Roald Dahl's Willy Wonka JR
 - c. Spring: The Secret Garden
- 4) BACT shall provide all Artistic and Stage Director services; as such, BACT shall cast each show, conduct rehearsals, work with designers and carry out the artistic vision for the show and the program overall.
- 5) BACT shall provide one production stage manager to coordinate rehearsals, technical aspects and "call" each show. BACT shall also provide an ASM/props person to further enhance the supervision of the production.
- 6) BACT shall provide all design elements reasonably necessary including:
 - a. Set Design - BACT shall employ a Set designer and builders to create a set appropriate for each production.
 - b. Costume Design – BACT shall employ a Costume designer and builder to create, rent, or "pull" all costumes appropriate for this production. BACT will keep whatever costumes it "builds".
 - c. Lighting Design - BACT shall employ a Lighting designer to create light plot, supervise light hang and focus and work with director to create cues to enhance theatrical production. Lighting designer will use only existing lighting equipment inventory of the Amador and Firehouse Theaters, unless agreed to in advance by City of Pleasanton.
 - d. Props - BACT shall acquire all props needed for each production, either by renting, building or purchasing each prop. BACT will keep whatever props it "builds".
 - e. Choreographer, Music Director, High Quality Recorded Musical Tracks – for musicals, BACT shall also provide these additional elements.
 - f. Special skills (puppetry, fight choreographer, etc) as reasonably required by specific production.
 - g. Sound designer/operator – BACT shall provide one person to design all sound aspects of each show, attend all necessary production meetings, and run the sound board for every performance. City of Pleasanton may elect to provide a qualified staff person, at cities sole expense, to fill this position instead but must inform BACT of this staffing in writing no later than 45 days prior to the first performance of the production for which such staff person would be utilized. Such staff person shall attend all rehearsals and performances as reasonably required.
- 7) BACT will facilitate collaboration with City of Pleasanton staff by sharing design concepts as they are developed.
- 8) BACT will provide build space at its scene shop for all scenic elements.

- 9) BACT will coordinate with theater tech staff to deliver all design elements built off-site to the Amador and Firehouse Theaters at previously scheduled date and time to coincide with production schedule.
- 10) BACT will conduct technical/dress rehearsals at theater, seeing production through opening night.
- 11) BACT will conduct strike of all design elements, hauling away any elements (set pieces, props, costumes, etc.) used in these productions, and returning the rooms to their pre-show/rehearsal conditions (removal of spike tape, etc.) This shall be done in coordination with technical staff of theater.
- 12) BACT shall be responsible for several educational and marketing deliverables, including graphic design of posters, postcards, and flyers. BACT shall also provide weekly parent e-newsletters to all cast member families.

Project and Fee Schedule

Project Schedule

Civic Arts Stage Company:

Schoolhouse Rock Live! JR
Roald Dahl's Willy Wonka JR
The Secret Garden

Fall , 2013; Firehouse Arts Center
Winter, 2013; Amador Theater
Spring, 2014; Firehouse Arts Center

Fee Schedule

<i>Schoolhouse Rock Live! JR</i>	\$34,200
<i>Roald Dahl's Willy Wonka JR</i>	\$44,500
<i>The Secret Garden</i>	\$30,400

Total Fee: \$109,100

Proposed Pay Schedule: July 2013	\$9,092 (Fall Production)
August 2013	\$9,092 (Fall Production)
September 2013	\$9,092 (Fall Production)
October 2013	\$9,092 (Fall Production)
November 2013	\$9,092 (Winter Production)
December 2013	\$9,092 (Winter Production)
January 2013	\$9,092 (Winter Production)
February 2013	\$9,092 (Winter Production)
March 2013	\$9,092 (Spring Production)
April 2013	\$9,092 (Spring Production)
May 2013	\$9,090 (Spring Production)
June 2013	\$9,090 (Spring Production)
Total Fee:	\$109,100

Support Required from the City of Pleasanton

Support of Participants:

- Need based scholarships
- Accessibility Services, in compliance with ADA (ASL-interpretation, etc.)
- Facilitate all CLASS registration

Marketing Support:

- School Concert Series and Group Sales Representative
- Box Office Services
- Assistance with marketing support through email, social media, website, season brochure and other outlets

Production, Class and Workshop Support:

- City Staff present at all auditions and callbacks
- Rehearsal and Performance space – City Staff present or on premises
- Classroom and showcase space – City staff present or on premises
- Coordination with other departments when needed
- Per City of Pleasanton, City Staff may provide sound as listed in paragraph 6g and operate fly rail and provide building monitor
- Storage space only during rehearsal and production

Misc:

- BACT staff and contractors will be able to have fingerprinting done by city staff at the Pleasanton Police Department
- Any other items determined in collaboration between the City of Pleasanton and BACT