Council Meeting of
July 14, 2009

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: General Services - Torrance Cultural Arts Center Foundation Annual Agreement

Expenditure: $119,420

RECOMMENDATION

The General Services Director recommends that the City Council approve the Torrance Cultural Arts Center Foundation Agreement to promote the City's Cultural Arts Center for a period commencing July 1, 2009 and expiring June 30, 2010, in an amount not to exceed $119,420.

Funding

Funding is provided in the Cultural Arts Center operating budget during the fiscal year 2009 –2010.

BACKGROUND

The City and Foundation entered into an Agreement on February 2, 1998, whereby the Foundation agreed to provide assistance to the City in a number of areas related to publicizing the City's Cultural Arts Center ("Center") and booking events at the Center. The Original Agreement entered into was for a period commencing September 16, 1997 and expiring June 30, 1998, and has been extended each fiscal year through June 30, 2009.

For services rendered pursuant to this Agreement, the Foundation received a $20,000 cash payment, in addition to in-kind support services, including printing, mailing, and clerical services in the budgeted amount of $25,000 during the City's 1997-1998, and 1998 - 2002 fiscal years. Beginning in fiscal year 2002 - 2003, the Foundation received an additional $10,000 cash payment and $25,000 in Theatre labor expenses annually. The $35,000 increase, along with the $45,000 budgeted annually in previous years, brought

the support for the Foundation to a total of $80,000 per year. In fiscal year 2006 – 2007, the Foundation received an additional one-time payment of $23,040, which was subsequently adopted in 2007 – 2008 as a permanent increase to ongoing annual support, bringing the total to $103,040 per year as follows: $41,800 cash payment, $36,240 in Theatre labor, and $25,000 of in-kind support services. In fiscal year 2009 - 2010, the Foundation's support was increased by $16,380, allocated between an additional annual cash payment of $6,380, and a one-time labor support amount of $10,000 from the City's Community Grant Fund.

ANALYSIS

The City operates the Torrance Cultural Arts Center to foster the cultural enrichment and education of the community and to enhance the quality of life of the City. The continued assistance of the Foundation with respect to the Center will help support this effort. Therefore, the General Services Director is requesting to extend the period of the Agreement for a period commencing July 1, 2009 and expiring June 30, 2010.

Respectfully submitted,

SHERYL BALLEW
General Services Director

By _____
Jasun Botiller
Cultural Arts Business Manager

CONCUR:

for S. Ballew.
_____
Sheryl Ballew
General Services Director

_____
LeRoy J. Jackson
for City Manager

Attachments: A. Agreement with Torrance Cultural Arts Center Foundation

ATTACHMENT A

AGREEMENT

THIS AGREEMENT is made and entered into as of July 1, 2009 by and between the **CITY OF TORRANCE**, a municipal corporation ("City") and the **TORRANCE CULTURAL ARTS CENTER FOUNDATION,** a California nonprofit public benefit corporation ("Foundation").

RECITALS

A. The City operates the Torrance Cultural Arts Center ("Center") to foster the cultural enrichment and education of the community and to enhance the quality of life to the City through:

- Providing visual, performing and literary arts programs
- Facilitating cultural programs provided by other groups in the community
- Developing and serving the widest possible audience for cultural programs
- Providing facilities for cultural programs and other community uses
- Promoting and developing partnerships between cultural groups

B. The Foundation provides assistance to the City in a number of areas related to publicizing the Center and booking events at the Center; and

C. The City wishes to obtain the continued assistance of the Foundation with respect to the Center.

AGREEMENT

1. Purpose of Agreement

The City retains the Foundation to assist in promoting and advertising the Center and in obtaining bookings for events at the Center. The parties understand and agree that the Foundation, while retained under this Agreement, will also be rendering other services to its members and to the public generally.

2. Foundation Services

The Foundation will:

- Provide a seasonal series of approximately ten programs for a general audience and six to eight children's interest programs.
- Provide quality artistic productions to the Center.
- Provide well known performers to the Center.
- Provide an annual report to the City of Torrance in regards to the success of the Foundation in accomplishing the above goals and indicating programming projections for the following year.

- Provide a procedure for credit card entries made at the time of telephone ticket purchases to be used for charge purchases, and that only a picture ID of the card-holder, rather than machine "card-swiping", be necessary at the time of ticket pickup at a Foundation-sponsored performance.
  However, should a large block of tickets, 20 or more, be purchased by telephone for a performance, the Box Office is to follow traditional procedure and require presentation of the credit card at the time of ticket pickup for a machine imprint of the card.
  The Foundation agrees to be responsible for any "bad" credit card purchases resulting from this practice. As part of the agreement, the Box Office or appropriate City financial department will alert the Foundation as soon as a bad credit card charge is discovered.
- Assume full responsibility for all ticket sales which are initiated by any parties other than the Box Office. This includes the collection and processing of payments, the assignment, tracking and distribution of tickets, and any other related customer service matters. The Box Office will act only to process orders from customers who contact them directly, either in person or via the Box Office phone line.

  This policy is to be renewed annually.

3. Term

The Foundation will be retained under this Agreement for the period commencing as of July 1, 2009 and ending June 30, 2010.

4. Compensation

For services rendered pursuant to this Agreement, the Foundation will receive $119,420 in cash, services and expenses. The Foundation will receive $48,180 in cash, which will be paid on July 30, 2009. In addition to the cash payment, the Foundation will also receive from the City the following budgeted amounts: $25,000 for certain in-kind support services, which may include printing, mailing and clerical services, and $46,240 for Theatre labor expenses.

5. Non-Liability of City Officers and Employees

No officer or employee of the City will be personally liable to the Foundation in the event of any default or breach by the City or for any amount that may become due to the Foundation.

6. Independent Contractors

Nothing contained in this Agreement will make either of the parties the partner of the other, nor be construed as creating a joint venture between the parties. Both

parties will at all times deemed to be independent contractors. The Foundation will have no right to obligate the City in any manner whatsoever, and nothing in this Agreement will be deemed to give any rights to any third party. While the Foundation agrees to perform the duties set forth in the Agreement, the Foundation has the sole control over the management of these activities in the manner in which these duties are carried out.

7. Reporting Procedure

The Foundation agrees to provide the City with an annual executive summary, and/or oral report with supporting material, before the City Council, of its activities and efforts with regard to this Agreement.

8. Conflict of Interest

A. No officer or employee of the City may have any financial interest, direct or indirect, in this Agreement, nor may any officer or employee participate in any decision relating to the Agreement that effects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee is, directly or indirectly interested, in violation of any law, rule or regulation.

B. No person may offer, give, or agree to give any officer or employee or former officer or employee, nor may any officer or employee solicit, demand, accept, or agree to accept from another person, a gratuity or an offer or employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rending of advice, investigation, auditing, or in any other advisory capacity in any way pertaining to any program requirement, contract or subcontract, or to any solicitation or proposal.

9. Notice

A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:

(1) Personal delivery. When personally delivered to the recipient: notice is effective on delivery.

(2) First Class mail. When mailed first class to the last address of the recipient known to the party giving notice; notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.

(3) Certified mail. When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

(4) Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account; notice is effective on delivery, if delivery is confirmed by the delivery service.

(5) Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice; notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

Foundation:	Torrance Cultural Arts Center Foundation P.O. Box 10416 Torrance, CA 90505 Fax: (310) 378-0044
City:	City Clerk City of Torrance 3031 Torrance Boulevard Torrance, CA 90503 Fax: (310) 618-2931

B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable to the postal authorities, messenger or overnight delivery service.

C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

10. Prohibition Against Assignment and Subcontracting

This Agreement and all exhibits are binding on the heirs, successors, and assigns of the parties. The Agreement may not be assigned or subcontracted by either City or Foundation without the prior written consent of the other.

11. Authority to Execute

The persons executing this Agreement on behalf of the Foundation warrant that (i) the Foundation is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the Foundation; (iii) by so executing this Agreement, the Foundation is formally bound to the provisions of this Agreement; and (iv) entering into this Agreement does not violate any provision of any other agreement to which the Foundation is bound.

CITY OF TORRANCE,
a municipal corporation

_____
Frank Scotto, Mayor

ATTEST:

_____
Sue Herbers, City Clerk

APPROVED AS TO FORM

JOHN L. FELLOWS III
City Attorney

By _____

TORRANCE CULTURAL ARTS
CENTER FOUNDATION,

By _____
Kurt Weideman, President