

METROPOLITAN EXPOSITION RECREATION COMMISSION

RESOLUTION NO. 10-23

For the purpose of approving a Third Amendment to the Broadway Series Agreement to amend user fees for the years 2010-2011 and 2011-2012 for subscription sales only.

WHEREAS, the PCPA has been asked to consider holding the user fee for subscription sales at \$3.25 for the fiscal year 2010-2011 season and then increasing it to \$3.75 in the fiscal year 2011-2012 season; and


WHEREAS, PCPA staff believes that keeping the user fee rate for subscription sales at \$3.25 for fiscal year 2011 is in the public interest, provides good customer service, would alleviate a significant hardship on the Opera and will be recouped through the increase in the 2011-2012 user fee, PCPA staff recommends approval of the Third Amendment to the Broadway Series Agreement to the Commission.

BE IT THEREFORE RESOLVED as follows:


The Metropolitan Exposition Recreation Commission approves the Third Amendment to the Broadway Series Agreement to amend user fees for the years 2010-2011 and 2011-2012 for subscription sales only and delegates authority to General Manager to execute the Third Amendment on behalf of the Commission in a form substantially similar to Exhibit A attached hereto and subject to final approval by the Office of Metro Attorney.

Passed by the Commission on September 1, 2010.


Chair


Secretary/Treasurer

Approved As to Form:
Daniel B. Cooper, Metro Attorney

By: 
Nathan A. Schwartz Sykes
Senior Attorney

THIRD AMENDMENT TO BROADWAY SERIES AGREEMENT

This Third Amendment is made and entered into by and between the Metropolitan Exposition Recreation Commission ("Commission," "Metro ERC," or "MERC") and Portland Opera Association, an Oregon nonprofit corporation, and PACE Theatrical Group, a Texas corporation, a joint venture (hereinafter, "Presenter"), including, all parent companies, members, affiliates, subsidiaries, successors and assigns, (MERC and Presenter will be collectively referred to as, "the Parties").

RECITALS

1. The Commission is a subdivision of Metro, a municipal corporation.
2. Presenter is an Oregon joint venture.
3. The parties have entered into a Broadway Series Agreement, the First Amendment to the Broadway Series Agreement and the Second Amendment to the Broadway Series Agreement (hereinafter collectively referred to as "the Agreement")
4. The parties desire to enter into this Third Amendment to the Broadway Series Agreement amend their user fees for the years 2010-2011 and 2011-2012 for subscriptions sales.

NOW, THEREFORE, in consideration of the mutual covenants of the Parties hereto, and upon the express terms and conditions hereinafter set forth, it is agreed by and between them as follows:

1.

The parties hereby agree that the User Fee for all subscription sales in accordance with Section 1(o) of the Second Amendment and Exhibit 1 to the Second Amendment to the Agreement will be \$3.25 for the 2010-2011 season and \$3.75 for the 2011-2012 season. All other terms and conditions of the Agreement shall remain the same.

2.

AMENDMENT DOCUMENTS

The Amendment documents together form the Agreement between Commission and the Presenter. All determination of the precedence of, discrepancy in, or conflicts regarding the Amendment documents shall be in accord with the following order, with the highest precedence item at the top:

- a. This Third Amendment to Broadway Series Agreement.
- b. The Second Amendment to Broadway Series Agreement.

- c. The First Amendment to Broadway Series Agreement.
- d. The Broadway Series Agreement.
- e. The standard PCPA Limited License Agreement.
- f. Amendment to the Commission's policies and procedures which are in effect as of the date hereof, a copy of which is attached, or are enacted subsequent to the date of this Amendment.

PRESENTER

**METROPOLITAN EXPOSITION-
RECREATION COMMISSION**

By: _____

By: _____

Name: _____
Portland Opera Association

Name: _____
MERC

Date: _____

Date: _____

By: _____

PACE Theatrical Group, Inc.

Date: _____

MERC Staff Report

Agenda Item/Issue: For the purpose of approving a Third Amendment to the Broadway Series Agreement to amend user fees for the years 2010-2011 and 2011-2012 for subscriptions sales only.

Resolution No.: 10-23

Presented By: Robyn Williams

Date: September 1, 2010

Background and Analysis:

In September 1997 the Commission approved a joint venture group (Portland Opera and what is currently known as Broadway Across America) to present a single Broadway Series at PCPA. In March 2003, new terms and conditions for seasons through 07/08 were negotiated and approved by the Commission, and in December 2006, a second amendment establishing rates and fees for Broadway seasons beginning in FY08-09 through 2015-2016 was approved.

Broadway subscribers were charged a \$3.25 user fee for the 2010-2011 season. PCPA has been asked to consider holding the subscriber rate at \$3.25 for FY11 season and then increasing it to \$3.75 in the FY12 season-which would be a \$0.50 increase instead of the \$0.25 that should have been applied.

It would be difficult plus an act of very poor customer service to attempt to collect the increase from subscribers who have already paid for and received their tickets. The Opera's only other option would be to make up this difference. This would be a considerable hardship for the Opera this fiscal year. Based on potential bookings for next year-which is anticipated to include a Blockbuster-PCPA believes subscription rates will increase and more than compensate for the drop this fiscal year.

Fiscal Impact:

Holding the subscription user fee at the prior year rate would potentially be a decrease of \$11,268 to PCPA in the FY11 budget-though this amount could be much lower if single ticket sales continue to be as strong as they have been for the first show of the season.

Recommendation: Staff recommends that the Metropolitan Exposition Recreation Commission approve the Terms of the Third Amendment to the Broadway Series Agreement to amend user fees for the years 2010-2011 and 2011-2012 for subscriptions sales only.