

**METROPOLITAN EXPOSITION-RECREATION COMMISSION
RESOLUTION NO. 97-46**

Authorizing an amendment to the Musical Theatre Agreement dated July 13, 1994 between the Metropolitan Exposition-Recreation Commission and Portland Opera/Juamcyn Productions Company regarding the requirements for season ticket sales proceeds.

Whereas, Portland Opera/Juamcyn Productions Company has successfully completed two seasons of a Musical Theatre Series; and

Whereas, the Metropolitan Exposition-Recreation Commission recognizes that Portland Opera/Juamcyn Production Company is an established presence in the Portland Arts community; and

Whereas, a prior amendment to the Musical Theatre Agreement provided the Commission with both interest income from ticket sales proceeds and ongoing security of the ticket sales monies, and also provided more autonomy to Portland Opera/Juamcyn Productions Company in regard to those monies for the 1996-97 season; and

Whereas, the original term of the Musical Theatre Agreement has been extended by one year until June 30, 1998; and

Whereas, both parties wish to also extend and amend the terms of the ticket sales amendment to apply to the 1997-98 season;

BE IT THEREFORE RESOLVED that the Metropolitan Exposition-Recreation Commission authorizes the General Manager to execute the Amendment No.3 to the Musical Theatre Agreement in a form substantially similar to the attached Exhibit "A," "Third Amendment to Musical Theatre Agreement."

Passed by the Commission on 8-13, 1997.



Chair



Secretary/Treasurer

Approved As to Form:
Daniel B. Cooper, General Counsel

By: 

Kathleen A. Pool, Senior Assistant Counsel

THIRD AMENDMENT TO MUSICAL THEATRE AGREEMENT

1. For the Fiscal Year 1997-98 only, Section 5(d) of the Musical Theatre Agreement is amended to read as follows,

d. Ticketing: Presenter has selected the Portland Opera Ticket office as the official ticketing service to be used for the sales of subscriptions, group, corporate, benefit and mail order tickets for all shows and has selected Ticketmaster Oregon as the official ticketing agency for telephone and outlet sales for all of its shows. For the 1997-98 Series all proceeds from the sales of subscriptions, group, corporate, benefit shall be maintained and controlled by the Presenter, provided that all of the following shall apply:

(i) By no later than the date this Amendment is executed, Presenter shall provide to Commission a letter of credit from a bank acceptable to the Commission in a form reasonably acceptable to the Commission (the "Base Letter of Credit") in an amount equal to \$100,000 or such lesser amount as Commission may accept in its sole discretion based on any projections of anticipated house costs (the "Base Letter of Credit Amount"). Said Letter of Credit shall be maintained with the Commission and may at all such times be drawn upon by the Commission upon presentation to the issuing bank of a certificate (a "Draw Certificate") signed by a designated representative or agent of the Commission to the effect that one or more of the following circumstances apply.

(a) The expiry date is earlier than September 30, 1998 and the Letter of Credit has not been renewed by the date thirty (30) days prior to the stated expiry date;

(b) Presenter has failed to pay guaranteed Rent in accordance with Article 5(c) of the Musical Theatre Agreement;

(c) Presenter has failed to compensate the Commission for the pass-through costs as set forth in Article 6(b) of the Musical Theatre Agreement;

(d) Presenter has failed to remit to the Commission ticket proceeds for a canceled performance;

(e) Commission is entitled to draw on the Letter of Credit pursuant to Article 11 of the Musical Theatre Agreement;

(f) Commission is entitled to draw on the Letter of Credit pursuant to Article 12 of the Musical Theatre Agreement;

(g) Commission is entitled to draw on the Letter of Credit pursuant to Article 16 of the Musical Theatre Agreement.

Each Draw Certificate shall state the amount to be drawn under the foregoing provisions. Commission may submit one or more Draw Certificates from time to time.

Commission agrees that all draws under the Letter of Credit must be made in good faith. In the event it is shown that the Commission has improperly made a draw under the Letter of Credit, the Commission shall immediately reimburse the Presenter for the amount drawn, together with the interest thereon and all reasonable fees, costs and attorney's fees incurred by the Presenter in demonstrating the impropriety of such draw. In the event that it is shown that the Commission's draw was proper, the Presenter shall immediately reimburse the Commission for all reasonable fees, costs, and attorney's fees incurred by the Commission in demonstrating the propriety of such draw, including but not limited to the full reasonable fair market value of any services provided to Commission by in-house counsel or in-house counsel supplied to Commission by Metro or any successor organization.

The obligation of the Presenter to provide the Letter of Credit under this Agreement may be satisfied through either (i) one or more letters of credit or (ii) such other security as may be acceptable to the Commission in its sole discretion.

(ii) At Presenter's request, Commission agrees to transfer to Presenter on a weekly basis an amount equal to all advance ticket sales for each week then in Commission's possession with respect to the Musical Theatre presentations defined as the Subscription Season, as calculated pursuant to sub-article 5(d)(ii)(a) below. This weekly transfer by the Commission to the Presenter is contingent upon Presenter first providing Commission with a Letter of Credit from a bank acceptable to the Commission in an amount equal to the amount of ticket receipts to be advanced (herein the "Ticket Advancement Letter of Credit"). Any advance ticket sales held by the Presenter shall be invested prudently, and shall be used by Presenter solely and exclusively for the purpose of payment of deposits and other expenses necessary for the presentation of the Musical Theatre Subscription Series. Presenter shall, at Commission's request, provide information to Commission concerning the investment and distribution of any advance ticket sales held by the Presenter. In advancing ticket receipts, the following provisions shall apply:

(a) The amount to be advanced to Presenter shall be the full amount of all advance ticket receipts then in the possession of Commission, less any ticket service charges paid by the customer in addition to the ticket price.

(b) The transfer of all ticket receipts by Commission to Presenter shall be made without charge to Presenter.

(c) Presenter covenants that in the event any performance(s) is canceled for any reason and is not rescheduled for a later date, then Presenter will immediately reimburse Commission for all advanced amounts for canceled performances. In the event Presenter fails to make the above described reimbursement to Commission, then Commission shall have the right to draw upon all or part of the Ticket Advancement Letter of Credit for any shortfall and Presenter must immediately replenish the Letter of Credit to an amount equal to or greater than the amount of the ticket receipts then

advanced. Commission shall also have the right to draw upon all or part of the Ticket Advancement Letter of Credit upon the same terms applicable to draws made upon the Base Letter of Credit.

(d) At no time shall the aggregate amount of ticket receipts advanced to Presenter for performance that have not yet occurred exceed the total amount of the Ticket Advancement Letter of Credit

(e) Commission shall not be obligated to advance any ticket receipts subsequent to any uncured Event of Default.

(iii) In lieu of Commission's share of interest proceeds as provided for in the Musical Theatre Agreement prior to this Amendment, Presenter shall pay to Commission the sum of \$21,000 per year, to be paid evenly at each show settlement. This payment must be paid no later than ten (10) business days following each show settlement.

Presenter and Commission shall execute any further forms or documents necessary to effectuate the terms herein.

2. Section 16 of the Musical Theatre Agreement is amended to add a new subsection (g), as follows:

(g) Commission may also draw upon any letter of credit provided to Commission by Presenter.

3. All other terms and conditions of the Musical Theatre Agreement shall continue in full force and effect.

4. Except as specifically provided herein and in the Musical Theatre Agreement, this document, together with the Musical Theatre Agreement, contains the complete and exclusive agreement between the Parties, and is intended to be a final expression of their agreement. No promise, representation or covenant not included in this document or the Musical Theatre Agreement has been or is relied upon by any party. No modification or amendment of this document or the Musical Theatre Agreement shall be in force or effect unless in writing executed by all parties hereto.

PORTLAND'S BROADWAY
THEATER, LLC

METROPOLITAN EXPOSITION-
RECREATION COMMISSION

By: _____

By: _____

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MERC STAFF REPORT

Agenda Item/Issue: Third Amendment to Musical Theatre Agreement

Resolution No. 97-46

Date: August 13, 1997

Presented by: Faye Brown
Mark B. Williams

Background and Analysis: The original term of the Musical Theatre Agreement (the Agreement) between MERC and Portland Opera/Jujamcyn Productions Company (Opera/Jujamcyn) dated July 13, 1994 was extended by the Commission for one year until June 30, 1998. The Agreement's original language contains stringent requirements regarding ticket sales, use of ticket sale proceeds and sharing of interest earnings. These requirements were established in 1994 based on the fact that the Musical Theatre arrangement was a new endeavor and there had been a failure of a similar series in the recent past.

In light of the fact that one successful Musical Theatre season had been completed and the requirements contained in the Agreement regarding ticket sales were fairly strict, Opera/Jujamcyn requested changes to the Agreement. On May 1, 1996, the Commission approved the First Amendment to the Agreement to make the terms regarding the 1996/1997 season ticket sales and interest sharing less stringent.

Now that the 1996/1997 season is complete, Opera/Jujamcyn has requested that the terms of the First Amendment be extended to their 1997/1998 season. Staff recommends that the following changes which had applied to the 1996/1997 season be extended to the 1997/1998 season:

1. Under the original Agreement, control of the season ticket sales was accomplished through the use of an Oregon Bank account maintained by the Commission. The Commission could obtain these monies upon default of Opera/Jujamcyn. Further, the Agreement restricted the use of ticket proceeds monies by Opera/Jujamcyn prior to settlement of season shows.

Consistent with the First Amendment, the proposed amendment maintains a level of security for the Commission over the ticket sales monies, yet allows Opera/Jujamcyn more autonomy in the use of those proceeds. This is accomplished by allowing the ticket sales proceeds to be deposited with Opera/Jujamcyn, in return for two letters of credit provided by Opera/Jujamcyn as follows:

- **Base Letter of Credit:** This letter of credit, in the amount of \$100,000, provides security for MERC in the event of non-payment of guaranteed rent, show costs and/or taxes/fees, failure to remit ticket proceeds for a

canceled performance, costs associated with defacement of the facility, or default by the Presenter.

- **Ticket Advancement Letter of Credit:** This letter of credit will be in an amount equivalent to the ticket proceeds held by Opera/Jujamcyn at any point in time (adjusted periodically) and is intended to provide security to the ticket buyers. The Commission could draw on this letter of credit in the event a show, or the season as a whole, is canceled and Opera/Jujamcyn has not remitted the ticket proceeds to the Commission for disbursement.

2. The original Agreement stipulated that the commission shall receive 50% of the interest earnings from the ticket sales proceeds. In order to remain whole in this regard, and to simplify the record keeping, the proposed amendment sets a guaranteed amount of \$21,000 to be paid to the Commission in equal increments when each show is settled throughout the season. This amount represents an increase of \$3,500 over the interest earnings realized last season due to projected ticket sales and current interest rates.

Fiscal Impact: The proposed amendment to the Musical Theatre Agreement will have a positive impact in terms of additional interest earnings (\$3,500) received this season versus the 1996/1997 season due to interest rates and projected ticket sales. Additionally, as was true with the First Amendment to the Agreement, there will be some staff time/cost savings achieved through reduced record keeping and procedures.

Recommendation: Staff recommends that the Commission approve the Third Amendment to the Musical Theatre Agreement regarding ticket sales proceeds.