

EXHIBIT "A"

AGREEMENT FOR SERVICES

PARTIES:

THE CITY OF PORTLAND, OREGON, City Hall, 1220 SW Fifth Avenue,
Portland, Oregon 97204 (City)

OREGON SYMPHONY ASSOCIATION, which shall be contacted through
Patricia Messick, 813 SW Alder, Portland, Oregon 97205, 226-
6438 (Contractor)

RECITALS:

1. The City of Portland approved \$64,333 and Multnomah County approved \$31,667 for the Oregon Symphony Association in the 1986-87 Major Institution budget package of the Metropolitan Arts Commission.
2. The Metropolitan Arts Commission has been charged by the City Council and the Multnomah County Board of Commissioners to promote the arts within the City of Portland and Multnomah County.
3. By this contract, the City and County desire to encourage continued success for the Oregon Symphony Association for the benefit of the citizens of Portland and Multnomah County.

AGREED:

SCOPE OF CONTRACTOR SERVICES:

CONTRACTOR SHALL:

1. Provide matching monies from new sources or increased monies from existing sources to equal the \$95,000 provided for in this contract.
2. Provide one series of educational concerts in the Arlene Schnitzer Concert Hall, for elementary, junior and senior high school students, free of charge, number of concerts to total 16.
3. Provide low-cost student and senior citizen discount tickets for a classical series.
4. Provide 6 low-cost Sunday afternoon family concert performances in the Arlene Schnitzer Concert Hall, encouraging families, senior citizens and students to participate in these popular classical programs, at special nominal prices to senior citizens and students.

5. Make available to schools, civic groups and other organizations lectures and demonstrations on various aspects of music and the symphony business.
6. Provide information and training options: (1) for individuals looking for experience in arts administration, including internships and work study programs; and (2) for young musicians looking for guidance and advice.
7. Provide special opportunities to music students from across the community to attend, free of charge, final rehearsals of classical series concerts.
8. Develop new, more effective educational programs for young people, in cooperation with other arts organizations in the community.
9. Generally enhance the quality of the cultural and musical life in Portland and Multnomah County by providing a wide variety of concerts and musical experiences.
10. Acknowledge the support of the Metropolitan Arts Commission in all programs, publicity releases and verbal announcements which are relevant to events funded by the Metropolitan Arts Commission.
11. Shall cooperate with the evaluation and monitoring by the City and shall furnish a final report to the Metropolitan Arts Commission at the end of the contract period. This report shall delineate how the Contractor has accomplished each of the work elements of Contractor performance.

2) EFFECTIVE AND TERMINATION DATES

This agreement shall be effective as of the 1st day of September, 1986 and shall terminate as of the 30th day of June, 1987.

3) COMPENSATION AND METHOD OF PAYMENT:

1. The City shall pay the Contractor for work performed under this Agreement after the effective date as set out above. The payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, and incidentals necessary to perform the work and services.
2. Such amounts as may become due to the Contractor by the City because of this Contract shall be paid upon receipt by the City of a timely and properly executed requisition and report package as required. Total payment not to exceed \$95,000.00.
3. Upon receipt by the City of such a requisition and report package, the Contractor shall be entitled to 100% of the total eligible cost as determined by the City for the work accomplished hereunder to date. Within thirty (30) days after receipt of the bill, the City shall pay the amount due to the Contractor.

4) EARLY TERMINATION OF AGREEMENT

- a) The City and Contractor, by mutual written agreement, may terminate this Agreement at any time.
- b) The City, on thirty (30) days written notice to the Contractor, may terminate this Agreement for any reason deemed appropriate in its sole discretion.
- c) Either the City or the Contractor may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not cured the breach within 15 days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.
- d) In such event all finished or unfinished documents, data, studies, drawings, maps, models, photographs, reports or other items, materials, or documents prepared by the Contractor under this contract shall at the option of the City become its property.

5) PAYMENT ON EARLY TERMINATION

- a) In the event of termination under subsection 4 (a) or (b) hereof, the City shall pay the Contractor for work performed in accordance with the Agreement prior to the termination date.

- b) In the event of termination under subsection 4 (c) hereof by the Contractor due to a breach by the City, then the City shall pay the Contractor as provided in subsection (a) of this Section.
- c) In the event of termination under subsection 4 (c) hereof by the City due to a breach by the Contractor, then the City shall pay the Contractor as provided in subsection (a) of this Section, subject to set off of excess costs provided for in Section 6 (a) hereof.
- d) In the event of early termination all Contractor's work product will become and remain property of the City.

6) REMEDIES

- a) In the event of termination under Subsection 4 (c) hereof by the City due to a breach by the Contractor, then the City may complete the work either itself or by agreement with another contractor, or by a combination thereof. In the event the cost of completing the work exceeds the amount actually paid to the Contractor hereunder plus the remaining unpaid balance of the compensation provided under Exhibit hereto, then the Contractor shall pay to the City the amount of the excess.
- b) The remedies provided to the City under Sections 4 and 6 hereof for a breach by the Contractor shall not be exclusive. The City also shall be entitled to any other equitable and legal remedies that are available.
- c) In the event of breach of this Agreement by the City, then the Contractor's remedy shall be limited to termination of the Agreement and, receipt of payment as provided in Sections 4 (c) and 5 (b) hereof.

7) ASSIGNMENT

The Contractor shall not assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the City.

8) PAYMENTS TO VENDORS AND SUBCONTRACTORS

- 1. The Contractor shall pay timely all suppliers, lessors, and contractors providing it services, materials or equipment for carrying out its obligations under this Agreement. The Contractor shall not take or fail to take any action in a manner that causes the City or any materials that the Contractor provides hereunder to be subject to any claim or lien of any person without the City's prior written consent.

9) INDEMNIFICATION

- 1. The Contractor shall hold harmless, defend, and indemnify the Metropolitan Arts Commission and the City of Portland, and their officers, agents, and employees, against all claims, demands, (including all attorney fees and costs) brought against any of them arising from the Contractor's work or any subcontractor's work under this Agreement.

10) COMPLIANCE WITH LAWS

- a) In connection with its activities under this Agreement, the Contractor shall comply with all applicable federal, state and local laws and regulations.
- b) In the event the Contractor provides goods or services to the City, in the aggregate in excess of \$2,500.00 per fiscal year, Contractor agrees it has certified with the City's Equal Employment Opportunity certification process.

11) OREGON LAW AND FORUM

- a) This Agreement shall be construed according to the law of the state of Oregon.
- b) Any litigation between the City and the Contractor arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

12) BREACH OF AGREEMENT

- a) The City or the Contractor shall breach this Agreement if it fails to perform any substantial obligation under this Agreement, except as provided in subsection (b).
- b) Neither the City nor the Contractor shall have breached this Agreement by reason of any failure to perform a substantial obligation under the Agreement if the failure arises out of causes beyond its control and without its fault or negligence. Such causes may include, without limitation, acts of God or the public enemy, acts of the federal, state, or local governments, fires, floods, epidemics, volcanic eruptions, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

Should either the City or the Contractor fail to perform because of a cause described in this subsection, the City and the Contractor shall make a mutually acceptable revision in the Scope of Services, Schedule or Compensation.

13) WORKERS' COMPENSATION INSURANCE

- (a) The Contractor shall obtain workers' compensation insurance coverage for all of its workers, employees and subcontractors either as a carrier-insured employer or a self-insured employer, as provided by Chapter 656 of the Oregon Revised Statutes, before this Contract is executed. A certification of insurance, or copy thereof, shall be attached to this Contract as Exhibit A, and shall be incorporated herein and made a term and part of this Agreement. The Contractor further agrees to maintain workers' compensation insurance coverage for the duration of this Agreement.

(b) In the event the Contractor's workers' compensation insurance coverage expires during the term of this Agreement, the Contractor agrees to timely renew its insurance, either as a carrier-insured employer or a self-insured employer as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration, and the Contractor agrees to provide the City of Portland such further certification of workers' compensation insurance as renewals of said insurance occur.

(c) The Contractor agrees to properly complete the City of Portland's Workers' Compensation Insurance Questionnaire prior to commencing work under this Agreement. Questionnaire is attached to this Agreement as Exhibit B and shall remain attached to this Agreement and become a part thereof as if fully copied herein.

14) SUBCONTRACTING

The Contractor shall not subcontract its work under this Agreement, in whole or in part, without the written approval of the City. The Contractor shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the Contractor as specified in this Agreement. Notwithstanding City approval of a subcontractor, the Contractor shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Contractor hereunder. Contractor agrees that if subcontractors are employed in the performance of this Agreement, Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

15) INDEPENDENT CONTRACTOR STATUS

- a. The Contractor is engaged as an independent contractor and will be responsible for any federal, state, and local taxes and fees applicable to payments hereunder.
- b. The Contractor and its subcontractors and employees are not employees of the City and are not eligible for any benefits through the City, including without limitation federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

16) LIABILITY INSURANCE

- a. The Contractor shall maintain public liability and property damage insurance that protects the Contractor and the City and its officers, agents, and employees from any and all claims, demands, actions, and suits for damage to property or personal injury, including death, arising from the Contractor's work under this Agreement. The insurance shall provide coverage for not less than \$100,000 for personal injury to each person, \$300,000 for each occurrence, and \$300,000 for each occurrence involving property damages; or a single limit policy of not less than \$300,000 covering all claims per occurrence. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of the Agreement. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees.

Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy has been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not terminate or be cancelled without thirty (30) days written notice first being given to the City Auditor. If the insurance is cancelled or terminated prior to completion of the contract, Contractor shall provide a new policy with the same terms. Contractor agrees to maintain continuous uninterrupted coverage, for the duration of the contract.

- b. The Contractor shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required under subsection (a). The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this agreement by the City.

17) FUNDS

City certifies that sufficient funds are available and authorized for expenditure to finance the cost of this contract.

18) BUSINESS LICENSE

Contractor shall obtain a City of Portland business license as required by PCC Section 7.06.010 prior to beginning work under this Agreement. Contractor shall provide a business license number in the space provided at the end of this Agreement.

19) COMMENCEMENT OF WORK

Contractor agrees that work being done pursuant to this contract will not be commenced until after:

- (a) workers' compensation insurance is obtained, as outlined in section 13 above; and

(b) this Agreement is fully executed by the parties and approved by the City Attorney's Office.

CONTRACTOR: _____
Address: _____

By: _____
Title: _____
Date: _____
Business License No. _____
Tax I.D. No. _____
or Social Security No. _____

APPROVED AS TO FORM:

CITY OF PORTLAND

City Attorney

By : _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

ORDINANCE No. 158928

An Ordinance authorizing an agreement with the Oregon Symphony Association in the amount of \$95,000 for the delivery of certain public services, and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds:

1. The City of Portland approved \$63,333 and Multnomah County approved \$31,667 for the Oregon Symphony Association in the 1986-87 Major Institution budget package of the Metropolitan Arts Commission.
2. The Metropolitan Arts Commission has been charged by the City Council and the Multnomah County Board of Commissioners to promote the arts within the City of Portland and Multnomah County.
3. By this contract, the City and County desire to encourage continued success for the Oregon Symphony Association for the benefit of the citizens of Portland and Multnomah County.

NOW, THEREFORE, The Council directs:

- a. The Auditor and Commissioner of Public Safety to execute on behalf of the City a contract similar in form to Exhibit "A" with the Oregon Symphony Association, 813 SW Alder, Portland, Oregon 97205, Attention: Carlos Wilson.
- b. The Mayor and Auditor to draw and deliver warrants pursuant to Exhibit "A" for the Oregon Symphony Association, in an amount not to exceed \$95,000 to be charged to the Metropolitan Arts Commission (37500046) Miscellaneous Services (260).

Section 2. The Council declares that an emergency exists because a delay in proceeding with the contract may unnecessarily deprive the citizens of Multnomah County and the City of Portland of the services being provided; therefore, this Ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, **AUG 27 1986**
Commissioner Schwab
August 19, 1986
Janet McMahon

Jewel Lansing
Auditor of the City of Portland
By *Doris E. Cleary*
Deputy

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
BOGLE	✓	
LINDBERG	✓	
SCHWAB	✓	
STRACHAN	✓	
CLARK	✓	

FOUR-FIFTHS CALENDAR	
BOGLE	
LINDBERG	
SCHWAB	
STRACHAN	
CLARK	

Calendar No.

1740

ORDINANCE No. 158928

Title

An Ordinance authorizing an agreement with the Oregon Symphony Association in the amount of \$95,000 for the delivery of certain public services, and declaring an emergency.

Filed AUG 21 1986

JEWEL LANSING
Auditor of the CITY OF PORTLAND

By Nancy Dunford
Deputy

INTRODUCED BY

Commissioner Schwab

NOTED BY THE COMMISSIONER

Affairs

Finance and
Administration

Safety M. A. Schwab

Utilities

Works

BUREAU APPROVAL

Bureau:

Metropolitan Arts Commission

Prepared By:

Date:

Janet McMahon August 19, 1986

Budget Impact Review:

☒ Completed ☐ Not required

Bureau Head Janet McMahon
Selina R. Ottum

CALENDAR

Consent

Regular

NOTED BY

City Attorney

City Auditor

City Engineer