



CONTRACT FACE SHEET

Document Type:

- Contract, MOU, Interlocal Agreement, Notice of Acceptance, Retainage, Franchise Agreement, Right of Way Use Agreement, Lien, Correspondence, Collective Bargaining Agreement

Status:

- New, Amendment, Change Order, Renewal, Cancellation

*Vendor Name: Performing Arts Center EASTSIDE (P.A.C.E)
*JDE PO Number: 950611-000
*Effective Date: 1-1-09
*Termination Date: 12-31-2010
Amendment Effective Date: /
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Resolution Number: 8021 12.07.2009
CIP Number:
Project Name: Funding Agreement with PACE for Downtown
Site Name: /
Vendor Number: 89462
File Location: 09.810

*Denotes mandatory fields. If referring to Retainage, please indicate the Termination Date same as the Contract Termination Date.

CRO

Face Sheet Date: 12.21.2009 C JDE

Index Date: 12.21.2009 MT ECM

PO # 950611-000
AGREEMENT BETWEEN THE CITY OF BELLEVUE AND
PERFORMING ARTS CENTER EASTSIDE

Res 8021 CR# 45397 DATE 12-21-09 LOC 09-810

THIS AGREEMENT is entered into this 8th day of December, 2009, by and between the CITY OF BELLEVUE, a municipal corporation of the State of Washington, hereinafter "the City" and PERFORMING ARTS CENTER EASTSIDE, a non-profit corporation organized under the laws of the State of Washington, hereinafter "PACE".

WHEREAS, PACE is a non-profit corporation authorized to design, develop, construct and operate a performing arts center for the purpose of providing a venue for the presentation of a variety of types of artistic performances, including music, theatre and dance east of Lake Washington; and

WHEREAS, PACE has embarked on a campaign to obtain substantial private contributions for the purpose of designing, developing, constructing and operating a performing arts center in the City; and

WHEREAS, by constructing and operating a performing arts facility, PACE will increase public accessibility to the performing arts and contribute to the attractiveness and economic vitality of Bellevue and the greater Eastside; and

WHEREAS, the City Council adopted certain investment principles to guide decision-making for appropriations of the funds designated for the support of cultural arts and which principles PACE must be found to have met in order to obtain grant funding from the City; and

WHEREAS, the City has determined that the provision of a performing arts center in the City is in the public interest and will provide public benefit, and therefore has designated City funds to pay a portion of the costs of design and construction of such performing arts center, all subject to certain agreements by PACE which will assure that all funds from the City are expended and the performing arts center is operated consistently with the public interest and for the benefit of the public; and

WHEREAS, by this Agreement the parties intend to set forth the understandings and conditions that will govern PACE's use of funds provided by the City to ensure such funds are used in a manner consistent with the use of such public funds; now, therefore,

IN CONSIDERATION OF THE MUTUAL PROMISES AND CONDITIONS CONTAINED
HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. City Funds. City agrees to provide Two Million Dollars (\$2,000,000) hereinafter "the Funds" to PACE for the design and construction of a performing arts facility located in Bellevue (the "Facility"), subject to the conditions and provisions set forth in this Agreement.
2. Investment Principles. The parties agree that the City's four investment principles for requests from cultural arts organizations applicable to this Agreement are as follows:
 - a. The organization must have a sustainable long-term financial model, including strong private sector financial commitment.

- b. Any agreement for funding must clearly define public benefit to be received in exchange for investment.
 - c. Any agreement for funding should provide for City involvement in financial oversight.
 - d. The City's funding must be an investment in a facility, or for support of the operation of the facility. The funds cannot fund fund-raising activities.
3. Payment and Use of Funds. The Funds shall be used exclusively for the following purposes: reimbursement of costs incurred by PACE relating to the design, engineering, and construction of the Facility. Attached hereto as Exhibit "A" are the City's requirements for submittal of reimbursement requests. Such reimbursement requests should be sent by PACE to the City's Finance Department, attention Zemed Yitref. Subject to the requirements set forth in Exhibit "A" being satisfied as to any request for Funds, the City shall disburse the requested Funds to PACE within thirty (30) days after written request from PACE. All Funds shall be expended (i.e., invoiced to the City in accordance with Exhibit "A") by December 31, 2010, and to the extent the Funds are not fully used by PACE by such date, the City shall not be obligated to advance the remaining balance of the Funds (and in such event the term "Funds" shall mean only the amount so expended by December 31, 2010). The Funds shall not be used for any other costs, including costs related to marketing or fundraising or other similar costs.

4. Financial Reporting. PACE shall produce the following quarterly financial data to the City within sixty (60) days of the end of each quarter:
- a. Balance Sheet
 - b. Statement of Cash Flows
 - c. Profit & Loss Statement (Budget versus Actual)

PACE shall provide the following annual financial data to the City within one hundred eighty (180) days of the end of PACE's fiscal year:

- a. Independent Auditor's Report
- a. Independent Auditor's Management Letter
- b. IRS Form 990 (Return of Organization Exempt from Tax)
- c. Updated three-year projections

The financial reports provided by PACE under this Section shall be substantially in the form currently produced and used by PACE, or such other reasonable form (for a non-profit entity) as PACE may hereafter adopt so long as they are prepared in accordance with generally accepted accounting principles consistently applied.

5. Maintenance of Records—Inspections. PACE shall maintain records for the Funds in a manner that readily allows for inspection. PACE shall also maintain records of services provided for the public good as referred to in Section 8.h. below. Such records shall be made available for inspection by representatives of the City during normal business hours upon five (5) days written notice of any inspection request made by the City.

6. Performing Arts Center Project; Security Interest. As currently anticipated, the Facility includes approximately 135,000 square feet of space including a performance hall, lecture and rehearsal space, and administrative offices. Upon completion of the Facility, PACE shall officially recognize the Funds by providing signage equivalent to the recognition given to donors of similar amounts in a visible location within the performing arts center to be mutually agreed upon by the City and PACE. PACE's obligation to provide performing arts services in and operate the Facility for the public good as required in this Agreement and repay the Unamortized Balance of the Funds after a Security Agreement Default ("PACE's Obligation") shall be secured by a security interest (i) in PACE's interest in the Construction Documents and Design Development Plans for the Facility, the Design Contract, dated June 27, 2006, between Pfeiffer Partners Architects, Inc. and PACE and the Pre-Construction Contract, dated October 1, 2006, between Sellen Construction Company and PACE (collectively, the "Plans and Contracts", which term includes all amendments, modifications and replacements of the specified Plans and Contracts) and (ii) all items of tangible personal property, furniture, furnishings and removable trade fixtures and equipment now or hereafter owned by PACE, including, without limitation, those that are used or installed in the Facility (collectively, the "FF&E"); provided, however, the FF&E expressly excludes any real property improvements and fixtures and any building equipment, such as HVAC units, that is essential to the building operation or function.

PACE hereby grants to the City a security interest in, to and against the Plans and Contracts and the FF&E, together with all proceeds thereof (collectively, the "Collateral") to secure PACE's Obligation. The security interest in the Collateral herein granted to the City shall be a first lien security interest except as otherwise provided herein. PACE authorizes the City to file such Washington Uniform Commercial Code financing statement(s) or amendments thereto with the Washington Secretary of State's Office and agrees to take whatever actions are reasonably requested by the City to perfect and continue the City's security interest in the Collateral. PACE hereby appoints the City as its irrevocable attorney-in-fact for the purpose of executing any documents necessary to perfect or continue the security interest granted in the Collateral. PACE shall not sell, offer to sell, or otherwise transfer, assign or dispose of the Collateral; provided, however, that PACE shall be entitled to make dispositions of obsolete or worn out property, or of property that is replaced by property of equal or superior utility or value, whether now owned or hereafter acquired, in the ordinary course of business; provided, further, security interests in PACE's property previously granted to The Cultural Development Authority of King County ("4Culture") pursuant to Contracts for Capital Construction & Fixed Asset Purchase (Agreement Nos. 103428 and 108012C) (the "4Culture Contracts"), copies of which have been provided to the City, shall be deemed permitted dispositions and are acknowledged by the City to be existing prior liens on the FF&E; provided further, in connection with obtaining construction and/or long-term financing for the Facility, PACE shall have the right to grant any such construction or term loan lender ("Construction Lender") a security interest in the Collateral to secure such loan, and in such event the City shall promptly on request subordinate its security interest in the Collateral to the security interest and lien in favor of the Construction Lender on such terms as the Construction Lender may reasonably require. PACE will use reasonable efforts to segregate the portion of the FF&E covered by the security interests granted in the 4Culture Contracts so that it may be more readily identifiable.

During the pendency of the City's security interest in the Collateral, and subject to the rights and interests of 4 Culture under the 4Culture Contracts and the rights and interests of the Construction Lender, all proceeds from any unpermitted disposition of the Collateral (for whatever reason) shall be held in trust for the City and shall not be commingled with any other funds.

Each of the following shall constitute a security agreement default under this Agreement ("Security Agreement Default") entitling the City to foreclose or otherwise realize upon its security interest in the Collateral: (1) the occurrence of an Event of Default as defined in Section 17 of this Agreement; (2) subject to the provisions of Section 13 with respect to any alleged failure by PACE as to its obligations under Section 8 or Section 10, any other material breach by PACE of any obligation under this Agreement if such breach is not cured by PACE within sixty (60) days after receiving written notice of such default from the City, (3) the dissolution, liquidation, or any other termination of PACE's existence, the insolvency of PACE, the appointment of a receiver for any part of PACE's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against PACE; and (4) commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of PACE or by any governmental agency against the Collateral if such proceedings are not dismissed or terminated prior to the earlier of (i) the date of foreclosure or repossession or (ii) sixty (60) days after the commencement of such proceedings. If any such Security Agreement Default occurs under this Agreement, at any time thereafter, all of the Unamortized Value of the Funds (defined below) shall be, at the City's option, immediately due and payable, and the City shall have all the rights of a secured party under the Washington Uniform Commercial Code. In addition, after the occurrence of any such Security Agreement Default, subject to the terms of this Agreement the City shall have and may exercise any or all other rights and remedies it may have available at law, in equity, or otherwise.

7. Use as a Performing Arts Center. Once the Facility is operational, PACE shall use the Facility as a performing arts center and for purposes customarily associated with such facilities for a period of at least twenty (20) years from the date of issuance of a final certificate of occupancy for the Facility. At the expiration of such twenty (20)-year period, this Agreement shall automatically terminate and neither party shall have any further rights or obligations hereunder except for any then-accrued indemnity and defense obligations arising under Section 14 hereof.
8. Performing Arts Services. Once the Facility is operational, for the duration of this Agreement, PACE will provide services consistent with its Mission as amended from time to time by its Board of Directors. These services may include but are not limited to the following activities:
 - a. Operation of the Facility as the primary location for PACE operations consistent with national performing arts center standards, appropriate portions of which to be open to the public during regular business hours, subject to reasonable restrictions and admission standards.

- b. Provision of education as a primary function through performances and programs.
 - c. Maintenance and operation of the Facility as a center of learning and cultural enrichment in the community by provision of professional artistic and educational experiences for people of all ages.
 - d. Presentation of performances and programs to families, children and the general public that will increase their understanding of the artistic, aesthetic and cultural heritages of artists from different cultures and perspectives.
 - e. Cooperation with the Bellevue School District in providing, for example, teacher training, student workshops and special tours, and encouragement of extensive visitor participation in interpretive and educational programs through lectures, demonstrations, workshops and similar activities.
 - f. Cooperation with public organizations such as the Bellevue Department of Parks & Community Services, Bellevue College, Bellevue Convention Center Authority and the King County Public Library in conducting programs of popular interest.
 - g. Provision of meeting spaces in the Facility for both private and public uses, as available and appropriate, for which reasonable fees may be charged.
 - h. Operating the Facility for the public good for those residing or located in Bellevue, including providing special performances and educational opportunities, discounted tickets, tours, scholarships, classes, discounted space rental or other programs or benefits, as appropriate, for the poor, infirm, low income residents, youths, students, seniors, ethnic minorities, the disabled, other disadvantaged or at-risk groups, and non-profit community organizations (collectively, the "Underserved").
 - i. Operation of the Facility as a high quality performing arts center worthy of public confidence and pride.
9. Access to Public. Once the Facility is operational, performances open to the public shall occur in the performance space of the Facility on a regular seasonal basis customary for similar performing arts centers in similar circumstances. PACE may restrict access to the Facility and/or portions thereof as is necessary for safety and security purposes, to allow for load-in, load-out, set installation/removal, rehearsals, and privately rented spaces or events, and may temporarily close the Facility or portions of the Facility as is necessary due to force majeure or for installation, repairs, renovation, decoration, or remodeling, from time to time.
10. Public Good. Once the Facility is operational, PACE will ensure access to performances and develop outreach and educational programs for the Underserved, such that the Facility serves the public good and benefits the community. The fees charged for regular admission shall be reasonable and comparable to the fees charged by similar performing arts centers in similar

circumstances. As referred to in Section 8.h above, discounted admission fees, special performances and various outreach and educational programs and opportunities ("Outreach Programs") shall regularly be offered to the Underserved in connection with operating the Facility for the public good. In structuring and implementing Outreach Programs, PACE will provide both choice and access and create an environment that welcomes everyone, recognizes that different populations have different needs, and use its resources to identify and provide performing arts programs that address the cultural needs and desires of the Underserved in the community. PACE's Outreach Programs will include some or all of the following:

- An Education & Outreach Department that will retain experienced, professional staff dedicated to the design, organization and delivery of the kinds of programs anticipated by Section 8(h). Some programs will be delivered off-site in partnership with agencies such as YES, YMCA, YWCA, Bellevue Schools, or the Bellevue public library. These might take the form of artists engaging young people directly in a "master class" or a conversational performance. On-site programs will include a series of free mini-performances and discussions for small groups of Underserved persons, designed to provide a context for those who are interested in dance or classical music or jazz, etc., but need an introduction; meet-and-greet opportunities between international artists and patrons with the same ethnic background; technical seminars in lighting, staging, and sound for high school and Bellevue College students; backstage tours; displays of student digital art, etc.
- Providing "rush" tickets (i.e., remaining, unsold day-of-performance tickets) to most performances at a significantly discounted rate for students with a valid student ID, and to adult and family patrons of partner institutions and social services organizations, such as the YWCA and Hopelink.
- Obtaining sponsorship or underwriting of discounted tickets to performances for the Underserved.
- Scheduling special matinees for senior audiences and families.
- ASL-interpreted performances.
- Audio-described performances.
- Preview materials designed for teachers and coordinated with the Bellevue public school curriculum, including written and video materials.

PACE will work with City staff to gain a better understanding of the "geography of need" in Bellevue in connection with planning its Outreach Programs. PACE will provide to the City, on an annual basis, a detailed report ("Annual Public Benefit Report") describing the number and types of Outreach Programs it has made available to the Underserved in the community in the prior year, together with a description of the Outreach Programs and the types of Underserved that were eligible for or benefited by such Outreach Programs and the number of such persons who participated in each such Outreach Program. If, within 90 days after PACE provides the City with the Annual Public Benefit Report, the City notifies PACE that it has determined that such Outreach Programs need to be supplemented in order to better achieve the public benefit goal required by this Agreement, PACE and the City shall work together cooperatively, diligently and in good faith to reach agreement on appropriate supplementation of the Outreach Programs for the coming calendar year. PACE will cooperate with the City to ensure that sufficient access is granted to the Underserved so as to demonstrate

a clear public benefit for the use of the Funds. If PACE breaches its obligations under this Section 10 and fails after written notice from the City to correct such breach within 180 days, the same shall constitute an Event of Default and the City shall be entitled to the remedies provided in Section 17 hereof.

11. Compliance with Laws. PACE shall comply with all zoning, land use, environmental and other laws applicable to the construction and operation of the Facility and with all applicable state and federal laws and regulations regarding employment, minimum wages and hours, and discrimination in employment.
12. Relationship of the Parties. In complying with its obligations under this Agreement, PACE shall determine the means of accomplishing the results contemplated by this Agreement, EXCEPT as otherwise expressly stated in this Agreement. Neither PACE nor its officers, agents or employees are employees or agents of the City of Bellevue for any purpose. PACE is responsible for determining the compensation of its employees, for payment of such compensation, and for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services. PACE and its officers, agents and employees shall make no claim of career service or civil service rights which may accrue to a City of Bellevue employee under state or local law. The City assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by, or on behalf of PACE, its employees and/or others by reason of this Agreement. This Agreement does not empower, entitle or authorize the City to interfere with, control or restrict the performance or program offerings, educational programs, services, space rentals or bookings for the Facility.
13. Resolving Disputes re Operating the Facility for the Public Good. If at anytime during the 20-year period referred to in Section 7 hereof after the Facility is completed and open for operation, the City determines that PACE is failing to operate the Facility to provide the services described in Section 8 or Section 10 of this Agreement, the City shall give PACE written notice thereof specifying the basis for its determination, and the parties shall meet and confer in good faith to attempt to resolve any concerns or issues related to such determination. If the parties are not in good faith able to agree to a mutually acceptable resolution within sixty (60) days after such notice from the City, the matter shall be subjected to mediation with a neutral, mutually acceptable professional mediator in Seattle, Washington, with such mediation to be completed within sixty (60) days after the expiration of the 60-day good faith negotiation period. Each party shall bear one half of the cost of the mediator. The City shall not exercise any other remedies or take any judicial or administrative action against PACE nor issue any public statements concerning its determination or any related issue nor shall PACE be in breach of this Agreement during any such 60-day good faith negotiation period so long as PACE is negotiating in good faith or during the ensuing 60-day mediation period so long as PACE is cooperating with such mediation process.
14. Mutual Indemnity and Hold Harmless.
 - a. To the extent allowed by law, PACE shall protect, defend, indemnify and save harmless the City and its officers, agents, and employees from and against any and all claims, costs and/or losses whatsoever occurring or resulting from the negligent or intentional tortious acts or omissions of

PACE and its officers, agents and employees in connection with or support of PACE's performance of this Agreement. PACE shall also defend, indemnify and save harmless the City and its officers, agents and employees from any and against any and all claims made by PACE's employees arising from their employment with PACE.

- b. To the extent allowed by law, the City shall protect, defend, indemnify and save harmless PACE and its officers, agents, directors, and employees from and against any and all claims, costs and/or losses whatsoever occurring or resulting from the negligent or intentional tortious acts or omissions of the City and its officers, agents and employees in connection with or in support of the City's performance of this Agreement.

15. Insurance Requirements. PACE shall procure and maintain for the duration of this Agreement insurance as described on Exhibit "B" labeled as "Insurance Requirements" attached hereto. From and after the date that PACE acquires title to the Land, PACE shall maintain in full force and effect All Risks property insurance covering all fixtures, improvements and equipment owned by PACE and installed or constructed on the Land or otherwise constituting a part of the Facility at the estimated value thereof, and shall provide the City with evidence that it is maintaining said coverage on a continuing basis throughout the term of this Agreement. Said property insurance shall include Earthquake and Flood coverage only if and to the extent the Construction Lender so requires.
16. No Future Support. The City makes no commitment and assumes no obligation for the support of PACE's activities except as set forth in this Agreement.
17. Cessation of Performing Arts Center Services; Remedies. PACE and the City agree that after the Facility is completed and open for operation, continued operation of the Facility for the services contemplated herein during the 20-year period referred to in Section 7 hereof is a primary objective of both parties. Accordingly, should PACE or any successor-in-interest who owns the Facility other than the Construction Lender or its successors or assigns (the "Facility Owner") at any time during the twenty (20) year period under Section 7 hereof cease to operate the Facility as a performing arts center as herein provided (i.e., should the Facility be closed down, "go dark", or not be used as a performing arts center) for more than one hundred twenty (120) consecutive days for reasons other than *force majeure* or construction, repair, renovation, remodeling, or similar activities, the City may give written notice to PACE or the Facility Owner declaring it to be in default and specifying the basis thereof; provided, however, that the period during which a Mortgagee owns title to the Facility shall not be included in such 120 day period. If PACE or the Facility Owner fails to re-commence operation of the Facility as a performing arts center as herein provided within sixty (60) days after receiving such notice of default, the same shall constitute an "Event of Default". Upon the occurrence of an Event of Default, PACE or the Facility Owner shall be obligated to repay the City the Unamortized Value of the Funds within thirty (30) days. As used herein, the term "Unamortized Balance of the Funds" shall mean the unamortized balance of the Funds provided to PACE by the City based on a twenty (20) year amortization period using straight-line amortization. The twenty (20) year amortization period shall commence on the date of issuance of a final certificate of occupancy for the Facility. (For example, if the Funds the City provides to PACE is the entire \$2 Million, and an Event of Default occurs on the fifth (5th) anniversary of the

commencement of the amortization period, the Unamortized Balance of the Funds would be \$1.5 Million.)

If the Unamortized Balance of the Funds is not repaid to the City within thirty (30) days after an Event of Default, (i) such amount shall thereafter bear interest at the rate of twelve percent (12%) per annum until repaid in full and the City shall be entitled to recover its reasonable attorneys' fees incurred in collecting the Unamortized Balance of the Funds and (ii) the City may take action to ensure that the Facility is used for a public purpose, commensurate with the City's investment therein and the remaining duration of the twenty (20) year period referred to in Section 7 hereof during which performing arts services are to be provided to the public. PACE and any Facility Owner will cooperate with the City in ensuring that this public purpose requirement is met.

The repayment of the Unamortized Balance of the Funds shall be the City's sole and exclusive damage remedy for any default by PACE or any Facility Owner under this Agreement. At such time as PACE or any Facility Owner pays the City the Unamortized Balance of the Funds (and any accrued interest and attorneys' fees incurred in collecting the same), this Agreement shall automatically terminate and neither party shall have any further rights or obligations hereunder except for any then-accrued indemnity and defense obligations arising under Section 14 hereof.

18. Notices. Whenever this Agreement provides for notice to be provided by one party to another, such notice shall be in writing and directed to the City Attorney and the Executive Director of PACE and PACE's legal counsel at the addresses set forth below, or at such other addresses as to which an addressee party may hereafter give notice to the other party.

If to City:

Contact: Lori M. Riordan, Bellevue City Attorney's Office
Address: P. O. Box 90012
Address: Bellevue, WA 98009-9012

Telephone: (425)452-6829
Facsimile: (425)452-7256

If to PACE:

Contact: John Haynes, PACE
Address: P. O. Box 828
Address: Bellevue, WA 98009-0828

Telephone: (425)462-0092
Facsimile: (425) 462-4295

With a copy to:

Contact: Davis Wright Tremaine LLP, Attn: Warren Koons, Esq.
Address: 777 - 108th Avenue NE, Suite 2300
Address: Bellevue, WA 98004-5149

Telephone: (425) 646-6117
Facsimile: (425) 646-6199

19. Governing Law and Venue. This Agreement will be construed and interpreted in accordance with the laws of the State of Washington. Any mediation, arbitration or legal proceeding that arises out of or in connection with this Agreement will be initiated and maintained in Seattle, Washington. Each party consents to jurisdiction and venue in such courts and waives the right to claim that any such court is an inconvenient forum.
20. Entire Agreement and Modifications. This Agreement, the attached Exhibits constitute all of the understandings and agreements of any nature existing between the parties with respect to the City's commitment to provide, and PACE's use of the Funds. Unless otherwise provided for herein, no amendments, changes, alterations or modifications of this Agreement shall be effective unless they are in writing executed by the City and PACE.

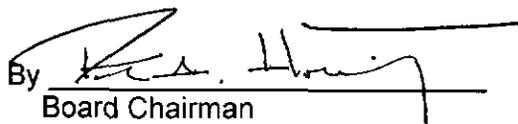
Performing Arts Center Eastside,
a non-profit corporation

City of Bellevue,
a municipal corporation

By 
John Haynes
Executive Director

By 
Brad Miyake
Deputy City Manager

Approved as to form,

By 
Board Chairman

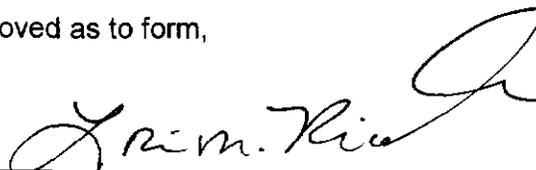
By 
Lori M. Riordan
City Attorney
City of Bellevue

EXHIBIT A
REIMBURSEMENT DOCUMENTATION

Any request for reimbursement shall be reasonably required to be supported by the following documentation:

1. Bills, invoices, contracts, or other writings evidencing the work performed by contractors or subcontractors on the project;
2. Proof of payment by PACE, including but not limited to financial statements, cancelled checks, receipts from contractor or subcontractor; and
3. A written declaration by PACE's Executive Director or Financial Officer under penalty of perjury under the law of the State of Washington that the documentation supporting the reimbursement request is true and correct; that the expenses have been incurred in association with the project; and that the expenses have been paid in full prior to the submission of the reimbursement request.

EXHIBIT B
INSURANCE REQUIREMENTS

PACE shall procure and maintain, at its cost, the following insurance coverage for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with this agreement:

A. Minimum Insurance:

1. **Commercial General Liability:** Coverage limits not less than \$1,000,000 per occurrence / \$2,000,000 annual aggregate, including Stop Gap coverage. The City of Bellevue shall be named as an additional insured on PACE's Commercial General Liability coverage.
2. **Crime Policy:** Coverage shall include coverage for Employee Dishonesty, Forgery/Theft at a limit not less than \$500,000.
3. **Workers' Compensation** coverage as required by the Industrial Insurance Laws of the State of Washington.
4. **Director's and Officer's Coverage** in limits not less than \$1,000,000.00 per occurrence.

B. Self-Insured Retentions:

Any self-insured retentions must be declared to and approved by the City.

C. Acceptability of Insurers:

Insurance shall be placed with insurers with a rating acceptable to the City.

D. Verification:

PACE shall furnish the City with certificates of insurance required by this clause. The certificates are to be received and approved by the City prior to the effective date of the Agreement and throughout the term of the Agreement. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

E. Cancellation:

PACE shall assure that each insurance policy required herein shall provide that coverage shall not be canceled except after thirty (30) days' written notice has been given to the City.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/03/09

PRODUCER
Parker Smith & Feek, Inc.
Bellevue (425-709-3600)
2233 112th Avenue NE
Bellevue, WA 98004

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

NAIC #

INSURED
Performing Arts Center Eastside
855 106th Avenue NE, Suite 150
Bellevue, WA 98004

INSURER A: Great American Assurance Company **A**
INSURER B: Great American Alliance Ins. Co. **B**
INSURER C:
INSURER D:
INSURER E:

26344
26832



COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	PAC556352902	12/05/09	12/05/10	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COM/PROP AGG \$2,000,000
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY EA ACC AGG \$
B		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10000	UMB556353002	12/05/09	12/05/10	EACH OCCURRENCE \$2,000,000 AGGREGATE \$2,000,000 \$ \$ \$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	PAC556352902 Emp Liab Only WA State Stop Gap	12/05/09	12/05/10	WC STATU-TORY LIMITS <input checked="" type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
A		OTHER Crime Employee Dishonesty	PAC556352902	12/05/09	12/05/10	\$500,000 Limit of Ins \$1,000 Deductible

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

City of Bellevue is included as Additional Insured per attached
Endorsement CG8224, Edition Date 12/01.

CERTIFICATE HOLDER

City of Bellevue
Attn: Lori M. Riordan
Bellevue City Attorney's Office
PO Box 90012
Bellevue, WA 98009-9012

CANCELLATION Ten Day Notice for Non-Payment of Premium

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 45 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Lori M. Riordan

DESCRIPTIONS (Continued from Page 1)

are named as Additional Insureds per Endorsement CG8224, Edition Date 12/01 attached. Waiver of Subrogation applies to Commercial General Liability. Fax: (425)460-5853.

Received

DEC 14 2009

Contracting Services

DEC 14 2009



Administrative Offices
680 Walnut Street
Cincinnati, Ohio 45202
Tel: 1-513-389-5000

Contracting Services

CG 82 24
(Ed. 12/01)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SOCIAL SERVICE AGENCY GENERAL LIABILITY BROADENING ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following provision is added to SECTION II - WHO IS AN INSURED

B. AUTOMATIC ADDITIONAL INSURED(S)

a. Additional Insured - Manager or Lessor of Premises

(1) This policy is amended to include as an insured any person or organization (hereinafter called Additional Insured) from whom you lease or rent property and which requires you to add such person or organization as an Additional Insured on this policy under:

- (a) a written contract; or
- (b) an oral agreement or contract where a Certificate of Insurance showing that person or organization as an Additional Insured has been issued;

but the written or oral contract or agreement must be an "insured contract," and,

- (i) currently in effect or become effective during the term of this policy; and
- (ii) executed prior to the "bodily injury," "property damage," "personal and advertising injury."

(2) With respect to the insurance afforded the Additional Insured identified in Paragraph A.(1) of this endorsement, the following additional provisions apply:

- (a) This insurance applies only to liability arising out of the ownership, maintenance or use of that portion of the premises leased to you.
- (b) The Limits of Insurance applicable to the Additional Insured are the lesser of those specified in the written contract or agreement or in the Declarations for this policy and subject to all the terms, conditions, and exclusions for this policy. The Limits of Insurance applicable to the Additional Insured are inclusive of and not in addition to the Limits of Insurance shown in the Declarations.
- (c) In no event shall the coverages or Limits of Insurance in this Coverage Form be increased by such contract.
- (d) Coverage provided herein is excess over any other valid and collectible insurance available to the Additional Insured whether the other insurance is primary, excess,

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(c) With respect to architects, engineers, or surveyors, coverage does not apply to "Bodily Injury," "Property Damage," "Personal and Advertising Injury" arising out of the rendering or the failure to render any professional services by or for you including:

- (i) the preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; and
- (ii) supervisory, inspection, or engineering services.

If an Additional Insured endorsement is attached to this policy and specifically names a person or organization as an Insured, then the coverage in Section II - WHO IS AN INSURED 5. Automatic Additional Insured(s) does not apply to that person or organization.

2. BLANKET WAIVER OF SUBROGATION

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS. Item 8. is replaced with:

8. Transfer of Rights of Recovery Against Others to us and Blanket Waiver of Subrogation

- a. If an Insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The Insured must do nothing after loss to impair them. At our request, the Insured will bring "suit" or transfer those rights to us and help us enforce them.
- b. If required by a written "insured contract", we waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your

work" done under a contract for that person or organization and included in the "products-completed operations hazard."

3. NON-OWNED OR CHARTERED WATERCRAFT

Section I - Coverages, Coverage A, Item 2.g.(2) is replaced with:

- (2) A watercraft you do not own that is:
 - (a) less than 51 feet long; and
 - (b) not being used to carry persons or property for a charge.

4. BROADENED PERSONAL AND ADVERTISING INJURY

Unless "Personal and Advertising Injury" is excluded from this policy:

SECTION V - DEFINITIONS Item 14. is replaced by:

14. "Personal and Advertising Injury" means injury, including consequential "bodily injury," arising out of one or more of the following offenses:

- a. false arrest, detention or imprisonment;
- b. malicious prosecution;
- c. the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;
- d. oral, written, televised, videotaped, or electronic publication of material, in any manner, that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. oral, written, televised, videotaped, or electronic publication of material, in any manner, that violates a person's right of privacy; or

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CG 82 24 (Ed. 12/01) XS

(Page 3 of 4)

Received

DEC 14 2009

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/10/2009

PRODUCER Parker Smith & Feek, Inc. Bellevue (425-709-3600) 2233 112th Avenue NE Bellevue, WA 98004	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED Performing Arts Center Eastside 855 106th Avenue NE, Suite 150 Bellevue, WA 98004	INSURER A: National Union Fire Insurance of PA A	19445
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
		GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY EA ACC \$ AGG \$
		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A		OTHER Directors & Officers Liability	041888509	12/05/09	12/05/10	\$2,000,000 Liab Limit \$5,000 Deductible Claims Made

Received
DEC 14 2009
Contracting Services

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Exhibit of insurance

CERTIFICATE HOLDER

CANCELLATION

City of Bellevue Attn: Lori M. Riordan Bellevue City Attorney's Office PO Box 90012 Bellevue, WA 98009-9012	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>0</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Deanna M. Johal</i>
---	--

Kelly, Christine

From: Riordan, Lori
Sent: Tuesday, December 15, 2009 8:45 AM
To: McCauley, Reina
Cc: Kelly, Christine
Subject: RE: PACE Agreement

Not a specific account number, but Zemed Yitref in Finance will be administering the payments, so he could answer that question.

Start date is 1/1/09 and end date is 12/31/10. This is a reimbursement contract, and the funds were budgeting for the full biennial period of 2009-2010.

From: McCauley, Reina
Sent: Tuesday, December 15, 2009 8:38 AM
To: Riordan, Lori
Subject: FW: PACE Agreement

Would you be able to answer the questions below? I have no idea what account number this would be charged too, if any at all and there were no start or end dates noted.

From: Kelly, Christine
Sent: Tuesday, December 15, 2009 8:31 AM
To: McCauley, Reina
Subject: PACE Agreement

Hi Reina – a few quick questions. There are a lot of blanks on the routing form, including start and end dates. Also, there are no account numbers to charge to.

Can you provide me with that information? I need it in order to proceed. Let me know. Thanks.

Chris Kelly
Contracting Services
Ext. 4103

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 8021

A RESOLUTION authorizing the City Manager or his designee to Execute a Funding Agreement with Performing Arts Center Eastside ("PACE") in an amount not to exceed \$2,000,000 from the Cultural Arts Funding Earmark in the 2009-2010 Budget.

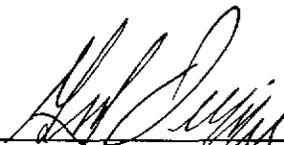
THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Manager or his designee is hereby authorized to execute a Funding Agreement with Performing Arts Center Eastside ("PACE") in an amount not to exceed \$2,000,000, from the Cultural Arts Funding Earmark in the 2009-2010 Budget, a copy of which Funding Agreement has been given Clerk's Receiving No.

45397.

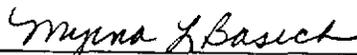
Passed by the City Council this 7th day of December, 2009, and signed in authentication of its passage this 7th day of December, 2009.

(SEAL)



Grant S. Degginger, Mayor

Attest:



Myrna L. Basich, City Clerk

Resolution 8021

Page 4

Item 8 (m)

Agenda

1066

City Council

Regular Session

MONDAY
December 7, 2009

8:00 – 10:00 p.m.
Council Chambers (1E-126)

Page

1. Call to Order
2. Roll Call, Flag Salute
3. Communications: Written and Oral

Note: Three-minute limit per person, or five minutes if representing the official position of a recognized community organization. Maximum of three persons are permitted to speak to each side of any one topic. Additional presentations may be heard at Agenda Item 13, including three additional persons speaking to topics heard at Agenda Item 3.

4. Reports of Community Council, Boards and Commissions
 5. Report of the City Manager
 6. Council Business and New Initiatives
 7. Approval of the Agenda
 8. Consent Calendar
- (a) Minutes of October 26, 2009 Extended Study Session

8a-1

City Council meetings are wheelchair accessible. American Sign language (ASL) interpretation is available upon request. Please phone 452-6805 at least 48 hours in advance. Assisted Listening Devices are also available upon request.



City of Bellevue

- (b) Security Contract for City Hall, BSC, Lincoln Center, Surrey Downs and Safeway Property CIVIC 8-1

Resolution No. 8001 authorizing execution of a two-year professional services agreement, with the option to renew for an additional two years, with G4S Wackenhut, in a total contract amount not to exceed \$500,828.88 for security services at City general government buildings for 2010-2011.

(Postponed from November 16, 2009 Consent Calendar.)
- (c) Resolution No. 8011 authorizing execution of a two-year agreement, with the option to renew for an additional two years, with Pacific Northwest Title Insurance Company, in an amount not to exceed \$150,000, for title and escrow services. CIVIC 8-7
- (d) Resolution No. 8012 authorizing execution of the ORCA card agreement with King County for the purchase and distribution of the annual 2010 ORCA cards (previously referred to as FlexPasses) to City employees. CIVIC 8-11
- (e) Resolution No. 8013 authorizing execution of a two-year banking services agreement with Bank of America, N. A. for general banking services in an estimated total amount of \$679,000 for the two-year term, with the option to extend the contract for an additional two years. FIN 8-17
- (f) On-Call General Services Contracts FIN 8-23

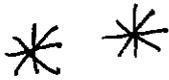
Resolution No. 8014 authorizing execution of a contract with Elite Landscaping Inc., in an amount not to exceed \$100,000, for city-wide on-call parking lot, sidewalk, and walkway snow removal and de-icer services.

Resolution No. 8015 authorizing execution of a contract with Santana Trucking & Excavating Inc., in

an amount not to exceed \$100,000, for city-wide on-call parking lot, sidewalk, and walkway snow removal and de-icer services.

- | | | |
|--|------|-------------|
| (g) Resolution No. 8016 authorizing execution of a one-year administrative services contract with Premera Blue Cross as a Third Party Administrator, to administer the City's self-insured medical and prescription drug benefit programs for 2010. | HR | <u>8-29</u> |
| (h) Resolution No. 8017 authorizing execution of an agreement with the Boys and Girls Club of Bellevue (BGCB), in an amount up to \$86,500, to continue the operation of the Ground Zero Teen Center and BGCB satellite sites in partnership with the City. | PARK | <u>8-33</u> |
| (i) Resolution No. 8018 authorizing execution of Amendment No. 2 to the Marymoor Park Interlocal Agreement with King County, in an amount not to exceed \$170,000 for a three-year term, for the maintenance and operation of the Bellevue/King County Marymoor Ballfield Complex. | PARK | <u>8-39</u> |
| (j) Motion to award Bid No. 9319 to SeaWest Construction, Inc., in the amount of \$48,143.00, as the lowest responsible bidder for the Eastgate Sportsfield Fence Replacement project (CIP Project No. P-R-11). | PARK | <u>8-49</u> |
| (k) Resolution No. 8019 authorizing execution of a professional services agreement with RH2 Engineering, Inc., in an amount not to exceed \$65,000, for engineering services to perform the West Operating Area Storage Capacity Study (CIP Plan No. W-103). | UTIL | <u>8-53</u> |
| (l) Resolution No. 8020 authorizing execution of a professional services agreement with Tetra Tech, in an amount not to exceed \$105,000, for engineering services to perform the Sewer Lake Line Replacement Preliminary Study for Lake Washington (CIP Plan No. S-58). | UTIL | <u>8-59</u> |

CAO



(m) Resolution No. 8021 authorizing the execution of a Funding Agreement with Performing Arts Center Eastside ("PACE") in an amount not to exceed \$2,000,000 from the Cultural Arts Funding Earmark in the 2009-2010 Budget.

- 9. Public Hearings
- 10. Land Use
- 11. Other Ordinances, Resolutions and Motions

(a) Mid-Biennium Budget Adoption

CMO/FIN 11-1
Steve Sarkozy/
Jan Hawn

1. Property tax and resulting banked capacity

11-5

a. Scenario 1 and Scenario 2 – 3% property tax increase to support the Mobility and Infrastructure Initiative and corresponding adjustment to the City's banked property tax capacity. (Scenario 2 contemplates a companion vote at Item 2 below to reduce the sewer utility tax rate)

Ordinance No. 5918-A establishing the amount of property taxes to be levied for the year 2010, the second year of the City of Bellevue's 2009-2010 biennium.

Resolution No. 8022-A providing for the banking of levy capacity pursuant to RCW 84.55.092.

b. Scenario 3 – 2% property tax increase to support the Mobility and Infrastructure Initiative and corresponding adjustment to the City's banked property tax capacity.

Ordinance No. 5918-B establishing the amount of property taxes to be levied for the year 2010, the second year of the City of Bellevue's 2009-2010 fiscal biennium.

Resolution No. **8022-B** providing for the banking of levy capacity pursuant to RCW 84.55.092.

- c. Scenario 4 - 1% property tax increase to support the Mobility and Infrastructure Initiative and corresponding adjustment to the City's banked property tax capacity.

Ordinance No. **5918-C** establishing the amount of property taxes to be levied for the year 2010, the second year of the City of Bellevue's 2009-2010 fiscal biennium.

Resolution No. **8022-C** providing for the banking of levy capacity pursuant to RCW 84.55.092.

- d. Scenario 5 - No property tax increase to support the Mobility and Infrastructure Initiative and corresponding adjustment to the City's banked property tax capacity.

Ordinance No. **5918-D** establishing the amount of property taxes to be levied for the year 2010, the second year of the City of Bellevue's 2009-2010 fiscal biennium.

Resolution No. **8022-D** providing for the banking of levy capacity pursuant to RCW 84.55.092.

2. **Utility tax**

11-27

- a. Scenarios 1, 3, 4, and 5 - establishing a new utility tax rate of 10.4% for water distribution to address fire flow capacity

Ordinance No. **5919-A** relating to the utility occupation tax of the City of Bellevue; amending Section 4.10.030 of the Bellevue City Code; providing for referendum as set forth in Chapter 1.12 of the Bellevue City Code; providing for severability; and establishing an effective date.

- b. Scenario 2 – establishing a new utility tax rate of 10.4% for water distribution to address fire flow capacity and a decrease in sewerage utility tax which would result in a savings of approximately \$300,000 to Bellevue customers. *(this item corresponds with Property Tax Scenario 2)*

Ordinance No. 5919-B relating to the utility occupation tax of the City of Bellevue; amending Section 4.10.030 of the Bellevue City Code; providing for referendum as set forth in Chapter 1.12 of the Bellevue City Code; providing for severability; and establishing an effective date.

3. **Water service charges (reduces water service charges due to provision of fire flow capacity through water distribution utility tax (Item 2 above))**

Ordinance No. 5920 establishing revised charges for water service, water consumption, and water standby capacity; repealing Ordinance No. 5847; providing for severability; and establishing an effective date.

4. **Mid-Biennium Budget (umbrella ordinance)**

Ordinance No. 5921 relating to the mid-biennial review and modification of the 2009-2010 biennial budget as required by RCW 35.A.34.130 and Ordinance No. 4872; adopting certain modifications to the 2009-2010 biennial budget; and establishing an effective date.

12. Unfinished Business
13. Continued Oral Communications
14. New Business
15. Executive Session
- (a) Personnel matter *(approximately 1 hour)*
16. Adjournment

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT: Resolution No. 8021 directing the City Manager or his designee to execute a Funding Agreement with Performing Arts Center Eastside ("PACE") in the amount of \$2,000,000 from the Cultural Arts Funding Earmark in the 2009-2010 Budget.

FISCAL IMPACT: This action would expend monies specifically earmarked for the intended purpose (a 2,000 seat theatre in Downtown Bellevue) of providing funding in response to a request from PACE organization.

Although the recommendation for this organization involves phased payments based upon submittal of invoices for qualifying capital project expenditure reimbursements, PACE has already expended substantial funds on development of plans for the building. This means that the full \$2,000,000 will likely be paid out no later than the first quarter of 2010.

STAFF CONTACTS: Lori M. Riordan, City Attorney's Office
Jan Hawn and Zemed Yitref, Finance Department

POLICY CONSIDERATION:

In order to qualify for the earmarked funds, each cultural arts organization is required to demonstrate that it is able to meet the Council's investment principles. Staff's analysis regarding this funding request was presented to Council on November 16 and 23, 2009. At that time Council provided direction to conclude negotiations on the final form of a Funding Agreement with PACE. Some clarifying, non-substantive provisions have been added to the Agreement which is now in final form for Council review and approval.

BACKGROUND/ANALYSIS:

BACKGROUND

As you will recall, certain arts organizations requested funds from the City during the 2007-2008 Budget process in late 2006. Council adopted a set of guiding principles for distribution of \$4.5 million set aside as an earmark for cultural arts. Those principles are as follows:

Principles to guide investment:

- Must have a sustainable long-term financial model, including strong private sector financial commitment
- Must clearly define public benefit to be received in exchange for investment (for example, ownership interest in an asset, scholarships, public access to the facility at low or no cost to low income and disabled persons)
- Should provide for City involvement in financial oversight

- Must be an investment in a facility, or for support of the operation of the facility.
Cannot fund fund-raising activities.

Previously, Council has approved funding agreements with KidsQuest Children's Museum and Bellevue Arts Museum under these principles. PACE is the remaining arts organization for whom these funds were specifically earmarked.

On November 16 and 23, 2009, we presented our staff analysis of the application of the principles to the PACE business model and proposed Funding Agreement. Council directed that the Agreement be finalized and brought forward for approval.

OPTIONS:

- a. Adopt Resolution No. 8021 directing the City Manager or his designee to execute the PACE Funding Agreement.
- b. Do not adopt Resolution No. 8021 directing the City Manager or his designee to execute the PACE Funding Agreement and provide alternate direction.

ATTACHMENTS:

Proposed Resolution No. 8021

AVAILABLE IN COUNCIL OFFICE

PACE Funding Agreement

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 8021

A RESOLUTION authorizing the City Manager or his designee to Execute a Funding Agreement with Performing Arts Center Eastside ("PACE") in an amount not to exceed \$2,000,000 from the Cultural Arts Funding Earmark in the 2009-2010 Budget.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Manager or his designee is hereby authorized to execute a Funding Agreement with Performing Arts Center Eastside ("PACE") in an amount not to exceed \$2,000,000, from the Cultural Arts Funding Earmark in the 2009-2010 Budget, a copy of which Funding Agreement has been given Clerk's Receiving No. _____

Passed by the City Council this _____ day of _____, 2009, and signed in authentication of its passage this _____ day of _____, 2009.

(SEAL)

Grant S. Degginger, Mayor

Attest:

Myrna L. Basich, City Clerk

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NOTE: If the word "non-revenue" appears in the space after Tax Registration Number, the account is not registered with the Department of Revenue. Although the business may not be required to register with the Department of Revenue, it is registered with one or more other agencies in the state.

Washington State Department of Revenue State Business Records Database Detail

TAX REGISTRATION NUMBER :	602206095
UBI :	602206095
LEGAL ENTITY :	PERFORMING ARTS CENTER EASTSIDE
DOING BUSINESS AS :	
 MAILING ADDRESS :	 BUSINESS LOCATION :
855 106TH AVE NE STE 150 BELLEVUE, WA 98004-4382	855 106TH AVE NE # 150 BELLEVUE, WA 98004-0000
 OWNER TYPE :	 NON PROFIT CORP
ACCOUNT OPENED :	02/01/2003
ACCOUNT CLOSED :	OPEN
NAICS CODE :	711310
	12/15/2009 8:38 AM

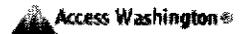
FOR NON-COMMERCIAL USE ONLY

As of 8/31/2005, the Standard Industrial Code (SIC) has been replaced with the North American Industry Classification System Code (NAICS). For more information, [click here](#)

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Voter registration assistance
(Secretary of State)

Washington State Department of
Labor and Industries



**Employer Liability
Certificate**

Department of Labor and Industries

Employer Liability Certificate

Date: 12/15/2009

UBI #: 602 206 095

Legal Business Name: PERFORMING ARTS CENTER EASTSIDE

Account #: 043,872-00

'Doing Business As' Name: PERFORMING ARTS CENTER EASTSID

Estimated Workers Reported: Quarter 3 of Year 2009 "7 to 10 Workers"
(See Description Below)

Workers' Comp Premium Status: Account is current. Firm has voluntarily reported and paid their premiums.

Licensed Contractor? No

Account Representative: T2 / GARY HONC (360)902-4825 - Email:
HONC235@lni.wa.gov

What does "Estimated Workers Reported" mean?

Estimated workers reported represents the number of full time position requiring at least 480 hours of work per calendar quarter. A single 480 hour position may be filled by one person, or several part time workers.

Industrial Insurance Information

Employers report and pay premiums each quarter based on hours of employee work already performed, and are liable for premiums found later to be due. Industrial insurance accounts have no policy periods, cancellation dates, limitations of coverage or waiver of subrogation (See RCW 51.12.050 and 51.16.190).

**License Detail**

Help us improve this online service

License Information:

Entity Name: PERFORMING ARTS CENTER EASTSIDE
Firm Name: PERFORMING ARTS CENTER EASTSIDE
License Type: Washington State Business
Entity Type: Nonprofit Corporation
UBI: 602206095 Business ID:001 Location ID:0001
Status: To check the status of this company, go to [Secretary of State](#)..

Location Address:

855 106TH AVE NE # 150
BELLEVUE, WA, 98004

Mailing Address:

855 106TH AVE NE # 150
BELLEVUE, WA, 98004

Governing People:

DENNIS CONRAD
JANINE FLORENCE
KATHRYN SURACE SMITH
PETER HORVITZ

Information Current as of 12/15/2009 4:32AM Pacific Time

[New Search](#)

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Excluded Parties List System

Search Results Excluded By
Exact Name : Performing Arts Center Eastside
Classification : Entity
State : WASHINGTON
as of 15-Dec-2009 11:42 AM EST

Your search returned no results.



CR# 45397 Date: 12-21-09 Loc: 09-810 PO #: 950611-000
Res 8021

City of Bellevue
 Finance Department - Contracting Services
 450 110th Ave. NE. Bellevue, WA 98004

Contract Routing Form

Current Contract Information:

Contract Title:
 Agreement with PACE (Performing Arts Center Eastside)
Contract Description:
 Agreement between the City of Bellevue and
 Performing Arts Center Eastside
Total Contract Value: \$2,000,000.00
This Amendment Value: 0

Department: Legal - 572
Contract Manager: Lori M. Riordan
Contract Type: Interlocal Agreement (ILA)
Contract Form: Funding Agreement
Budget Expenditure: \$2,000,000

Maximo User: No

Vendor Information:

Is this a new vendor? No
Vendor Name: Performing Arts Center Eastside
JDE Vendor Number: 89462
 Is this vendor an independent contractor? Yes

Tax ID #: 30-0100088
COB License #: None; 12/15/09
UBI #: 602-206-095
Contractor's License #: na.

Contract Terms:

Original Effective Date: 01/01/09 **End Date:** 12/31/10 **Subject To:**

Related Contract Information:

Is this an amendment/change order/renewal? No

Amendment #: _____ **Original Contract Value:** _____
Amendment Effective Date: _____ **Total value of Previous Change Orders:** _____
Original PO #: _____

Council Approval:

Does this contract require council approval? Yes

Council Award Date: 12/7/2009 **Council Action:** Resolution **Legislative #:** 8021

Received

Route:

	In	Out
Contracting Services:	<u>Chris Kelly</u>	<u>12/15/09</u>
Information Technology:	<u>Not Required</u>	
Legal:	<u>[Signature]</u>	
Insurance Reviewed By:	<u>Jeanne Nicolai</u>	<u>12/14/09</u>
Department Director:	<u>Lori Riordan</u>	
Contracting Services:	<u>Chris Kelly</u>	<u>12/15/09</u>
Return To:	<u>Reina McCauley</u>	
City Clerk's Office:	<u>Chaugen</u>	<u>12-21-09</u>

PO #950611-000

Selection Method:

Selection Method: - *Approved by Council prior to receiving paperwork in C.S.*

Roster Service: -

Solicitation Issue Date:

Solicitation Due Date:

Received

Length Bid/Proposal is valid for:

DEC 14 2009

Bid/RFP/RFQ #:

Bid/RFP/RFQ/ITQ Title:

Grant Money involved in contract?

Contracting Services

Quote #	Vendor Name	MWDBE	Fee/Cost
	<i>Performing Arts Center Eastside</i>	<input type="checkbox"/>	<i>\$2,000,000⁰⁰</i>

Budget Information:

Line #	Description	GL Date	Account #	Subtotal	Tax	Total
				<i>\$.2 mil</i>	<i>-</i>	<i>2 mil</i>

Additional Comments:

34668004.563000.7320

per Zymed Yntef 12/15/09.

CONTRACT REVIEW CRITERIA PO# 950611-000

Contract Title: Agreement with PACE

Vendor Name:

Dept. Contracting Services

- a) Does the Contract Routing/Approval Form and Contract have consistent information?
- b) Is the Contract Type and template appropriate for the services performed?
- c) Are the contract values (i.e aggregate values, yearly budget totals, taxable amounts, acct. numbers, etc.) accurate?
- d) Is the JDE vendor name and number accurate?
- e) Does the Contractor have a Bellevue Business License? If not, date Tax Office was notified? *12/15/09*
- f) Do the Contract Start/End Dates comply with current policies (maximum 4 years unless exception noted)?
- g) Is this an amendment or renewal? If so, are the original contract #'s and values indicated?
- h) Has the Selection Method been explained in Additional Comments? Are results attached?
- i) Is there an ordinance (resolution) motion for this contract? If so, is date and # noted? Is copy attached? *yes #8021-*
- j) Does the contractor meet requirements of the Independent Contractor Threshold question?
- k) Is Attachment "A" (Scope of Work and/or Services) attached?
- l) Is Attachment "B" (Insurance Requirements) attached?
- m) Are any additional riders required? If so, which one's? *Crime / Directors*
- n) Does Insurer have a Best rating of A- or better? *A A A*
- o) Is the Contractor identified as the insured?
- p) Does the Contractor have Commercial General Liability, Business Auto Liability, Worker's Compensation, and Employer's Liability/Stop Gap and special coverages as required? *not req'd.*
- q) Are the policy expiration date(s) on the Certificate of Insurance current?
- r) Does the Contractor have a self-insured retention? Is it above \$50,000?
- s) Is the City listed as the Certificate Holder? *not on City*
- t) Does the cancellation wording provide the City with 30 days notice? *45*
- u) Is the Certificate signed? *✓*
- v) Is the City of Bellevue (& contracting partners) listed as an additional insured on the Certificate of Insurance? Is the additional insured status primary and non-contributory?
- w) Is the contract exempt from paying Prevailing Wages? If not, are current Wage Rates attached in Attachment "C"?
- x) Does the Contractor have an open account with the Washington State Department of Revenue? *yes*
- y) Are the Contractor's worker's compensation premiums current? *yes, 7-10 workers*
- z) Is the Contractor on the Federal Debarred Suspended List?
- aa) Does the vendor have an active Professional/Contractor License with the Washington State Department of Licensing? *yes*

RISK MANAGEMENT:

- Are the Insurance Requirements (Attachment B) appropriate for Scope of Work?
- Does the Contractor's Certificate of Insurance comply with the requirements?
- Are there any Limitations of Liability clauses or other risk transfer language problems that shift risk back to the City?
- Does the Hold Harmless clause include language referencing Title 51 releases?

Received

DEC 14 2009

Contracting Services