

In May 2017, the Alliance for the Arts merged into the TOCAP Foundation to form the Thousand Oaks Alliance for the Arts (TOARTS). The requisite liquor license was transferred into TOARTS' name and TOARTS entered into a 30-month agreement with the City to continue to serve as the concessionaire for BAPAC, which is scheduled to expire on June 30, 2019.

DISCUSSION/ANALYSIS:

The ability to purchase refreshments is an important amenity for patrons attending performances. Concessions includes providing and selling various food items, water, soda, juice and alcoholic beverages to patrons attending performances at BAPAC.

Since assuming responsibility for concessions, TOARTS has expanded the mix of menu items and implemented a computerized point of sale system, which together with a policy that allows patrons to bring beverages into the theatre auditoriums, has significantly increased revenues over the last several years. TOARTS also provides sellers to assist artists and touring attractions with the sale of merchandise including t-shirts, CDs, videos, posters and programs. The Theatres Fund Budget benefits from the sale of merchandise by charging artists a commission for the rights to sell their merchandise at BAPAC.

It is important that the City continue to provide patrons with services they have come to expect when attending performances at BAPAC. Having TOARTS continue to hold the liquor license and operate concessions assures that patrons will be able to enjoy this important amenity during their visits to BAPAC performances and events.

Attachment:

Attachment #1 – BAPAC Concession Services Agreement

Project Name: BAPAC Concession Services

**AGREEMENT FOR CONCESSION SERVICES
BETWEEN THE CITY OF THOUSAND OAKS
AND THOUSAND OAKS ALLIANCE FOR THE ARTS**

THIS AGREEMENT is made and entered into this 21st day of May, 2019, by and between the **CITY OF THOUSAND OAKS**, a municipal corporation (herein referred to as "City"), and **THOUSAND OAKS ALLIANCE FOR THE ARTS**, (herein referred to as "TOARTS").

City and TOARTS agree as follows:

1. THEATRE CONCESSIONS

City and TOARTS hereby agree that TOARTS will, in addition to its duties and obligations as the City's nonprofit organization dedicated to advance, support, and present visual and performing arts, cultural events, and arts education at the Bank of America Performing Arts Center, carry out the services described in Section 2. TOARTS warrants it has the qualifications, experience, and personnel to properly and timely perform said services.

2. DESCRIPTION OF SERVICES

The services to be performed by TOARTS are as follows:

City grants TOARTS the sole and exclusive right to provide professional concession services at all events taking place at the Fred Kavli Theatre and Janet & Ray Scherr Forum (herein referred to as "Theatres") with the exception of backstage catering for performers and crew. Services shall generally include the sales of food, alcoholic and non-alcoholic beverages during Theatre events, and as more particularly set forth in the Scope of Work and Technical Requirements, attached as Exhibit "A," and incorporated herein.

3. COMPENSATION AND PAYMENT

(a) Compensation. TOARTS shall pay monthly to the City an amount equal to twenty-percent (20%) of Net Sales with Net Sales defined as gross sales less the cost of sales and general operating expenses.

(b) Payment. TOARTS shall provide City with a monthly financial report in a form satisfactory to City's Project Manager. All payments shall be made on a quarterly basis to City within 30 days after City's approval of the quarterly financial report.

(c) Nonwaiver. City does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by City, or the deposit with City, of any insurance certificates or policies described in Section 9.

9. INSURANCE

Without limiting TOARTS' indemnification of City, and prior to commencement of Work, TOARTS shall obtain, provide, and maintain at its own expense during the term of this agreement, and any extension thereof, policies of insurance of the type and amounts described below and in a form that is satisfactory to the City.

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** TOARTS shall, at TOARTS' sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry General Liability insurance coverage at least as broad as Insurance Services form CG 00 01 in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate for bodily injury, personal and advertising injury and property damage, including with limitation, blanket contractual liability.

2. **Worker's Compensation:** TOARTS shall, at TOARTS' sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry workers' compensation statutory benefits as required by law.

3. **Liquor Liability:** TOARTS shall, at TOARTS' sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry Liquor Liability insurance coverage. Such insurance policy shall, at a minimum, include coverage on an "occurrence" basis, for bodily injury, death and property damage from negligent and/or illegal alcohol service in connection with the work to be performed under this Agreement in an amount not less than \$1,000,000 per occurrence.

Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement, and TOARTS agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this agreement.

If TOARTS maintains higher limits than the minimum shown above, the City requires and shall be entitled to coverage for the higher limits maintained by TOARTS. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

ATTEST:

Cynthia M. Rodriguez, City Clerk

APPROVED AS TO ADMINISTRATION:

Andrew P. Powers, City Manager

APPROVED BY DEPARTMENT HEAD:

Barry McComb, Cultural Affairs Director

APPROVED AS TO FORM:

Office of the City Attorney

Patrick J. Hehir, Assistant City Attorney

EXHIBIT A

CONCESSION SERVICES SCOPE OF WORK AND REQUIREMENTS

1. GENERAL INFORMATION

TOARTS shall provide professional concession services at Theatres consisting of the sales of food, alcoholic and non-alcoholic beverages from permanent or portable concession stands, catered food and for beverages for special functions in Theatre meeting rooms and lounges, and merchandise sales as may be required by artists performing at Theatres.

2. TOARTS

TOARTS is responsible for the following requirements:

- a. **Bookkeeping.** TOARTS shall establish and maintain a system of bookkeeping satisfactory to City's Internal Auditor.
- b. **Cash Control and Inventory Systems.** TOARTS shall use in all permanent and portable concession stands a cash control and inventory system to track sales and product usage.
- c. **City Approval of Personnel.** City shall approve TOARTS' concessions personnel and reserves the right to request and have TOARTS comply with personnel changes to the extent permitted by applicable law. If at any time, any personnel are unsatisfactory to City Project Manager, TOARTS shall make a change in such personnel acceptable to City within ten (10) days of written notice from City.
- d. **Deliveries.** TOARTS shall schedule the movement of products in and out of concession locations to avoid conflicts with events at Theatres.
- e. **Facilities.** For the period of this Agreement, City will furnish at no cost to TOARTS office and storage space, concessions areas and pantry space. The location of any and all mobile concession stands requires the approval of City's Project Manager.
- f. **Facilities Access.** TOARTS and its employees and subcontractors shall be entitled to enter upon and remain in designated Theatre areas only during events and to office areas for the conduct of normal business activities associated with this Agreement.
- g. **Facilities Inspections.** City shall have the right at any time and as often as the City considers necessary to inspect the locations and places of operation of

TOARTS to advise TOARTS of the existence of any conditions which the City determines to be unsafe, unsanitary or detrimental to the public or operation of the Theatres. TOARTS shall correct all such conditions promptly after written notice from City.

- h. **Food Safety.** TOARTS is solely responsible for complying with all State, County and industry standard food safety regulations and procedures, including federal Hazard Analysis Critical Control Point (HACCP) standards, and for any health issues arising from the service of food by TOARTS or its employees or subcontractors.
- i. **Licenses and Permits.** TOARTS shall procure all required licenses and permits and pay all charges and fees necessary for the business to be conducted hereunder, including, but not limited to a full-service liquor license from the California Department of Alcoholic Beverage Control.
- j. **Merchandise Sales.** TOARTS may be required to provide personnel to serve as “sellers” for the sale of artist merchandise prior to, during, and after artist performances at Theatres. TOARTS will be reimbursed by artists at a rate of \$100.00 per seller. City shall retain all merchandise sales commissions paid by artist in exchange for the right to sell artist’s merchandise at Theatres.
- k. **Product Pricing.** TOARTS product offerings and pricing shall be pre-approved by City during the term of this Agreement.
- l. **Promotions.** From time to time, City may direct TOARTS to adopt promotional or marketing efforts to increase the sales of food, beverages and other services.
- m. **Restrictions on Sales.** City’s contracts with rental tenants for particular events at Theatres may stipulate reasonable restrictions on the sale of food, beverages and other concession items because of the nature of the function.
- n. **Sales Reports.** Within two (2) business days following each event, TOARTS shall provide City will a sales recap report.
- o. **Sanitation.** TOARTS shall maintain, at all times, all food preparation and serving areas, and all equipment, fixtures, utensils, and other concessions related items in a clean and sanitary condition and comply with all applicable health and sanitation laws and regulations in effect where the areas are located in Theatres.
- p. **Signage.** Any signage used to display product information and pricing shall be maintained in good condition and working order. All signage must be preapproved by City’s Project Manager prior to installation and shall not conflict with any sponsorship arrangement entered into by City and shall be expressly used to advertise a product for sale at the concessions sales location where the sign is being display.

- q. **Sponsorships and Sampling.** Nothing in this Agreement shall be construed so as to prohibit a rental tenant or sponsor of the Theatres or an event from exhibiting any merchandise in connection with the same, or from dispensing free samples of merchandise. Sampling of food or beverage merchandise shall take place following an event, so as to not impact TOARTS' concessions sales.
- r. **Taxes.** TOARTS shall collect and promptly disburse all taxes required by federal, state and local authorities for any sales conducted by TOARTS in Theatres and shall pay any applicable taxes relating to food service operations, equipment, or inventory (other than with respect to City owned/purchased equipment).
- s. **TIPS, TEAM.** TOARTS shall implement a TIPS or TEAM alcoholic beverage management control system to establish procedures when serving alcoholic beverages to patrons.
- t. **Uniforms and Appearance.** TOARTS shall ensure that employees maintain a professional appearance while performing the duties associated with this Agreement.

3. CITY

City is responsible for the following requirements:

- a. **Notice of Event Schedule.** City shall provide TOARTS with advance notice of scheduled events at Theatres including an estimated attendance for each event.
- b. **City Provided Equipment.** City owns and maintains the basic concessions equipment listed in Exhibit "B" of this Agreement and located in the Theatres permanent concessions stand and Theatres facilities.
- c. **Trash Services.** City is responsible for the removal of trash and recycling materials from Theatres. TOARTS shall comply with all laws and City policies concerning recycling and environmental issues that are in effect during the term of this Agreement.
- d. **Utilities.** City shall furnish, at no cost for consumption, all electric, gas, heat, water and drainage utilities necessary for the food service operations. TOARTS shall use best efforts to practice prudent energy management satisfactory to City. City shall be responsible for maintaining and repairing all utility lines and utility service equipment for TOARTS' locations within Theatres.

EXHIBIT B

CONCESSION SERVICES CITY PROVIDED EQUIPMENT

- Ice Machine, double headed 2,000 lb.
- Ice Machine, crushed ice machine
- Reach in refrigerators, 180 cubic feet



BOARD MEETINGS, EVENTS AND PROJECTS CALENDAR

Updated 4/25/19

MAY 2019

TOARTS Ad Hoc Arts Education Committee

Monday, May 13, 2019 – 5:00 pm, Founders Room

Projects

- Prepare draft operating budget for FY 2019-20.

JUNE 2019

Board Meeting

Thursday, June 13, 2019 – 8:00 am; Acorn Room

- Review preliminary draft of FY 2019-20 operating budget.
- Review budget for November 2019 Angels for the Arts Luncheon.
- Approve FY 2019-20 theater performance grants.
- Approve arts education plan for FY 2019-20.
- Approve new logo design for TOARTS.

Projects

- Distribution of CAP Presents program brochure.
- Approve interpretive content and design of History Wall.
- Approve design and fabrication agreement for Autograph Wall.
- Develop 3-year draft development plan.
- Staff prepares draft of TOARTS Operations staff report for 7/9 City Council meeting.

JULY 2019

City Council Meeting – TOARTS Operations Report

Tuesday, July 9, 2019 – 6:00 pm, Scherr Forum

Board Meeting

Thursday, July 11, 2019 – 8:00 am; Acorn Room

- Review of TOARTS activities over previous six months.
- Approve FY 2019-20 development plan.

- Approve FY 2019-20 operating budget.
- Approve branding/communications plan and budget for FY 2019-20.

AUGUST 2019

Board Meeting

Thursday, August 8, 2019 – 8:00 am; Acorn Room

SEPTEMBER 2019

Board Meeting

Thursday, September 12, 2019 – 8:00 am; Acorn Room

Arts In The Schools – Peter Pan

Wednesday, September 25, 2019 – 10:00 am, 11:30 am; Scherr Forum

Projects

- Hold annual TOARTS Board planning retreat.
- Distribution of CAP Presents fall program brochure.

OCTOBER 2019

Board Meeting

Thursday, October 10, 2019 – 8:00 am; Acorn Room

- Establish Ad Hoc Nominating Committee to review candidate to fill vacant Director seats effective January 1, 2020 and to make recommendations for Directors to be elected to Board Vice Chair and Secretary positions.

BAPAC 25TH Anniversary Events

Friday, October 4, 2019 – TOARTS Gala Dinner; TBD

Sunday, October 6, 2019 – CVUSD Conejo Arts Pops Orchestra with Jackie Evancho

Thursday, October 10, 2019 – TOARTS Concert – TBD

Friday, October 11, 2019 – TOARTS Concert – TBD

Saturday, October 12, 2019 – Resident Company performance

Sunday, October 13, 2019 – Civic Arts Plaza open house and lawn party

NOVEMBER 2019

Board Meeting

Thursday, November 14, 2019 – 8:00 am; Acorn Room

DECEMBER 2019

Board Meeting

Thursday, December 12, 2019 – 8:00 am; Acorn Room

- Election of Board Directors to fill vacant seats effective January 1, 2020.
- Election of Board Vice Chair and Secretary for two-years terms ending December 31, 2021.

Projects

- Staff prepares draft of TOARTS Operations staff report for January 2020 City Council meeting.

JANUARY 2020

Board Meeting

Thursday, January 9, 2020 – 8:00 am; Acorn Room

- Review of TOARTS activities over previous six months.

Arts In The School – National Geographic Live / Kobie Boykins

Friday, January 31, 2020 – Time and location TBD

Projects

- Distribution of CAP Presents spring program brochure.

FEBRUARY 2020

Board Meeting

Thursday, February 13, 2020 – 8:00 am; Acorn Room

Arts In The School – National Geographic Live / Andy Mann

Friday, February 28, 2020 – Time and location TBD

MARCH 2020

Board Meeting

Thursday, March 12, 2020 – 8:00 am; Acorn Room

APRIL 2020

Board Meeting

Thursday, April 9, 2020 – 8:00 am; Acorn Room

Arts In The School – National Geographic Live / Damien Mander

Friday, February 28, 2020 – Time and location TBD

MAY 2020

Board Meeting

Thursday, May 14, 2020 – 8:00 am; Acorn Room

Arts In The School – National Geographic Live / Annie Griffiths

Friday, May 15, 2020 – Time and location TBD

Projects

- Prepare draft operating budget for FY 2020-21.

FUTURE PROJECTS

- Develop BAPAC long-term improvement recommendations
- Board meets with City consultant regarding TOCAP campus recommendations

Autograph Wall Project

- a. Launch fundraising effort to fund the project
- b. Installation of Autograph Wall – August/September 2019
- c. Unveil the Autograph Wall – October 2019

History Wall Project

- a. Launch fundraising effort to fund the project
- b. Installation of History Wall – August/September 2019
- c. Unveil the History Wall – October 2019

FY 2018-19 ACTION TIMELINE

TASK	RESPONSIBILITY	DEADLINE	✓
Approve arts education plan for FY 2018-19	Board	Jul 2018	✓
Expand Kids & The Arts program into schools	Staff (NR, BM)	Fall 2018	✓
Establish 25 th Anniversary Gala Committee	Board, Staff	Feb 2019	✓
Develop branding/communications plan	Staff (CD, NR, BM)	Spring 2019	C
Combine Donors Services into Development Committee	Board	Mar 2019	
Develop arts education plan for FY 2019-20	Committee, Staff	Mar 2019	C
Prepare draft funding priorities for RC and arts organizations	Board, Committee	Apr 2018	C
Approve funding priorities for RC and arts organizations	Board	Apr 2019	✓
Increase applicant pool and funding for Theatre Grants	Board, Staff (NR)	Apr 2019	C
Approve arts education plan for FY 2019-20	Board	Apr 2019	
Develop draft 3-year development plan	Committee, Staff	Apr 2019	
Prepare draft FY 2019-20 operating Budget	Committee, Staff	Apr 2019	C
Approve interpretive content and design for History Wall	Board	Apr 2019	C
Approve design and fabrication agreement for Autograph Wall	Board	Apr 2019	C
Board approves FY 2019-20 development plan	Board	May 2019	
Approve branding/communications plan	Board	Jun 2019	
Approve FY 2019-20 operating Budget	Board	Jun 2019	
Develop BAPAC long-term improvement recommendations	Board, Staff	TBD	
Board meets with City regarding TOCAP campus project	Board	TBD	