

## **Board of Trustees Agenda Item**

**Board Meeting Date:** June 20, 2011

**Title of Item:**

**Performing Arts Alliance Contract Renewal**

**Background and Analysis:**

Board approval is requested for the 2011-2012 Agreements with the 18 groups that consist of the Performing Arts Alliance. These groups provide off-campus arts education to Foothill College students. The contracts have been updated from previous iterations; a copy of two such contracts are attached.. The budget for the Performing Arts Alliance for 2011-2012 is \$386,650.00.

**Recommendation:** President Judy Miner recommends approval.

Submitted by:	Judy Miner x7201
Additional contact names:	Mark Anderson, x7156
Is backup provided?	yes

***FOOTHILL COLLEGE***  
**Division of Fine Arts & Communications**  
***Foothill College Arts Alliance***

TO: Members of the Board of Trustees

FROM: Kay Thornton, Foothill College Performing Arts Alliance Coordinator, x7252

SUBJ: Foothill College Performance Arts Alliance Budget Proposal for 2011-2012

DATE: May 17, 2011

Below is the 2010-2011 Performing Arts Alliance budget.

**Group Name & ID**

Ballet San Jose (BSJ)	\$	10,736.00
Bay Area Music Foundation (BAMF)	\$	11,250.00
Bay Choral Guild (BCG)	\$	2,500.00
Bus Barn Stage Company (BBSC)	\$	17,500.00
California Youth Symphony (CYS)	\$	52,500.00
Cantabile Youth Singers (SCY)	\$	28,050.00
Children's Musical Theater of San Jose (SJCMT)	\$	40,500.00
City Lights Theatre Company (CLTC)	\$	22,000.00
Crystal Children's Choir (CCC)	\$	22,500.00
El Camino Youth Symphony (ECYS)	\$	62,700.00
Gamelan Sekar Jaya (GSJ)	\$	21,200.00
Music For Minors (MFM)	\$	29,000.00
Nova Vista Symphony (NVS)	\$	6000.00
Palo Alto Chamber Orchestra (PACO)	\$	8,500.00
Peninsula Youth Theatre (PYT)	\$	10,500.00
San Jose Taiko (SJT)	\$	15,000.00
Schola Cantorum (SC)	\$	5,700.00
West Bay Opera (WBO)	\$	22,500.00
<b>TOTAL</b>	<b>\$</b>	<b>386,650.00</b>

Two sample contracts are enclosed, one for theatre, one for music.

## **Agreement between the Foothill-De Anza Community College District and Bay Area Music Foundation**

This agreement is entered into on July 1, 2011, between the Foothill- De Anza Community College District on behalf of Foothill College (hereinafter Foothill) and Bay Area Music Foundation pursuant to Title 5 of the California Code of Regulations, section 58058(b). In consideration of the mutual benefits to be derived there from, the parties agree as follows:

### **I. Off Campus Music Performing Arts Program**

A. The Off-Campus Music Performing Arts Program (hereinafter the Program) to be operated pursuant to this agreement is a joint educational undertaking of Foothill and Bay Area Music Foundation designed to fit within the parameters of Title 5 of the California Code of Regulations, section 58050-58060.

B. The purpose of the Program is to train qualified students in specific areas of expertise apart from their general training to become accredited practitioners of music and its related arts for employment.

C. The Program shall consist of specific and appropriate lecture, performance and laboratory courses in music.

D. No course of instruction or other element of the Program's curriculum shall become effective until approved by Foothill.

E. The Program shall conform to the requirements of the Education Code, applicable regulations of the Board of Governors of the California Community Colleges and the rules and regulations of other appropriate regulatory agencies.

F. Classes are authorized only within the geographic boundaries of Alameda, Contra Costa, Santa Clara and San Mateo counties. No trip shall be taken, nor shall any performance be given, outside of these four counties as part of the Foothill College curriculum unless the trip and/or performance is approved in accordance with established Foothill College procedures for the authorization of field trips. Failure to conform to

these procedures will render the trip and/or performance ineligible as a Foothill College class and will not be covered by District liability and student accident insurance.

Unless travel to and from off-campus classes or performances is specifically authorized and provided by the District or a District-chartered vehicle, the instructor of the class is to inform all students that all off-campus classes convene at the off-campus sites for those classes, and that transportation to and from the off-campus sites is the sole responsibility of the student.

## II. Students:

A. Within enrollment limits determined by Foothill in consultation with the Program, Foothill shall admit qualified students to the courses offered as a part of the Program. A student meets the minimum qualifications for admission if, in the judgment of Foothill, he or she has the requisite maturity and experience and has met the academic and technical requirements for participation as solely defined by Foothill. In compliance with Title 5, no student may be enrolled in a PAA course or PAA course series more than six times.

B. Enrollment shall be limited to students who have reached their 14th birthday on the first day of the quarter in which they are enrolled. Students between the ages of 14 and 17 can only be enrolled in six units during the summer quarter and 10 units in each of the quarters of the regular academic year.

C. If applicable, the Program is required to have all K-12 Permission Forms signed by both parent or legal guardian and high school principal and returned to Foothill by the Friday of the second week of each quarter, pursuant to Education Code sections 48800-48802.

D. The Program will pay for mandated fees for its students enrolling in the program. Mandated fees are subject to change pending action by both the state and the Foothill-De Anza Community College District Board of Trustees. At the time of this contract the mandated fees are \$22 per student plus \$24 per unit per student 18 of age and over. Students are considered 18 who have reached their 18th birthday on the first day of the quarter in which they are enrolled.

E. The Program shall be responsible for the activities of the students participating in the Program and for assuring that they observe all applicable rules, regulations and policies.

F. Foothill shall be responsible for keeping all attendance and academic records of the students enrolled in the Program.

G. Students are responsible for applying to the college and obtaining a student identification number (CID) for use in registering for classes. College employees are not responsible for assigning CIDs.

### III. Personnel, Performance and Facilities:

A. In the manner prescribed by Section 58058(b) of Title 5 of the California Code of Regulations, and subject to part B, below, the Program shall provide all instruction for the Program. Each course that is a part of the Program and offered for credit shall be supervised by a person who has the appropriate teaching qualifications required by the Foothill-De Anza Community College District and who is employed and assigned to the Program by the Program after consultation with and approval by Foothill. Notwithstanding any other provision of this Agreement, Foothill shall have the primary right to control and direct the activities of each person assigned by the Program to teach a credit course in the Program while he or she is engaged in such instruction or is otherwise serving Foothill.

B. Notwithstanding the first two sentences of part III.A, instructors selected by the Program shall not commence such work unless and until each has entered into a separate contract with the District, which contract shall meet the requirements of Title 5 of the California Code of Regulations, section 58058. Upon execution of such contract, the instructor shall be an employee of the Program for all purposes, and shall be an employee of the District for the purpose of Title 5 of the California Code of Regulations, section 58058(b).

C. The Program shall select and evaluate professionals who may act as guest artist, lecturer or participant in other performance-related teaching for the Program.

D. In the case where an instructor utilizes an assistant or aide to provide instructional or other services to the students, such instructor's assistant or aide shall not solely supervise or instruct the course unless the following conditions are met: (1) the assistant or aide functions under the exclusive direction of the instructor assigned to the course and not independently; (2) the assistant or aide performs only those duties authorized by law, including, but not limited to, sections 88240 to 88249 of the Education Code; and (3) the instructor is able in physical proximity and range of communication to provide necessary supervision as to be able to work in conjunction with the assistant or aide.

E. Classroom facilities shall be selected by the Program and shall meet all applicable building code and earthquake safety standards.

F. The parties agree that the Program shall purchase workers' compensation in an amount not less than \$1 million, employer's liability of the same amount and general liability insurance worth not less than \$1 million in general liability and \$2 million aggregate. The Program shall also cause District to be listed as an "additional insured" by separate endorsement on general liability insurance. The Program's failure to meet this contractual obligation shall be a material breach justifying immediate cancellation by the District. Groups will provide Foothill-De Anza Community College District with a certificate of insurance annually.

#### IV. Consideration:

A. In consideration of the instructional and other services provided by the Program under the terms of this Agreement Foothill shall pay \$1.87 per student contact hour with a maximum limit of \$11,250.00 for term of contract. This payment per student contact hour is for regular credit courses.

B. Contact hourly payment shall be for rehearsal and performance hours only. Contact hours shall not incorporate other activities, including administration, board meetings or volunteer work.

C. The Program certifies that any direct education costs of the instructional and other services provided by the Program are not being fully funded through any other source.

D. All payments due to the Program shall be addressed as follows:

Bay Area Music Foundation  
P.O. Box 597  
Los Altos, CA 94023

V. Term:

A. This Agreement shall become effective on July 1, 2011, and continue in effect until June 30, 2012, unless sooner terminated by mutual written agreement of the parties.

B. Notwithstanding any other provision of this agreement, if good cause exists, either party may terminate this agreement and any remaining financial obligations under it at the end of any academic quarter by giving the other party written notice of termination at least 30 calendar days before the first day of the next succeeding academic quarter.

C. The terms of the contract are subject to change without prior notice if state funding is significantly reduced or if regulations are changed.

VI. General Provisions:

A. Notwithstanding any other provision of this agreement, Foothill-De Anza Community College District shall have the right to establish rules and regulations governing the operation of the Program if it determines they are necessary to meet the requirements of the Education Code or the regulations of the Board of Governors of the California Community Colleges.

B. Neither party to this Agreement shall, on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, unlawfully deny any person the benefits of nor unlawfully subject any person to discrimination under the program conducted pursuant to this Agreement.

C. The Program shall indemnify and hold harmless Foothill-De Anza Community College District, its officers, agents and employees from any and all claims, demands, suits, judgments or costs, including the cost of defense, arising in any manner from any act or omission of the Program, its officers, agents or employees while engaged in any

activity related to this Agreement. The obligation to defend shall be triggered by notice, to the indemnitor, that such a claim has been served upon the indemnitee.

Foothill-De Anza Community College District shall indemnify and hold harmless the Program, its officers, agents and employees from any and all claims, demands, suits, judgments or costs, including the cost of defense, arising in any manner from any act or omission of Foothill-De Anza Community College District, its officers, agents or employees while engaged in any activity related to this Agreement. The obligation to defend shall be triggered by notice, to the indemnitor, that such a claim has been served upon the indemnitee.

For the purposes of this Part C, as well as for the purposes of any third party claim arising out of the Program's activities hereunder, all instructors and staff involved in the Program shall be considered employees only of the Program notwithstanding section III.B., above.

D. The Artistic Director, or his or her designee, and the Vice President of Instruction at Foothill, or his or her designee, may formalize operational details of the Agreement by letter.

E. This Agreement, and any attachments explicitly referenced and made a part hereof, supersedes and controls over any and all prior or other oral or written agreements, representations or promises (collectively, "promises") made by either party concerning the matters which are covered by this Agreement, including those promises which assertedly supplement or contradict the terms hereof, which promises shall be of no force or effect. This Agreement can be amended only by writing signed by both parties.

F. This agreement, and any documents incorporated herein by express reference, constitute the entire agreement between the parties and supersede any inconsistent, conflicting or additional terms or promises previously discussed, verbally or in writing.

G. This Agreement may be terminated or its provisions may be terminated, changed or amended by mutual agreement of the parties expressed in writing signed by both parties.

H. Any and all disputes between the parties shall be resolved through binding arbitration pursuant to California Code of Civil Procedure, section 1280 et seq., with the non-prevailing party responsible for the arbitrator's fee, but with each side otherwise bearing its own costs and attorneys fees.

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of the parties hereto.

FOOTHILL-DE ANZA COMMUNITY COLLEGE  
DISTRICT ON BEHALF OF FOOTHILL COLLEGE

\_\_\_\_\_  
Mark Anderson,  
Dean of Fine Arts and Communication

Date: \_\_\_\_\_

\_\_\_\_\_  
Shirley Treanor, Foothill Vice President  
Educational Resources and Instruction

Date: \_\_\_\_\_

\_\_\_\_\_  
Kevin McElroy, Vice Chancellor of  
Business Services

Date: \_\_\_\_\_

BAY AREA MUSIC FOUNDATION

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
(Please print name)

\_\_\_\_\_  
(Title)

## **Agreement between the Foothill-De Anza Community College District and Bus Barn Stage Company**

This agreement is entered into on July 1, 2011, between the Foothill- De Anza Community College District on behalf of Foothill College (hereinafter Foothill) and Bus Barn Stage Company pursuant to Title 5 of the California Code of Regulations, section 58058(b). In consideration of the mutual benefits to be derived there from, the parties agree as follows:

**I. Off Campus Theatre Performing Arts Program**

A. The Off-Campus Theatre Performing Arts Program (hereinafter the Program) to be operated pursuant to this agreement is a joint educational undertaking of Foothill and Bus Barn Stage Company designed to fit within the parameters of Title 5 of the California Code of Regulations, section 58050-58060.

B. The purpose of the Program is to train qualified students in specific areas of expertise apart from their general training to become accredited practitioners of theatre and its related arts for employment.

C. The Program shall consist of specific and appropriate lecture, performance and laboratory courses in theatre.

D. No course of instruction or other element of the Program's curriculum shall become effective until approved by Foothill.

E. The Program shall conform to the requirements of the Education Code, applicable regulations of the Board of Governors of the California Community Colleges and the rules and regulations of other appropriate regulatory agencies.

F. Classes are authorized only within the geographic boundaries of Alameda, Contra Costa, Santa Clara and San Mateo counties. No trip shall be taken, nor shall any performance be given, outside of these four counties as part of the Foothill College curriculum unless the trip and/or performance is approved in accordance with established Foothill College procedures for the authorization of field trips. Failure to conform to

these procedures will render the trip and/or performance ineligible as a Foothill College class and will not be covered by District liability and student accident insurance.

Unless travel to and from off-campus classes or performances is specifically authorized and provided by the District or a District-chartered vehicle, the instructor of the class is to inform all students that all off-campus classes convene at the off-campus sites for those classes, and that transportation to and from the off-campus sites is the sole responsibility of the student.

II. Students:

A. Within enrollment limits determined by Foothill in consultation with the Program, Foothill shall admit qualified students to the courses offered as a part of the Program. A student meets the minimum qualifications for admission if, in the judgment of Foothill, he or she has the requisite maturity and experience and has met the academic and technical requirements for participation as solely defined by Foothill. In compliance with Title 5, no student may be enrolled in a PAA course or PAA course series more than six times.

B. Enrollment shall be limited to students who have reached their 14th birthday on the first day of the quarter in which they are enrolled. Students between the ages of 14 and 17 can only be enrolled in six units during the summer quarter and 10 units in each of the quarters of the regular academic year.

C. If applicable, the Program is required to have all K-12 Permission Forms signed by both parent or legal guardian and high school principal and returned to Foothill by the Friday of the second week of each quarter, pursuant to Education Code sections 48800-48802.

D. The Program will pay for mandated fees for its students enrolling in the program. Mandated fees are subject to change pending action by both the state and the Foothill-De Anza Community College District Board of Trustees. At the time of this contract the mandated fees are \$22 per student plus \$24 per unit per student 18 of age and over. Students are considered 18 who have reached their 18th birthday on the first day of the quarter in which they are enrolled.

E. The Program shall be responsible for the activities of the students participating in the Program and for assuring that they observe all applicable rules, regulations and policies.

F. Foothill shall be responsible for keeping all attendance and academic records of the students enrolled in the Program.

G. Students are responsible for applying to the college and obtaining a student identification number (CID) for use in registering for classes. College employees are not responsible for assigning CIDs.

### III. Personnel, Performance and Facilities:

A. In the manner prescribed by Section 58058(b) of Title 5 of the California Code of Regulations, and subject to part B, below, the Program shall provide all instruction for the Program. Each course that is a part of the Program and offered for credit shall be supervised by a person who has the appropriate teaching qualifications required by the Foothill-De Anza Community College District and who is employed and assigned to the Program by the Program after consultation with and approval by Foothill. Notwithstanding any other provision of this Agreement, Foothill shall have the primary right to control and direct the activities of each person assigned by the Program to teach a credit course in the Program while he or she is engaged in such instruction or is otherwise serving Foothill.

B. Notwithstanding the first two sentences of part III.A, instructors selected by the Program shall not commence such work unless and until each has entered into a separate contract with the District, which contract shall meet the requirements of Title 5 of the California Code of Regulations, section 58058. Upon execution of such contract, the instructor shall be an employee of the Program for all purposes, and shall be an employee of the District for the purpose of Title 5 of the California Code of Regulations, section 58058(b).

C. The Program shall select and evaluate professionals who may act as guest artist, lecturer or participant in other performance-related teaching for the Program.

D. In the case where an instructor utilizes an assistant or aide to provide instructional or other services to the students, such instructor's assistant or aide shall not solely supervise or instruct the course unless the following conditions are met: (1) the assistant or aide functions under the exclusive direction of the instructor assigned to the course and not independently; (2) the assistant or aide performs only those duties authorized by law, including, but not limited to, sections 88240 to 88249 of the Education Code; and (3) the instructor is able in physical proximity and range of communication to provide necessary supervision as to be able to work in conjunction with the assistant or aide.

E. Classroom facilities shall be selected by the Program and shall meet all applicable building code and earthquake safety standards.

F. The parties agree that the Program shall purchase workers' compensation in an amount not less than \$1 million, employer's liability of the same amount and general liability insurance worth not less than \$1 million in general liability and \$2 million aggregate. The Program shall also cause District to be listed as an "additional insured" by separate endorsement on general liability insurance. The Program's failure to meet this contractual obligation shall be a material breach justifying immediate cancellation by the District. Groups will provide Foothill-De Anza Community College District with a certificate of insurance annually.

#### IV. Consideration:

A. In consideration of the instructional and other services provided by the Program under the terms of this Agreement Foothill shall pay \$0.88 per student contact hour with a maximum limit of \$17,500.00 for term of contract. This payment per student contact hour is for regular credit courses.

B. Contact hourly payment shall be for rehearsal and performance hours only. Contact hours shall not incorporate other activities, including administration, board meetings or volunteer work.

C. The Program certifies that any direct education costs of the instructional and other services provided by the Program are not being fully funded through any other source.

D. All payments due to the Program shall be addressed as follows:

Bus Barn Stage Company  
PO Box 151  
Los Altos, CA 94023

V. Term:

A. This Agreement shall become effective on July 1, 2011, and continue in effect until June 30, 2012, unless sooner terminated by mutual written agreement of the parties.

B. Notwithstanding any other provision of this agreement, if good cause exists, either party may terminate this agreement and any remaining financial obligations under it at the end of any academic quarter by giving the other party written notice of termination at least 30 calendar days before the first day of the next succeeding academic quarter.

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B. Neither party to this Agreement shall, on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, unlawfully deny any person the benefits of nor unlawfully subject any person to discrimination under the program conducted pursuant to this Agreement.

C. The Program shall indemnify and hold harmless Foothill-De Anza Community College District, its officers, agents and employees from any and all claims, demands, suits, judgments or costs, including the cost of defense, arising in any manner from any

act or omission of the Program, its officers, agents or employees while engaged in any activity related to this Agreement. The obligation to defend shall be triggered by notice, to the indemnitor, that such a claim has been served upon the indemnitee.

Foothill-De Anza Community College District shall indemnify and hold harmless the Program, its officers, agents and employees from any and all claims, demands, suits, judgments or costs, including the cost of defense, arising in any manner from any act or omission of Foothill-De Anza Community College District, its officers, agents or employees while engaged in any activity related to this Agreement. The obligation to defend shall be triggered by notice, to the indemnitor, that such a claim has been served upon the indemnitee.

For the purposes of this Part C, as well as for the purposes of any third party claim arising out of the Program's activities hereunder, all instructors and staff involved in the Program shall be considered employees only of the Program notwithstanding section III.B., above.

D. The Artistic Director, or his or her designee, and the Vice President of Instruction at Foothill, or his or her designee, may formalize operational details of the Agreement by letter.

E. This Agreement, and any attachments explicitly referenced and made a part hereof, supersedes and controls over any and all prior or other oral or written agreements, representations or promises (collectively, "promises") made by either party concerning the matters which are covered by this Agreement, including those promises which assertedly supplement or contradict the terms hereof, which promises shall be of no force or effect. This Agreement can be amended only by writing signed by both parties.

F. This agreement, and any documents incorporated herein by express reference, constitute the entire agreement between the parties and supersede any inconsistent, conflicting or additional terms or promises previously discussed, verbally or in writing.

G. This Agreement may be terminated or its provisions may be terminated, changed or amended by mutual agreement of the parties expressed in writing signed by both parties.

H. Any and all disputes between the parties shall be resolved through binding arbitration pursuant to California Code of Civil Procedure, section 1280 et seq., with the non-prevailing party responsible for the arbitrator's fee, but with each side otherwise bearing its own costs and attorneys fees.

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of the parties hereto.

FOOTHILL-DE ANZA COMMUNITY COLLEGE  
DISTRICT ON BEHALF OF FOOTHILL COLLEGE

\_\_\_\_\_  
Mark Anderson,  
Dean of Fine Arts and Communication

Date: \_\_\_\_\_

\_\_\_\_\_  
Shirley Treanor, Foothill Vice President  
Educational Resources and Instruction

Date: \_\_\_\_\_

\_\_\_\_\_  
Kevin McElroy, Vice Chancellor of  
Business Services

Date: \_\_\_\_\_

BUS BARN STAGE COMPANY

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
(Please print name)

\_\_\_\_\_  
(Title)