

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one: <input checked="" type="checkbox"/> Budget Appropriation <input type="checkbox"/> Budget Transfer	100-3652	\$26,000	100-168-4237	\$26,000

Explain the reason for the budget change:

Background:

At the March 20, 2012 City Council meeting, City Council directed Recreation Services staff to continue to offer a children's theatre program in Milpitas through contract services. Recreation has been working with Center Stage Performing Arts to provide a quality children's theatre program for the 2012-2013 season. The season includes three productions and runs from August 2012 – July 2013. Approximately 40 to 80 children may be cast in any single production.

Milpitas Recreation Services and Center Stage Performing Arts are currently rehearsing for the Fall Production for which participants have already registered and paid cast fees. Staff has drafted per the Theatre Program cast fees, the attached contact agreement for August 27, 2012 – August 10, 2013.

Fiscal Impact: None. Contract cost is from participants' registration fees.

Recommendation:

- 1) Authorize the City Manager to execute contract with Center Stage Performing Arts and for an amount not to exceed \$26,000.
- 2) Approve budget appropriation of \$26,000 into the Cultural Arts budget.

Check if City Council Approval required.

Meeting Date: November 6, 2012

Requested by:	Renee Lorentzen	Date: October 30, 2012
Reviewed by:	Finance Director: Emma Karlen <i>McKee</i>	Date: 10/31/12
Approved by:	City Manager:	Date:

Date approved by City Council, if required:

Confirmed by:

AGREEMENT FOR CITY OF MILPITAS RECREATION SERVICES

Instructor Name:

Center Stage Performing Arts

Address:

2415 San Ramon Valley Blvd. Suite 4393
San Ramon, CA 94538

Social Security Number:

Phone Number: (408) 707-7158

This Agreement for Recreation Services is made by and between the City of Milpitas ("City") and **Center Stage Performing Arts**, ("Contractor") this agreement will be in effect from **August 27, 2012, through August 10, 2013**, in Milpitas, California.

1. Independent Contractor. At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement. Otherwise, City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System(PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
2. Contractor No Agent. Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.
3. Services. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide the City with the following services: **Milpitas Recreation Childrens' Theatre Program (see attached Schedule)**
 - A. Contractor shall supply and furnish all necessary work, labor, and materials in carrying out this Agreement at Contractor's sole cost and expense.
4. Compensation and City Cancellation Powers. It is agreed that payment to Contractor for work rendered hereunder shall be made within (30) days of completion of each production as herein indicated:

Payment Rate**: **90 %** receipts for program cast fees (excluding the individual \$20 non-resident fee) of enrollment totals at the end of the production. (Recreation Services is not responsible for compensating Contractors for participants who withdraw from the program due to dissatisfaction as stated in the Recreation Services Customer Satisfaction Policy.)

of productions: 3
Minimum Participants (per production): 20
Maximum Participants (per production):80

- A. In the event of a rehearsal cancellation by the Contractor resulting in a make-up rehearsal, the Contractor payment shall be reduced by any necessary refunds distributed to participants who are unable to attend the make-up rehearsal.
- B. If a production does not reach the stated minimum number of participants prior to the first rehearsal, the City may in its sole discretion cancel the production, without compensation to the Contractor. Likewise, in the event the total number of participants drops below the minimum required production size prior to the beginning of the no-refund cancellation period as set forth in the Recreation Customer Satisfaction Policy, then the City may in its sole discretion cancel the remaining production rehearsals. In that event, the City shall pay Contractor a prorated amount only for those production rehearsals taught, up to the time of cancellation.
- C. City will not withhold any amount for federal or state income taxes. All instructors must complete a W-9 form and shall be responsible for payment of any applicable federal or state taxes.

5. Licenses and Permits; Compliance with Laws. Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to provide services pursuant to this agreement. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement a valid business license from City and a copy of the license shall be included with the original signed contract.

6. Insurance **Insurance requirement waived.**

The City Attorney jointly with the Risk Manager (Finance Director) of the City have the authority to waive or vary any provision of Section 6. Any such waiver or variation shall not be effective unless made in writing and included in the Scope of Work attached in Exhibit A.

Should Contractor employ any party or person in connection with Contractor's operations under this contract, Contractor shall obtain Worker's Compensation Insurance and will provide the City with proof thereof. The Labor Code of the Workers' compensation laws of California states that an employer must cover employees for work-related injury and illness. As an Independent Contractor, and not an agent or employee of City, the Contractor will therefore not be covered under the City's Worker's Compensation Fund. Additionally, City will not obtain unemployment insurance for the Independent Contractor. Therefore, City's insurance company will not defend or pay out claims brought against an Independent contractor of City. Contractor understands that as an Independent Contractor, he/she is responsible for his/her own insurance and liability coverage. Contractor initials

7. No Assignment. Contractor has agreed that the services called for under this Agreement are personal services, and Contractor shall not, under any circumstances, assign this contract. Any attempt to do so shall render this contract void and of no further effect.

8. Publicity and Promotion. Contractor grants full permission to the City for use of his/her name and photographs, videographs, motion pictures or recordings for any publicity and promotional purposes without charge to the City.

9. Background Checks. If class/program is open to youth under the age of 18 years, Contractor and any assistant instructors/subcontractors agree to fulfill all fingerprint/background checks prior to the first class. Contractor/assistant instructor/subcontractor is not eligible to work until the clearance is received from the Department of Justice and notified by a Parks & Recreation Services representative. The Contractor attests that they have never been convicted of a crime, including military offenses, other than minor traffic offenses, which resulted in conviction and/or imprisonment.

10. Entire Agreement. This Agreement represents the entire and integrated agreement between the City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

11. Indemnification. Contractor hereby indemnifies and holds harmless and releases and discharges the City of Milpitas, its officers, agents, employees, and volunteers from any and all liability for any injuries to persons or property suffered by any persons (including but not limited to contractor, contractor's employees or students) arising from or connected with this Agreement or Contractor's activities pursuant to this Agreement. Therefore, Contractor evaluated the inherent risks involved in operating his/her activity and has sufficient insurance coverage. Contractor initials

12. Governing Law. The laws of the State of California shall govern this Agreement.

13. Compliance with Applicable Laws. Contractor shall comply with all laws applicable to the performance of the work hereunder.

14. Noncompliance and Equal Opportunity. Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in the provision or any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

CONTRACTOR SIGNATURE
DATE

PARKS & RECREATION SERVICES REPRESENTATIVE
DATE