

Ohlone Community College District Marketing Services Agreement

This agreement is made on _____ between the Ohlone Community College District (hereinafter called "District") and the Fremont Symphony Orchestra (hereinafter called "Orchestra") for management services.

- I. In consideration of the mutual promises and agreements of the parties hereto, as hereinafter set forth, it is agreed as follows:
 1. In consideration of the sum of 10% of the actual cost of publicity, design, printing, marketing, advertising handled by the District and in consideration of the general terms below, the District shall administer the marketing of the Orchestra as provided more specifically in this Marketing Services Agreement.
 2. This agreement shall automatically terminate on June 30, 2009 unless renewed in writing for no more than one additional year by the mutual written consent of both parties.

- II. General Terms
 1. Unsold event tickets will be made available to Ohlone College music students three days before performances at a reduced rate of \$10 per ticket.
 2. Orchestra's annual Fremont children's concerts will take place on the Ohlone College Fremont campus, pending availability of the gymnasium.

- III. Marketing Services
 1. The estimated amount to be expended by the Orchestra for marketing is expected to be as follows:
 - To be invoiced and paid directly to vendors:
 - \$1945.00 for design of two (2) brochures
 - \$3600.00 for printing of two (2) brochures
 - \$554, 10% professional service fee paid directly to Ohlone
 - Expected optional marketing expenses
 - a. To vendors \$6000.00
 - b. To Ohlone \$600.00

- IV. Indemnification and Warranty
 1. The District shall defend, indemnify and hold harmless the Orchestra and its employees and agents from and against any and all liability, loss expense (including reasonable attorney fees) and claims for injury and damages arising out of District's performance of its obligations under this Agreement, but only in proportion to and to the extent that such liability, loss, expense, attorney fees and/or claims for injury or damages are proximately caused by or proximately

result from the negligent or intentional acts or omissions of the District, its officers, employees or agents. This Section V-1 shall apply only to the acts and omissions of the District, its officers, agents and employees occurring during the term of this Agreement and extension hereto agreed to by the parties in writing.

2. Orchestra shall defend, indemnify and hold harmless the District and its employees and agents from and against any and all liability, loss, expense (including reasonable attorney fees) and claims for injury and damages arising out of Orchestra's performance of its obligations under this Agreement, but only in proportion to and to the extent that such liability, loss, expense, attorney fees and/or claims for injury or damages are proximately caused by or proximately result from the negligent or intentional acts or omissions of the District, its officers, employees or agents.

V. General Provisions

1. District and Orchestra are not partners or joint ventures and nothing herein contained shall be construed to create a partnership or joint venture in any respect.
2. Orchestra shall not delegate, sublet or assign any of its rights, privileges or obligations under this Agreement, or interest therein, and shall not attempt to confer any of its rights or obligations under this Agreement to any third party.
3. Any notice, demand, request, consent, approval or communication that either party desires or is required to give the other party shall be in writing and either served personally or by first-class mail as follows:

To the District: Walt Birkedahl, Dean of Fine Arts
 Ohlone College
 43600 Mission Boulevard
 Fremont, CA 94539

To the Orchestra: Susan Rose, Executive Director
 Fremont Symphony Orchestra
 3375 Country Dr
 Fremont, CA 94536

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4. This Agreement, together with the appendices hereto and the District policies, rules, regulations and practices to which it refers, constitutes the entire Agreement between the parties hereto, and may not be amended except by a writing duly authorized and signed by both parties.

VI. Signatures

Ohlone Community College District

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Fremont Symphony Orchestra

Signature: _____

Printed Name: _____

Title: _____

Date: _____