

AGREEMENT

Between

**CITY OF OCEAN CITY
CAPE MAY COUNTY, NEW JERSEY**

And

**AMERICAN FEDERATION OF MUSICIANS
LOCAL 661-708**

February 1, 2010 through January 31, 2012

TABLE OF CONTENTS

<u>ARTICLE</u>		<u>PAGE</u>
	PREAMBLE	1
I	UNION RECOGNITION	1
II	DUES DEDUCTION	1
III	SIZE OF ORCHESTRA	4
IV	ARTISTIC DISMISSAL	10
V	PROBATION/NON-PROBATION, TERMINATION AND DEMOTION	10
VI	APPEALS COMMITTEE	14
VII	AMERICAN FEDERATION OF MUSICIANS AND EMPLOYER PENSION FUND (AFM-EPF)	15
VIII	COMPENSATION	16
IX	SERVICES	19
X	GRIEVANCE PROCEDURE	22
XI	UNION ACCESS	25
XII	NON-DISCRIMINATION	26
XIII	MANAGEMENT RIGHTS	26
XIV	ARTISTIC COMMITTEE	27
XV	RESCHEDULING/CANCELLATION OF SERVICES FORCE MAJEURE	27
XVI	DRESS REQUIREMENTS	28
XVII	RECORDING	29
XVIII	PROGRESSIVE DISCIPLINE	31
XIX	TERM OF AGREEMENT	34

PREAMBLE

This agreement, entered into this ____ day of July, 2010, by and between American Federation of Musicians Local 661-708 (hereinafter referred to as the “Union”), and the City of Ocean City, New Jersey (hereinafter referred to as the “City”).

ARTICLE I

UNION RECOGNITION

The City recognizes the Union as the exclusive representative for collective negotiations for the instrumental musicians of the Ocean City Pops Orchestra, who are non-probationary members of the orchestra and who have worked for a minimum of 70% of the performances for the previous season.

The parties agree that the provisions of this collective bargaining agreement are in force for all services provided by musicians in relation to performances of the Ocean City Pops Orchestra, as scheduled and approved by the City, with the exception of those performances sponsored or funded by the Music Performance Fund of the American Federation of Musicians.

ARTICLE II

DUES DEDUCTION

1. The City agrees to deduct from the salaries of its employees subject to this Agreement dues for the Union (this includes subs, extras, probationary and non-probationary musicians.) Such deductions shall be made in compliance with Chapter 310, Public Laws of 1967, N.J.S.A. (R.S. 52:14-15.9(e)), as amended. Said monies together

with records of any corrections shall be transmitted to the Union Treasurer within five (5) working days from the payroll period ending date of each bi-weekly payroll period.

2. If, during the life of this Agreement there shall be any change in the rate of membership dues, the Union shall furnish to the City written notice 30 days prior to the effective date of such change and shall furnish new authorizations from its members showing the authorized deduction for such employees.

3. The Union will provide the necessary "check-off" authorization form and the Union will secure the signatures of its members on the form and deliver the signed forms to the City Treasurer. The Union shall indemnify, defend and save the City harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken by the city in reliance upon salary deduction authorization cards submitted by the Union to the City or in reliance upon the official notification on the letterhead of the Union and signed by the President and Secretary of the Union advising of such changed deduction.

4. The Union Agrees that there shall be no discrimination, intimidation, restraint, coercion, harassment or pressure by it or its officers, agents or members against any employee who refuses or fails to execute an authorization card.

5. Any such written authorization may be withdrawn at any time by the filing of notice of such withdrawal with the City Treasurer. The filing of notice of withdrawal shall be effective to halt deductions as of January 1st or July 1st next succeeding the date on which the notice of withdrawal is filed, in accordance with N.J.S.A. 52:14-15.9(e) as amended.

6. Any employee in the bargaining unit on the effective date of this Agreement who does not join the Union within 30 days of initial employment within the unit, and any permanent employee previously employed with the unit who does not join within ten (10) days of re-entry into employment with the unit shall, as a condition of employment, pay a representation fee to the Union by automatic payroll deduction. This representation fee shall be paid in an amount not greater than 85% of the regular Union membership dues, fees and assessments as certified to the employer by the Union. The Union may revise its certification on the amount of the representation fee at any time to reflect changes in the regular Union membership dues, fees and assessments. The Union's entitlement to the representation fee shall continue beyond the termination date of the Agreement as long as the Union remains the majority representative of the employees in the unit, provided that no modification is made in the provision by a successor agreement between the Union and the Employer.

7. The Union agrees to furnish the City with a copy of its "demand and return system" which must be established and maintained by the Union in accordance with the law.

8. The Union shall indemnify, defend and save the City harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of any action taken in making deductions and remitting the same to the Union pursuant to this Article.

ARTICLE III

SIZE OF ORCHESTRA

1. The Ocean City Pops Orchestra as of the date of this agreement consists of the following positions:

Violin I - 4
Violin II - 4 (1 position is grant funded)
Viola -2
Cello -2
Bass -1
Flute -1
Oboe -1
Clarinet –1
Bassoon -1
Horn -2
Trumpet - 2
Trombone – 1
Bass Trombone/Tuba – 1 (grant funded)
Piano/Keyboard -1
Percussion -1

Any permanent change among these positions will be made for good and necessary reasons, and reviewed by the Director of Community Services and the Business Administrator of Ocean City, in consultation with the Union. It is recognized that the Artistic

Director may increase or decrease the size of the orchestra according to the program needs of each concert.

2. Excepting guest soloists and a limited number of specifically designated, educationally oriented events, all players performing with the Ocean City Pops Orchestra must be compensated, professional-level musicians. Student interns may rehearse and/or perform with the orchestra after having successfully auditioned for a standard audition committee. If accepted, the intern may perform as an extra musician for expanded orchestra programs.

3. Reduction in core orchestra size should be based on industry-standard orchestrations and reductions (i.e., having no strings on big band night, or no brass on all string program, etc., are all acceptable reductions). Soloists (instrumental or vocal) must be accompanied by live musicians.

- a. In the event that a part is written for one person doubling on several instruments, the person hired must play the part on all of the required instruments as indicated in the orchestration. The parts written for that instrument must be offered to a tenured player if a qualified person cannot be found.
- b. When programs heavily emphasize brass no matter what the instrumentation, the 2nd chair player will be called upon to assist the principal player at the request of the principal player and in consultation with the Music Director on a case by case basis. The 2nd chair player will receive a premium of five percent (5%) for assisting the principal player.

4. When it becomes necessary to reduce the size of the orchestra because a grant-funded position will no longer receive the grant funding, the following procedure will be followed:

The last person hired into that section where the grant-funded position resides will be the person who will not regularly play in the orchestra. For those concerts with expanded orchestra programs, that person will be invited back to play in that section. In addition, that person will be the first called on the substitute list for that position.

5. Auditions and Vacancies

A. When time permits, all genuine vacancies in the orchestra (consisting of one season or more of employment) shall be filled by the audition procedure defined herein. Vacancies may result from:

1. A musician resigns, retires or dies.
2. A musician's dismissal has been finalized in accordance with the provisions of the contract.
3. A full-time position is added to the orchestra.

B. Auditions shall be open to any qualified applicant.

C. Auditions shall be advertised in appropriate places, including the International Musician publication (when time permits) and may also be advertised locally.

D. The details of the vacancy shall be given to the Union, the Orchestra Committee, and the Audition Committee.

E. The Audition Committee shall include the Artistic Director, one other non-probationary member of the orchestra selected by the Artistic Director, and

two non-probationary musicians selected by the Orchestra Committee. When possible, the Audition Committee should include the principal of the section with the vacancy.

- F. The person creating the vacancy and any individual with a potential conflict of interest shall not serve on the committee.
- G. The Artistic Director shall determine the applicants selected for an audition. All applicants selected shall be sent clear instructions detailing the date, time and the place of the audition, and the complete audition repertoire. Any music supplied to the applicants shall be legible and identical for all applicants.
- H. The audition repertoire shall be selected by the Artistic Director in consultation with the principal players of that orchestral choir.
- I. The auditions shall be conducted as follows:
 - 1. All selected applicants shall be made aware of the policies and procedures governing the audition.
 - 2. Each applicant's artistic abilities shall be judged solely on the basis of their performance in the audition.
 - 3. Candidates shall be given sufficient time to prepare, and best efforts will be made to provide a private room for 20 minutes prior to the audition.
 - 4. Music and parts supplied for the audition shall be in good condition, legible and clearly marked as intended to be played for the audition.
 - 5. Anonymity of the candidates shall be maintained in all auditions.

6. A screen or similar device shall separate the candidates from the Audition Committee.
7. Each candidate shall be required to perform the same pieces that were prepared in advance and may be required, at the discretion of the Audition Committee, to perform a group of orchestral excerpts read at sight.
8. The Audition Committee shall determine the manner by which the applicants will be narrowed, and ultimately the winner will be selected under the following guidelines:
 - a. Prior to taking any vote, the committee shall discuss the applicants among themselves freely and candidly so that the decision will be as informed as possible.
 - b. Upon completion of preliminary auditions, the Artistic Director and the Audition Committee shall jointly decide by a simple majority vote which candidates, if any, shall advance to the final round of auditions.
 - c. Following the final round of auditions, the Audition Committee shall decide by simple majority vote which candidate, if any, shall be offered a probationary position.
 - d. If the vote results in a tie, then the Artistic Director shall have an additional vote, which the Artistic Director shall exercise only after consultation with the committee. If more than one person is found to be qualified, the committee may offer the position to the

runner(s) up in the event that the winner does not accept employment. In this event (where more than one candidate is found to be acceptable for employment), written notification of this outcome will be forwarded to the Orchestra Players Committee within one week of the audition.

e. If the vote results in a tie, then the Audition Committee may exercise the option of the tied candidates auditioning again and taking another vote prior to the action, described in Section d. above, takes place in the event of another tie.

9. Candidates shall be notified of their status in the audition process promptly upon such determination.

10. A Union representative shall be offered the right to be present at all auditions.

11. No procedure outlined herein shall be in conflict with any policy of the City of Ocean City or the New Jersey Department of Personnel.

6. Substitutes

A. A substitute list shall be compiled by the Artistic Director in consultation with the principals of the orchestral choir. All things being equal, members of Local #661-708 will be given preference.

B. The principal of the section may consult with other members of the section regarding qualified musicians to be considered for the substitute list.

C. When a substitute is needed, the musicians on the list shall be contacted in the order specified.

- D. The substitutes shall be contacted as soon as possible and practical, when the need arises.
- E. When contacted, the substitute shall be provided full information regarding the appearance, including: date, time, place, length of rehearsal, length of concert, required dress, compensation and instrumentation.
- F. When the substitute list is exhausted, the use of substitutes outside the list shall be determined by the Artistic Director, in consultation with the section principal, if appropriate.
- G. The Union shall receive a copy of the substitute list.
- H. The substitute list shall be reviewed and revised as necessary, but annually at a minimum.

ARTICLE IV

ARTISTIC DISMISSAL

The Music Director may not initiate non-renewal for artistic reasons in his/her first year or his/her final year of employment.

ARTICLE V

PROBATION/NON-PROBATION, TERMINATION AND DEMOTION

1. Non-probationary musicians shall have the right of first refusal for all scheduled services of the Ocean City Pops Orchestra. All musicians must perform a minimum of 70% of performances offered in order to retain non-probationary status (See Appendix "A" for a listing of all non-probationary musicians who will be offered the right of first refusal for all performances of the Ocean City Pops for the following season). The

70% minimum applies to the “hiring letter” dates of late June through mid-September plus New Year’s Eve. Services missed due to illness, injury, emergencies, sabbaticals and absences excused by the Artistic Director do not count toward the 70% threshold.

a. When a musician has reached 75%, the musician will receive notification in writing from the Artistic Director or designee.

b. When the musician has reached 69%, the musician will receive notification in writing from the Artistic Director that their status has been changed from non-probationary to probationary, effective immediately. A copy will be sent to the Union President.

2. The first season of a newly hired musician’s employment shall be considered probationary. The Artistic Director may extend the probationary period of a musician, not to exceed one more consecutive season. A probationary musician shall meet with the Artistic Director to discuss the specific areas of the musician’s musical performance, that do or do not require improvement, at least two (2) times during the OCPO season. The musician can request a member of the Orchestra Players Committee at each of these meetings. The details of these meetings (including date, start and end times, specific areas of the musician’s musical performance requiring improvement and the names of the parties in attendance) shall be documented in writing by the Artistic Director and initialed by the Artistic Director and the probationary musician at the conclusion of each meeting. The probationary musician shall be given a copy of the document. The original shall remain in the possession of the Artistic Director. A probationary musician must be given notice, no later than January 1st, if he/she will not be re-engaged for the next season, or if the probationary period will be extended. A probationary musician, who does not receive notice of non-engagement or an extended probationary period by January 1st, shall be

considered a non-probationary member of the orchestra and shall be offered a contract for the following season, provided there is a position available.

3. A non-probationary musician cannot be terminated or demoted except for demonstrated consistent and unremedied failure of musical performance or for just cause. A non-probationary musician, whose musical performance is considered by the Artistic Director to be deficient enough to warrant termination or demotion, shall meet with the Artistic Director to discuss the specific areas of the musician's musical performance that require improvement at least two (2) times during the OCPO season. The musician can request a member of the Orchestra Players Committee at each of these meetings. The details of said meeting (including date, start and end times, specific areas of the musician's musical performance requiring improvement and the names of the parties in attendance) shall be documented in writing by the Artistic Director and initialed by the Artistic Director and the non-probationary musician at the conclusion of each meeting. The non-probationary musician shall be given a copy of the document. The original shall remain in the possession of the Artistic Director.

4. If the Artistic Director is still dissatisfied with the musician's performance, the Artistic Director shall convene a meeting with the non-probationary musician whose performance is under serious review. A representative of the Union shall be present. The non-probationary musician will have the opportunity to voluntarily accept the preliminary evaluation of the Artistic Director to terminate or demote.

5. A non-probationary musician who does not accept the preliminary evaluation of the Artistic Director shall be sent a written notice within 14 days of the meeting as set forth in Number four (4) above. Such notice shall include specific reasons for the Artistic

Director's decision to so notify the musician, with copies to the Union and the Director of Community Services of Ocean City. A musician receiving such notice shall have the right to remain in his/her current position for a review period equal to, at a minimum, 70% of the musician's scheduled performances for the current season, or, at a maximum, the entire following season.

6. If, at the end of the period of review, the Artistic Director is still dissatisfied with the musician's performance, the Artistic Director may so notify the musician by registered mail of his/her decision to terminate or demote, with copies to the Union and the Director of Community Services of Ocean City. Such notice must include specific reasons for the Artistic Director's decision to terminate or demote.

7. If a musician disputes the action of the Artistic Director as set forth in number six (6) above, the musician shall have the right to appeal such decision to the Appeals Committee. Appeals to the Appeals Committee must be made to the Director of Community Services of Ocean City no later than 14 days from the date of the postmark of the notice to terminate or demote, with copies to be sent to the Union and the Chair of the Appeals Committee.

8. Demotions apply to all principal players and to members of the first violin section, who are permanently moved to the second violin section.

9. Non-probationary and probationary orchestra members shall have right of first refusal for all chamber music services advertised as smaller versions of the Ocean City Pops Orchestra, i.e. "string section from Ocean City Pops Orchestra", "brass quintet from Ocean City Pops Orchestra", "featuring woodwinds from Ocean City Pops Orchestra", etc.

ARTICLE VI

APPEALS COMMITTEE

1. Non-probationary musicians and the Artistic Director, each person having one (1) vote, shall elect five (5) non-probationary members of the orchestra and one (1) alternate to serve on the Appeals Committee. These five (5) members shall elect their chairperson. The Election will be held during the first rehearsal/concert series of the summer season. If an Appeals process is already underway at the first rehearsal/concert series of the summer season, the Appeals Committee responsible for implementing that procedure will conclude that procedure, and the new Appeals Committee will implement any new appeal process.

2. Within 14 days of receipt of a request for Appeal, the Appeals Committee shall convene a meeting. At this meeting the Artistic Director may explain his/her reasons for the decision to terminate or demote the musician. The Artistic Director shall not be present during any deliberation of the Appeals Committee. The Appeals Committee may also take testimony and evidence from other sources. No performance or audition will be required of the appellant, nor shall any tapes be used against him/her. However, the aggrieved musician may play for the Committee if he/she so desires. After discussion, the Appeals Committee shall vote by secret ballot, majority vote rules, to uphold or oppose the action of the Artistic Director. The Appeals Committee shall conclude the Appeals Procedure within 14 days of its first meeting.

3. The Appeals Committee shall report its finding in writing to the Mayor of Ocean City, whose decision shall be final.

ARTICLE VII

**AMERICAN FEDERATION OF MUSICIANS AND
EMPLOYER PENSION FUND (AFM-EPF)**

On behalf of each musician covered under this Agreement (including subs, extras, probationary and non-probationary musicians), the Employer shall contribute to the American Federation of Musicians' Pension Fund (AFM-EPF) an additional amount equal to six percent (6%) in each year of all wages earned under this Agreement. In accordance with the American Federation of Musicians & Employer's Pension Fund Rehabilitation Plan the contribution will increase to 6.24% effective April 1, 2010 and to 6.54% effective April 1, 2011. Each payment shall be accompanied by the appropriate personnel or AFM B Report Form, setting forth for each musician on behalf of whom pension is being paid, the musician's name, Social Security number, date (or month) of services(s) for which pension is being paid, and the amount of pension contributed. All contributions to the AFM-EPF shall be paid no later than the end of the month following the month in which the services occurred, and shall be furnished to the Administrator of such fund at a place designated by the Union.

ARTICLE VIII

COMPENSATION

Musicians (including subs, extras, probationary and non-probationary) shall be compensated as set forth on the following pay schedule:

2-1

2-1

	<u>2010</u>	<u>2011</u>
Base Pay Per Performance:	\$142.50	\$147.00
Per Rehearsal:	\$89.00	\$91.67

Concertmaster - 100% over base pay

Principal Pay – 15% over base pay, includes the following positions:

First Chair Violin II

First Chair Viola

First Chair Cello

First Chair Bass

First Chair Flute

First Chair Oboe

First Chair Clarinet

First Chair Bassoon

First Chair French Horn

First Chair Trumpet

First Chair Trombone

First Chair Piano/Keyboard

First Chair Timpani/Percussion

First Chair Bass Trombone/Tuba

Performance as a soloist, in a work for solo instrument, 50% above base pay.

Performance as part of a duo, 50% above base pay.

Performance as part of a trio, 35% above base pay.

Performance as part of a quartet, 25% above base pay.

Performance as part of a quintet, 20% above base pay.

Performance as part of a sextet or greater, up to and including 12 musicians, 15% above base pay.

Premium pay for soloist, duo, trio, etc., shall be for full work with specific recognition. Once scheduled, premium pay will be compensated for both rehearsal and performance regardless of whether the piece is included in the concert performance.

Keyboard Accompanist/Vocal Coach, 50% above base pay.

Doubling .

a. Any musician required to play on an instrument not designated as his/her principal instrument shall receive an additional 20% per service of the individual's scale for each service at which doubling occurs. When pieces which involve doubling are listed in the posted or verbal rehearsal order but are not actually rehearsed, doubling compensation shall still be paid. A second double shall be compensated at an additional 10% per service of the individual's scale. Each additional double will be compensated at an additional 5%.

b. Playing any combination of the following separate instruments will constitute doubling:

violin	English horn	trumpet (B-flat and C)	harpsichord
viola	obe d'amore	piccolo trumpet	organ
cello	bass oboe	cornet	timpani
contrabass	clarinet (A and B-flat)	flugelhorn	drum set
viola d'amore	clarinet (E-flat)	tenor trombone	percussion
mandolin	piccolo clarinet	alto trombone	mallets
harp	bass clarinet	bass trombone	soprano saxophone
flute	Basset horn	baritone/euphonium	alto saxophone
piccolo	bassoon	tuba	tenor saxophone
alto flute	contrabassoon	keyboard (electronic)	baritone saxophone
bass flute	horn	piano	electric bass
oboe	Wagner tuba	celeste	

c. Other doubling combinations as agreed upon by the doubling musician and the Artistic Director

Cartage: (all round trip):

Bass Drum	\$15.00
Chimes	\$15.00
Congas (2)	\$10.00
Drum Set	\$15.00
Marimba/vibr./xylo.	\$15.00
Orchestra bells	\$10.00
Tympani (2)	\$30.00
Double Bass	\$10.00
Tuba	\$10.00
Harp	\$50.00
Contrabassoon	\$10.00
Baritone saxophone	\$10.00

Small/Chamber Ensembles (12 musicians or less).

a. Performance Fee – Principal Scale with soloist/duo/trio/quartet/quintet/sextet + premium. Per Diem and Pension apply.

b. Rehearsal Fee – Based upon Principal Scale. Pension applies.

c. Leader Fee – 50% of Principal Scale.

d. Performance time cannot exceed one hour. Overtime premiums as found in Article IX will be charged after one hour and a grace period of five (5) minutes.

e. Rehearsal time cannot exceed one hour and fifteen minutes. Overtime premiums as found in Article IX will be charged after one hour and fifteen minutes. A mandatory break is required at the end of one hour and fifteen minutes of rehearsal, and overtime will begin at that time if more rehearsal is needed.

f. Three (3) to four (4) weeks prior to performances away from the Music Pier stage, the Director of Community Services must discuss the logistics of the performance with the Orchestra Committee in order to maintain acceptable working conditions.

g. There will be a minimum of one rehearsal scheduled for the run of educational performances.

Special sidebar addendum regarding special weekly compensation for availability and use of personal percussion equipment.

Per Diem:

	<u>2010</u>	<u>2011</u>
Double Day	\$22.00	\$24.00
Single Day	\$ 9.00	\$11.00

ARTICLE IX

SERVICES

1. Musicians shall be sent a schedule listing all services for the ensuing season as soon as practicable, but no later than April 15th. Once the season schedule is set with a musician's established number of concerts, a musician must notify the Musical Director if they cannot make a concert. A minimum of two (2) weeks notice is required. If less than two (2) weeks' notice is given, a provision in the Substitute Policy must be followed.

a) Three (3) to four (4) weeks prior to performances away from the Music Pier state, the Director of Community Services must discuss the logistics of the orchestra performance with the Orchestra Committee in order to maintain acceptable working conditions.

2. A service (rehearsal or performance) shall be defined as a unit of work upon which wages are based.

3. A rehearsal in excess of two and one-half (2½) hours shall be considered overtime and compensated in 15-minute increments. For each 30 minutes of overtime, there shall be a five (5) minute break at the beginning of each 30-minute segment. If, in the

judgment of the Artistic Director, the required overtime will not exceed 30 minutes, the placement of the first five-minute break may be changed to the end of the overtime, if the majority of the musicians present approve.

4. Overtime for rehearsals shall be compensated at 150% the individual per service rate.

5. A performance in excess of two (2) hours shall be considered overtime, following a five (5) minute grace period for which no compensation shall be paid. Fifteen (15) minute overtime increments will begin at the end of the two (2) hour allotment for a performance. Overtime for a performance shall be compensated at 100% the individual per service rate for the first 30 minutes of overtime, and 150% the individual per service rate for the second and subsequent 30-minute periods of overtime.

6. A break (intermission) of 15 minutes shall be given to the entire orchestra at all services. No rehearsal shall extend beyond one (1) hour and 15 minutes without a 15-minute break with the exception of a dress rehearsal for a Broadway show.

7. All services offered to and accepted by the musician must be attended. Excused absences will be granted for illness or emergency. Excused absences for other reasons may be granted at the discretion of the Artistic Director. The following absences will not be counted in the 30% absence allowance: Sabbaticals, emergencies, illness, injuries and excused absences. All other absences will be counted against the 30% absence allowance.

8. Musicians who have maintained non-probationary status for at least four (4) consecutive years may request for a good and sufficient reason an unpaid sabbatical for one (1) season or part thereof. Sabbaticals cannot be taken more than once during any

five (5) year period. Requests for an unpaid sabbatical shall be submitted to the Director of Community Services of Ocean City, stating the reasons for, and the duration of, the requested sabbatical. Request for a sabbatical must be made within ten (10) days of receiving the performance schedule for the season. Requests for sabbaticals will be considered on a first come, first serve basis. No more than five (5) musicians may be granted a sabbatical in any one (1) season.

9. Musicians are required to be seated and ready to play five (5) minutes prior to the start of any service. The City shall make every effort to make the stage available to Musicians a minimum of 30 minutes prior to the start of any service.

10. The first 30 minutes of any interruption or delay of a service caused by factors over which the City has no control, such as power failure (affecting the Music Pier and other boardwalk locations), injury or illness to anyone in the facility, weather, fire, fire alarm, or other emergency delay, shall not be counted in determining whether an overtime period has been reached.

11. If a show is scheduled for more than one performance, the same Musicians are required to perform for the length of that show's run. Artistic Director may use his discretion to waive this.

12. Lateness/Early Departure: Wage penalty subtracted per 15 minutes or fraction thereof (rounded up), based on each musician's hourly rate per service. The first infraction will result in a letter of warning. Early departure is with prior approval of Artistic Director only, except in the case of illness or emergency.

ARTICLE X

GRIEVANCE PROCEDURE

1. The purpose of this procedure is to secure, at the lowest possible level, an equitable solution to the problems which may arise affecting the terms and conditions of employment under this Agreement.

2. Nothing herein shall be construed as limiting the right of any employee having a grievance to discuss the matter informally with any appropriate members(s) of the Community Services Department.

3. The term "grievance" as used herein, means any controversy arising over the interpretation, application or alleged violation of this Agreement affecting the terms and conditions of employment. An individual or the Union at the request of or on behalf of an individual or by the City may raise a "grievance".

4. The following constitutes the sole and exclusive method for resolving grievances between the parties covered by this Agreement, and shall be followed in its entirety unless any step is waived by mutual consent:

A. Step One - Artistic Director: The aggrieved musician shall file the grievance in writing within ten (10) days after the occurrence of the event giving rise to the grievance. An earnest effort shall be made to settle the differences between the aggrieved musician and the Artistic Director for the purpose of resolving the matter informally. Failure to act within the said ten (10) calendar days shall be deemed to constitute an abandonment of the grievance. The Artistic Director will answer the grievance in writing within ten (10) calendar days of receipt of the written grievance, with copies to the Union and the Director of Community Services of Ocean City.

B. Step Two - Director of Community Services: If no agreement can be reached at Step One, the musician or the Union may present the grievance in

writing within ten (10) calendar days thereafter to the Director of Community Services or his designated representative. The grievance at this step shall contain the relevant facts and a summary of the preceding oral discussion, including the applicable section of the contract violated and the remedy requested by the grievant.

The Director of Community Services or his designated representative will meet with the parties and answer the grievance in writing within ten (10) calendar days of receipt of the written grievance, with copies to the Union and the Business Administrator.

C. Step Three - Business Administrator: If the Union wishes to appeal the decision of the Director of Community Services, or his designated representative, such appeal shall be presented in writing to the Business Administrator or his designated representative within ten (10) calendar days, accompanied by a brief outline of the material facts and the rationale for the grievance, including the article of the contract that was violated. This presentation shall include copies of all previous correspondence relating to the matter in dispute. The Business Administrator or his designated representative shall respond in writing to the grievance within ten (10) calendar days of the submission, with a copy to the Union.

D. Step Four - Binding Arbitration: In the event the grievance has not been satisfactorily resolved at Step Three, the Union and only the Union may submit the matter to arbitration on the following conditions:

1. The request for arbitration must be filed in writing with the Public Employment Relations Commission (PERC) no later than thirty (30) calendar days after receipt of the response or expiration of the time to respond at Step Three.

2. Nothing in this Agreement shall be construed as compelling the Union to submit a grievance to arbitration. The Union's decision to request the movement of a grievance to arbitration or to terminate the grievance prior to submission to arbitration shall be final.
3. For all grievances, the cost for the service of the arbitrator shall be borne equally by the City and the Union. Any other expenses, including but not limited to the presentation of witnesses and the preparation of transcripts, shall be paid by the party incurring same.
4. The arbitrator shall be bound by the provisions of this Agreement and the Constitution and Laws of the State of New Jersey, and be restricted to the application of the facts presented to him involved in the grievance. The arbitrator shall not have the authority to add to, modify, subtract from, or alter in any way the provisions of this Agreement or any amendment or supplement thereto. The decision of the arbitrator shall be final and binding.
5. The time limits expressed herein shall be strictly adhered to. If any grievance has not been initiated within the time limits specified, then the grievance shall be deemed to have been abandoned. If any grievance is not processed to the next succeeding step of the Grievance procedure within the time limits prescribed, then the disposition of the grievance at the last preceding step shall be deemed to be conclusive. If a decision is not rendered within the time limits prescribed for decision at any step in the Grievance Procedure, then the grievance shall be deemed to have been denied. Nothing herein shall prevent the parties from

mutually agreeing to extend or contract the time limits provided for processing the grievance at any step in the Grievance Procedure.

6. Any aggrieved party may be represented by the Union's representatives at all stages of the grievance procedure.

ARTICLE XI

UNION ACCESS

Representatives of the Union shall have access to the place of any service for the purpose of conferring with the musicians, or conducting any other legitimate business, provided the conduct of said business shall not diminish the effectiveness of the designated representative's Division, and further provided that permission is granted in advance by the appropriate Department or his/her designee.

ARTICLE XII

NON-DISCRIMINATION

The City shall not discriminate against any musician on the basis of race, color, religion, sex, sexual preference, age, national origin, marital status, union activity or political affiliation.

ARTICLE XIII

MANAGEMENT RIGHTS

The City hereby retains and reserves until itself all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the Laws and Constitution of the State of New Jersey and the United States.

The exercise of the foregoing powers, rights, authority, duties or responsibilities of the City, the adoption of policy, rules, regulations and practices and furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this Agreement and then only to the extent that specific and express items hereof are in conformance with the Constitution and Laws of the State of New Jersey and United States and the ordinances of Ocean City.

Nothing contained herein shall be construed to deny or restrict the City of its rights, responsibilities and authorities under N.J.S.A. 40:1 et.seq., N.J.S.A. 40A:1 et.seq., N.J.S.A. 11:1 et.seq., N.J.S.A. 11A et.seq., any other national, state or county law or administrative code.

ARTICLE XIV

ARTISTIC COMMITTEE

The City and the Union will meet periodically to review plans for the growth and expansion of the Ocean City Pops Orchestra.

Artistic Committee – The City and the Union will meet periodically to review plans for the growth and expansion of the Ocean City Pops Orchestra through the establishment of an Artistic Committee, made up of non-probationary orchestra members. The Committee's input may include, but not be limited to the following: a) discuss future repertoire, b) help with seeking soloists and other guest artists, c) help plan for orchestra growth, d) help research industry standard reductions and orchestrations, e) foster goodwill between

Ocean City Pops Orchestra management, City of Ocean City, and Friends of the Pops, and f) help with selection of new Artistic Director (when applicable).

ARTICLE XV

RESCHEDULING/CANCELLATION OF SERVICES/FORCE MAJEURE

It is the responsibility of the City to notify musicians in writing of any change in the schedule within 48 hours of such a change having been made. If a musician cannot accommodate the schedule change, any resulting absence will be excused, and not counted in the 30% absence allowance.

If musicians are notified four (4) weeks or less before a change in the schedule of more than thirty minutes and are unable to accommodate the change, they will be compensated at the rate of 50% of the compensation they would have earned, had they played the engagement. If such notification is made two (2) weeks or less before a change in the schedule, full compensation will be made to those musicians who cannot accommodate it.

With the exception of an emergent condition, if musicians are notified four (4) weeks or less before the cancellation of a service, they will be compensated 50% of what the cancelled service(s) would have paid. If musicians are notified two (2) weeks or less before the cancellation of a service, they will be compensated in full.

In the event that it becomes impossible to hold or continue one or more services by reason of an act of nature such as inclement weather, fire, flood or pestilence; acts of war or other circumstances beyond the control of the Employer (but not including financial emergencies), the Employer shall have the right to cancel services for the duration of the

force majeure situation and shall not incur financial obligation to any musician beyond that for services already performed and any payments and benefits due.

ARTICLE XVI

DRESS REQUIREMENTS

Concert Attire:

Women - White blouse, black slacks or skirt, black shoes.

Men - White jacket, white shirt, black bow tie, black pants, black shoes and socks.

Theater Pit: All black for men and women.

OPENING AND CLOSING NIGHTS OF THE SEASON AND AS DIRECTED:

Women - Black blouse and skirt or slacks or black dress, black shoes.

Men - Black tuxedo, white shirt, black bow tie, black shoes and socks.

ARTICLE XVII

RECORDING

1. Except as otherwise explicitly provided herein, no service or any part thereof shall be recorded, reproduced or transmitted from the place of the service in any manner or by any means whatsoever, by the City, or by any other person(s), in the absence of a specific written agreement with the American Federation of Musicians International Office. The City Representative present at the service shall be responsible for enforcement of this provision at the service. The City shall communicate that flash photography, audio or video recording is strictly prohibited, in the following manner: a printed sign will be prominently displayed at every service; a pre-recorded announcement will be played prior to the start of every performance in appropriate circumstances; and, whenever practicable, a notice will

be printed in the program.

2. The City may designate a qualified person to make an audio archival study tape recording of previously designated orchestra rehearsals or performances. Archival tapes may be used for grant applications requiring such tapes. The Union must receive verification of any grant application made in the name of the City in connection with any archival recording made pursuant to this provision. Union approval of tapes made for grant purposes, artistic review, civic projects, short promotional uses, personal use and video brochures shall not be unduly withheld, provided notice is given to the Orchestra Committee within one to two weeks. Tapes made for the purposes noted herein shall not entitle employees represented by the Union to any additional wages or benefits.

3. In the event that archival study tapes are made, said tapes shall remain at all times in the joint custody of the City and the Union. Within 15 business days of the recording, the Union shall receive a copy for its files. Included with the recording shall be a full personnel list of all participants in the recorded rehearsal or performance.

4. The City shall not duplicate, nor permit duplication of any kind, of any archival study tape, nor will it allow any use of an archival study tape for purposes other than those explicitly provided herein and for review by the Artistic Director and members of the orchestra.

5. Archival study tapes shall be available during normal orchestra business hours at a designated location on the Music Pier for the Artistic Director, members of the orchestra and authorized personnel, as mutually agreed upon by the City, the Orchestra Committee and the Union, to review and study.

6. Archival study tapes shall never be used as evidence in any disciplinary,

demotion, reseating or dismissal proceeding.

7. The City may authorize radio and television promotional recording of the orchestra without additional payment to the musicians for local news or news magazine segments with a maximum of three (3) minutes of broadcast time, provided that such broadcast specifically and exclusively promotes the activities of the Ocean City Pops Orchestra. During news or publicity recording of performances, the use of flash photography and television lights will not be permitted. No member of the media will be permitted to audio or video record in excess of 15 minutes.

8. Should any recording created under the terms of this agreement ever be utilized for any other purposes not explicitly set forth herein, (including, but not limited to rehearsal or performance, demonstration or marketing of services or product by any group or individual, local or national or foreign broadcast, internet, phonograph records, promo's or commercial announcements, or background music for any type of sound or film program), the City shall enter into and comply with all conditions required by the appropriate agreement of the American Federation of Musicians, including, but not limited to the payment of 200% of the prevailing wages and allied fringe benefits outlined therein.

ARTICLE XVIII

PROGRESSIVE DISCIPLINE

The City shall have the right to issue and enforce rules, regulations and policies specific to professional department, attendance, smoking, dress, etc. The Director of Community Services, or designee, will consult with the Orchestra Committee prior to issuing such rules, regulations and policies.

Any musician who violates such rules, regulations and policies will be subject to the

following progressive disciplinary action:

The Artistic Director will issue a documented verbal warning to a musician for the first offense. If the musician commits the same or similar offense a second time, a written warning will be issued to the musician with a copy to the Union and to the City Personnel Director. If the musician commits the same or similar offense a third time, a second written warning will be issued, and the musician will be required to attend a mandatory disciplinary counseling session with the Artistic Director and the Director of Community Services (or designee). Union representation, or representation by a member of the Orchestra Committee, will be offered to the musician for such disciplinary counseling session.

Any offenses beyond three (3) may result in suspension or termination. Management shall exercise the right of suspension or termination only after the musician has been previously warned, and after written notice of cause has been given to the musician and to the union.

If Management, at its sole discretion, determines an offense to be so egregious as to warrant immediate suspension, the musician will be suspended with pay, pending the outcome of an investigation and a hearing, if a hearing is requested by the musician to the Personnel Director within five business days of receipt of notification of such suspension. Union representation, or representation by a member of the Orchestra Committee will be offered for such hearing.

City of Ocean City of Ocean City
Summary of Verbal or Written Warning

TO:

FROM:

This form is being used to:

_____ record the **verbal warning** given on _____.

_____ record this **written warning** given on _____.

The following is the date and the specifics of the incident that caused the verbal or the written warning to be initiated.

Artistic Director's Signature

Musician's Signature

Date

Additional infractions of this type may result in more severe remedial action, up to and including removal from City employment.

NOTE: Employee was offered a copy of this completed record and

_____ accepted it.

_____ did not want a copy.

ARTICLE XIX
TERM OF AGREEMENT

This Agreement shall be in full force and effect from February 1, 2010; to and including January 31, 2012. This Agreement shall continue in full force and effect from year to year thereafter unless one party or the other gives notice in writing no sooner than 150 days nor no later than 120 days prior to the expiration of this Agreement of a desire to change, modify or terminate this Agreement.

AGREED AND ACCEPTED:

FOR THE CITY:

Jay A. Gillian, Mayor

DATE _____

Attested By:

FOR THE ASSOCIATION:

AFM LOCAL 661-708

DATE _____

APPENDIX "A"

The following are considered non-probationary musicians of the Ocean City Pops Orchestra as described in Article V:

1st Violin:	Olga Mudryk-Konopelsky (Concert Master) Luigi Mazzochi Sarah Geller Funda Cizmecioglu
2nd Violin:	Inna Nedorezov Sally Scheible Sergey Nazarov Reina Invi (grant funded)
Viola:	Gwynn Stepper Vacant
Cello:	Anthony Pirollo Charles DePasquale
Bass:	Laura Ruas
Piano/Keyboard:	Jeffrey Uhlig
Flute:	Pamela Whitman
Oboe:	Steve Labiner
Clarinet:	Arne Running
Bassoon:	Andrea Herr
Horn:	Lauren Robison Kim Gilman
Trumpet:	James Hala Steve Heitzer
Trombone:	Catherine Bridge
Bass Trombone/Tuba:	W. Barry McCommon (grant funded)
Timpani/Percussion:	Mark O'Kain