

TRI-PARTY GRANT AGREEMENT

Among

BROWARD COUNTY

and

CITY OF FORT LAUDERDALE

and

PERFORMING ARTS CENTER AUTHORITY

For Grant Funding for PACA's Operation for Fiscal Year 2014

This is a Tri-Party Grant Agreement ("Agreement"), made and entered into by: Broward County, a political subdivision of the State of Florida, its successors and assigns, hereinafter referred to as "County"; City of Fort Lauderdale, a municipal corporation of the state of Florida, its successors and assigns, hereinafter referred to as "City"; and Performing Arts Center Authority, an independent special district created by Special Act of the Florida Legislature, its successors and assigns, hereinafter referred to as "PACA."

PACA operates the facility known as the Broward Center for the Performing Arts located in Fort Lauderdale, Broward County, Florida ("Center") which has demonstrated itself as a significant cultural attraction for the Broward County community.

PACA has presented renown performers and productions which have enhanced the cultural life of the South Florida community, and has bestowed a first-class facility upon Broward County, its residents and visitors.

The Board of County Commissioners of Broward County ("Board") and the City Commission of the City of Fort Lauderdale ("City Commission") both wish to support the Center by providing funding and in-kind contributions to the Center to offset a portion of any operating deficit (as defined in Section 1.4) which the Center may experience during its operations.

The Board and the City Commission have determined that the County's financial contribution and the City's contribution will serve a valid public purpose.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS AND IDENTIFICATIONS

- 1.1 "Contract Administrator" means Scott Miller, Director/CFO of the County's Finance and Administrative Services Department or his successor as designated by the County in writing.
- 1.2 "County Attorney" means the chief legal counsel for County who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.
- 1.3 "County Auditor" means the County Auditor for the Board. The County and PACA agree that the County Auditor shall be a permanent voting member of PACA's Finance Committee during the Term.
- 1.4 "Operating Deficit" means the excess of actual operating expenses, which includes depreciation, over actual operating revenues excluding the addition of non-operating income and the deduction of non-operating expenses.
- 1.5 "PACA's Representative" means PACA's Chief Financial Officer ("CFO") who is responsible for administration of this Agreement for PACA.

ARTICLE 2
SCOPE OF SERVICES

- 2.1 Scope of Services. For the Term, PACA shall operate the Center to provide cultural attractions and other activities. Unless stated otherwise in this Agreement, such operational services includes all labor, materials and tasks, whether or not enumerated in the Agreement, that are such an inseparable part of the operation expressly stated in the Agreement that exclusion thereof would render PACA performance impractical, illogical, or unconscionable.
- 2.2 PACA may subcontract any portion of the services required for operation of the Center without any consent from the other parties.
- 2.3 Change of Scope Procedures. PACA acknowledges that Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the scope of services to be provided under this Agreement except as expressly provided herein.

ARTICLE 3
TERM AND TIME OF PERFORMANCE

- 3.1 Term. The Agreement shall become effective on October 1, 2013 (the "Effective Date"), and shall end on September 30, 2014 ("Term").

- 3.2 Extensions. This Agreement is for only one fiscal year as stated in the Term.
- 3.3 Fiscal Year. The continuation of this Agreement beyond the end of any of the parties' fiscal year shall be subject to both the appropriation and the availability of funds, in accordance with Chapter 129, Florida Statutes. The parties' fiscal year commences on October 1 and ends September 30 of the following year.
- 3.4 Time is of the essence for all performance required under this Agreement.

ARTICLE 4
FUNDING, COMPENSATION AND USE OF FUNDS

- 4.1 Payment shall be made for the operation of the Center as required by this Agreement. The amounts set forth in this Article shall be accepted by PACA as full compensation for operation of the Center. PACA acknowledges that the amounts set forth herein are the maximum amounts payable and constitute a limitation on County's and City's obligations to compensate PACA for its operation of the Center as required by this Agreement. These maximum amounts, however, do not constitute a limitation of any sort upon PACA's obligation to operate the Center as required by this Agreement.
- 4.2 County's Contribution to PACA:
- 4.2.1 For operation of the Center. For the Term as defined in Article 3, County will pay PACA up to the maximum amount of Four Hundred Twenty-Three Thousand Six Hundred Dollars (\$423,600.00) as grant funding towards the operation of the Center.
- 4.2.2 County in-kind legal services. County further grants to PACA Twenty-five Thousand Dollars (\$25,000.00) solely in the form of in-kind professional legal services from the County Attorney's Office. In the event billing charges exceed \$25,000.00, the County will continue to provide the same level of service.
- 4.3 City's Contribution to PACA:
- 4.3.1 City's cash contribution. City will provide cash contributions consisting of that portion of the City's net garage revenues (i.e., the City's allocation of gross revenues less allocated expenses related to the operation of the Arts and Science District Parking Facility) up to an amount not to exceed Three Hundred Thousand Dollars (\$300,000.00) for the Term. City shall remit that portion of the City's garage revenues, as described herein and collected during each month of the Term, to PACA on a monthly basis within thirty (30) days after the end of each month at the address stated in Section 5.4.

4.3.2 City in-kind services and reimbursement expenses. The City grants and agrees to make available to PACA for use at the Center the following contributions to be expended during the Term as follows:

(i) The City shall provide in-kind services having a value of at least Thirty Thousand Dollars (\$30,000.00) as its contribution in the form of landscape maintenance of the valet lot and parking garage sites. The in-kind services shall be determined and valued by a method that is mutually acceptable by the CITY and PACA, which may be approved in writing by the City Manager and PACA's President/CEO.

(ii) City agrees that waste removal expenses paid by PACA for the Term shall be reimbursed by City up to an amount not to exceed Twenty-four Thousand Dollars (\$24,000.00) for the Term. Such reimbursement shall be paid by the City to PACA in accordance with Section 5.5 in the name of the "Performing Arts Center Authority" at the address stated in Section 5.4.

4.4 Use of funds. Funding provided by the County pursuant to this Agreement shall be used only for the payment of expenses incurred in the operation of the Center, except as stated in Section 4.2.2 for in-kind legal services which shall be for the overall operation of PACA.

4.5 Separate agreement for PACA's Auditor. Although the dollar amounts contributed by the County and the City to PACA for payment of PACA's Auditor is not part of the compensation payable to PACA under this Agreement, the parties acknowledge that PACA's Special Act, Chapter 2005-335 of Laws of Florida, requires that the County and the City retain, employ, and compensate independent certified public accountants to audit the records or book of account of PACA. The parties have entered into a separate agreement dated September 13, 2011, with PACA's Auditor to retain, employ, and compensate PACA's Auditor to audit the records or book and account of PACA for fiscal years 2011 through 2015.

ARTICLE 5 DISBURSEMENT

5.1 Quarterly payment. Within thirty (30) days after the commencement of the Term, and thereafter, within thirty (30) calendar days after the commencement of each subsequent quarter, the County shall pay One Hundred Five Thousand Nine Hundred Dollars (\$105,900.00) to PACA. No interest shall be payable by the County or the City on the amount payable to PACA.

5.2 Adjustments. Any adjustments to be made in the total amount paid by the County for the Term shall be made in the fourth quarter's payment to PACA. No such adjustment is required for this Term.

- 5.3 Upon written notice from the Contract Administrator, PACA shall promptly reimburse the County for any funding later determined by the County to be improperly paid pursuant to this Agreement. Such reimbursements shall be made by PACA within sixty (60) days after receipt of written notice. County or City shall have the right to withhold payment based on PACA's failure to comply with any term, condition, or requirement of this Agreement. The parties agree that any amounts so withheld shall not be subject to payment of any interest by County or City.
- 5.4 Payment shall be made to PACA payable to the "Performing Arts Center Authority" at:
- Performing Arts Center Authority
Attention: CFO
Broward Center for the Performing Arts
201 Southwest Fifth Avenue
Fort Lauderdale, Florida 33312
- 5.5 PACA shall provide the CITY with a separate monthly invoice for the waste removal expenses paid by PACA for the previous month along with a copy of the canceled check showing payment by PACA for the amount on the invoice. The invoice for the waste removal expenses incurred by the PACA for the last month of the Term in September shall be submitted by PACA to the City for payment due under Section 4.3.2 and such amount shall be paid by the City within forty-five (45) days after the end of the Term. Except for the last monthly payment, the City shall make payments in full to PACA of the amount shown on each separate monthly invoice within thirty (30) days after the receipt of such invoice.

ARTICLE 6
RECORDS, REPORTS AND AUDITS

- 6.1 PACA shall keep financial records in accordance with generally accepted accounting principles.
- 6.2 PACA shall submit to the County and City a quarterly financial report consisting of a balance sheet, income statement, a working capital statement, and a statement of all operating expenditures that were made from any funds disbursed hereunder for each quarter. Reports shall be submitted within thirty (30) days after the end of each quarter. PACA shall also prepare and submit an annual financial report to the County and City within one hundred twenty (120) days after the end of the fiscal year.
- 6.3 The financial statements (including a cash flow statement), accounts, and records of PACA shall be audited annually by an independent certified public accountant, licensed in the State of Florida using PACA's Auditor acknowledged in Section 4.5. Such audit report shall be completed within one hundred twenty

(120) days after the end of the fiscal year and shall be submitted by PACA to the County and City no later than one hundred twenty (120) days after the end of the fiscal year.

- 6.4 The audit report shall contain disclosures as to the amount of subsidy remitted, the amount expended for operations, whether any funds are due back to the County, and an opinion that the funds received have been expended pursuant to this Agreement. Furthermore, the report shall disclose the dollar value of the ticket surcharges and the amount collected from ticket surcharges by PACA.

ARTICLE 7 GOVERNMENTAL IMMUNITY

PACA, an independent special district, is also a political subdivision as defined in Section 1.01(8), Florida Statutes. PACA represents to County and City for their reliance that PACA is a state agency or political subdivision as described in Section 768.28, Florida Statutes. PACA agrees to be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law.

ARTICLE 8 INSURANCE

- 8.1 PACA represents that it is a state agency or political subdivision as defined in Section 768.28, Florida Statutes, and agrees to furnish the County and the City, upon complete execution of this Agreement, with written verification of liability protection in accordance with state of Florida's laws. Additionally, if PACA elects to purchase any additional liability coverage, including excess liability coverage, PACA agrees that "Broward County" and the "City of Fort Lauderdale" shall be listed as the certificate holders and included as additional named insureds on the certificate.
- 8.2 If PACA hires subcontractor(s) to perform the services, its subcontractor(s) shall be required to endorse "Broward County" as an additional insured on any general liability and excess liability policies.

ARTICLE 9 TERMINATION

- 9.1 Termination for cause. This Agreement may be terminated for cause based on any breach that is not cured within ten (10) days after written notice from the aggrieved party identifying the breach.

Prior to notice of termination for cause from County, the Contract Administrator will give PACA written notice of any violation and provide at least thirty (30) days to correct it. In the event that the violation is not corrected within the required time, the Contract Administrator in his/her sole discretion will determine whether

PACA's inability to correct the violation is excusable in light of the circumstances causing the violation. If the inability to correct is excusable in the sole discretion of the Contract Administrator and if he/she is satisfied that reasonable progress is being made by PACA in its endeavor to correct the violation, the Contract Administrator may grant further written extensions of time for correction. If, however, Contract Administrator determines that the failure to correct is not excusable or that continued violation is not excusable after further written extension has been granted, then, County may terminate this Agreement by providing the required ten (10) days prior written notice to PACA as stated in the first paragraph of this Section. In such event, County and/or City may also withhold any further disbursements to PACA.

Prior to notice of termination for cause from City, the same procedures will be followed as stated immediately above for County except that the City Manager shall provide the required notices and make any required determinations in lieu of Contract Administrator.

- 9.2 Termination for convenience. This Agreement may also be terminated for convenience by the County or City upon providing written notice to PACA and the other party of the termination date, which shall be not less than thirty (30) days after the date such written notice is provided. If County or City erroneously, improperly, or unjustifiably terminates for cause, such termination shall, to the full extent permissible under applicable law, be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.
- 9.3 County or City may terminate this Agreement if PACA is found to have submitted a false certification pursuant to Section 287.135, Florida Statutes, if PACA has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or if PACA has failed to promptly implement corrective action for audit deficiencies upon reasonable notice by County or City. Notwithstanding anything contained in this Agreement to the contrary, the rights and obligations of the parties under this paragraph shall be governed by Section 287.135, Florida Statutes, to the full extent applicable.
- 9.4 PACA represents that neither it nor any of its affiliates has been placed on the discriminatory vendor list, as defined by Section 287.134, Florida Statutes. County or City may terminate this Agreement effective immediately, without any further obligation to PACA, upon learning that such representation is false or if PACA or any of its affiliates is placed on the discriminatory vendor list.
- 9.5 This Agreement may also be terminated as provided in Section 10.4 (Public Entity Crime Act), Section 10.8 (Assignment and Performance), Section 10.21 (Contingency Fee) and Section 10.23 (Force Majeure).

- 9.6 Notice of termination shall be provided in accordance with the "Notices" section of this Agreement.
- 9.7 In the event this Agreement is terminated for convenience by County or City, PACA shall be paid for any services properly performed through the termination date specified in the written notice of termination. PACA acknowledges that it has received good, valuable and sufficient consideration from County, the receipt and adequacy of which are hereby acknowledged by PACA, for County's and City's right to terminate this Agreement for convenience, and PACA hereby waives, to the full extent permissible under applicable law, any and all rights to challenge the adequacy of such consideration or the validity of County's and City's right to terminate for convenience.

ARTICLE 10
MISCELLANEOUS

- 10.1 Rights In Documents And Work. Any and all reports, photographs, surveys, media and other data and documents provided or created in connection with this Agreement shall be and remain the joint property of each party for separate independent use without any additional consent from the other parties and, if a copyright is claimed, PACA hereby grants to County and City a non-exclusive perpetual license to use the copyrighted item(s), to prepare derivative works, and to make and distribute copies to the public. In the event of expiration or earlier termination of this Agreement, any reports, photographs, surveys, media and other data and documents prepared by PACA, whether finished or unfinished, shall become the independent and separate property of each party (subject to the license grant set forth in this Section 10.1) and shall be delivered by PACA to the Contract Administrator and City Manager within seven (7) days of expiration or earlier termination of this Agreement by either party.
- 10.2 Audit Right And Retention Of Records. PACA shall, by written contract, require its subcontractors to agree to all the requirements and obligations contained in this section.
- 10.2.1 County and/or City shall have the right to audit the books, records, and accounts of PACA and its subcontractors that are related to this Agreement. PACA and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. PACA and its subcontractors shall preserve and make available at reasonable times, for examination and audit by County or City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or for three (3) years after termination of this Agreement, whichever is longer. If any audit has been initiated and audit findings have not been resolved at the end of the applicable

retention period, the books, records, and accounts shall be retained until resolution of the audit findings.

10.2.2 To the extent PACA is acting on behalf of the County as stated in Section 119.0701, Florida Statutes, PACA shall:

(a) Keep and maintain public records that ordinarily and necessarily would be kept and maintained by the County and City were County and City performing the services under this Agreement;

(b) Provide the public with access to such public records on the same terms and conditions that the County and City would provide the records and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

(c) Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and

(d) Meet all requirements for retaining public records and transfer to the County and City, at no cost, all public records in possession of PACA upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the County and City in a format that is compatible with the information technology systems of the County and City respectively.

The failure of PACA to comply with the provisions of this section shall constitute a default and breach of this Agreement, entitling the County and/or City to exercise any remedy available under this Agreement or under applicable law.

10.3 Truth-In-Negotiation Representation. PACA represents that the information supplied and the representations supporting the funding under this Agreement are accurate, complete, and current at the time of contracting. County and/or City shall be entitled to recover any damages it incurs to the extent such representation is untrue.

10.4 Public Entity Crime Act. PACA represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. In addition to the foregoing, PACA further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether PACA has been placed on the convicted vendor list. Notwithstanding any provision in this Agreement to the contrary, if any

representation stated in this paragraph is false, County and/or City shall have the right to immediately terminate this Agreement and recover all sums paid to PACA under this Agreement.

- 10.5 Independent Contractor. PACA is an independent contractor under this Agreement. PACA shall not have the right to bind County or City to any obligation not expressly undertaken by County or City under this Agreement.
- 10.6 Third Party Beneficiaries. The parties acknowledge that there are no third party beneficiaries under this Agreement.
- 10.7 Notices. In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail with a contemporaneous copy via e-mail to the addresses listed below and shall be effective upon mailing. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change.

For County:

Director/CFO
Broward County Finance and Administrative Services Department
Governmental Center, Room 513
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
E-mail: sgmiller@broward.org
With simultaneous e-mail copy to:
lbrasso@broward.org and rjohnson@broward.org

with a copy to:

County Auditor
Broward County's Office of County Auditor
Governmental Center, Room 520
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
E-mail: elukic@broward.org
With simultaneous e-mail copy to: bsmithallen@broward.org

For City:

City Manager
City of Fort Lauderdale
City Hall
P. O. Box 14250
Fort Lauderdale, Florida 33302
E-mail: dwood@fortlauderdale.gov

- 10.11 Compliance With Laws. PACA shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing under this Agreement.
- 10.12 Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.
- 10.13 Joint Preparation. This Agreement has been jointly prepared by the parties hereto, and shall not be construed more strictly against any of the party.
- 10.14 Headings And Interpretation. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter," refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires.
- 10.15 Governing Law, Venue, And Waiver Of Jury Trial. This Agreement shall be interpreted and construed in accordance with, and governed by, the laws of the state of Florida. The parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the parties agree that the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHTS ANY OF THE PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CAUSE OF ACTION OR CLAIM ARISING FROM, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT.**

Prior to the filing of any litigation relating to this Agreement, the parties will participate in a non-binding mediation with each party to bear its own attorneys' fees and costs; however, each party shall pay equally on a one-third (1/3) basis its share of the mediator's fees and costs.

- 10.16 Amendments. No modification or amendment to this Agreement shall be effective unless it is in writing and executed by authorized representatives of each party. Without limiting the foregoing, the terms of this Agreement shall prevail over and against any additional or contrary terms and conditions in any format or medium unless expressly agreed to in writing by an amendment hereto executed by authorized representatives of each party.

this Agreement, except that any project assisted by U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26. PACA shall include substantially similar language in its contracts with any and all permitted subcontractors or sub-consultants.

10.23 Force Majeure. If the performance of this Agreement, or any obligation hereunder, is prevented by reasons of hurricane, earthquake, or other casualty caused by nature, or by labor strike, war, or by law, order, proclamation, regulation, or ordinance of any governmental agency, the party so affected, upon giving prompt notice to the other parties, shall be excused from such performance provided that the party so affected shall first have taken reasonable steps to avoid and remove such cause of non-performance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other parties in writing and resume performance hereunder whenever and to the full extent such causes are removed. However, if such non-performance exceeds sixty (60) days, any of the other parties that is not prevented from performance by the force majeure event shall have the right to immediately terminate this Agreement upon written notice to the party so affected in accordance with the "notices" section in Article 10. This section shall not supersede or prevent the exercise of any right the parties may otherwise have to terminate this Agreement.

10.24 Multiple Originals. Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

(The remainder is left blank.)

TRI-PARTY GRANT AGREEMENT AMONG BROWARD COUNTY AND THE CITY OF FORT LAUDERDALE AND THE PERFORMING ARTS CENTER AUTHORITY FOR FISCAL YEAR 2014

PACA

ATTEST:

Dianne Leonard
Assistant Secretary
Dianne Leonard
Print name

PERFORMING ARTS CENTER AUTHORITY, an independent special district and a public body, politic and corporate in the State of Florida

By *[Signature]* Chair
GEORGE I. PLATT
Print name of Chair above

(SEAL)

7 day of NOV, 2013