

AGREEMENT BETWEEN CITY OF FORT LAUDERDALE AND PERFORMING ARTS CENTER AUTHORITY FOR SIGN AT WAR MEMORIAL AND PARKER PLAYHOUSE

THIS IS AN AGREEMENT, made this _____ day of _____ 2014, by and between:

CITY OF FORT LAUDERDALE, a municipal corporation of the state of Florida (hereinafter referred to as "City")

and

PERFORMING ARTS CENTER AUTHORITY, an independent special district of the state of Florida (hereinafter referred to as "PACA").

The Parker Theater, Inc. leases property known as the Parker Playhouse from the City pursuant to a Lease Agreement dated October 18, 1966, as extended and amended ("Lease").

PACA manages Parker Playhouse on behalf of the Parker Theater, Inc. under an executed agreement and, as part of that management responsibility has the authority to enter into this Agreement with the City.

The City and PACA desire to work together to jointly fund the construction, subsequent continuous maintenance and operation of an electronic sign as described in the attached Exhibit "A" ("Project") to be used by both parties.

PACA has obtained the prior written approval of the President of the Parker Theater, Inc. to enter into this Agreement.

Pursuant to Motion at its Sept. 3 2014, meeting the City Commission has authorized approval and execution of this Agreement by Mayor and City Commission

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained and other good and valuable consideration, the adequacy of which is hereby acknowledged, it is agreed by and between the parties hereto as follows:

1. **PURPOSE OF AGREEMENT.** The purpose of this Agreement is to set forth the understandings of the City and PACA with respect to funding for the Project.

2. **DESCRIPTION OF PROJECT.** The description of the project is contained on the attached Exhibit A.

3. **RESPONSIBILITIES OF PARTIES.** The scope of services and the responsibilities of the City and PACA are contained on the attached Exhibit A.

4. **CITY'S INSURANCE.** City represents that it is a municipal corporation as defined in Section 768.28, Florida Statutes, and agrees to furnish the PACA, upon request, with written verification of liability protection in accordance with state of Florida's laws.

5. **GOVERNMENTAL IMMUNITY.** PACA represents to City for City's reliance that PACA as an independent special district is a state agency or political subdivision and City represents to PACA for PACA's reliance that City as a municipality is a state agency or subdivision as defined in Section 768.28, Florida Statutes. Each party agrees to be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law. Nothing herein constitutes or shall be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract.

6. **ASSIGNMENT.** PACA shall have no authority to assign any portion of this Agreement to a third party without prior approval of the City. The City shall have no authority to assign any portion of this Agreement to a third party without prior written notice to PACA.

7. **AMENDMENTS.** No modification, amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties hereto, with the same formality and equal dignity herewith. PACA (through its President/CEO) and the City (through the City Manager subject to approval of the City Commission) may approve and execute written amendments to this Agreement as long as it does not increase the monetary obligations or increase the liability of either party.

8. **WAIVER.** Failure of either party to insist upon strict performance of any covenant or condition of this Agreement, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any covenant, condition, or right; but the same shall remain in full force and effect. None of the conditions, covenants or provisions of this Agreement shall be waived or modified except by the parties hereto in writing.

9. **TERMINATION.** This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated by the City Manager upon such notice as the City Manager deems appropriate under the circumstances. In the event the City Manager determines that termination is necessary to protect the public health, safety, or welfare, Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement. This Agreement may also be terminated by PACA's President/CEO upon such notice as PACA's President/CEO deems appropriate under the circumstances in the event PACA's President/CEO determines that termination is necessary to protect the public health, safety or welfare. Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement.

10. **NOTICE.** Whenever either party desires to give notice to the other, such notice must be in writing and sent by United States mail, return receipt requested, courier evidenced by a delivery receipt, electronically or facsimile, evidenced by a delivery receipt, or by an overnight express delivery service, evidenced by a delivery receipt, addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice. Notice shall be effective upon delivery as evidenced by a delivery receipt.

Notice to City shall be addressed to:

City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, Florida 33301
Facsimile: (954) _____
E-mail: _____
With Simultaneous copy by e-mail to: _____

Notice to PACA shall be addressed to:

President/CEO
Performing Arts Center Authority
201 SW Fifth Avenue
Fort Lauderdale, Florida 33312
Facsimile: (954) _____
E-mail: _____
With Simultaneous copy by e-mail to: _____

11. **LAWS AND ORDINANCES.** City and PACA shall observe and comply with all applicable local, county, state and federal laws, ordinances and regulations in connection with the performance of this Agreement.

12. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Florida and venue for purposes of litigation arising out of this Agreement shall be Broward County, Florida.

13. **INDEPENDENT CONTRACTORS.** The City and PACA are each an independent contractor under this Agreement. Services provided by each party pursuant to this Agreement shall be subject to the supervision of said party. In providing such services, neither PACA or its agents shall act as officers, employees, or agents of the City. No partnership, joint venture, or other joint relationship is created hereby. The City does not extend to PACA, or its agents any authority of any kind to bind the City in any respect whatsoever. PACA does not extend to City, or its agents any authority of any kind to bind PACA in any respect whatsoever.

14. **SEVERABILITY.** If any provision of this Agreement or the application of any provision to any party or circumstance shall be deemed unenforceable, prohibited by or invalid under applicable law, the provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remaining provisions of the Agreement or their application to other parties or circumstances.

15. **ENTIRE AGREEMENT.** This Agreement embodies the entire agreement and understanding between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral. It may not be modified or terminated except as provided herein.

16. **FORCE MAJEURE.** For purposes of this Agreement, Force Majeure means any equipment failure, threatened terrorist acts, terrorist acts, act of public enemy, earthquake, war (declared or undeclared), fire, flood, epidemic, explosion, unusually severe weather, hurricane, embargo, labor dispute or strike (whether legal or illegal), labor or material shortage, transportation interruption of any kind, work slow-down, civil disturbance, insurrection, riot, or any other similar or dissimilar cause beyond the reasonable control of the parties. In the event of a Force Majeure occurrence under this Agreement, the City shall have the right to undertake necessary reasonable repairs without prior written approval of PACA and PACA shall reimburse City for the cost of such repairs in accordance with this Agreement.


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IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day
and year first written above

City

City of Fort Lauderdale

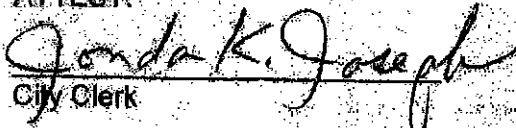


Mayor



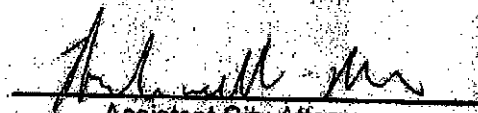
City Manager

ATTEST:



City Clerk

APPROVED AS TO FORM:



Assistant City Attorney

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PACA

WITNESSES:

Performing Arts Center Authority
an Independent Special District in the
State of Florida

Denise D. Platt
Signature
Denise D. Platt
Witness name above

By: [Signature]
George Platt, Chair
Name and title above

Signature

Witness name above

ATTEST:
[Signature]
Assistant Secretary

(SEAL)

Approved as to form by Joni Armstrong
Coffey, Broward County Attorney.

By: [Signature] (10-07-14)
Andrea S. Froome (Date)
Senior Assistant County Attorney

EXHIBIT A

SCOPE OF SERVICES AND
DESCRIPTION OF PROJECT

AGREEMENT BETWEEN CITY OF FORT LAUDERDALE AND PERFORMING
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1. RESPONSIBILITIES OF PACA. PACA shall:

- A. Provide funding in an amount not to exceed fifty percent (50%) of the funds for the implementation of the Project as described in section 3 of this Exhibit A.
- B. Provide 50% of the funding for documented ongoing expenses related to the Project for the monthly cable and electric bills, for so long as there is a valid lease agreement between the City and Parker Theater, Inc. for the Parker Playhouse and so long as PACA manages Parker Playhouse or in the event that the Lease terminates, for as long as PACA continues to manage Parker Playhouse whether under a written agreement between PACA and the Parker Theater, Inc. or its successor or through some other management rights for the Parker Playhouse.
- C. Provide 50% of the funding for documented ongoing maintenance expenses and repairs related to the Project for so long as there is a valid lease agreement between the City and Parker Theater, Inc. for the Parker Playhouse and so long as PACA manages Parker Playhouse or in the event that the Lease terminates, for as long as PACA continues to manage Parker Playhouse whether under a written agreement between PACA and the Parker Theater, Inc. or its successor or through some other management rights for the Parker Playhouse. Except in an emergency as identified in the Force Majeure section of the Agreement, City shall notify PACA in writing of estimated maintenance or repair expenses for prior written approval by PACA's President/CEO before proceeding with such maintenance or repair, which approval shall not be unreasonably withheld.

D. The funding contribution of PACA for the implementation is subject to the following conditions:

- i. Payment shall be made by PACA to City on a reimbursement basis after request by City, including the provision of required invoices by City. All payments up to 50% of the total cost for the implementation of the Project (estimated at \$84,125 based on the budget attached as Exhibit B) shall be made by PACA to City following completion of the services rendered upon the City providing an invoice for the completed work and PACA's General Manager for Parker Playhouse visit to the site to confirm completion. Payments will be made by PACA to City at the address in the "NOTICES" section as changed from time to time in accordance with that section.**
- ii. PACA shall have no obligation or responsibility to pay more than 50% of the total funding for the implementation and subsequent ongoing expenses for the Project. Funding is based on the budget attached as Exhibit B and shall be increased or reduced on a pro rata basis (50%/50% each) in accordance with any overall budget increases or reductions that are mutually approved in advance in writing by the PACA's President/CEO and City's City Manager.**
- iii. All funding provided by the PACA is to be used solely for the construction, ongoing expenses and maintenance of the Project as outlined in this Agreement. Any unauthorized use will require immediate reimbursement to PACA within thirty (30) days of PACA becoming aware of such unauthorized use.**

3. **RESPONSIBILITIES OF CITY.** City shall

- A. Provide a budget for the implementation of the proposed Project, which is attached hereto as Exhibit "B" including a line item for all anticipated expenses during implementation and for five-year maintenance of the sign included at no additional costs to PACA.
- B. Provide 50% of the funding for the Project in the estimated amount of \$84,125, to fund half the cost of the Project.
- C. Procure all services for the construction and maintenance of the Project in compliance with the City's Purchasing Code.
- D. Provide PACA with all necessary receipts, invoices and proof of payments necessary to show that funds have been spent in accordance with this Agreement.
- E. City is responsible for securing all applicable permits and compliance with all applicable law.
- F. Ownership of Improvements. The City shall be the owner of the Project and all related fixtures and improvements notwithstanding PACA's contribution of funds for the implementation of the Project and the ongoing maintenance expenses.
- G. The Project shall be maintained by the City in a reasonable manner and funding for maintenance costs shall be split equally (50%/50%) between the parties to this Agreement in accordance with Section 1, above.
- H. The City shall be responsible for securing and maintaining any required insurance for the Project. The City shall bear the liability for the Project, however PACA shall be responsible for any liability associated with its use of the sign.

4. DESCRIPTION OF PROJECT:

A. The "Project" is more particularly described as follows: The construction, subsequent continuous maintenance and operation of an electronic sign on the west lot of Holiday Park between 8 St and 9 St at the southwest corner of said lot) to be used by both parties. See more detailed description of sign contained on Attachments A-1 through A-10 attached hereto.

B. Pending review and recommendations by the City's consultant, messages on the sign will consist of 12 panels/slides messages. The City shall have the odd numbered panels/slides and PACA shall have the even number panels/slides. Each panel/slide will display for 3 to 5 seconds, pending review and recommendation by the City's consultant on exposure times.

C. All panels/slides will follow the same format, pending review and recommendation by the City's consultant, in order to achieve one cohesive branding for the site. The format agreed upon by PACA and the City is as follows:

- Top line/area: Main Act and/or Headliner
- Line 2/area: Static picture and/or graphic
- Line 3/area: Day, Date, Time(s) of Event

The Parties may mutually agree to change the format, subject to approval by City's Director of Parks and Recreation or his/her designee and PACA's President/CEO or his/her designee.

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EXHIBIT B
BUDGET

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The budget for the implementation of the Project is as follows:

▪ Electronic sign, including construction and installation	\$150,000
▪ Consultant Fee	\$10,000
▪ Tree relocation, 2 trees	\$3,250
▪ Permits	\$1,000
▪ FPL/Comcast drops to site	\$2,000
▪ City trenching	\$2,000
▪ 5 year maintenance agreement	included
▪ ESTIMATED TOTAL	\$168,250*

*Actual Total will be split equally 50%/50% between PACA and the City as stated on Exhibit A

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