



COMMISSION AGENDA ITEM  
DOCUMENT ROUTING FORM

3 ✓ 11/21/16 L

Today's Date: 11/16/16

**DOCUMENT TITLE: TRI-PARTY GRANT AGREEMENT AMONG BROWARD COUNTY, CITY OF FORT LAUDERDALE AND PERFORMING ARTS CENTER AUTHORITY FOR GRANT FUNDING FOR PACA'S OPERATIONS FOR FISCAL YEAR 2017**

COMM. MTG. DATE: 11/15/16 CAM #: 16-1353 ITEM #: CR-5 CAM attached:  YES  NO

Routing Origin: CAO Router Name/Ext: Jolene/5035

CIP FUNDED:  YES  NO

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, or fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, or real.

1) City Attorney's Office # of originals attached: 3 Approved as to Form:  YES  NO

Date to CCO: 11/16/2016 DJS  
Initials

2) City Clerk's Office: # of originals: 3 Routed to: Gina Ri/CMO/X5013 Date: 11/18/16

3) City Manager's Office: CMO LOG #: 11/18/16 Date received from CCO: 11/18/16

Assigned to: L. FELDMAN  S. HAWTHORNE  C. LAGERBLOOM   
L. FELDMAN as CRA Executive Director

APPROVED FOR LEE FELDMAN'S SIGNATURE  N/A FOR L. FELDMAN TO SIGN

PER ACM: S. HAWTHORNE (Initial/Date) C. LAGERBLOOM  
(Initial/Date)  PENDING APPROVAL (See comments below)

Comments/Questions: \_\_\_\_\_

Forward 3 originals to  Mayor  CCO Date: 11/18/16

4) Mayor/CRA Chairman: Please sign as indicated. Forward 3 originals to CCO for attestation/City seal (as applicable) Date: 11/21/16

**INSTRUCTIONS TO CLERK'S OFFICE**

City Clerk: Retains 0 original and forwards 3 original(s) to: Linda Blanco/5141 (Name/Dept/Ext)

Attach      certified Reso #       YES  NO Original Route form to CAO/Jolene C./5035

**TRI-PARTY GRANT AGREEMENT AMONG BROWARD COUNTY, CITY OF  
FORT LAUDERDALE, AND PERFORMING ARTS CENTER AUTHORITY FOR  
GRANT FUNDING FOR PACA'S OPERATIONS FOR FISCAL YEAR 2017**

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

**RECITALS:**

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

PACA has presented renowned performers and productions which have enhanced the cultural life of South Florida and made the Center a first-class facility for 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") wish to support the Center by providing funding and in-kind contributions to PACA to offset a portion of any Operating Deficit for the Center.

The Board and the City Commission have determined that their respective financial contributions serve a valid public purpose.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1. DEFINITIONS AND IDENTIFICATIONS**

- 1.1 "Contract Administrator" means the Director/CFO of the County's Finance and Administrative Services Department or his or her successor as designated by the County in writing.
- 1.2 "County Attorney" means the chief legal counsel for County appointed by the Board.
- 1.3 "County Auditor" means the County Auditor appointed by the Board. 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 (including depreciation) over actual operating revenues (excluding non-operating income and the deduction of non-operating expenses).

## 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, such operational services include all labor, materials, and tasks, whether or not enumerated, that are such an inseparable part of the Center's operation that exclusion thereof would render PACA's performance impractical, illogical, or unconscionable.
- 2.2 Subcontracting. PACA may subcontract any portion of the services required for operation of the Center as appropriate in its reasonable business judgment without any prior or subsequent 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 except as expressly provided herein.
- 2.4 PACA's Chief Financial Officer. PACA's Chief Financial Officer ("CFO") is responsible for administering this Agreement on behalf of PACA.

## ARTICLE 3. TERM AND TIME OF PERFORMANCE

- 3.1 Term. The Agreement shall be effective on October 1, 2016 (the "Effective Date"), and shall end on September 30, 2017 (collectively, the "Term").
- 3.2 Extensions. This Agreement is for one Fiscal Year as stated in Sections 3.1 and 3.3.
- 3.3 Fiscal Year. The continuation of this Agreement beyond the end of any Fiscal Year shall be subject to both the appropriation and the availability of funds, in accordance with Chapter 129 and Chapter 166, Florida Statutes, as applicable. Each party's Fiscal Year commences on October 1 and ends September 30 of the following year ("Fiscal Year").
- 3.4 Time is of the essence for all required performance.

## ARTICLE 4. FUNDING, COMPENSATION, AND USE OF FUNDS

- 4.1 Payments shall be made for the operation of the Center pursuant to this article which shall be accepted by PACA as full compensation for such operation. PACA acknowledges that the amounts set forth in this article 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. These maximum amounts,

however, do not constitute a limitation of any sort upon PACA's obligation to operate the Center.

4.2 County's Contribution to PACA:

4.2.1 For operation of the Center. County will pay PACA the total amount of Seven Hundred Thirty-two Thousand Five Hundred Dollars (\$732,500.00), as grant funding towards the operation of the Center in the manner described in Section 5.1.1.

4.2.2 County in-kind legal services. The County, through its Office of the County Attorney, will provide to PACA up to five hundred (500) hours of professional legal services each year of this Agreement, in connection with the following matters: legal counsel as needed at PACA Board of Directors meetings; drafting, review, and interpretation of agreements between PACA and vendors, governments, and providers of construction design, engineering, and construction services; employment issues; and staff counseling, dispute resolution, and litigation in connection with the foregoing matters. PACA shall pay all litigation and dispute resolution costs payable to third parties in connection with any dispute resolution or litigation matters in which the Office of the County Attorney is providing representation. It is provided, however, that the Office of the County Attorney will not provide legal services in connection with any matter presenting a professional conflict or appearance of professional conflict with the Office's primary obligation to Broward County and the Board of County Commissioners. Nothing in this Agreement shall limit PACA's option, at its sole discretion and expense, to retain legal services from other counsel in addition to or in lieu of the legal services provided by the Office of the County Attorney.

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 (that is, the City's allocation of gross revenues less allocated expenses related to the operation of the Arts and Science District Parking Facility adjacent to the Center) up to an amount not to exceed Three Hundred Thousand Dollars (\$300,000.00) for the Term. City shall remit to PACA, on a monthly basis within thirty (30) days after the end of each month, that portion of the City's net garage revenues collected during each preceding month.

4.3.2 City in-kind services and reimbursement expenses.

(i) The City shall provide landscape maintenance of the valet lot and parking garage sites as in-kind services to PACA having a value of at least Thirty Thousand Dollars (\$30,000.00) as its in-kind contribution. Nothing shall prevent the City from exceeding the amount of \$30,000.00 in its sole

discretion. The in-kind services shall be determined and valued by a method that is mutually acceptable to the City and PACA, which may be approved in writing by the City Manager and PACA's President/CEO.

(ii) If applicable, any expenses paid by PACA for waste removal services performed during the Term shall be invoiced in accordance with Section 5.2 and reimbursed by the City but such reimbursements shall not exceed Twenty-four Thousand Dollars (\$24,000.00) for the Term.

- 4.4 Use of funds. Funding provided by the County and the City pursuant to this Agreement shall be used only for the payment of expenses incurred in the operation of the Center, except for the in-kind legal services provided by the County as stated in Section 4.2.2 which shall be for the overall operation of PACA.
- 4.5 Selection and Compensation of Independent Auditor. Chapter 2005-335 of Laws of Florida requires the County and the City to retain, employ, and compensate independent certified public accountants to audit the records or book of account of PACA. The parties agree that the PACA will form a selection committee to select the auditor that will include the County Auditor or the County Auditor's designee and the City's Auditor or the City's Auditor's designee as voting members. The Parties agree to enter into a separate agreement to retain, employ, and compensate an independent auditor to audit the records, books and accounts of PACA for fiscal years 2016 through 2020. The County and the City are responsible for paying one-half of the compensation for the independent auditor.
- 4.6 Breach of Any Agreement. If PACA breaches this Agreement, PACA acknowledges that the County and/or the City may choose to withhold funds or other payment obligation due under this Agreement if the breach is not cured within any required time under this Agreement.

## ARTICLE 5. DISBURSEMENT

### 5.1 County's Payments

5.1.1 Quarterly payment. Within thirty (30) days after the commencement of the Term or after complete execution whichever date is later, the County shall pay One Hundred Eighty-three Thousand One Hundred Twenty-five Dollars (\$183,125.00) ("Quarterly Payment") to PACA as its first Quarterly Payment for the period October 1, 2016, through December 31, 2017. Thereafter, the County shall pay PACA the Quarterly Payment within thirty (30) calendar days after the end of each remaining quarter ending March 31, June 30, and September 30 respectively.

5.1.2 Adjustments. If applicable, any adjustments to be made in the total amount paid by the County to PACA for the Term shall be made in the fourth Quarterly Payment to PACA.

- 5.1.3 Over-payments. 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 under this Agreement. Such reimbursements shall be made by PACA to County within sixty (60) days after receipt of written notice from County.
- 5.2 City's Payments
- If applicable in accordance with Section 4.3.2(ii), PACA shall provide the City with a monthly invoice for any waste removal expenses paid by PACA for the previous month along with proof of payment of the invoiced amount. In such event, the City shall reimburse PACA for any waste removal service expenses paid by PACA within thirty (30) days after the receipt of the invoice.
- 5.3 No interest shall be due to PACA on any amount(s) payable by County or City.
- 5.4 County and City shall have the right to withhold payment (without payment of interest as allowed by Section 5.3) due to PACA's failure to comply with any term, condition, or requirement of this Agreement.
- 5.5 Payments due to PACA shall be 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

## **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 received and disbursed each quarter. Such quarterly 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. Such audit report 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, as to the amount expended for operations, as to whether any funds are due back to the County or City, and an opinion that the funds received have been expended in accordance with the terms of this Agreement.

#### **ARTICLE 7. GOVERNMENTAL IMMUNITY**

PACA represents to County and City 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 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 shall list "Broward County" and the "City of Fort Lauderdale" as additional named insureds on the certificate.
- 8.2 If PACA hires subcontractor(s) to perform the services under this Agreement, the 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. In the event of an alleged breach, the non-breaching party shall provide written notice of the breach to the alleged breaching party with a copy to the other party. If the breach is not cured within thirty (30) days of the written notice of the breach, this Agreement may be terminated for cause by the non-breaching party upon ten (10) days' prior written notice.

In the event that the violation is not corrected within the required time after notice by Contract Administrator to PACA, the Contract Administrator in his or 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 or 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 the continued violation is not excusable after further written extension has been granted, then County may terminate in accordance with this section. Additionally, prior to termination for cause by the City, the same procedures outlined in Section 9.1 will be followed by the City except that the City Manager shall provide the required notices and make any required determinations in lieu of Contract Administrator.

In the event of issuance of any notice of breach from either the County or City to PACA, the County or the City may withhold any further disbursements to PACA (without interest as allowed by Section 5.3).

- 9.2 Termination for convenience. This Agreement may also be terminated for convenience by the County or City by providing at least thirty (30) days' prior written notice to the other parties. If County or City erroneously, improperly, or unjustifiably terminate 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 fails to promptly implement corrective action for audit deficiencies within the time period stated in the notice from County or City.
- 9.4 County or City may terminate this Agreement in accordance with Sections 10.4, 10.8, 10.21, and 10.23.
- 9.5 Notice of termination shall be provided in accordance with the "Notices" section in Article 10.
- 9.6 In the event of termination for convenience by County or City, PACA shall be paid for any disbursements due or 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 and City, the receipt and adequacy of which are hereby acknowledged by PACA, for County's and City's right to terminate for convenience. PACA also 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 solely relating to this Agreement, 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, 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) and shall be delivered by PACA to the Contract Administrator and City Manager within seven (7) days of expiration or earlier termination.

10.2 Audit Right and Retention of Records. PACA shall, by written contract, require any of its subcontractors under this Agreement to agree to all the requirements and obligations contained in this section.

10.2.1 County and 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 such 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 expiration or earlier 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 Public Records. PACA, County, and City are public entities. Each party is responsible for complying with its public records requests and the public records laws in Chapter 119, Florida Statutes, including Section 119.0701.

10.3 Truth-In-Negotiation Representation. The County's and City's funding to PACA and other compensation to be provided by the County and the City is based upon representations supplied, or to be supplied, by PACA to County and City. PACA certifies that the information supplied or to be supplied is accurate, complete, and current at the time of contracting or at the time that it provides such information and representations to the County and the City. County and City shall be entitled to recover from PACA any damages incurred 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. Notwithstanding any provision to the contrary, if the representation stated in this paragraph is false, County and City shall have the right to immediately terminate by written notice and recover all sums paid to PACA under this Agreement.

- 10.5 Independent Contractor. PACA, County, and City are independent contractors. Each of the parties and its agents shall not act as officers, employees, or agents of the other parties. None of the parties shall have the right to bind any of the other parties to any obligation not expressly undertaken by the other parties.
- 10.6 Third Party Beneficiaries. The parties acknowledge that there are no third party beneficiaries to this Agreement.
- 10.7 Notices. In order for a notice to a party to be effective, 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 stated herein unless and until changed by providing notice of such change.

For County:

Broward County, Finance and Administrative Services Department  
Attn: Director/CFO  
Governmental Center, Room 513  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
E-mail: [finance@broward.org](mailto:finance@broward.org)  
With simultaneous e-mail copy to:  
[sfarmer@broward.org](mailto:sfarmer@broward.org) and [rjohnson@broward.org](mailto:rjohnson@broward.org)

with a copy to:

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

For City:

City of Fort Lauderdale  
Attn: Director of Finance  
City Hall  
100 N. Andrews Avenue  
Fort Lauderdale, Florida 33301  
E-mail: [kbuffington@fortlauderdale.gov](mailto:kbuffington@fortlauderdale.gov)

For PACA:

Performing Arts Center Authority  
Attn: CFO  
Broward Center for the Performing Arts  
201 Southwest Fifth Avenue  
Fort Lauderdale, Florida 33312  
E-mail: [tweeks@browardcenter.org](mailto:tweeks@browardcenter.org)  
With simultaneous e-mail copy to: [kshanley@browardcenter.org](mailto:kshanley@browardcenter.org)

- 10.8 Assignment and Performance. Except for subcontracting in accordance with Article 2, neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted, or encumbered by PACA without the prior written consent of County and City. If PACA violates this provision, County and City shall have the right to immediately terminate with written notice. PACA represents that each person and entity that will provide services is duly qualified to perform such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render services. PACA shall perform all services in a skillful and respectful manner, and shall ensure that the quality of all such services equal or exceed prevailing industry standards.
- 10.9 Conflicts. Neither PACA or nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with PACA's loyal and conscientious exercise of the judgment and care required to perform under this Agreement. None of PACA's officers or employees shall, during the Term of this Agreement, serve as an expert witness against County or City in any legal or administrative proceeding in which he, she, or PACA is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of County or City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude PACA or any person from in any way representing themselves, including giving expert testimony in support thereof, in any administrative or legal proceeding. PACA agrees that in each of PACA's contracts with subcontractors performing services under this Agreement shall contain substantively identical language to ensure that each subcontractor and its officers and employees meet the obligations relating to this Agreement contained in this section.
- 10.10 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth herein was bargained for at arm's length and is agreed to by the parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is therefore, a material term hereof.

- 10.11 Compliance with Laws. PACA shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to 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. The Agreement has been jointly prepared by the parties hereto, and shall not be construed more strictly against any of the parties.
- 10.14 Interpretation. The headings are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used 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. Whenever reference is made to a section or article, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article.
- 10.15 Law, Jurisdiction, Venue, 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 such claim or 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 PARTIES MAY HAVE TO A TRIAL BY JURY OF ANY CAUSE OF ACTION OR CLAIM ARISING FROM, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY ANOTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTIES IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

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, if applicable, any pre-approved cost(s) incurred by the mediator.

10.16 Amendments. No modification, amendment, or alteration in the terms and conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the County, City, and PACA or others delegated authority to or otherwise authorized to execute same on their behalf except as otherwise expressly stated herein (including in Section 4.3.2).

10.17 Prior Agreements. This Agreement represents the final and complete understanding of the parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations and discussions regarding this subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

10.18 Payable Interest.

10.18.1 Payment of Interest. The County and City shall not be liable to pay any interest to PACA for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof PACA waives, rejects, disclaims, and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This paragraph shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

10.18.2 Rate of Interest. If, for whatever reason, Section 10.18.1 is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County or City under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, 0.25% (one quarter of one percent) simple interest (uncompounded).

10.19 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference.

10.20 Representation of Authority. Each individual executing this Agreement on behalf of a party hereto represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

10.21 Contingency Fee. PACA represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for PACA, any

fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. If County or City learns that this representation is false, County and City shall have the right to terminate by written notice without any further liability to PACA. Alternatively, if such representation is false, County and City, at their sole discretion, may deduct from the compensation due PACA under this Agreement the full amount of such fee, commission, percentage, gift, or consideration.

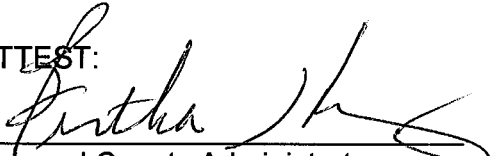
- 10.22 Nondiscrimination. No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. PACA shall include the foregoing or similar language in its contracts with any subcontractors, 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 performing services under this Agreement.
- 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 to the extent of such prevention, 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 such causes are removed. However, if such non-performance exceeds sixty (60) days, any of the other parties that are not prevented from performance by the force majeure event shall have the right to immediately terminate upon written notice to the party so affected and the remaining non-affected party 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 of page is intentionally left blank.)

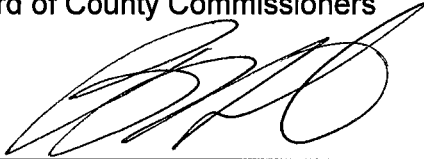
IN WITNESS WHEREOF, the parties have made and executed this Tri-Party Grant Agreement for Fiscal Year 2017 on the respective dates under each signature: Broward County, through its Board of County Commissioners, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the 6 day of December, 2016; the City of Fort Lauderdale, signing by and through its Mayor-Commissioner, duly authorized to execute same; and Performing Arts Center Authority, signing by and through its Chair or Vice Chair, duly authorized to execute same.

COUNTY

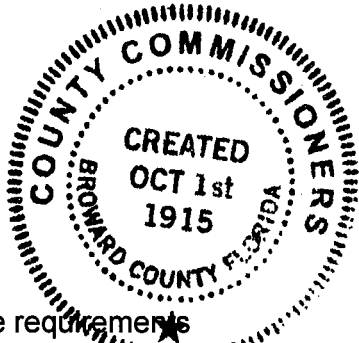
ATTEST:

  
Broward County Administrator, as  
Ex-officio Clerk of the Broward County  
Board of County Commissioners

BROWARD COUNTY, through its  
Board of County Commissioners

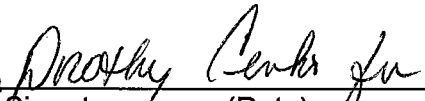
By   
Mayor

6 day of December, 2016



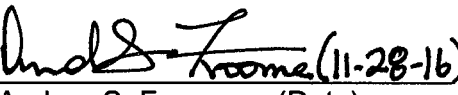
Insurance requirements  
approved by Broward County  
Risk Management Division

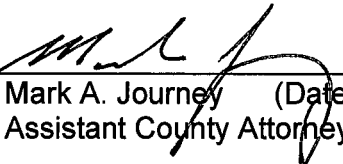
Approved as to form by  
Joni Armstrong Coffey  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By   
Signature (Date)

Risk Management Division  
Jacqueline A. Binns

Print Name and Title above 11/28/16

By  (11-28-16)  
Andrea S. Froome (Date)  
Senior Assistant County Attorney

By  11-28-16  
Mark A. Journey (Date)  
Assistant County Attorney

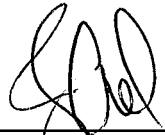
ASF:dp  
2016-09-28 PACA Tri-party Grant FY2017.A01  
09/28/16  
#16-158

TRI-PARTY GRANT AGREEMENT AMONG BROWARD COUNTY AND THE CITY OF FORT LAUDERDALE AND THE PERFORMING ARTS CENTER AUTHORITY FOR FISCAL YEAR 2017

CITY

ATTEST:

CITY OF FORT LAUDERDALE

  
\_\_\_\_\_  
City Clerk Signature

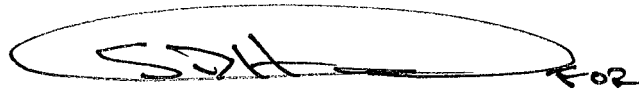
JEFFREY A. MODARELLI  
Print Name of City Clerk

By   
\_\_\_\_\_  
Mayor-Commissioner

JOHN P. "JACK" SEILER  
Print name of Mayor-Commissioner above

21<sup>st</sup> day of November, 2016.

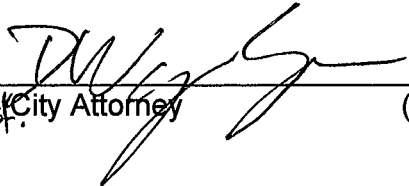
(SEAL)

  
\_\_\_\_\_  
City Manager

LEE FELDMAN  
Print name of City Manager above

18 day of NOVEMBER, 2016.

APPROVED AS TO FORM:

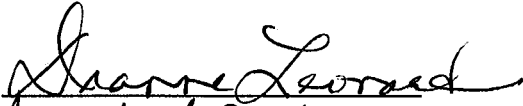
By   
\_\_\_\_\_  
Asst. City Attorney (Date) 11/16/2016



TRI-PARTY GRANT AGREEMENT AMONG BROWARD COUNTY AND THE CITY OF FORT LAUDERDALE AND THE PERFORMING ARTS CENTER AUTHORITY FOR FISCAL YEAR 2017


PACA

ATTEST:

  
Assistant Secretary  
Dianne Leonard  
Print name

(SEAL)

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

By   
Chair  
John T. Loos  
Print name of Chair above

13 day of October, 2016