



TRI-PARTY GRANT AGREEMENT BETWEEN BROWARD COUNTY, CITY OF FORT LAUDERDALE, AND PERFORMING ARTS CENTER AUTHORITY (PACA) FOR FUNDING FOR PACA'S CAPITAL IMPROVEMENT PROJECTS

This Tri-Party Grant Agreement ("Agreement") is made and entered into by Broward County, a political subdivision of the State of Florida ("County"), the City of Fort Lauderdale, Florida, a municipal corporation ("City"), and Performing Arts Center Authority, an independent special district created by the Florida Legislature ("PACA") (each a "Party" and collectively referred to as the "Parties").

RECITALS

A. PACA operates the Broward Center for the Performing Arts ("Center"), located in the City of Fort Lauderdale, which is a significant cultural attraction for Broward County.

B. PACA has presented renowned performers and productions that have enhanced the cultural life of South Florida and made the Center a first-class facility for Broward County, its residents, and visitors.

C. 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 land contributions to PACA to fund capital improvement projects for the Center.

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

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

1.1. **Applicable Law** means all applicable laws, codes, advisory circulars, rules, regulations, and ordinances of any federal, state, county, municipal, or other governmental entity, as may be amended.

1.2. **Board** means the Board of County Commissioners of Broward County, Florida.

1.3. **City's Contract Administrator** means the Director of Finance, or other person designated in writing by City's Director of Finance or the City Manager.

1.4. **County's Contract Administrator** means the Director of County's Cultural Division ("Division"), or other person designated in writing by the Division Director or the County Administrator.

1.5. **County Auditor** means the County Auditor appointed by the Board. City Auditor means the City Auditor appointed by the City Commission.

1.6. **Fiscal Year** means each annual period from October 1 through the following September 30. For purposes of this Agreement, the first Fiscal Year is the period from October 1, 2023, through September 30, 2024.

ARTICLE 2. EXHIBITS

Exhibit A	Approved Uses
Exhibit B	City Land Contribution
Exhibit C	Five-Year Capital Plan Detail
Exhibit D	Supplemental Agreement Between PACA and City
Exhibit E	Escrow Agreement

ARTICLE 3. SCOPE OF SERVICES

3.1. Scope of Services. For the Term (as defined in Section 4.1), PACA shall use all funding provided by County or City pursuant to this Agreement solely for the approved uses specified in Exhibit A and/or otherwise stated in the Five-Year Capital Plan Detail attached as Exhibit C (collectively, the “Permitted Uses”) to complete capital improvements at the Center to enable the Center to continue to provide cultural attractions and other activities.

3.2. Change of Permitted Uses. Modifications to the Permitted Uses require the prior written approval of County’s Contract Administrator, City’s Contract Administrator, and PACA’s Chief Financial Officer. Upon any such prior written approval, Exhibit A and or Exhibit C, as applicable, shall be deemed automatically updated to reflect the modifications so approved in writing.

3.3. PACA’s Chief Financial Officer. PACA’s Chief Financial Officer is responsible for administering this Agreement on behalf of PACA.

3.4. County Auditor. The County Auditor shall be a permanent voting member of PACA’s Finance Committee during the Term.

ARTICLE 4. TERM AND TIME OF PERFORMANCE

4.1. Term. The term of this Agreement (“Term”) shall begin retroactively on October 1, 2023 (the “Effective Date”), and shall end on December 31, 2028, unless otherwise terminated as provided in this Agreement.

4.2. Fiscal Year. The continuation of this Agreement beyond the end of any County or City fiscal year (October 1 through September 30) is subject to both the appropriation and the availability of funds pursuant to Chapter 129 and, if applicable, Chapter 212, Florida Statutes.

4.3. Time of the Essence. Time is of the essence for all performance required by this Agreement.

ARTICLE 5. FUNDING, INVOICING, AND USE OF FUNDS

5.1. All funds and other value received by PACA under this Agreement shall be used by PACA solely for the capital improvement of the Center. PACA acknowledges that the amounts set forth in this article are the maximum amounts payable or due by County and City and constitute a limitation on County's and City's obligations to provide funding or value for capital improvements for the Center.

5.2. County's Contribution to PACA. During the Term, County will provide up to One Million Dollars (\$1,000,000) total for each Fiscal Year in matching funds as set forth in this Section 5.2, not to exceed a total aggregate contribution of Five Million Dollars (\$5,000,000) for the Term of this Agreement.

5.2.1. For each Fiscal Year, County will fund up to Five Hundred Thousand Dollars (\$500,000) annually ("County-PACA Match") on a dollar-for-dollar (1:1) match basis to the extent of PACA's actual capital expenditures towards Permitted Uses during that applicable Fiscal Year (excluding any funds received from County or City). Any qualifying PACA capital expenditures that exceed \$500,000 in any Fiscal Year shall carryover into the next Fiscal Year(s), until fully credited, for purposes of calculating the County-PACA Match amount.

5.2.2. For each Fiscal Year, County will match up to Five Hundred Thousand Dollars (\$500,000) annually ("County-City Match") at a two-to-one (2:1) basis to the extent of the City's in-kind land contributions as described in Section 5.3 below, up to a total aggregate County-City match of Two Million Five Hundred Thousand Dollars (\$2,500,000) for the Term of this Agreement. Provided City takes all actions necessary to ensure the timely performance of all obligations of City stated in Section 5.3, the Donated Parcel shall be deemed to be annual in-kind contributions by City of Two Hundred and Fifty Thousand Dollars (\$250,000) for each Fiscal Year of this Agreement; for clarity, City's deemed annual in-kind contribution will apply in accordance with this section for each Fiscal Year, including Fiscal Years, if any, before and after the issuance of the Release Notice, up to a maximum total deemed in-kind contribution amount of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) for the Term of this Agreement. Any remaining balance of value of the Donated Parcel as stipulated in Section 5.3.4 below that is not counted toward the City in-kind contributions to PACA as set forth in this Section 5.2.2 shall be governed by a Supplemental Agreement between PACA and City, of even date herewith and incorporated herein and attached as Exhibit D. Any amendment to the Supplemental Agreement between PACA and City requires prior written approval by the County Administrator. If the Release Notice is issued and the Donated Parcel is transferred to PACA prior to the expiration or termination of this Agreement, County's obligations to pay the County-City Match in full in accordance with this section will survive such expiration or termination.

5.3. City's Contribution to PACA. During the Term, City will provide capital improvement funding to PACA as follows:

5.3.1. Within sixty (60) days after the date this Agreement is fully executed by the Parties, City shall place a quitclaim deed, the form of which must be approved in writing in advance by PACA, to transfer to PACA the real property described in Exhibit B ("Donated Parcel"), in escrow with Garry Johnson or other person approved by the Parties in writing ("Escrow Agent"), pursuant to the Escrow Agreement attached as Exhibit E ("Escrow Agreement"), which Escrow Agreement must be fully executed no later than the date this Agreement is fully executed. Any changes to the form of the Escrow Agreement must be approved in writing in advance by all Parties to this Agreement. City Manager is authorized to execute the Escrow Agreement in substantially the form of Exhibit E and approve any changes thereto.

5.3.2. The Escrow Agreement must provide for the release and recordation of the quitclaim deed for the Donated Parcel only and specifically as set forth in this Section 5.3.2. Escrow Agent shall release and record the quitclaim deed to PACA upon written notice from County ("Release Notice"). County shall issue the Release Notice upon the first to occur of the following three events: (i) October 1, 2028; (ii) PACA has demonstrated to County's satisfaction that PACA has expended at least Two Million Five Hundred Thousand Dollars (\$2,500,000) in capital expenditures for Permitted Uses during the Term (excluding funds received from County); or (iii) termination of this Agreement. The obligations of this section shall survive the termination or expiration of this Agreement.

5.3.3. Upon issuance of the Release Notice, PACA shall certify to City, and County shall verify and provide notice to City, as of the date of the Release Notice, the amounts expended by PACA in capital expenditures for Permitted Uses during the Term (excluding funds received from County). Escrow Agent shall ensure a copy of the Release Notice is sent to City.

5.3.4. The Parties stipulate that the total value of the Donated Parcel is Two Million One Hundred Thousand Dollars (\$2,100,000).

5.3.5. Unless and until the Release Notice is issued by County pursuant to Section 5.3.2, City, at its sole expense, shall:

5.3.5.1 Maintain and preserve the Donated Parcel in substantially the same condition and repair as it was on the date this Agreement is fully executed, ordinary wear and tear excepted;

5.3.5.2 Maintain the current use of the Donated Parcel and all associated contractual and service relationships relating to same, unless modification is approved in writing by PACA;

5.3.5.3 Comply with all of the covenants, conditions, and requirements set forth, imposed by, related to, or arising out of all statutes, laws, ordinances, rules, regulations, and other applicable covenants with regard to the Donated Parcel;

5.3.5.4 Not allow any lien, taxes, special assessments, or other financial obligations regarding the Donated Parcel to remain unpaid after the due date, and not allow or consent to the creation of any matter affecting the title of the Donated Parcel as it exists on the date this Agreement is fully executed by the Parties, unless approved in advance in writing by PACA and County; if any such lien, taxes, assessments, financial obligations, or new title matter or exception occur, City must promptly address and fully resolve same to the reasonable satisfaction of PACA; and

5.3.5.5 Refrain from applying for an individual property owner rezoning application, or other construction related permit, for the Donated Parcel without prior written approval of PACA.

5.3.6. If the Release Notice is issued by County, City shall use best efforts to promptly assign or otherwise transfer to PACA, if and to the extent that PACA so elects to assume same, any then-existing contracts or service agreements relating to the Donated Parcel. If PACA elects not to receive an assignment or other transfer of any given contract or agreement, City shall ensure the contract or agreement is effectively terminated or otherwise resolved such that no third party has any rights or claims relating to the Donated Parcel after the date of the release of the quitclaim deed by Escrow Agent.

5.4. Invoices. Commencing within thirty (30) days after this Agreement is fully executed and continuing thereafter by December 1 of each calendar year, PACA shall invoice County the applicable County-PACA Match amount and the applicable County-City Match amount for the immediately preceding Fiscal Year, except that the first such invoice under this Agreement will include all amounts due for all prior Fiscal Years during the Term of this Agreement. County shall pay each proper invoice within thirty (30) days, subject to the limitations of this Agreement including, without limitation, Section 5.2.

5.5. Expenditure of Funds. PACA shall expend all funding provided under this Agreement no later than September 30, 2029. The Parties recognize that capital expenditures may fluctuate from year to year; any unexpended funds at the end of any Fiscal Year may be rolled over by PACA for appropriation in subsequent Fiscal Years, subject to the obligation of this section to fully expend all amounts by September 30, 2029. The obligations of this section shall survive the termination or expiration of this Agreement.

5.6. Selection and Compensation of Independent Auditor. Chapter 2005-335 of the Laws of Florida requires County and City to retain, employ, and compensate independent certified public accountants to audit the records or book of account of PACA. The Parties have a separate agreement for independent auditing services with PACA's independent auditor for Fiscal Years 2022/2023 through 2026/2027, which is separately funded and is in addition to the amounts paid by City and County pursuant to Sections 5.2 and 5.3 above.

5.7. Overpayments. Upon written notice from the County's Contract Administrator, PACA shall promptly reimburse County for any amounts later determined by County or City to be improperly

paid under this Agreement. Such reimbursements shall be made by PACA to County or City, as applicable, within sixty (60) days after receipt of written notice from the applicable Contract Administrator.

5.8. Interest; Withholding. No interest shall be due to PACA on any amount(s) payable by County. County shall have the right to withhold payment (without any obligation to pay interest) because of PACA's failure to comply with any term, condition, or requirement of this Agreement.

5.9. Nonpayment. If any Party fails to make payments or otherwise fail to perform as required under this Agreement when due, such failure shall constitute a breach of this Agreement by the nonpaying or nonperforming Party, and this Agreement will remain in effect as and between the remaining Parties. PACA agrees to look solely to the nonpaying Party for recovery, and neither County nor City shall have any liability or responsibility associated with the other's nonpayment to PACA. Each Party shall have the right to seek specific performance of any or all obligations under this Agreement.

5.10. Payment Address. Payments due to PACA shall be payable to the "Performing Arts Center Authority" at:

Performing Arts Center Authority
Attention: Chief Financial Officer
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 County and City a calendar quarterly financial report consisting of a statement of net position, a statement of revenue and expenses, a working capital statement, a cash flow schedule and forecast, and a schedule of all operating expenditures that were made from any funds received and disbursed during the calendar quarter for which the report is prepared. Such quarterly reports shall be submitted within forty-five (45) days after the end of each calendar quarter. PACA shall also prepare and submit an annual financial report with the same details as the quarterly reports (except that the annual report will provide details for the entire fiscal year) to County and City within one hundred twenty (120) days after the end of the applicable Fiscal Year. PACA's obligations under this section shall survive the expiration of the Term by one (1) calendar 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 County and City no later than one

hundred twenty (120) days after the end of each Fiscal Year of the Term. PACA's obligations under this section shall survive the expiration of the Term by one (1) calendar year.

6.4. The audit report shall contain disclosures as to the amount of funding paid by County, by City, the amount expended for capital improvements of the Center, whether any funds are due back to County or City, and an opinion that the funds received have been expended in accordance with the terms of this Agreement. PACA's obligations under this section shall survive the expiration of the Term by one (1) calendar year.

ARTICLE 7. INSURANCE

PACA is a governmental entity and is responsible for the acts and omissions of its agents or employees as provided by applicable law, subject to any applicable limitations contained within Section 768.28, Florida Statutes, for claims against state agencies or subdivisions.

Upon request by County or City, PACA must provide the requesting Party with written verification of liability protection that meets or exceeds any requirements of Florida law. If PACA holds any excess liability coverage, PACA must ensure that "Broward County" and "City of Fort Lauderdale" are named as additional insureds and certificate holders under such excess liability policy and provide evidence of same to County and City.

If PACA maintains broader coverage or higher limits than the minimum coverage required under Florida law, County and City shall be entitled to such broader coverage and higher limits on a primary and non-contributory basis. County's and City's insurance requirements shall apply to PACA's self-insurance, if applicable.

PACA shall require that each contractor performing capital improvements at the Center procures and maintains insurance coverage that adequately covers each contractor's exposure based on the work provided by that contractor. PACA must ensure that all such contractors name "Broward County" and "City of Fort Lauderdale" as additional insureds and certificate holders under the applicable insurance policies. PACA shall not permit any contractor to perform capital improvements at the Center until the insurance requirements of the contractor under this section are met. If requested by County or City, PACA shall furnish evidence of insurance of all such contractors and their insurance. County reserves the right, but not the responsibility, to periodically review any and all insurance policies and to reasonably adjust the limits and/or types of coverage required herein, from time to time throughout the Term.

ARTICLE 8. EQUAL EMPLOYMENT OPPORTUNITY

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 contractors performing capital improvements at the Center, except that any project assisted by U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

ARTICLE 9. TERMINATION

9.1. Termination for Cause. In the event of an alleged breach of any provision of this Agreement, a nonbreaching 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 after written notice of the breach, this Agreement may be terminated for cause upon ten (10) days' prior written notice by the nonbreaching Party that provided notice of breach.

For any notice of breach from County pursuant to this section, if the breach is not corrected within the required time after notice, County's Contract Administrator in their sole discretion will determine whether the inability to correct the breach is excusable in light of the circumstances causing the breach. If the inability to correct is excusable in the sole discretion of County's Contract Administrator and if they are satisfied that reasonable progress is being made by the breaching Party in its endeavor to correct the breach, County's Contract Administrator may grant further written extensions of time for correction. If, however, County's Contract Administrator determines that the failure to correct is not excusable or that the continued breach is not excusable after a written extension has been granted, then County may terminate in accordance with this section.

For any notice of termination or termination for cause from City pursuant to this section, the same procedures outlined in this section will be followed by City except that the City Manager shall provide the required notices and make any required determinations in lieu of County's Contract Administrator.

9.2. Termination for Convenience. This Agreement may also be terminated for convenience by 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 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. Each Party acknowledges that it has received good, valuable, and sufficient consideration, the receipt and adequacy of which are hereby acknowledged by each Party, for these rights to terminate for convenience. Each Party 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 rights to terminate for convenience.

9.3. Notice of termination shall be provided in accordance with the "Notices" section in Section 11.7.

9.4. Effect of Termination or Expiration. In the event of termination or expiration of this Agreement, County and City shall remain obligated for any obligations that accrued on or before the effective date of termination or expiration. The rights and obligations of Sections 3.1, 3.2, Article 5, Article 6, this Section 9.4, and Section 11.2 shall survive termination or expiration of this Agreement.

ARTICLE 10. REPRESENTATIONS AND WARRANTIES

10.1. Representation of Authority. PACA represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of PACA, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that PACA has with any third party or violates any Applicable Law, rule, regulation, or duty arising in law or equity applicable to PACA. PACA further represents and warrants that execution of this Agreement is within PACA's legal powers, and each individual executing this Agreement on behalf of PACA is duly authorized by all necessary and appropriate action to do so on behalf of PACA and does so with full legal authority.

10.2. Prohibited Telecommunications Equipment. PACA represents and certifies that PACA and all subcontractors do not use, and for the Term will not provide or use, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 C.F.R. §§ 52.204-24 through 52.204-26.

10.3. Verification of Employment Eligibility. Each Party represents that it has registered with and use the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this Agreement will not violate that statute.

ARTICLE 11. MISCELLANEOUS

11.1. Public Records. PACA, County, and City are public entities. Each Party is responsible for complying with the public records laws in accordance with Chapter 119, Florida Statutes, including Section 119.0701.

In addition to any responsibility of PACA (as a separate public entity) to directly respond to each request it receives for records made or received by PACA in conjunction with this Agreement and to provide the applicable public records in response to such request, PACA shall notify County and City of the receipt and content of such request by sending an e-mail to County at pdunlap@broward.org (with a simultaneous copy to pgrewal@broward.org) and to City at lshort@fortlauderdale.gov (with a simultaneous copy to finance@fortlauderdale.gov) within one (1) business day after receipt of such request.

11.2. Audit Rights and Retention of Records. County and City shall each have the right to audit the books, records, and accounts of PACA and its contractors 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 and performance under this Agreement. All such books, records, and accounts of PACA and its contractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable

time, and upon request to do so, PACA and its contractors, as applicable, shall make same available in written form at no cost to County and City.

PACA and its contractors shall preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, by County or City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for a minimum period of three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. This article shall survive any dispute or litigation between the Parties, and PACA expressly acknowledges and agrees to be bound by this article throughout the course of any dispute or litigation with County and City. Audits and inspections pursuant to this section may be performed by any County representative (including any outside representative engaged by County) and/or by any City representative (including any outside representative engaged by City). County and City reserve the right to conduct such audit or review at PACA's place of business, if deemed appropriate by County or City, with seventy-two (72) hours' advance notice. PACA shall make all such records and documents available electronically in common file formats or via remote access if, and to the extent, requested by County.

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's or City's disallowance and recovery of any payment upon such entry. If an audit or inspection in accordance with this section discloses overpricing or overcharges to County or City of any nature by PACA in excess of five percent (5%) of the total contract billings reviewed, the reasonable actual cost of the audit shall be reimbursed to County and City, respectively, by PACA in addition to making adjustments for the overcharges. Any adjustments and/or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of the audit findings to PACA.

PACA shall ensure that the requirements of this section are included in all agreements with its contractor(s) relating to the performance of this Agreement.

11.3. 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.

11.4. Regulatory Capacity. Notwithstanding the fact that County and City are each a political subdivision with certain regulatory authority, County's and City's performance under this Agreement is as a party to this Agreement and not in their regulatory capacity. If County or City exercise regulatory authority, the exercise of such authority and the enforcement of Applicable Law shall have occurred pursuant to County's and/or City's regulatory authority as a governmental body separate and apart from this Agreement and shall not be attributable in any manner to County and/or City as parties to this Agreement.

11.5. Sovereign Immunity. Except to the extent sovereign immunity may be deemed waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign

immunity by any of the Parties nor shall anything included herein be construed as consent by the Parties to be sued by third parties in any matter arising out of this Agreement.

11.6. Third-Party Beneficiaries. The Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

11.7. Notices. Unless otherwise stated herein, in order for notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). Addresses may be changed by the applicable Party giving notice of such change in accordance with this section.

FOR COUNTY:

Broward County, Cultural Division

Attn: Phillip Dunlap, Director

100 South Andrews Avenue, 6th Floor, Fort Lauderdale, Florida 33301

E-mail address: pdunlap@broward.org and copy to pgrewal@broward.org

With a copy to:

Broward County, Office of County Auditor

Attn: County Auditor

115 South Andrews Avenue, Room 520, Fort Lauderdale, Florida 33301

E-mail: bmelton@broward.org and copy to kulett@broward.org

FOR CITY:

City of Fort Lauderdale

Attn: Director of Finance

100 North Andrews Avenue, Fort Lauderdale, Florida 33301

E-mail: finance@fortlauderdale.gov and copy to lshort@fortlauderdale.gov

With a copy to:

City of Fort Lauderdale

Attn: D'Wayne Spence, Acting City Attorney

100 North Andrews Avenue, Fort Lauderdale, Florida 33301

E-mail: dspence@fortlauderdale.gov

FOR PACA:

Performing Arts Center Authority

Attn: Catherine Carter, CFO

Broward Center for the Performing Arts

201 Southwest Fifth Avenue, Fort Lauderdale, Florida 33312

E-mail: ccarter@browardcenter.org and copy to tsutton@browardcenter.org

11.8. Assignment. Neither this Agreement nor any right or interest herein may be assigned, transferred, or encumbered by any Party without the prior written consent of the other Parties, and any such prohibited action shall be deemed null and void. If PACA violates this provision, County and City shall each have the right to immediately terminate this Agreement by providing written notice with no further financial obligation by any Party.

11.9. Conflicts. Neither PACA 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 judgment and care related to its performance under this Agreement. During the Term, none of PACA's officers or employees shall serve as an expert witness against County or City in any legal or administrative proceeding in which they or PACA are 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 such person's expert opinion that 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 persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. If PACA utilizes subcontractors, PACA shall require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as PACA.

11.10. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term. PACA's, County's, or City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party.

11.11. Compliance with Laws. PACA must comply with all Applicable Law, including, without limitation, the Americans with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and the requirements of any applicable grant agreements.

11.12. Severability. If 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.

11.13. Joint Preparation. This Agreement has been jointly prepared by the Parties and shall not be construed more strictly against any Party.

11.14. Interpretation. The titles and 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 any other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein” 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 of this Agreement, such reference is to the section or article as a whole, including all subsections thereof, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to “days” means calendar days, unless otherwise expressly stated. Any reference to approval by County or City shall require approval in writing, unless otherwise expressly stated.

11.15. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision within an article or section of this Agreement, the article or section shall prevail and be given effect.

11.16. 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 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 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. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO 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, if applicable, any pre-approved cost(s) incurred by the mediator.

11.17. Amendments. No modification, amendment, or alteration in the terms and conditions contained in this Agreement shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by County, City, and PACA or others delegated authority to or otherwise authorized to execute same on their behalf except as otherwise expressly stated. County (through its Board or County Administrator) and City (through its City Commission or City Manager) may approve and execute amendments on behalf of their respective entities as long as such amendment(s) do not increase County’s or City’s funding or financial obligations.

11.18. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding same. All commitments, agreements, and understandings of the Parties concerning the subject matter of this Agreement are contained herein.

11.19. Payable Interest

11.19.1. Payment of Interest. Unless prohibited by Applicable Law, County and City shall not be liable for interest to PACA for any reason, whether as prejudgment interest or for any other purpose, and PACA waives, rejects, disclaims, and surrenders any and all entitlement to interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement.

11.19.2. Rate of Interest. If the preceding subsection is inapplicable or 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, one quarter of one percent (0.25%) simple interest (uncompounded).

11.20. Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

11.21. Multiple Originals and Counterparts. This Agreement may be executed in multiple originals, or in counterparts, whether signed physically or electronically; each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same agreement.

11.22. Use of Party's Name or Logo. No Party shall use the name or logo of any other Party in marketing or publicity materials without prior written consent from an authorized representative of that Party.

The remainder of this page is intentionally blank.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: 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 ____ day of _____, 20__; City of Fort Lauderdale, signing by and through its Mayor and Acting City Manager, 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, by and through
its Board of County Commissioners

By: _____
Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

By: _____
Mayor
____ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600

By: _____
Javier Navas (Date)
Assistant County Attorney

By: _____
Sandy Steed (Date)
Assistant County Attorney

JN/SS
Tri-Party Capital Improvement Grant Agreement
2/4/2025
#1124436.30

**TRI-PARTY GRANT AGREEMENT BETWEEN BROWARD COUNTY, CITY OF FORT LAUDERDALE,
AND PERFORMING ARTS CENTER AUTHORITY (PACA) FOR FUNDING FOR PACA'S CAPITAL
IMPROVEMENT PROJECTS**

CITY

ATTEST:

CITY OF FORT LAUDERDALE

David Soloman, City Clerk

By: _____
Dean J. Trantalis, Mayor

_____ day of _____, 20_____

(SEAL)

By: _____
Susan Grant, Acting City Manager

_____ day of _____, 20_____

APPROVED AS TO FORM AND CORRECTNESS:
D'Wayne Spence, Interim City Attorney

By: _____
Shaun N. Amarnani, Esq.
Assistant City Attorney

_____ day of _____, 20 _____

**TRI-PARTY GRANT AGREEMENT BETWEEN BROWARD COUNTY, CITY OF FORT LAUDERDALE,
AND PERFORMING ARTS CENTER AUTHORITY (PACA) FOR FUNDING FOR PACA'S CAPITAL
IMPROVEMENT PROJECTS**

PACA

ATTEST:

PERFORMING ARTS CENTER AUTHORITY

Secretary

By: _____
Chair

Print name

Print name of Chair above

(SEAL)

____ day of _____, 20____

Exhibit A

Approved Uses

1. Capital Program Summary

Capital improvement funding provided pursuant to this Agreement shall be expended by PACA on capital improvement projects within three categories: facilities, production, and technology. These projects aim to enhance the functionality, safety, and efficiency of PACA's infrastructure and operations.

All funding will be expended only for capital improvement projects at the Broward Center for the Performing Arts, located at 201 SW 5th Avenue, Fort Lauderdale, FL 33312, including the Au-Rene Theater, the Amaturio Theater, the Abdo New River Room, the Rose Miniaci Arts Education Center, the Mary N. Porter Riverview Ballroom, the Peck Courtyard, and all ancillary spaces.

2. Capital Improvements Description

- a. PACA shall utilize a minimum of \$10,000 annually in each of the following three categories:
 - i. *Facilities*: Facilities projects include replacement of equipment & systems; scheduled replacement/refurbishment (elevators, fire protection, HVAC); replacement of tile, wood, doors, carpet, and flooring; structural repairs; architectural and engineering projects (design fees, construction documents and administration); stucco repair (replacement, waterproofing, painting); safety; and security.
 - ii. *Production*: Production projects include theatrical lighting systems; acoustical systems (performance and audio-visual); rigging; theatrical equipment; seating; and stage renovations (finishes to stage floor, walls, and ceiling).
 - iii. *Technology*: Technology projects include technology repairs, replacement, and upgrades; hardware replacement; network upgrades; software systems and enhancements; and network and cloud security.

Each project within these categories is aimed at improving PACA's facilities, enhancing production capabilities, and upgrading technological infrastructure to better serve PACA's mission and stakeholders. By strategically investing in these areas, PACA aims to ensure the long-term sustainability and effectiveness of its operations.

- b. PACA may also spend funding on any project listed in the Five-Year Capital Plan, as detailed in Exhibit C, which includes the following capital improvement projects by location:

i. **Broward Center Campus**

- *Facilities Projects*

- Scheduled replacement or refurbishment of:
 - Elevators,
 - Freight elevator,
 - Fire system, and
 - HVAC rooftop units.
- Structural repairs to the back of house facilities including:
 - Refurbishing tiles,
 - Fixtures,
 - Partitions, and
 - Walls.
- Replacement of equipment and systems that have reached the end of their useful life or are no longer functioning properly including:
 - Facility golf cart used for landscaping and outside maintenance,
 - Replacement of pneumatics vav boxes,
 - Replacement of catering equipment and furniture, and
 - Repainting the auditorium floors.

- *Technology Projects*

- Technology repairs, replacement and upgrades including:
 - Uninterruptible Power Supply (UPS) for the network Main Distribution Frame (MDF) and Intermediate Distribution Frame (IDF) to ensure reliable power backup,
 - Desktop and laptop replacement,
 - Hardware replacement that supports the virtual environment, and
 - Digital signage replacement and upgrades.
- This also includes replacement of critical software including:
 - Microsoft Dynamics,
 - Finance and Accounting systems,
 - Point of sale equipment, and
 - Replacement of security camera hardware (networking, cameras, servers) and screening devices.

ii. **Broward Center Exterior**

- *Facilities Projects*

- Replacement of tile, wood, doors, carpet, and flooring including replacement of exterior doors and hardware, repair and replacement of tile in the upper level of the Courtyard to enhance safety, replacement of wood handrails and refurbishment of outdoor fixtures.
- Replacement of the courtyard sound system and resurfacing of the Courtyard tile to reduce maintenance and improve safety. Structural repairs of the front drive and the upper courtyard, stucco repair, replacement, waterproofing and painting including soffit repairs, mullion repairs and recaulking.

- *Production & Technology Projects* - Replace the gate at the south backstage lot

entrance and installation of an exterior lighting package to enhance the appearance and safety of the building.

iii. **Au-Rene & Amaturro Theaters**

- *Facilities Projects*
 - Replacement of theater seats in the Au-Rene theater that have reached the end of their useful life.
 - New equipment and systems in the Amaturro wardrobe room and new house lights in the Amaturro theater.
- *Production Projects*
 - Theatrical light, sound and stage systems including cleaning, re-flameproofing, and re-certification of all soft goods for all venues, replacement of one-ton chain motors, a new floating moving light package, an upgraded projector, and video monitor package.
 - Replacement of the Au-Rene lighting console, new LED Cyc lights in the Au-Rene, new Thomas pre-rig double truss in the Au-Rene, a new curtain motor in the Au-Rene and an acoustic curtain control in the Amaturro, an LED video wall, and replacement and upgrades to various sound and lighting systems in both the Au-Rene and Amaturro theaters.

iv. **Ancillary Spaces**

- *Facilities Projects* – Replacement of tile, wood, doors, carpet, flooring including replacement of the Einstein Room floor, repair and replacement of administration office furnishings and flooring; and scheduled replacement/refurbishment of the skywalk elevator and the administration elevator.
- *Production Projects* - Theatrical light, sound and stage system projects including lighting system, audio console, wireless comm, projector and stage replacement in the Abdo New River Room.
- *Technology Projects* - Technology repairs, replacements, and upgrades for each of the conference rooms to support virtual meetings and multi-media presentations.

v. **Education Center**

- *Facilities Projects* – Replacement of equipment and systems including seating in the JM Studio and replacement of the floors in the JM Studio and each of the classrooms.
- *Production Projects* – Theatrical lights, sound and stage systems including replacement of the lighting system in the JM Studio to LED, updates to the JM lighting and audio console, replacement of the JM Studio PA and the JM Studio projector, replacement of the Thomas Classroom projector, and the Harlow Classroom audio system.

vi. **Pavilion**

- *Facilities Projects* – Replacement of equipment and systems including replacement of the ballroom lighting grid to reduce sky light heat on theatrical lighting, replacement of catering equipment and scheduled replacement of the pavilion HVAC rooftop units.
- *Production Projects* – Theatrical light, sound and stage systems including replacement of the ballroom lighting system and lighting console, the audio system and audio console, the ballroom projector, the Creston, and the lectern with confidence monitor.

PACA will update the Five-Year Capital Plan Detail, attached as Exhibit C, annually and provide an updated version to both the County and the City along with the annual Fiscal Year budget. Each annual updated Five-Year Capital Plan Detail shall be incorporated into this Agreement upon delivery to County and City.

Exhibit B
City Land Contribution

City agrees to donate the below described property to PACA to satisfy the City's contribution requirements under this Agreement:

Lot 15 in Block 19 of Bryan Subdivision of Blocks 5, 8 & 19, of Town of Fort Lauderdale, according to the Plat thereof, Recorded in Plat Book 1, Page 18, of the Public Records of Dade County, Florida; said lands situate, lying and being in Broward County, Florida and Lot 16 and the north one-half of Lot 17 in Block 19 of Bryan Subdivision of Blocks 5, 8 & 19, of Town of Fort Lauderdale, according to the Plat thereof, Recorded in Plat Book 1, Page 18, of the Public Records of Dade County, Florida; said lands situate, lying and being in Broward County, Florida, together with the East one-half of the vacated alley (vacated per Official Record Book 17657, Page 545, of the public records of Broward County Florida) lying West of and adjacent to said lots.

City and PACA shall enter into a separate agreement to transfer title of the abovementioned property.

Exhibit C
Five-Year Capital Plan Detail

CATEGORY	DESCRIPTION	FY24	FY25	FY26	FY27	FY28
Facilities	Skywalk Elevator	\$38,000				
Facilities	JM Studio Floor	\$75,000				
Facilities	JM Studio Seating	\$80,000				
Facilities	Fire System Upgrades	\$140,000				
Facilities	Exterior Doors/Hardware	\$300,000				
Facilities	Office Furniture		\$16,000			
Facilities	Campus Wayfinding (electric signs)		\$16,000			
Facilities	F&B Equipment (tables, carts)		\$20,000			
Facilities	Epoxy Outdoor Pavilion Entrance		\$20,000			
Facilities	Office Renovation		\$25,000			
Facilities	F&B Equipment (cooler, oven, ice machine, hot box)		\$35,000			
Facilities	F&B Equipment (chairs)		\$40,000			
Facilities	Window Tint (west wing)		\$50,000			
Facilities	HVAC VAV #10		\$60,000			
Facilities	Security Gate (South Backstage Lot)		\$60,000			
Facilities	Impact Glass (outside bar & box office)		\$65,000			
Facilities	Electrical Current Stabilization System		\$85,000			
Facilities	Administration Elevator (hydraulic)		\$250,000			
Facilities	AR Elevators (2 traction)		\$600,000			
Facilities	Buffet display tables/units			\$12,000		
Facilities	Mullion repairs/recaulking of Curtain Wall			\$15,000	\$15,000	\$15,000
Facilities	Facility Work Golf Cart			\$15,000		
Facilities	Courtyard Sound System Replacement			\$15,000		
Facilities	Refurbish Fixtures Outdoor theaters			\$22,000	\$23,000	
Facilities	Front Drive/Upper Courtyard Structural Repair			\$25,000	\$75,000	\$50,000
Facilities	Replace Floor (Einstein)			\$25,000		
Facilities	Admin Office Repair/Replace Projects			\$30,000		
Facilities	Resurfacing of Peck Courtyard			\$36,000	\$25,000	\$100,000
Facilities	New Floors Miniaci Classrooms			\$50,000	\$100,000	
Facilities	Freight Elevator Refurbishment			\$50,000	\$100,000	
Facilities	Exterior Soffit repairs-seal off/painting			\$60,000	\$60,000	\$60,000
Facilities	HVAC VAV BOXES 13, 12			\$60,000	\$60,000	
Facilities	Catering Equipment (Porter)			\$70,000		
Facilities	Sign replacement (AM, Pavilion, Wendt Terraces)			\$100,000		
Facilities	Repainting Auditorium Floor (AR/AM)			\$104,000		
Facilities	Carpet for Administration 3rd Floor & Offices			\$120,000	\$80,000	\$80,000
Facilities	House Lights (AM)			\$125,000		\$22,000
Facilities	Lighting Grid (Porter)			\$150,000		
Facilities	Metal Detector Guest Screening (Evol/purchase)			\$150,000		

CATEGORY	DESCRIPTION	FY24	FY25	FY26	FY27	FY28
Facilities	Exterior Wood replacement (composite)				\$8,000	\$8,000
Facilities	Tile Repair/Replacement (Upper Peck)				\$40,000	
Facilities	Stucco Repair/Replacement/Waterproofing/Painting				\$80,000	\$150,000
Production	Projector & Screen (ANRR)	\$30,000				
Production	LED Groundrow / Cyc Lights (AM)	\$45,000				
Production	Wireless COMM (AR)	\$60,000				
Production	Wireless COMM (AM)	\$60,000				
Production	Crestron Replacement (Ballroom)	\$80,000				
Production	Floating moving light package - Profiles	\$88,000				
Production	Conventional lighting package (AM)	\$94,000				
Production	Scissor Lift (AR)		\$15,000			
Production	Stage Monitors (JM)		\$20,000			
Production	Board Table & Chairs (Einstein)		\$22,000			
Production	RIO Racks (AM)		\$30,000			
Production	Subwoofers (AR)		\$40,000			
Production	Conventional LED lighting - Stage electrics (AM)		\$70,000			
Production	Floating Moving Light Package - Washes		\$85,000			
Production	Lighting Console (AR)		\$85,000			
Production	Conventional LED lighting - Ladders (AM)		\$90,000			
Production	Wireless COMM (ANRR)			\$15,000		
Production	Projector (Porter)			\$70,000		
Production	Chain Motors (AR)			\$80,000		
Production	Audio Console (ANRR)			\$80,000		
Production	Speaker Replacement (Porter)			\$100,000		
Production	20k Projector (AR)			\$120,000		
Production	Motor Package (AM)				\$80,000	
Production	PA (AR)				\$1,200,000	
Production	PA (AM)					\$1,200,000
Technology	Conference Room Refresh (Einstein)	\$60,000				
Technology	UPS Power System Replace	\$60,000				
Technology	Laptop Fleet Replacement		\$60,000			
Technology	Virtual Environment Refresh		\$75,000			
Technology	Cellular Campus Enhancement		\$150,000			
Technology	POS Replacement			\$100,000		
Technology	Security Camera Hardware Upgrades			\$250,000		
	Contingency		\$126,000	\$300,000	\$300,000	\$300,000
TOTAL: 5 Year Capital Plan		\$1,210,000	\$2,210,000	\$2,349,000	\$2,246,000	\$1,985,000

AR-Au-Rene Theater
AM-Amaturo Theater
ANRR-Abdo New River Room
JM-JM Family Studio (Rose Miniaci Arts Education Center)

Exhibit D
Supplemental Agreement Between PACA and City

Exhibit E
Escrow Agreement