

**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 2018**

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 of County's Cultural Division, or Acting Director of such Division as designated in writing by the Director or the County Administrator.
- 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.
- 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.
- 2.5 County Auditor. The County Auditor shall be a permanent voting member of PACA's Finance Committee during the Term.

## ARTICLE 3. TERM AND TIME OF PERFORMANCE

- 3.1 Term. The Agreement shall be effective on October 1, 2017 (the "Effective Date"), and shall end on September 30, 2018 (collectively, the "Term" or "Fiscal Year 2018").
- 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 Nine Hundred Fifty Thousand Dollars (\$950,000.00), as grant funding towards the operation of the Center in the manner described in Section 5.1.1. Such amount does not include the in-kind legal services provided in Section 4.2.2 below or any funding towards the audit services mentioned in Section 4.4 which is under a separate agreement.

4.2.2 County in-kind legal services. 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 City's net garage revenues (that is, 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 City's net garage revenues collected during each preceding month.

4.3.2 City in-kind services and reimbursement expenses.

(i) 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 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 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 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 County and 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 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 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 2016 through 2020 which is separately funded and which funds are not part of this Agreement.

4.6 Breach of Any Agreement. If PACA breaches this Agreement, PACA acknowledges that County and/or 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 by all parties whichever date is later, County shall pay Two Hundred Thirty-seven Thousand Five Hundred Dollars (\$237,500.00) ("Quarterly Payment") to PACA as its first Quarterly Payment for the period October 1, 2017, through December 31, 2017. Thereafter, 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 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 County for any funding later determined by 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 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, 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 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 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 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 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 County and 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 City, the same procedures outlined in Section 9.1 will be followed by 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 County or City to PACA, County or 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 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 the City Manager within seven (7) days of expiration or earlier termination. If subcontractors are used by PACA relating to this Agreement, PACA shall ensure that the requirements of this section are included in all agreements with such subcontractor(s).

## 10.2 Audit Right, Retention of Records and Public Records.

### 10.2.1 Audit Right and Retention of Records.

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 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 thereunder. All books, records, and accounts of PACA and its subcontractors 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 or its subcontractor, as applicable, shall make same available at no cost to County and City in written form.

PACA and its subcontractors shall preserve and make available, at reasonable times within Broward County for examination and audit by County and 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. 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 and/or City, with seventy-two (72) hours' advance notice.

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's and/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 and/or City of any nature by PACA in excess of five percent (5%) of the total contract billings reviewed by County and/or City, the reasonable actual cost of County's and



City's audit(s) 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 from presentation of County's and/or City's findings to PACA.

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

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.

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 [rnocom@broward.org](mailto:rnocom@broward.org) (with a simultaneous copy to [ebosworth@broward.org](mailto:ebosworth@broward.org)) and to City at [kbuffington@fortlauderdale.gov](mailto:kbuffington@fortlauderdale.gov) (with a simultaneous copy to [llogan-shont@fortlauderdale.gov](mailto:llogan-shont@fortlauderdale.gov)) within one (1) business day after receipt of such request.

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

- a. Keep and maintain public records required by County and City to perform the services under this Agreement;
- b. Upon request from the requesting party at County or City, provide County or City respectively with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- c. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to County and City; and
- d. Upon completion or termination of this Agreement, transfer to County and City, at no cost, all public records in possession of PACA or keep and maintain public records required by County and City to perform the services. If PACA transfers the records to County and City, PACA

shall destroy any duplicate public records that are exempt or confidential and exempt. If PACA keeps and maintains public records, PACA shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County and City upon request in a format that is compatible with the information technology systems of County and City respectively.

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

A request for public records regarding this Agreement must be made directly to County and/or City as applicable respectively, who will be responsible for responding to any such public records requests. PACA will provide any requested records to County and City to enable County and City respectively to respond to the public records request.

Any material submitted to County and/or City that PACA contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORDS PRODUCT – TRADE SECRET." In addition, PACA must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, and stating the factual basis for same. In the event that a third party submits a request to County and City for records designated by PACA as Trade Secret Materials, County and City shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by PACA. To the extent permitted by Florida's laws and subject to such laws, PACA shall indemnify and defend County and City, in addition to their employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a records request by a third party.

**IF PACA HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES TO PACA'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT WHICH INVOLVES COUNTY, SUCH CUSTODIAN MAY CONTACT COUNTY AT: COUNTY'S CULTURAL DIVISION'S CUSTODIAN OF PUBLIC RECORDS AT (954) 357-7457, RNOCOM@BROWARD.ORG (WITH A COPY TO EBOSWORTH@BROWARD.ORG), BROWARD COUNTY**

CULTURAL DIVISION, 100 S. ANDREWS AVE., 6<sup>TH</sup> FLOOR, FORT LAUDERDALE, FLORIDA 33301.

IF PACA HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES TO PACA'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT WHICH INVOLVES CITY, SUCH CUSTODIAN MAY CONTACT CITY AT: (954) 828-5167, KBUFFINGTON@FORTLAUDERDALE.GOV (WITH A SIMULTANEOUS COPY TO LLOGAN-SHONT @ FORTLAUDERDALE.GOV) AT CITY OF FORT LAUDERDALE, CITY HALL, 100 N. ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA 33301.

- 10.3 Truth-In-Negotiation Representation. County's and City's funding to PACA and other compensation to be provided by County and 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 County and 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, Cultural Division  
Attn: Earl Bosworth, Director  
100 S. Andrews Avenue, 6th Floor  
Fort Lauderdale, Florida 33301  
E-mail address: ebosworth@broward.org  
With simultaneous copy of e-mail to: rnocom@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: bmelton@broward.org  
With simultaneous e-mail copy to: kulett@broward.org

For City:

City of Fort Lauderdale  
Attn: Kirk Buffington, Director of Finance  
City Hall  
100 N. Andrews Avenue  
Fort Lauderdale, Florida 33301  
E-mail: kbuffington@fortlauderdale.gov  
With simultaneous e-mail copy to: llogan-short@fortlauderdale.gov

For PACA:

Performing Arts Center Authority  
Attn: Tim Weeks, CFO  
Broward Center for the Performing Arts  
201 Southwest Fifth Avenue  
Fort Lauderdale, Florida 33312  
E-mail: tweeks@browardcenter.org  
With simultaneous e-mail copy to: 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 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. 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 persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding. In the event PACA is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, PACA shall require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as PACA.
- 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 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 the United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, EACH PARTY HEREBY EXPRESSLY WAIVES ANY AND ALL RIGHTS THE PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO 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 ANY OF THE OTHER PARTIES 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 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). 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.
- 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. 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 2018 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 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; 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, through its Board of County Commissioners

\_\_\_\_\_  
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  
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

Insurance requirements approved by Broward County Risk Management Division

By \_\_\_\_\_  
Signature (Date)

By \_\_\_\_\_  
Andrea S. Froome (Date)  
Senior Assistant County Attorney

\_\_\_\_\_  
Print Name and Title above

By \_\_\_\_\_  
Mark A. Journey (Date)  
Assistant County Attorney

ASF:dp  
2017-08-29 PACA Tri-party Grant FY2018.A01  
08/29/17  
#17-158

TRI-PARTY GRANT AGREEMENT AMONG BROWARD COUNTY AND CITY OF FORT LAUDERDALE AND PERFORMING ARTS CENTER AUTHORITY FOR FISCAL YEAR 2018

CITY

ATTEST:

CITY OF FORT LAUDERDALE

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

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

\_\_\_\_\_  
Print Name of City Clerk

\_\_\_\_\_  
Print name of Mayor-Commissioner above

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

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

\_\_\_\_\_  
Print name of City Manager above

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

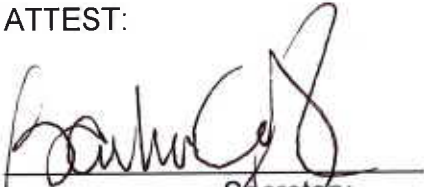
APPROVED AS TO FORM:

By \_\_\_\_\_  
City Attorney (Date)

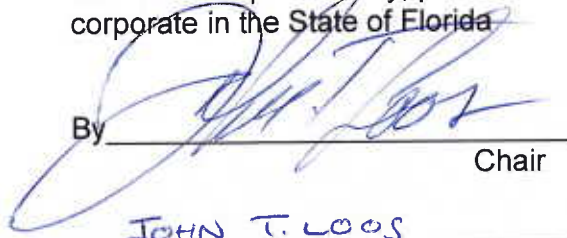
TRI-PARTY GRANT AGREEMENT AMONG BROWARD COUNTY AND CITY OF FORT LAUDERDALE AND PERFORMING ARTS CENTER AUTHORITY FOR FISCAL YEAR 2018

PACA

ATTEST:

  
Secretary  
Barbara A. Stern  
Print name

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

(SEAL)

19 day of SEPTEMBER, 2017.