

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

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, a municipal corporation ("City"), and Performing Arts Center Authority, an independent special district and a public body, politic, and corporate in Broward County, Florida, created by Special Act of the Florida Legislature ("PACA"). County, City, and PACA are individually referred to as 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, Broward County, Florida, 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 its 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 in-kind contributions to PACA to offset a portion of any operating deficit 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, or ordinances of any federal, state, county, municipal, or other governmental entity, as may be amended.

**1.2. 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. **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.

**1.3. County Attorney** means the chief legal counsel for County appointed by the Board. **City Attorney** means the chief legal counsel for the City appointed by the City Commission.

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

1.5. **County's Purchasing Director** means County's Director of Purchasing. **City's Purchasing Director** means City's Chief Procurement Officer.

1.6. **Services** means all work required of PACA under this Agreement, including without limitation all deliverables, and other services specified in the Scope of Services attached as Exhibit A.

1.7. **Subcontractor** means an entity or individual providing Services to County and/or City through PACA. The term "Subcontractor" includes all subconsultants.

## **ARTICLE 2. EXHIBITS**

### **Exhibit A      Scope of Services**

## **ARTICLE 3. SCOPE OF SERVICES**

3.1. Scope of Services. For the Term (as defined in Section 4.1), PACA shall perform all Services, including, without limitation, the work specified in Exhibit A (the "Scope of Services") and operate the Center to provide cultural attractions and other activities. Unless stated otherwise, such operational services shall include, without limitation, all labor, materials, and tasks, whether or not enumerated in this Agreement, which are such an inseparable part of the Center's operation that exclusion would render PACA's performance impractical, illogical, or unconscionable.

3.2. 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.

3.3. Change of Scope of Services. PACA acknowledges that County's Contract Administrator and City's Contract Administrator have no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services, except as expressly provided herein.

3.4. PACA's Chief Financial Officer. PACA's Chief Financial Officer is responsible for administering this Agreement on behalf of PACA.

3.5. 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 shall be for a period of three (3) years, with a retroactive effective date beginning on October 1, 2022 (the "Effective Date"), and shall end on September 30, 2025 ("Initial Term"), unless otherwise terminated or extended as provided in this

Agreement. The Initial Term, Extension Term(s), and any Additional Extension as defined in this article are collectively referred to as the “Term.”

4.2. Extensions. County and City may jointly extend this Agreement by written consent of both Parties for up to two (2) additional one (1) year terms (each an “Extension Term”) on the same rates, terms, and conditions stated in this Agreement by sending notice to PACA at least thirty (30) days prior to the expiration of the then-current term. County’s Purchasing Director is authorized to exercise any Extension Term(s) on behalf of County. The City Manager or other person designated in writing by the City Manager is authorized to exercise any Extension Term(s) on behalf of City. Notice to PACA of the exercise of an Extension Term may be done either by notice pursuant to Section 12.8 or by electronic mail, either of which shall be effective and sufficient.

4.3. Fiscal Year. The continuation of this Agreement beyond the end of any County or City fiscal year is subject to both the appropriation and the availability of funds pursuant to Chapter 129 and, if applicable, Chapter 212, Florida Statutes.

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

## **ARTICLE 5. FUNDING, COMPENSATION, AND USE OF FUNDS**

5.1. Payments shall be made to PACA for the operation of the Center pursuant to this article and shall be accepted by PACA as full compensation from County and City 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 do not constitute a limitation of any sort upon PACA’s obligation to operate the Center.

### **5.2. County’s Contribution to PACA:**

5.2.1. For Operation of the Center. Annually during the Term, County will pay PACA Nine Hundred Fifty Thousand Dollars (\$950,000) towards the operation of the Center in the manner described in Section 6.1.1. Such amount does not include County’s in-kind legal services provided pursuant to Section 5.2.2 below or any funding towards the required audit services as referenced in Section 5.5.

5.2.2. County In-Kind Legal Services. County, through its Office of the County Attorney (“OCA”), will provide to PACA up to five hundred (500) hours of legal services annually during the Term, which may include the following matters: legal counsel as needed at PACA’s Board meetings; drafting, review, and interpretation of agreements; legal counsel regarding employment issues; and dispute resolution and litigation services in connection with the foregoing matters. PACA shall pay all out-of-pocket costs and expenses incurred by the OCA (subject to prior approval by PACA) or otherwise due to third parties in connection with any such matter, including travel expenses, court costs, witness fees, and

mediator fees. The OCA will not provide legal services in connection with any matter that presents a conflict of interest or the appearance of a conflict of interest with the OCA representation of County or the Board. Nothing in this Agreement shall preclude PACA, at its sole discretion and expense, from retaining other counsel in addition to or in lieu of the OCA. PACA acknowledges and agrees that the OCA's primary clients are the Board and County, and that if a conflict of interest exists between the OCA's representation of PACA and the Board or County, the OCA shall notify PACA of such conflict and PACA agrees to and shall, to the extent permitted under the Rules Regulating the Florida Bar, waive such conflict so that the OCA may continue to represent its primary clients.

### 5.3. City's Contribution to PACA.

**5.3.1. City's Cash Contribution.** City will annually provide cash contributions to PACA consisting 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) annually during 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 the preceding month.

### **5.3.2. City In-Kind Services and Reimbursement Expenses.**

a. City, during the Term, shall provide landscape maintenance of the valet lot and parking garage sites as in-kind services to PACA, with such services having a value of at least Thirty Thousand Dollars (\$30,000) annually, as its in-kind contribution. Nothing shall prevent City from exceeding the amount of Thirty Thousand Dollars (\$30,000) annually in its sole discretion. The in-kind services shall be determined and valued by a method mutually acceptable to City and PACA, which shall be approved in writing by the City Manager and PACA's President/CEO.

b. If applicable, any expenses paid by PACA for waste removal services performed during the Term shall be invoiced in accordance with Section 6.2 and reimbursed by City, but such reimbursements shall not exceed Twenty-four Thousand Dollars (\$24,000) annually for the Term.

**5.4. 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 5.2.2, which may be for the overall operation of PACA.

**5.5. 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 through 2026, 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.

5.6. Breach of Any Agreement. If PACA breaches this Agreement, PACA acknowledges that County and/or City may choose to withhold funds or other payment due under this Agreement if the breach is not cured within the required time, if any, as specified in this Agreement.

## **ARTICLE 6. DISBURSEMENT**

### **6.1. County's Payments.**

**6.1.1. Quarterly Payment.** Within forty-five (45) calendar days after full execution of this Agreement by all Parties, County shall pay PACA the amount of Seven Hundred Twelve Thousand Five Hundred Dollars (\$712,500), which the Parties agree and stipulate is full compensation for all Services for the period from October 1, 2022, through June 30, 2023. Thereafter, County shall pay PACA the amount of Two Hundred Thirty-seven Thousand Five Hundred Dollars (\$237,500) ("Quarterly Payment") within forty-five (45) calendar days after the end of each quarter, commencing with the quarter ending September 30, 2023, and continuing for the remainder of the Term (i.e., quarters ending December 31, March 31, June 30, and September 30). Subject to Section 4.4, County's obligation to make the final quarterly payment shall survive the expiration of the Agreement.

**6.1.2. 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 last Quarterly Payment to PACA.

**6.1.3. Overpayments.** Upon written notice from the County's 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's Contract Administrator.

**6.2. City's Payments.** If applicable, in accordance with Section 5.3.2(b) of this Agreement, 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 forty-five (45) days after the receipt of a detailed invoice.

**6.3.** No interest shall be due to PACA on any amount(s) payable by County or City.

**6.4.** County and City 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.

**6.5.** If either County or City fail to make payments to PACA when due, such failure may only constitute a breach of this Agreement by the non-paying Party, and this Agreement will remain in effect as and between the remaining Parties. PACA agrees to look solely to the non-paying

Party for recovery and neither County nor City shall have any liability or responsibility associated with the other's non-payment to PACA.

6.6. 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 7. RECORDS, REPORTS, AND AUDITS**

7.1. PACA shall keep financial records in accordance with generally accepted accounting principles.

7.2. 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.

7.3. 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 first year of the Initial Term (i.e., October 1, 2022-September 30, 2023) and annually thereafter during the Term, with a final audit provided within one hundred twenty (120) days after the end of the Term or after such earlier termination of this Agreement. PACA's obligations under this section shall survive the expiration of the Term.

7.4. The audit report shall contain disclosures as to the amount of subsidy remitted by County, the amount expended for operations 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.

## **ARTICLE 8. INSURANCE**

PACA is a governmental entity and is fully responsible for the acts and omissions of its agents or employees, 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.

If PACA contracts with a Subcontractor to provide any of the Services set forth herein, PACA shall require that each Subcontractor procure and maintain insurance coverage that adequately covers each Subcontractor's exposure based on the Services provided by that Subcontractor. PACA must ensure that all Subcontractors name "Broward County" and "City of Fort Lauderdale" as additional insureds and certificate holders under the applicable insurance policies. PACA shall not permit any Subcontractor to provide Services until the insurance requirements of the Subcontractor under this section are met. If requested by County or City, PACA shall furnish evidence of insurance of all such Subcontractors. 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 9. 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 subcontractors, except that any project assisted by the U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

#### **ARTICLE 10. TERMINATION**

**10.1. 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.

If the breach is not corrected within the required time after notice by County pursuant to this section, County's Contract Administrator in their sole discretion will determine whether PACA's 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 PACA 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 by 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.

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 any obligation to pay interest).

**10.2. 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.

**10.3.** Notice of termination shall be provided in accordance with the "Notices" section In Article 12.

**10.4.** 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 rights 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 rights to terminate for convenience.

## **ARTICLE 11. REPRESENTATIONS AND WARRANTIES**

**11.1. 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.

**11.2. Warranty of Performance.** PACA represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform under this Agreement, and that each person and entity that will provide Services under this Agreement 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 represents and warrants that the Services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all Services shall equal or exceed prevailing industry standards for the provision of such Services.

## **ARTICLE 12. MISCELLANEOUS**

**12.1. Rights in Documents and Work.** Any and all reports, photographs, surveys, documents, materials, data, or other work created by PACA in connection with performing Services, whether finished or unfinished (“Documents and Work”) under this Agreement, shall be owned by County, and City individually and separately, and shall be deemed works for hire by PACA and its agents; if the Services are determined not to be a work for hire, PACA hereby assigns all right, title, and interest, including any copyright or other intellectual property rights, in or to the Documents and Work to County and City. Upon expiration or termination of this Agreement, the Documents and Work shall become the property of County and City, individually and separately, and shall be delivered by PACA to County’s Contract Administrator and the City Manager within seven (7) days after expiration or termination of this Agreement. Any compensation due to PACA may be withheld until all Documents and Work are received as provided in this Agreement. PACA shall ensure that the requirements of this section are included in all agreements with its Subcontractor(s). Any ownership and other rights granted to County and City are separate and apart from the rights granted to the other and may be exercised independently without consent from the other.

**12.2. 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 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 pgrewalbroward.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.

**12.3. 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 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 under this Agreement. All such 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 and its Subcontractors, as applicable, shall make same available in written form at no cost to County and City.

PACA and its Subcontractors 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 from presentation of the audit 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.

**12.4. 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.

**12.5. 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.

**12.6. 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.

**12.7. 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.

**12.8. 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 email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). The addresses for notice shall remain as stated in this section unless and until changed by providing notice of such change in accordance with this section.

**FOR COUNTY:**

Broward County, Cultural Division  
Attn: Phillip Dunlap, Director  
100 South Andrews Avenue, 6<sup>th</sup> Floor  
Fort Lauderdale, Florida 33301  
Email address: pdunlap@broward.org  
With simultaneous copy of e-mail 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  
With simultaneous e-mail copy to: kulett@broward.org

**FOR CITY:**

City of Fort Lauderdale  
Attn: Linda Short, Director of Finance  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33301  
E-mail: lshort@fortlauderdale.gov  
With simultaneous e-mail copy to: finance@fortlauderdale.gov

With a copy to:

City of Fort Lauderdale  
Attn: City Attorney  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33301  
Email: cityattorney@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](mailto:tweeks@browardcenter.org)  
With simultaneous e-mail copy to: [kshanley@browardcenter.org](mailto:kshanley@browardcenter.org)

**12.9. Assignment.** Except for subcontracting in accordance with Article 2, neither this Agreement nor any right or interest herein may be assigned, transferred, or encumbered by PACA without the prior written consent of County and City, 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.

**12.10. 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 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.

**12.11. 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. 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.

**12.12. 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.

**12.13. 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.

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

**12.15. 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 shall require approval in writing, unless otherwise expressly stated.

**12.16. 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.

**12.17. 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.

**12.18. 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 (including as stated 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.

**12.19. 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.

**12.20. Payable Interest**

**12.20.1. 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 Contractor 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.

**12.20.2. 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).

**12.21. 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.

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

**12.23. Construction Apprenticeship Program.** If this Agreement is a construction contract as defined in Section 26-9 of the Code, Contractor represents and certifies that it shall at all times comply with the requirements of the Construction Apprenticeship Program as set forth in Sections 26-8 through 26-11 of the Code.

**12.24. Verification of Employment Eligibility.** PACA represents that PACA and each Subcontractor have 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. If PACA violates this section, County and/or City may immediately terminate this Agreement for cause and PACA shall be liable for all costs incurred by County due to the termination.

12.25. Polystyrene Food Service Articles. PACA shall not sell or provide for use on County property expanded polystyrene products or food service articles (e.g., Styrofoam), unencapsulated expanded polystyrene products, or single-use plastic straws or stirrers, as set forth in more detail in Section 27.173, Broward County Administrative Code.

(The remainder of this page is intentionally left 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-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, 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 \_\_\_\_\_  
Sara F. Cohen (Date)  
Assistant County Attorney

By \_\_\_\_\_  
Nathaniel A. Klitsberg (Date)  
Senior Assistant County Attorney

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

CITY

ATTEST:

CITY OF FORT LAUDERDALE

\_\_\_\_\_  
DAVID SOLOMAN, CITY CLERK

By \_\_\_\_\_  
DEAN J. TRANTALIS, MAYOR

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

(SEAL)

\_\_\_\_\_  
GREG CHAVARRIA, CITY MANAGER

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

APPROVED AS TO FORM:  
D'WAYNE M. SPENCE, Interim City Attorney

By \_\_\_\_\_  
Patricia SaintVil-Joseph  
ASSISTANT CITY ATTORNEY

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

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

PACA

ATTEST:

PERFORMING ARTS CENTER AUTHORITY

\_\_\_\_\_  
Secretary

By \_\_\_\_\_  
Chair

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name of Chair above

(SEAL)

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

## **Exhibit A Scope of Services**

PACA shall perform the following services:

### **1. Services Summary**

PACA shall provide the operation of a world-class performing arts center and deliver a full season of arts events, performances, and education programs which may include, but not be limited to: Broadway performances, ballet performances, symphonies, operas, concerts, local performances, summer camps, school performances, and talk backs.

During the Term, PACA shall provide the following Services as consideration for County's and City's payments to PACA under this Agreement:

### **2. Services Description**

- a) For County: PACA will provide a minimum of 1,000 complimentary tickets per year during the Term for performances at the Center or its affiliated venues to non-profits, social service agencies, community organizations, and schools in Broward County that serve residents who might not otherwise have the opportunity to attend a live performance at PACA's theaters. Tickets will be based on availability and at the discretion of PACA.
- b) For City: PACA will provide a minimum of 250 complimentary tickets per year during the Term for performances at the Center or its affiliated venues to non-profits, social service agencies, community organizations, and schools in the City of Fort Lauderdale that serve residents who might not otherwise have the opportunity to attend a live performance at PACA's theaters. Tickets will be based on availability and at the discretion of PACA.
- c) Within 60 days after the Effective Date, PACA will provide a draft plan for the distribution of tickets to County's Contract Administrator and City's Contract Administrator. The plan must clearly address how PACA will identify community partners, the ticket distribution process, and tracking of ticket utilization.
- d) PACA will provide County with Fifty Thousand Dollars (\$50,000) of theater-rent credits annually during the Term (based on the Center's then-existing standard fees for use of the Center) towards County's use of the following Center facilities (rent credit excludes any related out-of-pocket hard costs or other standard fees for such use):
  - i. Au-Rene Theater
  - ii. Amaturio Theater
  - iii. Abdo New River Room
  - iv. JM Family Studio Theater

- e) PACA will provide City with Fifteen Thousand Dollars (\$15,000) of theater-rent credits annually during the Term (based on the Center's then-existing standard fees for use of the Center) towards City's use of the following Center facilities (rent credit excludes any related out-of-pocket hard costs or other standard fees for such use):
  - i. Au-Rene Theater
  - ii. Amaturo Theater
  - iii. Abdo New River Room
  - iv. JM Family Studio Theater
- f) PACA will include the Broward County and City of Fort Lauderdale logos on its website and recognize the County's and City's financial contributions in a manner consistent with the Center's donor recognition program.
- g) Annually during the Term, PACA will provide County and City with the following data (as available) for performances held at the Center: audience numbers and demographics, staff/board, and financial information. PACA shall provide the reports through DataArts or such other method as requested by County and City. If required, County and City shall provide PACA with access credentials to DataArts or such other data collection tool as approved by the Parties at least sixty (60) days prior to any report's due date. The first report shall be due sixty (60) days after the anniversary of the Effective Date, and annually thereafter, and shall cover all performances that occurred during the preceding year for which data is available.