



COMMISSION AGENDA ITEM
DOCUMENT ROUTING FORM

72L
12/21/17

Today's Date: 12/7/17

DOCUMENT TITLE: Grant Agreement between City of Ft. Lauderdale and Performing Arts Center Authority – Capital Grant Funding for FY 2017 through 2018

COMM. MTG. DATE: 12/5/17 CAM #: 17-1483 ITEM #: CM-3 CAM attached: ☒ YES ☐ NO

Routing Origin: CAO Router Name/Ext: Shaniece Louis / Ext. 5036

CIP FUNDED: ☐ YES ☐ NO

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

2) City Attorney's Office # of originals attached: 2 Approved as to Form: ☒ YES ☐ NO

Date to CCO: 12/8/17 ¹²
LS
Initials

3) City Clerk's Office: # of originals: 2 Routed to: Gina Ri/CMO/X5013 Date: 12/13/17

4) City Manager's Office: CMO LOG #: DEC-49 Date received from CCO: 12/13/17

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

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

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

Comments/Questions: _____

Forward 2 originals to ☒ Mayor ☐ CCO Date: 12/15/17

5) Mayor/CRA Chairman: Please sign as indicated. Forward ____ originals to CCO for attestation/City seal (as applicable) Date: _____

INSTRUCTIONS TO CLERK'S OFFICE

City Clerk: Retains 1 original and forwards 1 original(s) to: Ryan Henderson / CMO / Ext. 5213 (Name/Dept/Ext)

Attach ____ certified Reso # ____ ☐ YES ☐ NO Original Route form to CAO

please email an executed copy to Shaniece Louis

GRANT AGREEMENT

Between

CITY OF FORT LAUDERDALE

and

PERFORMING ARTS CENTER AUTHORITY

For Capital Grant Funding for Fiscal Years 2017 through 2028

This Grant Agreement ("Agreement") is made and entered into by and between CITY OF FORT LAUDERDALE, FLORIDA, a municipal corporation, hereinafter referred to as "CITY,"

AND

PERFORMING ARTS CENTER AUTHORITY, an independent special district organized by the State of Florida, hereinafter referred to as the "PACA."

WHEREAS, PACA was created in 1984 by a special act of the Florida Legislature originally under Laws of Florida, Chapter 84-396, and reenacted by Chapter 2005-335 (the "Act") and the Act deemed PACA's purpose as a public purpose, and therefore the expenditure of funds by the CITY for such purpose is a valid, necessary public purpose; and

WHEREAS, PACA operates the Parker Playhouse ("Parker") through a management agreement with Parker Theatre, Inc., which has entered a long term lease with the CITY, and the Parker has shown itself to be a major cultural attraction for the City of Fort Lauderdale and has presented renowned performers and productions which have enhanced the cultural life of the South Florida community, and has bestowed a cultural facility upon Fort Lauderdale, its residents and visitors; and

WHEREAS, the Parker has established itself as a critical economic component of Fort Lauderdale, Florida; and

WHEREAS, the Parker is now fifty years old and needs substantial capital expenditures as part of its Capital Replacement and Renewal Plan (the "Project"), as described on Exhibit A; and

WHEREAS, the CITY owns the Parker property, including the land and facility building, located at 707 NE Eighth Street, Fort Lauderdale, FL 33304; and

WHEREAS, the CITY wishes to enter into this capital expenditure subsidy agreement in order to assist PACA in maintaining, improving, expanding and protecting this critical component of the City's infrastructure; and

WHEREAS, the City Commission of Fort Lauderdale ("Commission") wishes to support Parker by providing a capital grant funding contribution to PACA; and

WHEREAS, the Commission has determined that the CITY's financial contribution of capital grant funding to the PACA will serve a valid public purpose.

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, CITY and PACA agree as follows:

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

- 1.1 Agreement - means this document, Articles 1 through 10, inclusive.
- 1.2 PACA's Representative - The PACA hereby designates its Chief Financial Officer as PACA's Representative responsible for administration of this Agreement. PACA's President/CEO may change PACA's Representative at any time by written notice using the notices procedures stated in Section 10.7, "NOTICES."
- 1.3 Commission - The City Commission of Fort Lauderdale, Florida.
- 1.4 Contract Administrator - The City Manager or designee. The primary responsibilities of the Contract Administrator are to coordinate and communicate with PACA and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator.
- 1.5 Effective Date- The date that the last party executes this Agreement.

- 1.6. Project - The Parker Capital Replacement and Renewal Project which is intended to fund capital expenditures, including interest and debt service related to the project, architectural and engineering services, capital construction costs for exterior and interior building improvements, upgrades and repairs, interior building construction, structural, mechanical and technology upgrades, and exterior building construction and property, site, structural, mechanical and technology upgrades.

ARTICLE 2

TERM AND TIME OF PERFORMANCE

- 2.1 The term of this Agreement shall begin on October 1, 2017 and end on September 30, 2028.

ARTICLE 3

CAPITAL GRANT FUNDING, USE OF FUNDS, AND UNEXPENDED FUNDS

- 3.1 GRANT: The CITY grants and agrees to make available to PACA funding in the total amount of Six Million Two Hundred Eighty-Five Thousand Dollars (\$6,285,000.00) for capital expenditures and/or debt service related to the Project, as described in Exhibit A.
- 3.2 ANNUAL APPROPRIATION: Subject to the CITY's annual appropriation of funds, it is anticipated that the CITY will budget funds for the performance of this Agreement during the CITY'S fiscal years commencing October 1, 2017 through September 30, 2028 from non-ad valorem tax revenue that is subordinate to all other pledges of non-ad valorem tax revenue. The CITY's performance of this Agreement is conditioned on the CITY's annual appropriation and the availability of funds.
- 3.3 USE OF FUNDS: Funding provided by the CITY pursuant to this Agreement shall be used by PACA only for the payment or recovery of capital expenditures and/or debt service related to the Project for the Parker. The CITY's funding may only be used by PACA for the Project's capital expenditures, including interest and debt service related thereto, including, but not limited to architectural and engineering services, capital construction costs for exterior and interior building improvements, upgrades and repairs, interior building construction, structural,

mechanical and technology upgrades, and exterior building construction and property, site, structural, mechanical and technology upgrades. Furthermore, funding provided by the CITY pursuant to this Agreement may be used by PACA to recover Project capital expenditures that were incurred during the fiscal year 2016-2017.

- 3.4 **UNEXPENDED FUNDS:** The CITY and the PACA recognize that the amount of capital expenditures may fluctuate during the term of this Agreement. As such, PACA shall carryover unexpended funds for appropriation in subsequent years, as required. The parties further agree that all restrictions on the use of such grant funds for capital expenditures and all obligations of PACA shall continue to remain in force until the grant funding is completely expended by PACA in accordance with the term of this Agreement, unless refunded in accordance with Section 3.5 below
- 3.5 **COMMENCEMENT OF CONSTRUCTION:** PACA shall commence construction of the Project within four (4) years from the Effective Date of this Agreement ("Commencement Date") unless the Commission grants an extension in its discretion which shall not be unreasonably withheld. The funds under this Agreement shall be reimbursed to the CITY, less any project expenditures incurred as defined in 1.6, if PACA has not commenced construction of the Project within the Commencement Date. Prior to commencement of construction, PACA, or its agents, shall make a presentation and submit conceptual plans of the Project to the Commission for its approval and consent. Within sixty (60) days of submission of the conceptual plans, the Commission shall approve or disapprove the proposed plans. If it disapproves, it will set forth the reasons for denial and allow PACA the opportunity to modify the plans and resubmit to the Commission and upon resubmission, the time for the Commission review shall recommence. The City Manager is delegated authority to approve the final plans and specifications of the Project, provided there have been no material modifications from the conceptual plans presented to the Commission.

ARTICLE 4

DISBURSEMENT AND METHOD OF PAYMENT

- 4.1 Within thirty (30) days after the Effective Date, the CITY shall disburse to PACA grant funding in the total amount of Five Hundred Thousand Dollars (\$500,000.00) which funds shall be used for predevelopment expenses, such as architectural fees, engineering, surveys and other design services. The CITY shall disburse to PACA grant funding in the total amount detailed in the following schedule for each subsequent year for the remainder of the term of this Agreement:

Five Hundred Thousand Dollars (\$500,000.00) by October 31, 2018
Five Hundred Thousand Dollars (\$500,000.00) by October 31, 2019
Six Hundred Thousand Dollars (\$600,000.00) by October 31, 2020
Six Hundred Thousand Dollars (\$600,000.00) by October 31, 2021
Six Hundred Thousand Dollars (\$600,000.00) by October 31, 2022
Seven Hundred Thousand Dollars (\$700,000.00) by October 31, 2023
Seven Hundred Thousand Dollars (\$700,000.00) by October 31, 2024
Seven Hundred Thousand Dollars (\$700,000.00) by October 31, 2025
Seven Hundred Thousand Dollars (\$700,000.00) by October 31, 2026
One Hundred Eighty-Five Thousand Dollars (\$185,000.00) by October 31, 2027

- 4.2 Payment shall be made to PACA payable to the "Performing Arts Center Authority" at:

Performing Arts Center Authority
Attention: Accounts Receivable
201 Southwest Fifth Avenue
Fort Lauderdale, Florida 33312

Federal Identification No. 592445804

ARTICLE 5

CAPITAL EXPENDITURE REPORTS

- 5.1 ANNUAL REPORTS: PACA shall submit to CITY's Contract Administrator annual expenditure reports within sixty (60) calendar days after the end of each of the CITY's fiscal years during the term of this Agreement. PACA's annual expenditure report shall report on the expenditures for the Project, including interest and debt service related thereto, to the CITY's Contract Administrator as support for the grant funding for the term of this Agreement. The annual report shall include a list of capital expenditures, including interest and debt service related thereto, for the Project and the amount of any unexpended grant funding remaining from the CITY's grant funding by CITY's fiscal year.

ARTICLE 6

FINANCIAL STATEMENTS

- 6.1 The PACA shall submit to the CITY a Special Report in connection with PACA's annual audited financial statements. PACA shall provide to the Contract

Administrator two (2) copies of the Special Report as required in Article 6 herein. Such Special Report shall be submitted to the Contract Administrator within one hundred twenty (120) calendar days after the close of PACA's fiscal years in which PACA accounts for funds received under this Agreement.

- 6.2 The Special Report shall be in accordance with Section 623 of the Codification of Statements on Auditing Standards as promulgated by the American Institute of Certified Public Accountants.
- 6.3 The Special Report shall include all financial requirements for the entire scope of the services or project covered by the Agreement, including interest and debt service related thereto, even if a part of the services or project was performed during the previous fiscal year(s) or continue past the end of the PACA's current fiscal year.
- 6.4 PACA shall be solely responsible for requiring PACA's Auditor who audits the PACA's financial statements to complete a separate annual fiscal year audit of the expenditures, including interest and debt service related thereto, which are made by the PACA against the PACA's capital projects committed to, and funded by, for each fiscal year of this Agreement. The required separate audit shall result in a separate certified letter to the CITY's Contract Administrator. Such letter shall include a certified opinion of the PACA's Auditor concerning whether the reported expenditures, including interest and debt service related thereto, were made in accordance with this Agreement.
- 6.5 AUDITED FINANCIAL STATEMENTS: The PACA shall submit to CITY two (2) copies of the PACA's annual audited financial statement no later than one hundred twenty (120) calendar days after the end of the PACA's fiscal year which ends on September 30 of each year.

ARTICLE 7

GOVERNMENTAL IMMUNITY

- 7.1 PACA is an independent special district created by Special Act of the Florida Legislature, and some of its members consist of appointees from some public agencies such as the City of Fort Lauderdale, a municipal corporation of the State of Florida and Broward County, a political subdivision of the State of Florida. PACA is a state agency or political subdivision of the State of Florida as defined in Chapter 768.28, Florida Statutes. The PACA agrees to be fully responsible for acts and omissions of its agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing

herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of this Agreement or any other contract.

- 7.2 The CITY is a state agency or subdivision of the State of Florida as defined in Chapter 768.28, Florida Statutes. The CITY agrees to be fully responsible for acts and omissions of its agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of this Agreement or any other agreement.

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 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 "City of Fort Lauderdale" as additional named insured on the certificate but only during the term of this Agreement.

ARTICLE 9

TERMINATION

- 9.1 This Agreement may be terminated for cause by action of the Commission of the CITY or by action of the Board of PACA if the party in breach has not corrected the breach within sixty (60) calendar days after written notice from the aggrieved party identifying the breach, provided that, if the failure stated in the notice cannot be corrected within the sixty (60) day period, the non-defaulting party will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the other party within the applicable period and diligently pursued until the default is corrected. This Agreement may also be terminated by CITY's Contract Administrator upon such notice as Contract Administrator deems appropriate under the circumstances in the event Contract Administrator determines that termination is necessary to protect the public health or safety.
- 9.2 Termination of this Agreement for cause by CITY shall include, but not be limited to, failure to use the funds for the intended purpose, failure to suitably perform

the work as set forth in this Agreement, or multiple breaches of the provisions of this Agreement notwithstanding whether any such breach was previously waived or cured. Termination of this Agreement for cause by PACA shall include multiple breaches of the provisions of this Agreement notwithstanding whether any such breaches may be previously waived or cured.

- 9.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the Contract Administrator which such Contract Administrator deems necessary to protect the public health, safety, or may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section in Section 10.7 of this Agreement.
- 9.4 In the event this Agreement is terminated, any compensation payable by CITY shall be withheld until all documents are provided to CITY pursuant to Section 10.1 of Article 10.

ARTICLE 10

MISCELLANEOUS

10.1 RIGHTS IN DOCUMENTS AND WORKS

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of PACA. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by PACA, whether finished or unfinished, shall remain the property of PACA but, upon written request by CITY, copies shall be delivered at no cost to PACA to the Contract Administrator within seven (7) calendar days after termination of this Agreement by either party. Any compensation due to PACA shall be withheld until all documents are received as provided herein.

10.2 AUDIT RIGHT AND RETENTION OF RECORDS

CITY shall have the right to audit the books, records, and accounts of PACA that are related to this Agreement. PACA shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Agreement. All books, records, and accounts of PACA 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 shall make same available in written form at no cost to CITY.

PACA shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to PACA's records, PACA shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by PACA. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

10.3 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

PACA shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. PACA shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by CITY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, PACA shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

PACA's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

PACA shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by CITY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In

addition, PACA shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

10.4 PUBLIC ENTITY CRIME ACT

PACA represents that the execution of this Agreement will not violate the Public Entity Crime Act (Section 287.133, Florida Statutes) which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with CITY, and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes (2005), for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by CITY pursuant to this Agreement, and may result in debarment from CITY's competitive procurement activities.

In addition to the foregoing, PACA further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a public entity crime and that it has not been formally charged with committing an act defined as a public entity crime regardless of the amount of money involved or whether PACA has been placed on the convicted vendor list.

10.5 INDEPENDENT CONTRACTOR

PACA is an independent contractor under this Agreement. Services provided by PACA pursuant to this Agreement shall be subject to the supervision of PACA. In providing such services, neither PACA nor its agents shall act as officers, employees, or agents of the CITY. This Agreement shall not constitute or make the parties a partnership or joint venture.

10.6 THIRD PARTY BENEFICIARIES

Neither PACA nor CITY intend to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly

acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

10.7 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR CITY:

City of Fort Lauderdale
Attn: City Manager
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

FOR THE PACA:

Performing Arts Center Authority
Attn: Chief Financial Officer
201 Southwest Fifth Avenue
Fort Lauderdale, Florida 33312

Any party may change the title(s) of the person(s) or the addresses stated in Section 10.7, "Notices" herein at any time using the notices procedures stated in Section 10.7 herein. PACA's Representative as stated in Section 1.2 and the CITY's Contract Administrator as stated in Section 1.4 may be changed at any time by written notice using the notices procedures stated in Section 10.7 herein.

10.8 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by PACA, without the written consent of the CITY; except that CITY agrees that this Agreement and any interest herein may be assigned by PACA in connection with any bond, loan, financial security or collateral agreements relating to the financing of the Project. Notwithstanding the interest of the City in the Parker Playhouse, shall not be pledged, encumbered or subordinate to any interest of PACA or any other party.

PACA represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience,

education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to CITY's satisfaction for the agreed compensation.

PACA shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of PACA's performance and all interim and final product(s) provided to or on behalf of CITY shall be comparable to the best local and national 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 related to its performance under this Agreement.

PACA agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, PACA agrees that 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 CITY in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude PACA or any other persons from representing themselves in any action or in any administrative or legal proceeding.

In the event PACA is permitted to utilize subcontractors to perform any services required by this Agreement, PACA agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this section.

10.10 MATERIALITY AND WAIVER OF BREACH

CITY and PACA agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

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.

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 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or PACA elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) calendar days after the finding by the court becomes final.

10.13 JOINT PREPARATION

The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

10.14 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 10 of this Agreement shall prevail and be given effect.

10.15 APPLICABLE LAW AND VENUE

Subject to the Florida Governmental Conflict Resolution Act, Chapter 164, Florida Statutes (as amended from time to time), venue in any action under this Agreement shall be in Broward County, Florida. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for

litigation arising out of this Agreement shall be in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. By entering into this Agreement, PACA and CITY hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to, or arising out of this Agreement.

10.16 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the CITY, (through its City Commission), and by the PACA (through its Board).

10.17 PRIOR AGREEMENTS

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with Section 10.16 above.

10.18 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. Exhibit A is made a part hereof and incorporated herein by reference.

10.19 MULTIPLE ORIGINALS

This Agreement may be fully executed in two (2) or more copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

10.20 PUBLIC RECORDS

10.20.1 Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any

public documents request served upon it pursuant to Chapter 119, Florida Statutes, as same may be amended from time to time and any resultant award of attorney's fees for non-compliance with that law.

10.20.2 PACA and all contractors or subcontractors (the "**Contractor**") engaging in services in connection with construction and/or maintenance of the Theater shall:

(a) Keep and maintain public records that ordinarily and necessarily would be required by CITY in order to perform the services rendered.

(b) Upon request from CITY's custodian of public records, provide CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2016), as may be amended or revised, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law and as to Parker for the duration of this Agreement and as to Contractor for the duration of the contract term and following completion of said contract if Contractor does not transfer the records to CITY.

(d) Upon completion of said construction or maintenance at the Theater, transfer, at no cost, to CITY all public records in possession of PACA or Contractor or keep and maintain public records required by CITY to perform the service. If Contractor transfers all public records to CITY upon completion of the Theater, PACA and Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If PACA or Contractor keeps and maintains public records upon completion of the Theater, PACA and Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to CITY, upon request from CITY's custodian of public records, in a format that is compatible with the information technology systems of CITY.

10.20.3 If PACA or any contractor has questions regarding the application of Chapter 119, Florida Statutes, to PACA or Contractor's duty to provide public records relating to its contract, contact the CITY's custodian of public records by telephone at 954-828-5002 or by e-mail at PRRCONTRACT@FORTLAUDERDALE.GOV or by mail at 100 North Andrews Avenue, Fort Lauderdale, FL 33301 Attention: Custodian of Public Records.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the parties have made and executed this Capital Grant Agreement on the respective dates under each signature: CITY OF FORT LAUDERDALE, through its CITY COMMISSION, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Commission action on the _____ day of _____ 2017, and PERFORMING ARTS CENTER AUTHORITY, signing by and through its Chair or Vice Chair, duly authorized to execute same.

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

CITY

WITNESSES:

Safec Ali
Print: Safec Ali

[Signature]
Print: KEARY ARTHURS

(CORPORATE SEAL)



CITY OF FORT LAUDERDALE

By [Signature]
John P. "Jack" Seiler, Mayor

BY [Signature]
Lee R. Feldman City Manager

ATTEST: [Signature]
Jeffrey A. Modarelli, City Clerk

Approved as to form:
Cynthia A. Everett, City Attorney

[Signature]
Lynn Solomon, Assistant City Attorney

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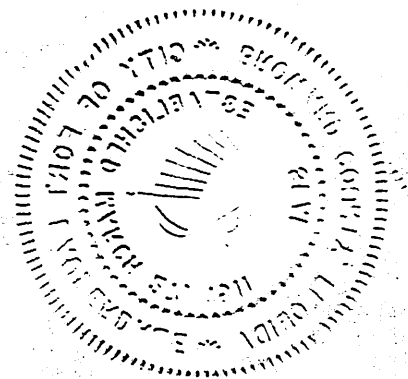
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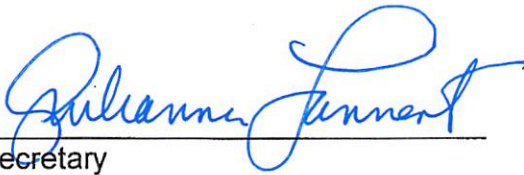
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CAPITAL GRANT AGREEMENT BETWEEN CITY OF FORT LAUDERDALE AND
PERFORMING ARTS CENTER AUTHORITY FOR CAPITAL GRANT FUNDING TO
PACA

PACA

ATTEST:


Secretary

GIULIANA LANWERT
Print name above

PERFORMING ARTS CENTER
AUTHORITY, an independent special
district organized in the State of Florida

By 
Chair

JOHN T. LOOS

Print name above

30 day of November, 2017

(SEAL)

EXHIBIT A

I. Project Title: Parker Capital Replacement and Renewal Project

II. Scope of Services:

Project Goals. The Projects' primary goals are to:

- Return the Parker to *state of the art* status. The latest theater technology will replace existing lighting and sound equipment.
- Enhance the experience of attendees. Create a more compelling destination in order to maintain the Parker's position as a leading cultural/entertainment venue in an increasingly competitive environment.
- Restore the physical plant, including green technologies. Improve operating efficiency and extend the life of the asset.
- Increase capacity for education. Provide additional space for growing educational programs

Project Timeline. The interior design, architectural/engineering phases of the Project began in August 2017 and is on-going with construction estimated to begin in June 2019 and estimated to be completed by December 2021. Times are estimates and are subject to change.

Project Funding. The Project cost, estimated at \$17 million, including fundraising and financing costs, will be funded from private and public partners, including the Broward Performing Arts Foundation, Inc., City of Fort Lauderdale, and other public entities.

Project Benefits to CITY. The entire Project will greatly benefit the citizens of Fort Lauderdale by restoring an important, city-owned, cultural asset, improving the surrounding area and its relationship to Holiday Park and the neighborhood, and providing additional space for educational programs.


JOINDER AND CONSENT

The Parker Theater, Inc., as the Long Term Lessee of the Parker Theater, hereby joins in and consent to the capital improvements to the Theater by PACA.

THE PARKER THEATER, INC.

By: 
RAYMOND E. PARKER, President

Attest:


Secretary
ROBERT E. HUBNER