

RESOLUTION NO. 20-

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, APPROVING THE BUDGET OF THE PERFORMING ARTS CENTER AUTHORITY FOR FISCAL YEAR 2020/2021 AND APPROVING A TRI-PARTY GRANT AGREEMENT RELATED TO FUNDING OF THE PERFORMING ARTS CENTER.

WHEREAS, the Performing Arts Center Authority ("Authority") is required, pursuant to the enabling act which created it, to submit its budget to both the Board of County Commissioners of Broward County ("County Commission") and to the City Commission of the City of Fort Lauderdale, Florida ("City Commission") for approval; and

WHEREAS, the Authority has submitted its budget for Fiscal Year 2020/2021 to the City Commission, a copy of said budget having been submitted to and on file with the City; and

WHEREAS, the City Commission has reviewed and approved the Authority's budget; and

WHEREAS, the City of Fort Lauderdale ("City") has annually contributed funding and in-kind services related to the operation of the Performing Arts Center along with Broward County ("County"); and

WHEREAS, the City Commission wishes to approve the Tri-Party Grant Agreement among the City, County and the Authority related to funding of the Performing Arts Center for Fiscal Year 2020/2021;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That pursuant to the enabling act which created the Authority, the City Commission hereby approves the budget of the Authority for Fiscal Year 2020/2021, a copy of said budget having been submitted to and on file with the City, and attached hereto as Exhibit "A".

SECTION 2. That the Tri-Party Grant Agreement among the City, County and Authority for Grant Funding for the Authority's Operation for Fiscal Year 2020/2021 is approved in

substantially the form attached hereto as Exhibit "B", and the proper City officials are hereby authorized to execute said agreement.

SECTION 3. That if any clause, section or other part of this Resolution shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Resolution shall not be affected thereby but shall remain in full force and effect.

SECTION 4. That all resolutions or parts of resolutions in conflict herewith, be and the same are hereby repealed.

SECTION 5. That this Resolution shall be in full force and effect upon final passage.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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Mayor  
DEAN J. TRANTALIS

ATTEST:

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City Clerk  
JEFFREY A. MODARELLI

**Performing Arts Center Authority**  
**Adopted Budget**  
**For the Fiscal Year October 1, 2020 - September 30, 2021**

**REVENUE**

<b>FAR Account</b>	<b>Description</b>	<b>Enterprise Fund</b>
337900	Other Local Grants	\$ 1,190,584
347900	Other Cultural/Recreational Charges	1,311,689
361100	Interest	24,000
362000	Rents and Royalties	125,000
389400	Contributions/Donations from Private Sources	2,304,887
	Subtotal Revenues	<u>4,956,160</u>
	Net Assets (Capital, Restricted & Unrestricted)	<u>72,936,088</u>
	<b>Total Revenues and Other Sources</b>	<b>\$ 77,892,248</b>

**EXPENSES**

<b>FAR Account</b>	<b>Description</b>	
51310	Financial and Administrative	\$ 7,077,956
57330	Cultural Services	4,300,807
59170	Proprietary Non-Operating Interest Expense	-
	Subtotal Expenses	<u>11,378,763</u>
	Net Assets (Capital, Restricted & Unrestricted)	<u>66,513,485</u>
	<b>Total Expenses and Other Uses</b>	<b>\$ 77,892,248</b>

**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 2021**

This is a Tri-Party Grant agreement ("Agreement") 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 created by Special Act of the Florida Legislature ("PACA") (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 which have enhanced the cultural life of South Florida and made the Center a first-class facility for Broward County, its residents, and visitors.

C. The Board of County Commissioners of Broward County ("Board") and the City Commission of the City of Fort Lauderdale ("City Commission") wish to support the Center by providing funding and 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. **Contract Administrator** means the Director of County's Cultural Division ("Division"), or other person designated in writing by the Division Director or the County Administrator.

1.2. **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.

## **ARTICLE 2. SCOPE OF SERVICES**

- 2.1. Scope of Services. For the Term (as defined in Section 3.1), 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 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 ("Scope of Services").
- 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 the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services, except as expressly provided.
- 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 begin on October 1, 2020 (the "Effective Date") and shall end on September 30, 2021 (the "Term").
- 3.2. 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.
- 3.3. Time is of the essence for all performance required under this Agreement.

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

- 4.1. 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 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.

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) as grant funding towards the operation of the Center in the manner described in Section 5.1.1. Such amount does not include the County's in-kind legal services provided pursuant to Section 4.2.2 below or any funding towards the required audit services as referenced in Section 4.5.

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 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 resolutions and litigation services in connection with the foregoing matters. PACA shall pay all out-of-pocket costs and expenses incurred by the Office of the County Attorney (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 Office of the County Attorney 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 Office of the County Attorney's representation of the 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 Office of the County Attorney.

4.3. City's Contribution to PACA.

4.3.1. City's Cash Contribution. City will provide cash contributions to PACA 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) 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 the 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, with such services having a value of at least Thirty Thousand Dollars (\$30,000), as its in-kind contribution. Nothing shall prevent City from exceeding the amount of Thirty Thousand Dollars (\$30,000) 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.

(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) 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 may 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. Within one hundred fifty (150) days of February 28, 2021, the Parties will enter into a separate agreement for independent auditing services with PACA's current independent auditor (or another auditor agreeable to the Parties), 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 due under this Agreement if the breach is not cured within any required time as specified in this Agreement.

## **ARTICLE 5. DISBURSEMENT**

### **5.1. County's Payments.**

5.1.1. Quarterly Payment. Within forty-five (45) days after the later of commencement of the Term or complete execution of the Agreement by all Parties, County shall pay Two Hundred Thirty-seven Thousand Five Hundred Dollars (\$237,500) ("Quarterly Payment") to PACA as its first Quarterly Payment for the period October 1, 2020, through December 31, 2020. Thereafter, County shall pay PACA the Quarterly Payment within forty-five (45) calendar days after the end of each remaining quarter ending March 31, June 30, and September 30, respectively. County's obligation to make the final payment shall, subject to Section 3.2, survive the expiration of the Term.

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. Overpayments. 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 Contract Administrator.

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 any obligation to pay interest) as a result of 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: Chief Financial Officer  
Broward Center for the Performing Arts  
201 Southwest Fifth Avenue  
Fort Lauderdale, Florida 33312

#### **ARTICLE 6. RECORDS, REPORTS, AND AUDITS**

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

6.2. PACA shall submit to County and City a calendar quarterly financial report consisting of a statement of net position, a statement of revenue and expenses, a working capital statement, a cash flow schedule and forecast, and a schedule of all operating expenditures that were made from any funds received and disbursed during the calendar quarter for which the report is prepared. Such quarterly reports shall be submitted within forty-five (45) days after the end of each calendar quarter. PACA shall also prepare and submit an annual financial report with the same details as the quarterly reports (except that the annual report will provide details for the entire fiscal year) to County and City within one hundred twenty (120) days after the end of the Term. PACA's obligations under this section shall survive the expiration of the Term.

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 Term.

6.4. The audit report shall contain disclosures as to the amount of subsidy remitted, 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 7. 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 of Section 768.28, Florida Statutes.

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.

In the event 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 such 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 of this Agreement.

## **ARTICLE 8. EQUAL EMPLOYMENT OPPORTUNITY**

No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. PACA shall include the foregoing or similar language in its contracts with any 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 9. TERMINATION**

9.1. Termination for Cause. In the event of an alleged breach of any provision of this Agreement, a nonbreaching Party shall provide written notice of the breach to the alleged breaching Party with a copy to the other Party. If the breach is not cured within thirty (30) days

after written notice of the breach, this Agreement may be terminated for cause by the nonbreaching Party that provided notice of breach upon ten (10) days' prior written notice.

If the breach is not corrected within the required time after notice by County pursuant to this section, the Contract Administrator in his or her 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 the Contract Administrator and if he or she is satisfied that reasonable progress is being made by PACA in its endeavor to correct the breach, the Contract Administrator may grant further written extensions of time for correction. If, however, the 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 the 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).

9.2. Termination for Convenience. This Agreement may also be terminated for convenience by County or City by providing at least thirty (30) days' prior written notice to the other Parties. If County or City erroneously, improperly, or unjustifiably terminates for cause, such termination shall, to the full extent permissible under applicable law, be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

9.3. Notice of termination shall be provided in accordance with the "Notices" section in Article 11.

9.4. 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 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. REPRESENTATIONS AND WARRANTIES**

10.1. Representation of Authority. PACA represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of PACA, and that neither the

execution nor performance of this Agreement constitutes a breach of any agreement that PACA has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to PACA. PACA further represents and warrants that execution of this Agreement is within PACA's legal powers, and each individual executing this Agreement on behalf of PACA is duly authorized by all necessary and appropriate action to do so on behalf of PACA and does so with full legal authority.

10.2. 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. PACA further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, 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.

10.3. 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.

10.4. 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 such services shall equal or exceed prevailing industry standards for the provision of such services.

## **ARTICLE 11. MISCELLANEOUS**

11.1. Rights in Documents and Work. Any and all reports, photographs, surveys, and documents created by PACA in connection with performing services 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; in the event 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 work, to County and City. 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 become the property of County and City, individually and separately, and shall be delivered by PACA to the Contract Administrator and the City Manager within seven (7) days after termination of this Agreement. Any compensation due to PACA may be withheld until all documents 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.

11.2. 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 rnocom@broward.org) and to City at lshort@fortlauderdale.gov (with a simultaneous copy to finance@fortlauderdale.gov) within one (1) business day after receipt of such request.

11.3. 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 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, 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. 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.

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for 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.

11.4. 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.

11.5. Third-Party Beneficiaries. The Parties acknowledge that there are no third-party beneficiaries to this Agreement.

11.6. Notices. In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). The addresses for notice shall remain as stated in this section unless and until changed by providing notice of such change in accordance with the provisions of this section.

For County:

Broward County, Cultural Division  
Attn: Phillip Dunlap, Director  
100 South Andrews Avenue, 6th Floor  
Fort Lauderdale, Florida 33301  
E-mail address: pdunlap@broward.org  
With simultaneous copy of e-mail to: rnocom@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, Chief Financial Officer  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33301  
E-mail: lshort@fortlauderdale.gov  
With simultaneous e-mail copy to: finance@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)

11.7. 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.

11.8. 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 of this Agreement, 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 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 of such representation, in any action or in any administrative or legal proceeding. In the event 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.

11.9. 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 of this Agreement. County's or City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party.

11.10. Compliance with Laws. PACA must 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, including, without limitation, American with Disabilities

Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations.

11.11. 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.

11.12. Joint Preparation. The Agreement has been jointly prepared by the Parties and shall not be construed more strictly against any of the Parties.

11.13. 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 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 of this Agreement, 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. Any reference to “days” means calendar days, unless otherwise expressly stated.

11.14. 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.**

Prior to the filing of any litigation relating to this Agreement, the Parties will participate in a non-binding mediation with each Party to bear its own attorneys’ fees and costs; however, each Party shall pay equally on a one-third (1/3) basis its share of the mediator’s fees and, if applicable, any pre-approved cost(s) incurred by the mediator.

11.15. 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.

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

11.17. Payable Interest.

11.17.1. 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.

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

11.18. Incorporation by Reference. Any and all Recital clauses stated above are true and correct and incorporated in this Agreement by reference.

11.19. 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.

11.20. Regulatory Capacity. Notwithstanding the fact that County and City are political subdivisions with certain regulatory authority, County's and City's performance under this Agreement is as a party to this Agreement. In the event County and City exercises their regulatory authority, the exercise of such authority and the enforcement of any rules, regulation, laws, and ordinances shall have occurred pursuant to County's and 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 City as a party to this Agreement.

11.21. Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by any Party nor shall anything included herein be construed as consent by any Party to be sued by third parties in any matter arising out of this Agreement. Each Party is a public entity or political subdivision as defined in Section 768.28, Florida Statutes, and shall be



responsible for the negligent or wrongful acts or omissions of its employees pursuant to Section 768.28, Florida Statutes.

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

*(Remainder of page left intentionally blank)*

IN WITNESS WHEREOF, the Parties have made and executed this Tri-Party Grant Agreement for Fiscal Year 2021 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  
Andrew J. Meyers  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By \_\_\_\_\_  
Sara F. Cohen (Date)  
Assistant County Attorney

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

SC  
PACA Tri-Party Agreement\_FY2021  
7/27/20  
#523139v3

**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 2021**

CITY

ATTEST:

CITY OF FORT LAUDERDALE

\_\_\_\_\_  
JEFF A. MODARELLI, CITY CLERK

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

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

(SEAL)

\_\_\_\_\_  
CHRISTOPHER J. LAGERBLOOM, ICMA-CM,  
CITY MANAGER

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

APPROVED AS TO FORM:

By \_\_\_\_\_  
D'WAYNE M. SPENCE  
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 FOR FISCAL YEAR 2021**

PACA

ATTEST:

PERFORMING ARTS CENTER AUTHORITY

\_\_\_\_\_  
Secretary

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

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

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

(SEAL)

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