

10-06-09 M-23

Exhibit 2

TRI-PARTY GRANT AGREEMENT

Among

BROWARD COUNTY

and

CITY OF FORT LAUDERDALE

and

PERFORMING ARTS CENTER AUTHORITY

For Grant Funding for Authority's Operation for Fiscal Year 2010

TRI-PARTY GRANT AGREEMENT

Among

BROWARD COUNTY

and

CITY OF FORT LAUDERDALE

and

PERFORMING ARTS CENTER AUTHORITY

For Grant Funding for Authority's Operation for Fiscal Year 2010

This is a Tri-Party Grant Agreement, made and entered into by and among: BROWARD COUNTY, a political subdivision of the State of Florida, its successors and assigns, hereinafter referred to as "COUNTY," through its Board of County Commissioners,

AND

CITY OF FORT LAUDERDALE, a municipal corporation of the state of Florida, hereinafter referred to as "CITY," through its City Commission,

AND

PERFORMING ARTS CENTER AUTHORITY, an independent special district created by Special Act of the Florida Legislature, its successors and assigns, hereinafter referred to as the "AUTHORITY."

WHEREAS, the AUTHORITY operates the facility known as the Broward Center for the Performing Arts ("Center") which has shown itself to be a cultural attraction for the Broward County community and has presented renown performers and productions which have enhanced the cultural life of the South Florida community, and has bestowed a first-class facility upon Broward County, its residents and visitors; and

WHEREAS, the Board of County Commissioners of Broward County and the City Commission of the City of Fort Lauderdale both wish to support the Center by providing funding and in-kind contributions to the Center to offset a portion of any operating deficit (as defined in Section 1.10) which the Center may experience during its operations; and

WHEREAS, the Board of County Commissioners of Broward County and the City Commission of Fort Lauderdale have each determined that the COUNTY's financial contribution and the CITY's contribution will serve a valid public purpose; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, premises and payments contained herein, the parties hereto hereby agree as follows:

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

- 1.1 For the purpose of this Agreement and the various covenants, conditions, terms, and provisions which follow, the definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the parties.
- 1.2 **AUTHORITY:** Performing Arts Center Authority, an independent special district, established pursuant to special act of the Legislature of the State of Florida, which operates and manages the facility known as the Broward Center for the Performing Arts ("Center") located in Fort Lauderdale, Broward County, Florida.
- 1.3 **AUTHORITY's Representative:** The AUTHORITY hereby designates its CFO as the AUTHORITY's Representative responsible for administration of this Agreement. The AUTHORITY's President/CEO may change the AUTHORITY's Representative at any time by written notice using the notice procedures stated in Article 11, "Notices."
- 1.4 **BOARD of County:** The Board of County Commissioners of Broward County, Florida, which is the governing body of Broward County government.
- 1.5 **BROWARD COUNTY:** A political subdivision of the State of Florida.
- 1.6 **CITY OF FORT LAUDERDALE:** A Florida municipal corporation acting by and through its City Commission.
- 1.7 **CONTRACT ADMINISTRATOR:** The Contract Administrator shall be the Director/CFO of the Broward County's Finance and Administrative Services Department or designee. The COUNTY's Director/CFO may change the Contract Administrator at any time by written notice using the notice procedures stated in Article 11 "Notices."

- 1.8 COUNTY ATTORNEY: The chief legal counsel for COUNTY who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.
- 1.9 COUNTY AUDITOR: The County Auditor for the Board of County Commissioners of Broward County, Florida. The COUNTY and the AUTHORITY agree that the County Auditor shall be a permanent voting member of the AUTHORITY's Finance Committee during the entire term of this Agreement.
- 1.10 FISCAL YEAR: The AUTHORITY's, the CITY's, and the COUNTY's fiscal year commences on October 1 of each year and ends on September 30 of the following year. For purposes of this Agreement, the AUTHORITY's fiscal year of operation shall commence on October 1, 2009, through September 30, 2010. Such fiscal year is referred to herein as fiscal year 2010. Whenever the term "fiscal year" is used in this Agreement, it shall be deemed to mean the AUTHORITY's fiscal year except as otherwise specifically stated herein. The fiscal year period shall also be deemed to be the same as the contract period.
- 1.11 OPERATING DEFICIT: The operating deficit shall be the excess of actual operating expenses, which includes depreciation, over actual operating revenues excluding the addition of nonoperating income and the deduction of nonoperating expenses.

ARTICLE 2

FUNDING AND METHOD OF PAYMENT

- 2.1 The COUNTY grants and agrees to make available to the AUTHORITY the sum of Four Hundred Forty-Four Thousand Six Hundred Dollars (\$444,600.00) for the current term of this Agreement.
- 2.2 The COUNTY and the CITY have either budgeted funds, or plan to budget funds, for the performance of this Agreement for fiscal year 2010, commencing on October 1, 2009, through September 30, 2010. In the event that this Agreement is executed by the COUNTY prior to approval and adoption by its Board of the COUNTY's budget for fiscal year 2010 or the period commencing October 1, 2009, the COUNTY's funding under this Agreement shall be subject to the availability of funds in accordance with Chapter 129, Florida Statutes, as amended from time to time. In the event that this Agreement is executed by the CITY prior to approval and adoption by the City Commission of the CITY's budget for fiscal year 2010 for the period commencing October 1, 2009, the CITY's funding under this Agreement shall be subject to the availability of funds by the CITY.

- 2.3 COUNTY further grants and agrees to make available to the AUTHORITY for use for the overall operation of the AUTHORITY an amount of Twenty-five Thousand Dollars (\$25,000.00) solely in the form of in-kind professional legal services from the County Attorney's Office. In the event billing charges exceed \$25,000.00, the COUNTY will continue to provide that same level of service.
- 2.4 CITY agrees to provide cash contributions consisting of the CITY's portion of net garage revenues from the Arts & Science Parking Garage up to an amount not to exceed Three Hundred Thousand Dollars (\$300,000.00). CITY shall remit the garage revenues described in Section 2.4 herein to the AUTHORITY on a monthly basis within thirty (30) calendar days after the end of each month.
- 2.5 The CITY grants and agrees to make available to the AUTHORITY for use at the Center the following contributions to be expended during the term of this Agreement as follows:
- (i) The CITY shall provide in-kind services having a value of at least Thirty Thousand Dollars (\$30,000.00) as its contribution for landscape maintenance of valet lot and parking garage sites.
 - (ii) CITY agrees that waste removal expenses paid by AUTHORITY for fiscal year 2010 shall be reimbursed by CITY up to an amount not to exceed Twenty-four Thousand Dollars (\$24,000.00). Such reimbursement shall be paid by the CITY to the AUTHORITY in the name of the "Performing Arts Center Authority" at the address stated in Section 3.4 in accordance with the provisions stated in Section 3.5.
- 2.6 The AUTHORITY shall continue to collect the ticket surcharge which shall, on an average, be at least Two Dollars (\$2.00) per ticket. The AUTHORITY shall be solely entitled to retain such ticket surcharge for its use and operation of the Center.
- 2.7 AUTHORITY'S AUDITOR:

COMPENSATION OF AUTHORITY'S AUDITOR: The COUNTY and the CITY agree that the AUTHORITY's Special Act requires that the COUNTY and the CITY retain, employ, and compensate independent certified public accountants to audit the records or book of account of the AUTHORITY at least once yearly and at such other times as either determines necessary. Subject to the AUTHORITY's Special Act and subject to the contractual provisions of the parties' written agreement with the AUTHORITY's Auditor dated May 23, 2006, the AUTHORITY, COUNTY, and the CITY agreed that they entered into a written

agreement with the AUTHORITY's Auditor on May 23, 2006, to retain, employ, and compensate such independent certified public accountant to audit the records or books of account of the authority for fiscal year 2006 through fiscal year 2010. In such separate written agreement, the COUNTY and the CITY agreed that each party will be respectively responsible for paying one-half of the compensation for the AUTHORITY's Auditor for such fiscal years.

ARTICLE 3

DISBURSEMENT

- 3.1 On October 1, 2009, or within thirty (30) calendar days after complete execution of this Agreement by all parties, whichever date is later, and thereafter, within thirty (30) calendar days after the commencement of each quarter during the term of this Agreement, the COUNTY shall provide to the AUTHORITY One Hundred Eleven Thousand One Hundred Fifty Dollars (\$111,150.00). No interest shall be payable by the COUNTY on the amount stated in Section 3.1 herein.
- 3.2 Any further adjustments to be made in the total amount paid by the COUNTY for each operating fiscal year of the AUTHORITY shall be made in the fourth quarter's payment to the AUTHORITY.
- 3.3 Upon written notice from the COUNTY, the AUTHORITY shall promptly reimburse the COUNTY for any funding or services later determined by the COUNTY to be improperly paid pursuant to this Agreement by making such reimbursements within sixty (60) calendar days after receipt of such written notice from COUNTY.
- 3.4 Payment shall be made to AUTHORITY payable to the "Performing Arts Center Authority" at:

Performing Arts Center Authority
Attention: CFO
Broward Center for the Performing Arts
201 Southwest Fifth Avenue
Fort Lauderdale, Florida 33312

The COUNTY and CITY acknowledge that each party is already in receipt of the AUTHORITY's federal identification number; however, the AUTHORITY agrees to provide such number in writing to COUNTY and/or CITY if requested by either party within ten (10) calendar days after such request.

- 3.5 The AUTHORITY shall provide the CITY with a separate monthly invoice for the waste removal expenses paid by the AUTHORITY for each previous month along with a copy of the canceled check showing payment by the AUTHORITY of the previous month's invoice for waste removal. The AUTHORITY and the CITY agree that the final separate monthly invoice for the waste removal expenses incurred by the AUTHORITY for the last month of the term of this Agreement or for the month of September 2010 shall be submitted by the AUTHORITY to the CITY for payment within forty-five (45) calendar days after the end of the term of this Agreement. The CITY shall make payments in full to the AUTHORITY of the amount shown on each separate monthly invoice within thirty (30) calendar days after the receipt of such invoice.

ARTICLE 4

USE OF FUNDS

Funding provided by the COUNTY pursuant to this Agreement shall be used only for the payment of expenses incurred in the operation of the Center, except as to Section 2.3 for in-kind legal services which relate to the overall operation of the AUTHORITY.

ARTICLE 5

INSURANCE AND GOVERNMENTAL IMMUNITY

- 5.1 The AUTHORITY shall maintain in force for the term of this Agreement commercial or comprehensive general liability insurance in the minimum amount of One Million Dollars (\$1,000,000.00) for each occurrence, including bodily injury and property damage liability. Such policy shall include premises/operation, contractual insurance, independent contractors, and personal injury liability. Further, such policy shall include CITY and COUNTY as additional insureds by naming the "City of Fort Lauderdale" and the "Broward County Board of County Commissioners" on such policy. Such policy shall provide thirty (30) days prior written notice to all parties of any material change or cancellation.
- 5.2 The AUTHORITY is an independent special district created by Special Act of the Florida Legislature, and some of the AUTHORITY's members consist of some public agencies' appointees from the CITY, a municipality, and the COUNTY, a political subdivision, as defined in Chapter 768.28, Florida Statutes (as amended). The AUTHORITY agrees to be fully responsible for acts and omissions of their 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.

- 5.3 The CITY is a municipality and the COUNTY is a political subdivision, as defined in Chapter 768.28, Florida Statutes (as amended). The COUNTY and the CITY agree to be fully responsible for acts and omissions of their 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.

ARTICLE 6

RECORD KEEPING, AUDIT RIGHTS, AND RETENTION OF RECORDS

- 6.1 The AUTHORITY shall keep financial records in accordance with the state uniform system prescribed by the Department of Banking and Finance, State of Florida.
- 6.2 If applicable, COUNTY and/or CITY shall have the right to audit the books, records, and accounts of AUTHORITY that are related to this Agreement. AUTHORITY 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 AUTHORITY 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, AUTHORITY shall make same available in written form at no cost to COUNTY and/or CITY.

AUTHORITY shall preserve and make available, at reasonable times for examination and audit by COUNTY and/or 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, as amended from time to time), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of five (5) 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 five (5) 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 COUNTY and/or CITY to be applicable to AUTHORITY's records, AUTHORITY shall comply with all requirements thereof; however, no

confidentiality or non-disclosure requirement of either federal or state law shall be violated by AUTHORITY. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for COUNTY's and/or CITY's disallowance and recovery of any payment upon such entry.

AUTHORITY shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Section 6.2.

ARTICLE 7

REPORTS AND AUDITS

- 7.1 The AUTHORITY shall submit to the COUNTY and the CITY a quarterly financial report consisting of a balance sheet, income statement, a working capital statement, and a statement of all operating expenditures for the quarter that were made from any funds disbursed hereunder. Reports shall be submitted within thirty (30) calendar days after the end of each quarter. The AUTHORITY shall also prepare an annual financial report and shall submit such annual report to the COUNTY and the CITY within one hundred twenty (120) calendar days after the end of the AUTHORITY's fiscal year.
- 7.2 The financial statements (including a cash flow statement), accounts, and records of the AUTHORITY shall be audited annually by an independent certified public accountant, licensed in the State of Florida, as selected by the COUNTY and the CITY (as stated in Section 2.7), and such audit reports shall be completed within one hundred twenty (120) calendar days after the end of the AUTHORITY's fiscal year. A copy of this report shall be submitted to the COUNTY and the CITY no later than one hundred twenty (120) calendar days after the end of the AUTHORITY's fiscal year.
- 7.3 The audit report shall contain disclosures as to the amount of subsidy remitted, the amount expended for operations, whether any funds are due back to the COUNTY, and an opinion that the funds received have been expended pursuant to this Agreement. Furthermore, the report shall disclose the ticket surcharges and the amount collected from ticket surcharges by the AUTHORITY.

ARTICLE 8

ASSIGNMENT

This Agreement, or any interest herein, shall not be assigned, sold, transferred, mortgaged, pledged, or otherwise encumbered, in whole or in part, under any circumstances, by the AUTHORITY.

ARTICLE 9

TERM AND TERMINATION

- 9.1 The term of this Agreement shall commence on October 1, 2009, through September 30, 2010. If the term of this Agreement extends beyond a single fiscal year of COUNTY, the continuation of this Agreement beyond the end of any such fiscal year shall be subject to the availability of funds from COUNTY in accordance with Chapter 129, Florida Statutes (as amended from time to time). If the term of this Agreement extends beyond the end of any fiscal year of CITY, the continuation of this Agreement beyond the end of any such fiscal year shall be subject to the availability of funds from the CITY at the time of its adoption of its budget for the subsequent fiscal year(s). The effective date of this Agreement shall be October 1, 2009, subject to complete execution by all parties. In the event that this Agreement is fully executed by all parties after October 1, 2009, it shall be effective retroactively back to October 1, 2009.
- 9.2 The COUNTY or the CITY shall give the AUTHORITY written notice of any violation of this Agreement and shall provide the AUTHORITY with thirty (30) calendar days to correct such violation. In the event that such violation shall remain uncorrected after such thirty (30) calendar day period, the COUNTY's Contract Administrator and/or the CITY's City Manager shall determine whether the AUTHORITY's inability to correct such violation is excusable in light of the circumstances causing such violation. If such inability to correct is excusable in COUNTY's Contract Administrator and/or CITY's City Manager opinion, and if COUNTY and CITY are satisfied that reasonable progress is being made by AUTHORITY in its endeavor to correct such violation, COUNTY and CITY may grant further written extensions of time for correction of such violation. If, however, COUNTY and CITY determine that such failure to correct is not excusable, or that after further written extension has been granted, continued violation is not excusable, COUNTY or CITY may, in its sole discretion, terminate this Agreement by providing ten (10) calendar days prior written notice to the AUTHORITY in accordance with Section 9.4, and COUNTY and/or CITY may also withhold any further disbursements to AUTHORITY.

This Agreement may be terminated for cause by action of the Board of the COUNTY, by action of CITY's Commission or by action of the Board of the AUTHORITY if the party in breach has not corrected the breach within thirty (30) calendar days after written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by action of Board of COUNTY or by action of the City Commission upon not less than thirty (30) calendar days' prior written notice by COUNTY's Contract Administrator or CITY's City Manager respectively. This Agreement may also be terminated by

COUNTY'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, or welfare. An erroneous termination for cause shall be considered a termination for convenience.

- 9.3 Termination of this Agreement for cause by COUNTY and/or CITY shall include, but not be limited to, failure to use the funds for the intended purpose, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of COUNTY and/or CITY 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 AUTHORITY shall include multiple breaches of the provisions of this Agreement notwithstanding whether any such breaches may be previously waived or cured.
- 9.4 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by COUNTY's Contract Administrator which such Contract Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section in Article 11 of this Agreement.
- 9.5 In the event this Agreement is terminated for convenience by COUNTY and/or CITY, AUTHORITY shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. AUTHORITY acknowledges and agrees that it has received good, valuable and sufficient consideration from COUNTY and CITY, the receipt and adequacy of which are, hereby acknowledged by AUTHORITY, for COUNTY's and/or CITY's right to terminate this Agreement for convenience.
- 9.6 In the event this Agreement is terminated, any compensation payable by COUNTY shall be withheld until all documents are provided to COUNTY in accordance with Article 6, "Record Keeping, Audit Rights, and Retention of Records," and Article 7, "Reports and Audits."
- 9.7 Notwithstanding the termination of this Agreement as provided herein, it is agreed among COUNTY, CITY, and AUTHORITY that Article 6, "Record Keeping, Audit Rights, and Retention of Records" and Article 7, "Reports and Audits" shall remain in full force and effect for at least the longer of the time period stated in Article 6 or Article 7 unless a longer period of time is required by the Florida Public Records Law.

ARTICLE 10

ALL PRIOR AGREEMENTS SUPERSEDED AND AMENDMENTS

- 10.1 This document incorporates and includes all prior negotiations, conversations, correspondence, agreements or undertakings 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, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.
- 10.2 It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith by the action of the Board of the AUTHORITY, by action of the Board of the COUNTY, and by action of the City Commission for CITY.

ARTICLE 11

NOTICES

Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notices, to-wit:

FOR BROWARD COUNTY:

Director/CFO
Broward County Finance and Administrative
Services Department
Governmental Center, Room 513
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

with a copy to:

County Auditor
Broward County's Office of County Auditor
Governmental Center, Room 520
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

FOR THE CITY OF FORT LAUDERDALE:

City Manager
City of Fort Lauderdale
City Hall
P. O. Box 14250
Fort Lauderdale, Florida 33302

FOR THE AUTHORITY:

CFO
Performing Arts Center Authority
Broward Center for the Performing Arts
201 Southwest Fifth Avenue
Fort Lauderdale, Florida 33312

Any party may change the title(s) of the person(s) or the addresses stated in Article 11, "Notices" herein at any time using the notices procedures stated in Article 11 herein. The COUNTY's Director/CFO of its Finance and Administrative Department may change the Contract Administrator stated in Section 1.7 at any time by providing written notice using the notices procedures stated in Article 11 herein. The AUTHORITY's President/CEO may change the AUTHORITY's Representative stated in Section 1.3 at any time by providing written notice using the notice procedures stated in Article 11.

ARTICLE 12

MISCELLANEOUS

12.1 APPLICABLE LAW AND VENUE

Subject to the Florida Governmental Resolution Act, Chapter 164, Florida Statutes (as amended from time to time), if applicable, 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, AUTHORITY, THE CITY, AND COUNTY 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.

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

AUTHORITY 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. AUTHORITY shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by COUNTY and/or 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, AUTHORITY 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.

AUTHORITY shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement, the solicitation for or purchase of goods or services relating to this Agreement, or in subcontracting work in the performance of this Agreement and shall not otherwise unlawfully discriminate in violation of the Broward County Code, Chapter 16½, as may be amended from time to time.

AUTHORITY shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 16½) in performing any services pursuant to this Agreement.

AUTHORITY shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by COUNTY and/or 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, AUTHORITY shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

12.3 PUBLIC ENTITY CRIME ACT

AUTHORITY represents that the execution of this Agreement will not violate the Public Entity Crime Act (Section 287.133, Florida Statutes [as amended]), 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 COUNTY, may not submit a bid on a contract with COUNTY for the construction or repair of a public building or public work, may not submit bids on leases of real property to COUNTY may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with COUNTY, and may not transact any business with COUNTY in excess of the threshold amount provided in Section 287.017, Florida Statutes (as amended), 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 hereto, pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

In addition to the foregoing, AUTHORITY 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 amended), 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 AUTHORITY has been placed on the convicted vendor list.

12.4 INDEPENDENT CONTRACTOR

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

12.5 THIRD PARTY BENEFICIARIES

Neither AUTHORITY, CITY nor COUNTY 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.

12.6 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.

12.7 INCORPORATION BY REFERENCE

Each and every "Whereas" clause set forth above is a true and correct recital and representation and is incorporated herein as if set forth fully.

12.8 MULTIPLE ORIGINALS

This Agreement may be fully executed in four (4) or more copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

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

IN WITNESS WHEREOF, the parties have made and executed this Tri-Party Grant Agreement for fiscal year 2010 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____; the 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

County Administrator and Ex-
Officio Clerk of the Board of
County Commissioners of
Broward County, Florida

By _____
Mayor

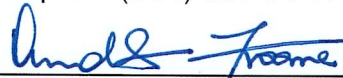
_____ day of _____, 20_____.

Insurance requirements approved
by Broward County Risk
Management Division



Authorized Signature (Date) 11/13/09

Approved as to form by
Office of County Attorney
Broward County, Florida
JEFFREY J. NEWTON, County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By  (11-16-09)

ANDREA S. FROOME (Date)
Senior Assistant County Attorney

TRI-PARTY GRANT AGREEMENT AMONG BROWARD COUNTY AND THE CITY OF FORT LAUDERDALE AND THE PERFORMING ARTS CENTER AUTHORITY FOR FISCAL YEAR 2010

CITY

ATTEST:

Jonda K. Joseph
City Clerk Signature

JONDA K. JOSEPH
Print Name of City Clerk

CITY OF FORT LAUDERDALE

By [Signature]
Mayor-Commissioner

John P. Seiler
Print name of Mayor-Commissioner above

5 day of November, 2009.

[Signature]
City Manager

George Gretsas
Print name of City Manager above

5 day of November, 2009.

(SEAL)

APPROVED AS TO FORM:

By [Signature] 10-26-09
asst. City Attorney (Date)

TRI-PARTY GRANT AGREEMENT AMONG BROWARD COUNTY AND THE CITY OF FORT LAUDERDALE AND THE PERFORMING ARTS CENTER AUTHORITY FOR FISCAL YEAR 2010

AUTHORITY

ATTEST:

Shanne Leonard
Assistant Secretary

Dianne Leonard
Print name

PERFORMING ARTS CENTER
AUTHORITY, an independent special
district and a public body, politic and
corporate in the State of Florida

By  Chair

AUSTIN FORAN
Print name of Chair above

(SEAL)

15 day of September, 2009

ASF:dp
Tri-Party-FY2010-[09-01-09]
09/01/09
#09-158.04