

AGREEMENT  
between  
BROWARD COUNTY  
and  
PERFORMING ARTS CENTER AUTHORITY  
for  
GRANT PROGRAM FUNDS FOR  
BROWARD CENTER FOR PERFORMING ARTS  
CAPITAL REPLACEMENT RENEWAL PLAN

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PERFORMING ARTS CENTER AUTHORITY  
for  
GRANT PROGRAM FUNDS FOR  
BROWARD CENTER FOR PERFORMING ARTS  
CAPITAL REPLACEMENT RENEWAL PLAN

This Agreement ("Agreement"), is made and entered into this \_\_\_ day of February, 2012, by and between BROWARD COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY,"

and

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

WHEREAS, PACA is contemplating a Forty Four Million Dollars (\$44,000,000) capital and renewal replacement plan to the Broward Center for the Performing Arts; and

WHEREAS, the Broward County Board of County Commissioners is prepared to offer certain grant funding to PACA as a contribution towards the costs of the capital renewal and replacement project; and

WHEREAS, more specifically, COUNTY is prepared to provide to PACA in accordance with the terms of this Agreement; (i) an Eight Million Dollars (\$8,000,000) grant, and (ii) a Four Million Dollars (\$4,000,000) eight-to-one matching grant; and

WHEREAS, the Broward County Board of County Commissioners has found and determined that the Broward Center for the Performing Arts provides a venue for art and cultural activities and serves an important public purpose and benefit to the community; NOW, THEREFORE,

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

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ARTICLE 1  
DEFINITIONS AND IDENTIFICATIONS

- 1.1 Agreement - Agreement shall mean this document and other terms and conditions which are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 Board - The Broward County Board of County Commissioners.
- 1.3 Contract Administrator - The County Administrator 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.
- 1.4 County Attorney - The chief legal counsel for COUNTY who directs and supervises the Office of County Attorney pursuant to Section 2.10 of the Broward County Charter.
- 1.5 Project - The Project is defined to mean the approximately \$44 Million Dollars capital replacement and renewal plan for the Broward Center for the Performing Arts, which includes the renovation and improvement to the existing theater and building facilities, and the addition of an educational center and event pavilion, all as more specifically described on Exhibit "1" "Project Description" attached hereto and made a part hereof.

ARTICLE 2  
SCOPE OF SERVICES

PACA shall undertake and perform all services and obligations identified in this Agreement and as provided on Exhibit "2" attached hereto and made a part hereof, as a condition for eligibility to receive grant funds pursuant to this Agreement. PACA shall provide to COUNTY a Project Evaluation Report for the Project funded through this Agreement on the form attached hereto as Exhibit "3" and made a part hereof. The final Project Evaluation Report shall be filed with the Contract Administrator no later than thirty (30) days after the completion of the Project.

ARTICLE 3  
PROMOTION OF GREATER FT. LAUDERDALE CONVENTION  
AND VISITORS BUREAU

PACA agrees that as a condition for entitlement to any grant funding pursuant to this Agreement, PACA shall be required to undertake or furnish to COUNTY annually certain promotional services and benefits to and on behalf of the Greater Ft. Lauderdale Convention and Visitors Bureau (CVB) for a period of Ten (10) years from the date of this Agreement. Such promotional services and benefits are described on Exhibit "4" attached hereto and

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made a part hereof. This Section and the obligations of PACA to provide the benefits and perform the services described on Exhibit "4" shall survive the termination of this Agreement.

ARTICLE 4  
CBE COMPLIANCE

- 4.1 In completing this Project, PACA agrees to cause its Managing General Contractor ("MGC") to include a County Business Enterprises (CBE) goal in the award and administration of the construction of the Project. CBE goals shall be applicable to total amount of non-design construction and management costs of the Project which are presently estimated to be approximately \$37,507,056 as more particularly described on Exhibit "6", attached hereto and made a part hereof.
- 4.2 PACA agrees that subcontract awards to CBE firms are important to the achievement of the Project's CBE participation goal. PACA understands that each CBE firm utilized on the Project to meet the participation goal must be certified by the Broward County Office of Economic and Small Business Development. PACA agrees to ensure that its MGC meets the following CBE participation goal, or makes a good faith effort using all reasonable means to achieve the goal:

Total CBE Goal	18 %
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- 4.3 PACA agrees to engage in on-site reviews to monitor MGC's progress in achieving and maintaining CBE participation goals. PACA agrees to report to COUNTY, at a minimum, all expenditures made to achieve compliance with its assigned goal, the name and business address of each CBE firm participating in the construction agreement, a description of the work performed and/or product or service supplied by each CBE firm; the date and amount of each expenditure. Reports to COUNTY shall include an interim report at fifty percent (50%) of project completion and a final report upon completion of the project.
- 4.4 COUNTY shall have the right to review all records pertaining to the project's CBE participation.
- 4.5 The following language regarding the CBE goal shall be included in PACA's MGC agreement:

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In completing this Project, MGC agrees to include a County Business Enterprises (CBE) goal in the award and administration of the construction of the Project.

MGC agrees that subcontract awards to CBE firms are important to the achievement of the Project's CBE participation goal. MGC understands that each CBE firm utilized on the Project to meet the participation goal must be certified by the Broward County Office of Economic and Small Business Development. MGC agrees to meet the following CBE participation goal, or make a good faith effort using all reasonable means to achieve the goal:

Total CBE Goal	18 %
----------------	------

MGC agrees to submit to PACA monthly CBE Utilization Reports containing a record of payments made to its CBE subcontractors during the term of this agreement.

MGC agrees to submit to PACA the Final CBE Participation Report containing the total amount paid to its CBE subcontractors. This report shall be submitted with the MGC's request for final payment and release of retainage, if applicable.

MGC shall certify to PACA the amounts paid to each CBE involved in the project as either a joint venture partner or pursuant to a subcontract with the CBE businesses. All such certifications shall be signed by both the MGC and CBEs.

MGC agrees that it shall not terminate a CBE subcontractor for convenience and then perform the work with its own forces or its affiliate. If a situation arises that a CBE subcontractor needs to be replaced or removed from the team, MGC must submit a written request to PACA with detailed explanation or justification for the submission of such request.

In the event of MGC's noncompliance with its participation commitment to a CBE firm (including without limitation the unexcused reduction of the CBE firm's participation), the affected CBE firm shall have the right to the following remedies if the noncompliance is or was alleged to be due to no fault of the CBE firm, and alleged to be due to the willful action or omission of MGC:

The affected CBE firm shall be entitled to damages pursuant to its agreement with MGC.

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If the CBE firm has the right to arbitrate and institutes arbitration proceedings claiming non-compliance with these participation commitments by MGC, then in such event the CBE firm may submit the dispute to arbitration. However, arbitration shall not be available as to any dispute between MGC and PACA; nor shall PACA incur any cost, fee, or liability relative to any arbitration proceeding.

Nothing under this subsection shall be construed to limit the rights of and remedies available to PACA, including the right to seek its own damages pursuant to this Agreement.

MGC agrees that nonpayment of a CBE subcontractor or CBE supplier as required by the construction agreement shall be a material breach of this Agreement and that PACA's Contract Administrator may, at its option, withhold grant payments unless and until MGC demonstrates timely payments of sums due to such subcontractors or suppliers. MGC agrees that the presence of a "pay when paid" provision in its contract with a CBE firm shall not preclude PACA or its representatives from inquiring into allegations of nonpayment. The foregoing remedies under this subsection shall not be employed when MGC demonstrates that failure to pay results from a bona fide dispute with its CBE subcontractor or supplier.

If MGC fails to comply with the requirements of this construction agreement, PACA shall have the right to exercise any right or remedy provided in this construction agreement or under applicable law, with all such rights and remedies being cumulative.

#### ARTICLE 5 TERM AND TIME OF PERFORMANCE

The term of this Agreement shall begin on the date it is fully executed by both parties and shall end December 31, 2015; provided, however, if the term of this Agreement extends beyond a single fiscal year of COUNTY, the continuation of this Agreement beyond the end of any fiscal year shall be subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes (as may be amended from time to time). The County Administrator is authorized to execute amendments that extend the term of this Agreement, provided all other terms remain the same.

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ARTICLE 6  
COMPENSATION

- 6.1 COUNTY agrees to pay PACA, in the manner specified in Exhibit "2" and subsection 6.3, two separate grants in the amount of \$8,000,000, and an eight-to-one matching grant in the amount the \$4,000,000, for a total possible grant amount of \$12,000,000, for work actually performed and completed pursuant to this Agreement. The grant of \$8,000,000 shall be paid first, subject to the conditions of this Agreement, in semi-annual payments upon COUNTY's prior receipt of an invoice for the amount requested which includes all supporting documentation which County, in its reasonable discretion may require. The matching grant in the amount of \$4,000,000 shall be paid to PACA after the initial \$8,000,000 grant has been exhausted, subject to the terms of this Agreement, in semi-annual payments, upon COUNTY's prior receipt of an invoice for the amount requested which includes all supporting documentation which COUNTY, in its reasonable discretion may require. It is acknowledged and agreed by PACA that this amount is the maximum payable and constitutes a limitation upon COUNTY's obligation to compensate PACA for services and expenses related to this Agreement.
- 6.2 The \$8,000,000 Grant payments from County to PACA shall not exceed \$5,000,000 in FY 2012 and \$3,000,000 in FY 2013. The \$4,000,000 Matching Grant payments from County to PACA shall not exceed \$2,000,000 in FY 2014 and \$2,000,000 in FY 2015.

6.3 METHOD OF BILLING AND PAYMENT

- 6.3.1 Subject to the budget limitations in Section 6.2, PACA may submit an invoice for compensation no more often than on a semi-annual basis. The final annual invoice must be received no later than sixty (60) calendar days after this Agreement expires.
- 6.3.2 Invoices shall be certified by PACA'S executive director or an authorized officer.
- 6.3.3 COUNTY shall pay PACA within thirty (30) calendar days of receipt of PACA's proper invoice, as required by the "Broward County Prompt Payment Ordinance" (Broward County Ordinance No. 89-49, as may be amended from time to time). To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by COUNTY.

ARTICLE 7  
CHANGES IN SCOPE OF SERVICES

- 7.1 Upon written request by PACA, the Contract Administrator may approve changes as authorized herein.

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- 7.2 The Contract Administrator may approve changes to the Scope of Services, project description provided that the total matching grant awarded remains unchanged, and the revisions do not diminish the quantity or quality of service to be provided.
- 7.3 Changes to the Scope of Services pursuant to this Article shall be in writing, signed by PACA and the Contract Administrator.

## ARTICLE 8 INDEMNIFICATION

GOVERNMENTAL IMMUNITY: Nothing herein is intended to serve as a waiver of sovereign immunity by any party nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. PACA is a political subdivision as defined in Chapter 768.28, Florida Statutes, and agrees to be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law.

## ARTICLE 9 TERMINATION

- 9.1 This Agreement may be terminated for cause by action of Board or by PACA upon ten (10) days' written notice by the party that elected to terminate., This Agreement may also be terminated by Board upon such notice as Board deems appropriate under the circumstances in the event Board determines that termination is necessary to protect the public health, safety, or welfare. Prior to any termination for cause, the non-breaching party shall provide written notice in accordance with the "Notices" section of this Agreement identifying the breach. If the party in breach has not corrected the breach within thirty (30) days after written notice, the non-breaching party may terminate this Agreement as provided for in this section; provided that, if the failure stated in the notice cannot be corrected within the thirty (30) 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.
- 9.2 Cause for termination of this Agreement shall include, but not be limited to, negligent, intentional, or repeated submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement, or multiple breach of this Agreement which has a material adverse effect on the efficient administration of the Project.
- 9.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by Contract Administrator which

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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 of this Agreement.

ARTICLE 10  
FINANCIAL STATEMENTS

- 10.1 Pursuant to the Broward County Administrative Code, Section 29.17, if PACA is receiving more than Twenty Five Thousand Dollars (\$25,000.00) in any one COUNTY fiscal year, PACA must submit audited and certified financial statements prepared in accordance with Generally Accepted Accounting Principles and audited by an independent Certified Public Accountant. PACA shall provide to Contract Administrator two (2) copies of such annual financial statements. Said annual financial statement shall be submitted to Contract Administrator within one hundred twenty (120) calendar days after the close of each of PACA's fiscal years in which PACA receives from COUNTY funds under this Agreement.
- 10.2 The financial statements shall include a statement of financial position, a statement of activities, a statement of cash flows, and any management letters thereby generated by or on behalf of PACA during any one COUNTY fiscal year. PACA shall disclose in footnotes or in a certified or notarized statement signed by the Executive Director (or, in the alternative, equivalent authorized director), the source and amount of funding from any other governmental entity providing five percent (5%) or more of total revenues to PACA.
- 10.3 For each project support grant awarded under this Agreement, the audited financial statements shall include a special report on specific accounts in order to account for services and/or projects during the PACA's fiscal year for which funds were provided. 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. The special report shall include:
- a. The statement, "no funds, including no interest earned on such funds, are due back to the County," or, a statement listing the funds, including interest earned on such funds, which are due back to the COUNTY;
  - b. An opinion as to whether the funds received under Agreement with COUNTY for the applicable grant have been expended in accordance with this Agreement; and
  - c. A schedule of project revenues and expenditures including, but not limited to, the following:
    - i. all revenues relating to the services and/or project classified by the

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source of the revenues; and

- ii. all expenditures relating to the services and/or project classified by the type of expenditures, to include the classifications as set forth in Exhibits "1" and "5" of this Agreement.

- 10.4 The financial statements and, where applicable, the special report, shall include all financial requirements for the entire Scope of Services or project covered by this Agreement, even if a part of the services or project was performed during the previous fiscal year(s) or continues past the end of PACA's current fiscal year.
- 10.5 Any corrections to the financial statements and/or special report requested by the Contract Administrator shall be made and submitted to the Contract Administrator within sixty (60) calendar days after written request is received by PACA.
- 10.6 Failure of PACA to meet the financial reporting requirements stated in Article 10 herein shall result in suspension of payment under this or any other grant agreement in effect with COUNTY and shall disqualify PACA from obtaining future grant awards until such financial statements are received and accepted by Contract Administrator in writing.
- 10.7 PACA acknowledges that submission of financial statements and/or special report to any other COUNTY office, agency, or division does not constitute compliance with requirements to submit such material to Contract Administrator for this Agreement.
- 10.8 PACA shall provide to Contract Administrator the schedule of correction developed in response to said management letter(s) within thirty (30) calendar days of its development.
- 10.9 PACA agrees to reimburse COUNTY any and all funds not used in strict compliance with this Agreement within ten (10) calendar days after receipt of the requested reimbursement amount from Contract Administrator.

ARTICLE 11  
MISCELLANEOUS

11.1 AUDIT RIGHT AND RETENTION OF RECORDS

COUNTY shall have the right to audit the books, records (including financial receipts), 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 this 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 COUNTY.

PACA shall preserve and make available, at reasonable times for examination and audit by COUNTY, all financial records, supporting documents, statistical records,

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and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after earlier 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 by PACA until final resolution of the audit findings. If the Florida Public Records Act is determined by COUNTY 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 COUNTY's disallowance and recovery of any payment upon such entry.

PACA shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Section 11.1.

#### 11.2 EQUAL EMPLOYMENT OPPORTUNITY (EEO) COMPLIANCE

PACA 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. PACA shall include the foregoing or similar language in its contracts with any subcontractor or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as COUNTY deems appropriate.

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 COUNTY, 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.

By execution of this Agreement, PACA represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes, as may be amended from time to time). COUNTY hereby materially relies on such

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representation in entering into this Agreement. An untrue representation of the foregoing shall entitle COUNTY to terminate this Agreement and recover from PACA all monies paid by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

### 11.3 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 COUNTY. No partnership, joint venture, or other joint relationship is created hereby. COUNTY does not extend to PACA or PACA's agents any authority of any kind to bind COUNTY in any respect whatsoever.

### 11.4 THIRD PARTY BENEFICIARIES

Neither PACA nor COUNTY intends 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.

### 11.5 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 sent by commercial express carrier with acknowledgment of delivery, 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 BROWARD COUNTY:

County Administrator  
Broward County  
115 S. Andrews Avenue, Suite 409  
Fort Lauderdale, FL 33301

#### FOR PACA:

Kelley Shanley,  
President Performing Arts Center Authority  
201 S.W. 5<sup>th</sup> Avenue  
Fort Lauderdale, FL 33312

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Either party may change at any time in writing the names, title and/or addresses stated in Section 11.5 herein by using the notices procedure stated in Section 11.5 herein to notify the other party.

#### 11.6 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 further agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against COUNTY in any legal or administrative proceeding in which he, she, or PACA 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 COUNTY 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 anyway from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event PACA is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, PACA agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as PACA.

#### 11.7 ASSIGNMENT

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party.

#### 11.8 MATERIALITY AND WAIVER OF BREACH

COUNTY 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.

#### 11.9 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.

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#### 11.10 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 the Agreement by reference and a term statement, requirement, or provision of Articles 1 through 11 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 11 shall prevail and be given effect.

#### 11.11 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. All parties agree 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 exclusively 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 COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

#### 11.12 AMENDMENTS

Except for the provisions set forth in Article 5 and in Article 7, 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 COUNTY, (through its Board), and PACA.

#### 11.13 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.

#### 11.14 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits "1" through "5" are incorporated into and made a part of this Agreement.

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11.15 COMPLIANCE WITH LAWS

PACA shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement.

11.16 MULTIPLE ORIGINALS

This Agreement may be executed in three (3) counterparts, each of which shall be deemed to be an original.

11.17 NO INTEREST

Any monies which are the subject of a dispute regarding this Agreement and which are not paid by COUNTY when claimed to be due shall not be subject to interest. All requirements inconsistent with this provision are hereby waived by PACA.

11.18 REPRESENTATION OF AUTHORITY

The individuals executing this Agreement on behalf of any entity do hereby represent and warrant that they are, on the date of this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of their principal.

11.19 OWNERSHIP OF DOCUMENTS

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 expiration or earlier termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by PACA, whether finished or unfinished, shall be delivered by PACA to the Contract Administrator within seven (7) calendar days of earlier termination or expiration of this Agreement by either party. Any compensation due to PACA shall be withheld until all documents are received as provided herein.

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IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and PACA, signing by and through its officer, duly authorized to execute same.

COUNTY:

ATTEST:


BROWARD COUNTY, by and 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  
Office of the County Attorney  
for Broward County, Florida  
JONI ARMSTRONG COFFEY, County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-6968

By  2/22/12  
\_\_\_\_\_  
Noel M. Pfeffer (Date)  
Deputy County Attorney

2/21/12

AGREEMENT BETWEEN BROWARD COUNTY AND PERFORMING ARTS CENTER  
AUTHORITY, FOR BROWARD CENTER FOR PERFORMING ARTS CAPITAL  
RENEWAL AND REPLACEMENT PROGRAM.

PACA:

WITNESSES:

PERFORMING ARTS CENTER AUTHORITY.

Dianne Leonard

Print Name: Dianne Leonard

John Milledge

(Authorized Signature)

JOHN M. MILLEDGE / CHAIR

(Print name and title)

Print Name: \_\_\_\_\_

22 day of FEBRUARY, 2012.

ATTEST:

Dianne Leonard

Corporate Secretary

(Corporate seal)

Assistant

NMP:slw  
2/21/12  
PACAGrantAgreement

PACA

2012 Grant

## **EXHIBIT 1 PROJECT DESCRIPTION**

The estimated \$44 million Project is planned to include the following components:

- Core refurbishment of the existing Broward Center for the Performing Arts major mechanical, theatrical, and operational systems, to include restrooms, lobby spaces, seating, HVAC, sound and lighting, and other components.
- Renovation of approximately 1,300 square feet of the A&E Garage, supporting the Broward Center, located on the west side of SW Fifth Avenue between Broward Boulevard and SW 2<sup>nd</sup> Street.
- Renovation of approximately 28,000 square feet of selected spaces contained within the existing Broward Center for guest experiences, event spaces, and pre-function spaces.
- Construction of an 11,700 square feet, two-story LEED certified event pavilion and affiliated seating terraces, to be located on the hillside east of the Broward Center overlooking the New River.
- Construction/renovation of a 25,000 square feet, three-story Education Wing on the west side of the Broward Center to house an educational classroom and performance space, operational support space, and administrative offices.

**EXHIBIT "2"**

PACA has been awarded grants under the following grant programs, payable each Fiscal Year (FY) in the amounts set forth below:

1. <u>COUNTY GRANT PROGRAM</u>	\$5,000,000 FY 2012
	<u>\$3,000,000 FY 2013</u>
TOTAL	\$8,000,000.
2. <u>MATCHING GRANT PROGRAM.</u>	\$2,000,000 FY 2014
	<u>\$2,000,000 FY 2015</u>
TOTAL	\$4,000,000.

Funding for such grant shall be paid to PACA by COUNTY in accordance with the Agreement and with the following:

- I. Project Title: Broward Center for the Performing Arts – Capital Replacement and Renewal Plan
- II. **Scope of Services:** PACA, agrees during the term of this Agreement that it shall be solely responsible for entering all necessary contracts to provide for the site preparation, design, construction, remodeling, replacement and enlargement of the Broward Center for Performing Arts located at 201 SW 5<sup>th</sup> Avenue, Fort Lauderdale, Florida building improvements, all as more specifically described in the Project Description attached to the Agreement as Exhibit "1."

**Permitted uses of Grant Funds:** Notwithstanding anything in the Agreement or any exhibit to the contrary, all grants funds provided by COUNTY pursuant to this Agreement shall be expended only for purposes and uses specifically authorized by Section 125.0104, Florida Statutes, the "Local Option Tourist Development Act" and only for such purposes and uses as are identified on Exhibit "6" "Permitted Uses of Broward County Capital Grant Funds", attached hereto and made a part hereof

- III. **Grant Funding:** COUNTY agrees to make available to PACA an initial grant ("Initial Grant") in the amount of \$8,000,000, payable to PACA in accordance with the terms of the Agreement and not to exceed \$5,000,000 for FY 2012 and \$3,000,000 for FY 2013. The Initial Grant funds shall be required to be fully expended before PACA may request COUNTY for any draws of grant funds pursuant to the terms of the \$4,000,000 matching grant ("Matching Grant") funds which shall not exceed \$2,000,000 for FY 2014 and \$2,000,000 for FY 2015.

PACA agrees that it shall be required to provide matching funds in a ratio of eight (8) to one (1) in order to receive the Matching Grant. PACA agrees to provide an eight-to-one match in any combination of the following forms: cash, grants, loans,

irrevocable gifts, pledges. COUNTY and the PACA agree that only matching funds committed or obtained by PACA (or the Broward Performing Arts Foundation, the official fundraising entity of PACA) after the effective date of this Agreement or the specific matching funds previously pledged to PACA and listed on Exhibit "7" attached hereto and made a part hereof can be used to calculate PACA's eligible eight to one match requirements for purposes of this Agreement and the Matching Grant. PACA recognizes it will be required to raise a total of Thirty Two Million Dollars (\$32,000,000) in order to be entitled to draw the full \$4,000,000 Matching Grant funds.

V. **Required Reports:**

PACA shall submit a written Report on or before the ending date of the term of this Agreement specifying how COUNTY's funds were used by the PACA.

PACA shall submit an Exhibit 3 - Project Evaluation Report as required in Article 2 of the Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]



4. **ATTACHMENTS:** Electronic/digitized images that clearly document the organization's grant activity are preferred. Enclose EITHER two (2) quality black and white, OR two (2) color first generation (an original, not a copy) photographs.

*Additional pages may be attached if necessary.*

**CERTIFICATION**

It is certified by the undersigned that the information provided is true and correct, and the expenditures were incurred solely for the purpose of the approved referenced grant activity.	
Signature	Signature
(Name Typed)	(Name typed)
Chief Administrative Officer	Project Director
Date:	Date:

<b>For BCC use only</b>	
Date received:	Reviewed by:
Complete? yes ___ no ___.	If incomplete, grantee notified (date):
Revised report received (date):	Complete? yes ___ no ___.

**EXHIBIT 4**  
**CVB PROMOTIONAL ACTIVITIES**

PACA agrees that commencing with the effective date of this agreement, PACA shall provide, furnish, or assist, as the case may be, the CVB with the following promotional opportunities for a period of 10 years from the date of this Agreement. This obligation shall survive the term of the Agreement.

- Periodic distribution of email invitation by PACA to all PACA patrons purchasing tickets from zip codes outside a 30 mile radius of the Broward Center with a link to view special offers on the CVB website.
- Use of the Au-Rene Theater, the Amaturio Theater and/or reception space at the Broward Center for events including meeting planners, media, filmmakers, tour operators, sports event planners and multi-cultural organizations. All fees and expenses up to a maximum of \$2,000 per event and \$10,000 annually will be paid by PACA. All fees in excess of \$2,000 per event and \$10,000 annually will be paid by CVB.
- CVB shall receive one hundred (100) complimentary tickets annually to BCPA self-presentations, subject to contractual restrictions with artists, promoters and other performance-related agreements. This benefit is considered fulfilled once tickets have been requested and received by CVB.
- CVB shall receive one hundred (100) passes annually to the Intermezzo lounge to host CVB guests at Au-Rene Theater presentations. This benefit is considered fulfilled once tickets have been requested and received by CVB.
- PACA shall arrange for the placement of CVB logo with link to CVB website in rotation on BCPA website home page.
- PACA shall arrange for the placement of CVB logo, promotional copy and link to CVB website in "plan your visit" section of BCPA website.
- PACA shall arrange for placement of CVB logo among public partners in program books for BCPA self-presentations and Playbills.
- PACA shall arrange for the display of CVB brochure at Guest Services Desk and in BCPA kiosks.

**EXHIBIT 5**

**SCHEDULE OF CBE PARTICIPATION**

[Applicable when agreement has assigned CBE goals]

PACA agrees that the CBE participants listed below have agreed by written subcontract to perform the work for the dollar value set forth and that the following information regarding participating Subcontractors is true and correct to the best of his/her knowledge:

(NAME OF PARTICIPATING CONTRACTOR)	(NAME OF PARTICIPATING CONTRACTOR)
(ADDRESS)	(ADDRESS)
(SCOPE OF WORK TO BE PERFORMED)	(SCOPE OF WORK TO BE PERFORMED)
\$	\$
(TOTAL DOLLAR VALUE)	(TOTAL DOLLAR VALUE)
(NAME OF PARTICIPATING CONTRACTOR)	(NAME OF PARTICIPATING CONTRACTOR)
(ADDRESS)	(ADDRESS)
(SCOPE OF WORK TO BE PERFORMED)	(SCOPE OF WORK TO BE PERFORMED)
\$	\$
(TOTAL DOLLAR VALUE)	(TOTAL DOLLAR VALUE)

**Broward Center for the Performing Arts  
Capital Replacement Renewal Plan  
Project Cost Detail**

Exhibit 6

Description	Project Cost	Design & CM Fee	General Construction Conditions	Permitted Uses of Broward County Capital Grant Funds					Additions					
				Au-Rene Theater	Amaturo Theater	Abdo New River Room	Existing Public Spaces	General Building Systems Refurb	Total	Studio Theater and Arts Education	New Public Spaces	Total		
A&E Parking Garage Upgrades	\$ 325,641						\$ 325,641							
Arrival Plaza Marquee/Porte-cochere Replacement & Expansion	\$ 1,328,274	\$ 5,364,000					\$ 1,328,274			\$ 2,448,476				
Arts Education Center Classroom & Support Spaces	\$ 2,448,476	\$ 1,014,521												
Au-Rene & Amaturo Production & Operational Support Space	\$ 3,608,281													
Au-Rene Carpet replacement & Theater Interiors	\$ 633,192				\$ 1,190,733									
Au-Rene Fixed Seating	\$ 919,794													
Au-Rene King's Row Mix Position Lift	\$ 39,039													
AuRene Lighting System Replacement	\$ 1,030,246													
Au-Rene Loading Dock Support Steel	\$ 10,474													
Au-Rene Mezzanine Premiere Level	\$ 380,867													
Au-Rene Moveable Seating Refurbishment	\$ 9,522													
Au-Rene Orchestra Pit lift	\$ 816,960													
Au-Rene Patron Lobbies Refurbishment	\$ 2,269,492													
Au-Rene Patron Restrooms Refurbishment	\$ 1,651,059													
Au-Rene Production Wing Expansion	\$ 160,916													
Au-Rene Rigging Upgrades & Repairs	\$ 515,123													
Au-Rene Sound System Replacement	\$ 1,449,200													
Au-Rene Theater Curtain Packages	\$ 92,360													
Au-Rene West Side Stework	\$ 539,879													
BCPA Contractor General Conditions	\$ 2,799,000													
BCPA Total Building Mechanical Refurbishments	\$ 4,726,562							\$ 4,726,562						
BCPA Total External Envelope Refurbishments	\$ 1,911,953							\$ 1,911,953						
Broadcast Studio/Lounge	\$ 303,742													
Education and Administration Support Space	\$ 2,420,499									\$ 2,420,499				
Hillside Terraces	\$ 1,104,515										\$ 1,104,515			
Riverside Event Pavilion	\$ 5,390,223										\$ 5,390,223			
Signage Allowance	\$ 621,766						\$ 621,766							
Subtotal of Non-Design/CM Fees			\$ 37,507,056											
<b>Total Project Cost</b>	<b>\$ 43,885,577</b>		<b>\$ 6,378,521</b>	<b>\$ 2,799,000</b>	<b>\$ 12,935,672</b>	<b>\$ 1,190,733</b>	<b>\$ -</b>	<b>\$ 2,275,682</b>	<b>\$ 6,638,515</b>	<b>\$ 23,040,602</b>	<b>\$ 4,868,975</b>	<b>\$ 6,798,480</b>	<b>\$ 11,667,455</b>	