

**ORLANDO/WINTER PARK
INTERLOCAL AGREEMENT**

PERFORMING ARTS CENTER FUNDING

THIS INTERLOCAL AGREEMENT is made and entered into this of the ____ day of _____ 20____, by and between **CITY OF ORLANDO**, a Florida municipal corporation, whose mailing address is P.O. Box 4990, Orlando, Florida 32802-4990, hereinafter referred to as “CITY”, and **CITY OF WINTER PARK**, a Florida municipal corporation, whose address is 401 S. Park Avenue, Winter Park, Florida 32789, hereinafter referred to as “WPK”.

W I T N E S S E T H:

WHEREAS, the Dr. Phillips Center for the Performing Arts, Inc. (DPAC), is a 501(c) (3) not-for-profit organization formed to provide a showcase for regional arts groups, to create a multi-cultural center for artistic excellence, to develop a center of arts education for children and adults alike, to establish a destination for Floridians and tourists, to build a welcoming place establishing community pride, and to create an environment encouraging participation and new experiences; and

WHEREAS, pursuant to the Orlando Performing Arts Center Agreement dated June 20, 2007, between DPAC and the CITY, as amended, DPAC is constructing a new, state of the art performing arts center in downtown Orlando with funding contributions from the City of Orlando, Orange County, philanthropy and various other sources; and

WHEREAS, the new performing arts center is being constructed in two (2) stages on a nine acre, two block area bordered on the West by South Orange Avenue, East by Rosalind Avenue, North by South Street and South by Anderson Street in downtown Orlando. Stage I, which is currently under construction and anticipated to be occupied by November 2014, consists of an approximately 250,000 square foot building that includes a +/- 2,700 seat amplified theater, +/- 300 seat multipurpose theater, administrative offices, an education center, related front of

house and back of house elements, and an outdoor plaza capable of seating 3,000 (CNL Arts Plaza), and Stage 2 is anticipated to consist of an approximately 115,000 square foot building that includes a +/- 1,700 seat acoustical hall with related front of house and back of house elements.

WHEREAS, the new performing arts center will provide a broad variety of entertainment and cultural events to Central Florida, with diverse and acclaimed programming that includes performances of theater, dance, popular music and family entertainment from the best of national and international talent, and provide educational opportunities for area youth and residents in the area of the performing arts; and

WHEREAS, a new performing arts center in Central Florida will further result in a significant economic impact to the hotel and tourist industry in the area, particularly in Orange, Seminole and Osceola Counties, and will increase the general revenues through the existing tourist taxes; and

WHEREAS, the mutual cooperation of CITY and WPK is critical to achieving the goal of bringing a new performing arts center and all its attendant benefits to the Central Florida area; and

WHEREAS, there is found to be a significant municipal purpose benefitting WPK including increased cultural opportunities for its residents, positive economic impact for its businesses and promotional opportunities for its cultural facilities;

NOW, THEREFORE, in consideration of the mutual understandings and covenants set forth herein, the CITY and WPK hereby agree as follows:

Section 1. WPK's Obligations. WPK agrees to contribute to CITY, as part of the funding committed for construction of the performing arts center the sum of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00), payable annually over a TEN (10) year period commencing October 1,

2014 and ending September 30, 2023, with each annual payment of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) to be paid no later than one hundred eighty (180) days after the first day of the fiscal year for which the payment is owed. The payment for 2015 would be payable no later than March 1, 2015; the payment for 2016 payable no later than March 1, 2016, etc. This obligation is subject to WPK's covenant that the funds shall be payable only from non-ad valorem revenues as set forth in paragraph 2.

Section 2. COVENANT THAT AD VALOREM REVENUES ARE NOT PLEDGED OR ENCUMBERED. WPK hereby covenants that none of its ad valorem revenues or tax revenue assessed as a percentage of the value of property in the City of Winter Park shall be pledged, encumbered or expended in satisfaction of WPK's funding obligation that is set out in paragraph 1 hereof. WPK's funding obligation hereunder is payable solely from non-ad valorem revenues of the City of Winter Park.

Section 3. CITY's Obligations. CITY agrees to use WPK's contributions, as described above, for construction and debt service for the performing arts center. WPK's monetary contribution, pursuant to this Agreement, will not be used for any purpose other than as stated above.

Section 3. Indemnification.

(a) Each party to this Agreement is responsible for all personal injury and property claims or damages attributable to the negligent acts or omissions arising out of this Agreement of that party and the officers, employees and agents thereof.

(b) The parties further agree that nothing contained herein shall be construed or interpreted as denying to any party any remedy or defense available to such parties under the laws of the State of Florida nor as a waiver of sovereign immunity of WPK and CITY beyond the waiver

provided for in Section 768.28, Florida Statutes. In no event will WPK be liable to a third party for any amount in excess of the limitations in FS 768.28, and WPK shall be responsible to CITY under this Agreement only to the extent of the express, written obligations stated herein.

(c) The waiver of a provision herein by any party shall not constitute the further waiver of said provision nor the waiver of any other provision.

(d) The provisions of this Section and the obligations hereunder shall survive the termination of this Agreement.

Section 4. Term. Subject to WPK's covenant in paragraph 2 hereof, this Agreement shall take effect on January 1, 2015 and shall remain in effect for a period of ____ () years and sixty (60) days, terminating on _____, 20____.

Section 5. Termination. This Agreement may, in whole or in part, only be terminated for cause, by failure of a party to fulfill its obligations under this Agreement. Said termination shall take effect upon delivery of written notice to the breaching party and failure of the party receiving such notice to cure within 10 business days after notice. Termination of this Agreement for one party's breach shall terminate the obligations of all parties with respect to this Agreement.

Section 6. Force Majeure. In the event any party to this Agreement fails to satisfy an obligation due to a hurricane, flood, tornado or other act of God, or an act of war or terrorism considered force majeure, then that party will be in default of this Agreement; provided however, such default will be considered cured upon the defaulting party recommencing performance after the intervening act ceases its effect. In the event of such occurrence, CITY and WPK agree to work in good faith regarding the appropriate extension of any dates/timelines set forth in this Agreement which may need to be reasonably altered to adjust for such force majeure event.

Section 7. Waiver of Breach or Default. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be construed to be modification of the terms of this Agreement, unless stated to be such in writing and duly signed by the parties. Failure by any party on one or more occasion to avail itself of a right conferred by or enforce a condition under this Agreement shall in no event be construed as a waiver of its right to avail itself of said right or to enforce said condition in the future.

Section 8. Notices. Whenever either party desires to give notice unto the other parties, notice may be sent to:

For CITY:

Chief Administrative Officer
City of Orlando
P.O. Box 4990
Orlando, Florida 32802-4990

For WINTER PARK

City Manager
401 S. Park Avenue
Winter Park, Florida 32789

Section 9. Entire Agreement.

(a) This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or 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, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

(b) 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.

Section 10. Governing Law/Venue. This Agreement shall be construed in accordance with the laws of the State of Florida. The location for the settlement of any disputes arising out of this Agreement shall be in the County of the party filing the action to enforce the terms herein.

Section 11. No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement, and third party beneficiaries are expressly disclaimed by this provision. Only the parties to this Agreement have standing to enforce it.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement for the purposes stated herein.

ATTEST:

CITY OF ORLANDO, FLORIDA

By: _____
ALANA BRENNER, City Clerk

By: _____
BUDDY DYER, Mayor

Date: _____

Approved as to form and
Legality for the use and reliance
of the City of Orlando, Florida, only.
_____, 2014.

MAYANNE DOWNS, City Attorney

ATTEST:

CITY OF WINTER PARK, FLORIDA

By: _____
CINDY BONHAM, City Clerk

By: _____
KENNETH W. BRADLEY, Mayor

Date: _____