
AGREEMENT
between
ORANGE COUNTY, FLORIDA
and
ORLANDO PHILHARMONIC PLAZA FOUNDATION, INC.

(Plaza Live Expansion – Patron’s Room)

THIS AGREEMENT, made and entered into as of the date of last execution below, by and between ORANGE COUNTY, a charter county and political subdivision of the State of Florida, (“**County**”), and ORLANDO PHILHARMONIC PLAZA FOUNDATION, INC. a not-for-profit corporation organized and existing under the laws of the State of Florida (“**OPPF**”).

WITNESSETH:

WHEREAS, the County currently collects the tourist development taxes authorized by Section 125.0104(3)(c), (d), and (m), Florida Statutes (“**Tourist Development Tax**” or “**TDT**”) and authorized uses of such Tourist Development Tax include the extension, remodeling, repair, improvement, maintenance, and promotion of auditoriums that are publicly owned and operated by not-for-profit organizations and open to the public within the county in which such tax is levied; and

WHEREAS, on November 29, 2016, the Orange County Board of County Commissioners (“**Board**”) adopted Ordinance No. 2016-30, as amended from time to time (“**Ordinance**”), which amended the Tourist Development Plan to authorize funding from legally available unallocated TDT revenue for legally authorized capital projects and events pursuant to a grant application process set forth in Section 25-147 of the Orange County Code (“**Code**”) which grant applications would be considered by the County’s TDT Application Review Committee (“**ARC**”); and

WHEREAS, one of the requirements in the FY 2024 – FY 2028 TDT ARC funding application was that the request had to be for a capital project for a dollar amount in excess of \$2 million and up to and including \$15 million toward a project for the acquisition, construction, expansion, enlargement, renovation, and equipping of eligible facilities; and

WHEREAS, OP PF applied for TDT capital funding in the amount of Two Million One Hundred Thousand Dollars (\$2,100,000.00) for the expansion and improvement of the Plaza Live building (the “**Auditorium**” and collectively, the “**Auditorium Project**”) each of which are authorized expenditures pursuant to the Local Option Tourist Development Act, § 125.0104, Florida Statutes (2024); and

WHEREAS, OP PF is a Florida not-for-profit corporation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the property upon which the Auditorium sits is owned by the City of Orlando; and

WHEREAS, on September 13, 2024, the ARC recommended approval of OPPF's application to the Tourist Development Council ("**TDC**"); and

WHEREAS, on September 27, 2024, the TDC recommended approval of OPPF's application; and

WHEREAS, on October 29, 2024, the Board approved the ARC grant recipients, including OPPF's "Orange County Tourist Development Tax Grant Application dated April 30, 2024" (the "**Grant Application**"), attached hereto as **EXHIBIT "A"**, subject to the execution of a funding agreement containing certain specific terms before the end of Fiscal Year 2025.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the County and OPPF agree as follows:

1. Recitals. The recitals set forth above are true and correct and are incorporated herein and made a part of this Agreement.

2. County Contribution. Subject to all terms and conditions set forth in this Agreement, the County agrees to contribute a total aggregate amount not to exceed Two Million One Hundred Thousand Dollars (\$2,100,000.00) solely from Fiscal Year 2024-2028 Excess TDT Revenue ("**County Contribution**"). For purposes of this Agreement, "Excess TDT Revenue" shall mean those TDT revenues appropriated by the Board in 2024 in the amount of \$15,000,000.00 per year beginning in Fiscal Year 2024 through Fiscal Year 2028 for capital projects that apply for and are recommended for funding from the ARC pursuant to Section 25-147 of the Code.

3. Restrictions on Use of County Contribution. OPPF shall use the County Contribution only to pay for capital costs associated with the expansion and improvement of the Auditorium described in OPPF's Grant Application. Capital costs shall include construction; design and engineering expenses; and furnishings, fixtures and equipment related to the scope of the Auditorium Project. *The County Contribution shall not be used for construction cost overruns; operating costs; or maintenance costs of any type whatsoever in connection with the construction or operation of the Auditorium.* Furthermore, the County Contribution shall not be used or pledged to secure any debt whatsoever.

4. Limitations on County's Obligation. The County's obligation to make the County Contribution shall not constitute a lien on Tourist Development Taxes and will not be on parity with any existing or future debt of the County. The obligations of the County under this Agreement are limited solely to Excess TDT Revenue and no general fund revenues or other funds whatsoever of the County are obligated. Nothing provided herein shall obligate or require the County to levy any ad valorem taxes, fees, or assessments whatsoever. This Agreement and any payments provided for in this Agreement are contingent upon the availability of Excess TDT Revenues derived from the tax levied under Section 25-136 of the Code and made available under Section 25-147 of the Code to make the payments hereunder. The County shall not cause such Excess TDT Revenues to be unavailable as a result of dilution of the funds made available through the application process set forth in Section 25-147 of the Code through funding other projects through such process.

5. Disbursement of County Contribution. The County Contribution shall be disbursed according to the schedule set forth below after OPPF submits: (1) proof to the County's satisfaction that at least eight percent (80%) of all non-TDT funding necessary to complete the Auditorium Project, in this case, \$843,481.00 (the "**Outside Funds**"), has been raised; and (2) proof of valid design, architectural, or remodeling, repair, improvement, or construction costs with certification that work invoiced has been satisfactorily performed and signed by an authorized representative of OPPF and accompanied by invoices or receipts evidencing completion of work in substantially the form of the cost requisition attached hereto as **EXHIBIT "B."** All such proof of Outside Funds and cost requisitions shall be submitted to the County Administrator or designee with a copy to the Orange County Comptroller ("**Comptroller**") at the notice address set forth in Section 9 herein. After review and approval of the Outside Funds and, subsequently, each requisition, the County Administrator or designee shall instruct the Comptroller to make payment to OPPF within 20 business days thereafter.

Upon approval of the Outside Funds and, subsequently, requisition(s) by the County Administrator or designee, the Comptroller is authorized to disburse the County Contribution to OPPF according to the following installment schedule:

- (a) Not to exceed \$1,500,000.00 in the aggregate before October 1, 2025; and
- (b) Not to exceed \$2,100,000.00 in the aggregate on or after October 1, 2025;

No later than 45 days following a disbursement for unpaid invoices, OPPF shall provide the County with evidence of payment demonstrating that any such invoice was paid.

6. Commemorative Plaque. Upon completion of the construction of the Auditorium Project, OPPF agrees that a plaque shall be prominently displayed on the Auditorium property acknowledging the names of the Orange County Mayor and Board of County Commissioners and their contribution to the construction of the Auditorium Project.

7. OPPF Representations and Obligations. OPPF has represented that it has received a determination from the Internal Revenue Service that it meets the requirements of Section 501(c)(3) of the Internal Revenue Code and hereby represents that it is in material compliance with the terms of such determination. OPPF shall (i) maintain its 501(c)(3) status during the term of this Agreement; (ii) diligently proceed with the expansion and improvement of the Auditorium in a financially responsible and commercially reasonable manner; (iii) use the Auditorium as described in The Grant Application; and (iv) shall comply with all federal, state, and local laws, ordinances, rules and regulations relating to the expansion and improvement, funding, operation and maintenance of the Auditorium and the Auditorium Project.

8. OPPF Audit. The County and the Comptroller (or designee) shall have the right to audit for compliance with the terms, conditions, obligations, limitations, restrictions and requirements of this Agreement, the use of the County Contribution for the expansion and improvement of the Auditorium. Such right shall extend for a period of five (5) years after completion of the Auditorium Project. OPPF agrees to provide reasonable assistance in providing documents, materials, data, information and records to the County and the Comptroller or designee

in the performance of these audits as requested by the Comptroller or County during the course of this contract and the aforementioned five (5) years after the final completion of the Auditorium Project. In those situations where records have been generated from computerized data (whether mainframe, mini-computer, or PC based computer systems), the Comptroller's representatives shall be provided with extracts of data files in computer readable format on data disks or suitable alternative computer exchange formats. Such activity shall be conducted during normal business hours.

9. Notices. Any notices required or allowed hereunder shall be in writing and given by certified mail with return receipt requested, to the addresses below, or in person with proof of delivery to the addresses below, or such other address as either party shall have specified by written notice to the other party delivered in accordance herewith:

County:	Orange County Administrator 201 S. Rosalind Avenue, 5 th Floor Orlando, Florida 32801
With a copy to:	Orange County Convention Center P.O. Box 691509 Orlando, FL 32869-1509 Attention: Deputy Director, Fiscal & Operational Support
OPPF:	Orlando Philharmonic Plaza Foundation, Inc. 425 North Bumby Avenue Orlando, FL 32803 Attention: Megan Kelley, General Manager
Comptroller:	Orange County Comptroller Director of Finance & Accounting 201 S. Rosalind Avenue, 4 th Floor Orlando, Florida 32801

10. Indemnification. OPPF agrees to defend, indemnify, and hold harmless the County, its officials and employees from all claims, actions, losses, suits and judgments, fines, liabilities, costs and expenses (including attorney's fees) attributable to its negligent acts or omissions or those of its officials and employees acting within their scope of their employment or connected in any way or arising from performance under this Agreement. The foregoing shall not constitute an agreement by either party to assume any liability for the acts, omissions and/or negligence of the other party. This provision shall survive termination of this Agreement.

11. Budget and Reporting Requirements. As a condition of receiving funds pursuant to this Agreement, OPPF acknowledges and agrees to comply with its reporting obligations and to timely provide the following to the Comptroller and County Administrator, at their respective notice addresses listed in Section 9 hereof:

- (i) audited financial statements of OPPF within 60 days of completion of its audit, and such audit shall be completed within 180 days of the close of OPPF's fiscal year;

- (ii) OPPF's IRS Form-990 filing with the Internal Revenue Service, to be submitted at the time of submission to the IRS; and
- (iii) after completion of the Auditorium Project, periodic program reports regarding the attendance at the Auditorium, the economic impact generated by the Auditorium, and the source of that information.

At the County's or TDC's discretion, OPPF shall provide a presentation or presentations regarding the Auditorium and/or the Auditorium Project as may be requested by the TDC or the County.

12. Recordkeeping; Accounting. OPPF will utilize accounting procedures and practices in the maintenance of the records of receipts and disbursements of the funds contributed by the County, as well as all its receipts and disbursement of funds, and such procedures and practices shall be in accordance with generally accepted accounting principles. All such records shall be open to inspection and auditing by the County, the County's designee, or the County Comptroller during normal business hours during the term hereof, and for a period of five (5) years after completion of the Auditorium or the termination of this Agreement whichever shall occur later. Any cost incurred by OPPF as a result of a County audit shall be the sole responsibility of and shall be borne by OPPF. This provision shall survive termination of this Agreement.

13. Term; Termination. This Agreement shall become effective upon execution by both parties hereto and shall continue for a period of five years following completion of the Auditorium Project. Except as otherwise set forth here, this Agreement may be amended, modified, or terminated at any time during the term of this Agreement by the mutual written agreement of the Parties.

14. Default by OPPF. The occurrence of any of the following constitutes an Event of Default by OPPF:

- (a) OPPF's failure to complete the Auditorium Project within five years from the date of this Agreement;
- (b) Any material representation is made by OPPF in any communication submitted to the County in an effort to induce the disbursement of Excess TDT Revenues which representation is determined by the County to be materially false, misleading, or incorrect;
- (c) OPPF's default in the performance of any material term or covenant of this Agreement not otherwise provided for in this section for a period of more than 30 days after its receipt of a notice of default; provided, however, that if the nature of the default is such that it cannot reasonably be cured within such 30-day period then OPPF shall have a reasonable period of time to cure such default provided that it diligently undertakes and pursues such cure;
- (d) The dissolution of OPPF;
- (e) If (i) a petition is filed by OPPF seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency, or (ii) a petition

is filed against OPPF, which is not dismissed within 60 days after filing, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency, or (iii) OPPF seeks or consents to or acquiesces in the appointment of any trustee, receiver, master or liquidator of itself or of all of the rent, revenues, issues, earnings, profits or income of any part of the Auditorium, or (iv) OPPF makes any general assignment for the benefit of creditors, or (v) OPPF is Insolvent (as defined herein); or (vi) any trustee, receiver or liquidator of OPPF is appointed who is not discharged within 60 days after its appointment. For purposes of this paragraph, a person or entity shall be deemed to be "Insolvent" if they are unable to pay their debts as they become due and/or if the fair market value of their assets does not exceed their aggregate liabilities;

(f) The loss of OPPF's status under Section 501(c)(3) of the Internal Revenue Code for a period of more than 30 days;

(g) OPPF's vacating or abandoning the Auditorium.

In the event of a default by OPPF, the County, may, at its option, exercise any one or more of the following remedies: (i) declare this Agreement terminated, or (ii) exercise any and all remedies available at law and in equity. In the event of a default by OPPF under Section 14(a), this Agreement shall automatically terminate and the County Contribution, or any portion thereof that had not yet been disbursed, shall revert back to the County.

15. Default by the County. The following shall constitute a default by the County: the County's continued default in the performance of a material term of this Agreement including but not limited to its obligations for disbursement of the County Contribution in accordance with the requirements of this Agreement for a period of more than 30 days from its receipt of written notice of such default from OPPF. In the event of a default by the County, then OPPF, at its option, may exercise any one or more of the following remedies: (i) declare this Agreement terminated; or exercise the remedy of mandamus to require the County's performance under the terms and conditions of this Agreement and/or an action for specific performance. OPPF hereby acknowledges and agrees that the only remedies available to OPPF other than termination are those of mandamus and specific performance and the County shall bear no liability for direct, indirect, or consequential damages.

16. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof; any representations or statements heretofore made with respect to such subject matter, whether verbal or written, are merged herein. No other agreement whether verbal or written, with regard to the subject matter hereof shall be deemed to exist.

17. No Assignment. OPPF may not assign its rights hereunder, without the prior written consent of the County. Failure to comply with this section may result in immediate termination of this Agreement.

18. No Waiver. Continued performance by either party hereto, pursuant to the terms of this Agreement, after a default of any of the terms, covenants or conditions herein shall not be

deemed a waiver of any right to terminate this Agreement for any subsequent default, and no waiver of such default shall be construed or act as a waiver of any subsequent default.

19. Severability. The provisions of this Agreement are declared by the parties to be severable. However, the material provisions of this Agreement are dependent upon one another, and such interdependence is a material inducement for the parties to enter into this Agreement. Therefore, should any material term, provision, covenant, or condition of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, the party protected or benefited by such term, provision, covenant, or condition may demand that the parties negotiate such reasonable alternate contract language or provisions as may be necessary either to restore the protected or benefited party to its previous position or otherwise mitigate the loss of protection or benefit resulting from holding.

20. Governing Law; Venue. Any litigation occurring as a result of this Agreement shall be held in the courts of Orange County, Florida. This Agreement shall be governed by the laws of the State of Florida.

21. Headings. The headings or captions of sections or paragraphs used in this Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Agreement.

22. Counterparts. This Agreement may be executed in separate counterparts, all of which taken together shall be deemed to constitute one and the same instrument.

[Signature pages follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as indicated below:

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: _____
Jerry L. Demings
Orange County Mayor

Date: _____

ATTEST:

Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: _____
Deputy Clerk


(SEAL)

ORLANDO PHILHARMONIC PLAZA
FOUNDATION, INC., a Florida Not-for-
Profit Corporation

By: Joanne Grant
Its: PRESIDENT
Date: 3/26/2025

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me, a Notary Public, by means of ☒ physical presence or ☐ online notarization this 26 day of MARCH, 2025, by Joanne Grant, as PRESIDENT of Orlando Philharmonic Plaza Foundation, Inc., on behalf of said corporation, who ☒ is personally known to me or ☐ has produced (type of identification) _____ as identification and did (did not) take an oath, the individual and officer described in and who executed the foregoing conveyance and acknowledged the execution thereof to be his/her free act and deed as such officer thereunto duly authorized, and that the official seal of said corporation, if any, is duly affixed thereto, and the said conveyance is the act and deed of said corporation.

Shelby Lanza
Notary Public
(Notary Seal)

Printed Name Shelby LANZA
My Commission Expires: 7/19/2027