

FIRST AMENDMENT TO PEABODY AUDITORIUM GRANT AGREEMENT

The City of Daytona Beach (the "City") and the Peabody Auditorium Foundation ("PAF"), parties to the Agreement Between the City of Daytona Beach and the Peabody Auditorium Foundation, Inc. (the "Grant Agreement" or "Agreement"), approved by City Resolution No. 15-268 and having an Effective Date of November 5, 2015, agree to amend the Agreement as follows, effective as of the date on which both Parties have signed as indicated below ("the Effective Date"):

Section 1. Article II of the Grant Agreement is hereby amended to read as follows (*additions are underlined; deletions are ~~struck through~~*):

II. Term

- A. Subject to early termination as provided below, this Agreement will commence on the Effective Date and continue and expire on September 30, ~~2020~~2018. The City will consider renewing this Agreement or entering into a new agreement with PAF after this Agreement expires, provided that PAF is successful in its fundraising efforts.

Section 2. Article V of the Grant Agreement is hereby amended to read as follows (*additions are underlined*):

V. Staffing and Support

- A. The PAF's Executive Director is the PAF staff person whose principal responsibility is fundraising for the benefit of the Auditorium. The Executive Director shall be the primary liaison between the City and PAF for day-to-day fundraising. The activities of the Executive Director shall be managed by the PAF Board of Directors.
- B. The PAF shall provide its own administrative staff support for its day-to-day operations, but work with the City on marketing, meeting support, website and social media, and performance ticketing.
- C. The PAF will be responsible for its own database, as well as financial and legal activities, including State charity registration and audit.
- D. The City Manager or designee shall be the City's designated representative on all matters arising under this Contract.
- E. The City hereby grants PAF \$75,000 as seed money. The Grant will be disbursed at the rate of \$3,125 per month, commencing November 1, 2015 and ending on October 1, 2017. The grant will be used solely to pay reasonable, necessary costs incurred by the PAF in direct relation to its fundraising activities on behalf of the Auditorium. The PAF shall keep and maintain, and provide the City reasonable access to, books, records, and other documentation as necessary, to allow for verification that the foregoing requirements are met.
- F. Upon the expiration of the initial Grant referenced in V.E. above, the City will grant PAF an additional \$75,000. This grant will be disbursed at the rate of \$3,125 per month commencing on November 1, 2017, and ending on October 1, 2019, and will be used by PAF solely to pay the reasonable, necessary costs incurred by PAF in direct relation to PAF's ongoing fundraising activities on behalf of the Auditorium. PAF shall keep and maintain, and provide the City reasonable access to, books, records, and other documentation as necessary, to allow for verification that the foregoing requirements are met. In consideration of this additional grant, PAF agrees to meet the minimum fundraising target for the period commencing on November

1, 2017, and ending on November 1, 2019, as further referenced in Section IX.A.3(b), below.

- G. PAF's obligations to keep and maintain documents, and for providing the City access thereto, as referenced in Sections V.E. and V.F., will continue for a period of three years after expiration or termination of this Agreement.

Section 3. Article VI of the Grant Agreement is hereby amended to read as follows (*additions are underlined*):

VI. Donor Development

- A. The PAF shall maintain the sole database of existing contributors and donor prospects. Either Party may suggest names of potential donor prospects to be added to the database. All Auditorium donors and subscribers must be added to the database before any significant approach by the PAF staff. The City will provide donor, subscriber, and single ticket buyer data to PAF on an annual basis.
- B. The PAF shall be responsible for developing an approach strategy for each donor and whether an operational, capital, in-kind, or other contribution is most appropriate.
- C. As the PAF identifies potential prospects for agreed-upon funding priorities, the Executive Director and the PAF Board will coordinate the approach to the prospective donor. Together, they will agree upon whether the approach should be made by PAF, the City or in combination. PAF Executive Director shall regularly update the City regarding staff-identified prospects and the current status of pledges and contributions, such updates to take place at the regularly scheduled PAF board meetings.
- D. The City shall provide PAF with approximately 24-42 house seats for all City booked and presented performances for the purpose of donor cultivation and sponsor benefits. PAF shall release any unused seats back to the Auditorium box office within 24 hours of show opening.

Section 4. Article VIII of the Grant Agreement is hereby amended by deleting Section C thereof in its entirety. Section C required PAF to comply with the restrictions of a pouring rights agreement between the City and Pepsi Bottling Group, which is now expired and of no further effect.

Section 5. Article IX of the Grant Agreement is hereby amended to read as follows (*additions are underlined; deletions are struck-through*):

IX. ~~Termination~~ Default by PAF

- A. ~~This Agreement shall be subject to termination by the City if~~ PAF shall be default of this Agreement if any of the following occur:
1. PAF uses grant funds in a manner that breaches the foregoing obligation;
 2. PAF fails to keep and maintain, or provide the City with reasonable access to, the books, records, and other documentation referenced above;
 3. Subject to the conditions set forth in Subsection B, below, PAF fails to meet the following minimum fundraising targets for the benefit of the Auditorium:
 - (a) A minimum fundraising target of \$75,000 in donated funds for the period beginning on the Effective Date and ending for the benefit of the Auditorium by November 1, 2017, ~~or~~ and
 - (b) The following minimum fundraising targets for the period commencing November 1, 2017 and ending on November 1, 2019:

- (i) PAF must donate to the City \$75,000 in unrestricted funds, which the City will be free to use for capital or operating costs of the Auditorium; and
 - (ii) PAF must donate to the City an additional \$125,000, which may be either unrestricted as reference above, or restricted to capital use, or any combination thereof.
4. PAF materially breaches any other obligation of this Agreement, and the breach continues or reoccurs after the end of the Cure Period. The Cure Period will commence on the date that the City notifies PAF in writing of the breach, demanding a cure, and end 30 days thereafter, unless the nature of the breach is such that a cure cannot be completed within such time, in which instance the Cure Period shall be extended by one day for each day that PAF diligently attempts to effect the cure.
- B. The City will have the right to terminate this Agreement upon PAF's default; provided, however, that before terminating the Agreement based on PAF's failure to meet the fundraising targets above, the City will work with PAF in good faith for a period of up to 60 days to devise mutually acceptable fundraising strategies, processes, and targets. If the Parties are unable to reach agreement, and the City shall have the right to immediately terminate this Agreement. Upon termination for any reason, PAF shall turn over to the City an updated donor database, and shall continue to turn over any funds solicited for the benefit of the Peabody prior to termination but received thereafter, less PAF's costs and expenses.
- C. If during the Term hereof or for a period of five years hereafter, it is judicially determined that PAF willfully failed to restrict the use of grant funds provided by the City in this Agreement in whole or in part to the purposes referenced herein, PAF will repay such funds to the City.


Section 6. All other provisions of the Grant Agreement will remain in full force and effect, except to the extent of conflict with the provisions of this First Amendment.

The Parties have executed this First Amendment to the above-referenced Agreement, on the dates indicated below.

The City of Daytona Beach

**The Peabody Auditorium
Foundation, Inc.**

By: _____
Derrick L. Henry, Mayor

By: 
Printed Name: Lloyd Bowen
Title: President

Date signed: _____

Date signed: 11/15/2017

Attest: _____
Letitia LaMagna, City Clerk

Approved as to legal form:

By: _____
Robert Jagger, City Attorney