



TOWN OF LAUDERDALE-BY-THE-SEA

AGENDA ITEM REQUEST FORM

Town Manager

Connie Hoffmann

Department Submitting Request

Dept Head's Signature

<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>	<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>	<u>Commission Meeting Dates</u>	<u>Last date to turn in to Town Clerk's Office</u>
<input type="checkbox"/> May 25, 2010	May 14 (5:00 p.m.)	<input type="checkbox"/> July 27, 2010	July 16 (5:00 p.m.)	<input type="checkbox"/> Oct 26, 2010	Oct 15 (5:00 p.m.)
<input type="checkbox"/> June 8, 2010	May 28 (5:00 p.m.)	<input type="checkbox"/> Aug 25 2010*	Aug 13 (5:00 p.m.)	<input type="checkbox"/> Nov 9, 2010	Oct 29 (5:00p.m.)
<input type="checkbox"/> June 22, 2010	June 11 (5:00 p.m.)	<input type="checkbox"/> Sept 14, 2010	Sept 3 (5:00 p.m.)	<input type="checkbox"/> Nov 23, 2010	Nov 12 (5:00p.m.)
<input type="checkbox"/> July 13, 2010	June 2 (5:00 p.m.)	<input type="checkbox"/> Sep 27, 2010	Sept 17 (5:00 p.m.)	<input type="checkbox"/> Dec 14, 2010	Nov 23 (5:00p.m.)
		<input type="checkbox"/> Oct 12, 2010	Oct 1 (5:00p.m.)		Dec 3 (5:00p.m.)
*Item is for 5 p.m. Special Meeting					
NATURE OF AGENDA ITEM	<input type="checkbox"/> Presentation	<input type="checkbox"/> Resolution	<input type="checkbox"/> Manager's Report		
	<input type="checkbox"/> Public Safety Report	<input type="checkbox"/> Quasi Judicial	<input type="checkbox"/> Attorney's Report		
	<input type="checkbox"/> Consent Agenda	<input checked="" type="checkbox"/> Old Business	<input type="checkbox"/> Other		
	<input type="checkbox"/> Ordinance	<input type="checkbox"/> New Business			

SUBJECT TITLE: Budget Workshop Item: Community Theater

EXPLANATION: The Community Theater group has reduced their planned performance schedule to three plays to be put on at Jarvis Hall and, as a result, has reduced their request for funding from the Town. The Commission had requested that staff meet with the theater group director and iron out an agreement that would define the responsibilities of the Town and the Theater group. A draft agreement is attached.

RECOMMENDATION: Commission to provide direction on acceptability of the schedule and the Town's contribution to the program.

EXHIBITS: Draft agreement.

Town Manager's Initials: CH

AGREEMENT

THIS IS AN AGREEMENT, made this ___ day of _____, 2010, by and between:

TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA

a municipal corporation organized and operating
under the laws of the State of Florida, hereinafter
referred to as "TOWN"

and

**LAUDERDALE-BY-THE-SEA COMMUNITY PERFORMING
ARTS CENTER, INC.**, a nonprofit corporation authorized to
do business in the State of Florida, hereinafter referred to
as "CPAC"

WITNESSETH:

Whereas, CPAC has requested financial and inkind assistance from the TOWN to provide a series of three plays, scheduled starting in November 2010 through April 2011;

Whereas, the TOWN and CPAC agree to enter into an Agreement to ensure the operation of the Performing Arts Center at the Jarvis Hall, located at 4500 Ocean Drive, Lauderdale-By-The-Sea, FL;

1.0 **Recitals.** The above recitals are true and correct and are hereby incorporated herein and made a part hereof.

2.0 **Services and Responsibilities of CPAC**

2.1 CPAC agrees to provide, to the Town, a series of shows at Jarvis Hall. The CPAC shall provide no less than 3 shows and approximately 12 performances from November 2010 through April 2011.

2.2 Generally

2.21 CPAC shall provide 3 shows and 12 performances, including a matinee on Saturday. The shows and dates are identified as follows:

Murder at Howard Johnsons- November 18-20, 2010
Saint or Sinner- February 3-5, 2011
Horowitz and Mrs. Washington- April 5-9, 2011

All scripts for plays will be submitted to the Town six weeks in advance for review and approval .

Should CPAC decide to change the plays to be presented, notice shall be given to the Town at least six weeks in advance of the initial performance of that play.

- 2.2.2 CPAC shall occupy the Jarvis Hall for a 5 day period for each show, the first day to enable CPAC to set up staging and the second day to set up chairs and for the dress rehearsal.

CPAC warrants that the Town can utilize Jarvis Hall for the senior program activities for the two set up and rehearsal days in the beginning of each performance schedule.

- 2.2.3 CPAC shall provide a turnkey operation; providing the play, actors and support personnel, stage and scenery.

- 2.2.4 CPAC shall advertise locally each play and the schedule of the performances.

- 2.2.5 CPAC shall provide spot lighting, microphones and a sound system.

- 2.2.6 CPAC will charge an admission price of no more than \$20/person. The Town acknowledges that it has no right to any of the revenues generated by the performance of the plays.

3.0 Services and Responsibilities of the Town

- 3.1 The Town agrees to provide funding for the term of this agreement in the amount not to exceed ONE THOUSAND DOLLARS (\$1,000) annually to assist in the funding of the performances, payable in three (3) increments of THREE HUNDRED AND THIRTY THREE DOLLARS AND THIRTY THREE CENTS (\$333.33). Each payment will be made after the performance series for each play is completed.

3.2 Generally

- 3.2.1 The Town agrees to advertise in Town Topics and Channel 78.

3.2.2 The Town agrees to provide storage space at the Town municipal site of an amount not to exceed 100 square feet from November 1, 2010 to April 30, 2011.

3.2.3 The Town agrees to provide Jarvis Hall at no charge and will provide chairs for the performances.

3.2.4 Town will provide year round storage for the set offsite during the offseason or until October 31, 2011.

4.0 Term and Termination

4.1 The Term of the Agreement shall be one season, starting November 1, 2010 and ending October 31, 2011.

4.2 The Agreement may be terminated for either party for convenience upon written notice to the other party. Upon receipt of such notice, the Agreement shall be terminated within thirty (30) days.

5.0 Liability Insurance.

5.1 CPAC shall not commence work under this Agreement until it has obtained all insurance required by the Town and evidence of such insurance has been provided to and approved by the TOWN. All subcontractors of CPAC must also provide evidence of insurance to the Town before providing any services. No subcontractors may provide any services hereunder unless approved in advance by Town.

5.2 Certificates of insurance, reflecting evidence of the required insurance listed below, shall be filed with the TOWN prior to the commencement of services hereunder. These certificates shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty (30) days prior written notice has been given to the TOWN. Policies shall be issued by companies authorized to do

6.0 Indemnification.

6.1 CPAC agrees to release the TOWN from and against any and all liability and responsibility in connection with the performance of this Agreement and any acts or omissions hereunder. CPAC further agrees not to sue or seek any money or damages from the TOWN in connection with the above-mentioned matters.

6.2 CPAC agrees to indemnify, defend and hold harmless the TOWN, its trustees, elected and appointed officers, agents, servants and employees, from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees, sustained by the TOWN or any third party arising out of, or by reason of, or resulting from CPAC's negligent acts, errors, or omissions relating to the performance of this Agreement or any acts or failure to act in relationship thereto.

6.3 The parties recognize that various provisions of this Agreement, including, but not necessarily limited to this Section, provide for indemnification by CPAC and that Florida Statute §725.06 requires a specific consideration be given therefore. The parties therefore agree that the sum of Ten Dollars and 00/100 (\$10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by CPAC. Furthermore, the parties understand and agree that the covenants and representations relating to this indemnification provision shall survive after the term of this Agreement and continue in full force and effect as to the party's responsibility to indemnify.

7.0 Independent Contractor. This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that CPAC is an independent CPAC under this Agreement and not the TOWN's employee for any purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. CPAC shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CPAC activities and responsibilities hereunder. All administrative procedures applicable to services rendered under this Agreement shall be those of CPAC and shall not conflict with the TOWN, H.U.D., or any United States policies, rules or regulations or conflict with any applicable statute, rule or law. CPAC agrees that it is a separate and independent enterprise from the TOWN, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between CPAC and the TOWN and the TOWN will not be liable for any obligation incurred by CPAC, including, but not limited to, unpaid minimum wages and/or overtime premiums.

8.0 Equal Employment Opportunity. In the performance of this Agreement, CPAC shall not discriminate against any firm, employee or applicant for employment or any other firm/individual in providing services because of sex, age, race, color, religion, ancestry or national origin.

9.0 Notice. Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, by hand delivery or by facsimile transmission with confirmation of receipt, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, the CPAC and the TOWN designate the following as the respective places for giving of notice:

TOWN: Town Manager
Town of Lauderdale-By-The-Sea
4501 Ocean Drive
Lauderdale-By-The-Sea, Florida 33308
Phone: (954) 776-0576
Fax: (954) 776-1857

COPY TO: Susan L. Trevarthen, Town Attorney
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
200 East Broward Boulevard, Suite 1900
Fort Lauderdale, Florida 33301
Phone: (954) 763-4242
Fax: (954) 764-7770

CPAC: Vincent J. Ragusa, Executive Director
Lauderdale-By-The-Sea Community Performing Arts Center, Inc
4430 Seagrape Drive
Lauderdale-By-The-Sea, Florida 33308
Phone: 954- 202-2666
Fax: 954-938-5312

10.0 Ownership. The parties agree that all items, equipment, property and materials owned or purchased by CPAC and provided under this Agreement shall remain the property of CPAC. The parties further agree that all items, equipment, property and materials owned or purchased by the TOWN and provided under this Agreement shall remain the property of the TOWN. Each party agrees to safeguard the other's property and to return such property in the same condition as provided, subject to ordinary wear and tear.

11.0 Assignments. Neither this Agreement nor any interest herein, shall be assigned, transferred or otherwise encumbered, under any circumstance by CPAC without the prior written consent of the TOWN. For purposes of this Agreement, any change of ownership of CPAC shall constitute an assignment which requires TOWN approval.

12.0 Public Records. Pursuant to Chapter 119, Florida Statutes, Florida's Public Records laws, CPAC shall maintain and make available for inspection any and all business records generated pursuant to this Agreement as required by law.

13.0 No Contingent Fees. CPAC warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CPAC to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CPAC, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

14.0 Default. For the breach or violation of any provision hereunder, the TOWN shall have the right to terminate the Agreement by written notice without further liability to TOWN and at its discretion, to deduct from the Agreement price, or otherwise recover the full amount expended by Town to cure any such breach or violation.

15.0 Binding Authority. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

16.0 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

17.0 Headings. Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

18.0 Waiver. Failure of the TOWN to insist upon strict performance of any covenant or condition of this Agreement, or to execute any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right, but the same shall remain in full force and effect.

19.0 Legal Representation. It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and accordingly the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.

20.0 Severability. If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

21.0 Governing Law. This Agreement shall be governed by the laws of the State of Florida with venue lying in Broward County, Florida.

22.0 Extent of Agreement. This Agreement represents the entire and integrated agreement between the TOWN and the CPAC and supersedes all prior negotiations, representations or agreements, either written or oral.

23.0 Attorney's Fees. In the event that either party brings suit for enforcement of this Agreement, the prevailing party shall be entitled to attorney's fees and court costs in addition to any other remedy afforded by law.

The rest of this page is intentionally left blank.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

ATTEST:

TOWN OF LAUDERDALE-BY-THE-SEA

BY: _____

June White, Town Clerk

Mayor Roseann Minnet

APPROVED AS TO FORM:

Susan L. Trevarthen, Town Attorney

Witness Signature

LAUDERDALE-BY-THE-SEA
COMMUNITY PERFORMING
ARTS CENTER, INC

BY: _____

Vincent J. Ragusa

Print Witness Name

CPAC Executive Director

STATE OF FLORIDA)

) ss:

COUNTY OF BROWARD)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared _____ as _____, of _____, an organization authorized to do business in the State of Florida, and acknowledged and executed the foregoing Agreement as the proper official of _____ for the use and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation. He/she is personally known to me or has produced _____ as identification.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this _____ day of _____, 2009.

NOTARY PUBLIC

My Commission Expires: