



University of Central Florida
Board of Trustees Meeting
February 15, 2017
Millican Hall, 3rd floor, President's Boardroom
Agenda
8:00 a.m.
800-442-5794, passcode, 463796

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|------|---------------|----------|--|
| I. | Call to Order | | Marcos Marchena
Chairman, Board of Trustees |
| II. | Roll Call | | Rick Schell
Associate Corporate Secretary |
| III. | New Business | | Chairman Marchena |
| | BOT-1 | Approval | Agreement Between the
University of Central Florida
and Dr. Phillips Center for
the Performing Arts, Inc. |
| | | | Fred Kittinger
Senior Associate Vice President
for University Relations |
| IV. | Adjournment | | Chairman Marchena |

ITEM: BOT-1

**University of Central Florida
BOARD OF TRUSTEES**

SUBJECT: Agreement Between the University of Central Florida and Dr. Phillips Center for the Performing Arts, Inc.

DATE: February 15, 2017

PROPOSED BOARD ACTION:

Approval of the Agreement Between the University of Central Florida and Dr. Phillips Center for the Performing Arts, Inc.

BACKGROUND INFORMATION:

In the 2016 Legislative Session, the Florida Legislature appropriated funding to the Board of Governors for “UCF-Dr. Phillips Center for Performing Arts” in the amount of \$5,048,043 for 2016-17, and recurring funding in subsequent years in the amount of \$3,900,299. UCF and the Dr. Phillips Center for Performing Arts are entering into a Memorandum of Agreement that calls for the following distribution of those funds: Upon receipt of the 2016-17 funding, UCF will transmit \$5,000,000 to Dr. Phillips Center for Performing Arts or the City as instructed by Dr. Phillips Center for Performing Arts, with UCF retaining the remaining \$48,043 for covering expenses for the 2016 “UCF Celebration of the Arts.” Beginning in 2017-18, and upon receiving the annual recurring sum of \$3,900,299, UCF will transmit \$3,000,000 to Dr. Phillips Center for Performing Arts or the City, with the sum of \$900,299 retained by UCF for the purpose of supporting UCF’s showcasing of the arts in downtown Orlando and the “UCF Celebration of the Arts.” If the Legislature adjusts the appropriation, the amount allocated to Dr. Phillips Center for Performing Arts and UCF shall be proportionately adjusted to reflect the same percentage as transferred in 2017-18.

Supporting documentation: Agreement Between the University of Central Florida and Dr. Phillips Center for the Performing Arts, Inc.

Prepared by: Fred Kittinger, Senior Associate Vice President for University Relations

Submitted by: John C. Hitt, President

**AGREEMENT
BETWEEN THE UNIVERSITY OF CENTRAL FLORIDA
AND DR. PHILLIPS CENTER FOR THE PERFORMING ARTS, INC.**

THIS AGREEMENT ("Agreement") is effective as of this ____ day of _____, 2017, by and between the Dr. Phillips Center for the Performing Arts, Inc., a Florida not for profit corporation ("DPC") and the University of Central Florida Board of Trustees, a Florida public body corporate ("UCF").

WHEREAS, DPC is a not for profit corporation that controls and operates a Performing Arts Center (PAC) in downtown Orlando;

WHEREAS, UCF is a state university and, for the State of Florida's capital contribution is recognized by DPC as a Resident Organization and shall be entitled to such benefits and rights as may be afforded to all Resident Organizations;

WHEREAS, effective October 14, 2015 DPC and UCF entered into a Facilities Use Agreement;

WHEREAS, the parties jointly collaborate on the UCF Celebration of the Arts and jointly desire to enhance and strengthen the presentation, development and educational aspects of the Arts in Orlando;

WHEREAS, the parties recognize the Florida Legislature appropriation funding of UCF-DPC for Fiscal Year 2016-2017 in the amount of \$5,048,043.00 and recurring funding in subsequent years in the amount of \$3,900,299.00; and

NOW THEREFORE, in light of the foregoing, the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **General.** The parties agree that the recitals are true and correct and are hereby incorporated as a material part of the Agreement.

2. **Annual Funding and Operation Costs:**
 - a. Upon execution of this agreement, UCF shall transmit \$5,000,000.00 from the Fiscal Year 2016-2017 funding appropriations to DPC or as otherwise instructed by DPC at that time. The sum of \$48,043.00 shall remain with UCF for the purpose of supporting the "UCF Celebration of the Arts" held at the PAC. If UCF receives partial payment, UCF will transmit pro-rata amount.
 - b. Beginning in Fiscal Year 2017-18 and upon fully receiving the recurring annual appropriation of \$3,900,299.00, UCF shall transmit \$3,000,000.00 to the DPC or as otherwise instructed by DPC at that time. The sum of \$900,299.00 shall remain with UCF for the purpose of supporting UCF's showcasing of the arts in Downtown Orlando and the "UCF Celebration of the Arts." In future years the transfer of the annual appropriations shall continue as set forth in this Agreement. In the event that the appropriation amount is adjusted by the Florida Legislature, the amount allocated to DPC shall be proportionally adjusted to reflect the same percentage as transferred in Fiscal Year 2017-18.

3. **Obligations of the Parties.**
 - a. UCF shall use the funds it receives from the Florida Legislature, as described above, to showcase, strengthen and expand the profile and offerings of UCF Arts in the Orlando Downtown

area. The annual programming of "UCF Celebrates the Arts" at the PAC will improve UCF's presence and impact in the Orlando Downtown area.

- b. DPC shall use the funds it receives from UCF to provide the future facilities that will become part of the PAC and programming that continue to build upon the center's reputation as an iconic facility for artistic excellence, arts education and the fostering of urban transformation and community pride.

4. **Resolution of Disputes.**

- a. The parties agree to attempt, in good faith, to resolve all disputes with respect to the interpretation, application, enforcement or amendment of this Agreement by the two step dispute resolution process of private negotiation and mediation set forth in this paragraph 4. Each party covenants to participate in the process in good faith and as expeditiously as possible in an effort to resolve such disputes in accordance with the rights of the parties.
- b. The parties will attempt in good faith to resolve any dispute by negotiations between knowledgeable senior executives of the parties who have authority to settle the dispute, subject, however, to the final approval of the respective boards of trustees or directors of each party. A disputing party shall give the other party written notice of any dispute. Within thirty (30) days after receipt of the notice, the executives of each party shall meet in person to attempt to resolve the dispute. The procedure under this paragraph 4(b) is referred to herein as "Private Negotiation."
- c. If the matter has not been resolved pursuant to the Private Negotiation procedure within thirty (30) days of the initiation of such procedure, or one or both of the parties' refuses to meet within thirty (30) days thereafter, either party may initiate mediation of the dispute using a panel of three (3) qualified mediators approved by both parties, which approval shall not be unreasonably withheld. In that event, the parties covenant and agree to participate in this process (the "Mediation Process") in good faith. It is mandatory that each party be represented in the Mediation Process by an officer of the party with authority to settle the dispute by signing a Mediation Settlement Agreement, subject, however, to the final approval

of the respective boards of trustees or directors of each party. Any party may be represented by legal counsel in the Mediation Process. The mediation shall be held within 30 days after initiation of the Mediation Process. The Mediation Process shall take place at a mutually agreeable location or, if the parties are not able to agree on a location, at a location selected by the party to whom the notice of dispute is directed.

- d. All deadlines specified in this paragraph 4 may be extended by mutual agreement.
- e. Failure to resolve a dispute through mediation shall authorize either party to take appropriate legal action to enforce the terms of this Agreement.

5. **Miscellaneous.**

- a. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of Florida. Venue for any action to construe or enforce the terms of this Agreement shall be in Orange County, Florida, and each party hereby consents and submits to the jurisdiction of such courts.
- b. DPC may terminate this Agreement at any time for willful refusal by UCF to allow public access, mandated by law, to all documents, papers, letters, or other non-exempt materials subject to the provisions of Chapter 119, Florida Statutes (generally referred to as the Public Records Act and to the extent it may be applicable by law to the parties), and made or received by DPC or UCF in conjunction with this Agreement. While DPC is not subject to the Public Records Act, for purposes of this Agreement, DPC agrees to allow public access to all documents, papers, letters, or other non-exempt materials otherwise subject to the Public Records Act, and UCF may terminate this Agreement at any time for willful refusal by DPC to allow such access. Nothing in this paragraph or elsewhere in this Agreement shall be interpreted or construed as a concession or admission from DPC that it is an agency subject to the Public Records Act or any other state or federal sunshine laws.
- c. This Agreement is not binding on the parties until it has been signed by the authorized representatives of each party. The parties may amend this Agreement at any time that they mutually agree; provided, however, that no amendment to this

Agreement is valid and binding unless reduced to writing and executed by both parties hereto.

- d. This Agreement is severable such that should any provision of this Agreement be or become invalid or unenforceable, the remaining provisions shall continue to be fully enforceable.
- e. The terms set forth in this Agreement and the Facilities Use Agreement constitute all of the terms and conditions agreed upon by the parties and no other terms or conditions in the future shall be valid and binding on any party unless reduced to writing and executed by all parties. This Agreement in conjunction with the Facilities Use Agreement constitutes the entire agreement, oral and written between the parties with reference to the subject matter hereof. In the event of a conflict of terms between this Agreement and the Facilities Use Agreement, the terms of the Facilities Use Agreement shall control.
- f. UCF assumes any and all risks of personal injury and property damage attributable to the negligent acts or omissions of UCF and its officers, employees, servants, students, invitees, vendors, service providers and agents thereof while utilizing the PAC in accordance with this Agreement. DPC assumes any and all risks of personal injury and property damage with respect to the negligent acts or omissions of DPC's officers, employees, servants, invitees, vendors, service providers and agents, or other persons acting or engaged to act by DPC in furtherance of the obligations of DPC under this Agreement. UCF, as a state entity, warrants and represents that it is self-funded for liability insurance, with said protection being applicable to its officers, employees, servants, students, invitees, vendors, service providers and agents while utilizing the PAC in accordance with the scope of their employment or agency and with this Agreement. UCF and DPC further agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Florida Statutes Section 768.28, which addresses tort immunity, recovery limits, limitations on attorney fees, statutes of limitations and the like.

g. No party shall be deemed to have waived any right or remedy set forth herein unless such waiver shall be set forth in writing and signed by the parties. The failure of either party to exercise any right or remedy pursuant to the terms and conditions set forth herein shall not constitute a continuing waiver of any subsequent breach of such terms and conditions.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date first set forth above.

UNIVERSITY OF CENTRAL FLORIDA

By: _____
John C. Hitt
Its: President

Legal Content Approved for UCF by

General Counsel

Dr. Phillips Center for the Performing Arts, Inc.

By: _____
Katherine Ramsberger
Its: President and CEO