

USE AGREEMENT:  
THE VENICE PERFORMING ARTS CENTER

THIS USE AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the School Board of Sarasota County, Florida (the "School Board") and the City of Venice, (the "City"), a municipal corporation under the laws of the State of Florida.

WHEREAS, the School Board and the City entered into an Interlocal Agreement, dated January 5, 2010 providing for upgrades for the Performing Arts Theater (re-named the "Venice Performing Arts Center", hereinafter the "Center"); and

WHEREAS, Paragraph 7 of said Interlocal Agreement requires the City and School Board to execute a Use Agreement governing the specific terms and conditions regarding the use of this facility; and

WHEREAS, the Interlocal Agreement provides that the initial term of said Use Agreement shall not be less than thirty (30) years; and

WHEREAS, it is the desire of the School Board and the City to enter into said Use Agreement as is set forth herein.

NOW THEREFORE, the School Board and City do mutually covenant and agree as follows:

Article I:      MANAGEMENT AND OPERATION OF THE CENTER

The parties acknowledge that cooperation between them will be required for the continued satisfactory operation of the Center, and they each pledge to use their respective best efforts to arrive at mutually satisfactory operations.

There is hereby created a Joint Management Advisory Board with a total of four (4) members, comprised of the Venice High School Principal or his/her designee, a Sarasota County resident appointed by the principal (who could be a school board employee if the principal so chooses), a representative of the City as appointed by the City manager; and a resident of Sarasota County who is selected by the performing arts groups (as defined below).

- A.     The Joint Management Advisory Board shall meet as needs dictate, but at least once per quarter.
  
- B.     The Joint Management Advisory Board shall discuss matters as may be referred to it by the governing bodies of the City and/or the School Board. Subject to City Council and School Board approval, the Joint Management Advisory Board may adopt such rules and procedures relative to its functioning as it may deem appropriate. The Advisory Board may also make recommendations for the expenditure of funds for maintenance/improvement projects.
  
- C.     The Joint Management Advisory Board and Center Manager will cooperatively develop the annual schedule of events for the Center.

- D. Within 18 months following execution of this Use Agreement, the Advisory Board shall propose specific provisions relating to the terms of office and selection methodology for the Venice and Sarasota County members. The Advisory Board shall submit these proposals to the Superintendent of the Sarasota County School District and the Venice City Manager for approval and inclusion in a formal Letter of Understanding.

Article II: SCHEDULING AND TIME-SHARING OF FACILITY

The City and the School Board recognize that no hard and fast rule concerning use can be made. The parties hereto agree to work in good faith to accommodate the needs of one another.

- A. In general, the City and School Board agree that the following priority order of uses and users is hereby established: 1) students and School Board-related activities; 2) the Venice Symphony, the Venice Concert Band and the Exsultate Venice Chorale (from here forward collectively referred to as "The Performing Arts Organizations" (PAO); 3) City of Venice events and activities; 4) other Venice community based groups and events; and 5) all other groups.
- B. The City and the School Board agree that the Center Manager shall be responsible for scheduling use of the Center, provided such scheduling is not in conflict with all provisions of the Interlocal Agreement.
- C. In order to expedite preparation of the annual schedule of events for the Center, the parties agree to submit their scheduling requests to the Center Manager in January of each year. For purposes of this agreement the season is defined as July 1 through June 30 of each year. The Center Manager shall provide each party with the final version of the annual schedule of events by March 1, and with revisions and additions to same as they occur. However, the parties recognize that strict adherence to these requirements may not always be possible due to planning constraints and unforeseen needs. In such instances, the parties agree to provide one another with as much advance notice as possible. Except in the case of a bona fide emergency or an act of God schedules of The Performing Arts Organizations will not be changed once published.

Article III: PARKING

Both parties agree to work in good faith to accommodate the needs of the City and the School Board concerning conflicts in scheduling the use of the parking lot.

Article IV: RETENTION OF INCOME; HIRING OF EVENT STAFF

- A. During the time each party is utilizing the Center, each shall have the right to make and retain all admission charges, parking fees and concession income derived from such use.
- B. The School Board is responsible for hiring and paying for ticket takers, parking attendants and other such appropriate staff for school-related events held in the Center. The PAO and the City are responsible for hiring and paying for ticket takers, parking attendants and other such appropriate staff for the PAO or City - sponsored events held in the Center. If the PAO or City use School Board staff

for the PAO or City functions at the Center, the PAO or City shall reimburse the School Board pursuant to the schedule listed in Exhibit A or, for staff not listed in Exhibit A, actual costs involved in using such staff.

Nothing contained herein shall prohibit the School Board or the PAO and City from using volunteers or personnel of its own choosing as ticket takers, parking attendants and ushers. However, the PAO and City shall only use the trained professional staff hired by the School Board in such areas as custodial help and equipment technicians. The parties recognize that a function of the education process is the development of trained student personnel to assist the equipment technicians.

- C. Any overtime work required by this provision shall be paid by the party requiring such overtime work.
- D. The parties agree that, as between the parties, responsibility for all claims for personal injuries or property damage shall be borne by the party which has use of the Center at the time of the incident giving rise to such claim.

#### Article V: CENTER MANAGER

- A. The School Board shall designate a Center Manager who shall be responsible, in coordination with the Joint Management Advisory Board, for the proper scheduling and operation of the Center, which shall include maintenance of the facility and scheduling of staff adequate for the needs of each party.
- B. The Center Manager shall be responsible for assuring that the Center rules and regulations, as adopted or amended from time to time by the School Board and the City, are carried out and properly enforced. The Center Manager shall be responsible for recommending such rules and regulations and such amendments thereto as may be necessary from time to time to the Joint Management Advisory Board. For the sake of security and safety, the Center Manager shall be responsible for locking and unlocking the facility.
- C. At all times that the School Board, PAO, or the City is using any stage facilities including sound and/or lighting systems, such use shall be scheduled with the Center Manager.
- D. The Center Manager shall maintain a master calendar of the events scheduled for the Center.
- E. The Center Manager shall be responsible for third party bookings and rentals of the Center.
- F. In the event that a schedule conflict arises between the parties which the Center Manager cannot resolve, said conflict will initially be referred to the City Manager and the Principal for resolution. If resolution can not be achieved, the matter will be referred to the School Board and the City Council.

- G. The Center Manager shall be available to assist the City in technical matters, and, on a Consultancy basis at the Center Manager's normal hourly pay rate, to advise the City regarding City-sponsored, revenue-generating projects and productions.

Article VI: RULES, REGULATIONS AND RENTAL REQUIREMENTS

- A. The School Board and the City shall adopt such rules and regulations as may be necessary for the maintenance and safety, operation and use of the Center. Such rules and regulations may be proposed by either party, or the public. The Advisory Board shall evaluate all proposals and submit recommendations regarding same to both parties.
- B. Per Article VIII of this Use Agreement, the School Board, or its designated assignee, will implement a Rate Schedule and User Contract for usage of the Center.

Article VII: CENTER ART WORKS AND SIGNS

- A. Any art works to be permanently placed either inside or outside the Center, whether murals, paintings, sculptures, permanent signs or statues, shall be submitted for approval by the School Board and the City.
- B. Art exhibits may be temporarily displayed within the Center upon approval of the Joint Management Advisory Board, subject to such guidelines for such art exhibits as have been adopted by the School Board and the City.

Article VIII: RATE SCHEDULE AND USER CONTRACT

- A. All non-School Board users of the Center shall be bound by the terms and conditions, as they may be amended from time to time, of the Venice Performing Arts Center Rate Schedule (Exhibit "A") and User Contract (Exhibit "B"), attached hereto and made a part herewith. Subject to paragraphs Band C below, the School Board shall have the sole right to make adjustments to the terms of Exhibits A and B as it deems appropriate throughout the term of this use agreement.
- B. As needs may dictate, the Joint Management Advisory Board may recommend changes to the aforesaid Rate Schedule and User Contract, subject to City Council review and School Board approval. The School Board shall consider those recommendations, taking into account the City Council's input.
- C. The School Board shall be responsible for all costs associated with the operation and maintenance of the Center during school events and unscheduled time periods.
- D. The City and the PAO shall be charged for use of the Center according to the rates and charges set forth in the Rate Schedule (Exhibit "A"). In all cases, except as waived by the Superintendent of Schools, fees will, at a minimum, cover the School Board's actual operational costs.

- E. For the PAOs, both deposits and contracts will be executed annually with the submission of the schedules of each organization.

Article IX: MUSIC SUITE

The parties agree that this Use Agreement applies only to the Venice Performing Arts Center and does not encompass the use of the Music Suite. The parties acknowledge that the School Board shall execute a separate Lease and Use Agreement for the Music Suite with the Venice Symphony.

Article X: CONFLICT BETWEEN AGREEMENTS

It is recognized that this Use Agreement is a part of the Interlocal Agreement made by the School Board and the City on January 5, 2010. In the event of a conflict between the Interlocal Agreement and this Use Agreement, this Use Agreement shall control.

Article XI: MODIFICATION OF USE AGREEMENT

No amendment or modification of this Use Agreement shall be valid or binding unless reduced to writing and executed by the parties hereto in the same manner as this Use Agreement is executed.

Article XII: CONTROLLING LAW

This Use Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by and construed in conformance with the laws of the State of Florida.

Article XIII: SOVEREIGN IMMUNITY.

Neither party shall be deemed to have waived its statutory defense of sovereign immunity, or increased its limits of liability, as set forth in Section 768.28, Florida Statutes as may be amended.

Article XIV: ASSIGNMENT

This Use Agreement may be assigned in its entirety by the School Board only with the prior written consent of the City, and this Use Agreement may be assigned in its entirety by the City only with prior written consent of the School Board. Any such assignment shall bind the assignee under this Use Agreement in the same manner as each is bound hereunder.

Article XV: AGREEMENT HEADINGS

Headings in this Use Agreement are for convenience and reference only; they form no part of this Use Agreement and shall not affect its interpretation.

Article XVI: USE AGREEMENT TERM

The term of this Use Agreement shall be for thirty (30) years after execution by both parties.

No later than eighteen (18) months after execution, the Joint Management Advisory Board shall assess the Use Agreement and propose to the School Board and City any amendments it believes are required.

Nothing in this Article shall be construed as restricting the authority of the School Board and the City to amend this Use Agreement at any time as need may dictate.

IN WITNESS THEREOF, the parties have caused this Use Agreement to be executed by the respective undersigned duly authorized officials.

Document approved as to form:

THE SCHOOL BOARD OF SARASOTA COUNTY, FLORIDA

By:   
MATTHEWS, EASTMOORE, HARTY,  
CRAUWELS & GARCIA, P.A.  
Attorneys for the School Board  
of Sarasota County, Florida

By: \_\_\_\_\_  
Jane Goodwin, Chair

Date: 06/11/13

Date: \_\_\_\_\_

Document approved as to form:

CITY OF VENICE, FLORIDA

By: \_\_\_\_\_  
David Persson , City Attorney

By: \_\_\_\_\_  
John Holic, Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Name, City Clerk

Date: \_\_\_\_\_