



AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

MEETING DATE: Aug 16 2016 10:15AM - Regular School Board Meeting

Special Order Request
 Yes No

ITEM No.:
 LL-1.

AGENDA ITEM: OPEN ITEMS

Time

CATEGORY: LL. OFFICE OF PORTFOLIO SERVICES

Open Agenda
 Yes No

DEPARTMENT: Facility Planning and Real Estate

TITLE:
 Contract and First Amendment to Contract for Use of Facilities between the Professional Facilities Management and The School Board of Broward County, Florida for Use of Coral Springs Center for the Arts to Hold the All County Concerts Events

REQUESTED ACTION:
 Approve the Contract and First Amendment to Contract for use of the facilities between Professional Facilities Management and The School Board of Broward County, Florida for use of Coral Springs Center for the Arts to hold the All County Concerts Events.

SUMMARY EXPLANATION AND BACKGROUND:
 The School Board of Broward County, Florida (SBBC) will use the Coral Springs Center for the Arts to hold the All County Concerts Events for the school year 2016-2017. Events are scheduled on January 30th, February 2nd, 9th, and 15th 2017. The Contract is accompanied by the First Amendment due to the Coral Springs Center for the Arts not wanting to alter their standard Contract format and content.
 This Agreement has been reviewed and approved as to form and legal content by the Office of the General Counsel.

SCHOOL BOARD GOALS:
 Goal 1: High Quality Instruction Goal 2: Continuous Improvement Goal 3: Effective Communication

FINANCIAL IMPACT:
 The financial impact to the School District is \$20,000. The District was able to rent this facility for the same fee as last year. The source of the funding is the budget of the Innovative Learning Department.

EXHIBITS: (List)
 (1) Executive Summary (2) Contract for Use of Facilities (3) First Amendment to Contract

BOARD ACTION:
APPROVED
 (For Official School Board Records Office Only)

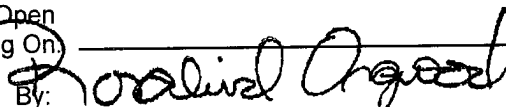
SOURCE OF ADDITIONAL INFORMATION:

Name: Joseph Luechauer	Phone: 754-321-1861
Name: Chris O. Akagbosu	Phone: 754-321-2162

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
Senior Leader & Title

Leslie M. Brown - Chief Portfolio Services Officer

Signature
 Leslie M. Brown
 Thursday, August 04, 2016 2:48:56 PM

Approved In Open Board Meeting On:
 By: 
 School Board Chair

EXECUTIVE SUMMARY

Contract and First Amendment to Contract for Use of Facilities Between the Professional Facilities Management and The School Board of Broward County, Florida for Use of the Coral Springs Center for the Arts to Hold the All County Concerts Events

The School Board of Broward County, Florida (SBBC) annually enters into an agreement with the Coral Springs Center for the Arts as a part of the All Broward County Honor Music Events. These events include performances of Elementary, Middle and High School students in the areas of Band, Chorus, Orchestra and Jazz. This venue is used because of its ability to host multiple performing groups simultaneously in a professional theatrical setting as well as provide a secure, sequestered location making security and supervision much easier for administrators, teachers and staff. The concert experience provides students with the ability to perform in a high quality professional theater that accentuates their talent and that is comparable with the honor of being selected to such a prestigious ensemble. The event is scheduled at this site because there is no District owned facility that is large enough to accommodate appropriate seating space for the large number of patrons that attend these events.

The dates for the SBBC honor concerts for this school year are January 30th, February 2nd, 9th, and 15th 2017. The Coral Springs Center for the Arts will be used for both rehearsals and performances from 8:00 am through 10:00 pm for each of the dates listed above.

Professional Facilities Management
Coral Springs Center for the Arts

Contract for Use of Facilities

954-344-5999 / 954-344-5980 (f)

This Agreement, dated August 16, 2016, by and between Professional Facilities Management (hereinafter referred to as "PFM") and:

The School Board of Broward County, Florida
KC Wright Administration Building
600 SE 3rd Avenue, 12th Floor
Fort Lauderdale, FL 33301

Contact: Joseph Luechauer, Curriculum Supervisor, Music and Performing Arts K-12
754-321-1861 / 768-8919 Fax

(Hereinafter referred to as "TENANT")

Is for the use of:

<u>Facility</u>	<u>Date</u>	<u>Beginning Time</u>	<u>Ending Time</u>	<u>Performance Time(s)</u>
Theater Rooms A, B, D	1/30/17 1/30/17	8:00 AM 8:00 AM	10:00 PM 10:00 PM	7:00 PM - Honor Band & Visual Art Show
Theater Rooms A, B, D	2/2/17 2/2/17	8:00 AM 8:00 AM	10:00 PM 10:00 PM	7:00 PM – Honor Chorus
Theater Rooms A, B, D	2/9/17 2/9/17	8:00 AM 8:00 AM	10:00 PM 10:00 PM	7:00 PM – Honor Jazz Band & Honor Elementary Band
Theater Rooms A, B, D	2/15/17 2/15/17	8:00 AM 8:00 AM	10:00 PM 10:00 PM	7:00 PM – Honor Orchestras

In the Coral Springs Center for the Arts, located at 2855 Coral Springs Drive, for the exclusive purpose of **Broward All County Concerts** (hereinafter referred to as "EVENT"). PFM and TENANT mutually agree to:

1. FEES

- 1.1 A \$750 non-refundable/nontransferable deposit must be returned with this signed contract, in the form of a certified check, cashier's check or money order. No ticket sales for events are permitted until this contract and the check are received by PFM. TENANT agrees to make additional deposit with PFM on written notice by PFM to TENANT address on this Agreement, in the event that Box Office Receipts for EVENT are less than the estimated license, personnel and equipment fees ten (10) days prior to EVENT. **If PFM does not provide Box Office Services as part of this contract, then all license and estimated personnel costs are due ten (10) days prior to the first day of EVENT.**
- 1.2 For licensing of the premises, TENANT agrees to pay PFM **\$20,000.00 all-inclusive fee**. TENANT must furnish certificate of tax exemption to PFM three (3) days prior to the first date of EVENT, or three (3) days prior to on-sale date of tickets.
- 1.3 All fees set forth in paragraphs 1.4 and 1.5 as follows are provided as estimates only. Corrected billing for actual labor and equipment will be made during settlement. To be eligible for "flat fees", EVENT must be a 1 to 4 hour performance oriented program with tickets or other admission documents. All other events will be billed at hourly rates.

1.4 The following personnel and equipment charges shall be paid at settlement

<u>Flat Fees</u>					
—	Technical Director Fee			\$ 350.00	
—	House Manager/Ushers Fee			\$ 350.00	
—	Clean-up Fee			\$ 500.00	
—	Security Fee			\$ 500.00	
<u>Hourly Fees*</u>					
		<u># Hours</u>		<u>\$ per Hour</u>	<u>Total</u>
—	Department Heads	TBD	x	\$ 20 =	\$ as required
—	Stagehands (min. 4)	TBD	x	\$ 22 =	\$ as required (min. 4 hrs)
*29% payroll service charge will be added to all bills					
—	Maintenance Staff	0	x	\$ 12 =	\$ _____
—	House Manager	0	x	\$ 12 =	\$ as required
—	Lead Ushers	0	x	\$ 8 =	\$ _____
—	Traffic Security	TBD	x	\$ 16 =	\$ as required
—	Uniformed Police	TBD	x	\$ 65 =	\$ as required (min. 4 hrs)
—	Police (Holidays)	TBD	x	\$ 76 =	\$ as required (min. 4 hrs)
—	Fire Watch (if needed)	TBD	x	\$ 68 =	\$ as required (min. 3 hrs)
—	Fire Watch (Holidays)	TBD	x	\$ 75 =	\$ as required (min. 3 hrs)

*Estimated

1.5 Coral Springs Center for the Arts Box Office charges are due at settlement, are deducted from gross ticket sales and are billed as follows (check all that apply):

Box Office is not being used by TENANT.

—	Basic Use Fee	TBD weeks @ \$ 100 per week =	\$ _____
—	Ticket Charges	TBD tickets @ \$.25 per ticket =	\$ _____
—	Bank Charges	5% of gross credit card receipts.	
—	Facility Service Charge to Customer	\$2.00 per ticket	
—	Group Sales	10% of gross group sales receipts.	

1.6 Unless fee terms specified above are adhered to, all rights granted to TENANT herein for use of facility will immediately terminate.

2. BOX OFFICE

2.1 TENANT must comply with all policies as defined in the PFM Box Office Procedures Manual, unless changes are mutually agreed to in writing.

2.2 TENANT must assign all tickets through the PFM Box Office exclusively, including all outside and phone sales. All current licensed agents will be included in this assignment. If tickets are to be sold by TENANT, they will be issued by the PFM Box Office and arrangements will be made for the proceeds of the sale of such tickets to be turned over to the PFM Box Office.

2.3 Tickets will be posted for sale no sooner than five (5) weeks prior to show date, unless otherwise specified. Maximum Basic Use Fee will be \$500 for longer sales periods.

2.4 House scaling must be approved by PFM staff prior to posting. Scaling will be as follows: n/a

2.5 For any event, the total number of participants may not exceed the maximum legal occupancy rates of the facility. (Currently 1,471 persons.)

2.6 PFM shall remain in complete control of Box Office facilities, equipment and personnel at all times. Access to the Box Office is restricted to PFM employees.

2.7 All gross ticket receipts shall remain under the control of the PFM Box Office until the final settlement is made, which will be within five working days of the last scheduled performance listed in this Agreement. All such monies shall be the rightful property of PFM for the purpose of applying said funds in accordance with this Agreement.

2.8 All tickets or any other admission documents will be produced by the PFM Box Office exclusively. TENANT agrees not to produce, purchase, distribute or issue any ticket or other admission documents of any type whatsoever, including, but not limited to, tickets, passes, backstage passes, parking permits, or complimentary admissions, without express, written permission of PFM.

2.9 TENANT complimentary tickets shall be counted for ticket printing charges and depreciation surcharges.

2.10 Ticket stock and printing shall be arranged by the PFM Box Office.

2.11 PFM reserves the right to have and use, without charge, a minimum of twenty (20) reserved seats, located in the orchestra seating section.

2.12 PFM retains the right to make determination of ticket refunds for cause, in keeping with PFM's policy of retaining public faith. This shall include, but not be limited to, seats blocked by equipment, failure of EVENT to occur within a reasonable time, cancellation or rescheduling of EVENT.

3. EVENT SERVICES, FACILITIES AND EQUIPMENT

3.1 PFM agrees to furnish, at no additional charge to TENANT, general lighting from permanent fixtures, existing outlets and equipment in the facilities specified, such as air conditioning, electrical and water for normal use. Failure to furnish any of the preceding, resulting from circumstances beyond the control of PFM shall not be considered a breach of contract.

3.2 TENANT must arrange a production meeting with PFM staff no later than fourteen (14) calendar days prior to EVENT to finalize all facility, equipment and labor requirements. No other services or equipment will be available other than discussed at this meeting. Failure to arrange this meeting will limit available services and equipment to those provided in this Agreement.

3.3 For all programs lasting one hour or more (except for religious services), an intermission of not less than 15 minutes must be held, subject to modification by PFM when necessary to meet unusual conditions. PFM's House Manager will determine the time for opening the theatre doors prior to EVENT. (Generally forty-five minutes prior to the posted or scheduled beginning of EVENT.)

3.4 PFM and its officers, agents and employees engaged in the operation and maintenance of the Coral Springs Center for the Arts reserve the right to enter upon and have free access to said premises at all times.

3.5 PFM reserves the right to cancel, interrupt or terminate EVENT in the interest of public safety if, in the sole judgement of PFM, such interruption or termination is warranted. PFM reserves the right to cancel EVENT if circumstances beyond the control of PFM make such action necessary, by providing written notice to TENANT prior to event.

3.6 In the event that TENANT cancels EVENT for any reason, PFM will charge TENANT for costs incurred by and related to the cancellation.

4. CONCESSIONS

4.1 PFM specifically reserves any and all concessions and catering services including, without limitation, food, beverages (including alcohol), confections, candies, ice cream, CD's, tapes, programs, T-shirts and other merchandise.

4.2 With express, written permission, TENANT may contract with an outside vendor for furnishing merchandise. PFM shall receive 35% of gross receipts after sales tax, which will include all monies paid or payable. Cash shortages, bad debts, other taxes of any kind except sales and use, returned checks and charges from returned checks are not to be deducted from gross receipts.

4.3 Settlement of concessions or novelty sales will be made within two hours of the end of EVENT. For multiple performance events, daily settlement sheets will be provided with final settlement and payment of monies due after the last performance of EVENT.

5. DAMAGE

5.1 TENANT agrees to assume full responsibility for and to pay all costs associated with repair and replacement of equipment or facilities damaged during EVENT, regardless of nature or cause. Estimated damage restitution may be deducted from settlement at the discretion of PFM.

5.2 TENANT may request a pre-event inspection of premises to assess the condition of equipment and facilities. If such an inspection is not requested, TENANT agrees to accept PFM's damage assessment.

6. INSURANCE

6.1 TENANT shall furnish PFM with a certificate of insurance showing that there is in effect and will remain in effect throughout the term of this contract, occurrence basis liability insurance naming both the **City of Coral Springs and PFM** as insured, with a combined single limit of not less than \$1,000,000 for Bodily Injury and Property Damage. TENANT shall supply the required certificate no later than ten (10) days prior to EVENT and it must contain the following wording: *"The coverage indicated as in effect through this certificate of insurance fully satisfies all requirements established in paragraph 6 of the Professional Facilities Management contract."*

6.2 TENANT shall pay and hold PFM harmless from any and all damages, losses or liabilities arising from any act, omission, neglect, or wrongdoing of the TENANT or any of its officers, agents, representatives, employees, guests, invitees, patrons or persons contracting with the TENANT. Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

6.3 PUBLIC RECORDS

6.4 Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to SBBC all public records in that party's possession upon termination of its contract with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law.

7. MISCELLANEOUS

7.1 Advertising -- TENANT will allow PFM Marketing staff to review and approve all materials prior to being distributed, printed, published or broadcast. All advertising for EVENT must include: the complete name and address (Coral Springs Center for the Arts, 2855 Coral Springs Drive, Coral Springs, Florida, 33065), the Box Office phone number (954-344-5990), and the phrase "A PFM managed facility". TENANT will provide PFM with a public contact telephone number for questions concerning EVENT.

7.2 Marquee -- PFM Management reserves the right to determine what may or may not be posted on the exterior marquee located on Coral Springs Drive. There is no implied agreement to announce EVENT or other information. Requests for use of the marquee are subject to a user fee defined in the Center for the Arts Fees and Charges.

7.3 Announcements -- PFM reserves the right to request announcements during intermission which would relate briefly to future attractions. PFM is also entitled to make such announcements, as it may deem necessary at any time in the interest of the safety and comfort of patrons or guests.

7.4 Assignment of Rights -- TENANT shall not assign this Agreement or any rights hereunder nor sublet said premises without the written consent of PFM.

7.5 Broadcast Rights -- PFM reserves all radio and television broadcast rights, with no exceptions unless specified in writing.

7.6 Copyrights -- TENANT will assume all cost arising from the use of patented, trademarked, franchised or copyrighted music, materials, devices, processes or dramatic rights or intellectual properties used on or incorporated in EVENT. TENANT agrees to indemnify, defend and hold harmless PFM from any claims or costs, including legal fees, which might arise from question of use of any such material described above.

7.7 Removal of Property -- If premises are not vacated by TENANT upon the time specified in this Agreement, then PFM is authorized to remove from the facility, at the expense of the TENANT, all goods, wares, merchandise, equipment, materials and other property of any kind placed by the TENANT. PFM will not be liable for any damages or loss relating to removal of such property.

7.8 Compliance -- TENANT shall use and occupy premises in a safe and careful manner and shall comply with all laws, rules, regulations, codes and ordinances of the City of Coral Springs, the State of Florida, the United States and the board of PFM. Premises shall not be used for any unlawful or immoral purpose or in any manner, which causes damage to any part of the facility. TENANT agrees to provide, at its expense, all necessary licenses and permits required in accordance with law for use of the premises.

7.9 Unavoidable Happening -- In the event that the premises are damaged or destroyed by fire or other cause, without fault of the TENANT, so as to prevent use of the licensed facilities for the purpose and during the time of EVENT, this agreement shall terminate. In such an event, PFM shall be paid for all services rendered prior to such destruction or damage.

7.10 Management Discretion -- Any decision affecting any matter not herein expressly provided for shall rest solely within the discretion of PFM's management.

7.11 Objectionable Persons -- PFM reserves the right to eject or cause to be ejected from the premises any person or persons committing objectionable acts, and neither PFM nor any of its officers, agents or employees shall be liable to the TENANT for any damages resulting from the exercise of PFM's right.

7.12 Civil Rights -- The TENANT agrees not to discriminate against any employee or applicant for employment because of race, gender, sexual orientation, religion or nationality and further agrees to likewise not discriminate for those same reasons relative to admissions, services or privileges offered to or enjoyed by the general public.

The parties shall not discriminate against any employee or participant in this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

7.13 When any of the parties desires to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of the paragraph. For the present, the parties designate the following as the respective places for giving notice:

To School Board: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Ft. Lauderdale, FL 33301

With a copy: Director, Facility Planning and
Real Estate Department
The School Board of Broward County, Florida
600 Southeast Third Avenue, 8th Floor
Ft. Lauderdale, FL 33301

To Licensor: Professional Facilities Management
2855 Coral Springs Drive
Coral Springs, FL 33065

8. ENTIRE AGREEMENT

8.1 This Agreement, including any addendum attached or referred to, contains the entire understanding of the parties and there are no other agreements or understandings, written or oral, with respect to this license agreement and this agreement may not be changed or altered, except in writing and signed by both parties. This Agreement shall be understood to contain the Center for the Arts Technical Rider, Box Office Policies and Schedule of Fees and Charges.

In Witness Whereof, the parties have executed this instrument or caused it to be executed by their representative duly authorized as of the date first mentioned.

For the Owner

CORAL SPRINGS CENTER FOR THE ARTS

By: [Signature]

Date: 6/14/16

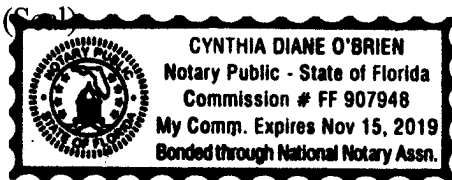
[Signature]
Witness

[Signature]
Witness

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 14 day of June, 2016
by Kevin Barrett. He/She took an oath and is personally known to me or has
produced _____ as identification.

My commission expires: 05/15/2019



[Signature]
Signature - Notary Public

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By Rosalind Osgood
DR. ROSALIND OSGOOD, Chair

Date: 8/10/10

ATTEST:

Robert W. Runcie
Robert W. Runcie, Superintendent of Schools

Date: 8/10/10

Approved as to Form and Legal Content:

Kathelyn Jacques-Adams

Digitally signed by Kathelyn Jacques-Adams
DN: cn=Kathelyn Jacques-Adams, o=The School
District of Broward County, Florida, ou=The Office
of the General Counsel, email=kathelyn.jacques-
adams@browardschools.com, c=US
Date: 2016.07.08 13:13:41 -04'00'

Office of the General Counsel

Date: _____

**FIRST AMENDMENT TO
CONTRACT**

10th THIS FIRST AMENDMENT TO CONTRACT is made and entered into as of this
day of August, 2016 by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as "TENANT"),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

Professional Facilities Management, Inc.
(hereinafter referred to as "PFM"),
having its principal place of business at
220 Weybosset Street
Providence, Rhode Island 02903

WHEREAS, TENANT and PFM entered into a Contract dated _____, 20____
(hereafter "Contract") for the exclusive purpose of Broward All County Concerts in 2016
(hereinafter referred to as "EVENT"); and

WHEREAS, the parties mutually desire to amend certain provisions of that Contract.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants
contained herein and the sum of Ten Dollars (\$10.00) and other good and valuable consideration,
the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1.01 **Recitals.** The Parties agree that the foregoing recitals are true and correct
and that such recitals are incorporated herein by reference.

1.02 **Amended Provisions.** The parties hereby agree to the following added and
amended provisions to the Contract:

*Paragraph 5 in the Contract shall be stricken and replaced with the following provision
below:*

5. **DAMAGE AND LIABILITY**

5.1 This section shall survive the termination of all performance or obligations under
this Contract and shall be fully binding until such time as any proceeding brought
on account of this Contract is barred by any applicable statute of limitations.

A. By TENANT: TENANT agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

B. By PFM: PFM agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by PFM, its agents, servants or employees; the equipment of PFM, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of PFM or the negligence of PFM's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by PFM, SBBC or otherwise.

Paragraph 6.2 in the Contract shall be stricken.

Paragraph 7.12 in the Contract shall be stricken and replaced with the following provision below.

7.12 The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Contract.

The following Paragraphs shall be added to Paragraph 7:

7.14 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Contract and shall be fully binding until such time as any proceeding brought on account of this Contract is barred by any applicable statute of limitations.

7.15 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Contract. None of the parties intend to directly or substantially benefit a third party by this Contract. The parties agree that there are no third party beneficiaries to this Contract and that no third party shall be entitled to assert a claim against any of the parties based upon this Contract. Nothing

herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

- 7.16 **Independent Contractor.** The parties to this Contract shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to TENANT retirement, leave benefits or any other benefits of TENANT employees shall exist as a result of the performance of any duties or responsibilities under this Contract. TENANT shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.
- 7.17 **Excess Funds.** Any party receiving funds paid by TENANT under this Contract agrees to promptly notify SBBC of any funds erroneously received from TENANT upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by TENANT.
- 7.18 **Excess Funds.** Any party receiving funds paid by SBBC under this Contract agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.
- 7.19 **Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Contract.
- 7.20 **Place of Performance.** All obligations of SBBC under the terms of this Contract are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.
- 7.21 **Governing Law and Venue.** This Contract shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Contract and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.
- 7.22 **Binding Effect.** This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

- 7.23 **Incorporation by Reference.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Contract by reference.
- 7.24 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Contract are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Contract, nor in any way effect this Contract and shall not be construed to create a conflict with the provisions of this Contract.
- 7.25 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Contract is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Contract and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.
- 7.26 **Preparation of Contract.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Contract has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 7.27 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Contract and executed by each party hereto.
- 7.28 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Contract and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.
- 7.29 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Contract if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

- 7.30 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Contract.
- 7.31 **Contract Administration:** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Contract.
- 7.32 **Authority.** Each person signing this Contract on behalf of either party individually warrants that he or she has full legal power to execute this Contract 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 Contract.

The following sentence shall be added to paragraph 7.6 of the Contract:

- 7.6 Notwithstanding the prior sentence, such costs and indemnification shall be up to the limits of Section 762.28, Florida Statutes.

The following sentence shall be added to paragraph 7.7 of the Contract:

- 7.7 Additionally, in such event, the TENANT shall be entitled to reimbursement of its deposit, all-inclusive fee and any other fees.

1.03 **Order of Precedence Among Contract Documents.** In the event of conflict between the provisions of the Contract and the provisions contained herein, the provisions of the following documents shall take precedence in this order:

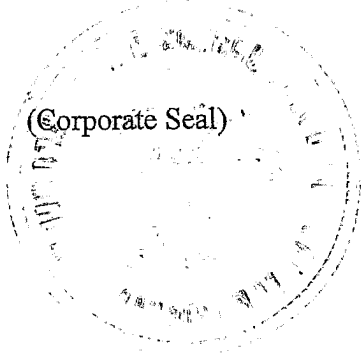
- a) this First Amendment to Contract; and
- b) the Contract.

1.04 **Other Provisions Remain in Force.** Except as expressly provided herein, all other portions of the Contract remain in full force and effect.

1.05 **Authority.** Each person signing this First Amendment to Contract on behalf of either party individually warrants that he or she has full legal power to execute this First Amendment to Contract 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 First Amendment to Contract.

IN WITNESS WHEREOF, the Parties hereto have made and executed this First Amendment to Contract between Professional Facilities Management, Inc. and the School Board of Broward County, Florida for the exclusive purpose of Broward All County Concerts in 2017 on the date first above written.

FOR SBBC



THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By Rosalind Osgood
DR. ROSALIND OSGOOD, Chair

Date: 8/10/14

ATTEST:

Robert W. Runcie
Robert W. Runcie, Superintendent of Schools

Date: 8/10/14

Approved as to Form and Legal Content:

By Kathelyn Jacques-Adams
Office of the General Counsel

Digitally signed by Kathelyn Jacques-Adams
DN: cn=Kathelyn Jacques-Adams, o=The School
District of Broward County, Florida, ou=The Office
of the General Counsel, email=kathelyn.jacques-
adams@browardschools.com, c=US
Date: 2016.07.08 13:14:10 -04'00'

Date: _____

[THIS SPACE INTENTIONALLY LEFT BLANK]

FOR PFM

(Corporate Seal)

PROFESSIONAL FACILITIES
MANAGEMENT, INC.

ATTEST:

By [Signature]
Signature

_____, Secretary

Printed Name: Kevin Barrett

-or-

Title: GM

Susan Forester
Witness

Beverly Shaw
Witness

STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me this 14 day of June, 2016 by Kevin Barrett of

PFM-CSCA on behalf of the corporation/agency. (H) He/She is personally known to me or produced _____ as identification and did/did not first take an oath. _____
Type of Identification

My Commission Expires: 05/15/2019

[Signature]
Signature -- Notary Public

Cynthia Diane O'Brien
Printed Name of Notary

FF907948
Notary's Commission No.

