

ATTACHMENT B

AGREEMENT FOR ARCHITECTURAL SERVICES

THIS AGREEMENT, the effective date of which is _____, by and between Dr. P. Phillips Performing Arts Center Corporation, located at 455 South Orange Avenue, 4th floor, Orlando, Florida 32801 (hereinafter referred to as "Owner") and _____ (hereinafter referred to as "Architect") for design and consulting services ("Services") as follows:

I. DESCRIPTION OF PROJECT

The Owner proposes to construct on certain real property located in _____ a _____ containing approximately _____ gross square feet of _____ space with _____ parking for approximately _____ cars ("Project") which is more particularly described in Exhibit A attached hereto. This Agreement is intended to provide for consulting Services for the Project and to define and describe the working relationship between the Owner and the Architect. The Owner has retained _____ to act as its Development Manager for the Project.

II. SCOPE AND DESCRIPTION OF SERVICES

A. BASIC SERVICES

1. Design Services

The Architect will participate with and assist the Owner and Development Manager, as required, in developing and refining the general Project concept for the Project described in Exhibit A. The Architect will develop a detailed program for the Project based on in-depth interviews with the Owner and other parties designated by the Owner. The Project program shall set forth the Owner's design objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, special systems and equipment, site requirements and other Owner requirements. The Architect shall review with the Owner and Development Manager, as requested, alternative approaches to design and construction of the Project and will prepare such schematic or conceptual drawings as may be required. After the Owner has approved the general Project concept and Project program, the Architect shall prepare, for review and approval by the Owner, design development drawings and outline specifications adequate for obtaining preliminary cost and price estimates, and a set of construction drawings and specifications, which are adequate for complete pricing and construction of the Project as designed ("Contract Documents"). Upon completion of the construction drawings and specifications, and prior to submitting such documents to the Owner for issuance to contractors for prices and construction, the Architect shall check each such final construction drawing and specification with all

other drawings and specifications for completeness and for freedom from conflicts, errors, omissions and ambiguities. The Architect shall assist the Owner, and prepare documentation as may be required, in obtaining approval of governmental authorities having jurisdiction over the Project. The Architect represents and agrees that the Contract Documents shall conform with applicable restrictions, laws, codes, and regulations in effect throughout the period that the Architect is performing services under this Agreement. The Contract Documents shall consist of all necessary drawings, details, plans, elevations, sections, and schedules, dimensioned, noted, and coordinated, as well as specifications, and the Architect shall seal and sign the drawings as the architect of record. The Architect shall assist the Owner and Development Manager in the preparation of any necessary bidding information, and any forms of agreement between the general contractor and the subcontractors for the Project. At the Owner's direction, the Architect shall prepare detailed area calculations in a form acceptable to Owner.

2. Construction Services

(a) *Consultation and Site Visits.* During construction of the Project, the Architect shall advise and consult with the Owner and Development Manager, as required. The Architect shall participate in construction conferences as required by Owner and Development Manager and shall visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the construction of the Project ("Work") and to determine in general if the Work is proceeding in accordance with the Contract Documents.

(b) *RFI's.* The Architect shall review and respond to Contractor's requests for information (RFI's) in regards to questions the Contractor or its subcontractors have about the Contract Documents. The Architect shall adhere to the Owner's policies and procedures concerning RFI's.

(c) *Observations.* The Architect shall make on-site observations to check the quality of the Work and observe tests required by the Contract Documents and authorities having jurisdiction over the Project. On the basis of such on-site observations, the Architect shall keep the Owner and Development Manager informed of the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor. A written report of each on-site observation will be promptly provided to the Owner, Development Manager and also to the contractor constructing the Work ("Contractor") when requested by the Owner or Development Manager. However, the Architect shall not have control over or charge of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work. The Architect shall not be responsible for the Contractor's schedule or failure to carry out the Work in accordance with the Contract Documents. The Architect shall not have control over or charge of acts or omissions of the Contractor, subcontractors, or their agents or employees, or of any other persons performing portions of the Work, but Architect shall notify Owner and Development Manager

immediately upon discovering any acts or omissions by such parties that are not in conformance with the Contract Documents or which Architect believes violates any laws, rules, codes, ordinances or other regulations.

(d) *Progress Payments.* Based on the Architect's observations and evaluations of the Contractor's applications for payment, the Architect shall review and certify to the Owner, all payment requests by the Contractor and any other consultants, in the form of Application and Certificate for Payment, AIA G702. Based on such observations at the site and on the Application and Certificate for Payment, the Architect shall determine the amount owing to the Contractor and shall issue Certificates for Payment in such amounts. The issuance of a Certificate for Payment shall constitute a representation by the Architect to the Owner, based on the Architect's observations at the site as provided in this Agreement and the data comprising the Application for Payment, that the Work has progressed to the point indicated; that to the best of the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by the Contract Documents, to minor deviations from the Contract Documents, correctable prior to completion, and to any specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to payment in the amount certified.

(e) *Shop Drawing Review and Approval.* The Architect shall review and approve, or take such other action as may be appropriate, within ten (10) working days (except as otherwise provided herein) of receipt (unless this time is extended by the Owner), all shop drawings, product data and samples to ascertain whether shop drawings and similar submittals are in accordance with the requirements of the Contract Documents and are consistent with, and adequate to secure execution of, the general design of the Project. The Architect shall participate in an expedited submittal process for the MEP and building controls trades and conduct the submittal meetings associated with such expedited process.

(f) *Final Observation and Review.* The Architect shall review the Work to determine the date or dates of Substantial Completion and the date of Final Completion (as determined in the Contract Documents) and shall receive, review for compliance with the Contract Documents and forward to the Owner and Development Manager for the Owner's and Development Manager's review and records all written warranties and related documents required by the Contract Documents and assembled by the Contractor. Upon Substantial Completion (as determined in the Contract Documents), the Architect shall issue to the Owner and Development Manager a certificate of substantial completion or the equivalent thereof pursuant to a Standard AIA certificate of substantial completion or in such other form as to which the Architect, the Owner and Development Manager agree pursuant to a written agreement among them. The Architect shall prepare such punch lists and follow-up observations on the punch lists as may be required, shall conduct a final observation of the Project, and

shall, if requested by the Owner or Development Manager, prepare a final report in writing for the Owner. Upon completion of the Project, the Architect shall deliver to the Owner the "Architect's Statement" in the form attached hereto as Exhibit B and Architect shall furnish Owner with one complete set of final Contract Documents.

(g) *Tests and Studies.* The Architect and/or its Consultants shall participate in, conduct and observe such tests as authorities having jurisdiction over the Project may require, provided that Owner shall bear all lab fees and expenses associated with such tests.

(h) *Contractor's Cost Saving and Alternative Proposals.* The Architect shall review and evaluate cost saving proposals submitted by the Contractor, subcontractors and/or manufacturers and shall make such revisions to the Contract Documents as necessary to incorporate those cost saving proposals which are accepted by the Owner.

(i) *Change Orders.* The Architect shall prepare, upon request of the Owner, change orders and change order proposals, for review and approval by the Owner for execution in accordance with the Contract Documents.

3. Post-construction Services

(a) The Architect shall consult with the Owner (but excluding the preparation of new architectural drawings) as necessary throughout the first year of the warranty period established under the general contractor's contract for construction ("Warranty Period").

(b) The Architect shall coordinate with the Owner in conducting all remedial work during the Warranty Period.

(c) The Architect shall attend warranty inspections with the Owner and monitor follow-up warranty work or services by the general contractor during the Warranty Period provided, however, to the extent that such warranty inspections or follow-up work relates to services provided solely by Consultants, then Architect shall require each Consultant to perform the obligations set forth in this subparagraph 3 and will not be required to do so itself.

(d) The Architect and the Consultants shall participate in a program to critique the design and construction of the Project as reasonably requested by the Owner or Development Manager.

4. General

(a) *Lender's Certificates.* The Architect agrees to issue, upon the request of the Owner, all such certificates as may reasonably be required by any lenders in connection with the construction or permanent financing for the Project. The Architect further agrees to consent to Owner's assignment of this Agreement as

security for any construction financing for the Project, and to consent to any modifications to this Agreement which are reasonably requested by any lender, provided such modifications do not materially alter the rights and obligations of the Architect.

(b) *Other Certificates.* The Architect agrees to issue, upon the request of the Owner, all such certificates and reports regarding the design or construction of any component of the Project as may be required to satisfy the Owner's obligations to third parties and any governmental authorities having jurisdiction over the Project.

(c) *Drawings to Owner.* Architect shall distribute all revised drawings on printed sheets (not electronically) to Owner in reasonable quantities prior to each design meeting during the design phase of the Project.

B. CONSULTANTS

Subject to the terms and provisions of Article V, the Architect may retain from time to time design, structural, mechanical / electrical / plumbing, civil, acoustical, lighting, building controls, graphics, landscaping, glass and glazing, security and such other consultants (all collectively referred to hereinafter as "Consultants") as may be necessary to accomplish the design and administration of the Project.

C. ADDITIONAL SERVICES

The Architect shall provide services in addition to those required by this Agreement ("Additional Services") as the Owner may reasonably request, including any services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice. The Architect shall obtain the Owner's prior written approval before performing any Additional Services. The Architect specifically agrees to cooperate and assist the Owner in any litigation brought against or by the Owner, against any parties other than the Architect or its Consultants, including the furnishing of documentation, expert testimony and the participation in pretrial discovery. Litigation assistance services of the Architect shall be furnished and compensated as Additional Services, except insofar as the Architect is required by legal process or subpoena to appear and give testimony.

D. QUALIFICATIONS AND STAFFING

The Architect represents and acknowledges that it is knowledgeable of all codes, standards, rules and regulations applicable in the jurisdiction in which the Project is located, including, but not limited to, all health, safety, environmental, building and zoning codes, rules and regulations, and by this representation agrees to comply with these codes, standards, rules and regulations. Should the Architect fail to comply with these applicable codes, standards, rules and regulations in accordance with the standard of care as described in Section II.E below, the Architect hereby agrees to bear all additional costs incurred in

securing compliance with such codes, standards, rules or regulations. However, in paying such additional costs, the Architect shall not be responsible for any cost or expense that provides betterment, upgrade or enhancement of the Project beyond that necessary to comply with such codes, standards, rules and regulations.

The Architect represents that it is experienced and fully qualified to perform the Services contemplated by this Agreement, and that it is properly licensed pursuant to applicable law to perform such Services.

All staff used by the Architect in the performance of the Services shall be qualified by training and experience to perform their assigned tasks. The Architect shall submit, for the Owner's approval, a team or staffing proposal for the Project, complete with job description, names and previous experience of all design personnel. The Architect has designated the Principal, Project Architect, and Job Captain for the Project as stated in Exhibit C. The Principal, Project Architect, and Job Captain will not be reassigned without the Owner's approval and the Owner shall have the right to approve their successors. If, for the benefit of the Project, the Owner believes a change in the Architect's personnel assigned to the Project to be necessary, the Architect shall assign other employees acceptable to the Owner.

E. PERFORMANCE OF SERVICES

The Architect agrees that the Services rendered with respect to this Project will be in conformity with the standard of care and skill employed by the members of its profession for projects of similar design and complexity. The Architect and Owner agree that the foregoing standard of care shall govern all Services to be provided by the Architect under this Agreement. Upon completion of the Project in accordance with the plans and specifications, the Architect agrees that the Project will be suitable for its intended purpose, as documented in the Project program, and subsequent directives, if any, from the Owner. The Architect accepts the relationship of trust and confidence established between it and the Owner by this Agreement. Architect agrees with the Owner to use its best efforts, skill, judgment, and abilities to assist and work with the Owner and Development Manager to design the Project, to produce the necessary Contract Documents, and to further the interests of the Owner in accordance with the Owner's requirements and procedures, each in accordance with professional standards applicable to the Architect and in compliance with all applicable restrictions, laws, codes, and regulations in effect throughout the period that the Architect is performing services under this Agreement. This Agreement represents the entire and integrated Agreement between the Architect and the Owner with respect to the Architect's Services, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Architect and Owner. It is binding upon the parties, their successors and assigns.

F. TIME OF PERFORMANCE

The Architect shall submit a schedule or schedules for performance of the professional Services herein, and upon approval by the Owner, these schedules shall establish the times for performance of the Architect's Basic Services. These times of performance of the Architect's Basic Services shall be extended due to delays caused by the Owner. The Owner may suspend the Architect's Services under this Agreement upon written notice to the Architect and the Architect agrees to resume Architect's Services in accordance with the terms of this Agreement upon receipt of Owner's notice to resume; provided however, that if any such suspension shall exceed one hundred twenty (120) consecutive days, the Owner shall pay to the Architect reasonable compensation for the Architect's actual, increased costs as a result of such suspension.

G. AUTHORITY

Architect shall have the authority to act on behalf of Owner only to the extent provided in this Agreement unless otherwise modified by a subsequent written instrument. Under no circumstances shall Architect contract, negotiate or make commitments with any governmental authorities with respect to the Project without the prior written consent of the Owner. Architect shall not order any corrective work to the Project without the Owner's prior written approval.

III. COMPENSATION

A. BASIC SERVICES

The Architect shall receive as compensation for all Basic Services described in Section II, the fixed price sum of _____ Dollars (\$ _____), payable in response to monthly invoices based upon the amount of Basic Services and Additional Services actually performed and Reimbursable Expenses (as defined in III C of this Agreement) actually incurred during each phase of the Architect's work and in accordance with the following percentages:

up to _____% of the total fixed price amount (excluding Reimbursable Expenses and Additional Services) shall be paid based upon the services performed during the Design phase;

up to _____% of the total fixed price amount (excluding Reimbursable Expenses and Additional Services) shall be paid based upon the services performed during the Construction phase.

The Architect recognizes that the completion of the Design Services through the commencement of construction as set forth in Section II A 1 of this Agreement normally entails reasonable changes in the Contract Document drawings and/or specifications commensurate with the size and complexity of this Project, and that such reasonable

changes or additions to the drawings and/or specifications are likely to occur during the course of construction services as set forth in Section II A 2. The Architect therefore represents that its firm fixed price for Basic Services includes such reasonable changes or additions to such drawings and specifications during the course of both design and construction, and that such changes or additions shall entitle them to no additional compensation pursuant to subsection B of this Section III.

B. ADDITIONAL SERVICES

The Architect shall receive compensation for Additional Services, if any, at a fixed hourly rate for the Architect's personnel plus agreed expenses incurred specifically as a result of such Additional Services. For purposes of computing these rates, the hourly rates for all employees' time shall be computed at a multiple of ____ times the Architect's Direct Personnel Expense. Direct Personnel Expense is defined as the direct salaries of all the Architect's personnel engaged on the Project, and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

If the Owner or Development Manager requests, the Architect shall, prior to engaging in any Additional Services, submit a proposal in a form acceptable to the Owner for performance of such specific Additional Services on a lump-sum, fixed-price basis. When the Architect and Owner agree to such proposal, then such Additional Services shall be performed on a fixed-price basis under this paragraph, notwithstanding any other provisions of this Section III.

In connection with invoices for such Additional Services, which are furnished on an hourly rate plus agreed expense basis, the Architect agrees to keep, on the basis of generally accepted accounting principles, financial records which shall be made available for review by the Owner and Development Manager within ten (10) working days of the receipt of a written request from the Owner or Development Manager.

C. REIMBURSABLE EXPENSES

Reimbursable Expenses are in addition to the compensation for Basic and Additional Services and include actual expenditures with appropriate back-up documentation made by the Architect and the Architect's employees and Consultants in the interest of the Project for the expenses listed in the following subparagraphs:

1. Expense of transportation in connection with the Project outside a fifty mile radius of the Architect's office; reasonable living expenses (exclusive of entertainment) in connection with out-of-town travel previously approved by Owner, and long distance communications.

2. Expense of reproductions, postage, express delivery and handling of drawings, specifications, and other documents, excluding reproductions made in-house for the office use of the Architect.

3. Expense of data processing and photographic production techniques when used in connection with Additional Services.

4. If authorized in advance by the Owner, expense of overtime work for Additional Services or Owner's request to accelerate the schedule requiring higher than regular rates.

5. Expense of renderings, models and mock-ups requested by the Owner, other than study models and graphic representations necessary for Architect to design the Project and to present the design to Owner.

Architect agrees that there will be no markup or other fee added to any Reimbursable Expense, and all Reimbursable Expenses shall be documented to the reasonable satisfaction of the Owner.

D. PAYMENTS

The Architect shall submit to the Owner and the Development Manager on or before the ____ day of each calendar month a detailed monthly invoice in such form and supported by such documents as the Owner and the Development Manager may reasonably require. After timely receipt and approval by the Owner and the Development Manager of the Architect's request for payment as herein required, the Owner will make payment to the Architect by the ____ day of the following calendar month.

IV. OWNER'S AND DEVELOPMENT MANAGER'S PARTICIPATION

The Architect understands and agrees that the Owner and Development Manager will, through their designated representative or representatives, actively participate both in the evolution of the design for the Project, in interaction and consultation with other Consultants and in construction administration of the Project. The Architect expressly acknowledges that it is an independent contractor, that it is not the representative or agent of the Owner, and that the Owner's and Development Manager's participation, through their representatives shall in no way relieve the Architect of its professional duties and responsibilities under applicable law and this Agreement.

The Owner and Development Manager will assist the Architect in developing the Project concept and the Project program.

The Owner will designate, when necessary, a representative authorized to act on the Owner's behalf with respect to the Project. The Owner, or such representative as may be authorized, shall examine the documents submitted by the Architect and will render decisions pertaining thereto as promptly as reasonably possible to avoid unreasonable delay in the progress of the Architect's services. The Development Manager will designate, when necessary, a representative authorized to act on the Development Manager's behalf with respect to the Project.

The Owner will furnish a legal description and a certified land survey of the site, as may be needed, and available information concerning the location of service and utility lines, above and below grade.

V. CONSULTANTS

A. SELECTION AND RETENTION OF CONSULTANT

Prior to the award of any Consultant subcontract, the Architect shall consult with the Owner and Development Manager and shall submit the name of the proposed Consultant and proposed subcontract form to the Owner and Development Manager for review. The Owner reserves the right to disapprove any proposed Consultant for any reason. Copies of executed Consultant subcontracts shall be provided to Owner and Development Manager.

The Architect shall bind each and every Consultant to the terms stated herein and shall require that all persons rendering Services under this Agreement are properly licensed to provide such Services in the locale in which the Project is located.

The Architect hereby agrees to include a provision in all subcontracts issued for Services hereunder allowing the Architect to assign said subcontract to the Owner or Owner's designee without the Consultant's consent. The Architect shall require all Consultants to include a similar assignment provision in each and every subcontract Consultant issues for Services hereunder.

The Architect hereby affirms that it will be fully responsible for the willful misconduct or negligent acts, errors and omissions of its Consultants and shall fully indemnify, defend, and save harmless the Owner, Development Manager, their shareholders, directors, officers, agents, employees, and assigns from any and all claims, liabilities, suits, damages and losses which arise on account of services rendered by the Architect's Consultants.

The Architect shall coordinate its Services with the Work of Contractor and of all other consultants and with the Owner and Development Manager.

B. COMPENSATION OF CONSULTANTS

The Architect shall be responsible for and shall include in its fixed price for professional services to be performed under this Agreement, the cost of the services of all Consultants retained by the Architect with the approval of the Owner as may be necessary to accomplish the design and construction services herein, except that compensation for the services to be provided by the following Consultants shall not be included in the fee charged for professional services by the Architect under Section III, Compensation:

1. _____, the Design Architect, shall be compensated for its services herein in the sum of

_____ Dollars (\$_____), payable in response to monthly invoices, based upon the amount of services actually performed, as more specifically described in such Consultant's approved subcontract.

2. _____, the Structural Engineer, shall be compensated for its services herein in the sum of _____ Dollars (\$_____), payable in response to monthly invoices, based upon the amount of services actually performed, as more specifically described in such Consultant's approved subcontract.

3. _____, the Mechanical/Electrical/Plumbing Consultant, shall be compensated for its services herein in the sum of _____ Dollars (\$_____), payable in response to monthly invoices, based upon the amount of services actually performed, as more specifically described in such Consultant's approved subcontract.

4. _____, the Civil Engineer, shall be compensated for its services herein in the sum of _____ Dollars (\$_____), payable in response to monthly invoices, based upon the amount of services actually performed, as more specifically described in such Consultant's approved subcontract.

5. _____, the Interiors Architect, shall be compensated for its services herein in the sum of _____ Dollars (\$_____), payable in response to monthly invoices, based upon the amount of services actually performed, as more specifically described in such Consultant's approved subcontract.

6. _____, the Lighting Consultant, shall be compensated for its services herein in the sum of _____ Dollars (\$_____), payable in response to monthly invoices, based upon the amount of services actually performed, as more specifically described in such Consultant's approved subcontract.

7. _____, the Building Controls Consultant, shall be compensated for its services herein in the sum of _____ Dollars (\$_____), payable in response to monthly invoices, based upon the amount of services actually performed, as more

specifically described in such Consultant's approved subcontract.

8. _____, the Graphics and Way-finding Consultant, shall be compensated for its services herein in the sum of _____ Dollars (\$_____), payable in response to monthly invoices, based upon the amount of services actually performed, as more specifically described in such Consultant's approved subcontract.

9. _____, the Glass and Glazing Consultant, shall be compensated for its services herein in the sum of _____ Dollars (\$_____), payable in response to monthly invoices, based upon the amount of services actually performed, as more specifically described in such Consultant's approved subcontract.

10. _____, the Landscaping Consultant, shall be compensated for its services herein in the sum of _____ Dollars (\$_____), payable in response to monthly invoices, based upon the amount of services actually performed, as more specifically described in such Consultant's approved subcontract.

11. _____, the Security Consultant, shall be compensated for its services herein in the sum of _____ Dollars (\$_____), payable in response to monthly invoices, based upon the amount of services actually performed, as more specifically described in such Consultant's approved subcontract.

12. _____, the Elevator Consultant, shall be compensated for its services herein in the sum of _____ Dollars (\$_____), payable in response to monthly invoices, based upon the amount of services actually performed, as more specifically described in such Consultant's approved subcontract.

13. _____, the Parking Consultant, shall be compensated for its services herein in the sum of _____ Dollars (\$_____), payable in response to monthly invoices, based upon the amount of services actually performed, as more specifically described in such Consultant's approved subcontract.

14. _____, the Telecommunications Consultant, shall be compensated for its services

herein in the sum of _____ Dollars (\$_____), payable in response to monthly invoices, based upon the amount of services actually performed, as more specifically described in such Consultant's approved subcontract.

15. _____, the Curtain Wall Consultant, shall be compensated for its services herein in the sum of _____ Dollars (\$_____), payable in response to monthly invoices, based upon the amount of services actually performed, as more specifically described in such Consultant's approved subcontract.

16. _____, the Building Acoustics Consultant, shall be compensated for its services herein in the sum of _____ Dollars (\$_____), payable in response to monthly invoices, based upon the amount of services actually performed, as more specifically described in such Consultant's approved subcontract.

17. _____, the Window Washing and Building Maintenance Consultant, shall be compensated for its services herein in the sum of _____ Dollars (\$_____), payable in response to monthly invoices, based upon the amount of services actually performed, as more specifically described in such Consultant's approved subcontract.

18. _____, the Code Consultant, shall be compensated for its services herein in the sum of _____ Dollars (\$_____), payable in response to monthly invoices, based upon the amount of services actually performed, as more specifically described in such Consultant's approved subcontract.

19. _____, the Geotechnical Engineer, shall be compensated for its services herein in the sum of _____ Dollars (\$_____), payable in response to monthly invoices, based upon the amount of services actually performed, as more specifically described in such Consultant's approved subcontract.

20. Other Consultants, as Consultant, Architect and Owner shall reasonably agree, shall be compensated for their services in accordance with the terms of agreements approved by Owner pursuant to Section V. A.

Compensation for the professional services (including compensation for Additional Services and Reimbursable Expenses) rendered by each of the Consultants set forth in paragraphs 1 through 20 above shall be paid directly to each Consultant by the Owner in accordance with the invoicing and support documentation requirements and timeframes of Section III.D above relating to payments to the Architect and following approval by the Architect of such Consultant's request for payment. The Architect shall have no responsibility with respect to payment for such services.

VI. COPYRIGHT ASSIGNMENT AND OWNERSHIP OF DOCUMENTS

The parties acknowledge and agree that Architect shall retain ownership of the copyright in and to all preexisting materials, proprietary methodologies and other creative tangible forms of expression created or owned by Architect prior to commencement of the Project and used in connection with the Project and/or incorporated into the products of service ("Preexisting Materials").

Architect hereby acknowledges and confirms the intention of Architect to convey all right, title and interest it may have in and to all drawings, specifications, models, renderings and work product, excluding the Preexisting Materials, prepared in connection with the Project ("Products of Service"), including, without limitation, the copyrights and any copyright registrations issued therefore, to Owner. Architect does hereby sell, assign and transfer to Owner, its successors, assigns and legal representatives, for the United States of America and throughout the world, all right, title and interest it may have in and to the Products of Service, including the copyrights and any copyright registrations issued therefore, the rights to prepare derivative works, the right to apply for copyright registration and future renewals or extensions of copyright terms, and the right to sue for copyright infringement, whether occurring in the past, present or future. Architect hereby grants to Owner and to any independent contractor(s) retained by Owner a perpetual, royalty-free, non-exclusive and non-transferable right and license to use the Preexisting Materials as part of or in connection with the Work.

At the request of Owner, Architect shall execute a separate deed of assignment in a form not inconsistent with the terms of this agreement for recording in the Copyright Office. Architect waives all right of attribution and integrity conveyed to authors pursuant to 17 U.S.C. 106A and similar foreign copyright laws regarding all uses of the Work. Architect will cause any and all Consultants or third parties retained in any manner to perform services in connection with the Project to execute an agreement containing similar provisions such that they agree to assign and assign to Owner any and all copyright rights they may have in and to the Work and comply fully with all other obligations set forth in this article.

Upon termination of this Agreement by the Owner pursuant to Section IX or, in any event upon payment by Owner to the Architect of all sums due hereunder, all drawings, specifications, models, renderings and work product prepared in connection with the Project shall become

the property of the Owner and each contract with each of the Consultants shall reflect this provision. The Architect shall deliver all such drawings, specifications, models, renderings and work product to the Owner if requested and the Architect agrees to make no further use thereof, except for Preexisting Materials, or such drawings, specifications, and products of service which are proprietary to the Architect or its Consultants or which are general in nature and in the public domain. Nevertheless, it is understood by the Owner that all such drawings, specifications, models, renderings and work product may be inappropriate for use in the construction of any other project. Therefore, the Architect shall not be responsible for the use or workability of such drawings, specifications, models, renderings and work product in connection with any project other than the project for which they were specifically prepared.

VII. INDEMNIFICATION

The Architect shall be responsible for and shall indemnify the Owner and Development Manager against any and all losses arising out of any willful misconduct or negligent acts, errors or omissions of Architect or those of its agents, employees, or Consultants, in connection with the performance of the Services under this Agreement, and will be responsible for all costs, losses, or expenses (including attorney fees) arising out of such losses.

The Architect shall indemnify and save harmless the Owner and Development Manager and all of their representatives, partners, and lenders from suits, actions, or claims and from any resulting costs, damages, expenses, or losses (including attorney fees), arising out of injuries or damage sustained by persons or property by willful misconduct or negligent acts, errors or omissions of the Architect or any Consultant or their employees, agents, or representatives. The Architect shall require each Consultant to include these same indemnification provisions in their contracts with the Architect.

The terms and provisions of this Article VII shall survive the expiration or termination of this Agreement.

VIII. INSURANCE

A. PROFESSIONAL LIABILITY INSURANCE

During the entire term that this Agreement shall remain in effect and for a period of two (2) years after final completion of the Project, the Architect, at Architect's sole cost and expense, shall obtain and maintain a policy or policies of professional liability insurance with limits of \$_____ each claim and covering the Architect's Services relating to the Project provided that such insurance can be obtained on reasonable terms. The Architect agrees to use its best efforts to obtain such insurance.

The Architect shall require that all Consultants maintain professional liability insurance in the amounts set forth below or as

otherwise agreed to by Owner and Architect and in accordance with the terms and conditions of this paragraph A, and that all Consultants comply with all other provisions of this Section VIII.

1) The Design Architect Consultant shall provide and certify to the existence of professional liability insurance in the amount of \$_____/each claim and in the aggregate.

2) The Structural Engineering Consultant shall provide and certify to the existence of professional liability insurance in the amount of \$_____/each claim and in the aggregate.

3) The Mechanical/Electrical/Plumbing Consultant shall provide and certify to the existence of professional liability insurance in the amount of \$_____/each claim and in the aggregate.

4) The Civil Engineering Consultant shall provide and certify to the existence of professional liability insurance in the amount of \$_____/each claim and in the aggregate.

5) The Interior Architect shall provide and certify to the existence of professional liability insurance in the amount of \$_____/each claim and in the aggregate.

6) The Lighting Consultant shall provide and certify to the existence of professional liability insurance in the amount of \$_____/each claim and in the aggregate.

7) The Building Controls Consultant shall provide and certify to the existence of professional liability insurance in the amount of \$_____/each claim and in the aggregate.

8) The Graphics and Way-finding Consultant shall provide and certify to the existence of professional liability insurance in the amount of \$_____/each claim and in the aggregate.

9) The Glass and Glazing Consultant shall provide and certify to the existence of professional liability insurance in the amount of \$_____/each claim and in the aggregate.

10) The Landscape Consultant shall provide and certify to the existence of professional liability insurance in the amount of \$_____/each claim and in the aggregate.

11) The Security Consultant shall provide and certify to the existence of professional liability insurance in the amount of \$_____/each claim and in the aggregate.

12) The Elevator Consultant shall provide and certify to the existence of professional liability insurance in the amount of \$_____/each claim and in the aggregate.

13) The Parking Consultant shall provide and certify to the existence of professional liability insurance in the amount of \$_____/each claim and in the aggregate.

14) The Telecommunications Consultant shall provide and certify to the existence of professional liability insurance in the amount of \$_____/each claim and in the aggregate.

15) The Curtain Wall Consultant shall provide and certify to the existence of professional liability insurance in the amount of \$_____/each claim and in the aggregate.

16) The Building Acoustics Consultant shall provide and certify to the existence of professional liability insurance in the amount of \$_____/each claim and in the aggregate.

17) The Window Washing and Building Maintenance Systems Consultant shall provide and certify to the existence of professional liability insurance in the amount of \$_____/each claim and in the aggregate.

18) The Code Consultant shall provide and certify to the existence of professional liability insurance in the amount of \$_____/each claim and in the aggregate.

19) The Geotechnical Engineer shall provide and certify to the existence of professional liability insurance in the amount of \$_____/each claim and in the aggregate.

B. WORKER'S COMPENSATION, LIABILITY AND VALUABLE PAPERS INSURANCE

During the entire term that this Agreement shall remain in effect, the Architect and the Consultants, at each's sole cost and expense, shall obtain and maintain the following insurances:

- 1) Workers Compensation insurance in amounts as required by statute.
- 2) Employers Liability insurance in an amount not less than \$1,000,000 each accident.
- 3) Commercial General Liability insurance on an occurrence basis in an amount of not less than \$2,000,000 per occurrence combined single limit for bodily injury (including death) and property

damage. Such Commercial General Liability insurance shall include, but not be limited to, the following coverages:

- Blanket contractual coverage;
 - Personal and advertising injury;
 - Independent contractors;
 - Explosion, collapse and underground hazards (x, c, u) included.
- 4) Commercial Automobile liability insurance on an occurrence basis covering all hired, owned and non-owned vehicles in an amount not less than \$1,000,000 each occurrence combined single limit for bodily injury (including death) and property damage.
- 5) Valuable Papers insurance to protect against destruction of valuable papers and records on an all-risk basis for the full replacement cost thereof.

The insurance policies required in the above sub-paragraphs 3) and 4) of this Section VIII, B. shall name the Owner and the Development Manager as additional insureds and shall be endorsed to be primary and non-contributory with any insurance otherwise carried by Owner or Development Manager. All insurance required hereunder a) shall be written with insurers authorized to do business in the state of **[Insert applicable state]** and rated A- IX by AM Best & Co.; b) shall provide to Owner and Development Manager 30 days advance written notice of reduction, cancellation or non-renewal and; c) shall waive all rights of subrogation against Owner and Development Manager.

C. CERTIFICATES OF INSURANCE

Prior to the commencement of work relative to this Agreement and upon the renewal of any of the insurance policies required hereunder, the Architect shall furnish certificates of insurance to Owner and Development Manager as evidence of the insurance and conditions required in paragraphs A. and B. of this Section VIII.

IX. TERMINATION

The Owner may, upon seven (7) days' written notice, terminate the requirement of the Architect's Services under this Agreement, in which case the Architect shall be entitled to that compensation earned under Section II of this Agreement for (i) Basic Services performed, (ii) Additional Services performed with prior approval by Owner in accordance with the schedules of fees and expenses for such Additional Services and (iii) Reimbursable Expenses incurred. Payments for such Basic Services, Additional Services and Reimbursable Expenses shall be made in accordance with the provisions of Section III.D above following the Owner's receipt of all drawings, specifications, models, renderings and all other work product pursuant to Section VI above. In the event of

such termination, Architect will not be entitled to any lost profits, damages, termination expenses, or any other compensation except as specifically provided above in this Section.

X. ASSIGNMENT

The Owner may sell, assign, hypothecate, pledge or otherwise transfer or dispose of all or a portion of the Project or its rights under this Agreement in its sole discretion, without the consent of the Architect, so long as (a) the rights and obligations of the Owner under this Agreement are assigned in connection therewith, (b) all payments due Architect under Section III have been paid current, and (c) the proposed transferee of Owner is of good reputation and has adequate financial resources. The Architect may not assign this Agreement or any of its obligations to perform under this Agreement without the express written consent of the Owner.

XI. DISPUTE RESOLUTION

In the event any disputes arise in connection with the performance of any obligation under this Agreement, the parties agree to consult and to consider the use of mediation or other form of alternative dispute resolution prior to resorting to litigation.

XII. NO WAIVER

No failure or delay of a party in the exercise of any right given to such party hereunder or by law shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other further exercise thereof or of any other right. The waiver by a party of any breach of any provision hereof shall not be deemed to be a waiver of any subsequent breach thereof or of any breach of any other provision hereof.

XIII. EXTENT OF AGREEMENT

This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may only be amended by written instrument signed by both parties hereto.

XIV. APPLICABLE LAW

This Agreement shall be construed in accordance with the laws of the State of _____.

XV. NOTICES

All notices provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested; by delivering the same in person to such party; by prepaid telegram or telex; or by

facsimile copy transmission. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to Owner, to:

If to Architect, to:

If to Development Manager, to:

Either party hereto may change its address for notice by giving three (3) days prior written notice thereof to the other party.

XVI. AUDIT

Owner reserves the right to request supporting documentation for all amounts charged to Owner. Records will be subject to audit at any time during the term of this contract and for a period not to exceed two (2) years after any amount is billed. Within thirty (30) days of receiving a request, Architect will furnish to Owner and Development Manager original invoices to support all charges and complete payroll records to support labor charges. Owner reserves the right to audit any other supporting evidence necessary to substantiate charges related to this Agreement, both direct and indirect costs, including overhead allocations as they may apply to costs associated with this Agreement. If requested by Owner or Development Manager, Architect will provide supporting records in a computer readable format as well as a hard copy.

If an audit reveals overcharges, the Architect will reimburse Owner upon demand for the cost of the audit and the amount of such overcharges plus interest thereon from the date paid by the Owner through the date of reimbursement at a rate equal to ____% above the rate announced from time to time by _____ for such period as its "Prime Rate".

XVII. ADA COMPLIANCE

The Architect agrees that the design of all improvements shall be in compliance with the current understanding and interpretation of the *Americans with Disabilities Act Guidelines*, Appendix A to the Americans with Disabilities Act of 1990, 42 U.S.C. Sections 12101 through 12213 and with adherence to any governing bodies having jurisdiction regarding access to the Project by the physically handicapped.

XVIII. CONFIDENTIALITY

Architect shall not use or disclose and shall not permit others to use or disclose Confidential Information without Owner's and Development Manager's prior written approval. Architect may disclose the Confidential Information only to those employees that have a need to know the Confidential Information for the Project and only upon the

following conditions: (1) the employees have each agreed in writing to Architect's obligations under this Article XVIII and (2) Architect has provided the original written agreement to Owner and Development Manager.

"Confidential Information" means all Owner and Development Manager knowledge, information, data, materials, and trade secrets gained, obtained, derived, produced, generated or otherwise acquired by Architect and its agents, employees, contractors and consultants with respect to the Project. "Confidential Information" shall not include any information (1) that is or becomes publicly available without a breach of this Agreement or (2) that Architect can show (by contemporaneous written records) Architect had in its possession before beginning the Project and before disclosure by Owner or Development Manager.

Architect and its employees, agents, contractors and consultants shall not make or otherwise disseminate any public announcement or press release with respect to the Project without the Owner's and Development Manager's prior written approval.

Architect agrees that the Confidential Information constitutes valuable trade secrets of Owner or Development Manager and that money damages cannot fully remedy any breach of this Article XVIII. Architect agrees that Owner or Development Manager may obtain an injunction to prevent or enjoin any breach of the obligations of this Article XVIII.

XIX. CONSULTANT'S REPRESENTATION

Consultant represents that, (i) neither Consultant nor any person or entity that directly owns 10% or greater equity interest in it nor any of its officers, directors, or managing members is a person or entity (each, a "Prohibited Person") with whom U.S. Person or entities are restricted from doing business under regulations of the office of Foreign Asset Control ("OFAC") of the Department of the U.S. Treasury (including those named on OFAC's Specifically Designated and Blocked Person List) or under Executive Order 13224 (the "Executive Order") signed on September 24, 2001, and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit Threaten to Commit, or Support Terrorism), or other governmental action, and (ii) that throughout the term of this agreement, Consultant shall comply with the Executive Order. Consultant shall require any sub-consultants retained by Consultant to comply with the requirements of this Article XIX.

A "Prohibited Person" means an entity, organization or individual that has been designated by U. S. Law or sanction regulations of OFAC as an entity, organization or individual with whom U. S. Persons may not transact business or must limit their interactions to those approved by OFAC. A "U. S. Person" is a citizen of the United States of America, an entity organized under the Laws of the United States of America, its territories or any of the several states, or any entity having its principal

place of business within the United States of America or any of its territories. “List” means any list published by OFAC (including those executive orders and lists published by OFAC with respect to Prohibited Persons), including the Specially Designated Nationals and Blocked Persons list. “OFAC” is the Office of Foreign Assets Control, U. S. Department of the Treasury. “Anti-Money Laundering Laws” are Laws and sanctions, state and federal, criminal and civil, that (1) limit the use of and/or seek the forfeiture of proceeds from illegal transactions; (2) limit commercial transactions with designated countries or individuals believed to be terrorists, narcotics dealers or otherwise engaged in activities contrary to the interests of the United States; or (3) are designed to disrupt the flow of funds to terrorist organizations. Such Laws and sanctions are deemed to include the USA PATRIOT Act of 2001, Pub. L. No. 107-56 (the “Patriot Act”), the Bank Secrecy Act, 31 U.S.C. Section 5311 et. seq., the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et. seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et. seq., and the sanction regulations promulgated by OFAC pursuant thereto, as well as Laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957.

XX. THIRD PARTY BENEFICIARY

All parties to this agreement (“Parties”) hereby acknowledge and agree that the City of Orlando, a Florida municipal corporation, herein referred to as “City” is an “intended third-party beneficiary” to this agreement, in part because without its substantial funding of the improvements which are the subject of this agreement, the scope of work contained herein would not be possible. The CITY shall have the right to enforce this contract (any such enforcement, an “Enforcement Action”) in the event of a material default, as determined by the CITY in its sole but reasonable judgment, should any of the Parties fail either to undertake a response reasonable calculated to require a defaulting party to honor in a timely manner a defaulting party’s responsibilities and obligations of this agreement, or to take such other actions necessary to insure the performance of the work specified in this contract. The Parties further agree that the CITY shall be entitled to initiate an Enforcement Action after written notice from the CITY to the Parties, listing all defaults with particularity, which must be corrected within a commercially reasonable period of time or else the CITY may commence an Enforcement Action. During the pendency of any Enforcement Action, the CITY, at its election shall be deemed to have been assigned automatically hereby, a party’s position under this contract to the extent necessary in order that the CITY may enforce all rights and seek whatever remedies against a defaulting party, as allowed to the other Parties herein and by law.

(Title), authorized to execute this
Agreement on behalf of

("Owner")

(Title), authorized to execute this
Agreement on behalf of

("Architect")

EXHIBIT A

DESCRIPTION OF PROJECT

LOCATION

BUILDING

PARKING

EXHIBIT B

**ARCHITECT'S STATEMENT
(Letterhead of Architect)**

Owner Name
Owner Address

Re: _____

Gentlemen:

The undersigned does hereby state to you as follows:

1. The undersigned is the Architect who prepared or supervised the preparation of the final plans and specifications for the "Project" described in the "Architect's Agreement" referred to above.
2. Copies of all such final plans and specifications, including all addenda thereto, have been delivered to you.
3. The Project, to the best of our knowledge, information and belief, has been constructed in accordance with the plans and specifications delivered to you and also in accordance with all applicable laws, ordinances, rules, regulations and requirements (including, without limitation, those with respect to discrimination) of all governmental authorities and in compliance with any and all covenants, conditions and restrictions affecting the real property upon which the Project has been constructed (the "Property").
4. The Project, to the best of our knowledge, information and belief, is ready for occupancy, and all certificates necessary to permit the occupancy of the Project, including certificates of occupancy, have been obtained from the appropriate governmental authorities.
5. The Project, to the best of our knowledge, information and belief, has been constructed in accordance with the plans and specifications and drawings approved by you, and complies with all applicable zoning, environmental, air quality, planning, subdivision, building, use and all similar type laws, rules, regulations and requirements imposed by all governmental authorities.
6. To the best of our knowledge, information and belief, all utility services necessary for the orderly operation of the Project in accordance with the plans, specifications and drawings approved by you are available to the Property at the boundaries thereof. All connections have been made to abutting public water, sewer, gas and electrical facilities and all fees in connection therewith have been paid.
7. To the best knowledge, information and belief of the undersigned, but without investigation, there is no action or proceeding pending before any court, agency or official with respect to the validity of any statutes, ordinances, regulations or restrictions or any permits or approvals thereunder relating to the Project.

EXHIBIT B

ARCHITECT'S STATEMENT
(Letterhead of Architect)

_____, _____
Page Two

8. The number of striped, on-site parking spaces is _____. Such total number or parking spaces complies, in all respects, with the minimum parking requirements in accordance with the actual use thereof and with the requirements of the program provided by Owner.

9. The Net Rentable Area of the Project is _____.

Very truly yours,

By: _____

EXHIBIT C

ARCHITECT'S STAFF

ATTACHMENT D**TERMS OF ARCHITECTURAL SERVICES**

The Production Architect will be the prime consultant for the Project and will contract with most other consultants on the Project Team. The Production Architect will be principally responsible for developing the design, preparing the construction documents and administering the Construction Contract for the Project. This will include without limitation, those services described in the Agreement for Architectural Services attached hereto as Attachment C and as follows:

- A. Developing and documenting a complete program for the Project with DPAC, Development Manager and the Project Team.
- B. Develop and document a complete zoning analysis and strategies for compliance.
- C. Working with the Design Architect, develop a master plan including, but not limited to: (i) building mass, (ii) existing and natural site influences, (iii) loading dock, building services and utility, (iv) landscaping and hardscaping concepts, and (v) traffic diagrams.
- D. Working with the Design Architect, develop as many design concepts and documents as necessary to address on-going value engineering, DPAC's vision, programmatic requirements and prepare presentation materials.
- E. Working with the Design Architect, develop Design Development documents, which are responsive to the DPAC's requirements.
- F. Provide monthly issue of in-progress construction documents and at other times as directed by the DPAC and/or Development Manager for their review and preliminary pricing;
- G. Issue complete and coordinated construction documents, suitable to completely construct the project(s) and for the purpose of obtaining at DPAC's election, competitive bids or negotiated contracts from various general contractors on the basis of such complete documents. Contract Documents may be issued in two or more package as follows:
 - 1) General Conditions, civil, sitework and structural engineering construction documents and associated specifications;
 - 2) All remaining construction documents and specifications;
- H. Assist in the evaluation of contractor-suggested cost savings;
- I. Revise construction documents as may be required; issue one or more addenda which shall incorporate selected equipment alternatives and any other revisions from contractor-initiated cost saving items agreed to during the bidding phase.

- J. Regularly preparing and updating area calculations showing gross, usable and rentable areas and number of parking spaces.
- K. Develop and document a complete building code analysis and strategies for compliance. The Production Architect is principally responsible for assuring the project's design is in compliance with all applicable codes, ordinances and governmental requirements and shall meet as often as is necessary with public officials and authorities having jurisdiction over the Project as is necessary to obtain the required approvals and permits. Permit documents may be issued in two or more packages.
- L. Prepare all submittals and other material necessary to receive a building permit and all other required approvals.
- M. Coordinating all design related issues and providing all design information necessary for the Design Team to execute the construction documents.
- N. Assist DPAC, the Developer Manager and Contractor during the sub-contractor bidding process, review bid requisitions for completeness and correctness, attend pre-bid conferences, answer bidder's questions, and assist in the evaluation of bids and recommendations of contract awards.
- O. Revise construction documentation in a closing addendum, which incorporates selected alternates and any other revisions from contractor-initiated cost saving items agreed to during the bidding phase.
- P. Attend pre-construction conferences after award of the sub-contracts.
- Q. Participate in and diligently support expedited shop drawing procedures and the MEP coordination process with Contractor and sub-contractors.
- R. Performing construction administration responsibilities including submittal review, job site inspections, responses to RFI's, payment request review and approval, change order request and change order documentation processing, punchlist and final completion certification and filing and assistance with obtaining final Certificate of Occupancy in accordance with the Agreement for Architectural Services attached hereto as Attachment "C."
- S. Attend Project meetings with DPAC, Development Manager, consultants and Contractor as needed. Take minutes of each meeting and distribute to Project Team of all meetings that Architect attends.
- T. Architect will provide on a monthly basis, to DPAC and Development Manager, such certifications as may be required by lenders and/or investors providing the financing for the Project. These certifications will include review of the Contractor's applications for payment, its progress against the Project Schedule, and verification that the Contractor's work has been performed in conformance to the contract documents.

ATTACHMENT E

BMA AGREEMENT FOR ARCHITECTURAL SERVICES

LETTER AGREEMENT

December 13, 2005

Mr. Barton Myers
Barton Myers Associates, Inc.
1025 Westwood Boulevard
Los Angeles, California 90024-2902

Re: Orlando Performing Arts Center
Letter Agreement

Dear Mr. Myers:

On October 24, 2005, Hines Interests Limited Partnership (“Hines”) on behalf of Orlando Performing Arts Center, Inc. (“OPAC”), solicited Design Architect proposals from architects including Barton Myers Associates, Inc. (“BMA”) for the performance of certain design services, all of which are more specifically set out in a request for proposal dated October 24, 2005 (“RFP”), which is attached hereto as Schedule I; all in respect of the proposed design and construction of a new performing arts center in the City of Orlando, Florida (“Project”).

On November 8, 2005, BMA submitted its proposal to the Owner in response to the RFP. In a meeting on November 16, 2005, BMA made a presentation to OPAC and Hines.

Subsequently, Hines on behalf of OPAC entered into negotiations with BMA. On November 30, 2005, OPAC and BMA agreed in good faith, to immediately commence with the concept design phase of the Project with the expectation of concluding the concept design phase so that the completed concept design can be presented to Orange County and City of Orlando officials for approval for funding, all generally in accordance with the terms and conditions of this Letter Agreement, the RFP, the Deal Summary (attached hereto as Attachment II) and the Agreement for Architectural Services (attached hereto as Attachment III).

OPAC and BMA acknowledge and agree that this Letter Agreement shall be in effect until such time as a production architect (“Production Architect”) has been retained by OPAC at which time BMA shall enter into an agreement with the Production Architect and this Letter Agreement shall be terminated.

BMA further acknowledges and agrees that (a) each of the undertakings and agreements herein made on the part of OPAC is made and intended not as a personal representation, undertaking or agreement but is made and intended for the purpose for binding only OPAC, (b) nothing herein contained shall be construed as creating any liability on the officers, agents or employees of OPAC or Hines, individually or personally, to perform any obligation of OPAC either expressed or implied or contained herein, all such liability

against such officers, agents and employees of OPAC and Hines, if any, being expressly waived by BMA and (c) under no circumstances shall such officers, agents and employees of OPAC or Hines be personally liable for the payment of any indebtedness or expenses of OPAC or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by OPAC under this Letter Agreement.

OPAC shall have the right to terminate this agreement with or without cause, acting in its sole and absolute discretion. If BMA is terminated, OPAC shall pay BMA for services rendered and approved reimbursable expenses through the date of termination.

If this Letter Agreement properly sets forth the current understanding between OPAC and BMA, please execute both copies of this letter in the space provided below and return one copy to my attention.

Sincerely,

Orlando Performing Arts Center, Inc.

By: _____

Name: _____

Title: _____

Agreed and Accepted this _____ day of _____, 2005

Barton Myers Associates, Inc.

By: _____

Name: _____

Title: _____

Attachments Hereto:

Schedule I: Request for Proposal

Schedule II: Deal Summary

Schedule III: Agreement for Architectural Services

Schedule I

Request for Proposal

NA

Schedule II

Deal Summary

1. BMA will be retained as the Design Architect only. Hines and OPAC will consider input from BMA regarding the selection of the Production Architect, but will make the Production Architect Selection in their sole and absolute discretion. When Hines and OPAC proceed with the selection of a Production Architect, BMA will submit a proposal as the Production Architect for the interiors of the performance halls. BMA may or may not be engaged as the Production Architect for the interiors of the performance halls at OPAC's and Hines' election. BMA will provide normal and customary and complete design services for all phases of the project including but not limited to: Project Concept, Schematic Design, Design Development, Construction Documents, Bid and Award, Construction Administration phases of the Project.
2. BMA will commit to participate in fund raising efforts together with Hines and OPAC and Barton Myers shall make himself reasonably available (with adequate advance notice) to participate in fund raising presentations and meetings in Orlando that may or may not coincide with Project meeting schedules.
3. From a contractual perspective, BMA will be a sub-consultant to the Production Architect who will be the Architect of Record. All consultants shall be selected by OPAC and Hines through whatever process OPAC and Hines deems appropriate and shall be assigned by OPAC and Hines to the Architect of Record. Hines and OPAC will consider input from BMA regarding other consultants, but will make all consultant selections in their sole and absolute discretion.
4. Regular project meetings will be held in Orlando or another location acceptable to Hines and OPAC.
5. BMA will not be the Master Planner for the Project. The Master Planner will be a qualified firm selected by OPAC and Hines. BMA will coordinate its concept design work with the Master Planner.
6. BMA agrees to the terms and conditions of the attached Agreement for Architectural Services and will execute an agreement with the Architect of Record that contains the provisions of this Agreement for Architectural Services.
7. The fee to be paid to BMA for its Basic Services as Design Architect shall be \$x as described in the attached Architect Fee Summary. This fee is a lump sum fee and is not to be adjusted based on a percentage of the construction cost of the project or any additional time required beyond the projected hours included in the BMA proposal required to complete the Basic Services. However, the fee paid to BMA for its Basic Services as Design Architect shall be adjusted in the event of a material change in the scope of the Basic Services. In addition, BMA shall be entitled to renegotiate its fee for Basic Design Services if the project is not completed six (6) years after the execution of the letter agreement.
8. BMA shall be paid \$x for the concept phase as described in the RFP ("Concept Design Fee"). Upon approval of the concept phase by OPAC and Hines and funding being officially approved by Orange County and funds being made available, BMA shall be

- paid an additional \$x for its approved concept design. Should the concept design not be approved by OPAC and Hines and funding is not officially approved by Orange County, BMA shall be paid no more than the \$x Concept Design Fee. OPAC and Hines shall not unreasonably withhold approval of the concept design.
9. BMA agrees that it will design the project starting with a “blank canvas” and without reliance on previous work effort or work product and will work and cooperate with OPAC, the Master Planner and Hines to create a new design concept that is appropriate to attain both OPAC’s and Hines’ mutual goals and objectives for the OPAC components and all commercial and civic buildings that may be integrated into the master plan.
 10. The cost of any insurance required by OPAC or Hines in an amount beyond that customarily carried by BMA shall be a reimbursable expense.
 11. Hines and BMA shall incorporate the terms of this deal summary in a subsequent letter of agreement which shall be executed by both parties prior to the commencement of design work.

Schedule III

Agreement for Architectural Services