AGREEMENT BETWEEN THE COUNTY OF SAN LUIS OBISPO AND FOUNDATION FOR THE PERFORMING ARTS CENTER

THIS AGREEMENT made and entered into on _____, 2015 by and between **San Luis Obispo County** (hereinafter referred to as the "County") and **Foundation for the Performing Arts Center** (hereinafter referred to as the "Applicant").

WITNESSETH:

WHEREAS, Applicant has applied to County for a grant of County funds for the project detailed in the scope of work ("Exhibit "A") attached hereto; and

WHEREAS, the County funds that the project is eligible for a County grant of County funds as a local community project; and

WHEREAS, the Board of Supervisors approved funding of the Applicant's **Encore Campaign** by adopting the budget on June 16, 2015.

NOW, THEREFORE, the parties agree as follows:

1. SCOPE OF SERVICES: The Applicant shall perform and complete the activities contained in the Scope of Work (Exhibit A) attached to this agreement.

2. PURPOSE: The Applicant agrees that the primary purpose of this grant is to provide funding for programs/programs that benefit the public by promoting the health and well-being of the community, encouraging behaviors and activities that focus on preventing disease, and enabling County residents to reach and maintain optimal health stability and independence.

3. TERM OF AGREEMENT: The term of this agreement shall be for 12 months, beginning **July 1, 2015 and ending June 30, 2016.** The agreement may be extended by 90 days if the Applicant and County agree in writing. The Board of Supervisors expressly grants to the County Administrator for San Luis Obispo County the authority to extend the Agreement pursuant to this Section as long as the change does not increase the maximum dollar amount of this Agreement or any other burden of the County under this Agreement.

4. GRANT: The County hereby agrees to transfer to Applicant, as a **Local Community** grant, **$250,000** to complete all tasks and activities contained in Exhibit A. Program/project funding shall not be used to supplant existing operations not related to the project but must be used to support the project as proposed in Exhibit A.

   Applicant understands and agrees that said grant is for the amount specified herein and the County has no obligation to award further, additional or ongoing grants beyond the term of this agreement.

5. REPORTING: The Applicant shall prepare and submit an annual report within sixty (60) days after the end of the grant period (see #3 - Term of Agreement), and should include the following: 1) final comparison of the approved project budget to actual expenditures, 2) actual program results reported in meaningful, measurable terms, and 3) this report shall be signed and dated by the project program manager. The Applicant shall provide at the County's request any other required or needed reports. The Applicant shall allow members of the Health and Human Services Grant Review Committee to conduct a site visit regarding the project or program.

   Should Applicant fail to expend the grant funds in the project as proposed in Exhibit A, County may, at its option, require Applicant to repay all or any portion of the funds not expended in the project or improperly expended.

6. EQUIPMENT: If the project budget for this project includes purchase of any equipment which has a useful life extending beyond the termination date of this project, the Applicant agrees that said equipment will be transferred over to County at the conclusion of this project, unless the County consents to a renewal or extension of the same or some similar project by Applicant utilizing the same equipment.

7. ADMINISTRATIVE PROVISIONS: Notwithstanding anything herein to the contrary, the Applicant is subject to the provisions of the applicable state and local laws and the Applicant's Articles of Incorporation and Bylaws.

8. ACCOUNTING: The Applicant shall comply with all applicable accounting regulations and standards.

9. AUDITS:

A. The Applicant shall maintain such records and accounts in accordance with general accounting practices. In addition, the Applicant shall maintain such records and accounts as may be required by the County. County may require Applicant, at its sole expense, to have its records and accounts audited annually by an accountant licensed by the State of California and approved in advance by said Auditor-Controller, and to present said audit to the County within thirty (30) days after the completion of the audit. County may make its own audit of Applicant's records and accounts at any time, if County so desires. Financial records should clearly demonstrate that the grant funds have been spent for the intended grant purpose within the scope of work (Exhibit A).

B. The County shall have the right through its representative, and at all reasonable times, to inspect such books and records; and Applicant hereby agrees that all such records and instruments are available to the County. All State and Federal tax returns of Applicant insofar as this Agreement is concerned shall also be made available to the County for accounting purposes if requested.

10. INDEMNIFICATION: To the fullest extent permitted by law, Applicant shall indemnify, defend, and hold harmless the County and its officers, agents, employees, and volunteers from and against all claims, demands, damages, liabilities, loss, costs, and expense (including attorney's fees and costs of litigation) of every nature arising out of or in connection with Applicant's performance or attempted performance hereunder or its failure to comply with any of its obligations contained in the Agreement, except such loss or damage which was caused by sole negligence or willful misconduct of the County.

11. INSURANCE: Applicant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Applicant, its agents, representatives, or employees.

Minimum Scope and Limit of Insurance.

Coverage shall be at least as broad as:

A. Commercial General Liability Insurance Policy ("CGL")

Insurance Services Office (ISO) Form CG 00 01 covering CGL on an

"occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than $1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

B. Business Automobile Liability Policy ("BAL")

ISO Form Number CA 0001 covering, Code 1 (any auto), or if Applicant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than $1,000,000 per accident for bodily injury and property damage.

C. Workers' Compensation And Employers' Liability Insurance Policy ("WC/EL")

Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease. If Applicant will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage shall also include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer., If applicable to Applicant's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

If the Applicant maintains higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits maintained by the Applicant.

D. Professional Liability/Errors and Omissions

Insurance covering Applicant's liability arising from or related to this Contract, with limits of not less than $1 million per claim and $2 million aggregate. Further, Applicant understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.
Other Insurance Provisions: The insurance policies are to contain, or be endorsed to contain, the following provisions:

E. Primary Coverage

For any claims related to this contract, the Applicant's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Applicant's insurance and shall not contribute with it.

F. Notice of Cancellation

Each insurance policy required above shall state that coverage shall not be canceled, except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the County.

G. Failure to Maintain Insurance

Applicant's failure to maintain or to provide acceptable evidence that it maintains the required insurance shall constitute a material breach of the Contract, upon which the County immediately may withhold payments due to Applicant, and/or suspend or terminate this Contract. The County, at its sole discretion, may obtain damages from Applicant resulting from said breach.

H. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Applicant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

I. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the County.

J. Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

2. Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract of work.*

3. If coverage is canceled or non-renewed, and not *replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, the Applicant must purchase "extended reporting" coverage for a minimum of *five (5)* years after completion of contract work.

K. Separation of Insureds

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

L. Verification of Coverage

Applicant shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Applicant's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Certificates and copies of any required endorsements shall be sent to:

San Luis Obispo County
Administrative Office
1055 Monterey Street, #D430
San Luis Obispo CA 93408
Attention: Nikki J. Schmidt, Administrative Analyst

M. Subcontractors

Applicant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

N. Special Risks or Circumstances

County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

O. Sexual Misconduct Liability

Insurance covering actual or alleged claims for sexual misconduct and/or molestation with limits of not less than $2 million per claim and $2 million aggregate, and claims for negligent employment, investigation, supervision, training or retention of, or failure to report to proper authorities, a person(s) who committed any act of abuse, molestation, harassment, mistreatment or maltreatment of a sexual nature.

12. NON-DISCRIMINATION: Applicant shall not discriminate against any person or class of persons in violation of any and all federal, state and local non-discrimination laws.

13. COMPLIANCE WITH ALL LAWS: Applicant agrees to abide by all laws and regulations applicable to the expenditure of County grant funds, including but not limited to, the audit of the expenditure of these funds for compliance with regulations and the inclusion of provisions guaranteeing compliance with all labor laws and regulations pertinent to public funds.

14. SEVERABILITY: The invalidity of any provision of the Agreement shall not affect the validity or enforceability of any other provision of the Agreement.

15. REMEDIES NOT EXCLUSIVE: The use by either party of any remedy specified herein for the enforcement of the Agreement is not exclusive and shall not deprive the party using such remedy of or limit the application of, any other remedy provided by law.

16. LAW: This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretations of any of the clauses of the Agreement shall be determined and governed by the laws of the State of California.

17. VENUE: San Luis Obispo County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

18. ENTIRE AGREEMENT AND MODIFICATIONS: This Agreement supersedes all previous Agreements and constitutes the entire understanding of the parties hereto. Applicant shall be entitled to no other benefits than those specified herein. No changes, amendments, or modifications shall be effective unless in writing and signed, in advance of the effective date of the change, amendment or modification, by both parties. Applicant specifically acknowledges that in entering into and

executing this Agreement, Applicant relies solely upon the provisions contained herein and no other Agreement or oral discussions prior to entering into this Agreement.

19. NO WAIVER: The failure to exercise any right or enforce any remedy contained in this Agreement shall not operate as or be construed to be a waiver or relinquishment of the exercise of such right or remedy, or of any right or remedy herein contained.

20. HEADINGS: The headings and other captions contained in this Agreement are for convenience only and shall not be used in interpreting, construing or enforcing of any provisions of this Agreement. This Agreement has been prepared through the efforts of all parties hereto and shall not be construed against any party as the draftsman.

21. NON-ASSIGNMENT OF AGREEMENT: This Agreement is intended to secure specialized services of Applicant and thus Applicant shall not assign, transfer, delegate or sublet this Agreement, or any interest therein, without the prior written consent of the County, and any such assignment, transfer, delegation or sublet without the County's prior written consent shall be considered null and void.

22. NOTICES: Any notices, demands or communication, under or in connection with this Agreement may be served upon County by personal service, or by mailing the same by regular mail and directed to County at:

County of San Luis Obispo
Administrative Office
1055 Monterey Street, D430
San Luis Obispo CA 93408
ATTN: Nikki J. Schmidt

and may be likewise served on Applicant at:

Foundation for the Performing Arts Center
PO Box 1137
San Luis Obispo CA 93406
ATTN: Heather Cochrane

IN WITNESS WHEREOF, the County has executed this Agreement and the Applicant has caused this Agreement to be approved by its Board of Directors and to be executed by a duly authorized office, all as of the day and year first above written.

AGREED TO ON THE DAY AND YEAR SET FORTH ABOVE.

COUNTY OF SAN LUIS OBISPO

BY: _____

AUTHORIZED BY BOARD ACTION

_____, 2015

ATTEST

By: _____
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGAL EFFECT
RITA L. NEAL
County Counsel

~~By: Rita L. Neal~~
~~Chief Deputy County Counsel~~

Date: 7/23/2015

Applicant: [signature]
By: Foundation for the PAC
Print Name: Heather Cochrane
Title: Executive Director

Applicant: [signature], Board Member
By: Foundation for the Performing Arts Center
Print Name: Riyad Naccasha
Title: Executive/Board Member