

MAXWELL C. KING CENTER FOR THE PERFORMING ARTS FACILITY USE AGREEMENT

This Agreement made and entered into on Oct. 11, 2012 with Brevard Community College, Melbourne, Florida, which owns and operates a facility also known as the Maxwell C. King Center for the Performing Arts, through the Executive Director hereinafter referred to as "KCPA and "Brevard Public Schools" hereinafter referred to as "user" in consideration of the foregoing and the covenants hereinafter set forth it is agreed as follows:

1. FACILITY USE: The KCPA grants the use and occupation of a portion of the King Center located at 3865 North Wickham Road, Melbourne Florida to the User on the following terms and conditions:

DATE(s): 2/17/12; 2/25/12

TIME OF OCCUPANCY: varied

PURPOSE: Elementary School Festival Rehearsal And Performance

AREAS: Main Stage, Studio Theater, Rotunda, 168

2. USER FEES: User agrees to pay the fee, as determined by the Executive Director, in accordance with the Fee Schedule applicable for date and time of said occupancy, a copy of which is attached hereto, labeled Addendum "A", and made part hereof by reference.

DEPOSIT: \$0.00

TOTAL CONTRACT FEE : \$6033.50

This Agreement is null and void unless User pays the KCPA the Total Contract Fee (less any deposits) with return of this signed Agreement no later than Jan. 10, 2012

3. FINAL PAYMENTS: The total Contract Fee payment shall be made by the User not less than 2 weeks before the event. With respect to any estimated costs or fees, KCPA may require a maximum of ten percent (10%) contingency to cover said estimated costs and fees, with any unused portion thereof to be returned to User as soon as practical following the final performance. In the event the contingency is not adequate to pay the estimated costs and fees, or any balance due under this Agreement, then the User shall promptly pay the balance within thirty (30) days after receipt from an invoice from due upon request by KCPA. If, for any reason, the fees or costs were not paid aforesaid, it is agreed that any ticket office receipts in the possession of the KCPA may be applied to the payment of said fees and costs. All payments by User will be made by cash, money order, certified check or cashier's check.

4. CANCELLATION BY USER: Should User desire to cancel this Agreement and if notification is given in writing to the KCPA at least 60 days prior to the date of scheduled event, the KCPA shall require one half of the total estimated base fee (see addendum "A") as liquidated damages, plus any additional costs incurred, and the User and the KCPA shall be relieved of any further obligations under this Agreement, except for any damages that may occur as indicated in Paragraph 11 of this Agreement. Any cancellation less than 60 days prior to date of scheduled event will require full payment by User of Total Contract Fee as listed above and detailed in addendum "A".

5. CANCELLATION BY KCPA: Should the KCPA desire to cancel or be unable to perform under this agreement, and if written notification is mailed to User at User's address listed on reverse, postmarked at least 90 days prior to date of User's scheduled use, the KCPA shall refund to User all payments made to KCPA, and KCPA shall be relieved of any further obligation. It is the policy of the KCPA not to cancel this Agreement with less than 90 days notification to User. However, should circumstances or events or occurrences totally beyond the control of the KCPA (i.e., natural disaster, act of God, state of emergency) for the KCPA to cancel this Agreement with less than 90 days notification, KCPA will make every effort to re-schedule User's event to the satisfaction of all. Should KCPA be unable to re-schedule to User's satisfaction, the KCPA shall refund to User all payments made to KCPA, minus expenditures already made by KCPA in behalf of User, and KCPA shall be relieved of any further obligation under this Agreement.

6. TERMINATION OF LEASE: The KCPA may terminate this agreement if User fails to perform any of its obligations herein set forth as appears to the KCPA to be financially insecure, in violation of the law, or about to default under the terms of the use Agreement or any attachments. Upon termination of the Agreement for whatever the reason, User agrees to promptly remove, at User's expense all its property from the KCPA premises within 24 hours. The KCPA shall require one half of the base rent as liquidated damages, plus any additional costs incurred, and the User and the KCPA shall be relieved of any further obligations under this Agreement except for any damages that may occur as indicated in paragraph 11 of this Agreement.

7. SUBLET/ASSIGNMENT OF RIGHTS: The User shall not sublet any occupied space(s), or in any way assign this Agreement or any rights hereunder to any other person or organization. User may not utilize the occupied space(s) for any purpose other than what is specified in this Agreement.

8. TIME IS OF THE ESSENCE: Time shall be of the essence for this use Agreement and the time herein granted shall not be extended for the occupancy or use of the premises or for the installation or removal of equipment without permission of the KCPA, and all such additional time shall be paid for accordingly to the costs fixed by the KCPA, if such permission is granted. Notwithstanding anything to the contrary in this Agreement, KCPA shall not assess User any charges not approved in advance by User.

9. LAW OBSERVANCE: The User agrees that every member connected with the said concert, entertainment or other purposes for which said auditorium is occupied shall abide by, conform to and comply with all laws of the United States, the State of Florida, the County of Brevard, and the ordinances of the City of Melbourne, and the rules and regulations of the King Center and Brevard Community College for the government and management of the said auditorium, together with all the rules and requirements of the Police and Fire Department of the City of Melbourne, and will not do, nor suffer to be done, anything on the said premises, during the term of this lease, in violation of any such rules, laws or ordinances, and if the attention of the User is called to such violation on the part of the agreement, or any other person employed by or admitted to the said premises by the User, the User will immediately desist from and correct such violations.

10. DAMAGE TO PREMISES/DEFACEMENT OF BUILDING: User hereby accepts the premises in the condition they are in on the date User first used the premises under this Agreement, and agrees to maintain said premises in the same condition, order and repair, excepting only reasonable wear and tear arising from the use thereof under this Agreement, and to make good to KCPA immediately upon demand any damage to water apparatus or electrical lights or any fixture, electronics, appliances or appurtenances of said premises, or any building, caused by any act or neglect of User, or any person or persons in the employ or under the control of the User or anyone contracting with User in relation to the use of the premises. User shall not be responsible for ordinary and reasonable wear and tear. Any utilization of the occupied premises by User shall be conclusive evidence, as against User, that User accepts it "as-is" and that said premises, and building of which the same form a part, were good and satisfactory condition at the time of such utilization occurrence. The User shall not injure nor mar, nor in any manner deface the said premises and shall not cause nor permit anything to be done whereby the said premises shall be in any manner injured, marred or defaced, nor shall drive or permit to be driven, any nails, hooks, tacks or screws, (also including any adhesive glue or tape) in any part of said building, nor shall he make, or allow to be made, any alterations of any kind herein.

~~**11. POLICY MANUAL AND ADDENDA:** User agrees to observe and abide by the policy manual and addenda which include the rules and regulations of the King Center. A copy of said manual will be given to User for their files. Addenda and other related attachments will be appended here and made part of this Agreement. User acknowledges receipt of these materials and agrees to be bound thereby. Addenda will be made a part of this Agreement by User and signing of this Agreement is subject to acceptance. Approval of this agreement is not final until attached addenda are signed or initialed.~~

12. FIRE: In case the said auditorium, or any part thereof, shall be destroyed or damaged by fire or by any other cause, or if any other casualty or unforeseen occurrence shall render the fulfillment of this Agreement by KCPA impossible, then KCPA shall not in any case be held liable or responsible to the User for any damages caused thereby.

13. CONTROL OF BUILDING: In occupying the auditorium or any part thereof, KCPA does not relinquish the right to control the management thereof and to enforce all necessary and proper rules for the management and operation of the same; and the Executive Director, or his designee, may enter the building and any of the premises at any time and on any occasion.

14. EXHIBITORS: Exhibitors shall be given time to install exhibits, and all exhibits shall be removed from the building on the day that is mutually agreed upon. In the event that the auditorium is not vacated by the User indicated on the date above, then KCPA shall be and is authorized to remove from the said auditorium at the expense of the User goods, wares, merchandise and property of any and all kinds and description which may be occupying the facility in which the term of agreement has expired, and the KCPA shall not be responsible or liable for any damage or loss to such goods, wares, merchandise or other property which may be sustained, either by reason of such removal or the place to which it may be removed, and the KCPA is hereby expressly released from any and all claims for damages of whatever kind or nature.

15. REMOVAL OF ERECTIONS: In the event of platforms or staging being erected by the User or any of the exhibitors in any portion of the building, the expense of such erection or removal shall be paid by the User, and all damage to said buildings for furnishings caused by the erection or removal of such platforms or staging shall be paid by the User.

16. SEATING CAPACITY: In no event shall tickets to a concert, entertainment or exhibition be sold or disposed of in excess of seating capacity of the house. King Center seating capacity is 1,993.

17. RESPONSIBILITY FOR INJURY: The User hereby assumes full responsibility for the character, acts and conduct of all persons admitted to said premises, or to any portion of said building by the consent of the User, or by or with the consent of the User's employees or any person acting for and on behalf of the User, and the User agrees to have on hand at all times sufficient police force to maintain order and protect persons and property.

~~**18. INSURANCE AND INDEMNIFICATION:** The User agrees to carry insurance as indicated in the policy manual, and in the event of such policy, shall be bound and held responsible for and Brevard Community College.~~

19. AISLES CLEAR: The User will permit no chairs or movable seats to be or remain in the passageways, and will keep the said passageways clear at all times.

20. RESERVED RIGHTS/CONCESSIONS: The KCPA reserves the right to sell librettos, bouquets, refreshments, liquor and other merchandise, to rent opera glasses, umbrellas and other such articles, to conduct a check room and to control programs, to make photographs for its own records, and other privileges, and the User shall not engage in any of the aforesaid businesses without the written consent of the KCPA. 25 up to 30% of gross monies earned through the sale of all concessions including any object or document will be paid to the hall if sold by artists; 30% of gross monies earned through the sale of concessions will be paid to the hall if sold by the hall. KCPA likewise reserves the right, through the Executive Director and representatives, to eject any objectionable person or persons from said building, and upon the exercise of this authority, through the Executive Director, agents or policemen, the User hereby waives any right and all claims for damages against the KCPA or Brevard Community College.

21. OBSTRUCTIONS TO SIDEWALKS: No portion of the sidewalks, entries, patios, portico, passages, vestibules, halls, elevators, and way of access to public utilities of said building shall be obstructed by the User or used for any purpose other than for ingress and egress, to and from the premises. The doors, skylights, stairways or openings that reflect or admit light into any place in the building, including hallways, corridors and passageways, also radiators, and house lighting attachments, shall not be obstructed by the User. The water closets and water apparatus shall not be used for any purpose other than that for which they were constructed, therein. Any damage resulting to them on account of misuse of any nature or character whatsoever, shall be paid by User.

22. RESPONSIBILITY FOR PROPERTY IN BUILDING: KCPA assumes no responsibility whatever for any property placed in said auditorium, and KCPA is expressly released and discharged from any and all liability for any loss, injury or damage to persons or property that may be sustained by reason of occupancy of said auditorium under this agreement, and all watchmen or other protective service desired by the User must be arranged for by special agreement with KCPA. All personal property placed or moved into the premises shall be at the risk of the User or owner thereof, and KCPA shall not be liable for any damages to said property.

23. ATTORNEY'S FEES: In the event it is necessary for KCPA to employ the services of an attorney to collect a rental or other cost hereunder, or should litigation take place with respect to any of the terms of this Agreement or attachments hereto, then in such event, the prevailing party shall be entitled to reasonable attorney's fees.

24. CAPITAL EQUIPMENT FUND SURCHARGE: The User acknowledges that there is a per ticket Capital Improvement Fund Surcharge levied on each ticket sold (SEE SECTION V 18.1 OF POLICY AND PROCEDURE MANUAL, PAGE 9, FOR ADDITIONAL INFORMATION). This surcharge must be included in the advertised price of the ticket. The sum of CEF surcharge will be deducted from gross receipts at the time of settlement and will be retained by the KCPA or invoiced to the User based on the User's sale of tickets not under the auspices of KCPA ticket office, as mutually agreed upon in advance of the execution of this Agreement. SEE FACILITY POLICY AND PROCEDURE MANUAL FOR ADDITIONAL CHARGES THAT MAY APPLY.

25. HOUSE SEATS: 10 seats selected by the KCPA will remain at all times under the control of the KCPA for KCPA use and are in no way included in any use agreement or settlement, and are not part of the inventory for the event. These seats will be located ORCHESTRA CENTER between ROWS H-L.

26. USE OF CLOSED-CIRCUIT TELEVISION: King Center reserves the right to use closed-circuit television monitors throughout the facility for monitoring purposes only. Grand Tier balcony has two (2) large screen television projection systems to allow for close-up viewing by balcony patrons and may be used for this event. Under no circumstances will event be recorded unless requested by artist or User by written permission. King Center reserves the right to assess applicable fees for such recording.

27. ADMINISTRATIVE FEE: King Center reserves the right to charge up to 20% of estimated contract fee (not to include CEFS charges) for administrative overhead.

28. SPECIAL CONDITIONS: KCPA shall provide sound, lighting, and other technical equipment in accordance with the KCPA website listing as of November 4, 2006. The technical specifications are located at www.kingcenter.com under the heading "Information" and subheading "Technical Specifications." SEE ATTACHED FACILITY USE ESTIMATE OF COSTS

AGREED TO AND ACCEPTED BY:

King Center for the Performing Arts, Inc.
Brevard Community College
Office: 321/433-5822 Fax: 321/433-5817

FOR: _____
(User/Organization)

BY: _____

BY: _____

DATE: _____

DATE: _____

PHONE: _____

Attention User: By signing this Use Agreement indicates that you have received, read and will abide by the King Center Facility Policy and Procedure Manual.

Board Approved 10/9/90: revised 2/94, 5/98

Maxwell C. King Center
for the Performing Arts
Facility Use Estimate of Costs

Addendum "A"

User: School Board Of Brevard County
Event Name: Elementary Music Festival
Date of Estimate: Oct. 11, 2011

Contract # R2025
Event Date(s): Feb. 25, 2012
Prepared by: Tim Freese
Class: B

Facility Use Fees

| | | |
|--------------------------------------|-----------------------------|-------------------------|
| Area: <u>Studio Theater, Rotunda</u> | Date/Time: <u>2/17/2012</u> | *Fee: <u>\$425.00</u> |
| Area: <u>Main Stage</u> | Date/Time: <u>2/25/2012</u> | *Fee: <u>\$1,850.00</u> |
| Area: _____ | Date/Time: _____ | *Fee: _____ |
| Area: _____ | Date/Time: _____ | *Fee: _____ |

Insurance: School Board Fee: _____

Total Facility Use Fees: \$2,275.00

Equipment Fees (Per Day)

| | | | |
|-----------------------------|---|----------------|--------------------|
| Grand Piano: _____ | @ | \$150.00/use | Fee: <u>\$0.00</u> |
| Upright Piano: _____ | @ | \$75.00/use | Fee: <u>\$0.00</u> |
| Piano Tuning: _____ | @ | \$75.00/tuning | Fee: <u>\$0.00</u> |
| Orchestra Shell: _____ | @ | \$150.00/use | Fee: <u>\$0.00</u> |
| 4' x 8" risers: _____ | @ | \$7.00/riser | Fee: <u>\$0.00</u> |
| Followspots: _____ | @ | \$100.00/spot | Fee: <u>\$0.00</u> |
| Vinyl (dance) Floor: _____ | @ | \$150.00/use | Fee: <u>\$0.00</u> |
| Tables (2.3' x 6'): _____ | @ | \$5.00/table | Fee: <u>\$0.00</u> |
| Tables (round): _____ | @ | \$5.00/table | Fee: <u>\$0.00</u> |
| Chairs: _____ | @ | \$6.00/dozen | Fee: <u>\$0.00</u> |
| Wireless Microphones: _____ | @ | \$25.00/use | Fee: <u>\$0.00</u> |
| Computer Road Sign: _____ | @ | \$150.00/week | Fee: <u>\$0.00</u> |
| Rotunda Sound System: _____ | @ | \$50.00/use | Fee: <u>\$0.00</u> |
| Other: _____ | | | Fee: <u>\$0.00</u> |
| Other: _____ | | | Fee: <u>\$0.00</u> |

Total Equipment Fees: \$0.00

Personnel/Labor (Estimated and may exceed)

| | |
|--|--------------------------|
| House Manager: <u>12.00</u> hrs @ <u>\$18.00</u> per hour | Total: <u>\$216.00</u> |
| Custodial (hourly): <u>24.00</u> hrs @ <u>\$13.50</u> per hour | Total: <u>\$324.00</u> |
| Custodial Service: _____ contracted, flat fee | Total: <u>\$0.00</u> |
| Technical Director: _____ hrs @ _____ per hour | Total: <u>\$0.00</u> |
| Sound Technician: _____ hrs @ _____ per hour | Total: <u>\$0.00</u> |
| Lighting Technician: _____ hrs @ _____ per hour | Total: <u>\$0.00</u> |
| Stage Technician: _____ hrs @ _____ per hour | Total: <u>\$2,400.00</u> |
| Parking/Security: <u>20.00</u> hrs @ <u>\$13.50</u> per hour | Total: <u>\$270.00</u> |
| Ticket Office: _____ hrs @ _____ per hour | Total: <u>\$0.00</u> |
| Other: _____ | Total: <u>\$0.00</u> |
| Other: _____ hrs @ _____ per hour | Total: <u>\$0.00</u> |

Total Personnel/Labor Fees: \$3,210.00

NOTES:

| | |
|------------------------------------|-----------------------------|
| Estimate Subtotal: | <u>\$5,485.00</u> |
| *Applicable Sales Tax (6%): | <u> </u> |
| Administrative Fee (10% subtotal): | <u>\$548.50</u> |
| ESTIMATED CONTRACT TOTAL: | <u>\$6,033.50</u> |
| LESS Deposit: | <u>\$0.00</u> |
| Balance Due (+CEFS): | <u>\$6,033.50</u> |