

**AGREEMENT BETWEEN THE
INSTITUTE OF PUERTO RICAN ARTS AND CULTURE AND
THE CHICAGO PARK DISTRICT**

This Agreement is made this 23rd day of October, 2002, by and between the Institute of Puerto Rican Arts and Culture (the "IPRAC"), a not-for-profit corporation organized and existing under the laws of the State of Illinois, and the Chicago Park District (the "Park District"), a municipal corporation organized and existing under the laws of the State of Illinois.

WITNESSETH:

WHEREAS, IPRAC was founded to establish a Puerto Rican cultural arts institute in the City of Chicago and to expand the Puerto Rican cultural arts initiative in Humboldt Park; and

WHEREAS, the Park District owns the land and buildings known as Humboldt Park, the Humboldt Park Stables, the adjacent grounds and parking lots located at 1440 N. Sacramento Avenue in Chicago, Illinois; and

WHEREAS, the Park District and IPRAC desire to enter into an agreement whereby the parties agree that IPRAC would operate on Park District land for the purpose of offering a diverse interdisciplinary arts program that is reflective of the Puerto Rican community, including: exhibitions; music; dance; theater performances; classes and workshops in the arts; presentations by visiting speakers, artists and curators; and opportunities for community artists and instructors to share their resources and knowledge.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereby agree to enter into this Agreement as follows:

Section 1. Definitions. As used in this Agreement, the following terms shall have the respective meanings set forth below unless the context otherwise requires:

"Adjacent Grounds" means the real property outside of and adjacent to the Building, described in *Exhibit A*.

"Board" means the Board of Commissioners of the Park District.

"Building" means the first floor of the Humboldt Park Stables in Humboldt Park, at the southwest corner of Sacramento and Division in Chicago, Illinois.

"Contractors" means all construction, rehabilitation and Maintenance and service contractors and subcontractors that provide services for IPRAC.

"Maintenance" includes, but is not limited to, day-to-day upkeep, security, waste removal and repairs to machinery and equipment.

"Park District Indemnities" has the meaning given that term in Section 12.

"Parking Lot" means the parking lot near the Humboldt Park Stables, as noted on *Exhibit A*.

"Site Plan" means IPRAC's plan for use of the Building, the Adjacent Grounds and the Parking Lot as set forth in *Exhibit B*.

Section 2. Use. The Park District agrees to make available to IPRAC free of charge and in accordance with Section 3, the Building and five (5) spaces in the Parking Lot, and IPRAC agrees to renovate, with the prior approval of the Park District as provided in Section 3, and use the Building, for the purpose of offering a diverse interdisciplinary arts program that is reflective of the Puerto Rican community, including: exhibitions; music; dance; theater performances; classes and workshops in the arts; educational activities; presentations by visiting speakers, artists, artisans, and curators; and opportunities for community artists, artisans and instructors to practice their arts and crafts and to share their resources and knowledge.

(a) Immediately following execution of this Agreement, the Park District will allow IPRAC to use two (2) areas in the northeast area of the Building for office use, and these areas will become part of the initial space to be used by IPRAC upon completion of the initial renovation pursuant to Section 3(b).

(b) Immediately following execution of this Agreement and for the duration of this Agreement, the Park District will ensure that IPRAC has access to the Parking Lot during normal park hours, seven (7) days a week.

(c) Until IPRAC assumes occupancy of the Building, the Park District will coordinate use of the Building. Excluding the period during which the Park District is undertaking renovation of the Humboldt Park Stables, IPRAC will have exclusive use and control of the Building.

Section 3. Building and Renovation. (a) After the Park District receives a grant from the State of Illinois, or other source, for the renovation of the Humboldt Park Stables in a sufficient amount as determined by the Park District, then the Park District will undertake an initial renovation of the Humboldt Park Stables. The Park District shall use its best efforts to secure funding for such renovations and to commence and complete the renovations as promptly as possible. The Park District shall keep IPRAC reasonably informed as to the status of funding for the renovations and the timetable for its commencement and completion.

(b) Upon completion of the initial renovation, the Park District shall authorize IPRAC to occupy and use the Building, and five (5) parking spaces in the Parking Lot.

(c) IPRAC shall have the right, subject to Sections 3(d) and (e), to renovate the Building for its intended use. It is understood that the renovation of the Building may occur in phases over a period of years.

(d) IPRAC shall submit a general plan and design of proposed renovations to the Park District for review and approval. IPRAC shall obtain written Park District approval of the final Site Plan prior to implementation of said plan. Any and all changes to the Site Plan shall require prior written approval from the Park District. IPRAC shall obtain written Park District approval of the final construction documents prior to commencing renovations. Once approved, the Site Plan will be incorporated into this Agreement as *Exhibit B*.

(e) Prior to the commencement of each phase of renovation, IPRAC shall have the financial means necessary to complete renovation of that phase or evidence of commitments for funding each such phase, and shall provide the Park District with preliminary drawings of the proposed scope of work, a budget for completing such work and evidence of available funding to undertake such work as well as any other relevant documentation to support the commencement of renovation. IPRAC shall obtain all required permits and prior written approval from the Park District before the commencement of renovation for each phase. Failure by IPRAC to complete each phase in a timely manner shall be cause for termination under this Agreement as to the phase not completed in a timely fashion.

(f) Upon completion of the renovation of the Building by IPRAC, IPRAC shall have right to expand and to occupy and use additional portions of the Humboldt Park Stables as depicted in *Exhibit B* with the prior written approval of the Park District General Superintendent under the conditions identified in Sections 3(d) and 3(e). After the approval of such expansions to additional areas by the Park District General Superintendent, the Building shall be automatically expanded to include such approved additional areas.

(g) Prior to each expansion of the Building, IPRAC shall demonstrate to the satisfaction of the Board that IPRAC has had sufficient attendance and has and will have the financial means to maintain and operate the areas to which IPRAC wishes to expand.

(h) Except as provided for in this Section, IPRAC shall not make any alteration, improvement, addition to, or perform any construction or renovation on the Building without prior written Park District approval. In addition, IPRAC shall obtain any required permits for the renovation of the Building. IPRAC agrees and acknowledges that Park District reviews, approvals, and engineering permits are not intended to indicate approval as to the safety, soundness, or structural integrity of any planned alteration, improvement, addition or construction and that it is IPRAC's responsibility to perform all necessary tests and evaluations for those purposes.

(i) The Park District represents and warrants to IPRAC that there are no hazardous materials at, on, or under the Site and that there are no violations of or obligations under environmental laws, rules, regulations or ordinances in connection with the Site. IPRAC covenants that its operations will comply with environmental laws and hereby indemnifies the Park District for any violation of such laws caused by IPRAC's operations.

Section 4. Capital Financing. The Building renovation will be funded through a combination of local, state and/or Federal grants, bonds, private donations, and/or foundation funds.

Section 5. Operation and Maintenance of the Building and Parking Lot.

(a) Subject to the terms of this Agreement, IPRAC shall have sole charge and control of the Building, provided, however, that IPRAC shall submit proposed hours of operation to the Park District for its review and approval.

(b) IPRAC shall be solely responsible for the operation and Maintenance of the Building and the Park District will be solely responsible for Maintenance of the Adjacent Grounds and Parking Lot.

Section 6. Purpose of Building. If at any time IPRAC shall cease to use the Building for the purposes stated in Section 2 of this Agreement, all of the rights of the IPRAC in the Building shall cease and terminate, and all of the rights of IPRAC in stock, equipment and other property purchased from funds received from the Park District shall cease and terminate and thereupon become the property of the Park District.

Section 7. Insurance. IPRAC shall be responsible for providing insurance for the Building on the basis set forth in *Exhibit C* attached hereto and made a part hereof.

Section 8. Utilities. (a) Upon completion of the initial renovation of the Humboldt Park Stables by the Park District and the occupancy of the Building by IPRAC, IPRAC agrees to pay for all utility costs for the renovation, operation and Maintenance of the Building.

(b) Utility costs include, but are not limited to, gas, electric, water, sewage, communication charges and all utility infrastructure costs associated with the renovation of the Building. If the Park District provides utilities to the Building, IPRAC shall reimburse the Park District for the costs of providing such utility service.

(c) IPRAC may explore alternative energy sources for the Building. The Park District shall have the right to review and approve the use of such sources.

Section 9. Concessions. IPRAC shall have the right to operate a gift shop in the Building, either through its own employees or through independent Contractors. IPRAC shall control and be entitled to receive all revenue earned from such gift shop within the Building provided, however, that such gift shop shall comply with the Code of the Park District, Park District ordinances, resolutions, rules, and regulations governing concessions and that all concessionaires obtain and pay for all required licenses.

Section 10. Special Events. IPRAC may have special events at the Building if such events are consistent with IPRAC's intended use of the Building as provided for in Section 2 of this Agreement ("Special Events"). IPRAC shall have the right to charge admission to special events sponsored by IPRAC or other entities in the Building. IPRAC shall be entitled to hold Special Events in the Building during or after normal business hours, but in no event beyond normal park hours; and shall be entitled to charge an admission fee for such Special Events; provided, however that IPRAC shall obtain all permits required by the Park District for such events in compliance with the Code of the Park District, ordinances, resolutions, rules and regulations of the Park District and shall pay for any applicable vendor fees.

Section 11. Admission Fees. IPRAC may charge an admission fee as allowed by law and to the extent authorized and permitted by the Board. All proceeds of such admission fees shall be used for the operation and Maintenance of the Building. On or before March 1 of each year IPRAC shall furnish to the Park District a detailed statement of the receipts from admission fees and the cost of the operation and Maintenance of the Building.

Section 12. Indemnification. (a) IPRAC for itself and its successors and assigns agrees to and does hereby expressly assume all responsibility for and agrees to defend, indemnify, save and keep harmless the Park District, its commissioners, officers, employees, volunteers, contractors and agents (collectively, the "Park District Indemnitees") against any loss, claims, damage, liability, action, suit, proceeding, cost or expense that the Park District Indemnitees may suffer, incur or sustain or for which it may become liable (including, but not limited to, personal and bodily injury to or death of persons or loss or damage to property) resulting from, arising out of, or relating to any acts, errors or omissions in the use and operation of the Building, the Parking Lot, or the Adjacent Grounds and its performance under this Agreement, and for any such loss, claims, damage, liability, action, suit, proceeding, cost or expense resulting from, arising out of, or relating to any acts, errors and omissions in the Contractors' performance of any work for IPRAC.

(b) IPRAC shall require the Contractors and their successors and assigns to defend, indemnify, save and keep harmless the Park District Indemnitees against any loss, claims, damage, liability, action, suit, proceeding, cost or expense that the Park District Indemnities may suffer, incur or sustain or for which it may become liable (including, but not limited to, personal and bodily injury to or death of persons or loss or damage to property), resulting from, arising out of, or relating to any acts, errors or omissions in the Contractors' performance of any work for IPRAC.

(c) IPRAC shall indemnify, save and keep harmless the Park District for and from any claims for mechanics' liens by reason of any construction work, repairs, replacements or other work or for any improvements made to the Building by or in behalf of IPRAC.

(d) The duties to indemnify, save and keep harmless, and defend the Park District Indemnitees shall survive the termination or expiration of this Agreement.

Section 13. Term; Termination. (a) IPRAC shall have the exclusive use and occupancy of the Building for a period of fifteen (15) years from the date of execution of this Agreement, unless the Agreement is terminated pursuant to the terms herein.

(b) Failure by IPRAC to satisfy the terms and conditions of this Agreement at any time shall be cause for the Park District to terminate this Agreement if such failure has not been cured, or steps to cure such failure have not been commenced to the reasonable satisfaction of the Park District, within thirty (30) days following written notice from the Park District of such failure. Upon termination of this Agreement, IPRAC shall remove all property not purchased with funds from the Park District and shall vacate the Building. If IPRAC shall fail to remove said property and vacate the Building, the Park District shall have the right to enter upon and occupy the Building and remove said property.

(c) During the term of this Agreement, the Park District and IPRAC will review the Building activities every three (3) years, or more frequently if desired by the Park District, to determine if IPRAC has achieved the intended purpose of the Building as provided for in Section 2 of this Agreement. If the Park District determines, in its sole discretion, that IPRAC has failed to meet the intended purpose of the Building then, notwithstanding any other provision of this Agreement, the Park District may terminate this Agreement upon thirty (30) days prior written notice to IPRAC.

Section 14. Right of Entry and Inspection. Throughout the term of this Agreement, the Park District shall have the right of entry and inspection of the Building at all times with prior notice to IPRAC.

Section 15. Signage. IPRAC shall obtain prior written Park District approval before erecting any exterior signs on the Building. The Park District shall have the right to remove any signage or signs that are erected without its consent after giving IPRAC notice and an opportunity to cure the lack of consent or correct the signage.

Section 16. Books and Records. IPRAC shall keep, and make available at the request of the Park District, such books, records and recording devices showing accurate and complete data on all receipts and disbursements arising from its performance of this Agreement, including but not limited to, accurate and complete data on operational expenses, maintenance expenses, concession fees, special event fees and admission fees. The Park District and its accounting and auditing officers or their designees shall have the right during normal business hours to examine and audit all of said books, records and recording devices. Upon receipt of a written request to make available or produce such books or records, IPRAC shall make available or submit same to the Park District's representative within five (5) working days of such request.

Section 17. MBE/WBE Requirements. IPRAC shall observe all requirements promulgated and enforced from time to time by the Park District that relate to Minority Business Enterprise and Women's Business Enterprise utilization.

Section 18. Recording. IPRAC and the Park District shall have the right to record this Agreement.

Section 19. Notices. All notices hereunder shall be in writing and shall be given as follows:

if to the Park District, to:

Chicago Park District
541 North Fairbanks
Chicago, Illinois 60611
Attention: General Superintendent

with a copy to the same address,
attention: General Counsel

if to the IPRAC, to:

Institute of Puerto Rican Arts and Culture
939 Clinton
Chicago, Illinois 60604
Attention: Executive Director

with a copy to:

Alzheimer & Gray
10 South Wacker, Suite 4000
Chicago, Illinois 60606
Attention: Rolando Acosta

Notices shall be effective upon receipt with written confirmation thereof. Either party may change the address or addresses for notices to be sent to it by giving notice to the other party.

Section 20. Assignment. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party. The foregoing shall not prohibit IPRAC from contracting with third parties to provide services to support the Maintenance obligations that IPRAC has undertaken under this Agreement, or to operate the gift shop within the Building.

Section 21. Interpretation. Section titles and headings are provided for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. References in this Agreement to Sections or Exhibits are to Sections or Exhibits of this Agreement. Both parties have reviewed and discussed this Agreement with legal counsel, and this Agreement shall be interpreted without applying any rule providing for construction against the drafting party.

Section 22. Entire Agreement; Beneficiaries; Amendments. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements or understandings, both written and oral, between the parties with regard to the subject matter hereof. This Agreement is not intended to confer upon any person other than the parties hereto any rights or remedies. This Agreement shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each party.

Section 23. Waivers. The failure of a party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

Section 24. Partial Invalidity. Wherever possible, each provision hereof will be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein is held to be invalid, illegal or unenforceable in any respect for any reason, such provision will be ineffective to the extent, but only to the extent, of

such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

Section 25. Representation of Authority to Contract. Each party represents and warrants to the other party that the execution and delivery of this Agreement by it has been duly authorized by all proper actions and proceedings and that this Agreement constitutes the legal, valid and binding obligation of such party.

Section 26. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by each party.

Section 27. Disputes. In the event any questions or disputes as to the meaning or requirements of anything in this Agreement arise, the matter shall at once be referred for consideration and decision to the Park District General Superintendent.

Section 28. Request for Approvals. The Park District shall make a good faith effort to respond within a reasonable time to all requests for approval submitted by IPRAC as required under this Agreement.

Section 29. Compliance With Law. (a) In performing their duties under this Agreement, IPRAC shall fully comply with all applicable Federal, state and local laws, and the Code of the Park District. IPRAC shall also comply with all rules, regulations and ordinances (including all health and safety regulations) promulgated by the Park District from time to time. Further, IPRAC, including all of its officers, employees, servants, agents, volunteers contractors, subcontractors, sub-operators shall abide by the provisions of the Park District Code of Conduct and hereby acknowledges receipt of a copy of the Park District Code of Conduct.

(b) IPRAC specifically agrees that no person(s) shall be subjected to discrimination in the use of the Building or to discrimination in employment decisions by IPRAC, on the basis of race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental handicap, unfavorable discharge from military services, parental status or sexual orientation.

Section 30. Relationship. This Agreement shall not be construed to create a partnership, joint venture, or employment relationship between the parties.

Section 31. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, excluding, however, those relating to choice or conflict of laws.

IN WITNESS WHEREOF, the parties to this Agreement have caused it to be executed by their duly authorized representatives as of the date first above written.

**INSTITUTE OF PUERTO RICAN ARTS AND
CULTURE**

By: 

Title: President - IPAAE

CH

By: 

Title: _____

EXHIBIT C

INSURANCE COVERAGE

IPRAC shall procure and maintain at all times, at IPRAC's own expense, during the period of this Agreement, the types of insurance specified below, with insurance companies authorized to do business in the State of Illinois with a Best's rating of A or better covering all operations of the Building.

The kinds and amounts of insurance required are as follows:

1) Workers' Compensations and Occupational Disease Insurance

Workers' Compensation and Occupational Disease Insurance, in accordance with the laws of the State of Illinois, or any other applicable jurisdiction, covering all employees who are to provide a service. Employer's liability coverage with limits of not less than \$500,000 each accident or illness shall be included.

2) Commercial Liability Insurance (Primary and Umbrella)

Commercial Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence, combined single limit, for bodily injury, personal injury, and property damage liability. Products/completed completed operations with extension of 2 years, explosion, collapse, underground, , broad form property damage and contractual liability coverages are to be included. The Park District is to be named as an additional insured on a primary, non-contributory basis.

3) Automobile Liability Insurance

When any motor vehicles are used in connection with work to be performed, IPRAC shall provide Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence combined single limit, for bodily injury and property damage. The Park District is to be named as additional insured on a primary, non-contributory basis.

4) Property Insurance

IPRAC shall procure broad form all risks property insurance coverage which covers all of the real property, fixtures, machinery and equipment with a blanket limit equal to the amount required to replace all real property, permanent fixtures, machinery and equipment at functional replacement cost and a deductible of no greater than \$10,000. The Park District is to be a named insured on the policy.

5) Pollution Liability Insurance

When any pollution risk exposure is apparent, IPRAC shall provide Pollution Liability Insurance on a blanket basis covering bodily injury, property damage and environmental restoration for claims arising from performance of services including handling, clean-up

and excavation of waste and hazardous materials (may be provided by IPRAC or by contractor of IPRAC with IPRAC and Park District named as additional insured). Limits required for each shall not be less than \$1,000,000 each accident, \$2,000,000 general aggregate. The coverage may be on a claims made form. Such insurance shall provide an inception or retroactive date prior to the date of performance and be renewed each year for a period of (3) years after completion of performance or provide an extended claims reporting period of not less than (3) years after completion of performance.

6) Valuable Papers Insurance

When any plans, designs, drawings, specifications and documents are produced for the Building, valuable papers insurance shall be maintained in an amount to insure against any loss whatsoever, and shall have limits sufficient to pay for the recreation and reconstruction of such records.

7) Fidelity Insurance

IPRAC shall procure crime insurance with a limit of \$500,000 and a deductible of no greater than \$10,000. The Park District is to be a named insured on the policy.

IPRAC will furnish the Park District original certificates of insurance evidencing the required coverage to be in force prior to commencement of work, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. IPRAC shall submit evidence of insurance prior to contract award, and reference on the Certificate the contract number and/or description of work to be performed. The failure of the Park District to obtain such evidence from IPRAC before permitting IPRAC to commence work shall not be deemed to be a waiver by the Park District, and IPRAC shall remain under continuing obligation to maintain insurance coverage.

The insurance hereinbefore specified shall be carried during the period of this Agreement. Failure to keep such insurance in force may constitute a violation, and the Park District maintains the right to terminate this Agreement.

The insurance shall provide for 60 days prior written notice to be given to the Park District, Department of Risk Management, in the event coverage is substantially changed, cancelled, or non-renewed.

Any and all deductibles on referenced insurance coverages shall be borne by IPRAC.

IPRAC expressly understands and agrees that any insurance coverages and limits furnished by IPRAC shall in no way limit IPRAC's liabilities and responsibilities specified with the contract documents or by law.

IPRAC agrees that the insurer shall waive their rights of subrogation against the Park District.

IPRAC expressly understands and agrees that any insurance maintained by the Park District shall apply in excess of and not contribute with insurance provided by IPRAC.

If IPRAC desires additional coverage, higher limits of liability, or other modifications for its own protection, IPRAC shall be responsible for the acquisition and cost of such additional protection.

The Park District maintains the right to modify, delete, alter or change these insurance coverage requirements.