

## ***SECOND AMENDMENT***

---

**THIS IS A SECOND AMENDMENT TO THE AGREEMENT** dated the \_\_\_\_\_ day  
of \_\_\_\_\_, 2016, between:

**CITY OF POMPANO BEACH**, a municipal corporation of the  
State of Florida, whose address is 100 West Atlantic Boulevard,  
Pompano Beach, Florida 33060, hereinafter referred to as "CITY,"

and

**CREATIVE CITY COLLABORATIVE OF POMPANO  
BEACH, INC.**, a Florida not for profit corporation, having its office  
and place of business at 1801 NE 6<sup>th</sup> Street, Pompano Beach, Florida  
33060, hereinafter referred to as "CONTRACTOR."

**WHEREAS**, the parties entered into a Professional Service and License Agreement to  
provide cultural arts programming, management and marketing for its existing Amphitheater and  
proposed Cultural Arts Center, ("Original Agreement"), approved by City Resolution No. 2015-442;  
and

**WHEREAS**, the parties entered into a First Amendment to the Original Agreement on  
September 30, 2016, approved by City Resolution No. 2016-317; and

**WHEREAS**, the parties have agreed to extend the Original Agreement to September 30,  
2017, substitute Exhibit 9 of the Original Agreement for Exhibit 9A, and to add additional monies to  
the Original Agreement in the amount of Seven Hundred Forty-Three Thousand, Three Hundred  
Fifty-Six Dollars (\$743,356.00).

### **WITNESSETH:**

**IN CONSIDERATION** of the mutual terms, conditions, promises, covenants and payments  
herein set forth CITY and CONTRACTOR agree as follows:

1. Each "WHEREAS" clause set forth above is true and correct and herein incorporated by this reference.

2. The Original Agreement effective September 25, 2015, and subsequently amended on September 30, 2016, copies of which are attached hereto and made a part hereof as Exhibit "A," shall be extended to September 30, 2017.

3. The attached Exhibit 9A is hereby substituted for, and in all references replaces, that Exhibit 9 which was attached to, referenced and made a part of the Original Agreement.

4. Article 6 of the Original Agreement is hereby amended as follows:

**ARTICLE 6  
FINANCIAL ACCOUNTABILITY & REPORTING**

...

K. By ~~January 1, 2016~~ March 1, 2018, Contractor, at its sole expense, shall deliver (1) audited financial statements and related footnotes (including liquidity and solvency ratios) reflecting all Contractor's activity hereunder, (2) management letter, and (2 ~~3~~) compiled financial statements for the Foundation, both of which shall be prepared by a certified public accountant. Said financial statements shall include the Balance Sheet and related Statements of Income, Earnings, and Cash Flows in accordance with standards established by the American Institute of Certified Public Accountants. A resulting year-end cash balance shall be reported and reconciled with the dedicated bank accounts described in required under subsections D and E of this Article.

Contractor shall provide to the City a fully executed agreement letter for the Independent Auditor firm before or by March 31, 2017. The engagement letter shall include a mandate that the firm shall begin field work for the audit no later than 30 days after end of the fiscal year and issue and deliver the audited financial statements, notes to the financial statements and a management letter for the Pompano Beach Arts and Cultural Center Operations and compiled financial statements for the Pompano Beach Foundations to Contractor no later than 150 days after end of fiscal year to ensure prompt issuance to City.

...

In the event Contractor fails to comply with the requirements of this subsection, City, at Contractor's expense, may employ a certified public accountant to produce such an audit or compilation (as applicable) and Contractor shall pay for same within ~~thirty (30)~~ sixty (60) days from the date of City's invoice for said

expenditure or City may deduct same from any sums due and owing Contractor at that time.

...

5. Article 7 of the Original Agreement is hereby amended as follows:

**ARTICLE 7  
PRICE FORMULA, INVOICES AND PAYMENTS**

A. Price Formula. For purposes of this Agreement, the payment schedule will correspond with the City's fiscal year, which commences on October 1<sup>st</sup> and concludes on September 30<sup>th</sup> annually. As consideration for Contractor's Work hereunder, City shall pay Contractor a monthly management fee and other operating expenses for the Property consistent with the activities set forth in Exhibit 6, the project timeline set forth in Exhibit 5 and the projected revenues and expenses set forth in Exhibit 9 (collectively the "Monthly Fee"). Payment of the Monthly Fee and corresponding dates of payment shall be as set forth below in this subsection.

1. For Fiscal Year 2016, which commences October 1, 2015 and ends September 30, 2016, the City's maximum commitment to provide financial support for Contractor's Work hereunder shall not exceed \$825,505.00. The City's maximum commitment for the portion of Fiscal Year 2017 ~~ending on December 31, 2016~~ beginning on January 1, 2017 and ending on September 30, 2017, to provide financial support for Contractor's Work hereunder shall not exceed ~~\$563,188.00~~ \$743,356.00 dollars, as more particularly described in the attached Exhibit 9A. It is anticipated that Fiscal Year 2016 and 2017 will be paid in monthly installments based on invoices Contractor submits to City in accordance with this Article along with detailed supporting documentation acceptable to City, which confirms reimbursement amounts, and advance payments related to contractual obligations hereunder.

...

6. All terms, covenants and conditions contained in the Original Agreement, with the exception of the provision for the extension and amendment, hereinabove, shall remain unchanged, and the parties agree to keep, observe and perform all covenants and conditions contained herein.

7. This Agreement shall bind the parties and their respective executors, administrators, successors and assign and shall be fully effective as though the extension and amendment had been originally included in the Agreement.

**IN WITNESS OF THE FOREGOING**, the parties have set their hands and seals the day and year first above written.

**"CITY":**

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
LAMAR FISHER, MAYOR

\_\_\_\_\_

By: \_\_\_\_\_  
DENNIS W. BEACH, CITY MANAGER

Attest:

\_\_\_\_\_  
ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved by:

\_\_\_\_\_  
MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager, and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

**"CONTRACTOR":**

Witnesses:

**CREATIVE CITY COLLABORATIVE OF  
POMPANO BEACH, INC.,** a Florida not for profit  
corporation

*Mark A. Beaudre*

By: *Alyona Ushe*

Print Name: *Mark A. Beaudre*

*Jonathan Nasser*

**Alyona Ushe, President & CEO**

Date: *12-17-16*

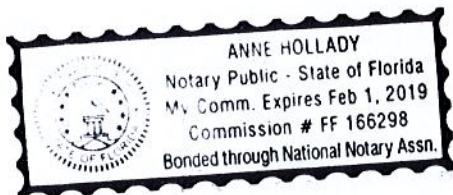
Print Name: *Jonathan Nasser*

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this **7th** day of **December**, 2016,  
by **Alyona Ushe**, as **CEO & President** of Creative City Collaborative of Pompano Beach, Inc.,  
a Florida not profit corporation, **who is personally known to me** or who has produced \_\_\_\_\_  
\_\_\_\_\_ (type of identification) as identification.

NOTARY'S SEAL:

*Anne Hollady*  
NOTARY PUBLIC, STATE OF FLORIDA



**Anne Hollady**

(Name of Acknowledger Typed, Printed or Stamped)

**FF 166298**

Commission Number

CLS/jrm  
12/7/16  
l:agr/recr/2017-163