

THIRD AMENDMENT

THIS IS A THIRD AMENDMENT TO THE AGREEMENT dated the _____ day of _____, 2017, 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 6th 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 a Second Amendment of the Original Agreement on December 20, 2016, approved by City Resolution No. 2017-100; and

WHEREAS, the parties have agreed to extend the Original Agreement to March 30, 2018, substitute Exhibit 9A of the Second Amendment for Exhibit 9B, substitute Exhibit 4 of the Original Agreement for Exhibit 4A, and to add additional monies to the Original Agreement in the amount up to and not to exceed the amount of Six Hundred Twenty-Nine Thousand, Three Hundred Forty-One Dollars and zero cents (\$629,341.00).

W I T N E S S E T H :

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 and December 20, 2016, copies of which are attached hereto and made a part hereof as Exhibit "A," shall be extended to March 30, 2018.
3. The attached Exhibit 4A hereby substitutes, and in all references replaces, Exhibit 4 that was attached to, referenced and made a part of the Original Agreement.
4. The attached Exhibit 9B hereby substitutes and in all references replaces, Exhibit 9A that was attached to, referenced and made a part of the Original Agreement.
5. Article 6 of the Original Agreement is hereby amended as follows:

**ARTICLE 6
FINANCIAL ACCOUNTABILITY & REPORTING**

...

G. For any month that Contractor experiences a deficit position after factoring in the City's monthly payment under this Agreement, any revenues generated during that period for the Property, and any operating and Event expenditures, Contractor may provide an accounting for such deficit with its monthly payment request although City is under no obligation to fund any such deficit and shall have no responsibility to bear any overruns in expenditures or deficiency in revenue collections for any Event. Notwithstanding the foregoing, during the term of this Third Amendment, CONTRACTOR shall not be responsible for any financial deficits incurred and accordingly all expenses and submittals for payment to CONTRACTOR will be approved in advance by CITY for reasonableness and supported by necessary documentation.

...

K. By ~~March 1, 2018~~, September 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 (3) compiled financial statements for the Foundation, both of which shall I 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~~ November 1, 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.

...

Q. Contractor shall prepare a revenue and expenses preliminary budget for each event taking place at the Amphitheater and Cultural Arts Center. The Contractor shall submit a copy of the preliminary budget to the City's contract administrator prior to contracting for any event. Contractor shall submit to City's contract administrator, on a monthly basis within five (5) weeks of month's end, a final accounting of the revenues and expenses for events taking place at the Amphitheater and Cultural Arts Center.

6. 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 1st and concludes on September 30th 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 beginning on January 1, 2017 and ending on September 30, 2017, to provide financial support for Contractor's Work hereunder shall not exceed \$743,356.00, as more particularly described in the attached Exhibit 9A. The City's maximum commitment for the portion of Fiscal Year 2018, which commences on October 1, 2017 and ending on March 30, 2018, to provide financial support for the Contractor's Work hereunder shall not exceed \$629,341.00 as more particularly described in the attached Exhibit 9B. It is anticipated that Fiscal Year ~~2016 and~~ 2017 and 2018 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.

7. 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.

8. 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: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2017 by **LAMAR FISHER** as Mayor, **GREGORY P. HARRISON** 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 are 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

By: _____
RIC GREEN, Director

Print Name: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of
_____, 2017, by RIC GREEN, as Director of Creative City Collaborative
of Pompano Beach, Inc., a Florida not profit corporation, on behalf of the corporation, who is
personally known to me or who has produced _____
(type of identification) as identification.

NOTARY’S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

TAL:jrm
9/19/17
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