



City Attorney's Communication #2018-822
May 16, 2018

TO: Mayor and City Commission

FROM: Fawn Powers, Assistant City Attorney

VIA: Mark E. Berman, City Attorney

RE: First Amendment to the Interlocal Agreement and Lease regarding the Public Library located at the Pompano Beach Cultural Arts Center

In 2011, the City, CRA and Broward County entered into an Interlocal Agreement (the "ILA" attached as Exhibit 1) that proposed in return for the City's receipt of \$7,233,264 from the County, the City and CRA would design and construct a two-story building at 50 West Atlantic Boulevard to be owned by the City (the "Building") that would house a Public Library on the first floor and a Cultural Center on the second floor (the "Project").

The ILA included a number of exhibits, one of which was a 50 year lease between the City and the County for the Library (the "Lease Exhibit" attached as 1A). Although the City executed the Lease Exhibit when it approved the ILA, the County refrained from doing so stating it preferred to execute it after the Building was completed and the Library was ready for occupancy.

The Project was completed in 2017 in accordance with the terms of the ILA. The Cultural Arts Center opened in May 2017 and the Library opened in January 2018. However, the Building was ultimately constructed so that the Library space wound up being situated on two floors rather than just the first floor. As a result of the foregoing contradiction to what had been proposed both in the ILA and the Lease Exhibit, the County Attorney advised Library staff not to have the Lease Exhibit executed but rather to seek to amend the ILA and the Lease Exhibit to reflect the County's use of both floors.

Attached for your review and approval is Composite Exhibit 2 which includes a First Amendment to the ILA and a revised Lease. Other than reflecting the County's Library space is situated on two floors (not just one), no substantive changes have been made to either the ILA or the Lease. Any and all other revisions are either stylistic, minor, or more accurately serve both parties' respective best interests thereunder. For your convenience, summarized below are the major differences between the ILA and the First Amendment to the ILA and the original Lease Exhibit and the revised Lease.

Differences between ILA and First Amendment to the ILA

The ILA provided the City would grant the County perpetual easements for access upon, over and across the Property as well as for the 130 dedicated parking spaces. The First Amendment provides the City will only grant the County access and parking rights throughout the term(s) of the Lease.

In addition, the ILA provided that if the public artwork financed by the County was integrated into the interior of the Library so as to become a permanent improvement, the County would transfer title of the artwork to the City who would be responsible for maintaining it with the \$10,500 in conservation funds it was to receive from the County subject to a formal agreement between the City, County and the Artist who created the artwork. The First Amendment provides the County will transfer title to the artwork which has been integrated as a permanent improvement to the Library to the City. However, rather than convey the \$10,500 in conservation funds to the City, the County will be responsible to maintain the artwork throughout the term(s) of its Lease and there is no need for the City to enter into a formal agreement with the County and the Artist regarding maintenance protocol.

Differences between the Lease Exhibit and the Lease

The Lease Exhibit (Article 1) provided the City would grant the County perpetual easements for access upon, over and across the Property as well as for the 130 dedicated County parking spaces. The Lease (Article 5) provides the City will only grant the County access and parking rights throughout the term(s) of the Lease.

The Lease Exhibit (Article 8) provided the City would be responsible to commence repairs to the Library within a reasonable time after written notice by the County whereas the Lease (Article 9) provides the City will now be required to commence repairs within 24 hours after the County's written notice of a problem.

The Lease Exhibit (Article 18) provided both parties would be given 90 days to cure a breach whereas the Lease (Article 13) provides the parties are only afforded 30 days to cure a breach.

The Lease Exhibit (Article 16) provided the City Manager, City Attorney and Public Works Director would serve as City contacts for notice thereunder whereas the Lease (Article 21) omits reference to the Public Works Director and adds the new Assistant City Manager and the Cultural Arts Director as contacts for the City.

In sum, the terms of both the First Amendment to the ILA and the Lease you are being asked to approve are substantially similar to that of the original ILA and the Lease Exhibit. As a relevant aside, the CRA already approved the First Amendment to the ILA at its last meeting on May 15, 2018.

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Thank you for your consideration of the foregoing. Please call me at (954) 786-4083 if you wish to discuss this matter further as both the First Amendment to the ILA and the Lease will be considered as one item on your Consent Agenda for May 22, 2018.



FAWN POWERS

FP:jmz
l:cor/manager/asstmgr/2018-822f

Attachments

cc: Gregory P. Harrison, City Manager