

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE WRITTEN RECOMMENDATION OF THE CITY MANAGER AND WAIVING, BY 5/7<sup>TH</sup> VOTE, THE FORMAL COMPETITIVE BIDDING REQUIREMENT, AS PERMITTED UNDER SECTION 2-367 OF THE CITY CODE, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY, AND APPROVING, IN SUBSTANTIAL FORM, AMENDMENT NO. 3 TO THE AGREEMENT, DATED JUNE 5, 2013, WITH SERVICE AMERICA CORPORATION D/B/A CENTERPLATE (CENTERPLATE) FOR CATERING CONCESSIONS AT THE CITY OF MIAMI BEACH CONVENTION CENTER; SAID AMENDMENT (1) EXPANDING THE SCOPE OF THE AGREEMENT TO INCLUDE THE FOOD AND BEVERAGE SERVICES FOR TWO CITY FACILITIES (CLUBHOUSE BUILDINGS), LOCATED WITHIN THE 21<sup>ST</sup> STREET COMMUNITY CENTER COMPLEX (CURRENTLY KNOWN AS THE "CARL FISHER CLUBHOUSE" AND THE "LITTLE STAGE THEATER"), CURRENTLY BEING RENOVATED AND REPURPOSED FOR USE AS DINING AND CATERING FACILITIES; AND (2) APPROVING CENTERPLATE'S CAPITAL CONTRIBUTION, IN AN AMOUNT NOT TO EXCEED \$750,000, FOR THE CLUBHOUSE BUILDINGS; AND FURTHER AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE FINAL AMENDMENT.**

**WHEREAS**, the City is the owner of the Miami Beach Convention Center (the "Convention Center") located in the City of Miami Beach, Florida; and

**WHEREAS**, on December 12, 2012, the Mayor and City Commission approved the issuance of Invitation to Negotiate No. 059-2013ME For Food and Beverage for the Miami Beach Convention Center (the ITN); and

**WHEREAS**, on June 5, 2013, the Mayor and City Commission adopted Resolution No. 2013-28241, accepting the proposal submitted by Service America Corporation d/b/a Centerplate ("Centerplate"); and

**WHEREAS**, the parties executed an agreement, dated June 5, 2013 (the "Agreement"), having an initial term of three (3) years, with two (2) one-year renewal terms, at the City's option; and

**WHEREAS**, the initial term of the Agreement expired on June 30, 2016; and

**WHEREAS**, in order to ensure continuity of services for a full operational year following the completion of the Convention Center Project, the City agreed to renew the Agreement and extend the term of the Agreement; and

**WHEREAS**, on April 13, 2016, the Mayor and City Commission adopted Resolution No. 2016-29369, waiving the formal competitive bidding requirement and approving an additional two (2) year and three (3) month extension of the term, expiring on September 30, 2020; and

**WHEREAS**, on September 12, 2018, the Mayor and City Commission adopted Resolution No. 2018-30507, waiving the formal competitive bidding requirement and approving Amendment No. 2, which amendment (1) restructured the financial terms to provide the City with 95% of the net operating profits of the catering and Food and Beverage operations at the Convention Center (after payment of all operating expenses), and (2) extended the term of the Agreement for an additional two years, for a term expiring on September 30, 2022; and

**WHEREAS**, the City is currently renovating the two buildings located within the 21<sup>st</sup> Street Community Center Complex, now known as the Carl Fisher Clubhouse and the Little Stage Theater, (collectively, the "Clubhouse Buildings") and repurposing them for use as dining and catering facilities; and

**WHEREAS**, in order to ensure that the same level of food and beverage services currently being provided at the Convention Center is also provided at the Clubhouse Buildings, upon opening, the City Manager recommends contracting with Centerplate for the food and beverage services at the Clubhouse Buildings; and

**WHEREAS**, Centerplate has agreed to make a capital contribution, in an amount up to \$750,000, in improvements to the Clubhouse Buildings; and

**WHEREAS**, Centerplate will amortize this capital contribution over a five (5) year period, and if the Agreement expires or is otherwise terminated prior to the end of the amortization period, the City will be responsible for paying Centerplate for the unamortized portion of the capital contribution; and

**WHEREAS**, the City Manager recommends the waiver, by 5/7ths vote, of the formal competitive bidding requirement, as being in the best interest of the City, and the approval, in substantial form, of Amendment No. 3 to the Agreement, incorporated herein by referenced and attached hereto as Exhibit "1", which includes the following essential provisions: (1) the addition of the Clubhouse Buildings to the scope of the Agreement, based upon the same financial terms; to wit: (i) Centerplate receiving a management fee of 7% of gross receipts and (ii) the Net Operating Profits being distributed to the City and Centerplate on a monthly basis, with the City receiving 95% of the New Operating Profits and Centerplate receiving 5% of the Net Operating Profits; and (2) the approval of an initial capital contribution toward the Clubhouse Buildings, in an amount up to \$750,000.

**NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA**, that the Mayor and City Commission hereby accept the written recommendation of the City Manager and waive, by 5/7<sup>th</sup> vote, the formal competitive bidding requirement, as permitted under Section 2-367 of the City Code, finding such waiver to be in the best interest of the City, and approve, in substantial form, Amendment No. 3 to the Agreement, dated June 5, 2013, with Service America Corporation d/b/a Centerplate (Centerplate) for catering concessions at the City of Miami Beach Convention Center; said amendment (1) expanding the scope of the Agreement to include the food and beverage services for two City facilities (Clubhouse Buildings), located within the 21<sup>st</sup> Street Community Center Complex (currently known as the "Carl Fisher Clubhouse" and the "Little Stage Theater"), currently being renovated and repurposed for use as dining and catering facilities; and (2) approving Centerplate's capital contribution, in an amount not to exceed \$750,000, for the Clubhouse Buildings; and further authorize the Mayor and City Clerk to execute the final amendment.

**PASSED** and **ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Dan Gelber, Mayor

Attest:

\_\_\_\_\_  
Rafael E. Granado, City Clerk

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

10/25/19

**AMENDMENT NO. 3 TO THE CATERING AND CONCESSIONS SERVICES AGREEMENT  
BETWEEN  
THE CITY OF MIAMI BEACH, FLORIDA  
AND  
SERVICE AMERICA CORPORATION D/B/A CENTERPLATE**

**This Amendment No. 3** ("Amendment") is made effective as of \_\_\_\_\_ ("Effective Date"), by and between the **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation having its principal office at 1700 Convention Center Drive, Miami Beach, Florida, 33139 (the "City"), and a Delaware corporation, **SERVICE AMERICA CORPORATION**, a Delaware corporation, d/b/a **CENTERPLATE**, whose address is 2187 Atlantic Street, Stamford, CT 06902 ("Concessionaire" or "Centerplate"), and hereby amends the Catering and Concessions Services Agreement dated as of June 5, 2013, as amended by Amendment No. 1 and Amendment No. 2 (collectively, the "Agreement"), as follows:

**RECITALS**

**WHEREAS**, the City is the owner of the Miami Beach Convention Center (the "Convention Center" or "MBCC"), having approximately 491,651 square feet of exhibition space and five (5) ballrooms, located at 1901 Convention Center Drive; and

**WHEREAS**, on December 12, 2012, the Mayor and City Commission approved the issuance of Invitation to Negotiate No. 059-2013ME For Food and Beverage for the Miami Beach Convention Center (the ITN); and

**WHEREAS**, on June 5, 2013, the Mayor and City Commission adopted Resolution No. 2013-28241, accepting the proposal submitted by Centerplate pursuant to the ITN; and

**WHEREAS**, the parties executed an agreement, dated June 5, 2013, having an initial term of three (3) years, with two (2) one-year renewal terms, at the City's option; and

**WHEREAS**, the initial term of the Agreement expired on June 30, 2016; and

**WHEREAS**, in order to ensure continuity of services for a full operational year following the completion of the Miami Beach Convention Center Project, on April 13, 2016, the Mayor and City Commission adopted Resolution No. 2016-29369, waiving the formal competitive bidding requirement and approving an additional two (2) year and three (3) month extension of the term, expiring on September 30, 2020; and

**WHEREAS**, on September 12, 2018, the Mayor and City Commission adopted Resolution No. 2018-30507, waiving the formal competitive bidding requirement and approving Amendment No. 2, which amendment restructured the financial terms of the Agreement and extended the term for an additional two years, for a term expiring on September 30, 2022; and

**WHEREAS**, the City is also the owner of the two buildings located within the 21<sup>st</sup> Street Community Center Complex, having a street address of 2100 Washington Avenue, now known as the Carl Fisher Clubhouse, having approximately 3,080 square feet of space, and the Little Stage theater (the "Clubhouse Annex"), having approximately 2,295 square feet of space (collectively, the Clubhouse Buildings); and

**Exhibit "1"**

**WHEREAS**, the City is currently renovating the Clubhouse Buildings and repurposing them for use as dining and catering facilities; and

**WHEREAS**, the parties desire to expand the scope of the Agreement to permit Centerplate to provide food and beverage services to the Clubhouse Buildings, based upon the same financial terms and conditions of the Agreement and as more particularly set forth herein; and

**WHEREAS**, on October 30, 2019, the Mayor and City Commission adopted Resolution No. \_\_\_\_\_, waiving the formal competitive bidding requirement and approving, in substantial form, Amendment No. 3 to the Agreement; said amendment adding the Clubhouse Buildings to the scope of the Agreement and approving Centerplate's Additional Investment Expenditure for the Clubhouse Buildings, in an amount not to exceed \$750,000; and

**WHEREAS**, Concessionaire shall be given possession of the Clubhouse Buildings as of (i) the date the City substantially completes the renovations at a particular Clubhouse Building, as evidenced from a Certificate of Completion, Temporary Certificate of Occupancy or Certificate of Occupancy, whichever occurs first; and (ii) the City tenders the keys for the Clubhouse Building to Concessionaire (the "Possession Date")

**WHEREAS**, this Additional Investment Expenditure will be amortized over a five (5) year period, and if the Agreement expires or terminates for any reason whatsoever prior to Centerplate's complete amortization of this Additional Investment Expenditure, the unamortized portion shall be reimbursed to Centerplate by the City, as provided in Section 4 and 9.5(a) of the Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties intending to be legally bound, hereby agree as follows:

1. The aforesaid recitals are true and correct and incorporated by reference herein.
2. Unless otherwise expressly stated herein, all capitalized terms shall have the respective meanings ascribed in the Agreement.
3. Paragraph 11 of Amendment No. 2 is hereby deleted in its entirety.
4. The definition of "Facility" in Section 1(o) is hereby deleted, in its entirety, and replaced with the following:

"Facility" shall refer to the Convention Center, the Carl Fisher Clubhouse and the Clubhouse Annex, as if each Facility was included individually within each such reference throughout the Agreement.

5. The definition of "Net Operating Profits" is hereby amended as follows:  
"Net Operating Profits" shall be calculated by subtracting the Operating Expenses from the total Gross Receipts. The Operating Expenses shall mean the out-of-pocket costs incurred and paid by Concessionaire pursuant to this Agreement and the Annual Operating Budget (as defined herein), and shall consist of, the actual expense of the ~~f~~Food and ~~b~~Beverage ~~product~~ Items, on-site direct payroll, payroll

taxes, fringe benefits, depreciation and amortization of the Additional Investment (including Centerplate's Additional Investment made in Amendment No. 1), costs paid to service providers and other expenses directly related to providing ~~eating and food and beverage s~~Services at the Facility, repair and maintenance, cleaning, credit card fees (net of discounts or fees received from credit card or debit card providers), office supplies, insurance, contractual reserves required pursuant to the Agreement, including the Marketing Reserve Fund, ~~Capital~~ Equipment Replacement Reserve Fund, and the Management Fee.

6. The following new Section 4.2 is hereby amended as follows:

4.2 Additional Capital Investment.

(a) Convention Center Additional Investment. Concessionaire shall directly invest \$300,000.00, carried over as of October 1, 2018, plus an additional \$150,000 ("Additional Investment") toward food service capital projects ("Additional Investment Expenditures") for the Convention Center, with the nature and scope of such Convention Center Additional Investment Expenditures to be made by mutual written agreement of the parties.

(b) Clubhouse Buildings Additional Investment. Centerplate shall directly invest up to \$750,000 ("Additional Investment") toward the initial infrastructure of the Clubhouse Buildings ("Additional Investment Expenditures"), with the nature and scope of such Additional Investment Expenditures to be made by mutual written agreement of the parties. The approved Additional Investment Expenditures relating to each Clubhouse Building shall be procured within one hundred eighty (180) days from the Possession Date for each corresponding Clubhouse Building.

(c) The City Manager or City Manager's designee shall be authorized to approve, in writing, the Additional Investment Expenditures for the Convention Center and the Clubhouse Buildings including, without limitation, the proposed themes, décor and construction materials for the Clubhouse Buildings.

7. Section 4.3 (a) is hereby amended as follows:

4.3 Amortization Schedule/Title.

(a) Amortization Schedule. All Additional Investment Expenditures shall be amortized and/or depreciated pursuant to Generally Accepted Accounting Principles and shall be amortized and/or depreciated over a five-year schedule, on a straight-line basis, commencing on the date of expenditure or date of installation, whichever is last in time. In connection with the expenditure of any portion of the approved Additional Investment Expenditures, Centerplate shall provide the City, on a quarterly basis, with the corresponding amortization schedule.

8. Section 5.3 is amended to include the language in Paragraph 7 of Amendment No. 2, as follows:

5.3 Fee Structure.

(a) Management Fee. Centerplate shall receive a Management Fee equal to (7%) of Gross Receipts, payable in twelve (12) monthly installments.

(b) Profit Sharing. The Net Operating Profit shall be distributed to the City and Centerplate monthly, unless otherwise agreed to by the City and Centerplate in writing. The City shall receive 95% of the Net Operating Profit, and Centerplate shall receive 5% of the Net Operating Profit. Centerplate shall not be entitled to any compensation under this Agreement, except for the Management Fee and 5% of the Net Operating Profit, if any.

9. The definition of the "Equipment Replacement Reserve Fund" as set forth in paragraph 12 of Amendment No. 2 is hereby numbered Section 5.5 in the Agreement.

10. Section 10.16 is hereby deleted in its entirety and replaced with the following:

10.16 Contractor/Consultant's Compliance with Florida Public Records Law.

(a) Concessionaire shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.

(b) The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.

(c) Pursuant to Section 119.0701 of the Florida Statutes, if Concessionaire meets the definition of "Contractor" as defined in Section 119.0701(1)(a), Concessionaire shall:

(1) Keep and maintain public records required by the City to perform the service;

(2) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;

(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if Concessionaire does not transfer the records to the City;

(4) Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of Concessionaire or keep and maintain public records required by the City to perform the service. If Concessionaire transfers all public records to the City upon completion of the Agreement, Concessionaire shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Concessionaire keeps and maintains public records upon completion of the Agreement, Concessionaire shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

(d) REQUEST FOR RECORDS; NONCOMPLIANCE.

(1) A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify Concessionaire of the request,

and Concessionaire must provide the records to the City or allow the records to be inspected or copied within a reasonable time.

- (2) Concessionaire's failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate the Agreement, following written notice to Concessionaire, pursuant to the notice provisions of the Agreement, and Concessionaire failing to comply with the Public Records Request within eight (8) business days; (2) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.
- (3) If Concessionaire fails to provide the public records to the City within a reasonable time may be subject to penalties under s. [119.10](#).

(e) CIVIL ACTION.

- (1) If a civil action is filed against a Concessionaire to compel production of public records relating to the City's contract for services, the court shall assess and award against Concessionaire the reasonable costs of enforcement, including reasonable attorneys' fees, if:
  - a. The court determines that Concessionaire unlawfully refused to comply with the public records request within a reasonable time; and
  - b. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that Concessionaire has not complied with the request, to the City and to Concessionaire.
- (2) A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to Concessionaire at Concessionaire's address listed on its contract with the City or to Concessionaire's registered agent. Such notices must be sent by common carrier delivery service or by registered, Concessionaire Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.
- (3) If Concessionaire complies with a public records request within 8 business days after the notice is sent, Concessionaire shall not be liable for the reasonable costs of enforcement.

(f) IF CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONCESSIONAIRE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

CITY OF MIAMI BEACH  
ATTENTION: RAFAEL E. GRANADO, CITY CLERK  
1700 CONVENTION CENTER DRIVE  
MIAMI BEACH, FLORIDA 33139  
E-MAIL: [RAFAELGRANADO@MIAMIBEACHFL.GOV](mailto:RAFAELGRANADO@MIAMIBEACHFL.GOV)  
PHONE: 305-673-7411



11. A new Section 10.19 is hereby added, as follows:

10.19 Prohibitions Regarding Sale or Use of Expanded Polystyrene Food Service Articles, Single Use Plastic Beverage Straws, and Single-Use Plastic Stirrers.

- (a) Concessionaire hereby agrees and acknowledges that, pursuant to Section 82-7 of the City Code, as may be amended from time to time, Concessionaire shall not sell, use, provide food in, or offer the use of expanded polystyrene food service articles (as defined in City Code Section 82-7) in City facilities or on City property, in connection with any services performed pursuant to this Agreement. A violation of this section shall be deemed a default under the terms of this Agreement. Notwithstanding the above, this section shall not apply to expanded polystyrene food service articles used for prepackaged food that have been filled and sealed prior to receipt by Concessionaire.
- (b) Additionally, Concessionaire agrees and acknowledges that, pursuant to Section 82-8 of the City Code, as may be amended from time to time, Concessionaire shall not sell, use, provide food in, or offer the use of single-use plastic beverage straws or single-use plastic stirrers (as defined in City Code Section 82-8) in City facilities or on City property, in connection with any services performed pursuant to this Agreement. A violation of this section shall be deemed a default under the terms of this Agreement. Notwithstanding the above, the requirements of Section 82-8 shall not restrict Concessionaire from providing a beverage with, or offering the use of, a single-use plastic beverage straw or single-use plastic stirrer to an individual with a disability or medical condition that impairs the consumption of beverages without a single-use plastic beverage straw or single-use plastic stirrer.
- (c) Additionally, Concessionaire agrees to comply with Section 46-92(c) of the City Code, which provides that it is unlawful for any person to carry any expanded polystyrene product, single-use plastic beverage straw, or single-use plastic stirrer onto any beach or park within the City, or onto any city marina, pier, dock, or boat ramp. It is also unlawful for any business to provide single-use plastic beverage straws or single-use plastic stirrers with the service or delivery of any beverage to patrons on any beach within the City. Notwithstanding the above, the provisions in Section 46-92(c) that pertain to single-use plastic beverage straws and single-use plastic stirrers shall not apply to a person or patron with a disability or medical condition that impairs the consumption of beverages without a single-use plastic beverage straw or single-use plastic stirrer.
- (d) As additional consideration for this Agreement, independent of the requirements set forth in Sections 82-7, 82-8 and 46-92(c) of the City Code, Concessionaire agrees:
  - (i) not sell, use, provide food in, or offer the use of expanded polystyrene food service articles in any Facility. A violation of this section shall be deemed a default under the terms of this Agreement. Notwithstanding the above, this section shall not apply to expanded polystyrene food service articles used for prepackaged food that have been filled and sealed prior to receipt by Concessionaire; and
  - (ii) not sell, use, provide food in, or offer the use of single-use plastic beverage straws or single-use plastic stirrers in any Facility. A violation of this section shall be deemed a default under the terms of

this Agreement. Notwithstanding the above, Concessionaire shall be permitted to provide a beverage with, or offering the use of, a single-use plastic beverage straw or single-use plastic stirrer to an individual with a disability or medical condition that impairs the consumption of beverages without a single-use plastic beverage straw or single-use plastic stirrer; and

- (iii) not carry any expanded polystyrene product, single-use plastic beverage straw, or single-use plastic stirrer onto any beach or park within the City, or onto any city marina, pier, dock, or boat ramp.

12. A new Section 10.20 is hereby added, as follows:

10.20 No Discrimination

(a) In connection with the performance of the Services, Concessionaire shall not exclude from participation in, deny the benefits of, or subject to discrimination anyone on the grounds of race, color, national origin, sex, age, disability, religion, income or family status.

(b) Additionally, Concessionaire shall comply fully with the City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, and public services on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

12. Except as expressly set forth in this Amendment, all other terms and conditions set forth in the Agreement shall remain in full force and effect. If there is any inconsistency between the provisions of this Amendment or the Agreement, the provisions of this Amendment shall prevail.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have hereunto affixed their corporate seals attested by the hand(s) of their proper officer(s) duly authorized in that behalf.

ATTEST:

**CITY OF MIAMI BEACH FLORIDA**

\_\_\_\_\_  
CITY CLERK

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

**SERVICE AMERICA CORPORATION  
d/b/a CENTERPLATE**

\_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I/We have the authority to bind the corporation