

2021 SOUTH BEACH JAZZ FESTIVAL SPONSORSHIP AGREEMENT

THIS AGREEMENT is made and entered into this 21 day of DEC, 2020 ("Effective Date"), by and between the **City of Miami Beach**, Florida, a Florida municipal corporation with offices at 1700 Convention Center Drive, Miami Beach, FL 33139 (the "City"), and **Power Access, Inc.**, a Florida not for profit corporation with offices at 1616 Michigan Avenue, Unit #1, Miami Beach, FL 33139 ("Event Organizer") (altogether, the "Agreement").

WITNESSETH:

WHEREAS, the City desires to sponsor the South Beach Jazz Festival (the "Event"), a special event that will take place from January 8-10, 2021 in various locations in Miami Beach (the "Event Site"); and

WHEREAS, Event Organizer shall produce, promote and host the Event on Miami Beach; and

WHEREAS, on September 16, 2020, the Mayor and City Commission adopted Resolution No. 2020-31532, approving City sponsorship funding in the amount of \$ 25,000; and (3) further authorizing the City Manager and City Clerk to execute this Agreement; and

WHEREAS, the City's sponsorship funding for the Event is to be paid directly to Event Organizer, to offset expenses for producing and presenting the Event.

NOW, THEREFORE, in consideration of the mutual promises and covenants made herein, City and Event Organizer agree as follows:

- The above recitals are true and correct and are incorporated by reference herein.
- The Term of this Agreement will commence on the Effective Date set forth above, and shall expire following the conclusion of the Event, and Event Organizer's completion of all of its obligations hereunder.
- Event Organizer shall be solely responsible for producing and promoting all aspects of the Event, including securing private sponsors and vendors to participate in the Event. The parties hereby agree that at all times the Event shall be known and promoted under the title of the South Beach Jazz Festival. Event Organizer is responsible for the conduct and operation of the Event and will provide the appropriate officials to conduct the Event. The City is under no obligation to fund subsequent events.
- The term "Event" as used herein shall include the event designated above and as set forth in Exhibit "A". Further, City shall not be a party to any independent contracts that the Event Organizer may enter into with other organizations, contractors, or participants in the Event and/or supporting activities, nor shall City be liable to such third parties. Event Organizer shall not represent that it is an agent, official, authorized representative or employee of City.
- Event Organizer shall be responsible for any and all compensation that may be due to any and all performers, entertainers, vendors, organizations, event sanctioning bodies, vendors, and participants, and City shall have no such responsibility, obligation or liability. City shall not be responsible or liable to competitors for prize money payments, or to any third party for any aspect of the production of the Event.
- Warranties. Event Organizer warrants and represents that it has all necessary rights, authority, licenses and permits necessary to enter into this Agreement, to grant the rights and licenses herein granted, and to carry out its responsibilities as set forth herein. Event

Organizer shall utilize the sponsorship benefits and conduct and operate the Event in accordance with all applicable laws, and without endangering others or violating their rights.

- **Sponsorship benefit package.** In consideration of the City fee waivers and sponsorship funding described in this Agreement, and the mutual promises made herein, Event Organizer shall provide sponsorship benefits to the City which, at a minimum, shall include the sponsorship benefits set forth in Exhibit "B" to this Agreement, which is incorporated herein by this reference.
- **Public benefit program.** Event Organizer shall provide a public benefit program to be made available to senior citizens and children that qualify as City of Miami Beach residents. Children are defined as individuals twelve years (12) and younger; senior citizens are defined as individuals sixty-five (65) years and older; and veterans are defined as individuals who have served in the military. The Event's public benefit program shall include the following, wherever permissible and applicable within the Event footprint:
 - The Event will be open to the public, and admission is free.
 - Event Organizer will provide discounted concert tickets for Miami Beach residents, if a concert is held.

The Event Organizer must provide, within 30 days of the completion of the Event, a Final Report, detailing the following:

- The implementation of the public benefit program, including statistics relating to how many residents, seniors, and children were served;
- Media coverage of the Event;
- Vendor and community feedback; and
- Hotel room occupancy (including hotel room nights generated by the Event).
- Event Organizer will also tag City on all Event-related postings on digital distribution platforms, also referred to as social media platforms. Event Organizer's Event-related postings shall include high quality content relevant to the Event and its targeted audiences. Digital distribution postings shall be issued in English and Spanish, wherever relevant.
- Event Organizer will use logo provided by City on all Event-related advertising. This includes local television partners, social media campaigns, radio efforts, and local newspapers.
- All promotional materials which include the City's name or logo, including, without limitation, advertising, telecasts, signage and social media publications shall be subject to City's **prior written approval**, which approval may be withheld at City's discretion. Event Organizer shall cease using all logos or other City marks upon the expiration of the Term. Additionally, City reserves the right to require the removal of its logo/marks from any promotional materials. This paragraph shall survive the expiration of this Agreement.
- Event Organizer is responsible for the following:
 - Event Organizer shall arrange for vendor concessions inside the enclosed Event Site. All sales of soft drinks or other beverages must be in compliance with the City's Coca-Cola contract. Event Organizer will collect all proceeds from Event concessions. City shall have no responsibility, obligation or liability relating to vendor concessions. Event Organizer shall be solely responsible for ensuring that all vendors' services are provided in accordance with all applicable laws, including, without limitation, all food service, food handling, and alcoholic beverage and license regulations.
 - Event Organizer shall be responsible for handling all media vendors and organizations and will be solely responsible for handling all issues relating to the media vendors.

- Event Organizer shall retain any and all rights to the Event, including any rights associated with Event-related apparel and/or product sales.
- Event Organizer shall keep the City appraised, on a monthly basis, of its progress with respect to the activation of the Event. City, at its sole discretion, may monitor and conduct an evaluation of Event Organizer's implementation of the Event. Event Organizer agrees to cooperate with City to promptly address any deficiencies or concerns the City may have in connection with the Event.
- Event Organizer hereby grants City a non-exclusive license and right to use the title of the Event or any footage of the Event, in connection with any City produced publication, including the City produced magazine or any City media outlets, such as MBTV. This section shall survive the termination or expiration of this Agreement.
- Event Organizer shall purchase and obtain all required Event Insurance policies for General Liability coverage in the amount of at least \$1,000,000.00 General Aggregate: \$1,000,000.00 Products/Completed Operations, \$1,000,000.00 Personal and Advertising Injury, \$1,000,000.00 per occurrence, covering City, and all participants, no later than 10 days prior to the Event, and Event Organizer shall provide a Certificate of Insurance to the City's Risk Manager. Event Organizer shall also provide liquor liability insurance in the amount of \$1,000,000.00 and Host liquor liability insurance in the amount \$1,000,000.00. All insurance policies shall name City as additional insured and Certificate Holder.
- Event Organizer shall obtain all applicable federal, state and local approvals, permits and licenses relating to the Event and any activities related thereto. Event Organizer shall maintain its good standing in accordance with the laws of the State of Florida and the City of Miami Beach Code of Ordinances ("City Code"), and shall comply with any federal, state, county or City Code requirement applicable to Event Organizer or to the Event Organizer's operation its business or other activities in the City of Miami Beach, including, without limitation, obtaining any Certificate of Use or Business Tax Receipt(s) that may be required for any business activity, timely making payment of all taxes, fees or charges that may be due to the City. Event Organizer shall promptly take corrective action to correct any City Code violation or notice of violation issued by any governmental agency with jurisdiction over Event Organizer. Further, Event Organizer agrees to comply with the terms and conditions of any lease, contract, or other grant agreement that Event Organizer may have separately entered into with the City, if any ("Other City Contracts"). Any failure by Event Organizer to comply with any provision of the City Code applicable to Event Organizer, or any breach or default by the Event Organizer of any covenant or other term or condition contained in any Other City Contracts (after the passage of any applicable notice and cure provision set forth therein), shall, at the option of the City, be considered an event of Default (as such term is defined more fully below), in which event the City shall be entitled (but in no event required) to apply all rights and remedies available to the City under the terms of this Agreement by reason of an Event Organizer's breach or failure to comply with said obligations.
- Event Organizer shall indemnify and hold harmless the City and its officers, employees, agents, and contractors, from and against any and all actions (whether at law or in equity), claims, liabilities, losses, expenses, or damages, including, without limitation, attorneys' fees and costs of defense, for personal, economic, or bodily injury, wrongful death, or loss of or damage to property, which the City or its officers, employees, agents, and contractors may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of this Agreement by Event Organizer or its officers, employees, agents, servants, partners, principals or contractors, or Event Organizer's use of the Event Site. Event Organizer shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of

the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney fees which may issue thereon. Event Organizer expressly understands and agrees that any insurance protection required by this Agreement, or otherwise provided, shall in no way limit its obligation, as set forth herein, to indemnify, hold harmless, and defend the City or its officers, employees, agents, and contractors as herein provided.

- Subject to Event Organizer's compliance with its obligations under this Agreement, City is responsible for the following:

- 3) City shall provide Event Organizer with sponsorship funding in an amount not to exceed \$25,000.

- Events of Default, Termination of Agreement and Remedies:

- 2) The following shall constitute events of default:

- 7) Any material misrepresentation, written or oral, made by Event Organizer and/or its representatives to City.

- 2) Failure by Event Organizer to timely perform and/or observe any of the terms and conditions of this Agreement.

- 3) Insolvency or bankruptcy on the part of Event Organizer.

- b) The occurrence of any event of default by Event Organizer may, at the sole option of City, operate as an automatic forfeiture of any rights or benefits conferred under this Agreement, and accordingly, City reserves the right to revoke the fee waivers or discontinue the funding provided for herein.

- c) In the event that Event Organizer is in default of any of its obligations under this Agreement, City reserves all legal remedies available to it, including but not limited to termination of this Agreement, upon ten (10) days written notice to Event Organizer. In the event of any such termination, City shall have no further obligation or liability to Event Organizer.

- Event Organizer shall not assign its rights or obligations under this Agreement without the City's consent. Any purported assignment in violation of this section shall be void, and shall constitute an event of default hereunder.

- Event Organizer shall keep accurate and complete books and records of all receipts and expenditures relating to this Agreement, in accordance with reasonable accounting standards, and shall retain such books and records for at least four (4) years after completion of the Event. At the request of the City, Event Organizer shall provide the City (and/or its designated representatives) reasonable access to its files, records and personnel during regular business hours for the purpose of making financial audits, evaluations or verifications, program evaluations, or other verifications concerning this Agreement, as the City deems necessary. Furthermore, the City may, at its expense, audit or have audited, all the financial records of the Event Organizer related to this Event.

• INSPECTOR GENERAL AUDIT RIGHTS

(A) Pursuant to Section 2-256 of the Code of the City of Miami Beach, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said

contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.

- (B) The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Event Organizer¹, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the Contract Documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.
- (C) Upon ten (10) days written notice to the Event Organizer, the Event Organizer shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Event Organizer, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.
- (D) The Inspector General shall have the right to inspect and copy all documents and records in the Event Organizer's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.
- (E) The Event Organizer shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this contract, for examination, audit, or reproduction, until three (3) years after final payment under this contract or for any longer period required by statute or by other clauses of this contract. In addition:
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- i. If this contract is completely or partially terminated, the Event Organizer shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
 - ii. The Event Organizer shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.
- (F) The provisions in this section shall apply to the Event Organizer, its officers, agents, employees, subcontractors and suppliers. The Event Organizer shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Event Organizer in connection with the performance of this contract.
- (G) Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the Event Organizer or third parties.
- This Agreement shall constitute the entire agreement between the parties, and no warranties, inducements, considerations, promises or other references shall be implied or impressed upon this Agreement that are not expressly addressed herein.
 - This Agreement shall be governed as to performance and interpreted in accordance with the laws of the State of Florida. Any claim or dispute arising out of the terms of this Agreement shall be litigated in Miami-Dade County, Florida.
 - It is expressly understood and agreed that this Agreement is for the duration of this Event only and that Event Organizer has no right or privilege other than that expressly provided herein.
 - Event Organizer agrees that nothing herein contained is intended or should be construed as in any way creating or establishing the relationship of partners or joint venturers between City and Event Organizer. In no event shall Event Organizer represent to any third party that it is acting as an agent, representative or on behalf of City for any purpose or in any manner whatsoever.
 - **FORCE MAJEURE**
 - (A) Neither the City or Event Organizer shall be deemed to be in default of any provision of the Agreement, or for failures in performance, resulting from acts or events beyond its reasonable control (a "Force Majeure Event") for the duration of the Force Majeure Event. Such Force Majeure Events shall include, but are not limited to acts of God, pandemics, civil or military authority, terrorism, civil disturbance, wars, strikes, fires, other catastrophes, labor disputes or other events beyond either party's reasonable control. Force Majeure shall not include technological impossibility, inclement weather, or failure to secure any of the required permits pursuant to the Agreement.
 - (B) If the City or Event Organizer's performance of its contractual obligations is prevented or delayed by an event believed by to be Force Majeure, such party shall immediately upon learning of the occurrence of the event or of the commencement of any such delay, but in no case within fifteen (15) business days thereof, provide notice of (i) of the occurrence of event of Force Majeure, (ii) of the nature of the event and the cause thereof, (iii) of the anticipated impact on the Agreement, (iv) of the anticipated period of the delay, and (v) of what course of action such party plans to take in order to mitigate the detrimental effects

of the event. The timely delivery of the notice of the occurrence of a Force Majeure event is a condition precedent to allowance of any relief pursuant to this section; however, receipt of such notice shall not constitute acceptance that the event claimed to be a Force Majeure event is in fact Force Majeure, and the burden of proof of the occurrence of a Force Majeure event shall be on the requesting party.

- (C) No party hereto shall be liable for its failure to carry out its obligations under the Agreement during a period when such party is rendered unable, in whole or in part, by Force Majeure to carry out such obligations. The suspension of any of the obligations under this Agreement due to a Force Majeure event shall be of no greater scope and no longer duration than is required. The party shall use its reasonable best efforts to continue to perform its obligations hereunder to the extent such obligations are not affected or are only partially affected by the Force Majeure event, and to correct or cure the event or condition excusing performance and otherwise to remedy its inability to perform to the extent its inability to perform is the direct result of the Force Majeure event with all reasonable dispatch.
- (D) Obligations pursuant to the Agreement that arose before the occurrence of a Force Majeure event causing the suspension of performance shall not be excused as a result of such occurrence unless such occurrence makes such performance not reasonably possible. The obligation to pay money in a timely manner for obligations and liabilities which matured prior to the occurrence of a Force Majeure event shall not be subject to the Force Majeure provisions.
- (E) Notwithstanding any other provision to the contrary herein, in the event of a Force Majeure occurrence, the City may, at the sole discretion of the City Manager, suspend City's payment obligations under the Agreement, and may take such action without regard to the notice requirements herein.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the Parties or their duly authorized representatives hereby execute this Agreement on the date written below.

FOR THE CITY OF MIAMI BEACH:

ATTEST:

Print Name: _____

Date

CITY OF MIAMI BEACH, FLORIDA

DocuSigned by:


Paul J. Aguila

By: _____

Raul Aguila, Interim City Manager

Date

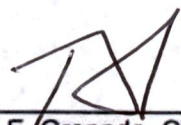
ATTEST:



Print Name: Regis Barber

Dec. 21, 2020

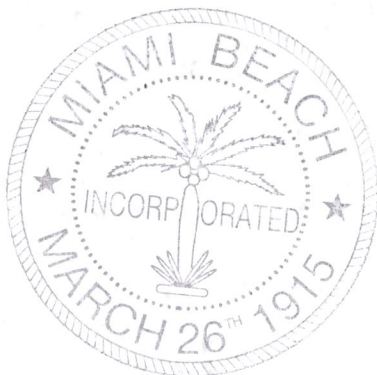
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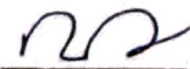
Rafael E. Granado, City Clerk

DEC 21, 2020

Date



APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

12-17-20
Date

FOR EVENT ORGANIZER:

POWER ACCESS, INC.

ATTEST:

By: _____

R. David New

R. DAVID NEW

By: _____

Harvey J. Burstein

HARVEY J. BURSTEIN

Print Name

Date: 12-17-20

By: _____

Lori F. Barkman

Lori F. Barkman

Print Name

Date: 12-17-20