

**AMENDMENT NO. 3
TO THE COLLABORATION, FUNDING AND MANAGEMENT AGREEMENT
BETWEEN
THE CITY OF MIAMI BEACH, FLORIDA
AND
THE SABRINA COHEN FOUNDATION, INC.
FOR AN ADAPTIVE RECREATION CENTER**

This Amendment No. 3 (Amendment) to the Funding, Collaboration and Management Agreement dated November 2, 2017 ("Agreement"), by and between the City of Miami Beach ("City"), and the Sabrina Cohen Foundation, Inc. (the "FOUNDATION"), is entered into as of this ____ day of _____, 2021:

RECITALS

WHEREAS, on October 31, 2017, the Mayor and City Commission adopted Resolution No. 2017-30082, approving and authorizing the Mayor and City Clerk to execute the Agreement with the FOUNDATION, for the FOUNDATION to raise the funds and be responsible for all of the expenses related to the City's design, development and construction of an Adaptive Recreation Center ("Center") to be located at a portion of the City's "P72" surface parking lot at the 53rd Street and Collins Avenue (the "P72 Lot"); and

WHEREAS, the City would be the owner of the Center, which will be used for the primary purpose of providing the general public and specifically, persons living with physical and cognitive disabilities, including seniors living with disabilities and able-bodied individuals with temporary injuries, with an accessible access point to the beach and related beach programming; and

WHEREAS, on July 2, 2018, pursuant to the Agreement's terms, the Mayor and City Commission adopted Resolution No. 2018-30377, approving, in the City's proprietary capacity, the Concept Plan for the Center; and

WHEREAS, on January 16, 2019, the Mayor and City Commission adopted Resolution No. 2019-3067, approving Amendment No. 1 to the Agreement, updating certain technical references, consistent with the Concept Plan approved by the City Commission on July 2, 2018 and applicable provisions of the City Code; and

WHEREAS, on July 31, 2019, the Mayor and City Commission adopted Resolution No. 2019-30922, approving Amendment No. 2 to the Agreement, extending the Fundraising Schedule and Deadlines in Section 7.1.b by twelve (12) months, in order to provide the FOUNDATION with additional time to raise donations for the design and construction of the Center; and

WHEREAS, the FOUNDATION approached the City with the concept of developing an outdoor fully adaptive park ("Park Project") at the City's Beach View Park, located adjacent to the Center; and

WHEREAS, the FOUNDATION has the ability to raise funds through a donor recognition program in connection with the elements of the Park Project which could be used to fund the Park Project, and once fully funded, all surplus funds would be allocated to the development of the Center; and

WHEREAS, during the July 30, 2021 FERC meeting, the Committee recommended the approval of the project scope and conceptual plan; the approval of the FOUNDATION'S donation to the City, in the amount of up to \$73,000 for the Park Project; that the City collaborate with the FOUNDATION to leverage additional funding and offset additional costs for the Park Project, and for the design and construction of the Center; and further recommended that the Administration meet with the Middle Beach Association to discuss the Park Project; and

WHEREAS, on September ____, 2021, the Mayor and City Commission adopted Resolution No. ____, accepting the recommendation of the Finance and Economic Resiliency Committee, at its July 30, 2021 meeting, directing the Administration to work with the FOUNDATION to secure additional funding for the Park Project and the Center through a sponsorship program ("Sponsorship Program"), subject to approval of Sponsorships by the City Commission and compliance with governmental approvals; and authorizing the City Manager and City Clerk to execute this Amendment, to memorialize the guidelines for the Sponsorship Program between the City and the FOUNDATION, as well as any other related documents or agreements.

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and Consultant hereby agree to amend the Agreement as follows:

1. ABOVE RECITALS.

The above recitals are true and correct and are incorporated as part of this Amendment.

2. MODIFICATIONS. The Agreement is hereby amended (deleted items ~~struck through~~ and inserted items underlined) as follows:

a. A new Section 35 is hereby added to the Agreement as follows:

Section 35. Outdoor Adaptive Park and Beach Project

The City is in the conceptual stage of designing and constructing of the outdoor fully adaptive park and beach project at the City's Beach View Park (the "Park Project"), adjacent to the future Center. The City will remain the owner of the Park Project, including all of its related elements. The City shall develop the Park Project, based upon design and construction criteria determined by the City, in its sole discretion, and subject to funding availability.

City work with the FOUNDATION to leverage additional funding to offset costs for the development of the Park Project and the Center through a donor recognition program ("Sponsorship Program"). The FOUNDATION will solicit said additional funding through sponsorships in the form of, but not limited to, a brick paver program and the naming opportunities of the Park Project amenities or other sponsorship rights related to the Park Project elements (collectively, "Sponsorships"). These Sponsorships will be recognized in the form of a small plaque or on a donor board located within the park.

All Sponsorships shall be subject to the prior written approval of the City Commission. The FOUNDATION will take full responsibility of providing the sponsor/donor with their full benefits.

All installations related to the Sponsorship Program ("Sponsorship Program Installations") including, without limitation, plaques/signage shall require the prior written administrative approval of the City Manager. The FOUNDATION shall be responsible for ensuring that Sponsorship Program Installations comply with all governing laws and shall be responsible for securing all required governmental approvals including, without limitation, the approval by any required City committees and City regulatory boards. The FOUNDATION will also assume all costs related to the creation, installation, maintenance, and replacement of all Sponsorship Program Installations.

All funds fundraised via said opportunities by the FOUNDATION, will be donated to the City foremost for the design and construction of the Park Project. All surplus funding would go towards the design and construction of the Center and would count towards the FOUNDATION'S fundraising goal for the Center.

b. A new Section 36 is hereby added to the Agreement as follows:

36. FOUNDATION'S COMPLIANCE WITH FLORIDA PUBLIC RECORDS LAW

36.1 The FOUNDATION shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.

36.2 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.

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

a. Keep and maintain public records required by the City to perform the service;

b. 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;

c. 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 the FOUNDATION does not transfer the records to the City;

d. Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the FOUNDATION or keep and maintain public records required by the City to perform the service. If the FOUNDATION transfers all public records to the City upon completion of the Agreement, the FOUNDATION shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the FOUNDATION keeps and maintains public records upon completion of the Agreement, the FOUNDATION 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.

36.4 Request for Records; Noncompliance.

a. 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 the FOUNDATION of the request, and the FOUNDATION must provide the records to the City or allow the records to be inspected or copied within a reasonable time.

b. The FOUNDATION'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; (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.

c. If the FOUNDATION fails to provide the public records to the City within a reasonable time may be subject to penalties under s. [119.10](#).

36.5. Civil Action.

36.5.1 If a civil action is filed against the FOUNDATION to compel production of public records relating to the City's contract for services, the court shall assess and award against the FOUNDATION the reasonable costs of enforcement, including reasonable attorneys' fees, if:

a. The court determines that the FOUNDATION 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 the FOUNDATION has not complied with the request, to the City and to the FOUNDATION.

36.5.2 A notice complies with subparagraph 36.5.1(b) if it is sent to the City's custodian of public records and to the FOUNDATION at the FOUNDATION's address listed on its contract with the City or to the FOUNDATION's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global 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.

36.5.3 If the FOUNDATION complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

36.6 IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'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
PHONE: 305-673-7411

- b. A new Section 37 is hereby added to the Agreement as follows:

37. INSPECTOR GENERAL AUDIT RIGHTS

37.1 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.

37.2 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 FOUNDATION, 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.

37.3 Upon ten (10) days written notice to the FOUNDATION, the FOUNDATION 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 FOUNDATION its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.

37.4 The Inspector General shall have the right to inspect and copy all documents and records in the FOUNDATION'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.

37.5 The FOUNDATION 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 Agreement, for examination, audit, or reproduction, until three (3) years after final payment under this Agreement or for any longer period required by statute or by other clauses of this Agreement. In addition:

a. If this Agreement is completely or partially terminated, the FOUNDATION shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and

b. The FOUNDATION shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Agreement until such appeals, litigation, or claims are finally resolved.

c. The provisions in this section shall apply to the FOUNDATION, its officers, agents, employees, subcontractors and suppliers. The FOUNDATION shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the FOUNDATION in connection with the performance of this Agreement.

37.6 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 FOUNDATION or third parties.

3. RATIFICATION.

Except as amended herein, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect. In the event there is a conflict between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall govern.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their appropriate officials, as of the date first entered above.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

SABRINA COHEN FOUNDATION, INC.:

By: _____
Name:
Secretary

Name:
President

CITY OF MIAMI BEACH, FLORIDA:

ATTEST:

By: _____
Rafael Granado, City Clerk

Alina T. Hudak, City Manager