



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: October 18, 2017

SUBJECT **SUPPLEMENT TO DISCUSSION OF AN AMENDMENT TO THE AIR & SEA SHOW AGREEMENT (R9 J)**

This memo serves as an update to the Mayor and City Commission on item R9J on the October 18, 2017 Commission Agenda, a discussion of an amendment to the Air & Sea Show Agreement.

At the July 24, 2017 meeting of the City Commission, the Commission voted to continue with the existing Agreement and Producer, under the requirement that the 2018 Air & Sea Show maintain the same event area and schedule as was executed in 2017. However, staff was directed to review the existing site plan and schedule with the Producer, should he wish to expand or enhance the execution for 2018. The attached amendment, attached hereto as Exhibit "A", outlines the proposed terms for a larger footprint and extended show in 2018. The attached site plan, Exhibit "B," details the intended footprint for the 2018 show.

On Thursday, October 12, 2017, the Administration met with the Producer to discuss the proposed terms for an amendment to the Agreement with respect to the 2018 Annual Show. As proposed, in addition to the permit fee waivers in excess of \$150,000, the City would be responsible for funding Event-Related City Services (Police, Fire, Ocean Rescue, Emergency Management, and certain sanitation expenses) up to a maximum not-to-exceed amount of \$350,000. However, if the City determines, at its sole discretion, to increase staffing or personnel for Police, Fire or Ocean Rescue, if such staffing is necessary to protect the public order, then the City shall be responsible for those increased Police, Fire and Ocean Rescue services. Further, as proposed, if the City's \$350,000 estimate is exceeded due to items relating to Producer's Event plans (which have not yet been submitted), or due to Producer-requested changes to the approved 2018 activation, the amendment outlines a process for Producer to either (1) agree to pay such amounts; or (2) revise the scope, as necessary to fit the budget.

On Monday, October 16, 2017, a proposed amendment, attached hereto as Exhibit "A," was sent to the Producer for his review. In view of the limited time for the Producer to provide comments to the draft, and for the City and Producer to finalize terms prior to the October 18, 2017 City Commission meeting, **should the City Commission approve the proposed activation for the 2018 Annual Show, the Administration recommends that it authorize the City Manager and City Attorney to negotiate the final amendment, and authorize the Mayor and City Clerk to execute the amendment upon conclusion of successful negotiations.**

Also discussed at the October 12, 2017 meeting with the Administration and the Producer were two key points of consideration:

1. A correction was noted as to Section 20(a) of the Agreement, which stipulates that the City will have the opportunity to discontinue the show after each year of execution, rather than solely after the first year of the show.
2. The Producer will work collaboratively with the newly formed Blue Ribbon Task Force on Diversity in the Community.

**AMENDMENT NO. 2 TO THE AGREEMENT
BETWEEN THE CITY OF MIAMI BEACH, FLORIDA
AND
A NATIONAL SALUTE TO AMERICA'S HEROES, LLC**

This Amendment No. 2 (Amendment) to the Agreement dated February 1, 2016, by and between the City of Miami Beach, Florida ("City"), and A National Salute To America's Heroes, LLC, a Florida limited liability company (the "Applicant" or "Producer"), is entered into this ____ day of October, 2017.

RECITALS

WHEREAS, on or about February 1, 2016, the City and the Producer, a for-profit entity of the State of Florida, executed an Agreement with respect to the production of an annual Air & Sea show event (each, an "Event" or "Annual Show") subject to the terms and conditions therein; and

WHEREAS, on or about April, 2017, the Producer advised the City that a sponsor of the 2017 Annual Show significantly reduced its financial participation in the 2017 Annual Show, and as a result thereof, the Producer was unable to meet its prior commitments; and

WHEREAS, notwithstanding that the City had no obligation to do so pursuant to the Agreement, the Producer requested that the City waive permit fees and underwrite certain costs for the 2017 Annual Show, in order for the 2017 Annual Show to take place; and

WHEREAS, on April 26, 2017, the City Commission adopted Resolution No. 2017-29848, and approved the Producer's request for waiver of certain permit fees and an additional City contribution in connection with the 2017 Annual Show, with the foregoing additional contribution memorialized in Amendment No. 1 to the Agreement; and

WHEREAS, the Agreement provides the City Commission with the annual ability, following the conclusion of the 2017 Annual Show, to discontinue the event and terminate the Agreement for its convenience, at its discretion; and

WHEREAS, on July 26, 2017, the City Commission declined to exercise the City's right, pursuant to Section 20(a) of the Agreement, to discontinue the Event, and agreed to permit the 2018 Annual Show to take place, expressly contingent upon, and in reliance of, the Producer's representation and agreement at the July 26, 2017 City Commission meeting, that the activation for the 2018 Annual Show would have the same scope as the activation agreed to, and implemented for, the 2017 Annual Show (see attached Exhibit "A,"); and

WHEREAS, at the July 26, 2017 City Commission meeting, the City Commission further directed the Administration to engage in discussions with the Producer with respect to the possibility to expand the 2018 Annual Show activation to, among other terms, potentially include an expanded footprint, a concert and fireworks show; and

WHEREAS, the Administration has met with the Producer, and has submitted the Producer's proposed terms for an expanded Annual Show, for the City Commission's consideration.

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:

I. ABOVE RECITALS.

The above recitals are true and correct and are incorporated as part of this Amendment No. 2.

II. MODIFICATIONS.

A. Subject to the Producer's compliance with the City's special event permitting requirements, including any approvals, permit conditions or requirements of any regulatory agencies having jurisdiction (including, without limitation, the City's Fire Department, Public Works Department, or Building Department) ("Agencies Having Jurisdiction"), and further subject to the City approval process provided for in the Agreement (including Section 4 thereof) as amended herein, the City agrees to the following programmatic scope of activation related to the Annual Show:

1. Notwithstanding any provision to the contrary in the Agreement, the "Event Site" for the Annual Show shall mean the area east of Ocean Drive, from 10th Street to 14th Place, limited by the waterline. For the Annual Show, the Producer agrees to not activate or use the areas east of Ocean Drive, from 5th Street through the southern end of 10th Street, or the area east of Ocean Drive on 15th Street (and such areas shall not be included as part of the Event Site for the Annual Show), provided, however, that the City agrees it will not hold any other special event east of Ocean Drive, from 5th to 15th Street, during the Event Period for the Annual Show.

2. The Restricted Event Area for the Annual Show, as defined in Section 2(n) of the Agreement, may also include a ticketed area and concert stage for the Annual Show, subject to the Producer successfully obtaining sponsorships with respect thereto, with live music performances from 4:00 pm to 9:00 p.m., on Saturday and Sunday of each Memorial Day Weekend, followed by a fireworks display on Saturday and Sunday of each Annual Show, formally concluding at 9:30 pm each night.

3. Subject to any limitations required by any Agencies Having Jurisdiction (including the U.S. Coast Guard or Marine Patrol), the Producer's proposed powerboat and jetski demonstrations in the ocean shall begin no earlier than 10:00 a.m. and shall end no later than 4:00 p.m. on each Saturday and Sunday of the Annual Show.

4. The Lummus Park portion of the Event Site may include, among other corporate sponsor components to be submitted along with Producer's Event Site Plan, an interactive athletic venue, featuring an "extreme sports" exhibition, and athletic/ cross fit style obstacle course.

a. Producer, as part of its Special Event Permit Application, shall include a safety plan, a risk management plan, and details concerning the qualifications and experience of the third-party vendors that will be involved in the production of any of the foregoing athletic activities.

b. All persons participating in any "extreme sports" or athletic activity shall be required, as a condition of their participation in any such activities, to execute a waiver and release of liability in favor of the Producer and the City of Miami Beach, in a form acceptable to the City.

c. On mutual agreement of the City Manager and the Producer, the programming for the Annual Show may include a designated "children's water zone," for children-focused activities, provided, however, that in the event the City and Producer mutually agree to proceed with any such children's activities, the City, through its Parks and Recreation Department, shall be responsible for activities involving the direct supervision of children.

5. The military display village area, featuring all branches of the U.S. Armed Forces, sponsor tents and related activations, may be relocated to the east side sidewalk of Ocean Drive, from 10 Street to 14 Street, within the existing Memorial Day closure of Ocean Drive.

6. If the Producer successfully makes arrangements with respect to broadcasting any portion of the Annual Show, the City Manager's prior written approval shall be required with respect to any use of the City's name or logo as part of the broadcast.

7. The Producer shall exercise its best efforts to work with veteran's groups, including the Salute 365 Foundation, a 501(c)3 not-for-profit, and others, to incorporate, as part of the programming approved pursuant to Section II.A hereof for the Annual Show, charitable components to benefit veteran groups.

8. Notwithstanding the timelines set forth in Sections 4, 5 and 6 of the Agreement with respect to the submission to the City of its proposed Event Site Plan, Public Safety Plan, and MOT Plan (collectively, the "Event Plans") for the Annual Show, Producer shall provide the City with its preliminary Event Plans, and any other deliverable contemplated in Section 4, 5 and 6 of the Agreement, within 120 days prior to the commencement of the Event Period for the Annual Show, to provide the City and Agencies Having Jurisdiction with the opportunity to review and comment on the Producer's preliminary Event Plans. With respect to the MOT Plan, the City shall, no later than December 1 of each year, provide Producer with additional guidance as to specific items the City expects to be included in the preliminary MOT Plan.

9. The Producer shall submit its final Event Plans, and any other deliverables contemplated in Sections 4, 5 and 6 of the Agreement, no later than 60 days prior to the commencement of the Event Period for the Annual Show.

10. If the Producer proceeds with a concert event as part of the Annual Show, the Producer shall complete its breakdown and load-out of the concert stage and related structures, not later than 120 hours following conclusion of the Annual Show. For the 2018 Annual Show, the Parties anticipate the concert stage and related structures will be generally located between 10th Street and 11th Street. All other facilities or structures shall be removed in accordance with Section 9(b) of the Agreement.

11. As part of its Event Site Plan for the Annual Show, Producer agrees that its placement of Mobi-mats shall, in addition to accommodating ingress/egress to the Restricted Event Area, also accommodate the needs of persons with disabilities at the Event Site (sufficient to permit persons with disabilities to view the activities at the Annual Show).

12. Any changes to the scope of the activation set forth in Section II.A herein, including changes to the footprint of the Annual Show, hours of operation, days of use, or programming uses, shall require the City Commission's prior approval.

B. City Permit Fee Waivers.

1. City hereby waives the following City of Miami Beach Special Event Permit fees for the 2018 Annual Show , up to the amounts stated herein:

Application Fee	\$	250.00
Permit Fee	\$	500.00
User Fee	\$	51,630.00
Square Footage Fee (estimate)	\$	97,931.76
Vehicle Access Passes	\$	3750.00 (for up to 25 vehicles)
Total Fees Waived	\$	154,061.76*

*The foregoing waivers do not include, and Producer shall remain responsible for, any applicable Building Department fees (which are not waivable), or the contractual displacement fee due to the City's exclusive beachfront concessionaire, Boucher Brothers, for the Producer's use of beach areas otherwise exclusively assigned to the Boucher Brothers as exclusive concession areas. City agrees to waive its portion of the Boucher Brothers displacement fee that would be due to the City as a concession fee.

2. With respect to any other Annual Shows, if any, the City agrees to waive the City's Special Event Application Fee, Permit Fee, User Fee, Square Footage Fee, and Vehicle Access Charges (for up to 25 vehicles), provided the scope of the activation for any future Annual Show is limited to the scope as provided in Section II.A herein. To the extent Producer requests an expansion of the Annual Show beyond the scope set forth in Section II.A, Producer shall be solely responsible for all permit fees corresponding to the Producer-requested changes.

C. Notwithstanding any provision to the contrary in the Agreement, and except as specified in Section II.F.1 below, the City's responsibility for the costs and expenses for personnel, staffing or services for public safety, Police, Fire, Ocean Rescue, sanitation (trash removal, debris clean-up, recycling, and post-event sand sifting outside of the Restricted Event Area), sod, landscaping or irrigation line replacement, emergency management, or any ancillary services related to any of the foregoing for each Annual Show (collectively, the "Event-Related Public Services"), **shall be limited to the not-to-exceed amount of \$350,000 (City's Maximum Contribution), with such annual funding to be subject to and contingent upon a budget appropriation by the City Commission, at its sole discretion.**

D. Producer further acknowledges and agrees that the City's approval of the activation for the Annual Show as provided herein is expressly contingent upon, and in reliance of, the limitations set forth in Section II.A with respect to the City's Maximum Contribution, as mutually agreed upon herein for the Annual Show.

E. Except as specified with respect to City's costs and expenses as set forth in Sections II.B, II.C and II.F.1 of this Amendment No. 2, and notwithstanding any provision to the

contrary in the Agreement, the Producer shall be solely responsible for all costs and expenses relating to its activation, operation and production of the Annual Show, including, without limitation, all costs that are the responsibility of the Producer (or "Applicant") as provided in the Agreement (including, without limitation, temporary public sanitary facilities required under Section 8(a) of the Agreement, the clean-up costs attributable to Applicant under Section 8(b) of the Agreement, privately-contracted security to provide public safety within the Restricted Event Area, in accordance with Section 5 of the Agreement, any parking spaces approved for use pursuant to Section 7 of the Agreement, and any other item that is the express responsibility of the Applicant under the Agreement); all fees that are not waived in Section II.B above or that are in excess of the amounts specified in Section II.B above, and all costs and expenses related to the Event-Related Public Services in excess of the City's Maximum Contribution as provided in Section II.F.2 (i.e., other than costs arising pursuant to Section II.F.1) (each such cost or expense, individually and collectively, hereinafter referred to as the "Producer's Expenses").

F. The Producer acknowledges that as of October 12, 2017, the Producer has been provided with the Commission Memorandum relating to this Amendment No. 2, which includes a summary of anticipated Event-Related Public Services in the amount of \$346,000, based on the deck submitted by Producer and as described in Section II.A. Producer further acknowledges that this amount is merely an estimate and is subject to change, as the Producer has not yet submitted, and the City has not reviewed, the proposed final Event Plans for the Annual Show.

1. As provided in the Agreement, and as public safety-related matters lie within the sole and absolute discretion of the City, the City Manager's determination as to the level of staffing or personnel required for any of the Event-Related Public Services shall be final and binding upon the Producer. To the extent that the City anticipates, at any time prior to the Annual Show, that due to the City's then-prevailing assessment of general risks or threat levels, additional Police, Fire or Ocean Rescue personnel is required for the Annual Show, such that the expenses for the Event-Related Public Services on account of such Police, Fire, Ocean Rescue, or Emergency Management personnel may exceed the City's Maximum Contribution, then the City shall be responsible for the cost of such additional Police, Fire, or Ocean Rescue costs, notwithstanding the City's Maximum Contribution. **Except as specified in this Section II.F.1, in no event shall the City be responsible, or have or owe any liability or obligation to the Producer for any of the Producer's Expenses, or for any amount in excess of the City's Maximum Contribution, and the process set forth below in Section II.F.2 through II.F.6 shall govern with respect to the costs for Event-Related Public Services.**

2. Following the City's review of the Producer's submission of the preliminary or final Event Plans based upon Section II.A hereto, to the extent the City anticipates that the expenses for Event-Related Public Services may exceed the City's Maximum Contribution for reasons related to specific proposed items in the Producer's preliminary or final Event Plans, or due to scope changes requested by the Producer, then in such event, the City shall provide the Producer with notice, via email to mickey@mdmgroup.com, of the City's updated estimate for the Event-Related Public Services, and the portion in excess of the City's Maximum Contribution for which the Producer shall be solely responsible for, as part of the Producer's Expenses ("Notice of Estimate").

3. The Producer shall have the option, within fifteen (15) calendar days following the City's delivery to Producer of a Notice of Estimate, to either (i) provide a written response to the City confirming that the Producer accepts the amounts identified as Producer's Expenses as set forth in the Notice of Estimate,; or (ii) submit modified Event Plans to the City for its review, with proposed reductions to the scope of the activation of the Annual Show (such

as reductions with respect to its footprint, hours of operation, or programmatic plan), as may be necessary for the corresponding Event-Related Public Services for the Annual Show, as modified, to be implemented within the City's Maximum Contribution (hereinafter, the "Modified Event Plan"). If Producer accepts its responsibility for expenses identified as Producer's Expenses pursuant to Section II.F.3(i), Producer shall pay the City, within sixty (60) days prior to that year's Annual Show, a deposit consisting of fifty percent (50%) of the amounts identified as Producer's Expenses in the Notice of Estimate (the "Deposit").

4. If the Producer submits a proposed Modified Event Plan for the Annual Show pursuant to Section II.F.3 above, and if the City Manager is amenable in principle to the proposed Modified Event Plan (subject to review and approval by any Agencies Having Jurisdiction), then the City shall provide the Producer with an updated Notice of Estimate with respect to the corresponding Event-Related Public Services for the proposed Modified Event Plan, within fourteen (14) days of Producer's submission to the City of the proposed Modified Event Plan, to permit Producer to review the City's updated estimate of expenses related thereto, in accordance with the process set forth in this Section II.F.

5. Within ten (10) business days following the Producer's submission of the preliminary Event Plans, as referenced in Section II.A.9 herein, the City shall provide Producer with an updated Notice of Estimate and shall follow the process set forth in this Section II.F with respect to expenses for Event-Related Public Services. If, for the reasons specified pursuant to Section II.F.2 hereof, the City provides the Producer with a Notice of Estimate based on the preliminary Event Plan, and the Producer fails to respond to any Notice of Estimate within fifteen calendar days following City's delivery to Producer of a Notice of Estimate, or otherwise fails to satisfy any of the requirements in Section II.F.3 above, within the timeframe set forth therein (i.e., by either declining to accept responsibility for the Producer's Expenses in the Notice of Estimate, or submit the Deposit, or by declining to submit a Modified Event Plan within the City's Maximum Contribution), then in such event, the Administration shall report on the foregoing status to the City Commission at the next available City Commission meeting (with email notice to the Producer thereof), to provide the City Commission with the opportunity to determine, at the City Commission's sole and absolute discretion, whether an additional appropriation in excess of the City's Maximum Contribution may be made, subject to and contingent upon funding availability, or whether, pursuant to this subsection, the Annual Show must be cancelled for lack of sufficient funding. In the event the Annual Show is cancelled pursuant to this subsection, then neither the City nor Producer shall have or owe any obligation or liability whatsoever to each other. For the avoidance of doubt, this Section II.F.5 shall be strictly limited to a Notice of Estimate based on Producer's submission of its *preliminary* Event Plans, if provided by the City within the timeframe set forth herein.

6. Within ten (10) days following the Producer's submission of its final Event Plans, as referenced in Section II.A.9 herein, the City shall provide Producer with an updated Notice of Estimate, if such proposed final Event Plans include any Producer-requested scope changes to the activation approved pursuant to Section II.A herein. If the Producer fails to respond to any such Notice of Estimate within fifteen calendar days following City's delivery to Producer of the Notice of Estimate, or otherwise fails to satisfy any of the requirements in Section II.F.3 above with respect to such Notice of Estimate, then the Producer-requested scope changes shall be deemed abandoned, and the proposed modifications shall not be approved.

7. The City shall provide the Producer with the final accounting (settlement) for the actual costs and expenses for the Event-Related Public Services (less the amount of the City's Maximum Contribution and the Deposit, if any) within fourteen (14) days after the conclusion of the Annual Show ("Settlement"). The Producer shall pay any amounts in excess of the City's Maximum Contribution (and Deposit, if any) that are the responsibility of the Producer, as provided herein, within thirty (30) days of receipt of the Settlement. Any remaining balance of the Deposit, if any, after crediting all amounts that may be due to the City hereunder, shall be refunded to the Producer within thirty (30) days of Producer's receipt of the Settlement. If the Producer fails to pay any amounts due to the City hereunder, within the timeframe established herein, then the Agreement, as amended, shall be automatically terminated, and neither the City nor Producer shall have or owe any obligation or liability whatsoever to each other.

G. With respect to the bonds the Producer is required to submit pursuant to Section 18 of the Agreement, the penal sum of the bond for the Annual Show shall be in the amount of \$50,000.

H. **For the avoidance of doubt, the provisions of this Amendment No. 2, and all of the subsections thereof, are expressly intended to replace, and supersede, the provisions of Section 17 of the Agreement with respect to the reimbursement of expenses. Accordingly, the City and the Producer agree that, Section 17 of the Agreement is hereby deleted in its entirety, and the provisions as outlined in Sections II.C through II.F of this Amendment No. 2 shall govern the parties' obligations with respect to expenses for the Annual Show. In addition, subject to and contingent upon a funding appropriation by the City Commission, at its sole and absolute discretion, and provided the City does not exercise its right of termination pursuant to Section 20(a) of the Agreement, the provisions of Sections II.A through II.F shall apply to any subsequent Annual Show, if any.**

I. The City shall, on commercially reasonable notice, have the right during normal business hours, at the expense of the City, to inspect (but not copy) the Producer's books and records and make any examination or audit of the Producer's records with respect to the Annual Show, including records relating to the financial performance of the Annual Show. The rights set forth herein shall be limited to inspection and audit only, to permit the Producer to maintain the confidentiality of its trade secret information (including business plans and confidential financial records).

J. As City's Maximum Contribution, as set forth in Section II.C, is subject to and contingent upon an annual funding appropriation by the City Commission, Section 20(a) of the Agreement is deleted in its entirety and replaced with the following termination for convenience rights in favor of the City:

Prior to the September 15th of each year preceding the next Annual Show, the City Commission, at its sole and absolute discretion, may terminate this Agreement for its convenience upon written notice to the Producer. The only method for any such cancellation of the Agreement for the City's convenience shall be by motion approved by the City Commission, prior to the September 30th of each year preceding the next Annual Show. The Producer shall be given fourteen (14) days advance notice (via email to mickey@mdmgroupp.com) of the City Commission meeting at which such cancellation shall be determined. If City elects to terminate this Agreement for its convenience prior to the expiration of the Term, the City shall not produce or permit another air & sea show on the City's beach for two (2) calendar years (730 days) following the conclusion of the last Annual Show.

III. 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.

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FOR CITY:

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By:

Rafael E. Granado, City Clerk

Philip Levine, Mayor

Date

FOR PRODUCER:

**A NATIONAL SALUTE TO AMERICA'S
HEROES, LLC**

ATTEST:

By:

Secretary

Manager

Print Name

Print Name

Date