

**AMENDMENT NO. 1 TO AGREEMENT  
BETWEEN  
THE CITY OF MIAMI BEACH, FLORIDA  
AND  
THE RHYTHM FOUNDATION, INC.**

This Amendment No. 1 (Amendment) to the Agreement, dated October 23, 2019 (Agreement), by and between the City of Miami Beach, Florida, a municipal corporation organized and existing under the laws of the State of Florida, having its principal place of business at 1700 Convention Center Drive, Miami Beach, Florida 33139 (City), and The Rhythm Foundation, Inc., a Florida not for profit corporation, having its principal place of business at 7275 Collins Avenue, Miami Beach, FL 33141 ("TRF"), is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (Effective Date):

**RECITALS**

**WHEREAS**, on June 5, 2019, the Mayor and City Commission adopted Resolution Number 2019-30846, waiving the formal competitive bidding requirement and authorizing the City Manager to execute a new management agreement with The Rhythm Foundation, Inc.; and

**WHEREAS**, on October 23, 2019, the City and TRF executed the Agreement with respect to the management of the North Shore Band Shell (the Agreement), as set forth in Exhibit A; and

**WHEREAS**, on January, 13 2021, the Mayor and City Commission adopted Resolution No. 2021-\_\_\_\_\_ authorizing the City to increase the rental waivers issued by the Cultural Arts Council per fiscal year to qualified nonprofit organizations for the use of the North Shore Band Shell from twelve (12) to thirty-six (36) for fiscal year 2020-2021 solely; and

**WHEREAS**, rent waivers issued for the use of the North Shore Band Shell charges for janitorial, clean-up, crowd and traffic control, set-up and tear down costs, and fees and charges (including for materials, labor and other services) directly necessitated by the occurrence of any Charitable Use, shall be limited to an amount not to exceed \$2,500 per venue waiver.

**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) Section 6.2.2 of the Agreement is hereby amended to read as follows:

#### 6.2.2 Free Charitable Use

The Cultural Arts Council may issue up to twelve (12) rental waivers per calendar year to qualified nonprofit organizations for use of the North Shore Band Shell, except for fiscal year 2020-2021. Venue waivers are available for nonprofit arts organizations that will present performing arts activities in Miami Beach. These performing arts activities include: theater, dance, music, cabaret, opera, performance art, multi-disciplinary works and film. Venue waivers will cover rental fees for up to four days per week. Venue waivers are funded by the Community Benefit fund and administered by the Tourism and Culture Department following review and recommendation by the Miami Beach Cultural Arts Council. Although City shall not owe a fee, rent or other payment strictly for the Charitable Use, (1) City shall promptly (within ten (10) business days after receipt of invoice thereof) reimburse The Rhythm Foundation for all actual costs incurred by The Rhythm Foundation to facilitate the Charitable Use, including, without limitation, The Rhythm Foundation's standard charges for janitorial, clean-up, crowd and traffic control, set-up and tear-down costs and fees and charges (including for materials, labor and other services) directly necessitated by the occurrence of any Charitable Use; (ii) The Rhythm Foundation shall retain exclusive rights to the operation of all concessions and other operations at the Facility during any Charitable Use, including, without limitation, food and beverage concessions and sales, including alcoholic beverages (but City Manager shall have the right to prohibit the sale of alcoholic beverages during any Charitable Use) and all proceeds of sales and concession operations shall be Operating Revenues (City shall have no right to retain or reserve any portion thereof nor to operate in competition therewith); The Rhythm Foundation will ensure that the pricing for any concessions shall not exceed the normal pricing therefor charged at standard Events at the Facility ; and (iii) any Charitable Use Event shall be scheduled in accordance with The Rhythm Foundation's scheduling needs so as not to conflict with or impair The Rhythm Foundation's ability to maintain its anticipated schedule of Events; but shall otherwise be scheduled at a time convenient for the City, with The Rhythm Foundation reasonably cooperating with City in coordinating all scheduling (but in any case, The Rhythm Foundation shall not be obligated to permit any Charitable Use unless scheduling thereof was memorialized in writing signed by the parties in advance of the Charitable Use Event); and (iv) City shall not be entitled to "roll over" or "carry forward" any unused Charitable Use from a prior Fiscal Year, such that, in the event during any Fiscal Year no such Charitable Use Event occurs for any reason, including reasons which were completely outside the parties' reasonable control, then, City shall be deemed irrevocably to have waived its right or entitlement to the benefit of the Charitable Use Event that otherwise could have occurred during the prior Fiscal Years). The Rhythm Foundation shall have the right to promulgate reasonable rules from time to time concerning the Charitable Use so long as they are consistent with the terms hereof and rules imposed upon other Events at the Facility. Notwithstanding anything to the foregoing in this Section 6.2.2, during fiscal year 2020-2021 only, the Cultural Arts Council may issue up to thirty-six (36) rental waivers per calendar year to qualified nonprofit organizations for the use of the North Shore Band Shell. Additionally, for fiscal year

2020-2021 only, all rent waivers and reimbursable costs, and venue waivers pursuant to this Section 6.2.2, including without limitation, The Rhythm Foundation's standard charges for janitorial, clean-up, crowd and traffic control, set-up and tear-down costs and fees and charges (including for materials, labor and other services) directly necessitated by the occurrence of any Charitable Use, shall not exceed an aggregate amount of \$2,500 per event.

**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.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

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

**FOR CITY:**

**CITY OF MIAMI BEACH, FLORIDA**


**ATTEST:**


By: \_\_\_\_\_  
**Rafael E. Granado, City Clerk**

\_\_\_\_\_  
**Raul Aguila, Interim City Manager**

\_\_\_\_\_  
Date

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

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

 12-24-20  
\_\_\_\_\_  
Date

**FOR THE RHYTHM FOUNDATION:**

**ATTEST:**

By: \_\_\_\_\_  
**Secretary**

\_\_\_\_\_  
**President**

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date