

MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jimmy L. Morales, City Manager
FROM: Joy V. W. Malakoff, Commissioner
DATE: April 19, 2016
SUBJECT: Request to Revisit the Air and Sea Show Scheduled to Come to Miami Beach, Memorial Day Weekend 2017

Please place the above discussion item on the Agenda for the Commission Meeting of April 27, 2016.

If you have any questions, please contact me at extension 6622.

Thank you.

JVWM



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OFFICE OF THE CITY ATTORNEY
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MEMORANDUM

**TO: JIMMY L. MORALES
CITY MANAGER**

FROM: RAUL J. AGUILA 
CITY ATTORNEY

DATE: APRIL 19, 2016

SUBJECT: AIR & SEA SHOW EVENT

In response to Commissioner Malakoff's email to you dated April 18, 2016, regarding the Commissioner's concerns as to the proposed Air & Sea Show Event (the "Event"), and the Commissioner's inquiry regarding the City's February 1, 2016 agreement with A National Salute to America's Heroes, LLC (the "Event Producer") for the production of the Event in the City of Miami Beach (the "Agreement"), this memorandum outlines the key Event-related deliverables set forth in the Agreement, along with pertinent provisions relating to the City's right to suspend Event activities or otherwise terminate the Agreement. A copy of the fully executed Agreement is attached hereto as Exhibit "1."

BACKGROUND

On December 9, 2015, the Mayor and City Commission adopted Resolution No. 2015-29226, approving the substantive terms of the proposed agreement for the production of the Event, which would take place each year during the Memorial Day weekend, unless terminated in accordance with the Agreement (the "Event Period"). The Agreement is for a five (5) year term, subject to the termination rights as set forth more fully below. The event site is generally described as the area east of Ocean Drive, from 5th Street to 15th Street (the "Event Site").

EVENT-RELATED DELIVERABLES UNDER THE AGREEMENT

The Agreement provides the City with the right to review and approve the various plans with respect to the activation of the Event. The key Event-related deliverables under the Agreement are as follows:

Memorandum to City Manager
April 19, 2016
Air & Sea Show Event

1. **Special Event Permit Application Process**. Not less than one hundred and twenty (120) days prior to the commencement of each Event Period (for the first year of the Event, this means prior to January 26, 2017), the Event Producer, as the applicant, must submit to the City, for review by City departments and final approval by the City Manager, a Special Event Application with the proposed Event Site Plan (See Agreement, Section 4), which must include:

- (i) depictions of all locations designated for Event Producer's exclusive use, including the Restricted Event Area (for command and control, landing zone, operations, and hospitality);
- (ii) locations of all tents, facilities, concessions, alcoholic beverage service areas, fences and barriers at the Event Site;
- (iii) copies of all permit applications;
- (iv) a description of all activities to occur at the Event Site, and identity of Event sponsors; and
- (v) any other information required pursuant to the City's Special Event Rules and Regulations, or otherwise required by the City Manager.

2. **Public Safety Plan**. Not less than one hundred and twenty (120) days prior to the commencement of each Event Period (for the first event, prior to January 26, 2017), the Event Producer must submit to the City its proposed Public Safety Plan, **which must include Event Producer's plan for responding or mitigating criminal or emergency incidents that may occur at the Event Site**. (Agreement, Section 5).

Importantly, the City Manager has absolute sole right and discretion to require any revisions or adjustments to the Public Safety Plan, and any such adjustments shall be binding on the Event Producer. (Agreement, Section 5).

3. **Maintenance of Traffic (MOT) Plan**. Not less than one hundred and twenty (120) days prior to the commencement of each Event Period (for the first Event, prior to January 26, 2017), the Event Producer must submit its proposed MOT Plan, which must include a construction, automotive and pedestrian traffic flow schedule, and Event Producer's proposal for opening and closing times for streets or transportation corridors. **All closing of streets to be determined by the City Manager's at his sole discretion.** (Agreement, Section 6).

Memorandum to City Manager
April 19, 2016
Air & Sea Show Event

4. **Erection of Facilities/Structures.** As part of the permit process, City's Fire Department and Building Department must review and approve the proposed use of any facilities or structures to be erected for the Event. (Agreement, Section 9).
5. **Use of City Parking Lots.** Not less than ninety (90) days prior to the Event Period (for the first Event year, prior to February 25, 2017), Event Producer must submit requests for use of City parking lots (at the Special Event Parking Rate). (Agreement, Section 7).
6. **Other Permits/Governmental Approvals.** At least fifteen (15) days prior to the Event Period, Event Producer must have secured all licenses and governmental approvals applicable to the Event. (Agreement, Section 13). For the proposed air and sea show program, the governmental approvals required for the Event include authorization from the Federal Aviation Administration (FAA), the U.S. Coast Guard, and the Florida Department of Environmental Protection.
7. **Room Block Requirement.** Event Producer must generate a minimum of one thousand (1,000) room nights on the peak night of the Event Period, and must provide the City with documentation verifying compliance with this requirement within thirty (30) days following the conclusion of each Event. If Event Producer fails to meet this requirement, the City may immediately terminate the Agreement for cause. (Agreement, Section 27).

In addition to the specific deliverables and milestones noted above, the Agreement includes a variety of terms and conditions for the protection of the City, including obligations with respect to maintenance of City property; insurance; payment of Event-related costs; submittal to the City of a payment bond to guarantee the Event Producer's obligations; and standards of conduct to ensure the Event Producer conducts its activities with full regard for public safety, including, without limitation, the requirement to comply with all applicable laws.

THE CITY MANAGER'S AUTHORITY TO SUSPEND EVENT ACTIVITIES.

In addition to the City Manager's right to review and approve the proposed plans for the Event, the Agreement provides that **the City Manager shall have the authority to suspend all or any part of the activities of the Event Producer, if in the City Manager's sole judgment and discretion, such activities may be or are detrimental to the public or to the City.** (Agreement, Section 19). The City Manager may also suspend activities if the City has reason to believe any law is being violated and such conduct is not corrected within forty-eight (48) hours. **Among other things, the City Manager may also suspend or terminate use of the Event Site if visitors become unruly.** (Agreement, Section 19).

Memorandum to City Manager
April 19, 2016
Air & Sea Show Event

TERMINATION PROVISIONS

1. Termination for Convenience.

The City Commission has the right to discontinue the Event each year, **following the conclusion of the first Event.** (Agreement, Section 20(a)). Termination for convenience pursuant to Section 20(a) of the Agreement must be effectuated by motion approved by the City Commission, within ninety days following the conclusion of each Event. If the City terminates the Agreement for convenience, the City shall not permit production of an air and sea show on City's beach for two (2) years after the year the last Event is produced. (Agreement, Section 20(a)).¹ In addition, the Event Producer also has the ability to terminate the Agreement for its convenience, if it elects to do so prior to the July 15 of the year preceding the next Event. (Agreement, Section 20(b)).

2. Termination for Cause.

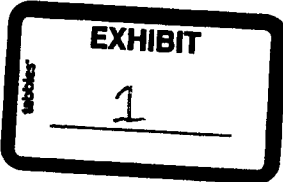
The Agreement includes a termination clause to permit either party to terminate the Agreement for cause if the other party defaults on its obligations under the Agreement. If the Event Producer fails to comply with the Agreement terms or any applicable laws, the City shall provide the Event Producer with a written notice of default. The City may thereafter terminate the Agreement for cause, if the Event Producer fails to cure the default within a specified time period (not later than 60 days). If the Event Producer commits a default and timely cures the default, and later subsequently commits a default of a similar nature, the City may terminate for cause immediately without providing any opportunity to cure the subsequent default. In addition, if the default is of a nature that cannot be cured (such as the failure to have met the minimum room block requirements), the City may immediately terminate the Agreement for cause. See Agreement, Section 20(c).

¹ At the December 9, 2015 City Commission meeting, in response to a question concerning the termination for convenience clause proposed as part of the agenda item, the City Attorney interpreted the proposed language as authorizing the City to terminate the Agreement for convenience prior to July 30, 2016. Both the Event Producer and at least one Commissioner disagreed with the interpretation, reasoning that, due to the work associated with organizing the Event, securing sponsors, and the like, the intent was to only authorize the City to termination for convenience after the conclusion of the first Event. Subsequently, the Mayor proposed either a postponement of the agenda item to the January, 2016 City Commission meeting, or a limited termination for convenience clause to allow the City to cancel the Agreement in the first sixty (60) days following execution of the Agreement, but after the Event Producer explained that the room block commitments would be compromised, these points were not included in the motion to approve the agenda item. As a result, the termination for convenience clause in the Agreement only applies *after* the conclusion of the first Event.

Memorandum to City Manager
April 19, 2016
Air & Sea Show Event

In response to Commissioner Malakoff's question as to whether the City may rescind Resolution No. 2015-29226, and terminate the Agreement prior to the 2017 Event, in the absence of a default on the part of the Event Producer that is not cured or cannot be cured within the cure period, any such action may constitute a breach of the Agreement that may expose the City to potential damages, including the Event Producer's attorneys' fees. In this regard, the Agreement provides that "the defaulting party shall remain liable for all damages, costs and expenses, including reasonable attorney's fees, arising out of or related to its Defaults under this Agreement." (Agreement, Section 20(c)(3).

If the City Commission desires to rescind Resolution No. 2015-29226 and terminate the Agreement, I recommend that the City Commission formally direct the Administration and City Attorney's Office to meet with the Event Producer to address the possibility for a negotiated settlement or buy-out of the Agreement, prior to the City Commission taking any final action to rescind or terminate the Agreement before the conclusion of the first Event.



AGREEMENT

THIS AGREEMENT is entered into on this 1 day of February, 2016,
between

THE CITY OF MIAMI BEACH, a municipal corporation of the State of Florida,
hereinafter referred to as "City",

and

A National Salute to America's Heroes, LLC, a Florida Limited Liability Company
hereinafter referred to as "Applicant".

WHEREAS, Applicant has requested approval from the City to conduct its aircraft flight demonstration and aquatic show, with ancillary activities such as entertainment, exhibits, souvenir sales, and refreshment sales (hereinafter referred to collectively as the "Air and Sea Show" or the "Event").

WHEREAS, City has been advised that, due to the scope and magnitude of the proposed Air and Sea Show, Applicant desires a contract with City for an initial term of five (5) years, so that Applicant can appropriately plan the commitment of resources, sponsors, subcontractors and finances.

WHEREAS, City recognizes that the Event is a unique branded event requiring significant capital and time investment and, as such, is willing to enter into this agreement with Applicant, subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. RECITALS INCORPORATED. The foregoing recitals are incorporated herein by reference.
2. DEFINITIONS. For the purposes of this Agreement, the Definitions set forth below are agreed upon by the parties:
 - a. "Agreement" means this Agreement between the City and Applicant, including all of the attached and/or referenced Exhibits, as the same may be amended from time to time, in writing, signed by both parties, and with any such amendment, as to the City, further subject to the approval of the Mayor and City Commission.
 - b. "Applicant" means A National Salute to America's Heroes, LLC, a Florida Limited Liability Company authorized to do business in the State of Florida.
 - c. "City" means the City of Miami Beach, Florida, a municipal corporation of the State of Florida.

- d. "Contract Administrator" means, as to City, the City Manager or his designee and, as to Applicant, the Manager of A National Salute to America's Heroes, LLC, or his/her designee. In the day to day oversight and administration of this Agreement, and except where otherwise provided herein, the parties may rely upon instructions or determinations made by the respective Contract Administrators. The Contract Administrators may not make any change to this Agreement without the approval of a written amendment to this Agreement, executed by City and Applicant and, as to City, further subject to the prior approval of the Mayor and City Commission.
- e. "City Manager" means the City of Miami Beach's City Manager.
- f. "City Commission" means the City of Miami Beach City Commission.
- g. "Event Impact Areas" means the areas outside of the Event Site that are directly impacted by the Event. The Event Impact Areas shall be determined by the City Manager, in his sole discretion; provided, however, that the City Manager may (but shall not be obligated to) consult with Applicant prior to making his determination. In the event of a disagreement between Applicant and the City regarding the Event Impact Areas, the City Manager's decision shall be final and binding upon the parties as to the determined Event Impact Areas.
- h. "Event Period" means the dates of Memorial Day Weekend annually and throughout the Term of this Agreement. The Air and Sea Show shall take place on Memorial Day Weekend over a three-day period beginning on a Friday and ending on a Sunday. The Applicant may utilize the Thursday immediately preceding the Event Period as a practice day for performers and equipment utilized during the Event. No concessions or hospitality tents shall be operating or open during the practice day. The Event Period may be revised upon the mutual consent of the City and the Applicant, and, if revised, any new Event Period shall be memorialized as a formal written amendment to this Agreement, which shall be further subject to approval by the City Commission.
- i. "Breakdown" shall mean the use of heavy equipment, machinery or vehicles in the deconstruction of the Event structures.
- j. "Event Site" means the area within the City used to hold the Event and shall generally refer to the area east of Ocean Drive, from 5th Street – 15th Street, limited by the waterline and the Maintenance of Traffic ("MOT") Plan. The Event Site is more specifically described in Exhibit "A" hereto.
- k. "Maintenance of Traffic Plan" or "MOT Plan" shall have the meaning given to such term in Section 6.
- l. "Public Safety Plan" shall have the meaning given to such term in Section 5.
- m. "Repair" shall mean any work (including all third party labor, supplies, materials and equipment) reasonably necessary to repair, restore, or replace any property, equipment, building, structure, or any other component within the Event Site, if such work is necessitated by any damage or destruction caused by the acts or omissions of the Applicant and/or its employees, contractors, subcontractors, agents, concessionaires, licensees, or invitees.

- n. "Restricted Event Area" shall mean the restricted area located within the Event Site utilized by Applicant for command and control, landing zone, operations, and hospitality.
- o. "Event Site Plan" shall have the meaning given to such term in Section 4.
- p. "Term" shall have the meaning given to such term in Section 20.

3. **PERMISSION TO USE.** Subject to the terms and conditions in this Agreement, Applicant shall be permitted to use the Event Site in order to conduct the Air and Sea Show. The right to use the Event Site shall not imply that the Applicant is permitted to close streets and transportation corridors that are defined as part of the Event Site, unless such closures are approved, in writing, by the City Manager, in his sole discretion.

The City Manager shall have the right to pre-approve all promotional materials, advertising and signage for the Event, which approval shall not be unreasonably withheld. If, upon review, the City Manager denies the use of certain promotional materials, advertising, or signage, the Applicant shall promptly discontinue the use of, and/or otherwise remove, such promotional materials, advertising or signage.

Applicant agrees to list the City of Miami Beach as a co-sponsor of the Event on all approved promotional materials, advertising and signage for the Event.

The parties agree that alcohol shall only be permitted in the Restricted Event Area. Applicant's alcohol sales, use, and consumption during the Event shall be governed in accordance with all applicable provisions of the City of Miami Beach Code and Florida law, as may be amended from time to time.

4. **CITY SPECIAL EVENT PERMIT APPLICATION:** Not less than one hundred twenty (120) days prior to the first day of each Event Period during the Term, Applicant shall complete and submit a Special Event Application and provide the City with the following:

- a. The Event Site Plan depicting, at a minimum, all locations that will be designated for Applicant's exclusive use (including, without limitation the Restricted Event Area): detailing the locations of any tents, sanitary facilities, parking, stages, booths, concessions, alcoholic beverage service areas, etc.; and the boundary lines, including those down to the waterline (as allowed by law), of any fences, barriers, etc. to be constructed at the Event Site. The Event Site Plan shall be subject to the review and approval by the appropriate City departments. After review by the appropriate City departments, the final proposed Event Site Plan shall be subject to the review and final written approval of the City Manager. A final inspection will be conducted by the City immediately prior to the Event to ensure that the location of all tents, booths, sanitary facilities, parking, stages, etc. are in accordance with the City approved Event Site Plan. The City approved Event Site Plan shall be incorporated into this Agreement as Exhibit "D" hereto.
- b. A description of all activities and events to occur at the Event Site, (including, without limitation, the Restricted Event Area).

- c. The cellular and business phone numbers of the individuals in charge of the various aspects of the Event.
- d. Copies of all appropriate permits and licenses required by the City. These permits include, but are not limited to, permits necessary for tents and other structures, merchandise, food and beverage vendors, and electrical connections.
- e. All sponsors of the Event, and/or all goods and services to be promoted, distributed, sold, or given away must have the prior written approval of the City Manager, which approval, if given at all, shall be at the City Manager's sole discretion.
- f. Applicant shall provide any other deliverable(s) required by the City Manager, whether same is required pursuant to the City's Special Event Rules and Regulations, which are attached and incorporated as Exhibit "___" hereto, or whether required in order to safeguard and ensure the health, safety, and welfare of the City's residents and visitors during the Event Period.
- g. Applicant acknowledges that other events and activities will take place within the City of Miami Beach during the Event Period each year, as the Event Period includes the Memorial Day holiday weekend, a historically busy weekend within the City of Miami Beach. Accordingly, Applicant's Event schedule, program, and activation shall be coordinated with the City, so as to ensure the health, safety and welfare of City's residents and visitors during the Event Period, and minimal disruption or interruption of other activities or events taking place within the City of Miami Beach during the Event Period.

5. **PUBLIC SAFETY PLAN FOR THE EVENT.** Because of the physical size of the Event and the number of people that may attend, City shall arrange for such necessary personnel, at City's expense, and in such type, manner and number, as may be determined by the City Manager, in his sole discretion and judgement, to ensure the appropriate level of public safety at the Event Site and Event Impact Areas, excluding the Restricted Event Area, which shall be provided at Applicant's expense. The parties may consult with each other in regard to the levels of security, including the scaling down of such services for the set up and tear down of the Event.

- a. The Applicant shall provide a Public Safety Plan for the City Manager's review and approval, no later than one hundred and twenty (120) days prior to the date of each Event Period. This Public Safety Plan shall include, but not be limited to, the Applicant's planned actions to respond to and mitigate various potential criminal and/or emergency incidents which may occur during the Event. After receiving the Public Safety Plan from the Applicant, the City Manager shall work with the Applicant in order to properly determine the number of personnel necessary to effectively and efficiently carry out the Public Safety Plan. The City and Applicant shall develop an anticipated budget for the Public Safety Plan. The City Manager shall have the absolute sole right and discretion to approve the Public Safety Plan, including any revisions or adjustments thereto. In the event of a disagreement(s) between Applicant and the City regarding the number of personnel required for the Public Safety Plan, and/or the anticipated budget of the Public Safety Plan, the City Manager's decisions shall be final. The final City-approved Public Safety Plan shall be attached and incorporated as Exhibit "B" to this Agreement.

- b. Applicant shall make arrangements with the appropriate City department(s) to provide Police, Fire, Ocean Rescue protection. These arrangements must be reviewed and approved by the City Manager.
- c. The parties will act in good faith to keep the other party notified of the latest information and any new developments or incidents that might cause additional public safety personnel to be deployed to the Event.
- d. In addition to the City-approved Public Safety Plan, the City's Police and Fire Departments will author separate comprehensive Incident Action/Operational Plans specific to their respective duties. Such plans will take into consideration several factors, to include nationally accepted event planning and management guidelines utilizing the National Incident Management System (NIMS) and the Incident Command System (ICS). These plans will be fluid up until the conclusion of the Event and may change based on real time intelligence, threat information, and other such inputs. Local representatives and agents from the Federal Bureau of Investigation (FBI) Special Events Unit, the Department of Homeland Security (DHS), Navy Criminal Investigative Service (NCIS), and other public safety partners will assist in determining the level and magnitude rating of the Event, advise of any potential national security considerations, and provide intelligence gathering and Event threat assessment assistance. Due to the sensitive security and safety implications of such plans, they will be kept confidential, accessible to City officials, Police/Fire personnel and Applicant only, and shall not be available for public or media distribution.
- e. The cost of any expansion of Event-related activities, boundaries or other Event program changes requested by Applicant, or the costs for additional services requested by Applicant, including, without limitation, public safety-related services that are greater than the services being provided by the City for the Event as established in the Public Safety Plan, shall be at the sole expense of Applicant. City shall be paid or reimbursed for all costs and expenses associated with any such additional or expanded services provided to Applicant, with all such costs being accounted for and paid separately from the provisions of Section 17 of this Agreement, which shall not apply with respect thereto. Expansion of services means enhancements of Event-related activities or programming, any changes in the type of activities approved for the Event, or other changes with respect to the Event that are initiated by or are requested by Applicant, including changes to the physical location and boundaries that result in an increase in the City's cost to provide all necessary services.
- f. Should Applicant request non-critical public safety services, such as a police escort, or if such services are beyond the City's ability to provide, Applicant may make such arrangements and coordinate these services with the City. The cost for these additional services shall be an expense to Applicant, and all such costs and expenses shall be paid to City within the time frame set forth in Section 17.
- g. In the event of an emergency or disaster during the Event, at the Event Site, or as a direct result of Event activities, that requires public safety resources beyond the City approved Public Safety Plan, it shall be the sole responsibility of the Applicant to reimburse the City for its additional cost to respond to such emergency or disaster. This paragraph shall not apply to any natural disaster, act of terrorism, or act of God that may occur at the Event Site during the Event including, without limitation, a hurricane, lightning strike, tomado, or any other such causes whatsoever beyond the control of the parties.

- h. In the event the Applicant wishes to utilize temporary mobile cellular communication service boosting) towers, which can also benefit public safety by increasing the E-911 capabilities of the specific service provider, the Applicant must notify the City Police and Fire Departments and agrees that the contracted equipment provider with whom they procure such equipment, services etc. will work closely with the City Radio Engineers to confirm the temporary towers will not interfere with the City or County public safety radio frequencies.

6. **STREET CLOSINGS:** The City Manager reserves the right, at his sole discretion, to approve all closing of streets, including those streets and transportation corridors within the Event Site.

- a. Not less than one hundred and twenty (120) days prior to the date of each Event, Applicant shall provide to the City a MOT Plan for the City Manager's review and approval. The City approved MOT Plan shall be incorporated into this Agreement as Exhibit "C," and shall contain a construction and automotive and pedestrian traffic flow schedule detailing the opening and closing times for all streets and/or transportation corridors. No street or transportation corridor closures will be permitted unless included in the City approved MOT Plan. Applicant agrees to provide the City with emergency access to all areas included in the Event Site.
- b. Applicant agrees to coordinate and make the appropriate arrangements with any merchants or residents affected by any street or transportation corridor closures to ensure they are provided sufficient and reasonable access to their businesses and residences. Applicant acknowledges that traffic control plans shall accommodate the ingress and egress to businesses or residences during the course of the Event.

7. **PARKING AND TRANSIT SERVICES:** It will be the responsibility of Applicant to arrange, coordinate, and pay for all parking at City facilities and any transit services from these facilities to the Event Site. All proposed shuttle routes and bus stops shall be submitted by Applicant, as part of the MOT Plan. City agrees to invoice Applicant at the approved Special Event Parking Rate for any public metered parking spaces that are removed from public use (as requested by the Applicant and approved by the City Manager). All parking lot requests must be in writing at least ninety (90) days in advance of the Event. An estimate of parking charges will be provided to Applicant no more than fourteen (14) days after receiving written requests. Applicant understands that the approved Special Event Parking Rate is a daily rate and may not be prorated.

8. **MAINTENANCE OF EVENT SITE AND EVENT IMPACT AREAS:**

- a. Applicant shall be responsible for, and shall provide, sufficient temporary public sanitary facilities so as to meet the requirements established by the City Manager. Applicant shall provide daily service of the facilities at all times during the Event Period. The cost of such temporary public sanitary facilities shall be an expense to Applicant, whether such facilities are furnished by Applicant or City. If any such facilities are furnished by City, all costs and expenses shall be paid to City within the time frame as set forth in Section 17. Applicant shall not be responsible to pay for clean-up of City public rest room facilities.
- b. The City shall be responsible for all clean-up costs and expenses associated with the removal of trash and debris that accumulates within the Event Site or in the designated Event Impact Areas, provided, however, that Applicant shall be responsible for all

clean-up costs and expenses associated with the removal of trash and debris that accumulates on any portion of the Restricted Event Area. All trash shall be collected and removed throughout the Event with final clean-up being completed within 24 hours of the Event completion. The requirement to remove trash and debris includes street sweeping.

- c. Applicant shall provide all day access passes to the necessary City staff required to work the Event. Applicant and City will agree to the list of passes that will be distributed for the Event at least ten (10) days prior to the Event. Additionally, Applicant shall provide an operations tent to be utilized by the City Manager during the Event days. Location of this operations tent shall be determined by the City Manager.

9. CONSTRUCTION OF FACILITIES, STRUCTURES, CANOPIES, TENTS AND CONCESSION STANDS;

- a. Applicant shall be permitted to construct and maintain, within the Event Site, such facilities and/or structures that are approved for the Event as part of the Event Site Plan. All such facilities and/or structures shall be erected, and deliveries with respect thereto made, on agreed-upon dates after consultation with the City's Special Event staff.
- b. Applicant shall be permitted to set up no later than the Monday prior to the Event. All such facilities and/or structures must be removed within seventy-two (72) hours following the conclusion of the Event.
- c. Applicant shall obtain approval by the City Fire Department and file with its Special Event Permit application evidence that any facilities and/or structures are of fireproof material and will not constitute a fire hazard. City's Building Department must review and approve the proposed use of any facilities and/or structures, in accordance with the City Code and the Florida Building Code, as same may be amended from time to time.
- d. All construction, installations and services, including electrical hook-ups, shall be made at Applicant's expense and approved in advance by the City's Building Department. If electricity is required, Applicant shall negotiate arrangements for such service with the City or a licensed contractor. This cost shall be an expense to Applicant and, if furnished by City, shall be paid to City within the time frame as set forth in Section 17, Reimbursement of Costs and Expenses.
- e. Unless Applicant receives prior written permission from the City Manager, no construction or installations shall involve the use of stakes or other material that may break the surface or deface any infrastructure such as asphalt, concrete, brick or any plant material.
- f. Applicant is required to provide and install Event-related signage, including directional, general messaging, concession stands, and sponsor-related signage, at locations subject to the City Manager's approval. Applicant will set up and remove such signage, at no cost to the City.

10. **MAINTENANCE OF AND PAYMENT FOR DAMAGE TO PROPERTY:** Regardless of the cause, Applicant shall be responsible for any damage to any and all property located or situated within the Event Site (including, without limitation, the Restricted Event Area). It is further agreed that City shall inspect the Restricted Event Area and Event Site for damage no later than the Wednesday immediately following the Event and, if as a result of said inspection, damage is found to exist, City shall furnish Applicant with a written report of such damage by the close of business within fourteen (14) days following the Event. The report shall state the cost to be paid by Applicant to remedy the damage. This cost shall be paid by Applicant within fourteen (14) days after Applicant receives the City's report.
11. **SECURITY:** All construction materials, equipment, goods, signs and any other personal property of Applicant shall be protected and/or secured solely by Applicant. Applicant acknowledges and agrees that City assumes no responsibility whatsoever for any such item(s) and that the security and protection of any such item(s) from theft, vandalism, the elements, acts of God, or any other cause, are strictly the responsibility of Applicant.
12. **SUBLEASES ASSIGNMENTS, OR TRANSFERS:** Applicant shall not assign, sublease or transfer any of its obligations or rights under this Agreement, in whole or in part, to any person. The foregoing notwithstanding, the City acknowledges that Applicant will have subcontractors providing services to Applicant in order for Applicant to effectuate this Agreement and the hiring of such subcontractors shall not be a violation of this paragraph.
13. **LICENSES AND PERMITS; COPYRIGHTS, PATENTS AND TRADEMARKS:** At least fifteen (15) days prior to the Event, Applicant agrees to secure and pay for all licenses, permits or other governmental approvals that may be required by any governmental agency having jurisdiction over the Event Site or any aspect of the Event, including, without limitation, any approval required by the City, Miami-Dade County, State of Florida and/or any agency of the U.S. government, and shall also be responsible for obtaining any incidental State permit for the protection of sea turtles issued by the appropriate governmental agency. Additionally, if Applicant intends to use any item which is or may be protected from infringement, such as but without limitation, copyrights, patents and trademarks, if requested by City, Applicant shall provide City fifteen (15) days in advance of the first date of property use, evidence showing that the applicable licenses, permits and/or permission have been secured and, if applicable, all fees have been paid in full by Applicant. The provisions of this paragraph specifically apply to the American Society of Composers, Authors and Publishers ("ASCAP"), Broadcast Music Incorporated ("BMI") and any other similar organization that may require written permission and payment of a fee for use of protected material. Applicant shall ensure that all performance payments required to be made under such licenses are made promptly and directly to the licensing organizations. Copies of all said licenses or reports shall be submitted to City upon request. In the event Applicant fails to submit the licenses or reports as required herein or the documentation is not satisfactory to City, Applicant shall be responsible for payment to City for all license fees incurred by the City in connection with the Event. City shall have no responsibilities to any performing rights licensing organizations for any performance during the Event.
14. **STANDARDS OF CONDUCT; COMPLIANCE WITH RULES, REGULATIONS, ORDINANCES:** Applicant agrees that at all times it will conduct its activities with full regard for public safety and will observe and abide by all Federal, State and local laws, including, without limitation, those relating to noise, building, zoning, gambling, fire protection, liquor regulation, sanitation, food facilities, and hours of operation. Applicant shall further take all precautions and use due care to conduct its operations in a safe and prudent manner with respect to its agents, employees and visitors to the Event.

15. **INSURANCE:** The Applicant shall provide and maintain at all times during the term of any contract, without cost or expense to the City, policies of insurance, with a company or companies authorized to do business in the State of Florida, and which are acceptable to the City. All required insurance will be placed with carriers licensed to do business in the State of Florida, having agents upon whom service of process may be made in the State of Florida, insuring the applicant against any and all claims, demands or causes of action whatsoever, for injuries received or damage to property relating to the performance of duties, services and/or obligations of the applicant under the terms and provisions of the contract. Applicant is responsible for timely provision of certificate(s) of insurance to the City at the certificate holder address evidencing conformance with the contract requirements at all times throughout the term of the contract.

Such policies shall remain in full force and effect during the Event and shall specifically include those times of setup and Breakdown in connection with the Event. Such policies of insurance, and confirming certificates of insurance, shall insure the applicant is in accordance with the following minimum limits:

- a. General Liability insurance on forms no more restrictive than the latest edition of the Occurrence Form Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

Each Occurrence/General Aggregate	\$1,000,000/2,000,000
Products-Completed Operations	\$2,000,000
Personal & Adv. Injury	\$1,000,000
Fire Damage	\$50,000
Medical Expense	\$5,000
Contractual Liability	Included

- b. Liquor Liability with the following minimum limits and coverage:

Each Occurrence	\$1,000,000
Annual Aggregate	\$1,000,000

- c. Automobile liability insurance, including owned, non-owned, and hired autos with the following minimum limits and coverage:

Combined Single Limit	\$1,000,000
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- d. Workers' compensation insurance based on proper reporting of classification codes and payroll amounts in accordance with Chapter 440, Florida Statutes, and/or any other applicable law requiring workers' compensation (Federal, maritime, etc). If not required by law to maintain workers' compensation insurance, the applicant must provide a notarized statement that if he or she is injured; he or she will not hold the City responsible for any payment or compensation.

- e. Employers Liability insurance with the following minimum limits and coverage:

Each Accident	\$1,000,000
Disease-Each Employee	\$1,000,000
Disease-Policy Limit	\$1,000,000

- f. Professional liability and/or specialty insurance (medical malpractice, engineers, architect, consultant, environmental, pollution, errors and omissions, etc.) insurance as applicable, with minimum limits of \$1,000,000 and annual aggregate of \$2,000,000.

The City of Miami Beach shall be named as additional insured as their interest may appear on all applicable liability insurance policies.

The certificate(s) of insurance shall provide for a minimum of thirty (30) days prior written notice to the City of any change, cancellation, or nonrenewal of the provided insurance. It is the applicant's specific responsibility to ensure that any such notice is provided within the stated timeframe to the certificate holder.

If it is not possible for the Applicant to certify compliance, on the certificate of insurance, with all of the above requirements, then the Applicant is required to provide a copy of the actual policy endorsement(s) providing the required coverage and notification provisions.

Certificate holder shall be:

The City of Miami Beach, Florida
1700 Convention Center Drive
Miami Beach, FL 33139

Certificates of insurance shall evidence a waiver of subrogation in favor of the City, that coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium payment by the City.

Applicant is required to confirm that each vendor of the Applicant carry insurance coverage that meets or exceed the coverages set forth in paragraphs (a)-(f) that apply to each vendor, as applicable to each vendor's work, and that the same limits apply to any and all vendors the Applicant uses for the Event. Applicant further confirms that Applicant's insurance will apply as excess over any other valid and collectible coverage of their vendors. Said limits may be provided by purchase of an umbrella or excess policy.

All self-insured retentions shall appear on the certificate(s) and shall be subject to approval by the City. At the option of the City, the insurer shall reduce or eliminate such self-insured retentions or the applicant or subcontractor shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

The City shall be exempt from, and in no way liable for, any sums of money, which may represent a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention shall be the sole responsibility of the applicant and/or sub-contractor providing such insurance.

If Applicant fails to deliver an insurance certificate, the City's failure to request delivery shall in no way be construed as a waiver of Applicant's obligation to provide the insurance coverage specified herein. Failure to obtain and maintain such

insurance as set out above will be considered a breach of contract and may result in termination of the contract for default.

Neither approval by the City of any insurance supplied by the, nor a failure to disapprove that insurance, shall relieve the Applicant of full responsibility for liability, damages, and accidents as set forth herein.

16. **INDEMNIFICATION AND HOLD HARMLESS:** Applicant shall indemnify, defend and hold harmless City, its officers, agents, and/or employees, against any and all damages, claims, losses, liabilities and expenses (including, without limitation, reasonable legal fees and disbursements) caused by, in connection with, arising out of, or resulting from the use of the Event Site, or caused by, in connection with, arising out of, or resulting from any act by Applicant, its partners, employees, officers, contractors, and/or agents done in the performance of this Agreement. If called upon by City, Applicant shall defend not only itself, but also City in connection with any such claim, at Applicant's expense, and at no expense whatsoever to City.

Applicant further agrees to defend, indemnify, save and hold harmless the City and the City's officers, agents, and employees from any claim, suit, loss, cost or expense or any damages arising out of or relating to Applicant's failure to obtain all necessary performing rights and licenses for the event (BMI, ASCAP, etc.).

17. **REIMBURSEMENT OF EXPENSES:** The City and Applicant shall be responsible for the costs and expenses associated with Police, Fire, Ocean Rescue, and Sanitation services within the Event Site and Event Impact Area, as provided herein. City shall be responsible for initial expenses up to the amounts associated with Memorial Day Weekend for the immediately preceding calendar year, adjusted annually for either (1) wage increases for personnel for the foregoing City departments or (2) inflation utilizing the United States Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers; U.S. City average (1982-84=100), whichever is lower (the "City's Initial Contribution"). Applicant shall be responsible for all of City's costs and expenses in excess of the City's Initial Contribution, up to the maximum amount of \$200,000 ("Applicant's Initial Contribution"). City and Applicant to each be responsible for 50 percent (50%) of all costs in excess of Applicant's Initial Contribution. Applicant shall reimburse City for any amounts due under this Agreement within fourteen (14) days of receipt of any invoice from City. Applicant shall have the right to request all supporting documentation with respect to charges being billed to Applicant under this Agreement. City's invoices shall include a breakdown of charges.

18. **BOND:**

- a. Applicant agrees to secure a bond in an amount equal to one hundred and ten percent (110%) of the estimated cost of services for the Applicant requested additional services or expansion of services requested by Applicant, for the Event including, without limitation, public safety, maintenance, cleanup, utility connections, Breakdown and removal, storage and repair or replacement of property. City reserves the right to approve the bonding company or institution issuing the bond and the instrument shall be kept in full force and effect for the period of the Agreement.
- b. No later than thirty (30) days prior to the date of permission from City to first use the Event Site, Applicant shall provide the City with a valid payment bond in the amount specified above. The bond shall be written by a corporate surety company holding a Certificate of Authority from the Secretary of Treasury of the United States, executed

and issued by a resident agent licensed by and having an office in the State of Florida, representing such corporate surety, providing that if Applicant fails to duly pay for any labor, materials, or other supplies used by Applicant, the surety will pay the same in the amount not exceeding the sum provided in such bond. Applicant shall also have the option to escrow the funds in an amount equal to one hundred and ten percent (110%) of the cost of reimbursement for City services ("Obligated Amount") in which case a bond would not be required by the City. The Obligated Amount shall be placed into the City to be held in escrow under the terms and conditions hereinafter set forth ("Escrow Deposit").

- c. The City's Chief Financial Officer shall be the Escrow Agent, the Escrow Agent shall promptly deposit, retain and disburse the Escrow Deposit in accordance with the terms hereof or as may be directed in writing by both the Applicant and City Manager on behalf of the City or as may be directed by a court of competent jurisdiction.
- d. If the Escrow Agent is in doubt as to his or her duties, the Escrow Agent shall retain the Escrow Deposit until Applicant and City, through its City Manager, collectively agree in writing to the disposition of the funds or until a court of competent jurisdiction has adjudicated the rights of Applicant and the City.
- e. Any suit between Applicant and City where Escrow Agent is made a party because of acting as Escrow Agent, or in any suit where Escrow Agent interpleads the Escrow Deposit, Escrow Agent shall recover reasonable attorney's fees and costs from the Escrow Deposit, as between Applicant and City, and such fees and costs shall be charged and assessed against the non-prevailing party.
- f. The parties agree that the Escrow Agent shall not be liable to any party or person for misdelivery of the Escrow Deposit or any portion thereof to Applicant or City, unless misdelivery is due to willful breach of the terms hereof or gross negligence on the part of Escrow Agent.

19. **CITY'S RIGHT TO SUSPEND ACTIVITIES OR REMOVE PERSONS FROM EVENT SITE:** The City Manager shall have the authority to suspend all or any part of the activities of Applicant when, in the City Manager's sole judgment and discretion, such activities may be or are detrimental to the public or to the City, or if the City has reason to believe any law or ordinance is being violated by Applicant, its agents or employees, which conduct is not corrected within forty eight (48) hours of written notice to Applicant. City reserves the right through the City Manager, to suspend or terminate use of the Property if visitors become unruly, and to reject any sponsor, presentation, material or item which is or may be, in the sole opinion of the City Manager, hazardous, offensive, immoral or disparaging to the image of the City, or to any person or group of persons. The decision of the City Manager in such regard shall be final, binding and conclusive.

20. **TERM AND TERMINATION:** The City hereby grants to the Applicant the exclusive right and privilege to conduct the Air and Sea Show annually for an initial period of five (5) years, subject to the following conditions:

- a. The Applicant may conduct the Air and Sea Show annually for the Term of this Agreement, unless the City Commission decides to discontinue the Air and Sea Show with notice to the Applicant, following the conclusion of the first Air and Sea Show. The only method for any such cancellation of the Agreement pursuant to this Section 20(a) is by motion approved by the City Commission. The City shall notify

the Applicant of its intent to cancel the Air and Sea Show prior to July 30 of the year preceding the next scheduled Air and Sea Show. However, in all instances City shall have ninety (90) days from the date the last Air and Sea Show ends to notify Applicant of its intent to cancel. Applicant shall be given fourteen (14) days' notice of the City Commission meeting at which such cancellation shall be determined. If City elects to discontinue, City shall not produce or permit the production of an air and sea show on City's beach for two (2) calendar years after the year the last Event is produced by the Applicant.

- b. The Applicant may elect, during the Term of this Agreement, to terminate this Agreement and no longer conduct the Air and Sea Show. If the Applicant elects to terminate this Agreement, the Applicant shall notify the City in writing of such election prior to the July 15 of the year preceding the next Air and Sea Show Event. If the Applicant elects not to conduct the Air and Sea Show in a particular year or elects not to seek an extension of the terms of this Agreement, this Agreement will automatically terminate.
- c. Termination for Cause: If either party fails to perform in accordance with the requirements of this Agreement or fails to comply with any applicable laws (any such failure to perform or comply with applicable laws hereby constituting a "Default"), the non-defaulting party shall give written notice thereof to the defaulting party, identifying the nature of the default ("Notice of Default").
 1. If, after delivery of the Notice of Default, the defaulting party fails to promptly commence and thereafter complete the curing of such Default within a reasonable period of time, not to exceed thirty (30) days after delivery of the Notice of Default or, if such Default is not capable of being cured within such thirty (30) day period, the defaulting party fails to undertake within such period to effect a cure, and diligently and in good faith prosecute the same to conclusion no later than sixty (60) days following delivery of the Notice of Default, then the non-defaulting party may terminate this Agreement for cause at any time following the expiration of the cure period specified in the Notice of Default or as provided in this Section 20(d).
 2. If either party commits a Default during the term of this Agreement and cures the Default within the cure period, and subsequently commits a Default of a similar nature, then the non-defaulting party shall have the sole option and discretion to terminate this Agreement for cause effective immediately, without providing the defaulting party with the opportunity to cure the subsequent Default. If the default is of a nature that cannot be cured, such as fraud or a material misrepresentation in connection with either party's performance under this Agreement, or a failure to have met the minimum room block requirements set forth in Section 27 below, the non-defaulting party shall be entitled to immediately terminate this Agreement for cause, and such termination shall be effective upon receipt of the termination notice and no cure period shall apply.
 3. Upon termination, the defaulting party shall remain liable for all damages, costs and expenses, including reasonable attorneys fees, arising out of or related to its Defaults under this Agreement, and the non-defaulting party

shall be fully discharged from any and all liabilities, duties, or obligations arising out of, or by virtue of, this Agreement.

21. **GOVERNING LAW AND ATTORNEY'S FEES:** This Agreement shall be governed by the laws of the State of Florida, with venue lying in Miami-Dade County. In the event of any dispute which arises out of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, including bankruptcy and/or appeal if any.
22. **ASSIGNMENT:** No assignment of the rights, interest or obligation under this Agreement shall be made by either party without the written consent of the other.
23. **AMENDMENT:** No modification amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties hereto, with the same formality and of equal dignity herewith.
24. **EXTENT OF AGREEMENT:** This Agreement represents the entire and integrated Agreement between City and Applicant and supersedes all prior negotiations, representations or agreements either written or oral.
25. **NOTICE:** Whenever any party desires to give notice to any other party, it must be given by written notice sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the place designated below and the place so designated shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, the parties designate the following as the respective places for giving notice:

CITY:

City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
Attn: City Manager

APPLICANT:

A National Salute to America's Heroes, LLC,
a Florida Limited Liability Company
c/o Michael I. Kotler, Esquire
54 SW Boca Raton Boulevard
Boca Raton, Florida 33432

26. **CORPORATE STATUS:** This Agreement shall automatically terminate if, within thirty (30) days from execution of this Agreement, Applicant does not provide City with proper certification from the State of Florida that Applicant has registered to do business in the State of Florida.
27. **ROOM BLOCK REQUIREMENT:** For each Event, Applicant shall be responsible for generating event room blocks at hotels located within the City of Miami Beach, in the minimum amount of (a) one thousand (1,000) room nights on the peak night of the Event Period (with such peak night during the Event Period to be selected by Applicant); and (b) thirty-five hundred (3,500) room nights over the course of the Event Period. Within thirty (30) days following the completion of each Event, Applicant shall provide the City all supporting documentation verifying compliance with

the foregoing minimum room block requirements. In the event the Applicant fails to meet the minimum room block requirements set forth herein, the City Manager may terminate this Agreement for cause pursuant to Section 20(c)(2).

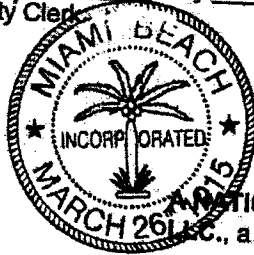
IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

ATTEST:

CITY OF MIAMI BEACH, FLORIDA,
a municipal corporation of the State of Florida

By: [Signature] 2/1/16
Rafael E. Granado, City Clerk

By: [Signature]
Philip Levine, Mayor



ATTEST:

NATIONAL SALUTE TO AMERICA'S HEROES,
a Florida Limited Liability Company

By: [Signature]
Print Name: CINQUE NUDARSI
Its: _____

By: [Signature]
Print Name: MICHAEL MURPHY
Its: STATE OF FLORIDA

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION
[Signature] 1-29-16
City Attorney RAP Date

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