

AGREEMENT

This Agreement (the "Agreement") is entered in as of this ___ day of _____, 2014, by and between O.B. Festival Events, LLC, a Florida not-for-profit limited liability company ("OB Events"), and the City of Fort Lauderdale (the "City").

WHEREAS, OB Events is operated for purposes beneficial to the community as a whole and the promotion of the social welfare of the State of Florida, to which end OB Events sponsors, produces and/or participates in festivals, expositions, athletic contests and other similar or allied projects so that the residents of, and visitors to, the community shall become acquainted with, attracted to and interested in the climatic, recreational, commercial, agricultural, social, educational and economic resources of the area; and

WHEREAS, OB Events is wholly-owned by The Orange Bowl Committee, Inc. (the "OBC") and has the right to use certain trade names, logos and other intellectual property owned by the OBC pursuant to a License Agreement dated April 28, 2010 (the "License Agreement"); and

WHEREAS, the City annually organizes and operates the "Downtown Countdown" New Year's Eve Celebration (the "Event") which takes place in Downtown Fort Lauderdale, on December 31st/January 1st of each year, which Event is a community event open to the general public and visitors; and

WHEREAS, pursuant to Section 2-189(c), the City Manager has determined that the services offered by OB Events are proprietary in nature and that it would be in the best interest of the City to not utilize competitive bids to purchase these services, but instead, the price and scope of services will be negotiated, and

WHEREAS, the City desires to retain OB Events to use its expertise to assist the City in promoting the Event, and OB Events agrees to do so on the terms and conditions as set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained herein and such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Article I

Duties and Obligations

1.1 Definitions

(a) City Marks shall mean such marks as shown on Exhibit 1 attached hereto and made a part hereof.

(b) Commercially Reasonable Efforts shall mean that level of effort which a prudent business would undertake in circumstances which are the same as or substantially similar to the circumstances referred to or described, but without any obligation to incur any unduly burdensome expenses or obligations.

(c) Intentionally left blank.

(d) Intentionally left blank.

(e) OB Event Marks shall mean the OBC marks licensed to OB Events pursuant to the License Agreement, as shown on Exhibit 2 attached hereto and made a part hereof.

(f) Procuring Cause shall mean that cause and effort which brings about the result of securing a Sponsor based upon the facts and circumstances.

(g) Net Revenue shall mean the gross revenue less all out-of-pocket costs and expenses incurred by OB Events in fulfillment of sponsorship contracts related to the Event (including, without limitation, tents, tables, food and beverages, banners, etc.), provided that, fulfillment costs and expenses shall not exceed twenty-five percent (25%) of the sponsorship fee without the prior written approval of the City not to be unreasonably withheld, as to which costs and expenses OB Events shall maintain true, correct and complete books and records in accordance with Section 4.3(c) hereof.

1.2 OB Events Obligations.

(a) OB Events hereby agrees to use Commercially Reasonable Efforts to obtain sponsors for the Event., . . . OB Events shall also work with the City to mutually agree on the various levels of sponsorships and the fulfillment levels of such sponsorships, the current levels agreed upon by the City and the OBC are set forth on Exhibit 3, which may be modified upon the mutual agreement of the City Manager (or his/her designee) and OB Events not to be unreasonably withheld (as the same may be amended, the "Agreed Rate Card").

(b) OB Events shall use commercially reasonable efforts to collect sponsorship fees from Sponsors for which it is the Procuring Cause (but shall not be required to threaten or institute litigation or collection proceedings) and shall also be responsible for sponsorship fulfillment for Sponsors for which it is the Procuring Cause. The sponsorship fees collected by OB Events shall be used to pay for fulfillment costs and expenses; it shall then retain the commissions due to the OB Events pursuant to Article IV and shall remit the balance thereof to the City as provided in Section 4.3 hereof.

(c) For purposes of this Agreement, OB Events hereby grants the City a limited, non-assignable, non-exclusive license to use the OB Events Marks solely for the purposes set forth in this Agreement. The City agrees to use the OB Event Marks in identical form to the specimens set forth on Exhibit 2 hereto without any alteration therefrom. Upon termination or expiration of this Agreement, the City agrees to cease all uses of the OB Events Marks.

(d) OB Events agrees to include the Event in all of its Orange Bowl Festival marketing and promotions wherever initiated, including, but not limited to, South Florida and the two markets of the teams participating in the applicable Orange Bowl football game.

(e) OB Events agrees to use the City Marks in identical form to the specimens set forth on Exhibit 1 hereto without any alteration therefrom. OB Events acknowledges that the City is the sole and exclusive owner of the City Marks and the goodwill associated with such marks, acknowledges the validity of the City Marks and agrees that it shall not at any time challenge or contest the validity of the City Marks or such party's ownership of the City Marks.

1.3 City Obligations.

(a) The City agrees to be solely responsible for all aspects of Event production, staging, entertainment, management, security and operation, including, but not limited to, operations, tickets, concessions, grandstands, barricading, police, and business administration if the Event takes place, but excluding OB Events fulfillment of sponsorship obligations for which OB Events is the Procuring Cause. It is acknowledged that OB Events shall have no responsibility or liability with respect to the foregoing. The City shall reasonably cooperate with OB Events with all matters related to local government and permitting

(b) The City will notify OB Events in writing if it is unable to hold the Event by April 1 prior to the Event or as soon as possible prior to the Event if the Event cannot be held as a result of war, insurrection, terrorist activity, strikes, lockouts, riots, floods, earthquakes, fires, casualty, acts of God, acts of a public enemy, epidemic, quarantine restrictions, freight embargo, shortage of labor or materials, interruption of utilities service, lack of transportation, litigation, weather, breach of contract or bankruptcy or insolvency of any vendors, sub-contractors, material suppliers or any other third parties unaffiliated with City and which breach or bankruptcy results in a City being unable to hold the Event, City shall not be liable to OB Events for services rendered. OB Events acknowledges that the City adopts its budget in September for the upcoming fiscal year, which runs from October 1st through September 30th. In the event that funds in an amount at least equal to what was budgeted by the City for the 2013-2014 Event are not available or budgeted to hold the Event, then the City shall give immediate written notice thereof to OB Events and either of the parties may terminate this Agreement with respect to such Event (but not any future Events that may be due to occur during the term of this Agreement) without liability effective upon written notice to the other party. If the parties agree to hold such Event, then the parties agree that the Event shall be financed based solely on the amount of sponsorship funds obtained by OB Events. for the Event.

(c) The City further agrees that the Event name has been modified to incorporate the "Orange Bowl" in the Event name as follows: [__potential title sponsor's name__] Fort Lauderdale Orange Bowl Downtown Countdown Presented by [__potential presenting sponsor's name__]. In all promotions and media of the Event, the City shall include the OBC's trade name and logo in the forms attached hereto as Exhibit 2 (the "OBC Marks")

(d) The City hereby grants OB Events a limited, non-assignable, non-exclusive license to use the City's trade name and other marks (collectively, the "City Marks") solely for the purposes of performing its responsibilities under this Agreement and promotion of the Event. Upon termination or expiration of this Agreement, OB Events agrees to cease all uses of the City Marks. If OB Events agrees to use the City Marks in accordance with the specifications set forth on Exhibit 1; any deviation therefrom shall require the prior approval of the City.

Article II

Event Insurance/ Indemnification

2.1 Event Insurance. The City and OB Events each agrees to require all of its new and renewed material vendors and suppliers, including, without limitation, the provider of pyrotechnics for the Event, to carry the following insurance, including, without limitation, the provider of pyrotechnics for the Event, and will use commercially reasonable efforts to require current vendors to carry the following insurance, and that such vendors endorse such policies (other than workers' compensation) to specifically naming the City and OB Events as an additional insured and to provide thirty (30) days prior written notice to OB Events of any cancellation, rescission or material change to the policies. In addition, the City requires OB Events to maintain insurance as listed below.

- (a) Worker's compensation in compliance with statutory requirements; and
- (b) Comprehensive general liability, including personal injury and contractual liability with a combined single limit in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, for bodily injury and property damage in a single occurrence, including a cross liability clause. The pyrotechnics vendor shall carry a minimum of \$5,000,000 in liability insurance.
- (c) Auto liability insurance for any commercial vehicles, hired, owned or borrowed, would require a combined bodily injury and property damage insurance limit of no less than \$1,000,000. Personal vehicles would be required to be in compliance with State auto insurance laws.

The City and OB Events each agrees to provide copies of such insurance policies duly endorsed to the other party. The City operates under a program of self-insurance for the above documented insurance coverages pursuant to applicable Florida Statute.

2.2 OB Events agrees to indemnify and hold harmless the City, as well as its employees and agents, against any and all damage of any nature whatsoever including but not limited to death or injury, property damage, claims, suits, actions, judgments, attorney fees and court costs arising out of, attributable to or in any way connected with, the acts, omission, negligence, willful or intentional misconduct of OB Events, its subcontractors, employees and agents in connection with activities arising out of or related to this Agreement, but not with respect to any acts, omission, negligence, willful or intentional misconduct of the City or its subcontractors, employees and agents. OB Events also specifically agrees to indemnify and hold harmless the City, as well as its employees and agents, against any and all damage of any nature arising from a third party claim of infringement arising out of, attributable to or in any way connected with use by City of OB Events Marks in accordance with this Agreement.

This indemnification shall survive termination or expiration of this Agreement and shall not be limited by any insurance required under this Agreement.

Article III

Term; Renewal

3.1 Term; Termination.

(a) The term of this Agreement shall commence as of the date hereof and shall terminate on January 2, 2020.

(b) Either party shall have the option to terminate this Agreement within ninety (90) days of the previous year's event with no cause.

3.2 First Refusal. In addition, upon the termination or expiration of this Agreement, the City hereby grants to OB Events a right of first refusal to provide the services contemplated by this Agreement exercisable by written notice by OB Events to the City given prior to expiration of the Term. In such event, the City and OB Events shall negotiate in good faith for a 60-day period. In the event that the City and OB Events are unable to mutually agree on the terms of any new agreement within such 60-day period, then the City shall be free to retain a third party to provide such services.

Article IV

Sponsorships

4.1 Sponsors. With respect to Sponsors for which OB Events is the Procuring Cause, Net Revenues shall be paid fifty percent (50%) to the City and fifty percent (50%) to OB Events.

4.2 Procedures.

(a) Payments to the City shall be made by OB Events with respect to all sponsorship fees received by OB Events no later than February 15th after each Event during the Term. .

(b) OB Events shall use all commercially reasonable efforts to collect all sponsorship fees with respect to Event Sponsors for which it is the Procuring Cause but shall not be responsible for uncollectible accounts receivables from Event Sponsors nor shall it be required to institute any collection action or litigation with respect thereto.

(c) OB Events shall keep true, complete and correct books and records of all transactions and activities pursuant to this Agreement and shall maintain such books and records for a minimum period of three (3) years after each Event or such time period as is required by the Florida General Records Schedule for Local Governments. The City shall have the right to inspect and copy such books and records upon reasonable prior written notice during normal business hours at OB Events' office, provided that they shall conduct such inspection in a manner so as to not unreasonably interfere with the business operations of OB Events. OB Events recognizes and acknowledges that all such records shall be subject to Florida Public Records Law.

[Add119.0701 Section

(d) In the event that this Agreement is not renewed for any reason OB Events agrees and acknowledges that OB Events shall not be entitled to any percentage of sponsorship fees derived from any Event Sponsors acquired by OB Events during the Term of this Agreement once this Agreement expires or terminates, and that the City will no longer use the Orange Bowl name in the title of the Event.

(e) All sponsors of the Event, all goods and services to be promoted, and all items to be distributed, sold, or given away must have the prior approval of the City Manager (or his/her designee), which shall not be unreasonably withheld or delayed.

(f) Each of the parties shall at all times comply with all federal, state and local laws and all rules, regulations and ordinances of City and any other governmental agency having jurisdiction applicable to its performance under this Agreement.

Article V

Miscellaneous

5.1 Notices. Notice by any party is deemed given when mailed (postage prepaid, certified or registered, return receipt requested), delivered by overnight courier service, facsimile transmission or by personal delivery addressed to the other parties at the addresses appearing below:

To OB Events: 14360 NW 77th Court
Miami Lakes FL 33016
Attn: Chief Financial Officer
Facsimile: (305) 341-4750
Email address: bpark@orangebowl.org

To the City: Parks & Recreation Administration Building
1350 W. Broward Blvd
Fort Lauderdale, FL 33312
Attn: Phil Thornburg
Facsimile: (954) 828-5650
Email address: Pthornburg@fortlauderdale.gov

With a Copy to: City Attorney's Office
100 N. Andrews Avenue
Fort Lauderdale, FL 33301
Facsimile: (954) 828-5195
Email address: Ceverett@fortlauderdale.gov

Any party may, by written notice to other, change the address to which any such communications shall be sent directly to such party at such changed address.

5.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to conflicts of law principles thereunder.

5.3 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

5.4 Severability. In the event that any provision of this Agreement or the application thereof to any party or circumstance shall be finally determined by a court of proper jurisdiction to be void, invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

5.5 Agreement; Amendment. This Agreement contains the full and complete understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, pertaining to the subject matter covered herein. This Agreement may not be amended, altered, or modified except by an instrument in writing, duly executed by the parties hereto.

5.6 Relationship. No agency, partnership, joint venture, or other representative or fiduciary relationship between OB Events, on the one hand, and the City, on the other hand, is created by, or may be implied or inferred from, the execution of this Agreement, the conduct of their respective activities as contemplated by this Agreement, or the performance of the transactions contemplated hereby. It is acknowledged and agreed that each party is acting as an independent contractor, with sole control over the manner and means of its performance hereunder.

5.7 Further Assurances. The parties agree to take or cause to be taken such further actions and to execute and deliver, or cause to be executed and delivered, such further documents and instruments, in order to effectuate fully the purposes, provisions, and conditions of this Agreement.

5.8 Execution. To facilitate execution, this Agreement may be executed in counterparts; and it shall not be necessary that the signatures of each party appear on each counterpart; but it shall be sufficient that the signature of each party appear on one or more of the counterparts. Delivery of executed signature pages hereof by facsimile transmission shall constitute effective and binding execution and delivery thereof.

5.9 No Third Party Rights. The provisions of this Agreement are for the exclusive benefit of the parties hereto and no other party (including, without limitation, any creditor of any of the parties) shall have any right or claim against the parties by reason of these provisions or be entitled to enforce any of those provisions against the parties.

5.10 Selection of Forum; Venue; Service of Process. The parties hereby irrevocably submit in any suit, action or proceeding arising out of or relating to this Agreement or any transactions contemplated hereby to the exclusive jurisdiction of the Circuit Court located in Broward County, State of Florida or the United States District Court for the Southern District of Florida and waive any and all objections to such jurisdiction or venue that they may have under the laws of any state or country, including, without limitation, any argument that jurisdiction, situs and/or venue are inconvenient or otherwise improper.

5.11 Survival. Notwithstanding the expiration or termination of this Agreement, Articles I and V and Sections 3.1(b) and 13.2 shall survive in accordance with their respective terms and conditions.

5.12 Representations. Each of the parties represents and warrants to the other that this Agreement has been duly authorized, executed and delivered by it and constitutes the valid and binding agreement of such party, enforceable in accordance with its terms.

[SIGNATURES CONTINUED ON NEXT PAGE]

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

WITNESSES:

CITY OF FORT LAUDERDALE

Print: _____

By _____
Mayor

Print: _____

By _____
City Manager

(CORPORATE SEAL)

ATTEST:

City Clerk

Approved as to form:

City Attorney

WITNESSES:

O.B. FESTIVAL EVENTS, LLC.

Print: _____

By _____
Eric Poms,
President & CEO

Print: _____

ATTEST:

(CORPORATE SEAL)

STATE OF FLORIDA:
COUNTY OF MIAMI-DADE:

The foregoing instrument was acknowledged before me this _____, 2010, by Eric Poms as President and Chief Executive Officer of O.B. Festival Events, LLC, on behalf of the company. They are personally known to me or have produced _____ as identification.

(SEAL)

Notary Public, State of Florida
(Signature of Notary taking
Acknowledgment)

Name of Notary Typed, Printed
Or Stamped

My Commission Expires:

Commission Number

EXHIBIT 1
CITY MARKS



CITY OF FORT LAUDERDALE



EXHIBIT 2
OB EVENTS MARKS



EXHIBIT 3
RATE CATEGORIES

Category	Rate
Title Sponsor	\$30,000
Presenting Sponsor	\$20,000
Beverage Sponsor	\$15,000
Automotive Sponsor	\$15,000
Kid's Zone Sponsor	\$15,000
Entertainment Sponsor	\$10,000
Supporting Sponsor	\$2,000