

AMENDED LAUDERDALE AIR SHOW ON FORT LAUDERDALE BEACH
AGREEMENT

THIS IS AN AGREEMENT, entered into on April 19, 2017, between:

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

and

LAUDERDALE AIR SHOW, LLC, a Florida limited liability
company organized under the laws of the State of Florida,
hereinafter referred to as "Applicant."

WHEREAS, subject to terms hereof, Applicant has requested approval from the City to conduct an air show, which includes an aircraft flight demonstration show with ancillary activities such as entertainment, exhibits, souvenir sales and refreshment sales (hereinafter referred to as the "Lauderdale Air Show on Fort Lauderdale Beach" or "Event.")

WHEREAS, Applicant shall provide the required certificates of insurance and indemnify and hold harmless the City for any damage to persons or property that might occur during, and as a result of, the operation of the Event; and

WHEREAS, City has been advised that, due to the scope and magnitude of the proposed Event, Applicant desires a contract with City for a period of time so that Applicant can appropriately plan the commitment of resources, sponsors, subcontractors and finances; and

WHEREAS, City recognizes that the Lauderdale Air Show on Fort Lauderdale Beach is a marquee event and, as such, is willing to enter into an agreement and provide certain City services; and

WHEREAS, at the November 15, 2015 Commission meeting, a three year agreement was approved with Lauderdale Air Show, LLC for the Lauderdale Air Show to return to Fort Lauderdale Beach; and

WHEREAS, due to challenges with traffic congestion along the barrier island, logistical concerns associated with new runway design and the 5 mile radius required for the planes to maneuver over Fort Lauderdale Beach, Lauderdale Air Show has worked with the Florida Fish and Wildlife Conservation (FWC) and City Staff to propose a revised site plan which moves the event footprint on the sand of Fort Lauderdale beach; and

WHEREAS, the Risk Management Department has requested changes to the insurance requirements; and

WHEREAS, pursuant to City's Code of Ordinances, in order to conduct the Event, Applicant wishes to enter into this Amended Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in

this Agreement, and other good valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follow:

1. RECITALS AND EXHIBITS INCORPORATED: The foregoing recitals are true and correct as are the Exhibits attached hereto and incorporated herein by this reference.
2. DEFINITIONS: For the purposes of this Agreement and the various covenants, conditions, terms and provisions that follow, the definitions set forth below are agreed to be true and correct and therefore agreed by the parties.
 - a. "Agreement" means this Lauderdale Air Show on Fort Lauderdale Beach Agreement between the City of Fort Lauderdale and Lauderdale Air Show, LLC, as the same may be amended from time to time, with original on file with the City Clerk.
 - b. "Applicant" means Lauderdale Air Show, LLC, a limited liability company organized under the laws of the State of Florida.
 - c. "City" means the City of Fort Lauderdale, Florida, a municipal corporation of the State of Florida, of which the City Commission is its governing body.
 - d. "Director" means the City of Fort Lauderdale Director of Parks and Recreation or his or her designee.
 - e. "Event" means Lauderdale Air Show on Fort Lauderdale Beach.
 - f. "Event Impact Areas" mean the areas outside the Event Site that are impacted by the Event and because of the impact to these areas, mitigating services are provided at the sole cost of the Applicant including, without limitation, police services, emergency medical services, traffic control, crowd control and trash removal. The Event Impact Areas shall be determined mutually by the City and the Applicant and may change over time as the attendance at the Event or the use of mass transit changes. In the event of a disagreement between the Applicant and the City regarding the Event Impact Areas, the City Manager's decision shall be final as to the determined Event Impact Areas
 - g. "Event Period" means the hours between 12:01 a.m. on the Wednesday preceding the Event, and 24 hours following the conclusion of the Event.
 - h. "Event Site" means collectively the area on the barrier island used to hold the Event from East Sunrise Blvd to NE 14th Court, and the Intercoastal Waterway to the Atlantic Ocean, as more specifically described in Exhibit "A." and is inclusive of the event impact area.
 - i. "Maintenance of Traffic Plan" shall have the meaning given to such term in Section 7 of this Agreement.
 - j. "Public Safety Plan" shall have the same meaning given to such term in Section 7 of this Agreement.
 - k. "Repair" shall mean any work (including all third party labor, supplies, materials, and equipment) reasonably necessary to repair, restore, or replace any equipment, building,

structure, or any other component of the Event Site or Event Impact Areas, if such work is necessitated by damage or destruction caused by the negligence of the Applicant and/or their agents, employees, contractors, or subcontractors.

- l. "Site Plan" shall have the same meaning given to such term in Section 6 of this Agreement.
 - m. "Initial Term" shall refer to the initial three (3) years of this agreement.
3. PERMISSION TO USE: Applicant shall be entitled to use the Event Site and the City's water adjacent thereto, as determined by the City Manager or designee in conjunction with Applicant, in order to conduct its Event. The actual extent of the area to be used shall be sufficient to accommodate the Event activities and shall be limited by the Maintenance of Traffic ("MOT") Plan and approval by City of all street closures, including those streets and transportation corridors that are defined as part of the Event Site. The right to use the Event Site does not imply that the Applicant is automatically allowed to close the streets and transportation corridors that are defined as part of the Event Site. Applicant agrees to list the City of Fort Lauderdale as a co-sponsor of the Event and make best efforts to include the City's logo on all promotional materials and advertising for the Event. Upon the City's request, Applicant agrees that the City Manager or his designee shall have approval over all promotional materials and advertising for the Event.
4. EVENT DATE: The City authorized applicant to hold the 2016 Air Show on Saturday, May 7, 2016 and Sunday, May 8, 2016. The Air Show shall take place annually between April 1st and November 1st over a two-day period beginning on a Saturday and ending on a Sunday. In the event the Applicant desires to conduct promotional or ancillary events on any of the days preceding the Event, Applicant must have prior written permission from the City Manager or designee not less than ninety (90) days prior to the date of the event. Applicant shall be responsible for any additional costs associated with practice days, promotional and ancillary events that may take place within the City limits on any of the days preceding the Event including, without limitation, crowd control, traffic management, fire, ocean rescue, emergency medical services and police services.
- a. The City and the Applicant shall agree upon the specific date for each Event by December 1st of the year preceding the next Event. The Applicant shall submit a written request for the approval of event dates to the City Manager at least six (6) months prior to the requested event dates.
 - b. Applicant may utilize the Thursday and Friday immediately preceding the Event as practice days for performers and equipment utilized or performed during the Event. No concessions or hospitality tents shall be operating or open during the practice days.
5. TERM: The initial term of this Agreement commenced on November 15, 2015 and shall expire three (3) years from that date. This Agreement shall renew upon approval of the City Commission for a one (1) year extension sixty (60) days following each Event. It is the intent of the parties to make a good faith effort to enter into a long-term relationship taking into account the investment and relationship of the parties. In the event Applicant fails to put on the Event during the term of this Agreement or extensions thereof, the City reserves the right to terminate

said Agreement as provided herein.

6. SITE PLAN: Applicant shall provide to the City a Site Plan not less than ninety (90) days prior to the date of the Event outlining the following:
 - a. For the Event Site, and sites having directional signage or traffic control equipment a final detailed Site Plan for the Event detailing the location of any tents, sanitary facilities, parking, stages, booths, concessions, etc. and the times when such will be constructed, operated and dismantled. Emergency lanes are required by the City's Public Safety Departments and shall be included in the Site Plan. Such Site Plan shall be subject to the review and approval by the appropriate City departments. Any additional changes made to the Site Plan by the Applicant, after reviewed and approved by the appropriate City departments, must be approved by the City, which such approval will not be unreasonably withheld. 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, stages, etc. are in accordance with the City approved Site Plan and code regulations. The Site Plan shall be incorporated into this Agreement and marked as Exhibit "A."
 - b. A description of all activities and events to occur in the Event Site during the Event.
 - c. Copies of all appropriate permits and licenses required by the City's building services and fire department. These permits include, but are not limited to, permits necessary for tents, merchandise, food and beverage vendors and electrical connections.
 - d. Within thirty (30) days of Applicant providing City with the Site Plan, City shall provide Applicant an anticipated budget of services that City will provide for the Event. This budget shall include an itemized line-by-line cost detail for all reimbursable services excluding any specific details relating to public safety plans and detail locations. The budget for the 2016 Event is attached as Exhibit "B." These services shall include, without limitation, crowd control, traffic management, fire, ocean rescue, emergency medical services, trash removal, parking fees and police services. City agrees to work with Applicant to mitigate these costs wherever possible and recognizes that doing so is critical to making it financially viable to hold the Event.
7. PUBLIC SAFETY PLAN FOR THE EVENT: Because of the physical size of the Event and the number of people that attend the Event, the City shall arrange for all necessary personnel to provide public safety at the Event Site and Event Impact Areas as determined by the City. The services shall include, without limitation, crowd control, traffic management, fire, ocean rescue, emergency medical services and police services. City agrees to develop and provide an anticipated budget each year during the term of this agreement and any extensions, within thirty (30) days of the Applicant providing the City with a proposed Site Plan. Applicant is aware such budgets are preliminary and subject to change by the City. Applicant is required to provide signage, barricades and cones to facilitate public safety and will provide set up and removal at no cost to the City.
 - a. The City shall review the Public Safety Plan for the Event, incorporated in this Agreement and marked as Exhibit "C," annually with Applicant and shall adjust the Plan to the extent possible as requested by the Applicant. Within sixty (60) days of the conclusion of each Event

during the term of this Agreement and any extensions, the Applicant and the City will meet to discuss any major modifications or expansions of the Event Site for the following year Event. Suggested modifications or expansions by each party shall be subject to the approval of the other party.

- b. The City shall determine the number of personnel necessary to effectively and efficiently carry out the Public Safety Plan. In the event of a disagreement between the Applicant and the City regarding public safety, the Police Chief and Fire Chief's decisions shall be final as to the appropriate level of public safety required for the Event.
- c. In addition to the Applicant's Public Safety Plan, the City's Police and Fire Departments will author separate comprehensive Incident Action/Operational Plans specific to their 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 this 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 and Police/Fire personnel only and shall not be available for public or media distribution.
- d. The cost for additional services or expansion of service requested by Applicant shall be an additional expense to Applicant. Expansion of services means enhancements of activities, any changes in the type of activities or changes in parameters of Event, including physical location and boundaries that result in an increase in the City's cost to provide services.
- e. Not less than one hundred and twenty (120) days prior to the date of the Event, Applicant shall provide the City a Maintenance of Traffic Plan ("MOT Plan") incorporated into this Agreement and marked as Exhibit "D," containing a construction and traffic flow schedule detailing the opening and closing times for all streets, lanes and/or traffic corridors and outlining the use of any and all message signs and static signs for the City's review and approval. No additional street, lane, or traffic corridor closures will be permitted unless included in the MOT Plan and approved by the City Manager or his designee. Applicant agrees to provide City with emergency access to all areas included in the Event Site to ensure the safety and welfare of the community.
- f. Should Applicant request non-critical public safety services such as police escort services, and if such services are beyond the City's ability to provide, Applicant may make such arrangements and coordinate these services with the City.
- g. In the event that the Department of Homeland Security (DHS) issues an "Imminent Threat Alert", the Police Department will be responsible for assessing the need to provide additional security or if deemed necessary cancel the Event at no cost to the City.

In the event of an emergency or disaster during the Event, at the Event Site or as a direct result from the Event activities, that requires public safety resources beyond the original Public Safety Plan, Mutual Aid will be implemented and subsequent costs will be settled as provided by the Mutual Aid Agreement. Applicant shall reimburse the City's costs to respond to the emergency disaster.

- h. Applicant acknowledges that traffic control plans shall accommodate the ingress and egress to residences throughout the Event period.

8. COSTS FOR CITY SERVICES:

- a. As provided for in Section 7 above, the City shall plan and provide for public safety. Applicant agrees to reimburse City for all incremental hard cost expenses incurred by the City inside the Event Site and Event Impact Area including, but, without limitation, public safety, maintenance, cleanup, breakdown and removal, storage and repair or replacement of property, and staff time incurred associated with Event during the Event Period. Incremental hard cost expenses are defined as follows:
 - i. Hourly paid labor costs and benefits for supplemental positions exceeding standard City staffing levels and/or outside standard working hours during the Event Period.
 - ii. Supplies or materials consumed or purchased solely for the Event and used or consumed during the Event Period.
 - iii. Equipment rented for use sole for the Event and utilized only during the Event Period.

Hard costs do not include standard maintenance, administrative or any other indirect costs where the City does not have to expend additional hard dollars during the Event Period and in direct sole support of the Event.

- b. Applicant agrees and understands that the off duty rate for police personnel for all special events is calculated at a three (3) hour minimum rate. There is a 24 hour cancellation requirement to avoid the three (3) hour minimum payment per officer. All payments will be paid within two (2) weeks of the payroll being submitted. Applicant agrees that positions for all security and supplemental police details for the Event should first be offered to City personnel at the detail rate. If an insufficient number of personnel are available at the detail rate, Applicant shall have the option to utilize outside Florida sworn agencies to fill the deficiency prior to the City mandating personnel to work at the overtime rate, with the request made through and coordinated by the City Police and/or Fire Rescue Departments. The Fort Lauderdale Police Department and Fire Department shall retain the command and control of their respective event operation areas at all times and any mutual aid or assisting agency personnel shall follow such command procedures. Applicant further agrees to be responsible for any capital improvements that the City must make to accommodate Applicant's request for any building, electrical, plumbing, fire, municipal or county code requirements. Applicant shall also be responsible for any replacement and restoration costs as set forth in Section 12, Maintenance of and Payment for Damage to Property.

- c. Applicant agrees to secure a bond in an amount equal to one hundred and ten percent (110%) of the estimated cost of reimbursement for City services, to cover all costs and expenses associated with hosting 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 and institution issuing the bond and the instrument shall be kept in full force and effect for the period of the Agreement. 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 the surety bond. Applicant shall also have the option to escrow the funds in the amount equal to one hundred and ten percent (110%) of the cost of reimbursement for City services less any funds being provided by the BID and CRA("Obligated Amount") in which case a bond would not be required by the City. The Obligated Amount shall be placed into the City of Fort Lauderdale Escrow Account to be held in escrow under the terms and conditions herein after set forth ("Escrow Deposit")
- d. In the event the Applicant elects to deposit the Obligated Amount with the City of Fort Lauderdale Treasurer, who 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.
- e. 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.
- f. 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.
- g. 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.
- h. City recognizes that Applicant must rely on the support funding provided collectively in 2016 by the Business Improvement District (herein after "BID") and the Community

Redevelopment Authority's (hereinafter referred to as "CRA") to cover the cost for city services

- i. Applicant shall be responsible for clean up of the area used for operation and private hospitality. Should Applicant fail to clean this area, Applicant shall be responsible for City's cost to clean the area, based on City's cost to provide labor necessary to clean the area. Applicant further agrees to be responsible for any capital improvements that the City must make to accommodate Applicant's request for any building, electrical, plumbing, fire, municipal, or county code requirements.
- j. The escrow deposit will be held until all effected departments have submitted their final invoice for the reimbursement of services. Once the final invoices have been received, the Applicant will be notified for approval. Once approved, the release of escrowed funds earmarked for police services will be wired back to the applicants bank account. The Applicant shall release checks to police personnel for payment of off-duty details at the Event within three (3) business days of receiving the escrowed funds and the balance of BID and CRA funds into Applicant's bank account.

9. REIMBURSEMENT OF EXPENSES:

- a. Applicant shall pay the City for all costs and expenses incurred by City for which Applicant is responsible hereunder, within fourteen (14) days of receipt of any invoice from City. If total amount is not paid within fourteen (14) days, interest charges at the maximum allowable under Florida Statute
- b. Should Applicant disagree with the invoice provided by the City, it shall state its reason(s) in writing within fourteen (14) days of receiving invoice from the City and may request the City Manager to review the charges and render a decision. If Applicant does not agree with the City Manager's decision, Applicant may make a petition to the City Commission. The City Commission's decision regarding the invoice(s) shall be final.

10. NON-PUBLIC SAFETY SERVICES:

City shall provide, as necessary, oversight, coordination and direction, but not supervision, of Applicant's employees or contractors related to Event transportation, set-up, storage, maintenance, repair and replacement of property, cleanup, and breakdown of Event Site and Event Impact Area including removal of barricades and safety cones.

11. MAINTENANCE OF EVENT SITE AND EVENT IMPACT AREAS:

- a. Applicant shall be responsible for and shall provide sufficient temporary public sanitary facilities and daily service of the facilities at all times during Event period within the Event Site and Event Impact Areas. The cost of such temporary public sanitary facilities shall be an expense to Applicant.

- b. City shall be responsible for the removal of trash and debris during the Event that accumulates on any portion of Event Site or in the designated Event Impact Areas, with the exception of those areas outlined below. All trash shall be collected and removed within twenty-four (24) hours of the end of the Event. The requirement to remove trash and debris includes street sweeping. Applicant will cover and reimburse City for all costs associated with trash and debris removal within the Event Site and Event Impact Areas.
 - c. Applicant is responsible for the clean up of the area used for operations and private hospitality. Should Applicant fail to clean this area, Applicant shall be responsible for City's cost to clean the area, based on the City's cost to provide the labor necessary to clean the area.
12. PARKING AND TRANSIT SERVICES: Applicant shall be responsible to arrange and coordinate the transit services from these facilities to the Event Site. All proposed shuttle routes and bus stops shall be approved by the City Manager or his designee as part of the MOT Plan. City agrees to invoice Applicant at the approved special event parking rate of \$10 dollars on a non-event day and \$20 on the days of the 2016 Event (include the code reference for parking rates), to use A1A north of Sunrise Blvd during the Event Period and any other public metered parking spaces that are removed from public use as requested by the Applicant and approved by the City. All parking requests must be in writing at least thirty (30) days in advance of the Event. An estimate of parking charges will be provided to Applicant no more than seven (7) days after receiving written requests. Applicant understands that the approved special event parking rate is a daily rate and may not be prorated. Requests to change an issued City parking invoice must be made in writing prior to the end of the Event.
13. STREET CLOSINGS: City reserves the right to approve all street closing, including those streets and transportation corridors that are defined as part of the Event Site, in association with the Event and any requests for street closing should be included with the MOT Plan that is submitted by the Applicant to City. Applicant agrees to coordinate and make the appropriate arrangements with any merchants or residents affected by any street closures to ensure they are provided sufficient and reasonable access to their businesses and residences.
14. CONSTRUCTION OF FACILITIES, STRUCTURES, CANOPIES, TENTS AND CONCESSION STANDS:
- a. All such structures, facilities, concession stands and canopies may be erected beginning at 12:01 A.M. on the Wednesday preceding the Event and must be removed within 48 hours following the conclusion of the Event. Any setup or tear down of such structure at the Event Site shall be in accordance with the terms contained in the City's Noise Ordinance. Except where such structures, facilities, concession stands, canopies and tents are permitted by this Agreement, the same shall not otherwise interfere with normal operations of the area where the Event is located.
 - b. Applicant shall be allowed to construct and maintain in the Event Site, such facilities and structures that are necessary for the Event including, but not limited to fences, barriers,

grandstands, and signs as approved by the City, and at such location as approved by the City.

- i. As approved by the City, Applicant shall be permitted the exclusive right to erect canopies, tents, stages, and concessions stands to sell additional merchandise for the Event at City approved locations in accordance with the approved Site Plan. The City, through its departments, agrees to utilize best efforts to assist Applicant and its Event merchandiser in the enforcement of the rights provided in this paragraph. It is understood that the cost of such assistance will be the responsibility of Applicant or its Event merchandiser. If any portion of any City owned parking is utilized by Applicant, the City Parking Department will invoice Applicant at the current Special Event parking rate of \$10.00 per space per day on a non-event day, \$20 on event days.
- ii. It is further agreed and specifically understood that permission to erect such canopies, tents and concession stands, as aforementioned, is conditioned upon Applicant complying with the following:
 1. Any alcoholic beverage sales must be contained in secured areas identified on the attached Exhibit "D." No alcohol beverage sales will be allowed on the sandy portion of the beach.
 2. Within 72 hours of City's request, the Applicant shall file with the Director an application containing a detailed proposal specifying the locations, hours, dates, and types of concessions that will operate during the Event.
 3. Within 72 hours of the City's request, Applicant shall provide City with copies of contracts and/or agreements with the individuals, corporations, partnerships or other entities that are or will be operating such tents, canopies and concessions provided that said documents are public records under Chapter 119, Florida Statutes.
 4. Applicant shall obtain and file with their application a certificate that such canopies, tents and/or concessions to be used during the period of time encompassed by this Agreement are of fireproof material and will not constitute a fire hazard.
- iii. All construction, installations and services, including electrical hook-ups, shall be made at Applicant's expense and approved in advance by the City Sustainable Development Department. If electricity is required, Applicant shall negotiate arrangements for such service with the City or a licensed contractor. This cost shall be an additional expense to the Applicant.

- iv. Unless having received prior specific written permission by the Director, no construction or installations shall involve the use of stakes or other material that breaks the surface or defaces any infrastructure such as asphalt, concrete, brick or any plant material.
- v. Applicant shall provide an operations tent to be utilized by the City of Fort Lauderdale during the Event days. This area will be situated along A1A north of Sunrise in the controlled VIP/Operations area alongside Hospitality Chalets with a direct view of the ocean. Applicant is not responsible for food beverages for this tent.
- vi. Applicant shall provide all day access passes to the necessary City staff required to work the Event. Applicant will agree to the list of passes that will be distributed for the Event fourteen (14) days prior to the Event.
- vii. City and Applicant recognize that it may be necessary to place equipment such as barricades and portable restrooms in the immediate area outside the Event Site to support ingress/egress or viewing of the Event by Event attendees. The cost of such equipment shall be the responsibility of the Applicant.

15. MAINTENANCE OF AND PAYMENT FOR DAMAGE TO PROPERTY:

- a. Applicant agrees to Repair all core drilling holes in the asphalt, concrete and all other paved and unpaved surfaces made to facilitate the erection of barriers, stages, fences, tents and other improvements to the Event Site and Event Impact Areas, according to City standards, as determined by the City Manager. Applicant shall be responsible for any damage to all plants, shrubs, trees other landscaped areas, paved surfaces, and to any and all structures located or situated upon any portion of the Event Site as a result of negligence or wrongful acts of Applicant or Applicant's agents, employees, contractors, subcontractors, invitees, licensees, attendees, or vendors. No more than two weeks prior to the event, City and Applicant shall inspect and document the condition of the Event Site and Event Impact Areas. It shall be the responsibility of the Applicant during the initial walk through inspection to point out to the City the areas of disrepair.
- b. No later than 5:00 pm on the Wednesday following the Event, the City shall inspect the Event Site and Event Impact Area. 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 on the Friday following the Event. The report shall estimate the cost to remedy the damage. Unless Applicant arranges for such damage to be repaired by a third party, the Applicant shall pay this cost within fourteen (14) days after the Applicant receives the City's invoice of the actual cost of said damage.

16. SECURITY OF APPLICANT'S PROPERTY : All construction materials, equipment, goods, signs and any other personal property of Applicant or Applicant's agents, employees, contractors, subcontractors, invitees, licensees, attendees or vendors shall be protected solely by

Applicant. Applicant acknowledges and agrees and assumes that City assumes no responsibility of Applicant.

17. APPLICANT'S CONTRACTORS: Applicant agrees to be solely responsible for all contracts or agreements of any nature including, without limitation, those for entertainment and vendors for the Event. All contracts for the event shall be negotiated by Applicant and secured at the sole expense of the Applicant. City shall not be named as a party in any contract for the Event and City shall have no obligation to ensure payment to any individual or entity for goods and/or services provided in conjunction with such Event.
18. SUBLEASES, ASSIGNMENTS, OR TRANSFERS: Applicant shall not assign, sublease, or transfer any of its obligations or right under this Agreement, in whole or in part, to any person, business or entity without the prior approval of the City Commission. Any such action by Applicant will result in immediate termination of this Agreement by City, and City shall keep any monies Applicant has already deposited.
19. DETAILS OF EVENT AND USE OF EVENT SITE: All sponsors of the Event, all goods and service to be promoted, and all items to be distributed, sold, or given away must have the prior approval of the Director or his or her designee which shall not be unreasonably withheld. Such approval may be withheld if, in the sole reasonable opinion of the Director or his or her designee, it is in the best interests of the City to do so. The distribution of information protected by the First Amendment to the United States Constitution shall not be subject to such prior approval and shall not be limited by the Applicant. All alcohol sales during the Event shall be governed in accordance with Sections 5-3 and 5-4 and all other applicable sections of the City of Fort Lauderdale Code of Ordinances.

20. INSURANCE:

During the term of the Agreement, Applicant at its sole expense shall provide insurance of such a type and with such terms and limits as noted below. Providing and maintaining adequate insurance coverage is a material obligation of Applicant. Applicant shall provide the City a certificate of insurance evidencing such coverage. Applicant's insurance coverage shall be primary insurance as respects to the City for all applicable policies. The limits of coverage under each policy maintained by Applicant shall not be interpreted as limiting Applicant's liability and obligations under the Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in Florida and possess an A.M. Best rating of A-, VII or better, subject to the approval of the City's Risk Manager.

The coverages, limits and/or endorsements required herein protect the primary interests of the City, and these coverages, limits and/or endorsements shall in no way be required to be relied upon when assessing the extent or determining appropriate types and limits of coverage to protect the Applicant against any loss exposures, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Applicant under this Agreement.

The following insurance policies are required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$5,000,000 each occurrence and \$5,000,000 general aggregate for Bodily Injury, Property Damage and Personal and Advertising Injury
- \$5,000,000 each occurrence and \$5,000,000 Aggregate for Products and Completed Operations

Aircraft Liability Coverage

Coverage must be afforded under a Commercial Aircraft Liability policy with limits not less than \$5,000,000 per occurrence.

Watercraft Liability Coverage

Coverage must be afforded in an amount not less than \$1,000,000 per occurrence and must cover the utilization of watercraft, including Bodily Injury and Property Damage arising out of ownership, maintenance, or use of any watercraft, including owned, non-owned, and hired.

The City, a political subdivision of the State of Florida, its officials, employees, and volunteers are to be covered as an additional insured for liability arising out of activities performed by or on behalf of the Applicant. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officials, employees, or volunteers.

Coverage may be provided in the form of an endorsement to the Commercial General Liability policy, or in the form of a separate policy covering Watercraft Liability or Protection and Indemnity for Bodily Injury and Property Damage.

Liquor Liability Coverage

If alcohol is to be served, the Applicant shall provide evidence of coverage for liquor liability in an amount no less than \$1,000,000 per occurrence.

Policy must include coverage for Contractual Liability and Independent Contractors.

The City, a political subdivision of the State of Florida, its officials, employees and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage in respects to: Liability arising out of activities performed by or on behalf of the Applicant. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officials, employees, or volunteers.

Business Automobile Liability

Coverage must be afforded including coverage for all Owned, Hired, and Non-Owned vehicles for Bodily Injury and Property Damage of not less than \$500,000 combined single limit each accident.

If the Applicant does not own vehicles, the Applicant shall maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Workers' Compensation and Employer's Liability

Limits: Workers' Compensation – Per Chapter 440, Florida Statutes

Employers' Liability - \$500,000

Any firm performing work on behalf of the City of Fort Lauderdale must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute.

Insurance Certificate Requirements

- a. Applicant shall provide the City with valid Certificates of Insurance no later than thirty (30) days prior to the date of permission from City to first use the Event Site.
- b. The Applicant shall provide a Certificate of Insurance to the City with a thirty (30) day notice of cancellation, ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the Applicant to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the certificate holder.
- d. The certificate shall indicate if coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form the certificate will show a retroactive date, which should be the same date of the contract (original if contract is renewed) or prior.
- e. The City shall be shown as an Additional Insured with a Waiver of Subrogation where appropriate.
- f. The Agreement, Event Dates, Bid number or other identifying reference must be listed on the certificate.

The Certificate Holder should read as follows:

City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

The Applicant has the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the City as Additional Insured shall be at the Contractor's expense.

The Applicant's insurance coverage shall be primary insurance as respects the City, a political subdivision of the State of Florida, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of Applicant's insurance and shall be non-contributory.

Any exclusions or provisions in the insurance maintained by the contractor that excludes coverage for work contemplated in this solicitation shall be deemed unacceptable, and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the City. In addition, Applicant must provide confirmation of coverage renewal via a new and current certificate should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of Applicant's insurance policies.

All notices of any claim/accident (occurrences) associated with work being performed under this Agreement, shall be provided to the Applicant's insurance company and the City's Risk Management office as soon as practicable.

It is the Applicant's responsibility to ensure that all sub-Applicants comply with these insurance requirements. All coverages for subcontractors shall be subject to all of the requirements stated herein.

21. INDEMNIFICATION AND HOLD HARMLESS: Applicant agrees to 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 results 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 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 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.). City shall be liable for damages or injuries caused by the City's negligence as determined by a court of competent jurisdiction in the State of Florida. The foregoing sentence shall not serve as a waiver of the City's sovereign immunity or of any legal defense available to the City and shall be subject to the limitation contained in Section 768.28, Florida Statutes as amended or revised.

22. LIMITATION OF LIABILITY

- a. The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of One Thousand Dollars (\$1,000.00). Applicant hereby expresses its willingness to enter into this Agreement with Applicant's recovery from the City for any damage action for breach of contract or for any action or claim arising from this Agreement to be limited to a maximum amount of One Thousand Dollars (\$1,000.00).
- b. Accordingly, and notwithstanding any other term or condition of this Agreement, Applicant hereby agrees that the City shall not be liable to Applicant for damages in an amount in excess of One Thousand Dollars (\$1,000.00), for any action for breach of contract or for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Article 768.28, Florida Statutes.

23. AUTHORITY OF CITY MANAGER OR DESIGNEE: City Manager or his/her designee and Applicant shall coordinate use of Event Site. The City Manager or designee shall have authority to suspend all or any part of the activities of Applicant when, in the City Manager's opinion, such activities may be or are detrimental to the public or to the City, or if the City has reason to believe Applicant, its agents, subcontractors, independent contractors, or employees have violated any law, rule or ordinance. City reserves the right through the City Manager or designee to suspend or terminate the use of the Event Site if visitors become unruly, and to reject from Event Site any sponsor, presentation, material or item which is or may be, in 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 or designee in such regard shall be final and binding. This shall not preclude the on-site public safety commanders from having the ability to immediately suspend any portion of the Event for what is deemed, in their opinion, a matter of public safety without having to wait for a decision from the City Manager or designee.
24. TERMINATION:
- a. It is expressly understood and agreed that the City may terminate this agreement at any time if the City decides to discontinue the Event or determines that it is necessary to protect the public's health, safety and welfare. City also may terminate this agreement upon the breach by the Applicant of its obligations under this Agreement. If Applicant fails to put on the Event in 2016 or any year during the term of this Agreement, the City reserves the right to terminate this Agreement. Notice of such termination shall be in writing as set forth in Section 29, Notices.
 - b. Applicant may elect to terminate this Agreement and no longer conduct the Event. If the Applicant elects to terminate this Agreement, Applicant shall notify the City in writing of such election prior to December 1st of the year preceding the next Event or within fifteen (15) days of receiving the budget for reimbursable services outlined in Section 6 of this Agreement, whichever is later. Applicant shall be obligated to reimburse City for any out of pocket hard costs and expense incurred by the City up to the date of termination in connection with the fulfillment of the City's obligations under this Agreement.
25. BREACH: A material breach of this Agreement by Applicant shall be grounds for the City Manager or Designee to terminate this Agreement. Before such termination, City shall give Applicant thirty (30) days written notice and an opportunity to cure the breach within such period.
26. FORCE MAJEURE: In the event the Event Site shall, at any time during the term of this Agreement, be destroyed or rendered unusable by storm or threat of a named storm within five hundred (500) miles of the Event Site, act of terrorism, war, act of God or other disaster or epidemic (collectively or separately, "Force Majeure Event"), then either party may terminate this Agreement. In such event, each party shall be responsible for their own costs and expenses incurred prior to such termination except if the Force Majeure event occurs during the Event Period, whereas Applicant will reimburse City for all actual costs incurred related to the Event, as otherwise provided hereunder.

27. GOVERNING LAW: This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida and shall inure to and be binding upon the parties, their successors, and assigns. Venue for any action brought in state court shall be in Broward County, Florida. Venue for any action brought in Federal Court shall be in the Southern District of Florida, Fort Lauderdale Division. The parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objection to said jurisdiction.
28. AMENDMENT: No modification,, amendment, or alteration of the terms or conditions of this Agreement shall be effective unless contained in a written document executed by both parties, with the same formality as this Agreement.
29. 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.
30. NOTICE: Whenever any party desires to give notice to any other party, it must be given by written notice sent by certified 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 Fort Lauderdale
1350 West Broward Boulevard
Fort Lauderdale, FL 33312
Attn: Director of Parks and Recreation

With a copy to:

City of Fort Lauderdale
City Attorney's Office
100 North Andrews Avenue
Fort Lauderdale, FL 33301

APPLICANT:

Lauderdale Air Show, LLC
PO Box 321330
Cocoa Beach, FL 32932
Attn: Bryan Lilley

31. WAIVER: Failure of City to insist upon strict performance of Applicant's duties shall not be construed as a waiver or relinquishment of any covenant contained herein.
32. MISCELLANEOUS PROVISIONS:

- a. For each Event, Applicant agrees to exercise a good faith and reasonable effort to work with

the City Police Department and representatives of the Sunrise Intracoastal Homeowners Association and Birch Park Finger Streets Association to implement a plan permitting homeowners ingress and egress to their residences during the course of the Event.

- b. Applicant agrees that viewing of the Event outside the Event Site described in Exhibit “A” shall be free to the public.
- c. Applicant agrees to secure and pay for all licenses and/or permits required by any governmental agency having jurisdiction over the Event Site, including obtaining an incidental take permit or other similar permit issued by the appropriate governmental agency for the protection of the sea turtles, if such permit or permission is required. 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, Applicant is required to secure all applicable licenses, permits and/or permissions to do so. If requested by City, Applicant shall provide to City fifteen (15) days in advance of the first date of property use, evidence showing that the applicable licenses, permits and or permissions have been secured. If Applicant fails to submit licenses or reports as required to City upon request, Applicant shall be responsible for payment to City for all license fees incurred by City in connection with the Event.

[THIS SPACE INTENTIONALLY LEFT BLANK]

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,
a municipal corporation.

By _____
JOHN P. "JACK" SEILER, Mayor

By _____
LEE R. FELDMAN, City Manager

(SEAL)

ATTEST:

JEFFREY A. MODARELLI, City Clerk

Approved as to form:

CANDACE R. DUFF, Assistant City Attorney

WITNESSES

LAUDERDALE AIR SHOW, LLC a Florida
limited liability company.

By _____
BRYAN S. LILLEY, Managing Member

Witness Print Name

Witness Print Name

STATE OF FLORIDA:
COUNTY OF _____:

The foregoing instrument was acknowledged before me in this _____ day of _____,
2017, by BRYAN S. LILLEY as Managing Member of LAUDERDALE AIR SHOW, LLC., a Florida
limited liability company who is ☐ personally known to me or ☐ has produced
_____ as identification.

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

Name of Notary typed or stamped

My commission expires: _____

Commission Number