

## FIRST AMENDMENT TO CONTRACT

THIS FIRST AMENDMENT TO CONTRACT is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**  
(hereinafter referred to as "TENANT"),  
a body corporate and political subdivision of the State of Florida,  
whose principal place of business is  
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

**Professional Facilities Management, Inc.**  
(hereinafter referred to as "PFM"),  
having its principal place of business at  
220 Weybosset Street  
Providence, Rhode Island 02903

**WHEREAS**, TENANT and PFM entered into a Contract dated \_\_\_\_\_, 20\_\_\_\_ (hereafter "Contract") for the exclusive purpose of Broward All County Concerts in 2016 (hereinafter referred to as "EVENT"); and

**WHEREAS**, the parties mutually desire to amend certain provisions of that Contract.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants contained herein and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1.01 **Recitals**. The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

1.02 **Amended Provisions**. The parties hereby agree to the following added and amended provisions to the Contract:

*Paragraph 5 in the Contract shall be stricken and replaced with the following provision below:*

5. **DAMAGE AND LIABILITY**

5.1 This section shall survive the termination of all performance or obligations under this Contract and shall be fully binding until such time as any proceeding brought on account of this Contract is barred by any applicable statute of limitations.

A. By TENANT: TENANT agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

B. By PFM: PFM agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by PFM, its agents, servants or employees; the equipment of PFM, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of PFM or the negligence of PFM's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by PFM, SBBC or otherwise.

*Paragraph 6.2 in the Contract shall be stricken.*

*Paragraph 7.12 in the Contract shall be stricken and replaced with the following provision below.*

7.12 The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Contract.

*The following Paragraphs shall be added to Paragraph 7:*

7.14 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Contract and shall be fully binding until such time as any proceeding brought on account of this Contract is barred by any applicable statute of limitations.

7.15 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Contract. None of the parties intend to directly or substantially benefit a third party by this Contract. The parties agree that there are no third party beneficiaries to this Contract and that no third party shall be entitled to assert a claim against any of the parties based upon this Contract. Nothing

herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

- 7.16 **Independent Contractor.** The parties to this Contract shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to TENANT retirement, leave benefits or any other benefits of TENANT employees shall exist as a result of the performance of any duties or responsibilities under this Contract. TENANT shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.
- 7.17 **Excess Funds.** Any party receiving funds paid by TENANT under this Contract agrees to promptly notify SBBC of any funds erroneously received from TENANT upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by TENANT.
- 7.18 **Excess Funds.** Any party receiving funds paid by SBBC under this Contract agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.
- 7.19 **Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Contract.
- 7.20 **Place of Performance.** All obligations of SBBC under the terms of this Contract are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.
- 7.21 **Governing Law and Venue.** This Contract shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Contract and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.
- 7.22 **Binding Effect.** This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

- 7.23 **Incorporation by Reference.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Contract by reference.
- 7.24 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Contract are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Contract, nor in any way effect this Contract and shall not be construed to create a conflict with the provisions of this Contract.
- 7.25 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Contract is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Contract and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.
- 7.26 **Preparation of Contract.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Contract has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 7.27 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Contract and executed by each party hereto.
- 7.28 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Contract and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.
- 7.29 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Contract if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

- 7.30 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Contract.
- 7.31 **Contract Administration:** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Contract.
- 7.32 **Authority.** Each person signing this Contract on behalf of either party individually warrants that he or she has full legal power to execute this Contract on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Contract.

*The following sentence shall be added to paragraph 7.6 of the Contract:*

- 7.6 Notwithstanding the prior sentence, such costs and indemnification shall be up to the limits of Section 762.28, Florida Statutes.

*The following sentence shall be added to paragraph 7.7 of the Contract:*

- 7.7 Additionally, in such event, the TENANT shall be entitled to reimbursement of its deposit, all-inclusive fee and any other fees.

1.03 **Order of Precedence Among Contract Documents.** In the event of conflict between the provisions of the Contract and the provisions contained herein, the provisions of the following documents shall take precedence in this order:

- a) this First Amendment to Contract; and
- b) the Contract.

1.04 **Other Provisions Remain in Force.** Except as expressly provided herein, all other portions of the Contract remain in full force and effect.

1.05 **Authority.** Each person signing this First Amendment to Contract on behalf of either party individually warrants that he or she has full legal power to execute this First Amendment to Contract on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this First Amendment to Contract.

**IN WITNESS WHEREOF**, the Parties hereto have made and executed this First Amendment to Contract between Professional Facilities Management, Inc. and the School Board of Broward County, Florida for the exclusive purpose of Broward All County Concerts in 2017 on the date first above written.

**FOR SBBC**

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

By \_\_\_\_\_  
DR. ROSALIND OSGOOD, Chair


Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Robert W. Runcie, Superintendent of Schools

Date: \_\_\_\_\_

Approved as to Form and Legal Content:

By  \_\_\_\_\_  
Office of the General Counsel

Digitally signed by Kathelyn Jacques-Adams  
DN: cn=Kathelyn Jacques-Adams, o=The School  
District of Broward County, Florida, ou=The Office  
of the General Counsel, email=kathelyn.jacques-  
adams@browardschools.com, c=US  
Date: 2016.07.08 13:14:10 -04'00'

Date: \_\_\_\_\_

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

FOR PFM

(Corporate Seal)

PROFESSIONAL FACILITIES  
MANAGEMENT, INC.

ATTEST:

By [Signature]  
Signature

Printed Name: Kevin Barrett

Title: GM

\_\_\_\_\_, Secretary

-or-

Susan Forester  
Witness

Beverly Shaw  
Witness

STATE OF Florida

COUNTY OF Broward

The foregoing instrument was acknowledged before me this 14 day of June, 2016 by Kevin Barrett of

PFM-CSCA on behalf of the corporation/agency.  He/She is personally known to me or produced \_\_\_\_\_ as identification and did/did not first take an oath. \_\_\_\_\_  
Type of Identification

My Commission Expires: 05/15/2019

[Signature]  
Signature - Notary Public

Cynthia Diane O'Brien  
Printed Name of Notary

FF907948  
Notary's Commission No.

