**REVENUE SHARING AGREEMENT**

This Revenue Sharing Agreement ("Agreement") is entered into effective as of the \_day of November, 2012 ("Effective Date") between the Miami Children's Museum, Inc., a Florida not-for-profit corporation ("MCM") and the City of Miami, a municipal corporation of the State of Florida ("City"), with the consent of Worldwide Amherst Media, LLC, a Delaware limited liability company ("WAM").

**RECITALS:**

**WHEREAS,** on November 2, 2001, the City and the Miami Sports and Exhibition Authority, an independent and autonomous agency and instrumentality of the City of Miami ("MSEA") entered into a Interlocal Agreement which leased to MSEA a portion of Watson Island for the development of the Miami Children's Museum project ("Interlocal Agreement"); and

**WHEREAS,** on November 2, 2001, MSEA and MCM entered into a Sublease Agreement, for the leasing of a portion of Watson Island, for the development of a world class children's museum and other related facilities and improvements ("Sublease"); and

**WHEREAS,** MCM constructed, operates and maintains the children's museum located on Watson Island at 980 McCarthur Causeway, Miami, FL ("Property"); and

**WHEREAS,** the City regulates Outdoor Advertising Signs in accordance with City Ordinance 13321 of the City of Miami Code of Ordinances, as amended ("City Code"); and

**WHEREAS,** MCM and WAM have entered into a License Agreement, as may be amended from time to time, in accordance with Article XV of the Sublease, for the installation and operation of outdoor advertising signs at the Property in order to help the financial viability of MCM's operation and programs ("License Agreement"); and

**WHEREAS,** In accordance with the Sublease, MCM is authorized to enter into the License Agreement without MSEA's consent; and

**WHEREAS,** MCM is desirous of entering into this Agreement in order to help the financial viability of other City wide initiatives and/or programs with the consent of WAM.

**NOW, THEREFORE,** in consideration of the foregoing and of the mutual promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, hereby agree as follows:

**1. Term.** This Agreement shall remain in full force and effect and run concurrently with the term of the License Agreement by between MCM and WAM, its successors or assigns. Furthermore, the term of this Agreement is subject to the Sublease and Interlocal Agreement Term provisions, as may be applicable.

1. **Permit Fee Payments and Revenue Share.** During the Term of this Agreement, MCM shall pay to the City:

(i) Revenue Share. In accordance with the License Agreement and the terms of this Agreement, MCM shall pay to the City, twenty percent (20%) of the Gross Receipts generated from the MCM Advertising Signs ("Sign Revenue"), inclusive of the Permit Fees. In accordance with City Ordinance 13321, the City shall receive approximately two hundred and fifty-two thousand dollars ($252,000) in Permit Fees for the two proposed signs at the Property ("MCM Advertising Signs"), as illustrated in attached Exhibit "A". MCM shall make the Sign Revenue payments within ten (10) days of receipt by MCM , and shall provide copies of all reports and logs evidencing the method of calculation of such revenue.

1. **Public Service** Messages. MCM agrees to display Public Service Messages as part of the museum signage, from time to time as requested by the City. The City shall notify MCM fifteen (15) days prior to the Publ ic Service Messages being displayed, except in the case of Emergency/Advisory Messages, which are not subject to the time provisions described herein. The City shall provide MCM with the required formatted media in order for the Public Service Messages and/or Emergency/ Advisory Messages to be displayed as scheduled. MCM shall not be responsible for the creation, formatting, or design of the Public Service Messages. MCM and the City shall coordinate the display time and schedule of when the Public Service Messages and/or Emergency/Advisory Messages shall run on an case by case basis. The Public Service Messages may run in coordination with other museum signage.
2. **Audits and Log.** During the Term of this Agreement, City may exercise the same audit rights as those granted to MCM in the License Agreement, Sublease and Interlocal Agreement.
3. **Transaction** Costs. Each party shall be responsible for the fees and expenses of its legal counsel in connection with this Agreement, whether or not the transactions contemplated hereby are consummated.
4. **Waiver.** The failure of any party hereto to insist upon strict performance of any of the terms or provisions of this Agreement or to exercise any right contained in this Agreement shall not be construed as a waiver of such term, provision, or right in the future. No waiver by any party hereto of any term or provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by such party.
5. **No Agency/Employment/Joint Venture.** Nothing contained in this Agreement shall be construed to constitute any party hereto as a partner, employee, joint venturer, or agent of any other party hereto.
6. **Applicable Law.** This Agreement shall be construed under and shall be governed by the laws of the State of Florida. All disputes arising out of or in connection with this Agreement (including disputes concerning the existence and validity hereof), shall be resolved by the courts in Miami-Dade County, Florida.
7. **Construction.** For the purpose of construing this Agreement, unless the context indicates otherwise, words in the singular shall be deemed to include words in the plural, and vice versa; words in one gender shall be deemed to include words in other genders, the word "or" is not exclusive. Headings of Articles and Sections are inserted only for convenience and are not, and shall not be deemed a limitation on the scope of the particular Articles or Sections to which they refer. The word "including" (or other forms of the word "include") shall not be and shall not be construed as being limiting.
8. **Indemnity.** MCM and WAM are subject to the Indemnity Provisions in the Interlocal Agreement, Sublease and License Agreement. Specifically, WAM shall indemnify the City, MSEA and all of their officers, employees and agents in the same manner as MCM is required to do so pursuant to the Sublease.
9. **Insurance.** WAM shall be required to maintain the insurance coverage set forth in Article XII of the Sublease and also name the City and MSEA as additional insured.
10. **Bond.** WAM shall be required to name the City as an additional payee under any bonds related to the erection of the MCM Advertising Signs.
11. **Remedies in** Case of **Default.** In the event of a default by MCM in its payments of the Sign Revenue to the City, the City shall have the right and authority to collect such Sign Revenue directly from WAM, upon ten (10) business day's written notice to MCM and WAM. If WAM is required to make payment of the Sign Revenue directly to the City, WAM shall be required to make the payment with ten (10) business days after receipt of the City's notice.
12. **Time is of the** Essence. Time is of the essence as to the performance of the provisions of this Agreement.
13. **Notices.** Unless otherwise provided herein, all notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be delivered by hand or by registered or certified mail, return receipt requested, bearing adequate postage and properly addressed as provided below. Each notice given by mail shall be deemed to have been given by the sender when received or refused by the party hereto intended to receive such notice; each notice delivered by hand or by courier service shall be deemed to have been given and received when actually received by the party hereto intended to receive such notice or when such party refuses to accept delivery of such notice. Upon a change of address by any party hereto, such party shall give written notice of such change to the other party in accordance with the foregoing. Inability to deliver because of changed address or status of which no notice was given shall be deemed to be receipt of the notice sent, effective as of the date such notice would otherwise have been received.

Ifto City: City of Miami Attn: City Manager

444 SW 2nd Avenue, 10th Floor

Miami, FL 33131

With Copy to: City of Miami

Attn: City Attorney

444 SW 2nd Avenue, 9th Floor Miami, FL 33131

lf to MCM: Miami Children's Museum Attn: Chief Executive Officer 980 McCarthur Causeway

Miami, FL 33131

lf to WAM: Worldwide Amherst Media, LLC Attn: Mr. Barry Rush

19 Beechwood Road Summit, New Jersey 07901

With Copy to: Greenberg Traurig Attn: Lucia Dougherty

333 Avenue of the Americas, 44th Floor Miami, FL 33131

16. Assignment; Successors and Assigns. WAM is allowed to make an assignment or transfer of any interest described herein, in accordance with the provisions of the Interlocal Agreement, Sublease and License Agreement, as may be applicable, after written consent of the City Manager, whose consent may not be unreasonably withheld.

1. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
2. Modification. This Agreement may not be modified except in writing signed by authorized representatives of each of the parties hereto.
3. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements between the parties whether oral or in writing.

*[SIGNATURE PAGE FOLLOWS]*

**IN WITNESS WHEREOF,** the parties have caused this Agreement to be duly executed as of the date first above written.

**MIAMI CHILDREN'S MUSEUM,** a Florida not for profit corporation.

ATTEST: By:

Jeff Berkowitz, Executive Director

**THE CITY OF MIAMI,** a municipal corporation of the State of Florida

ATTEST:

 

Dwight Danie, Interim City Clerk Johnny Martinez, City Manager

APPROVED AS TO FORM AND CORRECTNESS:

APPROVED AS TO INSURANCE REQUIREMENTS:

Julie 0. Bru City Attorney

Calvin Ellis

Risk Management Director

**CONSENT OF WAM**

**WORLDWIDE AMHERST MEDIA,** LLC, a

Delaware limited liability company

ATTEST:

By:

Mark Van Fossan, Managing Member

**EXHIBIT A**

**WAM OUTDOOR ADVERTISING SIGN PROPOSAL TO MCM**

A. West Face of MCM Property: ............................................... Permit Fee $126,000

* *Sign to be approved in accordance with Ordinance 13321of the City Code.*

B. East Face of MCM Property: ................................................. Permit Fee $126,000

* *Sign to be approved in accordance with Ordinance 13321of the City Code.*

**Total Anticipated Permit Fees $252,000**

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| **REVENUE EXAMPLE** |
| Sign Revenue Generated | $2,000,000 |
| Total Sign Revenue due to City -- 20% | $ 400,000 |
| Permit Fees Paid to City | $ 252,000 |
| Additional amount due to City to equal total Sign Revenue | $ 148,000 |