



VILLAGE OF DOBBS FERRY BOARD OF TRUSTEES AGENDA

MEETING DATE: APRIL 27, 2021
AGENDA ITEM SECTION: MATTERS REQUIRING ACTION
AGENDA ITEM NO. : 10
AGENDA ITEM: CONSIDER A RESOLUTION TO AUTHORIZE THE INTERIM ADMINISTRATOR TO EXECUTE A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT WITH JAZZ FORUM ARTS IN CONNECTION WITH THE 2021 DOBBS FERRY SUMMER MUSIC SERIES
ITEM BACKUP DOCUMENTATION: <ul style="list-style-type: none">1. DRAFT RESOLUTION2. AGREEMENT BETWEEN THE VILLAGE OF DOBBS FERRY AND JAZZ FORUM ARTS

RESOLVED that the Interim Village Administrator is hereby authorized to enter into a Public-Private Partnership Agreement with Jazz Forum Arts, 1 Dixon Lane, Tarrytown for professional services to produce the 2021 Dobbs Ferry Music Series at Waterfront Park.

AGREEMENT

THIS AGREEMENT made this ____ day of ____ 2021 by and between

VILLAGE OF DOBBS FERRY, a municipal corporation of the State of New York, with an address at 112 Main Street, Dobbs Ferry, New York 10522 (hereinafter "Village")

-and-

JAZZ FORUM ARTS having an address at 1 Dixon Lane Tarrytown, New York 10591 (hereafter the "JFA")

RECITALS

WHEREAS, the Village owns certain real property located within the Village, including Waterfront Park; and

WHEREAS, the Village desires to promote, facilitate and encourage concerts and other art and cultural events within the Village for the benefit of its residents and other members of the public; and

WHEREAS, JFA has specialized experience in producing concerts and art events and the Village desires to enter into a public/private relationship with JFA for the sponsorship of programs focusing on music and the arts upon the terms and conditions set forth herein; and

WHEREAS, the parties desire to foster this public/private partnership and enter into this Agreement for promotion of the arts within the Village, including the production of concerts at Waterfront Park.

WITNESSETH:

1. Scope of Work:

JFA shall book talent, produce and promote eight (8) free Wednesday evening concerts of Jazz and World Music, weather permitting, at the Village's Waterfront Park ("Waterfront Park") in accordance with the attached **Exhibit "A"**. JFA shall supervise all contract and professional services and staffing related thereto (the "Work"). The Work shall be carried out by JFA in accordance with current industry standards and trade practices and in compliance with all safety

and protective measures as mandated by Executive Order or other law, regulation or rule in connection with the Statewide Health Emergency or other risks posed by the COVID-19 pandemic.

2. Term:

The term of this Agreement shall be from July 1, 2021 through August 31, 2021 during which JFA shall produce and present the 2021 edition of the annual Dobbs Ferry Summer Music Series at Waterfront Park. JFA shall report to the Village, as the Village may request, on its progress toward completing the Work, and shall immediately inform the Village in writing of any cause for delay in the performance of its obligations under this Agreement.

3. Contract Amount:

For the Work to be performed pursuant to this Agreement, JFA shall be paid an amount not-to-exceed FIVE THOUSAND DOLLARS (\$5,000.00). Any expense in excess of \$5,000 related in any way to this Agreement shall be the obligation JFA. In no event shall the Village's obligations under this Agreement exceed \$5,000.00. Except as otherwise expressly stated in this Agreement, no payment shall be made by the Village for out-of-pocket expenses or disbursements made by JFA in connection with the Work hereunder. JFA shall, at no additional charge, furnish all labor, services, materials, tools, equipment and other appliances necessary to complete the Work, unless specific additional charges are expressly permitted under this Agreement. Payments shall be made upon presentation of an invoice by JFA to the Village in accordance with the following schedule: \$2,500 after the 4th concert and \$2,500 after the 8th and final concert. The parties recognize and acknowledge that the obligations of the Village under this Agreement are subject to the Village Budget and that no liability shall be incurred by the Village beyond the monies agreed to herein. The Village shall pay amounts due under this Agreement exclusively from legally available funds appropriated for this purpose. The Village shall retain the right, upon

the occurrence of the adoption of any Village Budget by its Board of Trustees during the term of this Agreement or any amendments or extensions thereto, and for a reasonable period of time after such adoption(s), to conduct an analysis of the impacts of any such Village Budget on Village finances. After such analysis, the Village shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates set forth herein. If the Village subsequently offers to pay a reduced amount, then JFA shall have the right to terminate this Agreement upon reasonable prior written notice.

4. Village's Right To Audit

Prior to the making of any payments hereunder, the Village may, at its option, audit such books and records of JFA as are reasonably pertinent to this Agreement to substantiate the basis for payment. The Village will not withhold payment pursuant to this paragraph for more than thirty (30) days after payment would otherwise be due pursuant to the provisions of this Agreement, unless the Village shall find cause to withhold payment in the course of such audit or JFA fails to cooperate with such audit. The Village shall, in addition, have the right to audit such books and records subsequent to payment, if such audit is commenced within one year following termination of this Agreement.

5. Right to Terminate:

The Village, upon thirty (30) days' notice to JFA, may terminate this Agreement in whole or in part when the Village deems it to be in its best interest.

6. Insurance Requirements/Hold Harmless:

JFA agrees to procure and maintain insurance naming the Village as additional insured during the term of this Agreement as set forth in the attached **Exhibit "B"** annexed hereto. Prior to any Work commencing, the Certificate of Insurance naming the Village as an additional insured

in the amounts set forth in **Exhibit “B”** shall be provided to the Village Administrator. Prior to any Work commencing, any and all subcontractors and/or vendors of JFA shall provide all insurance as set forth above naming the Village as an additional insured. In addition, JFA agrees:

- (a) that JFA shall defend, indemnify and hold harmless the Village its officers, employees, agents, and elected officials from and against any and all liability, damage, claims, demands, costs, judgments, fees, reasonable attorneys’ fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by JFA or third parties under the direction or control of JFA; and
- (b) to provide defense for and defend the Village, at JFA’s sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto.

7. Worker’s Compensation Insurance Requirements:

JFA shall comply, at its own expense, with the provisions of all applicable local, state and federal laws, rules and regulations, including, but not limited to, those applicable to JFA as an employer of labor. JFA and all subcontractors and/or vendors of JFA must maintain Worker’s Compensation Coverage as set forth in **Exhibit “B”** and provide proof of same to the Village Administrator. JFA shall further comply, at its own expense, with all applicable rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, sub-consultants and others employed to render the Work hereunder.

8. Entire Agreement:

It is the intent and understanding of the Village and JFA that each and every provision required by law, contract, or other proper authority to be included in this Agreement shall, for all intents and purposes, be considered and deemed included herein. JFA understands and acknowledges that for each and every such provision that has, through mistake or otherwise, either not been inserted in writing or been inserted in writing in an incorrect form, JFA hereby consents

to amending this agreement in writing, upon receipt of notice from the Village, for the purpose of inserting or correcting the provision in question. This Agreement and the attached **Exhibits “A”** and **“B”** constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

9. Outside Vendors/Temporary Tents:

It is understood that JFA may contract with certain vendors for the purveying of food, beverages and related goods. It is further understood that a number of temporary tents may be constructed by JFA and/or its subcontractors for said food service and/or for other reasons in connection with the Work. JFA shall require all subcontractors, vendors and/or sponsors to comply with all of the terms of this Agreement. JFA shall provide all subcontractors/subconsultants, vendors, sponsors with a copy of this Agreement. No temporary tents shall be allowed to be spiked into the ground, but said tents shall otherwise be secured by other means and methods as decided by JFA and/or its subcontractors, including for example, sandbags and as may be approved by the Village Building Inspector. Further, under no circumstance shall any trucks and/or any motorized vehicles drive on any grass portions of the Waterfront Park. Any violation of this provision of the Agreement shall require payment from JFA to the Village for all repair and restoration costs. Further, all vendors of JFA shall obtain all necessary permits from the Village, including, but not limited to, approvals/permits for tents and the sale of any food. A JFA vendor that fails to obtain a permit from the Village shall result in a summons being issued to the JFA and/or the vendor by the Village. Each and every summons issued shall result in a reduction of payment hereunder by \$500.

10. No Assignment:

JFA shall not delegate any duties to complete the Work or assign any of its rights under this Agreement without the prior express written consent of the Village.

11. Independent Contractor Status:

The parties hereto agree that JFA and its officers, employees, agents, consultants, subcontractors, subconsultants, vendors, and sponsors are independent contractors are not employees of the Village or any department, agency or unit thereof. In accordance with their status as independent contractors, JFA covenants and agrees that neither JFA nor any of its officers, employees, agents, contractors, subconsultants and/or consultants will hold themselves out as, or claim to be, officers or employees of the Village any department, agency or unit thereof.

12. No Waiver:

Failure of the Village to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment of such term or condition, but the same shall remain in full force and effect. Acceptance by the Village of any Work or the payment of any fee or reimbursement due hereunder with knowledge of a breach of any term or condition hereof, shall not be deemed a waiver of any such breach and no waiver by the Village of any provision hereof shall be implied.

13. Notices:

All notices of any nature referred to in this Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or delivered by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by registered or certified mail, postage pre-paid), as set forth below and above or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt.

14. No Third-Party Beneficiary:

Nothing herein is intended or shall be construed to confer upon or give to any third party or its successors and assigns any rights, remedies or basis for reliance upon, under or by reason of this Agreement, except in the event that specific third party rights are expressly granted herein.

15. No Exclusivity:

JFA recognizes that this Agreement does not grant it the exclusive right to perform the Work for the Village and that the Village may enter into similar agreements with other parties on an "as needed" basis.

16. Counterparts:

This Agreement may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Agreement shall not be enforceable until signed by both parties.

17. Choice of Law:

This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that for any cause of action arising out of this Agreement shall be brought in the County of Westchester, New York.

18. Severability:

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect

to the original written intent of the parties prior to the determination of such invalidity or unenforceability.

IN WITNESS WHEREOF, the Village and JFA have caused this Agreement to be executed.

VILLAGE OF DOBBS FERRY

By _____
Name: Richard A. Leins
Title: Interim Village Administrator

JAZZ FORUM ARTS

By: _____
Name: Mark Morganelli
Title: Executive Director & Artistic Director

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

On the ____ day of _____ in the year 2021 before me, the undersigned, personally appeared Richard A. Leins, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Date: _____

Notary Public

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY)

On the _____ day of _____ in the year 2021 before me, the undersigned, personally appeared Mark Morganelli, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Date: _____

Notary Public