



HOWARD COUNTY OFFICE OF COUNTY EXECUTIVE

3430 Court House Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2013

Allan H. Kittleman
Howard County Executive
akittleman@howardcountymd.gov

www.howardcountymd.gov
FAX 410-313-3051
TDD 410-313-2323

September 18, 2015

Michael McCall, President and CEO
c/o Inner Arbor Trust, Inc.
10630 Little Patuxent Parkway
Century Plaza, Suite 315
Columbia, MD 21044

Dear Mr. McCall:

Michael

Enclosed, please find Amendment Three to Grant Agreement (the "Amendment") between Howard County, Maryland and the Inner Arbor Trust, Inc. The County looks forward to the completion of the Chrysalis Amphitheater and the Butterfly Guest Services Building.

In accordance with the Amendment and the Grant Agreement, please provide the Chief Administrative Officer of the County with notice of any Board meeting, or subset thereof, to ensure that the County's review group will be able to attend and observe. Further, we look forward to negotiating an agreement related to the County's use and access to the Chrysalis.

Should you have any questions or concerns, please feel free to contact me.

Best regards,

Allan H. Kittleman
County Executive

cc: B. Diane Wilson – Chief of Staff
Lonnie Robbins – Chief Administrative Officer

AMENDMENT THREE TO GRANT AGREEMENT

18 This Amendment to Grant Agreement ("this Amendment") is made and entered into this day of September, 2015 (the "Effective Date"), by and between **HOWARD COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland ("the County") and **INNER ARBOR TRUST, INC.**, a Maryland nonprofit corporation (the "Grantee").

RECITALS

- A. Pursuant to the Annual Budget and Appropriation Ordinance for Fiscal Year 2014 (Bill No. 25-2013), the County appropriated \$5 million for the arts in Downtown Columbia, with up to \$3.5 million of that amount to be used for the "planning, design, engineering, and construction costs for an amphitheater located in Symphony Woods in Columbia and developed jointly with community partners and the Columbia Association."
- B. The Grantee is a non-profit entity that is currently party to a Grant Agreement with the County, dated December 18, 2013, as revised by the Amendment to Grant Agreement dated October 31, 2014, and as further revised by the Second Amendment to Grant Agreement dated April 24, 2015, (collectively, the "Agreement") under which the Grantee received the \$3.5 million to be used as described above, and as more specifically described in the Agreement.
- C. Pursuant to the Annual Budget and Appropriation Ordinances for Fiscal Year 2015 (Bill No. 24-2014) and Fiscal Year 2016 (Bill No. 23-2015), the County appropriated a total of \$2.895 million (\$1.5 million in FY 2015 and \$1.395 million in FY 2016) in additional funds to be used for construction of the amphitheater.
- D. The Grantee and the County desire to enter into this Amendment in order to: 1) grant the additional funding to the Grantee for construction of the amphitheater; and 2) establish additional conditions on the expenditure of the funds.

NOW THEREFORE, in consideration of the premises and the mutual promises and covenants contained in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Grantee agree as follows:

Item 1 of the Amendment: Section I, "Grant," is deleted and replaced with the following:

I. GRANT.

The County agrees to provide the Grantee with funds in an amount not to exceed Six Million, Three Hundred and Ninety-Five Thousand Dollars (\$6,395,000.00) (the "Grant") under the terms and conditions of this Agreement.

Item 2 of the Amendment: Section II, "Use of Grant Funds," is deleted and replaced with the following:

II. USE OF GRANT FUNDS.

A. **Scope of Work.** Grant funds may be used only for the following Scope of Work:

The Grantee shall provide the following services to Howard County residents beginning in October of 2013:

1. Select and manage planning and design consultants to prepare a site development plan composed of:
 - a. Construction drawings for the Chrysalis Amphitheater, as well as pedestrian path connections through Symphony Woods to Merriweather Post Pavilion, Little Patuxent Parkway and adjoining parking areas.
 - b. Design Development drawings for the Butterfly Guest Services Building.
2. Provide development management services to obtain all County approvals associated with the SDP, as well as the grading, building and sign permits.
3. Manage and complete construction of the Chrysalis Amphitheater and all directly supporting elements (except Sanitary Sewer), shown on the approved Phase 1 of the Site Development Plan.

B. **Project Standards.** The Grantee shall be evaluated in reference to the schedule and performance measures as set forth in Attachment A. For evaluation purposes, the Grantee's President and CEO shall submit monthly progress reports to the Director of the Department of Planning and Zoning and the Director of Finance beginning on December 31, 2013 stating the Grantee's progress towards these performance measures.

C. **Project Monitoring.** The County may evaluate the delivery of services and monitor the Grantee's expenditures and financial accounting procedures. The Grantee shall submit quarterly financial reports, including without limitation a statement of cash flows and any other requested financial statement, in a form acceptable to the County, for the immediately preceding six months, to the Director of the Department of Planning and Zoning and the Director of Finance beginning February 28, 2014. If the date for any submission falls on a weekend or a federal holiday, the due date for the required reports shall be the next business day. Upon notice by the County at least five working days in advance, the Grantee shall make available for inspection and examination all documentation, books of accounts, project records and other pertinent data to verify the reports and to ensure that the Grantee is operating according to the requirements of this Agreement.

D. **Coordination.** Upon reasonable notice, the Grantee agrees to meet with County staff as requested in order to coordinate the Grantee's activities in the planning, design, plan approval and construction of the new amphitheater.

E. **Limitation on Expenditures.** No Grant funds shall be expended for administrative, overhead, and management costs after December 1, 2015.

Item 3 of the Amendment: Section III, "Disbursements," is deleted and replaced with the following:

III. DISBURSEMENTS.

A. **In General.** Subject to the continued compliance by the Grantee with all of the terms and conditions of this Agreement, disbursements of funds to the Grantee will be made as follows:

1. An initial release of \$300,000 for planning and design upon execution of this Agreement, provision of agreements with design and engineering firms and the County's receipt of a conceptual business plan that includes projected development costs, development schedule, potential revenues, ownership structure, operations and additional funding sources.
2. Any additional funding for planning and design will be approved based on adequate documentation of expenses.
3. The remaining funds will be dispensed for development and construction related expenses based on adequate documentation, provided that:
 - a. The County hereby acknowledges that as of March 6, 2015, the Grantee entered into a **LICENSE, EASEMENT AND OPERATING AGREEMENT** with It's My Amphitheater, Inc. ("the IMA Agreement"), the operator of Merriweather Post Pavilion, in which are defined the use and access terms and protocols pertaining to the Treehouse Amphitheater (now referred to as the "Chrysalis" amphitheater).
 - b. Disbursements under this Agreement shall not exceed the total of \$6.395 million appropriated by the County.
 - c. Initial release of any construction funds will be based on confirmation that all the funding for construction costs has been committed.
4. The County agrees, subject to review and approval of the Grantee's invoices, which are not to be unreasonably withheld or delayed, it will pay Grantee's invoices within 30 days of receipt.

5. Any unutilized funds will be returned to the County following an audit of the actual project costs.
6. All funds disbursed to the Grantee under this Agreement shall be deposited and held in a separate bank account maintained by the Grantee to be used solely for deposits of funds received from the County for grant reimbursed costs and payments to the contractors for those same costs necessary to ensure completion of the new amphitheater and supporting elements.

B. **Conditions on Disbursement.** No Grant funds shall be disbursed to Grantee after September 1, 2015, unless Grantee complies with the following conditions:

1. On the Effective Date of this Amendment, the Grantee shall submit all construction plans, budgets, contracts, and schedules for the Chrysalis to a 3-member review group of County employees designated by the County Executive. The plans must be approved by the review group prior to the construction covered by the plans, which approval shall not be unreasonably delayed or withheld. Review group members are entitled to attend the Grantee's board meetings, but do not have voting powers and do not have any authority to release to the public any information obtained at the board meetings. Review members attending the Grantee's meetings are in attendance to observe the meetings, not to participate. Grantee's board may enter executive session and exclude review group members to protect the attorney/client privilege, to discuss any legal matters or receive legal advice, or to discuss confidential matters. Upon closing the board meeting to enter executive session, the board shall state the basis for closing the meeting.
2. Due to the abbreviated project schedule for the Chrysalis, the County has agreed that the \$1.5 million match required for the FY 2015 \$1.5 million grant allocation will be satisfied by the revenue the Grantee is contractually entitled to receive under the IMA Agreement.
3. The Grant funds shall be used only to pay the direct costs of construction management (not to exceed \$100,000 total from the Effective Date of this Agreement), design, fabrication, installation, and directly related site work for the Chrysalis. No funds are to be used by Grantee for the Trust's management, administration and overhead for expenses incurred after December 1, 2015.
4. The Grantee shall require that all plans, drawings and other deliverables acquired with Grant funds shall be the property of the Grantee, or licensed solely to the Grantee, and not any other organization or person.

5. Grant funds shall not be used to pay any vendor or contractor for goods or services above one thousand dollars (\$1,000) to a single party, unless the Grantee has a written contract with the vendor or contractor.
6. In addition to the quarterly financial reports required by this Agreement, the Grantee shall provide monthly project reports to the County by the fifteenth (15th) day of each month for the prior calendar month.
7. The Grantee shall cooperate fully with an audit to be conducted by an auditor hired by the County.
8. No later than October 31, 2015, the Grantee shall publish online its Founding and Formation Documents, Board Meeting Minutes; Financial Statements and Tax Returns; and the various Formal Agreements By & Between the Constituents of the Merriweather-Symphony Woods Neighborhood.

C. **Future Conditions on Disbursement.**

1. On or before the 90th day after the Effective Date of this Agreement, the Grantee and the County shall enter into a reasonable, non-exclusive separate written agreement governing use of and access to the Chrysalis, respecting the provisions of the IMA agreement and the Amended and Restated Declaration of Restrictive Covenants and Easement Agreement dated March 14, 2014 between the Columbia Association, Inc and Grantee. If such agreement is not executed by the 90th day after the Effective Date of this Agreement, no further grant funds shall be disbursed to Grantee until the agreement is finalized and executed by all required parties.
2. During each year of the IMA Agreement, the Grantee shall use, at a minimum, an amount equal to the difference between the Annual Base Rent and the Service Agreement Fee (as shown in Exhibit F of the IMA Agreement) to pay the direct costs of construction management, design, fabrication, installation, and directly related site work for the Chrysalis; provided, however, that once the Grantee has used a total of \$1.5 million of such funds for these purposes, this requirement shall become void. This provision becomes void after the completion of construction of the Chrysalis, grant of an occupancy permit for the Chrysalis and the payment of any and all costs related to the design, fabrication, installation and construction of the Chrysalis.

D. **Disbursements to Grantee.** Subject to the Grantee meeting all conditions required by this Agreement, disbursements are to be made directly from the County to the Grantee by check or electronic transfer, as determined by the County.

- 1) Except as modified by this Amendment, the Agreement and all provisions thereof shall remain in full force and effect and are hereby ratified and confirmed.
- 2) This Amendment, together with the Agreement, constitutes the entire agreement between the County and the Grantee. Any modification to this Amendment must be in writing and signed and delivered by authorized representatives of the affected parties in order to be effective.
- 3) In case of any conflict between the provisions of this Amendment and the Agreement, the provisions of this Amendment control.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the Effective Date indicated below by affixing hereon their respective seals and signatures of the proper offices.

WITNESS:

Barbara B. McCall
Name: Barbara B. McCall

INNER ARBOR TRUST, INC.:

BY: [Signature]
Michael S. McCall
President and CEO
Date: 9/16/15

ATTEST:

[Signature]
Lonnie R. Robbins
Chief Administrative Officer

HOWARD COUNTY, MARYLAND

BY: [Signature]
Allan H. Kittleman
County Executive
Date: 9/18/2015
(Effective Date)

APPROVED for Sufficiency of Funds:

[Signature]
Stanley J. Milesky, Director
Department of Finance

APPROVED for Form and Legal Sufficiency
this 18th day of September, 2015 :

[Signature]
Gary W. Kuc
County Solicitor

Reviewing Attorney:

[Signature]
James D. Vannoy
Senior Assistant County Solicitor