RESOLUTION

AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH SPECTACLE MANAGEMENT, INC.

CITY OF NASHUA

In the Year Two Thousand and Nineteen

RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor is authorized to enter into a “Memorandum of Understanding” with Spectacle Management, Inc. regarding the future operation of the Performing Arts Center in substantially the same form as the attached.
LEGISLATIVE YEAR 2019

RESOLUTION: R-19-133

PURPOSE: Authorizing the Mayor to enter into a Memorandum of Understanding with Spectacle Management, Inc.

ENDORSERS: Mayor Jim Donchess

COMMITTEE ASSIGNMENT:

FISCAL NOTE: None

ANALYSIS

This resolution authorizes the Mayor to enter into a "Memorandum of Understanding" with Spectacle Management, Inc. regarding the future operation of the Performing Arts Center in substantially the same form as the attached. If negotiations are successful, the proposed operation agreement will come back to the Board of Aldermen for approval.

Approved as to form: Office of Corporation Counsel

By: ____________________________

Date: ____________________________

April 4, 2019
MEMORANDUM OF AGREEMENT BETWEEN  
THE CITY OF NASHUA AND SPECTACLE MANAGEMENT, INC.

This MEMORANDUM OF AGREEMENT (the "MOA Agreement" or the "Agreement") is made this ______________ day of __________________, 2019 by and between the City of Nashua (the "City") and Spectacle Management, Inc. (the "Company").

WHEREAS, the City is a duly organized New Hampshire municipal corporation acting through its Board of Aldermen and Mayor, having its principal office located at Nashua City Hall, 229 Main Street, Nashua, NH 03061; and

WHEREAS, the Company is a foreign for-profit corporation having its principal United States offices located at 4 Muzzey Street, Lexington, MA 02421 and is authorized to do business in New Hampshire; and

WHEREAS, the City strongly supports increased economic development to provide additional jobs for residents of Nashua and the region, to expand business within the City, and to develop a healthy robust economy through the means of culture and arts investment; and

WHEREAS, the City is planning and developing a future Performing Arts Center of approximately 35,000 square feet to accommodate approximately 750 seats along with it being a flexible multipurpose event center; and

WHEREAS, the City released an RFP on ______________ soliciting proposals for operators; and

WHEREAS, the Company a for-profit entity with a business plan focusing on operating publicly owned performing art center venues on behalf of municipalities and non-profits responded to the solicitation for services; and

WHEREAS, the purpose of this MOA Agreement is to mutually express shared goals and expectations for the furtherance of both entities desirous of promoting and increasing artistic, cultural, entertainment and recreational experiences for the common good and benefit of the people; and

WHEREAS, the parties to the Agreement are desirous of entering into a MOA Agreement which shall pertain solely to the contemplated project as proposed by the City of Nashua in RFP ______________ attached hereto; and

WHEREAS, the Company understands and acknowledges that this MOA Agreement may be assigned to a non-profit entity and the final service contract agreement may be executed with an entity other than the City; and

WHEREAS, by a communication dated ______________, the Performing Arts Center Steering Committee recommended Company as the future operator of the Performing Arts Center to the Nashua Board of Aldermen and Mayor; and

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and contingent upon receipt of authorization from Nashua’s Board of Aldermen and in accordance with applicable law, the parties hereby agree as follows:
A. **THE CITY’S OBLIGATIONS**:

1. The Board of Aldermen approved the provisions of this MOA Agreement on ________, 2019 pursuant to the communication attached hereto. The Board of Aldermen hereby authorizes the Mayor to execute this MOA Agreement on the City’s behalf, and to monitor and enforce compliance by the Company. The Director of Economic Development is authorized to act for and on behalf of the City in proceedings relating to the compliance of this Agreement.

2. During the term of this Agreement, work exclusively with the Company to develop an appropriate Operator Service Contact for the future Performing Arts Center.

B. **THE COMPANY’S OBLIGATIONS**

1. To work cooperatively with the City and/or the successor or assigns to bring to fruition a Performing Arts Center by attending when possible meetings on the future Performing Arts Center as appropriate at no charge to the City.

2. The Company intends to enter into an operator agreement and will act in good faith to negotiate with the City to enter into said agreement.

C. **OTHER CONSIDERATIONS**.

1. The recitals to this Agreement are incorporated into and shall constitute a part of this Agreement.

2. This Agreement may be amended only when written consent is given by both parties.

3. Both parties shall endeavor to enter into an operator agreement within ninety (90) days of the Performing Arts Center receiving a building permit to start major construction of the Performance Center’s audience chamber.

4. This document shall terminate on the later of the 90 days referenced in C.3 above or December 31, 2019. Upon termination, all rights and obligations of the parties under this Agreement cease.

5. Both parties shall work with the framework outlined in the RFP dated __________ seeking a Performing Arts Center operator and the Company’s response dated __________.

6. All notices, reports or other communications require or permitted under this MOA Agreement must be in writing signed by a duly authorized representative of the City and/or Company and as the case may be, and shall be (i) hand delivered, (ii) delivered by a nationally recognized overnight delivery service, or (iii) mailed by certified or registered mail, return receipt requested, postage prepaid, to the parties at the following addresses or such other addresses as each may have specified to the other by such a notice:

CITY: Tim Cummings, Director of Economic Development
City Hall – Economic Development Office
229 Main Street/P.O Box 2019
Nashua, NH 03061
Celia Leonard, Deputy Corporation Counsel  
City Hall - Corporation Counsel Office  
229 Main Street/P.O. Box 2019  
Nashua, NH 03061

COMPANY: Peter Lally, President  
Spectacle Management  
4 Muzzey Street  
Lexington, MA 02421

7. This Agreement shall be governed exclusively by the laws of the State of New Hampshire and any claim or action brought relating to this Agreement or referable in anyway shall be brought in Hillsborough County (New Hampshire) Superior Court Southern Judicial District or in the New Hampshire 9th Circuit Court—Nashua and not elsewhere.

8. This Agreement shall not be assigned in whole in part by Company without the express prior written of the City. This Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective successors and assigns. This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

WITNESSETH, the execution and delivery of this Agreement by the Company and the City as an instrument under seal as of the date last written below by the signatories hereto.

AGREED TO:

SPECTACLE MANGMENT, CORPORATION

By: _______________________________  Dated: __________________, 2019

__________________________
Pete Lally
President, duly authorized
Spectacle Management Corporation

COMMONWEALTH OF MASSACHUSETTS

______________, ss.

On _______________, 2019, before me, the undersigned notary public, personally appeared ______________________, as __________________ of __________________ and proved to me through satisfactory evidence of identification, which was __________________, that s/he is the person whose name is signed on the preceding or attached document.
CITY OF NASHUA

By: ________________                  Dated: ________________, 2019

   James W. Donchess
   Mayor
   City of Nashua

STATE OF NEW HAMPSHIRE

______________, ss.

    On ________________, 2019, before me, the undersigned notary public, personally appeared ________________, as ________________ of ________________ and proved to me through satisfactory evidence of identification, which was ________________, that s/he is the person whose name is signed on the preceding or attached document.

______________________________
Notary Public
Printed Name:
My Commission Expires:
Attachment

Operator RFP
Attachment

Spectacle Management’s Response