



County of Fairfax, Virginia

AMENDMENT

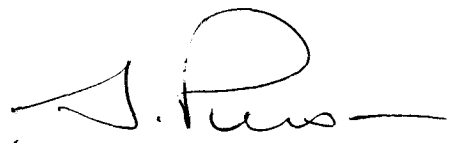
AMENDMENT NO. 2

CONTRACT TITLE: SESAC Performance License

<u>CONTRACTOR</u>	<u>SUPPLIER CODE</u>	<u>CONTRACT NO.</u>
SESAC LLC 55 Music Square East Nashville, TN 37203	1000025694	4400004516

By mutual agreement, this is to amend the contract to incorporate the attached music performance license for calendar year 2016.

All other prices, terms and conditions remain the same.



Cathy A. Muse, CPPO
Director/County Purchasing Agent

Steve Pierson, CPPB
Contracts Manager

DISTRIBUTION:

Finance – Accounts Payable/e
Contractor

Contract Specialist – Yong Kim
ACS, Team1 - J. Waysome-Tomlin



WILLIAM R. LEE
Senior Vice President
Licensing Operations

September 6, 2016

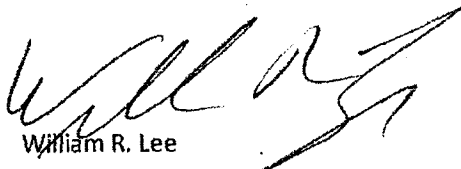
Yong Kim, Contract Specialist 11 – Team 1
Department of Procurement & Material Management
12000 Government Center Parkway, Suite 427
Suite 427
Fairfax VA, 22035-0013

Dear Yong Kim;

As you have requested SESAC has signed the license agreement between Fairfax County and SESAC. Please sign and return a copy via email to Jill Kemezis, jkemezis@sesac.com. Upon our receipt of the unaltered agreement we will process the agreement which then will become effective.

Please contact me should you have any questions or concerns.

SESAC



William R. Lee
Senior Vice President
Licensing Operations

SESAC PERFORMANCE LICENSE for MUNICIPALITIES

Agreement made in New York by and between SESAC LLC ("SESAC"), a Delaware limited liability company, with offices at 35 Music Square East, Nashville, TN 37203 and

Fairfax County ("LICENSEE")

Billing Address 12000 Government Center Pkwy Ste 55

City Fairfax State VA ZIP 22035

Telephone: (703) 324-3205 Fax: E-mail:

SESAC and LICENSEE hereby mutually agree as follows:

1. GRANT OF RIGHTS: Effective as of January 1 2016, (the "Effective Date") SESAC grants to LICENSEE the non-exclusive right and license to publicly perform live or "recorded" non-dramatic renditions of the musical compositions, the performance rights to which SESAC controls and/or is empowered to license (the "Compositions") solely on and in connection with the following:

Name: Fairfax County

Location: 12000 Government Center Pkwy Ste 55, Fairfax, VA 22035 (the "Municipality")

As used herein, Municipality shall include those locations owned, operated, and/or leased by LICENSEE which are used as governmental offices or for related purposes; those locations at which events are held under LICENSEE's sole control and attended by LICENSEE's employees, their families, social acquaintances, citizens, and other members of the public; and those areas owned, operated, and/or leased by LICENSEE which are under LICENSEE's sole control.

2. LIMITATIONS OF RIGHTS: The Rights granted pursuant to Paragraph 1 above shall specifically exclude:

A. the right to perform, broadcast, televise or otherwise transmit the Compositions to any location (unless and to the extent otherwise expressly permitted in Schedule "A");

B. the right to grant the Rights to any third party;

C. "Grand Rights" in and to the Compositions ("Grand Rights" include, but are not limited to, the right to perform in whole or in part, dramatico-musical and dramatic works in a dramatic setting);

D. performances of the Compositions (i) which are part of a background music service originating from any location including the Municipality, for which performance license fees are otherwise paid, regardless of the means by which such performances are transmitted on or to the Municipality, (ii) by coin-operated phonorecord players ("jukeboxes"), as defined in 17 U.S.C. § 116, and/or (iii) transmitted by computer on-line services or electronic bulletin boards and received on the Municipality (unless and to the extent otherwise expressly permitted in Schedule "A").

E. This license shall specifically exclude concerts. "Concerts" are those performances by an entertainer, group, or performer for which an admission or other fee is charged and which are not solely promoted by LICENSEE.

F. This license shall specifically exclude "Sporting events." "Sporting events" are professional, semi-professional, major or minor league athletic competitions.

G. This license shall specifically exclude Colleges and/or Universities.

3. TERM OF LICENSE:

A. The term of the Agreement shall be for an initial period that commences upon the Effective Date and continues for a period of one (1) year (the "Initial Period"). Thereafter, the Agreement shall automatically continue in full force and effect for successive additional periods of one (1) year ("Renewal Period(s)"). SESAC and /or LICENSEE shall have the right to terminate this Agreement as of the last day of the Initial Period or as of the last day of any Renewal Period(s) upon giving written notice to the other party by certified mail, return receipt requested, at least thirty (30) days prior to the commencement of any Renewal Period(s). The Initial Period and Renewal Period(s) are sometimes collectively referred to herein as the "Term."

B. Notwithstanding anything to the contrary contained herein, SESAC shall have the right to terminate this Agreement upon thirty (30) days written notice by reason of any law, rule, decree, or other enactment having the force of law, by any authority, whether federal, state, local, territorial or otherwise, which shall result in substantial interference in SESAC's operation or any substantial increase in the cost of conducting its business.

4. LICENSE FEE:

A. As consideration for the Rights granted herein, LICENSEE shall pay to SESAC the annual "License Fee" then in effect in accordance with the "Fee Schedule" set forth in Schedule "A" attached hereto.

B. In the event that SESAC is determined by the taxing authority or courts of any state, territory, or possession in which LICENSEE conducts its operation to be liable for the payment of a gross receipts, sales, use, business use or other tax which is based on the amount of SESAC's receipts from LICENSEE, then LICENSEE shall reimburse SESAC, within thirty (30) days of notification therefor, for LICENSEE's pro rata share of any such tax derived from receipts received from LICENSEE, unless by constitution or statute, LICENSEE is exempt from any such tax whether applied directly or indirectly to LICENSEE.

C. SESAC shall have the right to impose a late payment charge of one and one-half percent (1.5%) per month for any License Fee payment that is more than thirty (30) days past due. In the event that SESAC incurs any costs or fees in connection with the collection of any amounts past due to SESAC hereunder, including without limitation reasonable attorney's fees, then LICENSEE shall be responsible for paying such amounts to SESAC unless by constitution or statute, LICENSEE is exempt from any such charge whether applied directly or indirectly to LICENSEE.

D. Effective January 1 of each calendar year the License Fee may be increased by five percent (5%), rounded to the nearest dollar. In the event that the percent increase in the Consumer Price Index - All Urban Consumer (CPI-U) as published by the Bureau of Labor Statistics, U.S. Department of Labor, between the most recent October and the preceding October exceeds five percent (5%), then the License Fee may be increased by that amount.

5. MISCELLANEOUS:

A. In the event LICENSEE fails to pay the License Fee when due or is otherwise in default of any other provision of this Agreement, then SESAC shall have the right to terminate this Agreement in addition to pursuing any and all other rights and/or remedies available if LICENSEE has not cured such breach within thirty (30) days following SESAC's written notice of such default.

B. SESAC shall have the right to withdraw from the scope of this License, upon written notice, the right to perform any musical composition licensed hereunder as to which any action has been threatened, instituted, or a claim made that SESAC does not have the right to license the performance rights in such composition.

C. This Agreement shall be binding upon and inure to the benefit of SESAC's and LICENSEE's legal representatives, successors, and assigns, but no assignment shall relieve SESAC or LICENSEE of their obligation under this Agreement.

D. This Agreement supersedes and cancels all prior negotiations and understandings between SESAC and LICENSEE in connection with the Municipality. No modification of this Agreement shall be valid or binding unless in writing and executed by SESAC and LICENSEE. If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction or by any other legally constituted body having the jurisdiction to make such determination, the remainder of this Agreement shall remain in full force and effect. No waiver of any breach of this Agreement shall be deemed a waiver of any preceding, continuing or succeeding breach of the same, or any other provision of this Agreement.

IN WITNESS THEREOF, the parties have caused this Agreement to be duly signed as of

9/7/2016
(Please insert today's date)

LICENSEE

BY: [Signature]
(please sign here)

[Signature]
(Type or print name)

TITLE:

[Signature]

SESAC LLC

BY: [Signature]

TITLE:

Senior Vice President
Licensing Operations

**Schedule "A"
MUNICIPALITY - 2016**

I. **Municipality.** "Municipality," as used in the SESAC Performance License effective January 1 2016

(the "Agreement") to which this Schedule "A" is attached, shall be defined as the following Municipality:

Name: Fairfax County

Location: 12000 Government Center Pkwy Ste 55, Fairfax, VA 22035 (the "Municipality")

II. Fee Schedule/License Fee.

A. The annual License Fee shall be based upon the Population of the Municipality as noted below:

<u>Population</u>		<u>License Fee for calendar year 2016</u>
25,000	or less	\$ 378
25,001	- 50,000	\$ 755
50,001	- 100,000	\$1,230
100,001	- 150,000	\$1,792
150,001	- 250,000	\$2,451
250,001	- 500,000	\$3,205
500,001	And over	\$4,056 + \$378 for each additional 100,000 population

Population 1

This license will authorize **audio and/or audio/visual musical performances** (radio, records, tapes, compact discs, videocassettes, laser discs, television, and similar media), and **live musical performances**. This license will also authorize performances via **music on hold** systems operated by LICENSEE.

B. As used herein, "Population" shall mean the total population of the Municipality as of the most recent United States Census.

C. LICENSEE shall pay the license fee to SESAC upon execution of this Agreement, with license fees due and payable in advance. The initial license fee payment shall be a pro-rated amount calculated using the then current license fee rate(s) from the Effective Date through the end of the current billing period. Subsequent payments shall be made annually in one (1) payment on or before the first day of January, for the billing period of January 1 through December 31 of each calendar year of the Term.

D. Upon execution of this License, LICENSEE shall provide SESAC with a report detailing the Population as of the Effective Date. Thereafter, on or before October 1 of each calendar year, in the event that a change in the Population results in a change in fee category, LICENSEE shall submit an updated report of the Population. License fees will be adjusted effective the following January 1. SESAC retains the right to obtain these figures through United States Census Data and make appropriate adjustments to the license fee.

E. Notwithstanding anything to the contrary contained in this Agreement, upon written notice to LICENSEE, SESAC shall have the right to adjust the rates set forth in the Fee Schedule. In the event that LICENSEE's License Fee increases as a result of such adjustment to the Fee Schedule, LICENSEE shall have the right to terminate this Agreement as of the date such increase is to take effect. LICENSEE must give SESAC written notice of such termination by certified mail, return receipt requested, not later than thirty (30) days after written notice of such increase is sent to LICENSEE by certified mail. This paragraph shall not apply to paragraph 4.D of the Agreement.

III. **This Schedule** is incorporated and made part of the Agreement. Unless otherwise indicated, all capitalized terms in this Schedule "A" shall have the same meaning as set forth in the Agreement.

NOTICE TO VIRGINIA PROPRIETORS

Virginia law (§ 59.1- 460 et. seq.) requires SESAC, Inc. (a "performing rights society" as defined under the law) to provide you with the following notice, in writing, at least seventy-two (72) hours prior to the execution of any contract requiring you to pay royalties to SESAC:

(1) Notice that SESAC is required to file with the State Corporation Commission a certified copy of each form of document that is used by SESAC to enter into a contract with a proprietor doing business in the state and that SESAC will make available, upon your written request, at your sole expense, copies of such documents as are filed with the department.

Any request for copies of licenses offered by SESAC should be addressed to SESAC, Inc., 35 Music Square East, Nashville, TN 37203.

(2) Notice that the most current available list filed with the State Corporation Commission, of the copyright owners who are represented by SESAC, and of the musical works licensed by SESAC will be made available, upon your written request, and at your sole expense.

Any request for the list of SESAC affiliates or for the SESAC repertory should be addressed to: SESAC, Inc, 35 Music Square East, Nashville, TN 37203. The cost of a printed listing of the SESAC repertory is \$613.32. Alternatively, the SESAC repertory may be accessed and/or downloaded free of charge at www.sesac.com.

(3) Notice that SESAC will make available, by electronic means or otherwise, information as to whether a specific musical work is licensed under a contract entered into by SESAC and a copyright owner:

SESAC's toll-free information hotline is 800-826-9996. The most current list of SESAC's works and affiliates may be accessed at www.sesac.com.

(4) Notice that SESAC complies with federal law and with orders of courts having appropriate jurisdiction regarding rates and terms of royalties and the circumstances under which licenses for rights of public performance are offered to any proprietor.

CONTRACT FORM ADDENDUM

This addendum, duly executed by the parties, The County of Fairfax and the Contractor ("SESAC"), is attached and hereby an element of the contract.

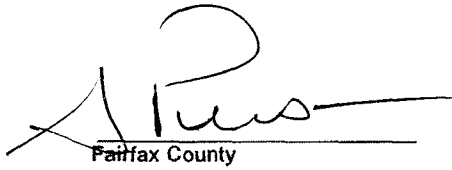
The Contractors License is acceptable to the County of Fairfax with exceptions and revisions noted herein. Certain standard clauses may appear in the Contractor's License Agreement that cannot be accepted by the County of Fairfax. In consideration of convenience, use of this form and the Contractors License Agreement negate the necessity of negotiating a separate contract document line by line.

1. Delete Section 4(B) and replace with the following provision: "It is acknowledged that Licensee is a political subdivision of the Commonwealth of Virginia and, therefore, is exempt from taxation.";
2. The County is unable to agree to collection costs and attorney's fees as set forth in Section 4(C) and as such the language shall be deleted.;
3. The obligation of the County to pay compensation due the Contractor under the contract or any other payment obligations under any contract awarded pursuant to this contract is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations.;
4. During the performance of the contract, the Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.;
5. Contractor certifies that it does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986. ;
6. CONTRACTUAL DISPUTES-Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the County Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy to the Contractor within ninety (90) days. The decision of the County Purchasing Agent shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A Contractor may not institute legal action, prior to receipt of the County Purchasing Agent's decision on the claim, unless the County Purchasing Agent fails to render such decision within the time specified. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.;
7. LEGAL ACTION-No Contractor shall institute any legal action until all statutory requirements have been met.

8. For record purposes, this Contract Form Addendum and the Attached License Agreement shall be referred to as contract number 44000004516.

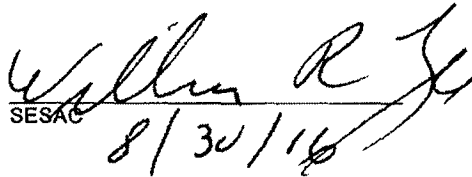
The Contractor's License Agreement and this Contract Form Addendum constitute the entire agreement between the parties and may not be waived or modified except by written agreement between the parties.

ACCEPTED BY:



Fairfax County

**Steve Pierson, CPPB
Contracts Manager**



SESAC

**Senior Vice President
Licensing Operations**