

## **PROFESSIONAL SERVICE AGREEMENT**

**THIS AGREEMENT** dated the \_\_\_\_\_ day of \_\_\_\_\_, 2018,  
between:

**CITY OF POMPANO BEACH**, a municipal corporation of the State of Florida, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, hereinafter referred to as "CITY,"

and

**CREATIVE CITY COLLABORATIVE OF POMPANO BEACH, INC., D/B/A CULTURAL ARTS CREATIVES, INC.**, a Florida not for profit corporation, having its office and place of business at 50 West Atlantic Boulevard, Suite #1, Pompano Beach, Florida 33060, hereinafter referred to as "CONTRACTOR."

**WHEREAS**, the parties previously entered into a Professional Service and License Agreement to provide cultural arts programming, management and marketing for its existing Amphitheater and proposed Cultural Pompano Beach Center, ("Original Agreement"), approved by City Resolution No. 2015-442; and

**WHEREAS**, the parties entered into three Amendments to the Original Agreement, to continue said services, the last of which is due to expire on March 30, 2018; and

**WHEREAS**, on March 31, 2018, the CITY will assume all operations, management and programming, for the POMPANO BEACH CULTURAL ARTS CENTER. The parties agree that it is in the best interest of the CITY to hire CONTRACTOR on a month-to-month basis, to assist in a limited capacity, with the final transition of the operations of the Center including staffing, until the CITY has hired all necessary personnel to completely implement the operations of the CENTER; and

**WHEREAS**, the CONTRACTOR will have a limited, define, scope of work during the final transition period as outlined in Exhibit "A," "Scope of Work"; and

WHEREAS, this Agreement shall continue on a month-to-month basis, however said Agreement shall not continue beyond September 30, 2018.

**WITNESSETH:**

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments herein set forth CITY and CONTRACTOR agree as follows:

**ARTICLE 1**  
**TERMS**

1. Each "WHEREAS" clause set forth above is true and correct and herein incorporated by this reference.
2. CONTRACTOR shall perform the limited services defined in Exhibit "A," Scope of Work, which is attached hereto and incorporated herein and made a part hereof, on a month-to-month, as-needed basis, beginning March 31, 2018, and shall expire on September 30, 2018 or sooner if said transitional period is completed at an earlier date.
3. The compensation to CONTRACTOR shall not exceed \$65,000.00 per month.
4. The CITY agrees that it shall provide CONTRACTOR with a ten (10) business day written notice of its request to terminate any given service or staffing position, during any given month, upon its sole determination that said service or staffing is no longer needed from the CONTRACTOR during the transition period. CONTRACTOR shall be responsible to terminate its employees and/or subcontractors upon notice from the CITY that said service or position is no longer necessary or desired and shall do so upon the aforementioned request from the CITY.
5. The CONTRACTOR is an independent contractor and shall not be considered an employee of the CITY at any time during the period of this Agreement. CONTRACTOR'S employees and subcontractors shall not be considered employees of CITY at any time during the period of this Agreement. CONTRACTOR shall terminate any employee and/or subcontractor upon notice that said service is no longer necessary during said transition period.

**ARTICLE 2**  
**PUBLIC RECORDS, RECORDKEEPING, INSPECTION AND  
AUDIT PROCEDURES**

1. *Public Records.*

A. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The CONTRACTOR shall comply with Florida's Public Records Law, as amended. Specifically, the CONTRACTOR shall:

1. Keep and maintain public records required by the CITY in order to perform the service.

2. Upon request from the CITY's custodian of public records, provide the CITY with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CONTRACTOR does not transfer the records to the CITY.

4. Upon completion of the contract, transfer, at no cost to the CITY, all public records in possession of the CONTRACTOR, or keep and maintain public records required by the CITY to perform the service. If the CONTRACTOR transfers all public records to the CITY upon completion of the contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records in a format that is compatible with the information technology systems of the CITY.

B. Failure of the CONTRACTOR to provide the above described public records to the CITY within a reasonable time may subject CONTRACTOR to penalties under 119.10, Florida Statutes, as amended.

## **PUBLIC RECORDS CUSTODIAN**

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

### **CITY CLERK**

**100 W. Atlantic Blvd., Suite 253**

**Pompano Beach, Florida 33060**

**(954) 786-4611**

**RecordsCustodian@copbfl.com**

2. *Recordkeeping, Inspection and Audit Procedures.* CONTRACTOR, its subcontractors and agents shall be required to record, preserve and make available at all reasonable times for CITY'S local inspection, examination and audit, complete and accurate records for all activities, revenues, and expenditures hereunder, including all financial records, books, statistical records, federal/state tax returns, and any other documents attendant to their provision of goods and services for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or if the Florida Public Records Act is not applicable, for a minimum period of five (5) years after termination or expiration of this Agreement.

However, upon written notice that CITY has initiated an audit and audit findings have not been resolved, CONTRACTOR, its subcontractor and agents hereunder shall be required to retain the aforesaid required documentation until resolution of the audit findings. Any incomplete or incorrect entry in such books, records and accounts shall be a basis for CITY'S disallowance and recovery of

any such payment. Should the results of such an audit result in discrepancies or unauthorized expenditures and CITY requests the return of such funds, in writing, CONTRACTOR agrees to comply with said request and provide CITY said funds within sixty (60) days thereafter.

CONTRACTOR shall make available at reasonable time for CITY'S examination all membership rosters; attendance, financial and statistical records; federal/state tax returns; and any other documents attendant to CONTRACTOR'S provision of goods and services under this Agreement.

### **ARTICLE 3** **CONTRACTOR'S INDEMNIFICATION OF CITY**

1. CONTRACTOR shall at all times indemnify, hold harmless and defend the CITY, its Mayor and Commissioners, employees and other agents from and against any and all claims, demands, suit, damages, attorneys' fees, fines, penalties, defense costs or liabilities arising as a direct result of CONTRACTOR'S officers, employees, agents, volunteers or contractors or other agents' negligence or misconduct under this Agreement. CONTRACTOR agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and to bear all other costs and expenses related thereto, even if the claim(s) is/are groundless, false or fraudulent. The foregoing indemnification shall not be operative as to any claims by CONTRACTOR for any causes of action CONTRACTOR has or may have for breaches or defaults by the City under this Agreement.

2. CONTRACTOR acknowledges and agrees that CITY would not enter into this Agreement without this indemnification of CITY by CONTRACTOR. The parties agree that one percent (1%) of the total compensation paid to CONTRACTOR hereunder shall constitute specific consideration to CONTRACTOR for the indemnification provided under this Article. These provisions shall survive expiration or early termination of this Agreement.

3. For Professional Liability claims, CONTRACTOR agrees this indemnification and hold harmless subsection shall survive the termination or expiration of this Agreement for a period of four (4) years, unless sooner terminated by the applicable statute of limitations. For General Liability claims, CONTRACTOR agrees this indemnification and hold harmless subsection shall survive the termination or expiration of this Agreement for a period of two (2) years, unless sooner terminated by the applicable statute of limitations.

#### **ARTICLE 4**

#### **DEFAULT AND DISPUTE RESOLUTION**

1. If either party claims the other is in default of this Agreement, the parties may, but are not required to, timely schedule a conference or meeting and make every reasonable effort to reach an amicable resolution. Both parties shall be entitled to have representatives present at any such meeting or conference.

2. If there is a default of any covenant or obligation under this Agreement, the defaulting party shall be given ten (10) calendar days to cure said default after written notice to the other in accordance with Article 7 herein.

3. If the party receiving written notice of default provides written notice denying same within ten (10) calendar days of receipt or the alleged default has not been remedied within ten (10) calendar days after receipt of written notice and is continuing, either party may appeal in writing to the City Manager for the CITY in accordance with Article 7 herein.

Upon receipt of said written appeal or demand, the City Manager for the CITY may request additional information relating to the dispute from either or both parties, which shall be provided within a reasonable time. Upon the City Manager's receipt and timely review of the disputed matter, the City Manager may make a decision regarding the alleged default as he/she deems appropriate under the circumstances. If the City Manager's decision is not implemented within the deadline set forth therein, the forty-five (45) day advance written notice provision set forth in Article 7 herein

shall not apply and it shall be lawful for CITY to immediately terminate this Agreement and in addition to any other remedies provided by law, CITY may possess itself of all rights and privileges heretofore enjoyed by CONTRACTOR.

**ARTICLE 5**  
**EQUAL OPPORTUNITY EMPLOYMENT**

CONTRACTOR agrees not to discriminate against any of it's or the CITY'S employees under this Agreement because of race, color, religion, sex, age, national origin or disability.

**ARTICLE 6**  
**PUBLIC ENTITY CRIMES ACT**

Through execution of this Agreement and in accordance with Section 287.133, Florida Statutes, CONTRACTOR certifies that it is not listed on the convicted vendors list maintained by the State of Florida, Department of General Services.

**ARTICLE 7**  
**NOTICES AND DEMANDS**

Whenever it is provided herein that notice, demand, request, or other communication shall or may be given to, or served upon, either of the parties by the other, it must be in writing, sent by certified United States mail with return receipt requested, addressed to the party to whom it is intended at the places designated below until changed by written notice in compliance with the provisions of this Article. For the present, the parties designate the following respective places for giving of notice, to-wit:

**For CITY:**

Gregory P. Harrison, City Manager  
City of Pompano Beach  
100 West Atlantic Boulevard  
Pompano Beach, Florida 33060  
[Greg.Harrison@copbfl.com](mailto:Greg.Harrison@copbfl.com)  
954-786-4601 (office)  
954-786-4113 (fax)

**For CONTRACTOR:**

Michael Tipton, Director  
Creative City Collaborative of  
Pompano Beach, Inc.  
50 West Atlantic Boulevard  
[michael@thecreatives.org](mailto:michael@thecreatives.org)  
954-545-7800 x3810 (office)

**With a copy to:**

Cultural Affairs Director  
Pompano Beach Cultural Center  
50 West Atlantic Boulevard  
Pompano Beach, Florida 33060  
954-786-4601(office)

**With a copy to:**

Robert Friedman, Chairman  
Creative City Collaborative, Inc.  
1821 NE 24<sup>th</sup> Street  
Lighthouse Point, Florida 33064  
[Robert.friedman@edwardjones.com](mailto:Robert.friedman@edwardjones.com)  
954-783-6694

**ARTICLE 8**  
**GOVERNING LAW AND VENUE**

The Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CITY and CONTRACTOR submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise.

**ARTICLE 9**  
**CONTRACT ADMINISTRATOR**

The CITY'S Assistant City Manager or his/her designee shall serve as the CITY'S Contract Administrator during the performance of services under this Agreement.

Michael Tipton shall serve as CONTRACTOR'S Contract Administrator during the performance of services under this Agreement.

**ARTICLE 10**  
**NO CONTINGENT FEE**

CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other



than a bona fide employee working solely for CONTRACTOR any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

In the event of CONTRACTOR'S breach or violation of this provision, the CITY shall have the right to terminate this Agreement without liability and, at CITY'S sole discretion, to recover the full amount of such fee, commission, percentage, gift or consideration.

#### **ARTICLE 11** **ATTORNEY'S FEES**

In the event of litigation between the parties, the prevailing party shall be entitled to recover all costs of collection, including a reasonable attorney's fees and court costs. The provisions of this paragraph shall survive termination of this Agreement.

#### **ARTICLE 12** **WAIVER AND MODIFICATION**

Failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

CITY and CONTRACTOR may request changes to modify certain provisions of this Agreement, including increasing or decreasing the scope of services to be provided. However, unless otherwise provided for herein, any such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement.

#### **ARTICLE 13** **APPROVALS**

Whenever CITY approval(s) shall be required for any action under this Agreement, said approval(s) shall not be unreasonably withheld.

#### **ARTICLE 14** **ABSENCE OF CONFLICTS OF INTEREST**

CONTRACTOR represents it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance hereunder.

CONTRACTOR further represents no person having any interest shall be employed or engaged by it for said performance.

CONTRACTOR shall promptly notify the CITY in writing by certified mail of all potential conflicts of interest for any prospective business association, interest or other circumstance that may influence or appear to influence CONTRACTOR judgment or quality of services being provided hereunder. Said notification shall identify the prospective business interest or circumstance and the nature of work that CONTRACTOR intends to undertake and shall request the CITY'S opinion as to whether such association, interest or circumstance would, in the opinion of the CITY, constitute a conflict of interest if entered into by CONTRACTOR.

#### **ARTICLE 15** **BINDING EFFECT**

This Agreement shall bind the parties and their respective executors, administrators, successors and assign and shall be fully effective.

#### **ARTICLE 16** **NO WAIVER OF SOVEREIGN IMMUNITY**

Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by CITY.

#### **ARTICLE 17** **PERFORMANCE UNDER LAW AND AUTHORITY TO ENGAGE IN BUSINESS**

CONTRACTOR, in the performance of Work hereunder, shall be responsible to ascertain and comply with all applicable local, state and/or federal laws and ordinances as exist now or as may subsequently be enacted during the term of this Agreement, including, but not limited to, standards of licensing, permitting, annual filings, copyright law, conduct of business and other matters and ignorance on CONTRACTOR'S part shall in no way relieve CONTRACTOR from this important responsibility.

CITY reserves the right to request in writing and receive within three (3) business days thereafter, copies of all documentation required under this Article.

#### **ARTICLE 18**

#### **ENTIRE AGREEMENT AND INTERPRETATION**

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both parties agree there are no commitments, agreements or understandings concerning the subject matter herein that are not contained in this Agreement. Accordingly, both parties agree no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and CONTRACTOR and their respective counsel have had equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of, and therefore construed against either party.

It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

#### **ARTICLE 19**

#### **SEVERABILITY**

Should any provision of this Agreement or the application of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts or provisions of this Agreement shall remain in full force and effect.

**IN WITNESS OF THE FOREGOING**, the parties have set their hands and seals the day and year first above written.

**"CITY":**

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
**LAMAR FISHER, MAYOR**

\_\_\_\_\_

By: \_\_\_\_\_  
**GREGORY P. HARRISON, CITY MANAGER**

Attest:

\_\_\_\_\_  
**ASCELETA HAMMOND, CITY CLERK**

(SEAL)

Approved As To Form:

\_\_\_\_\_  
**MARK E. BERMAN, CITY ATTORNEY**

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by **LAMAR FISHER** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

"CONTRACTOR":

Witnesses:

[Signature]

Print Name:

Ty SHANE

[Signature]

Print Name:

Jay Underhale

CREATIVE CITY COLLABORATIVE OF  
POMPANO BEACH, INC., a Florida not for profit  
corporation

By:

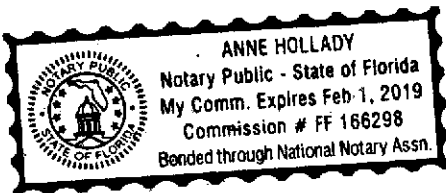
[Signature]

ROBERT FRIEDMAN, CHAIRMAN

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 22 day of  
March, 2018, by ROBERT FRIEDMAN, as Chairman of Creative City  
Collaborative of Pompano Beach, Inc., a Florida not profit corporation, on behalf of the corporation,  
who is personally known to me or who has produced \_\_\_\_\_  
(type of identification) as identification.

NOTARY'S SEAL:



Anne Hollady  
NOTARY PUBLIC, STATE OF FLORIDA

Anne Hollady  
(Name of Acknowledger Typed, Printed or Stamped)

FF166298  
Commission Number

TAL:jrm  
3/19/18  
L:agr/recr/2018-626