

## SERVICE CONTRACT

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**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by the CITY OF POMPANO BEACH, hereinafter referred to as "City" and THE SUPERLATIVE GROUP, INC., an Ohio corporation, authorized to do business in Florida hereinafter referred to as "Contractor."

**WHEREAS**, City requires services which Contractor is capable of providing, under the terms and conditions hereinafter described or referenced; and

**WHEREAS**, Contractor is able and prepared to provide such services as City does hereinafter require, under those terms and conditions set forth.

**NOW, THEREFORE**, in consideration of those mutual promises and the terms and conditions set forth hereafter, the parties agree as follows:

1. Contract Documents. The Contract Documents consist of this Agreement; Exhibit "A" – Scope of Work; Exhibit "B" Insurance Requirements, Exhibit "C" Rate Schedule; Contractor's response to Request for Proposal (RFP) L-28-17, all related documents to RFP L-28-17; and all written change orders and modifications issued after execution of this Agreement. These form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

2. Purpose. City hereby contracts with Contractor to provide services to catalog of all the City's assets, assess the possible marketing value of the City's assets to sponsors, and develop a comprehensive sponsorship policy upon the terms and conditions herein set forth.

3. Scope of Work. Contractor will provide the services to be rendered as set forth in Exhibit "A" (Scope of Work), attached hereto and by reference incorporated herein and made a part hereof.

4. Term of Contract. This Contract shall be for a one (1) year period. The start of this Agreement shall be upon execution of the contract by both parties. Contractor shall provide services for the City until completion of Exhibit "A", Scope of Work.

5. Renewal. This Contract is not subject to renewal.

6. Maximum Obligation. City agrees to pay Contractor in consideration for its services described herein. It is the intention of the parties hereby to insure that unless otherwise directed by the City in writing, Contractor will continue to provide services as specified in Exhibit "A" for the term of the contract.

7. Price Formula. City agrees to pay Contractor for performance of the services set forth in this Agreement as follows:

**Payment will follow Exhibit "C" Rate Schedule**

8. Invoices. Contractor shall submit the invoices to City, if requested by City, as follows:

Invoices shall be submitted upon completion of specified tasks, per Exhibit "C" Rate Schedule.

9. Payment. All payments by the City shall be made after the service has been provided. All invoices shall be submitted to the City for approval and payment will be issued within forty-five (45) days of submittal.

10. Disputes.

A. Any factual disputes between City and the Contractor in regard to this Agreement shall be directed to the City Manager for the City, and such decision shall be final.

B. Any action brought against either party to enforce this Agreement will be brought in Broward County, Florida.

11. Communications. All notices hereunder and communications with respect to this Agreement shall be effective upon the mailing thereof to the persons named below.

**If to Contractor:** Myles Gallagher  
The Superlative Group, Inc.  
921 Huron Road, Second Floor  
Cleveland, OH 44115

**If to City:** City of Pompano Beach  
City Manager  
PO Box 1300  
Pompano Beach, Florida 33061

12. Information and Documents. All information, data, reports, as are existing, if any, and necessary for carrying out the work as outlined in Exhibit "A" hereof, shall be furnished to Contractor without charge by City, and City shall cooperate in the carrying out of the work without undue delay.

13. Termination. This Agreement may be terminated without cause by either party upon thirty (30) days written notice to the other party.

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.

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 from the other.

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 shall have the right to terminate this Agreement immediately upon delivery of the written notice to the defaulting party of its election to do so.

14. Force Majeure. Contractor shall not be held responsible for losses, delays, failure to perform or excess costs caused by events beyond the control of the Contractor. Such events may include, but are not restricted to the following: Acts of God; fire, epidemics, earthquake, flood or other natural disaster; acts of the government; riots, strikes, war or civil disorder; unavailability of fuel.

15. Insurance. Throughout the term of this Agreement, Contractor shall procure and maintain liability insurance in the type and amounts set forth in Exhibit "B" attached hereto. Such insurance shall specify that it is issued on an "occurrence" basis. Contractor shall name City as additional insured on said policies and shall provide evidence of such insurance. Such policies shall provide that they may not be canceled without at least thirty (30) days notice to City.

16. Indemnity. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees, authorized agents and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The parties agree that one percent (1%) of the total compensation paid to Contractor for the work of the contract shall constitute specific consideration to Contractor for the indemnification to be provided under the contract.

17. Assignment. Contractor shall not assign all or any portion of this Agreement without the prior written consent of the City, and it is agreed that said consent must be sought in writing by Contractor not less than fifteen (15) days prior to the date of any proposed assignment.

18. Performance Under Law. The Contractor, in the performance of duties under the Agreement, agrees to comply with all applicable local, state and/or federal laws and ordinances including, but not limited to, standards of licensing, conduct of business and those relating to criminal activity.

19. Audit and Inspection Records. The Contractor shall permit the authorized representatives of the City to inspect and audit all data and records of the Contractor, if any, relating to performance under the contract until the expiration of three years after final payment under this contract.

The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that City or any of their duly authorized representatives shall, until the expiration of three years after final payment under the

subcontractor, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor, involving transactions related to the subcontractor.

20. Adherence to Law. Both parties shall adhere to all applicable laws governing their relationship with their employees including, but not limited to, laws, rules, regulations and policies concerning worker's compensation, unemployment compensation and minimum wage requirements.

21. Independent Contractor. The Contractor shall be deemed an independent Contractor for all purposes, and the employees of the Contractor or any of its contractors, subcontractors and the employees thereof, shall not in any manner be deemed to be employees of City. As such, the employees of the Contractor, its Contractors or subcontractors, shall not be subject to any withholding for tax, social security or other purposes by City, nor shall such Contractor, subcontractor or employee be entitled to sick leave, pension benefits, vacation, medical benefits, life insurance, workers or unemployment compensation or the like from City.

22. Mutual cooperation. The Contractor recognizes that the performance of this contract is essential to the provision of vital public services and the accomplishment of the stated goals and mission of City. Therefore, the Contractor shall be responsible to maintain a cooperative and good faith attitude in all relations with City and shall actively foster a public image of mutual benefit to both parties. The Contractor shall not make any statements or take any actions detrimental to this effort.

23. 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](mailto:RecordsCustodian@copbfl.com)**

24. Governing Law. This Agreement has been and shall be construed as having been made and delivered within the State of Florida, and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. Any action at law, or in equity, shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

25. Waiver. Any waiver of any breach of the covenants herein contained to be performed by Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the City from declaring a forfeiture for any succeeding breach either of the same condition or covenant or otherwise.

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

27. Headings. The headings or titles to sections of this Agreement are not part of the Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.

28. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy, email or facsimile copy of this Agreement and any signatory hereon shall be considered for all purposes as original.

29. Severability. Should any provision of this Agreement or the applications 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 of provisions of this Agreement shall remain in full force and effect.

The City hereby promises and agrees with the Contractor to employ and does employ the Contractor to provide the materials, if any, and to do and cause to do and be done the above-described work and to complete and finish the same according to the attached plans and specifications and the terms and conditions herein contained and hereby contracts to pay for the same according to the attached specifications and the schedule of unit or itemized prices hereto attached, at the time and in the manner and upon the conditions provided for in this contract.

The Contractor for himself and for his heirs, executors, administrators, successors and assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.

It is further provided that no liability shall be attached to the City by reason of entering into this contract, except as expressly provided herein.

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

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 \_\_\_\_\_, 20\_\_ 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 is personally known to me.

NOTARY'S SEAL:

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

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

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

**"CONTRACTOR"**

Witnesses:

Math Schaefer  
(Print or Type Name)

Mackenzie Clark  
(Print or Type Name)

THE SUPERLATIVE GROUP, INC.

By: Myles Gallagher  
Myles Gallagher, President

Business License No. 34-1762954

STATE OF OHIO

COUNTY OF CUYAHOGA

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of JUNE, 2017, by Myles Gallagher as President of The Superlative Group, Inc., an Ohio corporation authorized to do business in Florida, on behalf of the corporation. He is personally known to me or who has produced A DRIVER LICENSE FROM OHIO (type of identification) as identification.

NOTARY'S SEAL:

Edward J Seligman  
NOTARY PUBLIC, STATE OF OHIO

Edward J Seligman  
(Name of Acknowledger Typed, Printed or Stamped)

Commissioned EDWARD J. SELIGMAN  
NOTARY PUBLIC • STATE OF OHIO  
Recorded in Cuyahoga County  
My commission expires Mar. 13, 2018