

Updated 12-19-2017

INDEPENDENT CONTRACTOR AGREEMENT

This Agreement is entered into on this _____ day of _____, 20____ between **[ENTER FULL NAME OF CONTRACTOR]** (Contractor), and the City of Miami Beach, Florida (the City), for a period of **[ENTER DURATION/TERM OF AGREEMENT]**, with an effective starting date of **[]**, and an end date of **[]** (the Term).

1. **Description of Services.**

Contractor will provide the services described in Exhibit "A" hereto (the Services).

Although Contractor may be provided with a schedule of the available hours to provide its Services, the City shall not control nor have the right to control the hours of the Services performed by the Contractor; where the Services are performed (although the City will provide Contractor with the appropriate location to perform the Services); when the Services are performed (including how many days a week the services are performed); how the Services are performed; or any other aspect of the actual manner and means of accomplishing the Services provided. Notwithstanding the foregoing, all Services provided by the Contractor shall be in accordance with the terms and conditions set forth in Exhibit "A" hereto, and performed to the reasonable satisfaction of the City Manager. If there are any questions regarding the Services to be performed, Contractor should contact the following person:

2. **Fee.**

In consideration of the Services to be provided pursuant to this Agreement, the City agrees to pay Contractor a fee, not to exceed the amount of _____ (the Fee), which shall be paid as described in Exhibit "B" hereto.

The Contractor shall issue invoices to the City pursuant to the mutual agreement of the parties and pursuant to the Fee Schedule set forth in Exhibit "B" hereto upon receipt of an acceptable and approved invoice. The City shall remit payment to the Contractor within 45 days of receiving an invoice from the Contractor for that portion (or those portions) of the Services satisfactorily rendered (and referred to in the particular invoice).

3. **Termination.**

This Agreement may be terminated by either party, with or without cause, by giving written notice to the other party of such termination, which shall become effective upon fourteen (14) days following receipt by the other party of the written termination notice. Notwithstanding the foregoing, in the event of a public health, welfare or safety concern, as determined by the City Manager, in the City Manager's sole discretion, the City Manager, pursuant to a verbal or written notification to Contractor, may immediately suspend the Services under this Agreement for a time certain, or in the alternative, terminate this Agreement on a given date. In the event of termination pursuant to this paragraph, the Contractor shall be paid a sum equal to all payments due to him/her up to the date of termination; provided Contractor is satisfactorily continuing to satisfactorily perform all Services up to the date of termination. Thereafter, the City shall be fully discharged from

any further liabilities, duties, and terms arising out of, or by virtue of, this Agreement.

4. Indemnification/Hold Harmless.

Contractor agrees to indemnify, defend, and hold harmless the City of Miami Beach and its officers, employees and agents, from and against any and all actions, claims, liabilities, losses and expenses including, but not limited to, attorney's fees, for personal economic or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or be alleged to have arisen from the negligent acts or omissions or other wrongful conduct of Contractor, and/or any and all subcontractors, employees, agents, or any other person or entity acting under Contractor's control, in connection with the Contractor's performance of the services pursuant to this Agreement. Contractor shall pay all such claims and losses and shall pay all costs and judgments which may arise from any lawsuit arising from such claims and losses, and shall pay all costs and attorney's fees expended by the City in defense of such claims and losses, including appeals.

The parties agree that one percent (1%) of the total compensation to Contractor for performance of the Services under this Agreement is the specific consideration from the City to Contractor for the Contractor's agreement to indemnify and hold the City harmless, as provided herein. Contractor and the City hereby agree and acknowledge that this indemnity provision is intended to and shall survive the termination (or earlier expiration) of this Agreement.

5. Limitation of Liability.

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action, for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$10,000. Contractor hereby expresses its willingness to enter into this Agreement with Contractor's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$10,000.

Accordingly, and notwithstanding any other term or condition of this Agreement, Contractor hereby agrees that the City shall not be liable to the Contractor for damages in an amount in excess of \$10,000 for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement.

Nothing contained in this section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability, as set forth in Section 768.28, Florida Statutes.

6. Notices.

All notices and communications in writing required or permitted hereunder may be delivered personally to the representatives of the Contractor and the City listed below or may be mailed by U.S. Certified Mail, return receipt requested, postage prepaid, or by a nationally recognized overnight delivery service.

Until changed by notice in writing, all such notices and communications shall be addressed as follows:

CONTRACTOR: **[INSERT NAME OF CONTRACTOR]**
 [INSERT ADDRESS OF CONTRACTOR]
 [INSERT PHONE NUMBER]

CITY: **[INSERT DEPARTMENT DIRECTOR]**
City of Miami Beach
[INSERT DEPARTMENT NAME]
1700 Convention Center Drive
Miami Beach, FL 33139
(305) _____

Notice shall be deemed given on the date of an acknowledged receipt, and, in all other cases, on the date of receipt or refusal.

7. Venue.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, CITY AND CONTRACTOR EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

8. Duty of Care/Compliance with Applicable Laws/Conflict of Interest.

With respect to the performance of the Services contemplated herein, Contractor shall exercise that degree of skill, care, efficiency and diligence normally exercised by reasonable persons and/or recognized professionals with respect to the performance of comparable services.

In its performance of the Services, Contractor shall comply with all applicable laws, ordinances, and regulations of the City, Miami-Dade County, the State of Florida, and the federal government. Without limiting the foregoing, Contractor herein agrees to adhere to and be governed by all applicable Miami-Dade County Conflict of Interest Ordinances and ethics provisions, as set forth in the Miami-Dade County Code, and as may be amended from time to time; and by the City of Miami Beach Charter and Code, as may be amended from time to time, both of which are incorporated herein by referenced, as if fully set forth herein.

Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirectly which should conflict in any manner or degree with the performance of the Services. Contractor further covenants that in the performance of Services under this Agreement, no person having any such interest shall knowingly be employed by the Contractor. Notwithstanding the foregoing, Contractor shall be able to provide similar services to other third parties as long as they do not conflict with the Services to be provided hereunder. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefits arising therefrom.

9. No Discrimination.

In connection with the performance of the Services, the Contractor shall not exclude from participation in, deny the benefits of, or subject to discrimination anyone on the grounds of race, color, national origin, sex, age, disability, religion, income or family status.

Additionally, Contractor shall comply with City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, or public services, on the basis of actual or perceived race, color, national origin, religion, sex, intersexuality, sexual orientation, gender identity, familial and marital status, age, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, political affiliation, or disability.

10. Florida Public Records Law.

- (A) Contractor shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.
- (B) The term “public records” shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.
- (C) Pursuant to Section 119.0701 of the Florida Statutes, if the Contractor meets the definition of “Contractor” as defined in Section 119.0701(1)(a), the Contractor shall:
 - (1) Keep and maintain public records required by the City to perform the service;
 - (2) Upon request from the City’s custodian of public records, provide the City with a copy of the 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 Agreement if the Contractor does not transfer the records to the City;
 - (4) Upon completion of the Agreement, 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 Agreement, 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 Agreement, 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.
- (C) REQUEST FOR RECORDS; NONCOMPLIANCE.
 - (1) A request to inspect or copy public records relating to the City’s contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Contractor of the request, and the Contractor must provide the records to the City or allow the records to be inspected or copied within a reasonable time.
 - (2) Contractor’s failure to comply with the City’s request for records shall constitute a breach of the Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate the Agreement; (2) avail itself of the remedies

set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.

- (3) A Contractor who fails to provide the public records to the City within a reasonable time may be subject to penalties under s. 119.10.

(D) CIVIL ACTION.

- (1) If a civil action is filed against a Contractor to compel production of public records relating to the City's contract for services, the court shall assess and award against the Contractor the reasonable costs of enforcement, including reasonable attorney fees, if:
- a. The court determines that the Contractor unlawfully refused to comply with the public records request within a reasonable time; and
 - b. At least eight (8) business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Contractor has not complied with the request, to the City and to the Contractor.
- (2) A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to the Contractor at the Contractor's address listed on its contract with the City or to the Contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.
- (3) A Contractor who complies with a public records request within eight (8) business days after the notice is sent is not liable for the reasonable costs of enforcement.

(E) **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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY OF MIAMI BEACH
ATTENTION: CITY CLERK
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FLORIDA 33139
E-MAIL: RAFAELGRANADO@MIAMIBEACHFL.GOV
PHONE: 305-673-7411**

11. Ownership of Documents/Patents and Copyrights.

Any and all documents prepared by Contractor pursuant to this Agreement are related exclusively to the Services described herein shall be deemed to be a "work made for hire", and are intended or represented for ownership by the City. Any re-use distribution, or dissemination of same by Contractor, other than to the City, shall first be approved in writing by the City Manager, which approval, if granted at all, shall be at the City Manager's sole and absolute discretion.

Any patentable and/or copyrightable result arising out of this Agreement, as well as all information, specifications, processes, data and findings, are hereby assigned to the City,

in perpetuity, for public use.

No reports, other documents, articles or devices produced in whole or in part under this Agreement shall be the subject of any application for patent or copyright by or on behalf of the Contractor (or its employees or sub-contractors, (if any) without the prior written consent of the City Manager, which consent, if given at all, shall be at the Manager's sole and absolute discretion.

12. Liability for Rent, Supplies, Equipment, Etc.

Contractor shall provide all funds necessary to pay all debts, disbursements, and expenses incurred in connection with its performance of the Services hereunder, and shall not be entitled to any reimbursement from the City unless otherwise agreed to by the City. It will also provide all supplies and equipment necessary to provide such Services. If Contractor uses any of the City's facilities, supplies, or equipment to furnish the Services hereunder, Contractor shall pay the City (or such amount shall be deducted from the Fee set forth in Section 2) an amount as mutually agreed by the parties.

13. Liability for Sub-contractors.

Contractor shall be liable for its Services, responsibilities and liabilities under this Agreement and the costs, services, responsibilities and liabilities of any sub-contractors (if any), and any other person or entity acting under the direction or control of Contractor (if any). In this regard, Contractor must furnish the City with all information relating to the sub-contractors which is requested by the City. When the term "Contractor" is used in this Agreement, it shall be deemed to include any sub-contractors (if any) and/or any other person or entity acting under the direction or control of Contractor (if any). All sub-contractors (if any) must be disclosed in writing to the City prior to their engagement by Contractor.

14. Independent Contractor/No Joint Venture.

THIS AGREEMENT SHALL NOT CONSTITUTE OR MAKE THE PARTIES A PARTNERSHIP OR JOINT VENTURE. FOR THE PURPOSES OF THIS AGREEMENT, THE CONTRACTOR SHALL BE DEEMED TO BE AN INDEPENDENT CONTRACTOR, AND NOT AN AGENT OR EMPLOYEE OF THE CITY, AND SHALL NOT ATTAIN ANY RIGHTS OR BENEFITS UNDER THE CIVIL SERVICE OR PENSION ORDINANCE OF THE CITY, OR ANY RIGHT GENERALLY AFFORDED CLASSIFIED OR UNCLASSIFIED EMPLOYEES INCLUDING ANNUAL AND SICK DAY ACCRUAL. FURTHER, THE CONTRACTOR SHALL NOT BE DEEMED ENTITLED TO FLORIDA WORKER'S COMPENSATION BENEFITS AS AN EMPLOYEE OF THE CITY OR ACCUMULATION OF SICK OR ANNUAL LEAVE.

The Contractor shall be the sole party responsible for any and all employment taxes, unemployment compensation taxes or insurance, social security taxes, or other taxes, insurance payments, or otherwise whether levied by any country or any political subdivision thereof. The Contractor shall not, in any way, be considered to be, or be deemed to be, an employee of the City through the Services performed in this Agreement (e.g., including, but not limited to, for purposes of the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, any state revenue and taxation code relating to income tax withholding at the source of income, the Workers' Compensation Insurance Code and other benefit payments and third party liability claims), and the Contractor shall indemnify and hold the City harmless from all costs, loss, damages or expenses (including but not limited to taxes, accounting fees, court costs,

and attorney fees at all levels of litigation) in the event of any determination to the contrary by any court of competent jurisdiction or governmental authority. The Contractor recognizes and understands that it will receive an Internal Revenue Service Form 1099 statement and related tax statements, and will be required to file corporate and/or individual tax returns and to pay taxes in accordance with all provisions of applicable Federal and state law. The Contractor hereby promises and agrees to indemnify the City for any damages or expenses, including attorney's fees, and legal expenses, incurred by the City as a result of the Contractor's failure to make such required payments.

Except as otherwise expressly provided in the Agreement, the Contractor shall in no way hold itself out as an employee, dependent agent, or other servant of the City, its employees or other agents, or as other than a free agent with respect to the City. The Contractor is not granted, shall not have, and acknowledges the absence of any right or authority to assume or create any obligations or responsibility, express or implied, on behalf of or in the name of the City or to bind the latter in any matter or thing whatsoever.

15. Waiver of Breach.

A party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A party's waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

16. Severance.

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City elects to terminate this Agreement.

17. Joint Preparation.

The parties hereto acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been a joint effort of the parties, the language has been agreed to by parties to express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

18. Purchase Order Requirement.

This Agreement shall not be effective until executed by the parties hereto and until the City has issued a Purchase Order for this Agreement.

19. Entire Agreement.

This writing and any exhibits and/or attachments incorporated (and/or otherwise referenced for incorporation herein) embody the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

20. 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.

21. Assignment.

Contractor shall not assign all or any portion of this Agreement without the prior written consent of the City Manager, and it is agreed that said consent must be sought in writing by Contractor not less than sixty (60) days prior to the date of any proposed assignment.

22. Audit and Inspection Records.

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 this Agreement until the expiration of three years after final payment under this Agreement.

Contractor further agrees to include in all his/her subcontracts hereunder a provision to the effect that the sub-contractor agrees that the City or any of their duly authorized representatives shall, until the expiration of three years after final payment to the sub-contractor, have access to and the right to examine any directly pertinent books, documents, papers and records of such sub-contractor, involving transactions related to the sub-contractor.

23. Mutual cooperation.

Contractor recognizes that the performance of this Agreement is essential to the provision of vital public services and the accomplishment of the stated goals and mission of the City. Therefore, the Contractor shall be responsible to maintain a cooperative and good faith attitude in all relations with the 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.

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by the respective officials thereunto duly authorized, this date and year first above written.

FOR CITY:

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By: _____
City Clerk

City Manager

Date: _____

FOR CONTRACTOR:

[INSERT CONTRACTOR NAME]

WITNESS:

By: _____

Print Name

Signature

Print Name

Date: _____

Approved:

Approved as to form & language &
for execution.

Department Director

City Attorney Date

Office of Budget and Performance Improvement

Human Resources

Exhibit A

Description of Services

Exhibit B

Fee