

Agmt

RESOLUTION NO. 2020-_____

A RESOLUTION APPROVING THE EXECUTION BY THE MAYOR AND ATTESTATION BY THE CITY CLERK OF AN AGREEMENT BETWEEN THE CITY OF TAMPA AND TAMPA HILLSBOROUGH FILM AND DIGITAL MEDIA COMMISSION, INC., FOR THE PERFORMANCE OF CERTAIN PROFESSIONAL SERVICES FOR CONSIDERATION IN AN AMOUNT NOT TO EXCEED \$58,500.00, PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Tampa desires to continue to engage Tampa Hillsborough Film and Digital Media Commission, Inc. for Fiscal Year 2020 to provide media exposure and employment opportunities in the local community through projects involving digital media productions, including television, film and photography.

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TAMPA, FLORIDA:

Section 1. That the execution by the Mayor and attestation by the City Clerk of the Agreement between the City of Tampa and Tampa Hillsborough Film and Digital Media Commission, Inc., is approved in the form of the copy attached hereto, or in substantially similar form.

Section 2. That consideration for the services to be provided pursuant to said Agreement shall be paid from the General Fund, not to exceed \$58,500.00.

Section 3. That other proper officials of the City of Tampa are authorized to do all things necessary in order to carry out the terms and conditions of this Resolution.

Section 4. That this Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED, NUNC PRO TUNC OCTOBER 1, 2019, BY THE CITY COUNCIL OF THE CITY OF TAMPA, FLORIDA, ON JAN 09 2020

ATTEST:


~~CITY CLERK~~ ~~DEPUTY CITY CLERK~~


~~CHAIRMAN~~ CHAIRMAN PRO-TEM
CITY COUNCIL

PREPARED BY AND APPROVED AS TO LEGAL SUFFICIENCY:

ANDREA ZELMAN
DEPUTY CITY ATTORNEY

E2020-10

**AGREEMENT BETWEEN
CITY OF TAMPA, FLORIDA
AND
TAMPA HILLSBOROUGH FILM & DIGITAL MEDIA COMMISSION, INC**

THIS AGREEMENT (“Agreement”) is made as of the last date of execution by a party between the City of Tampa, a municipal corporation organized and existing under the laws of the State of Florida, (“City”) and Tampa Hillsborough Film and Digital Media Commission, Inc. (“Commission”), a private not-for-profit 501(c) (6) corporation existing under the laws of the State of Florida, hereinafter referred to as the “Commission.”

RECITALS

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Commission agree as follows.

ARTICLE 1
Recitals

The foregoing recitals are true and correct and are incorporated in this Agreement by reference.

ARTICLE 2
Scope of Service

The Commission shall provide the services described in Exhibit A, Scope of Services, attached hereto and incorporated herein by reference.

ARTICLE 3
Term of Agreement

This Agreement shall be effective and cover services provided from October 1, 2019, until September 30, 2020 (the “Term”), unless sooner terminated in accordance with this Agreement.

ARTICLE 4
Consideration and Payment

For its performance, under this Agreement, the City shall pay to the Commission an amount not to exceed \$58,500, payable for services set forth in Exhibit A, as full compensation for all work done and materials furnished, unless otherwise authorized by the City in a written modification agreement.

Payments will be made in accordance with the procedures specified in Exhibit B, Method of Payment, and Exhibit C, Request for Payment Form, both of which are attached hereto and

incorporated herein by reference. The Commission shall submit program performance report(s) in accordance with Exhibit D, Program Performance Report, attached hereto and incorporated herein by reference, with all payment requests.

ARTICLE 5
Maintenance and Review of Records

The Commission and any of its subcontractors providing any of the services required to be performed or provided under this Agreement shall maintain adequate records and accounts, including, but not limited to, property, personnel and financial records, and supporting documentation which shall enable ready identification of Commission's cost of goods and use of funds for a period of six (6) years from the date of final payment to the Commission, or its subcontractors, as applicable, under this Agreement or the termination of this Agreement, whichever occurs later. (Such six-year period is hereinafter referred to as the "Audit Period.") The City and its authorized agents shall have the right, and the Commission, and its subcontractors, as applicable, will permit the City and its authorized agents, to examine all such records, accounts and documentation and to make copies thereof, and excerpts or transcriptions therefrom, and to audit all contracts, invoices, materials, accounts and records relating to all matters covered by this Agreement, including, but not limited to, personnel and employment records during the Audit Period. All such records, accounts and documentation shall be made available to the City and its authorized agents for audit, examination or copying purposes at any time during normal business hours and as often as the City may deem necessary during the Audit Period. The City's right to examine, copy and audit shall pertain likewise to any audits made by any other agency, whether Federal, state or local. Commission shall ensure that any such subcontractor shall recognize the City's right to examine, inspect and audit its records, accounts and documentation in connection with its provision of services required to be provided by the Commission under this Agreement. If an audit is begun by the Commission or other agency, whether Federal, state or local, during the Audit Period, but is not completed by the end of the Audit Period, the Audit Period shall be extended until audit findings are issued. This Article shall survive the expiration or termination of this Agreement.

ARTICLE 6
Financial Reports

Upon written request by the City, unless otherwise specified in Exhibit A, the Commission shall submit to the City within one hundred and twenty (120) days after the end of the Commission's fiscal year, audited financial statements, which must comply with Generally Accepted Accounting Principles (GAAP), covering the entire Term of this Agreement. If the Commission fails to provide its audited financial statements within the 120 day time period referenced above, then, the Commission shall be in default hereunder. Notwithstanding the foregoing, the City may grant the Commission an extension of the 120 day time period to provide its audited financials, but such extension shall be solely at the City's discretion. Such audit is to address the Commission in a form to be examined by the External Auditor with approval by the City.

ARTICLE 7
Indemnification

The Commission shall indemnify, hold harmless, and defend the City and the Tampa City Council (“Council”), and the respective agents and employees of the City (all of the foregoing shall hereinafter collectively be referred to as the “Indemnified Parties”) from and against any and all liabilities, losses, claims, damages, demands, expenses or actions, either at law or in equity, including court costs and attorneys' fees, that may hereafter at any time be made or brought by anyone on account of personal injury, property damage, loss of monies, or other loss, allegedly caused or incurred, in whole or in part, as a result of any negligent, wrongful, or intentional act or omission, or based on any act of fraud or defalcation by the Commission, its agents, subcontractors, assigns, heirs, and employees during performance under this Agreement. The extent of this indemnification shall not be limited in any way as to the amount or types of damages or compensation payable to any of the Indemnified Parties on account of any insurance limits contained in any insurance policy procured or provided in connection with this Agreement. In any and all claims against any of the Indemnified Parties by any employee of the Commission, any subcontractor, heir, assign, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way as to the amount or type of damages, compensation or benefits payable by or for the Commission or any subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. Nothing herein shall be construed to extend any party's liability beyond that provided for in Sections 768.28, Florida Statutes. The provisions of this Article shall survive the expiration or termination of this Agreement.

ARTICLE 8
Insurance

The Commission shall procure and maintain throughout the Term of this Agreement, on behalf of itself and the City, the insurance specified on, and as required by, Exhibit E, Insurance Requirements, (attached hereto and incorporated herein by reference) and as stated below in this Article. All insurance shall be from responsible companies duly authorized to do business in the State of Florida.

The Commission shall ensure that the City and the Council are named as additional insured parties as to the actions of the Commission, its employees, agents, assigns, and subcontractors, performing or providing materials and/or services to Commission during the performance of this Agreement, on (1) all auto liability policies and general liability policies required to be obtained by the Commission pursuant to this Agreement, and (2) all other insurance policies required by this Agreement where such an endorsement is available in the industry. All such insurance policies also shall contain a Severability of Interests provision. Every insurance policy must provide for thirty (30) days prior written notice to the City of any cancellation, intent not to renew, or reduction in the policy coverage. A current certificate of insurance meeting City requirements is required before payment.

ARTICLE 9
Conflict of Interest

The Commission represents that it presently has no interest, and shall acquire no such interest, financial or otherwise, direct or indirect, nor engage in any business transaction or professional activity, or incur any obligation of any nature which would impede or conflict in any manner with the performance of the scope of service required hereunder.

The Commission warrants to the City that no gifts or gratuities have been or will be given to any City employee or agent, either directly or indirectly, in order to obtain this Agreement.

ARTICLE 10
Governing Laws; Venue

This Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and venue shall be in Hillsborough County, Florida.

ARTICLE 11
Public Entity Crimes

The Commission hereby represents and warrants that it has not been convicted of a public entity crime and that it is not on the State of Florida's convicted vendor list. The Commission also represents that it is not prohibited from entering into this Agreement by Section 287.133, Florida Statutes.

ARTICLE 12
Compliance With Applicable Laws

The Commission shall comply with all applicable laws, ordinances and codes of the United States, the State of Florida, and City, including but not limited, to City's ordinances and policies regarding Women and Minority Business Enterprise, Equal Employment Opportunity, Affirmative Action, Human Rights and Ethics. Moreover, the Commission acknowledges and understands that the City's Charter and Ethics Code prohibit any such contract or obligation entered into with the City, or from having any direct or indirect financial interest in effecting any such contract or obligation. The Commission shall ensure that no City employee receives any such benefit or interest as a result of this Agreement.

ARTICLE 13
Assignment

This Agreement may not be assigned or subcontracted in whole or in part without the prior written consent of the City.

ARTICLE 14
Headings

Article headings have been included in this Agreement solely for the purpose of convenience and shall not affect the interpretation of any of the terms of the Agreement.

ARTICLE 15
Waiver

A waiver of any performance or default by either party shall not be construed to be a continuing waiver of other defaults or non-performance of the same provision or operate as a waiver of any subsequent default or non-performance of any of the terms, covenants, and conditions of this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

ARTICLE 16
Additional Rights and Remedies

Nothing contained herein shall be construed as a limitation on such other rights and remedies available to the parties under law or in equity, which may now or in the future be applicable.

ARTICLE 17
Order of Precedence

In the event of any conflict between the provisions of this Agreement and the Exhibits, then the provisions of the Agreement shall take precedence over the provisions of the Exhibits.

ARTICLE 18
Severability

In the event any section, sentence, clause, or provision of this Agreement is held to be invalid, illegal or unenforceable by a court having jurisdiction over the matter, the remainder of the Agreement shall not be affected by such determination and shall remain in full force and effect.

ARTICLE 19
Survivability

Any term, condition, covenant or obligation which requires performance by either party subsequent to termination of this Agreement shall remain enforceable against such party subsequent to such termination.

ARTICLE 20
Project Publicity

Any news release or other type of publicity pertaining to the services performed by the Commission pursuant to this Agreement must recognize the contribution of the City. The

Commission being a not-for-profit corporation receiving public funding or non-monetary contributions through the City shall recognize the City for its contribution in all promotional materials and at any event or workshop for which City funds are allocated. Any news release or other type of publicity must identify the City/Council as a funding source. In written materials, the reference to the City must appear in the same size letters and font type as the name of any other funding sources.

ARTICLE 21
Third Party Beneficiaries/Independent Contractor

This Agreement is for the benefit of the City and the Commission. No other third party is an intended beneficiary so as to entitle that person to sue for an alleged breach of this Agreement. Commission acknowledges and agrees that it is acting as an independent contractor in performing its obligations hereunder and not as an agent, officer or employee of the City.

ARTICLE 22
Political Activity

The Commission shall not engage, participate or intervene in any form of political activity or campaign on behalf of, or in opposition to, any candidate for public office.

ARTICLE 23
Modifications

This writing embodies the entire agreement and understanding between the parties hereto and there are no other agreements and/or understandings, oral or written, with respect to the subject matter hereof, that are not merged herein and superseded hereby. This Agreement only may be amended or extended by a written instrument executed by the City and the Commission expressly for that purpose.

ARTICLE 24
Termination of Agreement

In addition to the exercise of any other remedies available to it at law or in equity, the City may terminate this Agreement for the Commission's non-performance, as solely determined by the City, upon no less than twenty-four (24) hours written notice to the Commission.

The City also may terminate this Agreement without cause upon thirty (30) days prior written notice to the Commission. In the event of termination by the City hereunder, the Commission shall not incur any new obligations after notification of the effective date of termination. The City shall pay the Commission for services incurred by the Commission prior to termination. Any costs incurred by the Commission after the effective date of the termination will not be reimbursed.

ARTICLE 25
Fiscal Non-Funding Clause

This Agreement is subject to funding availability. In the event sufficient budget funds to fund this Agreement become reduced or unavailable, the City shall notify the Commission of such occurrence, and the City may terminate this Agreement, without penalty or expense to the City, upon no less than twenty-four (24) hours written notice to the Commission. The City shall be the final authority as to the availability of funds and how available funds will be allotted. If this Agreement is funded in whole or in part by Federal or state dollars, which are reduced or become unavailable, the City shall notify the Commission of such occurrence and the City may terminate this Agreement, without penalty or expense to the City, upon no less than twenty-four (24) hours written notice to the Commission. The City shall pay the Commission for services incurred by the Commission prior to termination. Any costs incurred by the Commission after the effective date of the termination will not be reimbursed.

ARTICLE 26
Access to Records

If under this Agreement, the Commission is providing services and is acting on behalf of the City as provided under Section 119.011(2), Florida Statutes, the Commission will comply with public records laws, and specifically will: (1) keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the services being performed by the Commission; (2) provide the public with access to public records on the same terms and conditions that the City would provide the records and 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, including, but not limited to, Section 288.133 Florida Statutes; and (4) meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the Commission upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

ARTICLE 27
Drug Free Workplace

The Commission shall administer, in good faith, a policy designed to ensure that the Commission's employees, agents and subcontractors are free from the illegal use, possession, or distribution of drugs or alcohol.

ARTICLE 28
Notice

Any notice required or permitted to be given hereunder shall be sent by United States certified mail, return receipt requested, overnight delivery service or personal delivery with signature verification, to the attention of the following representatives of the parties:

A. CITY:

Thomas Snelling
Director Planning and Development
306 East Jackson Street, Suite 3 North
Tampa, Florida 33602

B. COMMISSION

Mr. Tyler Martinolich
Film Commissioner
Tampa Hillsborough Film and Digital Media Commission
201 N. Franklin Street, Suite 2900
Tampa, FL 33602

Any notice sent in accordance with this Article shall be deemed given two (2) days after deposit in the U.S. Mail, if sent by certified mail, return receipt requested, overnight delivery service or personal delivery. The act of refusal by a party of delivery of a notice sent in accordance with this Article shall be deemed acceptance of such notice by such party.

THE REAMINER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the Commission and the City respectively, have caused this Agreement to be executed by their duly authorized representatives.

ATTEST:

CITY

BY:

Harley Fox-Krueger
City Clerk/Deputy City Clerk

BY:

Jane Castor
Jane Castor, Mayor

Date:

11/27/20

Prepared by and approved
as to legal sufficiency:

Andrea Zelman
Andrea Zelman,
Deputy City Attorney

COMMISSION:

BY:

Tyler Martinovich
Authorized Official

Tyler Martinovich
(Printed Name of Signer)

Film Commissioner

(Title)

12/2/19

(Date)

ACKNOWLEDGEMENT OF AGREEMENT

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 2nd day

of December by Tyler MARTINOLICH
Name and Title of Officer or Agent

of Film Tampa Bay, a Florida corporation
(Name of Corporation) (State of Incorporation)

on behalf of the corporation. He/she is personally known to me or has produced:

(Type of Identification)

Karen L. McCully
Signature of Notary



Karen L. McCully
Name of Notary Typed, Printed or Stamped

Title or Rank

Serial Number, If Any