

THIS AGREEMENT, entered this _____ day of _____, 2018, by and between:

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida, with a business address of 100 North Andrews Avenue, Fort Lauderdale, Florida 33301 (herein after referred to as the "CITY")

and

RIVERWALK FORT LAUDERDALE, INC., a non-profit corporation organized under the laws of Florida whose usual place of business is 888 East Las Olas Boulevard, Suite 210, Fort Lauderdale, Florida 33301, hereinafter referred to as "RIVERWALK". CITY and RIVERWALK may be referred to collectively as the "Parties."

In consideration of good and valuable consideration, receipt of which is hereby acknowledged and the covenants expressed in this Agreement, the parties mutually agree as follows:

WITNESSETH:

WHEREAS, the CITY desires to use a broad base of options to communicate throughout the city; and

WHEREAS, RIVERWALK, being a local charity that owns and operates a public magazine on a monthly basis; and

WHEREAS, the parties agree to work together to further the messaging desired by the CITY.

TERMS OF AGREEMENT

NOW, THEREFORE, it is agreed between the parties hereto that:

I. SERVICES AND RESPONSIBILITIES

A. SCOPE OF SERVICES

1. One (1) page of editorial monthly with a message from the Mayor and/or Commissioners
2. Two (2) pages monthly to include content making city announcements, events, projects, awards or other suitable content as determined by the city.

B. SERVICE PROVISIONS

1. RIVERWALK will carry the city logo on the cover and spine of the monthly magazine.
2. RIVERWALK will include city information as provided in weekly eblast.
3. RIVERWALK will include city notices on www.goriverwalk.com as provided.
4. RIVERWALK will include city announcements in the 7 social media sites owned by RIVERWALK as well as share with a larger number of media partners that currently share with Riverwalk.

5. RIVERWALK proposes this partnership in print, on-line and through social media

II. TRADEMARK OWNERSHIP

Each party shall retain all rights, title, and interest in and to their own Trademarks, including any goodwill associated therewith. Each party grants to the other a non-exclusive, non-transferable limited license to use the other party's trademarks as is reasonably necessary to perform its obligations under this Agreement. RIVERWALK shall not use the CITY's trademark for any other reason other than as provided for in this Agreement, including but not limited to promotional use.

III. DELIVERABLES

The parties will conform to the RIVERWALK production schedule as follows:

1. CITY will provide content, articles, and or/event flyers to RIVERWALK by the 5th of each month for layout.
2. RIVERWALK will return a completed pdf for review and comment by the Strategic Communications Director at the CITY on or before the 10th of each month.
3. CITY will respond to RIVERWALK within 24 hours of receipt of the pdf.

Magazines are printed monthly and out for distribution on or about the 1st of each month.

In the event that the CITY fails to provide content to RIVERWALK on or before the 5th day of each month, the CITY will not be required to pay RIVERWALK for the scope of services for that month.

IV. TERM AND PERIOD OF PERFORMANCE

The effective date of this agreement will commence upon full execution by the CITY and RIVERWALK Fort Lauderdale and remains in force for one (1) year.

V. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the CITY under this agreement shall not exceed Fifty Thousand Four Hundred and 00/100 Dollars (\$50,400.00) for the scope of services defined above. The CITY will pay monthly installments to RIVERWALK in the amount of no more than four thousand two hundred dollars and 00/100 cents (\$4,200.00). All payments made by the CITY under this Agreement shall be governed by the Florida Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

VI. SOVEREIGN IMMUNITY

Nothing contained herein is intended nor shall be construed to waive CITY's rights and immunities under the common law or Section 768.28, Florida Statutes, as may be amended from time to time.

VII. Notices

When either party desires to give notice unto the other, it shall be given by written notice, sent by certified U.S. Mail, return receipt requested, addressed to the party to whom it is intended, at the places last specified, and the places for giving notice shall remain such until they are changed by written notice in compliance with this subsection. For the present, the parties designate the following representatives for the purpose of giving notice:

As to the CITY:

Lee R. Feldman
City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

As to RIVERWALK:

Eugenia Duncan Ellis
President/Chief Executive Officer
Riverwalk Fort Lauderdale, Inc.
888 East Las Olas Boulevard, Suite 210
Fort Lauderdale, Florida 33301

VIII. General Conditions

A. Independent Contractor

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. RIVERWALK shall at all times remain an "independent contractor" with respect to the service to be performed under this Agreement. The CITY shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as RIVERWALK is an independent contractor.

B. Hold Harmless

RIVERWALK shall defend, indemnify, and hold harmless the CITY, its officers, its elected officials, assignees, employees and agents, from and against any and all lawsuits, penalties, claims, demands, damages, settlements, losses, fines, judgments, decrees, costs, charges and other expenses or liabilities of every kind, sort, or nature, including, not limited to, attorney's fees at both the trial and appellate levels, in connection with or arising, directly or indirectly, out of or resulting from RIVERWALK's acts or omissions in the performance or nonperformance of its obligations or service under this Agreement. Further, RIVERWALK shall defend, indemnify, and hold harmless the CITY, its officers, elected officials, assignees, employees, and agents from any and all such claims relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright or of any other tangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court.

C. Amendments

1. No modification, amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed by the

- parties hereto, with the same formality and of equal dignity herewith.
2. CITY or RIVERWALK may request changes that would increase, decrease, or otherwise modify the Scope of Services, as described in Article I, to be provided under this Agreement. These changes will affect the compensation accordingly. Such changes or additional services must be in accordance with the provisions of the Code of Ordinances of the CITY, and must be contained in a written amendment, executed by the parties hereto, with the same formality, equality and dignity herewith prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work.
 3. In no event will RIVERWALK be compensated for any work which has not been described in this Agreement or a separate amendment to this Agreement executed by the parties hereto.

D. Public Records

The City of Fort Lauderdale is a public agency subject to Chapter 119, Florida Statutes. RIVERWALK shall comply with Florida Public Records Law. Specifically, RIVERWALK shall:

1. Keep and maintain public records that ordinarily and necessarily would be 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 the requested records to allow the records to be inspected or copied within a reasonable amount of time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2017), as may be amended or revised, 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 Agreement term and following completion of this Agreement if RIVERWALK does not transfer the records to the CITY.
4. Upon completion of this Agreement, transfer, at no cost, to the CITY all public records in possession of RIVERWALK or keep and maintain public records required by the CITY to perform the services. If RIVERWALK transfers all public records to the CITY upon completion of this Agreement, RIVERWALK shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If RIVERWALK keeps and maintains public records upon completion of this Agreement, RIVERWALK 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.

The failure of RIVERWALK to comply with the provisions set forth in this Public Records section shall constitute a Default and Breach of this Agreement and the CITY shall enforce the Default provisions as set forth in this Agreement.

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

**OFFICE OF THE CITY CLERK
100 N. ANDREWS AVENUE
FORT LAUDERDALE, FLORIDA 33301
(954) 828-5002
PRRCONTRACT@FORTLAUDERDALE.GOV**

E. Default

The following events shall constitute an “Event of Default” pursuant to this Agreement:

1. RIVERWALK fails to perform any covenant or term or conditions of this Agreement, or any representation or warranty of RIVERWALK herein or in any other documents executed concurrently herewith or made subsequent hereto, shall be found to be inaccurate, untrue or breached.
2. If RIVERWALK or any endorser of the Agreement files a voluntary petition in bankruptcy or shall be adjudicated as bankrupt or insolvent, or shall file any petition or answer seeking reorganization, arrangement composition, readjustment, liquidation, wage earner’s plan, assignment for the benefit of creditors, receivership, dissolution, or similar relief under any present or future Federal Bankruptcy Act or any other present or future applicable federal, state or other local law, or shall seek or consent to or acquiesce in appointment of any trustee, receiver or liquidator of RIVERWALK for all or any part of the properties of RIVERWALK; or if within ten (10) days after commencement of any proceeding against RIVERWALK, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, debtor relief or similar relief under any present or future Federal Bankruptcy Act of any other present or future federal, state or other local law, such proceedings shall not have been dismissed or stayed on appeal; or if within (ten) days after the appointment, without consent or acquiescence of RIVERWALK or of any endorser of the Agreement, of any trustee, receiver, or liquidator of RIVERWALK or any endorser of the Note, or of all or any portion of the Property, such appointment shall not have been vacated or stayed on appeal or otherwise; or if within ten days after the expiration of any such stay, such appointment shall not have been vacated.
3. RIVERWALK’s breach, violation or failure to perform any of the obligations or any of the covenants and conditions contained herein.
4. The assignment and/or transfer of this Agreement or execution or attachment thereon by RIVERWALK in a manner not expressly permitted hereunder.
5. The abandonment, unnecessary delay, refusal of, neglect, or refusal to comply with the instructions from the City of Fort Lauderdale City Manager or his designee relative thereto.

Upon the occurrence of any event of default, the CITY shall issue written notice in accordance with Article VII and RIVERWALK shall have thirty (30) days to cure such default. If RIVERWALK fails to cure the default within the thirty (30) days, the Agreement will be deemed terminated and the CITY may recover any damages incurred as a result of the failure of RIVERWALK to perform in accordance with the requirements of this Agreement.

F. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

G. INSURANCE

As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, RIVERWALK, at RIVERWALK's sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of RIVERWALK. RIVERWALK shall provide the CITY a certificate of insurance evidencing such coverage. RIVERWALK's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by RIVERWALK shall not be interpreted as limiting RIVERWALK's liability and obligations under this Agreement. All insurance policies shall be from insurers authorized to write insurance policies in the State of Florida and that possess an A.M. Best rating of A-, VII or better. All insurance policies are subject to approval by the CITY's Risk Manager.

The coverages, limits, and endorsements required herein protect the interests of the CITY, and these coverages, limits, and endorsements may not be relied upon by RIVERWALK for assessing the extent or determining appropriate types and limits of coverage to protect RIVERWALK against any loss exposure, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the CITY's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by RIVERWALK under this Agreement.

The following insurance is required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$1,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$1,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for Contractual Liability and Independent Contractors.

The CITY and the CITY's officers, employees, and volunteers are to be covered as additional insureds with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of RIVERWALK. The

coverage shall contain no special limitation on the scope of protection afforded to the CITY or the CITY's officers, employees, and volunteers.

Insurance Certificate Requirements

- a. RIVERWALK shall provide the CITY with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Agreement.
- b. RIVERWALK shall provide to the CITY a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of RIVERWALK to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d. In the event the Agreement term goes beyond the expiration date of the insurance policy, RIVERWALK shall provide the CITY with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The CITY reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- f. The CITY shall be named as an Additional Insured on Commercial General Liability policy.
- g. The title of the Agreement or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale

100 N. Andrews Avenue

Fort Lauderdale, FL 33301

RIVERWALK has the sole responsibility for the payment of all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the CITY as an Additional Insured shall be at RIVERWALK's expense.

If RIVERWALK's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, RIVERWALK may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

RIVERWALK's insurance coverage shall be primary insurance as applied to the CITY and the City's officers, employees, and volunteers. Any insurance or self-insurance maintained by the CITY covering the CITY, the CITY's officers, employees, or volunteers shall be non-contributory.

Any exclusion or provision in the insurance maintained by RIVERWALK that excludes coverage for work contemplated in this Agreement shall be unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the CITY, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, RIVERWALK must provide to the CITY confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The CITY reserves the right to review, at any time, coverage forms and limits of RIVERWALK's insurance policies.

RIVERWALK shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement shall be provided to RIVERWALK's insurance company or companies and the CITY's Risk Management office as soon as practical.

It is RIVERWALK's responsibility to ensure that any and all of RIVERWALK's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of RIVERWALK.

IX. SECTION HEADINGS AND SUBHEADINGS

Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

X. WAIVER

The CITY's failure to act with respect to a breach by RIVERWALK does not waive its right to act with respect to subsequent or similar breaches. Failure of the CITY to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XI. TERMINATION FOR CONVENIENCE

CITY has the unqualified and absolute right to terminate this Agreement at any time upon written notice by the CITY to RIVERWALK, in which event, RIVERWALK shall be paid its compensation for services performed up to the termination date. In the event that RIVERWALK abandons this

Agreement or causes it to be terminated, RIVERWALK shall indemnify the CITY against any losses pertaining to this termination.

XII. GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for all claims, objections, disputes, or actions arising out of this agreement shall be in Broward County, Florida.

XIII. NON-EXCLUSIVITY

The relationship between the CITY and RIVERWALK created hereunder and the services to be provided by RIVERWALK pursuant to this Agreement are non-exclusive. CITY shall be free to pursue and engage similar relationships with other contractors to perform the same or similar services performed by RIVERWALK hereunder. RIVERWALK shall be free to pursue relationships with other parties to perform the same or similar services, whether or not such relationships are for services to be performed within the City of Fort Lauderdale, so long as no such relationship shall result in a conflict of interest, ethical or otherwise, with the CITY's interests in the services provided by RIVERWALK hereunder.

XIV. ATTORNEY'S FEES

In the event that either party brings suit for enforcement of this Agreement, RIVERWALK, shall pay the CITY's attorney's fees.

XV. NON-DISCRIMINATION

RIVERWALK shall not in exercising any of the rights or privileges granted to RIVERWALK herein on the grounds of race, color, sex, or national origin, discriminate or permit discrimination against any persons or group of persons in any manner. RIVERWALK shall comply with the applicable sections of Americans with Disabilities Act of 1990 (42 USC 126), which prohibits discrimination of handicapped individuals by denying them the right to participate in or benefit from the services provided pursuant to this Agreement. RIVERWALK understands that RIVERWALK is responsible for compliance with this Act. To the extent that any provisions of this Agreement are inconsistent with ADA, the requirements of the ADA shall control.

XVI. LEGAL REPRESENTATION

It is acknowledged that each party to this agreement had the opportunity to be represented by counsel in the preparation of this Agreement, and accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.

XVII. ASSIGNMENT

This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by RIVERWALK without the prior written consent of CITY. For purposes of this Agreement, any change of ownership of RIVERWALK shall constitute an assignment which requires CITY approval. However, this Agreement shall run to the benefit of CITY and its successors and assignees.

XVIII. ENTIRE AGREEMENT

This Agreement, along with attachments, shall constitute, the entire Agreement between the CITY and RIVERWALK for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the CITY and RIVERWALK with respect to this Agreement. No prior written or contemporaneous oral promises or representations shall be binding. This Agreement shall not be amended except by written instrument signed by both parties.

XIX. AUTHORIZED SIGNATORY

RIVERWALK shall provide the CITY with copies of requisite documentation evidencing that the signatory for RIVERWALK has the authority to enter into this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the _____ day of _____, 2018.

ATTEST:

CITY OF FORT LAUDERDALE

Jeffrey A. Modarelli, City Clerk

By: _____
Lee R. Feldman, City Manager

Approved as to form:
Alain E. Boileau, Interim City Attorney

By: _____
Shari C. Wallen, Assistant City Attorney

WITNESSES:

RIVERWALK FORT LAUDERDALE, INC.
Florida non-profit corporation

(Witness print name)

By: _____
Eugenia Duncan Ellis
President/Chief Executive Officer

(Witness print name)
ATTEST:

ATTEST:

Secretary

(CORPORATE SEAL)

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me on the ____ day of _____, 2018, by Eugenia Duncan Ellis, as President/Chief Executive Officer of Riverwalk Fort Lauderdale, Inc., who is ____ personally known to me or has produced _____ as identification.

(SEAL)

Notary Public, State of _____
(Signature of Notary Public)

(Print, Type, or Stamp Commissioned Name of
Notary Public)