AGREEMENT
for
PROFESSIONAL SERVICES
between
CITY OF CEDAR HILLS
and
JORDAN LONG

This Agreement for Professional Services ("Agreement") is made as of the 20th day of June, 2018 (the "Effective Date"), between the City of Cedar Hills, Utah, a Utah municipality ("City"), and Jordan Long, an individual ("Consultant").

RECATALS:

WHEREAS, the City is in need of professional services (the "Services") as further defined herein; and

WHEREAS, Consultant has substantial experience performing services similar to those required by this Agreement; and

WHEREAS, pursuant to City's Procurement Policy no informal or formal procurement process is required to procure Consultant's Services; and

WHEREAS, CITY wants to retain the Consultant's Services, and Consultant is willing to perform the Services.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

AGREEMENT:

ARTICLE I. SCOPE OF WORK

Section 1.1. Services

Consultant shall perform the services ("Services") as fully described in Exhibit A.

Section 1.2. Compensation

City will compensate Consultant for the Services as fully described in Exhibit A.

ARTICLE II. INVOICING AND PAYMENT

4843-3868-8871
Section 2.1. Invoicing

Consultant will provide City a detailed invoice as a condition of payment. City shall not be liable for any other charges or expenses except for those specifically pre-approved by City in writing. Notwithstanding any other provision in this Agreement, Consultant's total compensation for the Services hereunder shall not exceed $15,000 annually, unless otherwise approved by City in writing.

Section 2.2. Payment

City will pay Consultant all undisputed invoiced amounts within thirty (30) days of City's receipt of invoice. In the event City disputes any invoiced amounts, the parties will work expeditiously to resolve such dispute, whereupon City will pay Consultant as agreed upon in such resolution.

ARTICLE III. TERM AND TERMINATION

This Agreement will be deemed commenced as of the Effective Date and will continue for three years, unless otherwise terminated by either party with thirty (30) days written notice of termination to the non-terminating party.

ARTICLE IV. CONFIDENTIALITY

Consultant understands that the Services performed for City are confidential and Consultant agrees to maintain such confidentiality. In the performance of the Services, City may disclose Confidential Information to Consultant. Consultant agrees to strictly maintain the confidentiality of the Confidential Information, which obligation shall survive the expiration or termination of this Agreement. As used herein, "Confidential Information" includes, without limitation, the following information of City regardless of whether or not such information may otherwise be classified as "public" under the Government Records Access Management Act ("GRAMA"): know-how, trade secrets, business plans, personnel information, financial information, marketing plans, pricing information, product information, customer information, building plans, computer systems, software code, system logic and systems, and network architecture and layout. Consultant acknowledges that unauthorized disclosure or use of the Confidential Information will cause substantial and irreparable injury to City, that money damages will not adequately compensate for such injury, and that City is entitled to obtain, among other remedies, immediate injunctive and other equitable relief for any breach of this Article, without any requirement to post a bond. This Article shall survive the termination of this Agreement and shall be binding upon Consultant irrespective of whether the Confidential Information may be otherwise publicly available under any statute or other theory of law. In the event Consultant breaches, or threatens to breach, its obligations of confidentiality, City shall be entitled to injunctive relief requiring
Consultant to specifically perform and abide by its obligations of confidentiality as set forth in this Article, without the need to post a bond.

ARTICLE V. OWNERSHIP OF DOCUMENTS

All documents and records, and all rights pertaining thereto, produced by Consultant in connection with this Agreement, without limitation, shall become and remain City’s property ("Documents"). City shall have the right to use such documents and records without restriction or limitation and without further compensation to Consultant. This ARTICLE V. shall survive the termination of this Agreement.

ARTICLE VI. COMPLIANCE WITH CITY POLICIES

In performing the Services hereunder, Consultant shall at all times comply with City’s policies and procedures. Failure to comply with any of City’s policies shall constitute a material breach of this Agreement for which City, in its sole discretion, immediately and with no opportunity to cure, may terminate this Agreement and all Services hereunder for cause.

ARTICLE VII. WARRANTY AND INDEMNIFICATION

Section 7.1. Warranty.

Consultant represents and warrants that Consultant is free to enter into this Agreement and that Consultant is under no disability, restriction, or prohibition that will interfere in any manner with Consultant’s full compliance with and performance under this Agreement. Consultant warrants that Services will be of good quality and to the reasonable satisfaction of City. Consultant also warrants and represents that no Services provided to the City hereunder will infringe or violate any right of any person or firm and that City may exploit such Services provided hereunder without liability or obligation to any person or firm.

Section 7.2. Indemnification.

Consultant agrees to indemnify, hold harmless and (at Indemnitee’s option) defend City, Affiliates and each of their employees, officers, directors, shareholders, contractors, representatives, servants, agents, insurers, attorneys, successors and assigns (the "Indemnitees") for, from and against any and all claims, causes of action, damages (including, without limitation, all foreseeable and unforeseeable consequential damages, injunction and other relief), fines, judgments, penalties, costs, liabilities, losses or expenses (including, without limitation, experts’ and consultants’ costs, attorneys’ fees and reasonable investigative and discovery costs) arising prior to, during or after the term of this Agreement on account of or in connection with, or directly or indirectly related to: (i) the acts or omissions of the Consultant, its agents, servants, employees, contractors, guests and invitees (collectively, the "Consultant’s Agents") in the performance of this
Agreement or the delivery of any Services; (ii) the violation of law by the Consultant or the Consultant’s Agents; (iii) Consultant’s untrue representation or warranty; and (iv) the use, reproduction, distribution, sale or other commercialization or exploitation of the Services, including, without limitation, any deliverables, and/or Documents in violation of rights under any patent, copyright, trademark, or other intellectual property right or application for the same. Consultant’s obligations with respect to indemnification hereunder shall remain effective, notwithstanding the expiration or earlier termination of this Agreement, as to claims arising or accruing prior to the expiration or earlier termination of this Agreement. Consultant shall not be required to indemnify or defend any Indemnitee against any injury, loss of life, or damage which is caused by the sole negligence or willful misconduct of any Indemnitee.

ARTICLE VIII. LIMITATION OF LIABILITY

NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, NEITHER CITY, NOR ITS MEMBER MUNICIPALITIES, NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, VOLUNTEERS, Elected OFFICIALS, AGENTS, CONTRACTORS OR SUBCONTRACTORS, ATTORNEYS, OR INSURERS SHALL BE LIABLE TO CONSULTANT FOR INCIDENTAL, CONSEQUENTIAL, RELIANCE, SPECIAL, PUNITIVE OR INDIRECT DAMAGES ARISING OUT OF THIS AGREEMENT WHETHER BY REASON OF CONTRACT, INDEMNITY, STRICT LIABILITY, NEGLIGENCE, BREACH OF WARRANTY, BREACH OF THIS AGREEMENT, OR ANY OTHER LEGAL THEORY, AND REGARDLESS OF WHETHER CONSULTANT KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT, CONSULTANT HEREBY RELEASES CITY OF AND FROM SUCH CLAIMS. CITY’S MAXIMUM LIABILITY UNDER ANY CLAIM WHATSOEVER, SHALL NOT EXCEED THE UNPAID AMOUNTS DUE TO AND PROPERLY INVOICED BY CONSULTANT FOR SERVICES ACTUALLY AND SATISFACTORILY PERFORMED UNDER THIS AGREEMENT IN A TIMELY MANNER.

ARTICLE IX. MISCELLANEOUS PROVISIONS

Section 9.1. Amendments

This Agreement is the only agreement or understanding between the parties and may only be modified or amended by a writing signed by both parties.

Section 9.2. Conflict of Interest

Consultant covenants that it does not now, nor will it acquire any interest, direct or indirect, which may in any manner conflict with Consultant’s performance under this Agreement unless such conflict is waived in writing by City in accordance with City’s Conflict of Interest Policy.

Section 9.3. Employment Status
Services rendered by Consultant pursuant to this Agreement are not rendered as a City employee and amounts paid under this Agreement do not constitute compensation paid to an employee. The parties expressly agree that Consultant is an independent contractor and is not an agent or employee of City, and as such, Consultant is solely responsible for his own employment taxes, worker’s compensation premiums and similar expenses. Consultant knowingly and voluntarily waives all claims, demands and/or arguments that could construe Consultant as an employee of City for any purpose whatsoever. City assumes no liability for Consultant’s actions and Consultant agrees to indemnify, defend and hold City harmless from and against any third party claims brought as a result of Consultant’s Services.

Section 9.4. Assignment of Rights

The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation or other entity without the prior, express, and written consent of the other party.

Section 9.5. Applicable Law

This Agreement and Consultant's obligations and Services hereunder are made and must be performed in compliance with all applicable federal, state, and local laws. The interpretation and enforcement of this Agreement shall be pursuant to the laws of the State of Utah.

Section 9.6. Jurisdiction and Venue

Any dispute arising from or related to this Agreement shall be brought in Fourth Judicial District Court of Utah, Utah County, if in state court, or the United States District Court of Utah, if in federal court. The parties expressly agree to such jurisdiction and venue and waive any objection that it is inconvenient. Consultant knowingly and voluntarily waives all rights to demand a jury trial.

Section 9.7. Time is of the Essence

THE PARTIES ACKNOWLEDGE AND AGREE THAT TIME IS OF THE ESSENCE IN CONSULTANT’S PERFORMANCE OF THE SERVICES HEREUNDER.

Section 6.8 Compliance with Laws and Regulations

In performing Consultant’s Services hereunder, Consultant will comply with all laws, regulations and other requirements applicable to City, including, without limitation, all federal grant and other requirements.

(Signature Page to Follow)
ENTERED INTO as of the Effective Date written above.

CITY:

[Signature]
Jenney Rees, Mayor

By:
Title:

ATTEST:

[Signature]
Colleen A. Mulvey
City Recorder

APPROVED AS TO FORM:

[Signature]
City Attorney

APPROVED AS TO FINANCES:

[Signature]
Director of Finance

APPROVED AS TO CONTENT:

[Signature]
City Manager

CONSULTANT

[Signature]
Jordan Long
EXHIBIT A

SCOPE OF SERVICES, OBLIGATIONS AND COMPENSATION

Services

1. Provide theater, drama, acting and musical training for youth ages 18 and under to the general public within the parameters of this Agreement at facilities owned by the City (the "Services").

Obligations

1. Use of the Cedar Hills Community Center or other property owned by the City (the "Facilities") will be specified in a written email to Consultant by the City in a which will detail the times and portions of the Facilities for Consultant's use. Consultant may not use any portion of the Community Center unless the time and space are approved in writing by the City.

2. City may give Consultant one or more keys or access codes to the Facilities. Consultant will not share the keys or access codes to the Facilities with anyone unless approved in writing by the City, and anyone with whom the City approves to use the keys or access codes to the Center may not share them with anyone unless approved in writing by the City.

3. Consultant shall use commercially reasonable best efforts to insure that Consultant's activities do not interfere with the activities of any other group or event in the Facilities.

4. Consultant shall comply with any financial policies and procedures required or requested by the City, including the requirement that the city collect all payments, including registration payments and ticket receipts.

5. Consultant shall submit an approximate budget of any single production for approval by the City before the City advances any funds for such production. Such budget shall include the approximate dates when the production will start and end.

6. Consultant shall submit an exemption request to the Worker's Compensation Fund of Utah annually during this Agreement, and the City shall pay Consultant for the cost of such exemption request in advance. Consultant shall send a copy of such approved exemption request to the City upon receipt.

7. Consultant, and any other employees or assistants of Consultant that shall have access to minors within the scope of this Agreement, shall submit their names to the City for a background check before they may have access to any minors. In the event a background check is not clear, Consultant shall use best efforts to insure that any individual without a clear background check have no access to minors under the work of this Agreement.

8. Consultant shall use best efforts at all times to insure the safety of all participants under this Agreement.

9. Consultant is responsible for ensuring that Facilities are free of litter, garbage or debris generated during their usage and that equipment is properly used. A cleaning fee of $50.00/hour may be assessed if Facilities are not left in good condition.
Compensation

After a production has ended and all expenses have been paid, Consultant shall notify City in writing. City shall then calculate all costs they have funded or reimbursed for the production, and the receipts, and send the positive difference, if any, to the Consultant within ten (10) business days of being notified in writing by Consultant that the production has ended and paid all expenses.