

CITY OF NORTH MIAMI
PROFESSIONAL SERVICES AGREEMENT
(STRATEGIC MARKETING CAMPAIGN – SOLE SOURCE)

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into this _____ day of 8/14/2014, 2014, between the **City of North Miami**, a Florida municipal corporation with a principal address of 776 NE 125th Street, North Miami, Florida (“City”), and **The M Network, Inc.**, a for-profit corporation organized and existing under the laws of the State of Florida, having its principal office at 7390 NE 4th Court, Suite 101, Miami, FL 33138 (“Consultant”). The City and Consultant shall collectively be referred to as the “Parties”, and each may individually be referred to as a “Party”.

RECITALS

WHEREAS, the City expeditiously requires Consultant’s expertise and knowledge in the unique field of strategic communications, including marketing, advertising, public affairs, government and media relations to develop a public service campaign highlighting the City of North Miami Museum of Contemporary Art operations within the City (“Services”), as further delineated in the Consultant’s Proposal; and

WHEREAS, this Agreement is intended to supplement the Proposal and further defines the provision of Services to the City by the Consultant; and

WHEREAS, City administration has selected Consultant as a sole source provider due to the expeditious need of Services under exigent circumstances, and the unique and specialized nature of the professional Services sought by the City; and

WHEREAS, Consultant possesses all necessary qualifications and specialized expertise to perform the Services for the City, and has expressed the capability and desire to perform such Services; and

WHEREAS, pursuant to Section 7-143 of the City Code of Ordinances, the sole source procurement of goods and services is allowed where the unique and specialized expertise of one source of Services is unlikely to be obtained from any other source and the agreement, by its very nature, is not suitable to competitive bids or sealed proposals; and

WHEREAS, the City Manager finds it in the best interest of the City to enter into a sole source agreement with Consultant for the provision of Services, using the most cost effective means currently available to the City.

NOW, THEREFORE, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

ARTICLE 1 - RECITALS

1.1 The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

ARTICLE 2 - CONTRACT DOCUMENTS

2.1 The following documents, collectively referred to as the "Contract Documents", are incorporated into and made part of this Agreement:

2.1.1 Consultant's MOCA Proposal 2014/2015: City of North Miami dated July 30, 2014 ("Proposal"), incorporated and attached hereto as "Exhibit A"; and

2.1.2 Any additional documents which are required to be obtained and/or submitted in the provision of Services under this Agreement.

ARTICLE 3 - TERM

3.1 The term of this Agreement shall be the period commencing immediately upon execution though December 31, 2014, unless earlier terminated by either Party pursuant to Article 11.

ARTICLE 4 - INDEPENDENT CONTRACTOR

4.1 The Consultant is, and shall be in the performance of all work, services, and activities for the City, an independent contractor, and not an employee, agent, or servant of the City. The Consultant shall exercise control over the means and manner in which it and its employees perform the Services, and in all respects, Consultant's relationship and the relationship of its employees with the City shall be that of an independent contractor and not as employees or agents of the City. Therefore, the Consultant shall not attain any rights or benefits under the City's Civil Service or Pension Ordinances or any rights generally afforded to the City's classified or unclassified employees.

ARTICLE 5 - FEES

5.1 The City agrees to compensate Consultant for Services performed on behalf of the City the amount of Forty Thousand Dollars (\$40,000.00), payable in monthly installments as provided for in the Proposal. The monthly installment payments shall be made at the end of each month, throughout the term period. Any additional fees and costs incurred shall also be paid at the end of the month in which they were incurred. All invoices are due net thirty (30) days.

ARTICLE 6 – SCOPE OF SERVICES

6.1 As an inducement for the City to enter into this Agreement, Consultant has represented an expertise in the provision of Services on similar public or private projects. In reliance upon those representations, the City has entered into this Agreement with Consultant for the provision of the Services.

6.2 Consultant shall provide all the required labor, supervision, transportation, materials, equipment, supplies, tools, and all related services necessary for the provision of Services, under the terms, conditions and specifications contained in the Contract Documents. Consultant shall provide Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession.

6.3 Consultant represents and warrants to the City that: (i) Consultant possesses all qualifications, licenses and expertise required in the provision of Services, with personnel fully licensed by the State of Florida; (ii) Consultant is not delinquent in the payment of any sums due

the City, including payment of permit fees, local business taxes, or in the performance of any obligations to the City; (iii) all personnel assigned to perform work shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; (iv) the Services will be performed in the manner as described in the Proposal for the budgeted amounts, rates and schedules; and (v) the person executing this Agreement on behalf of Consultant is duly authorized to execute same and fully bind Consultant as a Party to this Agreement.

6.4 Consultant agrees and understands that: (i) any and all subconsultants used by Consultant shall be paid by Consultant and not paid directly by the City; and (ii) any and all liabilities regarding payment to or use of subconsultants for any of the work related to this Agreement shall be borne solely by Consultant. Any work performed for Consultant by a subconsultant will be pursuant to an appropriate agreement between Consultant and subconsultant which specifically binds the subconsultant to all applicable terms and conditions of this Agreement.

ARTICLE 7 – PUBLIC RECORDS

7.1 Please be advised that the City and all its activities, unless exempt, are subject to the Public Records Law (Chapter 119, Florida Statutes) and the Sunshine Law (Section 286.011, Florida Statutes). As such, the Consultant must observe and comply with the requirements of said laws and all related City policies and procedures.

ARTICLE 8 – PROFESSIONAL LIABILITY INSURANCE

8.1 The Consultant shall maintain in full force and effect, during the life of this Agreement, Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) for each occurrence with a maximum deductible of Fifty Thousand Dollars (\$50,000.00). A certificate of Professional Liability Insurance, satisfactory to the City, shall be furnished to the City immediately upon commencement of Services. Such certificate of insurance will provide the City with thirty (30) days prior written notice of any cancellation or non-renewal.

ARTICLE 9 – CONFLICTS OF INTERESTS

9.1 The Consultant shall represent to the City that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of Services, as provided in Part III of Chapter 112, Florida Statutes (2013). The Consultant shall promptly notify the City Attorney's Office, in writing, of all potential conflicts of interest, which may influence or appear to influence the Consultant's judgment or quality of Services. The notice shall identify the perspective business association, interest, or circumstance and the nature of work that the Consultant wants to undertake and shall request the City's opinion as to whether the association, interest or circumstance would, in the opinion of the City Attorney, constitute a conflict of interest that is entered into by the Consultant. The City shall notify the Consultant of its opinion within ten (10) days of receipt of notification by the Consultant. If, in the opinion of the City Attorney, the prospective business association, interests, or circumstance would not constitute a conflict of interest, then such business association, interests, or circumstance shall not be deemed to be a conflict of interest with respect to the Services provided by the Consultant.

ARTICLE 10 - DEFAULT

10.1 In the event the Consultant fails to comply with any provision of this Agreement, the City

may declare the Consultant in default by written notification. The City shall have the right to terminate this Agreement if the Consultant fails to cure the default within ten (10) days after receiving notice of default from the City. If the Consultant fails to cure the default, the Consultant will only be compensated for completed Services. In the event partial payment has been made for such Services not completed, the Consultant shall return such sums due to the City within ten (10) days after notice that such sums are due. The Consultant understands and agrees that termination of this Agreement under this section shall not release Consultant from any obligations accruing prior to the effective date of termination.

10.2 Consultant will use its best efforts to provide the Services under this Agreement in a professional and timely manner; however, Consultant will not be liable to the City for any loss, damage, claim, liability or expense of any kind caused directly or indirectly by any action (other than for Consultant's negligence or breach of this Agreement) taken in furnishing the Services to be provided under this Agreement.

10.3 Neither Consultant nor the City will be liable to the other for any special indirect, incidental, consequential, or punitive damages, including without limitation, lost or imputed profits, lost savings, loss of goodwill, or legal expenses, resulting from any cause whatsoever, whether liability is asserted in contract, tort, or otherwise. In no event may the aggregate damages claimed by the City under this Agreement exceed the total fees actually paid by the City to Consultant under this Agreement, regardless of the number or extent of such claims.

ARTICLE 11 - INDEMNIFICATION

11.1 Each Party agrees to indemnify the other from and against any and all claims, liabilities, suits, losses, claims, fines, and/or causes of action that may be brought against a Party, its officers, agents and employees, on account of any negligent act or omission of the other Party, its agents, servants, or employees in the performance of Services under this Agreement and resulting in personal injury, loss of life or damage to property sustained by any person or entity, caused by or arising out of a Party's negligence within the scope of this Agreement, including all costs, reasonable attorneys fees, expenses, including any appeal, and including the investigations and defense of any action or proceeding and any order, judgment, or decree which may be entered in any such action or proceeding, except for damages specifically caused by or arising out of the negligence, strict liability, intentional torts or criminal acts of a Party, its officer, agents, employees or consultants, which claims are lodged by any person, firm, or corporation.

11.2 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes. Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

ARTICLE 12 - RIGHT OF CITY TO TERMINATE

12.1 The City has the right to terminate this Agreement at any time for cause upon written notice to the Consultant, and said termination shall become effective upon receipt of said notice. The Consultant may terminate for cause upon written notice to the City, and said termination shall become effective upon receipt of said notice. Upon Termination by either Party, the City shall pay to Consultant any remaining balance due at that time, and the Consultant shall transfer

14.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

ARTICLE 15 - MISCELLANEOUS PROVISIONS

15.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

15.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the contract documents, shall survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

15.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

15.4 This Agreement constitutes the sole and entire agreement between the Parties. No modification or amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties.

15.5 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

15.6 The City reserves the right to audit the records of the Consultant covered by this Agreement at any time during the provision of Services and for a period of three years after final payment is made under this Agreement.

15.7 The Consultant agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

15.8 Services shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the City.

15.9 The City is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.

15.10 The professional Services to be provided by Consultant pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.

15.11 This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

15.12 The Consultant agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

15.13 All other terms, conditions and requirements contained in the Proposal, which have not been modified by this Agreement, shall remain in full force and effect.

15.14 In the event of any dispute arising under or related to this Agreement, the prevailing Party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

15.15 This Agreement represents the entire and integrated agreement between the City and Consultant, and supersedes all prior negotiations, representations or agreements, either written or oral.

15.16 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

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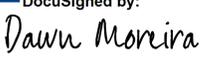
IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

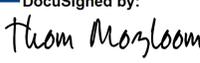
ATTEST:

The M Network, Inc., a Florida for-profit corporation:

Corporate Secretary or Witness:

“Consultant”

By: 
DocuSigned by:
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By: 
DocuSigned by:
E8C7E5EF2C7B439...

Print Name: Dawn Moreira

Print Name: Thom Mozloom

Date: 8/14/2014

Date: 8/14/2014

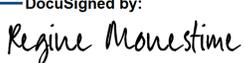
ATTEST:

City of North Miami, a Florida municipal corporation: **“City”**

By: 
DocuSigned by:
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Michael A. Etienne
City Clerk

By: 
DocuSigned by:
AD8C42C3AF4E44B...
Aleem A Ghany
City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: 
DocuSigned by:
9787BB01BC7F413...
Regine M. Monestime
City Attorney