

**MEMORANDUM OF
UNDERSTANDING
THE CITY OF CULVER CITY
AND THE
CULVER CITY CULTURAL AFFAIRS FOUNDATION, INC.**

THIS AGREEMENT is made and entered into this __ day of ____, 2017, by and between the CITY OF CULVER CITY, a municipal corporation ("City"), and CULVER CITY CULTURAL AFFAIRS FOUNDATION, INC., a nonprofit corporation of the State of California ("CCCAF").

RECITALS

- A. On June 26, 2006 the City Council established the Culver City Cultural Affairs Foundation.
- B. On August 4, 2008 the Internal Revenue Service issued its determination that the CCCAF qualified as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, retroactive to September 26, 2006.
- C. The City Council has found that the development and implementation of a relationship between the City and the CCCAF will enhance the quality and quantity of the City of Culver City's historic preservation, public art, cultural facilities and programming (Programs), which act as an innovator in the creative economy-.
- D. City desires to establish and maintain a relationship with CCCAF, an organization whose purpose is to raise funds to promote arts and cultural activities within the City of Culver City.
- E. At its meeting of ____, 2018, the City Council approved this Memorandum of Understanding ("Agreement").

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, City and CCCAF hereby agree as follows:

SECTION 1. TERM OF AGREEMENT.

The term of this Agreement shall be from _____ ("Commencement Date") and shall end on June 30, 2022, subject to the termination provisions set forth in this Agreement. Regardless of the date of execution of this Agreement, this Agreement is effective as of the

Commencement Date.

SECTION 2. SERVICES PROVIDED AND ACTIVITIES CONDUCTED BY CCCAF.

- A. City recognizes that enhancing arts and cultural activities in the City requires significant fund raising beyond those funds available to the City for such activities and that the utilization of a charitable organization such as the CCCAF can play a vital role in filling a funding gap. CCCAF shall work closely with the Cultural Affairs Commission ("Commission") and City staff to develop and implement fund raising strategies and programs to assist in carrying out the Cultural Affairs Work Plan of the Commission and City staff as adopted by the City Council.
- B. CCCAF shall play an active role in assessing the financial viability of elements of the Cultural Affairs Work Plan including, but not limited to, EXHIBIT A, entitled "CCCAF SCOPE OF SERVICES AND ACTIVITIES," which is attached hereto and incorporated herein by reference. The parties agree that among the goals of the City is enhancing the quality and quantity of arts and cultural activities available to the residents of and visitors to Culver City.

SECTION 3. PAYMENT.

- A. For Fiscal Year 2017-18, City agrees to loan CCCAF an amount not to exceed \$35,000, which is to be used as "seed money" to commence its activities ("Loan"). At the end of the fiscal year (June 30, 2018), the CCCAF shall report on the status of its funding and ability to repay the Loan to the City. If there are insufficient funds to repay the Loan, the City Council may decide to extend the term of the Loan or forgive its repayment.
- B. For future fiscal years, City does not intend to provide any additional funding.
- C. All outstanding Loan balances shall become immediately due at the time of expiration or termination of this Agreement.

SECTION 4. BANK ACCOUNTS.

- A. All CCCAF bank accounts shall be maintained in a Culver City bank branch by CCCAF. CCCAF's Tax Identification Number shall be used on all bank accounts.

SECTION 5. COORDINATION.

- A. The City Manager, or his/her designee, is charged with the responsibility of administering this Agreement on City's behalf. The City Manager shall delegate his or her authority to designated City employees as necessary. The City Manager shall determine the role of City staff, if any role exists, and use of City mementos, proclamations, commendations, facilities and equipment related to any CCCAF event activity, or promotion thereof.
- B. All functions, events and activities conducted by CCCAF, whether or not directly funded in whole or in part by City, must be consistent with City's mission and goals. The City Manager will monitor CCCAF's compliance with this Section.
- C. At the time of execution of this Agreement, CCCAF shall provide City with a roster of CCCAF's officers and its Board of Directors. An updated roster shall be provided annually and upon written request to CCCAF by the City Manager.
- D. During the term of this Agreement, CCCAF shall provide City with an Agenda of CCCAF's board and membership meetings with at least three days advance notice. CCCAF shall provide City with Minutes of such meetings.
- E. The City Manager or his or her designee shall grant approval for CCCAF's use of:
 - 1. City park picnic shelters, including passive grass areas, four times annually. The fees for two of the four uses shall be waived; the other two uses shall be provided at a 45% fee reduction.
 - 2. The Dan Patacchia Conference Room at City Hall for CCCAF business meetings, 12 times annually. The fees for such use shall be waived.
 - 3. The use of a room in the Veterans Memorial Complex two times annually at a 45% room fee reduction.
 - 4. The City Manager may, in his or her discretion, move any of CCCAF's meetings or events to alternate City facilities should the meeting or event conflict with the conduct of City business. The City shall not charge a room rental fee to CCCAF for a meeting or event that is relocated from the Dan Patacchia Conference Room to an alternate comparable meeting space at the Veterans Memorial Complex or within City Hall.
- F. Fee waivers do not include the cost to rent the AV system or other equipment at the Veterans Memorial Complex or other City park facilities.
- G. CCCAF shall be solely responsible for the damage deposit on each room and/or facility rental.

- H. If CCCAF provides or establishes a gift, garden or facility directly to City or serves as a conduit for any individual or outside organization to provide gifts to City, all gifts become the property of City. As such, the City Manager or his or her designee will determine the placement or location of the gifts and the level of maintenance and/or operation associated with said gifts.
- I. City shall coordinate its level of involvement or participation in any CCCAF event.
- J. Except as provided herein, City employees shall not perform CCCAF activities on City time or use City resources unless authorized in writing by the City Manager or designee. A City employee who is volunteering for CCCAF is not acting as a representative of City during the course of his or her volunteer activities, and City is not liable for his or her actions.

SECTION 6. REPORTING AND AUDITING.

- A. CCCAF shall provide a written plan of activities (the "Plan") no later than thirty (30) days following the commencement of the fiscal year (July 1). The Plan shall include a general outline of the CCCAF to assist in fundraising to carry out the goals of the Cultural Affairs Work Plan. The Plan shall also outline a per project budget for any planned fundraising activities.
- B. CCCAF shall complete financial reports detailing income from all sources, and expenses, including receipts and documentation of expenditures, in accordance with generally accepted accounting principles. Financial reports are due within six months after the end of each fiscal year.
- C. CCCAF agrees to make available for examination or audit by City, all ledgers, invoices, vouchers, canceled checks or other documents representing CCCAF's financial transactions within 30 days of a written request by City.
- D. CCCAF shall include a copy of its monthly financial report along with its submittal of the minutes of each Board meeting.

SECTION 8. PERFORMANCE REVIEW.

CCCAF's performance during the term of this Agreement may be evaluated on an annual basis, and at the expiration of the Agreement. CCCAF shall cooperate with any and all City requests for information and material for CCCAF's evaluation. If City is not satisfied with the performance of CCCAF, then the City Manager shall meet with CCCAF to develop a plan to remediate any area(s) of concern. If the performance of CCCAF continues to fail to meet the terms, conditions and objectives outlined in this Agreement, then the City Manager may issue a written notice to CCCAF, outlining the requirements to maintain CCCAF's relationship with City and file a report with the City Council. If further action is required to ensure CCCAF's

satisfactory performance of this Agreement, then the matter may be referred to City Council.

SECTION 9. NON-DISCRIMINATION.

In the performance of the activities permitted by this Agreement, CCCAF, and any of its contractors or agents shall not refuse or fail to hire or employ any qualified person, or bar or discharge from employment any person, or discriminate against any person, with respect to his or her compensation, terms, conditions or privileges of employment, based on such person's gender, gender identity, gender expression, sexual orientation, sex, age, physical and/or mental disability, medical condition, genetic information, marital status, race, color, religious creed, ancestry, national origin, or military and/or veteran status.

SECTION 10. INDEPENDENT CONTRACTOR.

CCCAF and its employees (if any), volunteers and agents, are independent contractors and are not agents or employees of City. This Agreement shall not in any way be construed to create a partnership, association, or any kind of joint undertaking or venture between City and CCCAF.

SECTION 11. COMPLIANCE WITH LAWS.

- A. CCCAF shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments, including but not limited to any laws specifically referenced in this Agreement.
- B. CCCAF shall be responsible for payment of all taxes, fees, contributions or charges applicable to the conduct of CCCAF business and activities.
- C. CCCAF shall maintain its status as a nonprofit corporation in the State of California in good standing, at all times during the term of this Agreement.
- D. CCCAF shall maintain its federal tax-exempt status. Within 10 days of suspension, termination or other loss of its tax exempt status under IRS section 501(c)(3), CCCAF shall provide written notice to the City of such loss.

SECTION 12. ASSIGNMENT.

This Agreement shall not be assigned by CCCAF without City's prior written consent. Unless specifically authorized by this Agreement, CCCAF shall not assign the performance of any obligation under this Agreement and may not assign any interest under this Agreement without City's prior written consent.

SECTION 13. HOLD HARMLESS.

To the fullest extent permitted by law, CCCAF shall indemnify, defend (at CCCAF's sole expense, with legal counsel approved by City) and hold harmless the City of Culver City, members of its City Council, its boards and commissions, officers, agents, and employees (hereinafter, "Indemnitees"), from and against all loss, damage, cost, expense, liability, claims, demands, suits, reasonable attorneys' fees and judgments arising out of or in any manner related to this Agreement. This indemnification includes, but is not limited to, tort liability to a third person for bodily injury and property damage.

CCCAF agrees that this obligation to indemnify, defend and hold harmless extends to liability and/or claims arising from Indemnitees' active or passive negligence.

Notwithstanding the foregoing, nothing herein shall be construed to require CCCAF to indemnify an Indemnitee from any claim arising from the sole negligence or willful misconduct of that Indemnitee.

The duty to defend referenced herein is wholly independent from the duty to indemnify, arises upon written notice by City to CCCAF of a claim within the potential scope of this indemnification provision, and exists regardless of any determination of the ultimate liability of CCCAF, City or any Indemnitee..

SECTION 14. TERMINATION.

- A. This Agreement may be terminated by either party upon giving to the other party 90 days written notice of termination.
- B. CCCAF's performance under this Agreement is an integral part of the consideration for City to enter into future agreements. CCCAF's failure to perform, in accordance with Exhibit A, Section 2, under this Agreement shall constitute a material breach for which City, in addition to any other rights or remedies available to City, may immediately terminate this Agreement upon written notice to CCCAF.
- C. Only the City Council may decide on the part of City that this Agreement is to be terminated, and may direct the City Manager to furnish written notice to the CCCAF of such termination.
- D. Only the CCCAF Board of Directors may decide on behalf of CCCAF that this Agreement is to be terminated and may direct the Board President to furnish written notice to City of such termination.

SECTION 15. INSURANCE REQUIREMENTS.

Without limiting its obligations under Section 13 of this Agreement, CCCAF shall submit procure and maintain, at CCCAF's sole cost and expense and for the duration of this Agreement, insurance coverage as set forth in "Insurance Requirements" attached to and incorporated into this Agreement as Exhibit "B." All policies, endorsements, certificates and/or binders shall be subject to approval by the City Manager and City Attorney or their respective authorized designees as to form and content.

SECTION 16. NOTICES.

Any notices or communications shall be sent in writing to the respective parties at the following addresses:

To CCCAF, Inc.:

XXXX, Chairperson
Culver City Cultural Affairs Foundation
Box XXXX
Culver City, CA 90231-XXXX

To City:

John M. Nachbar City
Manager
City of Culver City
9770 Culver Boulevard
Culver City, CA 90232

SECTION 17. MISCELLANEOUS.

- A. Captions and sections of this Agreement are for convenience only and shall not be considered in resolving any questions of interpretation or construction.
- B. This Agreement shall be governed exclusively by its provisions and by the laws of the State of California as the same from time to time exist. In the event that suit shall be brought by either party, the parties agree that venue shall be exclusively vested in the state courts of the County of Los Angeles, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Central District of California, in Los Angeles, California.

- C. If a court of competent jurisdiction rules that any provision of this Agreement is void or unenforceable, the remaining provisions shall not be affected and shall remain in full force and effect.
- D. Whenever in this Agreement words of obligation or duty are used, such words shall have the force and effect of covenants. Any obligation imposed by either party shall include the imposition on such party of the obligation to pay all costs and expenses necessary to perform such obligation.
- E. This Agreement, including the exhibits attached thereto, contains the entire Agreement of the parties and supersedes all prior understandings or representations of the parties, whether written or oral, including, but not limited to the Original MOU. Any subsequent modification of this Agreement must be made in writing and signed by the parties' authorized representatives.

WITNESS THE EXECUTION HEREOF the day and year first hereinabove written.

Date: _____

CULVER CITY CULTURAL AFFAIRS
FOUNDATION, INC.

Chairperson

Date: _____

CITY OF CULVER CITY, CA

John Nachbar, City Manager

ATTESTED TO:

City Clerk

EXHIBIT A
CCCAF SCOPE OF ACTIVITIES

CCCAF agrees to perform the services set forth below, as reflected by the work plan developed in conjunction with the CAC, which may include:

1. Plan and implement fund raising activities to meet the goals and objectives of City to enhance the quantity and quality of the City of Culver City's historic preservation, public art, cultural facilities and programming.
2. Develop and implement fund raising strategies and programs, in conjunction with and cooperation from the Cultural Affairs Commission and City staff, to carry out the City's annual Cultural Affairs Work Plan as created by the Cultural Affairs Commission and City staff and approved by the City Council.
3. Provide expertise to the Cultural Affairs Commission and City staff in developing and funding the elements of the Cultural Affairs Work Plan.
4. Offer expertise to nonprofit cultural affairs organizations in their promotion and fund raising activities for specific events and activities, if requested by the organization and if approved by the CCCAF.
5. Develop, produce and distribute appropriate material to promote CCCAF and its activities.
6. Design and maintain a website and utilize social media to promote CCCAF events and activities.
7. CCCAF shall make a concerted effort to host all CCCAF events and meetings within Culver City and utilize Culver City vendors, whenever possible.
8. CCCAF shall be regularly placed on the agenda of Cultural Affairs Commission meetings for the purpose of making oral and or written reports on a quarterly basis on its events and activities. CCCAF shall also provide a written quarterly report to the Commission and City staff detailing its events, activities and financial status.

EXHIBIT B
INSURANCE REQUIREMENTS

General

CCCAF shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CCCAF, Inc., its agents, representatives, employees or subcontractors.

Policy Requirements

CCCAF shall submit duly executed certificates of insurance for the following:

1. An occurrence based Commercial General Liability ("CGL") policy, at least as broad as ISO Form CG 0001, in the minimum amount of One Million Dollars (\$1,000,000) each occurrence, with not less than Two Million Dollars (\$2,000,000) in annual aggregate coverage.

The CGL Policy shall have all of the following requirements:

- a. The policy shall provide coverage for personal injury, bodily injury, death, accident and property damage and advertising injury, as those terms are understood in the context of a CGL policy. The coverage shall not be excess or contributing with respect to City's self-insurance, commercial liability insurance, or any pooled risk arrangements. The coverage shall contain no special limitations on the scope of protection afforded to City, members of its City Council, its boards and commissions, officers, agents, and employees.
- b. The policy shall provide \$1,000,000 combined single limit coverage for owned, hired and non-owned automobile liability. Any individual driving a personal or rented vehicle while conducting any CCCAF business must provide proof of valid Automobile Liability Insurance upon request by CCCAF or the City.
- c. The policy shall include coverage for liability undertaken by contract covering, to the maximum extent permitted by law, CCCAF's obligation to indemnify the Indemnitees as required under Section 13 of this Agreement.
- d. The policy shall not exclude coverage for Completed Operations, Hazards or Athletic or Sports Participants.
- e. The policy shall provide provisions regarding CCCAF's duties after accident or loss. Any failure to comply with reporting provisions of the policies by CCCAF,

shall not affect coverage provided City, its officers, employees, agents, or contractors.

- f. **The City of Culver City, members of its City Council, its boards and commissions, officers, agents, and employees will be named as additional insureds** in an endorsement to the policy, which shall be provided to the City and approved by the City Attorney.

2. If the activities conducted under this Agreement will have CCCAF employees working within the City limits, CCCAF shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least one million dollars [\$1,000,000] per accident.) CCCAF shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.

3. Directors and Officers Insurance.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by the City Manager or his/her designee. At the option of City, either:

- A. The insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officers, employees, agents and contractors; or
- B. CCCAF shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City's Risk Manager.

Waiver

City may waive one or more of the coverages required by this Agreement. This waiver must be express and in writing, and will only be made upon a showing by CCCAF that its operations in and with respect to City are not such as to impose liability within the scope of that particular coverage.

All Coverages

1. CCCAF shall provide City with at least thirty (30) days' prior written notice of any modification, reduction or cancellation of any of the Policies required by this Agreement, or a minimum of ten (10) days' notice for cancellation due to non-payment.

2. City may increase the scope or dollar amount of coverage required under any of the policies described above, or may require different or additional coverages, upon prior written notice CCCAF.

Acceptability of Insurers

All insurance required by this Agreement shall be issued by companies licensed to do business in the State of California, with a claims paying ability rating of "BBB" or better by S&P (and the equivalent by any other Rating Agency) and a rating of A-:VII or better in the current Best's Insurance Reports.

Verification of Coverage

CCCAF shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Proof of insurance shall be submitted to the City Manager.

Subcontractors

CCCAF shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.