

CONTRACT

FOR SERVICES OVER \$20,000

ANY ALTERATIONS OF CONTRACT LANGUAGE WILL RESULT IN REVOCATION OF CITY ATTORNEY APPROVAL.

This Contract for professional services is entered into by and between Class Acts Columbus, Inc (herein referred to as "Contractor"), and the City of Columbus, Department of Recreation and Parks (herein referred to as "City").

WITNESSETH

WHEREAS, the City has authorized the Director of Recreation and Parks in its behalf to enter into agreement with Contractor to provide professional services to City for the Festivals, and other events, and has appropriated funds to pay the costs thereof.

WHEREAS, this contract is authorized by Ordinance No.0939-2015, passed by Columbus City Council on April 20, 2015; and

NOW, THEREFORE, in consideration of the mutual promises as hereinafter set forth, the parties agree as follows:

ENTIRE AGREEMENT

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof. Understandings, agreements, representations, or warranties not contained in this Contract, or as written amendment hereto, shall not be binding on either party. Except as provided herein, no alteration of any terms, conditions, delivery, price, quality, or specifications of this Contract shall be binding on either party without the written consent of both parties.

1. **Contract Term**

The term of this Contract shall be from July 2015 to until all funds are expended or replacement contract is in place. This Contract shall not automatically renew.

2. **Maximum Obligation**

The maximum amount to be paid under any purchase order associated with this Contract shall not exceed **\$145,000** unless additional funds are appropriated and authorized.

3. **Pricing and Scope of Services**

The Contractor agrees to perform and invoice the Scope of Services as set forth **ON ATTACHED EXHIBIT A***.

*Contract is NOT valid if the Scope of Services is NOT attached.

No other costs, rates, or fees shall be payable to the Contractor for services performed hereunder. The terms and conditions specified in this Contract constitute the entire contract governing the purchase of services by the City from the Contractor, and shall supersede any terms and conditions which may accompany Contractor's invoice/bid/estimate. Any and all verbal representations are superseded by this Contract. The terms of this Contract shall prevail over any conflicting or deficient terms or conditions listed in any attachments from Contractor.

4. **Equal Opportunity Clause**

Contractor agrees to abide by all of the terms, conditions and requirements set forth in Columbus City Code Section 3909.01, Equal Opportunity Clause. Failure or refusal of a Contractor or Subcontractor to comply with the provisions of Article I, Title 39, may result in cancellation of this Contract. (Ordinance 2550-93.)

5. **Taxes**

Federal or State taxes are not to be included on invoices for the described services. Contractor will be provided an exemption certificate, if needed.

6. **City's Contract Administrator/Contract Administration**
Karen Wisner will manage the Contract on behalf of the City and will be the principal point of contact for the City concerning the Contractor's performance under this Contract.
Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall only be effective if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Services as first-class certified mail, postage prepaid and return receipt requested, to the parties at the following addresses: (List names and addresses of City and Contractor contact persons below.)
7. **Contractor as an Independent Contractor**
The Contractor shall be and shall remain an Independent Contractor with respect to all services performed hereunder and he/she/it agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for Social Security, unemployment insurance or old age retirement benefits, pensions or annuities now or hereafter imposed under any state or federal law which are measured by the wages, salaries or other remunerations paid to the Contractor or persons employed by the Contractor for work performed under the terms of this Agreement and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now, or hereafter may be, issued or promulgated under said respective laws.
8. **Applicable Law, Remedies**
This Agreement shall be governed in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and the Contractor arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within the County of Franklin, State of Ohio.
9. **Payment/Invoice Submittal**
Fees shall be paid for services rendered following: (1) the City's receipt of a correct invoice, which designates the specific applicable charges, and (2) issuance of a certified purchase order. Invoices shall be submitted. The City will not be subject to any late payment charges. Rates shall be firm during the term of this Contract. The City will process correctly documented invoices for payment and Contractor should receive payment for such invoice thirty (30) days from receipt by the City.

Invoices: All invoices shall be submitted to: Karen Wisner, 1111 East Broad Street, Suite 101, Columbus, OH 43205.
10. **Modifications**
No modification, amendment, alteration, addition or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by an authorized representative of the City and the Contractor and approved by the appropriate City authorities.
11. **Contract Termination**
If either the City or the Contractor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party shall give the other party written notice of a proposed correction to such failure or violation. The responsible party will correct the violation or failure within thirty (30) calendar days or as otherwise mutually agreed. If the failure or violation is not corrected, this Contract may be terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party. If it is determined for any reason the failure to perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a Termination for Convenience. This section shall not apply to any failure(s) to perform that result from the willful or negligent acts or omissions of the aggrieved party.

When it is in the best interest of the City, the City may terminate this Contract, in whole or in part by providing fourteen (14) calendar days or other appropriate length of time written notice to the Contractor

prior to the effective date of termination. If this Contract is so terminated, the City is liable only for payments required by the terms of this Contract for services received and accepted by the City.

12. **Nonexclusive Remedies**

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under the law.

13. **Survivorship**

All services executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, prices discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Contract, or any extension thereof. Further, the terms, conditions, and warranties contained in this Contract that by their sense in context are intended to survive this completion of the performance, cancellation or termination of this Contract, shall so survive.

14. **Save Harmless**

Contractor shall protect, indemnify and save the City harmless from and against any damage, cost, or liability, including reasonable attorneys' fees resulting from claim, by third parties for any or all injuries to persons or damage to property arising from intentional, willful or negligent acts or omissions of Contractor, its officers, employees, agents, or Subcontractors.

15. **Severability**

If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions for the Contract are declared severable.

16. **Assignment**

This Contract may not be assigned or otherwise transferred to others by the Contractor without the prior written consent of the City.

17. **Authority to Bind**

The signatories to this Contract represent that they have the authority to bind themselves and their respective organizations to this Contract.

18. **Worker's Compensation**

The Contractor shall comply with all Workers' Compensation laws of the State of Ohio. **Proof of coverage shall be attached to this Contract AS EXHIBIT B.**

19. **Insurance/Indemnity**

The Contractor shall, indemnify, protect, defend and hold harmless the City from any claim, loss or damage arising in any way from the Contractor's performance under the terms of this Contract and from any negligent or wrongful act or omission of the Contractor arising therein. Contractor shall carry at least the minimum amounts listed below of Commercial Liability Insurance (Bodily Injury and Property Damage) naming the City as an additional insured. **Contractor must attach a copy of the Certificate of Insurance to this Contract AS EXHIBIT C:**

Bodily Injury Liability:

Each Person \$500,000
Each Accident \$1,000,000

Property Damage Liability:

Each Accident \$500,000
All Accidents \$1,000,000

20. **City Income Taxes**

Contractor hereby further agrees to withhold and pay all city income taxes due or payable under the provisions of Chapter 361, Columbus City Codes, for wages, salaries and commissions paid to its employees and further agrees that any of its subcontractors shall be required to agree to withhold and pay any such city income taxes due under said chapter for services performed under this Contract. If it has been determined by the Columbus Income Tax Division that Contractor owes city income taxes, the Contractor

agrees that the City may withhold the amount due to the City from any amount due to the Contractor for services performed under this Contract notwithstanding paragraph 9 hereinabove. If it has been determined by the Columbus Income Tax Division that any subcontractor(s) owes city income taxes, the Contractor agrees that the City may withhold up to 2.5% from any amount due for the invoice submitted for said subcontractor.

21. Campaign Contributions

Contractor hereby certifies the following: that it is familiar with Ohio Revised Code ("O.R.C.") Section 3517.13; that all applicable parties listed in Division (I)(3) or (J)(3) of O.R.C. Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of that Section; that it is eligible for this contract under the law and will remain in compliance with O.R.C. Section 3517.13 for the duration of this contract and for one year thereafter.

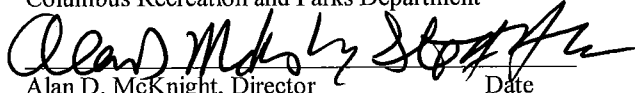
IN WITNESS WHEREOF, the parties have executed this Contract as of the day and year written below.

EXHIBITS A, B AND C MUST BE ATTACHED HERETO.

ANY ALTERATIONS OF CONTRACT LANGUAGE WILL RESULT IN REVOCATION OF CITY ATTORNEY APPROVAL.

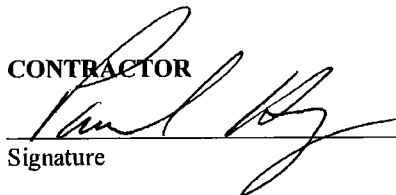
AGREED:

Columbus Recreation and Parks Department


Alan D. McKnight, Director _____
Date
5-20-15

EBOCO Approval _____

CONTRACTOR



Signature _____ Date

Approved As To Form:

Paul Hoy, President
Printed Name and Title
Federal ID Number: 31-1340678 _____

City Attorney _____ Date

EXHIBIT A SCOPE OF SERVICES

1. Contractor/Obligor agrees to act as a fiscal agent, pursuant to Columbus City Code Section 321.11, and to provide professional services to the City as production assistant for the 2015 Jazz & Rib Fest and other events as needed.

Pursuant to the terms of the attached Agreement, the Obligor, as Trustee of such funds on the City's behalf, shall collect Festival revenues including, without limitation, beverage sales proceeds, vendor fees and deposits all as authorized by the City, and shall pay expenses from invoices from said revenues collected as first authorized by the City, which expenses are limited to operations, advertising, marketing and production services, beverage service personnel and related beverage product expenses, cash control staff and other contracted personnel, deposit returns and other expenses as authorized and approved by the City. After final payment of all expenses which have been authorized and approved by the City, Obligor shall pay 100% of the remaining balance of the Festival revenues collected by Obligor to the Columbus City Treasurer within 5 business days of request by the City.

2. Contractor agrees to assume all responsibilities surrounding the event talent. The scope of work to be performed by Contractor will include the following:

- Collaborate with the City (Festival Director) to determine a budget and set "Talent Objectives" including but not limited to:
 - Artist fees including per diems, travel, hospitality, accommodations
 - Genre guidelines
 - Presentation guidelines
 - Performance lengths
 - Production needs
 - Completion deadlines
- Select and hire all event talent
 - Develop schedule
 - Submit offers and negotiate fees
 - Issue, modify and execute contracts
- Pay required artist deposits
- Accumulate and distribute promotional materials to festival marketing team
- Hire/secure required talent-related support services including but not limited to*:
 - Backline
 - Ground Transportation
 - Hospitality
 - Stagehands
 - Power generation
- Advance performance details with all artists/management
- Coordinate artist local ground transportation as needed*
- Competitively bid and hire production staff including but not limited to:
 - Sound system for all performance locations*
 - Lighting for all performance locations*
 - Staging as needed to supplement city owned staging*
- Collect and disseminate artist rooming lists to host hotel
- Pay required balance payments and per diems
- Hire stage managers for all performance sites*

3. The Obligor shall, on behalf of the City, execute contracts for performing artists, pay contract deposits and make final payments to the artists in accordance with the terms of the Agreement, but in no event shall the City be required to pay more than the amount listed in the Agreement. The Obligor shall also make payments for related expenses including, but not limited to: artists' travel and transportation expenses, per diem, and miscellaneous expenditures as may be authorized and approved by the City.
4. The Contractor will pay 100% of remaining balance of the Festivals' revenue that was collected by the Contractor to Columbus City Treasurer, OCA No. **223051**, OL3 No. **0833** upon request by the City.
5. The City agrees to pay the Contractor a total amount not to exceed **one-hundred forty-five thousand dollars (\$145,000.00)**, for the above mentioned services and expenses, payable as follows:
 - a. **Seventy one thousand dollars (\$71,000)** from Department No. **51-01**, Fund No. **223**, OCA No. **223051**, OL3 No. **3336**, Commodity Code No. **962-05**.
 - b. **Seventy four thousand dollars (\$74,000)** from Department No. **51-01**, Fund No. **285**, OCA No. **516567**, OL3 No. **3336**, Commodity Code No. **962-05**.
6. The Contractor shall be reimbursed in the amount equal to payments made for contracts and invoices for all services authorized by the City for Jazz & Rib Fest and other events as needed. Payment will be made to the Contractor after submission of itemized invoices to the City, with receipts attached, as noted herein. All expenditures paid for by the Contractor on behalf of the City must have prior approval. All authorized miscellaneous expenses will be reimbursed to the Contractor at an amount equal to the actual expense. A flat fee of \$7,500.00 and an amount equal to ten percent (10%) of artists' contract fees will be itemized in the above-mentioned invoices and paid to the Contractor for the professional services. Items in Section 2 marked with "*" will not be subject to 10% fee and will be paid by the City or via Fiscal Agent funds upon prior written authorization and approval by the City.
7. The Contractor will provide a copy of all Festival financial records to the City. The Contractor will obtain a bond, as approved by the City Auditor, in the amount of \$100,000 including, but not limited to, protecting the City against non-performance of this Agreement... The bond will be attached hereto as Exhibit D.
8. All rights and responsibilities of the Contractor under this contract are non-transferable without the express written approval of the City.
9. To the extent permitted by the Constitution and Laws of the State of Ohio and the Charter and Ordinances of the City of Columbus, the City of Columbus agrees to assume liability for claims, losses or damages asserted against the Contractor, if it is determined subsequent to the execution of this agreement that such claims, losses or damages are the result of the negligent act or omission of the City of Columbus or its officials, employees or other representatives, and such negligent act or omission is not otherwise subject to immunity pursuant to Ohio Revised Code Chapter 2744 or the common or other statutory laws of the State of Ohio.