

## MUNICIPAL SERVICES AGREEMENT

THIS MUNICIPAL SERVICES AGREEMENT ("Agreement") is made and entered into this 26<sup>th</sup> day of July, 2019, by and between the CITY OF COCOA, FLORIDA, a Florida municipal corporation ("City"), and GREATER COCOA COMMUNITY PARTNERSHIP, INC., a Florida Not For Profit Corporation, d/b/a "Cocoa Main Street," ("Greater Cocoa Community Partnership, Inc.,") located at 434 Delannoy Ave, Suite #100, Cocoa, FL 32922 and THE HISTORIC COCOA VILLAGE ASSOCIATION, INC., a Florida Not For Profit Corporation ("The Historic Cocoa Village Association, Inc.") located at 600 Florida Ave., Suite #104, Cocoa Village, FL 32922 (the Greater Cocoa Community Partnership, Inc. and The Historic Cocoa Village Association, Inc., collectively as "Service Provider") (all three parties collectively the "Parties").

### RECITALS:

**WHEREAS**, the Greater Cocoa Community Partnership, Inc., is a bona-fide nonprofit 501(c)(3) corporation, the purpose of which is to enhance the community identity and heritage, foster a center of activity, and ensure economic stability for the heart of Cocoa through concentrated efforts of design, promotion, organization and economic revitalization;

**WHEREAS**, The Historic Cocoa Village Association, Inc., is a bona-fide nonprofit 501(c)(6) corporation, whose mandate is to help promote and encourage growth of the Historic Cocoa Village community and the City of Cocoa in general by organizing and hosting community events and activities in the village;

**WHEREAS**, the City is the sole owner of the Porcher House, and leases portions of same to tenants for different business purposes;

**WHEREAS**, the Greater Cocoa Community Partnership, Inc., d/b/a/ "Cocoa Main Street," has been a tenant of the Porcher House for the past several years and desires to continue to lease space at the Porcher House for the purpose of conducting its nonprofit association for community and special events;

**WHEREAS**, the Greater Cocoa Community Partnership, Inc., and The Historic Cocoa Village Association, Inc., have advised the City of the intent of the two corporations, which share similar purposes, to form one nonprofit association d/b/a "Historic Cocoa Village Main Street;" however, at the time of entering this Agreement, the relevant documents combining the two corporations have not yet been approved by the Florida Department of State Division of Corporations;

**WHEREAS**, the Greater Cocoa Community Partnership, Inc., and The Historic Cocoa Village Association, Inc., desire to lease office space together at the Porcher House as provided for herein for the purpose of conducting their nonprofit associations for community and special events;

**WHEREAS**, given the stated intent of Greater Cocoa Community Partnership, Inc., and The Historic Cocoa Village Association, Inc., to form one nonprofit association in the near future, both such corporations desire to be parties to this Agreement and for this Agreement to be assigned to their single nonprofit association once same receives approval from the Florida Department of State Division of Corporations and the corporations provide such new nonprofit association information to the City as

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provided for herein;

**WHEREAS**, the Service Provider requested that the City provide office space as identified herein for lease at the Porcher House a lease rate of \$1.00 per year in exchange for the Municipal Services to be provided as detailed herein;

**WHEREAS**, the City Council has determined that the Municipal Services to be provided by Service Provider serve a municipal purpose and benefit the public health, safety, and welfare of the citizens of the City of Cocoa, and, in furtherance of this benefit, authorize said annual lease rate from the Service Provider, though monthly Common Area and Maintenance charges shall continue to be charged throughout the Agreement term, in exchange for the Municipal Services identified hereunder;

**WHEREAS**, the Parties desire to enter this Agreement defining their obligations relating to such Municipal Services, as well as their rights, duties, and liabilities relating to the rental of space at the Porcher House.

**NOW THEREFORE**, in consideration of the mutual promises and covenants herein, and other good and valuable consideration which the Parties agree has been exchanged and received the Parties agree as follows:

**Article 1 – Recitals.** The foregoing recitals are deemed to be true and accurate and are fully incorporated herein by this reference.

**Article 2 – Definitions.** For purposes of this Agreement, the following terms and words shall have the meaning ascribed to them, unless the context clearly indicates otherwise:

“Agreement” or “Contract” shall be used interchangeably and shall refer to this Agreement, as may be amended from time to time by mutual written agreement by the Parties, which shall constitute authorization for the Service Provider to provide the Municipal Services stated herein.

“City” is the City of Cocoa, Florida, a Florida municipal corporation.

“Effective Date” shall be August 1, 2019. The Agreement shall not be effective against any party until said date.

“Greater Cocoa Community Partnership, Inc.” is the Greater Cocoa Community Partnership, Inc., a Florida nonprofit corporation and bona fide 501(c)(3) corporation, d/b/a/ “Cocoa Main Street.”

“Historic Cocoa Village Association, Inc.” is the Historic Cocoa Village Association, Inc., a Florida nonprofit corporation and bona fide 501(c)(6) corporation.

“Municipal Services” or “Work” shall be used interchangeably and shall refer to the performance of the services outlined in Article 5 of this Agreement.

“Premises” shall mean any office rental space within the Porcher House provided by the City and occupied by the Service Provider in accordance with this Agreement.

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"Public Record" is as described in Section 119.011(12), *Florida Statutes*.

"Rent" or "Rental Amount" or "Nominal Rental Amount" shall mean the monies paid to the City by the Service Provider in accordance with Article 8 of this Agreement.

"Service Provider" is both the Greater Cocoa Community Partnership, Inc., a Florida nonprofit corporation, d/b/a "Cocoa Main Street," and the Historic Cocoa Village Association, Inc.

**Article 3 – Term of Agreement.** The Term of this Agreement shall commence on the Effective Date and shall continue in force and effect through July 31, 2021. The City shall have the option to renew this Agreement for up to one (1) additional one (1)-year term upon mutual agreement by the Parties, which shall be in writing and executed by both Parties. The City Manager shall act for the City hereunder.

**Article 4 – Lease of Premises.** In exchange for the Municipal Services provided to the City by the Service Provider, as further described in Article 5, the City agrees to lease the Premises to Service Provider in accordance with the lease provisions found elsewhere herein.

**Article 5 – Engagement; Municipal Services.** The City hereby engages the Service Provider and the Service Provider agrees to perform the Municipal Services more particularly described on the Scope of Work attached as **Exhibit "A"** and incorporated herein. Specifically, the Service Provider shall supply any and all personnel necessary to provide the Municipal Services identified in the Scope of Work unless otherwise directed by the City.

Unless otherwise specifically agreed to in writing by the City, there shall be no additional consideration for the performance of the Municipal Services by the Service Provider aside from the nominal Rental Amount charged to the Service Provider, which nominal amount is authorized by the City in exchange for the Municipal Services provided in accordance with this Agreement.

**Section 5.1 – Municipal Services a Material Term and Condition of Agreement.** The Municipal Services constitute a material term and condition of the Agreement and the failure of the Service Provider to perform the Municipal Services, as determined by the City, constitutes a material breach of this Agreement and a cause for termination of the Agreement and surrender of the leased Premises as further provided for herein.

**Section 5.2 – Submittal of Progress Reports.** At the request of the City, Service Provider shall submit to the City a written progress report as to the status of all Municipal Services set forth in this Agreement. If the detail is not sufficient in the City Manager's reasonable discretion to permit the City to determine the Municipal Services performed or the manner in which it is being performed, the City may seek more detail from the Service Provider.

**Article 6 – Leased Premises; Relocation of the Service Provider.** The City does hereby lease, demise and let unto the Service Provider, and the Service Provider does hereby rent, lease, hire and take from the City, to have and to hold during the Term, subject to the terms and conditions of this Agreement, certain Premises within the Porcher House.

Such leased Premises shall consist of that portion of the property located at 434 Delannoy Avenue, Cocoa, Florida 32922, Offices #203 and #204. Office #203 is calculated at approximately 228 square feet, and Office #204 is calculated at approximately 276 square feet, such number being used to determine the common area maintenance charge.

The Parties agree that Offices #203 and 204 are considered to be premium office space as within the Porcher House. The Parties agree that, should another suitable office space (as determined by the City) within the Porcher House become available and the City have the availability to lease Offices #203 and 204 at the full lease rate, that City hereby reserves the right to, with proper notice, relocate the Service Provider to other office space within the Porcher House.

#### **Article 7 – Use of Leased Premises.**

**Section 7.1 – Use.** The Premises shall be used and occupied by Service Provider in the operation of its lawful trade or business as presently carried on by Service Provider, limited to general office activities, more particularly described as non-profit association(s), in a safe, careful and proper manner, so as not to contravene any present or future governmental laws, rules, regulations, policies, procedures or orders. If improvements are necessary to comply with any of the foregoing or with the requirements of insurance carriers, due solely to Service Provider's use of the Premises, Service Provider shall be required to seek written approval from City prior to making the improvements and if approved, Service Provider shall pay the entire cost thereof.

**Section 7.2 – Historic Preservation.** Service Provider shall not use the Premises in any manner that disrupts the historic nature of the Porcher House through its use or alterations. This Agreement shall be subject to any historic preservation regulations and other requirements that are applicable to the Porcher House.

**Section 7.3 – Nuisance.** Service Provider shall not cause or maintain any nuisance in or about the Premises and the property thereon, and shall keep the Premises free of debris, rodents, vermin and anything of a dangerous, noxious, or offensive nature or which could create a fire hazard (through undue load on electrical circuits or otherwise) or undue vibration, heat or noise.

**Section 7.4 – Unlawful or Dangerous Activity.** Service Provider shall neither use nor occupy the Premises or any part of the Premises for any unlawful, disreputable, or ultrahazardous business purpose nor operate or conduct Service Provider's business in a manner constituting a nuisance of any kind. Service Provider shall immediately, on discovery of any unlawful, disreputable, or ultrahazardous use, take action to halt such activity.

**Section 7.5 – Common Areas.** Service Provider shall have use of common areas including parking areas, ways, exits, entrances, roadways, and rest rooms for the general use, in common, of Service Providers, their officers, agents, employees, and customers. However, the common area use cannot interfere with any of the City of Cocoa's operations and does not include any area on the first floor of the building.



## **Article 8 – Rent and Common Area and Maintenance Charges.**

**Section 8.1 – Annual Rental Amount.** The City agrees to accept One Dollar and 00/100 (\$1.00) per year from the Service Provider, due on or before August 1, 2019 and August 1, 2020, respectively, as a nominal annual Rental Amount for the rental of the Premises.

**Section 8.2 – Monthly Common Area and Maintenance (CAM) charges.** Common Area and Maintenance (CAM) charges, shall be paid on a monthly basis, on or before the 1<sup>st</sup> of each month. Payments made after the 5<sup>th</sup> day of the month shall be subject to a ten percent (10%) late fee. Monthly CAM charges due shall be in equal installments of Thirty-Nine Dollars and 90/100 (\$39.90) for each month of this Agreement. Such monthly CAM charges due represent the collective amount due for both offices each month, which, separately are Twenty-One Dollars and 85/100 (\$21.85) for Office #203 and Eighteen Dollars and 05/100 (\$18.05) for Office #204. Common area costs shall mean all sums expended by the City for the maintenance and operation of the common areas and property management fees incurred by the City and all increases in any such costs and expenses. Costs for maintenance, management, and operation of the common areas shall include, but not be limited to, the following: cleaning, sweeping, resurfacing and restripping; cleaning and/or treating exterior brick surfaces; cleaning exterior window surfaces; repainting; repairs to buildings and improvements; relandscaping; supplying directional signs and other markers; car stops; lighting, water, and other utilities; and other costs necessary in the City's judgment for the maintenance and operation of the common areas, and any other charges, costs, and expenses that arise during the Term of this Agreement. This amount described above is subject to change based on circumstances unforeseen at the City's discretion.

**Section 8.3 – Sales tax.** The amounts due as provided for above do not include sales tax, inasmuch as the Service Provider, at the time of executing this Agreement, is a non-profit, tax-exempt corporation and thus provides that such sales tax is inapplicable. Should the Service Provider lose its status as a non-profit, tax-exempt corporation, at any time during the Term of this Agreement, applicable sales tax shall be calculated and imposed as of the date which the Service Provider no longer enjoys such status. The Service Provider shall give notice to the City of any change in its non-profit, tax-exempt status within five (5) days thereof, for the purpose of calculation, imposition and payment of applicable sales tax.

**Section 8.4 – Payments to the City – General.** All amounts payable by the Service Provider to the City under this Agreement, whether Rent, CAM charges, Security Deposit or any other payment, shall be payable when due, without deduction or set-off, in U.S. Dollars made payable to The City of Cocoa, Attention: Finance, at the address of, 65 Stone Street, Cocoa, Florida 32922, or to such other person or at such other address as City may from time to time designate in writing.

**Section 8.5 – Late Fee and Costs.** The Service Provider shall pay the City a late charge equal to ten percent (10%) of any payment amount if payment is not tendered within five (5) days of its due date. Such payment shall be submitted as described in Section 8.4 above. The Service Provider shall indemnify the City against all costs and charges (including legal fees) lawfully and reasonably incurred in enforcing payment thereof, and in obtaining possession of the Premises after default of the Service Provider or upon expiration or earlier termination of the Term of this

Agreement, or in enforcing any covenant, proviso or agreement of Service Provider herein contained.

**Article 9 – Use of City’s Office Equipment.** The Service Provider shall have no right to share in the use of City's office equipment.

**Article 10 – Property Management.** The Service Provider acknowledges that the City may retain a management company (“Management Company”) to manage and operate the property described in this Agreement. The Service Provider hereby agrees not to interfere with the City or the Management Company's duties and responsibilities under the Management Agreement. This Agreement shall be subject to any applicable provision in any future Management Agreement and any provision of this Agreement that conflicts with the Management Agreement shall be null and void and the applicable provision of the Management Agreement shall be substituted for the conflicting Agreement provision as if that provision was originally made a part of this Agreement.

**Article 11 – Maintenance, Repair, Alterations and Renovations by the City.**

**Section 11.1 – Maintenance, Repair and Replacement.** The City shall be responsible for and shall expeditiously maintain and repair the foundations, structures and roofs of the Premises in their condition as they exist at the execution of this Agreement, less reasonable wear and tear over the Term, provided that:

- A. If all or part of the Premises is destroyed, damaged or impaired, the City shall have a reasonable time in which to complete the necessary repair or replacement;
- B. The City shall use reasonable diligence in carrying out its obligations under this Article 11, but shall not be liable under any circumstances for any consequential damage to any person or property for any failure to do so; and
- C. Nothing contained herein shall be in derogation of the provisions of this Agreement regarding Destruction of the Premises.
- D. Under no circumstances shall the City be liable to the Service Provider for any damage suffered by the Service Provider, its employees, agents, customers or invitees as a result of moisture or water inside the Premises whether caused by natural disasters and other acts of God, leaks in the structure or in the plumbing.

**Section 11.2 – Alterations by the City.** City may from time to time make repairs, replacements, changes or additions to the structure, systems, facilities and equipment in the Premises where necessary to serve the Premises; provided, however, that in so doing the City shall not disturb or interfere with the Service Provider's use of the Premises and operation of its business any more than is reasonably necessary under the circumstances and shall repair any damage to the Premises caused thereby.

**Section 11.3 – Renovation by the City.** In the event the City determines it is necessary to renovate the Premises of the Service Provider, and said renovation may significantly impact the Service

Provider's use of the Premises, the City may do so upon not less than seven (7) calendar days notice. If deemed necessary by the City, the Service Provider shall relocate promptly upon the request of City, at the Service Provider's expense. During any period of City renovation where the Service Provider was required to relocate, there will be a rent abatement. Upon completion of renovation, the Service Provider will be required to return to the Premises and adhere to all terms of this Agreement.

**Section 11.4 – Access by City.** The Service Provider shall permit the City or the City's agents to enter the Premises at all reasonable hours, including outside normal business hours, and, during normal business hours where such will not unreasonably disturb or interfere with the Service Provider's use of the Premises and operation of its business, to examine or inspect the Premises, to provide services, to make repairs, replacements, changes or alterations as set out in this Agreement and/or that the Service Provider may neglect or refuse to make in accordance with the provisions of this Agreement, and to take such steps as the City may deem necessary for the safety, improvement or preservation of the Premises or the building. The City shall, whenever possible, consult with or give reasonable notice to the Service Provider prior to such entry, but no such entry shall constitute an eviction or entitle the Service Provider to any abatement of Rent.

## **Article 12 – Maintenance, Repair, Alterations and Improvements by the Service Provider.**

**Section 12.1 – Condition of Premises.** Except to the extent that the City is specifically responsible under Article 11 of this Agreement, the Service Provider shall maintain the Premises and all improvements therein in their condition, as they exist at the execution of this Agreement, less reasonable wear and tear, at the Service Provider's sole cost and expense.

**Section 12.2 – Alterations by Service Provider.** The Service Provider may from time to time at the Service Provider's own expense make changes, additions and improvements in the Premises to better adapt the same to its business, provided that any such change, addition or improvement shall:

- A. Be performed in a satisfactory manner and shall not weaken or impair the structural strength, or lessen the value, of the building or Premises, or change the purposes for which the building, or any part of the building, may be used; and
- B. Not compromise the historic nature of the Porcher House, as determined by the City; and
- C. Comply with the requirements of any governmental authority having jurisdiction; and
- D. Equal or exceed the then current standard for the building; and
- E. Require the prior written consent of City.

Should the Service Provider make changes, additions and improvements without complying with the provisions of this Section, the Service Provider shall be fully liable to the City to restore the

Premises to the same or better condition that existed prior to the unauthorized changes, additions and improvements. If the Service Provider fails to make the restorations within the time prescribed by the City, the City may, at its discretion, immediately terminate this Agreement, without penalty, and restore the Premises at the Service Provider's sole expense.

**Section 12.3 – Trade Fixtures and Personal Property.** The Service Provider may install in the Premises its usual trade fixtures and personal property in a proper manner, provided that no such installation shall interfere with or damage the mechanical or electrical systems or the structure of the building. If the Service Provider is not then in default hereunder, trade fixtures and personal property installed in the Premises by the Service Provider may be removed from the Premises:

- A. From time to time in the ordinary course of the Service Provider's business or in the course of reconstruction, renovation, or alteration of the Premises by the Service Provider; and
- B. During a reasonable period prior to the expiration of the Term;

provided that the Service Provider promptly repairs at its own expense any damage to the Premises or building resulting from such installation and removal.

### **Article 13 – Taxes.**

**Section 13.1 – Service Provider's Taxes.** The Service Provider shall pay on or before the last day on which payment may be made without penalty or interest, all applicable taxes, assessments, or other governmental charges that shall or may during the Agreement Term be imposed on, or arise in connection with the use of, the Premises or any part of the Premises including, but not limited to:

- A. Florida state sales tax, if applicable, and all other applicable taxes, other than income taxes and taxes of a similar nature, due on rentals, including city, state, county and federal taxes that may be in effect from time to time; and
- B. Operations at, occupancy of, or conduct of business in or from the Premises by or with the permission of the Service Provider; and
- C. Fixtures or personal property in the Premises which do not belong to the City; and
- D. Rent paid or payable by the Service Provider to the City for the Premises or for the use and occupancy of all or any part thereof, specifically including, but not limited to, applicable sales and /or use taxes imposed by any governmental authority having jurisdiction; and
- E. It is the intention of the Parties that the rent specified in this Agreement is net rental, and the City shall receive such rent free from all taxes that are made payable by the Service Provider.

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**Section 13.2 – Notice of Payment of Taxes.** The Service Provider shall, within seven (7) calendar days after the time provided for the payment of any applicable tax or other governmental charge by the Service Provider, produce and exhibit to the City satisfactory evidence of the payment.

**Article 14 – Utilities.** The City will be responsible for all electrical, garbage, water and sewer charges, however, will not be responsible or liable to the Service Provider for disruptions in service due to no fault of the City. All applications and connections for other necessary utility services on the Premises, such as telephone service, shall be made in the name of the Service Provider only, with prior written consent of the City. The Service Provider shall be solely liable for utility charges, excluding electric, garbage, water and sewer, as they become due.

**Article 15 – Insurance.**

**Section 15.1 – Insurance Requirements of the Service Provider relating to the Leased Premises.** During the Term, the Service Provider shall maintain at its own expense:

- A. Flood insurance, fire insurance with extended coverage and water damage insurance in amounts sufficient to fully cover Service Provider alterations and all property in the Premises which is not owned by City; and
- B. Commercial General Liability or Businessowners' Liability insurance against claims for death, personal injury and property damage in or about the Premises, in amounts which are from time to time acceptable to a prudent tenant in the community in which the Premises is located, but not less than One Million Dollars (\$1,000,000.00) combined single limit, in respect of each occurrence; and

All policies for insurance required pursuant to this Article 15 shall name the City and the Service Provider as the insureds as their respective interests may appear, shall contain standard mortgagee clauses in favor of the holders of any mortgages on the City's property, shall be in a form and with an insurer reasonably acceptable to the City, shall require at least fifteen (15) days written notice to the City of termination or material alteration during the Term, and shall waive, to the extent available, any right of subrogation against the City. If requested by the City, the Service Provider shall from time to time promptly deliver to the City certified copies or other evidence of such policies, and evidence satisfactory to the City that all premiums thereon have been paid and the policies are in full force and effect. The insurance requirements set forth herein shall not relieve or limit the liability of the Service Provider. The City does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect the Service Provider's interest or liabilities, but are merely minimums.

**Section 15.2 – Insurance Requirements of the Service Provider Relating to the Municipal Services.** During the Term of this Agreement, Service Provider shall also maintain, at its own expense, the following insurance coverage:

- A. *Worker's compensation insurance* in accordance with the applicable provisions of Florida law.

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- B. *Professional liability insurance* for all corporate officers and directors of Service Provider with a combined single limit of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate.
- C. *Commercial general liability insurance* with a combined single limit of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate.

All policies for insurance required herein shall name the City and the Service Provider as the insureds as their respective interests may appear, shall be in a form and with an insurer reasonably acceptable to the City, shall require at least fifteen (15) days written notice to the City of termination or material alteration during the Term, and shall waive, to the extent available, any right of subrogation against the City. The Service Provider shall provide a copy of all insurance certificates to the City. Should the Service Provider fail to provide the insurance certificates or fails to obtain coverage in the aforementioned amounts, the City shall have the right to terminate this Agreement if the Service Provider unreasonably delays compliance. If requested by the City, the Service Provider shall from time to time promptly deliver to the City certified copies or other evidence of such policies, and evidence satisfactory to the City that all premiums thereon have been paid and the policies are in full force and effect. The insurance requirements set forth herein shall not relieve or limit the liability of the Service Provider. The City does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect the Service Provider's interest or liabilities, but are merely minimums.

#### **Article 16 – Indemnification and Hold Harmless.**

**Section 16.1 – Indemnification and Hold Harmless Relating to Leased Premises.** The Service Provider shall hold harmless and indemnify the City against any and all expenses, liabilities, and claims of every kind, including reasonable attorneys' fees of attorneys selected by the City, and related expenses through all appellate proceedings, by or on behalf of any person or entity arising out of either: (1) a failure by the Service Provider to perform any of the terms or conditions of this Agreement; (2) any injury or damage happening on or about the Premises; (3) failure to comply with any law of any governmental authority; or (4) any mechanic's lien or security interest filed against the Premises or equipment, materials, or alterations of buildings or improvements on the Premises.

The Service Provider recognizes the broad nature of this indemnification and hold harmless clause, as well as the provision of a legal defense to the City when necessary, and voluntarily makes this covenant and expressly acknowledges the receipt of such good and valuable consideration provided by the City in support of these indemnification, legal defense and hold harmless contractual obligations in accordance with the laws of the State of Florida. This Section shall survive the termination of this Agreement. Compliance with any insurance requirements required elsewhere within this Agreement shall not relieve the Service Provider of its liability and obligation to defend, hold harmless and indemnify the City as set forth in this Section of the Agreement. Nothing herein shall be construed to extend the City's liability beyond that provided in Section 768.28, Florida Statutes.

**Section 16.2 – Indemnification and Hold Harmless Relating to the Municipal Services.** For all Municipal Services and Work performed pursuant to this Agreement, the Service Provider shall indemnify and hold harmless the City, its employees, attorneys and officers, from and against all claims, losses, damages, personal injuries (including but not limited to death), or liability (including reasonable attorney's fees), directly or indirectly arising from, or out of the following: (a) the acts, errors, omissions, intentional or otherwise, arising out of or resulting from Service Provider's and its employees, partners, contractors, volunteers, and agents performance of the Municipal Services and Work being performed under this Agreement; (b) Service Provider's, and its employees, partners, contractors, volunteers, and agents failure to comply with the provisions of any federal, state, or local laws, ordinance, or regulations applicable to Service Provider and its employees, partners, contractors, volunteers, and agents performance under this Agreement; and (c) any fraud and misrepresentation conducted by Service Provider and its employees, partners, contractors, volunteers, and agents. Service Provider shall not indemnify City against the sole negligence, gross negligence or willful misconduct of City or its employees or agents.

Nothing in this Agreement is intended to serve as a waiver of sovereign immunity by the City. Nothing in this Agreement shall be construed as consent by the City to be sued by third parties in any matter arising out of this Agreement or any other contract. The indemnification provided above shall obligate the Service Provider to defend at its own expense or to provide for such defense, at the option of the City, of any and all claims of liability and all suits and actions of every name and description that may be brought against the City or its employees and officers which may result from the Municipal Services and Work performed under this Agreement whether the Municipal Services and Work are performed by the Service Provider, its employees, contractors, partners, volunteers, and agents or anyone directly or indirectly employed by the Service Provider. In all events the City shall be permitted to choose legal counsel of its sole choice, the fees for which shall be reasonable and subject to and included with the indemnification provided herein. This Section shall survive the termination of this Agreement.

**Article 17 – Transfers by the City.** Nothing in this Agreement shall restrict the right of the City to sell, convey, assign, mortgage or otherwise deal with the City's property or the right of the City to assign its interest in this Agreement subject only to the rights of the Service Provider under this Agreement.

**Article 18 – Default or Breach.** Each of the following events shall constitute a default or breach of this Agreement by the Service Provider:

- A. If the Service Provider fails, as determined by the City, to perform the Municipal Services as described in Article 5.
- B. If the Service Provider, or any successor or assignee of the Service Provider while in possession, shall file a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall voluntarily take advantage of any such act by answer or otherwise, or shall make an assignment for the benefit of creditors.
- C. If the Service Provider shall fail to pay City any rent (inclusive of CAM charges) or additional rent when the rent shall become due and shall not make the payment within five (5) calendar days of its due date.

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- D. If the Service Provider shall fail to perform or comply with any of the conditions of this Agreement and if the nonperformance shall continue for a period of seven (7) calendar days after notice of nonperformance given by the City to the Service Provider or, if the performance cannot be reasonably had within the seven (7) calendar day period, Service Provider shall not in good faith have commenced performance within the seven (7) calendar day period and shall not diligently proceed to completion of performance.
- E. If the Service Provider shall vacate or abandon the Premises.
- F. If this Agreement or the estate of Service Provider under this Agreement shall be transferred to or shall pass to or devolve on any other person or party, except in the manner permitted in this Agreement.
- G. If the Service Provider fails to take possession of the Premises on the term commencement date, or within seven (7) calendar days after notice that the Premises are available for occupancy, if the term commencement date is not fixed in this Agreement or shall be deferred as provided in Agreement.

**Article 19 – Effect of Service Provider Default or Breach.** In the event of any default or breach under this Agreement, including but not limited to the events as set forth in Article 18, the rights of the City shall be as follows:

- A. The City shall have the right to cancel and terminate this Agreement, as well as all of the right, title, and interest of Service Provider under this Agreement, by giving to the Service Provider not less than seven (7) calendar days' notice of the cancellation and termination. On expiration of the time fixed in the notice, this Agreement and the right, title, and interest of the Service Provider under this Agreement, shall terminate in the same manner and with the same force and effect, except as to the Service Provider's liability, as if the date fixed in the notice of cancellation and termination were the end of the term originally set forth in this Agreement.
- B. The City may elect, but shall not be obligated, to make any payment required of Service Provider in this Agreement or comply with any agreement, term, or condition required by this Agreement to be performed by Service Provider. The City shall have the right to enter the Premises for the purpose of correcting or remedying any such default and to remain until the default has been corrected or remedied, but any expenditure for the correction by the City shall not be deemed to waive or release the default of the Service Provider or the right of City to take any action as may be otherwise permissible under this Agreement in the case of any default, including holding the Service Provider responsible for any City expenditure.
- C. The City may reenter the Premises immediately and remove the property and personnel of Service Provider, and store the property in a public warehouse or at a place selected by City, at the expense of Service Provider. After reentry City may terminate the Agreement on giving seven (7) calendar days' written notice of termination to Service Provider.

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Without the notice, reentry will not terminate this Agreement. On termination, City may recover from Service Provider all damages proximately resulting from the breach, including the cost of recovering the Premises and the value of the balance of this Agreement over the reasonable rental value of the Premises for the remainder of the Agreement term, which sum shall be immediately due City from Service Provider.

- D. After reentry, City may relet the Premises or any part of the Premises for any term without terminating this Agreement, at the rent and on the terms as City may choose. City may make alterations and repairs to the Premises. The duties and liabilities of the Parties if the Premises are relet as provided in this section shall be as follows:
- i. In addition to the Service Provider's liability to the City for breach of the Agreement, the Service Provider shall be liable for all expenses of the reletting, for the alterations and repairs made, and for the difference between the rent received by City under the new Agreement and the rent installments that are due for the same period under this Agreement.
  - ii. The City shall have the right, but shall not be required, to apply the rent received from reletting the Premises to: (1) reduce the indebtedness of the Service Provider to the City under this Agreement, not including indebtedness for rent; (2) expenses of the reletting and alterations and repairs made; (3) rent due under this Agreement; or (4) to payment of future rent under this Agreement as it becomes due.
  - iii. If the new tenant does not pay a rent installment promptly to City, and the rent installment has been credited in advance of payment to the indebtedness of the Service Provider other than rent, or if rentals from the new tenant have been otherwise applied by City as provided for in this section and during any rent installment period are less than the rent payable for the corresponding installment period under this Agreement, the Service Provider shall pay City the deficiency, separately for each rent installment deficiency period, and before the end of that period. The City may at any time after a reletting terminate this Agreement for the breach on which the City had based the reentry and subsequently relet the Premises.
  - iv. After reentry, the City may procure the appointment of a receiver to take possession and collect rents and profits of the business of the Service Provider. The receiver may carry on the business of the Service Provider and take possession of the personal property used in the business of the Service Provider, including inventory, trade fixtures, and furnishings, and use them in the business without compensating the Service Provider. Proceedings for the appointment of a receiver by the City, or the appointment of a receiver and the conduct of the business of the Service Provider by the receiver, shall not terminate and forfeit this Agreement unless the City has given written notice of termination to the Service Provider as provided in this Agreement.

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**Article 20 – Destruction of Premises.** In the event of a partial destruction of the Premises during the term of this Agreement from any cause, the City shall promptly repair such damage, provided the repairs can be made within a reasonable number of days under the laws and regulations of applicable governmental authorities and the cost of repairs are budgeted and appropriated by the City of Cocoa City Council. Any partial destruction shall neither annul nor void this Agreement, except that the Service Provider shall be entitled to a proportionate reduction of rent while the repairs are being made, any proportionate reduction being based on the extent to which the making of repairs shall interfere with the business carried on by the Service Provider on the Premises. In the event that the City does not elect to make repairs that cannot be made in a reasonable time, or those repairs cannot be made under the laws and regulations of the applicable governmental authorities, or the City of Cocoa City Council does not budget and appropriate money to conduct the repairs, this Agreement may be terminated at the option of either party.

**Article 21 – Condemnation.** Rights and duties in the event of condemnation subsequent to the effective date of this Agreement are as follows:

- A. If the whole of the Premises shall be taken or condemned by any competent authority for any public or quasi-public use or purpose, this Agreement shall cease and terminate as of the date on which title shall vest in that authority, and the rent reserved under this Agreement shall be apportioned and paid up to that date.
- B. If only a portion of the Premises shall be taken or condemned, this Agreement shall not cease or terminate, but the rent payable after the date on which the Service Provider shall be required to surrender possession of such portion shall be reduced in proportion to the decreased use suffered by the Service Provider as the Parties may agree or as shall be determined by arbitration.
- C. In the event of any taking or condemnation in whole or in part, the entire resulting award of consequential damages shall belong to the City without any deduction from such award for the value of the unexpired term of this Agreement or for any other estate or interest in the Premises now or later vested in the Service Provider. The Service Provider assigns to City all Service Provider's right, title, and interest in any and all such awards.

**Article 22 – Subordination.** This Agreement and all rights of the Service Provider under this Agreement shall be subject and subordinate to the lien of any and all mortgages or requirements of any historic preservation grant that may now or in the future affect the Premises, or any part of the Premises, and to any and all renewals, modifications, or extensions of any such mortgages or grants. The Service Provider shall on demand execute, acknowledge, and deliver to the City, without expense to the City, any and all instruments that may be necessary or proper to subordinate this Agreement and all rights in this Agreement to the lien of any such mortgage(s) and grant(s). If the Service Provider shall fail at any time to execute, acknowledge, and deliver any such subordination instrument, the City, in addition to any other remedies available in consequence of such failure, may execute, acknowledge, and deliver the subordination instrument as the Service Provider's attorney-in-fact and in the Service Provider's name. The Service Provider irrevocably makes, constitutes, and appoints the City, its successors and assigns, the Service Provider's attorney-in-fact for that purpose.

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and The Historical Cocoa Village Association, Inc.

**Article 23 – Access to Premises; Sign Posted by the City.** The Service Provider shall permit the City or its agents to enter the Premises at all reasonable hours to show the Premises to prospective buyers, renters, or government officials in the course of the City of Cocoa's municipal functions. At any time, the City may show the Premises to persons wishing to rent them. The Service Provider shall, at any time, permit the usual notices of "For Rent" and "For Sale" to be placed on the Premises and to remain on the Premises without hindrance and molestation.

**Article 24 – Easements, Agreements, or Encumbrances.** The Parties shall be bound by all existing easements, agreements, and encumbrances, which may or may not be of record relating to the Premises, and the City shall not be liable to the Service Provider for any damages resulting from any action taken by a holder of an interest pursuant to the rights of that holder.

**Article 25 – Quiet Enjoyment.** Subject to the terms and conditions of this Agreement, the City warrants that the Service Provider shall be granted peaceable and quiet enjoyment of the Premises free from any eviction or interference by the City if the Service Provider pays the rent and other charges provided in this Agreement, and otherwise fully and punctually performs the terms and conditions, in relation to the Municipal Services or otherwise, imposed on the Service Provider by this Agreement.

**Article 26 – Liability of the City.** The Service Provider shall be in exclusive control and possession of the Premises, and the City shall not be liable for any injury or damages to any property or to any person on or about the Premises or for any injury or damage to any property of the Service Provider. The provisions of this Agreement permitting the City to enter and inspect the Premises are made to insure that Service Provider is in compliance with the terms and conditions of this Agreement and to insure that the Service Provider makes repairs that the Service Provider has failed to make. The City shall not be liable to the Service Provider for any entry on the Premises for inspection purposes.

**Article 27 – Rent abatement.** No abatement, diminution, or reduction of rent shall be claimed or allowed to the Service Provider or any person claiming under the Service Provider under any circumstances, whether for inconvenience, discomfort, interruption of business, or otherwise, arising from the making of alterations, improvements, or repairs to the Premises, because of any governmental laws, or arising from and during the restoration of the Premises after their destruction or damage by fire or other cause, or the taking or condemnation of a portion only of the Premises, except as provided in Articles 11, 20 and 21.

**Article 28 – Representations by City.** At the commencement of the term, the Service Provider shall accept the Premises and improvements and any equipment in their existing condition and state of repair, and the Service Provider agrees that no representations, statements, or warranties, express or implied, have been made by or on behalf of the City in respect to the buildings, improvements and equipment, except as contained in the provisions of this Agreement.

**Article 29 – Assignment, Sublease or Sale.**

**Section 29.1 – Assignment or Sublease by Service Provider.** Except as explicitly authorized by this subsection, neither the Service Provider nor the Service Provider's successors or assigns shall assign, mortgage, pledge, or encumber this Agreement or sublet the Premises in whole or in part, or permit the Premises to be used or occupied by others, nor shall this Agreement be assigned or transferred by operation of law, without the prior, express, and written consent in writing of the

City in each instance.

The City acknowledges that the Historic Cocoa Village Association, Inc. intends to dissolve and assign its assets to the Greater Cocoa Community Partnership, Inc., which shall retire the fictitious name "Cocoa Main Street" and register a new fictitious name, "Historic Cocoa Village Main Street." Appropriate documentation from the Florida Department of State Division of Corporations as to approval of such transaction must be immediately submitted to the office of the City Manager. Additionally and to the extent necessary, updated insurance certificates required by this Agreement must be submitted to the City by the Greater Cocoa Community Partnership, Inc. Upon written acknowledgement of receipt by the City Manager of 1) all required insurance certificates, and 2) acceptable information from the Florida Department of State Division of Corporations documenting approval of the transaction, this Agreement shall be deemed assigned from the Greater Cocoa Community Partnership, Inc., d/b/a "Cocoa Main Street," and The Historic Cocoa Village Association, Inc. to the Greater Cocoa Community Partnership, Inc., d/b/a "Historic Cocoa Village Main Street," which shall become the Service Provider. Any consequent change regarding notice information addressed in Article 31 herein shall be immediately provided by the Service Provider to the City.

If this Agreement is assigned or transferred, or if all or any part of the Premises is sublet or occupied by anybody other than Service Provider, the City may, after default by the Service Provider, collect rent from the assignee, transferee, subtenant, or occupant, and apply the net amount collected to the rent reserved in this Agreement. However, any such assignment, subletting, occupancy, or collection shall not be deemed a waiver of any agreement or condition of this Agreement, or the acceptance of the assignee, transferee, subtenant, or occupant as the Service Provider. The Service Provider shall continue to be liable under this Agreement in accordance with its terms and conditions and shall not be released from the performance of the terms and conditions of this Agreement.

**Section 29.2 – Assignment by City.** City shall have the right to transfer, assign and convey, in whole or in part, any and all of its rights under this Agreement provided that the assignee and any assignee of the fee simple title of the Premises assume the obligations and duties of City arising under this Agreement.

**Section 29.3 – Sale, Conveyance and Assignment.** Nothing in this Agreement shall restrict the right of the City to sell, convey, assign, mortgage or otherwise deal with the Premises or the right of the City to assign its interest in this Agreement subject only to the rights of the Service Provider under this Agreement.

**Article 30 – Surrender of Possession.** The Service Provider shall, on the last day of the term, or on earlier termination and forfeiture of this Agreement, peaceably and quietly surrender and deliver the Premises to the City free of subtenancies, including all buildings, additions, and improvements constructed or placed on the Premises by the Service Provider, except moveable trade fixtures, all in good condition and repair. If the City so elects, any trade fixtures or personal property not used in connection with the operation of the Premises and belonging to the Service Provider, if not removed at the termination or forfeiture of this Agreement, shall be deemed abandoned and become the property of the City without any payment or offset for such fixtures or property. At the City's election, the City may remove such fixtures

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or property from the Premises and store them at the risk and expense of the Service Provider. The Service Provider shall repair and restore all damage to the Premises caused by the removal of equipment, trade fixtures, and personal property.

**Article 31 – Notices.** Communication and details concerning this Agreement shall be directed to the following contact representatives:

Attn: City Manager City of Cocoa 65 Stone Street Cocoa, Florida 32922 321-433-8660  with copy to  Anthony A. Garganese, City Attorney Garganese, Weiss, D'Agresta & Salzman, P.A. P.O. Box 2873 Orlando, Florida 32802-2873 407-425-9566	Attn: Cocoa Main Street and The Historic Cocoa Village Association, Inc. 434 Delannoy Avenue Suite 203 Cocoa, FL 32922 (321) 631-9075
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Any notice from one party to the other hereunder shall be in writing and shall be deemed duly served if delivered to the party being served or if mailed by registered or certified mail. Any notice shall be deemed to have been given at the time of delivery if the day of such delivery is not a Saturday, Sunday or statutory holiday. If the day of delivery is a Saturday, Sunday or statutory holiday, such notice shall be deemed to have been given on the next following day that is not a Saturday, Sunday or statutory holiday. If such notice is mailed, notice shall be deemed to have been given seven (7) calendar days after the date of mailing thereof unless the postal system has been disrupted by strikes or slow downs, in which case notice shall be given by personal delivery only. Either party shall have the right to designate by notice, in the manner above set forth, a different address or representative to which notices are to be mailed.

**Article 32 – Miscellaneous.**

**Section 32.1 – Right to Refuse Admission and to Eject.** The City reserves the right to refuse admission to the Premises, outside of ordinary business hours, to any person not known by the City or properly identified; to eject any person from the Premises whose conduct may tend to be harmful to the safety and interests of the Premises, the tenants and the property thereon; to close any part of the Premises during any riot or other commotion where person or property may be impaired or prior to, during, or after a Hurricane or other natural disaster.

**Section 32.2 – Service Provider Not to Allow Lien or Encumbrances.** The Service Provider shall not permit to be created nor to remain undischarged any lien, encumbrance, or charge arising out of any work of any contractor, mechanic, laborer, or materialman which might be or become a lien or encumbrance or charge upon the Premises of which the Premises is a part. If any lien or

notice of lien on the account of any debt of the Service Provider shall be filed against the Premises or the property of which the Premises is a part, and the Service Provider fails to discharge the lien or notice of lien within twenty (20) days of filing, the City, in addition to any other legal rights or remedies, may, but shall not be obligated to, discharge the same by either paying the amounts claimed to be due, or shall be entitled to defend any prosecution of an action for foreclosure of such lien. Any amount paid by the City and all costs and expenses (including reasonable attorneys' fees and interest) incurred by Landlord in connection therewith shall be paid by the Service Provider.

**Section 32.3 – Condition Precedent.** All rights, obligations and liabilities of the City and the Service Provider shall be subject to satisfaction of the condition precedent of the complete execution of this Agreement by the Service Provider and the City Manager of the City of Cocoa.

**Section 32.4 – Binding Effect.** This Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the Parties.

**Section 32.5 – Professionalism and Standard of Care.** The Service Provider shall do, perform and carry out in a professional manner all Municipal Services required to be performed by this Agreement. Service Provider shall also use the degree of care and skill in performing the Municipal Services that are ordinarily exercised under similar circumstances by reputable members of Service Provider's profession working in the same or similar locality as Service Provider.

**Section 32.6 – Warranty of Professional Services & Compliance with Law.** The Service Provider (for itself and any of its employees, contractors, volunteers, partners, and agents used to perform the Municipal Services) hereby warrants unto the City that all of its employees (and those of any of its contractors, partners, and agents used to perform the Municipal Services) have sufficient experience to properly complete the Municipal Services specified herein or as may be performed pursuant to this Agreement. In pursuit of any Municipal Services, the Service Provider shall supervise and direct the Municipal Services, using its best skill and attention. The Service Provider shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority during the performance of the Municipal Services.

**Section 32.7 – Work is a Private Undertaking.** With regard to any and all Work performed hereunder, it is specifically understood and agreed to by and between the Parties hereto that the contractual relationship between the City and Service Provider is such that the Service Provider is an independent contractor and not an agent of the City. The Service Provider, its contractors, volunteers, partners, agents, and their employees are independent contractors and not employees of the City. No provision contained herein shall be construed as creating a joint venture between the Parties. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor, between the City, on one hand, and the Service Provider, its contractors, volunteers, partners, employees, or agents, during or after the performance of the Work under this Agreement.

**Section 32.8 – Public Records.** Pursuant to Section 119.0701, Florida Statutes and other applicable public records laws, Service Provider agrees that any records, documents, transactions,

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writings, papers, letters, computerized information and programs, maps, books, audio or video tapes, films, photographs, data processing software, writings or other material(s), regardless of the physical form, characteristics, or means of transmission, of Service Provider related, directly or indirectly, to the services provided to the City under this Agreement and made or received pursuant to law or ordinance or in connection with the transaction of official business by the City, may be deemed to be a public record, whether in the possession or control of the City or the Service Provider. Said records, documents, transactions, writings, papers, letters, computerized information and programs, maps, books, audio or video tapes, films, photographs, data processing software, writings or other material(s), regardless of the physical form, characteristics, or means of transmission of Service Provider are subject to the provisions of Chapter 119, Florida Statutes, and may not be destroyed without the specific written approval of the City's designated custodian of public records.

**IF SERVICE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SERVICE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, THE CITY CLERK, AT (321) 433-8484, cshealy@cocoafl.org, 65 STONE ST., COCOA, FLORIDA 32922.**

Service Provider is required to and agrees to comply with public records laws. Service Provider shall keep and maintain all public records required by the City to perform the services as agreed to herein. Service Provider shall provide the City, upon request from the City Clerk, copies of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law. Service Provider shall 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. Upon completion of the Agreement, Service Provider shall transfer to the City, at no cost, all public records in possession of the Service Provider, provided the transfer is requested in writing by the City Clerk. Upon such transfer, Service Provider shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. However, if the City Clerk does not request that the public records be transferred, the Service Provider shall continue to keep and maintain the public records upon completion of the Agreement and shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City Clerk, in a format that is compatible with the information technology systems of the City. Should the City not possess public records relating to this Agreement which are requested to be inspected or copied by the City or any other person, the City shall immediately notify Service Provider of the request and the Service Provider shall then provide such records to the City or allow the records to be inspected or copied within a reasonable time. If the Service Provider does not comply with a public records request, the City may enforce this Section to the extent permitted by law. Service Provider acknowledges that if Service Provider does not provide the public records to the City within a reasonable time, Service Provider may be subject to penalties under Section 119.10, Florida Statutes. Service Provider acknowledges that if a civil action is filed against Service Provider to compel production of public records relating to this Agreement, the court may assess and award against Service Provider the reasonable costs of enforcement, including reasonable attorney fees. All public records in connection with this Agreement shall, at any and all reasonable times during the normal business hours of the Service

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Provider, be open and freely exhibited to the City for the purpose of examination, audit, or otherwise. Failure by Service Provider to grant such public access and comply with public records laws and/or requests shall be grounds for immediate unilateral cancellation of this Agreement by the City upon delivery of a written notice of cancellation. If Service Provider fails to comply with this Section, and the City must enforce this Section, or the City suffers a third party award of attorney's fees and/or damages for violating Chapter 119, Florida Statutes, due to Service Provider's failure to comply with this Section, the City shall collect from Service Provider prevailing party attorney's fees and costs, and any damages incurred by the City, for enforcing this Section against Service Provider. And, if applicable, the City shall also be entitled to reimbursement of all attorneys' fees and damages which the City had to pay a third party because of Service Provider's failure to comply with this Section. The terms and conditions set forth in this Section shall survive the termination of this Agreement.

**Section 32.9 – Audit and Inspections.** All Service Provider's records with respect to the providing of Municipal Services under this Agreement shall be made available to the City, at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Failure of the Service Provider to comply with the above audit requirements will constitute a material breach of this Agreement.

**Section 32.10 – Civil Rights.** The Service Provider agrees to comply with any and all federal, state and local civil rights laws, including, but not limited to Title VI of the Civil Rights Act of 1964 as amended; Title VII of Civil Rights Act of 1968 as amended; Section 109 of Title I of the Housing and Community Development Act of 1974; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Age and Discrimination Act of 1975; Executive Order 11063; and with Executive Order 11246 as amended by Executive Orders 11375 and 12086.

**Section 32.11 – Severability.** Should any paragraph or any part of any paragraph of this Agreement be rendered void, invalid, or unenforceable by any court of law, for any reason, such a determination shall not render void, invalid, or unenforceable any other paragraph or any part of any paragraph in this Agreement.

**Section 32.12 – Choice of Law; Venue.** This Agreement has been made and entered into in the State of Florida, County of Brevard, and the laws of such state shall govern the validity and interpretation of this Agreement and the performance due hereunder. The Parties agree that venue shall be exclusively in Brevard County, Florida, for all state court actions or disputes which arise out of or based upon this Agreement, and in Orlando, Florida for all federal court actions or disputes which arise out of or are based upon this Agreement.

**Section 32.13 – Integration; Modification.** The drafting, execution, and delivery of this Agreement by the Parties has been induced by no representations, statements, warranties, or agreements other than those expressed herein. This Agreement embodies the entire understanding of the Parties, and there are no further or other agreements or understandings, written or oral, in effect between the Parties relating to the subject matter hereof unless expressly referred to herein. Modifications of this Agreement shall only be made in writing signed by both Parties.

**Section 32.14 – Attorney's Fees.** Should any litigation arise concerning this Agreement between



the Parties, the Parties agree to bear their own costs and attorney's fees, whether at settlement, trial or on appeal.

**Section 32.15 – Headings.** All headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

**Section 32.16 – Waiver.** Any waiver by City of any breach or violation of Service Provider's obligations under this Agreement shall not be construed as a continuing waiver or consent to any subsequent breach or violation.

**Section 32.17 – Corporate Representations.** Service Provider makes the following representations to City:

- A. Service Provider is duly organized and in good standing under the laws of the State of Florida, and is duly qualified and authorized to carry on the functions, responsibilities, and obligations in this Agreement.
- B. The undersigned signatory for Service Provider has the power, authority, and the legal right to enter into and perform the obligations set forth in this Agreement and all applicable exhibits thereto, and the execution, delivery, and performance hereof by Service Provider has been duly authorized by the board of directors and/or president of Service Provider. In support of said representation, Service Provider agrees to provide, if requested by the City, a copy to the City of a corporate certificate of good standing provided by the State of Florida prior to, or any time after, the execution of this Agreement.

**Section 32.18 – City's Right of Inspection.** In addition to any rights of inspection of the City in relation to the occupancy of the Premises by the Service Provider as a tenant, the City is hereby granted the right of entry onto Service Provider's property used to perform the Municipal Services for purposes of determining Service Provider's compliance with this Agreement. The Service Provider hereby agrees to fully cooperate with the City in permitting the City to conduct said inspections.

**Section 32.19 – Time of Performance/Term.** Time is of the essence under this Agreement. Municipal Services provided by the Service Provider shall begin immediately upon execution of this Agreement.

Sections 32.8, 32.9, 16.1, 16.2 and 32.22 shall survive the termination of this agreement.

**Section 32.20 – Assignment.** Except as explicitly provided in Section 29.1, this Agreement shall not be assigned by the Service Provider unless agreed to in writing by the City.

**Section 32.21 – No City Obligation for Future Obligations to the Service Provider.** No provision in this Agreement shall be construed as requiring the City to provide a lessened or nominal rental amount or otherwise in exchange for Municipal Services, or shall otherwise obligate the City in any respect relating to the Service provider, in the future.

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**Section 32.22 – Sovereign Immunity.** The City intends to avail itself of the benefits of Section 768.28, Florida Statutes and any other statutes and common law governing sovereign immunity to the fullest extent possible. Neither this provision nor any other provision of this Agreement shall be construed as a waiver of the City's right to sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on the City's potential liability under state or federal law. Contractor agrees that City shall not be liable under this Agreement for punitive damages or interest for the period before judgment. Further, City shall not be liable for any claim or judgment, or portion thereof, to any one person for over two hundred thousand dollars (\$200,000.00), or any claim or judgment, or portion thereof, which, when totaled with all other claims or judgments paid by the State or its agencies and subdivisions arising out of the same incident or occurrence, exceeds three hundred thousand dollars (\$300,000.00). Nothing in this Agreement is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. This paragraph shall survive termination of this Agreement.

**Article 33 – Recordation.** This Agreement shall be recorded in the public records of Brevard County, Florida.

*[Remainder of page intentionally blank. Signature page follows.]*

IN WITNESS WHEREOF, this Agreement is entered into as of the day and year the last party signs this Agreement as stated below.

WITNESS:

Carie Shealy  
Print Name: Carie Shealy

Monica Townsend  
Print Name: Monica Townsend

GREATER COCOA COMMUNITY  
PARTNERSHIP, INC. d/b/a "COCOA MAIN  
STREET"

By: Rosynk Greene

Print name: Rosynk K. Greene

Title: Secretary

Date: 7-26-19

WITNESS:

Monica Townsend  
Print Name: Monica Townsend

Carie Shealy  
Print Name: Carie Shealy

THE HISTORIC COCOA VILLAGE  
ASSOCIATION, INC.,

By: Nancy Elliott

Print name: Nancy Elliott

Title: President

Date: 7/26/19

ATTEST:

Carie Shealy  
Carie Shealy, City Clerk

CITY OF COCOA:

John A. Titkanich, Jr. 07/24/2019  
John A. Titkanich, Jr., Date  
AICP, ICMA-CM  
City Manager

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## **EXHIBIT A**

### **SCOPE OF WORK**

#### **A. GENERAL OBLIGATIONS**

1. The Service Provider shall partner with and support the City to fulfill, at a minimum, the community-based projects provided for hereunder in Section B.
2. The Municipal Services shall largely focus on the coordination and implementation of physical improvements to the City, as directed by the City.
3. In addition to the specific projects identified in Section B. hereunder, the Service Provider shall support other community beautification projects, provide volunteers in support of City-sponsored (leisure Services and otherwise) events and/or economic development initiatives.
4. The Service Provider shall supply all personnel necessary to provide the Municipal Services detailed herein.

#### **B. SPECIFIC PROJECTS**

1. The projects and obligations specified below in Section 2. will be provided by the Service Provider until a revised and Scope of Work is agreed upon by the Parties. The City and the Service Provider shall agree upon such revised Scope of Work on or before March 1, 2020. In accordance with the Municipal Services Agreement, the Municipal Services, as described in the Scope of Work, constitute a material term and condition of the Agreement. The failure of the parties to agree upon a revised Scope of Work on or before March 1, 2020 shall constitute a failure by the Service Provider to perform the Municipal Services, as determined by the City, and shall constitute a material breach of this Agreement and a cause for termination of the Agreement and surrender of the leased Premises as further provided for in the Municipal Services Agreement.
2. The following projects and obligations shall be provided by the Service Provider to the City:
  - a. The Service Provider will provide to the City a promotional table at each of the Service Provider's upcoming events for the City to display any promotional events or materials.
  - b. The Service Provider will include the City logo on all promotional materials for upcoming events of the Service Provider. The City shall have the right to review the Service Provider's promotional materials in advance of their release and the City may reject inclusion of the City logo thereon in its sole discretion.
  - c. The Service Provider will help promote and collect items for the City's food, toy and school supply drives.
  - d. The Service Provider will help plan and promote the "Hot Cocoa Holidays" events which occur in December 2019, which include but are not limited to the Holiday Craft Fair, Cocoa/Rockledge Holiday Parade, Cocoa Holiday Festival, and Taste of Cocoa events.
  - e. The Service Provider will help to promote the City of Cocoa's City Government Week events in October 2019, which include but are not limited to an Open House at City Hall and a Touch-a-Truck event.

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