

# AGREEMENT

**WITNESSETH THAT:** This agreement (the Agreement”) is made and entered into as of this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_ (“Effective Date”) by and between Memphis Management Group, LLC (“MMG”) as the operator of the Renasant Convention Center and the Cannon Center for the Performing Arts (the “Facility”) acting as the duly authorized representative of the Memphis Convention Center Commission (the “Commission), and the City of Memphis, TN (the “City”), all hereinafter jointly referred to as “Owner”, and \_\_\_\_\_, hereinafter referred to as “Contractor”.

**WHEREAS:** The Owner requires the services provided for in this Agreement, and

**WHEREAS:** The Contractor desires to provide such services,

**NOW, THEREFORE:** in consideration of the mutual promises set forth in this Agreement, and of One Dollar (\$1.00) cash, paid in hand, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MMG and Contractor agree as follows:

## **1. DEFINITIONS**

As used throughout this Agreement, the following terms shall have the meaning set forth below:

“Response” shall mean that certain response to Memphis Management Group, LLC., titled \_\_\_\_\_ RFP, dated \_\_\_\_\_, 20\_\_\_, and all documents related thereto and associated therewith, from Contractor (Attached hereto as Exhibit A).

“RFP” shall mean that certain Request for Proposal for \_\_\_\_\_ Services, dated \_\_\_\_\_, 20\_\_\_, and distributed by MMG in connection with its management of the Facility, during a public bidding process described therein (Attached hereto as Exhibit B).

"Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Agreement, who are under a separate contract with the Contractor. The terms "Subcontractor" and "Subcontractors" means Subcontractor(s) in any tier.

## **2. SCOPE OF WORK**

Contractor shall provide services and staff, and do all things, undertake all acts, and perform all duties, responsibilities, and obligations, necessary for and incidental to, the performance of the work and services set forth in the RFP and the Response.

The RFP and the Response, including all attachments, exhibits, and other documents associated therewith, are all hereby incorporated into this Agreement. If there are any discrepancies among this Agreement, the Response, or the RFP, then the order of priority

shall be as follows: 1) this Agreement, 2) the Response, and 3) the RFP, and if the Response is silent or prima facia unclear then the language of the RFP shall control.

### **3. TERM**

The initial "Term" of this Agreement shall commence on the Effective Date and shall end on \_\_\_\_\_ {insert for completion purposes > **Example:** December 31st, 2022. **Example:** This Agreement shall automatically renew for \_\_\_\_\_two (2) years unless written notice of termination is given ninety (90) days prior to the end of the initial Term. }

### **4. PAYMENT**

For any requests for direct payment(s) by MMG from Contractor, Contractor shall submit to MMG itemized original invoices in a form and substance acceptable to MMG, along with supporting documentation.

Payment by MMG of any invoice submitted by Contractor does not imply acceptance of services and does not prejudice MMG's right to object to or question any invoice. If any valid invoice is not paid by MMG, Contractor shall give thirty (30) written notice of such non-payment to MMG before suspending services.

No payments in advance of, or in anticipation of, services to be provided under this Agreement shall be made by MMG.

Payments to MMG by Contractor shall be made \_\_\_\_\_monthly as \_\_\_\_\_described in the Response.

### **5. ASSIGNMENT**

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred, or assigned, by the Contractor without prior written consent of MMG.

### **6. CONFIDENTIALITY AND SAFE-KEEPING OF INFORMATION**

The Contractor shall not use or disclose any information concerning MMG, or information that may be classified as confidential, or may reasonably be considered by MMG to be confidential, for any purpose not directly connected with the administration of this Agreement, except with prior written consent of MMG, or as may be required by law.

### **7. DISPUTES AND GOVERNING LAW**

The terms of this Agreement shall be discerned by the laws of the State of Tennessee. All disputes arising from this Agreement shall be brought under and settled by final and binding arbitration, according to the Expedited Rules of the Commercial Rules of the American Arbitration Association, and governed by the Federal Arbitration Act, to the exclusion of state law regarding arbitration proceedings inconsistent therewith. The parties shall agree

on one (1) Arbitrator to settle any dispute, controversy, or claim. All negotiations leading up to and involving such binding arbitration shall be treated as settlement negotiations and shall be held and kept in a completely confidential manner. Venue shall lay in Shelby County, TN.

## **8. STANDARD OF CARE AND PERFORMANCE.**

Contractor shall perform its services and obligations hereunder consistent with the professional skill and care ordinarily provided by firms providing similar services at comparable facilities.

## **9. INDEMNIFICATION**

Contractor shall indemnify, defend, and hold harmless MMG, the Renasant Convention Center and Cannon Center for the Performing Arts, the Memphis Convention and Visitor's Bureau d/b/a Memphis Tourism, the City of Memphis, TN, the Memphis Convention Center Commission, and all officials, agents, representatives, and employees thereof (the "Indemnitees"), from and against all claims for injuries, disability, or death arising out of or resulting from the negligent performance of this Agreement by Contractor.

The term "claim," as used above in this Agreement, means any financial loss, claim, suit, action, damage, or expense, including, but not limited to, attorney's fees, court fees, or investigatory fees, or costs related thereto, attributable to any bodily injury, disability, death, sickness, disease, or injury to or destruction of tangible property including loss of use resulting therefrom. Contractor's obligations to indemnify, defend, and hold harmless Indemnitees includes any claim by Contractor's officials, agents, representatives, or employees, or any subcontractor or its officials, agents, representatives, or employees.

Contractor expressly agrees to indemnify, defend, and hold harmless Indemnitees from any claim arising out of or incident to Contractor's or any subcontractor's negligent performance or failure to perform the Agreement.

## **10. INDEPENDENT CONTRACTOR STATUS**

The parties intend that an independent contractor relationship will be created by this Agreement. The Contractor and its employees or agents performing under this Agreement are not employees or agents of MMG. The Contractor nor its employees or agents, shall not hold itself, himself, or herself out as, or claim to be, an officer or employee of MMG by reason hereof, nor will the Contractor make any claim of right, privilege, or benefit that would accrue to the status of employee under applicable law. Conduct and control of the work and services under this Agreement will be solely with the Contractor.

## **11. INSURANCE**

**1. Contractor shall provide insurance coverage as set out herein.** The intent of the required insurance is to protect MMG should there be any claims, suits, actions, costs, damages or expenses arising from acts or omissions of the Contractor or any of its subcontractors, or agents or employees of either, while performing under the terms of this Agreement. The

required insurance coverage, which shall be maintained in full force and effect during the term of this Agreement, is as follows:

A. **Commercial General Liability Insurance.** Contractor shall maintain general liability (“CGL”) insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the “general aggregate” limit shall be at least twice the “each occurrence” limit. Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

B. **Automobile Liability.** Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of “Any Auto” provisions.

C. **Employers Liability (“Stop Gap”) Insurance.** In addition, Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

2. **The above insurance policies shall include the following provisions:**

A. **Additional Insured.** MMG, the Renasant Convention Center and Cannon Center for the Performing Arts, the Memphis Convention and Visitor’s Bureau d/b/a Memphis Tourism, the City of Memphis, TN, and the Memphis Convention Center Commission, and their elected and appointed officials, agents, representatives, and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this Agreement shall be primary as to any other insurance or self-insurance programs afforded to or maintained by MMG.

B. **Cancellation.** MMG shall be provided written notice before cancellation or non-renewal of any insurance referred to herein. The insurer shall give MMG forty-five (45) days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, MMG shall be given ten (10) days advance notice of cancellation.

C. **Insurance Carrier Rating.** All insurance and bonds should be issued by companies admitted to doing business within the State of Tennessee, and have a rating of A-, Class VII or better in the most recently published edition of Best’s Reports. Any exception shall be reviewed and approved by the MMG Risk Manager before the Contract is accepted or work may begin.

3. **Industrial Insurance Coverage (Workers’ Compensation).** Contractor shall comply with the provisions of Tennessee State law regarding Industrial Insurance. If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, MMG may collect from Contractor the full amount payable for such Industrial Insurance. MMG may deduct the amount owed by Contractor for industrial Insurance fund from the amount payable to Contractor by MMG under this

Agreement and transmit the deducted amount to the State of Tennessee. This provision does not waive any of the State of Tennessee's right to collect from Contractor.

Contractor shall always comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the fullest extent applicable. MMG will not be held responsible in any way for claims filed by Contractor or its employees for services performed under the terms of this Agreement.

**4. Certificates of Insurance.** Contractor shall submit to MMG within fifteen (15) calendar days of the Effective Date, certificates of insurance that outlines the coverage and limits defined in herein. Contractor shall submit renewal certificates as appropriate during the term of this Agreement.

## **12. EXCESS INSURANCE COVERAGE**

By requiring insurance herein, MMG does not represent that coverage and limits will be adequate to protect Contractor, and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to MMG in this Agreement.

## **13. LICENSING, ACCREDITATION, CERTIFICATION, AND REGISTRATION**

Contractor shall comply with, and be solely responsible for, all applicable Federal, State, and local licensing, accreditation, certification, and registration requirements/standards, necessary for the performance of this Agreement, including but not limited to, those responsibilities and obligations itemized in Exhibits A and B.

## **14. TERMINATION FOR CAUSE**

In the event MMG determines Contractor has failed to comply with the conditions of this Agreement in a timely manner, MMG has the right to suspend or terminate this Agreement. Before suspending or terminating this Agreement, MMG shall notify Contractor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days, the Agreement may be terminated or suspended.

MMG reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by Contractor, or a decision by MMG to terminate the Agreement. A termination shall be deemed a "Termination for Convenience" if it is determined that Contractor: (i) was not in default; or (ii) failure to perform was outside of its control, fault, or negligence. The rights and remedies of MMG provided in this Agreement are not exclusive, and are in addition, to any other rights and remedies provided by law.

## **15. TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this Agreement, MMG may, by sixty (60) calendar days' written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part. If this Agreement is so terminated, MMG shall be liable only for payment

required under the terms of this Agreement for services rendered prior to the effective date of termination.

## **16. TREATMENT OF ASSETS**

1. Title to all property furnished by MMG shall remain in MMG.
2. Any property of MMG furnished to the Contractor shall, unless otherwise provided herein or approved by MMG, be used solely for the performance of this Agreement.
3. Contractor shall be responsible for any loss or damage to property of MMG, that results from the negligence of the Contractor or that results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
4. All reference to Contractor under this clause shall also include Contractor's employees, agents, or subcontractors.

## **17. LIMITATION OF AUTHORITY AND AMENDMENTS**

This Agreement may be amended by mutual agreement of the parties hereto. However, only the President of MMG or an MMG SVP shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement, and only in writing.

## **18. ATTORNEY'S FEES**

In the event of litigation or other action brought to enforce the terms of this Agreement, each party agrees to bear its own attorney fees and costs.

## **19. PUBLICITY**

Contractor agrees to submit to MMG all advertising and publicity matters relating to this Agreement. Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of MMG.

## **20. PRIVACY**

Personal information including, but not limited to, "Protected Health Information", collected, used, or acquired in connection with this Agreement shall be protected by the parties against unauthorized use, disclosure, modification, or loss.

Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell, or otherwise make known to unauthorized persons, personal information without the express written consent of MMG or as provided by law.

## **21. RECORDS MAINTENANCE**

Contractor shall maintain books, records, documents, data and other evidence relating to this Agreement, the Response, and the RFP, and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

Contractor shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under this Agreement, shall be subject at all reasonable times to inspection, review, or audit by MMG or personnel duly authorized by MMG. If any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

## **22. SEVERABILITY**

The provisions of this Agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

## **23. PUBLIC SAFETY**

While on premises, Contractor, its agents, employees, or subcontractors shall conform in all respects with MMG's physical, fire, or other public safety event policies, procedures, or regulations.

## **24. NON-DISCRIMINATION**

Contractor hereby agrees to comply with Title VI and Title VII of the Civil Rights Act of 1964 and all other Federal, State, and local laws prohibiting discrimination. These laws provide, in whole or in part, that no person shall be excluded from participation in, or be denied benefits of, or otherwise be subjected to discrimination in the performance of this Agreement or in Contractor's employment practices on the grounds of handicap/disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, State or local law. Upon request, Contractor shall provide proof of non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

In the event Contractor fails to comply with the MMG's non-discrimination policy and any/all laws prohibiting discrimination, this Agreement may be cancelled, terminated, or suspended in whole or in part by the MMG. MMG reserves the right to investigate all claims of illegal discrimination by Contractor and notify Contractor of any findings of discrimination. Contractor shall then take all necessary steps to cure and rectify such discrimination to the reasonable satisfaction of the MMG. Refusal to comply with this provision shall be considered substantial non-performance and is grounds for termination.

## **25. EMPLOYMENT OF ILLEGAL IMMIGRANTS**

Contractor warrants that it is and shall remain in compliance with all applicable Federal and State laws prohibiting employment of individuals not legally authorized to do work in the

United States. Failure to abide by this provision may result in the suspension, cancellation, or termination of this Agreement.

## **26. ENTIRE AGREEMENT**

This Agreement constitutes the full and final understanding of the parties hereto with regarding the subject matter hereof and supersedes and replaces any and all prior or contemporaneous agreements or understandings, whether written or oral, express or implied, between the parties with respect to the subject matter of this Agreement.

## **27. FORCE MAJEURE**

Neither MMG nor the Contractor shall be deemed in default hereunder, nor shall either party be responsible for delay, interruption, or cessation in the performance of its obligations under this Agreement where such failure of performance is the result of any force majeure event which are defined as Acts of God, riots, wars, strikes, public demonstrations, epidemics, acts of insurrection, acts of governmental authorities, acts of nature, or other similar causes.

## **28. ASSIGNMENT**

Neither this Agreement, nor any of its terms, nor any rights, responsibilities, or claims arising hereunder, shall be transferred, or assigned by the Contractor in any manner, without prior written consent of MMG.

## **29. SUCCESSORS**

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns.

## **30. SUBJECT TO FUNDING**

Agreement is subject to availability and annual appropriation of funds by the City for MMG's operation of the Facility. In the event sufficient funds for this Agreement are not appropriated by the City for any of its fiscal periods during the Term, then MMG shall immediately terminate this Agreement upon written Notice to Contractor. In the event of such termination, Contractor shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the termination date. Such termination by MMG shall not be deemed a breach of contract by either MMG or the Owner, and Contractor shall have no right to any other actual, general, specific, incidental, consequential, or any other damages whatsoever of any description or amount.

## **31. SUBCONTRACTING**

Neither Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this Agreement without obtaining prior written approval of MMG. In no event shall the existence of any subcontract operate to release or reduce the liability of Contractor to MMG for any breach in the performance of Contractor's duties. This clause



does not include contracts of employment between Contractor and personnel assigned to work under this Agreement.

Additionally, Contractor is responsible for ensuring that all terms, conditions, assurances, warranties, and certifications set forth in this Agreement are carried forward to any subcontracts.

**32. TAXES**

All payments accrued because of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for the Contractor, its subcontractors, or their employees shall be the sole responsibility of Contractor.

**33. WAIVER**

Waiver of any default or breach under this Agreement shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by an authorized representative of MMG.

**34. NOTICES**

All notices shall be sent via a nationally recognized overnight carrier/courier, or by registered or certified mail to the following addresses (with a signed return receipt required):

**MMG:**

Attn: Mr. Dean Dennis, SVP  
Renasant Convention Center  
255 North Main Street  
Memphis, TN 38103

**Contractor:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**I HAVE READ AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AS OF THE EFFECTIVE DATE.**

**SIGNATURES CONTINUED ON NEXT PAGE**

**SIGNATURES:**

**Signature of Contractor:**

\_\_\_\_\_

**By** \_\_\_\_\_

**Printed Name** \_\_\_\_\_

**Title** \_\_\_\_\_

**Signature of MMG:**

**Memphis Management Group, LLC**

**By** \_\_\_\_\_

**Printed Name** \_\_\_\_\_

**Title** \_\_\_\_\_

**EXHIBIT A (Response)**

**EXHIBIT B (RFP)**

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