PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF NORTH MIAMI and THE NEWS DIRECTORS, INC. - BRIAN C. ANDREWS for MEDIA RELATIONS

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made between the **City of North Miami**, a Florida municipal corporation, located at 776 NE 125th Street, North Miami, FL ("City") and **The News Directors, Inc.**, a Florida for-profit corporation organized and existing under the laws of the State of Florida, having a principal business address at 2 South Biscayne Boulevard, Suite 3760, Miami, FL 33131 ("Consultant"). The City and Consultant shall collectively be referred to as the "Parties", and each may individually be referred to as a "Party".

WHEREAS, the City Manager (including his designees) and Consultant, through mutual negotiations, have agreed upon a scope of services, schedule, and fee for the provision of Services as delineated herein; and

WHEREAS, as a result of such negotiations, the City Manager desires to engage Consultant to perform the Services as specified herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Consultant and the City agree as follows:

1. **Scope of Services/Deliverables.**

   1.1 Consultant shall provide the City with media communication services (including crisis communications and advertising services) as authorized by the City Manager or his designee (collectively referred to herein as "Services").

2. **Term/Commencement Date.**

   2.1 This Agreement shall become effective upon execution by both Parties and shall remain in effect through September 30, 2017, unless earlier terminated in accordance with Section 8, below. The City Manager may extend the term of this Agreement up to an additional 180 days by written notice to Consultant.

   2.2 Consultant agrees that time is of the essence and Consultant shall provide Services within the timeframe provided by the City Manager.

3. **Compensation and Payment.**

   3.1 The Consultant shall be compensated in the following manner:

   A flat fee of Two Thousand Dollars ($2,000.00) for each month from October 1, 2016, through September 30, 2017 ("Monthly Retainer"). This

Monthly Retainer will cover an anticipated sixteen (16) hours of Services. Additional hours beyond the anticipated sixteen (16) hours of Services requested by the City Manager, will be billed at a rate of Two Hundred Fifty Dollars ($250.00) per hour.

Upon completion of the Services, Consultant shall submit its bill[s] for payment in a form approved by the City Manager. The bill[s] shall identify the Services completed and the amount charged.

3.2 The City shall pay Consultant within forty-five (45) days from the receipt of Consultant's invoice, in accordance with the applicable provisions of the Local Government Prompt Payment Act, under Chapter 218, Florida Statutes (2016).

3.3 If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay Consultant the undisputed portion of the invoice. Upon written request of the Finance Director, the Consultant shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

4. **Sub-consultants**.

4.1 The Consultant shall be responsible for all payments to any sub-consultants and shall maintain responsibility for all work related to the Services.

4.2 Any sub-consultants used on the Services must have the prior written approval of the City Manager or his designee. It is agreed that Commander Linda O'Brien and Jilda Unruh will serve as approved sub-consultants. Ms. Unruh is a partner in The News Directors.

5. **City's Responsibilities**.

5.1 Furnish to Consultant, at the Consultant's written request, all available maps, plans, existing studies, reports and other data pertinent to the Services to be provided by Consultant, in possession of the City.

5.2 Arrange for access to and make all provisions for Consultant to enter upon real property as required for Consultant to perform services as may be requested in writing by the Consultant (if applicable).

6. **Consultant's Responsibilities**.

6.1 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily provided by a professional Services Manager under similar circumstances. If at any time during the

term of this Agreement or within one year from the completion of the Services, it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the Scope of Services, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work. The City in no way assumes or shares any responsibility or liability of the Consultant or sub-consultant under this agreement.

7. **Conflict of Interest.**

7.1 To avoid any conflict of interest or any appearance thereof, Consultant shall not, for the term of this Agreement, represent any private sector entities (developers, corporations, real estate investors, etc.), with regard to any City related matter.

8. **Termination.**

8.1 Either Party, without cause may terminate this Agreement upon thirty (30) days written notice of termination to the other Party. The City Manager may terminate this Agreement immediately with cause, by written notice of termination to Consultant.

8.2 Upon receipt of the written notice of termination. Consultant shall cease Services.

8.3 In the event of termination by the City Manager, the Consultant shall be paid for all Services accepted by the City Manager up to the date of termination, provided that the Consultant has first complied with the provisions of sub-Section 8.4, below.

8.4 Consultant shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Services, in a hard copy and electronic format specified by the City Manager within fourteen (14) days from the date of the written notice of termination or the date of expiration of this Agreement.

9. **Nondiscrimination.**

9.1 During the term of this Agreement, Consultant shall not discriminate against any of its employees, Sub-consultants or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination.

10. **Attorneys' Fees and Waiver of Jury Trial.**

10.1 In the event of any litigation arising out of this Agreement, each Party shall be responsible for their attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

~~10.2 In the event of any litigation arising out of this Agreement, each Party~~ hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

11. **Indemnification.**

11.1 Consultant shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Consultant's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Consultant's performance or nonperformance of this Agreement. This section shall be interpreted and construed in a manner to comply with any applicable Florida Statutes, as amended from time to time.

11.2 The provisions of this section shall survive termination of this Agreement.

11.3 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes (2016). Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

12. **Notices/Authorized Representatives.**

12.1 Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the Parties (or their successors) at the following addresses:

For The Consultant: The News Directors, Inc.
c/o: Brian C. Andrews
2 South Biscayne Boulevard
Suite 3760
Miami, Florida 33131

For the City: City of North Miami
Attn: City Manager
776 N.E.125th Street
North Miami, Florida 33161

With copy to: City of North Miami
Attn: City Attorney
776 N.E.125th Street
North Miami, Florida 33161

13. **Governing Law**.

13.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Miami-Dade County, Florida, or the Southern District of Florida.

14. **Entire Agreement/Modification/Amendment**.

14.1 This writing contains the entire Agreement of the Parties and supersedes any prior oral or written representations. No representations were made or relied upon by either Party, other than those that are expressly set forth herein.

14.2 No agent, employee, or other representative of either Party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

15. **Ownership and Access to Records and Audits**.

15.1 All records, books, documents, maps, data, deliverables, papers and financial information ("Records") that result from the Consultant providing services to the City under this Agreement shall be the property of the City.

15.2 The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Consultant involving transactions related to this Agreement.

15.3 The City Manager may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes (2016).

16. **Non-assignability**.

16.1 This Agreement shall not be assignable by Consultant unless such assignment is first approved by the City Manager. The City is relying upon the apparent qualifications and personal expertise of the Consultant, and such firm's familiarity with the City's area, circumstances and desires.

17. **Severability**.

17.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. **Independent Contractor**.

18.1 The Consultant and its employees, volunteers and agents shall be and remain independent contractors and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the Parties.

19. **Compliance with Laws**.

19.1 The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Services.

20. **Waiver**.

20.1 The failure of either Party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

21. **Survival of Provisions**.

21.1 Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the

Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either Party.

22. **Prohibition of Contingency Fees.**

22.1 The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

23. **Counterparts.**

23.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterpart shall constitute one and the same instrument.

24. **Miscellaneous Provisions.**

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

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

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

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

[The remainder of this page is intentionally left blank.]

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

ATTEST:

Corporate Secretary or Witness:

By: _____

Print Name: John R. Lorfils

Title: Budget Analyst

Date: 10-10-16

The News Directors, Inc., a Florida for-profit corporation,
"Consultant":

By: _____

Print Name: BRIAN C. ANDREWS

Title: PRESIDENT

Date: 10/3/16

ATTEST:

By: _____
Michael A. Etienne, Esq.
City Clerk

City of North Miami, a Florida municipal corporation, "City":

By: _____
Larry M. Spring
City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Jeff P. H. Cazeau, Esq.
City Attorney