

## AGREEMENT

**THIS AGREEMENT**, by and between **CITY OF COLUMBIA, MISSOURI**, a municipal corporation (hereinafter "City"), and The Columbia Entertainment Company (hereinafter "Contractor"), is entered into on the date of the last signatory noted below ("Effective Date").

WHEREAS, City, through its Office of Cultural Affairs, has canvassed the cultural needs of City and determined that certain unmet cultural needs exist within the community; and

WHEREAS, Contractor provides services that may fulfill the cultural needs of Columbia's citizens; and

WHEREAS, City is desirous of meeting the unmet cultural needs by contracting for services with Contractor.

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows.

1. **Term.** The services of Contractor shall commence as soon as practicable after the execution of this Agreement, unless otherwise directed in writing, and shall be undertaken and completed in such sequence as to assure their expeditious completion in the light of the purposes of the Agreement, but in any event, all of the services required hereunder shall be completed by **December 31, 2023**, unless the Parties agree otherwise, in writing.
2. **Services.** City agrees to engage the services of Contractor and Contractor agrees to perform the services outlined in Exhibit A. Contractor agrees that it will make no changes in the approved services until the changes are approved in writing by City. Minor changes may be approved by City staff. Significant programming changes require the approval of the Commission on Cultural Affairs.
3. **Subcontracts.** Contractor represents that Contractor will secure at Contractor's own expense, all personnel required to perform the services called for under this Agreement by Contractor. None of the work or services covered by this Agreement shall be subcontracted or assigned without the written approval of City.

#### 4. Payment.

- a. City agrees to pay Contractor the sum of four thousand eight hundred nine dollars (\$4,809.00) which shall constitute complete compensation for all services and payment of expenses to be rendered under this Agreement. It is expressly understood that in no event will the total amount to be paid to Contractor under the terms of this Agreement or any amendment thereto exceed the sum set forth in this paragraph unless otherwise agreed to in writing between the parties in advance of the provision of such services.
  - b. Payment shall be made as follows:  
City shall pay ninety percent (90%) of the agreement amount within 30 days of execution of agreement. City shall retain ten percent (10%) of the agreement amount pending completion of the services agreed upon and the receipt of Contractor's final report within forty-five (45) days of the end of the project. If the Contractor fails to file a final report with the Office of Cultural Affairs within ninety (90) days of the completion of the services agreed upon, the ten percent (10%) retained shall be forfeited to City and Contractor shall not be eligible to participate in future agreements with City for the provision of cultural services until such unmet requirements are fulfilled.
  - c. Contractor agrees that City may withhold payment of funds until Contractor has satisfied all requirements of this Agreement and any previous contract between Contractor and City. Where Contractor has had previous City funds for projects under programs of the Office of Cultural Affairs, a final report including a detailed schedule of income and expenses must have been presented in order for new project funds to be disbursed.
5. Contractor agrees that it is responsible for all funds made available to Contractor by this Agreement and further agrees that it will reimburse to City any funds expended in violation of city, state, or federal law or in violation of this Agreement. Contractor agrees that it is subject to audit and review on request by City. If Contractor has a financial audit prepared, that report shall be furnished to the Office of Cultural Affairs. Contractor agrees that all funds received from City shall be expended as outlined in the Exhibit A and in the budget approved by the City's Manager of Cultural Affairs. None of the funds shall be used to replace monies normally budgeted by Contractor for other projects or for staff salaries, contractor overhead, generalized administrative expenses or be diverted to any other use or purpose. Full records of all expenditures and disbursements and any income from the provision of the program described in Exhibit A shall be kept and open to City inspection during regular business hours.

6. No Assignment. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.
7. Termination. City shall have the right at any time by written notice to Contractor to terminate and cancel this Agreement, without cause, for the convenience of City. In such event, Contractor shall immediately stop work and City shall not be liable to Contractor except for payment for actual work performed prior to such notice in an amount proportionate to the completed contract price and for the actual costs of preparations made by Contractor for the performance of the cancelled portions of the contract, including a reasonable allowance of profit applicable to the actual work performed. Anticipatory profits and consequential damages shall not be recoverable by Contractor. Should City terminate this Agreement, Contractor shall refund any advance payment made and amount due to the City within thirty (30) days of the termination date.
8. Cancellation of Art Services, Program(s) or Event(s).
- a. Cancellation by Contractor. Should Contractor cancel the proposed art services, program(s), or event(s) that are outlined in Exhibit A, Contractor shall return all of the funds to the City.
  - b. Cancellation by City. Should City cancel the proposed art services, program(s), or event(s) that are outlined in Exhibit A or should an order of the City result in cancellation of the services, program(s) or event(s), Contractor shall return the unspent funds to the City.
9. Notices. Any notice, demand, request, or communication required or authorized by the Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

**If to City:**

**City of Columbia  
Office of Cultural Affairs  
P.O. Box 6015  
Columbia, MO 65205-6015  
ATTN: Sarah Dresser,  
Office of Cultural Affairs  
Manager**

**If to Contractor:**

**Columbia Entertainment Company  
PO Box 953  
Columbia, MO 65205  
ATTN: Enola White**

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand or facsimile and on deposit by the sending party if delivered by courier or U.S. mail.

**10. HOLD HARMLESS AGREEMENT:**

To the fullest extent not prohibited by law, Contractor shall indemnify and hold harmless the City of Columbia, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) for bodily injury and/or property damage arising by reason of any act or failure to act, negligent or otherwise, of Contractor, of any subcontractor (meaning anyone, including but not limited to consultants having a contract with Contractor or a subcontractor for part of the services), of anyone directly or indirectly employed by Contractor or by any subcontractor, or of anyone for whose acts the Contractor or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require Contractor to indemnify, hold harmless, or defend the City of Columbia from its own negligence.

11. Professional Oversight Indemnification. Contractor understands and agrees that City has contracted with Contractor based upon Contractor's representations that Contractor is a skilled professional and fully able to provide the services set out in this Agreement. In addition to any other indemnification set out in this Agreement, Contractor agrees to defend, indemnify and hold and save harmless City from any and all claims, settlements, and judgments whatsoever arising out of City's alleged negligence in hiring or failing to properly supervise Contractor.

12. No Third-Party Beneficiary. No provision of this Agreement is intended to nor shall it in any way inure to the benefit of any third party, so as to constitute any such person a third-party beneficiary under this Agreement.

13. No Waiver of Immunities. In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.

14. Nature of City's Obligations. All obligations of City under this Agreement, which require the expenditure of funds, are conditional upon the availability of funds budgeted and appropriated for that purpose.

15. General Laws. Contractor shall comply with all federal, state, and local laws, rules, regulations, orders, and ordinances. Contractor's services shall also be done in accordance with any regulations or orders including but not limited to public health orders. Contractor shall be responsible for obtaining any permits needed for the services, program(s) or event(s).
16. Governing Law and Venue. This contract shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this contract document, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.
17. Nondiscrimination. During the performance of this Agreement, Contractor shall not discriminate against any employee, applicant for employment or recipient of services because of race, color, religion, sex, sexual orientation, gender identity, age, disability, or national origin or any other legally protected category. Contractor shall comply with all provisions of laws, rules and regulations governing the regulation of Equal Employment Opportunity including Title VI of the Civil Rights Act of 1964 and Chapter 12 of the City of Columbia's Code of Ordinances. Contractor shall include this obligation of compliance in its contracts with subcontractors on this project.
18. Americans with Disabilities Act. Contractor shall comply with all applicable provisions of the Americans with Disabilities Act and the regulations implementing the Act, including those regulations governing employment practices. If this Contract involves Contractor providing services directly to the public, Contractor shall make the services, programs, and activities governed by this Agreement accessible to persons with disabilities as required by the Americans with Disabilities Act and its implementing regulations. Payment of funds under this Agreement are conditional upon Contractor certifying to the City in writing that it and the completed Project complies with the Americans with Disabilities Act and 28 CFR Part 35.
19. Contractor agrees that it will include either the Office of Cultural Affairs (OCA) logo or the following credit line in all advertising, catalogues, flyers, posters, literature, film/video credits, news releases, printed programs, public broadcasts, promotion and publicity set out in a prominent location and type size: "Financial assistance for this project has been provided by the City of Columbia, Office of Cultural Affairs."
20. This Agreement may be signed in one or more counterparts, each of which

shall be deemed an original, but all of which together shall constitute one and the same document. Faxed signatures, or scanned and electronically transmitted signatures, on this Agreement or any notice delivered pursuant to this Agreement, shall be deemed to have the same legal effect as original signatures on this Agreement.

21. Contract Documents. This Agreement includes the following exhibits, which are incorporated herein by reference:

<b>Exhibit</b>	<b>Description</b>
A	Scope of Services

In the event of a conflict between the terms of an exhibit and the terms of this Agreement, the terms of this Agreement controls.

22. Entire Agreement. This Agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this Agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the Parties hereto have been duly authorized to execute this Agreement as of the day and year last written below.

**CONTRACTOR:**

The Columbia Entertainment Company  
By: [Signature]  
Name: Enola Riann White  
Title: Executive Director  
Date: 1/13/23

**CITY OF COLUMBIA, MISSOURI**

By: De'Carlton Seewood, City Manager/sd [Signature]  
Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Nancy Thompson, City Counselor/rw

**CERTIFICATION:** I, hereby certify that this contract is within the purpose of the appropriation to which it is to be charged, Account Number account number 11004610-504990, and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.

\_\_\_\_\_  
Matthew Lue, Director of Finance

## **EXHIBIT A SCOPE OF SERVICES**

### **CEC's 44<sup>th</sup> Season**

#### **PROJECT DESCRIPTION**

Our proposed project is the presentation of theatrical productions, and the production of the winning selections from the Jackie White Memorial National Playwriting Contest.

The productions include:

"The Adams Family" - February 2023

August Wilson's "Ma Rainey's Black Bottom" - April 2023

"Sister Act" – June 2023

Jackie White Playwriting Contest - July 2023

Shows and dates were approved at our February 2022 board meeting. We are committed to rescheduling all cancelled productions from our 41st and 42nd season. This request includes The Addams Family, originally slated for June 2020. All productions will be held at the 155-seat CEC Theatre at 1800 Nelwood Drive, Columbia, MO. We have owned and operated our theatre building for 30 years, since 1991.

The objectives of the project are to provide mid-Missouri audiences with access to year-round, top quality live community theater productions; to provide a wide range of artistic opportunities to actors, artists, musicians, and technicians; and to offer hands-on learning and theatrical education to adults and children to inspire creativity through participation in the productions. We realize these goals by offering a wide variety of productions, from black-box short plays to full-blown spectacular musicals; keeping ticket prices competitive and offering discounts to students and seniors, recruiting volunteer artists and technicians to participate, and by engaging well-qualified directors and staff to facilitate learning and growth among our performers and other stakeholders.

#### **USE OF FUNDS**

CEC is primarily a volunteer-run organization, with 2 stipend staff positions Executive Director and Artistic Director. Our stakeholders are generous with their time and their funds, but OCA grants continue to have a large positive impact on our ability to offer top-quality productions to Columbia residents. Royalties, livestreaming fees, and other overhead costs continue to increase over time, we estimate a cost of \$15.00 per person for the five shows (three plays and two musicals) that we will be producing during the grant period. This is consistent with previous requests and our average ticket pricing.

If awarded, funds will be used to defray the costs of the productions and Jackie White Play Festival.