City of Birmingham
A Walkable Community

MEMORANDUM

Finance Department

DATE: **June 9, 2014**

TO: **Joseph A. Valentine, Interim City Manager**

FROM: **B. Sharon Ostin, Director of Finance/Treasurer**

SUBJECT: **Cultural Council 2014-2015 Service Agreement**

The City Commission previously approved a master service agreement to be used by various outside agencies that are requesting and have previously received funding from the City. The Cultural Council of Birmingham/Bloomfield has completed the required agreement and Attachment A, which provides a description of the services to be provided and the direct benefit of their services to the City.

The Cultural Council is requesting funding totaling $4,200. This is the same amount of funding received by the Cultural Council last year. Funding has been approved in the fiscal year 2014-2015 budget for this expenditure. Based on the services that the Cultural Council provides and the direct benefit to the City, it is recommended that the City Commission approve the Cultural Council's funding request in the amount of $4,200.

SUGGESTED RESOLUTION: To approve the service agreement with the Cultural Council of Birmingham/Bloomfield in the amount of $4,200 for services described in Attachment A of the agreement for fiscal year 2014-2015, account number 101-299.000-811.0000, and further direct the Mayor and City Clerk to sign the agreement on behalf of the City

SERVICES AGREEMENT

THIS SERVICES AGREEMENT ("Agreement"), made this 1 day of JULY, 2014 by and between the **CITY OF BIRMINGHAM**, having its principal office at 151 Martin Road, Birmingham, MI 48009 ("CITY"), and Cultural Council Birmingham/Bloomfield, whose address is PO Box 465 Birmingham, MI 48012 ("SERVICE PROVIDER"), provides as follows:

WITNESSETH:

WHEREAS, the CITY desires to have certain services provided, which shall be of the type, nature and extent as set forth on Attachment A; and

WHEREAS, SERVICE PROVIDER desires to provide said services for the CITY, which it shall do in accordance with the experience it has attained from providing similar services of this nature, under the terms and conditions hereinafter stated.

NOW, THEREFORE, for and in consideration of the respective agreements and undertakings herein contained, the parties agree as follows:

1. SERVICE PROVIDER shall perform the services as set forth on Attachment A. The type, nature and scope may be changed if mutually agreed upon in writing by SERVICE PROVIDER and the CITY.

2. The CITY shall pay a total of $4,200.00 to SERVICE PROVIDER for the performance of this Agreement, which amount shall compensate SERVICE PROVIDER for all aspects of the services to be performed including, but not limited to, all preparation, coordination, management, staffing and all other services incidental thereto. Payment shall be made to SERVICE PROVIDER pursuant to the schedule contained in Attachment A.

3. All services performed shall be of the highest quality and standards that meet or exceed that which is required and expected in that service industry.

4. SERVICE PROVIDER shall provide and designate one supervisor responsible for the coordination of services provided, who shall handle problem solving and be the contact person for the CITY.

5. This Agreement shall commence immediately after both parties have signed in the place and manner indicated below and shall terminate in accordance with the provisions as set forth in Attachment A.

6. This Agreement shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan. SERVICE PROVIDER agrees to perform all services provided for in this Agreement in accordance with and in full compliance with all local, state and federal laws and regulations.

7. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.

8. This Agreement shall be binding upon the successors and assigns of the parties hereto, but no such assignment shall be made by SERVICE PROVIDER without the prior written consent of the CITY. Any attempt at assignment without prior written consent shall be void and of no effect.

9. SERVICE PROVIDER agrees that neither it nor its employees will discriminate against any employee, independent contractor, or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight or marital status. SERVICE PROVIDER shall inform the CITY of all claims or suits asserted against it by SERVICE PROVIDER's employees or contractors who work pursuant to this Agreement. SERVICE

PROVIDER shall provide the CITY with periodic status reports concerning all such claims or suits, at intervals established by the CITY.

10. To the fullest extent permitted by law, SERVICE PROVIDER and any entity or person for whom SERVICE PROVIDER is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the CITY, its elected and appointed officials, employees and volunteers and others working on behalf of the CITY against any and all claims, demands, suits, or loss, including all costs connected therewith, including reasonable attorney fees, and for any damages which may be asserted, claimed or recovered against or from the CITY, its elected and appointed officials, employees, volunteers or others working on behalf of the CITY, which arises out of or is in any way connected or associated with this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting solely from the act or omission of the CITY, its elected or appointed officials, employees, volunteers or others working on behalf of the CITY.

11. SERVICE PROVIDER shall not commence work under this Agreement until it has, at its sole expense, obtained the insurance required by this paragraph. All certificates of insurance shall be with insurance carriers licensed and admitted to do business in the State of Michigan. All certificates of insurance shall be with insurance carriers acceptable to the CITY. SERVICE PROVIDER shall maintain during the life of this Agreement the types of insurance coverage and minimum limits as set forth below:

A. Workers' Compensation Insurance: SERVICE PROVIDER shall procure and maintain during the life of this contract, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

B. Commercial General Liability Insurance: SERVICE PROVIDER shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than $1,000,000 per occurrence for combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability

Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.

C. Motor Vehicle Liability: SERVICE PROVIDER shall procure and maintain during the life of this Agreement Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than $ 1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

D. Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be *Additional Insureds*: The City of Birmingham, including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary and any other insurance maintained by the additional insureds shall be considered to be excess and non-contributing with this insurance required from SERVICE PROVIDER under this Section.

E. Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal shall be sent to: Finance Department, City of Birmingham, P.O. Box 3001, 151 Martin Street, Birmingham, Michigan 48012.

F. Proof of Insurance Coverage: SERVICE PROVIDER shall provide the CITY at the time the contracts are returned for execution, Certificates of Insurance and/or policies, acceptable to the CITY, as listed below.

1. Two (2) copies of Certificate of Insurance for Workers' Compensation;

2. Two (2) copies of Certificate of Insurance for Commercial General Liability;

3. Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;

4. If so requested, Certified Copies of all policies mentioned above will be furnished.

G. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, SERVICE PROVIDER shall deliver renewal certificates and/or policies to the CITY at least (10) days prior to the expiration date.

12. If, after the effective date of this Agreement, any official of the CITY or spouse, child, parent or in-law, of such official or employee shall become directly or indirectly interested in this Agreement, or the affairs of SERVICE PROVIDER, the CITY shall have the right to terminate this Agreement without further liability to SERVICE PROVIDER if the disqualification has not been removed within thirty (30) days after the CITY has given SERVICE PROVIDER notice of the disqualifying interest. Ownership of less than one percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

13. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim exceeds $1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL §600.5001 et. seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. This Agreement shall be governed by the laws of the State of Michigan and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 48th District Court.

14. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties, except as

specifically set forth herein. No supplement, modification, addition, deletion or waiver of this Agreement or any provision of this Agreement shall be binding unless executed in writing by both parties to be bound thereby.

15. SERVICE PROVIDER and the CITY agree that SERVICE PROVIDER shall be liable for its own actions and neither SERVICE PROVIDER nor its employees or contractors shall be construed as employees of the CITY. Neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. SERVICE PROVIDER, including its employees and contractors, shall not be considered entitled or eligible to participate in any benefits or privileges given or extended by the CITY, or be deemed an employee of the CITY for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation and other employer contributions on behalf of SERVICE PROVIDER or SERVICE PROVIDER's employees or contractors.

16. SERVICE PROVIDER acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. SERVICE PROVIDER recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the CITY. Therefore, the SERVICE PROVIDER agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. SERVICE PROVIDER shall inform its employees and contractors of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. SERVICE PROVIDER further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.

The said parties have caused this Agreement to be executed as of the date and year above written.

THE CITY OF BIRMINGHAM

By: _____
Scott D. Moore, Mayor

By: _____
Laura M. Pierce, City Clerk

[SERVICE PROVIDER]

By: _____

Its: President CCBB

APPROVED:

_____
Joseph A. Valentin, Interim City Manager
(Approved as to substance)

_____
Department Head
(Approved as to substance)

_____
Timothy J. Currier, City Attorney
(Approved as to form)

_____
B. Sharon Ostin, Director of Finance
(Approved as to financial obligation)

ATTACHMENT A

I. Funding Request: $4,200.00

A. CityScapes $3,400
B. Birmingham in Stitches $ 800
TOTAL $4,200

II Amount of Funding Previously Received From City: $4,200

III. Organization's Purpose or Mission with Emphasis on how Organization Serves the City:
The Cultural Council of Birmingham/Bloomfield promotes the area as an arts and cultural center and serves as an information resource, catalyst, and advocate for cultural resources in the City of Birmingham as well as the greater community it serves as a "downtown" center.

Increases in cultural programming have been demonstrated to result in enhanced community image, appeal to educated citizens, increased desirability as a city to live in and visit, sustained residential property value, and overall citizen satisfaction. The strategic partnership between the Cultural Council and the City of Birmingham results in unique programming that contributes to the quality of life, the economy and the vibrancy of the City.

The main activities of this service to the City and CityScapes are a visible expression of the City of Birmingham moniker, *A Walkable Community*. CityScapes contributes to Birmingham as a destination downtown, strengthen visibility for residential and business concerns through increased foot traffic and media publicity, provide diversion and entertainment for residents and visitors, and enhance the image and reputation of the City of Birmingham as a special place to live, work, do business and pursue recreational activities.

IV. Date(s) of Service(s):

CityScapes Ongoing throughout the year

V. Description of Services to be Provided (Scope of Work):

CITYSCAPES, a joint project of the City of Birmingham Public Arts Board and the Cultural Council of Birmingham/Bloomfield, through the Joint Committee for CityScapes, installs outdoor sculptures at designated locations throughout downtown Birmingham. The present program is a revival of a Cultural Council program originally created in 1990 that had languished for a time following City establishment of the Public Arts Board. The Cultural Council acts as contractor

ATTACHMENT A - continued

VI. Describe Direct Benefit of Services to Birmingham Residents:

Cultural Council services to the City of Birmingham as outlined above strengthen the resources of the Public Arts Board for the placement of art in public places, contribute to Birmingham as a destination downtown, strengthen visibility for residential and business concerns through increased foot traffic and media publicity, provide diversion and entertainment for residents and visitors, and enhance the image and reputation of the City of Birmingham as a special place to live, work, do business and pursue recreational activities.

OP ID: LW

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 05/30/14

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
TFC O'Connell Agency
27500 Farmington Rd
Farmington Hills, MI 48334
Nancy A. O'Connell

Phone: 248-848-1900
Fax: 248-848-1912

CONTACT NAME:
PHONE (A/C, No, Ext):
FAX (A/C, No):
E-MAIL ADDRESS:
PRODUCER CUSTOMER ID #: CULTU-1

INSURED
Cultural Council of Birmingham/Bloomfield
P.O. Box 465
Birmingham, MI 48012-0465

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Auto Owners Insurance Co.	18988
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC	X		04108614-14	07/15/14	07/15/15	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 50,000
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
							PRODUCTS - COMP/OP AGG	$ 2,000,000
								$
	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS			NOT INCLUDED			COMBINED SINGLE LIMIT (Ea accident)	$
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
								$
	UMBRELLA LIAB OCCUR EXCESS LIAB CLAIMS-MADE DEDUCTIBLE RETENTION $			NOT INCLUDED			EACH OCCURRENCE	$
							AGGREGATE	$
								$
								$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		NOT INCLUDED			WC STATU-TORY LIMITS / OTH-ER	
							E.L. EACH ACCIDENT	$
							E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

*30 day notice of cancellation provided
*10 day notice for nonpayment of premium

CERTIFICATE HOLDER

City of Birmingham
Attn: Finance Department
P.O. Box 3001
Birmingham, MI 48012-1669

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Nancy A. O'Connell

© 1988-2009 ACORD CORPORATION. All rights reserved.

The ACORD name and logo are registered marks of ACORD

It is understood and agreed that the following shall be Additional Insured the City of Birmingham, including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and b members, including employees and volunteers thereof. This coverage shall primary and any other insurance maintained by the Additional Insured shall considered to be excess and non-contributing with this insurance.

Cultural Council of Birmingham/Bloomfield
P.O. Box 465
Birmingham, Michigan 48012

June 6, 2014

City of Birmingham
Attn.: B. Sharon Ostin, Director of Finance
151 Martin Street, P.O.Box 3001
Birmingham, MI. 48012

Dear Ms. Ostin,

This letter is to confirm the following:

Workers Compensation coverage is not required for the Cultural Council of Birmingham Bloomfield due to the fact all of the staff are volunteers. There are no employees.

Auto insurance coverage is not required for the Cultural Council of Birmingham Bloomfield due to the fact that CCBB does not own any automobiles and no autos are utilized for services provided.

Sincerely

Laurie Tennent
President