

**PROFESSIONAL SERVICE AGREEMENT
BETWEEN THE CITY OF MIAMI BEACH, FLORIDA
AND URBACH KAHN & WERLIN, LLP
FOR PROFESSIONAL SERVICES IN AUDITS OF
ENTITIES REQUIRED TO COLLECT AND REMIT RESORT TAXES
AND INTERNAL AUDITS OF NON-PROFIT ORGANIZATIONS**

THIS AGREEMENT made and entered into this 15th day of March, 2004, by and between the **CITY OF MIAMI BEACH, FLORIDA** (hereinafter referred to as City), a municipal corporation, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida, 33139, and Urbach Kahn & Werlin, LLP (hereinafter referred to as Consultant), a limited liability partnership, whose address is 1425 K Street, 5th Floor, Washington, DC 20005.

**SECTION 1
DEFINITIONS**

- Agreement:** This Agreement between the City and Consultant.
- City Manager:** The Chief Administrative Officer of the City.
- Consultant:** For the purposes of this Agreement, Consultant shall be deemed to be an independent Consultant, and not an agent or employee of the City.
- Services:** All services, work and actions by the Consultant performed pursuant to or undertaken under this Agreement, as described in Section 2.
- Fee:** Amount paid to the Consultant to cover the costs of the Services.
- Risk Manager:** The Risk Manager of the City, with offices at 1700 Convention Center Drive, Third Floor, Miami Beach, Florida 33139, telephone number (305) 673-7000, Ext. 6435, and fax number (305) 673-7023.

**SECTION 2
SCOPE OF WORK**

The scope of work to be performed by Consultant is set forth in Exhibit "A," entitled

"Scope of Services" (Services).

SECTION 3 **COMPENSATION**

3.1 FIXED FEE

Consultant shall be compensated for the Services, as set forth in Section 2 and Exhibit A, as follows: (a) For audits of entities required to collect and remit Resort Taxes, \$750 per review completed on monthly and quarterly filers, \$600 per review completed on annual filers, (b) For internal audits of non-profit organizations, \$50 per hour.

3.2 INVOICING

Consultant shall submit an invoice, which includes the purchase order number and a detailed description of the Services provided.

3.3 METHOD OF PAYMENT

Payments shall be made for services satisfactorily rendered within thirty (30) days of the date of invoice, in a manner satisfactory to, and as approved and received by, the City. Consultant shall mail all invoices to:

City of Miami Beach
Accounts Payable
1700 Convention Center Drive
3rd Floor
Miami, Florida 33139

SECTION 4 **GENERAL PROVISIONS**

4.1 RESPONSIBILITY OF THE CONSULTANT

With respect to the performance of the Services, the Consultant shall exercise that degree of skill, care, efficiency and diligence normally exercised by recognized professionals with respect to the performance of comparable Services. In its performance of the Services, the Consultant shall comply with all applicable laws, ordinances, and regulations of the City, Miami-Dade County, State of Florida, and Federal Government.

4.2 PUBLIC ENTITY CRIMES

A State of Florida Form PUR 7068, Sworn Statement under Section 287.133(3)(a) Florida Statute on Public Entity Crimes shall be filed with the City's Procurement Division, prior to commencement of the Services herein.

4.3 DURATION AND EXTENT OF AGREEMENT

The term of this Agreement shall be for a period of one year from the date this Agreement is executed by all parties hereto. The City may, at its sole option and discretion, and upon written notice to Consultant, renew the Agreement for two (2) additional one year terms, subject to the same terms and conditions set forth herein.

4.4 TIME OF COMPLETION

The Services to be rendered by the Consultant shall be commenced upon receipt of a written Notice to Proceed from the City subsequent to the execution of the Agreement.

4.5 INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the City of Miami Beach and its officers, employees and agents, from and against any and all actions, claims, liabilities, losses, and expenses, including, but not limited to, attorneys' fees, for personal, economic or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or be alleged to have arisen from the negligent acts, errors, omissions or other wrongful conduct of the Consultant, its employees, agents, sub-consultants, or any other person or entity acting under Consultant's control, in connection with the Consultant's performance of the Services pursuant to this Agreement; and to that extent, the Consultant shall pay all such claims and losses and shall pay all such costs and judgements which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by the City in the defense of such claims and losses, including appeals. The parties agree that one percent (1%) of the total compensation to the Consultant for performance of the Services under this Agreement is the specific consideration from the City to the Consultant for the Consultant's Indemnity Agreement.

The Consultant's obligation under this Subsection shall not include the obligation to indemnify the City of Miami Beach and its officers, employees and agents, from and against any actions or claims which arise or are alleged to have arisen from negligent acts or omissions or other wrongful conduct of the City and its officers, employees and agents. The parties each agree to give the other party prompt notice of any claim coming to its knowledge that in any way directly or indirectly affects the other party.

4.6 TERMINATION, SUSPENSION AND SANCTIONS

4.6.1 Termination for Cause

If the Consultant shall fail to fulfill in a timely manner, or otherwise violate any of the covenants, agreements, or stipulations material to this Agreement, the City shall thereupon have the right to terminate this Agreement for cause. Prior to

exercising its option to terminate for cause, the City shall notify the Consultant of its violation of the particular terms of this Agreement and shall grant Consultant seven (7) days to cure such default. If such default remains uncured after seven (7) days, the City, upon three (3) days' notice to Consultant, may terminate this Agreement and the City shall be fully discharged from any and all liabilities, duties and terms arising out of/or by virtue of this Agreement.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by any breach of the Agreement by the Consultant. The City, at its sole option and discretion, shall additionally be entitled to bring any and all legal/equitable actions that it deems to be in its best interest in order to enforce the City's right and remedies against the defaulting party. The City shall be entitled to recover all costs of such actions, including reasonable attorneys' fees. To the extent allowed by law, the defaulting party waives its right to jury trial and its right to bring permissive counter claims against the City in any such action.

4.6.2 Termination for Convenience of City

NOTWITHSTANDING SECTION 4.6.1, THE CITY MAY ALSO, FOR ITS CONVENIENCE AND WITHOUT CAUSE, TERMINATE AT ANY TIME DURING THE TERM HEREOF BY GIVING WRITTEN NOTICE TO CONSULTANT OF SUCH TERMINATION, WHICH SHALL BECOME EFFECTIVE SEVEN (7) DAYS FOLLOWING RECEIPT BY THE CONSULTANT OF THE WRITTEN TERMINATION NOTICE. IN THAT EVENT, ALL FINISHED OR UNFINISHED DOCUMENTS AND OTHER MATERIALS, AS DESCRIBED IN SECTION 2 AND IN EXHIBIT "A", SHALL BE PROPERLY ASSEMBLED AND DELIVERED TO THE CITY AT CONSULTANT'S SOLE COST AND EXPENSE. IF THE AGREEMENT IS TERMINATED BY THE CITY AS PROVIDED IN THIS SUBSECTION, CONSULTANT SHALL BE PAID FOR ANY SERVICES SATISFACTORILY PERFORMED, AS DETERMINED BY THE CITY AT ITS DISCRETION, UP TO THE DATE OF TERMINATION. PROVIDED, HOWEVER, THAT AS A CONDITION PRECEDENT TO SUCH PAYMENT, CONSULTANT SHALL HAVE DELIVERED ANY AND ALL DOCUMENTS, MATERIALS, ETC, TO CITY, AS REQUIRED HEREIN.

4.6.3 Termination for Insolvency

The City also reserves the right to terminate the Agreement in the event the Consultant is placed either in voluntary or involuntary bankruptcy or makes an assignment for the benefit of creditors. In such event, the right and obligations for the parties shall be the same as provided for in Section 4.6.2.

4.6.4 Sanctions for Noncompliance with Nondiscrimination Provisions

In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the City shall impose such sanctions as the City, Miami-Dade County, and / or the State of Florida, as applicable, may determine to be appropriate, including but not limited to, withholding of payments to

the Consultant under the Agreement until the Consultant complies and/or cancellation, termination or suspension of the Agreement. In the event the City cancels or terminates the Agreement pursuant to this Subsection the rights and obligations of the parties shall be the same as provided in Section 4.6.2.

4.7 CHANGES AND ADDITIONS

Changes and additions to the Agreement shall be directed by a written amendment signed by the duly authorized representatives of the City and Consultant. No alteration, change, or modification of the terms of this Agreement shall be valid unless amended in writing, signed by both parties hereto, and approved by the City Commission of the City.

4.8 OWNERSHIP OF DOCUMENTS

All documents prepared by the Consultant pursuant to this Agreement are related exclusively to the Services described herein, and are intended or represented for ownership by the City. Any reuse distribution, or dissemination of same by Consultant, other than to the City, shall first be approved in writing by the City.

4.9 INSURANCE REQUIREMENTS

The Consultant shall not commence any work pursuant to this Agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City's Risk Manager. The Consultant shall maintain and carry in full force during the term of this Agreement the following insurance:

1. Consultant General Liability in the amount of \$1,000,000.
2. Consultant Professional Liability in the amount of \$300,000.
3. Workers Compensation & Employers Liability as required pursuant to Florida statute.
4. The insurance must be furnished by insurance companies authorized to do business in the State of Florida and approved by the City's Risk Manager.
5. Original certificates of insurance for the above coverage must be submitted to the City's Risk Manager for approval prior to any work commencing. These certificates will be kept on file in the office of the Risk Manager, 3rd Floor, City Hall.
6. The Consultant is solely responsible for obtaining and submitting all insurance certificates for its sub-consultants.

All insurance policies must be issued by companies authorized to do business under the laws of the State of Florida. The companies must be rated no less than "B+" as to management and not less than "Class VI" as to strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the City's Risk Manager. Compliance with the foregoing requirements shall not relieve the Consultant of the liabilities and obligations under this Section or under any other portion of this Agreement, and the City shall have

the right to obtain from the Consultant specimen copies of the insurance policies in the event that submitted certificates of insurance are inadequate to ascertain compliance with required overage.

4.9.1 Endorsements

All of Consultant's certificates, above, shall contain endorsements providing that written notice shall be given to the City at least thirty (30) days prior to termination, cancellation or reduction in coverage in the policy.

4.9.2 Certificates

Unless directed by the City otherwise, the Consultant shall not commence any services pursuant to this Agreement until the City has received and approved, in writing, certificates of insurance showing that the requirements of this Section (in its entirety) have been met and provided for.

4.10 ASSIGNMENT, TRANSFER OR SUBCONTRACTING

The Consultant shall not subcontract, assign, or transfer any work under this Agreement in whole or in part, without the prior written consent of the City.

4.11 SUB-CONTRACTORS

The Consultant shall be liable for the Consultant's services, responsibilities and liabilities under this Agreement and the services, responsibilities and liabilities of sub-contractors, and any other person or entity acting under the direction or control of the Consultant. When the term "Consultant" is used in this Agreement, it shall be deemed to include any sub-contractors and any other person or entity acting under the direction or control of Consultant. All sub-contractors must be approved in writing by the City prior to their engagement by Consultant.

4.12 EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, and national origin, place of birth, marital status, physical handicap, or sexual orientation. The Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, color, religion, ancestry, sex, age, national origin, place of birth, marital status, disability, or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or termination; recruitment or recruitment advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship.

4.13

CONFLICT OF INTEREST

The Consultant agrees to adhere to and be governed by the Metropolitan Miami-Dade County Conflict of Interest Ordinance (No. 72-82), as amended; and by the City of Miami Beach Charter and Code, which are incorporated by reference herein as if fully set forth herein, in connection with the Agreement conditions hereunder.

The Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirectly which should conflict in any manner or degree with the performance of the Services. The Consultant further covenants that in the performance of this Agreement, no person having any such interest shall knowingly be employed by the Consultant. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefits arising therefrom.

4.14

PATENT RIGHTS; COPYRIGHTS; CONFIDENTIAL FINDINGS

Any patentable result arising out of this Agreement, as well as all information, specifications, processes, data and findings, shall be made available to the City for public use.

No reports, other documents, articles or devices produced in whole or in part under this Agreement shall be the subject of any application for copyright or patent by or on behalf of the Consultant or its employees or sub-contractors, without the prior written consent of the City.

4.15

NOTICES

All notices and communications in writing required or permitted hereunder may be delivered personally to the representatives of the Consultant and the City listed below or may be mailed by registered mail, postage prepaid (or airmailed if addressed to an address outside of the city of dispatch).

Until changed by notice in writing, all such notices and communications shall be addressed as follows:

TO CONSULTANT:

Urbach, Kahn & Werlin, LLP
Attn: Joseph L. Peterson, CPA
1425 K Street
Washington, DC 20005
(202) 296-2020

TO CITY:

City of Miami Beach
Attn: Procurement Division
1700 Convention Center Drive

Miami Beach, Florida 33139
(305) 673-7490

Notices hereunder shall be effective:
If delivered personally, on delivery; if mailed to an address in the city of dispatch,
on the day following the date mailed; and if mailed to an address outside the city of
dispatch on the seventh day following the date mailed.

4.16 **LITIGATION JURISDICTION/VENUE**

This Agreement shall be enforceable in Miami-Dade County, Florida, and if
legal action is necessary by either party with respect to the enforcement of any or all of
the terms or conditions herein, exclusive venue for the enforcement of same shall lie in
Miami-Dade County, Florida.

BY ENTERING INTO THIS AGREEMENT, THE CONSULTANT
EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY
CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

4.17 **ENTIRETY OF AGREEMENT**

This writing and the Services embody the entire Agreement and
understanding between the parties hereto, and there are no other agreements and
understandings, oral or written with reference to the subject matter hereof that are not
merged herein and superceded hereby. The Services and the Proposal Documents
are hereby incorporated by reference into this Agreement.

4.18 **LIMITATION OF CITY'S LIABILITY**

The City desires to enter into this Agreement only if in so doing the City can place
a limit on the City's liability for any cause of action for money damages due to an
alleged breach by the City of this Agreement, so that its liability for any such breach
never exceeds the sum of \$1,000. Consultant hereby expresses its willingness to
enter into this Agreement with Consultant's recovery from the City for any damage
action for breach of contract to be limited to a maximum amount of \$1,000.

Accordingly, and notwithstanding any other term or condition of this Agreement,
Consultant hereby agrees that the City shall not be liable to the Consultant for
damages in an amount in excess of \$1,000 for any action or claim for breach of
contract arising out of the performance or non-performance of any obligations imposed
upon the City by this Agreement. Nothing contained in this paragraph or elsewhere in
this Agreement is in any way intended to be a waiver of the limitation placed upon the
City's liability as set forth in Section 768.28, Florida Statutes.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials, as of the date first entered above.

FOR CITY:

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By: *Robert Parden*
City Clerk

Janice [Signature]
City Manager

FOR CONSULTANT:

URBACH KAHN & WERLIN, LLP

WITNESS:

By: *[Signature]*
JAMES C. NORFLEET
Print Name

[Signature]
Signature
Roger Von Elm CPA
Partner for
Joseph L. Peterson CPA
Print Name / Title

By: *[Signature]*
CORBEN WEISERLINE
Print Name

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

[Signature] 3-7-04
City Attorney Date

EXHIBIT "A"

SCOPE OF SERVICES:

A. Resort Taxes:

Audits are to be performed on businesses registered with the City for collecting resort taxes.

The scope of the work consists of examining the taxpayer's accounting records, such as general ledgers, cash receipts journals, sales journals, and other records as may be maintained by the taxpayer; comparison of reported taxable sales with other reports such as Florida sales tax reports, and the preparation of schedules and analyses of work to determine compliance with the City Code relating to the collection and payment. All taxpayers' records which are subject to, determined to be, or administered by the Resort Tax codes are examined. Detailed testing is performed on a sampling basis.

Consultant is to follow the City's Internal Audit programs for auditing resort tax businesses. There are separate programs for the annual filing and the monthly filing accounts. Revenues reported in monthly filing accounts may vary by containing revenues from rooms, food and or alcohol. City forms and programs will be provided in electronic format. Also included in the work to be performed are the initial contact with business and the performance of an audit which results in the issuance of a resolution letter stating the results of the audit.

Each audit is completed by the submission of workpapers and a resolution letter to the Internal Auditor for final review and approval.

The Internal Audit Department will assign these audits. It is anticipated that the total number of audits assigned to the Consultants will be about 120 to 150 audits per year.

B. Internal Audits of Non-Profits:

Audits are to be performed on non-profit organizations receiving funding from and / or through the City. This is the first year that services will be contracted with an outside vendor.

The scope of the work consists of examining the organization's accounting records, such as general ledgers, revenues and expenditure transactions, and other records as may be maintained by the organization, and the preparation of schedules and analyses of work to determine compliance with the applicable regulations of the funding received from the City. Detailed testing is performed on a sample basis.

Consultant is to work under the direction of the City's Internal Auditor by using internal audit programs for auditing non-profit agencies. Audit scope is to be determined for

each audit by the Internal Auditor upon assignment. City forms and programs will be provided in electronic format. Each audit is completed by submission of workpapers with a draft audit report listing findings to the internal auditor for final review and approval.

The Internal Audit Department will assign these audits. It is anticipated that the total number of audits assigned to the Consultants for next fiscal year (03/04) would be approximately 4 to 6 audits depending upon funding.