

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF MIAMI BEACH  
AND CIRCLE OF ONE, INC.  
FOR MEDIA RELATIONS AND ADVERTISING CONSULTING SERVICES**

**THIS AGREEMENT** made and entered into this 8<sup>th</sup> day of November, 2004, by and between the **CITY OF MIAMI BEACH, FLORIDA** (hereinafter referred to as City), having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida, 33139, and **CIRCLE OF ONE, INC., a Florida Corporation**, (hereinafter referred to as Circle of One, Inc. or Consultant), whose address is 2400 NE 2<sup>nd</sup> Avenue, Studio C, Miami, FL, 33137.

**SECTION 1  
DEFINITIONS**

- Agreement:** This Agreement between the City and Consultant.
- City Manager:** The Chief Executive 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**

- 2.1 Consultant agrees to perform the following services for the City during the term of this Agreement (Services).
- a) Media negotiations for paid media placement
  - b) Monitoring of Street Teams
  - c) African-American media relations
  - d) Administration of Art-Here-Now
  - e) Co-administration of event sponsorships

Should the City, at its sole option and discretion, renew the Agreement, the City reserves the right to negotiate any and all future Services to be provided herein.

**SECTION 3**  
**COMPENSATION**

**3.1 FEE**

Consultant shall be compensated by the City for those Services provided and satisfactorily performed during the term herein, **for a fee not to exceed nine thousand three hundred sixteen dollars (\$9,316.00)**, inclusive of Reimbursable Expenses and any other consultants necessary to complete the Scope of Work described in Section 2 herein. Reimbursable Expenses shall include out-of-pocket costs which include long-distance phone calls, photocopies, transportation, mailings, and other ancillary costs for items such as press kits, a branding manual, media-training equipment rental and tapes. However, any such Reimbursable Expenses must be approved in writing by the City prior to Consultant incurring costs for same. The City shall have no duty or responsibility to reimburse Consultant for any unapproved expenses.

**3.2 METHOD OF PAYMENT**

Consultant shall submit an invoice, which includes description of the portion of the Services provided.

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

City of Miami Beach Department of Tourism and Cultural Development  
Cultural Affairs  
1700 Convention Center Drive  
Miami, Florida 33139  
Attn: Roberta Behrendt, Operations Manager

**SECTION 4**  
**GENERAL PROVISIONS**

**4.2 PUBLIC ENTITY CRIMES**

Prior to commencement of the Services, 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 commence upon the last date of execution of this Agreement, by all parties hereto, and shall terminate no later than March 31, 2005. See Attachment "A," Circle of One, Inc., Timeline for Services.

**4.4 TIME OF COMPLETION**

The Services to be rendered by the Consultant shall be commenced upon execution of the Agreement, and Consultant shall complete the scope of work presented in Section 2 by no later than March 31, 2005.

A reasonable extension of time shall be granted in the event the work of the Consultant is delayed or prevented by the City or by any circumstances beyond the reasonable control of the Consultant, including weather conditions or Acts of God, which render performance of the Consultant's duties impracticable.

**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 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 judgments 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. This information shall survive the term of the 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 the Services then remaining to be performed. 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**

**THE CITY MAY ALSO, FOR ITS CONVENIENCE AND WITHOUT CAUSE, TERMINATE THE SERVICES THEN REMAINING TO BE PERFORMED AT ANY TIME DURING THE TERM HEREOF BY GIVING WRITTEN NOTICE TO CONSULTANT OF SUCH TERMINATION, WHICH SHALL BECOME EFFECTIVE FIFTEEN (15) 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 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.

**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 or the State of Florida 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 Services. In the event the City cancels or terminates the Services 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.

**4.8 AUDIT AND INSPECTIONS**

At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City and/or such representatives as the City may deem to act on its behalf, to audit, examine and make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. Consultant shall maintain any and all records necessary to document compliance with the provisions of this Agreement.

**4.9 ACCESS TO RECORDS**

Consultant agrees to allow access during normal business hours to all financial records to the City and/or such authorized representatives as it may deem to act on its behalf, and agrees to provide such assistance as may be necessary to facilitate financial audit by the City or its representatives when deemed necessary to insure compliance with applicable accounting and financial

standards. Consultant shall allow access during normal business hours to all other records, forms, files, and documents which have been generated in performance of this Agreement, to those personnel as may be designated by the City.

#### **4.10 ASSIGNMENT, TRANSFER OR SUBCONSULTING**

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

#### **4.11 SUB-CONSULTANTS**

The Consultant shall be liable for the Consultant's services, responsibilities and liabilities under this Agreement and the services, responsibilities and liabilities of sub-consultants, and any other person or entity acting under the direction or controls of the Consultant. When the term "Consultant" is used in this Agreement, it shall be deemed to include any sub-consultants and any other person or entity acting under the direction or control of Consultant. All sub-consultants must be approved of in writing 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, sexual orientation or physical handicap. 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, physical handicap, 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 herein agrees to adhere to and be governed by all applicable Miami-Dade County Conflict of Interest Ordinances and Ethics provisions, as set forth in the Miami-Dade County Code, and as may be amended from time to time; and by the City of Miami Beach Charter and Code; both of which are incorporated by reference herein as if fully set forth herein.

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 there from.

**4.14 PATENT RIGHTS; COPYRIGHTS; CONFIDENTIAL FINDINGS**

All reports, documents, articles, or other deliverables produced in whole or in part under this Agreement shall be the sole and absolute property of the City.

No reports, other documents, articles or deliverables 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 subconsultants, without the express prior written permission of the City. Further, in the event the Consultant incorporates or otherwise uses previously (or pending) copyrighted, trademarked, and/or patented material(s) pursuant to its performance of the Services, Consultant shall be solely responsible for having obtained any and all required approvals, permissions, and or authorization(s) for such use. The 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, attorney's fees, for personal, economic or bodily injury, wrongful death, loss of or damage to property, which may arise or be alleged to have arisen from Consultant's use of any copyrighted, trademarked, and/or patented material pursuant to this Subsection 4.14. 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 this indemnity. This indemnity shall survive the term of the Agreement.

**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:** Suzan McDowell, President  
Circle of One, Inc.  
2400 NE 2<sup>nd</sup> Avenue, Studio C  
Miami FL 33137  
Tel/Fax 305-576-3790/305-576-3789

**TO CITY:** Bill Baites, Cultural Affairs Program Manger  
City of Miami Beach Department of  
Tourism and Cultural Development  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Tel/fax 305-673-7577/305-673-7262

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.

**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.

**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.



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 Parcher  
Robert Parcher  
City Clerk

By: Jorge M. Gonzalez  
Jorge M. Gonzalez  
City Manager

**FOR CONSULTANT:**

**Circle of One, Inc.**

**ATTEST:**

By: Andrea Mason  
Circle of One, Inc.  
Secretary

By: [Signature]  
Circle of One, Inc.  
President

ANDREA MASON  
Print Name

SUZAN McDowell  
Print Name

**Corporate Seal**

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

[Signature] 11/18/04  
City Attorney Date

Attachment "A"  
 Circle of One, Inc.  
 Timeline for Services

	October	November	December
<b>A</b>	Open Cultural Arts Council file		
<b>S</b>	Eloise/Suzan/Rafa meet on 10/4 to begin conceptual CAC brand and marketing campaign	Initiate relationships with grass roots organizations	Execute art here now events
<b>K</b>	Identify and initiate relationships with all media	Identify potential cross promotional opportunities with corporate sponsors	November activity re-cap report
	Write business plan for entire project	Create list of target Florida celebrities for CAC celebrity endorsement	Special events
	Schedule media days with all media (first 2 weeks of October)	Initiate street team program	Monitor media
	Negotiate annual media contracts (3 week October)	Monitor media	Art Basel
	Meet with CAC for approval of media/marketing plan	Investigate Art Basel program	Not So Silent Night
	Research on all non-profits in CAC system	Launch of creative campaign	African american press
	Review existing promotional materials	Execute art here now events	
	Place media to begin in November	October activity re-cap report	
	Establish weekly meeting times for Project Team	Special events	
	Plan Art, Here, Now events	African-american press	
	Plan and negotiate special event for the calendar year		
	Meet with Ticketmaster for Cultural Passport program		
	Initiate relationship with Conclerge Association		
	Meet with and schedule street team		
	Submit press releases to African-American press		
	Concept/write copy for radio campaign		
	Produce radio campaign		

Attachment "A"  
 Circle of One, Inc.  
 Timeline for Services

January	February	March
Execute art here now events	Execute art here now events	Execute art here now events
Re-evaluate newsletter: online vs. printed	January activity re-cap report	February activity re-cap report
December activity re-cap report	Special events	Special events
Special events	African-American press	Comprehensive Campaign re-cap will be submitted in April
Monitor media	Monitor media	African american press
African American press	Meet with Bill/Roberta re: possible contract renewal	Monitor media