



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 4/27/2023

File ID: TMP-2853

Department: Urban Development

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into an agreement between the City of Huntsville and Music Export Memphis (MEM), Inc., for Huntsville Ambassador Program.

Resolution No.

Finance Information:

Account Number: Account number 3080-71-00000-530000-BUDGET01-

City Cost Amount: \$25,000.00

Total Cost: \$25,000.00

Special Circumstances:

Grant Funded: N/A

Grant Title - CFDA or granting Agency: N/A

Resolution #: N/A

Location: (list below)

Address: N/A

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:

N/A

RESOLUTION NO. 23-

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized, to enter into an agreement between the City of Huntsville and Music Export Memphis (MEM), Inc., in the amount of TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00), for Professional Services for Huntsville Ambassador Program, in Huntsville, Alabama, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that document attached hereto and identified as "Agreement between the City of Huntsville and Music Export Memphis (MEM), Inc., for Professional Services for Huntsville Ambassador Program," consisting of a total of eleven (11) pages including "Exhibit A" and the date of April 27, 2023, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

ADOPTED this the 27th day of April, 2023.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 27th day of April, 2023.

Mayor of the City of Huntsville,
Alabama

**AGREEMENT BETWEEN THE CITY
OF HUNTSVILLE AND MUSIC
EXPORT MEMPHIS (MEM), INC.,
FOR HUNTSVILLE AMBASSADOR
PROGRAM**

STATE OF ALABAMA)
)
COUNTY OF MADISON)

AGREEMENT FOR GRANT WRITING SERVICES

This Agreement is made this 27th day of April, 2023, by and between the City of Huntsville, Alabama, a municipal corporation (hereinafter referred to as the “City”) and Music Export Memphis (MEM), Inc., (hereinafter referred to as “Consultant”) for Huntsville Ambassador Program. The City and Consultant hereby agree as follows:

RECITALS

WHEREAS, Consultant will perform in assessments for existing research on the Huntsville music ecosystem, messaging strategy and competitive landscape to include the existing capacity and landscape for touring artists; and

WHEREAS, Consultant will gather a foundational understanding of the ecosystem, artists’ capacity for touring, and key narratives to design the Ambassador Program; and

WHEREAS, Consultant will assist with the start of the Ambassador Program and will provide ongoing feedback and support to the City through the duration of the project; and

WHEREAS, the City desires to retain Consultant under the terms and conditions set forth herein to assist with the creation of the Huntsville Ambassador program.

WITNESSETH

NOW THEREFORE, in consideration of the mutual promises and covenants, herein contained, the parties hereby agree as follows, to wit:

1. **Scope of Work:** Consultant hereby agrees to provide the following services to the City of Huntsville:

**President of the City Council of the City
of Huntsville, AL**
Date: April 27, 2023

In Phase I of the project, the Consultant will provide assessments of the Huntsville Music Ecosystem, Competitive Landscape and Research for Messaging Strategy. After gaining a foundational understanding in Phase II of the project, the Consultant will engage with Huntsville artists to design an Ambassador Program that is specific and unique to

Huntsville to grow the music economy. Through the duration of each Phase of the project, which is anticipated to be a total of three (3) months, the Consultant will assist in the start of the project, and will provide ongoing feedback and support to the City though the duration of the project. The work will be performed, and deliverables produced as described in more detail in the Consultant's proposal (the "Proposal"), attached hereto and incorporated herein by reference as Exhibit "A".

2. **Period of Performance and Schedule:** The project start date for which the Consultant is engaged will be April 28, 2023. The Consultant will complete all tasks necessary for the completion of the project by July 15, 2023 in preparation to begin the Ambassador Program in September 2023 which is hereby considered Huntsville Music Month.

3. **Contract Price:** In consideration of the services rendered hereunder, the City shall pay to Consultant for the work performed pursuant to the Scope of Work the total amount of TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00). Consultant shall invoice the City in the amount of TEN THOUSAND AND NO/100 DOLLARS (\$10,000) of the total contract amount at the start of the project. Upon the completion of Phase I, Consultant shall invoice the City in the amount of SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$7,500) of the total contract amount and again upon the completion of Phase II in the amount of SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$7,5000). The City shall pay Consultant within thirty (30) days from the date of receipt of the invoice from Consultant. Reimbursable expenses such as in-town travel, long-distance telephone charges, facsimile, document reproduction, overnight delivery and in-town are included in the contract price. Out-of-town travel expenses must be approved in advance by the City and are not included within the contract price.

4. **Consultant Performing as an Independent Contractor:** In the performance of this work it is understood between the parties that Consultant and its employees, agents, subcontractors and consultants, if any, shall be acting as independent contractors and not as an employee of the City of Huntsville. Consultant shall have no authority to obligate the City to any indebtedness or other obligation.

5. **Notices:** All notices (a) shall be in writing, (b) shall be deemed served on the date on which they are actually received, and (c) shall be served by (i) personal delivery, or (ii) United States First Class Certified or Registered Mail, Return Receipt

Requested, properly addressed with postage prepaid or (iii) a nationally recognized overnight courier/delivery service (i.e. Federal Express, United Parcel Service, etc.) or (iv) electronic transmission ("E-mail") or telephonic facsimile transmission ("Fax") in conjunction with one of the other methods of delivery set forth in subparagraphs (i), (ii) or (iii), each addressed as follows:

City of Huntsville
Attention: Shane Davis
P.O. Box 308
Huntsville, Alabama 35804
shane.davis@huntsvilleal.gov
courtney.goss@huntsvilleal.gov
256-427-5300

Music Export Memphis (MEM), Inc.
Attention: Elizabeth Cawein
56 S. Front Street
Memphis, TN 38103

6. **Entire Agreement:** The contract between the City and Consultant consists of this written Agreement and any documents, drawings or attachments furnished by the City and referenced herein. This written Agreement constitutes the entire agreement between the City and Consultant with reference to the Scope of Work delineated within. Except to the extent specifically excluded herein, this Contract supersedes any bid or proposal documents and all prior written or oral communication, representation and negotiations, if any, between the City and Consultant.

7. **Order of Preference of Contract Documents.** In the event any conflict, discrepancy, or inconsistency among any of the documents which make up this contract, the following shall control. Interpretations shall be based upon the following order of precedence: 1) this Agreement; 2) the Proposal submitted by Consultant.

8. **No Privity of Contract with Third Parties:** Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the City and person or entity other than Consultant.

9. **No Waiver Clause:** The failure of the City to insist in one or more instances upon the performance of any term of this Contract is not a waiver of the City's right to future performance of such terms, and Consultant's obligations for future performance of such shall continue in effect.

10. **Equal Participation of Parties:** Both parties to this Agreement have participated fully and equally in its negotiation and preparation. Therefore, this Agreement shall not be more strictly construed or any ambiguities within this Agreement resolved against either party hereto.

11. **Insurance and Indemnification Requirements:** Consultant shall carry insurance of the following kinds and amounts in addition to any other forms of insurance or bonds required under the terms of the contract specifications. Consultant shall procure and maintain for the duration of the job until final acceptance by the City, or as later indicated, insurance against claims for injuries to persons or damages to property which

may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, employees or subcontractors.

A. MINIMUM SCOPE OF INSURANCE:

1. General Liability:

Insurance will be written on an occurrence basis. Claims-made coverage will be accepted only on an exception basis after the City's approval.

2. Commercial General Liability:

Products and Completed Operations
Contractual
Personal Injury
Broad Form Property Damage

2. Professional Liability:

Insurance may be written on a "claims-made" basis, providing coverage for negligent acts, errors or omissions in the performance of professional services. Coverage will be maintained for three years after completion of the professional services and Certificates of Insurance will be submitted to the City within reasonable economic terms. For purposes of this provision, reasonable economic terms shall mean that such coverage is carried by at least 25% of the firms within the discipline of concern in the United States. Such coverage shall be carried on a continuous basis including prior acts coverage to cover the subject project. The professional liability insurance shall contain contractual liability coverage.

3. Automobile Liability:

Business Automobile Liability providing coverage for all owned, hired and non-owned autos. Coverage for loading and unloading shall be provided under either automobile liability or general liability policy forms.

4. Workers' Compensation Insurance:

Statutory protection against bodily injury, sickness or disease or death sustained by employee in the scope of employment. Protection shall be provided by a commercial insurance company or a recognized self-insurance fund authorized before the State of Alabama Industrial Board of Relations. Waivers of subrogation in favor of the City shall be endorsed to Worker's Compensation coverage.

5. Employers Liability Insurance:

Covering common law claims of injured employees made in lieu of or in addition to a worker's compensation claim.

B. MINIMUM LIMITS OF INSURANCE:

1. General Liability:

Commercial General Liability on an "occurrence form" for bodily injury and property damage:

\$ 3,000,000 General Aggregate Limit
\$ 1,000,000 Products - Completed Operations Aggregate
\$ 1,000,000 Personal & Advertising Injury
\$ 1,000,000 Each Occurrence

2. Professional Liability:

Insurance may be made on a "claims-made" basis:

\$ 100,000 Per Claim - Land Surveyors
\$ 250,000 Per Claim - Other Professionals

3. Automobile Liability:

\$ 500,000 Combined Single Limit per accident for bodily injury and property damage.

4. Workers' Compensation:

As Required by the State of Alabama Statute

5. Employers Liability:

\$ 100,000 Bodily Injury by Accident or Disease
\$ 500,000 Policy Limit by Disease

C. OTHER INSURANCE PROVISIONS:

The City is hereby authorized to adjust the requirements set forth in this document in the event it is determined that such adjustment is in the City's best interest. If the insurance requirements are not adjusted by the City prior to the City's release of specifications with regard to the project in question, then the minimum limits shall apply.

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverage's Only:

a. The City, its elected and appointed officials, employees, agents and specified volunteers are to be covered as Additional Insureds, as their interests may appear, as respects: liability arising out of activities performed by or on behalf of Consultant for products used by and completed operations of Consultant; or automobiles owned, leased, hired or borrowed by Consultant. Additional insured status shall be through ISO Additional Endorsement CG 20 10 11 85 or equivalent that is sufficient to provide the coverage required by this Agreement.

b. Consultant's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, employees, agents and specified volunteers, as their interests may appear. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or specified volunteers shall be excess of Consultant's insurance and shall not contribute to it.

c. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages:

a. Consultant is responsible to pay all deductibles. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Cancellation of coverage for non-payment of premium will require ten (10) days written notice to the City.

b. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees, agents or specified volunteers.

D. ACCEPTABILITY OF INSURERS:

Insurance is to be placed with insurers with an A. M. Best's rating of no less than **B+ V**.

E. VERIFICATION OF COVERAGE:

The City shall be indicated as a Certificate Holder, and Consultant shall furnish the City with Certificates of Insurance reflecting the coverage required by this document. The A. M. Best Rating and deductibles, if applicable, shall be indicated on the Certificate of Insurance for each insurance policy. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

F. CONSULTANTS AND/OR SUBCONTRACTORS WORKING FOR CONSULTANT:

Consultant shall include all subcontractors and/or consultants as insureds under its policies or shall furnish separate certificates and/or endorsements for each subcontractor and/or consultant.

G. HOLD HARMLESS AGREEMENT:

1. Other Than Professional Liability Exposures:

Consultant, to the fullest extent permitted by law, shall indemnify and hold harmless the City, its elected and appointed officials, employees, agents and specified volunteers against all claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to personal injury, including bodily injury sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, and (2) is caused by any negligent act or omission of Consultant or any of their consultants, or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable. Such obligation should not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

2. Professional Liability:

Consultant agrees that as respects negligent acts, errors or omissions in the performance of professional services, to indemnify and hold harmless the City, its officers, agents, employees, and specified volunteers from and against any and all claims, demands, losses and expenses including, but not limited to attorney's fees, liability, or consequential damages of any kind or nature resulting from any negligent acts, errors, or omissions of Consultant or any subcontractors or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable. Nothing contained in this agreement shall make Consultant responsible to the City for any claims, suits or expenses arising out of the negligent, intentional, reckless, or wrongful acts of the City or its agents.

H. Intellectual Property Rights:

Consultant agrees to indemnify, hold harmless and defend City from and against any and all liability, losses, judgments, damages, and expenses arising from third party claims that the Products delivered by and/or Services performed by Consultant pursuant to this Agreement infringe on or violate any patents, copyrights, or trade secrets of such third parties. This indemnification is contingent upon City providing prompt written notice of such a claim to Consultant and granting Consultant the sole right to defend such claim. In the event of any infringement or claimed infringement, Consultant shall: (i) modify the infringing Services to be non-infringing as long as there is no loss of functionality by such modification; (ii) obtain a license for City to use the infringing Services; or (iii) terminate

the City's right to use the infringing Services and refund to City all amounts paid for such infringing Services, amortized over a period of (5) years from the acceptance of Services.

12. **Governing Law and Venue.** This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Alabama. For any action concerning this Agreement, (a) jurisdiction shall be in the appropriate state or federal courts sitting in Alabama and (b) venue (i) in Alabama state courts shall be in Madison County, Alabama and (ii) in Alabama federal courts shall be in the United States District Court for the Northern District of Alabama, Northeastern Division.

13. **Assignment by Consultant.** Consultant shall not assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of the City. Subject to the provisions of the immediately preceding sentence, the City and Consultant, respectively, bind themselves, their successors, assigns and legal representatives to the other party to this Agreement and to the successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.

14. **No Third-Party Beneficiaries.** Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

15. **Use of Subcontractors.** Consultant shall obtain the City's written consent before placing any subcontract for furnishing any of the work called for in this contract. Consent by the City to any subcontract shall not constitute approval of the acceptability of any subcontract terms or conditions, acceptability of any subcontract price or of any amount paid under any subcontract, nor relieve Consultant of any responsibility for performing this contract. The City agrees that Garver and the Hawkins Group are acceptable subcontractors for the purposes of this Agreement.

16. **Non-Discrimination.** In consideration of the signing of this Agreement, the parties hereto for themselves, their agents, officials, employees, and servants agree not to discriminate in any manner on the basis of race, color, creed, age, sex, disability or national origin with reference to the subject matter of this contract, no matter how remote. This nondiscrimination provision shall be binding on the successors and assigns of the parties with reference to the subject matter of this Agreement.

17. **Miscellaneous Provisions.**

A. This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

B. When a word, term or phrase is used in this Contract, it shall be interpreted or construed. First, as defined herein; second, if not defined, according to its generally accepted meaning within the Contractual industry; and third, if there is no generally

accepted meaning in the Contractual industry, according to its common and customary usage.

C. The words "include," "includes," or "including," as used in this Contract, shall be deemed to be followed by the phrase, "without limitation."

D. The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

E. Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

F. Time limitations contained herein, or provided for hereby, are of the essence of this Agreement.

G. The Services will comply with any and all applicable federal, state, and local laws as the same exist and may be amended from time to time.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

**MUSIC EXPORT
MEMPHIS (MEM), INC.**

Attest:

By : _____
Matt Mandrella
Its: Huntsville Music Officer

CITY OF HUNTSVILLE
a municipal corporation
in the State of Alabama

Attest:

Shaundrika Edwards
Its: City Clerk

By: _____
Tommy Battle
Its: Mayor



Music Export Memphis (MEM) is pleased to work with the City of Huntsville (client) on the creation of the Huntsville Ambassador program. This agreement outlines the scope of work, deliverables, timeline, terms and invoicing schedule for the project cost, not to exceed \$25,000.

PROJECT SCOPE OF WORK + TIMELINE

PHASE I: ASSESSMENT

- Literature review of existing research on the Huntsville music ecosystem
- Competitive landscape assessment + research for messaging strategy: has this been done before within government, or will Huntsville be the first?
- Engagement with Huntsville artists: capture existing capacity and landscape for touring artists through virtual meetings, online surveys, and one full day of on-site, in-person interviews or meetings with artists
- Tourism and talent strategies: via literature review/desk research or meetings (virtual or in-person), assess current tourism and talent attraction strategies and messaging to inform program narratives and artist deliverables

PHASE II: PROGRAM DESIGN

With a foundational understanding of the ecosystem, artists' capacity for touring, and key narratives, we will design an ambassador program that meets the unique needs of your music community and seizes on the unique opportunities of the Huntsville story.

We'll build on existing models from our own work while also taking a truly bespoke approach, crafting a program that is specifically and uniquely suited to grow your music economy and export your assets.

PHASE III: IMPLEMENTATION

Following the completion of program design, MEM is on hand to assist on program launch and provide ongoing feedback and support for up to three months.

DELIVERABLES

- Ambassador program design including application format and review process design, funding rubrics, budget modeling/forecasting, artist deliverables, impact modeling/metrics and reporting
- MEM also available to consult on messaging/PR strategy around program launch

TERMS

Project launch date April 1

Desired date of completion: no later than July 15 to set up launch in time for September (Huntsville Music Month)

INVOICE SCHEDULE

Music Export Memphis will invoice the City of Huntsville at project start (40%), completion of Phase I (30%) and completion of Phase II (30%). All invoices are due 30 Days upon receipt, and the project initiation invoice should be paid within 30 days of project start date (April 1, 2023). Tentative schedule would be as follows, assuming a 12-week project timeline:

April 1 - \$10,000

May 15 - \$7,500

July 1 - \$7,500



56 S. Front Street
Memphis, TN 38103
musicexportmemphis.org



Elizabeth Cawein, Music Export Memphis

Tommy Battle, Mayor
City of Huntsville



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Memphis, TN 38103
musicexportmemphis.org