# **PROFESSIONAL SERVICES CONTRACT**

# **BETWEEN**

# **MILWAUKEE COUNTY BOARD OF SUPERVISORS**

# **AND**

# **RICHARD T. CLARK**

This Contract is made and entered into effective January 1, 2017 by and between the MILWAUKEE COUNTY BOARD OF SUPERVISORS (the “Board”), through its Director of Parks, Recreation and Culture (“Parks Director”), and RICHARD T. CLARK (“RC”), a sole proprietor, located at 215 W. Maple Street, Suite 311, Milwaukee, Wisconsin, 53204, 609-703-1396. Together these named entities constitute the parties (“Parties”) to this Agreement.

**WITNESSETH:**

**WHEREAS,** the Milwaukee County Board appropriates property tax funds each calendar year to support and encourage cultural and artistic activities in Milwaukee County (hereinafter referred to as the “Arts Fund”); and

**WHEREAS,** on October 2, 1986 the Board established the Milwaukee County Cultural, Artistic and Musical Programming Advisory Council (“CAMPAC”) to act as an advisory council to the Chairman of the Board, the Board and the Milwaukee County Committee on Parks, Energy and Environment (“Parks Committee”); and

**WHEREAS,** the primary purpose of CAMPAC is to advise the Board and the Parks Committee on how to best allocate the Arts Fund to community arts groups for the provision of cultural arts programs that best serve and enhance the quality of life in Milwaukee County; and

**WHEREAS,** CAMPAC consists of nine (9) members confirmed by the Board; and

**WHEREAS,** the Board, by virtue of adopting Resolution 08-453 on December 19, 2008, has authorized the Parks Director to enter into an agreement with an Arts Administrator on behalf of Milwaukee County, whereby said administrator shall be hired for the fee stated herein, including certain expense reimbursements, to administer and coordinate the Milwaukee County art program supported by the Arts Fund (the “Arts Program”) in the manner stated herein; and

**WHEREAS,** the Board has, by resolution in 1986 approved the form of this Contract; and

**WHEREAS,** RC is agreeable to administering the Arts Program under the terms and conditions hereinafter set forth.

**NOW, THEREFORE,** the Board and RC, in consideration of the mutual promises hereinafter set forth, do hereby promise and agree as follows:

**PROVISIONS:**

1. **Services to be provided by RC:**

RC shall provide the following services under this Contract:

* 1. RC shall act as staff for CAMPAC on all matters pertaining to the Arts Program.
  2. RC shall coordinate and assist in the administration of the Arts Program in the following manner:

1. RC shall solicit proposals for programs to be included in the Arts Program, consistent with the criteria and guidelines approved by the Board.
2. RC shall analyze and review all submitted proposals for Arts Fund monies and make recommendations to CAMPAC regarding whether such proposals should be included in the Arts Program.
3. RC shall obtain an Acknowledgement of Receipt (“Receipts”) from Arts Groups connected with the grant subsidy program where appropriate.
4. RC shall provide staff assistance to CAMPAC and the Board in connection with the administration of payments to Arts Groups as provided in paragraph 1.4, below.
   1. RC shall assist in administering Receipts payments as provided in paragraph 1.2(d), above.
   2. Not later than the due dates specified in RC’s notice, the Board shall make payments to the Arts Groups entitled thereto in the amounts specified in RC’s notice or, if the Board disputes that any payment is due or the amount of any payment, the Board shall notify RC of such dispute and payment shall be withheld until the Board, RC and the Arts Group involved resolve such dispute. RC shall work cooperatively with Milwaukee County staff, department heads, public officials, CAMPAC, and with the Arts Groups toward the successful completion of the Art Program.
   3. RC shall recommend such changes in the guidelines and eligibility criteria for the Arts Program, as it considers appropriate to the changing needs and circumstances of the arts Program.
   4. RC shall assist CAMPAC and the Board with information and research on topics related to the Arts Fund and in the initial preparation of the annual CAMPAC budget and any requested reports and documents.
   5. Termination: It is understood that this Contract may be terminated at any time by the Board. Upon issuance of a letter of termination by the Board, RC will submit a final bill for work agreed to as a part of the termination and completed as of the effective date of the termination.
   6. Termination for Cause: If RC fails to fulfill its obligations under this Contract in a timely or proper manner, or violates any of its provisions, the Board shall have the right to terminate it by giving thirty (30) days written notice of termination of Contract, specifying the alleged violations and effective date of termination. It shall not be terminated if, upon receipt of the notice, RC promptly cures the alleged violation prior to the end of the thirty (30) day period. In the event of termination, the Board will be liable for services rendered through the date of termination and/or for services or materials purchased or paid for by RC for use in completing the Contract.
   7. RC shall be responsible for supervising any subcontractor hired and will assist in completing any required forms pursuant to Section 5 under this Contract.
5. **Responsibilities of the Board:**

The Board shall have the following responsibilities hereunder:

* 1. RC shall obtain written receipts from the Arts Groups upon payment thereto and retain said copies for CAMPAC’s records.
  2. The Board agrees to indemnify and hold RC, its respective employees and agents harmless from and against any and all claims, loss, damage, cost and expense (including reasonable attorneys fees and amounts paid in settlement with the Board’s consent) which may be suffered or incurred by any of them as a result of any claim, action or proceeding relating to or arising out of any such claims, actions or proceedings arising out of any willful or negligent acts or omissions of the Board, and its respective agents or employees. Without limitation, the indemnification hereunder shall extend to any claims asserted against RC by any Arts Group alleging nonperformance or otherwise arising out of any Contract between the Board and such Arts Group. RC agrees to indemnify and hold the Board, the members of the Board and its employees and agents, and CAMPAC harmless from and against any and all claims, loss, damage, cost and expense which may be suffered or incurred by any of them as a result of willful or negligent acts or omissions of RC or its agents or employees arising out of RC’s duties hereunder.
  3. The Board shall work cooperatively with RC staff to assure that RC is able to properly provide its services hereunder.

1. **Term of Contract and Payment for Services:**
   1. Subject to termination as provided in Paragraph 1.7, above, the term of this Contract shall commence on January 1, 2017 and expire on December 31, 2017.
   2. The Board shall compensate RC for the services provided hereunder in an amount not to exceed Twelve Thousand Seven Hundred Dollars ($12,700.00) during calendar year 2017 at a rate of Fifty Dollars ($50.00) per hour. The compensation set forth in this Section 3.2 is intended by the Parties to be the sole amount payable to RC hereunder for the term hereof. This compensation shall include any amount paid to ay subcontractor required pursuant to Section 5 under this Agreement.
   3. The Board and CAMPAC have also budgeted an annual amount not to exceed Three Hundred Dollars ($300.00), included in the maximum amount payable in Section 3.2, to cover reimbursement for approved expenses. RC will be compensated for approved expenses upon submittal of receipts for the following items: purchase of a tape recorder to record CAMPAC meetings; cost of postage for mass mailings to Arts Groups, the board and CAMPAC; cost of copies for large distributions for mass mailings and CAMPAC meetings. It is hereby acknowledged that the tape recorder will become the property of Milwaukee County should this Contract be terminated or not renewed and that it is for the purpose of recording CAMPAC meetings. Other miscellaneous copies and postage are the responsibility of RC and not subject to reimbursement.
   4. RC shall submit invoices on a quarterly basis (April, July, October, and January) for services rendered for the previous quarter and for any approved expenses. Invoices will be submitted to the Chair of CAMPAC who will review and initial the invoice for approval and send to the Parks Department for processing.
2. **RC Reporting Requirements:**

RC hereby agrees to report to the Board and CAMPAC in the following manner:

* 1. RC agrees to submit to the Board and CAMPAC, on or before the date requested by the Board (which date shall provide RC a reasonable opportunity to compile the desired information), in such detail and form as Milwaukee County officials may request, all requests received from community groups for Arts Fund monies.
  2. RC agrees to notify the Board of the individuals who will maintain the records and reports required under this Contract and who will be supervising the administration of the Arts Program on behalf of RC. RC shall inform the Board of any change in any such person within fifteen (15) days of said change.

* 1. Records and Audits: RC agrees that it will retain all financial and business records relating to this Contract for a period of six (6) years following the completion of this Contract; provided, however, that if RC desires to dispose of any such records prior to the expiration of such period, RC shall give a written notice to the Board offering to deliver such records to the Board, and may thereafter destroy or otherwise dispose of any such records which are not claimed by the Board within sixty (60) days after delivery of such notice. Pursuant to Milwaukee County ordinance section 56.30(6)(e), RC shall allow Milwaukee County, the Milwaukee County Department of Audit, or any other party Milwaukee County may name, when and as they demand, to audit, examine and make copies of records in any form and format, meaning any medium on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by the RC regarding this Contract, including but not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer files, computer printouts and optical disks, and excerpts or transcripts from any such records or other information directly relating to matters under this Contract, all at no cost to Milwaukee County. Any subcontracting by RC in performing the duties described under this Contract shall subject the subcontractor and/or associates to the same audit terms and conditions as RC.

1. **Nondiscriminatory Provisions:**

RC agrees that the provisions of Sections 56.17 and 42.05 of the Milwaukee County General Ordinances are incorporated herein by reference. There is a 10% DBE utilization goal for this Contract.

1. **Additional Provisions:**

The Board and RC furthermore mutually agree as follows:

* 1. The Board and RC assure and certify to the other Party hereto that they, respectively, possess the authority to execute this Contract.
  2. RC assures and certifies that it will establish safeguards to protect against employees and participants from using their positions for private gain for themselves or others.
  3. RC understands that this Contract in no way affects RC’s obligation to comply with all applicable laws, ordinances and codes of the federal, state and local governments.
  4. RC understands that the Board reserves the right to terminate this Contract at any time if RC is not complying with its obligations specified under Paragraph 1 of this Contract.
  5. Insurance: RC agrees that it will procure and thereafter maintain comprehensive general liability (bodily injury) and property damage in amounts satisfactory to the Board, and such other insurances as may be required by law in amounts satisfactory to the Board; however, it is understood that such amounts will be reasonable under the circumstances.

RC shall provide evidence of the following coverages and minimum following amounts:

Type of Coverage Minimum Limits

Commercial General Liability

Bodily Injury and Property Damage $1,000,000 Per Occurrence

(incl. Personal Injury, Fire Legal, $1,000,000 General Aggregate

Contractual & Products/Completed

Operations)

Automobile Liability

Bodily Injury & Property Damage $1,000,000 Per Accident

All Autos-Owned, non-owned and/or hired

Uninsured Motorists Per Wisconsin Requirements

Employers’ Liability $100,000/$500,000/$100,000

Milwaukee County, as its interests may appear, shall be named as an additional insured and be afforded a thirty (30) day written notice of cancellation or non-renewal. Disclosure must be made of any non-standard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable. A certificate indicating the above coverages shall be submitted for review and approval by the County for the duration of this Agreement.

Coverages shall be placed with an insurance company approved by the State of Wisconsin and rated “A” per Best’s Key Rating Guide.

Additional information as to policy form, retroactive date, discovery provisions and applicable retentions shall be submitted to County, if requested, to obtain approval of insurance requirements. Any deviations, including use of purchasing groups, risk retention groups, etc., or requests for waiver from the above requirements shall be submitted in writing to the County for approval prior to the commencement of activities under this Agreement.

The insurance requirements contained within this Agreement are subject to periodic review and adjustment by the County Risk Manager.

* 1. Indemnity: The Parties to this Agreement agree to indemnify, defend and hold harmless the other Party and their elected officials, officers, employees and agents, against any and all liability, losses, charges, fines, costs or expenses including attorney’s fees to the extent such damages including suits at law or in equity are caused by or resulting from any wrongful, intentional, or negligent acts or omissions of the indemnifying party or any of the officers, employees, agents or representatives of the indemnifying party which may result in any person, persons, or organization suffering bodily injury, personal injury, death or property loss or damage, employment practices, civil rights or environmental liability and impairments arising out of this Agreement. Milwaukee County’s liability shall be limited by Wisconsin State statute sections 345.03(3) for automobile and 893.80(3) for general liability.
  2. It is further understood and agreed that RC is an independent contractor and not the agent or the employee of the Board. All personnel performing the services contemplated by the Contract shall be the employees of RC and not of the Board and RC will make all necessary provisions for the payment of their salaries and for the withholding of appropriate deductions for state and federal income tax, social security and, in addition thereto, shall provide worker’s compensation insurance and all other prerequisites of the employer-employee relationship. Nothing contained in this Contract shall constitute or be construed to create a partnership or joint venture between the Board or its successors or assigns and RC or its successors or assigns. In entering into this Contract, and in acting in compliance herewith, RC is at all times and performing as an independent contractor, duly authorized to perform the acts required of it hereunder.

1. **Notices & Communications:**

Any notices or communications required to be given under this Contract shall be sufficient if in writing and hand-delivered, or if mailed, by certified or registered mail, postage prepaid, as follows.

If to the Board: Milwaukee County Board of Supervisors

Milwaukee County Courthouse, Room 201

901 North 9th Street

Milwaukee, WI 53233

Attention: Board Chair

If to CAMPAC: Mary C. Cannon, Chair

1800 N. 60th Street

Milwaukee, WI 53208

If to RC: Richard T. Clark

215 W. Maple St., Suite 311

Milwaukee, WI 53204

* 1. Contact: The contact for this Contract will be the Chair of CAMPAC. The Chair of CAMPAC will provide the overall Contract review and management for the services to be provided by RC.

**8. Governing Law:**

This Contract and all questions arising in connection therewith shall be governed by the laws of the State of Wisconsin.

**9. Amendment:**

This Contract may not be amended or extended without the prior written agreement of the Parties hereto.

**SIGNATURE PAGE FOLLOWS:**

**IN WITNESS WHEREOF, the Parties hereto have set their hands as follows:**

**Richard T. Clark**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_

**Milwaukee County Dept. of Parks, Recreation & Culture**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_

John Dargle, Jr.,Director

**CAMPAC**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_

Mary C. Cannon, Chair

*Approved with regards to County Ordinance Chapter 42:*

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_

Community Business Development Partners

*Approved for execution: Reviewed by:*

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_

Corporation Counsel Risk Management

*Approved: Approved as to funds available per*

*Wisconsin Statutes Section 59.255(2)(e):*

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_

County Executive Chris Abele Comptroller Scott B. Manske

*Approved as compliant under Sec. 59.42(2)(b)5, Stats.:*

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_

Corporation Counsel