



## AGREEMENT

**THIS IS AN AGREEMENT ("Agreement")**, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between:

**THE CITY OF PEMBROKE PINES**, a municipal corporation of the State of Florida with a business address of **601 City Center Way, Pembroke Pines, Florida 33025** (hereinafter referred to as the "CITY")

and

**FOX-MAR PHOTOGRAPHY, INC.**, a for profit corporation, authorized to do business in the State of Florida, with a business address of **10535 SW 109 Court, Miami, FL 33176** (hereinafter referred to as the "CONTRACTOR"). CITY and CONTRACTOR may hereinafter be referred to collectively as the "Parties."

**WHEREAS**, the CITY operates the following **CITY's Charter Schools (the "Schools")**:

- City of Pembroke Pines Charter Academic Village (High School), located at: 17189 Sheridan Street, Pembroke Pines, FL 33026
- City of Pembroke Pines Charter Academic Village (Middle School), located at: 17189 Sheridan Street, Pembroke Pines, FL 33026
- City of Pembroke Pines Charter Middle Central Campus, located at: 12350 Sheridan Street, Pembroke Pines, FL 33026
- City of Pembroke Pines Charter Middle West Campus, located at: 18501 Pembroke Road, Pembroke Pines, FL 33029
- City of Pembroke Pines Charter Elementary Central Campus, located at: 2350 Sheridan Street, Pembroke Pines, FL 33026
- City of Pembroke Pines Charter Elementary East Campus, located at: 10801 Pembroke Road, Pembroke Pines, FL 33025
- City of Pembroke Pines Charter Elementary West Campus, located at: 1680 SW 184<sup>th</sup> Avenue, Pembroke Pines, FL 33029
- City of Pembroke Pines Charter Elementary FSU Campus, located at: 601 SW 172nd Avenue, Pembroke Pines, FL 33029

and is in need of photography services ("Services") for the Schools; and,

**WHEREAS**, pursuant to Section 35.18(C)(7)(c) of the CITY's Procurement Code, photography services are recognized as being creative in character and skill in a recognized field of artistic endeavor; and,



**WHEREAS**, the Agreement provides that the Services will be provided to the CITY at no cost, and will provide revenue to the CITY; and,

**WHEREAS**, the CITY wishes to engage CONTRACTOR for the Services required pursuant to this Agreement for the Schools.

**WITNESSETH:**

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, the Parties agree as follows:

**ARTICLE 1**  
**PREAMBLE**

In order to establish the background, context and form of reference for this Agreement, and to generally express the objectives and intentions of the Parties herein, the following statements, representations, and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow, and may be relied upon by the Parties as essential elements of the mutual considerations upon which this Agreement is based.

**ARTICLE 2**  
**SERVICES AND RESPONSIBILITIES**

2.1 CONTRACTOR hereby agrees to perform **photography services**, as more particularly described in **Exhibits "A", "B", "C", "D" and "E"** attached hereto and by this reference made a part hereof, and CONTRACTOR agrees to perform all Services pursuant to this Agreement.

2.2 CITY agrees that CONTRACTOR shall be the official photographer to the Schools for the Services set forth in **Exhibits "A", "B", "C", "D" and "E"**.

2.3 CONTRACTOR shall furnish and deliver all Services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement, except as otherwise specifically provided for herein, and all work performed under this Agreement shall be done in a professional manner.

2.4 CONTRACTOR shall provide the Schools at least **sixty (60) days** advance notice of planned staff and student picture days.

2.5 CONTRACTOR shall guarantee the quality of all work to all program participants. The Parties agree that the program participants and teams reserve the right to have photos re-shot if they are not satisfied with the quality of the work. CONTRACTOR shall have all finished work back to the Schools within three (3) weeks after the initial photo shoot.

2.6 CONTRACTOR shall provide the School staff with identification cards and an optional packet of pictures at no cost to the CITY or the Schools.



2.7 CONTRACTOR shall supervise its employees, agents, and subcontractors to ensure that all of its employees, agents, and subcontractors conduct themselves and perform their work in a safe and professional manner. CONTRACTOR shall perform a Level II criminal records background check on all employees, agents, and subcontractors involved with CONTRACTOR'S performance of this Agreement, and shall provide results of the background screening to the CITY. This Agreement shall not commence until those results are provided to and accepted by the CITY.

2.8 CONTRACTOR shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to CONTRACTOR, its employees, agents or subcontractors, if any, with respect to the work and services described herein. A violation of any federal, state, or local law or regulation may be cause for breach of this Agreement, allowing the CITY to terminate this Agreement.

### **ARTICLE 3**

#### **TERM AND TERMINATION**

3.1 CONTRACTOR shall perform the Services as identified herein and in Article 2 hereof, for an initial **three (3) year** period commencing on **August 1, 2019 and ending on July 31, 2022**.

3.2 This Agreement may be renewed at the expiration of the initial term, for **three (3) additional three (3) year terms** upon the mutual consent of the Parties, evidenced by a written Amendment to this Agreement extending the term thereof.

3.3 *Termination for Convenience:* This Agreement may be terminated by CITY for convenience, upon seven (7) business days of written notice by the CITY to the CONTRACTOR for such termination in which event CONTRACTOR shall be paid its compensation for services performed to termination date, including services reasonably related to termination. In the event that CONTRACTOR abandons this Agreement or causes it to be terminated, CONTRACTOR shall indemnify CITY against loss pertaining to this termination.

3.4 *Default by CONTRACTOR:* In addition to all other remedies available to CITY, this Agreement shall be subject to cancellation by CITY for cause, should CONTRACTOR neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by CONTRACTOR of written notice of such neglect or failure.

### **ARTICLE 4**

#### **COMPENSATION AND METHOD OF PAYMENT**

4.1 CONTRACTOR shall remit to the Schools as listed herein, to the attention of the School's principal within **ninety (90) days** after the photo shoots are completed, payment in accordance with **Exhibits "A", "B", "C", "D" and "E"** and as set forth below:

1. **FORTY percent (40%)** commission on sales of underclass photographs (all schools).



2. **THREE DOLLAR (\$3.00)** commission per class group (Elementary Schools) as more particularly described in **Exhibit "C"**.
3. **THIRTY percent (30%)** commission on net sales (gross sales minus sales tax) of Spring Photography, to the sponsoring group (Middle School), as more particularly described in the table in **Exhibit "D"**
4. Tiered commission on net sales (gross sales minus sales tax) of Spring Photography, to the sponsoring group (Elementary School) as more particularly described in the table in **Exhibit "E"**.

4.2 Payments to the CITY shall be delivered to each of the Schools' principals respectively, accompanied by a summary and full report of all orders received for the Services provided and subsequent amounts due to the CITY under this Agreement.

## **ARTICLES 5 & 6**

### **RESERVED**

## **ARTICLE 7**

### **CHANGES IN SCOPE OF WORK**

7.1 CITY or CONTRACTOR may request changes that would increase, decrease, or otherwise modify the Scope of Services, as described in **Exhibits "A", "B", "C", "D" and "E"** to be provided under this Agreement as described in Article 2 of this Agreement. These changes may affect the monthly compensation accordingly. Such changes or additional services must be in accordance with the provisions of the Code of Ordinances of the CITY, and must be contained in a written amendment, executed by the Parties hereto, with the same formality, equality and dignity herewith prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work.

7.2 In no event will the CONTRACTOR be compensated for any work which has not been described either herein or in a separate written agreement executed by the Parties hereto.

## **ARTICLE 8**

### **INDEMNIFICATION**

8.1 The CONTRACTOR agrees to release the CITY from and against any and all liability and responsibility in connection with the above mentioned matters. The CONTRACTOR further agrees not to sue or seek any money or damages from CITY in connection with the above mentioned matters.

8.2 The CONTRACTOR agrees at all times to indemnify, hold harmless, and at the CITY's option, defend or pay for any attorney selected by the CITY to defend the CITY, its trustees, elected and appointed officers, agents, servants, assigns, employees, consultants, separate contractors, any of their subcontractors, sub-subcontractors, agents and employees from and against any and all claims, demands, or causes of action whatsoever, and the resulting losses,



damages, costs and expenses, including but not limited to attorneys' fees, including paralegal expenses and appellate fees, liabilities, damages, orders, judgments, or decrees, sustained by the CITY or any third party arising out of or resulting from the CONTRACTOR's negligent acts, errors or omissions.

8.3 The Parties recognize that various provisions of this Agreement, including but not necessarily limited to this Article, provide for indemnification by the CONTRACTOR and that Section 725.06, Florida Statutes, requires a specific consideration be given therefor. The Parties therefore agree that the sum of Ten Dollars and 00/100 (\$10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnities and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by CONTRACTOR. Furthermore, the Parties understand and agree that the covenants and representations relating to this indemnification provision shall survive the term of this Agreement and continue in full force and effect as to the party's responsibility to indemnify.

8.4 Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

8.5 CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of CONTRACTOR.

8.6 Nothing contained herein is intended nor shall be construed to waive CITY's rights and immunities under the common law or §768.28, Florida Statutes, as may be amended from time to time.

## **ARTICLE 9** **INSURANCE**

9.1 The CONTRACTOR shall indemnify and hold harmless the CITY and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the CONTRACTOR or its employees, agents, servants, partners, principals or subcontractors. The CONTRACTOR shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The CONTRACTOR expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the CONTRACTOR shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CITY or its officers, employees, agents and instrumentalities as herein provided.

9.2 CONTRACTOR shall not commence work under this Agreement until it has obtained all insurance required under this Article and such insurance has been approved by the Risk Manager of



the CITY nor shall the CONTRACTOR allow any subcontractor to commence work on any subcontract until all similar such insurance required of the subcontractor has been obtained and similarly approved.

9.3 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the CITY's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.

9.4 Policies shall be endorsed to provide the CITY thirty (30) days' notice of cancellation or the CONTRACTOR shall obtain written agreement from its Agent to provide the CITY thirty (30) days' notice of cancellation.

9.5 Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, the CONTRACTOR shall furnish, at least forty-five (45) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The CONTRACTOR shall neither commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. CONTRACTOR shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.

#### 9.6 REQUIRED INSURANCE

9.6.1 Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:

1. Each Occurrence Limit - \$1,000,000
2. Personal & Advertising Injury Limit - \$1,000,000
3. General Aggregate Limit - \$2,000,000
4. Products & Completed Operations Aggregate Limit - \$2,000,000
5. Sexual abuse shall not be excluded from the liability policy

**The City of Pembroke Pines must be shown as an additional insured with respect to this coverage.** CITY's Additional Insured status shall extend to any coverage beyond the minimum requirements for limits of liability found herein.

9.6.2 Workers' Compensation and Employers Liability Insurance covering all employees, and/or volunteers of the CONTRACTOR engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the CONTRACTOR shall require the subcontractors similarly to provide Workers'



Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. Coverage for the CONTRACTOR and all subcontractors shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

1. Workers' Compensation: Coverage A – Statutory
2. Employers Liability: Coverage B \$500,000 Each Accident  
\$500,000 Disease – Policy Limit  
\$500,000 Disease – Each Employee

If CONTRACTOR claims to be exempt from this requirement, CONTRACTOR shall provide CITY proof of such exemption along with a written request for CITY to exempt CONTRACTOR, written on CONTRACTOR letterhead.

9.6.3 Comprehensive Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

1. Any Auto (Symbol 1)  
Combined Single Limit (Each Accident) - \$1,000,000
2. Hired Autos (Symbol 8)  
Combined Single Limit (Each Accident) - \$1,000,000
3. Non-Owned Autos (Symbol 9)

Combined Single Limit (Each Accident) - \$1,000,000 9.7 REQUIRED ENDORSEMENTS

- 9.7.1 The City of Pembroke Pines shall be named as an Additional Insured on each of the General Liability policies required herein
- 9.7.2 Waiver of all Rights of Subrogation against the CITY
- 9.7.3 Thirty (30) Day Notice of Cancellation or Non-Renewal to the CITY
- 9.7.4 CONTRACTOR's policies shall be Primary & Non-Contributory
- 9.7.5 All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the CITY

9.8 CONTRACTOR shall name the CITY, as an additional insured on each of the General Liability policies required herein and shall hold the CITY, its agents, officers and employees harmless on account of claims for damages to persons, property or premises arising out of the Services provided hereunder.

9.9 Any insurance required of the CONTRACTOR pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work that is subcontracted unless such subcontractor is covered by the protection afforded by the CONTRACTOR and provided proof of such coverage is provided to CITY. The CONTRACTOR and any subcontractors shall maintain such policies during the term of this Agreement.



9.10 The CITY reserves the right to require any other additional types of insurance coverage and/or higher limits of liability it deems necessary based on the nature of work being performed under this Agreement. The required limits of insurance do not in any way limit the CONTRACTOR's indemnification of the CITY as described herein.

#### **ARTICLE 10**

##### **NON-DISCRIMINATION & EQUAL OPPORTUNITY EMPLOYMENT**

10.1 During the performance of the Agreement, neither the CONTRACTOR nor any subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. CONTRACTOR will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONTRACTOR shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. CONTRACTOR further agrees that he/she/it will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

#### **ARTICLE 11**

##### **INDEPENDENT CONTRACTOR**

11.1 This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the CONTRACTOR is an independent contractor under this Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. The CONTRACTOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONTRACTOR's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of CONTRACTOR, which policies of CONTRACTOR shall not conflict with CITY, State, H.U.D., or United States policies, rules or regulations relating to the use of CONTRACTOR's funds provided for herein. The CONTRACTOR agrees that it is a separate and independent enterprise from the CITY, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the CITY and the CITY will not be liable for any obligation incurred by CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.





**ARTICLE 12**  
**UNCONTROLLABLE FORCES**

12.1 Neither CITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

12.2 Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

**ARTICLE 13**  
**RESERVED**

**ARTICLE 14**  
**GOVERNING LAW AND VENUE**

14.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida as now and hereafter in force. The venue for any and all actions or claims arising out of or related to this Agreement shall be in Broward County, Florida.

**ARTICLE 15**  
**SIGNATORY AUTHORITY**

15.1 CONTRACTOR shall provide CITY with copies of requisite documentation evidencing that the signator for CONTRACTOR has the authority to enter into this Agreement.

**ARTICLE 16**  
**ASSIGNMENTS; AMENDMENTS**

16.1 This Agreement constitutes the entire agreement between CONTRACTOR and CITY, and negotiations and oral understandings between the Parties are merged herein. This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered under any circumstance, by CONTRACTOR without the prior written consent of CITY. For purposes of this Agreement any sale or transfer of assets, stocks or worth of CONTRACTOR shall be deemed a prohibited assignment and will result in the automatic termination of this Agreement. However, this Agreement shall run to the CITY and its successors and assigns.

16.2 It is further agreed that the terms and conditions of this Agreement can be supplemented or



amended only by a written document executed by both CONTRACTOR and CITY with the same formality and equal dignity herewith.

**ARTICLE 17**  
**RESERVED**

**ARTICLE 18**  
**BANKRUPTCY**

18.1 It is agreed that if CONTRACTOR is adjudged bankrupt, either voluntarily or involuntarily, then this Agreement shall terminate effective on the date and at the time the bankruptcy petition is filed.

**ARTICLE 19**  
**DISPUTE RESOLUTION**

19.1 **Arbitration.** In addition to any other remedy provided hereunder, CITY, at its option, may use arbitration to resolve any controversy or claim arising out of or relating to this Agreement if arbitration is elected by CITY. Any controversy or claim arising out of or relating to this Agreement, or breach thereof, may be settled by arbitration in accordance with the rules of the American Arbitration Association and judgment upon the award rendered by the arbitrators may be entered into by any court having jurisdiction thereof. In the event arbitration is elected by CITY, such controversy or claim shall be submitted to one arbitrator selected from the National Panel of The American Arbitration Association.

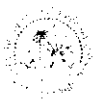
19.2 **Operations During Dispute.**

19.2.1 In the event that a dispute, if any arises between the Parties relating to this Agreement, performance or compensation hereunder, CONTRACTOR shall continue to render service in full compliance with all terms and conditions of this Agreement as interpreted by CITY regardless of such dispute.

19.2.2 CONTRACTOR expressly recognizes the paramount right and duty of CITY to provide adequate maintenance of CITY's property, and further agrees, in consideration for the execution of this Agreement, that in the event of such a dispute, if any, it will not seek injunctive relief in any court, but will negotiate with CITY for an adjustment on the matter or matters in dispute and, upon failure of said negotiations to resolve the dispute, may present the matter to a court of competent jurisdiction in an appropriate suit therefore instituted by it or by CITY.

**ARTICLE 20**  
**PUBLIC RECORDS**

20.1 The City of Pembroke Pines is public agency subject to Chapter 119, Florida Statutes. The CONTRACTOR shall comply with Florida's Public Records Law. Specifically, the CONTRACTOR shall:



20.1.1 Keep and maintain public records required by the CITY to perform the service;

20.1.2 Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

20.1.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the CONTRACTOR does not transfer the records to the CITY; and

20.1.4 Upon completion of the Agreement, CONTRACTOR shall transfer to the CITY, at no cost to the CITY, all public records in CONTRACTOR's possession. All records stored electronically by the CONTRACTOR must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

20.2 The failure of CONTRACTOR to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement and the CITY shall enforce the Default in accordance with the provisions set forth in this Agreement:

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK  
601 CITY CENTER WAY, 4<sup>TH</sup> FLOOR  
PEMBROKE PINES, FL 33025  
(954) 450-1050  
[mgraham@ppines.com](mailto:mgraham@ppines.com)**

**ARTICLE 21  
MISCELLANEOUS**

21.1 **Ownership of Documents.** Reports, surveys, studies, and other data provided in connection with this Agreement are and shall remain the property of CITY, whether or not the project for which they are made is completed.

21.2 **Legal Representation.** It is acknowledged that each party to this agreement had the opportunity to be represented by counsel in the preparation of this Agreement, and accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both Parties.



21.3 **Records.** CONTRACTOR shall keep such records and accounts and require any and all subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement, and any expenses for which CONTRACTOR expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by CITY and shall be kept for a period of ten (10) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by CITY of any fees or expenses based upon such entries.

21.4 **No Contingent Fees.** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the Agreement price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

21.5 **Notice.** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, CONTRACTOR and CITY designate the following as the respective places for giving of notice:

CITY	Charles F. Dodge, City Manager City of Pembroke Pines 610 City Center Way, 4 <sup>th</sup> Floor Pembroke Pines, Florida 33025 Telephone No. (954) 431-4884 Facsimile No. (954) 437-1149
Copy To:	Samuel S. Goren, City Attorney Goren, Cherof, Doody & Ezrol, P.A. 3099 East Commercial Boulevard, Suite 200 Fort Lauderdale, Florida 33308 Telephone No. (954) 771-4900 Facsimile No. (954) 771-4923
CONTRACTOR	Fox-Mar Photography, Inc. Robert Hibbard 10535 SW 109 Court Miami, FL 33015 Telephone No. 305-279-3240



21.6 **Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

21.7 **Headings.** Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

21.8 **Exhibits.** Each exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.

21.9 **Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

21.10 **Extent of Agreement.** This Agreement represents the entire and integrated agreement between CITY and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral.

21.11 **Waiver.** Failure of CITY to insist upon strict performance of any provision or condition of this Agreement, or to execute any right therein contained, shall not be constructed as a waiver or relinquishment for the future of any such provision, condition, or right, but the same shall remain in full force and effect.

21.12 **Attorney's Fees.** In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.

21.13 **Protection of City Property.** At all times during the performance of this Agreement, CONTRACTOR shall protect CITY's property from all damage whatsoever on account of the work being carried on under this Agreement.

21.14 **Florida Information Protection Act.** CONTRACTOR agrees and understands that the services and/or goods provided under this Agreement consist, at least in part, of "customer records" that contain "personal information," as defined in the Florida Information Protection Act, section 501.171, Florida Statutes (the "Act"). Accordingly, as required by the Act, CONTRACTOR agrees to implement safeguards to protect customer records containing personal information, in whatever form retained and stored, from a breach of security. If customer records in CONTRACTOR's possession are breached in the manner set forth in the Act, CONTRACTOR shall immediately notify CITY as required by law, and CONTRACTOR shall work with CITY as required by the Act to assist in any of the following actions:



21.14.1 Investigate the alleged breach and determine if an actual breach has occurred, which may include the use of law enforcement officials as needed and as determined by CITY;

21.14.2 Provide notice to any and all consumers whose personal information has been breached;

21.14.3 Provide any and all other notices to governmental agencies that may be applicable under the Act, if a breach has reached a particular threshold, as defined in the Act, which may include but is not limited to: credit reporting agencies and the Florida Department of Legal Affairs;

21.14.4 Ensure that CONTRACTOR's third-party agents are made aware of the Act and any requirement to comply with the Act, and require that those third-party agents that store customer records of CITY who experience a breach notify CITY immediately, and work with CONTRACTOR and CITY as outlined in this Section.

The procedures specified herein shall not supersede any requirement specified by the Act. The provisions of the Act, as may be amended from time to time, shall prevail in the event of any conflict.

22.15 **Scrutinized Companies.** CONTRACTOR, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services if:

22.15.1 Any amount of, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes or is engaged in a boycott of Israel; or

22.15.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:

22.15.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or

22.15.2.2 Is engaged in business operations in Syria.

22.16 **Compliance With Statutes.** It shall be CONSULTANT's responsibility to be aware of and comply with all applicable statutes, ordinances, rules, orders, regulations and requirements of all state and federal agencies, as applicable; specifically the Jessica Lunsford Act – Chapter 1012, Florida Statutes, which provides for the screening of individuals who are vendors or licensees with a Florida public school or district.



City of Pembroke Pines

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

ATTEST:

CITY

BY: \_\_\_\_\_  
MARLENE D. GRAHAM, CITY CLERK CHARLES F. DODGE CITY MANAGER

APPROVED AS TO FORM.

OFFICE OF THE CITY ATTORNEY

CONTRACTOR

Witnesses:

x [Signature]

Cristal Redondo

Print Name

x [Signature]

Victoria Quarles

Print Name

STATE OF FLORIDA )

) ss:

COUNTY OF MIAMI-DADE )

FOX-MAR PHOTOGRAPHY, INC.

BY: Mark W. Maynard

Print Name: MARK W. MAYNARD

Title: DIRECTOR/OWNER

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared MARK W. MAYNARD as OWNER of **FOX-MAR PHOTOGRAPHY, INC.**, a company authorized to conduct business in the State of Florida, and acknowledged execution of the foregoing Agreement as the proper official of **FOX-MAR PHOTOGRAPHY, INC.**, for the use and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this 6<sup>th</sup> day of AUGUST, 2019.

[Signature]  
NOTARY PUBLIC

Celina Santana

(Name of Notary Typed, Printed or Stamped)

