

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
CITY OF STANWOOD
AND STANWOOD CAMANO ARTS GUILD, A U.S. NON-PROFIT
FOR TOURISM PROMOTION SERVICES**

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Stanwood, a Washington State municipal corporation ("City"), and Stanwood Camano Arts Guild, a U.S. Non-profit, ("Provider").

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, the parties hereto agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is to provide the City with tourism promotion services regarding as described in Article II. The general terms and conditions of the relationship between the City and the Service Provider are specified in this Agreement.

ARTICLE II. SCOPE OF SERVICES

The Scope of Services is attached hereto as **Exhibit "A"** and incorporated herein by this reference ("Scope of Services"). All services and materials necessary to accomplish the tasks outlined in the Scope of Services shall be provided by the Service Provider unless noted otherwise in the Scope of Services or this Agreement.

ARTICLE III. OBLIGATIONS OF THE SERVICE PROVIDER

III.1 MINOR CHANGES IN SCOPE. The Service Provider shall accept minor changes, amendments, or revision in the detail of the Scope of Services as may be required by the City when such changes will not have any impact on the service costs or proposed delivery schedule. Extra work, if any, involving substantial changes and/or changes in cost or schedules will be addressed as follows:

Extra Work. The City may desire to have the Service Provider perform work or render services in connection with each project in addition to or other than work provided for by the expressed intent of the Scope of Services in the scope of services. Such work will be considered as extra work and will be specified in a written supplement to the scope of services, to be signed by both parties, which will set forth the nature and the scope thereof. All proposals for extra work or services shall be prepared by the Service Provider at no cost to the City. Work under a supplemental agreement shall not proceed until executed in writing by the parties.

III.2 WORK PRODUCT AND DOCUMENTS. The work product and all documents produced under this Agreement shall be furnished by the Service Provider to the City,

and upon completion of the work shall become the property of the City, except that the Service provider may retain one copy of the work product and documents for its records. The Service provider will be responsible for the accuracy of the work, even though the work has been accepted by the City.

In the event that the Service provider shall default on this Agreement or in the event that this Agreement shall be terminated prior to its completion as herein provided, all work product of the Service provider, along with a summary of work as of the date of default or termination, shall become the property of the City. Upon request, the Service provider shall tender the work product and summary to the City. Tender of said work product shall be a prerequisite to final payment under this Agreement. The summary of work done shall be prepared at no additional cost to the City.

Service provider will not be held liable for reuse of documents produced under this Agreement or modifications thereof for any purpose other than those authorized under this Agreement without the written authorization of Service provider.

III.3 TERM. The term of this Agreement shall commence on February 1, 2016 and shall terminate at midnight, January 31, 2017. The parties may extend the term of this Agreement by written mutual agreement.

III.4 NONASSIGNABLE. The services to be provided by the Service provider shall not be assigned or subcontracted without the express written consent of the City.

III.5 EMPLOYMENT. Any and all employees of the Service Provider, while engaged in the performance of any work or services required by the Service Provider under this Agreement, shall be considered employees of the Service provider only and not of the City, and any and all claims that may or might arise under the Workman's Compensation Act on behalf of any said employees while so engaged, and any and all claims made by any third party as a consequence of any negligent act or omission on the part of the Service Provider or its employees while so engaged in any of the work or services provided herein shall be the sole obligation of the Service Provider.

III.6 INDEMNITY. Indemnification/Hold Harmless Service provider shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Service provider in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Service provider and the City, its officers, officials, employees, and volunteers, the Service provider's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Service provider's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Service provider's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the

parties. The provisions of this section shall survive the expiration or termination of this Agreement.

III.7 INSURANCE.

a. **Minimum Limits of Insurance.** The Service provider shall procure, and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work and services hereunder by the Service provider, its agents, representatives, employees or subcontractors. The Service provider shall, before commencing work under this agreement, file with the City certificates of insurance coverage and the policy endorsement to be kept in force continuously during this Agreement, in a form acceptable to the City. Said certificates and policy endorsement shall name the City, its officers, elected officials, agents and/or employees as an additional named insured with respect to all coverages except professional liability insurance and workers' compensation. The minimum insurance requirements shall be as follows:

(1) Comprehensive General Liability. \$1,000,000 combined single limit per occurrence for bodily injury personal injury and property damage; \$2,000,000 general aggregate.

(2) Automobile Liability. \$300,000 combined single limit per accident for bodily injury and property damage.

(3) Workers' Compensation. Workers' compensation limits as required by the Workers' Compensation Act of Washington.

(4) Service provider's Errors and Omissions Liability. \$1,000,000 per occurrence and as an annual aggregate.

b. **Notice of Cancellation.** In the event that the Service provider receives notice (written, electronic or otherwise) that any of the above required insurance coverage is being cancelled and/or terminated, the Service provider shall immediately (within forty-eight (48) hours) provide written notification of such cancellation/termination to the City.

c. **Acceptability of Insurers.** Insurance to be provided by Service provider shall be with a Bests rating of no less than A:VII, or if not rated by Bests, with minimum surpluses the equivalent of Bests' VII rating.

d. **Verification of Coverage.** In signing this agreement, the Service provider is acknowledging and representing that required insurance is active and current. Further, throughout the term of this Agreement, the Service provider shall provide the City with proof of insurance upon request by the City.

e. **Insurance shall be Primary.** The Service provider's insurance coverage

shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Service provider's insurance and shall not contribute with it.

f. **No Limitation.** Service provider's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Service provider to the coverage provided by such insurance or otherwise limit the recourse to any remedy available at law or in equity.

g. **Claims-made Basis.** Unless approved by the City all insurance policies shall be written on an "Occurrence" policy as opposed to a "Claims-made" policy. The City may require an extended reporting endorsement on any approved "Claims-made" policy.

III.8 DISCRIMINATION PROHIBITED AND COMPLIANCE WITH EQUAL OPPORTUNITY LEGISLATION. The Service provider agrees to comply with equal opportunity employment and not to discriminate against client, employee, or applicant for employment or for services because of race, creed, color, religion, national origin, marital status, sex, sexual orientation, age or handicap except for a bona fide occupational qualification with regard, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; selection for training, rendition of services. The Service provider further agrees to maintain (as appropriate) notices, posted in conspicuous places, setting forth the provisions of this nondiscrimination clause. The Service provider understands and agrees that if it violates this nondiscrimination provision, this Agreement may be terminated by the City, and further that the Service provider will be barred from performing any services for the City now or in the future, unless a showing is made satisfactory to the City that discriminatory practices have been terminated and that recurrence of such action is unlikely.

III.9 UNFAIR EMPLOYMENT PRACTICES. During the performance of this Agreement, the Service provider agrees to comply with RCW 49.60.180, prohibiting unfair employment practices.

III.10 LEGAL RELATIONS. The Service provider shall comply with all federal, state and local laws and ordinances applicable to work to be done under this Agreement. The Service provider represents that the firm and all employees assigned to work on any City project are in full compliance with the statutes of the State of Washington governing activities to be performed and that all personnel to be assigned to the work required under this Agreement are fully qualified—and properly licensed to perform the work to which they will be assigned. This Agreement shall be interpreted and construed in accordance with the laws of Washington. Venue for any litigation commenced relating to this Agreement shall be in Snohomish County Superior Court.

III.11 INDEPENDENT CONTRACTOR.

a. The Service provider and the City understand and expressly agree that the Service provider is an independent contractor in the performance of each and every part of this Agreement. The Service provider expressly represents, warrants and agrees that his status as an independent contractor in the performance of the work and services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195 or as hereafter amended. The Service provider, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the services required under this Agreement. The Service provider shall make no claim of City employment nor shall claim any related employment benefits, social security, and/or retirement benefits.

b. The Service provider shall be solely responsible for paying all taxes, deductions, and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, the Service provider shall pay the same before it becomes due.

c. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Service provider performs hereunder.

d. Prior to commencement of work, the Service provider shall obtain a business license from the City.

III.12 CONFLICTS OF INTEREST. The Service provider agrees to and shall notify the City of any potential conflicts of interest in Service provider's client base and shall obtain written permission from the City prior to providing services to third parties where a conflict or potential conflict of interest is apparent. If the City determines in its sole discretion that a conflict is irreconcilable, the City reserves the right to terminate this Agreement.

III.13 CITY CONFIDENCES. The Service provider agrees to and will keep in strict confidence, and will not disclose, communicate or advertise to third parties without specific prior written consent from the City in each instance, the confidences of the City or any information regarding the City or services provided to the City.

III.14 SUBCONTRACTORS/SUBSERVICE PROVIDERS.

a. The Service provider shall is responsible for all work performed by subcontractors/subservice providers pursuant to the terms of this Agreement.

b. The Service provider must verify that any subcontractors/subservice providers they directly hire meet the responsibility criteria for the project. Verification

that a subcontractor/subservice provider has proper license and bonding, if required by statute, must be included in the verification process.

c. The Service provider may not substitute or add subcontractors/subservice providers without the written approval of the City.

d. All Subcontractors/Subservice providers shall have the same insurance coverages and limits as set forth in this Agreement and the Service provider shall provide verification of said insurance coverage.

ARTICLE IV. OBLIGATIONS OF THE CITY

IV.1 PAYMENTS.

a. The Service provider shall be paid by the City for services rendered under this Agreement as described in the Scope of Services and as provided in this section. In no event shall the compensation paid to Service provider under this Agreement exceed \$400.00 (four hundred dollars) without the written agreement of the Service provider and the City. Such payment shall be full compensation for work performed and services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the work. In the event the City elects to expand the scope of services from that set forth in Exhibit A, the City shall pay Service provider a mutually agreed amount.

b. The Service provider shall submit a monthly invoice to the City for services performed in the previous calendar month in a format acceptable to the Cities. The Service provider shall maintain time and expense records and provide them to the Cities upon request.

c. The City will pay timely submitted and approved invoices received before the 20th of each month within thirty (30) days of receipt.

IV.2 CITY APPROVAL. Notwithstanding the Service provider's status as an independent contractor, results of the work performed pursuant to this Agreement must meet the approval of the City, which shall not be unreasonably withheld if work has been completed in compliance with the Scope of Services and City requirements.

IV.3 MAINTENANCE/INSPECTION OF RECORDS. The Service provider shall maintain all books, records, documents and other evidence pertaining to the costs and expenses allowable under this Agreement in accordance with generally accepted accounting practices. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the City and/or the Washington State Auditor at all reasonable times, and the Service provider shall afford the proper facilities for such inspection and audit. Representatives of the City and/or the Washington State Auditor may copy such books, accounts and records where necessary to conduct or document an audit. The Service provider shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement. In the event that any audit or inspection

identifies any discrepancy in such financial records, the Service provider shall provide the City with appropriate clarification and/or financial adjustments within thirty (30) calendar days of notification of the discrepancy.

ARTICLE V. GENERAL

V.1 **NOTICES.** Notices to the City shall be sent to the following address:

Sally Pray
8700 271st Street NW
Stanwood, WA 98292

1078 ELLIE LANE
CAMANO IS., WA 98287

RCL ok
7/7/16
SP 7-7-16

Notices to the Service provider shall be sent to the following address:

Leonard Kelley
Mayor, City of Stanwood
10220 270th Street NW
Stanwood, WA 98292

Receipt of any notice shall be deemed effective three (3) days after deposit of written notice in the U.S. mail with proper postage and address.

V.2 **TERMINATION.** The right is reserved by the City to terminate this Agreement in whole or in part at any time upon ten (10) calendar days' written notice to the Service provider.

If this Agreement is terminated in its entirety by the City for its convenience, the City shall pay the Service provider for satisfactory services performed through the date of termination in accordance with payment provisions of Section VI.1.

V.3 **DISPUTES.** The parties agree that, following reasonable attempts at negotiation and compromise, any unresolved dispute arising under this Agreement may be resolved by a mutually agreed-upon alternative dispute resolution of arbitration or mediation.

V.4 **EXTENT OF AGREEMENT/MODIFICATION.** This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

V.5 **SEVERABILITY**

a. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed

and enforced as if the Agreement did not contain the particular provision held to be invalid.

b. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

V.6 **NONWAIVER.** A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

V.7 **FAIR MEANING.** The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.

V.8 **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

V.9 **VENUE.** The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Snohomish County, Washington.

V.10 **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

V.11 **AUTHORITY TO BIND PARTIES AND ENTER INTO AGREEMENT.** The undersigned represent that they have full authority to enter into this Agreement and to bind the parties for and on behalf of the legal entities set forth below.

DATED this 7 day of July, 2016.

CITY OF STANWOOD

Stanwood Camano Arts Guild, U.S. Non-profit

By Leonard Kelley
Leonard Kelley, Mayor

By Sally Pray
Sally Pray, Chairman

Approved as to form:

Grant Weed
Grant Weed, City Attorney

**EXHIBIT A
SCOPE OF WORK**

Hold Arts by the Bay on July 9 and July 10, 2016 on 271st Street NW, between 84th Avenue NW and approximate 90th Avenue NW. The funding provided through this grant application shall be utilized for advertising the event for the follow Regional Ads:

1.	Entertainment News	\$260.00
2.	Splash	\$925.00
3.	Snohomish Tribune	\$160.00
4.	Sound Publishing/Everett Herald	<u>\$2,000.00</u>
TOTAL		\$3,345.00

MORE INVOICES TO COME

1.	SOUND PUBLISHING AD	# 1,250-	5-13-14
2	THE SEATTLE TIMES	# 1,165-	5-15-16
3	CAMANO ARTS ASSOCIATION	# 250-	6-1-14
4	UPS FLYERS ART BY THE BAY	# 1109."	4-14-16
		<hr/>	
		# 3,484."	

*SP 7-7-14
REV
OK*

MORE INVOICES TO COME