

PROFESSIONAL SERVICES AGREEMENT

This Agreement is entered into this ___ day of _____, 2004 (but effective as of _____) by and between the Virginia Key Beach Park Trust (“Trust”) located at 3550 Biscayne Blvd. Suite 510, Miami, Florida , an entity of the City of Miami (“City”) and Terragenesis (“Provider”).

RECITALS:

- A.** The Trust is in need of film/video Production and editing services for a documentary style oral history film/video (“Film”), for the Virginia Key Beach Park (“Services”).
- B.** Provider possesses all necessary qualifications and expertise to perform the Services.
- C.** The Trust wishes to engage the services of Provider, and Provider wishes to perform the services for the Trust
- D.** The Commission of the City of Miami, by Ordinance No. 12003, Section 38-234 adopted on December 14th, 2000, authorized the Executive Director to execute all contracts on behalf of the Trust.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, Provider and the Trust agree as follows:

TERMS:

1. **RECITALS:** The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.
2. **TERM:** The term of this Agreement shall be for a period ***of three months (3)***, commencing on the effective date hereof of September 20, 2004.
3. **OPTION TO EXTEND:** The Trust shall have 1 option to extend the term hereof for a period of 3 (three) months each, subject to availability and appropriation of funds. The Trust approval shall not be required as long as the total extended term does not exceed six (6) months, or a period equal to the original term of this Agreement, whichever is longer.
4. **SCOPE OF SERVICE:**
 - A. Provider agrees to provide the Services as specifically described, and subject to the special terms and conditions set forth in Attachment "A" hereto, which by this reference is incorporated into and made a part of this Agreement.

B. Provider represents and warrants to the Trust that: (i) it possess all qualifications, licenses and expertise required for the performance of the Services; (ii) it is not delinquent in the payment of any sums due the City of Miami or the Trust, including payment of permits fees, occupational licenses, etc., nor in the performance of any obligations to the City of Miami, or the Trust (iii) all personnel assigned to perform the Services are and shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; and (iv) the Services will be performed in the manner described in Attachment “A”.

5. COMPENSATION:

- A.** The amount of compensation payable by the Trust to Provider shall be based on the rates and schedules described in Attachment “A” hereto, which by this reference is incorporated into this Agreement; provided, however, that in no event shall the amount of compensation exceed \$33,713.57.
- B.** Unless otherwise specifically provided in Attachment “A”, payment shall be made within forty five (45) days after receipt of Provider’s invoice, following an agreed upon payment schedule, which shall be accompanied by sufficient supporting documentation and contain sufficient detail, to allow a proper audit of expenditures, should Trust require one to be performed. Travel expenses are the responsibility and expense of the provider as outlined in attachment “A”.

6. OWNERSHIP OF DOCUMENTS: Provider understands and agrees that any information, document, report or any other material whatsoever which is given by the Trust to Provider or which is otherwise obtained or prepared by Provider pursuant to or under the terms of this Agreement is and shall at all times remain the property of the Trust. Provider agrees not to use any such information, document, report or material for any other purpose whatsoever without the written consent of the Trust, which may be withheld or conditioned by the Trust in its sole discretion. The Provider further agrees that the original negatives, tapes, digital images and work prints of the Film shall be given to the Trust and that the Trust is the sole owner.

7. AUDIT AND INSPECTION RIGHTS:

- A.** The Trust may, at reasonable times, and for a period of up to three (3) years following the date of final payment by the Trust to Provider under this Agreement, audit, or cause to be audited, those books and records of Provider which are related to Provider's performance under this Agreement. Provider agrees to maintain all such books and records at its principal place of business for a period of three (3) years after final payment is made under this Agreement.
- B.** The Trust may, at reasonable times during the term hereof, inspect Provider's facilities and perform such tests, as the Trust deems reasonably necessary, to determine whether the goods or services required to be provided by Provider under this Agreement conform to the term hereof, if applicable.

Provider shall make available to the Trust all reasonable facilities and assistance to facilitate the performance of test or inspections by Trust representatives. All tests and inspections shall be subject to, and made in accordance with, the provisions of Section 18-55.2 of the Code of the City of Miami, Florida, as same may be amended or supplemented, from time to time.

8. AWARD OF AGREEMENT: Provider represents and warrants to the Trust that it has not employed or retained any person or company employed by the City of Miami or Virginia Key Beach Park Trust to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

9. PUBLIC RECORDS: Provider understands that the public shall have access, at all reasonable times, to all documents and information pertaining to Virginia Key Beach Park Trust or City of Miami contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the Trust and the public to all documents subject to disclosure under applicable law. Provider's failure or refusal to comply with the provisions of this section shall result in the immediate cancellation of this Agreement by the Trust.

10. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS: Provider understands that agreements between private entities and local governments are subject to certain laws and regulations, including laws pertaining to public records, conflict of interest, record keeping, etc.

Trust and Provider agree to comply with and observe all applicable federal, state and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

11. INDEMNIFICATION: Provider shall indemnify, defend and hold harmless the City of Miami and the Virginia Key Beach Park Trust and its officials, employees and agent (collectively referred to as “Indemnitees”) and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including attorney’s fees) or liabilities (collectively referred to as “Liabilities”) by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with (i) the performance or non-performance of the services contemplated by this Agreement which is or is alleged to be directly or indirectly caused, in whole or in part, by any act, omission, default or negligence (whether active or passive) of Provider or its employees, agents or subcontractors (collectively referred to as “Provider”), regardless of whether it is, or is alleged to be, caused in whole or part (whether joint, concurrent or contributing) by any act, omission, default or negligence (whether active or passive) of the Indemnities, or any of them or (ii) the failure of the Provider to comply with any of the paragraphs herein or the failure of the Provider to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal or state, in connection with the performance of this Agreement.

Provider expressly agrees to indemnify and hold harmless the Indemnitees, or any of them, from and against all liabilities which may be asserted by an employee or former employee of Provider, or any of its subcontractors, as provided above, for which the Provider's liability to such employee or former employee would otherwise be limited to payments under state Workers' Compensation or similar laws.

12. DEFAULT: If Provider fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Provider shall be in default. Upon the occurrence of a default hereunder the Trust, in addition to all remedies available to it by law, may immediately, upon written notice to Provider, terminate this Agreement whereupon all payments, advances, or other compensation paid by the Trust to Provider while Provider was in default shall be immediately returned to the Trust. Provider understands and agrees that termination of this Agreement under this section shall not release Provider from any obligation accruing prior to the effective date of termination. Should Provider be unable or unwilling to commence to perform the Services within the time provided or contemplated herein, then, in addition to the foregoing, Provider shall be liable to the Trust for all expenses incurred by the Trust in preparation and negotiation of this Agreement, as well as all costs and expenses incurred by the Trust in the procurement of the Services, including consequential and incidental damages.

13. RESOLUTION OF CONTRACT DISPUTES: Provider understands and agrees that all disputes between Provider and the Trust based upon alleged violation of the terms of this Agreement by the Trust shall be submitted to the Executive Director for his/her resolution, prior to Provider being entitled to seek judicial relief in connection therewith. In the event that the amount of compensation hereunder exceeds \$10,000, the Executive Directors decision shall be approved or disapproved by the Virginia Key Beach Park Trust Board of Trustees. Provider shall not be entitled to seek judicial relief unless: (i) it has first received Executive Directors written decision, approved by the Virginia Key Beach Park Board of Trustees if the amount of compensation hereunder exceeds \$10,000; or (ii) a period of sixty (60) days has expired, after submitting to the Executive Director a detailed statement of the dispute, accompanied by all supporting documentation (90 days if Executive Directors decision is subject to Trustees approval); or (iii) Trust has waived compliance with the procedure set forth in this section by written instrument, signed by the Executive Director.

14. TRUST'S TERMINATION RIGHTS:

A. The Trust shall have the right to terminate this Agreement, in its sole discretion, at any time, by giving written notice to Provider at least five (5) business days prior to the effective date of such termination. In such event, the Trust shall pay to Provider compensation for services rendered and expenses incurred prior to the effective date of termination. In no event shall the Trust be liable to Provider for any additional compensation, other than that provided herein, or for any consequential or incidental damages.

B. The Trust shall have the right to terminate this Agreement, without notice or liability to Provider, upon the occurrence of an event of default hereunder. In such event, the Trust shall not be obligated to pay any amounts to Provider and Provider shall reimburse to the Trust all amounts received while Provider was in default under this Agreement.

15. INSURANCE: Provider shall, at all times during the term hereof, maintain such insurance coverage as may be required by the City of Miami or the Trust. All such insurance, including renewals, shall be subject to the approval of the Trust for adequacy of protection and evidence of such coverage shall be furnished to the Trust on Certificates of Insurance indicating such insurance to be in force and effect and providing that it will not be canceled during the performance of the services under this contract without thirty (30) calendar days prior written notice to the City. Completed Certificates of Insurance shall be filed with the Trust prior to the performance of services hereunder, provided, however, that Provider shall at any time upon request file duplicate copies of the policies of such insurance with the Trust.

If, in the judgment of the Trust, prevailing conditions warrant the provision by Provider of additional liability insurance coverage which is different in kind, the Trust reserves the right to require the provision by Provider of an amount of coverage different from the amounts or kind previously required and shall afford written notice of such change in requirements thirty (30) days prior to the date on which the requirements shall take effect.

Should the Provider fail or refuse to satisfy the requirement of changed coverage within thirty (30) days following the Trust's written notice, this Contract shall be considered terminated on the date the required change in policy coverage would otherwise take effect.

16. NONDISCRIMINATION: Provider represents and warrants to the Trust that Provider does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with Provider's performance under this Agreement on account of race, color, sex, religion, age, handicap, marital status or national origin. Provider further covenants that no otherwise qualified individual shall, solely by reason of his/her race, color, sex, religion, age, handicap, marital status or national origin, be excluded from participation in, be denied services, or be subject to discrimination under any provision of this Agreement.

17. MINORITY AND WOMEN BUSINESS AFFAIRS AND PROCUREMENT

PROGRAM: The City of Miami has established a Minority and Women Business Affairs and Procurement Program (the "M/WBE Program") designed to increase the volume of City procurement and contracts with Blacks, Hispanic and Women-owned business. The M/WBE Program is found in Ordinance No. 10062, a copy of which has been delivered to, and receipt of which is hereby acknowledged by, Provider.

Provider understands and agrees that the Trust shall have the right to terminate and cancel this Agreement, without notice or penalty to the Trust, and to eliminate Provider from consideration and participation in future Trust contracts if Provider, in the preparation and/or submission of the Proposal, submitted false or misleading information as to its status as Black, Hispanic and/or Women owned business and/or the quality and/or type of minority or women owned business participation.

18. ASSIGNMENT: This Agreement shall not be assigned by Provider, in whole or in part, without the prior written consent of the Trust, which may be withheld or conditioned, in the Trust's sole discretion.

19. NOTICES: All notices or other communications required under this Agreement shall be in writing and shall be given by hand-delivery or by registered or certified U.S. Mail, return receipt requested, addressed to the other party at the address indicated herein or to such other address as party may designate by notice given as herein provided. Notice shall be deemed given on the day on which personally delivered; or, if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

TO PROVIDER:

TO THE TRUST:

**Terragenesis
3550 Biscayne Blvd. Ste.307
Miami, Florida 33137**

**Virginia Key Beach Park Trust
3550 Biscayne Blvd. Ste.510
Miami, Florida 33137**

20. MISCELLANEOUS PROVISIONS:

- A.** This Agreement shall be construed and enforced according to the laws of the State of Florida.
- B.** Title and paragraph headings are for convenient reference and are not a part of this Agreement.
- C.** No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.
- D.** Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida or the City of Miami, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same be deemed servable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.
- E.** This Agreement constitutes the sole and entire agreement between the parties hereto. No modification or amendment hereto shall be valid unless in writing and executed by properly authorized representatives of the parties hereto.

21. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon the parties hereto, their heirs, executors, legal representatives, successors, or assigns.
22. **INDEPENDENT CONTRACTOR:** Provider has been procured and is being engaged to provide services to the Trust as an independent contractor, and not as an agent or employee of the Trust. Accordingly, Provider shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the City of Miami, nor any rights generally afforded classified or unclassified employees. Provider further understands that Florida Workers' Compensation benefits available to employees of the City of Miami or the Trust are not available to Provider, and agrees to provide workers' compensation insurance for any employee or agent of Provider rendering services to the Trust under this Agreement.
23. **CONTINGENCY CLAUSE:** Funding for this Agreement is contingent on the availability of funds and continued authorization for program activities and the Agreement is subject to amendment or termination due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days notice.
24. **ENTIRE AGREEMENT:** This instrument and its attachment constitute the sole and only agreement of the parties relating to the subject matter hereof and correctly set forth the rights, duties, and obligations of each to the other as of its date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.

25. COUNTERPARTS: This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective officials thereunto duly authorized, this the day and year above written.

“Trust”
Virginia Key Beach Park Trust

ATTEST:

By: _____
Guy Forchion
Assistant Executive Director

By: _____
David Shorter, Executive Director

“Provider”
Terragenesis

By: _____

By: _____,
N. Barry Harley, Creative Director

APPROVED AS TO FORM AND
CORRECTNESS:

Jorge L. Fernandez
City Attorney

APPROVED AS TO INSURANCE
REQUIREMENTS:

Administrator
Risk Management

Attachment A