

## **AGREEMENT**

**THIS AGREEMENT** (the "Agreement"), is made and entered into effective \_\_\_\_\_, 2015 ("Effective Date") by and between JEWISH COMMUNITY PARTNERS, INC., a Tennessee not-for-profit organization ("JCP"), and MEMPHIS JEWISH FEDERATION, a Tennessee not-for-profit corporation ("MJF").

### **WITNESSETH:**

**WHEREAS**, JCP is a not-for-profit corporation whose purposes include to align financial, human and organizational resources to foster and sustain a vibrant local and global Jewish community (the "Community"), to facilitate an ongoing process to establish, monitor and assess collective Community goals and priorities as well as provide shared resources and tools to strategic partners within the Community, to manage data collection and impact analysis across the Community, to coordinate outreach and Community priorities, to facilitate dialogue and collaboration among strategic partnerships in the Community, and to offer a broad range of philanthropic opportunities for donors in all levels in support of Community priorities, mobilizing and aligning other funding and resources for such priorities (the "Purposes"); and

**WHEREAS**, one of the ways JCP performs its Purposes is by providing coordinated services to other organizations in the Community, through such services facilitating dialogue and collaboration among organizations in the Community and offering a broad range of philanthropic opportunities for donors in all levels in support of priorities of such other organizations in the Community; and

**WHEREAS**, MJF is a charitable not-for-profit corporation whose purposes include to

promote and maintain the welfare and unity of the Jewish people, to provide financial and other assistance and participation in agencies, organizations, and programs which engage in or promote religious, welfare, health, philanthropic, community relations, education, cultural, and social service activities and projects for the benefit of Jews in the local community, in the United States, or internationally (hereinafter collectively called “Jewish Activities”), to serve as a needs assessment, fund-raising and allocation agency in the Memphis metropolitan area, to approve, sponsor, conduct, clear and coordinate the raising and allocation of funds in such area for the benefit of Jewish Activities, to cooperate with, provide leadership development for, and otherwise assist local, national, and international agencies and organizations and local synagogues, and to establish and implement proper programs in order to plan, coordinate, promote and advance Jewish Activities on a local, national, and international level, to promote and nurture harmony, understanding, consensus, and good relations among the members of the Community and between the Community and the larger communities of which it is a part, to represent the Community in the Memphis metropolitan area in all matters of general Jewish interest and concern as to which there exists a recognized consensus in the Community, and to plan, establish and implement educational and promotional programs and activities for the benefit of the people of Israel, and to serve as spokesperson and representative in the Memphis metropolitan area for Jewish Federations of North America (JFNA) or any successor organization, American Jewish Joint Distribution Committee, Jewish Agency for Israel (JAFI), Hebrew Immigrant Aid Society (HIAS), and other organizations assisting the people of Israel and worldwide Jewry; and

**WHEREAS**, JCP represents and MJF recognizes that JCP has officers and employees experienced in assisting organizations like MJF in organization and administration and in the activation, realization, and effectuation of purposes like those of MJF, and, accordingly, MJF

has determined that JCP can benefit MJF by performing for MJF all functions and actions required to accomplish the mission and purposes of MJF (collectively, and as further described hereinafter, the “Services”), except those functions and actions specifically required by law or the Bylaws of MJF to be performed or taken by the Board of Directors of MJF, and JCP has determined that providing the Services to MJF will further JCP’s Purposes in the Community;

**NOW, THEREFORE**, in consideration of the premises and mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do mutually covenant and agree as follows:

### **I. RECITALS**

The aforementioned recitals are true and are made a part hereof.

### **II. MANAGEMENT BY JEWISH COMMUNITY PARTNERS, INC.**

MJF hereby retains JCP as and JCP agrees to be the exclusive provider of the Services, including without limitation those services listed in **Exhibit A** attached hereto.

### **III. FINANCIAL ARRANGEMENT**

3.1 Services Compensation. For the Services which are to be rendered by JCP pursuant to this Agreement, JCP shall be paid the following amounts (which shall be collectively referred to as the “Services Compensation”):

(a) Base Fee. MJF shall pay JCP as its fee for performance of the services detailed in this Agreement a base fee (the “Base Fee”) in the amount of the budget (the “Budget”), set out on **Exhibit B** attached hereto, of costs and expenses of providing the Services (the “Expenses”), to be adjusted in accordance with subsequent revised or replacement budgets, as provided for hereinafter.

(b) Excess Costs and Expenses. To the extent the Expenses incurred by JCP exceed the Base Fee, MJF shall pay JCP such additional amounts (the “Excess Expenses”) reasonably incurred by JCP, upon receipt of invoices providing reasonably detailed explanation for the excess amounts.

(c) Periodic Updated Budgets. The Expenses and Excess Expenses described in the preceding subparagraphs (a) and (b) are intended by the parties hereto to reimburse JCP for all expenses, including employee salaries and all costs and expenses incurred by JCP in performing the Services hereunder. JCP will provide to MJF on a quarterly basis (or such other periodic basis as mutually agreed by the parties) an accounting of the Expenses incurred as compared to the then applicable Budget; and if material changes have occurred or are anticipated by JCP to occur during the next reporting period, JCP will submit to MJF a proposed updated budget. If MJF disagrees with any budget submitted by JCP, the parties will work together to resolve any differences. It is the parties’ intent that total amount paid by MJF to JCP hereunder for any annual term shall be the amount of JCP’s actual costs and expenses incurred in providing the Services hereunder.

3.2 Payment. Payments of the Base Fee are due and payable on the first day of each month of the Term hereof; and payment of any additional invoices will be due within ten (10) days after receipt of each invoice.

3.3 Additional Services/Fees. If the parties agree to have JCP provide additional services (in addition to the Services) to MJF, compensation for such services will be as mutually agreed by the parties.

#### **IV. TERM**

The Initial Term of this Agreement shall be for five (5) years; and the Term shall be renewed automatically for successive five (5) year Terms, unless terminated by either party in

accordance with Article XI of this Agreement.

## **V. RESPONSIBILITIES OF JCP**

5.1 Exhibit A Duties. JCP shall provide the Services in a timely, professional and proficient manner. To the extent any of JCP's duties provide for payment of any amounts to or on behalf of the MJF, JCP shall not be responsible for such payments until and unless the amount of such payments are made available by MFJ to JCP for such payment.

## **VI. RESPONSIBILITIES OF MJF**

6.1 Board of Directors of MJF. MJF shall maintain a Board of Directors who shall meet in accordance with applicable law and the Bylaws of MJF in effect from time to time. MJF shall provide JCP with the name and contact person authorized to deal with JCP regarding the Services provided hereunder on a day to day basis; and the other officers and Board members of MJF shall not be involved in or interfere with JCP regarding the Services. MJF shall be responsible for ensuring that such person and members of the Board of Directors of MJF spend the time necessary to perform their functions.

6.2 Licenses and Permits. JCP shall assure that either MJF or JCP on behalf of MJF, whichever is applicable, maintains any licenses, permits and other requirements, necessary to continue MJF operations, shall advise the MJF Board and officers regarding all such requirements for MJF and MJF's business, and shall prepare and process for MJF, subject to cooperation by the officers and Board of MJF as required, all filings and other actions necessary to maintain the corporate status and any licenses, permits or other authorizations required or necessary to operate MJF, including without limitation charitable registration and reporting and filing of required tax returns and any and all obligations to the Internal Revenue Service with respect to the tax exemption of MJF.

6.3 Cooperation with JCP in Effectuating JCP Services. The Board and officers

of MJF will cooperate with JCP by acting upon and putting into effect the advice and recommendations of JCP with respect to the Services.

## **VII. REPRESENTATIONS AND WARRANTIES OF PARTIES**

7.1 Representations and Warranties. JCP and the MJF, respectively, represent,

warrant and agree that:

- a. JCP is a charitable not-for-profit corporation duly organized and existing under the laws of the state of Tennessee.
- b. MJF is a charitable not-for-profit corporation duly organized and existing under the laws of the state of Tennessee.
- c. The execution and performance of this Agreement and all related documents have been duly authorized by each respective party.
- d. This Agreement constitutes a valid and binding obligation of each respective party and shall not violate any federal and/or state, law(s), regulation(s), or rulers, order(s) of any government, JCP's or MJF's articles of organization, bylaws, or any related agreement(s) with any third party(ies) or other commitments) to which it is a party or to which it is subject.
- e. In providing the Services to MJF, JCP and its employees shall at all times comply with accepted industry standards of practice, licensure standards, state and federal requirements.
- f. MJF meets, and at all times during the term of this Agreement shall meet, all of the requirements necessary to operate in the State of Tennessee and any other state in which it operates and complies with,

and at all times during the term of this Agreement shall comply with, any and all other applicable federal and/or state, law(s), rule(s), guideline(s) and regulation(s) governing its operations and business.

- g. Except as otherwise expressly provided for in this Agreement, any and all of MJF liability(ies), whether arising before, during or after the term of this Agreement, shall be the sole responsibility of the MJF. JCP does not assume MJF's liability to any state and/or federal governmental or other entity(ies), or any third party(ies) with respect to MJF.
- h. Any and all of JCP's liability(ies), whether arising before, during or after the term of this Agreement, shall be the sole responsibility of JCP. MJF does not assume JCP's liability to any state and/or federal governmental or other entity(ies), or any third party(ies), including without limitation, any board members, officers, employees, agents or other representatives of JCP, whether or not such parties are involved, either directly or indirectly, in providing the Services.

7.2 Other. Each respective party makes no warranties, either express or implied, other than those specifically provided for in this Agreement.

## **VIII. RECORDS**

8.1 MJF and JCP. JCP and MJF for a period of six (6) years after Services are furnished hereunder shall retain this Agreement and copies of all books, documents and/or records related to this Agreement, the Services, and its respective organization documents related to this Agreement or the Services hereunder. In the event of a request for access to the books or records from any third party, each party agrees to notify the other party immediately

and to consult with such other party regarding the response to the request for access.

## **IX. CONFIDENTIALITY**

9.1 Confidential Information. JCP and the MJF, respectively, each agree and covenant that all knowledge and information of whatsoever kind or nature not generally available to the public relating to the other party and/or its clients, employees, commissioners, members, officers, agents, servants, consultants and/or related or affiliated companies, whether related by common ownership, affiliation agreement, control or otherwise, which is acquired or is made available to the other party, before, during or after the Term of this Agreement, shall be regarded as strictly confidential and/or trade secrets of the other party and shall not be directly or indirectly disclosed to any person(s), corporation(s) or other entity(ies) without the other party's prior written consent. In addition, JCP and the MJF agree and acknowledge that upon the termination of this Agreement for any reason, each party shall return to the other party any and all of such other party's documents and objects, and any copy(ies), duplicate(s) or reproduction(s) of whatsoever kind, of any of the other party's document(s) or object(s), which are in JCP's or the MJF's possession, as applicable.

Nothing of the foregoing shall be construed to nor shall subject a party to damages if disclosure is mandated by federal or state law with respect to any suit, investigation, or proceeding by any governmental agency or regulatory body exercising jurisdiction over the party, or if such disclosure is required by subpoena or other order of a court or administrative body exercising jurisdiction over the party; provided, however, the party shall give prior reasonable notice to other party whose information is subject to such disclosure that such disclosure is sought pursuant to such suit, investigation, or proceeding, in order that other party whose information is subject to such disclosure may take appropriate action to quash any such judicial or administrative requirement of disclosure or take such other action appropriate

to protect the confidentiality of any such records or information prior to their disclosure.

## **X. INDEMNIFICATION**

10.1 Indemnification. Each party shall indemnify, defend and hold the other party and its officers, members, owners, employees, agents, servants, representatives and affiliated companies, whether related by common ownership, control or otherwise, free and harmless from and against any and all claims, losses, causes of action, judgments, damages, liability, demands and/or expenses of any kind whatsoever to the fullest extent permitted by Tennessee and federal law, including, but not limited to, reasonable attorneys' fees, that may result from, arise out of or be caused by any neglect, negligence, misconduct, or other act or omission of such indemnifying party or any of its employees, officers, members, agents or representatives in the performance or omission of any act or responsibility assumed by such party pursuant to this Agreement.

10.2 Survival of these Provisions. Notwithstanding anything contained herein to the contrary, the indemnification provisions above shall survive the termination or expiration of this Agreement.

## **XI. TERMINATION**

11.1 Termination upon Breach. This Agreement may be terminated by a non-breaching party upon the occurrence of one or more of the following breaches:

- a. The insolvency of, filing of, or adjudication of, bankruptcy, dissolution or loss of charter of either party;
- b. Either party consents to the appointment of a trustee or receiver or if one is appointed for either party or either party's assets, or any substantial part thereof;
- c. Failure by MJF to make any required payment to JCP within ten (10) days after receipt of written notice from JCP that such payment is past due;

d. Failure to perform any other obligation(s) imposed on either party or breach of any covenant(s), representation(s) or warranty(ies) made by either party pursuant to the terms of this Agreement or the Exhibits hereto, if such failure or breach is not cured within ninety (90) days after receipt of written notice thereof from the party alleging such failure or breach;

e. Any attempted or purported assignment which violates the provisions of Paragraph 12.5 below;

f. Any violation or failure to comply with any statute(s), ordinance(s), rule(s), order(s), regulation(s), guidelines and/or requirement(s) of the federal government or any state, county or city government(s) or any of their departments or bureaus applicable to the subject matter of this Agreement, or hereafter established, to the extent that either party is so obligated under this Agreement, unless such violation or failure is cured by the offending party in a manner and to an extent determined by the other party, in its reasonable judgment, to be timely and sufficient; or

g. MJF fails to obtain or has revoked any authorization necessary to maintain its legal existence or perform its activities.

h. JCP fails to obtain or has revoked any authorization necessary to maintain its legal existence or perform its activities.

11.2 Right to Cure Breach. Before either JCP or MJF shall exercise its right to terminate this Agreement upon the occurrence of any of the events of the nature set forth in Paragraph 11.1 above, the non-breaching party shall first give notice to the breaching party to remedy such alleged breach(es) within thirty (30) days after the service of such notice.

11.3 Failure to Cure Within 30 Days of Notice. Upon the occurrence of any of the events set forth in Paragraph 11.1 above, if such matter is not cured within any cure period for

such matter provided for above, or if no cure period is provided for such matter, then in addition to any other remedy(ies) the non-breaching party may have, the non-breaching party may choose, in its sole discretion, to terminate this Agreement by written notice to the breaching party.

11.4 Rights upon Termination Due to Breach. Upon termination of this Agreement due to breach, the terms and all of the rights of the breaching party shall immediately terminate except as otherwise stated herein with the same force and effect as if the date of such termination was the expiration of the Term as originally set forth above. Notwithstanding the foregoing, any and all Services Compensation accrued and/or due to JCP for Services rendered pursuant to this Agreement shall be promptly paid to JCP.

11.5 Termination by Mutual Agreement. Notwithstanding anything contained herein to the contrary, this Agreement may be terminated upon the mutual prior written agreement by and between MJF and JCP.

## **XII. MISCELLANEOUS**

12.1 Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the undersigned parties and their respective representatives, successors, heirs, executors, administrators, legal representatives and assigns, commissioners, members, officers, agents, servants, employees and/or related and/or affiliated companies, whether related by common ownership, control or otherwise.

12.2 Governing Law. Each party hereto agrees that the laws of the State of Tennessee shall govern all questions relating to the construction and enforcement of this Agreement, and that the rights or obligations of the parties and any such questions shall be resolved only by lawfully instituted proceedings in a court of competent jurisdiction in the State of Tennessee. To the extent such waiver is permitted by law, the parties waive trial by

jury in any action or proceeding brought in connection with this Agreement and/or the Services provided for hereunder.

12.3 Force Majeure. Neither party hereto shall be liable for any delay or inability to perform under this Agreement due to any reasons beyond its control, including, without limitation, labor disputes, fire, unusually severe weather, embargoes, floods, acts of God, acts of any public authority or sovereign government, delays or defaults caused by public carriers, shortages or any statute(s), regulation(s) or rule(s) of the Federal, any state and/or any local government(s), now or hereafter in force. In the event of such delay, the time for performance shall be extended for a period of time equal to the length of delay.

12.4 Remedies in the Event of Breach and Attorney's Fees. In the event that either party hereto breaches or threatens to breach any term(s) of this Agreement the non-breaching party shall have the right to bring suit for the breach of this Agreement, seeking damages and any other appropriate relief, legal and/or equitable, including a temporary restraining order, preliminary and/or permanent injunction(s). Should either party be in breach under this Agreement, the breaching party shall pay all reasonable attorney's fees incurred by the non-breaching party in connection with such breach or the enforcement of any obligation(s) hereunder, or both of them, as determined by a court of competent jurisdiction.

12.5 Restriction on Assignment. The parties are entering into this Agreement based on their respective unique characteristics and experience, and neither party hereto may assign this Agreement or delegate or transfer any of its right(s), duty(ies) and/or obligation(s) hereunder without the prior written consent of the other party hereto, which consent may be withheld or given at such party's sole discretion.

12.6 Mediation of Disputes. In the event of a disagreement among the parties regarding any matter set out in this Agreement or arising from the existence or operation of this

Agreement, that the parties are not able to resolve on their own, the parties agree to bring in a third-party mediator, who shall be an individual with substantial experience both in the management of businesses and in Jewish communal governance, to assist the parties in resolving their disagreement(s).

12.7 Authority to Execute Agreement. Each individual signing this Agreement on behalf of the parties warrants and represents that he/she is authorized to sign and execute this Agreement on behalf of his/her respective party. By signature of such individual below, such signatory and each party warrants and agrees that this Agreement has been duly authorized and approved by each party's respective governing body, in accordance with such party's charter, bylaws, corporate documents, articles of organization, or operating agreement, as applicable, and all other actions necessary to the execution of and binding effect of this Agreement have been fully performed by each of the parties hereto. Each party warrants and represents that it is fully aware of all rights and obligations with respect to this Agreement.

12.8 Titles, Pronouns. The use of titles to the provisions of this Agreement are for convenience and reference only, and such titles shall not be deemed to modify or limit any of the provisions of this Agreement. Any pronouns used in this Agreement shall be deemed to include the masculine, feminine, neuter, singular and plural as appropriate.

12.9 Notices. All notices, requests, consents, and other communications hereunder shall be in writing and shall be deemed to have been sufficiently given or served if delivered in person or deposited for mailing with the United States postal service, registered or certified, return receipt requested, postage prepaid, or with FedEx Corporation and addressed as follows:

To JCP:

6560 Poplar  
Memphis, Tennessee 38138  
Attn: President

To MJF:

6560 Poplar  
Memphis, Tennessee 38138  
Attn: President

12.10 Waiver of Breach. No failure or delay of a party to detect, protest, remedy, or enforce its rights due to a breach of any of its rights under this Agreement shall be deemed a waiver of any of the aggrieved party's rights. Any waiver of rights shall only occur by a written document specifying the specific right waived and the specific circumstance covered by the waiver, and shall be signed by an authorized representative or the party granting the waiver.

12.11 Construction and Enforcement. Should any provision(s), sentence(s), phrase(s) and/or word(s) of this Agreement or application thereof to any person(s) and/or circumstance(s) be declared illegal, invalid or unenforceable, then the remainder hereof or the application of such provision(s), sentence(s), phrase(s) and/or word(s) to any person(s) and/or circumstance(s) other than those to which it is held invalid shall not be affected thereby and shall remain in full force and effect.

12.12 Entire Agreement. This Agreement and the Exhibit hereto contain the entire understanding and agreement between the parties regarding the subject matter of this Agreement. This Agreement and the Exhibit hereto supersede any and all prior understanding(s), agreement(s), representation(s), and other communication(s) between the parties concerning the subject matter hereof, and any executory agreement(s) hereinafter made between the

parties shall be ineffective to change, waive, release, discharge, terminate or effect any abandonment of this Agreement, in whole or in part, unless such executory agreement(s) is in writing and signed by authorized representatives of both parties.

12.13 Third Party Beneficiaries. Nothing in this Agreement is intended to be construed, nor shall it be deemed to create, any right or remedy in any third party, and no person(s) and/or entity(ies) shall be considered and/or deemed a third party beneficiary either under this Agreement.

12.14 Relationship of Parties. The parties hereto are not, nor shall they become by virtue of this Agreement or any actions taken pursuant thereto, joint venturers, partners, employed by one and the other, or agents of one and the other so as to permit a party to bind the other party to any agreement, warranty, or representation beyond those specifically authorized herein. JCP and MJF have contracted on an independent contractor basis for the provision of the Services hereunder. Each party agrees not make any warranty(ies), representation(s), or promise(s) that would either bind the other party or act purportedly on the other party's behalf or authorization without the prior written approval of such other party.

SIGNATURES ON FOLLOWING PAGE

*Signature Page to Services Agreement*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed and signed by their duly authorized officers, being done in duplicate originals, each of which shall be considered an original.

JEWISH COMMUNITY PARTNERS, INC.

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

Title: \_\_\_\_\_

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

MEMPHIS JEWISH FEDERATION

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

Title: \_\_\_\_\_

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

**EXHIBIT A**  
**SERVICES**

The Services to be provided under the Agreement include but are not limited to the following:

(a) Planning. Develop and consult with MJF on long range strategic plans and annual business plans for MJF.

(b) Programming. Develop programs and activities consistent with the purposes of MJF.

(c) Marketing and Public Relations. Develop and conduct activities to publicize and promote the purposes of MJF in the Community and work with MJF to foster positive relationships with the Community and the greater Memphis area and such areas in which MJF conducts its activities.

(d) Fund-Raising. Plan and manage MJF fund-raising programs.

(e) Allocation of Grants and Funds. Manage the allocation process and submit recommendations, consistent with the charitable purposes of MJF, for final approval by MJF, and implement and handle the disbursement of MJF funds.

(f) Policies & Procedures. Develop policies and procedures necessary for MJF. Such policies and procedures will be prepared and implemented in accordance with applicable federal, state and local laws, regulations and guidelines.

(g) Bylaws and Corporate Documents. Review, recommend updates and amendments, and assist MJF in drafting, updating, monitoring and effectuating the Bylaws and organizational documents of MJF.

(h) Board of Directors. Recruit, train, and assist MJF in selecting members for MJF's Board of Directors and Advisory Board, if MJF maintains an Advisory Board.

(i) Committees. Form, organize and staff any committees determined by JCP to be necessary or prudent for conducting MJF's functions and activities.

(j) Records. Maintain JCP's records with respect to its Services hereunder and maintain MJF's records, both with respect to the Services hereunder and the general corporate and organizational records of MJF according to state and federal law.

(k) Staffing. Recruit, hire, train and supervise all personnel needed by JCP to provide the Services in accordance with the Agreement.

(l) Financial Statements/Tax Reports. Prepare or oversee the preparation of, either within JCP or by engaging outside professionals, financial statements and any other reports required by or for MJF.

**EXHIBIT B  
TO SERVICES  
AGREEMENT**

**INITIAL BUDGET OF PROJECTED COSTS  
AND EXPENSES**

**- See attachment -**