

RESOLUTION NO. 4846

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A
CONTRACT WITH ENGEL ENTERTAINMENT FOR PRODUCTION
OF A POSSIBLE TELEVISION SERIES**

WHEREAS, Engel Entertainment is currently developing the production of a television series focused on recruitment of new officers working in Alaska; specifically, they are highlighting persons coming from the lower 48 states to start a career in Alaska law enforcement; and

WHEREAS, the Fairbanks Police Department (FPD) continues to spend considerable effort on the recruitment of new officers and is constantly searching for more effective ways to recruit as old recruitment methods are not meeting demands; and

WHEREAS, there is currently considerable interest in law enforcement and Alaska within the reality television industry; and

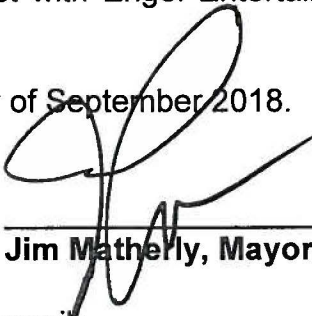
WHEREAS, partnering with Engel Entertainment will increase the exposure of the FPD to potential public safety applicants; and

WHEREAS, successful production will further bridge an information gap between the FPD and the local community; and

WHEREAS, the only cost to the City of Fairbanks will be staff time commitment to work with the producers, although considerable staff time is already dedicated to recruitment efforts.

NOW, THEREFORE, BE IT RESOLVED that the Fairbanks City Council authorizes the Mayor to enter into the contract with Engel Entertainment attached as Exhibit A.


PASSED and APPROVED this 24th day of September 2018.



Jim Matherly, Mayor

AYES: Pruhs, Huntington, Cleworth, Bagwill
NAYS: Rogers
ABSENT: Therrien
APPROVED: September 24, 2018

ATTEST:



D. Danyielle Snider, CMC, City Clerk

APPROVED AS TO FORM:



Paul Ewers, City Attorney

DEVELOPMENT AND PRODUCTION AGREEMENT

The following constitutes the agreement, dated and effective as of the last date of signing by both parties, by and between the City of Fairbanks, Alaska, Fairbanks Police Department ("Agency") and Engel Entertainment ("EE" or the "Producer") (Agency and EE collectively referred to as the "Parties"), in connection with the development and production of the Program(s) (the "Agreement"). The Parties acknowledge that it may be necessary for the Parties to enter into an agreement with a broadcaster or company which may broadcast, distribute, finance, advertise and promote, or otherwise exploit the Program(s) (a "Buyer") and agree to negotiate in good faith with the relevant Buyer and Producer for Agency's services on the Program(s) or a possible pilot, production, and/or series based on the Program(s) (collectively, a "Project" or "Series"). For purposes of clarity, EE confirms that it is and will be the Producer of the Program(s) and Project as defined herein.

1. Term. In consideration of Producer's efforts in connection with the development, marketing, and production of the Project, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree that for a period of four months following the Effective Date of this Agreement (the "Term"), Producer will have the exclusive right to discuss, develop, represent, and submit the Project and Agency's prospective services to potential broadcasters, networks, financiers, and/or buyers of the Project (collectively "Buyers"). In the event that EE secures Buyer interest in the Project, Producer shall be attached as the producer of the Project and shall have an exclusive option to engage Agency in connection with the Project; upon the exercise of which, Agency agrees to negotiate in good faith with the relevant Buyer and Producer for Agency's services on a possible presentation, pilot, production and/or series based on the Project. If Producer is in active negotiations for the development, production, marketing, financing and/or distribution of the Project with a Buyer at the time the Term is due to expire, then the Term shall be automatically extended one time for an additional four months without the need for further documentation between the Parties. The Term may also be extended by written agreement between the Parties. If, within four months of the expiration of the Term (as may be extended) hereunder, Agency enters into an agreement with any Buyer to whom the Project was submitted by Producer, Producer shall be attached to the Project as the producer of the Project as if this Agreement were still in effect and for the duration of the Project.

2. Services and Materials.

a. Activities. Agency agrees that EE has the right to shoot, record, tape, and photograph Agency and Agency's personnel or representatives (collectively, "Agency Personnel") at the Agency's offices and other related locations and facilities, including but not limited to highlighting the Fairbanks, Alaska environment, and the work and activities of the Agency law enforcement officers. EE's film crew will be permitted, based on Agency procedures and discretion, to ride along with Agency Personnel in vehicles, with the Agency's on-call and response teams in a "docufollow" format, and otherwise to be with Agency

Personnel in connection with their work and their activities in the environs of Fairbanks, Alaska. Subject to section 2(d), Agency further agrees that EE shall have the right to broadcast, exhibit and otherwise exploit the film, recordings, tapings and photographs of the foregoing in connection with the production, distribution, broadcast, promotion and advertising of a television Series based on the Project (the "Series"), in whole or part (collectively, the "Materials") in any and all manner, broadcast and other media whatsoever, whether now known or hereafter devised, throughout the universe in perpetuity. Agency agrees that EE will own all of the Materials and the results and proceeds of the Materials as a work made for hire for use throughout the world in any and all media in perpetuity, and all rights of every kind in and to the Materials and the Series shall be and remain vested in EE, including, without limitation, the right to use and reuse such Materials in connection with advertisements, promotions and publicity related to the Series, EE or any Buyer. Provided EE produces the Series featuring Agency, EE shall have the right to use and license to others to use the name and any trademarks of Agency in connection with the Series, and the names, voices, photographs, likenesses and biographical information of featured Agency Personnel in connection with the Series, subject to EE obtaining appropriate releases from those Agency Personnel appearing in the Series, in connection with the Series and the advertising and promotion of the Series, throughout the world in any and all media in perpetuity, provided such use does not constitute an endorsement of any other product or service other than the Series. Notwithstanding the foregoing, and further to the Agency's legal, safety and security priorities discussed below, EE agrees not to use for inclusion in the Program(s) or Series any material that the Agency has deemed objectionable, as set forth more fully below. EE also agrees not to use any Materials or Pitch Materials (as defined below) produced in connection with the Series and featuring Agency Personnel for any other public display or disclosure that is not in connection with EE, a broadcaster (a "Buyer"), the Series or any related advertising or promotion related thereto."

b. Agency Participation, Protocol and Discretion. Agency agrees that during the Term, at Producer's request and based on Agency legal obligations, protocols, judgment, and discretion, Agency shall make selected Agency personnel and work environment available to participate and appear in Project materials including but not limited to a Project summary, treatment, video, pitch tape, sample show reel ("sizzle reel") and the like in connection with the Project (collectively, "Pitch Materials") which shall be owned by EE and may be assigned to a Buyer. In connection with the production of any Pitch Materials and Producer's other development activities and promotion of the Project, as well as within or concerning the development, marketing, production or other use or display of the Project itself, Agency agrees that Producer shall have the right to film and record Agency personnel based on the above and to use Agency's approved name and logo in connection with the Project (collectively, "Materials") and to use those Materials in and in connection with the Project.

c. Safety and Agency Priorities. The Parties recognize that the Agency's legal, safety, and security considerations are of paramount importance in connection with the production of the

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Project and, accordingly, EE agrees that Agency shall have the right to instruct EE's crew to cease filming on location or to leave any particular location at any time if Agency reasonably deems such action is necessary and appropriate, on the basis of any particular legal, safety and/or security concerns or protocols followed by the Agency.

d. Legal Compliance and Review. The Parties also recognize that the Project may be subject to certain restrictions on the use of such material under State or Federal law, and that under no circumstances shall any material that is determined by the Agency to be subject to any such restriction be publicly aired, displayed, or disclosed unless required by law or legal process. Additionally, Agency shall have an opportunity to review each episode of the Project for legal and factual accuracy and for the Agency to have the opportunity to ensure that the episode does not contain objectionable material that may, at the Agency's reasonable and sole discretion, jeopardize the safety and security practices of the Agency or violate the law, or cause damage or embarrassment to the Agency or any of its personnel or representatives, or depict the Agency's personnel and representatives to be failing to follow legal procedures and organization policy and practices. The following shall constitute the review process:

(i) Producer shall deliver to the Agency a Cut (namely, a version) of each episode of the Project (the "Review Cut"). The Review Cut shall be delivered to the Agency to the attention of the Agency representative designated in writing to EE, who as of the date of signing is Police Chief Eric Jewkes. Upon delivery of the Review Cut to the Agency, the Agency shall have an opportunity to review and provide specific notes to EE concerning the Review Cut episode regarding any material that violates the law, is objectionable as described above, or contains any factually inaccurate depiction of Agency policy and practices, including, but not limited to, any material that Agency determines should not be publicly aired or displayed because such material may cause damage or embarrassment to the Agency or any of its personnel or representatives, or jeopardizes the safety and security practices of Agency, contains a factually inaccurate depiction of Agency policies or practices, or is otherwise restricted under the law (collectively, the "Review" regarding the "Review Cut" or "Cut").

(ii) Agency understands and acknowledges that time will be of the essence for the Review of the episode because production of the Project will be underway. EE represents that each episode for Review will likely be less than 60 minutes in length. For advance scheduling purposes at the Agency, EE agrees to provide Agency with at least five business days' prior notice that an episode Cut is being prepared to be sent to Agency for its Review, and Agency agrees to schedule time for such Review and deliver such notes (if any), or if it wishes, advise of the absence of notes, concerning such episode Cut based on the parameters referenced in (i) above, within five business days of Agency's receipt of the Cut of each episode (the

“Review Period”).

(iii) Following receipt by EE of any notes from the Agency concerning the episode during the Review Period, the Parties will, in good faith, discuss the inclusion, removal or modification of any questionable or objectionable material based on the parameters referenced in (i) above, and EE shall make all requested changes consistent with the above and consistent with Agency, EE and a Buyer’s regulations, policies and practices and the law.

(iv) The designated representative of Agency in connection with the Review process and the provision of notes (if any) regarding the episode Cut shall be such person as Agency may designate in writing to EE. The designated representative of EE shall be such person as EE may designate in writing to Agency.

3. Promotion of the Project. Subject to the execution of a Buyer agreement, and any required further agreements, as applicable, in connection with the Project, it is expressly understood that Producer owns the work, results, and proceeds of any of the services (collectively, “Results”) provided by either Party to this Agreement as a work made for hire for EE for the sole purpose of developing, producing, and promoting the Project.

4. Exclusivity. Agency agrees that during the Term, Agency shall not enter in to any third-party agreements for Agency’s on-camera services, specifically in any other non-scripted (documentary or factual) programming, without Producer’s prior written consent. Nothing herein however shall be deemed to preclude or prevent Agency from participating or appearing in any live programming, news, or talk shows on a nonrecurring basis.

5. Credit. Provided Agency appears in the Series, Agency shall be accorded credit in connection with each episode of the Series featuring Agency, subject in all cases to any applicable Buyer policies and approvals. Agency acknowledges and agrees that the potential publicity that Agency may receive as the result of the production or exploitation of the Series featuring Agency, if any, constitutes full and complete consideration for the exercise of the rights granted by Agency under this Agreement.

6. Assignment. EE may license or assign this Agreement and all rights granted by Agency to EE under this Agreement but only to the Buyer or any similarly situated third party entity provided EE remains a producer on the project. Agency may not assign its rights and obligations under this Agreement to any other person or agency.

7. Future Options. In the event that EE is engaged by a Buyer to produce the Series, Agency agrees that EE shall have five (5) consecutive, exclusive, successive and dependent

annual options to produce the same number of seasons of the Series that is required by the Buyer (the "Option Periods"). The Term of this Agreement, any extensions thereof, and any Option Period(s) shall be referred to collectively as the "Term." The Term shall also include the post production period immediately following the final season of the Series, if any. EE shall exercise each option by providing Agency with notice no later than ten (10) business days after EE receives notification from the Buyer, but in no event later than one hundred and eighty (180) days from the initial airing of the last episode of the immediately prior season of the Program(s) or Series.

8. Plugola/Payola. Agency represents and warrants that Agency has not accepted nor agreed to accept, nor will accept nor agree to accept, directly or indirectly, from any person, any money, service or other valuable consideration for the inclusion of any matter as a part of any Series and that Agency will not cause any product, service, trademark or brand name to be mentioned or identified on any Series produced under the Agreement except as provided by EE or the Broadcaster. Notwithstanding the above, it is not the intention of this Section to limit or prevent Agency's acceptance of any services or products in the ordinary course of the Agency's performance of its work or duties.

9. Force Majeure. In the event EE is unable to use Agency's services or engage in production due to any of the following reasons: act of nature, unavoidable accident, fire, blackout, act of public enemy, war, riot, civil commotion, act of government, including but not limited to, acts of the Alaska legislature, strike or other labor dispute, failure of technical facilities or other similar or dissimilar cause beyond EE's control, EE may suspend the Term during the continuation of any such inability to use Agency's services or engage in production, the Term shall be deemed extended by all such periods of suspension and EE shall not be obligated to make any payments during the period of such suspension, provided that no such suspension shall continue for more than six (6) months absent further mutual written agreement of the Parties. EE shall have the right to terminate the Agreement and all of EE's obligations under the Agreement if such inability to utilize Agency's services or engage in production continues for more than 60 days or if Agency is unable to provide the services required of EE or the Buyer under this Agreement. Agency shall have the right to suspend or terminate this Agreement in the event of an act of the Alaska legislature or other governmental body.

10. No Injunctive Relief. Agency acknowledges and agrees that, once an episode of the Series has been reviewed and approved by Agency further to the protocol set forth in this Agreement, the sole remedy for any default or breach related to such episode under this Agreement shall be monetary damages, if any, and in no event shall Agency or anyone on its behalf, be entitled to seek or obtain injunctive or any other type of equitable relief. The Agency acknowledges that by entering into this Agreement, EE and ultimately a Buyer will be relying on the Agency to reasonably cooperate with EE in connection with production of a Program(s) or Series, within the parameters set forth in this Agreement. The Agency also understands that injunctive or any other type of equitable relief for

the Agency is not an entitlement under this Agreement for reasons including that a Buyer might be unwilling to approve a Program(s) or Series for production with the risk that the Agency would seek such relief. Notwithstanding the above, the Agency may terminate EE's continued right to produce the Program(s) or Series permitted hereunder in the event of EE's material and substantial violation of this Agreement. In the event of a suspected violation, the Agency shall notify EE in writing of its belief that a material and substantial violation has occurred, and EE shall have 15 business days to cure the violation.

11. No Obligation. Producer's failure to secure an agreement to produce or promote a production based on the Project shall not be a breach of this Agreement, nor shall Producer have any obligation to produce, or otherwise promote, a production based on the Project. EE may assign any of its rights or obligations hereunder to a co-producer or Buyer, provided EE remains a producer of the Project (if it is produced). EE represents to Agency that at the time of execution of this Agreement, EE anticipates the likely Buyer (should there be a Buyer) to be a national television broadcaster. The Parties also acknowledge and agree that no failure by Buyer to enter into an agreement with Agency nor any failure of Buyer with respect to any of its obligations to Agency that may come to be, shall be the responsibility or liability of Producer. Because the Agency is unique and this Agreement involves the unique services of the Agency's personnel, Agency may not assign this Agreement or any of its obligations hereunder.

12. Representations and Warranties. Agency and EE represents and warrants that they: (i) have the full right and authority to enter into this Agreement and grant the rights herein granted; (ii) have ~~has~~ obtained all rights from any third-party contributors and there are no other agreements entered into by Agency that could disturb, infringe upon, prevent or impede the full and unencumbered exercise of any of the rights granted herein, including without limitation the right to develop, produce, market, distribute, exhibit and otherwise promote the Project in any and all media now known or hereafter devised throughout world; and (iii) to the best of their knowledge, there is not now outstanding any litigation, claim, or threat of litigation or claim which in any way could touch upon any of the rights granted or assigned pursuant to this Agreement. EE agrees to indemnify and hold the Agency, its officers, and employees harmless from and against any and all loss, damage, liability, cost, and expense, including reasonable attorney's fees in connection with any legal claims incurred by the Agency as a result of or arising out of the acts or omissions of EE in connection with the Program(s) or Series. The Parties understand and acknowledge that it is the Agency, in its sole and exclusive judgment and discretion, and not the Producer, which is responsible for the implementation of Agency's duties, work, and Services. Accordingly, Agency shall defend and hold harmless EE from and against any claims, actions, damages, costs, and expenses (including reasonable attorney's fees) arising out of or relating to Agency's duties, work, or services, or Agency's breach of any of its representations, obligations, or warranties under this Agreement.

13. Relationship of the Parties. This Agreement shall not be construed to create or maintain a partnership, employment relationship, agency, or joint venture between Producer and Agency.

14. Insurance. EE shall obtain and maintain in force, comprehensive general liability insurance against all claims of bodily injury, death, or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate in connection with the Program(s) or Series. EE shall furnish to the Agency a certificate of insurance for the required insurance and for all renewals thereof no later than 30 days prior to the expiration date of each insurance policy in connection with the Program(s) or Series. Each certificate of insurance shall contain a clause requiring the insurer to provide the Agency no less than 30 days prior written notice of cancellation or modification of the policy.

15. Miscellaneous. This Agreement contains the complete understanding between the Parties with reference to the subject matter hereunder, supersedes all prior agreements and understandings between them whether written or oral pertaining thereto, and may not be modified or amended except by a written instrument signed by both Parties. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, heirs and permitted assigns. If any of this Agreement's provisions shall be held to be unenforceable, the remainder of the Agreement shall be enforceable. Captions are for convenience only and are not intended to have legal effect. This Agreement shall be governed and construed in accordance with the laws of the State of New York. All disputes relating to the Agreement will be resolved by arbitration in accordance with the rules of the American Arbitration Association then in effect, before a single arbitrator selected by the Parties. The Parties agree that if they cannot agree on the location of such arbitration, the arbitration will be conducted by video conference. Any award rendered by the arbitrator shall be final and conclusive upon the Parties, and a judgment concerning such award may be entered in any state or federal court having jurisdiction. This Agreement may be executed in counterparts and facsimile or scanned signatures shall be deemed to be original.

ENGEL ENTERTAINMENT, INC.

CITY OF FAIRBANKS, ALASKA

Steven M. Engel, President

Jim Matherly, Mayor

Dated: _____

Dated: _____

Recommended for Approval

Eric Jewkes, Police Chief

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