

RESOLUTION NO. 2017-105

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO A CONSULTING SERVICES AGREEMENT WITH FLORIDA MUNICIPAL MARKETING, LLC, A FLORIDA LIMITED LIABILITY COMPANY, TO REVIEW, REDEVELOP AND EXPAND A CORPORATE PARTNERSHIP PROGRAM AND MARKETING INITIATIVES FOR CITY RECREATIONAL AND EDUCATIONAL PROGRAMS, FACILITIES AND SPECIAL EVENTS, FOR A TERM OF ONE YEAR COMMENCING ON SEPTEMBER 30, 2017 AND ENDING ON SEPTEMBER 30, 2018, IN THE AMOUNT OF \$20,000.00, PAYABLE IN QUARTERLY INSTALLMENTS, AND COMPENSATION FOR OTHER SERVICES AS AGREED, IN SUBSTANTIAL CONFORMITY WITH THE AGREEMENT ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1".

WHEREAS, the managing member of Florida Municipal Marketing, LLC, Robert Walker, has extensive experience with the City of Hialeah's corporate sponsorship program; and

WHEREAS, it is in the best interest of the City to enter into a new agreement with an expanded scope of service since Florida Municipal Marketing, LLC has been successful in increasing revenues to the City in a cost-effective and efficient manner, through commission incentives and contract services.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The foregoing facts and recitations contained in the preamble to this resolution are hereby adopted and incorporated by reference as if fully set forth herein.

Section 2: The City of Hialeah, Florida hereby authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to enter into a Consulting Services Agreement with Florida Municipal Marketing, LLC, a Florida limited liability company, to review,

redevelop and expand a corporate partnership program and marketing initiatives for City recreational and educational programs, facilities and special events, for a term of one year, commencing on September 30, 2017 and ending on September 30, 2018, in the amount of \$20,000.00, payable in quarterly installments, and compensation for other services as agreed, in substantial conformity with the Agreement attached hereto and made a part hereof as Exhibit "1".

PASSED AND ADOPTED this 12 day of December, 2017.


Vivan Casals-Muñoz
Council President

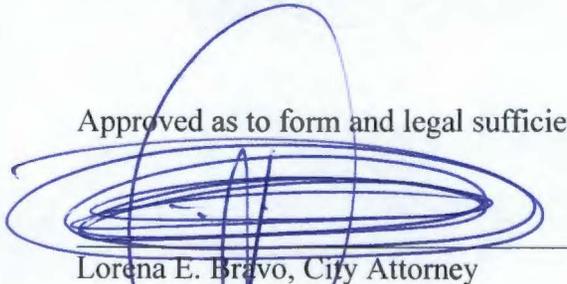
Attest:

Approved on this 18 day of December, 2017.


Marbelys Fatjo, City Clerk


Mayor Carlos Hernandez

Approved as to form and legal sufficiency:


Lorena E. Bravo, City Attorney

Resolution was adopted by a (7-0) vote with Councilmembers, Caragol, Zogby, Cue-Fuente, Casáls-Munoz, Hernandez, Garcia, and Lozano voting "Yes".

**CONSULTING SERVICES AGREEMENT BETWEEN
CITY OF HIALEAH, FLORIDA AND FLORIDA MUNICIPAL MARKETING, LLC**

This Consulting Agreement (hereinafter referred to as the "Agreement") is between the City of Hialeah, Florida (hereinafter referred to as the "City") and Florida Municipal Marketing, LLC, a professional management firm based in Vero Beach, Florida, by and through its duly authorized agent (hereinafter referred to as the "Consultant").

WHEREAS, Consultant has the training, know-how, experience and ability and the City has relied on Consultant's representations as to its training, know-how, experience and ability to perform the services as provided for in this Agreement; and

WHEREAS, the City, having investigated the qualifications of the Consultant to perform the work necessary to fully carry out the scope of services herein contemplated and found the Consultant to be qualified and competent; and

WHEREAS, the City agrees to enter into this Agreement with the Consultant and the Consultant agrees to accept engagement under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and obligations herein contained, and subject to the terms and conditions hereinafter stated, intending to be legally bound, the parties hereto agree as follows:

I. SCOPE OF CONSULTING SERVICES

In consideration of the fee to be paid to Consultant by the City, Consultant shall provide the work and services described in Attachment "A" hereto ("Services"). During the Term of this Agreement, the City shall engage the Consultant on an as needed when needed basis to perform the Services. Any such service shall only be initiated and performed for the City following the Consultant's receipt from the City of an executed authorization form. The template authorization form is attached as Attachment "B" to this Agreement.

The City appoints Consultant to act as its sole and exclusive agent for all services contemplated in this Agreement for the term of this Agreement. Consultant accepts such appointment and agrees to the best of his ability to perform the services contemplated in this Agreement. No other outside consulting companies, entities or individuals, shall perform any of the services contemplated in this Agreement except through Consultant and with Consultant's knowledge and consent. Nothing in this Agreement shall be construed to prohibit the City from engaging any of its staff to carry out the tasks and functions contemplated by this Agreement to the exclusion of Consultant.

Unless specifically indicated otherwise in this Agreement, the Consultant agrees to undertake, perform and complete all necessary work, functions and activities, including providing all materials, supplies, and/or labor, that may be necessary or reasonably inferred from this Agreement, at Consultant's sole cost and expense, to provide the contemplated Services, whether or not the work, function, activity, material, supply or labor is specifically identified and required in this Agreement.



When engaged, Consultant will be entitled to compensation for all services upon completion during the term of this Agreement as provided for in this Agreement.

II. INFORMATION, MEETINGS, SOCIAL FUNCTIONS AND EVENTS

The City shall cooperate with Consultant by culling its internal records to provide the Consultant with the following information when and where reasonably available:

- A.** Complete recreational facility listing to include location/site map, name, phone number and address of each existing and future project.
- B.** Sponsorship logs for most recent fiscal year available.

Logs should specify the following:

- Date of sponsorship or donation
- Amount or cash value of each sponsorship or donation
- Type of sponsorship (cash, commission, product or in-kind)
- Name of business, corporation or individual
- Designation of sponsorship or donation (specific event, program, facility)
- Any extenuating circumstances and/or contractual obligations associated

Commission reports to specify:

- Name of business or vendor
- Date of commission report and period (dates) commissions paid for
- Commission rate and total commissions paid for the reporting period
- Fill orders (if applicable)

- C.** Logos (EPS and JPEG or PDF)

- City of Hialeah
- Parks and Recreation Department
- Education and Community Services Department
- Any additional logos deemed necessary or applicable to sponsorship procurement

- D.** Existing partnership/sponsorship and vending proposals and agreements (active & inactive) for past three fiscal years.
- E.** Current Census report and complete demographical information.
- F.** Special event and educational/recreational programming information/attendance figures.
- G.** Marketing/collateral materials (brochures, fliers and calendars).
- H.** Archival photographs and video (events, facilities and programs).

- I. User surveys/comment cards for special events & recreation programs.
- J. Organizational charts for City and contracts associated with this Agreement.
- K. Complete list of all businesses and corporations within the City limits or jurisdiction (occupational license holders).
- L. List of Top 25/largest employers businesses in the City of Hialeah and Miami-Dade County.
- M. List of largest contracts procured by the City from for goods and services to include, but not limited to, automotive, wireless communication, computers/electronics, signage and graphic design.
- N. Public utilities franchise agreements.
- O. Postage, letterhead, envelopes and office supplies as it relates to services provided specifically on behalf of the City.
- P. Services (clerical, photographic, graphic design, signage, printing/duplication and legal) as it relates to Consultant services performed on behalf of the City. If the City cannot provide these services, the Consultant will do so with the understanding that the Consultant will be reimbursed for expenses. All services covered by Consultant will be pre-approved by the City.
- Q. Rental and/or purchase of services and/or products required to fulfill sponsorship agreement obligation to include, but not limited to, tents, tables, chairs, signage, banners, and light pole banners. All rentals/purchases will be pre-approved by the City prior to the Consultant making a commitment to the Sponsor.
- R. Support of City staff to carry out mission of services to include, but not limited to, installing signage, dissemination of fliers/publicity at City facilities, coordinating details of marketing samplings, displays, games and activities. City staff shall be responsible for the compilation of all sponsorship/partnership recaps.
- S. Work space to include the use of a computer, copier, scanner and fax to perform the obligated services outlined in the Agreement between the City and Consultant.
- T. Any other data or documents deemed necessary to fulfill each individually authorized project. The City may invite the Consultant to attend meetings, social functions and/or special events regarding potential or official sponsors/corporate partners. The City shall provide the Consultant as much advance notice as possible. The Consultant shall attend on an “as available” basis.

III. SERVICES COMPENSATION

The amount of services compensation to be paid by the City to the Consultant for each executed authorization shall be as follows:

1. Consulting Services Authorizations

Both Parties to this Agreement shall mutually agree upon the Consulting Services to be performed. The compensation for the Consulting Services outlined in the attached Scope of Services shall be a flat rate of \$20,000.00 payable in four equal quarterly payments of \$5,000.00 per quarter. The City shall also pay the Consultant travel expenses in the amount of \$1,000.00 per quarter. All travel expenses shall be recorded in a travel log and properly documented with invoices and receipts for payment corresponding to each event of travel. Consultant shall create and maintain a contemporaneous record of all travel and the records shall be delivered to the City on a quarterly basis.

Additionally, beginning October 1, 2017, the Consultant will be compensated in the form of a sales commission of fifteen percent (15 %) for the sales of agreed upon Naming Rights partnership programs and authorized and marketing programs based upon receipt of proceeds from sales, payable at the end of the year.

Compensation for other related services shall be according to the terms negotiated by Consultant and the City on a per project basis.

2. Other Related Services Authorizations

The scope of work and compensation for any other related public relations services shall be as agreed to in writing by both Parties to this Agreement.

The City and Consultant may agree in writing to additional services related to competitive bidding (such as preparation of RFP, RFQ, ITB documents, negotiation and selection of qualified bidders) for franchise or marketing agreements (such as for Bus Passenger Bench, Bus Shelter, and other outdoor media or marketing agreements) as authorized by the City. The scope of work and compensation shall be according to the terms negotiated by Consultant and the City on a per project basis.

The Consultant shall use its best efforts to successfully fulfill any and all consulting services authorized by the City.

2.1 Negotiation of Agreement with Martin Outdoor Media for a renewal contract to maintenance bus benches on City rights-of-way

The Parties acknowledge that Consultant negotiated the current contract with Martin Outdoor Media for the continued placement and maintenance of bus benches on the City's rights-of-way on terms and conditions agreed upon by the City. Consultant continues to be compensated as illustrated in Attachment "C".

Consultant shall continue to provide limited contract management services throughout the term of the contract including reviewing quarterly sales, verifying the compensation received from the Consultant meets the terms of the agreements, and assessing and recommending the suitability of new or existing sites for bus benches.

2.2 Negotiation of Agreement with Clear Channel Outdoor for a renewal contract to maintenance bus shelters on City rights-of-way

Consultant will negotiate a contract with Clear Channel Outdoor for the continued placement and maintenance of bus shelters on the City's rights-of-way on terms and conditions agreed upon by the City. In addition to Consultant's efforts in negotiating a contract, Consultant shall also provide limited contract management services throughout the term of the contract verifying the compensation received from the Consultant meets the terms of the agreements, and assessing and recommending the suitability of new or existing sites for bus shelters. In consideration for these services and only if Consultant is successful in negotiating an agreement acceptable to and executed by both parties, the City shall pay Consultant as illustrated in Attachment "D" during the term of the negotiated agreement.

3. Consulting Fees Non-Refundable

The fixed consulting fees contemplated in this Agreement are earned, non-refundable fees payable upon execution of this Agreement. All other compensation is earned upon performance and completion of the services and payable as set forth in this Agreement.

4. Approval of Sponsorship Agreement

The Consultant understands and agrees that the City has the right to refuse to accept a sponsor brought by the Consultant at the sole discretion of the City. If the City rejects a proposed sponsor for any reason, the Consultant understands and agrees that it shall receive no compensation for said sponsorship. If an agreement between the City and a sponsor or third party procured through Consultant's efforts or services, which may entitle Consultant to compensation as contemplated by this Agreement is terminated pursuant to the terms of such agreement, Consultant's sales commission will be adjusted accordingly.

IV. COMPENSATION TIMING, INVOICES AND PAYMENTS

The timing of the services compensation for each executed project authorization shall be on a quarterly basis. The Parties shall mutually agree upon the number of calendar quarters anticipated to be required for the completion of the authorized consulting services. The quarterly amount for each authorization shall equal the total compensation divided by the agreed upon number of quarters.

The consultant shall submit quarterly invoices to the City in accordance with the schedule approved on each executed authorization. The City shall pay the Consultant the full amount of each invoice within thirty (30) calendar days of the invoice date. The City shall make each payment payable to Florida Municipal Marketing, LLC and mail it for receipt by the due date.

V. AGREEMENT TERM

The Term of this Agreement shall be for a period of one (1) year, commencing on September 30, 2017 and ending on September 30, 2018 ("Term"). Any amounts due and owing by the City to the Consultant prior to the termination shall survive the termination and continue to be due and owing until paid in full.

VI. FEDERAL, STATE AND LOCAL LAWS COMPLIANCE

Both Parties shall comply with all applicable laws, ordinances and codes of federal, state and local governments.

VII. GENERAL CONDITIONS

- A. Title and paragraph headings are for convenient reference and are not a part of this Agreement.
- B. In the event of conflict between the terms of this Agreement and any terms or conditions contained in any attached document, the terms in this Agreement shall rule.
- 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 provisions, paragraphs, sentences, words or phrases 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 Hialeah, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, then the same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.

VIII. OWNERSHIP OF DOCUMENTS

- A. All documents developed by the Consultant under this Agreement shall be delivered to the City by the Consultant upon completion of the consulting services required by this Agreement and shall become the property of the City, without restriction or limitation on its use. The Consultant agrees that all documents maintained and generated pursuant to this Agreement shall be subject to all provisions of the Public Records Law, Chapter 119, Florida Statutes.
- B. Any information, writings, maps, contract documents, reports or any other matter whatsoever which is given by the City to the Consultant pursuant to this Agreement shall at all times remain the property of the City and shall not be used by the Consultant for any other purposes whatsoever without the written consent of the City.

IX. NONDELEGABLE

The Consultant shall have the right to contract another individual (s) or firm (s) as an Associate Consultant(s) to assist with the provision of any herein described services.

However, the obligations undertaken by the Consultant pursuant to this Agreement shall not be delegated or assigned to any other person or firm unless the City first consents in writing to the performance or assignment of such service or any part thereof by another person or firm. The Consultant shall closely direct and coordinate any such approved Associate (s) and be solely responsible for any compensation due to them.

X. AUDIT RIGHTS

The City shall have the right to audit the records of the Consultant relating to this Agreement for a period of up to one (1) year after final payment is made under this Agreement. Such an audit shall be conducted at such a time and in such manner so as to minimize disruption of the Consultant's normal business activities.

XI. AGREEMENT AWARD

The Consultant warrants that it has not employed or retained any person employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person employed by the City any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or resulting from the award of this Agreement.

XII. AGREEMENT CONSTRUCTION

This Agreement shall be construed and enforced according to the laws of the State of Florida.

XIII. CONFLICT OF INTERESTS

- A. The Consultant covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal direct or indirect financial interests with the Consultant. The Consultant further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed. Any such interests on the part of the Consultant or its employees must be disclosed in writing to the City.
- B. The Consultant is aware of the conflict of interest laws of the City of Hialeah (City of Hialeah Code Ch. 26, Art. I and II, Code of Miami-Dade County, Florida § 2-11.1 et seq. and the State of Florida, Chapter 112, Part III, Florida Statutes.

XIV. LIMITATION OF LIABILITY

The City's total liability to the Consultant for any and all liabilities, claims, or damages arising out of or relating to this Agreement, howsoever caused and regardless of the legal theory asserted,

including breach of contract or warranty, tort, strict liability, statutory liability or otherwise, shall not in the aggregate, exceed the amount owed to the Consultant by the City under this Agreement.

In no event shall the City be liable to the Consultant for any punitive, exemplary, special, indirect, incidental, or consequential damages (including, but not limited to, lost profits, lost business opportunities, loss of use or equipment down time, and loss of or corruption of data) arising out of or relating to this Agreement, regardless of the legal theory under which such damages are sought, and even if the parties have been advised of the possibility of such damages or loss.

XV. SOVEREIGN IMMUNITY

Nothing in this Agreement shall be interpreted or construed to mean that the City waives its common law sovereign immunity or the limits of liability set forth in Section 768.28, Florida Statutes.

XVI. INDEPENDENT CONSULTANT

The Consultant and its employees and agents shall be deemed to be independent Consultants, and not agents or employees of the City and shall not attain any rights or benefits under the Civil Service or Pension Ordinances of the City or any rights generally afforded classified or unclassified employees. The Consultant shall not be deemed entitled to the Florida Workers' Compensation benefits as an employee of the City.

XVII. AGREEMENT CANCELLATION

The City retains the right to cancel this Agreement at any time prior to the completion of the services without penalty to the City, upon providing written notice at least thirty (30) days in advance to the Consultant. In that event, notice of cancellation of this Agreement shall be in writing to the Consultant, who shall be paid for those services performed prior to the date of its receipt of the notice of termination. In no case, however, will the City pay the Consultant for an authorized project an amount in excess of the compensation provided by this Agreement. Notwithstanding the above, nothing herein shall be construed as a waiver by Consultant of its earned non-refundable engagement fee paid at the time of this executed Agreement.

It is hereby understood by and between the City and the Consultant that any payment made in accordance with this Section to the Consultant shall be made only if the Consultant is not in default under the terms of this Agreement. If the Consultant is in default, the City shall in no way be obligated and shall not pay to the Consultant any sum whatsoever.

XVIII. NONDISCRIMINATION

The Consultant agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability in connection with its performance under this Agreement.

Furthermore, the Consultant agrees that no otherwise qualified individual shall, solely by reason of his/her race, sex, color, creed, nation origin, or disability, be excluded from the participation

in, denied benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

XIX. DEFAULT PROVISION

In the event that the Consultant shall fail to comply with each and every term and condition of this Agreement, or fail to perform any of the terms and conditions contained herein, the City, at its sole option, upon written notice to the Consultant may cancel this Agreement, and all payments, advances, or other compensation paid to the Consultant by the City while the Consultant was in default of the provisions herein contained, shall be returned to the City.

XX. ENTIRE AGREEMENT

This Agreement constitutes the sole and only Agreement of the Parties relating to the services described herein and sets 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.

XXI. AGREEMENT AMENDMENT (S)

No Amendments (s) to this Agreement shall be binding on either party unless in writing and signed by both Parties.

XXII. CONSULTANT NOT PRECLUDED FROM OTHER EMPLOYMENT

Nothing in this Agreement shall be construed as to give to the City any rights to prohibit Consultant from contracting its services to any other private or governmental entity or to entitle City to control in an any manner the conducting of Consultant's business while performing this Agreement or otherwise.

XXIII. NOTICE

The City's representative for this Agreement, Director of the Communications and Special Events Department or designee, is referred to herein as the "Director". All notices or other communications which shall or may be given pursuant to this Agreement shall be in writing and shall be delivered by personal service, or by registered mail addressed to the other party at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served; or if by mail, upon the date of actual receipt.

To Director
or Designee

David Fernandez
City of Hialeah,
Acting Director Communications and
Special Events Department
20 East 6 Street
Hialeah, FL 33010
Tel: (305)889-5705
Fax: (305)888-8031

To Consultant

Robert L. Walker, Manager Member
Florida Municipal Marketing, LLC
3295 74th Lane
Vero Beach, Florida 32967
Tel: (561) 602-1251

(This space left intentionally blank. Signatures follow on the next page.)

IN WITNESS WHEREOF the parties hereto have executed this Agreement by their respective proper officers duly authorized thereunto, on this _____ day of _____, 2017.

CITY OF HIALEAH, FLORIDA
501 Palm Avenue
Hialeah, Florida 33010

Attest:

Authorized signature on behalf of the City

Marbelys Rubio Date
City Clerk

Carlos Hernandez Date
Mayor

(SEAL)

Approved as to form and legal sufficiency:

Lorena E. Bravo
City Attorney

Florida Municipal Marketing, LLC
3295 74th Lane
Vero Beach, Florida 32967

Authorized signature on behalf of
Florida Municipal Marketing, LLC

By: _____
Robert L. Walker Date
Manager Member