

**AMENDMENT NO. 2 TO THE PROFESSIONAL CONSULTANT SERVICES
AGREEMENT FOR MARKETING SERVICES
BETWEEN THE CITY OF PALM DESERT AND FG CREATIVE**

1. Parties and Date.

This Amendment No 2 to the PROFESSIONAL CONSULTANT SERVICES AGREEMENT FOR MARKETING SERVICES is made and entered into as of this 24th day of August 2023, by and between the City of Palm Desert ("City") and FG Creative, a Corporation, with its principal place of business at 19725 Driscoll Road, Desert Hot Springs, CA 92241 ("Vendor"). The City and Vendor are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. Recitals.

2.1 Agreement. The City and FG Creative have entered into an agreement entitled "Professional Consultant Services Agreement for Marketing Services" dated June 23, 2022 ("Agreement" or "Contract") for the purpose of retaining the services of FG Creative to provide Marketing Services.

2.2 Amendment. The City and FG Creative entered into that Amendment No. 1 to increase compensation during the period of July 1, 2022 through June 30, 2023.

2.3 Amendment. The City and FG Creative desire to amend the Agreement to establish compensation for the second year of the contract. The Parties have heretofore entered into that Amendment No. 1 dated May 11, 2023.

2.4 Amendment Authority. This Amendment No. 2 is authorized pursuant to Section **3.9 (N) Amendment; Modification** of the Agreement.

3. Terms.

3.1 3.6.A Compensation is hereby amended in its entirety to read as follows:

Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000) without the written approval of the City Council or City Manager, as applicable.

3.2 "Exhibit C" is hereby deleted in its entirety and replaced with "Exhibit C" attached hereto and incorporated herein by reference.

3.3 Continuing Effect of Agreement. Except as amended by this Amendment No. 2, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 2. From and after the date of this Amendment No. 2, whenever the term "Agreement" or "Contract" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 2.

3.4 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that

Contract No. C43370

they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 2.

3.5 Severability. If any portion of this Amendment No. 2 is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.6 Counterparts. This Amendment No. 2 may be executed in duplicate originals, each of which is deemed to be an original, but when taken together, shall constitute but one and the same instrument.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR AMENDMENT NO. 2 TO THE PROFESSIONAL CONSULTANT SERVICES AGREEMENT FOR MARKETING SERVICES BETWEEN THE CITY OF PALM DESERT AND FG CREATIVE

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 2 to the Professional Consultant Services Agreement for Marketing Services as of the day and year first above written.

CITY OF PALM DESERT

FG CREATIVE, A CORPORATION

By: ^{DocuSigned by:}
L. Todd Hileman
0E3F366299F6405...
L. Todd Hileman
City Manager

By: ^{DocuSigned by:}
Stephanie Greene
291AE5678EGF439...
Its: CEO
Printed Name: Stephanie Greene

Attest:

By: ^{DocuSigned by:}
Anthony J. Mejia
8863A109723B437...
Anthony J. Mejia
City Clerk

By: ^{DocuSigned by:}
Stephanie Greene
291AE5678EGF439...
Its: CFO
Printed Name: Stephanie Greene

Approved as to form:

By: ^{DocuSigned by:}
Isra Shah
3829DDF2EAC8480...
Best Best & Krieger LLP
City Attorney

QC: MN

Insurance:

^{DS}
JB

Initial Review

^{DS}
JB

Final Approval

7. EXHIBIT "C"

7.1 COMPENSATION

- The CITY's budget for advertising and publicizing the EPPBID's facilities, services, and events is established as part of the CITY's fiscal year budget for the period of July 1, 2023 - June 30, 2024, at **\$250,000**. The CITY reserves the right, at any time during the term or any extension thereof, to adjust the amount budgeted for advertising and promotion services. Prior to performing any services or furnishing any material contemplated by this Contract to be undertaken and furnished by FG CREATIVE, the CITY or its designee, after conferring with FG CREATIVE, shall authorize the services rendered and materials to be furnished, the agreed compensation to be paid for their services, the manner of payment (lump sum or periodic progress payments), the description and estimate of reimbursable expense, and such other matters as may be deemed proper. Subject to the limitations and provisions set forth in this section, the CITY shall compensate and reimburse FG CREATIVE as follows:
 - The CITY will pay FG CREATIVE a flat fee of \$3,250 per month to cover advertising services in accordance with the proposal presented by FG CREATIVE as attached in the Addendum to the EPPBID and/or any marketing mutually agreed to by the parties hereto. The fee covers not less than 40 hours per month; such services include, but are not limited to, meetings, account planning and service, production management, media planning and buying, and clerical.
 - FG CREATIVE will purchase media at the lowest rate available. All billings will be submitted at net costs for payment by the CITY. FG CREATIVE will not markup billings or receive commissions.
 - FG CREATIVE shall bill the CITY monthly for the previous month's activities. Each invoice shall contain, in reasonable detail, the projects and services worked on and rendered with supporting documentation of reimbursable costs and expenses. Payment and reimbursements provided for in this in Section 4 will be made in due course by the City of Palm Desert.
 - FG CREATIVE shall keep full and accurate books of account and records and other pertinent data in accordance with generally accepted accounting principles reflecting all transactions contemplated by this Contract.

7.2 RENEWAL

In the event that this Agreement is renewed pursuant to the Section titled "Term," the rates set forth above may be increased or reduced each year at the time of renewal, but any increase shall not exceed the Consumer Price Index, All Urban Consumers, Riverside-San Bernardino-Ontario, CA.