

## AMENDMENT NO. 2 TO CONTRACT NO. C43390 MARKETING SERVICES AGREEMENT BETWEEN THE CITY OF PALM DESERT AND IDEA PEDDLER

### 1. Parties and Date.

This Amendment No. 2 to the Marketing Services Agreement is made and entered into as of this 13<sup>TH</sup> day of July, 2023, by and between the City of Palm Desert ("City") and Idea Peddler, a Texas Limited Liability Corporation, with its principal place of business at 106 E 6<sup>th</sup> St, Ste. 900-937, Austin, TX 78701 ("Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

### 2. Recitals.

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

2.2 Amendment. The City and Consultant desire to amend the Agreement to revise the Scope of Services and Compensation.

### 3. Terms.

3.1 3.3.D Substitution of Key Personnel is hereby amended in its entirety to read as follows:

Consultant has represented to City that certain key personnel will perform and coordinate the Services. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows: Sara Martin, SVP Integrated Marketing, Blake Takushi, Creative Director or Ed Cohen, Strategy Director.

3.2 3.3.I Period of Performance is hereby amended in its entirety to read as follows:

Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be separately agreed upon in writing by the City and Consultant ("Performance Milestones").

3.3 3.5 Other Provision or Requirements The "Water Quality Management and Compliance" section of the Agreement is hereby deleted in its entirety.

3.4 3.7 Labor Code Requirements The "Prevailing Wages" and "Registration/DIR Compliance" sections of the Agreement are hereby deleted in their entirety.

3.5 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 Eight Hundred Ninety Thousand Dollars (\$890,000) without written approval of the City Council or City Manager, as applicable.

3.6 3.6.B Payment of Compensation is hereby amended in its entirety to read as follows:

Consultant shall submit to City monthly invoices which provide a detailed description of the Services rendered by Consultant. Consultant shall not invoice City for any milestones or deliverables until such milestones or deliverables have been completed in accordance with Exhibit "B." City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein. Consultant shall submit its final invoice to City within thirty (30) days from the last date of provided Services or termination of this Agreement and failure by the Consultant to submit a timely invoice may constitute a waiver of its right to final payment. Payment shall not constitute acceptance of any Services completed by Consultant. The making of final payment shall not constitute a waiver of any claims by the City for any reason whatsoever.

3.7 3.7 Labor Code Requirements The "Prevailing Wages" and "Registration/DIR Compliance" sections of the Agreement are hereby deleted in their entirety.

3.8 3.9.A.1 Grounds for Termination is hereby amended in its entirety to read as follows:

City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and with cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this Agreement. City understands that any additional work outside of the 60-day cancellation window to support a successful transition of work will require incremental compensation at a rate to be determined.

3.9 3.9.C.1 Documents & Data; Licensing of Intellectual Property is hereby amended in its entirety to read as follows:

This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Provided that the City has paid in full for all milestones and deliverables, all

Documents & Data shall be and remain the property of City and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.10 3.9.C.3 Right to Use is hereby amended in its entirety to read as follows:

Provided that the City has paid in full for all milestones and deliverables, City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

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

3.12 "Exhibit B" is hereby deleted in its entirety and replaced with "Exhibit A" attached hereto and incorporated herein by reference.

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

3.14 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,

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whenever the term "Agreement" or "Contract" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 2.

3.15 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 2.

3.16 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.

3.17 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]**

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# SIGNATURE PAGE FOR AMENDMENT NO. 2 TO MARKETING SERVICES AGREEMENT BETWEEN THE CITY OF PALM DESERT AND IDEA PEDDLER

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 2 to the MARKETING SERVICES AGREEMENT as of the day and year first above written.

## CITY OF PALM DESERT

DocuSigned by:  
By: *L. Todd Hileman*  
CE3E366233E0405  
L. Todd Hileman  
City Manager

## IDEA PEDDLER LIMITED LIABILITY CORPORATION

DocuSigned by:  
By: *Cimin Cohen*  
EA0366A3EAAF4E7...  
Its: Founder, Director

Printed  
Name: Cimin Cohen

## ATTEST:

DocuSigned by:  
By: *Anthony J. Mejia*  
8063A180723D437...  
Anthony J. Mejia  
City Clerk

DocuSigned by:  
By: *Ed Cohen*  
EC40010343EA4BF...  
Its: VP Strategy

Printed  
Name: Ed Cohen

## APPROVED AS TO FORM:

DocuSigned by:  
By: *Isra Shale*  
3020BDF2EAC04B0...  
Best Best & Krieger LLP  
City Attorney

QC: MN

Insurance:

DS  
JB  
Initial Review

DS  
JB  
Final Approval

## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

The agency will assist the City in the following areas: strategy, creative services/branding, media planning, public relations, and social media. Each of these areas is outlined below. The City welcomes the agency as a partner to provide strategic counsel toward furthering the synergy of the City's ad campaign, the City's overall branding, and among owned media channels overseen by City staff, including the website, social media, and e-newsletter.

The goal is to achieve across all channels (owned, earned, and paid) a cohesive brand that represents the City well and inspires people to spend time in Palm Desert, whether that be for an afternoon, a day, a week, or longer.

#### **1. STRATEGY & ACCOUNT MANAGEMENT**

**GOAL:** Work closely with City Staff and the Marketing Committee to create a marketing and media strategy for each fiscal year that maximizes the existing budget to efficiently reach our target audiences and inspire travel to Palm Desert.

##### **SPECIFICS:**

- Annual Strategy – Engage in a workshop with City Staff to create an overarching strategic plan for each fiscal year.
- Marketing Committee – Assist in planning Marketing Committee meetings, prepare informational updates for each committee meeting, and attend meetings via Zoom with in-person agency representation at a minimum of three meetings.

#### **2. CREATIVE SERVICES & BRANDING**

**GOAL:** Keep the City's ad campaign fresh, compelling, and engaging while strengthening the City's overall brand through various channels and projects.

##### **SPECIFICS**

- Asset Development/Refresh - expand the City's library of usable marketing material, including photography and videography. Refresh and update both the "Find Your Happy Place" campaign and the "Palm Desert Pocket Guide" content via two Photo Shoots.
- Design Services for creative development of the ad campaign and Pocket Guide content as needed, including the City's annual calendar.
- Ad mechanicals to produce the various iterations of ads as required by the media plan.

#### **3. MEDIA PLANNING & BUYING**

**GOAL:** Create a comprehensive, creative, and strategic media plan that economically uses limited funds to reach a targeted audience with the City's ad campaign.

##### **SPECIFICS**

- Develop an annual budget that includes a comprehensive, strategic, and diversified media plan and account management that promotes Palm Desert to its target audiences in accordance with direction provided by the City. This media plan is to include both the

City's tourism (out-of market) ad campaign and its in-market advertising for local community events. This media plan should demonstrate maximum spend efficiency and a clear ability to measure return on investment (ROI).

- Negotiate, schedule, and maintain media buys in accordance with the approved media plan. Ensure that all work performed on behalf of the City of Palm Desert is billed to the City at net amounts.
- Provide media administrative services including, but not limited to, record keeping; flowcharts; budget recaps; billing; processing payment; maintaining media buy schedules; buy confirmations; tracking make goods and credits; trafficking of creative materials.
- Evaluate all media proposals submitted to the City and issue recommendations based on cost, validity, and perceived benefits to the marketing/advertising objectives of the City.
- Provide monthly and quarterly reports summarizing project activities and achievements of all services outlined in this scope of work.
- Submit detailed invoices to include the projects and services worked on or completed, with supporting documentation for the previous month's activities.

#### **4. PUBLIC RELATIONS/SOCIAL MEDIA**

**GOAL:** Create synergy with the paid ad campaign by promoting earned media placements and managing the City's tourism Instagram account.

**SPECIFICS:** Continue development of a strategy for earned media that fits into the media plan and capitalizes on City events and amenities, as well as on larger events that happen in the Coachella Valley, such as the BNP Tennis Tournament and the Coachella Music Festival. Explore hosting a Media Fam Trip related to 50<sup>th</sup> Anniversary.

## EXHIBIT "B"

### SCHEDULE OF SERVICES

#### 1. STRATEGY & ACCOUNT MANAGEMENT (\$53,000)

Billed as a monthly retainer across 12 months (July to June)

#### 2. CREATIVE SERVICES & BRANDING (\$190,000)

- A. Ad Campaign Creative Refresh Milestones
  - a. Storyboard - \$25,000
  - b. Photo Shoot Completion - \$40,000
  - c. Shoot Recap - \$35,000
- B. Pocket Guide Creative Refresh Milestones
  - a. Storyboard - \$15,000
  - b. Content Capture Completion - \$25,000
  - c. Capture Recap - \$25,000
- C. Ad Mechanicals Milestones and Deliverables
  - a. Calendar
    - i. Launch & Concept Approval - \$2,500
    - ii. Final Product - \$2,500
  - b. Ad Campaign Assets (two 30-second ads, four 15-second ads, ad sizing) - \$4,000
  - c. Pocket Guide Videos Batch 1 (20 videos) - \$3,000
  - d. Pocket Guide Videos Batch 2 (20 videos) - \$3,000
  - e. Pocket Guide Videos Batch 3 (20 videos) - \$3,000
  - f. Non-video paid media ads (estimated 6 sizes) - \$5,000
  - g. Early-Season Ad (1 size) - \$1,000
  - h. Late-Season Ad (1 size) - \$1,000

#### 3. MEDIA PLANNING & BUYING (\$583,000)

Media Management Services - \$53,000 – Billed as a monthly retainer across 12 months.  
Working Media Investment/Media Buy - \$530,000 – Pass-through expenditure

#### 4. PUBLIC RELATIONS/SOCIAL MEDIA (\$64,000)

Public Relations billed as a monthly retainer across 12 months - \$35,000  
Social Media billed as a monthly retainer across 12 months - \$29,000



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**EXHIBIT "C"**  
**COMPENSATION**

Consultant shall receive compensation, including authorized reimbursements, for all services rendered under this Agreement at the rates set forth in Exhibit "B" to this Contract, which is attached hereto and incorporated herein by reference.

**Pass-through Expenditures** – Consultant shall be reimbursed for pass-through media buy expenditures in an amount not to exceed five hundred thirty thousand dollars (\$530,000).

**Renewal** - In the event that this Agreement is renewed pursuant to Section 3.1.2, 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.

Exhibit "C"