

**FIRST AMENDMENT TO
MASTER AGREEMENT
FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF SAN JOSE
AND
BARNESTORMING ADVERTISING AND MARKETING COMMUNICATIONS**

This FIRST AMENDMENT TO AGREEMENT is entered into this ____ day of _____, 2010, by the CITY OF SAN JOSE ("CITY"), a municipal corporation, and BARNESTORMING ADVERTISING AND MARKETING COMMUNICATIONS ("CONSULTANT").

RECITALS

WHEREAS, on June 24, 2008, CITY and CONSULTANT entered into an agreement entitled "Master Agreement for Consultant Services between the City of San Jose and Barnestorming Advertising and Marketing Communications" ("AGREEMENT"); and

WHEREAS, CITY and CONSULTANT desire to amend the AGREEMENT to increase the Compensation;

NOW, THEREFORE, the parties agree to amend the AGREEMENT as follows:

SECTION 1. SECTION 4, "COMPENSATION" is amended to read as follows:

"The compensation to be paid to CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed Four Hundred Fifteen Thousand Dollars (\$415,000) for the initial term of the AGREEMENT. The compensation to be paid to CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed Two Hundred Thirty Thousand Dollars

(\$230,000) for the first one-year Option Period of the Agreement. The compensation to be paid to CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed One Hundred Eighty-Five Thousand Dollars (\$185,000.00) for the second one-year Option Period of the Agreement. The total maximum compensation, including both payment for professional services and reimbursable expenses for the initial term of the AGREEMENT and the two one-year Option Periods (July 1, 2008 through June 30, 2012), shall not exceed Eight Hundred Thirty Thousand Dollars (\$830,000). The rate and schedule of payment is set out in REVISED EXHIBIT D, entitled "COMPENSATION", which is attached hereto and incorporated herein."

SECTION 2. EXHIBIT D, "COMPENSATION" is amended to read as shown in REVISED EXHIBIT D, attached and incorporated into this First Amendment.

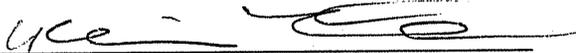
SECTION 3. All of the terms and conditions of the original AGREEMENT not modified by this First Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year first written above.

"CITY"

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

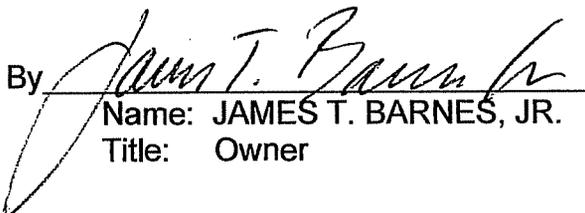


KEVIN FISHER
Sr. Deputy City Attorney

By _____
LEE PRICE, MMC
City Clerk

"CONSULTANT"

BARNESTORMING ADVERTISING AND
MARKETING COMMUNICATIONS

By 

Name: JAMES T. BARNES, JR.
Title: Owner

REVISED EXHIBIT D
COMPENSATION

CITY agrees to compensate CONSULTANT for professional services performed in accordance with the terms and conditions of this AGREEMENT at the hourly rates as set forth below:

Consultant Service	Hourly Rate
Strategic Marketing Planning	\$230
Creative Strategy	\$230
Community Outreach Strategy	\$200
Consensus Building	\$200
Copywriting	\$230
Project Management	\$230
Community Relations	\$200
Event Planning	\$200
Ethnic Marketing	\$150
Production Supervision	\$230
Media Strategy, Planning and Buying	\$150
Art Direction	\$150
Production Art	\$100
Senior Art Direction	\$175

Initial Term

The maximum amount of compensation to be paid to CONSULTANT under the initial term of this AGREEMENT, including both payment for professional services and reimbursable expenses, shall not exceed Four Hundred Fifteen Thousand Dollars (\$415,000). Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to CITY.

Option Periods

The compensation to be paid to CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed Two Hundred Thirty Thousand Dollars (\$230,000) for the first one-year Option Period of the Agreement.

The compensation to be paid to CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed One Hundred Eighty-Five Thousand Dollars (\$185,000.00) for the second one-year Option Period of the Agreement.

Total Maximum Compensation

The total maximum compensation, including payment for both professional services and reimbursable expenses, for the initial term of the AGREEMENT and the two one-year Option Periods (July 1, 2008 through June 30, 2012), shall not exceed Eight Hundred Thirty Thousand Dollars (\$830,000). Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

CITY shall compensate CONSULTANT only for work authorized and performed under each service order prepared by CONSULTANT and approved by DIRECTOR as provided in the Scope of Services, EXHIBIT B, Section E. The DIRECTOR shall

establish maximum compensation in each service order, unless CONSULTANT shows that actual costs exceed those stipulated in the specific estimate, and the DIRECTOR authorizes in writing an amendment to the estimate for the coverage. In such a case, a supplemental service order will be issued by CONSULTANT and approved in writing by the DIRECTOR.

Reimbursable Expenses

Reimbursable expenditures, reproduction of printed materials and other direct costs shall be billed to CITY by CONSULTANT at actual cost. CONSULTANT is not authorized to commit CITY to media advertising without the DIRECTOR's prior written consent. Eligible reimbursable expenses are as follows:

- A. **Coarch airfare** for travel by non-local subconsultants of CONSULTANT, with the prior written approval of the DIRECTOR;
- B. **Hotel room charges** limited to lodging only for non-local subconsultants of CONSULTANT, with the prior written approval of the DIRECTOR;
- C. **Economy car rental** for local travel by non-local subconsultants of CONSULTANT;
- D. **Per diem meals** for non-local subconsultants of CONSULTANT during required local tasks and not-to-exceed \$35.00 per person;
- E. **Telephone and facsimile charges;**
- F. **Messenger and overnight air delivery charges**, with the prior approval of the DIRECTOR;
- G. **Printing costs**, with the prior approval of the DIRECTOR;
- H. **Mileage** for project-related travel and not exceeding \$0.31 per mile (which may be adjusted to equal a greater or lesser rate as approved by the IRS for business deductions). Mileage expenses must be supported by an IRS-accepted log, to be submitted with CONSULTANT's monthly invoice.

Subconsultants

The costs for all subconsultants used by CONSULTANT under this AGREEMENT shall be paid directly by CONSULTANT.