

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

AGREEMENT FOR CONSULTANT SERVICES

This Agreement for Consultant Services (“Agreement”) is made by and between the City of Farmers Branch, Texas (“City”) and Ballyhoo Media & Marketing LLC, a Texas limited liability company (the “Consultant”), (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

RECITALS:

WHEREAS, City desires to engage the services of Consultant as an independent contractor and not as an employee to provide media and marketing services to the City through the 2019-2020 fiscal year as described in Exhibit “A” (the “Scope of Services”); and

WHEREAS, Consultant desires to render services for City on the terms and conditions provided in this Agreement;

NOW THEREFORE, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

**Article I
Term**

1.1 The term of this Agreement shall be for a period of one year beginning on May 1, 2019 (the “Effective Date”), and continue through April 30, 2020, unless sooner terminated as provided herein. City may upon written notice to Professional renew the term of this Agreement for one additional term of one year. beginning on May 1, 2020, and continuing through April 30, 2021.

1.2 Either Party may terminate this Agreement by giving thirty (30) days prior written notice to the other Party.

**Article II
Scope of Services**

2.1 The Consultant shall perform the services in connection with the Project as set forth in the Scope of Services. The Consultant shall perform the services: (i) with the skill and care ordinarily provided by similar consultants practicing in the same or similar locality and under the same circumstances and applicable licenses or certifications; and (ii) as expeditiously as is prudent considering the ordinary skill and care of similar competent consultants.

2.2 The City shall, prior to commencement of services, provide the Consultant with the information set forth in the Scope of Services, if any.

2.3 The Parties acknowledge and agree that any and all opinions provided by the Consultant in connection with the Scope of Services represent the professional judgment of the Consultant, in accordance with the standard of care applicable by law to the services performed hereunder.

2.4 Upon execution of this Agreement the City has the right to use the Consultant's instruments of service, including but not limited to reports, maps, cost estimates, recommendations or other deliverables for the Project.

Article III Schedule of Work

The Consultant agrees to complete the required services in accordance with the schedule established by the City.

Article IV Compensation and Method of Payment

4.1 Consultant will be compensated in accordance with the payment schedule and amounts set forth in the Scope of Services, in an amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00). Unless otherwise provided herein, payment to the Consultant shall be monthly based on the Consultant's monthly progress report and detailed monthly itemized statement for services that shows the names of the Consultant's employees, agents, contractors performing the services, the time worked, the actual services performed, the rates charges for such service, reimbursable expenses, the total amount of fee earned to date, and the amount due and payable as of the current statement, in a form reasonably acceptable to the City. Monthly statements shall include authorized non-salary expenses with supporting itemized invoices and documentation. The City shall pay such monthly statements within thirty (30) days after receipt and City verification of the services and expenses unless otherwise provided herein.

4.2 Unless otherwise provided in the Scope of Services the Consultant shall be responsible for all expenses related to the services provided pursuant to this Agreement including, but not limited to, travel, copying and facsimile charges, telephone, internet and email charges.

4.3 The hourly rates set forth in the Scope of Services, if any, shall remain in effect during the term of this Agreement. Any changes to established hourly rates shall require the prior written consent of the City.

Article V Devotion of Time; Personnel; and Equipment

5.1 Consultant shall devote such time as reasonably necessary for the satisfactory performance of the services under this Agreement. Should City require additional services not included under this Agreement, Consultant shall make reasonable effort to provide such additional services within the time schedule without decreasing the effectiveness of the

performance of services required under this Agreement, and shall be compensated for such additional services on a time and materials basis, in accordance with Consultant's standard hourly rate schedule, or as otherwise agreed between the Parties.

5.2 To the extent reasonably necessary for the Consultant to perform the services under this Agreement, the Consultant shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Consultant may deem proper to aid or assist in the performance of the services under this Agreement. The Consultant shall provide written notice to and obtain written approval from the City prior to engaging services not referenced in the Scope of Services. The cost of such personnel and assistance shall be included as part of the total compensation to be paid Consultant hereunder and shall not otherwise be reimbursed by the City unless otherwise provided herein.

5.3 Consultant shall furnish the facilities, equipment and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

5.4 The Consultant shall submit monthly progress reports and attend monthly progress meetings scheduled by the City or more frequently as may be required by the City from time to time based upon Project demands. Each progress report shall detail the work accomplished and special problems or delays experienced on the Project during the previous report period, and the planned work activities and special problems or delays anticipated for the next report period.

Article VI Miscellaneous

6.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

6.2 Assignment. Consultant may not assign this Agreement in whole or in part without the prior written consent of City. In the event of an assignment by Consultant to which City has consented, the assignee shall agree in writing with City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

6.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

6.4 Governing Law. The laws of the State of Texas shall govern this Agreement without regard to any conflict of law rules; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

6.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

6.7 Independent Contractor. It is understood and agreed by and between the Parties that Consultant in satisfying the conditions of this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Consultant pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of City. Consultant shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

6.8 Insurance.

- (a) Consultant shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage including the property of the City, its officers, contractors, agents and employees (collectively referred to as the “City”) insuring against all claims, demands or actions relating to the work and services provided by the Consultant pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage; (ii) policy of automobile liability insurance covering any vehicles owned, non-owned and hired and/or operated by Consultant, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$1,000,000.00 combined single limit for bodily injury, death and property damage; and (iii) statutory Worker’s Compensation Insurance at the statutory limits and Employers Liability covering all of Consultant’s employees involved in the provision of services under this Agreement with policy limit of not less than \$1,000,000.00.
- (b) All insurance shall be endorsed to provide the following provisions: (1) name the City, its officers, and employees as additional insureds as to all applicable coverage with the exception of Worker’s Compensation Insurance; (2) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance. A specific endorsement needs to be added to all policies, with a copy of the endorsement provided to the City that indicates the insurance company will provide to the City at least a thirty (30) day prior written notice for cancellation, non-renewal, and/or material changes of the policy. In the event the companies providing the required insurance are prohibited by law to provide any such specific endorsements, the Consultant shall provide at least thirty (30) days prior

written notice to the City of any cancellation, non-renewal and/or material changes to any of the policies of insurance.

- (c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least “A” by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the City.
- (d) A certificate of insurance and copies of policy endorsements evidencing the required insurance shall be submitted to the City prior to commencement of services. On every date of renewal of the required insurance policies, the Consultant shall cause a certificate of insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the City. In addition, the Consultant shall within ten (10) business days after written request provide the City with certificates of insurance and policy endorsements for the insurance required herein. The delivery of the certificates of insurance and policy endorsements to the City is a condition precedent to the payment of any amounts due to Consultant by the City. The failure to provide valid certificates of insurance and policy endorsements shall be deemed a default and/or breach of this Agreement.

6.9 Indemnification. CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, CAUSED BY OR RESULTING FROM THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE CONSULTANT, ITS AGENT, ITS CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL

INDEMNIFIED ITEMS SHALL INCLUDE REASONABLE ATTORNEYS’ FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO THE CONSULTANT’S LIABILITY.

THE CONSULTANT’S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY CONSULTANT UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6.10 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed or facsimile to the address specified below, or to such other party or address as either party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City, to:

Attn: Charles S. Cox, City Manager
City of Farmers Branch, Texas
13000 William Dodson Parkway
Farmers Branch, Texas 75234
972.919.2620 – telephone
972.919.2685 – facsimile

With copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith LLP
1800 Ross Tower
500 N. Akard
Dallas, Texas 75201
214.965.9900 – telephone
214.965.0010 – facsimile

If intended for Consultant:

Ballyhoo Media & Marketing LLC
Attn: Samantha Berens, President/CEO
566 Featherstone Drive
Rockwall, Texas 75087

6.11 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

6.12 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

6.13 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.14 Prohibition of Boycott Israel. Consultant verifies that it does not Boycott Israel and agrees that during the term of this Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended.

(signature page to follow)

SIGNED AND AGREED this _____ day of _____, 2019.

CITY OF FARMERS BRANCH, TEXAS

By: _____
Charles S. Cox, City Manager

APPROVED AS TO FORM:

City Attorney

SIGNED AND AGREED this _____ day of _____, 2019.

BALLYHOO MEDIA & MARKETING LLC

By: _____
Samantha Berens, President/CEO

**EXHIBIT “A”
SCOPE OF SERVICES**

DESCRIPTION

Consultant will provide marketing and media services to the City through the 2019-2020 fiscal year based on the following work streams:

WORK STREAM 1 – MEDIA MANAGEMENT

Consultant will provide media management services to include planning, reconciliation and post-buy reporting for all campaigns managed by the agency. Media management fees will be itemized in annual media plan.

Deliverables include:

- Annual media plan
- Monthly digital media performance reporting
- Email campaign reporting

WORK STREAM 2 – MEDIA PLACEMENT

Upon media plan approval, Consultant will purchase all media on behalf of the client.

WORK STREAM 2 – WEBSITE MANAGEMENT

Consultant will provide website management services to include the following activities:

- Ensure content is aligned with paid media campaigns
- Monitor tag titles and meta tag descriptions
- Monitor technical performance with monthly support, and execution of minor tweaks and edits
- Ensure site aligns with Google best practices
- Monitor keyword performance/density and SERPs
- Monitor Google Analytics

Deliverables include monthly recommendations as needed and quarterly reporting. Website management fees will be itemized in annual media plan.

WORK STREAM 1 – EMAIL DESIGN + DEPLOYMENT

Consultant will provide design, implementation and deployment services related to any email campaign included in media plans. Creative services fees will be itemized in annual media plan.

**EXHIBIT “A”
SCOPE OF SERVICES**

EXCLUSIONS

Any services not outlined in the above work streams are subject to additional charges and will be priced separately. Examples include, but aren't limited to ad design, copywriting, etc.

COMPENSATION

All projects are estimated in advance, are valid 20 days from the date of the estimate and may vary up to 15%. Estimates are based on the anticipated time and outside service costs for a project and does not include reimbursable expenses (such as, but not limited to, travel, postage, delivery, freight, etc.). Any changes, additional services or materials requested after an estimate is accepted will be billed in addition to the original amount estimated; a change order will be submitted for approval before work begins or resumes.

BILLING/PAYMENT

The Consultant is compensated for all services rendered on behalf of the City. The Consultant does not perform services speculatively. Invoices will be provided monthly for all services rendered and are due 30 days from invoice date. All media expenditures are pre-billed a minimum of 30-days prior to air date. Should a project be cancelled prior to completion, the City will pay all charges/penalties incurred for time, materials, services, commitments made on the City's behalf to the point of cancellation. Should the Consultant retain attorneys or collection services to recover outstanding invoices, the City will pay all costs as well as the invoice amount. In the event that the Consultant sustains a loss as a result of claim, suit or proceeding against the Consultant as a result of the publication, broadcast or reproduction of material which the City approved of and authorized, the City will indemnify the Consultant for any such loss.

CITY RESPONSIBILITY

It is the City's responsibility to proof all materials created by or provided to the Consultant to ensure that the content of the material is correct, that it is suitable for the intended use, and it is within proper copyright and other restrictions. The City must have the legal right to reproduce any materials submitted to the Consultant for use in work contracted by the City. The City will assume full legal and financial responsibility for any copyright suit or action resulting from Consultant usage of materials supplied for reproduction.

RIGHTS / OWNERSHIP

Usage and ownership rights to all ideas and materials developed by the Consultant are exclusively transferred to the City upon payment in full for such ideas and materials.

Consultant will have access to, and knowledge of, the City's confidential and commercially valuable information. The Consultant acknowledges that the City would not have entered into this agreement without its consent to the confidentiality and restrictive covenants in this Agreement, the parties agree as follows:

A. CONFIDENTIALITY – Definition

**EXHIBIT “A”
SCOPE OF SERVICES**

- (a) Confidential Information means all information, and all documents and other tangible materials and things which record it, relating to or used in the City’s business, which is not generally known to the public, and was disclosed to or developed during the course of, or as a result of any projects under this agreement. Unless otherwise specified to the Consultant by the City, confidential information includes the following especially sensitive types of information which are owned or used by the City:
- i. Marketing plans and advertising programs
 - ii. Pricing information
 - iii. Manuals, research and prototypes
 - iii. Computer programs, software and computer systems
 - v. Business records and financial information

B. CONFIDENTIALITY – Restrictions

- (a) The Consultant shall hold any and all Confidential Information received by, or disclosed to, in the strictest of confidence and take reasonable action to prevent its disclosure.

