
AGREEMENT

Between

TOWN OF PALM BEACH

and

Jacober & Associates DBA Jacober Creative

for

Marina Marketing Services

This is an Agreement between the TOWN OF PALM BEACH, a municipal corporation of the State of Florida (hereinafter the "TOWN"), through its TOWN Council;

AND

Jacober Creative successors and assigns, (hereinafter "CONTRACTOR"). This agreement is dated Oct 22, 2020

WITNESSETH, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, TOWN and CONTRACTOR, agree as follows:

ARTICLE I

SCOPE OF SERVICES

CONTRACTOR agrees to provide marina marketing services as required in Town of Palm Beach, RFP No. 2020-21, attached hereto as Exhibit "A" and by this reference made a part hereof.

ARTICLE II

TERM

The term of this Agreement shall be for one (1) year beginning **November 1st, 2020 and ending October 31, 2021**. At the end of the one (1) year period, this Agreement may be extended for up to two (2) additional one (1) year terms upon mutual consent.

PT

ARTICLE III

COMPENSATION AND METHOD OF PAYMENT

The sole compensation to be paid to the CONTRACTOR by the TOWN for the routine services rendered hereunder shall not exceed \$ 181,500.00 for Fiscal Year (FY) 2021 and \$138,000.00 for FY2022. Payments shall be made by the TOWN on a monthly basis upon receipt of a proper invoice from CONTRACTOR based on each month of completed services. Amount due shall be paid within 30 days of receipt of a proper invoice. Payment for project services shall be based on actual amounts incurred monthly and shall be paid on the same schedule as routine services.

ARTICLE IV

CONTRACTOR RESPONSIBILITIES

CONTRACTOR shall perform services per RFP No. 2020-21 Marina Marketing Services. The extent of the services to be rendered and frequency of performance are as stated in these specifications. CONTRACTOR shall provide competent labor as required to perform these services. CONTRACTOR shall respond to correct any deficiencies in performance of the services as identified by the TOWN Contract Coordinator. Deficiencies shall be corrected within forty eight (48) hours unless the TOWN Contract Coordinator allows additional time based on the complexity of the corrective action.

ARTICLE V

MODIFICATION OF CONTRACT TERMS

The terms of this contract may be modified by mutual consent to increase or decrease the scope of work, adjust prices in subsequent contract periods, or for such other purposes as shall become necessary during the conduct of the contract period. Such amendments shall be accomplished in writing as an addendum to the Contract.

ARTICLE VI

MISCELLANEOUS

6.1 TERMINATION

This Agreement may be terminated by either party for cause, or by TOWN for convenience, upon thirty (30) days written notice from the terminating party to other party. In the event of such termination, CONTRACTOR shall be paid its compensation for services performed to termination date. In the event that CONTRACTOR abandons this Agreement or causes it to be terminated by TOWN, CONTRACTOR shall indemnify TOWN against any loss pertaining to this termination.

PT

For purposes of this Agreement, termination by TOWN for cause includes, but is not limited to, the following:

1. CONTRACTOR'S failure to keep, perform and observe each and every provision of this Agreement and such failure continues for a period of more than seven (7) days after delivery to CONTRACTOR of a written notice of such breach or default; or
2. CONTRACTOR'S abandonment of the work for a period of seven (7) days or more during the course of a year. Such days need not be consecutive.
3. Any material misrepresentation, written or oral, made by the CONTRACTOR to the TOWN;
4. Failure by the CONTRACTOR to timely perform and/or observe any or all of the covenants, rules, regulations, guidelines or terms and conditions of this Agreement; and/or
5. Insolvency, bankruptcy, and/or suggestion of bankruptcy on the part of the CONTRACTOR or the assignment of assets for the benefit of creditors by the CONTRACTOR.

CONTRACTOR recognizes and agrees that in the event of the termination or expiration of this Agreement, it will be necessary to assist the TOWN and/or a selected successor to CONTRACTOR with an orderly transition of work. CONTRACTOR shall be paid in accordance with Article III for all services rendered through the date of termination. All TOWN tools, materials, and supplies provided to CONTRACTOR during the course of the work shall be returned in good condition (except for normal wear and tear) upon termination.

6.2 EQUAL OPPORTUNITY EMPLOYMENT

CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships.

6.3 ASSIGNMENT

This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered by CONTRACTOR, under any circumstances, without the

PS

prior written consent of TOWN.

6.4 INDEMNIFICATION OF TOWN

- 6.4.1 CONTRACTOR shall at all times hereafter, indemnify, hold harmless, and defend TOWN, its agents, it's officers, employees, representatives and assigns from and against any claim, demand, or cause of action of any kind or nature arising out of error, omission or negligent act of CONTRACTOR, its agents, or employees in the performance of services under this Agreement.
- 6.4.2 CONTRACTOR further agrees, at all times hereafter, to indemnify, hold harmless and defend TOWN, its agents, it's officers, employees, representatives and assigns from and against any claim, demand or cause of action of any kind or nature arising out of any conduct or misconduct of CONTRACTOR resulting from the performance of services under this Agreement for which TOWN, its agents, or employees are alleged to be liable.
- 6.4.3 CONTRACTOR acknowledges and agrees that TOWN would not enter into this Agreement without this indemnification of TOWN by CONTRACTOR, and that TOWN'S entering into this Agreement shall constitute good and sufficient consideration for this indemnification. These provisions shall survive the expiration or earlier termination of this Agreement. Nothing in this Agreement shall be construed to affect in any way the TOWN'S rights, privileges, and immunities as set forth in Florida Statutes 768.28.

6.5 INSURANCE

The Consultant shall provide at its own cost and expense during the life of the contract, the following insurance coverages to the Town of Palm Beach thirty (30) business days prior to the commencement of any work. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance shall be evidenced by certificates and/or policies to include premiums as determined by the Town of Palm Beach. It shall be an affirmative obligation upon the Service Provider to advise Ebix, the Town's insurance certificate management service provider, at townofpalmbeach@ebix.com; P.O. Box 100085-HM, Duluth, GA 30096 within 24 hours or the next business day of cancellation, non-renewal or modification of any stipulated insurance and failure to do so shall be construed to be a breach of agreement/contract. The Town of Palm Beach reserves the right to require additional insurance coverages and limits based upon the particular service or change order requested by the consultant.

If the consultant maintains higher limits than the minimums shown below, the Town requires and shall be entitled to coverage for the higher limits maintained by the contractor.



The requirements contained herein, as well as Town's review or acceptance of insurance maintained by consultant are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Consultant under the contract.

Professional Liability, or equivalent Errors & Omissions Liability with limits of liability not less than \$1,000,000 Per Occurrence.

For policies written on a Claims-made basis, service provider shall maintain a retroactive date prior to or equal to the effective date of this contract. In the event the policy is canceled, non-renewed, switched to an occurrence form or there is a change in retroactive date, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this contract, the service provider shall agree to purchase a SERP with a minimum reporting period of not less than three (3) years. Coverage is to apply on a primary basis.

Comprehensive General Liability Insurance coverage with limits of liability not less than \$1,000,000 Each Occurrence. The Certificate of Insurance shall indicate an Occurrence Basis. The Town of Palm Beach shall be endorsed as an additional insured under the General Liability coverage. The Service Provider's General Liability coverage shall be primary and non-contributory. For policies written on a Claims-made basis, service provider shall maintain a retroactive date prior to or equal to the effective date of this contract. In the event the policy is canceled, non-renewed, switched to an occurrence form or there is a change in retroactive date, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this contract, the service provider shall agree to purchase a SERP with a minimum reporting period of not less than three (3) years. Coverage is to apply on a primary basis.

Business Auto Liability coverage for any auto (all owned, hired, and non-owned autos) with limits not less than \$1,000,000 each occurrence combined single limit each accident. In the event service provider does not own any autos, the Town will accept proof of Hired and Non-Owned Auto Liability. For personally owned vehicles, the Town requires limits not less than \$300,000 each occurrence combined single limit.

Workers' Compensation coverage with statutory limits pursuant to Florida State Statute 440 or an exemption letter from the State. Should the scope of work performed by consultant qualify its employees for benefits under federal workers' compensation statute (example, U.S. Longshore & Harbor Workers Act or Merchant Marine act), proof of appropriate federal act coverage must be provided. A waiver of subrogation must be provided.

Employers Liability coverage with limits not less than \$100,000 for each accident, \$100,000 disease (each employee) and \$500,000 disease (policy limit).

In the event that claims in excess of the insured amounts provided herein are filed by reason of any operations under the contract, the amount excess of such claims or any

A handwritten signature or set of initials, possibly 'PJ', located in the bottom right corner of the page.

portion thereof may be withheld from any payment due or to become due the Service Provider until such time the Service Provider shall furnish such additional security covering such claims as may be determined by the Town of Palm Beach.

For policies written on a claims made basis, service providers shall maintain a retroactive date prior to or equal to the effective date of this contract. In the event the policy is canceled, non-renewed, switched to an occurrence form or there is a change in retroactive date, service provider must purchase an extended reporting period rider during the life of this contract of not less than 3 years. Coverage is to apply on a primary basis.

Umbrella or Excess Liability is required up to the minimum limit of liability if the limits of liability shown on the Certificate of Insurance under General Liability do not meet the minimum limit of liability as required.

All required insurance policies shall provide a waiver of subrogation and rights of recovery against the Town of Palm Beach, including its agents, officers, past and present employees, elected officials and representatives, the insurance policy in effect shall protect both parties and be primary and non-contributory for any and all losses covered by the above described insurance. Insurers have no recourse against the Town of Palm Beach for payment or assessments in any form on any insurance policy.

Town, by and through its Risk Management Office, in cooperation with the contracting/hiring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the life of this Contract. Town reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

6.6 PERFORMANCE OF WORK BY CONTRACTOR/SUBCONTRACTORS

6.6.1 It is expressly agreed that CONTRACTOR is and shall be in the performance of all work, services and activities under this Agreement, an independent contractor and not an employee, agent, or servant of the TOWN. All persons engaged in any work, service or activity performed pursuant to this Agreement shall at all times and in all places be subject to CONTRACTOR'S sole direction, supervision and control. CONTRACTOR shall exercise control over the means and manner in which it and its employees perform and work, and in all manner in which it and its employees perform the work, and in all CONTRACTOR'S relationship and the relationship of its employees to the TOWN, shall be that of an independent contractor and not as employees or agents of the TOWN.

6.6.2 In the event CONTRACTOR, during the term of this Agreement, requires the services of any subcontractors or other professional associates, in connection with services covered under this Agreement, CONTRACTOR must secure the prior written approval of TOWN'S Purchasing Agent. Any

PJ

subcontractor authorized to perform under this Agreement shall be required to possess the same insurance coverage as enumerated in Paragraph 6.5 herein.

6.6.3 CONTRACTOR may indefinitely use the Work Product developed for the Town in CONTRACTOR portfolio, case studies and promotional materials.

6.7 LAWS AND REGULATIONS

It is further understood by the parties that CONTRACTOR will, in carrying out the duties and responsibilities under this Agreement, abide by all federal, state and local laws.

6.8 CONTRACT COORDINATOR

The TOWN'S Contractor Coordinator during the performance of services pursuant to this Agreement shall be the Town Director of Business Development and Operations.

6.9 NO CONTINGENT FEE

CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

6.10 GOVERNING LAW AND VENUE

This agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County, and the Agreement will be interpreted according to the laws of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other of further exercise thereof.

6.11 ATTORNEY'S FEES

In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

PT

6.12 AUTHORITY TO ENGAGE IN BUSINESS

CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the TOWN'S representative upon request.

6.13 ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document.

6.14 NOTICES

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

FOR TOWN OF PALM BEACH:

PURCHASING MANAGER
TOWN OF PALM BEACH
951 Old Okeechobee Road, Suit "D"
West Palm Beach, FL 33401

FOR CONTRACTOR:

JACOBER CREATIVE
696 Lincoln Road #201
MIAMI BEACH, FL
33139

PJ

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals this 23th day of October, 2020.

(Seal)

TOWN OF PALM BEACH
A Municipal Corporation of the
State of Florida.

ATTEST:

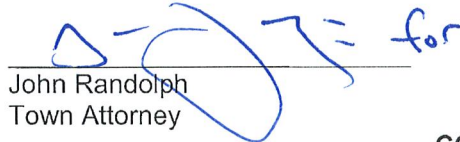


Queenester Nieves, Town Clerk



Kirk Blouin, Town Manager

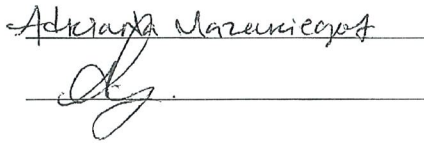
ENDORSED AS TO FORM
AND SUFFICIENCY:

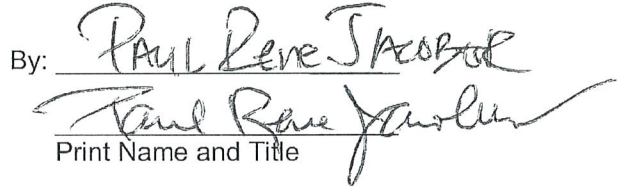
 for
John Randolph
Town Attorney

CONTRACTOR

JACOBER CREATIVE

WITNESSES:



By: 
Print Name and Title

(Corporate Seal)

SWORN TO and SUBSCRIBED before me this 22 day of Oct, 2020.


(Notary Seal)

RAUL CHAVARRIA
Commission # GG 953280
Expires March 6, 2024
Bonded Thru Budget Notary Services

Signature:


Notary Public - State of Florida
Raul Chavarria
Printed Name

Commission No. 60957240

Commission Expires: 03-06-2024

