

**AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MIAMI BEACH, FLORIDA (CITY) AND THE
SUPERLATIVE GROUP, INC. (CONSULTANT) FOR PROFESSIONAL
SERVICES IN CORPORATE SPONSORSHIP MARKETING PURSUANT TO
REQUEST FOR PROPOSALS NO. 06-04/05**

This Amendment No. 1 is made and entered this 1st day of February 2010, by and between the **CITY OF MIAMI BEACH, FLORIDA** (City), a municipal corporation having its principal office at 1700 Convention Center Drive, Miami Beach, Florida, 33139, and **THE SUPERLATIVE GROUP, INC.** (Consultant), an Ohio corporation, having its principal office at 2706 Franklin Blvd., Cleveland, Ohio, 44113.

RECITALS:

WHEREAS, on February 23, 2005, the City Commission approved the issuance of Request for Proposals No. 06-04/05 for the purpose of implementing a municipal marketing program (the RFP); and

WHEREAS, on March 22, 2007, the City entered into a Professional Services Agreement with Consultant for Phase I of a municipal marketing program, which included the development of an Asset and Valuation Inventory, a Strategic Planning Document, and a Policy Document (the Agreement); and

WHEREAS, Consultant has completed its Phase I services/deliverables; and

WHEREAS, the City and Consultant now wish to amend the Agreement in order to proceed with, and provide the scope of services and compensation schedule for, Phase II of the municipal marketing program, which will address implementation of the program (including, without limitation, soliciting and entering into municipal marketing agreements with business entities).

NOW THEREFORE, in consideration of the mutual promises contained herein, the City and Consultant hereby amend the Agreement as follows:

1. The foregoing recitals are true and correct and are hereby incorporated by reference into this Amendment.
2. Section 1 of the Agreement, entitled "Definitions," is amended to include the following defined term:

Sponsorship Agreements: shall mean fully executed written contracts procured by Consultant, and approved by the City, for sponsorships, naming rights, and/or licensing agreements. Notwithstanding the

preceding, Sponsorship Agreements shall not include contracts where the sponsor, person or entity requesting the naming right(s), and/or licensee, initiates the contact directly with the City, and there has been no previous contract between Consultant and that sponsor (or person/entity requesting the naming right(s) and/or licensee) on behalf of the City.

3. Section 2 of the Agreement, entitled "Scope of Work," is amended to include and incorporate Exhibit "A," attached hereto, which shall define Consultant's scope of work/services for Phase II of the Agreement (development and implementation of the City's municipal marketing program). In addition to the scope of services, Exhibit "A" also sets forth the timeline within which Consultant is required to complete any deliverables, and/or achieve milestones/benchmarks, as required by the City for Phase II.
4. Section 3.1 of the Agreement, entitled "Fixed Fee," is deleted in its entirety and replaced with the following new Section 3.1, entitled "Compensation for Phase II":

3.1. The City hereby acknowledges that it has elected to proceed with Consultant to provide Phase II services under the Agreement, as more specifically set forth in Exhibit "A" hereto.

Accordingly, in consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by the City Manager or his designee, of Phase II services and work, as set forth in this Amendment No. 1 and Exhibit "A" hereto, the City agrees to compensate Consultant as follows:

- 3.1.1 Upon the parties' execution of this Amendment No. 1, and as agreed in the original Agreement, Consultant shall refund to City fifty percent (50%) of the fees (or \$19,500) paid to Consultant for Phase I services under the Agreement. The City shall deduct this \$19,500 amount as a reimbursable draw from commissions earned by Consultant on the first \$2 million of total gross revenues to the City (GR) generated by Sponsorship Agreements obtained by Consultant pursuant to this Agreement. In the event that the commissions due Consultant during the initial term of the Agreement do not satisfy the \$19,500 owed to the City, then the City and Consultant shall mutually agree on an alternative method for reimbursement of the full (or remainder of the full) amount.
- 3.1.2 On the Commencement Date (as defined in Section 4.4), and thereafter at the beginning of every month for the proceeding eight (8) months of the Term, City shall pay

Consultant a draw against future commissions on Sponsorship Agreements, in the amount of \$5,500. The draws shall be credited against any commissions due Consultant. In no event shall the total amount of the draws against commissions paid to Consultant during the first nine (9) months of the Term, exceed \$49,500.

3.1.3 Commission Structure. Consultant shall be entitled to receive a commission based upon a percentage of total gross revenues to the City (GR) generated by Sponsorship Agreements obtained by Consultant pursuant to this Agreement (Commission Payment). The commission structure shall be as follows:

- (i) 15% commission on \$0 – 250,000 in GR to City;
- (ii) 12% commission on \$250,001 – 500,000 in GR to City;
- (iii) 10% commission on \$500,001 – 1,000,000 in GR to City;
- (iv) 6% commission on \$1,000,000+ in GR to City;

And, additionally,

- (v) 7% commission on renewals (percentage of GR for first renewal only);
- (vi) 45% commission on licensing agreements (to include monitoring); and
- (vii) 10% commission on budgeted cost avoidance measures, as defined in Section 3.1.6.

3.1.4 City shall pay Consultant the Commission Payment within sixty (60) days following receipt of revenues from Sponsorship Agreements. Consultant shall only be entitled to receive Commission Payments on payments actually received by the City. If the Agreements are multi-year in nature, and payments to the City are made annually or in installments, then Consultant shall be paid the Commission Payment within sixty (60) days after receipt of the annual (or other installment) payment by City.

3.1.5 The packaging and pricing of Sponsorship Agreements may be changed by the City from time to time, in its sole and reasonable judgment and discretion, and Consultant shall not receive any increase in Commission Payments as a result of such change(s) unless (i) Consultant directly

negotiated the change(s); and (ii) the City (through its City Manager or his/her designee) and Consultant agree, in writing, that Consultant is entitled to an increased Commission Payment(s) as a result of such change(s).

- 3.1.6 For purposes of this Section 3.1, "budgeted cost avoidance measures" shall mean procurement by Consultant of items previously included in the City's approved annual operating budget. Consultant shall receive a Commission Payment for such item(s) if, and only if, City would have purchased said item(s) from another source outside the scope of this Agreement. The Commission Payment for said item(s) shall be based on the amount budgeted and such payment shall be made upon delivery and acceptance by the City of the item(s). The City shall not owe nor be required to pay a Commission Payment if said item(s) does/do not assist or reduce items in the City's approved annual operating budget. Whether or not a particular item falls within the definition of budgeted cost avoidance measures shall be left to the sole discretion of the City Manager or his/her designee.
- 3.1.7 The City shall reimburse Consultant's travel and other out of pocket expenses for Phase II, up to a total amount not to exceed \$15,000 during the Term. The City Manager or his/her designee must approve all expense reimbursements in advance, in writing. The City shall not owe, nor be required to reimburse Consultant for, any expenses that have not been pre-approved, in writing, by the City Manager or his/her designee.
- 3.1.8 All work/services performed by Consultant hereunder shall be performed to the satisfaction of the City Manager or his/her authorized designee. The determination by the City Manager (or his/her authorized designee) shall be final, binding and conclusive on all parties hereto. Final acceptance of work product and services shall require written approval by the City Manager or his/her designee. Payment will only be made to Consultant following written approval of any such final work product and/or services by the City Manager or his/her designee. The City shall be under no obligation to pay for any work/services performed by Consultant which is not satisfactory to the City Manager or his/her designee. The City Manager shall have the right to terminate this Agreement should Consultant's work not be satisfactory to the City Manager (or his/her authorized

designee); provided however, that the City shall have no obligation to terminate and may withhold payment for any unsatisfactory work/services, (even should City not elect to terminate).

3.19 The City shall not be obligated nor liable under this Agreement to any party other than Consultant, for the payment of any monies or the provision of any goods or services.

3.2.0 Additional Services. At its sole option and discretion, the City may request Consultant to provide additional services (and reserves the right to negotiate an additional fee and/or separate commission structure for), subject to mutual agreement of the parties and pursuant to a written amendment to this Agreement, executed by the parties. Additional services may include, without limitation, a request by the City to Consultant for Consultant's assistance with any existing City municipal marketing and/or agreement(s); and assistance on sponsorship agreements, license agreements, etc. that the City negotiates directly with Consultant.

5. The language in Section 4.4 of the Agreement, entitled "Duration and Extent of Agreement Term," is deleted in its entirety, and replaced with the following new language:

The term of this Agreement shall be for an initial term of three (3) years, commencing on the last date of execution of the Agreement by the parties hereto (Commencement Date). At the City Manager's sole option and discretion, the Agreement may be renewed for two (2) additional one (1) year renewal terms, upon the same terms and conditions set forth herein, upon written notice to Consultant, which notice shall be provided no later than thirty (30) days prior to the expiration of the initial term (or the first renewal term, as the case may be).

6. Section 4.7 of the Agreement, entitled "Termination, Suspension and Sanctions," is amended to include the following new Section 4.7.5, entitled "Payment Calculation Upon Termination/Procedure(s) Upon Termination:"

4.7.5 Payment Calculation Upon Termination/Procedure(s) Upon Termination.

4.7.5.1 For Convenience by City or for Cause by Consultant.

In the event the City terminates the Agreement for convenience, or Consultant terminates the Agreement for

cause, Consultant shall be entitled to its Commission Payment(s) on Sponsorship Agreements executed as of the date of termination.

4.7.5.2 For Cause by City.

In the event this Agreement is terminated for cause by the City (as a result of breach by the Consultant), any amount owed Consultant will be calculated based solely upon the fair value to the City provided by Consultant up to the date of termination.

The City shall have the right, at its sole option and discretion, to contract with another consultant to complete (and/or continue, as the case may be) the work/services required under this Agreement. The City shall also have the right to offset the cost of the agreement with a new consultant against Consultant's future or unpaid invoices (including, without limitation, any unpaid Commission Payments).

4.7.5.3 Within thirty (30) calendar days of the effective date of termination of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by the City for work/services performed under this Agreement through the effective date of termination. Failure of Consultant to submit its claims within said thirty (30) calendar days shall negate any liability on the part of City and constitute a waiver by Consultant of any and all right or claims to collect monies that Consultant may rightfully be otherwise entitled to for work/services performed under this Agreement.

4.7.5.4 Upon the effective date of termination of this Agreement, Consultant shall cease all work/services being performed by Consultant (including any of its subcontractors) pursuant to this Agreement. Should Consultant be in negotiations with a potential sponsor at the time of expiration or earlier termination of this Agreement, the City will be allowed, at its discretion, to continue negotiations and/or otherwise follow up with any such potential sponsor(s), without any liability to Consultant (whether financial or otherwise).

4.7.5.5 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City, or to

such person(s) or firm(s) as the City Manager or his/her designee may designate, at no additional cost to the City, of all completed or partially completed documents, papers, records, charts, reports, and any and all other materials or information produced as a result of, or pertaining to, the work/services rendered by Consultant, hereunder, regardless of storage medium (collectively, the Records). Assembly and delivery of the Records to City shall be at Consultant's sole cost and expense. Payment of any compensation due to Consultant shall be conditional upon delivery of any and all Records, as required herein.

4.7.5.6 In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or equity, City's right to seek damages or otherwise pursue Consultant for any default hereunder or other action.

4.7.5.7 UNDER NO CIRCUMSTANCES SHALL CITY BE LIABLE TO CONSULTANT, OR TO ANY THIRD PARTY CLAIMING BY OR THROUGH CONSULTANT, FOR CONSEQUENTIAL DAMAGES OR LOST PROFITS.

7. Section 4.16, entitled "Notices," shall delete the reference to the City's Communications Office (and Jay Moore).
8. Section 4.19, entitled "Limitation of Liability," is hereby amended throughout said section to change the dollar amount of the City's limit on its liability from \$1000 to \$50,000. In addition to being capped at \$50,000, the City's liability for any cause of action for money damages due to an alleged breach by the City of the Agreement shall also be offset by any sums actually paid to Consultant by City through the effective date of termination of the Agreement.
9. Section 4.20, entitled "Dispute Resolution," is hereby added as follows:

4.20 Dispute Resolution.

City and Consultant agree that every effort shall be made to resolve any dispute arising under this Agreement informally through their designated representatives. For purposes of this section, the City's designated representative shall be the City Manager or his/her designee.

If the informal efforts are unsuccessful, then either party may request mediation by submitting a written request to the other party. Within thirty (30) calendar days, of the request of any party, the parties shall mutually agree on the person or alternative dispute resolution agency to conduct the mediation. The initiating party shall then schedule the mediation. The costs of the mediation and fees of the mediator, if any, shall be borne equally by the parties.

Any dispute not resolved through the mediation may proceed to litigation in a court of competent jurisdiction in Miami-Dade County, Florida, unless the parties agree, in writing, to submit the dispute to binding arbitration.

The duties and obligations imposed by this Agreement, and the rights and remedies available hereunder, shall be in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by the City or Consultant shall constitute a waiver of any right or duty afforded either of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed to in writing.

10. Consultant's invoices for any payments due pursuant to this Agreement shall be mailed to:

City of Miami Beach
Office of the City Manager
1700 Convention Center Drive, Miami Beach, Florida 33139
Attention: Hilda Fernandez, Assistant City Manager

11. No Further Modifications. Except as provided in this Amendment No. 1, the Agreement remains unmodified and in full force and effect.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials, as of the date first entered above.

ATTEST:

CITY OF MIAMI BEACH, FLORIDA


City Clerk



Mayor

ATTEST:

THE SUPERLATIVE GROUP, INC.

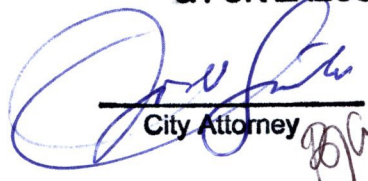

Secretary

Ashley Malone
Print Name


President

Myles C. Gallagher
Print Name

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION


City Attorney

5/21/10
Date

EXHIBIT A
SCOPE OF SERVICES

1. Develop and present within 90 days of agreement execution a list of corporate prospects (local, regional, national and/or international) to pursue, both short term (12 – 18 months) and long term (18-36 months), and develop a priority list and marketing and sales plan for these prospects.
2. Develop, in cooperation with the City's Communications staff, marketing materials (within 90 days of agreement execution)
3. Assist the City in the development of Request for Proposals or "Invitation for Best Value Bids" or any such other process that assists the City in maintaining an open and competitive process for soliciting and securing corporate partnerships, as may be appropriate for each type of municipal marketing opportunity. This would include marketing the opportunity to potential partners, and assisting the City in the evaluation of proposals received.
4. Assist the City in negotiating the municipal marketing partnership agreement terms with selected partners, and in the development of the municipal marketing partnership agreement document.
5. Present prospective municipal marketing partners for the City's consideration.
6. Assist City staff with any community vetting necessary to ensure an understanding of proposed partnerships and address concerns.
7. Assist City staff, as needed, in determining what, if any, City ordinances may require amendment to accomplish some of the goals or particular municipal marketing strategies.
8. Develop a plan for managing the fulfillment obligations for each successful municipal marketing agreement
9. Provide monthly reports that provide a status update on the progress in achieving Item 1 above, including what phase of progress has been made (e.g. research/identification of targets, contact made, meetings held, follow up held, preliminary proposal drafted/discussed, etc.)