

**CONTRACT TO PROVIDE
TOURISM ADVERTISING AND MARKETING CAMPAIGN SERVICES
BETWEEN
SLINGSHOT, LLC
AND THE
OFFICE OF THE GOVERNOR
ECONOMIC DEVELOPMENT AND TOURISM DIVISION**

A.1 DESCRIPTION AND REQUIREMENTS

A.1.1 Contracting Parties

This Contract to provide Tourism Advertising and Marketing Campaign Services (the "Contract") is by and between the Office of the Governor, Economic Development and Tourism Division (OOG), and Slingshot, LLC (Contractor). OOG and Contractor are hereinafter referred to either individually as the "party," or collectively as the "parties."

A.1.2 Description of Services Required

A.1.2.1 Contractor shall successfully conduct a comprehensive, strategic, and results-driven tourism advertising and marketing campaign to promote travel to the State of Texas; provide services to strengthen branding strategies and opportunities; produce innovative advertising ideas, design campaigns, and develop and implement competitive planning and purchasing of print, radio, television, Internet and other media. The campaign shall be directed primarily to consumers and the travel trade industry in domestic and select international markets and clearly position the State of Texas as a premier travel destination, and increase travel to the state.

A.1.2.2 Contractor shall provide all services as described in this Contract, unless amended in writing by OOG and Contractor, in accordance with the Contract, the attached Request for Proposals #300-2-2, and the attached Proposal submitted by Contractor and the accompanying clarifications.

A.1.2.3 The following documents are hereby attached to and incorporated as terms and conditions of performance under this contract:

- a) Attachment A, Request for Proposals #300-2-2 and
- b) Attachment B, Contractor's Proposal and subsequent clarifications.

A.1.2.4 The terms of this Contract and any amendments shall prevail over any other document that governs the performance of the Parties. In the event of a conflict regarding the interpretation of terms related to the performance of OOG or Contractor, the order of precedence shall be the following: the Contract and any amendments; the Request for Proposals; and Contractor's proposal and any subsequent clarification.

A.1.3 Term of the Contract

The initial term of the Contract shall be effective beginning January 1, 2012 through August 31, 2013 (the "Term").

A.1.4 Renewal and Extension Options

- a. **Contract Renewals** – The Contract may be renewed for two (2) additional twenty-four (24) month periods provided both parties agree in writing to do so, prior to the expiration date.
 1. Subject to the availability of funds, OOG and Contractor may mutually agree to renew the performance period of the Contract by extending the expiration date for a maximum renewal of two (2) consecutive 24-month periods. OOG will exercise its option to renew the performance period by providing Contractor with a written advance notice of intent to renew the performance period of the Contract. In the written advance notice of intent, OOG will state the proposed total performance period of the Contract. OOG will follow the written advance notice of intent with a written contract amendment which, when agreed upon in writing by both parties, will extend the expiration date of the performance period. The written contract amendment will be executed no later than the last day of the current contract performance period.
 2. Optional performance period will be limited to that specified above, and shall include the same services, including any amendments, as required in the previous performance period. Unit prices for services provided during optional performance period shall not exceed those quoted for the optional performance period by Contractor in their original proposal.
- b. **Contract Extensions** - Subject to availability of funds, OOG may exercise its right to extend the performance period of the Contract by means of a written notice of intent to Contractor, followed by a contract amendment. An extension may be used: 1) after the expiration of all available contract renewal periods; 2) in the event that OOG and Contractor have decided not to renew the Contract; or 3) in the event that circumstances require a temporary, short-term extension of performance under the Contract. OOG will provide Contractor with a sixty (60) day written advance notice of intent to extend the performance period of the Contract. In this written notice to Contractor, OOG will state the anticipated number of days or months in the extension period and the proposed total performance period of the Contract. The contract amendment will be issued no later than the last day of the current contract performance period. OOG reserves the right to extend the performance period of the Contract, on a month-to-month basis, for a maximum of twelve (12) additional months. All services provided during any extended performance period shall be subject to the same proposal prices, performance requirements and terms and conditions, including any amendments, as required in the previous performance period.

A.1.5 Termination

This Contract shall terminate upon full performance of all requirements contained in this Contract, unless otherwise extended or renewed as provided in accordance with the Contract terms and conditions.

- a. **Termination for Convenience.** OOG and Contractor reserve the right to terminate the Contract at any time for convenience, in whole or in part, by providing sixty (60) calendar days advance written notice (delivered by certified mail, return receipt requested) of intent to terminate. In the event of such a termination, Contractor shall, unless otherwise mutually agreed upon in writing,

cease all work immediately upon the Effective Date of Termination. OOG shall be liable for payments limited only to the portion of work authorized by OOG in writing and completed prior to the Effective Date of Termination, provided that OOG shall not be liable for any work performed that is not acceptable to OOG and/or does not meet contract requirements. All work products produced by Contractor and paid for by OOG shall become the property of OOG and shall be tendered upon request.

b. Termination for Default. OOG may, by written notice of default to Contractor, terminate this Contract, in whole or in part, for cause if Contractor fails to perform in full compliance with the contract requirements, through no fault of OOG. OOG will provide a thirty (30) day written notice of termination to Contractor (delivered by certified mail, return receipt requested) of intent to terminate, and OOG will provide Contractor with an opportunity for consultation with OOG prior to termination.

1. Upon receipt of written notice to terminate, Contractor shall promptly discontinue all services affected (unless the notice directs otherwise) and shall deliver or otherwise make available to OOG, all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by Contractor in performing this Contract, whether completed or in process.
2. Upon termination, OOG may take over the work and pursue the same to completion by contract with another party or otherwise. OOG retains no rights in the proprietary syndicated data developed and owned by Contractor and used in the performance of this Contract except for OOG's normal internal business uses. Contractor will provide OOG with a public release version of its proprietary syndicated data for OOG's public relations and distribution needs.
3. Contractor will be required to reimburse OOG for any additional costs incurred as a result of the default.
4. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Contract to enforce the terms of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless OOG notifies Contractor in writing prior to the exercise of such remedy. Contractor shall remain liable for all covenants and indemnities under the Contract. Contractor shall be liable for all costs and expenses, including court costs, incurred by OOG with respect to the enforcement of any of the remedies listed herein.
5. If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either OOG or Contractor cannot reasonably fulfill the Contract and if the Parties cannot agree to an amendment that would enable substantial continuation of the Contract, the Parties shall be discharged from any further obligations under the Contract.
6. Termination of the Contract for any reason shall not release Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.

c. No Liability Upon Termination

If the Contract is terminated for any reason, OOG and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination.

A.1.6 Amendments and Changes

Any amendment or change to the Contract performance requirements whether by modification or supplement, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representatives of Contractor and OOG. Neither party to this Contract will be bound by any oral statements, contracts, or representations contrary to the written Contract requirements and terms and conditions.

Any alterations, additions, or deletions in the terms and conditions of the Contract shall be by written amendment executed by both Parties and put into effect with a Contract Amendment issued by OOG. The Contractor shall not be entitled to payment for any additional services, work, or products that are not authorized by a properly executed Contract amendment.

A.2 FINANCIAL MATTERS

A.2.1 Contract Amount

OOG shall pay the Contractor up to Forty Four Million Dollars (\$44,000,000.00) (the "total contract amount") from available funds during the Term of this Contract. The total contract amount shall include payments to the Contractor for the Monthly Service Fee and Reimbursables. Total payments for the Monthly Service Fee during the Term of the Contract shall not exceed the sum of Two Million Six Hundred Twenty Six Thousand Four Hundred Seventeen Dollars and Fifty Cents (\$2,626,417.50). Total annual payments for Reimbursables shall not exceed the difference between the total contract amount and the total annual payments for the Monthly Service Fee. Any increases in the contract amount for any given performance period as a result of increases in funding shall be approved in advance and in writing by OOG. The total of any and all such increases shall not exceed 25% of the original amount determined for that contract period.

A.2.2 Appropriations

All obligations of OOG are subject to the availability of legislative appropriations. Contractor acknowledges that the ability of OOG to make payments under the Contract is contingent upon the continued availability of appropriated state funds. Contractor further acknowledges that funds may not be specifically appropriated for the Contract and OOG's continual ability to make payments under the Contract is contingent upon the funding levels appropriated for each particular appropriation period. OOG will use all reasonable efforts to ensure that such funds are available. Contractor agrees that if future levels of funding for OOG are not sufficient to continue operations without any operational reductions, OOG, in its discretion, may terminate the Contract or a pending order under the Contract, either in whole or in part. In the event of such termination, OOG will not be considered to be in default or breach under the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination. OOG shall make best efforts to provide reasonable written advance notice to Contractor of any such contract or order termination. In the event of such a termination, Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the Effective

Date of Termination, either on that particular order if an order is being terminated, or the Contract, if the Contract is being terminated. OOG shall be liable for payments limited only to the portion of work OOG authorized in writing and which Contractor has completed, delivered to OOG, and which has been accepted by OOG. All such work shall have been completed, per the contract requirements, prior to the Effective Date of Termination.

A.2.3 No Debt against the State

This Contract shall not be construed as creating any debt by or on behalf of the State of Texas, and all obligations of the State of Texas, regarding this Contract, are subject to the continued availability of funds, per Section A.2.2.

A.2.4 Purchase of Services

Excluding Contractor's Monthly Service Fee, OOG cannot and does not guarantee the purchase of any services during the Contract performance period (including any optional contract renewal or extension periods). All quantities of services and work products (excluding Contractor's Monthly Service Fee) shall be purchased upon OOG's request, in "as needed" quantities, on an "as needed" basis, as determined by OOG.

A.2.5 Cost Estimates

Prior to making any purchases or incurring any expenditures or costs on behalf of OOG not included in Contractor's Monthly Service Fee, Contractor shall submit a written estimate for advanced, written approval by OOG. All purchases of reimbursable goods and services are subject to OOG's current competitive procurement procedures. Contractor shall follow OOG guidelines for travel, procurement of goods and service, and fiscal year spending requirements. Upon OOG approval, Contractor shall complete the project as stated and agreed upon in accordance with the cost estimate. If OOG feels the cost estimate or any part of the cost estimate provided by Contractor may be unreasonable, OOG has the right to refuse to approve the estimate and/or to acquire quotes on the project, in whole or in part, and require Contractor to use the most reasonable quote or modify Contractor's estimate to make it comparable with the most reasonable quote acquired by OOG. OOG will have the final approval in deciding which scenario will result in a best value project most advantageous to the State.

A.2.6 Service Authorization

The State of Texas shall issue written notice (e.g., purchase order, contract renewal, or extension notice, etc.) authorizing the purchase of services specified in the Contract performance requirements. No authorization for the purchase of any services is provided until Contractor receives such written notice from the state.

Immediately upon receiving the service authorization, Contractor shall identify the person authorized to receive direction from OOG, to manage the work being performed, and to act on behalf of Contractor ("Authorized Representative"). Contractor shall ensure that its Authorized Representative, or his or her designee, is available at all times for consultation with OOG.

A.2.7 Delivery

All deliveries shall be made in accordance with the Contract requirements. If Contractor foresees problems, delays, or adverse conditions which may prevent Contractor from meeting delivery requirements, Contractor shall give written notice to OOG which explains the reason(s) for the delay and which provides an alternate delivery for OOG approval. OOG has the right to extend delivery date

if reasons appear valid to OOG, in its sole discretion. Contractor shall keep OOG advised at all times of delivery status. Default in promised delivery (without accepted reasons) authorizes OOG to purchase services elsewhere and charge full increase, if any, in costs and handling to defaulting Contractor. No substitutions or cancellations shall be permitted without prior written approval of OOG. Default in delivery may result in termination of the Contract, for reason of default, in accordance with paragraph A.1.5(b).

A.2.8 Acceptance of Work Performed

All work performed by Contractor shall be accepted in writing by OOG (or designee) before payment will be approved. Acceptance shall be based upon Contractor's compliance with all contract requirements. OOG will not pay for work which is of poor quality and/or fails to fully comply with the contract requirements. Should OOG determine Contractor's work to be of poor quality and/or Contractor fails to perform services which comply with the contract requirements, OOG may require Contractor to promptly re-perform the services in conformity with the contract requirements, at no cost to OOG, or OOG may refuse to pay for Contractor's work. OOG may further require new performance or a refund in the event that poor quality or unacceptable work is discovered after payment has been made. Failure to perform work in compliance with all Contract requirements may result in termination of the Contract for reason of default, in accordance with A.1.5(b).

A.2.9 Invoicing and Payment

- a. Contractor shall submit itemized monthly invoices for all services completed, delivered to, and accepted by OOG, per the requirements of the Contract.
- b. Each invoice shall reference OOG RFP #300-2-2. All invoices shall be made payable to Contractor. To be a proper invoice that may be accepted and paid, the invoice must include the following information and/or attachments:
 - (1) Name and address of Contractor.
 - (2) Contractor's Texas Identification Number (TIN).
 - (3) Contractor's invoice remittance address.
 - (4) A description of the services completed and delivered by Contractor, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, Contractor must also include the payment number (e.g., 1 of 36).
- c. If an invoice does not meet this Section's requirements, OOG will send Contractor written notice with the improper invoice within 21 calendar days after receipt of the invoice. The notice will contain a description of the defect or impropriety and any additional information Contractor needs to correct the invoice.
- d. Invoices and payment inquiries shall be submitted directed to:
Accounts.Payable@Governor.state.tx.us or by mail to:
Office of the Governor
Financial Services Section
P.O. Box 12878
Austin, Texas 78711-2878
- e. Each invoice is subject to review and approval by OOG before payment will be processed. Normal payment processing time for services which have been completed, delivered to, and approved by OOG is thirty (30) calendar days after receipt of a valid, uncontested invoice. OOG will incur no

penalty for late payment if payment is made in thirty (30) or fewer days from receipt of goods or services and an uncontested invoice. Payments shall be made consistent with Chapter 2251, Texas Government Code.

- f. Contractor shall bill and OOG will make payment to Contractor for approved costs incurred in accordance with the following:
 - 1. Monthly Service Fee - OOG will pay the monthly service fee, as stated in this Contract. Invoices for partial month's services shall be pro-rated and paid based upon a 30-day work period (month).
 - 2. Reimbursable - All purchases made or expenses incurred by the contractor, on OOG's behalf, including those made by the contractor's subcontractors, shall be billed at net costs. OOG will make payment to the contractor for such reimbursable costs for which OOG has pre-approved in writing, a contractor's estimate (including all supporting documentation) and for which the contractor has incurred costs, provided such services have been approved, completed, and received by OOG during the performance period. The contractor's invoices submitted to OOG for payment shall include the following information:
 - a. Original approved project estimate (with OOG's written approval) and documentation of any variation from estimate, including signed change order, if applicable.
 - b. Proper bid documentation, when applicable.
 - c. Receipts for all purchases and expenditures.
- g. Reimbursable items may include sales taxes on expenses, services, and travel incurred by Contractor on behalf of and pre-approved in writing by OOG.
- h. Any invoice that does not comply with the minimum requirements stated above may not be considered valid and may be subject to rejection and/or return to Contractor.
- i. Upon satisfactory completion by Contractor of all the tasks identified in the Contract, acceptance of such tasks by OOG, and delivery of the release of claims, Contractor will be paid the unpaid balance of any money due for such tasks in accordance with the payment terms outlined in the Contract. Contractor agrees that determination of satisfactory completion will be based entirely on the judgment of the staff of OOG. Contractor further agrees to exempt OOG and its staff from damages or claims arising from the enforcement of this provision.
- j. Advance payments for services, including but not limited to media placements and outside productions costs, under this Contract, shall be made to Contractor only in compliance with State of Texas Purchasing Policies and Procedures.

A.2.10 Disputed Invoices

As stated above, Contractor will receive notice of an error in an invoice submitted for payment by not later than the 21st day after the date the invoice was received by the state. If an invoice dispute is resolved in favor of Contractor, Contractor is entitled to receive interest on the unpaid balance of the invoice, beginning on the date the invoice became overdue, pursuant to Texas Government Code §2251.021. If a dispute is resolved in favor of OOG, Contractor shall submit a corrected invoice that

must be paid in accordance with §2251.021. The unpaid balance accrues interest if the corrected invoice is not paid by the appropriate date.

A.2.11 Refunds

If OOG determines that it has overpaid Contractor under the Contract, Contractor shall refund that amount to OOG. OOG may offset and deduct the amount of the overpayment from any amount owing, as a reimbursement, but unpaid to Contractor. Contractor shall refund any overpayment within 30 calendar days of receipt of the notice of the overpayment.

If any reimbursement, or a portion of a reimbursement, is disallowed as a result of an audit finding that Contractor failed to follow the requirements for the Contract, then Contractor agrees that OOG may recoup the disallowed amount from funds payable under the Contract, to the extent the disallowed amount was incurred by OOG. If an audit identifies a disallowed amount after the expiration date of the Contract, OOG shall send Contractor notice of the audit results and specifically identify the amount that must be refunded by Contractor. Contractor shall refund the disallowed amount within 30 calendar days of receipt of the notice.

A.2.12 Accounting Systems

Contractor shall have an accounting system that accounts for costs in accordance with United States generally accepted accounting principles. Contractor's accounting system must include an accurate and organized file/records system for accounting and financial purposes for providing backup materials for billings.

A.2.13 Inspections

Throughout the contract period, all services, including all work products, shall be subject to inspection and test by authorized OOG representatives. OOG reserves the right, at all reasonable times, to have access to and inspect all goods and services being provided by Contractor and its subcontractors, including but not limited to, all facilities, equipment, supplies, and pertinent records or written material relating to the contract requirements. Failure of Contractor and its subcontractors to provide reasonable access to authorized OOG representatives who desire to perform such inspections or tests, or failure of services to comply with the contract terms shall be deemed unacceptable. In the event inspected or tested services are deemed unacceptable by OOG for failure to meet or exceed all contracts requirements, the cost of the sample used and the cost of testing shall be borne by Contractor.

A.2.14 Audit Requirements

Pursuant to Texas Government Code §2262.003, the State Auditor's Office, or successor agency, may conduct an audit or investigation of Contractor or any other entity or person receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds by Contractor or any other entity or person directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Contractor or other entity that is the subject of an audit or investigation must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. The Contract may be amended unilaterally by OOG to comply with any rules and procedures of the State Auditor's Office in the implementation and enforcement of §2262.003. Contractor shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.

A.2.15 Records Retention, Access to Records

- a. Contractor shall maintain and make available for review, inspection, and/or audit all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract, including negotiated changes or amendments thereto, in accordance with accepted professional practices. Contractor shall retain all such records for a period of four (4) years after the expiration of the Contract, or until OOG or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. Contractor shall also maintain and make available the financial information and data used by it in the preparation or support of any cost submission or cost, price or profit analysis required by the State of Texas under this contract or any negotiated sub contract or change order and a copy of the cost summary submitted to OOG. The State of Texas, through any of its duly authorized representatives, shall have access to such books, records, documents, and other evidence for the purpose of review, inspection, copying, and/or audit. All such information shall be handled by the parties in accordance with good business ethics. Contractor shall provide proper facilities within the State of Texas for such access and inspection. Contractor shall also follow procedures developed by OOG's audit staff
- b. Contractor agrees to include this Section in all its contracts and all subcontracts there under and all change orders directly related to project performance.
- c. Contractor agrees to the disclosure of all information and reports resulting from access to records pursuant to this Section to the State of Texas. Where the audit concerns Contractor, the auditing agency will afford Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.
- d. Records shall be maintained and made available during the entire performance period of this contract and until four (4) years from date of final OOG payment for the services provided under this contract. In addition, those records which relate to any dispute, litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until completion of such action and resolution of all issues which arise from it, or until the end of the aforementioned four (4) year period, whichever is later.
- e. Access to records is not limited to the required retention periods. The authorized representatives designated in A.2.15 shall have access to records at any reasonable time for as long as the records are maintained.
- f. The right of access applies to financial records pertaining to all subcontracts and all subcontract change orders and amendments. In addition, this right of access to all records pertains to all subcontracts, subcontract change orders and subcontract amendments, to the extent the records reasonably relate to subcontractor performance, if there is any indication that fraud, gross abuse, or corrupt practices may be involved; or if the subcontract is terminated for default or for convenience.
- g. Contractor shall allow such access to the work product it has created for OOG hereunder as may be necessary to enable any new OOG Contractor of Tourism Advertising and Marketing Campaign services to accomplish a smooth transition to the new Contractor.

A.3 TERMS AND CONDITIONS

A.3.1 Governing Law and Venue

Contractor agrees that the Contract in all respects shall be governed by and construed in accordance with the laws of the State of Texas, except for its provisions regarding conflicts of laws. Notwithstanding any other terms in this contract, or any exhibits or addenda hereto, or any other documents included in this contract, all claims, counterclaims, disputes, and other matters in question between OOG and Contractor arising out of or relating to the contract or the breach thereof, will be decided in a court of competent jurisdiction in Travis County, Texas. The parties may agree to submit such claims, counterclaims, disputes, and other matters in question to arbitration or mediation, but only by mutual written contract.

A.3.2 Licenses, Permits and Laws

Contractor warrants and covenants that it has obtained all permits, approvals, and licenses, necessary for its lawful performance of its obligations under this contract, without costs to OOG. Contractor shall maintain such licenses during the term of this contract without additional expense to OOG. Contractor shall comply with any applicable federal, state, county, local and municipal laws, ordinances, resolutions, codes, decisions, orders, rules, and regulations, in connection with the work required by this contract.

A.3.3 Political Activity

None of the activities or performances rendered hereunder by Contractor shall involve lobbying or political activity, including but not limited to, any activity to further the election or defeat of any candidate for public office, or any activity undertaken to influence the passage, defeat, or final contents of legislation.

A.3.4 Sectarian Activity

None of the activities or performances rendered hereunder by Contractor shall involve any sectarian or religious activity.

A.3.5 Americans with Disabilities Act

Contractor shall provide reasonable accessibility for persons with disabilities in compliance with the Americans with Disabilities Act, where applicable.

A.3.6 Proprietary Right, Copyright, and Publications

All work performed under this contract shall become the property of OOG. All intellectual property rights, including publication rights, to all products developed under this contract shall be retained by OOG. The contractor shall ensure duplication and duplication rights are secured to OOG from all contracts and subcontractors prior to delivery of products to OOG.

Contractor shall not assert rights at common law or in equity or establish any claim to statutory copyright in any material or information developed in performance of the contract. OOG shall have the right to use, copyright, reproduce, publish, or distribute any or all of such information and other materials without the necessity of obtaining any permission from Contractor and without expense and

charge. OOG reserves the right to authorize others to use, publish, or reproduce products developed hereunder.

As this Contract is terminating, Contractor shall work cooperatively with OOG and any new contractor to which OOG may award its Tourism Advertising and Marketing Campaign Services contract in the future so that there is a smooth transition to the new contractor. Contractor's failure to secure all required duplication and duplication rights to OOG from all contracts and subcontracts, prior to delivery of products, shall be grounds for termination of this Contract, for reason of default, in accordance with Section A.1.5(b).

A.3.7 Patent, Trademark, Copyright and Other Infringement Claims

In performing work under this Contract, Contractor shall comply with all laws, rules, and regulations relating to intellectual property, and shall use its best efforts to prevent infringement on any third-party's intellectual property rights. Contractor shall indemnify, save, and hold harmless OOG and the State of Texas from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations, or infringements arising from OOG's or Contractor's use of or acquisition of any services or other items provided to OOG by Contractor or otherwise to which OOG has access as a result of Contractor's performance under this Contract, provided that OOG shall notify Contractor of any such claim within a reasonable time of OOG's receiving notice of any such claim.

If Contractor is notified of any claim subject to this section, Contractor shall notify OOG of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Contractor without OOG prior written approval. Contractor shall reimburse the OOG and the State of Texas for any claims, damages, losses, costs, expenses, judgments, or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. Contractor shall pay all reasonable costs of the State's counsel and shall also pay costs of multiple counsels, if required to avoid conflicts of interest. Contractor represents that it has determined what licenses, patents, and permits are required under this Contract and has acquired all such licenses, patents, and permits.

Contractor shall include provisions adequate to effectuate the purposes of Sections A.3.6 and A.3.7 in all subcontracts under this Contract in the course of which intellectual property may be produced or acquired. Such provisions shall make it clear that any intellectual property created under such subcontracts belongs solely to OOG.

A.3.8 Data and Publicity

- a. Contractor shall not provide information generated or otherwise obtained in the performance of its responsibilities under this Contract to any parties other than OOG and the State of Texas through its authorized agents except as otherwise provided by this Contract or after obtaining the prior written approval of OOG.
- b. Contractor agrees to notify and obtain the written approval of OOG prior to releasing any information to the news media regarding the activities being conducted under this Contract.

A.3.9 Release of Information

Upon contract award, all information submitted with Contractor's original proposal response becomes part of this contract and becomes public record subject to disclosure under the Public Information Act, unless an exception under such Act is applicable. The production of any materials under this contract

shall not have the effect of violating or causing OOG to violate any law, including the Public Information Act.

A.3.10 Bankruptcy

Should Contractor become insolvent, or if proceedings in bankruptcy should be instituted by or against Contractor, the remaining or unexpired portion of the contract shall, at the election of OOG, be terminated.

A.3.11 Contractor and Subcontractor Responsibilities

Contractor and any subcontractor hired to provide electronic services shall provide OOG a signed affidavit and provide relevant documentation that work will not be performed on or for businesses with websites whose content is adult-oriented. Contractor and subcontractor shall also agree in writing that OOG may conduct random, unannounced on-site audits of it to ascertain whether it does perform work on or for adult websites. Further, Contractor and subcontractor performing work for OOG after the date of this Contract shall agree in writing to perform its services for OOG and its other clients in a legal and non-fraudulent manner. Contractor and subcontractor shall not conduct any marketing or promotional activity for OOG that places illegal gambling, drinking, prostitution, or drug use in a favorable light.

A.4 CONTRACT MANAGEMENT

A.4.1 Contract Managers

A.4.1.1 OOG Contract Manager

OOG Contract Manager has the authority to:

- sign Controlled Correspondence
- serve as the day-to-day point of contact
- coordinate quality control reviews
- approve invoices
- coordinate meetings with the Respondent
- investigate complaints

OOG Contract Manager shall have no authority to agree to any:

- Contract amendment
- pricing change

A.4.1.2 Contractor's Contract Manager

Contractor shall identify its Contract Manager to OOG in writing within 10 days of the issuance of the Purchase Order. Changes to Contractor's Contract Manager shall hereafter be documented by Contractor through Controlled Correspondence. Contractor's Contract Manager has the authority to:

- make decisions regarding the deliverables required by the Contract
- sign Controlled Correspondence
- serve as the day-to-day point of contact
- coordinate quality control reviews
- coordinate meetings with OOG
- investigate complaints

A.4.2 Controlled Correspondence

In order to track and document requests for decisions and/or information pertaining to the Contract, and the subsequent response to those requests, OOG and Contractor shall use Controlled Correspondence. OOG shall manage the Controlled Correspondence for the Contract. For each Controlled Correspondence document, OOG shall assign a tracking number and the document shall be signed by the appropriate Party's Contract Manager.

Controlled Correspondence shall not be used to change pricing or alter the terms of the Contract. Controlled Correspondence shall not be the basis of a claim for equitable adjustment of pricing. Any changes that involve the pricing or the terms of the Contract must be by a properly executed Contract amendment. However, the Controlled Correspondence process may be used to document refinements and interpretations of the provisions of the Contract, to document the cost impacts of proposed changes.

Controlled Correspondence documents shall be maintained by both Parties in ongoing logs and shall become part of the normal status reporting process. Any communication not generated in accordance with such process shall not be binding upon the Parties and shall be of no effect.

A.4.3 Notices and Liaisons

A.4.3.1 Delivery of Written Notices

Any notice required or permitted to be given under the Contract by one Party to the other Party shall be in writing and shall be addressed to the receiving Party at the address hereinafter specified. The notice shall be deemed to have been given immediately if delivered in person to the recipient's address hereinafter specified. It shall be deemed to have been given on the date of certified receipt, if placed in the United States mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the receiving Party at the address hereinafter specified.

A.4.3.2 Notice to Contractor

Within 10 days of the issuance of the Purchase Order, Contractor shall identify in writing to OOG the address and contact person for all notices. If there is any change to this information during the term of the contract, Contractor shall notify OOG by Controlled Correspondence.

A.4.3.3 Notice to OOG

OOG's address for all purposes, (registered or certified mail with return receipt is not required for copies), under this Contract and for all notices hereunder shall be:

Office of the Governor
P. O. Box 12428 (physical address: 1100 San Jacinto Blvd)
Austin, Texas 78711-2428 (physical: 78701)

A.4.4 Subcontracting Approval

In the event that Contractor should determine that it is necessary or expedient to execute additional or alternative subcontracts for any of the performances under the Contract, Contractor shall submit a revised Subcontracting Plan for prior approval before executing any subcontracts. Contractor shall also transmit to OOG for review and prior OOG approval a true copy of the subcontract it proposes to execute with a subcontractor.

Contractor, in subcontracting for any performances specified herein, expressly understands and acknowledges that in entering into such subcontracts, OOG is in no manner liable to any subcontractors of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all terms of this Contract and the Request for Proposals.

A.4.5 No Implied Authority

Any authority delegated to Contractor by OOG is limited to the terms of the Contract. Contractor shall not rely upon implied authority and specifically is not delegated authority under the Contract to: (1) make public policy; (2) promulgate, amend, or disregard OOG program policy; or (3) unilaterally communicate or negotiate, on behalf of OOG, with any member of the U.S. Congress or any member of their staff, any member of the Texas Legislature or any member of their staff, or any federal or state agency.

A.4.6 Cooperation with OOG

Contractor must ensure that it cooperates with OOG and other state or federal administrative agencies, at no charge to OOG, for purposes relating to the administration of the Contract. Contractor agrees to reasonably cooperate with and work with OOG's contractors, subcontractors, and third party representatives as requested by OOG.

A.4.7 Dispute Resolution

The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used, as further described herein, by OOG and Contractor to attempt to resolve any claim for breach of contract asserted by Contractor. If Contractor's claim for breach of contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, Contractor shall submit written notice, as required by Chapter 2260, to the Executive Director of the Economic Development and Tourism Division at OOG or his designee. The notice shall also be given to the individual identified in the Contract for receipt of notices. Compliance by Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

The contested case process provided in Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for an alleged breach of contract by OOG if the Parties are unable to resolve their disputes as described above.

Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the contract by OOG nor any other conduct of any representative of OOG relating to the contract shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under the contract, OOG and Contractor shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the Parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by OOG and Contractor within fifteen (15) days after written notice by one of them demanding mediation under this Section. Contractor shall pay all costs of the mediation unless OOG, in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, OOG and Contractor may use a non-binding form of dispute

resolution other than mediation. The purpose of this Section is to reasonably ensure that OOG and Contractor shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. OOG's participation in, or the results of, any mediation or other non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by OOG of (1) any rights, privileges, defenses, remedies or immunities available to OOG as an agency of the State of Texas or otherwise available to OOG; (2) OOG's termination rights; or (3) other termination provisions or expiration dates of the contract.

Notwithstanding any other provision of the contract to the contrary, unless otherwise requested or approved in writing by OOG, Contractor shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes; however, Contractor may suspend performance during the pendency of such claim or dispute if Contractor has complied with all provisions of Texas Government Code §2251.051 and such suspension of performance is expressly applicable and authorized under that law.

A.4.8 Fraud, Waste, and Abuse

Contractor represents and warrants that it has read and understood and shall comply with OOG's Anti-Fraud Policy, found at: <http://www.window.state.tx.us/ssv/ethics.html>, as such Policy currently reads and as it is amended throughout the term of the Contract.

A.4.9 Renegotiation of Price

OOG shall monitor market prices and prices paid by other states for substantially similar goods and services during the term of the Contract. If OOG determines that substantially similar goods and services are selling for meaningfully lower prices than the prices established in the Contract, OOG may initiate price renegotiations with Contractor and amend the Contract to reflect a new, lower price, if agreed to by the Parties.

A.4.10 Changes in Circumstances for Contractor

A.4.10.1 Contractor shall promptly notify OOG of any change of name in which it holds this Contract or of a sale of a majority control of Contractor to another entity through Controlled Correspondence. Contractor, in its notice, shall describe the circumstances of the name change or sale, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract for Contractor, Contractor shall identify the new personnel and provide resumes to OOG, if resumes were originally required by the RFP. OOG may request other information about the change and its impact on the Contract and Contractor shall supply the requested information within five (5) working days of receipt of the request.

A.4.10.2 An Addendum to this Contract shall be required upon a change of name which shall specifically state that no other terms or conditions of this Contract are thereby changed. Contractor shall not assign this Contract pursuant to this section. OOG may terminate the Contract due to a sale of or change to Contractor that materially alters Contractor's ability to perform under the Contract. OOG has the sole discretion to determine if termination is appropriate.

A.4.10.3 Contractor shall promptly notify OOG in the event that any representations and warranties provided in this Contract are no longer true and correct. Contractor acknowledges that all of its representations and warranties contained in any part of its Proposal and this Contract are material and have been relied upon by OOG in selecting Contractor for the award of this Contract. Further,

Contractor warrants and represents that all of its statements and representations made to OOG prior to being awarded the Contract, and those made during the negotiation of this Contract, are material, true and correct.

A.4.11 News Releases

OOG does not endorse any vendor, commodity, or service. News releases pertaining to this transaction and/or advertisements, publications, declarations and any other pronouncements by Contractor using any means or media mentioning the State of Texas or OOG must be approved in writing by OOG prior to public dissemination.

A.5 CONFIDENTIALITY AND SECURITY

Contractor should not receive any sensitive or confidential information under the Contract. Any information Contractor compiles or creates as a result of the Contract must be maintained and protected in accordance with any federal, state, or local laws and regulations that apply. Contractor shall establish a method to secure the confidentiality of records and other information relating to clients in accordance with applicable federal and state laws, rules, and regulations.

The obligations of Contractor under this Security and Confidentiality section shall survive this Contract and shall be included in all subcontracts.

A.6 ADDITIONAL TERMS AND CONDITIONS

A.6.1 Civil Rights

Contractor agrees that no person shall, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. Contractor shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor."

A.6.2 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion

OOG is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's Excluded Parties List System (EPLS), <http://www.epls.gov>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

Contractor certifies that Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal,

state or local governmental entity and Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.

A.6.3 Environmental Protection

Contractor shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 *et seq.*) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 *et seq.*).

A.6.4 Certifications

A.6.4.1 Child Support Obligations

Under §231.006, Texas Family Code, (relating to child support) Contractor certifies that it is not ineligible to receive a payments under the Contract and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.

A. 6.4.2 Texas Corporate Franchise Tax Certification

Contractor certifies that its Corporate Texas Franchise Tax payments are current, or that it is exempt from or not subject to such tax.

A. 6.4.3 Certification Concerning Dealings with Public Servants

Contractor certifies that it has not given and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this transaction.

A. 6.4.4 Certification Concerning Financial Participation

Pursuant to Texas Government Code §2155.004, Contractor certifies that the individual or business entity named in its Proposal is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate. Section 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specifications for the Contract.

A. 6.4.5 Certification Concerning Hurricane Relief

Sections 2155.006 and 2261.053, Government Code, prohibit OOG from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Texas Government Code §418.004, occurring after September 24, 2005. Under Texas Government Code §2155.006, Contractor certifies that the individual or business entity named in its Proposal is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.

A.6.5 Antitrust and Assignment of Claims

Pursuant to 15 U.S.C. §1, *et seq.*, and Texas Business & Commerce Code §15.01, *et seq.*, Contractor affirms that it has not violated the Texas antitrust laws or federal antitrust laws and has not communicated its Proposal for the Contract directly or indirectly to any competitor or any other person engaged in such line of business. Contractor hereby assigns to OOG any claims for overcharges associated with the Contract under 15 U.S.C. §1, *et seq.*, and Texas Business & Commerce Code §15.01, *et seq.*

A.6.6 Debts and Delinquencies

As required by Texas Government Code §2252.903, Contractor agrees that any payments due under the Contract shall be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.

A.6.7 Independent Contractor

This Contract shall not render Contractor an employee, officer, or agent of OOG for any purpose. Contractor is and shall remain an independent contractor in relationship to OOG. OOG shall not be responsible for withholding taxes from payments made under the Contract. Contractor shall have no claim against OOG for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

A.6.8 No Assignment by Contractor

Contractor shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from OOG.

A.6.9 Indemnification and Liability

Contractor shall defend, indemnify, and hold harmless the State of Texas, its officers, and employees, and OOG, its officers, and employees and contractors, from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, including without limitation attorneys' fees and court costs, arising out of, connected with, or resulting from any acts or omissions of Contractor or any agent, employee, subcontractor, or supplier of Contractor in the execution or performance of the Contract. Contractor shall coordinate its defense with the Texas Attorney General as requested by OOG.

This section is not intended to and shall not be construed to require Contractor to indemnify or hold harmless the State of Texas or OOG for any claims or liabilities resulting from the negligent acts or omissions of OOG or its employees.

A.6.10 Contractor Liability for Damage to Government Property

Contractor shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. Contractor shall notify OOG Contract Manager in writing of any such damage within one (1) calendar day.

A.6.11 Force Majeure

OOG and Contractor shall not be responsible for performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of OOG.

In the event of an occurrence under this Section, Contractor will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and Contractor continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Contractor shall immediately notify OOG Contract Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

A.6.12 Buy Texas

In accordance with Texas Government Code §2155.4441, Contractor shall, in performing any services under the Contract, purchase products and materials produced in Texas when they are available at a comparable price and in a comparable period of time to products and materials produced outside Texas.

A.6.13 Miscellaneous Terms and Conditions

A.6.13.1 Permits

Contractor shall be responsible, at Contractor's expense, for obtaining any and all permits or licenses required by city, county, state, or federal rules, regulations, law, or codes that pertain to the Contract.

A.6.13.2 Electrical Items

All electrical items provided by Contractor to OOG or a Customer under the Contract must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC, or NEMA.

A.6.13.3 Executive Head

Pursuant to Texas Government Code §669.003, OOG may not enter into a contract with a person who employs a current or former Executive Head of a state agency until four years have passed since that person was the executive head of the state agency. Contractor certifies that it does not employ any person who was the Executive Head of a state agency in the past four years.

A.6.13.4 Terminated Contracts

Contractor certifies that it has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or regulations of any state or federally funded program within the past five (5) years nor is it currently prohibited from contracting with a governmental agency. If Contractor does have such a terminated contract, Contractor shall identify each and provide an explanation for the termination.

A.6.14 Non-Waiver of Rights

Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair,

preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or succeeding breach.

A.6.15 No Waiver of Sovereign Immunity

The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by OOG or the State of Texas of any immunities from suit or from liability that OOG or the state may have by operation of law.

A.6.16 Severability

If any provision of the Contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.

A.6.17 Dealing with Public Servants

Contractor must comply with all applicable laws, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) Texas Penal Code §36.09, which prohibits the offering or conferring of benefits to public servants; (iii) Texas Government Code §2155.003, which prohibits the chief clerk or any other employee of OOG from having an interest in, or in any manner be connected with, a contract or bid for a purchase of goods or services by an agency of the state or accept from any person to whom a contract has been awarded anything of value or a promise, obligation, or contract for future reward or compensation.

A.6.18 Insurance and Other Security

Contractor represents and warrants that it will obtain and maintain for the term of the Contract all insurance coverage required to ensure proper fulfillment of the Contract and its liabilities there under. Contractor shall insure any of its motor vehicles used to fulfill its duties under the Contract and ensure that its subcontractors do the same. Such insurance shall comply with Texas statutory requirements and also cover any cargo being delivered to Customers.

Contractor represents and warrants that all of the above coverage will be obtained from companies that are licensed in the state of Texas, have an "A" rating from Best, and are authorized to provide the coverage. Contractor shall furnish proof of insurance upon request of a Customer or OOG.

A.6.19 Deceptive Trade Practices; Unfair Business Practices

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com. Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

A.6.20 Immigration

Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 regarding employment verification and retention of verification forms

for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract.

A.6.21 Federal, State, and Local Requirements

Contractor shall demonstrate onsite compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Contractor is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation insurance coverage. Contractor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Contractor or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.

A.6.22 Felony Criminal Convictions

Contractor represents and warrants that Contractor has not and Contractor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised OOG as to the facts and circumstances surrounding the conviction.

[Rest of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties have executed this Contract as of the effective date stated above.

OFFICE OF THE GOVERNOR
ECONOMIC DEVELOPMENT
AND TOURISM DIVISION

SLINGSHOT, LLC

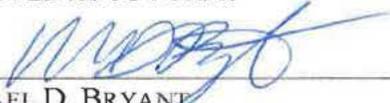


JEFFREY S. BOYD
CHIEF OF STAFF



JAMES O. HANNAY
CEO

APPROVED AS TO FORM:



MICHAEL D. BRYANT
ASSISTANT GENERAL COUNSEL

ATTACHMENT A

REQUEST FOR PROPOSALS #300-2-2

ATTACHMENT B

CONTRACTOR'S PROPOSAL AND SUBSEQUENT CLARIFICATIONS

**RFP No. 300-2-2
Attachment D
Compensation Schedule**

RESPONDENT NAME:

Slingshot, LLC

AUTHORIZED RESPONDENT SIGNATURE:

Tony Palmer

DATE: 11.22.2011

MONTHLY SERVICE FEES	QUANTITY	UNIT	UNIT PRICE Per Month	EXTENSION
BASE PERIOD* 1/1/2012 through 8/31/2013	20	MO	\$ 131,320.88	\$ 2,626,417.50
RENEWAL OPTION NO. 1 9/1/2013 through 8/31/2015	24	MO	\$ 131,320.88	\$ 3,151,701.12
RENEWAL OPTION NO. 2 9/1/2015 through 8/31/2017	24	MO	\$ 131,320.88	\$ 3,151,701.12

- Length of Base Period subject to change depending on final effective date of contract



TEAM TEXAS

Liz Reid, Purchaser
Texas Procurement and Support Services
Office of the Governor
Economic Development and Tourism
P.O. Box 13186
Austin, TX 78711-3186

Re: Best and Final Offer (BAFO) for RFP# 300-2-2

Dear Liz,

Thank you for the opportunity to provide this Best and Final Offer (BAFO) proposal from Slingshot, LLC and Team Texas for the term of the Tourism Marketing and Advertising Campaign Services contract.

For ease of comparison versus our original fee proposal, we've attached our original response to RFP Section A.5.7 (Compensation and Fees), revised to include a BAFO column for FY 2012 (1.1.12-8.31.12) and a BAFO column for FY 2013 (9.1.12-8.31.13). We've also attached RFP Attachment D (Compensation Schedule) revised to reflect our BAFO fee proposal.

To summarize, our original agency fee proposal to cover the detailed scope of work outlined in Section A.5.7 was \$1,105,860 for the eight month period in FY 2012 and \$1,658,790 for each 12 month period thereafter. These fees included a 20% discount on Slingshot manpower costs, reflecting our desire to maximize available dollars for working media and other consumer facing marketing programs and our belief that our deep knowledge of the State and understanding of the policies and procedures of OOG would allow us to operate with maximum efficiency. This 20% discount would yield savings to OOG of \$276,465.33 in FY 2012 and \$414,698.00 for each 12 month period thereafter.

That said, we are prepared to further reduce our fees by an additional 5% off our original proposal, or \$55,293 in FY 2012 and \$82,939.50 in each 12 month period thereafter. These additional savings will yield total savings to OOG of \$331,758.33 in FY 2012 and \$497,637.50 in each 12 month period thereafter, and a BAFO agency fee of \$1,050,567.00 for FY 2012 and \$1,575,850.50 for each 12 month period thereafter.

We do so in a good faith effort to emphasize our strong desire to work with OOG, our conviction that our strategic thinking and creative work will drive increased visitation to Texas, our commitment of our most talented and senior managers to that end, and our very respectful assertion that no agency resource has more experience or a better track record of success serving OOG than Team Texas.

Thank you again for considering Slingshot and Team Texas and please let us know if you have any additional questions or requests.

Sincerely,

Tony Balmer
VP, Client Services

**RFP No. 300-2-2
Attachment D
Compensation Schedule**

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Slingshot, LLC

AUTHORIZED RESPONDENT SIGNATURE:



DATE: 11.22.2011

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Liz Reid, Purchaser
Texas Procurement and Support Services
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P.O. Box 13186
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Thank you again for considering Slingshot and Team Texas and please let us know if you have any additional questions or requests.

Sincerely,

Tony Balmer
VP, Client Services



Domestic Media Management

- National General Vacation
- National Senior/Winter
- Regional Howdy Neighbor
- Local spot promotional campaign support
- Meetings and Conventions

International Media Management

- Canada
- Europe (Germany, UK, France)
- Asia (Japan, China)
- Mexico

Integrated Production

- Annual travel guide shoot
- Campaign photography
- Content development (video/animation)
- Vendor management and negotiation
- Photography management and negotiation
- Talent management and negotiation
- Quality assurance
- Broadcast Management
 - TV shoot
 - Radio
 - Edit/post
 - Dubs, shipping and storage
- Print
 - Domestic
 - International
- Interactive Production Management
 - Digital vendor management
 - TravelTex.com maintenance and updates
 - o Usability testing
 - o Redesign
 - o Quarterly database updates
 - o Error capturing and reporting
 - o New content updates
 - o Feature development and updates
 - o Site hosting management
 - o Social media integration
 - o Search engine optimization
 - o Monthly reporting
 - o Hosting
 - m.traveltex.com site maintenance/updates

- o Redesign
- o Streamlined mobile process
- o New content updates as needed
- o Mobile web app featuring click to call implementation
- International website management
- Travel.state.tx.us maintenance
 - o Reskin
 - o Administrative functionality
 - o Hosting management
- Display
 - o Rich media banner development and trafficking
 - o Creative optimization and testing
 - o Promotional high impact media placement production
- Email program and vendor management
 - o Email development and coding
 - o Email blasting
 - o Database/list management
 - o Tracking and reporting
 - o Suppression management

Social Media Development and Management

- Social presence strategy development
- Facebook brand and applications
- Twitter, YouTube, Instagram, Location-based brand pages
- Youtube channel to support videos
- Content calendar development and execution process plan
- Monitoring and reporting on Facebook or Twitter applications and YouTube channel performance

Miscellaneous

- Travel guide, accommodations guide and map
 - Creative design for covers
 - Execution
- Promotional and licensed merchandise management
 - Vendor solicitation
 - Production management
- Miscellaneous project management

- Award show entry coordination
- Golf guide
- Domestic tour and meeting guide
- International tour guide
- Miscellaneous tradeshow campaigns

Call Center

- Vendor management
- Performance evaluation

Promotional Program (i.e. experiential)

- Conceptual development
- Vendor management
- Production and execution management

Future Planning

- Ongoing monitoring of emerging media and travel trends
- Quarterly competitive review

The following services will not be covered within the Slingshot agency fee:

- Photography, illustration, retouching, artwork creation, etc.
- Broadcast (video and audio) development, production, direction, editing, etc.
- Interactive development, including website coding, CMS, RICH media, HTML, etc.

**AMENDMENT NUMBER ONE
TO THE
CONTRACT TO PROVIDE
TOURISM ADVERTISING AND MARKETING CAMPAIGN SERVICES
BETWEEN
SLINGSHOT, LLC
AND THE
OFFICE OF THE GOVERNOR
ECONOMIC DEVELOPMENT AND TOURISM DIVISION**

State of Texas

County of Travis

Section 1.

The Office of the Governor, Economic Development and Tourism Division (OOG), and Slingshot, LLC, (Contractor) agree to amend the Contract to Provide Tourism Advertising and Marketing Campaign Services, Contract Number 300-2-2 (the "Contract"), effective January 1, 2012, as set forth below. The Effective Date of this Amendment Number One is September 1, 2012.

Section 2.

Pursuant to Section A.1.6, **Amendments and Changes**, the first sentence of Section A.2.1, **Contract Amount**, is deleted in its entirety and replaced with the following:

OOG shall pay the Contractor up to Forty Eight Million Dollars (\$48,000,000.00) (the "total contact amount") from available funds during the Term of this Contract.

Section 3.

All terms and conditions of the Contract and any prior amendments not in conflict with this Amendment Number Two shall remain in full force and effect.

[Rest of the page left intentionally blank. Signature page follows.]

The parties have caused this Amendment Number One to the Contract to be executed by their duly authorized representatives as of the date first specified above.

OFFICE OF THE GOVERNOR

SLINGSHOT, LLC



JEFFREY S. BOYD
CHIEF OF STAFF

NAME James Owen Hamilton
TITLE CEO

Approved as to form:



ASSISTANT GENERAL COUNSEL

AMENDMENT NUMBER TWO
TO THE
CONTRACT TO PROVIDE
TOURISM ADVERTISING AND MARKETING CAMPAIGN SERVICES
BETWEEN
SLINGSHOT, LLC
AND THE
OFFICE OF THE GOVERNOR
ECONOMIC DEVELOPMENT AND TOURISM DIVISION

State of Texas

County of Travis

Section 1.

The Office of the Governor, Economic Development and Tourism Division (OOG), and Slingshot, LLC, (Contractor) agree to amend the Contract to Provide Tourism Advertising and Marketing Campaign Services, Contract Number 300-2-2 (the "Contract"), effective January 1, 2012, as set forth below. The Effective Date of this Amendment Number Two is September 1, 2013.

Section 2.

Pursuant to Section A.1.4.a.1., **Contract Renewals**, OOG and Contractor agree to renew the performance period of the Contract by extending to continue performance from September 1, 2013 through August 31, 2015.

Section 3.

Pursuant to Section A.1.6, **Amendments and Changes**, the second sentence of Section A.1.4.a.2, **Renewal and Extension Options**, is deleted in its entirety and replaced with the following:

Unit prices for services provided during an optional performance period shall not exceed those quoted for the optional performance period by Contractor in their original proposal unless approved in advance and in writing by OOG.

Section 4.

Pursuant to Section A.1.6, **Amendments and Changes**, the Section A.2.1, **Contract Amount**, is deleted in its entirety and replaced with the following:

For the time period of January 1, 2011, through August 31, 2013, OOG shall pay the Contractor up to Forty Eight Million Dollars (\$48,000,000.00). For the time period of September 1, 2013, through August 31, 2015, OOG shall pay the Contractor up to Seventy Four Million Dollars (\$74,000,000.00) from available funds during the term of the first renewal period. The total contract amount for any performance period shall include payments to the Contractor for the Monthly Service Fee and Reimbursables. Total payments for the Monthly Service Fee during the original performance period of January 1, 2011, through August 31, 2013 shall consist of 20 monthly payments of One Hundred Thirty One Thousand Three Hundred Twenty Dollars and Eighty Eight Cents (\$131,320.88), and shall not exceed the sum of Two Million Six Hundred Twenty Six Thousand Four Hundred Seventeen Dollars and Fifty Cents (\$2,626,417.50). Total payments for the Monthly Service Fee during the optional performance period of September 1, 2013, through August 31, 2015, shall consist of 24 monthly payments of One Hundred Thirty Six Thousand Five Hundred Forty Five Dollars and Thirty Eight Cents (\$136,545.38), and shall not exceed the sum of Three Million Two Hundred Seventy Seven Thousand Eighty Nine Dollars and Twelve Cents (\$3,277,089.12). Total annual payments for Reimbursables shall not exceed the difference between the contract amount for the applicable performance period and the total annual payments for the Monthly Service Fee. Any increases in the contract amount for any given performance period as a result of increases in funding shall be approved in advance and in writing by OOG. The total of any and all such increases shall not exceed 25% of the original amount determined for that contract period.

Section 5.

All terms and conditions of the Contract and any prior amendments not in conflict with this Amendment Number Two shall remain in full force and effect.

[Rest of the page left intentionally blank. Signature page follows.]

The parties have caused this Amendment Number One to the Contract to be executed by their duly authorized representatives as of the date first specified above.

OFFICE OF THE GOVERNOR

SLINGSHOT, LLC

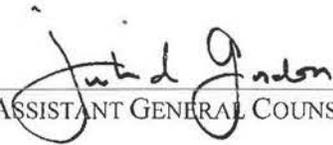


KATHY WALT
CHIEF OF STAFF



NAME Owen Hannay
TITLE CEO

Approved as to form:



ASSISTANT GENERAL COUNSEL

**AMENDMENT NUMBER THREE
TO THE
CONTRACT TO PROVIDE
TOURISM ADVERTISING AND MARKETING CAMPAIGN SERVICES
BETWEEN
SLINGSHOT, LLC
AND THE
OFFICE OF THE GOVERNOR
ECONOMIC DEVELOPMENT AND TOURISM DIVISION**

State of Texas

County of Travis

Section 1.

The Office of the Governor, Economic Development and Tourism Division (OOG), and Slingshot, LLC, (Contractor) agree to amend the Contract to Provide Tourism Advertising and Marketing Campaign Services, Contract Number 300-2-2 (the "Contract"), effective January 1, 2012, as set forth below. The Effective Date of this Amendment Number Three is September 1, 2014.

Section 2.

Collections under the hotel occupancy tax resulted in additional amounts being available for advertising by OOG, and the additional advertising placements result in the Contractor incurring additional administrative costs which shall be returned by incrementally increasing the Contractor's Monthly Service Fee for the 2015 Fiscal Year.

Section 3.

Pursuant to Section A.1.6, **Amendments and Changes**, the Section A.2.1, **Contract Amount**, is deleted in its entirety and replaced with the following:

For the time period of January 1, 2012, through August 31, 2013, OOG shall pay the Contractor up to Forty Eight Million Dollars (\$48,000,000.00). For the time period of September 1, 2013, through August 31, 2015, OOG shall pay the Contractor up to Eighty Two Million Seven Hundred Thousand Dollars (\$82,700,000.00) from available funds during the term of the first renewal period. The total contract amount for any performance period shall include payments to the Contractor for the Monthly Service Fee and Reimbursables. Total payments for the Monthly Service Fee during the original performance period of January 1, 2012, through August 31, 2013 shall consist of 20 monthly payments of One Hundred Thirty One Thousand Three Hundred Twenty Dollars and Eighty Eight Cents (\$131,320.88), and shall not exceed the sum of Two Million Six

Hundred Twenty Six Thousand Four Hundred Seventeen Dollars and Fifty Cents (\$2,626,417.50).

Total payments for the Monthly Service Fee during the optional performance period of September 1, 2013, through August 31, 2015, shall consist of 12 monthly payments of One Hundred Thirty Six Thousand Five Hundred Forty Five Dollars and Thirty-Eight Cents (\$136,545.38) for the time period of September 1, 2013, through August 31, 2014, and 12 monthly payments of One Hundred Forty-Five Thousand Four Hundred Ninety-Two Dollars and Twenty-Six Cents (\$145,492.26) for the time period of September 1, 2014, through August 31, 2015. The Monthly Service Fee payments during the optional performance period of September 1, 2013, through August 31, 2015, and shall not exceed the sum of Three Million Three Hundred Eighty-Four Thousand Four Hundred Fifty-One Dollars and Sixty-Eight Cents (\$3,384,451.68). Total annual payments for Reimbursables shall not exceed the difference between the contract amount for the applicable performance period and the total annual payments for the Monthly Service Fee. Any increases in the contract amount for any given performance period as a result of increases in funding shall be approved in advance and in writing by OOG. The total of any and all such increases shall not exceed 25% of the original amount determined for that contract period.

Section 4.

All terms and conditions of the Contract and any prior amendments not in conflict with this Amendment Number Three shall remain in full force and effect.

[Rest of the page left intentionally blank. Signature page follows.]

The parties have caused this Amendment Number Three to the Contract to be executed by their duly authorized representatives as of the date first specified above.

OFFICE OF THE GOVERNOR

SLINGSHOT, LLC



KATHY WALT
CHIEF OF STAFF



NAME Owen H. H. H. H.
TITLE CEO

Approved as to form:



ASSISTANT GENERAL COUNSEL

**FOURTH AMENDMENT TO CONTRACT
TO PROVIDE TOURISM ADVERTISING AND
MARKETING CAMPAIGN SERVICES
BETWEEN
SLINGSHOT, LLC
AND THE
OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM**

THIS FOURTH AMENDMENT to the Contract to Provide Tourism Advertising and Marketing Campaign Services (“Fourth Amendment”) is made and entered into by and between the Office of the Governor, Economic Development and Tourism Office, hereinafter referred to as “OOG,” and Slingshot, LLC, hereinafter referred to as “Contractor.” OOG and Contractor are hereinafter referred to collectively as the “Parties.”

INDUCEMENTS

WHEREAS, the OOG and Contractor agreed to and executed a Contract to Provide Tourism Advertising and Marketing Campaign Services, hereinafter referred to as the “Original Contract,” for the initial contract period of January 1, 2012 through August 31, 2013; and

WHEREAS, the Original Contract has previously been amended three times to renew the term of the contract and increase the contract total; and

WHEREAS, the OOG intends to renew the term of contract for an additional 24 months to cover the performance period from September 1, 2015 through August 31, 2017, with a corresponding increase in the contract total to cover the contract costs for the 2016 state fiscal year (September 1, 2015 through August 31, 2016); and

WHEREAS, the Parties intend to create a new contract consisting of the provisions of this Fourth Amendment to the Contract to Provide Tourism Advertising and Marketing Campaign Services and the remaining unchanged provisions of the Original Contract.

NOW THEREFORE, in consideration of the inducements, mutual covenants and conditions herein, the Parties agree as follows:

SECTION 1. CHANGE OF CONTRACT TERM

1.1 Contract Term. The Parties agree to amend the Original Contract, Section A.1.3, Term of the Contract, to read as follows:

Section A.1.3. Term of the Contract.

The term of the contract shall be January 1, 2012 through August 31, 2017, with the First Performance Period being January 1, 2012 through August 31, 2013, the Second Performance Period being September 1, 2013 through August 31, 2015, and the Third Performance Period being September 1, 2015 through August 31, 2017.

SECTION 2. CHANGE OF CONTRACT TOTAL

2.1 Contract Amount. The Parties agree to amend the Original Contract, Section A.2.1, Contract Amount, read as follows:

Section A.2.1. Contract Amount.

- a. The total payment during the First Performance Period of this Contract (September 1, 2012 through August 31, 2013) shall not exceed the sum of Forty Eight Million Dollars (\$48,000,000).
- b. The total payment during the Second Performance Period of this Contract (September 1, 2013 through August 31, 2015) shall not exceed the sum of Eighty-Two Million Seven Hundred Thousand Dollars (\$82,700,000).
- c. The total payment during the Third Performance Period of this Contract (September 1, 2015 through August 31, 2017) shall not exceed the sum of Forty-Five Million Dollars (\$45,000,000). The monthly service fee during the Third Period of Performance shall not exceed One Hundred Forty-Five Thousand Four Hundred Ninety-Two and 26/100 Dollars (\$145,492.26) per month.
- d. Any increase(s) in the contract amount for any given performance period as a result of increases in funding shall require an amendment to the Contract pursuant to Section A.1.6, which will specify the new line item amount and contract total.

SECTION . ENTIRE AGREEMENT

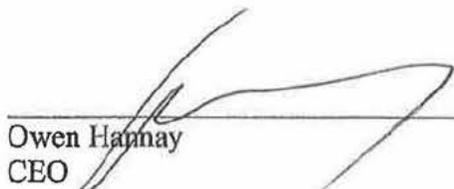
The entire agreement between the OOG and Contractor consists of the provisions of this Fourth Amendment and the remaining unchanged provisions of the Original Contract. No prior agreement or understanding, oral or otherwise, of the Parties or their agents will be valid or enforceable unless embodied in this contract. To the extent of any conflict between this Fourth Amendment and the Original Contract or any prior amendment(s), the terms of this Fourth Amendment control and supersede over any prior or contemporaneous understandings, agreements, promises, representations, terms and conditions, both oral and written

OFFICE OF THE GOVERNOR

SLINGSHOT, LLC



Chief of Staff or Designee



Owen Hannay
CEO

Date: 8/29/15

Date: 8/17/15

**FIFTH AMENDMENT TO CONTRACT
TO PROVIDE TOURISM ADVERTISING AND
MARKETING CAMPAIGN SERVICES
BETWEEN
SLINGSHOT, LLC
AND THE
OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM**

THIS FIFTH AMENDMENT to the Contract to Provide Tourism Advertising and Marketing Campaign Services (“Fifth Amendment”) is made and entered into by and between the Office of the Governor, Economic Development and Tourism Office, hereinafter referred to as “OOG,” and Slingshot, LLC, hereinafter referred to as “Contractor.” OOG and Contractor are hereinafter referred to collectively as the “Parties.”

INDUCEMENTS

WHEREAS, the Parties agreed to and executed a Contract to Provide Tourism Advertising and Marketing Campaign Services, hereinafter referred to as the “Original Contract,” for the initial contract period of January 1, 2012 through August 31, 2013; and

WHEREAS, the Original Contract has previously been amended four times to renew the term of the contract and increase the contract total; and

WHEREAS, the OOG intends to increase the contract total to authorize \$36 million in additional funds for services to be provided by the Contractor during the FY 2017 fiscal year (September 1, 2016 through August 31, 2017); and

WHEREAS, the Parties intend to create a new contract consisting of the provisions of this Fifth Amendment to the Contract to Provide Tourism Advertising and Marketing Campaign Services and the remaining unchanged provisions of the Original Contract.

NOW THEREFORE, in consideration of the mutual inducements, covenants and conditions herein, the Parties agree as follows:

SECTION 1. CHANGE OF CONTRACT AMOUNT

1.1 Contract Amount. The Parties agree to amend the Original Contract, Section A.2.1, Contract Amount, subsection c., to read as follows:

- c. The total payment during the Third Performance Period of this Contract (September 1, 2015 through August 31, 2017) shall not exceed the sum of (i) Forty-Five Million Dollars (\$45,000,000) for FY 2016 (September 1, 2015 through August 31, 2016); and (ii) Thirty-Six Million Dollars (\$36,000,000) for FY 2017 (September 1, 2016 through August 31, 2017). The monthly service fee during the Third Period of Performance shall not exceed: (i) One Hundred Forty-Five Thousand Four Hundred Ninety-Two and 26/100 Dollars (\$145,492.26) per month for FY 2016 (September 1, 2015 through August 31, 2016); and (ii) One Hundred Forty Thousand Five Hundred Eighty-Three

and 92/100 Dollars (\$140,583.92) per month for FY 2017 (September 1, 2016 through August 31, 2017).

SECTION .2 ENTIRE AGREEMENT

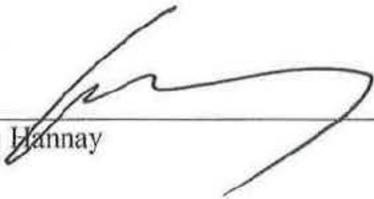
The entire agreement between the OOG and Contractor consists of the provisions of this Fifth Amendment and the remaining unchanged provisions of the Original Contract as previously amended. No prior agreement or understanding, oral or otherwise, of the Parties or their agents will be valid or enforceable unless embodied in this contract. To the extent of any conflict between this Fifth Amendment and the Original Contract or any prior amendment(s), the terms of this Fifth Amendment control and supersede over any prior or contemporaneous understandings, agreements, promises, representations, terms and conditions, both oral and written.

OFFICE OF THE GOVERNOR

SLINGSHOT, LLC



Chief of Staff or Designee



Owen Hannay
CEO

Date: 8/10/16

Date: 8/10/2016