

EXECUTIVE SUMMARY

Recommend approval of Change Order #3 to Contract # 10-5541 with Paradise Advertising and Marketing, Inc. in the amount of \$250,000 for a total of \$600,000 in additional media and production billing at gross in accordance with their agreement with Collier County.

OBJECTIVE: Recommend approval of Change Order #3 for total additional expenditures of up to \$600,000 at gross rate with Paradise Advertising and Marketing, Inc. above the \$2,000,000 net billing threshold level indicated in our agreement.

CONSIDERATIONS: The current agreement approved by the County Commission on March 22, 2011 with Paradise Advertising and Marketing, Inc. (attached) indicates a monthly service fee in the amount of \$25,000 (\$300,000 annually) for FY 12. This service fee is in lieu of the standard advertising agency commission of 15% on all media and production costs for regular and emergency advertising up to an aggregate of \$2,000,000 annually for FY 12. The agreement further stipulates that media or production billing for regular and emergency advertising over an aggregate of \$2 million annually will be added by change order and to be billed by Paradise Advertising and Marketing, Inc. at gross, reflecting a standard advertising agency commission of 15%.

The County Commission approved in October, 2011 an additional expenditure of \$350,000 from Fund 184 carry forward. Staff has requested an additional \$350,000 from FY 11 carry forward be recognized as revenue for use in FY 12 for an enhanced summer and fall marketing program. These additional funds will be split between Paradise Advertising and Marketing, Inc. for a total of \$600,000 in additional media and production expenditures at gross, and \$100,000 for staff generated expenses for trade show and travel expenditures in support of these additional marketing efforts.

Paradise Advertising has billed \$1,476,823.59 through May 18, 2012 and staff projects reaching the \$2,000,000 contractual cap with the June Paradise Advertising & Marketing, Inc. billing. Staff requests that the TDC recommend at their May 29, 2012 meeting the approval of an additional \$600,000 billing over \$2 million to include a standard advertising agency commission of 15%. With the TDC recommendation, staff will take this request to the County Commission for approval on June 12, 2012 to ensure the necessary Change Order #3 is in place when the \$2,000,000 level of media and production billing is reached.

FISCAL IMPACT: The additional \$600,000 is available in the approved FY 12 Tourism Department marketing and promotion budget in Fund 184 as carry forward from FY 11.

RECOMMENDATION: Approve Change Order #3 to Contract # 10-5541 with Paradise Advertising and Marketing, Inc. for up to \$600,000 in total additional billing at gross in accordance with their agreement with Collier County.

PREPARED BY: Jack Wert, Tourism Director

Contract # 10-5541
"TOURISM MARKETING SERVICES"

THIS AGREEMENT, made and entered into on this 22nd day of March, 2011, by and between Paradise Advertising and Marketing, Inc., hereinafter called the "Contractor" and Collier County, a political subdivision of the State of Florida, Collier County, Naples, hereinafter called the "County":

WITNESSETH:

1. **COMMENCEMENT.** The Contractor shall commence the work on April 1, 2011. The initial term of the contract shall terminate on September 30, 2012. The County may, at its discretion and with the consent of the Contractor, extend the Agreement for two (2) additional one (1) year periods. The County shall give the Contractor written notice of the County's intention to renew the Agreement term not less than ten (10) days prior to the end of the Agreement term then in effect.
2. **STATEMENT OF WORK:** The Contractor will provide the following services including, but not limited to:
 - a) Develop for approval and implementation and counsel with the County on advertising and marketing communications to meet the County's objectives and budgetary limitations.
 - b) Develop for approval and implementation, and obtain prior written approval from the County by use of an Estimate or Insertion Order for all media and production projects.
 - c) Plan and implement a strategic advertising and promotion program to include an Emergency Advertising Plan and County museum promotional publicity, creative art direction, copy writing, layout and production.
 - d) Create an annual marketing plan prior to the start of each fiscal year outlining current situation, creative strategy, implementation schedule and measurement.
 - e) Develop collateral materials including brochures, newsletters, and direct mail, including creative copy, layout and production.
 - f) Develop and implement website, Internet and social media marketing strategies and advertising.
 - g) Maintain an office in Collier County staffed with a full-time Account Manager.
 - h) Supply the County with monthly reports reflecting agency activity and return on investment, such as placement and inquiry reports.
 - i) Additional services may be added to this contract upon satisfactory negotiation of price by the Contract Manager and Vendor.

2.1 ADVERTISING

Charges for advertising placed by the Contractor on behalf of the County will be billed to the County in accordance with the negotiated rate(s) of the specified medium or media. All charges for production, print and broadcast will be billed to the County

upon receipt of all required documentation. Invoices will include the appropriate documentation including tear sheets, approved Insertion Orders or Estimates and media or production vendor invoices.

The Contractor will prepare and send to the County pre-approved adjusted media invoices to account for insertion changes, short rates, circulation rebates and/or other estimates and adjustments.

The County agrees to assume full financial liability for properly authorized insertions for advertising space and/or time placed on its behalf by the Contractor. However, the Contractor shall assume payment liability for all insertions for which the Contractor has received payment in full from the County.

In the event that a publication and/or station elects not to accept the Contractor's standard insertion order which disallows liability for unpaid media charges, the County agrees to provide the publication and/or station with written confirmation of acceptance of this liability.

2.2 MATERIALS AND SERVICES

All charges for advertising production, photography, on-line, and social media production design, printing, direct mail, audiovisual production services, marketing research and museum promotional publicity will be estimated, authorized in writing by the County and billed at cost on a project basis.

The County agrees to assume full financial liability for properly authorized services initiated on its behalf by the Contractor.

County may modify, reject, cancel, or stop any and all plans, schedules, or work in progress at anytime by delivering written notice. In this event, however, County will retain sole liability for all commitments made by the Contractor prior to such action, and reimburse Contractor for all of Contractor's charges and expenses for work begun with County approval.

3. **PAYMENT:** Payment will be made upon receipt of a proper invoice and in compliance with Chapter 218, Florida Statutes, otherwise known as the "Local Government Prompt Payment Act." Collier County reserves the right to withhold and/or reduce an appropriate amount of any payments for work not performed or for unsatisfactory performance of Contractual requirements.

3.1 TRAVEL AND REIMBURSABLE EXPENSES

Travel expenses shall be reimbursed in accordance with Collier County Resolution 2006-40 and F.S. 125.0104. Travel mileage reimbursement is to be paid at the current authorized rate.

Reimbursable items other than travel expenses shall include, but not be limited to the following: actual telephone long-distance charges, actual fax charges, in office photocopying charges at ten cents (\$.10) per copy or actual photocopying charges if done while traveling and actual postage and actual shipping charges. Reimbursables will be paid only after Contractor has provided all receipts. Contractor shall be responsible for all other costs and expenses associated with activities and solicitations undertaken pursuant to this Agreement.

3.2 AGENCY FEE

For regular and emergency advertising, the County agrees to pay the Contractor a fee of twenty-five thousand dollars (\$25,000.00) per month based upon a total annual fee of three hundred thousand dollars (\$300,000.00) as consideration for all professional time devoted to account administration, client meetings, strategic planning, media planning, media negotiation, media placement, broadcast traffic and billing. All media and production costs for regular and emergency advertising, including but not limited to, creative and outside vendor costs up to two million dollars (\$2,000,000.00) annually will be billed to the County at net, so that the County receives any available agency discount. Media or production billing over two million dollars (\$2,000,000.00) annually will be added by change order and will be billed at gross, reflecting a Contractor commission of fifteen percent (15%). The Contractor fee will be billed on the first day of each month beginning February 1, 2011, with a pro-rated amount back to the execution date of the contract.

The museum advertising budget is currently fifty thousand dollars (\$50,000.00) and will be billed at gross, reflecting a Contractor commission of fifteen percent (15%).

All charges for advertising, production, photography, on-line production design, social media, printing, direct mail, audiovisual production services, marketing research and museum promotional activity will be estimated and authorized in writing by the Tourism Director or his designee and billed on a project basis at net cost. Out of pocket expenses will be billed at net.

The agency will provide emergency pro bono publicity and public relations services, up to six thousand dollars (\$6,000.00) in staff time. Additionally, the agency will make publicity and public relations services over and above the emergency budget available on an as-needed basis, estimated in advance on an Estimate Form and submitted to the Tourism Director or his designee for prior written approval before expenses are incurred.

3.3 PROFESSIONAL FEES/HOURLY BASIS: For estimating and billing purposes, services will be billed at the rates on Exhibit A attached hereto and made a part hereof.

4. **NOTICES.** All notices from the County to the Contractor shall be deemed duly served if delivered by hand, fax, email or the United States Postal Services Department, first class mail service, postage prepaid to the Contractor at the following Address:

Cedar Hames, President
Paradise Advertising & Marketing, Inc.
150 Second Avenue North # 800
St. Petersburg, FL 33701
Facsimile: 727-822-3722

All Notices from the Contractor to the County shall be deemed duly served if delivered by hand, fax, email or the United States Postal Services Department, first class mail service, postage prepaid to the County to:

Jack Wert, Director
Collier County Tourism Department
2800 N. Horseshoe Drive
Naples, Florida 34104
Facsimile: 239-252-2404

The Contractor and the County may change the above mailing address at any time upon giving the other party written notification. All notices under this Agreement must be in writing.

5. **NO PARTNERSHIP.** Nothing herein contained shall create or be construed as creating a partnership between the County and the Contractor or to constitute the Contractor as an agent of the County.
6. **PERMITS: LICENSES: TAXES.** In compliance with Section 218.80, F.S., all permits necessary for the prosecution of the Work shall be obtained by the Contractor. Payment for all such permits issued by the County shall be processed internally by the County. All non-County permits necessary for the prosecution of the Work shall be procured and paid for by the Contractor. The Contractor shall also be solely responsible for payment of any and all taxes levied on the Contractor. In addition, the Contractor shall comply with all rules, regulations and laws of Collier County, the State of Florida, or the U. S. Government now in force or hereafter adopted. The Contractor agrees to comply with all laws governing the responsibility of an employer with respect to persons employed by the Contractor.
7. **NO IMPROPER USE.** The Contractor will not use, nor suffer or permit any person to use in any manner whatsoever, County facilities for any improper, immoral or offensive purpose, or for any purpose in violation of any federal, state, county or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. In the event of such violation by the Contractor or if the County or its authorized representative shall deem any conduct on the part of the Contractor to be objectionable or improper, the County shall have the right to suspend the contract of the Contractor. Should the Contractor fail to correct any such violation, conduct, or practice to the satisfaction of the County within twenty-four (24) hours after receiving notice of such violation, conduct, or practice, such suspension to

continue until the violation is cured. The Contractor further agrees not to commence operation during the suspension period until the violation has been corrected to the satisfaction of the County.

8. **OWNERSHIP OF DOCUMENTS:**

County shall be the owner of all documents and materials produced pursuant to this Agreement and Paradise Advertising & Marketing, Inc. shall not receive any additional compensation for their use or reproduction by the County. The County shall be the owner of and be in possession of all intellectual property created or furnished pursuant to this Agreement, including, but not limited to drawings, layouts, photography, film, video and printed documents, unless specifically exempted by the County.

9. **TERMINATION.** Should the Contractor be found to have failed to perform his services in a manner satisfactory to the County as per this Agreement, the County may terminate said agreement immediately for cause; further the County may terminate this Agreement for convenience with a thirty (30) day written notice. The County shall be sole judge of non-performance. Upon termination of this Agreement, Contractor will bill the County for all amounts not previously billed and due Contractor at that time. Contractor will not be entitled to payment for any advertisement if work on it commenced after Contractor received notice of termination. Contractor will be entitled to payment for services for advertisements commenced and approved for placement by the County prior to receipt of such notice.

10. **NO DISCRIMINATION.** The Contractor agrees that there shall be no discrimination as to race, sex, color, creed or national origin.

11. **INSURANCE.** The Contractor shall provide insurance as follows:

A. **Commercial General Liability:** Coverage shall have minimum limits of \$500,000 Per Occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations; Independent Agency's; Products and Completed Operations and Contractual Liability.

B. **Workers' Compensation:** Insurance covering all employees meeting Statutory Limits in compliance with the applicable state and federal laws.

Special Requirements: Collier County shall be listed as the Certificate Holder and included as an **Additional Insured** on the Comprehensive General Liability Policy.

Current, valid insurance policies meeting the requirement herein identified shall be maintained by Agency during the duration of this Agreement. Renewal certificates shall be sent to the County thirty (10) days prior to any expiration date.

There shall be a thirty (30) day notification to the County in the event of cancellation or modification of any stipulated insurance coverage.

Contractor shall ensure that all sub contractors comply with the same insurance requirements that he is required to meet. The same Contractor shall provide County with certificates of insurance meeting the required insurance provisions.

12. **INDEMNIFICATION.** To the maximum extent permitted by Florida law, the Contractor shall indemnify and hold harmless Collier County, its officers and employees from any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees and paralegals' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor or anyone employed or utilized by the Contractor in the performance of this Agreement. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph.

This section does not pertain to any incident arising from the sole negligence of Collier County.

13. **CONTRACT ADMINISTRATION.** This Agreement shall be administered on behalf of the County by the Tourism Department.
14. **COMPONENT PARTS OF THIS CONTRACT.** This Contract consists of the attached component parts, all of which are as fully a part of the contract as if herein set out verbatim: RFP #10-5541 "Tourism Marketing Services", Contractor's Proposal, Insurance Certificate, Addendum and Exhibit A, Hourly Rate Fee Schedule for Non-Routine Work.
15. **SUBJECT TO APPROPRIATION.** It is further understood and agreed by and between the parties herein that this agreement is subject to appropriation by the Board of County Commissioners. The approval of this Agreement is contingent upon a finding by the Collier County Board of County Commissions that adequate funding exists for the purposes set forth herein through approval of the annual Tourism Department budget. If Category "B" tourist tax funds become unavailable in the future, no further funding under this contract will be due to the Contractor and the County may terminate this Agreement in accordance with section #9, "Termination".
16. **COOPERATION:** The Contractor shall fully cooperate with the County in all matters pertaining to this agreement and provide all information and documents as requested by the County from time to time. Failure to cooperate, as interpreted by the County, shall constitute grounds for the County to impose sanctions that do not result in termination of this Agreement.
17. **EMPLOYMENT OF CONTRACTOR PERSONNEL:** During the term of this Agreement and for a period of one (1) year following its termination, the County agrees not to hire any employee (past or present) of the Contractor who worked on the County's account while employed by the Contractor.

18. **AVAILABILITY OF RECORDS:** The Contractor shall maintain all records, books, documents, papers and financial information pertaining to work performed under this agreement. The Contractor agrees that the County, or any of its duly authorized representatives, shall, until the expiration of five (5) years after final payment under this Agreement, have access to, and the right to examine and photocopy any pertinent books, documents, papers and records of the Contractor involving transactions related to this Agreement.
19. **PROHIBITION OF ASSIGNMENT:** The Contractor shall not assign, convey or transfer in whole or in part its interest in this Agreement without the prior written consent of the County.
20. **PROHIBITION OF GIFTS TO COUNTY EMPLOYEES:** No organization or individual shall offer or give, either directly or indirectly, any favor, gift, loan, fee, service or other item of value to any County employee, as set forth in Chapter 112, Part III, Florida Statutes, Collier County Ethics Ordinance No. 2004-05, and County Administrative Procedure 5311. Violation of this provision may result in one or more of the following consequences: a. Prohibition by the individual, firm, and/or any employee of the firm from contact with County staff for a specified period of time; b. Prohibition by the individual and/or firm from doing business with the County for a specified period of time, including but not limited to: submitting bids, RFP, and/or quotes; and, c. immediate termination of any contract held by the individual and/or firm for cause.
21. **DISPUTE RESOLUTION.** Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation. The negotiation shall be attended by representatives of Contractor with full decision-making authority and by County's staff person who would make the presentation of any settlement reached during negotiations to County for approval. Failing resolution, and prior to the commencement of depositions in any litigation between the parties arising out of this Agreement, the parties shall attempt to resolve the dispute through Mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. The mediation shall be attended by representatives of Contractor with full decision-making authority and by County's staff person who would make the presentation of any settlement reached at mediation to County's board for approval. Should either party fail to submit to mediation as required hereunder, the other party may obtain a court order requiring mediation under section 44.102, Fla. Stat.

Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate federal or state courts in Collier County, Florida, which courts have sole and exclusive jurisdiction on all such matters.

IN WITNESS WHEREOF, the Contractor and the County, have each, respectively, by an authorized person or agent, hereunder set their hands and seals on the date and year first above written.

BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA

ATTEST:

Dwight E. Brock, Clerk of Courts

By: *Luise Polaski*

Dated: 4/5/2011

Attest: Chairman

Signature

Approved as to form and
legal sufficiency:

Scott R. Teach

Assistant County Attorney

DEPUTY

SCOTT R. TEACH

Print Name

By: *Fred W. Coyle*
Fred W. Coyle, Chairman

Contractor:
PARADISE ADVERTISING & MARKETING, INC.

By: *Cedar Hames*
Signature

Cedar Hames, President

Typed signature and title

Patoka A. Cate

First Witness

Patoka A. Cate

↑Type/print witness name↑

Second Witness

Kee G. Goddard

↑Type/print witness name↑

EXHIBIT "A"
CONTRACT 10-5541 - TOURISM MARKETING SERVICES

RATE SCHEDULE

SERVICE POSITION	CCT RATE/HOUR	NOTES
Director Strategic Planning	\$300.00	Included in fee
Brand Development Director	\$300.00	Included in fee
Director of Account Service	\$250.00	Included in fee
Account Supervisor	\$175.00	Included in fee
Account Manager	\$150.00	Included in fee
Account Executive	\$125.00	Included in fee
Account Coordinator	\$100.00	Included in fee
Media Director/Planner	\$200.00	Included in fee
Media Buyer	\$150.00	Included in fee
Media Coordinator	\$100.00	Included in fee
Administrative Services	\$50.00	Included in fee
Accounting Manager	\$125.00	Included in fee
Traffic	\$100.00	Included in fee
Research - In house Director	\$200.00	Included in fee
Research - In house Coordinator	\$100.00	Included in fee
Creative Director	\$250.00	
Associate Creative Director	\$200.00	
Senior Copywriter	\$175.00	
Copywriter	\$150.00	
Designer	\$175.00	
Senior Art Director	\$175.00	
Art Director	\$150.00	
Broadcast Production Supervision	\$200.00	
Production Supervisor-Print	\$150.00	
Production Supervisor-Digital	\$175.00	

SERVICE POSITION	CCT RATE/HOUR	NOTES
Production Coordinator	\$100.00	
Proofreading	\$100.00	
In-house Video Services	\$200.00	
In-house Photograph Services	\$200.00	
In house Audio Services	\$200.00	
Public Relations Director	\$200.00	Covered under fee up to \$6,000 in PR time
Public Relations Account Manager	\$150.00	Covered under fee up to \$6,000 in PR time
Public Relations Account Executive	\$125.00	Covered under fee up to \$6,000 in PR time
Public Relations Writer	\$150.00	Covered under fee up to \$6,000 in PR time
Public Relations Coordinator	\$100.00	Covered under fee up to \$6,000 in PR time
Director of Diversity Marketing	\$200.00	
Digital Services Director	\$200.00	
Digital Strategist/Research	\$150.00	
Digital Production Supervision	\$175.00	
Digital Coordinator	\$125.00	
Data Entry Specialist	\$100.00	
Search Engine Optimization	\$150.00	
Digital Production Developer	\$200.00	
Director of Mobile Development	\$250.00	
Social Media Marketing Director	\$175.00	
Social Media Marketing Coordinator	\$125.00	

The Agency will present written estimates for client approval for any costs being incurred.

All out-of-pocket costs will be billed at net. The Agency billing invoices will include a copy of the signed estimate and all vendor invoices. Cost will not exceed the original signed estimate unless revised with written approval from the client. All cost savings will be passed on to the client.

CHANGE ORDER

CHANGE NO. **3**

CONTRACT NO. **10-5541**
BCC Date: **3/22/2011**
Agenda Item: **10B**

TO: Paradise Advertising and Marketing, Inc.
150 Second Ave. N., Suite 800
St. Petersburg, FL 33701

DATE: 5/21/2012

PROJECT NAME: Tourism Marketing Services

PROJECT NO.: n/a

Under our AGREEMENT dated March 22, 2011

You hereby are authorized and directed to make the following change(s) in accordance with terms and conditions of the Agreement: Up to \$250,000 to provide for an enhanced summer and fall marketing campaign as follows:

- Up to \$150,000 for an enhanced summer television, digital and social media campaign in the Florida markets of Miami/Ft. Lauderdale, Palm Beach and Orlando.
- Up to \$100,000 to launch a television, digital and social media advertising and promotion campaign in those same Florida markets in September to boost visitation in the slowest tourism month of the year.

FOR THE (Additive) Sum of: \$250,000; Two hundred fifty thousand dollars.

Original Agreement Amount	<u>\$2,300,000</u>
Sum of Previous Change Orders	<u>\$1,150,000 (# 1 -\$800,000; # 2- \$350,000)</u>
This Change Order # 3 adds	<u>\$ 250,000</u>
Present Agreement Amount	<u>\$3,700,000</u>

May 29, 2012

New Business 7-g

The time for completion shall be increased or decreased by n/a calendar days due to this Change Order. Accordingly, the Contract Time is now n/a calendar days. The substantial completion date is n/a and the final completion date is n/a. Your acceptance of this Change Order shall constitute a modification to our Agreement and will be performed subject to all the same terms and conditions as contained in our Agreement indicated above, as fully as if the same were repeated in this acceptance. The adjustment, if any, to the Agreement shall constitute a full and final settlement of any and all claims of the Contractor arising out of or related to the change set forth herein, including claims for impact and delay costs.

IN WITNESS WHEREOF, the Contractor and the County have each, respectively, by an authorized person or agent, hereunder set their hands and seals on the date(s) indicated below.

Accepted: _____, 20__

ATTEST:

OWNER:
BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA

Dwight E. Brock, Clerk

By: _____
Fred W. Coyle, Chairman

CONTRACTOR:
Paradise Advertising and Marketing, Inc.

By: _____
Cedar Hames, President

Approved as to form and
Legal sufficiency:

Assistant County Attorney

Name