

RESOLUTION NO. 11-045

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, TO AWARD A CONTRACT FOR RFQ 2011-14 TO WILESMITH ADVERTISING & DESIGN, INC (“WILESMITH”) FOR THE TOWN’S BRAND MARKETING SERVICES, IN AN AMOUNT NOT TO EXCEED \$40,000; AUTHORIZING THE TOWN MANAGER TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE CONTRACT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE CONTRACT; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on June 16, 2011 the Town of Miami Lakes (the “Town”) issued a Request for Qualification (RFQ) for a Brand Marketing Program; and

WHEREAS, the project consists of a destination Brand Study, development of a Brand Promise, Brand Design, Brand Script and Brands Standards document; and

WHEREAS, of the two firms that met the qualifications, Wilesmith Advertising was better qualified; and

WHEREAS, the Town Council approves award of contract for RFQ 2011-14, Brand Marketing Program, to Wilesmith Advertising, in an amount not to exceed \$40,000.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing Recitals are true and correct and incorporated herein by this reference.

Section 2. Approval of the Contract. The Town Council hereby approves award of contract RFP 2011-04, Brand Marketing Program to Wilesmith Advertising, in an amount not to exceed \$40,000.

Section 3. Authorization of Fund Expenditure. The Town Manager is authorized to expend budgeted funds to implement the terms and conditions of the contract.

Section 4. Authorization of Town Manager. The Town Manager and/or his designee and the Town Attorney are authorized to take all steps necessary to implement the terms and conditions of the Contract.

Section 5. Execution of the Contract. The Town Manager is authorized to execute the Contract, on behalf of the Town, with Wiles Advertising, for Brand Marketing services.

Section 6. Effective Date. This Resolution shall take effect immediately upon adoption.

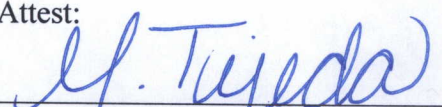
PASSED AND ADOPTED this 8th day of November 2011.

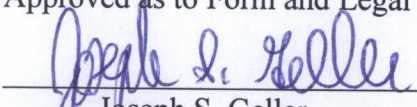
Motion to adopt by Mayor Pizzi, second by Councilman Perdomo.

FINAL VOTE AT ADOPTION

Mayor Michael Pizzi	<u>Yes</u>
Vice Mayor Nick Perdomo	<u>Yes</u>
Councilmember Mary Collins	<u>Yes</u>
Councilmember Tim Daubert	<u>Yes</u>
Councilmember Nelson Hernandez	<u>Yes</u>
Councilmember Ceasar Mestre	<u>Yes</u>
Councilmember Richard Pulido	<u>Yes</u>


Michael Pizzi
MAYOR

Attest:

Marjorie Tejada
TOWN CLERK

Approved as to Form and Legal Sufficiency

Joseph S. Geller
INTERIM TOWN ATTORNEY

**PROFESSIONAL SERVICES AGREEMENT
FOR BRANDING MARKET PROGRAM**



The Town of Miami Lakes Council:

**Mayor Michael Pizzi
Vice Mayor Nick Perdomo
Councilmember Mary Collins
Councilmember Timothy Daubert
Councilmember Nelson Hernandez
Councilmember Ceasar Mestre
Councilmember Richard Pulido**

Alex Rey, Town Manager
The Town of Miami Lakes
15150 NW 79th Court
Miami Lakes, Florida 33016

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This Agreement made this ___ day of **November** in the year **2011** ("Agreement") by and between the Town of Miami Lakes, Florida, hereinafter called the "Town," and Wilesmith Advertising & Design, Inc., hereinafter called the "Consultant.", a Florida Corporation, with offices at 3119 Clematis Street, Suite 710, West Palm Beach, Florida 33401.

RECITAL

A. The Town issued a Request for Qualifications ("RFQ") 2010-014 on June 16, 2011 for the provision of professional services ("Services") which included the development and implementation of a Branding Market Program ("Program") and Consultant's proposal ("Proposal"), in response thereto, as finalized through negotiations, was selected for the provision of said Services. The RFQ and the Proposal, as finalized, are sometimes referred to herein, collectively, as the Solicitation Documents, and are by this reference expressly incorporated into and made a part of this Agreement as if set forth in full.

B. WHEREAS, the Town entered into competitive negotiations with the three top ranked firms and selected the Consultant as providing the most advantageous Program to the Town.

C. WHEREAS, the Town, through action of the Town Manager and/or the Town Council, as applicable, has selected the Consultant in accordance with the applicable provisions of the Town Procurement Ordinance, to provide the professional services as described herein.

WITNESSETH, that the Town and the Consultant, for the considerations herein set forth, agree as follows:

SECTION A GENERAL TERMS AND CONDITIONS

Article A1 Definitions**A1.01 Additional Services** means any Work defined as such in this Agreement, secured in compliance with the Town Code.

A1.02 Attachments mean the Attachments to this Agreement which are expressly incorporated by reference and made a part of this Agreement as if set forth in full.

A1.03 Base Fee means the amount of compensation mutually agreed upon for the completion of Basic Services.

A1.04 Basic Services means those services designated as such in a Section B.

- A1.05 Consultant** means the individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, or engineers, which has entered into the Agreement to provide professional services to the Town.
- A1.06 Notice to Proceed** means same as "Authorization to Proceed." A duly authorized written letter or directive issued by the Town Manager or Procurement Manager acknowledging that all conditions precedent have been met and/or directing that Consultant may begin Work on the Project.
- A1.07 Project Manager** means an employee or representative of the Town assigned by the Town Manager to manage and monitor the Services to be performed under this Agreement and the construction of the Project as a direct representative of the Town.
- A1.08 Program** means the Branding Market Program as contemplated and budgeted by the Town. The Project shall be further defined in the Scope of Services in Section B of the Agreement.
- A1.09 Professional Services** means those services within the scope of marketing, advertising, or public relations, or those performed by any marketing, public relations or advertising individual in connection with his or her professional employment or practice. These services may be abbreviated herein as "Services" or "Professional Services", as applicable, which are within this definition.
- A1.10 Scope of Services or Services** means a comprehensive description of the activities, tasks, features, objectives, deliverables and milestones required for the completion of the Program with sufficient detail to allow a reasonably accurate estimation of resources necessary for its completion.
- A1.11 Town Council** means the legislative body of the Town of Miami Lakes.
- A1.12 Town Manager** means the duly appointed chief administrative officer of the Town of Miami Lakes or designee.
- A1.13 Town or Owner** means the Town of Miami Lakes, Florida, a Florida municipal corporation, the public agency which is a party hereto and for which this Agreement is to be performed. In all respects hereunder, Town's performance is pursuant to Town's position as the Owner of the Project. In the event the Town exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, codes, laws and ordinances shall be deemed to have occurred pursuant to Town's authority as a governmental body and shall not be attributable in any manner to Town as a party to this Agreement. The Town of Miami Lakes shall be referred to herein as "Town". For the purposes of this Agreement, "Town" without modification shall mean the Town Manager.
- A1.14 Wage Rates** means the effective direct expense to Consultant, on an hourly rate basis, for employees in the specified professions and job categories assigned to provide services under this Agreement that justify and form the basis for any additional services issued under this Agreement.

A1.15 *Work Order Proposal* means a document prepared by the Consultant, at the request of the Town for Services to be provided by the Consultant on a specific phase of a Project for Additional Services.

ARTICLE A2 General Conditions

A2.01 Term

The term of this Agreement shall be effective upon its execution and shall end upon completion of the delivery of the Services, inclusive of any options exercised by the Town. The timeframe established for the completion of the Basic Services shall be six (6) months. The Town shall have up to 1 year from the completion of the Basic Services to exercise the Optional Services.

A2.02 Scope of Services

Consultant agrees to provide the Services as specifically described and set forth in Section B.

A2.03 Compensation

A2.03-1 Compensation Limits

The amount of compensation payable by the Town to Consultant shall generally be a lump sum fee, in the amount of Forty Thousand dollars (\$40,000), excluding Town approved reimbursable expenses, unless explicitly approved by action of the Town Council or Town Manager as applicable, and put into effect by written amendment to this Agreement.

A2.03-2 Payments

Unless otherwise specifically provided elsewhere in this Agreement, payment shall be made in accordance with Florida Statute Chapter 218, Part VII, Local Government Prompt Payment Act, after receipt of Consultant's invoice, which shall be accompanied by sufficient supporting documentation and contain sufficient detail, to allow a proper audit of expenditures, should Town require one to be performed. If Consultant is entitled to reimbursement of travel expenses, then all bills for travel expenses shall be submitted in accordance with Section 112.061, Florida Statutes. Consultant shall utilize Attachment I for the submission of invoices.

Article A3 Performance

A3.01 Performance and Delegation

The Services to be performed hereunder shall be performed by the Consultant's own staff, unless otherwise provided in this Agreement, or approved, in writing by the Town Manager. No subconsultants shall be used on any portion of the Services. Said approval shall not be construed as constituting an agreement between the Town and said other person or firm and the Town assumes no liability or responsibility for allowing the Consultant to utilize a subconsultant.

A3.02 Consultant Key Staff

The parties acknowledge that Consultant was selected by Town, in part, on the basis of qualifications of Program staff identified in Consultant's response to Town's solicitation, hereinafter referred to as "Key Staff". Consultant shall ensure that Key Staff are available for Services hereunder as long as said Key Staff is in Consultant's employ. Consultant will obtain prior written acceptance of Town Manager or designee to change Key Staff. Consultant shall provide the Town Manager with such information as necessary to determine the suitability of

proposed new Key Staff. The Town Manager will act reasonably in evaluating Key Staff qualifications. Such acceptance shall not constitute any responsibility or liability for the individual's ability to perform.

A3.03 STANDARD OF CARE

Consultant is solely responsible for the accuracy and quality of its Services. Consultant shall perform due diligence, in accordance with best industry practices, in gathering information and developing the Program. Consultant shall, without additional compensation, correct or revise any errors, omissions, and/or deficiencies in its development of the Program.

ARTICLE A4 COPYRIGHT, PATENTS, AND ROYALTIES

A4.01 General

Any patentable, or copyrightable results arising out of this Agreement shall accrue to the benefit of the Town. No report, documents, articles, media or devices produced in whole or in part under this Agreement shall be the subject of any application for copyright or patent by or on behalf of the Consultant, its employees, or subconsultants, without the prior written consent of the Town Manager.

A4.02 Infringement

Consultant shall make its best efforts to provide a program that is free and clear of any patent, copyright, trade secret, or trademark. Consultant shall defend the Town against any claims of infringement and Consultant shall be liable for all costs associated with such infringement. The Town, and any representative of the Town shall be held harmless on account thereof. Where necessary the Consultant shall negotiate for the right of the Town to use of any copyright, patent, trademark.

A4.03 Defense of Claims

Where either party to this Contract has been notified of any suit or claim for infringement of a patent the party receiving the notification must notify the other party within ten (10) business days of receipt of such notification. The Town may, at its sole discretion, terminate this Contract for convenience in accordance with the terms of the Contract should the Contractor be in breach of any copyright, patent, trademark, or other similar right. The Town, at its sole discretion may elect to defend itself in any claim or suit and the Consultant shall be liable for reasonable attorney fees and court costs.

ARTICLE A5 DEFAULT

A5.01 General

If Consultant fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Consultant shall be in default. Upon the occurrence of a default hereunder the Town, in addition to all remedies available to it by law, may immediately, upon written notice to Consultant, terminate this Agreement whereupon all payments, advances, or other compensation paid by the Town to Consultant while Consultant was in default shall be immediately returned to the Town. Consultant understands and agrees that termination of this Agreement under this section shall not release Consultant from any obligation accruing prior to the effective date of termination.

In the event of termination due to default, in addition to the foregoing, Consultant shall be liable to the Town for all expenses incurred by the Town in preparing and negotiating this Agreement, as well as all costs and expenses incurred by the Town in the re-procurement of the Services, including consequential and incidental damages. In the event of default, Town may also suspend or withhold reimbursements from Consultant until such time as the actions giving rise to default have been cured.

A5.02 Conditions of Default

A finding of default and subsequent termination for cause may include, without limitation, any of the following:

A5.02-1 Consultant fails to obtain or maintain the insurance required herein.

A5.02-2 Consultant fails to comply, in a substantial or material sense, with any of its duties under this Agreement, with any terms or conditions set forth in this Agreement or in any agreement it has with the Town, beyond the specified period allowed to cure such default.

A5.02-3 Consultant fails to commence the Services within the time provided or contemplated herein, or fails to complete the Services in a timely manner as required by this Agreement.

A5.03 Time To Cure Default; Force Majeure

Town through the Town Manager or designee shall provide written notice to Consultant as to a finding of default, and Consultant shall take all necessary action to cure said default within time stipulated in said notice, after which time the Town may terminate the Agreement. The Town at its sole discretion, may allow additional days to perform any required cure if Consultant provides written justification deemed reasonably sufficient.

Should any such failure on the part of Consultant be due to a condition of Force Majeure as that term is interpreted under Florida law, then the Town may allow an extension of time reasonably commensurate with the cause of such failure to perform or cure.

ARTICLE A6 Termination Of Agreement

A6.01 Town's Right To Terminate

The Town, including the Town Manager, has the right to terminate this Agreement for any reason or no reason, upon ten (10) days' written notice. Upon termination of this Agreement, all charts, sketches, studies, drawings, and other documents, including all electronic copies related to Services authorized under this Agreement, whether finished or not, must be turned over to the Town Manager. The Consultant shall be paid in accordance with provisions of Section C, provided that said documentation is turned over to Town Manager within ten (10) business days of termination. Failure to timely deliver the documentation shall be cause to withhold any payments due without recourse by Consultant until all documentation is delivered to the Town Manager or designee.

A6.01-1 Consultant shall have no recourse or remedy from a termination made by the Town except to retain the fees earned compensation for the Services that was performed in complete compliance with this Agreement, as full and final settlement of any claim, action,

demand, cost, charge or entitlement it may have, or will, have against the Town, its officials or employees.

A6.02 Consultant's Right to Terminate

The Consultant shall have the right to terminate this Agreement, in writing, following breach by the Town, if the breach of the Agreement has not been corrected within thirty (30) days from the date of the Town's receipt of a written statement from Consultant specifying its breach of its duties under this Agreement.

A6.03 Termination Due to Undisclosed Lobbyist or Agent

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

For the breach or violation of this provision, the Town shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

Article A7 Documents And Records

A7.01 Ownership of Documents

All plans, drawings, documents, media, computer files, and/or reports prepared or obtained under this Agreement, as well as all data collected, including all electronic digital copies will be considered works made for hire and become the property of the Town upon payments made to Consultant or termination of this Agreement without restriction or limitation on their use.

A7.02 Delivery Upon Request Or Cancellation

Failure of the Consultant to promptly deliver all such documents, both hard copy and digital, to the Town Manager within ten (10) days of cancellation, or within ten (10) days of request by the Town Manager, shall be just cause for the Town Manager to withhold payment of any fees due Consultant until Consultant delivers all such documents. Consultant shall have no recourse from these requirements.

A7.03 Nondisclosure

To the extent allowed by law, Consultant agrees not to divulge, furnish or make available to any third person, firm or organization any information or documentation related to this Agreement, without Town Manager's prior written consent, or unless incident to the proper performance of the Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant hereunder, and Consultant shall require all of its employees, agents, Subconsultants and subcontractors to comply with the provisions of this paragraph. Consultant shall be entitled to limited use of the information and documents related to this Agreement, which shall be used for the sole purpose of marketing to generate new business clients.

A7.04 Maintenance of Records

Consultant will keep adequate records and supporting documentation, which concern or reflect its services hereunder. Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, shall be kept in accordance with statute. Otherwise, the records and documentation will be retained by Consultant for a minimum of three (3) years from the date of termination of this Agreement or the date the Project is completed, whichever is later. Town, or any duly authorized agents or representatives of Town, shall have the right to audit, inspect, and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the three (3) year period noted above; provided, however such activity shall be conducted only during normal business hours.

Article A8 Indemnification

The Consultant shall hold harmless, indemnify and defend the Town, its officials and employees from any and all claims, losses and causes of actions which may arise out of the performance of this Agreement as a result of any act of negligence or negligent omission, recklessness, or intentionally wrongful conduct of the Consultant or the Subconsultants. The Consultant shall pay all claims and losses of any nature whatsoever in connection therewith and shall defend all project related suits, in the name of the Town when applicable, and shall pay all costs, including without limitation reasonable attorney's and appellate attorney's fees, and judgments which may issue thereon. The Consultant's obligation under this paragraph shall not be limited in any way by the agreed upon contract price, or the Consultant's limit of, or lack of, sufficient insurance protection and shall apply to the full extent that it is caused by the negligence, act, omission, recklessness or intentional wrongful conduct of the Consultants, its agents, servants, or representatives.

Article A9 Insurance

The Consultant shall not start Services under this Agreement until the Consultant has obtained all insurance required hereunder and the Town Manager has approved such insurance.

A9.01 Companies Providing Coverage

All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and satisfactory to the Town Manager. All companies shall have a Florida resident agent and be rated at least A(X), as per A.M. Best Company's Key Rating Guide, latest edition.

A9.02 Verification of Insurance Coverage

The Consultant shall furnish certificates of insurance to the Town Manager for review and approval prior to the execution of this Agreement. The Certificates shall clearly indicate that the Consultant has obtained insurance of the type, amount and classification required by these provisions, in excess of any pending claims at the time of contract award to the Consultant. Consultant shall maintain coverage with equal or better rating as identified herein for the term of this Agreement. Consultant shall provide written notice to the Town Manager of any material change, cancellation and/or notice of non-renewal of the insurance within 30 days of the change. Consultant shall furnish a copy of the insurance policy or policies upon request of the Town Manager within ten (10) days of written request.

A9.03 Forms of Coverage

A9.03-1 Commercial General Liability and Automobile Liability

The Consultant shall maintain commercial general liability coverage with limits of at least \$1,000,000 per occurrence, \$2,000,000 aggregate for bodily injury and property damage. The coverage shall include Premises and Operations, Contingent and Contractual Liability, and Products and Completed Operations, with additional endorsements as applicable. The coverage shall be written on a primary and non contributory basis with the Town listed as an additional insured as reflected by endorsement CG 2010 11/85 or its equivalence. Notice of cancellation should read (30) days/ (10) days for nonpayment.

A9.03-2 Business Automobile

The Consultant shall provide business automobile liability coverage including coverage for all owned, hired and non owned autos with a minimal combined single limit of \$1,000,000 naming the Town as an additional insured with respect to this coverage. Notice of cancellation should read (30) days/(10) days for nonpayment.

A9.03-4 Worker's Compensation Insurance

The Consultant shall maintain Worker's Compensation Insurance in compliance with Florida Statutes, Chapter 440, as amended, and Employee's Liability with a minimum limit of \$500,000 each occurrence. Should the Consultant be exempt from Florida's Worker's Compensation insurance requirement the Consultant shall provide documentation from the State of Florida evidencing such exemption.

Article A10 Miscellaneous

A10.01 Audit Rights

The Town reserves the right to audit the Consultant's accounts during the performance of this Agreement and for three (3) years after final payment under this Agreement. The Consultant agrees to furnish copies of any records necessary, in the opinion of the Town Manager, to approve any requests for payment by the Consultant.

A10.02 Entire Agreement

This Agreement, as it may be amended from time to time, represents the entire and integrated Agreement between the Town and the Consultant and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may not be amended, changed, modified, or otherwise altered in any respect, at any time after the execution hereof, except by a written document executed with the same formality and equal dignity herewith. Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach of any provision of this Agreement.

A10.03 Successors and Assigns

The performance of this Agreement shall not be transferred pledged, sold, delegated or assigned, in whole or in part, by the Consultant without the written consent of the Town Council or Town Manager, as applicable. It is understood that a sale of the majority of the stock or partnership shares of the Consultant, a merger or bulk sale, an assignment for the benefit of

creditors shall each be deemed transactions that would constitute an assignment or sale hereunder requiring prior Town approval.

The Consultant's services are unique in nature and any transference without the prior written approval of the Town shall be cause for the Town to terminate this Agreement. The Consultant shall have no recourse from such cancellation. The Town may require bonding, other security, certified financial statements and tax returns from any proposed Assignee and the execution of an Assignment/ Assumption Agreement in a form satisfactory to the Town as a condition precedent to considering approval of an assignment.

The Consultant and the Town each binds one another, their partners, successors, legal representatives and authorized assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

A10.04 Applicable Law and Venue of Litigation

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any suit or action brought by any party, concerning this Agreement, or arising out of this Agreement, shall be brought in Miami-Dade County, Florida. Each party shall bear its own attorney's fees except in actions arising out of Consultant's duties to indemnify the Town under 0 where Consultant shall pay the Town's reasonable attorney's fees.

A10.05 Notices

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

For Town of Miami:
Alex Rey
Town Manager
15150 NW 79th Court
Miami, Florida 33014
reya@miamilakes-fl.gov

With a copy to:
Gary Fabrikant, Procurement Manager
15150 NW 79th Court
Miami, Florida 33014
fabrikantg@miamilakes-fl.gov

For Consultant:
Margaret Wilesmith
President
319 Clematis Street

Suite 710
West Palm Beach, Florida 33401
(561) 835-0413
m.wilesmith@wadads.com

A10.06 Interpretation

The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

A10.07 Joint Preparation

Preparation of this Agreement has been a joint effort of the Town and Consultant and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

A10.08 Priority o Provisions

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in this Agreement shall prevail and be given effect.

A10.09 Mediation - Waiver of Jury Trial

In an effort to engage in a cooperative effort to resolve conflict which may arise during the course of the design and /or construction of the subject project(s), and/or following the completion of the projects(s), the parties to this Agreement agree all disputes between them shall be submitted to non-binding mediation prior to the initiation of litigation, unless otherwise agreed in writing by the parties. A certified Mediator, who the parties find mutually acceptable, will conduct any Mediation Proceedings in Miami-Dade County, State of Florida. The parties will split the costs of a certified mediator on a 50/50 basis. The Consultant agrees to include such similar contract provisions with all Subconsultants and/or independent contractors and/or Consultants retained for the project(s), thereby providing for non-binding mediation as the primary mechanism for dispute resolution.

In an effort to expedite the conclusion of any litigation the parties voluntarily waive their right to jury trial or to file permissive counterclaims in any action arising under this Agreement.

A10.10 Compliance with Laws

Consultant shall comply with all applicable laws, codes, ordinances, rules, regulations and resolutions including, without limitation, the Americans with Disabilities Act (“ADA”), as amended, and all applicable guidelines and standards in performing its duties, responsibilities, and obligations related to this Agreement. The Consultant represents and warrants that there shall be no unlawful discrimination as provided by law in connection with the performance of this Agreement.

A10.10-1 Non-Discrimination

Town warrants and represents that it does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with Consultant’s performance under this Agreement on account of race, color, sex, religion, age, handicap, marital status or national origin. Consultant further covenants that no otherwise qualified individual shall, solely by reason of his/her race, color, sex, religion, age, handicap, marital status or national origin, be excluded from participation in, be denied services, or be subject to discrimination under any provision of this Agreement.

A10.10- OSHA Compliance

The Consultant warrants that it will comply with all safety precautions as required by federal, state or local laws, rules, regulations and ordinances. The Town reserves the right to refuse Consultant access to Town property, including project jobsites, if Consultant employees are not properly equipped with safety gear in accordance with OSHA regulations or if a continuing pattern of non-compliance with safety regulations is exhibited by Consultant.

A10.10-3 ADA Compliance

Consultant shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (“ADA”) in the course of providing any work, labor or services funded by the Town, including Titles I & II of the ADA (regarding nondiscrimination on the basis of disability) and all applicable regulations, guidelines and standards. Additionally—the Consultant shall take affirmative steps to—insure nondiscrimination in employment of disabled persons.

A10.11 No Partnership

Consultant is an independent contractor. This Agreement does not create a joint venture, partnership or other business enterprise between the parties. The Consultant has no authority to bind the Town to any promise, debt, default, or undertaking of the Consultant.

A10.12 Discretion of Town Manager

Any matter not expressly provided for herein dealing with the Town or decisions of the Town shall be within the exercise of the reasonable professional discretion of the Town Manager.

A10.13 Resolution of Disputes

Consultant understands and agrees that all disputes between it and the Town based upon an alleged violation of the terms of this Agreement by the Town shall be submitted for resolution in the following manner.

The initial step shall be for the Consultant to notify the Procurement Manager in writing of the dispute identified in Article A10.06, Notices. Consultant shall, within five (5) calendar days of the initial notification, submit all supporting documentation to the Procurement Manager. Failure to submit such appeal of the written finding shall constitute acceptance of the finding by the Consultant. Upon receipt of said documentation the Procurement Manager shall review the issues relative to the dispute and issue a written finding.

Should the Consultant and the Procurement Manager fail to resolve the dispute the Consultant shall submit their dispute in writing within five (5) calendar days to the Town Manager. Failure to submit such appeal of the written finding shall constitute acceptance of the finding by the Consultant. Upon receipt of said notification the Town Manager shall review the issues relative to the dispute and issue a written finding.

Appeal to the Town Manager for his/her resolution, is required prior to Consultant being entitled to seek judicial relief in connection therewith. Should the amount of compensation require approval or disapproval by the Town Council Consultant shall not be entitled to seek judicial relief unless:

- (i) it has first received Town Manager's written decision, approved by the Town Council if applicable, or
- (ii) a period of sixty (60) days has expired after submitting to the Town Manager a detailed statement of the dispute, accompanied by all supporting documentation, or a period of (90) days has expired where Town Manager's decision is subject to Town Council approval; or
- (iii) Town has waived compliance with the procedure set forth in this section by written instrument(s) signed by the Town Manager.

A10.14 Contingency Clause

Funding for this Agreement is contingent on the availability of funds and continued authorization for program activities and the Agreement is subject to amendment or termination due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days notice.

A10.15 Third Party Beneficiary

Consultant and the Town agree that it is not intended that any provision of this Agreement establishes a third party beneficiary giving or allowing any claim or right of action whatsoever by any third party under this Agreement.

10.16 No Estoppel

Neither the Town's review, approval and/or acceptance of, or payment for Services performed under this Agreement shall be construed to operate as a waiver of any rights under this Agreement of any cause of action arising out of the performance of this Agreement, and the Consultant shall be and remain liable to the Town in accordance with applicable laws for all damages to the Town caused by the Consultant's negligent performance of any of the Services under this Agreement. The rights and remedies provided for under this Agreement are in addition to any other rights and remedies provided by law.

Where the Consultant is comprised of more than one legal entity, each such entity shall be jointly and severally liable under this Agreement.

END OF SECTION

SECTION B SCOPE OF SERVICES**Article B1 General**

The Scope of Services shall consist of two components, Basic Services, and Optional Services. Basic Services shall consist three (3) phase as further detailed below. The Optional Services as detailed below shall be based on future funding and shall be exercised in accordance with Article 2.01 of the Agreement.

Article B2 Basic Services**Phase 1 – Destination Brand Study**

The purpose is to gain insight into current brand perceptions, assess the brand environment and image, provide insight into audience segments, give guidance to the development of a meaningful brand platform and promise, and provide an agreed upon context for all follow-on activities. The Study shall include:

- Interview, in person or by phone, with Mayor and Town Council
- Business Leader and/or Resident Focus Groups (2)
- Communication Materials and Strategic Plan Audit
- In-depth work sessions with brand committee (3-4 throughout process or as needed, but no limit will be set)
- Review competitive set
- Research/Interview Finding Report

Phase 2 – Brand Promise and Brand Design

- Brand Promise

The written Brand Promise is based on core attributes and achievable aspirational attributes that can deliver both emotional and functional benefits to your key audience(s) and will set the direction for how Miami Lakes will be perceived, and the experience it will deliver.
- Brand Identity: Logo/Tagline
 - Develop logo concepts
 - Write bylines/taglines
 - Explore wordmarks, iconography, and symbols
 - Explore color palettes
 - Distill concepts and refine
 - Preliminary tagline service mark and url search
- Brand Standards Document

This Document will define the specific design criteria and standards to ensure all printed material and signage is consistent with the Town's brand.

END OF SECTION

SECTION C COMPENSATION AND PAYMENTS

To Be Finalized During Negotiations

Article C3 Compensation and Payments

C3.01 Payment

Consultant shall be paid the lump sum amount stated in Article A2.03 of the Agreement.

Payments for Basic Services may be requested monthly, based on six (6) equal payments in the amount of \$6,666.66. However, the final monthly payment will only be paid subsequent to the delivery of the Brand Standards Document. Consultant shall utilize the Town standard Consultant Invoice Form that will be provided to the Consultant by the Project Manager.

C3.02 Reimbursable Expenses

If permitted under the Agreement any fees for authorized reimbursable expenses shall not include charges for Consultant handling, office rent or overhead expenses of any kind, including local telephone and utility charges, office supplies, depreciation of equipment, professional dues, subscriptions, etc., reproduction of reports, documents, or media (above the quantities set forth in this Agreement), mailing, stenographic, clerical, or other employees time or travel and subsistence not directly related to a project. All reimbursable services shall be billed to the Town at direct cost expended by the Consultant. Town authorized reproductions in excess of those established in the Agreement will be a Reimbursable Expense. Incurring of Reimbursable Expenses shall require the prior approval of the Town.

The Town will reimburse the Consultant for authorized Reimbursable Expenses pursuant to the limitations of this Agreement as verified by supporting documentation deemed appropriate by Town Manager or designee including, without limitation, detailed bills, itemized invoices and/or copies of cancelled checks.

C3.03 Additional Services

The Consultant may be authorized to perform Additional Services for which additional compensation and/or Reimbursable Expenses, as defined in this Agreement may be applicable.

C3.03-1 Determination of Fee

The compensation for such services will be one of the methods described herein: mutually agreed upon Lump Sum; or Hourly Rate with a Not to Exceed Limit. Any reimbursable expenses will be paid in accordance with Article C3.02 above.

C3.03-2 Procedure and Compliance

An independent Notice to Proceed, and an approved Work Order, shall be required to be issued and signed by the Town Manager for each additional service requested by the Town.

C3.04 Payment Exclusions

Consultant shall not be compensated by Town for revisions and/or modifications to the Program when such work is due to errors or omissions of Consultant as determined by Town.

C3.05 Billing – Hourly Rate

For payments made based on hourly rates invoices submitted by Consultant shall be sufficiently detailed and accompanied by supporting documentation to allow for proper audit of expenditures.

C3.06 Transportation

Should the Consultant be entitled to reimbursement for transportation such payments are subject to the limitations of Section 112.061, Florida Statutes, as amended, General automobile transportation expenses within Miami-Dade, Broward counties is not eligible for reimbursement. All transportation expenses are subject to the prior written approval of the Town.

C3.07 Travel and Per Diem

Identifiable per diem, meals and lodging, lodging, taxi fares and miscellaneous travel-connected expenses for Consultant's personnel subject to the limitations of Section 112.061 Florida Statutes as amended. Meals for class C travel inside Miami-Dade or Broward County will not be reimbursed. Lodging will be reimbursed only for room rates equivalent to Holiday Inn, Howard Johnson or Ramada Inn.

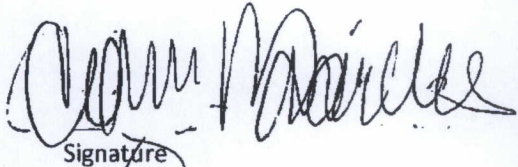
C3.08 Communication Expenses

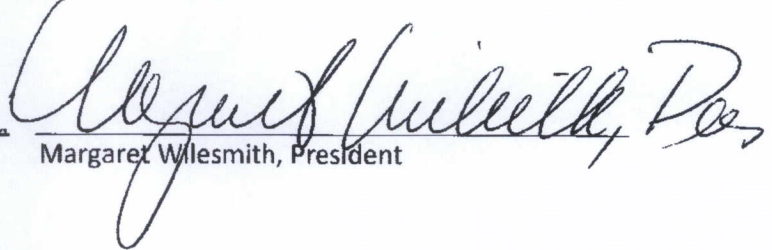
Identifiable communication expenses approved by the Project Manager, long distance telephone, courier and express mail will not be considered reimbursable expenses under this Agreement, unless approved in advance, in writing by the Project Manager.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

WITNESS/ATTEST

Consultant: **Wilesmith Advertising & Design, Inc.**


Signature


Margaret Wilesmith, President

Corrina Benavides
Print Name, Title

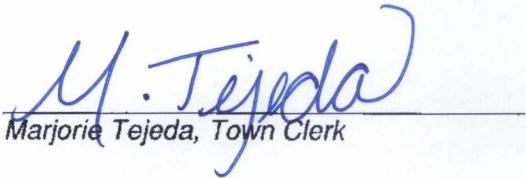
ATTEST:

(Corporate Seal)

Consultant Secretary
(Affirm Consultant Seal, if available)

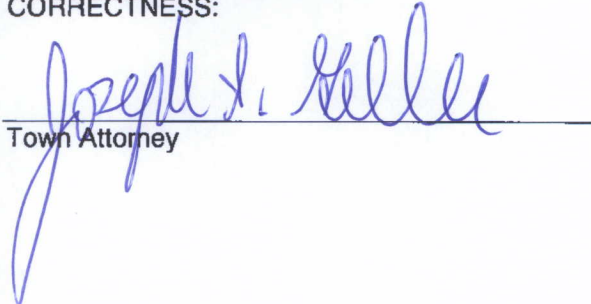
ATTEST:

Town of Miami Lakes, a municipal corporation
of the State of Florida


Marjorie Tejada, Town Clerk


Alex Rey, Town Manager

APPROVED AS TO LEGAL FORM AND
CORRECTNESS:


Joseph D. Keller
Town Attorney

Form KS – Key Staff

NAME	JOB CLASSIFICATION
Margaret Wilesmith	President/Creative Director
Bill Vervaeke	Account Director; Strategic Planning
Scott Eurich	Design and Implementation Director
Dale Carlson	Destination Brand Marketing Specialist
Linda Rivera	Senior Art Director
Jon Chung	Graphic Designer
Donna Davis	Broadcast Producer