



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		05/14/2012		
Department:		Purchasing		
Department Head		Diane Palmer-Boeck		
Agenda Coordinator (include phone #): Aimee Storm Ext. 7248				
CAPTION				
To approve a contract by and between the City of Plano and The Atkins Group, for a City of Plano Brand Development and Community Vision Consultant an amount not to exceed \$70,345 and authorizing the City Manager to execute all necessary documents.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2011-12	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget		0	100,000	0
Encumbered/Expended Amount		0	0	0
This Item		0	-70,345	0
BALANCE		0	29,655	0
FUND(S): GENERAL FUND				
COMMENTS: Funding for this item is available in the approved FY 2011-12 Non-Departmental budget. This item authorizes The Atkins Group to conduct research and develop branding materials for the City of Plano. STRATEGIC PLAN GOAL: Soliciting community input while revising Plano's branding relates to the City's goals of Partnering for Community Benefit and Strong Local Economy.				
SUMMARY OF ITEM				
Staff recommends the purchase of a contract for a City of Plano Brand Development and Community Vision Consultant in an amount not to exceed \$70,345.				
Professional Services are exempt from state competitive bidding requirements.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Contract				

**PERSONAL SERVICES AGREEMENT
BY AND BETWEEN THE CITY OF PLANO, TEXAS AND
THE ATKINS GROUP**

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **THE ATKINS GROUP**, a Texas limited liability company, hereinafter referred to as "Consultant" to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to engage the services of Consultant to provide brand development and community visioning, hereinafter referred to as the "Project"; and

WHEREAS, Consultant desires to render such services for the City upon the terms and conditions provided herein.

NOW, THEREFORE, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

I. ENGAGEMENT

The City hereby agrees to retain Consultant to perform services in connection with marketing services as set forth in the attached scope of work, Exhibit "A". Consultant agrees to perform such services in accordance with the terms and conditions of this Agreement.

This Agreement shall commence upon the effective date herein and continue in full force and effect until all work has been completed or termination in accordance with its provisions.

II. SCOPE OF SERVICES

The services are described in the Scope of Services attached hereto and incorporated herein as Exhibit "A". The parties understand and agree that deviations or modifications in the Scope of Services may be authorized from time to time by the parties, but said authorization must be made in writing.

If City agrees in writing to additional services beyond what is required in Exhibit "A", such services shall be billed in accordance with the schedule set forth in Exhibit "B".

III. SCHEDULE OF WORK

Consultant agrees to commence work immediately upon receiving a notice to proceed for each specific phase of work shown on Exhibit "A" of this Agreement, and to proceed diligently with said work until such phase is complete unless notified by the City to cease work. However, if additional work is requested by City beyond what is contained in the Scope of Services, the Schedule of Work may be extended by written agreement of the parties.

Consultant shall be responsible for providing all necessary facilities, personnel, equipment, materials or other items necessary to perform the services required of it hereunder; provided, however, that City shall cooperate with Consultant by providing space it has available for meetings, conferences, presentations, etc.

IV. COMPENSATION/EXPENSES

a. The total compensation for services if all phases are performed in Exhibit "A" shall not exceed \$55,825.00, not including travel expenses. The maximum amount for travel expenses associated with each phase is set forth in "Exhibit A-1" and will be allowed in accordance with the provisions set forth in b., below.

b. Consultant will submit travel dates and obtain prior written permission from City prior to any travel expense to be billed for each phase. Travel Expenses and Per Diem for out of town travel will be calculated as follows:

- (i) Transportation – Consultant shall use its best efforts to secure the most time and cost efficient mode of travel. Airfare will be purchased at the lowest fare available and within the planning timetable. If schedule changes are required by City, any adjustment to the fare will be added. If travel is cancelled and Consultant is able to reuse funds on a previously purchased ticket at no cost, that cost will be credited to the City. If it is a non-refundable ticket, the City will be billed for the fare and/or change fees that may apply. Airfare will be billed to the City at net cost with no markup.
- (ii) Ground Transportation – For out of town travel, \$75 per day will be assessed for ground transportation. This rate covers fuel, parking and maintenance of the Consultant's vehicle. If a specialty vehicle is needed, or our Consultant vehicle is not available, actual rental car receipts will be provided along with parking and fuel receipts.
- (iii) Lodging – For out of town travel Consultant shall use its best efforts to secure the lowest rate possible for comfortable and secure single occupant lodging, including utilizing an available corporate rate

established by the City when available. Actual receipts will accompany billing.

- (iv) Meals – For out of town travel, a per diem rate of \$65 per day, per person, may be charged for meals and any incidentals. For billing purposes, a day consists of time away from Consultant's corporate office during regular business hours. This will be charged in conjunction with travel and does not necessarily require an overnight stay.

c. Consultant and City herein recognize that the continuation of any agreement after the close of any given fiscal year of the City of Plano, which fiscal year ends on September 30th of each year, shall be subject to Plano City Council approval. In the event that the Plano City Council does not approve the appropriation of funds for this Agreement, the Agreement shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder, other than the City's obligation to pay Consultant for any time occurred prior to the termination date and before notice of termination.

d. Payment for services rendered shall be made within thirty days of receipt of invoice unless City reasonably objects to the charge(s). If City disputes the amount or the services rendered, it shall notify Consultant within five business days. No payment for the disputed amount shall be made until it is resolved by the parties.

V. INSURANCE

Consultant agrees to meet all insurance requirements, and to require all consultants who perform work for Consultant to meet all insurance requirements, as set forth in Exhibit "C", which is attached hereto and thereby made a part of this Agreement.

VI. INDEMNIFICATION AND HOLD HARMLESS

CONSULTANT AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS (INCLUDING PATENT, COPYRIGHT AND TRADEMARK INFRINGEMENT) OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONSULTANT'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE CONSULTANT OR, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND

THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE CONSULTANT IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

CONSULTANT AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONSULTANT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONSULTANT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONSULTANT SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONSULTANT FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND CONSULTANT SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

IN ADDITION TO CONSULTANT'S INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION AND DEFENSE REQUIREMENTS HEREIN, IF AN INFRINGEMENT CLAIM OCCURS, OR IN CONSULTANT'S OPINION IS LIKELY TO OCCUR, CONSULTANT SHALL, AT ITS EXPENSE: (A) PROCURE FOR THE CITY THE RIGHT TO CONTINUE USING THE PRODUCT; (B) REPLACE OR MODIFY THE PRODUCT SO THAT IT BECOMES NON-INFRINGEMENT WHILE PROVIDING FUNCTIONALLY EQUIVALENT PERFORMANCE; OR (C) ACCEPT THE RETURN OF THE PRODUCT AND GRANT THE CITY A REIMBURSEMENT FOR THE PRODUCT. CONSULTANT WILL PROCEED UNDER SUBSECTION (C) ABOVE ONLY IF SUBSECTIONS (A) AND (B) PROVE TO BE COMMERCIALY UNREASONABLE.

THE INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION HEREIN APPLIES TO ALL PRODUCTS PROVIDED, SUPPLIED OR SOLD UNDER THIS AGREEMENT BY CONSULTANT TO CITY WHETHER MANUFACTURED BY CONSULTANT OR A THIRD PARTY. CONSULTANT REPRESENTS THAT, TO THE BEST OF ITS KNOWLEDGE, THE CITY'S USE OF PRODUCTS THAT ARE PROVIDED SUPPLIED, OR SOLD BY CONSULTANT TO CITY AS PART OF THIS AGREEMENT DOES NOT CONSTITUTE AN INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS AND THE CITY HAS THE LEGAL RIGHT TO

USE SAID PRODUCTS. THE CITY ENTERS INTO THIS AGREEMENT RELYING ON THIS REPRESENTATION.

THE INDEMNIFICATION HEREIN SURVIVES THE TERMINATION OF THE AGREEMENT AND/OR DISSOLUTION OF THIS AGREEMENT INCLUDING ANY INFRINGEMENT CURE PROVIDED BY THE CONSULTANT PURSUANT TO PARAGRAPH 3 IN THE HEREIN INDEMNIFICATION SECTION.

VII. INDEPENDENT CONTRACTOR

Consultant covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that it shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Consultant its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Consultant.

VIII. ASSIGNMENT AND SUBLETTING

Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. Consultant further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Consultant from its full obligations to the City as provided by this Agreement.

Consultant may engage the services of any agents or assistants which it may deem proper, and it may further employ, engage, or retain the services of such other persons or corporations to aid or assist it in the proper performance of its duties. The cost of the service of such agents or assistants shall be borne by Consultant at its sole cost and expense.

IX. AUDITS AND RECORDS

Consultant agrees that at any time during normal business hours and as often as City may deem necessary, Consultant shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of three (3) years from the date of City's acceptance of the final Project, or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

X. PROHIBITED INTEREST

Consultant agrees that it is aware of the prohibited interest requirements of the City Charter and Code of Conduct and will abide by the same. Further, a lawful representative of Consultant shall execute the affidavit shown in Exhibit "D". Consultant understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

XI. RIGHT TO TERMINATE

The parties agree that City shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Consultant.

Notices shall be deemed given on the day of mailing or in case of notice by fax, on the day it is transmitted. In the event of such termination, Consultant shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Consultant in connection with this Agreement. Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination. The rights, duties and responsibilities of Consultant shall continue in full force during the period of notice, including the ordering and billing of advertising in print media whose closing dates fall within such period and the ordering and billing of advertising in broadcast media where the air dates fall within such period.

XII. OWNERSHIP OF WORK PRODUCT

Upon termination of this Agreement, Consultant shall transfer ownership, assign and deliver to City, or its representatives, all Work Product which shall include the research findings and summaries, brand position and pyramid, and all logos and taglines developed and materials developed pursuant to this Agreement (including intellectual property) and paid for by the City (the "Work Product"). In the event that the Work Product is copyrightable, trademarked, or patented subject matter (including pending intellectual property rights), Consultant and City agree that, for the purposes of this Agreement, the Work Product shall be a work made for hire and the property of the City. In the event that the Work Product is not copyrightable, trademarked or patented subject matter, or for any reason is determined not to be a work made for hire, then and in such event, Consultant hereby assigns all right, title and interest to said Work Product to City for the fees specified herein. Work Product includes any materials or documents containing ideas, results, statistics, data, feedback, advertising, logos, merchandising, branding, packaging and supplementary items that are developed by Consultant pursuant to Exhibits "A" and "B" attached to the Agreement hereto. Work product shall not include the processes used by Consultant to achieve the work Product.

Any Work Product that the City, in its sole discretion, agrees in writing to release back to Consultant, shall remain Consultant's property.

XIII. COMPLETE AGREEMENT

This Agreement, including the Exhibits lettered "A" through "D", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

XIV. MAILING OF NOTICES

Unless instructed otherwise in writing, Consultant agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

City of Plano, Texas
City Manager
Attn: Bruce D. Glasscock
P.O. Box 860358
Plano, TX 75086-0358
Facsimile: 972-423-9587

City agrees that all notices or communications to Consultant permitted or required under this Agreement shall be addressed to Consultant at the following address:

The Atkins Group
Attn: Steve Atkins, President
501 Soledad Street
San Antonio, TX 78205
Facsimile: 210-824-8326

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

XV. AUTHORITY TO SIGN

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

XVI. MISCELLANEOUS

A. Paragraph Headings:

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

B. Agreement Interpretation:

This is a negotiated Agreement, should any part be in dispute, the parties agree that the terms of the Agreement shall not be construed more favorably for either party.

C. Venue/Governing Law:

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County Texas. Exclusive venue shall lie in Collin County, Texas.

D. Successors and Assigns:

City and Consultant and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

E. Severability:

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

F. Effective Date:

This Agreement shall be effective from and after the date of execution by both parties hereto.

SIGNED on the date indicated below.

THE ATKINS GROUP

Date: _____

By: _____
Steve Atkins
PRESIDENT

CITY OF PLANO, TEXAS

Date: _____

By: _____
Bruce D. Glasscock
CITY MANAGER

APPROVED AS TO FORM

Diane C. Wetherbee, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2012, by **STEVE ATKINS**, President of **THE ATKINS GROUP**, a Texas limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2012, by **BRUCE D. GLASSCOCK**, City Manager, of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas



EXHIBIT "A"

CITY OF PLANO BRAND DEVELOPMENT AND COMMUNITY VISION

Objective: The Atkins Group is proposing to lead the City of Plano toward the development of a singular citywide brand identity, which would effectively capture and represent a long-term community vision toward maximizing the quality of life and economic prosperity for the people of Plano.

Phase 1: Community Audit

The Atkins Group will review all existing research and appropriate representations of the current community profile and anticipated growth opportunities for the City of Plano. Materials should represent all city departments, including: City Council, Chamber, Parks & Recreation, CVB, EDC, etc.

Estimate: \$3,950

Phase 2: Key Research To Shape The Future

Invite approximately 60-70 Plano community members to participate in one of two “visioning sessions” to help understand what the current perceptions are of Plano amongst the community and what they feel it should be. This effort will create awareness, understanding and a sense of involvement in the pursuit of community brand architecture. Each session will last approximately 2.5 hours and include about 35 people.

Each session will be comprised of a cross section of the following groups within the community:

1. Key City employees and partners – Parks & Rec, CVB, Chamber, EDC, etc.
2. Education system leadership
3. Corporate headquarter leaders
4. Other economic and business organizations, including the healthcare segment
5. Cultural Arts, volunteer, religious and other “quality of life” organizations

Using nominal group techniques, we will identify, record and better understand the current situation, stimulate forward thinking and explore all possibilities that can positively affect quality of life and broader issues of economic development, while building community involvement.



EXHIBIT "A"

CITY OF PLANO BRAND DEVELOPMENT AND COMMUNITY VISION

In these sessions, participants will be arranged into 4 or 5 “work groups” within each session to provide input to the following questions:

1. When people think of Plano, what images come to mind?
2. How are they distinctive from your key competitors?
3. What words would they use to describe Plano to others?
4. How are these distinctive from your closest competitors?
5. Are there specific “stories” that you feel represent what Plano is all about?
6. What messages do you think are most circulated about Plano in the community?
...outside of the community?
7. What would you want them to be?
8. Personify Plano (represent it as human)
9. Pretend you live in Frisco and convince me that Frisco is a better place to live and/or conduct business versus Plano.
10. What are the top three biggest misconceptions about Plano?

In addition to gathering insights into the Plano brand, we will probe for:

1. Brief reflection of history (product development and business creation).
2. Prioritization of target audiences.
3. Describe what your ideal vision is for Plano; what should the city look like/be like five to ten years from now?
4. What will it take for the City to achieve this vision?
5. Current obstacles to maximizing that level of economic development. What are the most important issues facing the City of Plano that should be addressed over the next 2 to 5 years?
6. What can/should be the role of the visitor industry be to support the goals?
7. What resources are necessary to maximize that role?
8. What tools/products/infrastructure would be needed?
9. Perceived key purpose/value of the Plano brand to internal and external audiences.
10. What final suggestions or recommendations might you have for City Leadership?

A summary of key findings will be produced and presented to Internal Stakeholders.

Estimate: \$19,500



EXHIBIT "A"

CITY OF PLANO BRAND DEVELOPMENT AND COMMUNITY VISION

Phase 3: Defining The Brand and Opportunities for the Future

We will bring together all of the insights gathered during the audit and research phases, as well as the Plano CVB brand research findings, to finalize our recommendation for the City of Plano brand architecture. This will include:

- Finalize brand position and brand pyramid
- Characterize the brand personality
- Create brand statements
- Develop tagline and brand identity
- Present a summary of key opportunities for the future

Estimate: \$12,875

Phase 4: Logo Development & Execution

Development of new logo and color palette that becomes the single visual representation of Plano, based on the newly defined brand and tagline. An official Style and Usage Guide will be produced to demonstrate logo usage across all City departments and for implementation on all materials. During this phase we will also define a plan for executing the logo citywide.

*****The Atkins Group will do a reasonable search on the initial logo and tagline before finalizing the recommended logo. This does not modify or eliminate Atkins Group responsibility to indemnify the City pursuant to Article VI of this Agreement. Costs associated with the actual filing of the copyright and trademark of the logo can be estimated separately should the City choose to have The Atkins Group provide those services.***

Estimate: \$19,500

EXHIBIT "A-1"
TRAVEL EXPENSES

Phase 1; 1 trip = \$ 1,320
Phase 2; 4 trips = \$ 5,280
Phase 3; 4 trips = \$ 5,280
Phase 4; 2 trips = \$ 2,640
Total: \$14,520 for all phases

EXHIBIT "B"

1. As work is determined and requested for additional service outside of the Brand Development proposal, estimates will be provided to reflect hours utilized based on the scope of work as determined with the client. All time related to creating and producing your advertising materials is estimated and billed at the following rates:
 - a. Strategic Planning
 - i. Steve Atkins, Principal - \$225 per hour
 - ii. Claudia Gonzalez, Strategic Planning Director - \$195 per hour
 - b. Account Supervision
 - i. Steve Atkins, Principal - \$195 per hour
 - ii. Terri Angelico, Senior Account Supervisor - \$150 per hour
 - c. Account Management
 - i. Jayme Legros, Account Supervisor - \$150 per hour
 - ii. Selina Clem, Account Manager - \$150 per hour
 - iii. Gabriella Flores, Senior Account Coordinator - \$125 per hour
 - d. Concept/Design
 - i. Dirk Mitchell, Co-Creative Director - \$175 per hour
 - ii. James Howe, Co-Creative Director - \$175 per hour
 - e. Copywriting
 - i. Dirk Mitchell, Co-Creative Director - \$150 per hour
 - ii. Stan McElrath, Copywriter - \$150 per hour
 - f. Art Director
 - i. Thuy Pham, Art Director - \$125 per hour
 - g. Production Art & Traffic
 - i. Steve Young, Production Artist - \$95 per hour
 - ii. Phyllis Keith, Traffic Manager - \$95 per hour
 - h. Web Design & Maintenance
 - i. Jim Aderhold, Co-Director, Digital - \$175 per hour
 - ii. Brad Gray, Co-Director, Digital - \$175 per hour
 - iii. Erik Arredondo, Interactive Programmer - \$150 per hour

- i. Media Planning & Buying
 - i. Ann Perrine, Media Director, Planning - \$175 per hour
 - ii. Ann Perrine, Media Director, Buying - \$150 per hour
 - iii. Pat Roberson, Associate Media Director - \$150 per hour
 - iv. Cecilia Novak, Media Manager - \$125 per hour
 - v. Cecilia Novak, Media Coordination - \$95 per hour
 - vi. Paige Norman, Billing Administrator - \$75 per hour

 - j. Public Relations
 - i. Kelly Morris, Public Relations Director - \$150 per hour
 - ii. Blithe Wiley, Public Relations Management - \$125 per hour
 - iii. Karen Kolivosky, Public Relations Management - \$125 per hour
 - iv. Fran Stephenson, Social Media Director - \$150 per hour

 - k. Crisis Management Communications
 - i. Kelly Morris, Public Relations Director - \$185 per hour
2. On all media purchased by us on your behalf, we shall bill you at the net published card rates after negotiation. Hourly billings will cover the cost of media planning and placement, media trafficking, all administrative and accounting functions for the original media estimate and one (1) revision to that order. Additional revisions will be done upon approval of a change order to compensate for additional hours needed to make changes/cancellations to the original approved estimate.
3. Professional will present cost estimates for projects over \$1,500 for the Client's review and approval prior to beginning work on individual projects. These estimates detail all production costs and reflect a plus or minus 10% contingency factor in addition to any specifically stated contingency. If changes and/or additional unforeseen services/costs are necessary to complete a job, a change order will be issued to Client for review and approval.
4. All purchases of space and facilities and all engagement of talent with respect to the advertising of your products shall be subject to prior approval. If you should direct us to cancel and/or terminate any previously authorized purchase or project, we shall promptly take all appropriate action, provided that you will hold us harmless with respect to any costs incurred to us as a result thereof. We warrant and represent to you that in purchasing any materials or services for your account, we shall exercise due care in selecting suppliers and make every effort to obtain the lowest

price for the desired quality of materials or services. Wherever possible, we shall obtain competitive bids.

5. Furthermore, talent contracts with members of certain labor unions or guilds generally cannot be assigned except to signatories to the collective bargaining agreements governing the services rendered by such talent. Upon termination, no rights or liabilities shall arise out of this relationship, regardless of any plans which may have been made for future advertising, except that any non-cancelable contracts made on City's authorization and still existing at termination hereof, which contracts were not paid or could not be assigned by Professional to City, shall be carried to completion by us and paid for by you in the manner described in Paragraph (1) above.

INSURANCE REQUIREMENTS

1.0 General Provisions

- 1.1 The Contractor shall obtain and maintain the minimum insurance coverage set forth in this section. By requiring such minimum insurance, City shall not be deemed or construed to have assessed the risk that may or may not be applicable to the Contractor. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Contractor is not relieved of any liability or other obligation assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance requirements listed below do not replace any warranty or surety (performance, payment, or maintenance) bonds if required by preceding or subsequent sections of this contract.
- 1.2 Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified herein or cover such subcontractors under its insurance coverage.
- 1.3 The Contractor agrees that the insurance requirements specified in this section do not reduce the liability Contractor has assumed in any indemnification/hold harmless section of this contract.
- 1.4 City reserves the right to approve the security of the insurance coverage provided pursuant to this section by insurers including terms, conditions and the Certificate of Insurance. Failure of the Contractor to fully comply with requirements of this section during the term of the contract will be considered a material breach of contract and will be cause for immediate termination of the contract at the option of City.
- 1.5 Insurance coverage required by this section shall:
 - 1.5.1 Be on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by City
 - 1.5.2 Be with an insurer possessing an A-VII. A. M. Best Rating
- 1.6 **Subcontractor Insurance.** If the contractor utilizes the services of another company or subcontractor, affiliate or non-affiliate, in order to fulfill the requirements covered under this Agreement, then those other companies or subcontractors must comply with the insurance provisions within this Agreement.

2.0 Minimum Insurance Coverage & Limits

2.1 Commercial General Liability. Contractor shall maintain commercial general liability and, if necessary commercial umbrella insurance as specified below.

2.1.1 Commercial general liability insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, product-complete operations, personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

2.1.2 City, the City Council and its members, the City's agents, officers, directors and employees shall be included as an additional insured under the commercial general liability using **ISO additional insured endorsement CG 20 10 and CG 20 37** or their equivalent, including coverage for City with respect to liability arising out of the completed operations of Contractor.

2.1.3 Limits of Insurance

2.1.3.1	\$1,000,000 Per Occurrence
2.1.3.2	\$1,000,000 Personal/Advertising Injury
2.1.3.3	\$2,000,000 General Aggregate
2.1.3.4	\$2,000,000 Products/Completed Operations Aggregate

2.2 Commercial Automobile Liability. Contractor shall maintain business automobile liability insurance and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident.

2.2.1 Such automobile liability insurance shall cover liability arising out of any auto (including owned, hired, and non-owned automobiles).

2.2.2 Commercial automobile coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to the provided ISO form CA 00 01.

2.2.3 Contractor waives all rights against City and its agents, officers, directors and employees for recovery by the commercial automobile liability or commercial umbrella liability insurance obtained by Contractor pursuant to this section or under any applicable automobile physical damage coverage.

2.3 Workers' Compensation & Employer Liability. Contractor shall maintain workers' compensation insurance in the amounts required by appropriate state statute. The employers liability limit and, if necessary, commercial umbrella coverage shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

2.3.1 Contractor waives all rights against City, the City Council and its members, the City's agents, officers, directors and employees for recovery of damages under contractor's workers' compensation and employers liability or commercial umbrella liability insurance. Contractor must cause a **waiver of subrogation** to be effected under its workers' compensation coverage using endorsement WC 00 03 13.

2.4 Professional Liability. Contractor shall maintain professional liability insurance covering errors, including omissions, due to negligence in the performance or failure to perform professional services.

2.2.1 Limits of Insurance

2.2.1.1 \$1,000,000 Per Occurrence

2.2.1.2 \$2,000,000 Aggregate

2.2.2 If coverage required by this section is written on a claims-made basis, the Contractor warrants that any applicable retroactive date under the policy precedes the effective date of this Agreement; and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of one (1) year beginning from the time that work under the Agreement is completed.

3.0 Evidence of Insurance

3.1 Prior to commencement of work, and thereafter upon renewal or replacement of coverage required by this section, Contractor shall furnish City a certificate(s) of insurance, including for subcontractors cited in Section 1.6, executed by a duly authorized representative of each insurer, showing compliance with this section. **Contractor shall furnish copies of all endorsement to insurance policies as required by each section herein to the City.**

3.2 Failure of City to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

3.3 City shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City.

- 3.4 Failure to maintain required insurance may result in termination of this contract at sole option of the City.
- 3.5 The Contractor shall furnish a Certificate of Insurance (COI) evidencing insurance coverage required by this section ten (10) business days preceding commencement of contracted service(s). The COI shall:
 - 3.5.1 List each insurers' NAIC Number or FEIN
 - 3.5.2 List **contract number, project name**/number, name of event, location (building name, building address, etc.), date(s) of event or service being performed
 - 3.5.3 State insurance is on a primary basis and non-contributory with any insurance/or self-insurance carried by City
 - 3.5.4 Specifically list reference to all endorsements required herein
 - 3.5.5 List the specific number of days cancellation provided pursuant to policy language for notice of cancellation on certificate
 - 3.5.6 List City of Plano, Risk Management Division, 7501 A Independence Parkway, Plano, Texas, 75025 in the Certificate Holder Section

EXHIBIT "D"

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare that I am authorized to make this statement on behalf of **THE ATKINS GROUP**, a Texas limited liability company, and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of **THE ATKINS GROUP**, is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

"No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council."

I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

THE ATKINS GROUP

By: _____
STEVE ATKINS
President
Date: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2012.

Notary Public, State of Texas