

**NOTICE OF CONVENTION AND VISITORS ADVISORY BOARD SPECIAL MEETING
CITY OF SOUTH PADRE ISLAND**

WEDNESDAY, JULY 8, 2020

10:00 AM AT THE MUNICIPAL BUILDING,
CITY COUNCIL CHAMBERS, 2ND FLOOR
4601 PADRE BOULEVARD, SOUTH PADRE ISLAND, TEXAS

1. Call to Order

2. Pledge of Allegiance

3. Public Comments and Announcements

This is an opportunity for citizens to speak to the Board relating to agenda or non-agenda items. Speakers are required to address the Board at the podium and give their name before addressing their concerns. [Note: State law will not permit the Convention and Visitors Bureau to discuss, debate or consider items that are not on the agenda. Citizen comments may be referred to City Staff or may be placed on the agenda of a future Convention and Visitors Bureau meeting]

5. Regular Agenda

- 5.1. Discussion and recommendation to City Council to approve The Atkins Group contract extension for FY 2020/2021. (Caum)

6. Adjourn

NOTE:

One or more members of the City of South Padre Island City Council and Special Events Committee may attend this meeting; if so, this statement satisfies the requirements of the OPEN MEETINGS ACT.

DATED THIS DAY THE 24TH OF JUNE 2020.



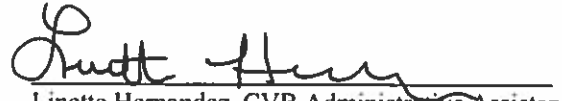
Linette Hernandez, CVB Administrative Assistant

I, THE UNDERSIGNED AUTHORITY, DO HEREBY CERTIFY THAT THE ABOVE NOTICE OF MEETING OF THE CONVENTION AND VISITORS ADVISORY BOARD OF THE CITY OF SOUTH PADRE ISLAND, TEXAS IS A TRUE AND CORRECT COPY OF SAID NOTICE AND THAT I POSTED A TRUE AND CORRECT COPY OF SAID NOTICE ON THE BULLETIN BOARD AT CITY HALL/MUNICIPAL BUILDING ON JUNE 24, 2020, AT/OR BEFORE 5:00 PM AND REMAINED SO POSTED CONTINUOUSLY FOR AT LEAST 72 HOURS PRECEDING THE SCHEDULED TIME OF SAID MEETING.

Agenda: JULY 8, 2020






Linette Hernandez, CVB Administrative Assistant

THIS FACILITY IS WHEELCHAIR ACCESSIBLE, AND ACCESSIBLE PARKING SPACES ARE AVAILABLE. REQUESTS FOR ACCOMMODATIONS OR INTERPRETIVE SERVICES MUST BE MADE 48 HOURS PRIOR TO THIS MEETING. PLEASE CONTACT BUILDING OFFICIAL, BELINDA TARVER AT (956)761-8103.

Agreement

**Between
City of South Padre Island
and
The Atkins Group**

The Atkins Group (referred to as TAG) with offices located at 501 Soledad Street, San Antonio, TX 78205, hereby agrees to serve as marketing communications agency for the City of South Padre Island (referred to City) with offices located at 4601 Padre Boulevard, South Padre Island, TX 78597, in accordance with and subject to the following terms:

1. During the term of this Agreement, the City appoints TAG as the primary agency for the City of South Padre Island, with the only exception being direct placement by the City. TAG will be charged with the responsibility of strategic planning and stewardship, brand campaign concept development and maintenance, digital services, public relations and social media strategy/management, and preparing and placing advertising/marketing communications for the City.
2. Charges not to exceed the annual costs outlined below per year for the term of the contract: October 1, 2020 – September 30, 2021.

Creative and Content Services	\$133,000
Account Services	\$162,000
Production & Editing	\$100,000
Advanced Analytics & Reporting	\$24,000
Public Relations & Social Media Strategy	\$96,000
Website & Digital Development	\$60,000
Media Research, Planning and Placement	\$1,125,000
TOTAL:	\$1,700,000

3. The City may, however, wish to assign additional projects, products, or services to TAG beyond the budget outline shown above. TAG agrees to accept such assignments upon written authorization from both the South Padre Island Convention & Visitors Bureau Director and Convention & Visitors Advisory Board.
4. TAG shall perform the above services as defined in Detail A (Scope of Work) and Detail B (Digital Development), attached hereto and incorporated for all purposes, in connection with the planning, preparing and placing of advertising/community outreach/promotions and other marketing communications to sell the overall experience of South Padre Island and to stimulate overnight lodging. TAG will be compensated for services rendered in accordance with Detail A (Scope of Work).
5. TAG will present cost estimates for individual projects over \$1,500 for the City's review and approval prior to beginning work on projects. These estimates detail all 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 the City's for review and approval.

6. All purchases of production materials, locations fees and engagement of talent with respect to the advertising of the City's products shall be subject to prior approval. If the City should direct TAG to cancel and/or terminate any previously authorized purchase or project, the City will pay TAG for services rendered and for hard costs associated with current projects or media vendors in alignment with industry standard cancellation payment periods.
7. TAG warrants and represents to the City 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. In every circumstance appropriate, TAG shall obtain multiple competitive bids.
8. It is the intention of the City that proceeds from the hotel occupancy tax are available to pay for the work reflected in this Agreement. If during a fiscal year, hotel occupancy tax collections vary more than ten percent from the expectations on which the applicable budget of this Agreement is based, the City shall send TAG written notice of how the City proposes to adjust the budget and Agreement accordingly. If TAG agrees with the proposed adjustments, TAG will adjust budget levels in a reasonable time period not withstanding all fees incurred at the time of notice. It is not intended that the Agreement should be adjusted if there are adequate funds available in the reserve fund to continue to pay for the work; provided, however, that once the available tax collections and any available money in such reserve funds have been spent, then no further money shall be available or paid by the City.
9. The term of this Agreement shall commence on October 1, 2020 for a period of one year and may be renewed annually thereafter for three additional one-year periods based on performance review. City will provide written notice of intent to renew at least 90 days prior to the end of each renewal period. This Agreement may be terminated by either party at any time without cause upon written notice of such intention given ninety (90) days in advance. Notices shall be deemed given on the day of mailing or in case of notice by fax or email, on the day it is transmitted. The rights, duties and responsibilities of TAG 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.
10. Any advertising, merchandising, packaging and similar plans and ideas prepared by TAG and submitted to the City (whether submitted separately or in conjunction with or as part of other material) but not used by the City, shall remain the City's property provided that TAG is compensated for its development. The City agrees to return to TAG any copy, art work, files or any other physical embodiment of the creative work relating to such ideas or plans, (which may be in the City's possession upon termination) that have not been paid for at that time.
11. TAG is authorized to purchase media on the City's behalf, with advance approval.

Compensation for services, terms of payment and responsibility for payment are found in Detail A (Scope of Work). Provided TAG has been paid the full amount for a specific media contract by the City, TAG will be responsible for payment to the Media Provider. However, in the event the City has not paid TAG for a specific media contract or contracts, payments due for those services entered into on behalf of the City by TAG are guaranteed by the City and will be paid by the City.

12. TAG may list any work done on behalf of the City that is publicly available and not confidential in nature, whether online or in print or any other media. Listing may include one or more images of the creative work, website or website page, a description of services provided and/or summary of features implemented by TAG, as well as hyperlinks to and/or web address for the listed website or website page.
13. Upon termination of this contract, TAG shall transfer, assign and make available to the City, all property and materials in TAG's possession or control belonging to and paid for by the City, to be carried to completion by TAG and paid for by you under rates found in Detail A (Scope of Work). Furthermore, the City recognizes that 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 the City's authorization and still existing at termination hereof, which contracts were not paid or could not be assigned by TAG to the City or someone designated by the City, shall be carried to completion by TAG and paid for by the City in the manner described in Detail A (Scope of Work).

For purposes of this section, Work Product means all service, materials, reports and other products, including the following:

- a. website content code, photos, and videos; and
 - b. creative materials, including ads, collateral materials, brochures, flyers, photography; and
 - c. all copy including public relations, blogs, advertising, scripts, photography; and
 - d. all databases and content including all CRM contact lead database; and
 - e. all other work product or work materials produced for the City as described in Detail A and Detail B.
14. TAG shall maintain general liability insurance, including "personal and advertising injury" with minimum limits of \$1,000,000 per occurrence, \$2,000,000 annual aggregate, during the term of this Agreement.

15. All notices given under this Agreement will be sent by certified mail to the following:

As to: City of South Padre Island
Randy Smith, City Manager
4601 Padre Blvd
South Padre Island, TX 78597
956-761-6456
FAX: 956-761-3888

As to: The Atkins Group
Steve Atkins, President
501 Soledad Street
San Antonio, TX 78205
210-444-2500
FAX: 210-824-8326

And copy to: City of South Padre Island
Executive Director - Convention and Visitors Bureau
7355 Padre Blvd
South Padre Island, TX 78597

16. The Atkins Group is an independent contractor. Nothing in this Agreement is intended, nor should be construed to create a relationship of principal and agent, joint venture, partnership, or any relationship other than that of independent contractors, contracting with each other solely with respect to the performance of those services, which are the subject matter of this Agreement.
17. This Agreement, which includes Detail A and B attached hereto and incorporated herein by reference for all purposes, supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement, which is not contained herein shall be valid or binding. The parties agree that this Agreement and its attachments constitute the entire understanding of the parties. In the event of conflict between the Agreement and Proposal, the Agreement shall control.
18. Except as limited herein, the terms and provisions of this Agreement shall be binding upon an inure to the benefits of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party.
19. The validity of this Agreement, any of its terms or provisions, as well as, the rights and duties of the parties hereunder, shall be governed by the laws of the State of Texas. The parties agree that it is performable in Texas and that exclusive venue shall be in Cameron County, Texas.
20. This Agreement is entered into subject to the charter and ordinances of the City as they may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable federal and state laws. TAG shall make any and all reports required in accordance with federal, state or local law, including but not limited to proper reporting to the Internal Revenue Service as required in accordance with TAG's income.

21. In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and; this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
22. TAG acknowledges and represents it is aware of the laws, City Charter, and City Code of Conduct regarding prohibited interest and that the existence of a prohibited interest at any time will render the Agreement voidable. At the time of executing this Agreement, a representative of TAG will execute the Conflict's Disclosure Statement.
23. Nothing in this Agreement shall be as a waiver of the City's governmental immunities. In accordance with Texas Government Chapter 2270, by signing the Contract, Contractor verifies that it does not boycott Israel and will not boycott Israel during the term of the contract.

Entered into an Agreement as of October 1, 2020.

The Atkins Group
Steve Atkins, President

Date

City of South Padre Island
Randy Smith, City Manager

Date

Detail A - Scope of Work

Between the City of South Padre Island and The Atkins Group

We have formed an Agreement that gives us the opportunity to work with you to help shape your brand, enhance your reputation and grow your business based upon your goals.

This Agreement is detailed by the elements of the scope of work listed below. These apply to the year of service covering FY 2020/2021. Subsequent years will be further defined and mutually agreed on an annual or other basis:

- 1. Creative & Content Services** **\$133,000**
Agency creative services, production and traffic management includes all time associated with determining the best creative strategies for print, collateral, broadcast, digital and other online marketing outreach, including the development of written and video social media content, as well as producing all campaign materials and assets needed to fulfill the brand campaign, various creative projects and the media plan. This includes concept development, art direction, design, layout and production management, as well as digital strategy and development for projects associated with overall brand campaign and to fulfill creative assets as per the media plan. Content development involves creative work like copywriting or graphics and run in parallel with the brand campaign. Our content strategy and implementation plan will cross all owned publishing.
- 2. Account Services** **\$162,000**
As an extension of your staff, the account service team provides day-to-day management to maintain a clear understanding of your objectives, strategic direction, brand growth and maintenance requirements. This team will maintain ongoing communications, participate in planning meetings, assists with board/staff communication and others when appropriate and on an ongoing basis, prepare and submit to you for advance approval estimates of costs for recommended projects and programs, report and coordinate projects, keeping you informed of schedules, changes to scope and any other relevant information.
- 3. Production & Editing** **\$100,000**
This production budget allocation will be used for any costs associated with production of campaign materials including photography, video/audio production, talent usage rights, VO/music, editing, printing, etc. We negotiate hard with vendor partners to get the most favorable quotes, while maintaining the quality level the South Padre Island brand deserves.
- 4. Advanced Analytics & Reporting** **\$24,000**
TAG will provide high levels of analytics that use detailed data from digital tracking, media impressions, public relations and other forms of research to develop insightful reports that paint a clear picture of not only what's been done, but how it is performing by campaign by objective. Moreover, this monitoring and analysis is being done on an ongoing basis so that mid-month course corrections are possible, allowing content to adjust and tune to perform at optimal levels. The result of our Advanced Analytics and Reporting is greater utilization of resources and improved program performance. Monthly summary reports are rolled into quarterly full reports, formatted to present to all necessary stakeholders in City leadership.

- 5. Public Relations & Social Media Strategy** **\$96,000**

Ongoing public relations and social media management will include a cohesive connection of your inbound and outbound PR efforts. From owned channels (social and web) to earned (media and influencers) to in house, PR must not only use media as a megaphone, but arm your staff and customers so they can amplify messages as well. It requires channel specific strategy to maximize results. This program involves: News Media Relations, Social Media Strategy, Social Amplification, Edu-tainment through Blogs, Influencers, etc.
- 6. Website Maintenance & Digital Development** **\$60,000**

Through our managed services program, we'll assist with ongoing training and support to your team, as well as assist with ongoing feature and functionality development and general website maintenance and platform updates. Our technology services will support this effort to continually evolve the marketing platforms we've built together. This includes website hosting through WP Engine, Hot Jar analytics tools, WPML service, Timely Event Management service, Googlemaps API, and the Active Campaign email automation service. Additionally, we'll provide periodic SEO optimizations to ensure the website and its content are performing at peak opportunity.
- 7. Media Research, Planning & Placement** **\$1,125,000**

The paid channels team works on an ongoing basis to understand the audiences, reach and budget objectives for each assignment, and through the use of media research tools, an approach and plan will be developed using a variety of paid channels. This includes creation of an annual plan noting key seasonal shifts and targeting the leisure and groups/meetings audiences, and ongoing research and evaluation of various media opportunities. We will negotiate on your behalf, using our experience and buying leverage, to yield the best rates and value-added possible, and order the space, time or other means to be used for your advertisements. This includes invoice reconciliation and reporting. Media is paid by the commission for media placed with 12.5% yield (this is calculated using the advertising industry standard multiplier of 1.1429 to yield 12.5% margin on the net media cost). Media is billed to you when the media is placed, meaning the time when the outlet has reserved the media for your use.

Hourly Costs by Job Function

The following hourly costs for each job description were utilized to form the overall budget plan as outlined in contract item #2. The budget line items as defined previously contain all costs within the defined budget plan total. The only application of additional hourly charges will come if new projects are defined and authorized from both the South Padre Island Convention & Visitors Bureau Director and Convention & Visitors Advisory Board.

Concept and Design	\$175
Copywriting	\$150
Art Direction	\$125
Production Art	\$95
Traffic	\$95
Account Supervision	\$150
Account Coordination	\$125

Analytics Supervision	\$150
Analytics Coordination	\$125
Public Relations Director	\$150
Public Relations Writing	\$125
Media Planning	\$175
Media Buying	\$150
Media Coordination	\$95
Social Media	\$150
Digital Design/Senior Programming	\$150
Programming	\$125
Account Supervision – principal	\$195
Strategic Planning – principal	\$225

Travel Reimbursement

Travel costs will be approved in advance and are not to exceed \$10,000 per calendar year unless authorized by The City.

TAG will submit approved travel dates for any business-related meetings, production activities, event promotion activities, etc. Time will be billed to the City at one half the hourly cost for the individuals involved. Travel Expenses and Per Diem will be charged as follows:

Automobile Transportation

Travel by company or private automobile will be reimbursed at the then-allowable IRS rate. Mileage, as well as any parking, tolls or other travel-related expenses will be reimbursed.

Commercial Carrier Travel (out of town)

Every effort will be made to secure the most time and cost-efficient mode of travel. TAG will purchase at the lowest fares available within the planning timetable. If schedule changes are required by client, any adjustment to the fare will be added. If travel is cancelled and TAG is able to reuse funds on a previously purchased ticket, that cost will be credited to the City, less any anticipated change fees. If it is a non-refundable/non-reusable ticket, the City will be billed for the fare. Commercial Carrier Travel receipts will be provided for reimbursement with no markup.

Rental Vehicles

Every effort will be made to secure the lowest rate possible for comfortable and secure transportation, including utilizing an available corporate rate available through TAG or the City when available. Actual rental car receipts along with parking, toll and fuel receipts will be provided for reimbursement with no markup.

Lodging

Every effort will be made to secure the lowest rate possible for comfortable and secure lodging, including utilizing an available corporate rate available through TAG or the City when available. Actual hotel receipts (including parking fees, if necessary), will be provided for reimbursement with no markup.

Meals

A per diem rate of \$65 per day, per person, will be charged for meals and any incidentals. For billing purposes, a day consists of time away from the corporate office during regular business hours. This will be charged in conjunction with travel and does not necessarily require an overnight stay.

Fees at Termination

Upon termination, we will transfer, assign and make available to you, all property and materials in our possession or control belonging to and paid for by you, to be carried to completion by TAG and paid for by City at the then-current Hourly Fee Schedule rates. If requested and reasonably possible, an estimate will be provided prior to starting the services. Payment for services when estimated will be due and payable 50% at commencement and the actual balance prior to delivery of requested materials, releases, etc. If no estimate is requested, we will progress bill at appropriate points in the process, with final balance due prior to delivery of requested materials, releases, etc.

Miscellaneous Expenses

You agree to reimburse us for delivery fees and other reasonable and necessary expenses incurred on your behalf.

Payment terms

Our monthly billing terms are Net 30 Days. A finance charge of 1.5% per month (18% annually) will be billed on balances 30-days or more past invoice date.

Detail B - Digital Development
Between the City of South Padre Island and The Atkins Group

Creation and modifications of websites (desktop, mobile and responsive), applications and any/all other digital assets involves creation of code and other elements, most of which are created specifically for the need, but some are obtained from other sources. Because these circumstances are specific to digital development, the following apply.

OWNERSHIP OF SOFTWARE AND OTHER CONTENT

1. Definitions.

- a. "Reusable Elements" means software tools and code, informational content, graphic elements and any other content that we have created or acquired and/or will during the course of the Agreement create, acquire and/or improve that are reusable or are useful for one or more other products, tasks and projects and for which we own all right, title and interest;
- b. "Third Party Elements" means software tools and code, informational content, graphic elements and any other content under which we do not own the entire right, title and interest; and
- c. "Client Specific Elements" means software tools and code, informational content, graphic elements and any other content (1) other than specified in subsections 1(a) or 1(b) and (2) specifically identified as such in the particular Project Estimate under which it is created and delivered.

- 2. *Reusable Elements.* You agree that all Reusable Elements are or will be our exclusive property. Except as otherwise expressly provided in one or more relevant Project Estimates, upon payment of amounts due to us with regard to each Estimate, we will grant to you a non-exclusive, worldwide, perpetual, irrevocable and fully paid up license to use, modify, adapt and otherwise exploit such Reusable Elements solely for use with the deliverables under such Project Estimate and derivatives of such deliverables. Under no circumstance, however, may you sublicense to any third party any right in such Reusable Elements.
- 3. *Third Party Elements.* Client agrees that all rights of use and ownership in, to and under Third Party Elements shall be governed exclusively by the third party terms of use or other agreement under which such Third Party Elements are acquired.
- 4. *Client Specific Elements.* Upon payment of all amounts due to us with regard to each Project Estimate, Client Specific Elements under such Estimate will belong to you and will be, to the fullest extent permitted under the U.S. copyright laws, a work-made-for-hire for you. To the extent that any such Client Specific Elements are not a work-made-for-hire, such Client Specific Elements (including, as applicable, the binary code and source code) are hereby assigned to you.
- 5. *Facilitation.* Each party agrees to provide, at the other party's expense, any documents reasonably necessary or useful to vest in each party its respective intellectual property under this Detail. Additionally, Client hereby grants to us a non-exclusive and non-

transferable license to access and use your computer and network systems and proprietary software and to use any software tools and code, informational content, graphic elements and any other content of your as reasonably required for us to carry out our obligations under this Agreement.

6. **No Other Rights.** Except as expressly stated in this Agreement, each party retains its own rights. No rights are created or transferred by implication.

7. **Warranties and Indemnity**

- a. **Agency Warranties.** We warrant: (a) that it has all required corporate authority to execute and perform this Agreement; and (b) that any original creation by us provided or to be provided under this Agreement does not and will not infringe or violate any valid third party patent right, trademark or service mark right, right of likeness or publicity, right of privacy, copyright or trade secret right in the United States.
- b. **Client's Warranties.** You warrant: (a) that it has all required corporate authority to execute and perform this Agreement; and (b) that any material and/or content furnished or to be furnished under this Agreement, including, without limitation, any third party product or service required for performance by us of Services under any Estimate, does not and will not infringe or violate any valid third party patent right, trademark or service mark right, right of likeness or publicity, right of privacy, copyright or trade secret right in the United States.
- c. **Warranty Exclusion.** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, WE DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. **Indemnification.** You shall indemnify us at all times after the effective date of this Agreement against any liability, loss, damages (including punitive damages), claim, settlement payment, cost and expense, interest, award, judgment, diminution in value, fine, fee, penalty or other charge, including reasonable legal fees and the cost of enforcing this indemnity, arising out of or relating to any one or more of the following: (a) breach by you of any warranty set forth in this Agreement; (b) any claim, action, suit or proceeding made or brought by a third party based in whole or in part upon, or arising out of or relating to, performance by us of any Service; or (c) negligence, fraud or willful misconduct of Client.

9. **DISCLAIMER OF DAMAGES AND LIMITATIONS OF LIABILITY**

- a. **The City of South Padre Island is entitled to all remedies available by law.**

Stale Claims for Quality of Work. We are not liable in any amount for any claim by you based upon, or arising out of or relating to, any objection by you to the quality of any Service performed or deliverable provided by us unless written notice of the objection is provided by you to us within 60 days following the date of performance or delivery.

- i. **Maximum Liability.** IN NO CASE ARE WE LIABLE TO YOU FOR ANY AMOUNT IN EXCESS OF THE LESSER OF: (a) THE REASONABLE COST OF CORRECTING ANY

***ERROR ATTRIBUTABLE TO US OR (b) THE TOTAL FEES UNDER THE ESTIMATE
RELEVANT TO THE LIABILITY THAT WERE PAID BY YOU TO US DURING THE SIX
(6) MONTH PERIOD PRIOR TO THE FIRST DATE OF OCCURRENCE GIVING RISE
TO THE LIABILITY. THIS LIMITATION APPLIES IN THE AGGREGATE TO ALL
CAUSES OF ACTION ARISING FROM THE OCCURRENCE.***

DRAFT