

FIRST AMENDMENT

to

AGREEMENT

between

BROWARD COUNTY

and

TNT PROMOTIONS, INC.  
D/B/A SHARP MARKETING

for

MARKETING AND DISTRIBUTION OF  
BROWARD COUNTY AND GREATER FORT LAUDERDALE CONVENTION  
AND VISITORS BUREAU LOGO ON APPAREL AND MERCHANDISE

RLI # R0985702R1

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This is a First Amendment to an Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the state of Florida, acting by and through its Board of County Commissioners, hereinafter referred to as "COUNTY,"

AND

TNT Promotions, Inc. d/b/a Sharp Marketing, a Florida corporation, hereinafter referred to as "SHARP" (collectively referred to as the "Parties").

WHEREAS, COUNTY and SHARP entered into an Agreement for the marketing and distribution of Broward County and Greater Fort Lauderdale Convention and Visitors Bureau Logo on apparel and merchandise dated February 12, 2013 (the "Agreement"); and

WHEREAS, the term of the Agreement ends on September 30, 2017; and

WHEREAS, COUNTY, pursuant to its policies of open and fair competition, is in the process of issuing a request for proposals (RFP) for the marketing and distribution of Broward County and Greater Fort Lauderdale Convention and Visitors Bureau and merchandise; and

WHEREAS, the RFP process and award of a contract shall not be completed prior to the end of the current term of this Agreement; and

WHEREAS, it is desirable to retain the marketing and distribution services of SHARP until the RFP process has been completed; and

WHEREAS, the Parties have agreed to extend the term of the agreement on a month-to-month basis not to exceed six (6) months; NOW, THEREFORE,

In consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, COUNTY and CONTRACTOR agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. Beginning October 1, 2017, the Agreement shall continue month to month for a period not to exceed six (6) months, provided, however, either party may terminate the Agreement upon fourteen days written notice.
3. Section 10.02 "Audit Right and Retention of Records" is hereby amended to read as follows (Strikethrough text indicates deletions; underlining indicates additions):

COUNTY shall have the right to audit the books, records, and accounts of SHARP. SHARP shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project.

~~SHARP shall preserve and make available, at reasonable times for examination and audit by COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by COUNTY to be applicable to SHARP's records, SHARP shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by SHARP. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for COUNTY's disallowance and recovery of any payment upon such entry.~~

Public Records. To the extent SHARP is acting on behalf of COUNTY as stated in Section 119.0701, Florida Statutes, SHARP shall:

- a. Keep and maintain public records required by COUNTY to perform the services under this Agreement;

b. Upon request from COUNTY, provide COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

c. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to COUNTY; and

d. Upon completion or termination of this Agreement, transfer to COUNTY, at no cost, all public records in possession of SHARP or keep and maintain public records required by COUNTY to perform the services. If SHARP transfers the records to COUNTY, SHARP shall destroy any duplicate public records that are exempt or confidential and exempt. If SHARP keeps and maintains public records, SHARP shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to COUNTY upon request in a format that is compatible with the information technology systems of COUNTY.

The failure of SHARP to comply with the provisions of this Section shall constitute a material breach of this Agreement entitling COUNTY to exercise any remedy provided in this Agreement or under applicable law.

A request for public records regarding this Agreement must be made directly to COUNTY, who will be responsible for responding to any such public records requests. SHARP will provide any requested records to COUNTY to enable COUNTY to respond to the public records request.

Any material submitted to COUNTY that SHARP contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Florida Statutes Chapter 119) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCT - TRADE SECRET." In addition, SHARP must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Florida Statutes Section 812.081 and stating the factual basis for same. In the event that a third party submits a request to COUNTY for records designated by SHARP as Trade Secret Materials, COUNTY shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by SHARP. SHARP shall indemnify and defend COUNTY and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys'

fees, litigation expenses, and court costs, relating to the non-disclosure of any Trade Secret Materials in response to a records request by a third party.

**IF SHARP HAS QUESTIONS REGARDING THE APPLICATION OF FLORIDA STATUTES CHAPTER 119 TO SHARP'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 765-8999, SRITTER@BROWARD.ORG, 101 N.E. 3 AVENUE, SUITE 100, FORT LAUDERDALE, FLORIDA 33301.**

4. The effective date of this First Amendment shall be on the date it is fully executed by both parties.
5. Except as set forth herein, all of the terms and conditions contained within the Agreement, as amended, shall remain in full force and effect and are incorporated herein by reference.
6. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.
7. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this document that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.
8. Preparation of the Agreement, as amended, has been a joint effort of COUNTY and SHARP 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.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this First Amendment to Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, and TNT PROMOTIONS, INC., d/b/a SHARP MARKETING, a Florida corporation signing by and through its \_\_\_\_\_, duly authorized to execute same.

COUNTY:

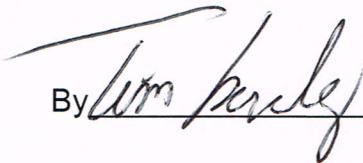
ATTEST:

BROWARD COUNTY, through its  
BOARD OF COUNTY COMMISSIONERS


\_\_\_\_\_  
County Administrator and  
Ex-Officio Clerk of the Board  
of County Commissioners of  
Broward County, Florida

By: \_\_\_\_\_  
Mayor  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Approved as to Insurance  
Requirements by Risk  
Management Division

By  \_\_\_\_\_

Approved as to form by  
Office of County Attorney  
Broward County, Florida  
Joni Armstrong Coffey, County Attorney  
Governmental Center, Room 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-6968

By  8/2/17  
Sharon V. Thorsen  
Senior Assistant County Attorney

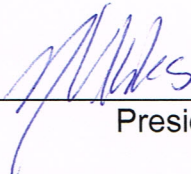
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SHARP

TNT PROMOTIONS, INC.  
d/b/a SHARP MARKETING

WITNESSES:

Janey Egger  
W. Blaine

By  7-13-17  
President  
(SEAL)



SVT:dmv  
First Amendment TNT Promotions  
04/24/17