

**AGREEMENT
CITY OF FRESNO, CALIFORNIA**

CITY OF FRESNO
City Clerk's Office (Original)

THIS AGREEMENT is made and entered into effective the 25 day of Nov, 2009, by and between the City of Fresno, a California municipal corporation (hereinafter referred to as "City"), and JP Marketing, a division of Two Q, Inc., a California corporation (hereinafter referred to as "JPM").

RECITALS

- A. The City has previously produced four public service announcements ("PSA") ("Existing PSA's") and the City desires to produce additional PSA's ("Future PSA's") (hereinafter Existing Works and Future Works shall collectively be referred to as "City PSA's").
- B. The City has been contacted by a number of other fire department agencies who have sought to use the Existing PSA's in their jurisdictions either in their current state or edited to serve their needs. The City finds that other jurisdictions either are not able to produce PSA's or that other jurisdictions could save substantial amounts of money using and/or modifying the City PSA's.
- C. The City does not have the professional and technological expertise or technology and equipment to market and syndicate PSA's or produce additional PSA's.
- D. The City desires to (i) obtain production services to produce Future PSA's and (ii) obtain professional marketing and syndication services to market and syndicate the City PSA's to other fire department agencies ("Agencies"), for the purpose of assisting other agencies in promoting fire safety and to use any proceeds from providing such services to other Agencies to fund to Fresno Fire Department activities (hereinafter collectively referred to as "Project").
- D. JPM is engaged in the business of the development, sales and execution of syndicated marketing materials for fire departments across the United States, including television commercials, radio commercials, out-of-home advertisements and printed materials and hereby represents that it desires to and is professionally and legally capable of performing the Project for the City.
- E. This Agreement will be administered for City by the Chief of the Fresno Fire Department (hereinafter referred to as "Administrator") or his/her designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. City agrees to the following:

1.1 Grant of Rights. The City grants, assigns and otherwise transfers to JPM during the term of this Agreement, (i) the publication rights to the City PSA's for the sole purpose of producing copies of the City PSA's for syndication and marketing; and (ii) the right to modify and produce the City PSA's for other Agencies subject to City's review and prior editorial approval of the proofs. All rights not expressly granted to JPM are hereby reserved by City.

1.2. City PSA's; Other Materials and Permissions.

(a) The City will deliver or caused to be delivered, not later than September 1, 2009, to JPM, the Existing PSA's, and the names, addresses and contact information of Agencies expressing interest to Administrator for the use of the City PSA's.

(b) Within a reasonable time upon request by JPM, City will deliver to JPM written authorizations and permissions for the use of any copyrighted or other proprietary materials (including, but not limited to art, illustrations, photographs, video) owned by any third party which appear in the content of the Existing PSA's delivered to JPM and written releases or consents by any person or entity described, quoted or depicted in same (collectively, "Permissions").

2. JPM agrees to the following:

2.1 Produce Future PSA's. Upon request of the City, JPM agrees to produce Future PSA's at a cost and scope of work as provided in **Exhibit C** attached to this Agreement and incorporated herein.

2.2 Syndicate and Market City PSA's. JPM shall do all work necessary to market and syndicate the City PSA's to Agencies consistent with the scope of work provided in **Exhibit D** attached to this Agreement and incorporated herein. In performance of this Agreement through marketing or syndication, JPM may use the City of Fresno or Fresno Fire Department name, logos, trademarks only with the prior approval of the Administrator. In using the City's name or association, at all times during the term of this Agreement, JPM shall act in a manner to ensure the good reputation of the City and the Administrator shall have the right at any time during the term of this agreement to stop JPM from using any marketing material, written or verbal representations, City PSA's or syndicated productions that would put the City or the Fresno Fire Department in a bad light or hurt the City or the Fresno Fire Department's reputation.

2.3 Warranty Against Infringement. JPM represents and warrants that the alterations to the City PSA's, if published, (i) will not infringe upon any copyright, trademark or any other proprietary right at common law, and (ii) contains no matter whatsoever that is obscene, libelous, violative of any third party's right of privacy or publicity, or otherwise in contravention of law or the right of any third party. JPM shall indemnify, hold harmless and defend the City and its officials, officers, employees, agents and authorized volunteers from any claims or actions based on allegations, if true, would constitute a breach of any of the foregoing warranties, and any and all liabilities, losses, damages and expenses (including attorney's fees and costs) in consequence thereof. JPM shall require each of the respective Agencies to also provide such written

representations, warranties and indemnities in accordance with the terms of this paragraph. All such warranties, representations and indemnities shall survive the termination or expiration of this Agreement.

2.4 Control of Masters. The Master Copy or copies of all City PSA's, that is copies capable of being reproduced for professional broadcast or release, shall be held by JPM during the term of this Agreement. JPM shall provide at least two copies on DVD or similar format of the City PSA's to the Administrator.

2.5 Accounting and Donation of a Portion of Proceeds. JPM agrees to donate to the Fresno Fire Department 20% of any money received from Agencies from performing under Section 2.2 of the Agreement ("Donations"). JPM will submit donations to the Administrator on the 15th of each month for any monies paid to JPM in the previous month by any Agencies.

2.6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as JPM represents to City that JPM is skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, City relies upon the skill of JPM to do and perform such services in a skillful manner and JPM agrees to thus perform the services. Therefore, any acceptance of such services by City shall not operate as a release of JPM from said professional standards.

2.7. Indemnification. To the furthest extent allowed by law, JPM shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of JPM, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If JPM should subcontract all or any portion of the services to be performed under this Agreement, JPM shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

2.8. Insurance.

(a) Throughout the life of this Agreement, JPM shall pay for and maintain in full force and effect all insurance as required in **Exhibit A** or as may be authorized in writing by City's Risk Manager or his/her designee at any time and in his/her sole discretion.

(b) If at any time during the life of the Agreement or any extension, JPM or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to JPM shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve JPM of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by JPM shall not be deemed to release or diminish the liability of JPM, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by JPM. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of JPM, its principals, officers, agents, employees, persons under the supervision of JPM, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) Upon request of City, JPM shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

(e) If JPM should subcontract all or any portion of the services to be performed under this Agreement, JPM shall require each subcontractor to provide insurance protection in favor of City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with JPM and City prior to the commencement of any services by the subcontractor.

2.9. Conflict of Interest and Non-Solicitation.

(a) Prior to City's execution of this Agreement, JPM shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit B**. During the term of this Agreement, JPM shall have the obligation and duty to immediately notify City in writing of any change to the information provided by JPM in such statement.

(b) JPM shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of

impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of City, JPM shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, JPM and the respective subcontractor(s) are in full compliance with all laws and regulations. JPM shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, JPM shall immediately notify City of these facts in writing.

(c) In performing the work or services to be provided hereunder, JPM shall not employ or retain the services of any person while such person either is employed by City or is a member of any City council, commission, board, committee, or similar City body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) JPM represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(e) Neither JPM, nor any of JPM's subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project unless fully disclosed to and approved by the City Manager, in advance and in writing. JPM and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, JPM shall remain responsible for complying with Section (b), above.

(f) If JPM should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, JPM shall include the provisions of this Section 2.9 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 2.9 shall survive expiration or termination of this Agreement.

2.10. Recycling Program. In the event JPM maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, JPM at its sole cost and expense shall:

(i) Immediately establish and maintain a viable and ongoing recycling program, approved by City's Solid Waste Management Division, for each office and facility. Literature describing City recycling programs is available from

City's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.

(ii) Immediately contact City's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.

(iii) Cooperate with and demonstrate to the satisfaction of City's Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

2.11. Confidential Information and Ownership of Documents.

(a) Except as expressly provided by this Agreement, any reports, information, data or other material prepared or assembled by JPM pursuant to this Agreement shall not be made available to any individual or organization by JPM without the prior written approval of the Administrator. During the term of this Agreement, and thereafter, JPM shall not, without the prior written consent of City, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of City, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in City.

(b) The City retains the intellectual and physical rights to the City PSA's and any and all writings, documents, prepared or provided by JPM pursuant to this Agreement and all City PSA's and writings and documents prepared or provided by JPM pursuant to this Agreement shall be turned over to City upon expiration or termination of the Agreement. JPM shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(c) This Section 2.11 shall survive expiration or termination of this Agreement.

3. City and JPM agree to the following:

3.1. Term of Agreement. This Agreement shall be effective from the date first set forth above ("Effective Date") and shall continue in full force and effect for one year from the Effective Date and shall automatically renew for annual terms, subject to any earlier termination in accordance with this Agreement.

3.2. Termination, Remedies and Force Majeure.

(a) This Agreement shall terminate without any liability of City to JPM upon thirty days written notice of any party.

(b) Immediately upon any termination or expiration of this Agreement, all rights granted under this Agreement to JPM shall revert to City and JPM shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; (iii) provide accounting in Section 6, above, and pay to City all Donations required under Section 2.5; and (iv) return all properties and materials in the possession of JPM that are owned by City.

(c) Upon any breach of this Agreement by JPM, City may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that City improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(d) JPM shall provide City with adequate written assurances of future performance, upon Administrator's request, in the event JPM fails to comply with any terms or conditions of this Agreement.

(e) JPM shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of JPM and without its fault or negligence such as, acts of God or the public enemy, acts of City in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. JPM shall notify Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

3.3. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of City within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Administrator or his/her designee.

(b) Records of JPM's expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to City or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of JPM pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This Section 3.3(b) shall survive expiration or termination of this Agreement.

3.4. Nondiscrimination. To the extent required by controlling federal, state and local law, JPM shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

3.5. Independent Contractor.

(a) In the furnishing of the services provided for herein, JPM is acting solely as an independent contractor. Neither JPM, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of City for any purpose. City shall have no right to control or supervise or direct the manner or method by which JPM shall perform its work and functions. However, City shall retain the right to administer this Agreement so as to verify that JPM is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between JPM and City. JPM shall have no authority to bind City absent City's express written consent. Except to the extent otherwise provided in this Agreement, JPM shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, JPM and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City employees. JPM shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, JPM shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of JPM's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, JPM may be providing services to others unrelated to City or to this Agreement.

3.6. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

3.7. Binding. Subject to Section 3.8, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

3.8. Assignment. This Agreement is personal to JPM and there shall be no assignment by JPM of its rights or obligations under this Agreement without the prior written approval of the City Manager or his/her designee. Any attempted assignment by JPM, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.

3.9. Compliance With Law. In providing the services required under this Agreement, JPM shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

3.10. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

3.11. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

3.12. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

3.13. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

3.14. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

3.15. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

3.16. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

3.17. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

3.18. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

3.19. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

3.20. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and JPM.

3.21 Good Faith; Ethical Standard. Each party will exercise their rights and obligations under this Agreement in good faith and fair dealing and with integrity, honesty, professionalism and consistent with ethical business conduct.

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IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

City of Fresno,
a California municipal corporation

JP Marketing, a Division of Two Q, Inc,
a California corporation

By: Andrew T Souza
Andrew T. Souza, City Manager
City of Fresno 11/25/09

By: Jane O Quebe
Name: Jane O. Quebe

Title: President
(if corporation or LLC, Board
Chair, Pres. or Vice Pres.)

ATTEST:
REBECCA E. KLISCH
City Clerk

By: Elvia Somerville
Deputy 11/25/09

By: Joanna Antonino
Name: Joanna Antonino

Title: Treasurer
(if corporation or LLC, CFO,
Treasurer, Secretary or Assistant
Secretary)

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: S. Chaffin
Shannon Chaffin Date 11/4/09
Deputy City Attorney

Addresses:

City:
Fresno Fire Department
Attention: Randy R. Bruegman
911 H Street
Fresno, CA 93721
Phone: (559) 621-4002
FAX: (559) 498-4261

JPM:
JP Marketing, Inc.
Attention: Jane Olvera Quebe
7690 N. Palm Avenue, Suite 105
Fresno, CA 93711-5772
Phone: (559) 438-2180

Attachments:

- 1. Exhibit A - Insurance Requirements
- 2. Exhibit B - Conflict of Interest Disclosure Form
- 3. Exhibit C - Scope of Work for Future PSAs
- 4. Exhibit D - Scope of Work for City PSAs

Exhibit A

INSURANCE REQUIREMENTS Syndication Agreement between City of Fresno ("City") and JP Marketing, A Division of Two Q, Inc. ("JPM") Syndication and Marketing of PSA's

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.
2. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to JPM's profession. Architect's and engineer's coverage is to be endorsed to include contractual liability.

Minimum Limits of Insurance

JPM shall maintain limits of liability of not less than:

1. General Liability:
 - \$1,000,000 per occurrence for bodily injury and property damage
 - \$1,000,000 per occurrence for personal and advertising injury
 - \$2,000,000 aggregate for products and completed operations
 - \$2,000,000 general aggregate applying separately to the work performed under the Agreement
2. Automobile Liability:
 - \$1,000,000 per accident for bodily injury and property damage
3. Employer's Liability:
 - \$1,000,000 each accident for bodily injury
 - \$1,000,000 disease each employee
 - \$1,000,000 disease policy limit

4. Professional Liability (Errors and Omissions)

\$1,000,000 per claim/occurrence

\$2,000,000 policy aggregate

Umbrella or Excess Insurance

In the event JPM purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Deductibles and Self-Insured Retentions

JPM shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and JPM shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii) JPM shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

Other Insurance Provisions

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. City, its officers, officials, employees, agents and volunteers are to be covered as additional insureds.
2. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers.
3. JPM's insurance coverage shall be primary and no contribution shall be required of City.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: JPM and its insurer shall waive any right of subrogation against City, its officers, officials, employees, agents and volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The "Retro Date" must be shown, and must be before the effective date of the Agreement or the commencement of work by JPM.
2. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after any expiration or termination of the Agreement or, in the

alternative, the policy shall be endorsed to provide not less than a 5-year discovery period. This requirement shall survive expiration or termination of the Agreement.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, JPM must purchase "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Agreement.
4. A copy of the claims reporting requirements must be submitted to City for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, JPM shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, JPM shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or authorized by City's Risk Manager.

Verification of Coverage

JPM shall furnish City with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of the Agreement and before work commences.

Exhibit B

DISCLOSURE OF CONFLICT OF INTEREST

Marketing and Syndication of PSA's

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation:

Signature *Jane O'Quebe*

(name) *Jane O. Quebe*

(company) *JP Marketing*

(address) *7690 N. Palm Ave, Ste 105*

Additional page(s) attached.

(city state zip) *Fresno, CA 93711*

Exhibit C – Scope of Work to Produce Future PSA's

Future PSA's - Fire Awareness Enhancement Campaign

JPM recommends the following topics be considered to enhance the City's Public Service Announcement campaign:

1. Cooking

Topics to include in PSA are:

- a. Always make sure an adult is in the kitchen when something is cooking on the stove, never leave food cooking on your stove unattended and don't cook when you're drowsy.
- b. Keep your stovetop clean of grease, spills and clutter that might accidentally catch on fire.
- c. When you cook, turn pot handles in toward the back of the stove so curious little hands can't accidentally spill the contents.

2. Cigarettes

Topics to include in PSA are:

- a. If anyone in your house smokes, make sure they use large, deep, non-tip, non-combustible ashtrays.
- b. Never smoke when sleepy and never smoke in bed.
- c. Store matches and lighters out of sight and out of reach of curious children.
- d. Soak cigarette and cigar butts and ashes in water before throwing them away.

3. Candles

Topics to include in PSA are:

- a. Keep candles away from anything that can burn and put them out when you leave the room or go to sleep.
- b. Use a stable, non-combustible candleholder.

After researching the leading causes of home fire, JPM found that the above three PSA's would help educate the public on fire safety and help save lives. Additionally, there may be other topics that the City would like to prioritize and include in Future PSA's.

Nothing provided in this Scope or the Agreement is intended to limit the subject matter covered in any Future PSA or commit the City to producing a particular Future PSA. The City may choose to produce one or all of the above PSA's or none of the above PSA's and produce different PSA's of the City's own choosing.

PSA Package Pricing

JPM agrees to provide turnkey creative development and production for Future PSA's, which when completed can be marketed and syndicated consistent with the Agreement. The subject matter of all Future PSA's is determined by the City. The City has sole discretion to make all decisions on the content of Future PSA's. The City in the reasonable discretion of the

Administrator may reject and not pay for any Future PSA produced by JPM that does not reasonably meet the objective of the City, the intent of the Agreement or puts the City in a bad light.

The following is the pricing for producing Future PSA's under the Agreement which shall include, but not be limited to, all shooting, editing, music, graphics, voice talent (if applicable), dubs and youtube.com posting, developing the concepts and spots with syndication in mind:

One (1)	:30 PSA	- \$2500
One (1)	:60 PSA	- \$3500
Two (2)	:30 PSA's	- \$4700 (\$2350 ea)
Two (2)	:60 PSA's	- \$6700 (\$3350 ea)
Three (3)	:30 PSA's	- \$6600 (\$2200 ea)
Three (3)	:60 PSA's	- \$9600 (\$3200 ea)
Four (4)	:30 PSA's	- \$8000 (\$2000 ea)
Four (4)	:60 PSA's	- \$12000 (\$3000 ea)
Additional	:30's	- \$2000 each
Additional	:60's	- \$3000 each

To cut any :60 to a :30 or any :30 to a :15 – additional \$850 each

**Exhibit D – Scope of Work to Market and Produce Syndicated
City PSA's (Existing PSA's and Future PSA's)**

Syndication Development

The Existing PSA's are ready for immediate syndication:

1. Drinking and Driving
2. Deck the Halls
3. Fireworks
4. Smoke Detectors*

*This spot can be left "as is" or made generic with generic fire apparel.
If made generic, there will be an additional production cost.

Included in the syndication package, JPM will offer two versions of spot syndication for purchasing Agencies:

1. Generic Version
This generic version of the spot will not feature a fire or law enforcement agency representative. Rather, it will be strictly voice over under graphics and video where there is a fire or law enforcement agency representative on camera now.
2. Customizable Version
This version will leave a donut hole where City representatives are on camera now so purchasing fire agencies will have room to insert their own local fire or law enforcement agency representatives. To insert a local representative the Agency will have two options:
 - a. JPM to shoot and produce agency representative and drop into syndicated commercial. The purchasing Agency would cover JPM's travel and expenses as well as production fees and this would be negotiated directly with the purchasing Agency.
 - b. Purchasing Agency has a local production company or television station shoot and edit the donut hole with their local fire or law enforcement agency representatives.

The pricing structure will feature price breaks for each spot purchased up to six :30 spots. For each syndication package sold, funds will be distributed, consistent with the Agreement in the following manner:

Percentage to City	Sales Range*		Number of Spots at \$2,350 Ave.		Net to City	
20%	\$0	\$120,000	0	51	\$24,000	
23%	\$120,001	\$235,000	51	100	\$26,450	\$50,450
25%	\$235,001	\$335,000	100	143	\$25,000	
28%	\$335,001	\$435,000	143	185	\$28,000	
31%	\$435,001	\$535,000	185	228	\$31,000	
35%	\$535,001	\$635,000	228	270	\$35,000	
40%	\$635,001	\$735,000	270	313	\$40,000	
45%	\$735,001	\$835,000	313	355	\$45,000	
50%	\$835,001	\$935,000	355	398	\$50,000	
						\$304,447

*Would not include spot origination in syndication cuts

Syndication Package Pricing

JPM will manage the entire syndication and production effort from marketing to invoicing. Spot syndication will be available in four packages for purchasing agencies:

1. Package A \$2500

Includes one syndicated spot of the purchasing Agency's choice. Price does not include customizing by JPM. For price quote on customization, department must contact JPM directly.

2. Package B \$4700 (\$2350 each)

Includes two syndicated spots of the purchasing Agency's choice. Price does not include customizing by JPM. For price quote on customization, department must contact JPM directly.

3. Package C \$6600 (\$2200 each)

Includes three syndicated spots of the purchasing Agency's choice. Price does not include customizing by JPM. For price quote on customization, department must contact JPM directly.

4. Package D \$8000 (\$2000 each)

Includes four syndicated spots of the purchasing department's choice. Price does not include customizing by JPM. For price quote on customization, department must contact JPM directly.

Agencies that have purchased spots on the first roll out will have first opportunity to purchase any and all new PSA's at a reduced package rate, to be set by JPM.

City of
FRESNO REPORT TO THE CITY COUNCIL

Presented to City Council
Date 11/19/09
Disposition Rec. approved

November 19, 2009

AGENDA ITEM NO. <u>1L</u>
COUNCIL MEETING <u>11-19-09</u>
APPROVED BY _____
DEPARTMENT DIRECTOR <u>Randy R. Bruegman</u>
CITY MANAGER <u>Andrew T. Kelly</u>

FROM: RANDY R. BRUEGMAN, Fire Chief
Fire Department

SUBJECT: APPROVE AGREEMENT BETWEEN THE CITY OF FRESNO AND
JP MARKETING FOR THE PRODUCTION AND SYNDICATION OF
FIRE DEPARTMENT PUBLIC SERVICE ANNOUNCEMENTS

RECOMMENDATION

Staff recommends City Council approve the agreement between the City of Fresno and JP Marketing for the production and syndication of departmental public service announcements (PSAs).

EXECUTIVE SUMMARY

Previously, the department has produced a number of PSAs, which have gained national attention. As such, the Fire Department has been contacted by a number of other fire departments throughout the country seeking to use these PSAs in their jurisdictions. In some cases, the use of the PSAs as they are and in other cases they wish to edit specific elements to the needs of their community. Staff has found in many cases these jurisdictions are not able to produce or modify the PSAs, which have been provided to them by the City of Fresno.

In addition, the Fire Department has been awarded a second grant for the production of more PSAs, which provides an opportunity to enhance the department's educational outreach and will provide an additional opportunity to syndicate the PSAs nationally. As such, the department desires to enter into an agreement with JP Marketing for the production of future PSAs and to syndicate and market existing PSAs to other departments around the country.

BACKGROUND

The City produced several PSAs, which have been shown on local televisions and in movie theaters for the past three years. Several of these PSAs have gained national attention and recognition, specifically the sprinkler and the holiday safety PSAs. The department has been contacted by numerous departments during the past 24 months to provide them with copies of the PSAs to edit and use in their local jurisdictions. Unfortunately, in many cases, these departments do not have the technical equipment to do an effective job and the quality of the produced PSA is less than desirable.

With the receipt of an additional grant for the production of more PSAs, an opportunity exists to partner with JP Marketing to not only produce new PSAs to enhance the department's educational outreach but will bring all the department's produced PSAs under an umbrella where they can be syndicated and used nationally. The

PSAs will be provided on a national basis with JP Marketing taking the lead in marketing this service as well as following up with the individual requests for the departments to utilize the PSAs within their local jurisdiction.

Following is the pricing for future PSAs under the agreement:

30-Second PSAs	
One (1) :30 PSA	\$2,500
Two (2) :30 PSAs	\$4,700 (\$2350 each)
Three (3) :30 PSAs	\$6,600 (\$2200 each)
Four (4) :30 PSAs	\$8,000 (\$2000 each)
Additional :30 PSAs	\$2,000 each
60-Second PSAs	
One (1) :60 PSA	\$3,500
Two (2) :60 PSAs	\$6,700 (\$3,350 each)
Three (3) :60 PSAs	\$9,600 (\$3,200 each)
Four (4) :60 PSAs	\$12,000 (\$3,000 each)
Additional :60 PSAs	\$3,000 each
To cut any :60 to a :30 or any :30 to a :15 – additional \$850 each	

In addition there is an outline scope of work to market and produce syndicated City PSAs to other jurisdictions.

Syndication Package Pricing

1. Package A \$2,500

Includes one syndicated spot of the purchasing Agency's choice. Price does not include customizing by JPM. For price quote on customization, department must contact JPM directly.

2. Package B \$4,700 (\$2,350 each)

Includes two syndicated spots of the purchasing Agency's choice. Price does not include customizing by JPM. For price quote on customization, department must contact JPM directly.

3. Package C \$6,600 (\$2,200 each)

Includes three syndicated spots of the purchasing Agency's choice. Price does not include customizing by JPM. For price quote on customization, department must contact JPM directly.

4. Package D \$8,000 (\$2,000 each)

Includes four syndicated spots of the purchasing department's choice. Price does not include customizing by JPM. For price quote on customization, department must contact JPM directly.

The pricing structure will feature price breaks for each spot purchased up to six :30 spots. For each syndication package sold, funds will be distributed, consistent with the Agreement in the following manner:

Percentage to City	Sales Range*		Number of Spots at \$2,350 Ave.		Net to City	
20%	\$0	\$120,000	0	51	\$24,000	
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50%	\$835,001	\$935,000	355	398	\$50,000	
						\$304,447

*Would not include spot origination in syndication cuts

FISCAL IMPACT

There will be no fiscal impact in respect to this agreement other than the matching funds related to the grant award. For each syndication package sold, the department will receive a percentage of the syndication price as noted, which will be paid to the Fire Department. It is the intent of the department to use this money to create more PSAs and to buy more airtime for the showing of the PSAs throughout the community.