



**CONTRACT FOR
ADVERTISING SERVICES
BETWEEN
THE TEXAS LOTTERY COMMISSION
AND
LATINWORKS MARKETING, LLC**

RECITAL

This Contract is entered into by and between the Texas Lottery Commission, hereinafter referred to as "the Commission, TLC or the Texas Lottery," and LatinWorks Marketing, LLC, 206 E. 9th Street, 13th Floor, Austin, Texas 78701, hereinafter referred to as "Contractor."

WHEREAS, the TLC previously issued a Request for Proposals (RFP) for Advertising Services (RFP No. 362-12-0002); and

WHEREAS, LatinWorks Marketing, LLC submitted a proposal in response to the RFP; and

WHEREAS, following review of proposals submitted in response to the RFP, the TLC has selected Contractor to provide Advertising Services for the TLC for the Contract term and any renewal periods.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

I. TERM

This Contract shall commence upon execution by both parties and continue through August 31, 2016, subject to the termination provisions in the RFP and subject to the TLC being continued and funded by the Texas Legislature.

At the end of the initial term, the Texas Lottery, at its sole discretion, reserves the right to extend this Contract for up to two (2) additional two-year periods, at the Contract rate or rates as modified during the term of the Contract.

At the end of the initial term or any renewal period, the Texas Lottery, at its sole discretion, reserves the right to extend this Contract for up to three (3) additional months, in one month increments, at the Contract rate or rates as modified during the term of this Contract.

At the end of the Contract term (including any renewal period), or upon earlier termination under any provision of this Contract, Contractor shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and provider, if requested by the Texas Lottery.

The TLC, in its sole discretion, may terminate, in whole or in part, this Contract at will and without cause upon no less than thirty (30) days' advance written notice. The TLC also may terminate this Contract immediately with written notice if the Executive Director, in his sole judgment, believes that the integrity or security of the TLC is in jeopardy and it is in the best interest of the TLC to do so.

II. PRODUCTS AND SERVICES

During the term of this Contract, Contractor, as an independent contractor and not as an employee or agent of the TLC, shall provide the following services:

Those products and services requested in and pertaining to the TLC Request for Proposals for Advertising Services (RFP), issued December 13, 2011 (attached hereto as Exhibit A), as may have been clarified and modified in responses to questions submitted by proposers (attached hereto as Exhibit B), Contractor's Proposal submitted February 21, 2012 (attached hereto as Exhibit C) and Contractor's revised Cost Proposal (Exhibit D). Contractor's revised Cost Proposal supersedes the cost proposal included in Contractor's Proposal and shall apply during the Contract term (including any renewal period).

Exhibits A, B, C and D are incorporated into this Contract by reference the same as if recited at length and are made a part of this Contract for all purposes. The terms of the RFP and the Proposal are controlling except as modified by the terms of this Contract, which shall control in all events. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: Sections I-VIII of this document, together with the Contractor's revised Cost Proposal (Exhibit D); the RFP as clarified and modified by amendment and in response to questions submitted by proposers (Exhibits A and B); and Contractor's Proposal (Exhibit C). Contractor's performance shall be in accordance with the terms and conditions established in Exhibits A, B, C and D and as specified in Sections I through VIII of this document.

Notwithstanding anything herein to the contrary, the parties agree the following RFP sections are replaced in their entirety as shown below and shall apply during the Contract term and any renewal period:

1. RFP Glossary of Terms, definition of "Works"

Any tangible or intangible items or things that have been or will be prepared, created, maintained, serviced, developed, incorporated, provided or obtained by a Successful

Proposer (or such third parties as the Successful Proposer may be permitted to engage) at any time following the effective date of the Contract, for or on behalf of TLC under the Contract, including but not limited to any (i) works of authorship (such as literary works, musical works, dramatic works, choreographic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works, sound recordings and architectural works, which includes but is not limited to lottery games, game names, game designs, ticket format and layout, manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer software, scripts, object code, source code or other programming code, HTML code, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, and (vii) all other goods, services or deliverables to be provided to TLC under the Contract.

2. RFP Section 3.25.1 (Pre-Existing and Third Party Rights)

To the extent that any pre-existing rights and/or third party rights or limitations are embodied, contained, reserved or reflected in the Works, the Successful Proposer shall either (a) grant to the Texas Lottery the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such pre-existing rights and any derivative works thereof in connection with the sale, offering for sale, marketing, advertising, and promotion of the Texas Lottery's goods and services, and in all forms of media, media channels and/or publicity that may now exist or hereafter be created or developed, including but not limited to television, radio, print, Internet, and social media (e.g., Facebook, Twitter, YouTube, etc.) and (ii) authorize others to do any or all of the foregoing, or (b) where the obtaining of worldwide rights is not reasonably practical or feasible, provide written notice to the Texas Lottery of such pre-existing or third party rights or limitations, request the Texas Lottery's approval of such pre-existing or third party rights, obtain a limited right and license to use such pre-existing or third party rights on such terms as may be reasonably negotiated, and obtain the Texas Lottery's written approval of such pre-existing or third party rights and the limited use of same. The Successful Proposer shall provide the Texas Lottery with documentation indicating a third party's written approval for the Successful Proposer to use any pre-existing or third party rights that may be embodied, contained, reserved or reflected in the Works. The Successful Proposer shall indemnify, defend and hold the Texas Lottery harmless from and against any and all claims, demands, regulatory proceedings and/or causes of action, and all losses, damages, and costs (including attorneys' fees and settlement costs) arising from or relating to, directly or indirectly, any claim or assertion by any third party that the Works infringe any third party rights. The foregoing indemnity obligation shall not apply to instances in which the Texas Lottery either (y) exceeded the scope of the limited license that was previously obtained by the Successful Proposer and agreed to by the

Texas Lottery, or (z) obtained information or materials, independent of the Successful Proposer's involvement or creation, and provided such information or materials to the Successful Proposer for inclusion in the Works, and such information or materials were included by the Successful Proposer, in an unaltered and unmodified fashion, in the Works.

3. RFP Section 3.28 (Personality Rights)

The Successful Proposer hereby warrants and represents to the Texas Lottery that individuals or characters appearing or depicted in any advertisement, marketing, promotion, publicity or media, of any type or form that may now exist or hereafter be created or developed, have provided their written consent for the use, reproduction, display, performance, and distribution of, and/or preparation of derivative works to, their persona or personality rights, including name, biographical information, picture, portrait, likeness, performance, voice and/or identity ("Personality Rights"), and have been compensated for such Personality Rights, if appropriate. If such permission has been obtained for a limited time, the Successful Proposer shall be responsible for any costs associated with claims resulting from such use, etc., of the Personality Rights after the expiration of those time limits. The Successful Proposer agrees to hold the Texas Lottery harmless from any claims, including, without limitation, claims for invasion of privacy, infringement of the right of publicity, libel, unfair competition, false advertising, intentional or negligent infliction of emotional distress, copyright or trademark infringement, and/or claims for attorney's fees, resulting from such use, etc., of the Personality Rights.

4. RFP Section 7.3.3 (Advertising and Media Plans)

Media Plan. Once the advertising plan has been approved, the Successful Proposer shall develop a media plan to support the advertising plan. The Texas Lottery and the Successful Proposer will review the media plan and may revise the plan based on changes in economic factors, market conditions, or as otherwise authorized by the Texas Lottery. The media plan, at a minimum, must include:

- (1) Allocation of dollars by media and DMA with detailed rationale.
- (2) Gross rating point ("GRP") objectives with reach/frequency and efficiency analysis.
- (3) Detailed media flowchart that specifies mediums, market tiers, GRP levels and costs for each campaign.

Advertising and media plans should be based on the Texas Lottery's fiscal year (FY) (September 1 – August 31). Advertising plans will be due annually but no later than May 31, and media plans will be due two weeks after Texas Lottery approval of the advertising plans.

For FY13, the Successful Proposer shall submit an advertising plan no later than six weeks after the Contract execution date, or as specified by the Texas Lottery. The media plan for FY13 for the months of September through October is due no later than June 8, 2012 and for the months of November through August is due two weeks after the Texas Lottery approves the advertising plan.

III. PAYMENT

All payments will be made in accordance with this Section III and the Texas Government Code Ch. 2251 ("Payments for Goods and Services"). Contractor shall submit invoices in accordance with Section 7.15 and as prescribed by the Texas Lottery, noting the contract number, detailing services rendered and date of services. Payments will be made only upon the completion of services or after the delivery of goods authorized in an approved invoice. Invoices may be submitted by mail to the Texas Lottery Commission, P. O. Box 16630, Austin, Texas 78761-6630.

Pursuant to Texas Government Code Ann. Section 2251.025, interest is not due on a payment until it becomes "overdue." A payment is not "overdue" until the 31st day after the latter of: (1) the date the Texas Lottery receives the goods covered by the contract; (2) the date the performance of service under the contract is completed; or (3) the date the Texas Lottery receives an invoice for the goods or services. Tex. Gov't Code Ann. Section 2251.021. Services are "completed" when accepted by the Texas Lottery.

Contractor agrees that if the Texas Comptroller of Public Accounts is prohibited from issuing a warrant to Contractor under section 403.055 of the Texas Government Code, any payments owed to Contractor will be applied towards the debt or delinquent taxes that Contractor owes the State of Texas until the debt or delinquent taxes are paid in full.

Contractor acknowledges that the State of Texas requires consistent, high quality performance during the entire term of this Contract and during any transition to an alternate or successor provider. Contractor agrees that to ensure such consistent high quality performance, and an orderly transition to a new vendor, the Texas Lottery may withhold the last two (2) payments due under this Contract (the "Hold Back"). Following the successful transition to a new vendor, the Texas Lottery shall release the Hold Back to Contractor. If Contractor delays the transition, the Texas Lottery shall be entitled to retain the Hold Back or such portion as the Executive Director deems equitable.

TLC agrees to pay Contractor the then-current Contract rate(s) for all services provided by Contractor under this Contract and accepted by TLC through the Contract expiration/termination date.

IV. MODIFICATION

The TLC and Contractor may by mutual agreement modify the scope, personnel and prices set forth in this Contract. This modification must be in writing, recite that it is a modification pursuant to Section IV of the Contract, and be signed by individuals having the authority to bind the parties.

In no event shall Contractor be paid for work not authorized by the Contract or any of its written modifications.

V. GENERAL PROVISIONS

The following general provisions are specifically applicable to Contractor during the term of this Contract and any extension thereof, and shall survive the Contract where necessary:

A. Marketing and Advertising. No marketing or advertising related to this Contract may be conducted by Contractor without the prior written consent of the TLC.

B. Contractor Employees. In addition and subject to the requirements set forth in the RFP, Contractor shall assign the work required by this Contract only to those persons identified in Contractor's Proposal by name, together with staff category, and who are reasonably satisfactory to the TLC. Contractor shall report on a quarterly basis, with deadlines to be supplied by the TLC, the number of full-time equivalent (FTE) employees used by Contractor or any subcontractors to provide goods and services under this Contract.

C. Improper Influence. Contractor hereby agrees that Contractor shall not knowingly make a gift, loan or political contribution, either directly or indirectly, to any Texas State Officer or a member of the Texas State Legislature, during the term of this Contract. For purposes of this Contract, "Texas State Officer" means those whose duties concern the State of Texas at large or the general public, or who are authorized to exercise their official functions throughout the entire State, without limitation to any political subdivision of the State. Contractor further agrees that it shall direct its officers, directors, employees, agents, lobbyists and representatives not to make any such gift, loan or political contribution on Contractor's behalf; provided, that any gifts, loans or political contributions that these individuals or entities may make on their own behalf or on behalf of someone other than Contractor shall not be a violation of this provision. Any violation of this provision may, at the sole discretion of the TLC, result in either the immediate termination of this Contract or liquidated damages in the amount of \$10,000 for each occurrence.

D. Conflict of Interest. Contractor shall promptly disclose to the Texas Lottery in writing any actual, potential or perceived conflict of interest, relative to the performance of the requirements of this Contract. Contractor must disclose any personal or business relationship of (a) itself; (b) any of its principals, officers, directors, investors, owners, partners, and employees (collectively, Proposer Personnel); (c) any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of residence of any Proposer Personnel; (d) any affiliate; or (e) any Subcontractor, with any employee or representative of the Texas Lottery (including the Texas Lottery Executive Director and its commissioners) or its prime vendors.

E. Change in Financial Condition. Contractor shall notify the Texas Lottery of a material adverse change in financial condition during the Contract term and any renewal thereof. If the Contractor experiences a material adverse change during the term of the Contract or any extension thereof, Contractor shall notify the Texas Lottery in writing of such change at the time the change occurs or is identified. Failure to notify the Texas Lottery of such material adverse change will be sufficient grounds for terminating the Contract. The term "material adverse change" shall mean any change or changes that individually or in the aggregate are materially adverse to (i) the assets, properties, business, results of operations or financial condition, taken as a whole, of Contractor or other applicable obligor, (ii) the ability of Contractor or such other obligor to perform its or their obligations under the Contract, or (iii) the legality or enforceability against Contractor or such obligor of the Contract.

F. Contractor Standards. Contractor shall perform its responsibilities by following and applying at all times the highest professional and technical guidelines and standards.

G. Contingencies. This Contract is subject to the following contingencies:

- (1) Contractor's presentment of all bonds and insurance certificates in the form and amount required by the TLC in accordance with the requirements set forth in the RFP.
- (2) Satisfactory criminal history and background investigation report in accordance with the requirements of the State Lottery Act (Chapter 466 of the Texas Government Code), including Sections 466.103 and 466.155.

H. Multiple Originals. This Contract is executed in three (3) identical copies, each of which shall be deemed an original.

VI. NOTICES

Unless otherwise directed, all invoices, notices, reports and correspondence required by this Contract shall be in writing and delivered to the following representatives of the TLC and Contractor, or their successors in function:

Texas Lottery
Angela Zgabay-Zgarba
Contracts Administrator
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630

Contractor
Jaime Gonzalez-Mir
Group Account Director
LatinWorks Marketing, LLC
206 E. 9th Street, 13th Floor
Austin, Texas 78701

VII. APPLICABLE LAW

This Contract [Sections I-VIII of this document, the RFP (Exhibit A), as may have been clarified and modified in responses to questions submitted by proposers (Exhibit B), Contractor's Proposal (Exhibit C), and Contractor's revised Cost Proposal (Exhibit D)] shall be governed by and construed in accordance with the laws of the State of Texas, and venue for any dispute arising from this Contract shall be in state district court, Travis County, Texas. This Contract constitutes the entire agreement between the TLC and Contractor, and may be amended only by formal written agreement properly executed by both the TLC and Contractor.

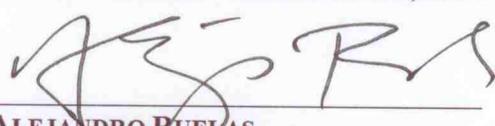
VIII. EQUAL OPPORTUNITY

Contractor agrees that all employees shall be recruited, hired, trained, assigned, promoted, transferred, downgraded, laid off, recalled and terminated based upon their own abilities, achievements and experience, and in compliance with the provisions of the Civil Rights Act of 1964 (42 USCA 2000e, *et. seq.*) and other applicable federal and state laws.

EXECUTED on this 21st day of May 2012, by a person having the authority to contractually bind LatinWorks Marketing, LLC.

LATINWORKS MARKETING, LLC

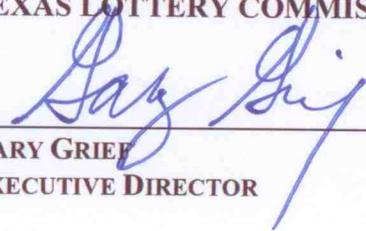
By:


ALEJANDRO RUELAS
MANAGING PARTNER AND CHIEF
MARKETING OFFICER

EXECUTED on this 21st day of May 2012, by a person having the authority to contractually bind the Texas Lottery Commission.

TEXAS LOTTERY COMMISSION

By:


GARY GRIEF
EXECUTIVE DIRECTOR