

Basic Agreement

The following contract is made between the

a) State of Greater Berlin, represented by the Governing Mayor of Berlin, who is represented by the Director of the Press and Information Office of the State of Greater Berlin (Presse- und Informationsamtes des Landes Berlin), Rathaus Schöneberg, John-F.-Kennedy-Platz, 1000 Berlin 62,

b) the Senator for Business and Labor (Senator für Wirtschaft und Arbeit), Martin-Luther-Strasse 105, 1000 Berlin 62,

called "Berlin" in the following,

and the FCB Berlin-Werbeagentur GmbH, Lassenstrasse 11/15, 1000 Berlin 33,

called "Agency" in the following.

§ 1

Within the scope of the general work for the purpose of political public relations and promotion of tourism, Berlin assigns the Agency with the communications tasks for the State of Greater Berlin. In the individual instance, these tasks will be more closely defined in terms of kind and extent. In assuming these tasks, the Agency acts in its own name and at its own expense to the extent that this contract does not determine otherwise.

INTERNAL SECURITY
SECTION
REGISTRATION UNIT

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U.S. DEPARTMENT
OF JUSTICE
CRIMINAL DIVISION

§ 2

Within the scope of the contract, the Agency must in particular provide the following services:

1. Development of communications strategy and elaboration of annual plans;
2. Preparation of texts, designs (layouts), and clean drawings for the various advertisements;
3. Elaboration of the test of the conception and/or test of the advertisement;
4. Provision of expertly executed advertising materials and technically faultless printing and production materials based on the designs accepted by Berlin;
5. Contacting the necessary specialists or subcontractors such as journalists, copywriters, graphic artists, typesetters, photographers, retouchers, architects, printers and platemakers, film-makers, recording studios, etc., and giving assignments to these in the name of and at the expense of the Agency following approval by Berlin.
6. Following consultation with Berlin, the Agency, in cooperation with suitable manufacturing companies, is responsible under its own name and at its expense for obtaining production bids, placement of order, and production supervision of all advertisements issued by Berlin.
7. Preparation, planning, and implementation of advertising measures in rate-charging media.

8. Counseling, planning, and realization of advertising campaigns;
9. Testing and documentation;
10. Presentation of intermediary stages as well as of the final version of all communication material in the in-house and advisory authorities of Berlin if this is desired or necessary.

§ 3

1. The services to be performed by the Agency within the scope of this contract are established in detail in an annual program, which is drawn up at the beginning of each year between the Agency and Berlin, from which no legal claims can be derived for the Agency. For this purpose, the Agency submits at the appropriate time a working paper that contains both a detailed list of costs and a payment plan from which the deadlines and amounts can be learned. These costings do not include the fee.

In principle, a cost overrun is not possible. Should there nonetheless be instances in which the costing is unavoidably exceeded, they must be sufficiently and provably justified by the Agency. They require the previous written approval of Berlin. In the event of a budget cut, there will be an adjustment of the assigned tasks to the budget situation, taking possible budget constraints into consideration.

2. The Agency, following the discussion of projects with Berlin, prepares appropriate consecutively numbered and dated factual reports that are binding for the additional work only after approval by Berlin. This approval is considered to be given if the factual report is not rejected within two weeks. The assignments are made singly. All assignments must be settled through the use of order forms.

§ 4

In principle, Berlin supervises via the Agency assignments that are made within the scope of this contract between Berlin and the Agency. Berlin retains the right, however, to also make assignments to third parties.

§ 5

For assignments to rate-charging advertising media, the Agency guarantees the most favorable rate conditions in each instance. The payment of such assignments occurs through the Agency, which acts in its own name toward the rate-charging advertising media, but the Agency makes the assignments for Berlin and settles with Berlin directly.

§ 6

All assignments to subcontractors must be issued by the Agency on the basis of the general regulations for the assignment of services (VOL/A) and of regulation PR number 30/53 concerning prices in the public assignments of November 21, 1953 (GVBL. S. 1511) in the applicable version in each instance. The text of these regulations is being delivered to the Agency today.

§ 7

1. In compliance with § 2 No. 7 (insertions in daily newspapers, magazines, radio, television, movie advertising, putting up posters of any kind, supplements in newspapers and magazines, etc.), the Agency receives, in addition to the payment of the net/net-insertion costs plus value-added tax for all communications tasks, a handling fee of 17.65% on the net/net of any transaction plus value-added tax on the fee.

2. The Agency also receives a net/net reimbursement of the costs for outside services necessary for the assignment (composition, lithography, slides, etc.) only in the amount that actually must be paid by the Agency. In addition, a handling fee of 15% plus value-added tax on the fee will be paid. There exist no additional fee claims, including the reimbursement of travel expenses and other expenditures, in connection with the reimbursement of outside services.

3. The net/net amount is yielded after deduction of all benefits granted to the Agency (Agency rate commissions, rebates, discounts, and other concessions such as volume discounts and annual bonuses).

4. In compliance with paragraphs 1 and 2, the following are paid with the handling fee: advice, planning, implementation, and control of the communication work as well as creation of the communications tools in word, picture, and sound as well as presentation by the Agency in the in-house or advisory committees of Berlin.

5. Along with the handling fee in paragraphs 1 and 2, all administrative and organizational costs of the Agency, including the material costs for documentation, the costs for telephone, telex, photocopies, and postage (with the exception of the postage to be added in \$ 10, paragraph 1) are also to be reimbursed.

6. Clean drawings made by the Agency itself are reimbursed to it on an hourly basis at agreed-on rates per hour.

7. Slides for the preparation of printing materials which the Agency, in consultation with Berlin, makes or acquires are reimbursed in compliance with the previous agreement.

8. If the Agency creates its own designs for communications tools whose use or duplication Berlin assigns without calling upon the Agency, the Agency receives for its services and for the acquisition of all rights a fee in compliance with the previous agreement.

§ 8

1. In compliance with § 2 (printed materials, film, radio, television projects, exhibition stands, etc.) except for the communications tasks mentioned in § 7 paragraph 1, the Agency receives for the development, design, manufacture, and supervision of production projects a handling fee, which must be previously agreed on, of up to 17.5% of the net bill for any production costs that arise for the production within the first 12 months of their use. With this handling fee, all fee claims by the Agency, including such claims from reimbursement of outside services, particularly from reimbursement of travel expenses and other expenditures, are compensated.

2. Accordingly considered applicable are § 7, paragraph 2, sentence 1 as well as paragraphs 3, 4, 5, 6, 7, and 8.

§ 9

For other communications assignments and particularly for development services, the reimbursement is made on a project-by-project basis in a lump sum or on an hourly basis, in each instance on the basis of the specific assignment by Berlin. Expenditures in this context, provided Berlin recognizes them as necessary, are calculated and reimbursed at the cost price plus the actual amount of value-added tax that is due.

§ 10

Travel expenses and other expenditures in the preparation and implementation of PR programs or for the fulfillment of services within the scope of this contract are reimbursed to the Agency or to the subcontractor working at the assignment of Berlin upon submission of voucher on the basis of the Federal Travel Expense Law (Bundesreisekostengesetz); the reimbursement of hotel accommodations is restricted to the reception guidelines of Berlin. The employees of Berlin do not participate in the reimbursement. The Agency will not pay for expenditures for employees of Berlin.

§ 11

1. It is known to the Agency that the employer must observe particular rules of a public and legal nature. The services of the Agency are in each instance to be computed following completion of an assignment, but at the latest within 8 weeks. For larger and long-term projects, partial payment based on portions of the work is possible.

2. The handling fee is paid only after conclusion of each separate assignment.

3. For separate assignments that were made in writing, the Agency can request covering payments for the fulfillment of payment obligations that are already due or that will become due within 4 weeks. With the exception of insertion costs in compliance with paragraph 1 of § 7, the amount requested may not exceed 90% of the assignment limit of the material costs of a single assignment. For advance payments that are requested prematurely or excessively, interest will be charged in the amount of 3% above the discount rate of the Deutsche Bundesbank but at least in the amount of 6%.

4. The bills of the Agency are due within 30 days after receipt in Berlin. Berlin can withhold the payment if the Agency fails to heed the assignment conditions of Berlin.
5. A special bank account ((trust account) will be set up for all transfers by Berlin. The outside bills will be paid directly from this account.

§ 12

1. In keeping with business principles, the Agency is obligated to use as effectively and economically as possible the means that are provided it within the scope of an assignment by Berlin.
2. The Agency must take into consideration and pass on to Berlin all rebates, discounts, and other reimbursements that it is granted within the scope of an assignment.
3. In keeping with the basic principles of the VOL (payment regulation for services), the Agency must as a matter of principle obtain three cost proposals if it assigns work to a third party.
4. The Agency is responsible for costs that arise through the implementation of separate measures that have not been approved.
5. All outside bills must be documented by duplicates of the original bill. The identification of these outside bills must prove their inclusion within a specific separate assignment with the order number of Berlin and of the Agency. For composition costs, each bill must be accompanied by a galley proof or baryta copy or proof of the text at no charge. The accuracy of the documented delivery, service, and amount of the bill issued must be proved.

§ 13

1. With the payment of reimbursements and costs in compliance with §§ 7 - 10, Berlin acquires the unrestricted ownership of the objects mentioned. The submission of the manufactured objects, which is necessary for the transfer of ownership, is prescribed by the fact that the Agency stores or has these objects stored until their delivery for Berlin. In addition, all commercial and non-commercial utilization and reimbursement rights to the objects that were made in compliance with § 2 are transferred exclusively to Berlin. In compliance with § 2, the rights for the commercial and non-commercial utilization and reimbursement of films, including films for television along with all the publication aids, that were made within the country and abroad remain with Berlin.

2. The Agency sees to it that it can own these rights and that these rights are not already owned by any other party and that these rights do not violate the copyright or other rights of third parties.

3. If Berlin should become subject to payment of indemnity or otherwise become subject to any claim by a third party due to the utilization and evaluation of the objects produced in compliance with § 2, the Agency is obligated to free Berlin of all claims. A possible contributory negligence by Berlin is not affected by this.

4. The insertion of a sign and/or the mention of the name of the Agency require the approval of Berlin.

§ 14

The Agency is obligated to maintain secrecy about the matters made known to it on the basis of the contract. This applies also for the time after conclusion of the contractual relationship. In addition, it is obligated to accordingly require secrecy of the third parties engaged for the provision of services mentioned in § 2.

§ 15

1. In the fulfillment of the contract, the Agency is liable for the attention of a conscientious businessman. In conjunction with the annual auditing, the Agency provides proof at its expense by means of an independent auditing company that the accounting of the business relations has occurred within the sense of this contract.

2. Berlin or an authority assigned by it as well as the auditing office of Berlin have the right to take a look at the Agency's business records that are relevant to this contract.

§ 16

The Agency pledges that it will accept assignments from other states, Länder, cities, and communities that affect the official public relations work and the advertisement of tourism only with the previous approval of Berlin.

§ 17

As for the rest, the General Conditions for the Performance of Services (Allgemeine Bedingungen für die Ausführung von Leistungen) (VOL/B) as well as the implementation guidelines of §55 of the state budget regulation (Landeshaushaltsordnung) are part of this contract. This applies also in the relationship to subcontractors. The Agency is obligated to include a corresponding clause in the assignments with subcontractors. Texts of the regulations mentioned are being delivered to the Agency today.

§ 18

1. This contract begins on January 1, 1986 and ends on December 31, 1986.

2. In the event of an important reason, this contract can be terminated in writing without observance of a period of notice.

3. Considered as an important reason is in particular a serious violation of the obligations mutually assumed within the scope of this contract or any other behavior that makes impossible further cooperation on a basis of trust.

4. Also considered an important reason is a change of the business basis that occurs in the effective duration of the contract.

§ 19

Changes and supplements to this contract must be made in writing.

§ 20

Essential parts of this contract are the attachment 1 (hourly rates in keeping with §§ 7 and 9 of the contract) and attachment 2 (authorization to sign for the job forms mentioned in § 3, paragraph 2).

Place of fulfillment and legal venue is Berlin.

Berlin, January 14, 1986

(for the State of Berlin)

(for the Agency)

FCB

Re.: Advertising and sales promotion in the USA
in 1986/87

Dear Mr. Schwartz,

as agreed, the Land Berlin, represented by the Senator for Economics and Labour (Tourism Office, Berlin), authorizes FCB New York to carry out the advertising and sales promotion in the USA in 1986/87, which is based on the contract, which has been concluded with you.

I assume that all activities for public relations, sales promotion and advertising will be executed at place in the USA, only the co-ordination will be carry out by FCB Berlin.

On the 15th of every month the Land Berlin will be informed via your office about the activity status. Additional co-ordination will follow spontaneously, independent of this date.

Referring to your Recommended Budget Allocation, which also contains the reimbursement for the activities, I please you to take care that possible taxes, which have to be paid in the USA, are included in the total budget.

New York will directly charge to account. The requested amounts will be paid to the account, which you had indicated, directly to New York.

In order to facilitate the co-ordination with FCB New York, I please you to send a copy of our contract to New York, therefore that in particular the details for the deduction can be taken into consideration.

I am looking forward to a creative co-operation.

FCB

Translations of letter to Mr. Kierey 12/16/1986

re: Advertisement and Sales Promotion in the U.S.

Dear Mr. Kierey:

thank you for your letter of November 1986.

As agreed we herewith send you the "Recommended Budget Allocation" with which you charged FCB New York and which is amounting to approx. US\$ 1,030,000.00. Basis is the German currency, i.e. a fix account of 2,000,000.00 German Marks.

FCB New York will do the necessary work for public relations, sales promotions and advertisement directly in the U.S. FCB Berlin is the coordinator for FCB New York in Berlin for your office and the tourist office. You will receive a regular status report of FCB New York on the works to do via FCB Berlin - on the 15th of each month.

In order that FCB New York can carry through in the US the already approved and above mentioned works in time, they need an advance payment of 500,000.00 German Marks in December 1986 still.

Please transit the amount to the following account in New York: FCB Communications, Inc., Chase Manhattan Bank, 1 Chase Manhattan Plaza, Lock Box 9102555225, New York, N.Y. 10081, U.S.A.

Best regards,

FCB BERLIN WERBEAGENTUR GMBH

Jörg Schwartz

ppa. Hans-Hennig Fahlberg