

AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2023, by and between the Commissioners of St. Michaels (“the Town”), a Maryland municipal corporation, and _____ (“the Consultant”), a _____ corporation.

In consideration of the mutual covenants and obligations contained herein, the sufficiency of which is hereby acknowledged, the Town and the Consultant hereby agree as follows:

1. Services Provided:

A. The Consultant will provided the following services for the Town: comprehensive marketing services to promote the Town across all channels of communication (“the Services”). The Services shall be provided as detailed in the following enumerated documents, which in addition to this Agreement, form the contract, and they are incorporated herein to the same extent as if attached thereto, except that the Consultant’s Proposal is incorporated only as to the scope of work, the pricing proposal, and any warranties or representations about the nature or quality of the services or equipment to be provided contained therein.

- 1) Request for Proposals, dated _____
- 2) Consultant’s Proposal, dated _____
- 3) Instructions to Bidders
- 4) General Conditions
- 5) Equal Opportunity Employer & Drug Free Workplace Certification
- 6) Affidavit of Public Contracting Eligibility
- 7) Reference List
- 8) Drug Free Workplace Certification

B. The Consultant agrees to begin work within ____ days of the Notice to Proceed and to continue providing Services in a timely manner until this Agreement is terminated.

C. The Consultant agrees to conform strictly to and be bound by standards, criteria, budgetary considerations, and memoranda of policy furnished to it by the Town and further agrees to design the work in strict compliance with industry standards and all applicable laws, codes, and industry standards.

2. Fees: The Town hereby agrees to pay the Consultant as full consideration _____ Dollars (\$_____) per hour payable in the following manner: monthly. within thirty (30) days of the Town’s receipt of an invoice for Services satisfactorily rendered. [IF BILLING HOURLY:] The Consultant shall bill in increments no greater than 1/10th hour.

3. Binding Effect of Agreement: This Agreement shall be binding upon all parties hereto and their respective officials, employees, successors, and assigns.

4. Political Contributions: If this contract involves cumulative consideration of at least \$200,000, the Consultant shall file with the State Board of Elections a statement under oath containing: (i) the name of each candidate, if any, to whom one or more applicable contributions in a cumulative amount of \$500 or more were made during the reporting period; (ii) the office sought by each candidate; (iii) the amount of aggregate contributions made to each candidate; (iv) the name of each unit of a governmental entity with which the person did public business during the reporting period; (v) the nature and amount of public business done with the Town; and (vi) if the contract or the contribution is attributed to another person who is filing the statement, the name of the contracting entity or the person who made the contribution and the relationship of that person to the person filing the statement. The Consultant's initial statement shall be filed at that time of the inception of the contract, and shall cover the preceding 24 months, and the Consultant shall thereafter file a semi-annual statement, for the six months ending on January 31 or July 31 of every year, for each reporting period during which performance remains uncompleted on the contract, and shall be filed within 5 days after the end of the applicable reporting period.

5. Notices: All notices or other communications required hereunder shall be in writing and delivered by email and either (a) by hand or (b) by mail, postage prepaid, addressed as follows:

To the Town: Robert Straebel, Town Administrator
 300 Mill Street
 P.O. Box 206
 St. Michaels, Maryland 21663
 rstraebel@stmichaelsmd.gov

With a copy to: Elissa D. Levan, Esquire
 Town Attorney
 Levan Ruff LLC
 2007 Tidewater Colony Drive
 Annapolis, Maryland 21401
 elevan@levanruff.com

To the Consultant: _____

6. Other Payments, Taxes, Expenses: Except as may be specifically agreed upon by the parties in writing, the Consultant shall be entitled to no fees, bonuses, contingent payments, or any other amount in connection with the services to be rendered or materials provided hereunder. The parties hereto further agree that the Town shall have no obligation to reimburse, pay directly or otherwise satisfy any expenses of the Consultant in connection with the performance of his obligations under this Agreement, including, but not limited to, the cost of any insurance or license fees.

The fees payable hereunder shall be paid in gross amount, without reduction for any Federal or State withholding or other payroll taxes, or any other governmental taxes or charges. The Consultant is an independent contractor of the Town and is therefore responsible for directly assuming and remitting any applicable Federal or State withholding taxes, estimated tax payments, or any other fees, taxes, or expenses. If the Consultant is deemed not to be an independent contractor by any government agency, the Consultant agrees to indemnify and hold harmless the Town for all fees, costs, and expenses, including but not limited to, attorneys' fees, incurred thereby.

7. Insurance: The Consultant covenants to maintain the insurance coverages set forth herein. The Consultant further agrees to provide evidence of such insurance within ten (10) days from notice of award. The Certificates of Insurance shall provide that the Town shall be given at least thirty (30) days prior written notice of the cancellation, intention not to renew, or material change in the coverage. The Consultant must provide Certificates of Insurance to the City before commencing any work pursuant to this Agreement. All insurance must name the Town as an additional insured.

Provision of any insurance required herein does not relieve the Consultant of any of the responsibilities or obligations assumed by the Consultant in the contract awarded, or for which the Consultant may be liable by law or otherwise.

A. **Workers' Compensation Insurance:** The Consultant shall comply with the requirements and benefits established by the State of Maryland for the provision of workers' compensation insurance. If the Consultant is an entity eligible to elect an exemption for officers or other employees under any provisions of the Maryland Workers Compensation Act, Md. Code Ann., Lab. & Emp. Art., § 9-101 et seq., the Consultant is required to submit a copy of the relevant Workers' Compensation Commission form with proof of filing.

B. Comprehensive General Liability Insurance: The Consultant shall provide general liability insurance in the amount set forth herein. Coverage shall be issued on an occurrences basis.

(1) Personal injury liability insurance with a limit of \$500,000.00 for each occurrence and \$1,000,000.00 aggregate, where insurance aggregates apply;

(2) Property damage liability insurance with limits of \$100,000.00 for each occurrence and \$200,000.00 aggregate, where aggregates apply.

C. Automobile Liability Insurance. If any person will be driving a vehicle in connection with providing the Services, motor vehicle insurance meeting the requirements of Maryland law and covering every vehicle and driver involved in providing the services.

8. Doing Business in Maryland: The Consultant warrants and represents that it has paid all taxes, fees and charges owed by it to any governmental entity. In addition, it warrants and represents that any entity with which it is affiliated or has been affiliated has paid all taxes, fees and charges owed by it to any governmental agency accrued during any period during which the Consultant was affiliated with the entity. The Consultant warrants and represents that it (1) is either (a) incorporated in Maryland or (b) registered or qualified by the Maryland State Department of Assessments and Taxation (SDAT) as required by the Maryland Annotated Code, Corps. & Assocs. Article, to do business in Maryland and (2) is in good standing with SDAT.

9. Compliance with Laws: The Consultant shall, without any additional expense to the Town, be responsible for complying with all applicable laws, codes, and regulations in connection with the services provided by the Consultant, including but not limited to obtaining any licenses required by the Consultant to perform the Services.

10. Indemnification: The Consultant shall defend and indemnify the Town and save the Town harmless from any and all suits, claims, actions, damages or costs of every name and description, including reasonable attorneys' fees to which the Town may be subject, including but not limited to any suit, claim or action alleging injury to persons (bodily injury, including death, or any personal injury) or property damage as a result of Consultant's professional services, or caused or alleged to be caused by the negligence or willful acts of misconduct of the Consultant, or its employees, subcontractors, or agents. The Town shall retain monies owed the Consultant until such claims for damages shall have been resolved or until the Consultant furnishes to the City a bond in the amount of the dispute in a form satisfactory to the Town.

11. Not Assignable: The Consultant shall not assign or transfer any interest or claim under this Agreement except as may be agreed upon and authorized in writing by the Town and no contract shall be made by the Consultant with any other party for furnishing any of the services herein contracted for without the prior approval of the Town.

12. Relief: In the event of a breach or a threatened breach by the Consultant of any provision of the Agreement, the Consultant recognizes the substantial and immediate harm that a breach or threatened breach will impose upon the Town, and further recognizes that in such event monetary damages will be inadequate to fully protect the Town. Accordingly, in the event of a breach or threatened breach of this Agreement, the Consultant consents to the Town's entitlement to such ex parte, preliminary, interlocutory, temporary, or permanent injunctive, or any other equitable relief, protecting and fully enforcing the Town's rights hereunder and preventing the Consultant from further breaching any of his obligations set forth herein. The Consultant expressly waives any requirement based on any statute, rule of procedure, or other source, that the Town post a bond as a condition of obtaining any of the above-described remedies. Nothing herein shall be construed as prohibiting the Town from pursuing any other remedies available to the Town at law or in equity for such breach or threatened breach, including the recovery of damages from the Consultant.

13. Town's Right to Terminate:

A. This Agreement may be terminated by the Town for the convenience of the Town by written notice to the Consultant specifying the termination date of the Agreement.

B. In the event of termination that is not the fault of the Consultant, the Town shall pay to the Consultant the compensation properly due on work performed for Services properly performed prior to the effective date of the termination.

C. If the Consultant through any cause fails to perform any of the terms, covenants, or provisions of this Contract on its part to be performed, or if it for any cause fails to make progress in work hereunder in a reasonable manner, or if the conduct of the Consultant impairs or prejudices the interest of the Town, or if the Consultant violates any of the terms, covenants, or provisions of this Contract, the Town shall have the right to terminate this Contract by giving seven (7) days' notice in writing of the termination and date of such termination to the Consultant. The Town shall have the sole discretion to permit the Consultant to remedy the cause of the contemplated termination without waiving the Town's right to terminate the Contract. All drawings, specifications, and other documents relating to the design or

supervision of work shall be surrendered forthwith by The Consultant to the Town. The Town may take over work to be done under this Agreement and prosecute the work to completion by Contract or otherwise.

D. The Services may be terminated whenever adequate funds have not been appropriated by the Town Council in the annual budget for the purpose set forth herein. The Consultant is advised that the Town does not guarantee the appropriation of funds for any subsequent fiscal year (beginning July 1). The Consultant shall not perform services in any fiscal year following the current fiscal year without verification from the Town Administrator that adequate funds have been appropriated for that purpose in the budget for the relevant fiscal year. Upon such termination, the Town shall be liable to the Consultant only for payment for services provided prior to the effective date of the termination.

14. Waiver: The waiver by the Town of a breach, default, delay, or omission by the Consultant with respect to any of the provisions of this Agreement shall not be construed as a waiver of any subsequent breach of the same or other provisions.

15. Entire Understanding: This Agreement contains the entire understanding between the parties, and supersedes any prior proposals or agreements, and any additions or modifications hereto may only be made in writing, executed by both parties.

16. Governing Law:

A. This Agreement shall be interpreted in accordance with the laws of the State of Maryland. Any suit to enforce the terms hereof or for damages or other remedy for breach or anticipated breach hereof shall be brought exclusively in the courts of the State of Maryland for Talbot County and the parties expressly acknowledge that venue is proper therein and consent to the jurisdiction thereof and waive any right that they may otherwise have to bring such action in or transfer or remove such suit to the courts of any other jurisdiction.

B. The parties irrevocably waive their rights, if any, to a trial by jury in any action, proceeding or counterclaim (whether based upon contract, tort or otherwise) arising out or relating to this Agreement or the actions of the parties in the negotiations, administration, performance, or enforcement thereof.

17. Conflict of Interest: The person executing this Agreement on behalf of the Consultant certifies that he or she understands the provisions of the St. Michaels Town Charter and Code dealing with conflicts of interest and the prohibition of the solicitation or acceptance of gifts.

18. Set-Off: In the event that the Consultant shall owe an obligation of any type to the Town at any time during the term hereof, or after the termination of the relationship created hereunder, the Town shall have the right to offset any amount so owed the Consultant against any compensation due to the Consultant for the provision of the Services.

19. Severability: If any term or provision of this Agreement shall be held invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be enforced to the fullest extent permitted by law.

20. Record Retention, Audits, and Inspections: The Consultant shall:

A. Retain all financial and project-related records for a period of three (3) years from the date of issuance of final payment hereunder.

B. Permit the Town to have access to all records, including all subcontracts covered by this Agreement for the purpose of making audits, examinations, reproductions, excerpts, and transcripts. Access shall be available at any time during normal business hours and as often as deemed necessary by the Town.

21. Ownership of Documents:

A. The Town shall have unlimited rights in the ownership of all work product, designs, designs, specifications, notes and other work developed in the performance of the Agreement, including the right to use same on any other the Town's projects without additional cost to the Town, and with respect thereto the Consultant grants to the Town an exclusive royalty-free license to all data and to all designs furnished to the Town in connection with this Agreement as to which it may assert any rights or establish any claim under the patent or copyright laws.

B. In the case of future re-use of the documents, the City reserves the right to negotiate with the Consultant for the acceptance of any professional liability. In the event the City does not exercise the option to negotiate with the Consultant for the Consultant's acceptance of any professional liability, it is understood that the Consultant's name and seal shall be removed from the documents and the Consultant shall no longer be liable to the City or third parties in the reuse of those documents, and the City agrees to indemnify the Consultant.

IN WITNESS WHEREOF, on the date hereinabove set forth, the parties hereto have signed this Agreement through their authorized representative.

WITNESS: THE COMMISSIONERS OF ST. MICHAELS

Kristen Payne, Town Clerk

By: _____
Robert Straebel, Town Administrator

WITNESS: CONSULTANT: [INSERT NAME].

By: _____
[INSERT NAME AND TITLE]

Federal Identification No.

Approved as to Form and Legal Sufficiency:

Date: _____

Elissa D. Levan, Town Attorney