

# Agreement

## Comprehensive Branding, Logo Development and Marketing Services

THIS AGREEMENT, MADE AND ENTERED into this 13<sup>th</sup> day of September, 2018, by and between The City of Frederick, a municipal corporation of the State of Maryland (hereinafter referred to as the "City"), and The Burdette Agency, Inc. d/b/a North Star Destination Strategies (hereinafter referred to as the "Consultant") for Comprehensive Branding, Logo Development and Marketing Services.

The parties hereto acknowledge that they understand the terms and conditions set forth herein and that for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, do hereby agree as follows:

### ARTICLE I - SCOPE OF WORK

The specific work that the Consultant shall perform is set forth in Request for Qualifications 5411-04-20-18, Comprehensive Branding, Logo Development and Marketing Services; including all Addenda (collectively referred to as "the RFQ"), Consultant's submitted proposal dated May 18, 2018 to same, and Consultant's Best and Final Offer dated August 15, 2018, which are incorporated herein by reference and made a part of this Agreement, as if set forth herein in full. The services as described in the foregoing are collectively referred to herein as the "Scope of Work" and include the following:

1. 3-4 day in-market visit to Frederick including immersive meetings with City staff and external stakeholders
2. Research Competitive and Current State
3. Positioning statement
4. Internal Brand statement
5. Logo Development w/ three (3) rounds of revisions (+3 departmental brands, same # revisions)
6. Tagline
7. Formalized Brand Guidelines
8. Key Marketing Messages
9. Expanded Brand Style Guidelines
10. Rollout Plan.

With regard to the three departmental brands, scope items 1, 2, 9 and 10 will be merged and completed together within the City Branding effort.

### ARTICLE II - PERIOD OF PERFORMANCE

The period of performance shall commence upon issuance of the Notice to Proceed and continue until project completion which is to be within 180 calendar days.

### ARTICLE III - RELATIONSHIPS

In the performance of the services described herein, the Consultant shall act solely as an independent consultant, and nothing herein or implied herein shall at any time be construed as to create the relationship of employer and employee, partnership, principal and agent, or joint adventurer between The City of Frederick and the Consultant.

# Agreement

## Comprehensive Branding, Logo Development and Marketing Services

The Consultant will report and coordinate all duties with the Technology Manager or their designated representative(s).

In carrying out the services to be provided pursuant to this Agreement, the Consultant will also work with City Staff and any other agencies, organizations or individuals necessary to complete the services described in the Scope of Work.

All notice requests and authorizations provided for herein shall be in writing and shall be delivered or mailed, addressed as follows:

To the City:                 Matthew Bowman  
                                      Technology Manager  
                                      101 North Court Street  
                                      Frederick, Maryland 21701  
                                      301-600-6209  
                                      [mbowman@cityoffrederick.com](mailto:mbowman@cityoffrederick.com)

To the Consultant:        Will Ketchum, President  
                                      The Burdette Agency, Inc. d/b/a North Star Destination Strategies  
                                      1023 Kings Avenue  
                                      Jacksonville, Florida 32207  
                                      615-232-2103  
                                      [will@northstarideas.com](mailto:will@northstarideas.com)

### ARTICLE IV - PERSONAL SERVICES; ASSIGNMENT

The work and services provided for herein shall be performed by the Consultant, and no other person shall be engaged upon such work or services by the Consultant except upon the written approval of the City, provided, however, that this provision shall not apply to secretarial, clerical, and similar incidental services needed to assist the Consultant in performance of this Agreement. The Consultant shall not hire City of Frederick employees to perform any portion of the work or services provided for herein. Neither this Agreement nor any interest or claims hereunder shall be assigned or transferred by the Consultant to any party or parties, except with the written consent of the City.

### ARTICLE V - OWNERSHIP OF REPORTS, DRAWINGS, SPECIFICATIONS, ETC.

All reports, designs, specifications, recommendations, data and memoranda of every description relating to the services described herein and in completion thereof, shall be the property of the City. The Consultant shall not disclose such information and procedures without the written approval of the City, which approval shall not be unreasonably withheld.

Stock photography used for the demonstration of creative concepts is not to be reproduced or published in any way without first negotiating usage rights with the appropriate stock image provider.

# **Agreement**

## **Comprehensive Branding, Logo Development and Marketing Services**

### ARTICLE VI- BASIS OF PAYMENT

The total amount to be paid by the City to the Consultant for services performed in accordance with the Scope of Work shall be in accordance with the Consultant's Best and Final Offer dated August 15, 2018 and shall not exceed the total amount of \$45,000.00. Invoices for payment will be submitted on a per task basis for the duration of the contract. Invoices will be subject to verification and approval by Matt Bowman, Technology Manager or his designee. Pricing shall be fixed and firm for the duration of the contract.

### ARTICLE VII - WORK CHANGES

The City reserves the right to order work changes in the nature of additions, deletions or modifications without invalidating the Agreement, and agrees to make corresponding adjustments in the Agreement price and/or time for completion. All changes will be authorized by a written change order signed by the Technology Manager or their designee.

Work shall be changed and the Agreement price and completion time shall be modified only as set out in the written change order. Any adjustment in the Agreement price resulting in a credit or a charge to the City shall be determined by mutual agreement of the parties before starting the work involved in the change.

Should additional requests be made beyond the Scope of Work, Consultant's blended firm rate of \$175 per hour will be the basis for Consultant's pricing.

### ARTICLE VIII - TERMINATION

If Consultant defaults in its performance under the executed Agreement and does not cure the default within 10 days after written notice of default, The City of Frederick may terminate the Agreement, in whole or in part, upon written notice without penalty to The City of Frederick. In such event the Consultant shall be liable for damages including but not limited to the excess cost of procuring similar work, materials, product, labor, supplies or services: provided that if, it is determined for any reason that the Consultant was not in default, the termination will be deemed to be a termination for the convenience of The City of Frederick.

The City of Frederick may terminate the Agreement for convenience, in whole or in part, upon 30 days prior written notice when it is in the best interest of The City of Frederick. This Agreement is for services and if terminated, The City of Frederick shall be liable only for payment in accordance with the payment provisions of the Agreement for those services rendered prior to termination.

Upon termination of this Agreement, Consultant shall transfer, assign and make available to the City, or its representatives, all property and materials in its possession or control belonging to the City and paid for by the City. In the event that the material, which is the subject of this Agreement, is copyrightable subject matter, Consultant and City agree that for the purposes of this order the material shall be a work made for hire and the property of the City. In the event that the material which is the subject of this Agreement is not copyrightable subject matter, or for any reason is determined not to be a work made for hire, then and in such event Consultant hereby assigns all right, title and interest to said material to City for the fees specified herein. Concepts, logos and straplines not selected by the City remain the intellectual property of Consultant.

# **Agreement**

## **Comprehensive Branding, Logo Development and Marketing Services**

### ARTICLE IX - INDEMNIFICATION/INSURANCE

Consultant shall indemnify, protect, defend, and hold harmless the City and its elected and appointed officers, employees, and agents ("City Indemnitees") from and against all liability, claims, demands, damages, losses, liens, causes of action, suits, judgments, fines, penalties, costs and expenses (including, without limitation, reasonable attorney fees and costs of defense), of any nature, kind, or description claimed, asserted, or prosecuted by any person or entity whomsoever, to the extent caused by: (i) the negligent, acts, errors, or omissions, by Consultant, its agents, partners, employees and sub-contractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, or (ii) the material breach of this Agreement, except to the extent that any claims or damages are caused by the negligence, willful misconduct or material breach of this Contract by the City Indemnitees.

The City shall indemnify, defend and hold the Consultant harmless against any losses or expenses that the Consultant may incur as a result of any claim, suit or proceeding brought against the Consultant in connection with communications materials produced by the Consultant which contain unlawful, infringing, erroneous or incorrect data, information or other material provided to the Consultant by the City.

This indemnity obligation shall survive the termination or expiration of this Agreement, but shall not otherwise extend any applicable statute of limitations or statute of repose. This indemnity obligation shall be in addition to, and not in lieu of, any and all other liability which the Consultant has or may have to any party indemnified hereunder or to third parties as a matter of law. Consultant's obligations hereunder shall not be limited by any insurance coverage required by this Agreement.

The Consultant shall within ten (10) days after notice of award submit proof of insurance in accordance with the specifications set forth in the RFQ. The requirements contained herein, as well as City's review or acceptance of insurance maintained by the Consultant are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Consultant under the Agreement.

### ARTICLE X - CONFORMANCE WITH PROPOSAL

It is understood that the materials and/or work required herein are in accordance with the Proposal dated May 18, 2018 and Best and Final Offer dated August 15, 2018 submitted by the Consultant pursuant to the Request for Qualifications, on file in the Purchasing Office of the City. All documents submitted by the Consultant in relation to said proposal, and all documents promulgated by the City for inviting proposals are, by reference, made a part hereof as if set forth herein in full.

### ARTICLE XI - MISCELLANEOUS PROVISIONS

- 1) This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Maryland.
- 2) The Consultant and the City respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all terms and conditions of this Agreement.

# **Agreement**

## **Comprehensive Branding, Logo Development and Marketing Services**

- 3) This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. If any provision of this Agreement is declared invalid or unenforceable, the remainder shall continue in full force and effect.
- 4) This Agreement cannot be changed or modified, unless by written agreement signed by all parties hereto.
- 5) Non-Discrimination: The Consultant shall not discriminate on the basis of race, color, religion, sex, national origin, age, marital status, veteran status, disability, sexual orientation, gender identity, genetic information, or any other legally protected group in employment or in the provisions of services.
- 6) Waiver: Unless otherwise agreed in writing, neither party's waiver of the other's breach of any term or condition contained in this Agreement shall be deemed a waiver of any subsequent breach of the same or any other term or condition of this Agreement.

### ARTICLE XII - LICENSING

Consultant warrants that they possess all licenses and certificates necessary to perform required work and are not in violation of any laws. Consultant warrants that their licenses and certificates are current and will be maintained throughout the duration of the Agreement.

To ensure that the recommended strapline (tagline) is available for use and capable of being trademarked, Consultant will conduct a trademark registration search with the United States Patent and Trademark Office via their web site: <http://www.uspto.gov/main/trademarks.htm>. Consultant will report any records found relating to the strapline. The pursuit of an official, legally binding trademark is the responsibility of the City.

### ARTICLE XIII - ASSIGNMENT

Consultant shall not delegate, sublet or subcontract any part of the work under this Agreement or assign any monies due them hereunder without first obtaining the written consent of the City.

# Agreement

## Comprehensive Branding, Logo Development and Marketing Services

IN WITNESS WHEREOF, WITNESS the hands and seals of the undersigned parties hereto on the day and year first above written.

The Burdette Agency, Inc.  
d/b/a North Star Destination Strategies

WITNESS: Kimberly Perry

Will Ketchum  
Will Ketchum, President

The City of Frederick

WITNESS: [Signature]

[Signature]  
Michael C. O'Connor, Mayor

Reviewed and Approved For Legal Sufficiency:

Leandra A. Nichols  
City Attorney

**Agreement**  
**Comprehensive Branding, Logo Development and Marketing Services**

Acknowledgment of Officer of Owner

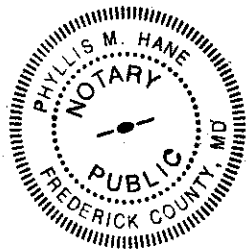
On this 13<sup>th</sup> day of September, 2018, before me personally came Michael C. O'Connor, Mayor, to me personally known and known to me to be the Mayor, the same person who executed the foregoing Contract as such official, and that said Michael C. O'Connor, Mayor, duly acknowledged to me that he executed the same pursuant to the power and authority vested in him by The City of Frederick and that said signature is so affixed pursuant to authority vested in him.

State of Maryland

County of Frederick

Notary Public Phyllis M. Hane

My Commission Expires 11/2/20



Acknowledgment of Contractor

On this 13<sup>th</sup> day of September, 2018, before me personally came and appeared Will Ketchum to me known or properly identified, who, being by me duly sworn, did depose and say that he/she is the President of The Buerdette Agency, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation, that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation, and that he/she signed their name thereto by like order.

State of Florida

County of Duval

Notary Public Heather Stevens

My Commission Expires 10/17/2020

