



DESTINATION PANAMA CITY
REGULARLY SCHEDULED QUARTERLY MEETING
December 10, 2019

9:00AM (approximate time, follows City Commission Meeting)

- 1) Roll Call
- 2) Authorize CEO to execute negotiate Marketing & PR Contract with Fahlgren
Mortine
- 3) Public Participation
- 4) Adjournment

Client: **Destination Panama City**

Date: 12/10/2019

Fahlgren Mortine(hereinafter called "Agency") agrees to serve

Destination Panama City (Panama City Community Development Council, Inc.),
a Florida public agency and corporation not-for-profit
(hereinafter called "Client")

as advertising agency of record in accordance
with and subject to the terms and conditions set forth below.

Herein, Agency and Client will collectively be referenced as "Parties" and individually as a "Party."

General Provisions

- 1. Agency-Client Relations.** Agency agrees to render to Client those services as agreed upon in written task orders executed by the parties as described herein. Agency is authorized to act as Client's agent in purchasing the media, materials and services required to produce and/or execute advertising, production, marketing communications, digital media or event management on Client's behalf, subject always to the terms and conditions herein. Agency will act as Client's agent with Client as the disclosed principal in entering into contracts with media or other marketing vendors, and a copy of this paragraph may be presented to media and/or other third parties as evidence of Agency's authority to act in such capacity for such purpose.
- 2. Advertising and Marketing Charges; Billing Policies.** Compensation to Agency and any reimbursement of Agency expenses shall be governed by **Exhibit 1**, attached and incorporated herein, except in instances when a task order expressly identifies deviations from the standard rules provided by **Exhibit 1** and provides substituted rules related to compensation, which shall only be applicable to that task order.

Agency does not finance Client's media advertising or other marketing unless as part of a Project as defined below. Charges for advertising placed or other marketing arranged by Agency on behalf of Client (other than as part of a Project) will be verified by Agency and billed to and paid by Agency directly to the media or other marketing vendor in accordance with the negotiated (lowest available to Agency) **net rate** of the media or other vendor (after deduction of any applicable commission, discount, rebate or the like). Agency shall instruct all media and other vendors to bill Agency directly and Agency shall remit payments in accord with the payment terms established by the media or other vendor. Client agrees to assume full financial liability for authorized insertions for advertising space and/or time placed on its behalf by Agency. Authorized insertions are those insertions specified in a media plan approved by Client or otherwise approved in writing by Client.

Agency may require partial payment in advance equal to one-half (1/2) total cost for all production, marketing communications, digital media or event management projects (herein a "Project") in excess of \$5,000 based upon a Client-approved "not-to-exceed" cost estimate. When a Project is completed, final billing will be rendered detailing all actual costs and expenses and, if applicable, reflecting the initial partial payment. Client agrees to pay Agency for each Project the lesser of the actual cost or the maximum agreed Project cost.

Agency shall invoice Client monthly and Client must pay all fees and reimbursement of expenses under this agreement within 30 calendar days of receipt of an invoice. Sales taxes for which Client is jointly responsible with Agency will be charged on all invoices unless Client files a tax-

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exempt certificate with Agency. **Delinquent balances may be assessed an interest charge of 1% per month.**

Reimbursements of any travel, lodging, and food expenses that may be provided for under this Agreement are subject to Florida Statute 112.061, with Agency and its employees being subject to the rules applicable to "authorized travelers."

Agency may contract with media on the basis of "sequential liability" if each contract is approved in writing by Client. Client will remain solely liable for sums owing for space or time and if Client does not use all of the space or facilities for which Client originally authorized Agency to contract by written approval of a media estimate, and if a higher "short rate" results, Client will be responsible for the additional amount due by reason of the rate differential.

3. Examination of Records. Pursuant to Florida Statute 119.0701, Agency shall comply with public records laws and, more specially, shall:

- a. Keep and maintain public records required by the public agency to perform the service.
- b. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- d. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the Agency transfers all public records to the public agency upon completion of the contract, the Agency shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Agency keeps and maintains public records upon completion of the contract, the Agency shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF AGENCY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO AGENCY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (850) 832-5262, Jennifer@DestinationPanamaCity.com or 228 HARRISON AVENUE, SUITE 103, PANAMA CITY, FL 32401

4. Talent Union Codes. Client will defend, indemnify and hold harmless Agency against any loss Agency may sustain resulting from any claim, suit or proceeding against Agency for use of any Agency-produced commercials made or brought by talent provided to Agency by Client when such claim, suit or proceeding arises out of Client's obligations under the applicable union codes or contracts relating to the production of commercials. Agency will defend, indemnify and hold harmless Client against any loss Client may sustain resulting from any claim, suit or proceeding made or brought against Client as a result of Agency's work on behalf of Client in the production

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of commercials when such claim, suit or proceeding arises out of Agency's obligations under the applicable union codes or contracts relating to the production of commercials. Client's duty to indemnify Agency, and Agency's duty to indemnify Client, attach to all commercials made pursuant to this agreement and shall survive the termination of this agreement for a period of five (5) years.

5. Liability and Insurance Matters. Agency agrees to exercise all reasonable precautions in the examination of all material prepared or used by Agency on Client's behalf to avoid any actions, suits or other proceedings against either Agency, Client, or both. To the extent not covered in full by the "Advertising Agency Special Perils Policy" described below, Client will defend, indemnify and hold Agency harmless with respect to any claims, demands or actions described by this paragraph arising out of product representations or other materials supplied by Client to Agency for inclusion in Client's advertising, publicity or promotion of any kind. Agency shall carry an "Advertising Agency Special Perils Policy" in a form and with companies satisfactory to Client, written on an occurrence basis with limits not less than **\$1,000,000** per occurrence and in the aggregate, and shall name Client as an additional insured Party. Such policy shall be with respect to Agency's advertising, publicity or promotion of any kind of Client's products or services or Agency's services rendered or that should have been rendered by Agency in the development, placement or exhibition of advertising from claims, demands and actions pertaining to the following, except to the extent such claims arise from information or materials provided by or through Client:

- (a) any form of defamation or other tort related to disparagement or harm to the character, reputation or feelings of any person or organization, including libel, slander, product disparagement, trade libel, infliction of emotional distress, outrage or outrageous conduct;
- (b) any form of invasion, infringement or interference with rights of privacy or publicity, including false light, public disclosure of private facts, intrusion and commercial appropriation of name or likeness;
- (c) false arrest, detention or imprisonment or malicious prosecution, wrongful entry or eviction, trespass, eavesdropping or other invasion of the right of private occupancy;
- (d) infringement of title, slogan, trademark, trade name, trade dress, service mark or service name;
- (e) infringement of copyright, plagiarism, piracy or misappropriation of ideas under implied contract;
- (f) unfair competition, dilution, deceptive trade practices, civil actions for consumer fraud, false advertising or misrepresentation in advertising, and claims under Section 43(a) of the federal trademark statute or similar state statutes.

This policy protects Client up to the amount of the limit of such policy if Agency and does not substitute for, limit, or reduce any obligation otherwise provided herein for Agency to indemnify Client.

Upon assertion of a claim or commencement of a suit or proceeding by a third party that may give rise to liability of an indemnifying Party under this agreement, the indemnified Party shall promptly notify the indemnifying Party of the existence of such a claim and shall give the indemnifying Party reasonable opportunity to settle the claim with its own counsel at its own expense. The indemnified party shall at all times have the right to participate in such defense at its own expense

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and shall not be obligated to participate in any settlement which it reasonably believes would have an adverse effect on its business. The Parties agree to assist each other as may reasonably be requested in order to ensure a proper and adequate defense. An indemnified Party shall not settle any claim without the prior written consent of the indemnifying Party. Client's duty to indemnify Agency, and Agency's duty to indemnify Client, shall survive the termination of this agreement for a period of five (5) years.

6. **Term and Termination.** This term of this agreement is for one (1) year beginning on the date that is last executed by the parties (the "Effective Date"), unless sooner terminated as provided herein. Thereafter, this agreement may be renewed from year to year upon the mutual agreement of the Parties. Such renewal must be in writing, executed by both Parties, and shall be on the same terms stated herein except as specified by the written renewal. A renewal shall not be binding on Client unless executed by Client's President.

This agreement may be terminated for convenience, without cause, by either party by giving ninety (90) days advance notice in writing. The Parties' respective rights, duties and responsibilities shall continue during such notice or "wind-down" period. Agency shall be entitled to any retainer fee to the end of the notification period and Client shall have the option, in its sole discretion, to pay such fee in full in advance and discharge Agency immediately.

Client may terminate this agreement for cause by written notice to Agency effective immediately. Cause shall include by way of example and not limitation, solicitation or acceptance of a competing client as described below, commission of a criminal act or an act evidencing moral turpitude, dishonest or deceptive dealing, incompetence, repeated lack of service, or any other material breach of this Agreement. Any wrongful termination for cause shall be conclusively deemed a termination for convenience.

Client may terminate this agreement on or about September 30 of any year in which the Board of County Commissioners of Bay County, Florida, fails to appropriate advertising and marketing funds to the Client for the next fiscal year in an amount materially equal to the amount appropriated for the then current fiscal year.

Furthermore, Client may terminate this contract if Agency is found to have submitted a false certification related to Florida Statute 287.15; has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel; has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or has been engaged in business operations in Cuba or Syria.

As used throughout this agreement, termination shall mean termination by lapse of time or otherwise.

- (a) **Limitation of Pending Projects and Non-Cancelable Contracts.** Upon termination for convenience and during the wind-down period, Client may, in its sole discretion, require Agency to limit, reduce or cease work on any pending project. In such case, Client shall be responsible for all ordinary project costs incurred and hourly fees earned by Agency through the date notice of limitation, reduction or cessation was given, provided Agency, at Client's request, uses its best efforts to cause any third party contract or benefit associated with the project to be assigned or set over to Client. In addition, Client shall be responsible for all project costs unavoidably incurred by Agency with a third party after notice of limitation, reduction or cessation was given, so long as Agency, at Client's request, uses its best efforts to cause such third party contract or benefit to be assigned

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or set over to Client. However, Client shall not be responsible for any lost profit or benefit of the bargain claimed by Agency.

- (b) **Transfer of Property and Materials.** Upon termination, Agency shall transfer, assign and make available to Client or its representative, all property and materials in Agency's possession or control belonging to Client, including any copy, artwork, plates, licenses, digital files or other physical embodiment of creative work relating to any such property, all advertising, merchandising, package, plan or idea prepared by Agency and submitted to Client (whether submitted separately or as part of other material) which Client has elected to utilize or not to utilize, any unfinished Project or materials, and any passwords or permissions needed to access and use any such licenses or digital files; provided however, that Client grants Agency the right to use final projects and material previously approved for publication by Client solely for purposes of marketing or promoting Agency and its services.
7. **Responsibility for Third Parties.** Agency shall take reasonable precautions to safeguard Client's tangible or intangible property entrusted to Agency's custody, control or use. Agency will guard against any loss to Client through failure of media or suppliers to properly execute their commitments related to this Agreement.
8. **Confidential Information.** Agency and Client agree to keep in confidence and not to disclose or use for its own benefit or the benefit of any third party (except as may be required for the performance of services under this agreement or as may be required by law), any information, documents or materials which are identified by a Party, at the time that they are made available, to be proprietary or confidential and are marked as such, provided however that such obligation shall not extend to any information, documents or materials that become publicly available without breach of this provision. These obligations shall survive the termination of this agreement for a period of three (3) years.
9. **Miscellaneous.** The above provisions, the attached **Exhibit 1**, and any task order agreed upon by the Parties in writing with the same formality required for an amendment to this Agreement constitute the entire agreement of the Parties concerning the relations and agreements of Agency and Client. It is agreed that neither Party shall have the right to, orally or in writing, modify the above terms unless the modifications, changes or additions have been executed as an amendment to this agreement by the properly authorized officers of each Party in the same manner as the above provisions are being agreed. No waiver of any provision, or delay or failure to exercise any remedy, shall be deemed a subsequent waiver or modification of the same or any other provision. The prevailing Party in any suit brought to enforce this agreement shall be entitled to a reasonable attorney's fee, including appeal, and any litigation to determine the amount of fees or costs owed to a prevailing Party. This agreement shall be governed by and construed in accordance with the laws of the State of Florida, and exclusive venue and jurisdiction to hear any dispute shall lie in a court of appropriate jurisdiction located in Bay County, Florida. This agreement may not be assigned or transferred in whole or in part by either Party without the other Party's prior written consent. Client's obligation to defend, indemnify and hold harmless Agency is subject to the limits contained in Section 768.28 Florida Statutes (waiver of sovereign immunity). This agreement is solely for the benefit of the Parties, and nothing herein shall be deemed to create any third-party beneficiary right in any other person. All notices and approvals required or permitted hereunder must be in writing; an email from one Party which is received by the other at its customary email address shall qualify as a written notice or approval.

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- 10. Ownership of Materials.** All materials created and/or produced by Agency for Client, in final form, shall become the property of Client upon receipt by Agency of payment in full for all services rendered by Agency pursuant to this Agreement through the creation or development of such materials.

Agency acknowledges that Client is the sole and exclusive owner of Client's protectable intellectual property, including without limitation, trademarks, service marks, trade names and logos (collectively, the "Client Marks"). Agency agrees that it will not make any use of the Marks without Client's prior written consent. Agency further agrees and acknowledges that it shall not acquire any interest in the Marks or the goodwill associated with the Marks by virtue of this Agreement or Agency's use of the Marks. Client hereby reserves all such rights not specifically granted hereunder.

Client acknowledges that Agency is the sole and exclusive owner of Agency's protectable intellectual property, including without limitation, trademarks, service marks, trade names and logos (collectively, the "Agency Marks"). Client agrees that it will not make any use of the Marks without Agency's prior written consent. Client further agrees and acknowledges that it shall not acquire any interest in the Marks or the goodwill associated with the Marks by virtue of this Agreement or Client's use of the Marks. Agency hereby reserves all such rights not specifically granted hereunder.

- 11. Conflict of Interest:** Notwithstanding any of its current client business, during the term of this Agreement, Agency shall not represent any destination marketing organization or tourism related business of similar size or scope located in an adjacent, competitive beachfront community or in the greater Panama City Beach area. Agency shall be entitled to request at any time Client's determination of whether soliciting or accepting a particular client will violate this covenant. Client shall respond in writing within five (5) business days after receipt of a written request for determination
- 12. Appropriations.** Client, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms involves the expenditure of money in excess of the amounts appropriated to Client by the Board of County Commissioners of Bay County, Florida, and budgeted as available for expenditure during such fiscal year for the purposes contained in this agreement. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract.

[Signatures on following page.]

Client: **Destination Panama City**

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The above provisions are accepted by:

Destination Panama City

Fahlgren Mortine

By: _____
(Authorized Signature)

By:  _____
(Authorized Signature)

Title: _____
(Type or Print Name)

Title: Chief Financial Officer
(Type or Print Name)

Date: _____

Date: December 3, 2019

Client: **Destination Panama City**

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EXHIBIT 1

A. SERVICES

ACCOUNT MANAGEMENT SERVICES

Strategic planning and executive leadership

Development and execution of an Annual Marketing Plan based on research and insights

Monthly account management such as overall project management, budget tracking, job status reports, weekly status calls, billing support, meeting preparation and attendance, monthly reports, etc.

Oversight of all necessary project back-up and supporting documentation

Quarterly TDC Meeting attendance, includes time only

- o Expenses to be billed separately from production budget
- o Agency attendee attendance will vary depending on agenda or presentation items
- o Notwithstanding the foregoing, Agency and Client shall review quarterly attendance to ascertain, if needed, Agency attendance would be less frequently desired

ADVERTISING MEDIA SERVICES

Develop and execution of Annual Media Plan based on research and insights

Media vendor outreach, negotiation, buying, and placement management for all non-local media insertions. Local media insertions and scheduling will remain internal functions.

Oversight of all necessary project back-up and supporting documentation

Digital Advertising Ops program planning*

Monthly media services management such as overall plan management, budget tracking, estimating, invoicing, billing, meeting preparation and attendance, monthly affidavit tracking and reporting, etc.

Execution and reconciliation of the Annual Media Plan, providing all necessary backup for support when invoicing on a monthly basis.

Digital Advertising Ops and programmatic advertising services for implementation, execution and ongoing oversight, such as ad tagging, ad testing, testing, ad serving, pacing, optimization, analytics, and reporting, shall be billed as a line item within all Digital Media Ad Buys.

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CREATIVE AND PRODUCTION SERVICES

Develop creative elements to support the annual approved marketing plan, which may include the following (and shall change year to year);

- o Website quarterly audit for suggestions, modifications, and enhancements
- o Advertising creative development
- o Social media quarterly audit for strategic content
- o Content for digital, website, and social media platforms
- o Event and consumer activation and event support
- o Sales collateral development
- o Brand guide/toolkit
- o Marketing templates and tool kits for Agency, Client or Partner use

PUBLIC RELATIONS SERVICES

Coordinate media visits.

Coordinate deskside visits in target markets, both known and emerging markets.

Crisis Management handling with professional and timely communication releases and responses.

Analytics dashboard.

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B. RATES

2020 Agency Rate Sheet (valid 1/1/2020 – 12/31/2020). Subject to change each calendar year; Agency shall provide Client an updated Rate Sheet no later than December 1 of each calendar year in each Term.

Fixed hourly rate across all functions of \$150 per hour.

Administrative functions at a standard \$75 per hour.

Agency to charge client 7% of gross commission on all media placed on Client's behalf.

All projects will be initiated by discussion with Destination Panama City CEO, a written project cost estimate provided for review and approval before any work begins.