

RETAINER AGREEMENT CITY OF DALTON

Tuesday, November 23 2021



ADVERTISING & PUBLIC RELATIONS

This agreement is for provision of creative professional services to **City of Dalton** located at **300 West Waugh Street, Dalton, GA 30720**, herein referred to as **Client**, by **h2b creative** located at **101 North Hamilton Street, Suite A, Dalton, GA 30720**, herein referred to as Agency.

The terms of this agreement extend from **January 1, 2022**, until either party advises in writing intent to terminate this agreement with a 60-day prior written notice.

The parties acknowledge that this is a binding legal agreement, and its terms cannot be modified except by mutual agreement of the parties.

I. Appointment of Agency

Client hereby appoints Agency, and Agency hereby agrees to serve as, the Client's Agency of Record for advertising/marketing/public relations/(etc.). Agency shall provide Client those services listed on Exhibit "A" attached hereto and incorporated herein by reference. As such, the Agency is authorized to purchase outside services on the Client's behalf as the Client's Agent, subject to Client's approval of such purchases; provided however, Client shall execute all contracts with third parties for the outside services, and Client shall be solely responsible for the same.

To that end, the Agency agrees to devote its best efforts to furthering the Client's interests and endeavor in every way to make their communications successful. As requested by the Client, the Agency will supervise all media, graphic design, packaging, collateral and promotional materials (etc.) for appearance, accuracy, timeliness, position, size and mechanical reproduction. The Agency will make no commitments or disbursements or incur any obligations for the Client's account without proper authorization or approval from the Client.

The Agency will therefore require the Client's approval on all project estimates and media authorizations before ordering production material, making commitments with suppliers or making reservations for media space or time. The Client will designate in writing who within their organization may sign such estimates and authorizations.

The Client may request changes or cancellations, or stop any work in progress, provided these are within the Agency's contractual obligations. Where previously approved work has already incurred charges, Client agrees to reimburse the Agency for unrecoverable charges or expenses arising from requested changes or cancellations.

The Agency will submit to the Client for approval all copy, layouts, artwork, drawings, storyboards, scripts and media schedules.

II. Confidentiality

The Agency shall not, without the Client's expressed written permission, reveal or otherwise make available to any person or persons any confidential, privileged information or trade secrets regarding the Client's programs, products, business, or methods of operation learned by the Agency during the term of this contract.

III. Agency Compensation

The Client agrees to a Professional Services Fee (retainer) of \$2,500.00 to be paid monthly. The monthly retainer is due to be paid on the first day of each month. This covers approximately 25 hours per month.

Projects such as collateral material and production time are billed per the Agency's standard hourly rate schedule. Shipping charges, travel expenses, delivery charges, overnight delivery service, cost of original photography, stock photography and images, printing, broadcast production and other expenses/outside purchases that may accrue to a project, but cannot be accurately estimated in advance of production, are not included in estimates and are billed separately.

The Agency shall provide the Client with a monthly retainer report by no later than the fifteenth (15th) of the following month. If necessary, the Agency will bill the Client for costs exceeding the monthly retainer/fee; such adjustments shall be provided under separate invoice by no later than the twentieth (20th) of the following month, and payment due Net thirty (30) days from date of receipt.

IV. Billing Procedures

Agency terms are Net thirty (30) days from receipt of invoice. Interest at 1.5 percent will be charged on accounts past due thirty (30) days.

In the event of dispute, the Client is responsible for payment to all vendors, including printers, photographers, specialty manufacturers, etc. for approved purchases. With the exception of proven willful fault or neglect, Agency bears no financial responsibility for payment of products or services purchased on Client's behalf.

In the event of default in payment, the Client shall pay the Agency all costs and expenses, including attorney's fees, the fees of collection agencies and other expenses incurred, in enforcing any of the terms or conditions thereof.

The Agency shall use its best efforts to guard against any loss to the Client through failure of media or suppliers to properly execute their commitments, but the Agency shall have no responsibility for any failure on their part.

V. Third party defaults or delays

- A. The Agency shall not be held liable for the failure of media or suppliers to meet their obligations.
- B. The Agency shall not be liable for delay, omission or error in any advertisement in the absence of willful fault or neglect.
- C. Nothing in this agreement shall be deemed to require the Agency to undertake any campaign or prepare any advertising or publicity which is in the Agency's judgment as misleading, libelous, unlawful, indecent or otherwise prejudicial to the Agency or to the Client's interest.
- D. The Agency shall hold, for a period not to exceed three (3) years, original production vehicles of all Client materials; the Agency shall not be responsible for the destruction of the same through fire, theft or natural disaster.

VI. Governing Law/Jurisdiction

This agreement, in its validity, construction and performance, shall be governed in all respects by the laws of the State of Georgia, Both parties agree to hereby submit to the jurisdiction of the State and Federal courts of Georgia but to seek remedy by mediation prior to filing any judicial action.

VII. Rights of Termination

This agreement may be cancelled by sixty (60) days prior written notice given by the Agency to the Client, or by the Client to the Agency.

All services performed and materials prepared by the Agency during the sixty (60) days prior to termination of this agreement shall be billed to the Client within five (5) days of completion, and shall be due and payable by the Client upon receipt. The Agency shall deliver to the Client, upon payment of all outstanding obligations, all papers, digital files, photographs and other materials related to the work performed on or before the termination date, and as well as any work performed, invoiced and paid for during the 60 days termination period.

The Client shall own any layouts, copy, artwork, drawings, films, video tapes, photo negatives and other materials prepared by or purchased by the Agency for the Client and for which the Client has paid, regardless of whether such materials were published, displayed, or otherwise presented prior to the termination of the agreement. The Client shall not own any videos, photos or other such item for which the Agency has only paid a fee for the "rights of use."

Any unused or rejected marketing, public relations, advertising or other graphic design programs, plans, designs, and ideas prepared by the Agency will remain the property of the Agency, and shall be used as it sees fit, provided it does not involve the release of any confidential information regarding the Client's business or methods of operation or otherwise identify the client as a source thereof.

Upon termination of this Agreement, Client agrees to assume and Agency agrees to assign any non-cancelable contracts to which the Agency has entered into directly with a third party vendor on behalf of the Client and with the Client's approval/authorization, and Client shall be responsible for any and all obligations under said contract, including but not limited to any payment obligations thereunder, in accordance with the provisions of this agreement. The Client will indemnify the Agency against any claims therefor.

VIII. Modification

This writing contains the entire agreement of the parties. No representations were made or relied on by either party, other than those expressly set forth. No agent, employee, or other representative of either party is empowered to alter any of the terms hereof, unless done in writing and signed by an executive officer of both parties. No modification of either party, which would have the effects of modifying the obligations of the other party (except as to lessen the same), shall be effective unless a memorandum regarding same is executed by an executive officer of both parties.

This agreement is subject to review. Adjustments to fees/rate schedules may be negotiated at time of review. Any change in ownership of the Client business would be cause for immediate review of this agreement and the terms and conditions herein stated.

IN WITNESS WHEREOF, the above parties have set their hands this _____ (day) of _____ (month), _____(year).

Authorized Signature for The Agency:

Authorized Signature for The Client:

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Client representatives for estimate and authorization approvals:

Name: _____

Name: _____

Title: _____

Title: _____

A.
Design
Copywriting
Layout
Mechanical art
Artwork
Storyboards
Scripts
Media schedules
Creative Concepts