

AGREEMENT FOR TOURISM PROMOTION PROGRAM SERVICES

This AGREEMENT FOR TOURISM PROMOTION PROGRAM SERVICES ("**Agreement**"), effective as of March 26, 2024 ("**Effective Date**"), is by and between Brianna A. Escandon ("**Contractor**"), and The Town of Anthony, Texas ("**Client**").

1. Marketing and Brand Development Services. The contractor will perform services for the Client in connection with the planning, provision, creation, and/or placing of branding, research, and advertising of the Town of Anthony Tourism and promotion, marketing, consulting, creative, and/or digital services for Client, during the Term, as provided in the attached (Attachment A) Statement of Work ("**SOW**"), incorporated herein by reference (such services are collectively referred to as "**Services**"). During the term of this agreement, Client may wish to assign additional projects, products, or services to Contractor beyond the Services outlined in the SOW ("**Out-of-Scope Assignments**"). The contractor agrees to accept such Out-of-Scope Assignments only upon a separate written agreement with the Client regarding additional compensation to be paid to the Contractor and other relevant terms and conditions. Nothing in this Agreement will be deemed to require Contractor to undertake any act or perform any services which in its good faith judgment would be misleading, false, libelous, unlawful, in breach of a contract, or otherwise prejudicial to Client's or Contractor's interests.

2. Subcontractors. Client acknowledges that Contractor may, in the rendition of the Services hereunder, engage third party suppliers and other vendors and subcontractors ("**Subcontractors**") from time to time to provide certain services. Contractor shall supervise such services and endeavor to guard against any loss to Client as the result of the failure of Subcontractors to properly execute their commitments, but Contractor shall not be responsible for their failure, acts or omissions, except where such failure, acts or omissions are due to Contractor's negligence or willful misconduct. If Client enters into arrangements with third party vendors, subcontractors or suppliers regarding the provision of materials or services ("**Preferred Suppliers**") and requests that Contractor utilize such Preferred Suppliers in the discharge of Contractor's obligations hereunder, Client remains solely responsible for such Preferred Suppliers.

3. Client Approval of Materials. Contractor shall submit to Client for its approval all elements of any materials to be produced or placed hereunder, including, but not limited to, all copy, layouts, slogans, websites artworks, graphic materials, and photography (collectively, "**Materials**"). Submission for prior approval of Materials will not be required to the extent that they are preliminary only.

4. Services to Client's Designees. Should Client request Contractor to make purchases for or render services to any parent, subsidiary, or affiliate of Client ("**Client Affiliate**"), Client and such Client Affiliate shall be jointly and severally liable to Contractor even though Contractor may render invoices to, or in the name of, such Client Affiliate.

5. Fees, Payments, and Expenses.

- a) **Flat Fee.** As compensation for the Services rendered under this Agreement, Client agrees to pay Contractor a flat monthly fee of \$3,750.00.
- b) **Expenses.** Client shall reimburse Contractor for reasonable out-of-pocket incidental expenses (collectively, "**Expenses**") Incidental expenses include all expenses incurred for Client's account in connection with Contractor's rendition of services and performance of duties hereunder, including but not limited to the cost of packaging material for shipment, postage, messenger, shipping charges, copyright or trademark charges, website hosting, and any advertisement buys associated with radio, print, or other media and online sources. Contractor shall obtain Client's prior written authorization before incurring any individual Expense or cost in excess of \$50.00. All Expenses not paid directly by Client shall be paid within fifteen (15) days of receipt of Contractor's invoice. All Expense reimbursements shall be made at Contractor's direct out-of-pocket costs, without any markup for overhead, administrative costs, or otherwise.
- c) **Taxes.** The Contractor shall be solely responsible for any and all taxes, Social Security contributions or payments, disability insurance, unemployment taxes, and other payroll type taxes applicable to such compensation.
- d) **Other Fees.** Unless otherwise provided in this Agreement, all other services, including Out-of-Scope Assignments, rendered by Contractor at the request of the Client shall be subject to additional compensation under a separate agreement between Contractor and Client.
- e) **Payment Of Invoices.** All invoices shall be paid by Client within thirty (30) days of receipt. Payments not made within such period shall be subject to late charges equal to the lesser of (i) one and one-half percent (1.5%) per month of the overdue amount or (ii) the maximum amount permitted under applicable law. Contractor may suspend all services on seven (7) days' written notice until the amounts outstanding are paid in full.

6. Trademarks. Contractor may create or develop trademarks for Client, in the form of taglines, slogans, logos, designs, or product and brand names (collectively, the "**Marks**"). Client shall ultimately be responsible for confirming availability and registering such Marks, even though, pursuant to the SOW, Contractor may assist in coordinating the effort associated with clearing and registering the Marks.

7. Third Party Licenses. In addition to any other fees outlined in this Agreement, Client shall be required to purchase any applicable third-party licenses for any third-party products that are necessary for Contractor to design and develop Client marketing websites. Such third-party products may include, but are not limited to: server-side applications, clip art, "back-end" applications, music, stock images, or any other copyrighted work that Contractor deems necessary to purchase on behalf of Client. In the event any such third-party product exceeds \$50.00 per product, Contractor shall obtain Client's prior written consent before incorporating such third-party product.

8. **Marketing.** Client hereby grants Contractor the right to use the name and service marks of Client in its marketing materials or other oral, electronic, or written promotions, which shall include naming Client as a client of Contractor and a brief scope of services provided. In addition, Client hereby grants Contractor the right to display its logo (or other identifying information) and a hyperlink to Contractor's website on the home page of Client's website. Any use of the Contractor's logos or links on the Client's website must be approved in writing by the Contractor. Either party may elect to issue a press release related to this Agreement. In doing so, any release shall be approved by the other party and such approval shall not be unreasonably withheld.

9. Term and Termination.

- a) **Term.** This Agreement will commence on the Effective Date and shall continue and will continue in full force and effect for two (1) years.
- b) **Termination.** Either party may terminate this Agreement earlier than the one (2) year term discussed. This Agreement may be terminated at any time and for any reason or no reason by either party upon 30 days' written notice to the other party. Upon receipt of the written notice of termination from the Recipient or delivery of the written notice of termination by the Contractor, the Contractor shall immediately suspend any further work unless otherwise mutually agreed in writing by the parties. By such termination, neither party may nullify obligations already incurred for performance or failure to perform the services rendered before the date of termination of this agreement. However, neither party shall have any obligation to perform services or make payment for services rendered after such date of termination.
- c) **Effect of Termination.** Client shall pay Contractor for all services rendered and work performed up to the effective date of termination. Accordingly, the Contractor will send to Client a final bill for the last month of service prorated by the number of days of service for the respective month before termination. The client shall pay the invoice within ten (10) days of receipt.
- d) **Return of Proprietary or Confidential Information.** Within ten (10) days after the termination or expiration of this Agreement, each party shall return to the other all Proprietary or Confidential Information (defined below) of the other party (and any copies thereof) in the party's possession or, with the approval of the party, destroy all such Proprietary or Confidential Information.

10. Confidentiality. The parties agree to hold each other's Proprietary or Confidential Information in strict confidence. "**Proprietary or Confidential Information**" shall include, but is not limited to, written or oral contracts, trade secrets, know-how, business methods, business policies, memoranda, reports, records, computer-retained information, notes, or financial information. Proprietary or Confidential Information shall not include any information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of the receiving party; (ii) was previously known to the receiving party or rightly received by the receiving party from a third party; (iii) is independently developed by the receiving party; or (iv)

is subject to disclosure under court order or other lawful process. The parties agree not to make each other's Proprietary or Confidential Information available in any form to any third party or to use each other's Proprietary or Confidential Information for any purpose other than as specified in this Agreement. Each party's Proprietary or Confidential Information shall remain the sole and exclusive property of that party. The parties agree that in the event of use or disclosure by the other party other than as specifically provided for in this Agreement, the non-disclosing party may be entitled to equitable relief. Notwithstanding termination or expiration of this Agreement, Contractor and Client acknowledge and agree that their obligations of confidentiality with respect to Proprietary or Confidential Information shall continue in effect for a total period of three (3) years from the Effective Date.

11. Responsibilities; Representations and Warranties.

- a) The contractor represents and warrants that (i) the Services provided hereunder will be performed professionally, and (ii) any software, hardware, websites, web-based or technology-related Services (collective “**Electronic Services**”) will be free of material bugs or defects for thirty (30) days after delivery. Such warranty does not extend to any modification of Services by anyone other than Contractor or its Subcontractors at the time of such modification, any abuse or misuse of Services by Client, or use of Services in an operating environment that differs materially from the specifications agreed to by the parties.
- b) **DISCLAIMER OF WARRANTIES. EXCEPT AS SET FORTH IN THIS AGREEMENT, ELECTRONIC SERVICES ARE PROVIDED on an “AS IS” and “AS AVAILABLE” basis, AND CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
- c) **THIRD PARTY DISCLAIMER. THE CONTRACTOR MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH REGARD TO ANY THIRD-PARTY PRODUCTS, THIRD-PARTY CONTENT, OR ANY SOFTWARE, EQUIPMENT, OR HARDWARE OBTAINED FROM THIRD PARTIES.**

12. Indemnities.

- a) **Client Indemnity.** Client shall indemnify, defend, and hold harmless Contractor, its parents, subsidiaries, and affiliated companies, and its and their respective employees, officers, directors, shareholders, and agents (each an “**Contractor Indemnitee**”) from and against any and all Loss incurred by an Contractor Indemnitee based upon or arising out of any third-party claim, allegation, demand, suit, or proceeding (each, a “**Claim**”) made or brought against any Contractor Indemnitee with respect to any advertising, branding, research or other products or services which Contractor prepared or performed for Client hereunder to the extent that such Claim relates, in whole or substantial part, to: (i) the inaccuracy of any information supplied by Client or its agents to Contractor including, without limitation, information concerning Client’s products and services, the

products or services of Client's competitors or Client's product or service category; (ii) the use of any marketing, branding, research, advertising, packaging, trademark, software, hardware or other materials, or components thereof, furnished by Client or its agents to Contractor to be included in any Materials or media placements; (iii) the use of any materials or data provided or created by Contractor and changed by Client or its agents or used in a manner different from that agreed by the parties; (iv) risks or restrictions known by Client where Client nonetheless elected to proceed; (v) death, personal injury, or product liability (including health and safety) claims or actions arising from the use of Client's products and services; (vi) the unauthorized or improper use of Materials or the Marks by Client, Client's designees, licensees, distributors, franchisees or Client Affiliates; (vii) claims brought by Client's employees for employment discrimination, other employment or labor disputes, breach of contract, personal injury or other civil law matters, or claims brought by those parties with whom Client has a contractual or supplier relationship; (viii) allegations of patent, trademark or trade dress infringement or any other violation of a patent, trademark or trade dress right; (ix) any material breach of the terms of this Agreement by, or any act of omission of, Client or its agents or employees relating to media commitments made by Contractor pursuant to Client's approval as provided for herein; and (x) the negligence, gross negligence, bad faith, or intentional or willful misconduct of Client or its employees, agents or Client Affiliates.

- b) Contractor Indemnity. Excluding claims covered by Section 11(a), the Contractor shall indemnify, defend, and hold harmless Client, the Client Affiliates, and their respective employees, members, managers, officers, directors, shareholders, and agents (each a "**Client Indemnitee**") from and against any and all Loss incurred by a Client Indemnitee based upon or arising out of any Claim made or brought against Client arising out of the production or dissemination of materials produced hereunder that involve (i) libel, slander, defamation, copyright infringement, right of publicity and/or invasion of right of privacy arising out of work created by Contractor and in final form (*i.e.*, ready to be disseminated to the public); or (ii) damage to or destruction of personal property, injury to or death of any person directly attributable to or arising out of Contractor's negligence or willful misconduct in connection with the performance of the Services hereunder.
- c) Third-Party Investigations of Client. In addition, Client shall reimburse Contractor for all costs and expenses (including reasonable attorneys' fees and costs) incurred by Contractor resulting from any third-party investigation of the acts or practices of Client including, without limitation, any costs or expenses related to compliance with any third-party subpoena or other discovery request. Should the Contractor be served with a third-party subpoena in connection with Services it performed for Client, the Contractor shall promptly advise Client and consult with Client regarding the Contractor's response to the subpoena to the extent the subpoena seeks Client data, documents, or information pertaining to Client so that Client may have an opportunity to seek appropriate relief.
- d) Notification of Claims. A party entitled to be indemnified pursuant to this Section 12 (the "**Indemnified Party**") shall provide prompt written notice to the party liable for such indemnification (the "**Indemnifying Party**") of any claim or demand which the Indemnified Party has determined has given or could give rise to a right of indemnification under this Agreement. The Indemnifying Party shall promptly undertake

to discharge its obligations hereunder. Additionally, the Indemnifying Party shall employ counsel reasonably acceptable to the Indemnified Party to defend any such claim or demand asserted against the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any such claim or demand at its own expense. The Indemnified Party shall cooperate with the Indemnifying Party in any such defense. In addition, the Indemnified Party shall always have the right to fully participate in any settlement which it reasonably believes would have an adverse effect on its business, but the Indemnified Party shall not make any settlement of any Claims that might give rise to liability of the Indemnifying Party without the prior written consent of the Indemnifying Party. The Indemnified Party shall make available to the Indemnifying Party or its agents all records and other materials in the Indemnified Party's possession reasonably required by it for its use in contesting any third-party claim or demand.

- e) **LIMITATION OF LIABILITY. EXCLUDING INDEMNIFICATION**
OBLIGATIONS OR DAMAGES ARISING FROM BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, FOR ANY LOST PROFITS (excluding direct damages for Contractor's anticipated fees), BUSINESS INTERRUPTION, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LIABILITY, NOR SHALL CONTRACTOR'S AGGREGATE LIABILITY FOR ANY OTHER DAMAGES ARISING OUT OF THIS AGREEMENT EXCEED THE REVENUE PAID BY CLIENT TO CONTRACTOR IN ACCORDANCE WITH THE APPLICABLE SOW.

13. Ownership.

- a) **Work Product.** All Materials developed or prepared by Contractor or its employees or Subcontractors for Client hereunder that are subject to copyright, trademark, patent, or similar protection shall become the property of Client and deemed "**Work Product**" provided that (i) the Materials are produced in final form (*i.e.*, ready to be disseminated to the public) by Contractor for Client within six (6) months of being proposed by Contractor and (ii) Client has paid to Contractor all fees and costs associated with creating and, where applicable, producing the Materials. All title and interest to Work Product shall vest in Client as "works made for hire" within the meaning of the United States Copyright Act. To the extent that the title to any such Work Product may not, by operation of law or otherwise, vest in Client as a work made for hire or any such Work Product may not be considered a work made for hire, all right, title and interest therein is hereby irrevocably assigned by Contractor to Client. In order to assure that its employees and Subcontractors do not possess proprietary rights in the Work Product that are inconsistent with the Client's possession of such rights, the Contractor will, as necessary, obtain the assignment and conveyance to the Client, or to the Contractor for the benefit of Client, of any proprietary rights that such persons or entities may then have or may have in the future to such Work Product.

- b) Third Party Licenses. Notwithstanding the provisions of Section 11(a) above, it is understood that the Contractor often licenses materials from third parties for inclusion in Work Product. In such circumstances, ownership of such licensed materials remains with the licensor, and Client agrees that it remains bound by the terms of such licenses and that it does not obtain proprietary rights in such third-party materials beyond the terms and conditions contained in the pertinent license. The contractor will keep the Client informed of any such limitations.
- c) Contractor Materials. Notwithstanding any other provision of this Agreement, Contractor shall retain all right, title and interest in and to, including any intellectual property rights with respect to, any data, designs, processes, specifications, software, applications, source code, object code, utilities, methodologies, know-how, materials, information and skills (and any derivative works, modifications and enhancements thereto) owned, acquired or developed by Contractor or its licensors, and regardless of whether incorporated in any Work Product, (i) prior to the Effective Date; (ii) independently of, or not in connection with the performance of, the Services; (iii) in the general conduct of its business or to serve general functions that are not specific to Client's unique requirements; or (iv) if generally applicable, non-site specific and unrelated to the "look and feel" of the Materials or other deliverable, in connection with the Services (or partially in connection with the Services) (collectively, "**Contractor Materials**"). Subject to fulfillment of Client's payment obligations hereunder, Contractor hereby grants Client a worldwide, perpetual, irrevocable, royalty-free, nonexclusive license, with the right to sublicense (but only for the benefit of Client or its permitted successors or assigns), to use Contractor Materials actually incorporated into Work Product pursuant to this Agreement as necessary for or in connection with the use, management and maintenance of such Work Product, provided that Client shall not have the right to publish or distribute any Contractor Materials other than as part of such Work Product or to create derivative works of Contractor Materials.

14. Governing Law, Jurisdiction, and Venue. This Agreement and the rights of the parties hereunder shall be governed by and interpreted in accordance with the internal laws of the State of Texas, without regard to its conflict of laws rules or choice of law principles. Exclusive jurisdiction and venue for any claims made by either party against the other shall be within the state and federal courts located in the State of Texas.

15. NOTICES. All notices and communications from one party to the other in connection with this agreement must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile as follows:

To RECIPIENT at:

Town of Anthony, Texas
Attention: Mayor
401 Wildcat
P.O. Box 1269
Anthony, Texas 79821

To CONTRACTOR at:

Brianna Escandon
901 Bellas Artes
El Paso, TX. 79912
(915) 261-6748

Tel. No.: (915) 886-3944

16. Waiver. The failure of any party to seek redress for violation of or to insist upon the strict performance of any agreement, covenant, or condition of this Agreement shall not constitute a waiver with respect thereto or with respect to any subsequent act.

17. No Third Party Beneficiaries. This Agreement is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise

18. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns.

19. Assignment. Except as may be necessary for the rendition of the Services as provided herein, neither Contractor nor Client may assign any part or all of this Agreement, or subcontract or delegate any of their respective rights or obligations under this Agreement, without the other party's prior written consent. Any attempt to assign, subcontract, or delegate in violation of this paragraph is void in each instance.

20. Paragraph Headings and Captions. Paragraph headings and captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, or extend the scope or intent of this Agreement or any provision thereof.

21. Severability. Wherever possible each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under any such law, such provision shall be limited to the minimum extent necessary to render the same valid or shall be excised from this Agreement, as the circumstances require, and this Agreement shall be construed as if said provision had been incorporated herein as so limited or as if said provision had not been included herein, as the case may be, and enforced to the maximum extent permitted by law, and the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in order that the transactions contemplated by this Agreement can be consummated as contemplated.

22. Force Majeure. Neither Client nor Contractor shall be liable to the other for any failure, inability, or delay in performing hereunder if caused by any cause beyond the reasonable control of the party so failing, including, without limitation, an Act of God, war, strike, or fire; but due diligence shall be used in curing such cause and in resuming performance.

23. Independent Contractors; No Partnership or Joint Venture. Client and Contractor agree that Contractor shall perform its duties under this Agreement as an independent contractor.

24. Survival. Provisions of this Agreement, the performance of which by either or both parties, or by their sense and context, are intended to survive, will survive the completion, expiration, termination or cancellation of this Agreement.

25. Entire Agreement. This Agreement and the Schedules attached hereto constitute the entire agreement between Contractor and Client relating to the subject matter hereof and supersedes any prior agreement or understandings between them. This Agreement may not be modified or amended unless such modification or amendment is agreed to by both Contractor and Client in writing.

IN WITNESS WHEREOF, Contractor and Client have executed this Agreement on the day and date as it first appears.

By: 

Name: Anthony D. Turner

Title: Mayor

Contractor Brianna A. Escandon

By: 

Name: Brianna A. Escandon

Title: CEO

Attachment A

STATEMENT OF WORK (SOW)

Brianna A Escandon (“**Contractor**”), in performance of the foregoing Agreement TOURISM PROMOTION PROGRAM SERVICES, will perform the following services to The Town of Anthony, Texas (“**Client**”).

The tourism promotion coordinator must draft a budget to cover the allowable expenditures which are traditionally in the form of

- Internet
- Newspaper
- Mail
- Television
- radio ads
- solicitations to promote an event or facility.

The advertising or promotion must directly promote the hotel and convention industry.

Coordinate any events for the Town of Anthony Texas

Expenditures that promote the arts.

Specifically, it allows funding for the encouragement, promotion, improvement, and application of the arts including.

- Instrumental And Vocal Music
- Dance
- Drama
- Folk Art
- Creative Writing
- Architecture
- Design And Allied Fields.
- Painting
- Sculpture
- Photography
- Graphic And Craft Arts
- Motion Pictures
- Radio
- Television
- Tape And Sound Recording.
- Other Arts Related To The Presentation, Performance, Execution, And Exhibition Of These Major Art Forms.

However, it is not enough that a facility or event promotes the arts. Texas law requires that arts-related expenditures also directly promote tourism and the hotel and convention industry.

Signage directing tourists to sights and attractions that are frequently visited by hotel guests in the municipality is an acceptable expenditure.

The *tourism promotion program coordinator* will prepare the following quarterly reports and submit them to the Town Clerk or the designee (the administrator that is designated to oversee hotel occupancy tax-funded programs) who shall then report them to the Texas Comptroller's Office:

- A list of the scheduled activities, programs, or events that will directly enhance and promote tourism and the convention and hotel industry.
- Quarterly reports, listing the hotel occupancy tax expenditures made.
- May Plan and provide a retail-level product branding strategy for the Client
- Coordinate, with independent legal counsel hired by Client, all applicable trademark filings for Client.
- May Create a basic, branded "coming soon" website for the Client, including information for retailers selling at the Client's venues.
- Coordinate, with independent legal counsel hired by Client, execution of all brand licensing agreements and any other agreements between Client and its vendors.
- Monitor and forecast the Client's production volume and timing.
- Draft and implement best practices to ensure enhanced promotion of events occurring in the Town.
- Create, standardize, and coordinate the renter's enrollment or leasing process.
- Assist the Client in coordinating any events within the Town to help promote the visitors to the community and capitalize on the venues and events within the vicinity of the Town.
- Assist the local Hotel/motels in advertising the stays at the Town
- Coordinate special room rates for upcoming weekend long events.