



Tooele County Council Agenda Item Summary

Department Making Request:

Community Development

Meeting Date:

November 30, 2021

Item Title:

Tourism website contract Penna Powers

Summary:

Contract with Penna Powers for \$79,950 to design tourism website and social media promotion. Money is available in the budget. Received a grant for \$37,400 with \$50,000 approved in 2021 tourism budget.

This contract will go through November 2021 through November 2022.

Copies go to:


Clerk
Zachelle
Penna Powers

PROFESSIONAL SERVICES AGREEMENT


Tooele County Community Development, a Utah entity, hereinafter CLIENT, does hereby authorize PENNA POWERS, INC. hereinafter AGENCY, to provide the services set forth below, subject to the terms and conditions set forth below in Articles 1-4.

- A. CLIENT INFORMATION:
Tooele County
Andy Welch
47 South Main Street
Tooele, UT 84074
- B. TERM OF AGREEMENT: November 2021 through November 2022
- C. SCOPE OF SERVICES: AGENCY shall provide services as follows:
- Project Management, Team Coordination, Strategy & Planning
 - Team and client meetings
 - Internal coordination
 - Contract management and billing
 - Web Services
 - Website development (up to 5 pages)
 - SEO
 - Social Media Strategy & Management
 - Logo/branding
 - Social Media Branding Guidelines
 - Ongoing social media support for 1 year
 - Note: Specific details for tasks will be determined at initial scoping meeting
- D. AGENCY shall be compensated on a time and expense basis in accordance with this agreement. Total budget for scope of services: \$79,950.00
- E. CLIENT has read and understood the terms and conditions set forth and agrees that such items are hereby incorporated into and made a part of this agreement.
- F. Having read, understood and agreed to the foregoing, CLIENT and AGENCY, by and through their authorized representatives, have subscribed their names hereon effective this 12 day of December, 2021

CLIENT

By: 
Date: 12/8/21

PENNA POWERS, INC.

By: 
Date: 12/10/2021

APPROVED AS TO FORM:

 12/08/2021
Colin R. Winchester
Deputy Tooele County Attorney

ARTICLE 1. DEFINITIONS

- 1.1 Expenses. Expenditures made by the AGENCY and approved in advance by CLIENT directly in the performance of its services under this agreement including, but not necessarily limited to:
- Release, license, permit or other authorization fees;
 - Transportation, subsistence and lodging when traveling in connection with the project;
 - Long distance calls, messenger service, and special mail or related services;
 - Artwork, illustrations, copying, printing talent, exhibits, and literary, dramatic or musical works;
 - Film direction, production, recording, editing, photography, and similar specialty services.
- 1.2 Media. A means of mass communication including, but not necessarily limited to, internet, television, radio, newspapers, billboard and magazines.
- 1.3 Printing. Any and all materials requiring a printing process created by AGENCY, beginning with mechanical art to delivery of complete printed materials including, but not necessarily limited to, brochures, annual reports, one-sheets, flyers, hang tags, outdoor posters, ad reprints, labels and product or sales literature.

ARTICLE 2. COMPENSATION

- 2.1 Basis. CLIENT shall compensate AGENCY on a time and expense basis. Time and expense will be charged to CLIENT as follows:
- 2.1.1 Time charges will be computed by determining the number of hours worked by each AGENCY representative or employee and multiplying said hours by said individual's billing rate.
- 2.1.2 Expenses will be charged at AGENCY's costs plus a mark-up to equal 25%.
The following expenses are not subject to a mark-up: transportation, subsistence and lodging when traveling in connection with the project, long distance calls, messenger service, and special mail or related services.
See Schedule 1 (attached).
- 2.1.3 Broadcast, print and outdoor media expense will be charged at AGENCY's cost plus a mark-up to equal 15%; except that if CLIENT has advanced funds to AGENCY for the express purpose of securing a media discount, any discount so received shall be passed through by AGENCY to CLIENT.
- 2.1.4 Digital and Social media expense will be charged at AGENCY's cost plus a mark-up to equal 20%; except that if CLIENT has advanced funds to AGENCY for the express purpose of

securing a media discount, any discount so received shall be passed through by AGENCY to CLIENT.

- 2.1.5 Specialty services will be charged at standard industry rates for similar services. AGENCY shall notify CLIENT in advance in the event such rates will apply.
- 2.2 Invoicing, Payment. CLIENT will be invoiced on or near the 1st of each calendar month following the effective date of this agreement. Payment is due upon receipt of invoice. AGENCY may assess a carrying charge of 1.5 percent (%) per calendar month if payment in full is not received within thirty (30) days following the date of invoice except in the case of written notice from CLIENT to AGENCY of disputed charges. CLIENT warrants payment of said charge in full if payment is not received within said thirty (30) days. AGENCY may, in its sole discretion and without notice, suspend its services under this agreement, withhold all or a portion of the products or other results of AGENCY's efforts, if AGENCY has not been compensated for the same, and/or cancel any commitments made by AGENCY on behalf of CLIENT.

ARTICLE 3. SPECIAL TERMS AND CONDITIONS

- 3.1 Additional Services. Services not expressly or implicitly included with those herein specified, as determined by AGENCY, are not covered by this agreement.
- 3.2 Representative. AGENCY and CLIENT shall each designate in writing an individual authorized to act as their Representative. Said Representatives shall serve as sole intermediaries between AGENCY and CLIENT and shall transmit, receive and process all communications and provide appropriate responses promptly to prevent unreasonable delay in the progress of AGENCY's services.
- 3.3 Exclusive Agency. AGENCY is CLIENT's exclusive agent for purposes of attaining the specified objective. For the term of this agreement AGENCY shall not serve as advertising agency for any products and or services directly competitive with the products of CLIENT subject of this agreement without CLIENT's prior written consent. Unless otherwise agreed, CLIENT shall not utilize any other entity or individual to advertise said products and/or services.
- 3.4 Media Placement. Subject to Section 3.6, AGENCY shall, for and on behalf of CLIENT, plan and place all media and secure third party services in furtherance of the stated objective. Payment for such media or services is the sole responsibility of CLIENT. CLIENT shall hold harmless, indemnify and defend AGENCY from and against any and all claims or losses arising out of any failure to make said payments. Media placement is the exclusive province of AGENCY. Should CLIENT place media, using materials created by the AGENCY, without the prior express written consent of AGENCY, CLIENT shall pay to AGENCY an amount equal to 15 percent (%) of CLIENT's cost for the media placed.
- 3.5 Printing Services. Subject to Section 3.6, AGENCY shall, for and on behalf of CLIENT, plan and secure all printing of materials created by AGENCY and secure third party services in furtherance of the stated objective. Payment for such printing services is the sole responsibility of CLIENT, CLIENT shall hold harmless, indemnify and defend AGENCY from and against any and all claims or losses arising out of any failure to make said payments. Printing is the exclusive province of AGENCY. Should CLIENT procure printing of materials created by AGENCY without the prior express written consent of AGENCY, CLIENT shall pay to AGENCY an amount equal to 25 percent (%) of CLIENT's cost for the printing supplied.
- 3.6 Cost Estimates. Prior to initiating services, AGENCY shall provide written cost estimates for services and shall await CLIENT's approval thereof. Such estimates represent AGENCY's opinion, are subject to change, and are contingent upon facts over which AGENCY has no control. AGENCY does not guarantee the accuracy of such estimates.
- 3.7 Confidential Relationship. AGENCY shall not reveal or otherwise make available to any third party any confidential information or trade secrets regarding CLIENT's products, business, customers, or methods of operation made known to AGENCY during the term of this agreement.

- 3.8 AGENCY's Discretion. AGENCY reserves the right not to initiate publicity or undertake the placement of space if, in AGENCY's judgment, CLIENT's advertisements or campaigns are misleading or in any other manner unlawful or unethical.
- 3.9 CLIENT's Discretion. CLIENT reserves the right to modify, reject, or cancel by written notice AGENCY's work in process or an advertising project undertaken pursuant to this agreement. In any such event, CLIENT shall compensate AGENCY for its time and expense or obligations incurred through the date of receipt of such notice except in the case of work done by AGENCY determined to be below the standard acceptable by CLIENT.
- 3.10 Releases. AGENCY shall secure releases, licenses, permits and/or authorizations necessary to use talent, photographs, copyrighted materials, and similar items for advertising prepared for CLIENT hereunder.
- 3.11 Allocation of Liability. Except as to claims based upon AGENCY's fault, CLIENT shall hold harmless, indemnify, and defend AGENCY from and against any and all claims arising directly or indirectly out of advertising or publicity prepared for and approved by CLIENT prior to broadcast or publication. AGENCY is not responsible for losses incurred by CLIENT as a result of default of person(s) not the representative or employee of AGENCY, including but not limited to suppliers of materials or services or owners of media.
- 3.12 Termination of Agreement. This agreement may be terminated with or without cause by either party upon giving ninety (90) days written notice to the non-terminating party. Notice shall be given by certified mail, return receipt requested. The date of termination shall be ninety (90) days from the postmark of said Notice. In the event of termination, CLIENT shall compensate AGENCY for time and expenses approved in advance by CLIENT and incurred through the date of termination.
- Upon termination, CLIENT shall continue to pay media and printing commissions to AGENCY subject to sections 3.4 and 3.5 for any and all work used by CLIENT which was produced by AGENCY under this contract.
- 3.13 Ownership/Use of Materials/Ideas. CLIENT is and remains the owner of all right, title and interest in creative work produced under this agreement, in as much as legally obtainable in consideration of third-party, licensed materials. These third-party materials for which Penna Powers obtains license from a third-party vendor, such as stock photography and fonts, may not be transferred to CLIENT per existing agreements by which Penna Powers is bound.
- 3.14 AGENCY Records. AGENCY's pertinent records are available to CLIENT for examination in AGENCY's offices during regular business hours and upon three (3) days notice.

ARTICLE 4. GENERAL TERMS AND CONDITIONS

- 4.1 Applicable Law. This agreement shall be interpreted and enforced according to the laws of the State of Utah.
- 4.2 Assignment; Subcontracting. Neither CLIENT nor AGENCY shall assign its interest in this agreement without the written consent of the other. This Agreement shall be binding upon and inure to the benefit of the successors, assigns or any other transferees of the signatories hereto. No rights or benefits are conferred to third parties by this Agreement.
- 4.3 Force Majeure. Any delay or default in the performance of any obligation of either party under this agreement resulting from any cause(s) beyond said party's reasonable control shall not be deemed a breach of this agreement. The occurrence of any such event shall suspend the obligation of said party as long as performance is delayed or prevented thereby.
- 4.4 Attorney's Fees. In the event of CLIENT's failure to compensate AGENCY as herein agreed, CLIENT shall pay all costs incurred in the collection of said compensation, including reasonable attorney's fees, whether incurred through initiation of legal proceedings or otherwise.

- 4.5 Severability; Waiver. In the event any provision(s) of this agreement shall be held to be invalid or unenforceable, the remaining provisions shall remain valid and binding upon the parties. One or more of any term, condition or other provision of this agreement by either party shall not be construed as a waiver of a subsequent breach of the same or any other provision.
- 4.6 Amendments; Merger. This agreement may be amended only by written instrument expressly referring hereto and duly signed by the parties. This agreement constitutes the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations and/or agreements, written or oral.
- 4.7 Non-Compete. During the term of this Agreement, neither Party shall actively recruit, solicit or otherwise attempt to hire the employees of the other who are performing work under this Agreement without the prior written permission of the other Party. This restriction shall not apply to any individual employed by the other who voluntarily seeks employment with the other Party on their own initiative or in response to employment advertisements in the newspapers, trade publications or other public commercial media or as an unsolicited walk-in candidate.

SCHEDULE 1. Billing

Penna Powers strives to maintain financial integrity by providing quality products and services at reasonable rates and competitive pricing. We believe that any agreement has to be a win-win for both parties involved. We expect a reasonable profit for our efforts and our clients should expect to realize a good return on their investment.

As each client is unique in its marketing strategy and execution so are they unique in their billing requirements. Penna Powers is flexible and will meet the client's needs and bill them according to a mutually equitable arrangement.

Media:

Penna Powers has an array of options for billing time associated with the planning, placement and tracking of purchased media. We will work with each client individually to determine the best approach for them, but in general, Penna Powers retains the standard commission as allowed by the specific medium to recognized advertising agencies, this is usually 15% for traditional media (broadcast, print, outdoor) and 20% for digital media. When the medium does not pay a commission, we will bill in one of two ways depending on the budget; we will either add the commission of gross media or bill at the hourly rate listed above for planning, placement and tracking of that specific media.

Hard Costs/Outside Purchases:

Penna Powers makes it a practice to keep a current list of preferred suppliers for services such as printing, photography, videography, editing, promotional items and others. Because we have established relationships with these suppliers they provide us with exceptional work at reasonable and usually below "direct" prices. All projects requiring the service of these suppliers are sent out for bid and the most acceptable price/product supplier is chosen. Penna Powers administers a standard "cost plus a service fee that equals 25% of the actual cost billed to client" to cover the cost of service personnel, such as our receptionist, finance director and finance coordinator. The expenses to which we apply a service fee are outlined below:

Hard Costs could include (not inclusive of all expenses that could be incurred):

- Printing costs – brochures, posters, rack cards, flyers, postcard, banners, etc.
- Signage, banners, directional markers, booth graphics, window graphics, billboard printing
- Photography (both original and stock)
- Model fees / Talent fees / Make-up artist
- TV filming and editing
- Videography and archiving
- Props
- Social media promotions (20%)
- Equipment rental
- Location scouting fees
- Radio recording and editing
- Mailing lists
- Mailing services
- Giveaway items
- Translation services
- Props
- Domain name registration
- Storage
- Website bandwidth
- Event space rental / exhibition space rental
- Trademark services / patent services

In-house Equipment Rental:

Penna Powers has state of the art photography and video equipment which we will use on client projects from time to time. When necessary the rental fee of this equipment will be included with each job. Equipment includes digital video and still camera, sound capture equipment, lights and drone.

Non-Service Fee Expenses:

Certain out-of-pocket expenses made by Penna Powers and approved in advance by client directly in the performance of its services under this agreement are passed on to client without a service fee. They include; transportation, subsistence and lodging when traveling in connection with the project; long distance or toll telephone calls, postage, messenger service and special mail or related services.

Project Estimates:

At the beginning of each project an estimate is given outlining professional services fees and hard cost expenses needed to complete the job. This estimate must be approved by the client before any work begins. Additionally, clients are provided with media schedules to approve before any media is ordered or purchased.

Billing:

Penna Powers bills on a monthly basis at the end of the month for work done in the preceding 30 days, as well as media that ran during the same period. All billing contains a listing of projects or jobs with the charges for each job broken by professional services and hard costs. No backup is normally included in the billing packet, but is available upon request. Bills are due and payable within 30 days of the invoice date.

SCHEDULE 2.
Billing Rates

| TITLE | HOURLY RATE |
|---|-------------|
| Partner | \$160 |
| Vice President | \$140 |
| Director/ACD | \$135 |
| Sr AM/PM//Content/Designer/Copywriter | \$125 |
| AM/PM/Content/Designer/Copywriter | \$120 |
| Assoc AM/PM/Content/Designer/Copywriter | \$110 |
| Specialists: | |
| Production Manager | \$115 |
| Videographer | \$125 |
| Social Media Strategist | \$135 |
| Web Developer | \$125 |
| Media Relations/Public Relations Specialist | \$125 |
| Outreach Specialist | \$110 |
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