

## SERVICES AGREEMENT

**THIS SERVICES AGREEMENT (“Agreement”)**, made on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government pursuant to KRS Chapter 67A (hereinafter “LFUCG”), located at 200 East Main Street, Lexington, Kentucky 40507, and **Bullhorn LLC, d/b/a Bullhorn Creative** (hereinafter “CONSULTANT”) located at 109 East Loudon Avenue, Lexington, Kentucky 40505.

**WHEREAS**, LFUCG has been allocated federal funds from the Kentucky Transportation Cabinet under Title 23, United States Code, Section 133(b), Catalog of Federal Domestic Assistance number 20.205 for Intelligent Transportation System and Congestion Management System Traffic Improvements; and

**WHEREAS**, LFUCG recognized a need for a cohesive series of Safe Streets Marketing Materials to promote driver, cyclist, and pedestrian safety in Fayette County, Kentucky; and

**WHEREAS**, LFUCG issued a request for proposals for the Development of Safe Streets Marketing Material (RFP #33-2016); and

**WHEREAS**, CONSULTANT responded to RFP #33-2016 and LFUCG has determined that CONSULTANT is the successful bidder.

**NOW, THEREFORE**, LFUCG and CONSULTANT, in consideration of their mutual covenants herein AGREE in respect to the Development of Safe Streets Marketing Material and the payment for those services by LFUCG as set forth below (“Services”).

**WITNESSETH:** That CONSULTANT and the LFUCG in consideration for adequate consideration and intending to be legally bound, hereby agree to commence and complete the scope of services described as follows:

### **1.0 SCOPE OF WORK**

CONSULTANT shall perform the work as outlined in Exhibit “A” (the “RFP”) and Exhibit “B” (the “Response”), both of which are attached hereto and incorporated herein by reference.

#### **1.1 Incorporated Bid Documents**

Exhibit A – The “RFP” document titled “RFP #33-2016 “Development of Safe Streets Marketing Material” including the General Conditions and the Risk Management Provisions.

Exhibit B – The “response” document titled “Safe Streets Request for Proposal” RFP #33-2016”.

Exhibit C – The negotiated hours with rates required to complete the tasks defined within RFP #33-2016.

All of the terms and provisions of the RFP, including but not limited to the General Conditions and the Risk Management Provisions, and the Response are attached hereto and incorporated herein by reference as if fully stated. To the extent of any conflict between or among the documents, the terms of this Agreement shall take precedence, followed by the RFP and the Response.

## **1.2 Timely Reports**

CONSULTANT shall provide monthly reports of all activities to LFUCG PROJECT MANAGER. Reports may be submitted electronically.

## **1.3 Applicable Laws**

CONSULTANT shall perform work in accordance with applicable Federal and State laws and regulations including all of Title 49 United States Code (USC), Title 23 United States Code (USC), 49 Code of Federal Regulations, and 23 Code of Federal Regulations.

## **2.0 TERM**

This Agreement is effective as of the date of LFUCG's signature ("Effective Date") and will continue for a period of one (1) year with an option for an additional one year (1) renewal subject to sufficient appropriation of funds AND a mutual agreement between CONSULTANT and LFUCG.

### **2.1 Termination**

LFUCG may terminate performance of this Agreement, or a portion thereof, upon thirty (30) days' written notice, or if the CONSULTANT materially breaches any provision of this Agreement. Upon receipt of a written notice (which shall describe the circumstances that lead to a material breach), CONSULTANT shall have thirty (30) calendar days to cure the default.

## **3.0 INDEMNIFICATION CLAUSE**

The Risk Management Provisions of RFP #33-2016 are incorporated herein by reference as if fully stated. Copies of the required Certificates of Insurance shall be provided to LFUCG as required therein.

## **4.0 PAYMENTS TO CONSULTANT**

Payment for the Services hereunder, in an amount not to exceed \$40,000, will be made on time and expense basis subject to the following requirements:

- a. All invoices shall reflect the work performed in accordance RFP#33-2016 and the corresponding amount due based on the budget allotted for each task.

### **4.1 Time of Payment**

CONSULTANT shall submit detailed monthly statements indicating work completed for LFUCG, and shall submit sufficient documentation for any and all reimbursable expenses prior to payment. LFUCG shall respond to CONSULTANT's monthly statements within thirty (30) days, either denying payment or making payments.



## **4.2 Other Provisions Concerning Payments.**

**4.2.1.** In the event the Agreement is terminated by the LFUCG without fault on the part of the CONSULTANT, the CONSULTANT shall be paid for actual work performed or services rendered and delivered to LFUCG prior to termination, as determined by mutual agreement between LFUCG and CONSULTANT.

**4.2.2.** In the event that Services are terminated by LFUCG for fault on the part of the CONSULTANT, the CONSULTANT shall be paid for actual work performed or services rendered and delivered to LFUCG prior to termination, as determined by LFUCG.

## **5.0 SUCCESSORS AND ASSIGNS**

CONSULTANT binds itself, and its partners, successors, executors, administrators, assigns, agents, and legal representatives to this Agreement with respect to all covenants, agreements and obligations.

## **6.0 ASSIGNMENT AND DELEGATION**

CONSULTANT shall not assign any interest, obligation or benefit of this Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent of LFUCG.

CONSULTANT shall not subcontract more than fifty percent (50%) of the Services, based upon dollar value, to be provided under this Agreement. CONSULTANT shall obtain written approval prior to delegating or assigning any services contained in this Agreement. LFUCG's consent to the delegation or assignment of any part of this Agreement shall not be construed to relieve CONSULTANT of any responsibility for compliance with the provisions of this Agreement.

## **7.0 FORCE MAJEURE**

CONSULTANT shall not be liable to LFUCG for any delay in performance or any failure in performance hereunder caused in whole or in part by reason of *force majeure*, which shall be deemed to include war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot and other acts of civil disobedience, action of a public enemy, failure or unavoidable delays in mass transportation, laws, regulations or acts of any national, state or local government (or any agency, subdivision or instrumentality thereof), judicial action, labor dispute, disease, accident, fire, explosion, flood, storm or other act of God, unforeseeable shortage of labor, fuel, raw materials, machinery or unforeseen technical failures. LFUCG shall not refuse to accept delivery by reason of delays occasioned by *force majeure*. Any delay resulting from *force majeure* shall correspondingly extend the time for performance by CONSULTANT. Notwithstanding the above, CONSULTANT acknowledges that it will not be excused from full performance of any contractual provision contained herein or separately contained in any Statement of Work or Change Order if an act or occurrence resulting in any delay in performance or failure in performance could have been avoided through CONSULTANT's exercise of due care.

## **8.0 OPTIONAL TASKS AND SERVICES**

LFUCG may desire to have CONSULTANT perform work or render services in connection with this Project other than provided by the expressed intent of this Agreement. Such work shall be considered as "Optional Task and Services," subject to a change order, supplemental to this Agreement, setting forth the character and scope thereof and the compensation therefore. Work under such change order shall not proceed until written authorization is given by LFUCG. This work shall be considered as "Optional Work & Tasks" and shall be paid on a lump sum basis by task in accordance with the negotiated rates as provided by CONSULTANT in response to RFP#33-2016 in Attachment C.

## **9.0 RIGHTS IN WORK PRODUCT**

Unless otherwise agreed by the parties in a separate Agreement, all Services rendered by CONSULTANT under this Agreement and the product or proceeds of such Services, including any and all information and data owned or controlled by LFUCG, or otherwise manifested in programs and documentation purchased, produced, or delivered to or on LFUCG's behalf ("Work Product") shall belong to and be owned by LFUCG. CONSULTANT and third party service and software providers shall retain sole and exclusive ownership, right, title and interest, including ownership of copyright, with respect to their respective, independently developed intellectual property in accordance with federal copyright and other applicable laws.

## **10.0 EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, the CONSULTANT agrees as follows:

**10.1.** CONSULTANT agrees to comply with Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Order 11375 and 12086.

**10.2** CONSULTANT will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, age, disability or other handicap. CONSULTANT shall take affirmative action to insure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, national origin, sex, age, disability or other handicap. CONSULTANT will take affirmative action to insure that all employment practices include, but are not limited to, the following: employment, hiring, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection of training, including apprenticeships. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.

**10.3** A Compliance with Civil Rights Act of 1964. During the performance of this AGREEMENT, CONSULTANT agrees as follows:

A. CONSULTANT will comply with the regulations relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this AGREEMENT.



- B. Nondiscrimination: CONSULTANT, with regard to the work performed by it after award and prior to completion of the AGREEMENT, work will not discriminate on the ground of race, color, or national origin in the selection and retention of subcontractors including procurement of materials and leases of equipment. CONSULTANT will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.
- C. Solicitations for Subcontractors, including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONSULTANT for work to be performed under a subcontract including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by the CONSULTANT or the CONSULTANT'S obligations under this AGREEMENT with the REGULATIONS relative to nondiscrimination on the ground of race, color, or national origin.
- D. Information and Reports:CONSULTANT will provide all information and reports required by the REGULATIONS, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the GOVERNMENT to be pertinent to ascertain compliance with such REGULATIONS orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT will so certify to the GOVERNMENT as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the CONSULTANT'S noncompliance with the nondiscrimination provisions of this AGREEMENT, the GOVERNMENT will impose such contract sanctions as it may determine to be appropriate, including but not limited to:
  - 1) Withholding payment to the CONSULTANT under the AGREEMENT until the CONSULTANT complies; and/or
  - 2) Cancellation, termination or suspension of the AGREEMENT, in whole or in part.

**10.4** It is the policy of the U.S. Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this AGREEMENT. Consequently the DBE requirements of 49 CFR Part 23 apply to this AGREEMENT.

**10.5** DBE Obligation. CONSULTANT or its subcontractors agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this AGREEMENT. In this regard, CONSULTANT or subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that

disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. **CONSULTANT** and the subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U. S. DOT – assisted contracts.

**CONSULTANT** will make every effort to locate DBEs to purchase materials and services for use in this AGREEMENT. **CONSULTANT** shall document the steps it has taken to obtain DBE participation, including, but not limited to the following:

- A. The names, addresses, and telephone numbers of DBEs that were contacted;
- B. A description of the information provided to DBEs regarding the type of work to be performed.

**11.0 RIGHT TO REVIEW, AUDIT AND INSPECT**

**CONSULTANT** understands and agrees that upon reasonable notice that officials of the Lexington-Fayette Urban County Government, the Kentucky Transportation Cabinet, and the Federal Highway Administration may review, audit, and inspect any and all of the **CONSULTANT'S** records and operations relative to the services performed under this Agreement to assure compliance with the Agreement.

**12. MODIFICATIONS**

No extension, modification, or amendment of this Agreement shall be effective unless it is set forth in writing and signed by the Parties.

**13. DISPUTE RESOLUTION**

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. **CONSULTANT** acknowledges and agrees that any claims, legal proceedings or litigation arising in connection with this Agreement or the Services provided hereunder shall be brought solely in Fayette County, Kentucky.

**14. SEVERABILITY**

If any particular provision of this Agreement is determined to be invalid or unenforceable, that determination will not affect any other provision hereto, which will be construed in all respects as if the invalid or unenforceable provision were omitted. No extension, modification, or amendment of this Agreement will be effective unless it is described in writing and signed by the Parties.

**IN WITNESS WHEREOF**, the parties hereto have executed this Contract as of the date and year above written.

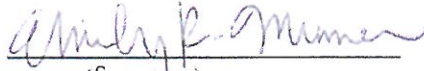
LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT

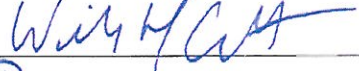
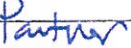
ATTEST:

\_\_\_\_\_  
Clerk of the Urban County Council

BY: \_\_\_\_\_  
Jim Gray  
MAYOR

Bullhorn Creative  
109 East Loudon Avenue  
Lexington, Kentucky 40507

  
\_\_\_\_\_  
(Secretary)

BY:   
ITS:   
\_\_\_\_\_

  
\_\_\_\_\_  
(Witness)

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EXHIBIT A

RFP #33-2016-Development of Safe Streets Marketing Material

47 Pages

**EXHIBIT B**

Bullhorn Response to RFP #33-2016: Development of Safe Streets Marketing Material  
(32 Pages)

**EXHIBIT C**

RFP #33-2016 Schedule of Negotiated Services and Hourly Rates