

Client Flat Fee Agreement

This Agreement for Marketing and Branding Services (the "Agreement"), effective as of **Jun 15, 2023 *** ("Effective Date"), is by and between **startsmall.THINKBIG!, LLC**, a Virginia Limited Liability Company, located at 1651 Bethel Beach Road Onemo, VA 23130 ("SSTB") and **Town of Irvington ***, with offices located at **4203 Irvington Rd, Irvington, VA 22480 *** ("Client").

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions

1. **Materials:** all elements produced by SSTB for Client including, but not limited to, all copies, layouts, slogans, websites, artworks, graphic materials, photography, and videography.
2. **Statement of Work ("SOW"):** Attachment A to this Agreement with detailed specifications of services that will be performed and provided by SSTB for Client
3. **Expenses:** includes all incidental expenses incurred in connection with SSTB's rendition of services and performance of duties 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 print or other media and online sources.
4. **Work Product:** all materials developed or prepared by SSTB for Client that will be delivered to and considered property of the Client
5. **SSTB Materials:** 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 owned, required, acquired or developed by SSTB or its licensors/vendors, and regardless of whether incorporated in any Work Product
6. **Proprietary and Confidential Information:** includes 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

2. **Term.** Unless earlier terminated pursuant to the terms and conditions of this Agreement, this Agreement shall commence on the Effective Date and shall be continue perpetually, on a month-to-month retainer basis. This Agreement shall renew automatically each month unless either party gives written notice of an intent not to renew to the other within seven (7) days of the Invoice date.

3. Scope. Marketing and Brand Development Services. SSTB will perform services for Client in connection with the planning, provision, creation, and/or placing of branding, research, advertising, marketing, consulting, creative and/or digital services for Client, during the Term, as provided in the SOW, incorporated herein by reference (such services are collectively referred to as "Services").

1. During the term of this agreement, Client may wish to employ SSTB for additional projects, products, or services beyond the Services outlined in the SOW. SSTB agrees to accept such additional projects only upon a separate written agreement with Client regarding additional compensation and other relevant terms and conditions. The separate, written agreement must be signed by both parties. Nothing in this Agreement will be deemed to require SSTB to undertake any act or perform any services which in its good faith and judgment would be misleading, false, libelous, unlawful, in breach of contract, or otherwise prejudicial to Client's or SSTB's interests.

4. Client Approval of Materials. SSTB shall submit to Client for its timely approval all Materials to be produced or placed hereunder. Submission for prior approval of Materials will not be required to the extent that they are preliminary only.

5. Fees, Payments, and Expenses.

1. Flat, Recurring Fee. As compensation for the Services rendered pursuant to this Agreement, Client agrees to pay SSTB a recurring monthly fee of \$300.00 * due each month on the 15th. SSTB will provide Client with an Invoice seven (7) days prior to each due date.
2. Expenses. Client shall reimburse SSTB for reasonable Expenses incurred for Client's account in connection with SSTB's rendition of services and performance of duties hereunder. All Expenses not paid directly by Client shall be paid within ten (10) days of receipt of SSTB's Invoice. All Expense reimbursements shall be made at SSTB's direct out-of-pocket costs, without any markup for overhead, administrative costs, or otherwise.
3. Other Fees. Unless otherwise provided in this Agreement, all other Services, rendered by SSTB shall be subject to additional compensation under a separate, written agreement between SSTB and Client.
4. Payment of Invoices. All invoices shall be paid by Client within ten (10) days of receipt. Payments not made within such time period shall be subject to late charges equal to 1.5% per month of the overdue amount of invoice. SSTB may suspend all services on seven (7) days written notice until all the amounts outstanding are paid in full.

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

7. Ownership

1. Work Product. The Client's Work Product will be produced in final form by SSTB for Client provided Client has paid SSTB all fees and costs associated with creating and, where applicable, producing the Materials.
2. SSTB Materials. Notwithstanding any other provisions of this Agreement, SSTB shall retain all right, title, and interest in SSTB Materials (1) prior to the Effective Date; (2) independently of, or not in connection with the performance of, the Services; (3) in the general conduct of its business or to serve general functions that are not specific to Client's unique requirements; or (4) if generally applicable, non-site specific and unrelated to the look and feel of the Materials or other deliverable, in connection with the Services. Subject to fulfillment of Client's payment obligations hereunder, SSTB hereby grants Client a worldwide, perpetual, irrevocable, royalty-free, nonexclusive license, with right to sublicense, to use SSTB Materials actually incorporated into Work Product pursuant to this Agreement as necessary for or in connection with the use, management or maintenance of such Work Product, provided that Client shall not have the right to publish or distribute any SSTB Materials other than as part of such Work Product or to create derivative works of SSTB Materials.

8. Marketing. Client hereby grants SSTB 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 SSTB and a brief scope of services provided. In addition, Client hereby grants SSTB the right to display its logo (or other identifying information) and a hyperlink to SSTB's website on the home page of Client's website. Any use of SSTB's logos or links on Client's website must be approved by SSTB.

9. Termination.

- a. Termination. Either party may terminate this Agreement by giving seven (7) days written notice to the other party prior to the Renewal Date, upon the occurrence of any of the following events:
 1. Either party wishes to terminate the Agreement, for any reason, and such decision, and respective seven (7) days written termination notice to the other party.
 2. The commission by the other party of a material breach of this Agreement, which breach is not cured within thirty (30) days of the other party's receipt of written notice of such breach;
or
 3. The other party has or may be commencing a voluntary or involuntary bankruptcy, receivership, or similar proceeding with respect to such other party.
- b. Effect of Termination. Client shall pay SSTB for all services rendered and work performed up to the effective date of termination. Client shall pay the invoice within ten (10) days of receipt.
- c. Return of Proprietary or Confidential Information. Within ten (10) days after the termination or expiration of this Agreement, each party shall return to other all Proprietary or Confidential Information 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 not include any information which: (1) is or becomes generally known to the public; (2) was previously known to the receiving party or rightly received by the receiving party from a third party; (3) is independently developed by the receiving party; or (4) 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 is specifically provided for in this Agreement, the non-disclosing party may be entitled to equitable relief. Notwithstanding termination and expiration of this Agreement, SSTB 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; Warranties; Remedies

1. SSTB warrants for a period of thirty (30) days from the date of delivery that the Services provided hereunder will perform in a professional manner and any software, hardware, websites, web-based, or technology related services ("Electronic Services") will be free of bugs or defects provided that: (1) the Electronic Services were not modified, changed, or altered by anyone other than SSTB; (2) the Electronic Services are used in a suitable operating environment and Client's operating systems are in good operating order; (3) nonperformance is not caused by Client, its agents, employees, or any third party; (4) Client promptly notifies SSTB of the error or defect after it is discovered; and (5) all amounts due to SSTB have been paid.
2. **DISCLAIMER OF WARRANTIES.** THERE ARE NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THIS AGREEMENT, THE SERVICES OR GOODS PROVIDED SSTB TO CLIENT HEREUNDER, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, ALL OF WHICH ARE EXPRESSLY EXCLUDED.
3. Third Party Disclaimer. SSTB 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.
4. SSTB shall not be liable for any indirect, incidental, punitive, exemplary, special, or consequential damages of any kind whatsoever, including but not limited to, any damages sustained as a result of any breach of warranty or of this Agreement, any act or failure to act relating to this Agreement or the Services, SSTB's negligence or gross negligence, or any claim made against Client by any other party, even if SSTB has been advised of the claim or potential claim. Client agrees that it shall not assert any claims against SSTB based upon theories of negligence, gross negligence, strict liability, fraud, or misrepresentation, and that it shall indemnify, hold harmless, and defend SSTB against any claim, demand, loss, or action resulting from Client's possession or use of Services. Any action by Client for breach of this Agreement must be commenced within one (1) year after the cause of action has accrued.

12. Choice of Law. This Agreement shall be governed, interpreted, construed, and enforced in accordance with the laws of

13. Notices. Notices under this Agreement shall be delivered to the other party at the address below:

a. If to SSTB:

- 1651 Bethel Beach Road Onemo, VA 23130
- whitney@startsmallthinkbig.net

b. If to Client:

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14. No Waiver. No delay or failure of SSTB in exercising any right under this Agreement and no partial or single exercise of any right by SSTB shall be deemed to constitute a waiver of that right or any other right under this Agreement.

15. 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.

16. No Assignment. Client's rights under this Agreement may not be assigned, transferred, or sublicensed without SSTB's prior written consent.

17. Paragraph Headings and Captions. Paragraph headings and captions contained in this Agreement are inserted only as a matter of convenience and in no way defines, limits, or extends the scope or intent of this Agreement or any provision thereof.

18. Severability. If any provision of this Agreement shall be held illegal, void, or unenforceable, the remaining portions shall remain in full force and effect.

19. Force Majeure. Neither Client nor SSTB 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.

20. Entire Agreement. This Agreement and the Schedules attached hereto constitute the entire agreement between SSTB 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 in writing and signed by both SSTB and client.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

Whitney Law

* Signature required

whitney@startsmallthinkbig.marketing

Julie W. Harris, Mayor

Town of Irvington

* Signature required

jharris@town.irvington.va.us