

PROFESSIONAL SERVICES CONTRACT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
WOLFFHAUS.
FOR
BRAND, MEDIA, PRESS AND DIGITAL ECOSYSTEM COMPREHENSIVE AUDIT,
MARKETING AND ASSESSMENT SERVICES

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Huntington Beach, a municipal corporation of the State of California, hereinafter referred to as "CITY," and WOLFFHAUS, hereinafter referred to as "CONSULTANT."

WHEREAS, CITY desires to engage the services of a CONSULTANT to provide, in part, brand, media, press and digital ecosystem comprehensive audit, marketing and assessment services; and

In addition to comprehensive skill set and unique familiarity of City services, CONSULTANT has been selected pursuant to Huntington Beach Municipal Code, Chapter 3.03.100 relating to budget procurement of professional service contracts.

NOW, THEREFORE, it is agreed by CITY and CONSULTANT as follows:

1. SCOPE OF SERVICES

CONSULTANT shall provide all services as described in **Exhibit "A,"** which is attached hereto and incorporated into this Agreement by this reference. These services shall sometimes hereinafter be referred to as the "PROJECT."

CONSULTANT hereby designates Tyler Wolff who shall represent it and be its sole contact and agent in all consultations with CITY during the performance of this Agreement.

2. CITY STAFF ASSISTANCE

CITY shall assign a staff coordinator to work directly with CONSULTANT in the performance of this Agreement.

3. TERM; TIME OF PERFORMANCE

Time is of the essence of this Agreement. The services of CONSULTANT are to commence on _____, 20____ (the "Commencement Date"). All tasks specified in **Exhibit "A"** shall be completed as provided in the schedule identified in Exhibit A. The schedule for performance of the tasks identified in **Exhibit "A"** are milestones for payment purposes. This schedule may be amended to benefit the PROJECT if mutually agreed to in writing by CITY and CONSULTANT. The City agrees to cooperate in good faith and provide reasonable access to personnel, information, records, facilities, in the City's control and/or possession and decisions necessary for the CONSULTANT to perform the services contemplated under this Agreement. The CONSULTANT'S performance and project timelines are dependent upon the timely cooperation of the City and its departments. If the City fails to provide requested information, approvals, access, or cooperation within a reasonable time (Delays), any resulting delay by CONSULTANT shall automatically extend the applicable project schedules, milestones, and deliverable dates by a period equal to the delay.

Any delay reasonably caused, in whole or in part, by the City shall be documented in writing by CONSULTANT and provided to the City Manager within five (5) business days after such delay becomes reasonably identifiable. Any determination of City-caused delay shall be based on objective facts and supporting records, If the City caused or contributed to the delay, applicable project schedules, milestones, and deliverable dates shall be extended by the period reasonably impacted. If the City materially interferes with, delays, blocks, or refuses access necessary for performance, and does not cure after notice, Consultant may suspend services and/or terminate, with payment due for work performed plus termination fee as described in Section 4.

4. COMPENSATION

In consideration of the Services to be performed under this Agreement and Exhibit A, City shall pay Consultant a fixed monthly retainer in the amount of Thirty Thousand Dollars (\$30,000.00) payable in twenty-four (24) monthly installments. In no event shall the total compensation paid to Consultant exceed Seven Hundred Twenty Thousand Dollars (\$720,000.00.).

The first payment will be due 5 days after City's receipt of the initial Monthly Progress Deliverable, and following payments will be due the first Friday of every month thereafter. Consultant shall submit, on or before the 21st of each month, (i) an invoice for the applicable billing period, and (ii) a Monthly Progress Deliverable, and City shall pay the applicable monthly installment on the first Friday of every month thereafter.

"Monthly Progress Deliverable" means a monthly submission evidencing substantive advancement of the Scope of Services, which may include progress summaries, strategic plans, recommendations, draft or final materials, implementation updates, milestone tracking, issue logs, requested City actions or approvals, and other documentation showing material progress across the contracted programs.

The parties acknowledge that the Services under this Agreement consist of an ongoing professional engagement across multiple concurrent initiatives, including strategy, development, implementation, coordination, system design, operational buildout, creative direction, program development, oversight, and milestone advancement. Accordingly, monthly payment shall not require the completion of a final end-product or fully completed milestone in any individual month, provided that Consultant has materially advanced the Services and submitted the required invoice and Monthly Progress Deliverable.

City review of each Monthly Progress Deliverable shall be limited to confirming that Consultant has materially performed and advanced the contracted Services during the applicable billing period. City may not withhold payment based on subjective preference, discretionary dissatisfaction, or the absence of a fully completed long-term milestone where measurable progress has been made within the Scope of Services.

Unless City provides written notice within five (5) business days after receipt of the invoice and Monthly Progress Deliverable identifying with reasonable specificity a material deficiency in Consultant's performance for the applicable billing period, the Monthly Progress Deliverable shall be deemed accepted for payment purposes, and receipt of such invoice and Monthly Progress Deliverable shall automatically trigger payment of the applicable monthly installment on the first Friday of the immediately following month.

Any objection to a Monthly Progress Deliverable must be made in writing and must describe with reasonable specificity the alleged deficiency. City may withhold only the specific portion of payment reasonably related to a properly noticed and substantiated deficiency, and City shall timely pay all undisputed amounts when due.

All City-specific deliverables produced under this agreement shall become the property of the City upon payment for services rendered.

Certain initiatives, programs, or operational improvements recommended or developed by the CONSULTANT under this agreement may require additional funding, budget allocations, or expenditures by the City in order to implement at the City's sole discretion. The Consultant can achieve milestones without major city financial expenditure.

In addition, the performance of services under this agreement may require reasonable project-related expenses, including but not limited to specialty travel, production costs, materials,

third-party services, or other costs necessary to support the execution of approved initiatives. The CONSULTANT shall not incur any of these expenses on behalf of the City without prior written authorization from the City Manager. Any approved project-related expenses shall be reimbursed by the City if pre-approved by the City Manager.

If implementation of a program requires City funding approval, procurement processes, or third-party contracting, the associated project timelines and deliverable schedules shall be adjusted to reflect the City's approval and funding process.

Any additional funding, other than set forth in Compensation section, shall be subject to approval by the City Manager.

5. EXTRA WORK

In the event CITY requires additional services not included in **Exhibit "A"** or changes in the scope of services described in **Exhibit "A,"** CONSULTANT will undertake such work only after receiving written authorization from CITY. Additional compensation for such extra work shall be allowed only if the prior written approval of CITY is obtained.

6. METHOD OF PAYMENT

CONSULTANT shall be paid pursuant to the terms set forth herein and **Exhibit "B."**

7. DISPOSITION OF PLANS, ESTIMATES AND OTHER DOCUMENTS

CONSULTANT agrees that title to all materials prepared hereunder, including, without limitation, all original drawings, designs, reports, both field and office notices, calculations, computer code, language, data or programs, maps, memoranda, letters and other documents, shall belong to CITY, and CONSULTANT shall turn these materials over to CITY

upon expiration or termination of this Agreement or upon PROJECT completion, whichever shall occur first. These materials may be used by CITY as it sees fit.

8. HOLD HARMLESS

CONSULTANT agrees to defend, indemnify and hold harmless CITY, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all third-party claims, damages, losses, expenses, demands and defense costs, including costs and attorney's fees, but only to the extent arising out of the negligence, recklessness, or willful misconduct of CONSULTANT, its officers, agents, employees, or approved subcontractors in the performance of this Agreement. CONSULTANT shall have no obligation under this Section to the extent any such claim arises from the negligence, willful misconduct, directions, approvals, content, or independent acts or omissions of CITY or third parties not under CONSULTANT'S direction or control. CONSULTANT'S obligations under this Section shall be limited to matters within the scope of services under this Agreement and shall not extend to final governmental decisions, legal compliance determinations reserved to CITY, procurement decisions, budget approvals, permitting decisions, or operational acts undertaken exclusively by CITY.

LIMITATION OF LIABILITY. Notwithstanding any other provision of this Agreement, the total cumulative liability of CONSULTANT to CITY arising out of or relating to this Agreement, whether in contract, tort, or otherwise, shall not exceed the lesser of: (i) the total compensation actually paid by CITY to CONSULTANT under this Agreement; or (ii) the proceeds actually available under any insurance required to be maintained by CONSULTANT under this Agreement. This limitation shall not apply to damages arising from CONSULTANT'S fraud or willful misconduct, or to the extent such limitation is prohibited by applicable law.

CONSULTANT shall have no claim against the City for third-party claims, damages, losses, expenses, demands and defense costs, including costs and attorney's fees, in law or equity, regarding any challenge to this Agreement **such as the** contracting process, directions, approvals, content, or independent acts or omissions of CITY or third parties not under CONSULTANT'S direction or control

9. PROFESSIONAL LIABILITY INSURANCE

CONSULTANT shall obtain and furnish to CITY a professional liability insurance policy covering the work performed by it hereunder. This policy shall provide coverage for CONSULTANT's professional liability in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate. The above-mentioned insurance shall not contain a self-insured retention without the express written consent of CITY; however an insurance policy "deductible" of Ten Thousand Dollars (\$10,000.00) or less is permitted. A claims-made policy shall be acceptable if the policy further provides that:

- A. The policy retroactive date coincides with or precedes the initiation of the scope of work (including subsequent policies purchased as renewals or replacements).
- B. CONSULTANT shall notify CITY of circumstances or incidents that might give rise to future claims.

CONSULTANT will make every effort to maintain similar insurance during the required extended period of coverage following PROJECT completion. If insurance is terminated for any reason, CONSULTANT agrees to purchase an extended reporting provision of at least two (2) years to report claims arising from work performed in connection with this Agreement.

If CONSULTANT fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the CITY with required proof that insurance has been procured and is in force and paid for, the CITY shall have the right, at the CITY's election, to forthwith terminate this Agreement. Such termination shall not affect CONSULTANT's right to be paid for its time and materials expended prior to notification of termination. CONSULTANT waives the right to receive compensation and agrees to indemnify the CITY for any work performed prior to approval of insurance by the CITY.

10. CERTIFICATE OF INSURANCE

Prior to commencing performance of the work hereunder, CONSULTANT shall furnish to CITY a certificate of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverage as required by this Agreement; the certificate shall:

- A. provide the name and policy number of each carrier and policy;
- B. state that the policy is currently in force; and
- C. shall promise that such policy shall not be suspended, voided or canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice; however, ten (10) days' prior written notice in the event of cancellation for nonpayment of premium.

CONSULTANT shall maintain the foregoing insurance coverage in force until the work under this Agreement is fully completed and accepted by CITY.

The requirement for carrying the foregoing insurance coverage shall not derogate from CONSULTANT's defense, hold harmless and indemnification obligations as set forth in this Agreement. CITY or its representative shall at all times have the right to demand the original or a

copy of the policy of insurance. CONSULTANT shall pay, in a prompt and timely manner, the premiums on the insurance hereinabove required.

11. INDEPENDENT CONTRACTOR

CONSULTANT is, and shall be, acting at all times in the performance of this Agreement as an independent contractor herein and not as an employee of CITY. CONSULTANT shall secure at its own cost and expense, and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for CONSULTANT and its officers, agents and employees and all business licenses, if any, in connection with the PROJECT and/or the services to be performed hereunder.

12. TERMINATION OF AGREEMENT

All work required hereunder shall be performed in a good and workmanlike manner. CITY may terminate CONSULTANT's services hereunder at any time with or without cause, and whether or not the PROJECT is fully complete. Any termination of this Agreement by CITY shall be made in writing, notice of which shall be delivered to CONSULTANT as provided herein. In the event of termination, all finished and unfinished documents, exhibits, report, and evidence shall, at the option of CITY, become its property and shall be promptly delivered to it by CONSULTANT.

The City may terminate this agreement for cause in the event the CONSULTANT materially breaches the terms of this agreement including but not limited to failure to complete milestones as set forth in Exhibit A. and fails to cure such breach within sixty (60) days following written notice describing the nature of the breach. In the event of termination for cause, the CONSULTANT shall be compensated only for services properly performed through the effective date of termination and for any completed deliverables accepted by the City

The services contemplated under this agreement involve the development and transfer of strategic frameworks, operational systems, institutional knowledge, industry relationships, and program structures that become embedded within City operations. The City maintains discretion on which programs to implement which will not affect the CONSULTANT's milestone deliverables.

Once these elements are transferred, they cannot be practically removed or reversed. If the City elects to terminate this agreement prior to completion of the contracted scope of work for reasons other than termination for cause, the City shall compensate the CONSULTANT for: all services performed through the effective date of termination; completed deliverables not yet invoiced; A termination payment equal to fifty percent (50%) of the remaining unpaid contract balance. The termination payment reflects the remaining value of the engagement that cannot be recovered or withdrawn once the work has begun.

The CONSULTANT may terminate this agreement upon thirty (30) days written notice to the City if any of the following conditions occur: the City fails to make payment for services rendered within thirty (30) days after written notice of non-payment ; the City materially breaches the terms of this agreement and fails to cure such breach within thirty (30) days after written notice.

The City prevents, obstructs, or materially interferes with the CONSULTANT's ability to perform the agreed scope of services. the City materially breaches the terms of this agreement and fails to cure such breach within thirty (30) days after written notice.

13. ASSIGNMENT AND DELEGATION

This Agreement is a personal service contract and the work hereunder shall not be assigned, delegated or subcontracted by CONSULTANT to any other person or entity without the

prior express written consent of CITY. If an assignment, delegation or subcontract is approved, all approved assignees, delegates and subconsultants must satisfy the insurance requirements as set forth in Sections 9 and 10 hereinabove.

14. COPYRIGHTS/PATENTS

CITY shall own all rights to any patent or copyright on any work, item or material produced as a result of this Agreement.

15. CITY EMPLOYEES AND OFFICIALS

CONSULTANT shall employ no CITY official nor any regular CITY employee in the work performed pursuant to this Agreement. No officer or employee of CITY shall have any financial interest in this Agreement in violation of the applicable provisions of the California Government Code.

16. NOTICES

Any notices, certificates, or other communications hereunder shall be given either by personal delivery to CONSULTANT's agent (as designated in Section 1 hereinabove) or to CITY as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, to the addresses specified below. CITY and CONSULTANT may designate different addresses to which subsequent notices, certificates or other communications will be sent by notifying the other party via personal delivery, a reputable overnight carrier or U. S. certified mail-return receipt requested:

TO CITY:

City of Huntington Beach
ATTN: City Manager
2000 Main Street
Huntington Beach, CA 92648

TO CONSULTANT:

Wolffhaus
ATTN: Tyler Wolff
1309 Coffeen Avenue, Suite 1200
Sheridan, WY 82801

17. CONSENT

When CITY's consent/approval is required under this Agreement, its consent/approval for one transaction or event shall not be deemed to be a consent/approval to any subsequent occurrence of the same or any other transaction or event.

18. MODIFICATION

No waiver or modification of any language in this Agreement shall be valid unless in writing and duly executed by both parties.

19. SECTION HEADINGS

The titles, captions, section, paragraph and subject headings, and descriptive phrases at the beginning of the various sections in this Agreement are merely descriptive and are included solely for convenience of reference only and are not representative of matters included or excluded from such provisions, and do not interpret, define, limit or describe, or construe the intent of the parties or affect the construction or interpretation of any provision of this Agreement.

20. INTERPRETATION OF THIS AGREEMENT

The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be unenforceable, void, illegal or invalid, such holding shall not invalidate or affect the remaining covenants and provisions of this Agreement. No covenant or provision shall be deemed dependent upon any other unless so expressly provided here. As used in this Agreement, the masculine or neuter gender and singular or plural number shall be deemed to include the other whenever the context so indicates or requires. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision

contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no right to contract, then the latter shall prevail, and the provision of this Agreement which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

21. DUPLICATE ORIGINAL

The original of this Agreement and one or more copies hereto have been prepared and signed in counterparts as duplicate originals, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original. Each duplicate original shall be deemed an original instrument as against any party who has signed it.

22. IMMIGRATION

CONSULTANT shall be responsible for full compliance with the immigration and naturalization laws of the United States and shall, in particular, comply with the provisions of the United States Code regarding employment verification.

23. LEGAL SERVICES SUBCONTRACTING PROHIBITED

CONSULTANT and CITY agree that CITY is not liable for payment of any subcontractor work involving legal services, and that such legal services are expressly outside the scope of services contemplated hereunder. CONSULTANT understands that pursuant to *Huntington Beach City Charter* Section 309, the City Attorney is the exclusive legal counsel for CITY; and CITY shall not be liable for payment of any legal services expenses incurred by CONSULTANT.

24. ATTORNEY'S FEES

In the event suit is brought by either party to construe, interpret and/or enforce the terms and/or provisions of this Agreement or to secure the performance hereof, each party shall

bear its own attorney's fees, such that the prevailing party shall not be entitled to recover its attorney's fees from the nonprevailing party.

25. SURVIVAL

Terms and conditions of this Agreement, which by their sense and context survive the expiration or termination of this Agreement, shall so survive.

26. GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

27. SIGNATORIES

Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify CITY fully for any injuries or damages to CITY in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

28. ENTIRETY

The parties acknowledge and agree that they are entering into this Agreement freely and voluntarily following extensive arm's length negotiation, and that each has had the opportunity to consult with legal counsel prior to executing this Agreement. The parties also acknowledge and agree that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by that party or anyone acting on that party's behalf, which are not embodied in this Agreement, and that that party has not executed this Agreement in reliance on any representation, inducement, promise, agreement, warranty, fact or circumstance not expressly set forth in this Agreement. This Agreement, and the attached exhibits, contain the entire agreement between the parties respecting the subject matter of this Agreement, and supersede all prior

understandings and agreements whether oral or in writing between the parties respecting the subject matter hereof.

29. EFFECTIVE DATE

This Agreement shall be effective on the date of its approval by the City Council.

This Agreement shall expire when terminated as provided herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers.

CONSULTANT,
WOLFFHAUS

CITY OF HUNTINGTON BEACH,
a municipal corporation of the State of
California

By: _____

Director/Chief
(Pursuant To HBMC §3.03.100)

print name
ITS: (circle one) Chairman/President/Vice President

AND

APPROVED AS TO FORM:

By: _____

City Attorney

print name
ITS: (circle one) Secretary/Chief Financial Officer/Asst.
Secretary – Treasurer

Date _____

RECEIVE AND FILE:

City Clerk

Date _____

EXHIBIT "A"

A. STATEMENT OF WORK: (Narrative of work to be performed)

SEE ATTACHED EXHIBIT A

B. CONSULTANT'S DUTIES AND RESPONSIBILITIES:

SEE ATTACHED EXHIBIT A

C. CITY'S DUTIES AND RESPONSIBILITIES:

D. WORK PROGRAM/PROJECT SCHEDULE:

EXHIBIT "B"

Payment Schedule (Fixed Fee Payment)

1. CONSULTANT shall be entitled to monthly progress payments toward the fixed fee set forth in Section 4 of the Contract.
2. CONSULTANT shall submit to CITY an invoice as follows:
 - A) Reference this Agreement;
 - B) Describe the services performed;
 - C) Show the total amount of the payment due;
 - D) Include a certification by a principal member of CONSULTANT's firm that the work has been performed in accordance with the provisions of this Agreement;
and
 - E) For all payments include an estimate of the percentage of work completed.
3. Any billings for extra work or additional services authorized in advance and in writing by CITY shall be invoiced separately to CITY. Such invoice shall contain all of the information required above, and in addition shall list the hours expended and hourly rate charged for such time. Such invoices shall be approved by CITY if the work performed is in accordance with the extra work or additional services requested, and if CITY is satisfied that the statement of hours worked and costs incurred is accurate. Such approval shall not be unreasonably withheld. Any dispute between the parties concerning payment of such an invoice shall be treated as separate and apart from the ongoing performance of the remainder of this Agreement.