

ORDINANCE NO. 39-24

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH ENCOMPASS MARKETING AS THE CITY'S MARKETING AND COMMUNICATIONS CONSULTANT FOR THE AVON AQUATIC FACILITY AND DECLARING AN EMERGENCY

WHEREAS, the City has long recognized that revenues can be achieved through the sale of corporate naming rights and advertising involving the City's Aquatic Center; and

WHEREAS, in furtherance of realizing these revenues, the City contracted with Look Strategies, LLC and its CEO, Steve Corcoran pursuant to Ordinance No. 20-15 to develop a marketing and communications strategy to facilitate the sale of corporate sponsorships and advertising plans specific to the City's aquatic facility. That relationship continued until February 2024; and

WHEREAS, the City now desires to contract with Encompass Marketing and its Director, Paula M. Pitasky, and to move forward with a formal contract authorizing Encompass Marketing to act as the City's exclusive agent in the marketing of corporate sponsorships and advertising at the aquatic site; and

WHEREAS, Council, having reviewed the contract with Encompass Marketing, finds it to be fair and equitable and authorizing the Mayor to enter into said contract to be in the best interests of the health, safety, and welfare of the citizens of Avon.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, LORAIN COUNTY, OHIO:

Section 1 - That the Mayor is hereby authorized to enter into a contract with Encompass Marketing in substantially the form as set forth in the attached Exhibit A, which is incorporated herein by this reference, for the planning, coordinating and implementing of a comprehensive program to promote and sell corporate sponsorships and advertising for the City's Aquatic Facility.

Section 2 - Payment in the amounts set forth in the contract are hereby authorized to be made by the Finance Director under the terms and conditions set forth therein.

Section 3 - That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4 - That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety and welfare of the citizens of the City of Avon, the immediate emergency being the necessity to contract with Encompass Marketing to be

Ordinance No. 39-24 (Con't.)

the marketing and communications consultant for the City as soon as possible in advance of the upcoming opening of the City's Aquatic Center; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: March 25, 2024 DATE SIGNED: March 25, 2024

By: Brian Fischer
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR: March 26, 2024

Bryan K. Jensen
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior
John A. Gasior, Law Director

ATTEST:

Barbara Brooks
Barbara Brooks, Clerk of Council

POSTED: March 27, 2024
Electronically and at City Hall as
Provided by Council

Prepared By:
John A. Gasior, Esq.
Law Director

I, Barbara J. Brooks, Clerk of the Council of the City of Avon, Ohio, hereby certify this document to be a true and exact copy of Ordinance No. 39-24, passed by the Council of said City on March 25th, 2024.

IN WITNESS WHEREOF, I have on this 25th day of March 2024, affixed my signature and official seal.

Barbara J. Brooks
Barbara J. Brooks, Clerk of the Council
of the City of Avon, Ohio

INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement (the "Agreement") is entered into by and between the below listed parties and will become effective on March 1st, 2024 upon subsequent adoption of legislation (Ord. No. 39-24) by Avon City Council (the "Effective Date"). The Parties agree to the following terms as set forth in this Agreement:

The City:
City of Avon, Ohio
36080 Chester Road
Avon, Ohio 44011

Contractor:
Paula Pitasky LLC d/b/a Encompass Marketing
36311 Detroit Road, Suite 201
Avon, Ohio 44011

1. Term.

- 1.1 The term of this Agreement shall commence on the Effective Date and be in effect for a period of Nineteen (19) months from the Effective Date or until earlier terminated based upon the terms of this Agreement or by the written consent of both parties.
- 1.2 Upon expiration of the initial term of this Agreement, this Agreement shall be automatically renewed for additional twelve (12) month terms beginning October 1, 2025 and ending September 30, 2026 unless a party otherwise provides at least thirty (30) days advance written notice to the other party of its intention to allow this Agreement to expire.
- 1.3 For convenience, either party may terminate this Agreement at any time without cause upon providing the other party with at least thirty (30) days advance written notice.
- 1.4 Upon termination for any reason, Contractor shall be entitled to receive payment for any past unpaid work performed and commissions earned but not yet paid and Contractor agrees to provide The City with all such completed work or work in-progress that Contractor has completed as of the date of such termination.

2. Contractor's Compensation.

- 2.1 For all sponsorships generated under this Agreement, the Contractor will receive the following compensation for performing the Scope of Work throughout a term:
 - 2.1.1 Contractor shall receive a Fifteen (15%) percent commission on the first Seventy-Five Thousand Dollars and 00/100 (\$75,000.00) of aggregated gross sponsorship revenue dollars actually collected from all sponsors during and an Eighteen (18%) percent commission on all aggregated gross sponsorship revenue dollars actually collected from all sponsors that exceed Seventy-Five Thousand Dollars and 00/100 (\$75,000.00) (collectively referred to as the "Fee").
 - 2.1.2 Contractor shall be eligible to earn the Fee throughout the initial nineteen (19) month term commencing on the Effective Date and ending on September 30, 2025.
 - 2.1.3 Upon the commencement of a new term under this Agreement on October 1 of a calendar year, the aggregate sponsorship dollars will be reset to zero dollars (\$0.00) in calculating the Fee earned and due to Contractor during such term.

- 2.1.4 The City agrees to direct all sponsors to the Contractor for handling based on the terms of this Agreement.
- 2.2 The City shall reimburse Contractor for costs Contractor incurs in performing the Scope of Work when such costs are outside the ordinary and customary costs of operating Contractor's business, e.g., such as the costs of an email automation subscription (similar to Constant Contract), graphic design fees incurred, and the like.
 - 2.2.1 Contractor is to provide The City with an invoice detailing the costs Contractor incurred in performing the Scope of Work and, upon demand, provide The City with any additional supporting documents requested.
 - 2.2.2 The City is to reimburse the Contractor the amount set forth in the invoice within thirty (30) days after receipt of such invoice or otherwise, provide a written objection.
- 2.3 Contractor agrees to provide The City with a fully completed IRS Form W-9 at the time Contractor executes this Agreement.
- 2.4 Upon expiration of the Term or upon termination of this Agreement for any reason, The City shall continue to pay to Contractor all amounts due and owing set forth in any invoices received prior to the expiration or termination of the Term along with any Fees that have been earned but not yet paid.

3. Scope of Work.

- 3.1 The City provides the Contractor with the authority to:
 - 3.1.1 Determine the location of a particular sponsorship opportunity within The City in conjunction with review, discussion, and approval of the appropriate official within The City, such as the director of the aquatic center.
 - 3.1.2 Determine the length or duration of a particular sponsorship opportunity.
 - 3.1.3 The amount to be charged for the various sponsorship opportunities available to sponsors.
 - 3.1.4 The ancillary benefits that a sponsor will receive in agreeing to sponsor a particular sponsorship opportunity.
 - 3.1.5 Determine and approve the content of a sponsor's signage and/or advertising materials but, notwithstanding the foregoing, the Contractor shall not enter into any sponsorship agreement with any adult oriented business or permit any adult oriented signage or advertising materials.
 - 3.1.6 Invoice the sponsor the cost of the applicable sponsorship opportunity, request that the sponsor remit payment to the Contractor, and advise that the sponsor's payment is to be made payable to the "City of Avon."
 - 3.1.7 Promptly deliver sponsor payments to The City care of the finance department or as otherwise so advised.
 - 3.1.7.1 Upon The City's receipt of the sponsorship payment, the Contractor is to also include an invoice of the Fee due and owing as it pertains to that particular invoice.
 - 3.1.7.2 The City shall remit payment of the Fee to Contractor within fifteen (15) days after receipt of Contractor's invoice.
- 3.2 The City provides the Contractor with the authority to approve and execute sponsorship agreements with sponsors if the total amount of the sponsorship fee to be paid pursuant to a sponsorship agreement (in the aggregate) is equal to or less than Ten Thousand Dollars and 00/100 (\$10,000.00). If the total amount of the sponsorship fee to be paid pursuant to a sponsorship

agreement (in the aggregate) is greater than Ten Thousand Dollars and 00/100 (\$10,000.00), a representative from the mayor's office shall approve and execute the sponsorship agreement with the sponsor.

3.3 Unless indicated otherwise, Contractor's primary contact within The City is the mayor or the mayor's administrative assistant.

4. Contractor Obligations.

- 4.1 Contractor agrees and understands that Contractor has the requisite knowledge, education, and experience to perform the Scope of Work.
- 4.2 Contractor agrees to provide the Scope of Work in a diligent, competent, and professional manner and in compliance with all applicable laws, rules, and ethics of the profession.
- 4.3 In performing the Scope of Work, Contractor will perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
- 4.4 During the term of this Agreement, Contractor shall devote as much of Contractor's productive time, energy, and abilities to the performance of Contractor's duties hereunder as is necessary to perform the required duties in a timely and productive manner.
- 4.5 Contractor may use Contractor's employees and/or independent contractors in the performance of the Scope of Work.
- 4.6 Contractor agrees to keep complete and accurate records or cause complete and accurate records to be kept for all work performed by Contractor.
- 4.7 Contractor is expressly free to perform services for others while performing services for The City, subject to any limitations contained within this Agreement.

5. Independent Contractor.

- 5.1 Subject to the terms and conditions hereof, The City retains Contractor as an independent contractor and Contractor hereby accepts such engagement.
- 5.2 This relationship cannot be changed or modified unless in writing and signed by both Parties.
- 5.3 Nothing contained in this Agreement shall be deemed or interpreted to constitute Contractor as a partner, joint venturer, agent, or employee of The City.
- 5.4 Contractor understands that Contractor is not eligible to take part in any of The City's employee benefit programs that The City offers to The City's employees.
- 5.5 As an independent contractor, Contractor shall be in control of Contractor's equipment, working methods, and techniques.
- 5.6 Contractor will supply, at Contractor's sole expense, all equipment, tools, supplies, and materials necessary to perform the Scope of Work under this Agreement.
- 5.7 Contractor acknowledges and agrees that Contractor shall be responsible for paying any and all taxes assessed by all federal, state, and local taxing authorities relating to all payments that Contractor receives from The City pursuant to this Agreement.

6. Wage and Hour. Contractor agrees to comply with all applicable federal, state, and/or local wage and hour laws in the payment of employees and contractors in performing the Scope of Work.

7. Confidentiality

- 7.1 In performing the Scope of Work pursuant to the terms of this Agreement, it is anticipated that Contractor will learn information that The City regards as confidential or proprietary.

Contractor will maintain the confidentiality of this information and any other information which Contractor may acquire with respect to The City's operations, unless and until The City consents to disclosure.

- 7.2 Upon the expiration or termination of this Agreement for any reason whatsoever, Contractor agrees to return to the The City or destroy (except for confidential information contained in the regular and periodic backing-up of Contractor's digital files) the Confidential Information which is in Contractor's possession or control.

8. Default. In the event a party is in default in the full and timely performance of any of its obligations under the terms of this Agreement, for any reason other than such party's default, the non-defaulting party shall provide the defaulting party with written notice setting forth in particular the alleged default and the defaulting party shall have seven (7) days after receipt of the written notice, to cure the default. If the defaulting party fails to cure the default in a timely fashion, then the non-defaulting party may: (1) enforce the terms this Agreement, and/or (2) terminate the Term of this Agreement.

9. Severability of Provisions.

- 9.1 If any provision, paragraph, or subparagraph of this Agreement is adjudicated by any court of competent jurisdiction to be void or unenforceable in whole or in part, this adjudication shall not affect the validity of the remainder of the Agreement including any other provision, paragraph, or subparagraph.
- 9.2 Each provision, paragraph, and subparagraph of this Agreement is separable from every other provision, paragraph, and subparagraph and constitutes a separate and distinct covenant.

10. Assignment.

- 10.1 This Agreement shall be binding upon and shall inure to the benefit of the parties and their successors and assigns.
- 10.2 Contractor may assign Contractor's rights, responsibilities, and obligations under this Agreement to a third-party, including all rights and obligations herein, upon The City providing its written consent.
- 10.3 The City may assign The City's rights, responsibilities, and obligations under this Agreement to a third-party, including all rights and obligations herein.

11. Entire Agreement.

- 11.1 As to the matters contained herein, this Agreement constitutes the complete understanding between the parties, all prior representations or agreements having been merged into this Agreement.
- 11.2 No alteration or modification to any of the provisions of this Agreement shall be valid unless made in writing and signed by both parties.
- 11.3 The obligations contained in this Agreement shall survive the termination of this Agreement.
- 11.4 In addition, the termination of this Agreement shall not affect any of the rights or obligations of either party arising prior to or at the time of the termination of this Agreement, or which may arise by any event causing the termination of this Agreement.

12. Headings. The captions and headings used herein are for convenience purposes only and are not intended to define or limit the scope, extent, or intent of the Agreement or any provision hereof and shall not affect the meaning, interpretation, or construction of any provision of the Agreement.

13. Conflicts of Interest. Each party to this Agreement represents that it, and its principals, is free to enter into this Agreement and that this engagement does not violate the terms of any agreement with any third party.

14. Insurance. Contractor agrees that at all times during the term of the Agreement Contractor will carry, at Contractor's sole cost and expense, liability insurance and insurance coverage amounts which are customary in Contractor's industry.

15. Notices.

- 15.1 Any and all notices, demands, or other communications required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to another party if personally served, or if deposited in the federal mail service, certified or registered, postage prepaid, return receipt requested, or if sent via electronic mail with delivery receipt.
- 15.2 If such notice or demand is served personally, notice shall be deemed constructively made at the time of such personal service.
- 15.3 All other notices, demands, or other communications shall be conclusively deemed given five days after deposit thereof in the United States mail, sent via electronic mail and addressed to the party to whom such notice, demand, or other communication is to be sent at the address set forth at the beginning of this Agreement.

Any party may change any of the contact information listed above by written notice in the manner so provided.

16. No Third-Party Beneficiaries. No individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or governmental authority other than The City and Contractor and their respective successors and permitted assigns shall have or be construed to have any legal or equitable right, remedy, or claim under or in respect of or by virtue of any provision of this Agreement or in reliance hereon.

17. Full Authority and Capacity. The Parties warrant to each other that they are legally able to enter into this contractual agreement and that they are not under any legal restriction or legal disability that would prohibit them from carrying out their responsibilities under the Agreement.

18. Invalidity. In the event that any of the provisions of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

19. Construction. This Agreement has been carefully read, the contents hereof are known and understood, and it is freely signed by the parties hereto. This Agreement shall not be construed against the party responsible for drafting any section alleged to be ambiguous or uncertain in the event of ambiguities and uncertainties.

6