

RESOLUTION NO. 2944

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH JAYRAY ADS & PR, INC, FOR ‘EXPLORE WILSONVILLE’ TOURISM PROMOTION AND DEVELOPMENT AND DESTINATION MARKETING SERVICES.

WHEREAS, the City Council adopted on May 5, 2014, Resolution No. 2468 approving the *Wilsonville Tourism Development Strategy* (“Strategy”), which set forth a blueprint for implementing a tourism strategy for the greater Wilsonville community, including forming a Destination Marketing Organization (DMO) or committee to develop and promote tourism; and

WHEREAS, the City Council adopted on June 15, 2015, Resolution No. 2541 to establish the Tourism Promotion Committee that, among other duties, is to oversee the implementation of the Strategy and develop an annual business plan; and

WHEREAS, the City Council adopted on April 4, 2016, the first annual *FY 2016/17 Five-Year Action Plan and Annual One-Year Implementation Plan for the Wilsonville Tourism Development Strategy* (“Plan”), a business plan for the tourism promotion program; and

WHEREAS, the City Council adopted on June 19, 2017, the second annual rolling *FY 2017/18 Five-Year Action Plan and Annual One-Year Implementation Plan for the Wilsonville Tourism Development Strategy* (“Plan”), a business plan for the tourism promotion program; and

WHEREAS, the City Council adopted on Feb. 22, 2018, Resolution No. 2669, which approved the *FY 2017/18 & 18/19 Tourism Promotion Marketing Plan* composed of the “FY 2017/18 & 18/19 Marketing Playbook” Plan, dated February 2018, and supporting “Scope of Work 2018/2019 Advertising & Marketing Services,” dated January 19, 2018, to implement the *Wilsonville Tourism Development Strategy*; and;

WHEREAS, the City Council adopted on March 19, 2018, Resolution No. 2681 that approved a Tourism Advertising and Marketing Services Professional Services Agreement that exercised a first one-year contract extension with a tourism operations and marketing development consultant that supports implementation Resolution No. 2669; and

WHEREAS, the City Council adopted on July 16, 2018, Resolution No. 2699 the third annual rolling *FY 2018/19 Five-Year Action Plan and Annual One-Year Implementation Plan for the Wilsonville Tourism Development Strategy* (“Plan”), a business plan for the tourism promotion program; and

WHEREAS, the City Council adopted on July 15, 2019, Resolution No. 2758 that approved the *FY 2019/20 Five-Year Action Plan and Annual One-Year Implementation Plan for the Wilsonville Tourism Development Strategy and Half-Year FY 2019/20 Tourism Promotion & Destination Marketing Services Plan* for the period of time from June 30, 2019, to January 1, 2020; and

WHEREAS, the City Council adopted on December 16, 2019, Resolution 2776 a professional services agreement with JayRay Ads and PR, Inc. to implement the remaining FY 2019/20 and FY 2020/21 Tourism Promotion & Destination Marketing Services Plan; and

WHEREAS, the COVID-19 Pandemic necessitated a first amendment dated June 4, 2020 to modify the scope of work and reduce the budget; and

WHEREAS, the City Council adopted on May 3, 2021, Resolution No. 2891 that authorized the City Manager to execute a second amendment to the Professional Services Agreement with JayRay Ads & PR, Inc., for the purpose of extending the time for performance from July 1, 2021, through December 31, 2022 with contract payments not to exceed \$120,000.00 during FY2021/22 and FY2022/23; and

WHEREAS, the City Council adopted the June 15, 2020, Resolution No. 2825 that approved the fifth annual rolling *FY 2020/21 Five-Year Action Plan and Annual One-Year Implementation Plan for the Wilsonville Tourism Development Strategy*, a business plan for the tourism promotion program; and

WHEREAS, the City Council adopted the May 17, 2021, Resolution No. 2898 that approved the *FY 2020/21 Five-Year Action Plan and Annual One-Year Implementation Plan for the Wilsonville Tourism Development Strategy*, a business plan for the tourism promotion program; and

WHEREAS, City staff worked with the Tourism Promotion Committee to develop a *Request for Proposals (RFP) for 'Explore Wilsonville' Tourism Promotion and Development and Destination Marketing Services* published on October 8, 2021, that would cover the period of July 1, 2022, through June 30, 2023; and

WHEREAS, the City received two (2) qualified proposals by the deadline of October 27, 2021, that members of the Tourism Promotion Committee and staff acting as the Selection Review Committee reviewed on November 10, 2021, and recommended to the City Council as the consensus choice of the committee with the highest criteria evaluation retaining the professional services of JayRay Ads & PR, Inc., of Tacoma, Washington; and

WHEREAS, the City and members of the Tourism Promotion Committee believe that the proposal by JayRay Ads & PR, Inc., provides the needed tourism promotion and development and destination marketing services by City and is in the best interest of the City to continue the tourism-promotion program; and

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Council approves and authorizes the City Manager to execute on behalf of the City of Wilsonville a Professional Services Agreement with JayRay Ads & PR, Inc., for 'Explore Wilsonville' Tourism Promotion and Development and Destination Marketing Services for the period of July 1, 2022, through June 30, 2023, with contract payments not to exceed \$150,000.00 during FY2022/23.
2. The City Council approves up to two (2) renewals of the contact for up to \$200,000.00 during FY2023/24 and FY 24/25 not to exceed a total of \$550,000.
3. Attached hereto as Exhibit 1 with the term of the agreement ending on June 30, 2023 unless renewed no more than twice.
4. This resolution becomes effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 20th day of January 2022, and filed with the Wilsonville City Recorder this date.

DocuSigned by:
Julie Fitzgerald
8A974AF3ADE042E...
Julie Fitzgerald, Mayor

ATTEST:

DocuSigned by:
Kimberly Veliz
E781DE10276B498...
Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald	Yes
Council President Akervall	Yes
Councilor Lehan	Excused
Councilor West	Yes
Councilor Linville	Yes

Exhibit:

1. Professional Services Agreement with JayRay Ads & PR, Inc., for 'Explore Wilsonville' Tourism Promotion and Development and Destination Marketing Services

**CITY OF WILSONVILLE
PROFESSIONAL SERVICES AGREEMENT**

Tourism Promotion and Destination Marketing

This Professional Services Agreement (“Agreement”) for the Tourism Promotion and Destination Marketing Project (“Project”) is made and entered into on this _____ day of _____ 2022 by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **JayRay Ads & PR, Inc.**, a Washington corporation (hereinafter referred to as “Consultant”).

RECITALS

WHEREAS, the City requires services which Consultant is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Consultant represents that Consultant is qualified to perform the services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Consultant is prepared to provide such services as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Scope of Work

Consultant shall diligently perform the tourism advertising and marketing services according to the requirements identified in the Scope of Work for the Project, attached hereto as **Exhibit A** and incorporated by reference herein (the “Services”).

Section 2. Term

Unless earlier terminated in accordance herewith, the term of this Agreement shall be for a period of one (1) year from July 1, 2022 (“Initial Term”), with two (2) one-year extension options (“Extension Term”), which may be exercised in the City’s sole discretion. Except in the event of an extension of time, agreed to in writing by the City, all Services for the Initial Term must be completed by no later than June 30, 2023, as outlined in the Scope of Work. Any extension option must be exercised by the City, in writing, prior to expiration of the Initial Term of this Agreement or any subsequent Extension Term.

Section 3. Consultant's Services

3.1. All written documents prepared by Consultant in conjunction with the Services shall bear the signature, name, or logo of, or otherwise be identified as coming from, Consultant's authorized Project Manager.

3.2. Consultant will not be deemed to be in default by reason of delays in performance due to circumstances beyond Consultant's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or other unavoidable delays or acts of third parties not under Consultant's direction and control ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Services will be extended accordingly and proportionately by the City, in writing. Lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

3.3. The existence of this Agreement between the City and Consultant shall not be construed as the City's promise or assurance that Consultant will be retained for future services beyond the Scope of Work described herein.

3.4. Consultant shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Consultant may have access by reason of this Agreement. Consultant warrants that Consultant's employees assigned to the Services provided under this Agreement shall be clearly instructed to maintain this confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Agreement.

Section 4. Compensation

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Consultant on a time and materials basis, guaranteed not to exceed ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000), for performance of the Services for the Initial Term ("Compensation Amount"). Any compensation in excess of the Compensation Amount will require an express written Addendum to be executed between the City and Consultant.

4.2. As set forth in **Section 2**, this Contract allows for up to two (2) one-year extensions. The Compensation Amount for each one-year extension shall be on a time and materials basis, guaranteed not exceed TWO HUNDRED THOUSAND DOLLARS (\$200,000), for performance of the Services for that Extension Term ("Extension Compensation Amount"). The Total Compensation for this Contract, including two extensions, shall not exceed FIVE HUNDRED FIFTY-THOUSAND DOLLARS (\$550,000).

4.3. During the course of Consultant's performance, if the City, through its Project Manager, specifically requests Consultant to provide additional services that are beyond the Scope of Work described on **Exhibit A**, a written Addendum to this Agreement must be executed in compliance with the provisions of **Section 14**.

4.4. Except for amounts withheld by the City pursuant to this Agreement, Consultant will be paid for Services for which an itemized invoice is received by the City within thirty (30) days of

receipt, unless the City disputes such invoice. In that instance, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Consultant as promptly as is reasonably possible.

4.5. The City will be responsible for the direct payment of required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, and all other similar fees resulting from this Project, that are not specifically covered by **Exhibit A**.

4.6. Consultant's Compensation Amount is all inclusive and includes, but is not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits and similar contributions and benefits, technology and/or software charges, licensing, trademark, and/or copyright costs, office expenses, travel expenses, mileage, and all other indirect and overhead charges, including, but not limited to, the recently enacted Oregon Corporate Activity Tax (CAT).

Section 5. City's Project Manager

The City's Project Manager is Zoe Mombert. The City shall give Consultant prompt written notice of any re-designation of its Project Manager.

Section 6. Consultant's Project Manager

Consultant's Project Manager is Bridget Baeth. In the event that Consultant's designated Project Manager is changed, Consultant shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Consultant's Project Manager will not be changed without the written consent of the City, which consent shall not be unreasonably withheld. In the event the City receives any communication from Consultant that is not from Consultant's designated Project Manager, the City may request verification by Consultant's Project Manager, which verification must be promptly furnished.

Section 7. Subcontractors and Assignments

7.1. Consultant shall not subcontract with others for any of the Services prescribed herein. Consultant shall not assign any of Consultant's rights acquired hereunder without obtaining prior written approval from the City, which approval may be granted or denied in the City's sole discretion.

7.2. Unless expressly authorized in **Exhibit A** or **Section 8** of this Agreement, Consultant shall not subcontract with others for any of the Services prescribed herein. Consultant shall not assign any of Consultant's rights acquired hereunder without obtaining prior written approval from the City, which approval may be granted or denied in the City's sole discretion. Some Services may be performed by persons other than Consultant, provided Consultant advises the City of the names of such subcontractors and the work which they intend to perform, and the City specifically agrees in writing to such subcontracting. Consultant acknowledges such work will be provided to the City pursuant to a subcontract(s) between Consultant and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Agreement,

the City incurs no liability to third persons for payment of any compensation provided herein to Consultant. Any attempted assignment of this Agreement without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for work performed by others on behalf of Consultant shall not be subject to additional reimbursement by the City.

7.3. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Agreement. Consultant shall cooperate with the City and other firms, engineers or subcontractors on the Project so that all portions of the Project may be completed in the least possible time and within normal working hours.

7.4. Consultant shall include this Agreement by reference in any subcontract and require subcontractors to perform in strict compliance with this Agreement.

Section 8. Consultant Is Independent Contractor

8.1. Consultant is an independent contractor for all purposes and shall be entitled to no compensation other than the Compensation Amount provided for under **Section 4** of this Agreement. Consultant will be solely responsible for determining the manner and means of accomplishing the end result of Consultant's Services. The City does not have the right to control or interfere with the manner or method of accomplishing said Services. The City, however, will have the right to specify and control the results of Consultant's Services so such Services meet the requirements of the Project.

8.2. Consultant may request that some consulting services be performed on the Project by persons or firms other than Consultant, through a subcontract with Consultant. Consultant acknowledges that if such services are provided to the City pursuant to a subcontract(s) between Consultant and those who provide such services, Consultant may not utilize any subcontractor(s), or in any way assign its responsibility under this Agreement, without first obtaining the express written consent of the City, which consent may be given or denied in the City's sole discretion. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Consultant.

8.3. Consultant shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Consultant's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Consultant shall require that all of Consultant's subcontractors also comply with, and be subject to, the provisions of this **Section 8** and meet the same insurance requirements of Consultant under this Agreement.

Section 9. Consultant Responsibilities

9.1. Consultant must make prompt payment for any claims for labor, materials, or services furnished to Consultant by any person in connection with this Agreement as such claims become due. Consultant shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Consultant. If Consultant fails, neglects, or refuses to make prompt payment of any such claim, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor, materials, or services and offset the amount of the

payment against funds due or to become due to Consultant under this Agreement. The City may also recover any such amounts directly from Consultant.

9.2. Consultant must comply with all applicable Oregon and federal wage and hour laws, including Bureau of Labor and Industries (BOLI) wage requirements, if applicable. Consultant shall make all required workers compensation and medical care payments on time. Consultant shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Consultant shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Consultant shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be Consultant's responsibility. Consultant shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses.

9.3. No person shall be discriminated against by Consultant or any subcontractor in the performance of this Agreement on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Agreement, in whole or in part, by the City. References to "subcontractor" mean a subcontractor at any tier.

9.4. COVID-19 Safety Measures. Consultant must have a written policy in place to comply with all applicable local, state, and federal laws, regulations, and executive orders related to the COVID-19 coronavirus outbreak to ensure the protection of Consultant's employees and/or subcontractors, City employees, and the public. Consultant must provide its written policy to the City Project Manager at the commencement of the Project. In the event that Consultant is required to stop or delay work due to a COVID-19 related event, Consultant shall not be entitled to any additional payment, remobilization costs, or delay damages.

Section 10. Indemnity

10.1. Indemnification. Consultant acknowledges responsibility for liability arising out of the performance of this Agreement, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Consultant's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Agreement, or from Consultant's failure to perform its responsibilities as set forth in this Agreement. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Consultant shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Consultant of its responsibility to perform in full conformity with the City's requirements, as set forth in this Agreement, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Consultant's negligent performance of this Agreement, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 10.2**. Consultant shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Consultant. As used herein, the term "Consultant" applies to Consultant and

its own agents, employees, and suppliers, and to all of Consultant's subcontractors, including their agents, employees, and suppliers.

10.2. Standard of Care. In the performance of the Services, Consultant agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Consultant's profession practicing in the Portland metropolitan area. Consultant will re-perform any Services not meeting this standard without additional compensation. Consultant's re-performance of any Services, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Consultant's failure to perform in accordance with the applicable standard of care of this Agreement and within the prescribed timeframe.

Section 11. Insurance

11.1. Insurance Requirements. Consultant shall maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Agreement. Such insurance shall cover all risks arising directly or indirectly out of Consultant's activities or work hereunder. Any and all agents, contractors, or subcontractors with which Consultant contracts to work on the Services must have insurance that conforms to the insurance requirements in this Agreement. Additionally, if a subcontractor is an engineer, architect, or other professional, Consultant must require the subcontractor to carry Professional Errors and Omissions insurance and must provide to the City proof of such coverage. The amount of insurance carried is in no way a limitation on Consultant's liability hereunder. The policy or policies maintained by Consultant shall provide at least the following minimum limits and coverages at all times during performance under this Agreement:

11.1.1. Commercial General Liability Insurance. Consultant and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Agreement, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Agreement and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Agreement.

11.1.2. Professional Errors and Omissions Coverage. Consultant agrees to carry Professional Errors and Omissions Liability insurance on a policy form appropriate to the professionals providing the Services hereunder with a limit of no less than **\$2,000,000** per claim. Consultant shall maintain this insurance for damages alleged to be as a result of errors, omissions, or negligent acts of Consultant. Such policy shall have a retroactive date effective before the commencement of any work by Consultant on the Services covered by this Agreement, and coverage will remain in force for a period of at least three (3) years after termination of this Agreement.

11.1.3. Business Automobile Liability Insurance. If Consultant or any subcontractors will be using a motor vehicle in the performance of the Services herein, Consultant shall provide the City a certificate indicating that Consultant and its subcontractors have business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

11.1.4. Workers Compensation Insurance. Consultant, its subcontractors, and all employers providing work, labor, or materials under this Agreement that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Consultants who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.

11.1.5. Insurance Carrier Rating. Coverages provided by Consultant and its subcontractors must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

11.1.6. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Consultant's liabilities hereunder in insurance coverages. Additional Insured coverage under Consultant's Commercial General Liability, Automobile Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers." An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder. Consultant must be an additional insured on the insurance policies obtained by its subcontractors performing work on the Services contemplated under this Agreement.

11.1.7. Certificates of Insurance. As evidence of the insurance coverage required by this Agreement, Consultant shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Consultant agrees that it will not terminate or change its coverage during the term of this Agreement without giving the City at least thirty (30) days' prior advance notice and Consultant will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

11.2. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Consultant shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are “Claims Made” policies, Consultant will be required to maintain such policies in full force and effect throughout any warranty period.

Section 12. Early Termination; Default

12.1. This Agreement may be terminated prior to the expiration of the agreed upon terms:

12.1.1. By mutual written consent of the parties;

12.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Consultant by mail or in person; or

12.1.3. By Consultant, effective upon seven (7) days’ prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of Consultant, where such default is not cured within the seven (7) day period by the City. Withholding of disputed payment is not a default by the City.

12.2. If the City terminates this Agreement, in whole or in part, due to default or failure of Consultant to perform Services in accordance with the Agreement, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Consultant shall be liable for all costs and damages incurred by the City as a result of the default by Consultant, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Agreement. This Agreement shall be in full force to the extent not terminated by written notice from the City to Consultant. In the event of a default, the City will provide Consultant with written notice of the default and a period of ten (10) days to cure the default. If Consultant notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Agreement and seek remedies for the default, as provided above.

12.3. If the City terminates this Agreement for its own convenience not due to any default by Consultant, payment of Consultant shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Consultant against the City under this Agreement.

12.4. Termination under any provision of this Section shall not affect any right, obligation, or liability of Consultant or the City that accrued prior to such termination. Consultant shall surrender to the City items of work or portions thereof, referred to in **Section 16**, for which Consultant has received payment or the City has made payment.

Section 13. Suspension of Services

The City may suspend, delay, or interrupt all or any part of the Services for such time as the City deems appropriate for its own convenience by giving written notice thereof to Consultant. An adjustment in the time of performance or method of compensation shall be allowed as a result of such delay or suspension unless the reason for the delay is within Consultant's control. The City shall not be responsible for Services performed by any subcontractors after notice of suspension is given by the City to Consultant. Should the City suspend, delay, or interrupt the Services and the suspension is not within Consultant's control, then the City shall extend the time of completion by the length of the delay.

Section 14. Modification/Addendum

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both the City and Consultant. A modification is a written document, contemporaneously executed by the City and Consultant, which increases or decreases the cost to the City over the agreed Compensation Amount in **Section 4** of this Agreement, or changes or modifies the Scope of Work or the time for performance. No modification shall be binding or effective until executed, in writing, by both Consultant and the City. If Consultant incurs additional costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Addendum.

Section 15. Access to Records

The City shall have access, upon request, to such books, documents, receipts, papers, and records of Consultant as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts during the term of this Agreement and for a period of four (4) years after termination of the Agreement, unless the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Agreement.

Section 16. Property of the City

All documents, reports, and research gathered or prepared by Consultant under this Agreement, including but not limited to spreadsheets, charts, graphs, drawings, modeling, maps, data generation, papers, and diaries, shall be the exclusive property of the City and shall be delivered to the City prior to final payment. Any statutory or common law rights to such property held by Consultant as creator of such work shall be conveyed to the City upon request without additional compensation.

Section 17. Notices

Any notice required or permitted under this Agreement shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of Wilsonville
Attn: Zoe Mombert, Assistant to the City Manager
29799 SW Town Center Loop East
Wilsonville, OR 97070

To Consultant: JayRay Ads & RP, Inc.
Attn: Bridget Baeth, Senior Advisor and Principal
535 Dock Street, Suite 205
Tacoma, WA 98402

Section 18. Miscellaneous Provisions

18.1. Integration. This Agreement, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these or any other documents, the provisions of this Agreement shall control, and the terms most favorable to the City, within the City's sole discretion, will apply.

18.2. Legal Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Agreement may be enforced by an action at law or in equity.

18.3. No Assignment. Consultant may not assign this Agreement, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

18.4. Adherence to Law. In the performance of this Agreement, Consultant shall adhere to all applicable federal, state, and local laws (including the Wilsonville Code and Public Works Standards), including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Consultant is required by law to obtain or maintain in order to perform the Services described on **Exhibit A**, shall be obtained and maintained throughout the term of this Agreement.

18.5. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

18.6. Jurisdiction. Jurisdiction and venue for any dispute will be in Clackamas County Circuit Court.

18.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other

expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Agreement, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

18.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Agreement shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

18.9. Severability. If any provision of this Agreement is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.

18.10. Modification. This Agreement may not be modified except by written instrument executed by Consultant and the City.

18.11. Time of the Essence. Time is expressly made of the essence in the performance of this Agreement.

18.12. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Agreement, the first day from which the designated period of time begins to run shall not be included.

18.13. Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

18.14. Number, Gender and Captions. In construing this Agreement, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

18.15. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the

specific item in question, such as in the case of where this Agreement gives the City “sole discretion” or the City is allowed to make a decision in its “sole judgment.”

18.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

18.17. Interpretation. As a further condition of this Agreement, the City and Consultant acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the Agreement, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

18.18. Entire Agreement. This Agreement and all documents attached to this Agreement represent the entire agreement between the parties.

18.19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement but all of which together shall constitute one and the same instrument.

18.20. Authority. Each party signing on behalf of Consultant and the City hereby warrants actual authority to bind their respective party.

The Consultant and the City hereby agree to all provisions of this Agreement.

CONSULTANT:

CITY:

JAYRAY ADS & PR, INC.

CITY OF WILSONVILLE

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

Employer I.D. No. _____

APPROVED AS TO FORM:

Ryan Adams, Assistant City Attorney
City of Wilsonville, Oregon

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EXHIBIT A
SCOPE OF WORK

Explore Wilsonville Scope of Work & Budget Detail

TOURISM PROMOTION AND DEVELOPMENT AND DESTINATION MARKETING SERVICES

FY 2022-23: July 1, 2022-June 30, 2023

December 20, 2021

BUDGET: \$150,000

FY 2022-2023: July 1, 2022-June 30, 2023

MARKETING SERVICES: \$66,827

FY 2022-2023

Deliverables	Budget
Develop 2022-2023 high-level marketing plan for Tourism Promotion and Development and Destination Marketing Plan (includes media buy plan for digital campaign placements)	\$1,600
Art and creative direction, including concepting for two campaigns (Winter and Spring)	\$2,480
Ad design, production and copy writing	\$8,000
Advertising allowance (\$21,000) to reach target markets and grow followers. Primary focus on digital ads, geolocation marketing and Travel Oregon Visitor Guide. Work with partner organizations on co-op ad buys as available	\$24,000
Geolocation data to include custom analysis dashboard for six clusters (hotels, parks, attractions, high-visitation areas, etc.) of points of interest with charts, graphs, maps and tables with new data monthly and historical data. Also includes annual consumer spending (credit card) report	\$26,357
Geofencing management and data analysis	\$2,400
Certified Folder poster display at French Prairie Rest Area (annual allowance)	\$1,990
Reporting* of marketing KPIs *cost included in Management Services	
SUBTOTAL	\$ 66,827

WEBSITE SERVICES: \$15,960

FY 2022-2023

Deliverables	Budget
Annual maintenance including software/paid plug-in renewals, website hosting, domain renewal, SSL certificate renewals, security/hack alert scanning, and a technical support plan (necessary theme and plug-in updates, daily cloud backups, 24/7 uptime monitoring and website restored when down within an hour) <i>Includes domain name & SSL Certificate renewals include: ExploreWilsonville.com</i>	\$4,440
Provide ongoing content maintenance (attractions, lodging, calendar of events) for up to 3 hours a month distributed based on event, point of interest, or other seasonal need	\$6,660
Develop campaign landing pages (up to two) to track advertising, using FB Pixels/UTMs	\$1,840
Website content development (seasonal homepage image; homepage copy; featured landing pages and blog (4 repurposed media pitches) changed and maintained every quarter.	\$3,020
Reporting* of website traffic and related KPIs (up to 4 measurements such as visitors, top pages, locations and unique users) *cost included in Management Services	
SUBTOTAL	\$15,960

FY 2022-2023: July 1, 2022-June 30, 2023

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SOCIAL MEDIA SERVICES: \$22,670**FY 2022-2023**

Deliverables	Budget
Update social media strategy including quarterly content themes. Craft a master editorial calendar to include a balance of original and curated content across Instagram, Facebook and Pinterest	\$1,310
Write and produce social content (copy and images from existing photoshoot bank) 3-5 times per week for three social media channels following approved social media plan and editorial calendar. Up to 2 revisions, content delivered on a two-week basis	\$15,720
Community management and engagement (schedule and post content on three channels, find photos from followers to post, and grow followers)	\$4,440
Boosted post/ad allowance to increase social media reach/impressions and drive website traffic	\$1,200
Reporting* of social media KPIs *cost included in Management Services	
SUBTOTAL	\$22,670

PUBLIC RELATIONS SERVICES: \$22,743**FY 2022-2023**

Deliverables	Budget
Software subscription to robust Cision Media Database (\$1,000 annually) to provide monthly monitoring, media contact lists, distribution and reporting	\$1,000
Subscribe to database of relevant reporter inquiries, respond to media inquiries or media opportunities as needed. Monitor on a weekly basis	\$1,200
Develop annual story calendar with media lists for 4 approved themes with corresponding tactics including media pitches and press releases. Conduct targeted PR outreach and provide ongoing media follow-up, quarterly. Review and approve at ongoing monthly meetings	\$12,000
Micro influencer/travel blogger campaign (bring 4 IG influencers with travel blogs, each tasked to promote a different Wilsonville itinerary, 1 per quarter). Includes influencer selection, contracts, itinerary building and hosting.	\$6,743
Media hosting allowance for FAMS and approved media visits (\$1,800)	\$1,800
Reporting* of public relations KPIs *cost included in Management Services	
SUBTOTAL	\$22,743

MANAGEMENT SERVICES: \$21,800**FY 2022-2023**

Deliverables	Budget
Management of the overall tourism-promotion and destination marketing program (includes monthly virtual meetings to encompass strategy decisions such as marketing management efforts)	\$6,400
STR hotel report data, annual subscription renewal for Wilsonville for FY 2022-23	\$2,640
Renew memberships to Travel Portland and Oregon Destination Association FY 2022-23	\$900
Provide quarterly report (4) of key performance indicators (KPIs) and STR report, in addition to a combined report of contracted services including website, marketing/advertising, social media, geolocation data and PR. Reports will also include a high-level dashboard to track progress against annual goals and previous year's results. Includes one annual report	\$5,640
Send monthly email to tourism partners / TPC to share upcoming content themes, gather packages and deals for promotion, discuss opportunities to partner/host media	\$2,220
Attend Tourism Promotion Committee virtual meeting with TPC (4 total, 1 per quarter)	\$4,000
SUBTOTAL	\$21,800

TOTAL \$150,000