

**PORT OF GALVESTON
REQUEST FOR DISCUSSION**

BUSINESS ITEM

SUBJECT: Discuss and Consider Consulting Agreement Between the Board of Trustees of the Galveston Wharves, and Community Strategies LLC

DISCUSSION: This item was placed on the agenda for Trustee discussion and consideration.

Ray

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT ("Agreement") is entered into as of May 1, 2022 (the "Effective Date"), by and between the **BOARD OF TRUSTEES OF THE GALVESTON WHARVES** ("Client"), a separate utility of the City of Galveston, Texas (the "City"), and **COMMUNITY STRATEGIES, LLC**, a Texas Limited Liability Company, ("Consultant").

WHEREAS, Client is interested in obtaining strategic planning and communication services (the "Personal Services") for Client relating to Client's operations at the Port of Galveston (the "Port"), and Client desires to retain the services of Consultant in connection with those services;

WHEREAS, Consultant is a communications firm authorized to do business in Texas and whose sole member and employee, Kathy Thomas, is qualified to perform the Personal Services Client wishes it to perform; and

WHEREAS, Client has determined that Consultant is a qualified provider of these Personal Services based on demonstrated competence and qualifications, and that this Agreement represents a fair and reasonable price for the Personal Services.

NOW, THEREFORE, for and in consideration of the sum of \$10 and other valuable consideration, Client and Consultant agree to the following Terms, covenants, and conditions:

1. Performance by Consultant

Consultant agrees to provide Personal Services to Client, which may include but are not limited to the following:

- Communications planning
- Public relations
- Media relations
- Strategic messaging
- Writing
- Social media content
- Rebranding planning and rollout

Client and Consultant will agree upon the priority and timing of Consultant's performance of the Personal Services in advance. Once agreed, Consultant will provide timely delivery of the Personal Services.

2. Payment for Services

a. Fees, Price Protection. Client agrees to pay Consultant for the Personal Services based on an hourly rate of \$150 per hour, together with reasonable out-of-pocket expenses approved in advance by the Client and incurred by the Consultant pursuant to the terms of this agreement. Mileage incurred by the Consultant in the performance of work for the Client shall be reimbursed at a rate of 58.5 cents a mile. The Consultant will invoice at the end of each month and provide a detailed accounting of hours worked, services performed and status of deliverables. Invoices will be payable within 30 (thirty) days.

3. Obligations of Consultant

a. *Work on Client's Premises.* Consultant will ensure that its sole member and employee, Kathy Thomas, will, whenever on Client's premises, obey all reasonable instructions and directions issued by Client.

b. *Key Person.* Client and Consultant agree that Kathy Thomas is essential to Consultant's performance of the Personal Services being provided pursuant to this Agreement. Should Kathy Thomas no longer be active on Client's account or be employed by Consultant for any reason, this Agreement will terminate.

c. *Consultations, Reports.* When requested by Client, Consultant shall schedule periodic meetings to review the progress of all Personal Services being provided under this Agreement and the results thereof. Consultant also shall prepare and submit to Client when requested a written report setting forth the status of such work in a format to be mutually agreed upon by Consultant and Client, as well as copies of all documents relating to the Personal Services performed by Consultant.

4. Obligations of Client

Client agrees to make available to Consultant, upon reasonable notice, such information, data, and documentation regarding its facilities and infrastructure as may reasonably be required by Consultant to complete the Personal Services.

6. Term of Agreement

a. *Commencement and Renewal.* This Agreement shall commence on the Effective Date and shall remain in effect until December 31, 2022, unless sooner terminated as provided herein.

b. *Termination by Either Party.* Either party, upon giving written notice to the other party, may terminate this Agreement:

i. if the other party or its employees, consultants or other agents violate any provision of this Agreement and the violation is not remedied within 30 days of the party's receipt of written notice of the violation;

ii. if at any time after the commencement of the Personal Services, Client, in its reasonable judgment, determines that such services are inadequate, unsatisfactory, or substantially non-conforming to the specifications, descriptions, warranties, or representations contained herein and the problem is not remedied within 30 days of the party's receipt of written notice describing the problem; or

iii. at any time in the event the other party terminates or suspends its business, becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute, or becomes subject to direct control by a trustee or similar authority.

In the event that any of the above events occurs to a party, that party shall immediately notify

the other party of its occurrence.

c. ***Obligations on Expiration or Termination.*** Upon expiration or termination of this Agreement, Consultant shall promptly return to Client all information, files, documentation, media, related material, and any other material that is owned by Client, as well as any work product in progress. Expiration or termination of this Agreement shall not relieve either party of its obligations regarding Confidential Information under Section 7 below.

7. Confidential Information

a. ***Non-Disclosure.*** Consultant agrees not to use, disclose, sell, license, publish, reproduce or otherwise make available the Confidential Information (defined below) of Client except and only to the extent necessary to perform the Personal Services under this Agreement. Consultant agrees to secure and protect the Client's Confidential Information in a manner consistent with the maintenance of Client's confidential and proprietary rights in the information and to take appropriate action by instruction or agreement with its employees, consultants or other agents who are permitted access to Client's Confidential Information to satisfy its obligations under this Section.

b. ***Definition.*** "Confidential Information" means a party's information, not generally known by non-party personnel, used by the party and which is confidential or proprietary to the party or the disclosure of which would be detrimental to the party. Confidential Information includes, but is not limited to, the following types of information (whether or not reduced to writing or designated as confidential):

- i. work product resulting from or related to Services performed under this Agreement;
- ii. a party's computer software, including documentation;
- iii. a party's internal personnel, financial, marketing and other business information and manner and method of conducting business;
- iv. a party's security status, strategic operations, and other business plans and forecasts;
- v. confidential information provided by or regarding a party or a party's employees, customers, vendors and other contractors; and
- vi. the existence of a contractual relationship between the parties.

c. ***Confidentiality Agreement with Consultant's Employees.*** All of Consultant's employees or agents who perform services for Client shall sign a confidentiality agreement in a form approved by Client.

8. Indemnification

Indemnification of City and Client. Consultant INDEMNIFIES and HOLDS HARMLESS Client, its trustees, officers, agents and employees, and the City, its officers, agents and employees, against all costs and expenses, including, without limitation, attorneys' fees and costs of investigation and defense, as well as legal liability, whether from suit, judgment, settlement or otherwise arising out of any or all claims for injury to persons or property, including but not limited to injuries resulting in death, arising from, or caused by, or incident to any wrongful or negligent act or omission of Consultant, its agents, invitees, servants and employees upon the property of Client, or arising or resulting from any defective or unsafe condition for which Consultant is responsible, or of any apparatus, equipment or other property of Consultant, or in any other manner arising out of any action or inaction of Consultant relating to the performance of Services under this Agreement. Any language to the contrary notwithstanding, the covenants and agreements contained in this paragraph survive the termination or expiration of this Agreement for whatever cause.

9. Injunctive Relief

It is hereby understood and agreed that damages shall be an inadequate remedy in the event of a breach by Consultant of this Agreement and that any such breach by Consultant will cause Client great and irreparable injury and damage. Accordingly, Consultant agrees that Client shall be entitled, without waiving any additional rights or remedies otherwise available to Client at law or in equity or by statute, to injunctive and other equitable relief without proof of actual damages in the event of a breach or intended or threatened breach by Consultant.

10. No Assignment

Consultant must not assign or subcontract the whole or any part of this Agreement.

11. Other Provisions

a. **Status as Independent Contractor.** Consultant and Client are contractors independent of one another and neither party's employees will be considered employees of the other party for any purpose. This Agreement does not create a joint venture or partnership, and neither party has the authority to bind the other to any third party.

b. **Applicable Law and Forum.** This Agreement will be governed and construed in accordance with the laws of the State of Texas without regard to the conflicts of laws principles thereof. Any action or suit related to this Agreement must be brought in the state or federal courts sitting in Galveston County, Texas.

c. **Notices.** All notices, demands, or requests from one party to another must be in writing and must be (i) personally delivered, (ii) sent by mail, certified or registered, postage prepaid, (iii) sent by facsimile transmission, or (iv) sent by overnight delivery, in any case to the address stated in this Section, or to such other address as the party may request in writing, and are deemed to have been given at the time of receipt or delivery:

If to Client: Board of Trustees of the Galveston Wharves
123 Rosenberg, 8th Floor
Galveston, Texas 77550
Fax: (409) 766-6171
Attn.: Port Director

If to Consultant: Communication Strategies, LLC
P. O. Box 8045
Galveston, TX 77553
Attn.: Kathy Thomas

d. **Waiver.** No waiver by Client of any breach by Consultant of any of the provisions of this Agreement shall be deemed a waiver of any preceding or succeeding breach of the same or any other provisions hereof. No such waiver shall be effective unless in writing and then only to the extent expressly set forth in writing.

e. **Entire Agreement.** This Agreement constitutes the entire agreement between Consultant and Client with respect to the subject matter hereof.

f. **Modifications.** No modification of this Agreement shall be effective unless in writing and signed by both parties.

g. **Severability.** If any provision of this Agreement is invalid or unenforceable under any statute or rule of law, the provision is to that extent to be deemed omitted, and the remaining provisions shall not be affected in any way.

h. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which taken together will be deemed one and the same document. A photocopy or facsimile reproduction of an original signature of a party on this Agreement binds that party to the terms, covenants and conditions of this Agreement.

i. **No Personal Liability of Board.** The members of the BOARD OF TRUSTEES OF THE GALVESTON WHARVES, whether singularly or collectively, are not personally liable on this Agreement or for any breach thereof.

j. **Limitation of Liability of the City.** The City of Galveston is never liable to respond in damages or make indemnity, or contribution, or payment of any character from any source other than the property, and the income and revenues arising from the property, under the management and control of the BOARD OF TRUSTEES OF THE GALVESTON WHARVES by reason of, due to or caused by a breach of this Agreement.

IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have executed this Agreement on the date first set forth above.

CLIENT:

**BOARD OF TRUSTEES OF THE GALVESTON
WHARVES**

By: _____
Rodger E. Rees, Port Director / CEO

Approved as to form:

Counsel to the Board of Trustees
of the Galveston Wharves

CONSULTANT:

COMMUNITY STRATEGIES, LLC

By: _____
Kathy Thomas,
Sole Managing Member