

ATTACHMENT 5

CITY OF LAKE FOREST PILOT SERVICES AGREEMENT

This PILOT SERVICES AGREEMENT (“Agreement”) is made this ____ day of June, 2023, (“Effective Date”) by and between the City of Lake Forest (the “City”), a California municipal corporation, with its principal place of business at 100 Civic Center Dr., Lake Forest, California, and the Lake Forest Chamber of Commerce (the “Chamber”), a California nonprofit corporation, with its principal place of business at 26239 Enterprise Court, Lake Forest, California. The City and the Chamber are sometimes individually referred to as “Party” and collectively referred to as the “Parties”.

RECITALS

WHEREAS, the City is desirous of promoting business, residential, and economic development opportunities within the City, disseminating information relative thereto, and of properly following up and giving consideration to inquiries made relative to the various activities of the City, and its business, residential, and economic development opportunities; and

WHEREAS, the Chamber has special knowledge, experience, and facilities for disseminating such information, is organized for and equipped to carry on promotional activities on behalf of the City, and to publicize and market the economic and regional advantages that the City has to offer to business, residential, and industrial interests.

NOW, THEREFORE, IN VIEW OF THE GOALS AND OBJECTIVES OF THE CITY AND THE PROMISES THE CITY AND THE CHAMBER SET FORTH IN THIS AGREEMENT, THE CITY AND THE CHAMBER AGREE, AS FOLLOWS:

1. Term.

The term (“Term”) of this Agreement shall be from July 1, 2023, to June 30, 2024, unless earlier terminated in accordance with Section 10.1.

2. Scope of Work

2.1 The Chamber shall host Beer and Wine Gardens at the Summer Concerts in the Parks and cosponsor the annual Business Appreciation Luncheon.

2.2 The Parties shall provide the General and Specific Scope of Work outlined in the Scope of Work, Exhibit “A”, attached hereto and incorporated herein by this reference.

3. Consideration

3.1 In consideration of the Scope of Work to be performed by the Chamber for the City, as set forth herein, the City hereby agrees to pay the Chamber during the Term of this Agreement, the sum of twenty-one thousand dollars (\$21,000) (“City Investment”). The Chamber shall receive quarterly payments in the amount of five thousand two-hundred and fifty dollars (\$5,250). The Chamber shall submit quarterly invoices and reports, as provided for in Section 4.1 below, to the City fifteen (15) days prior to the scheduled payment, as provided for in Section 3.2.

3.2 Payments will follow the quarterly schedule provided below:

August 31, 2023
November 30, 2023
February 29, 2024
May 30, 2024

3.3 Each payment by the City shall be conditioned upon the following:

3.3.1 The Chamber is not in default of any material terms of this Agreement;
and

3.3.2 The Chamber maintains its nonprofit 501(c)(6) status.

4. Reports

4.1 The Chamber shall provide the City with one (1) set of quarterly reports setting forth the receipt and disbursement of funds consistent with industry standards and principles for record-keeping and accounting. The report shall identify the expenditure of the City's Investment for the previous quarter and demonstrate the Chamber's full compliance with the requirements of this Agreement. The reports shall also include the total cost of the events that took place during the reporting quarter. Costs should be broken down by line item and should include, but not limited to: costs for catering, decorations, staffing, marketing, etc. The Chamber shall work cooperatively in resolving the City's inquiries or questions regarding the services provided. The report shall include a summary of accomplishments achieved during the reporting period. The Chamber shall file reports with the City within fifteen (15) days prior to the end of the respective quarter throughout the Term of this Agreement.

4.2 The Chamber shall maintain complete and accurate financial records, including but not limited to, receipts and disbursements, with respect to all costs and expenses incurred by the Chamber during the Term of this Agreement. All such records shall be clearly identifiable. The Chamber, upon the City's request, shall allow a representative of the City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement.

5. Political Activities

5.1 No portion of the City's Investment shall be used for political purposes and shall only be used for those services provided for in the Scope of Work required of the Chamber by the terms and conditions of this Agreement.

5.2 The Chamber shall not use any portion of the City's Investment to advocate or oppose any local municipal election issue or candidate. The Chamber shall not display any political material, sign, advertisement or similar material in, on or about its offices.

5.3 The Chamber shall be entitled to continue presentations and advance the purposes of the business community in general on civic issues except as provided for herein.

6. Chamber Responsibilities for Costs and Expenses

Except as otherwise expressly stated herein, the Chamber shall be responsible for all costs and expenses incurred relative to the Chamber, personnel of the Chamber and subconsultants of the Chamber in connection with the performance of the Scope of Work, including, without limitation, payment of salaries, fringe benefits contributions, payroll taxes, withholding taxes and other taxes or levies, office overhead expense, travel expenses, telephone and other telecommunication expenses, and document reproduction expenses.

7. Independent Contractor

The Scope of Work shall be performed by the Chamber or under its supervision. The Chamber shall determine the means, methods and details of performing the Scope of Work subject to the requirements of this Agreement. The Chamber represents that it possesses the professional and technical personnel required to perform the Scope of Work. The City retains the Chamber on an independent contractor basis and not as an employee of the City. The personnel performing the Scope of Work on behalf of the Chamber shall at all times be under the Chamber's exclusive direction and control.

8. Personnel; License; Conformance to Applicable Requirements/Insurance

8.1 The Chamber represents and warrants that it and all personnel engaged in performing the Scope of Work are and shall be fully qualified, authorized and permitted under state and local law to perform such Scope of Work. The Chamber represents and warrants that it and all personnel and subconsultants engaged in performing the Scope of Work have and keep all licenses, permits, qualifications, and approvals of whatever nature that are legally required to perform the Scope of Work under this Agreement.

8.2 All aspects of the provision of the Scope of Work by the Chamber shall conform to all applicable city, county, state, and federal laws, rules and regulations in effect at the time the services are provided. The Chamber shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Scope of Work, including all Cal/OSHA requirements, and shall give all notices required by law. The Chamber shall be liable for all violations of such laws and regulations in connection with its Scope of Work. If the Chamber performs any work knowing it to be contrary to such laws, rules and regulations, the Chamber shall be solely responsible for all costs arising therefrom. The Chamber shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or failure to comply with such laws, rules or regulations.

8.3 The Chamber shall at all times during the Term maintain adequate insurance. Insurance certificates shall name the City as additional insured with endorsements.

9. Representatives and Notices

9.1 City's Representative. The City hereby designates the City Manager/Executive Director, or his/her designee, to act as its representative for the performance of this Agreement

(“City’s Representative”). The City’s Representative shall have the power to act on behalf of the City for all purposes under this Agreement. The Chamber shall not accept direction or orders from any person other than the City’s Representative or his/her designee.

9.2 Chamber’s Representative. The Chamber hereby designates its Chief Executive Officer or his/her designee, to act as its representative for the performance of this Agreement (“Chamber’s Representative”). The Chamber’s Representative shall have full authority to represent and act on behalf of the Chamber for all purposes of this Agreement. The Chamber’s Representative shall supervise and direct the Scope of Work, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Scope of Work under this Agreement.

9.3 All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

Chamber: Lake Forest Chamber of Commerce
26239 Enterprise Court
Lake Forest, CA 92630

City: Debra Rose
City Manager
100 Civic Center Dr.
Lake Forest, CA 92630

10. General Provisions

10.1 Termination of Agreement.

10.1.1 Grounds for Termination. The City may, by written notice to the Chamber, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to the Chamber of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, the Chamber shall be compensated only for those Services which have been adequately rendered to City, and the Chamber shall be entitled to no further compensation. The Chamber may not terminate this Agreement except for cause.

10.1.2 Effect of Termination. If this Agreement is terminated in whole or in part as provided herein, the City may require the Chamber upon request to provide all finished or unfinished documents and data and other information of any kind prepared by the Chamber in connection with the performance of the Scope of Work under this Agreement. The Chamber shall be required to provide such documents and data and other information within fifteen (15) days of the request.

10.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, the City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

10.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other documents and data either created by or provided to the Chamber in connection with the performance of this Agreement shall be held confidential by the Chamber. Such materials shall not, without the prior written consent of the City, be used by the Chamber for any purposes other than the performance of the Scope of Work. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Scope of Work. Nothing furnished to the Chamber which is otherwise known to the Chamber or is generally known, or has become known, to the related industry shall be deemed confidential. The Chamber shall not use the City's name or insignia, photographs of any product of the Scope of Work, or any publicity pertaining to the Scope of Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the City.

10.3 Cooperation; Further Acts. The Parties shall fully cooperate with one another and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

10.4 Attorneys' Fees. If either Party commences an action against the other Party, either legal, administrative, or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

10.5 Indemnification. The Chamber shall defend, indemnify and hold the City and its members, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any actual, alleged or negligent acts, omissions or willful misconduct of the Chamber, its officials, officers, employees, agents, the consultants and contractors arising out of the performance of the Scope of Work, or this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses. The Chamber shall defend, at the Chamber's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City and its directors, officials, officers, employees, volunteers or agents. The Chamber shall pay and satisfy any judgment, award or decree that may be rendered against the City and its members, officials, officers, employees, volunteers or agents, in any such aforesaid suit, action or other legal proceeding. The Chamber shall reimburse the City and its directors, officials, officers, employees, volunteers and/or agents, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The Chamber's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City and its members, officers, employees, volunteers or agents.

10.6 Eligibility. All members of the Chamber shall certify that the member is in compliance with local, state, and federal laws. Noncompliance with local, state, or federal laws shall be grounds for membership disqualification.

10.7 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

10.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

10.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

10.10 City's Right to Employ Other Consultants. The City reserves right to employ other consultants in connection with this Agreement.

10.11 Assignment or Transfer. The Chamber shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer.

10.12 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

10.13 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

10.14 No Third-Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

10.15 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

10.16 Labor Certification. By its signature hereunder, the Chamber certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Scope of Work.

10.17 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

10.18 Subcontracting. The Chamber shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of the City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. The Chamber may utilize vendors to complete the Scope of Work as reasonably necessary.

[Signatures on following pages]

**SIGNATURE PAGE TO
CITY OF LAKE FOREST
CONTRACTUAL SERVICES AGREEMENT**

CITY:

CITY OF LAKE FOREST
a California municipal corporation

By: _____
Debra Rose
City Manager

Dated: _____

ATTEST:

Lisa Berglund
City Clerk

APPROVED AS TO LEGAL FORM:


BEST BEST & KRIEGER LLP

By:  _____
Matthew Richardson
City Attorney

**SIGNATURE PAGE TO
CITY OF LAKE FOREST
CONTRACTUAL SERVICES AGREEMENT**

CHAMBER:

LAKE FOREST CHAMBER OF COMMERCE
a California non-profit corporation

By: 
7479FD138AA34D8...
Steve Smith, Chairman of the Board

Its: Chairman of the Board

By: 
15EB649BA8F0487...
Mary Visconte, CEO

Its: Chief Financial Officer

Dated: 6/14/2023

**EXHIBIT “A”
CITY OF LAKE FOREST
PILOT CONTRACTUAL SERVICES AGREEMENT**

SCOPE OF SERVICES

A. Specific Services: Events and Services

The Chamber shall provide the specific services outlined below under Events and Services. The Chamber shall coordinate with the City on scheduling all events so that they do not conflict with the City’s master calendar of business seminars and events. Unless otherwise approved by the City in advance and in writing, all events must be held in the City at a venue suitable for the event. Venues outside of the City will only be considered when it is determined that no other suitable venue could be located in the City.

All events and programs must prominently feature the City’s logo on related marketing materials. Notwithstanding the foregoing, the Chamber may charge its normal and customary fees to vendors, exhibitors, and other participants obtaining services or materials from the Chamber for the events. If the Chamber provides opportunities for table sponsors, the Chamber will give first priority to sponsors that are Lake Forest businesses and/or provide services directly related to the nature of the events. Required events include, but are not limited to:

1. Beer & Wine Garden(s) at Concerts in the Park:

The Chamber will host a Beer and Wine Garden at each Concert in the Park. Event dates will be: July 22, 2023, August 26, 2023, and a date in June of 2024.

The Chamber’s roles and responsibilities will include:

- a. Produce all marketing materials for this event.
- b. Provide the City with the draft invitation and/or marketing materials for the City’s review and approval.
- c. Secure all Department of Alcohol Beverage Control approvals/permits, etc.
- d. Market the event to Chamber members and the general Lake Forest business community.

The City’s role and responsibilities for the Beer and Wine Gardens shall include:

- a. Secure a venue at the Lake Forest Sports Park and Pittsford Park free of charge.
- b. Market the Beer & Wine Garden on promotional flyers and in the Leaflet, as appropriate.
- c. Provide the Chamber use of City-owned barricades.
- d. Provide the Chamber with review and final approval on all marketing materials.

2. Business Appreciation Luncheon:

The Chamber shall partner with the City on a Business Appreciation Luncheon during the Term of the Agreement. This event shall be held in December of 2023.

The Chamber's role and responsibilities will include:

- a. Provide catered food suitable and appropriate for this event from a Lake Forest vendor and be responsible for paying the cost of the food, which shall be inclusive of the City's Investment.
- b. Provide decorations, table centerpieces, tablecloths, plates, and silverware, and work with the City to obtain approval for items.
- c. Provide and make available to the City, at no additional cost to the City, a table equal in size to the Chamber's main table, from which the City will promote City programs and communicate with members of the community who may have questions or request information concerning the City. The table will be in a prominent location as approved by the City.
- d. Make available to the City a prominent location in which to display the City's Business Marketing Display and Banner Stand. The display and banner will be featured in such a manner that it is clearly visible to those entering the event. The City has first choice regarding the location and placement of all City banners and displays. The City will provide its own banners and displays at no cost to the Chamber.

The City's role and responsibilities for the Business Appreciation Luncheon shall include:

- a. Provide a City facility as a venue with no cost to the Chamber with the understanding that the event held at a City facility must be free of charge to all attendees.
- b. Produce and mail all invitational materials for the Business Appreciation Luncheon to a combined list of Chamber members and Lake Forest businesses.
- c. Secure a keynote speaker and work with speaker/business to obtain its presentation.
- d. Provide sign off to the Chamber on proposed food vendor, rentals, and decoration.
- e. As requested, provide support to the Chamber in promoting the event through, but not limited to, City marketing materials, articles in the Economic Development e-newsletter, promotion on the City's website and Economic Development website, prominently featuring the Chamber's name, logo, and website information, and identifying the event as cosponsored with the Chamber.

