

## **PROFESSIONAL SERVICES AGREEMENT**

**Between**

**CITY OF CLEVELAND HEIGHTS, OHIO**

**And**

**Burges and Burges Strategists, Inc.**

THIS AGREEMENT for professional services ("Agreement") is made this 23rd day of October, 2024, between the City of Cleveland Heights, Ohio ("City"), a municipal corporation, and Burges & Burges Strategists, Inc. ("Consultant"), an Ohio corporation (each, a "Party," and collectively, "the Parties").

### **RECITALS:**

1. The Cleveland Heights City Council passed Resolution No. 21-2017 on March 20, 2017, adopting the City of Cleveland Heights Master Plan ("Master Plan")
2. The Master Plan was in part the result of several public community meetings and surveys that contributed to the significant public input concerning the conditions, community vision, policy development, implementation plans, and priority projects.
3. In 2019, the City's electors voted to amend the City Charter to provide for the City's reorganization as a 'strong mayor-council' form of government, which was not contemplated by the Master Plan. Further, in 2020, the City was substantially impacted by the COVID-19 pandemic, also not contemplated by the Master Plan.
4. The City desires to supplement the regularly employed staff of the several departments of the City by contracting with an entity that possesses the expertise necessary to conduct the interviews, surveys, and other outreach required to determine how the needs and expectations of residents, as well as the roles and engagement of stakeholders, have evolved as a result of these unanticipated developments.
5. Consultant has offered by its proposal, attached hereto as Exhibit "A", to provide such professional services ("Work") to the City.
6. The City finds Consultant's Proposal acceptable and desires to hire and engage Consultant to supplement the staff of the City and furnish the Work

outlined in Exhibit "A" in accordance with the terms, conditions, and provisions herein (collectively, the "Agreement").

**IN CONSIDERATION OF THE FOREGOING**, the payments and the mutual agreements of the parties contained in this Agreement, the parties agree as follows:

**Section 1. Scope of Service**

A. Consultant shall perform all Work in accordance with the terms, conditions, and provisions of this Agreement.

B. Any subcontract made by Consultant shall require the prior written approval of the City and shall incorporate by reference all applicable terms, conditions, and provisions of this Agreement, and shall not impose additional costs upon the City unless Agreement is amended to provide for such additional expense, in a writing signed by the Parties.

D. Consultant shall submit an appropriate written or oral report to the City upon completion of each specific service requested.

E. At the request of the City, Consultant shall provide a status report each month during the performance of the Work to describe the activities which took place during that month. The status report shall include reports of activities performed during the reporting period and activities planned for the next reporting period and should further include descriptions of significant accomplishments, milestones, and problems encountered.

**Section 2. Cooperation of the City**

The City shall cooperate with Consultant during the term of this Agreement as the City may deem helpful to accomplishing the Work.

**Section 3. Payments**

A. Consultant shall issue four (4) monthly invoices of \$12,000.00 each, beginning in \_\_\_\_\_ 2024, for the accomplishment of all services in the performance of the Work hereunder, which the City shall pay, for a total cost not to exceed the amount of Forty-Eight Thousand Dollars and 0/100 (\$48,000.00; the "NTE Amount").

B. The City is exempt from all sales, use and excise taxes, and any other assessments in the nature of taxes. The City shall not pay any late charges, interest, finance charges or service charges.

C. No services beyond the scope of the Work ("Additional Services") shall be compensated by the City except with the Mayor's written approval, and further subject to the NTE Amount. Invoices for Additional Services shall be in the same detail and form as provided for Work.

**Section 4. Termination**

A. This Agreement may be terminated by the City upon thirty (30) days' written notice to Consultant. Further, this Agreement is subject to annual appropriation by the City pursuant to Ohio Revised Code Section 5705.44, and in the event such annual appropriation is not made, this Agreement will terminate.

B. The City may terminate this Agreement at any time by sufficient notice to the Consultant, in the event of any of the following circumstances:

1. A receiver for Consultant's assets is appointed by a court of competent jurisdiction.
2. Consultant is divested of its rights, powers, and privileges under this Agreement by operation of law.
3. Consultant fails to comply with any term, covenant, or condition of this Agreement to be kept, performed, and observed by it, and the Consultant fails to remedy such noncompliance within thirty (30) days from the date of written notice from the City as set forth in Sections 4(a) or (b), herein.
4. Consultant's violation of any applicable federal, state, or local law applicable to the Work and completion thereof.

C. In the event of termination under this Article 4, the Consultant shall, unless the notice directs otherwise, immediately discontinue the Work. Consultant shall be entitled to payment for all Work performed up to the date of termination, subject to the NTE Amount. Under no circumstances is the Consultant entitled to reimbursement for any lost profits, lost opportunity costs, productivity losses, lost efficiencies, or any other direct, indirect, or consequential damage or cost occasioned by City's termination herein.

D. If the City terminates this Agreement for convenience, the City shall pay Consultant for reasonable costs associated with the performance thereof prior to and as of the date of such termination.

E. Consultant's audit and indemnification obligations hereunder are to survive the termination of this Agreement.

F. If this Agreement is canceled by the City prior to completion, Consultant within ten (10) days of such cancellation, shall submit final progress report of the percentage of Work completed by the date of cancellation. The City shall pay Consultant for the Work completed as certified in the final progress report and as approved by the City. Notwithstanding any other provision of this Agreement, all records, documents, materials and working papers prepared as part of the Work under this Agreement shall become and remain the property of the City, and upon any such cancellation, Consultant shall turn over to the City all records, judgments, documents, working papers and other materials which would be necessary, in the judgment of the City, to maintain continuity in having the Work completed by another Consultant.

#### **Section 5. Assignment Prohibited; Subconsultants**

A. Consultant, including any subconsultants, may not assign, transfer, convey, sell or pledge its rights or interest in this Agreement or any part of this Agreement, or any right or privilege created under this Agreement without first obtaining written consent of the City. Upon any attempt by Consultant or a subconsultant to do so, this Agreement shall immediately terminate. Subcontracting shall not relieve Consultant of any of its obligations under this Agreement.

B. Consultant shall be and remain solely responsible to the City for the acts or faults of any subconsultant and of such subconsultant's officers, agents and employees, each of whom shall for this purpose be deemed to be an agent or employee of Consultant to the extent of its subcontract. As a prior condition to approval of a subconsultant, Consultant shall provide a conformed copy of the applicable subcontract to the City.

#### **Section 6. Professional Responsibility; Indemnification**

##### **A. Professional Responsibility.**

Consultant shall be responsible for the professional quality and technical accuracy of all services performed hereunder.

B. Indemnification.

Consultant shall indemnify and save harmless the City and its respective officers, agents, employees, successors and assigns, for and from any and all suits, claims, fines, loss, cost damage, expense and liability from its failure to comply with all applicable laws, ordinances, orders and regulations in the performance of Consultant's services under this Agreement, and from loss of life or damage or injury to persons or property of any person, including but not limited to the agents, employees, invitees and licensees of the parties hereto and to the property of any of them, and of the parties hereto, arising out of or connected with and to the extent caused by negligent act, error or omission of Consultant or its subconsultants in their performance of this Agreement. Consultant shall, at its own expense, defend the City in all litigation, pay all attorneys' fees, damages, court costs and other expenses arising out of such litigation or claims incurred in connection therewith. Furthermore, Consultant, at its own expense, shall satisfy and cause to be discharged such judgments as may be obtained against the City, or any of its officers, agents, employees, successors or assigns arising out of such litigation. Nothing stated in this Agreement shall prevent Consultant from seeking indemnification from Consultant's subconsultants. This indemnification clause shall survive the completion of the services to be performed under this Agreement and the termination of this Agreement.

**Section 7. Insurance Requirement**

A. Consultant and each of its subconsultants shall, at their expense and at all times during the performance of services, under this Agreement, maintain comprehensive general and professional liability insurance insuring themselves against the indemnification obligations undertaken in Section 6, Indemnity, above. Consultant shall require subconsultants to obtain insurance and shall be responsible for enforcement of its subconsultant's obligation to obtain insurance to satisfy the requirements under this Agreement. The policies shall be with companies authorized to do business in Ohio and rated "A" or above by A.M. Best Company or equivalent. The comprehensive general liability insurance policy shall: be occurrence type; name the City as an additional insured; have limits of not less than One Million Dollars (\$1,000,000.00) for any one incident; have a "per project" endorsement; and be primary with respect to Consultant's general liability, notwithstanding any other insurance covering the City. Consultant's insurance policy shall include valuable papers coverage in the amount of One Hundred Thousand Dollars (\$100,000.00). The professional liability insurance shall have limits of not less than One Million Dollars (\$1,000,000.00) for any one incident, and if not written on an occurrence basis, shall be maintained for a period of not less than two (2) years following the completion of the Work. Further, the Consultant shall obtain and at all times provide workers' compensation insurance covering its employees.

B. Notice of Cancellation.

The insurance policy or policies provided hereunder shall provide as follows:

"The Company agrees that ten (10) days prior to cancellation or reduction of the insurance afforded by this policy, with respect to the Agreement involved, written notice will be sent by certified mail to the Director of Law of the City of Cleveland Heights."

In addition to the notification required of Consultant's insurance company, Consultant shall notify the City, in writing, by certified mail to the Director of Law of the City of Cleveland Heights, immediately upon learning of cancellation or reduction of the insurance afforded by its policy.

C. Copy of Insurance Policy

Upon the request of the Director of Law of the City of Cleveland Heights, Consultant shall immediately provide the Director of Law with an exact copy of the insurance policy or policies required by this Agreement.

D. Certificate of Insurance

Upon execution of this Agreement, Consultant shall submit to the City a certificate(s) of insurance with respect to such policy or policies. Such certificate(s) of insurance shall contain the notification provision set forth in paragraph B above. If the additional insured endorsement required above is not available at the Agreement execution date, Consultant shall submit to the City a notation of the endorsement together with either a Binder or an Advice of Insurance with respect to the endorsement. Consultant shall also provide a copy of the endorsement naming the City as an additional insured under Consultant's comprehensive general liability coverage. The endorsement shall be submitted no later than thirty (30) days after the execution date of this Agreement.

E. Policy

The policy or policies, certificate(s), Binder or Advice required in paragraphs C and D above shall, as to form, coverage and carrier, be satisfactory to the Director of Law. If at any time, the coverage or carrier on any policy shall become unsatisfactory to the Director of Law or Finance, Consultant shall immediately provide a new policy meeting the requirements of the Director of Law or Finance.

**F. No Limit of Liability**

The limits of insurance specified above shall in no way constitute the upper limits of liability for which Consultant is responsible under Section 6, Indemnity above.

City's examination of, or failure to request or demand, any evidence of insurance under this Agreement, shall not constitute a waiver of any requirement of this Section 7 and the existence of any insurance shall not limit Consultant's obligations under any provisions of this Agreement.

**Section 8. State Industrial Compensation**

Consultant shall be required at all times during the term of this Agreement to subscribe to and comply with the Worker's Compensation Laws of the State of Ohio and pay such premiums as may be required under those laws and to save the City harmless from any and all liability from or under the act. It shall also furnish, upon request by the City, a copy of the official certificate or receipt showing the payments referred to above.

**Section 9. Social Security Act**

Consultant shall be and remain an independent Consultant with respect to all services performed under this Agreement and agrees to and does accept full and exclusive liability for the payment of any and all contributions or taxes for social security, unemployment benefits, pensions and annuities now or later imposed under any state or federal laws which are measured by the wages, salaries or other remuneration paid to persons employed by the Consultant on work performed under this terms of this Agreement and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or may later be issued or promulgated under the respective laws by any duly authorized state or federal officials; and Consultant also agrees to indemnify and save harmless the City of Cleveland Heights from any such contributions or taxes or liability.

**Section 10. Interest of Consultant**

Consultant covenants that its principals have made no contributions to the Mayor of the City which would cause Consultant to be ineligible for the award of an unbid contract under division (I) or (J) of Section 3517.13 of the Ohio Revised Code, and that it has executed and submitted to the City an affidavit to such effect. Consultant covenants that it presently has no interest and shall not acquire any

interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Consultant further covenants that no person having any such interest shall be employed in the performance of this Agreement.

## **Section 11. Defaults and Remedies**

### **A. Default**

Consultant shall be in default of this Agreement upon the happening of any of the following events:

1. If Consultant fails to observe or perform any of the covenants or agreements to be observed or performed by it under this Agreement and such failure continues for a period of five (5) days after written notice thereof is given Consultant by the City;
2. The filing, execution or occurrence of: (i) a petition or other proceeding by, or a finding against, Consultant for its dissolution, reorganization or liquidation, (ii) a petition in bankruptcy by Consultant; (iii) an adjudication of Consultant as bankrupt or insolvent; (iv) an assignment or petition for assignment for the benefit of creditors; or
3. If Consultant abandons or discontinues its operations, except when such abandonment or discontinuance be caused by fire, earthquake, war, strike, or other calamity beyond its control.

### **B. Remedies**

Upon the happening of any one or more of the events as set forth in paragraph A of this Section, or upon any other default or breach of this Agreement, the City may, at its option, exercise concurrently or successively any one or more of the following rights and remedies:

1. Without waiving such default, to pay any sum required to be paid by Consultant to others than the City and which Consultant has failed to pay under the terms and conditions of this Agreement, Consultant shall repay to the City, on demand, any amount so paid by the City, with interest thereon at eight percent (8%) per annum from the date of such payment and all expenses connected therewith;
2. Enjoin any breach or threatened breach by Consultant of any covenants, agreements, terms, provisions or conditions thereof;

3. Sue for the performance of any obligation, promise or agreement devolving upon Consultant for performance or for damages for the nonperformance, all without terminating this Agreement; and/or

4. Terminate this Agreement.

C. Rights and Remedies Not Exclusive

All rights and remedies granted to the City in this Agreement and any other rights and remedies which the City may have at law and/or in equity are declared to be cumulative and not exclusive and the fact that the City may have exercised any remedy without terminating this Agreement shall not impair the City's rights thereafter to terminate or to exercise any other remedy granted in this Agreement or to which it may be otherwise entitled.

**Section 12. Notice and Payments**

All notices given by one party to the other under this Agreement shall be in writing and shall be delivered personally, sent by express delivery service, certified mail, or first class U.S. mail, postage prepaid and addressed to the parties at the respective addresses set forth in this Agreement, or to such other address as either party shall designate by proper notice. Notices will be deemed given as of the earlier of (i) the date of actual receipt, (ii) the next business day when notice is sent via express mail or personal delivery, or (iii) three (3) days after mailing in the case of first class or certified U.S. mail. Such notices shall be sent to:

To the City: Mayor  
City of Cleveland Heights  
City Hall  
40 Severance Circle  
Cleveland Heights, Ohio 44118

With a copy to: Director of Law  
City of Cleveland Heights  
City Hall  
40 Severance Circle  
Cleveland Heights, Ohio 44118

To Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 13. Non-Discrimination Clause**

This Agreement is a "contract" for the purposes of C.O. 171.011 and Consultant is hereby notified that it is prohibited from discriminating against any individual in violation of C.O. Chapter 749. A copy of this clause shall be made a part of every subcontract or agreement entered into for goods or services and shall be binding on all entities, persons, firms, employees, agents, affiliates, assigns, and with whom Performer may deal.

**Section 14. O.R.C. Compliance**

Consultant hereby certifies that beginning on the date the contract is awarded and extending until one year following conclusion of the contract, all persons identified in Ohio Revised Code Sections 3517.13(I)(3) and 3517.13(J)(3), as applicable, are in compliance with Ohio Revised Code Sections 3517.13(I)(1) and 3517.13(J)(1).

**Section 15. Miscellaneous**

A. Consultant agrees that no representation or warranties of any type shall be binding upon the City, unless expressly authorized in writing in this Agreement.

B. Neither this Agreement nor the activities of Consultant hereunder shall be deemed or construed to create in any way a partnership, joint venture or agency relationship between the City and Consultant. Neither party shall hold itself out to be vested with any power or authority to bind the other party contractually otherwise, or to act on behalf of the other party, for any purpose whatsoever, unless and except as expressly provided herein.

C. All terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this Agreement or any paragraph or clause in this Agreement may require, the same as if such words have been fully and properly written in the number and gender.

D. The headings of sections and paragraphs, if any, to the extent used are used for reference only, and in no way define, limit or describe the scope or intent of any provision of this Agreement.

E. In the event that any term(s) or provision(s) of this Agreement are held invalid, illegal or unenforceable, for any reason, by any court of competent jurisdiction, such invalidity, illegality or unenforceability should not affect any other

term or provision of this Agreement, and this Agreement shall be interpreted and construed as if such term(s) or provision(s) had never been contained in this Agreement, to the extent the same has been held to be invalid, illegal or unenforceable.

F. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.

G. In the event of any variance among the provisions of this Agreement, the provisions of the document shall govern in the following order: (1) Sections 1-15 of this Agreement, (2) Consultant's Proposal.

H. The standard of care for all professional consulting and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily used by members of Consultant's profession practicing under similar conditions at the same time and in the same locality.

I. This Agreement constitutes the entire Agreement of the parties and shall not be deemed amended except by a writing signed by the parties.

J. This Agreement and any claims arising under this Agreement or related to this Agreement, whether in contract or tort shall be governed by the laws of the Ohio. Any suit regarding this Agreement must be brought in a court of competent jurisdiction in Cuyahoga County, Ohio.

The following attached documents are incorporated with and made part of this Agreement:

1. **Exhibit A** – Consultant's Proposal

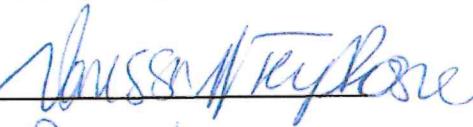
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**IN WITNESS OF THIS AGREEMENT**, the parties have caused this instrument to be executed as of the day and year written above.

**CITY OF CLEVELAND HEIGHTS**

By:   
Mayor Kahil Seren

**BURGES & BURGES STRATEGISTS, INC.**

By:   
Title: President  
Printed Name: Vanessa Tey Iosue

34-1490500  
Taxpayer Identification Number

The legal form and correctness  
of the within instrument are  
hereby approved.

WILLIAM R. HANNA  
Director of Law

By:   
Christopher J. Heltzel  
Assistant Director of Law

Date: October 24, 2024



## DRAFT Proposal for Community Research, Engagement and Strategic Communications

*2019*  
In 2021, Cleveland Heights residents voted to shift their municipal government to a 'strong-mayor' format. After three-quarters of the first elected mayor's term, now is an appropriate time to review what has been working well, what needs to be retooled, and assess how the administration has aligned with community expectations. Cleveland Heights last Master Plan was developed over 8 years ago – under a former structure of government and before a pandemic that impacted nearly every aspect of civic life. Understandably, it is important to check-in with the members of your community to see how their needs may have shifted, and what remains constant.

Cleveland Heights is recognized as a community that has fostered a strong history of citizen participation and engagement, providing myriad opportunities for input on issues facing the city. However, leaders typically hear only the strongest opinions from the most engaged residents at both ends of the spectrum – those who are disproportionately satisfied or dissatisfied. Most residents with more moderate opinions are less likely to offer their feedback, or even to be asked, so reaching that population takes a significant, pro-active effort.

We recommend a process that includes the following:

1. Conducting individual in-depth interviews with opinion leaders representing all aspects of the community from business, civic, neighborhood, faith, education, etc. across a broad spectrum of demographics.
2. Interviewing department leaders to determine any shifts in their roles, community expectations, and what they believe their priorities should be.
3. Implementing an opt-in online survey that is available to the broader community, advertised via social channels, emails and earned media. The goal is at least 1,000 responses. While not necessarily a statistically accurate sample, it would provide important data from a highly motivated cohort.
4. Reviewing existing communications methods and content over the last 2 years to determine the messages that have been sent versus what has been received by residents.
5. Completing a review of best practices among peer cities in and out of Ohio to assess how they shifted from a city manager to strong mayor form of government and navigated related legislative/administrative/stakeholder/resident relationships and services.
6. Partnering with a trusted third party to implement a phone survey to quantify what we learn through these qualitative discussions. This would be billed at cost and is not included in our fee.
7. Creating a **community task force (Mayor's round table?)**, serving at the mayor's discretion with input from council and cabinet, to guide feasibility and implementation of any recommendations that emerge from the research. This would be a guiding body to help contextualize feedback and *would not be a binding decision-making group.*

*Proprietary Confidential*  
Our end-product would be a series of strategy memos with findings after each step, and a final report with recommendations that may include communications, media, further engagement – developed in collaboration with department heads and other consultants. We understand that we may need to adapt the scope and/or various steps based on what we learn (or what could change) throughout the process.

Our fee for this process is \$48,000 which is payable in 4 installments of \$12,000 and will be billed monthly (*excluding a phone survey, should you determine to proceed with one*). If approved, we would begin immediately and complete the process in 4 months. This is an expedited timeline to allow for time to begin implementation before the holiday season begins.