

PROFESSIONAL SERVICES AGREEMENT

Marketing & Promotion of Bremerton Harborside District Events

The City of Bremerton (“City”) and Nyhus Communications LLC (“Consultant”), referred to collectively as the “Parties,” enter into the following Agreement for professional services:

I. Scope: The Consultant agrees to perform the services more specifically described in the Scope of Work, attached hereto as Exhibit A, which is incorporated by reference herein. The Scope of Work may be modified only pursuant to Section VII.G. of this Agreement. If the Scope of Work provides for unspecified additional services such services shall only be performed upon the express written request of the City. Consultant further represents that the services furnished under this Agreement will be performed in accordance with generally accepted professional practices in effect at the time such services are performed.

II. Term: The City and the Consultant agree that work will begin on the tasks described in Exhibit A immediately upon execution of this Agreement. The parties agree that the work described in Exhibit A is to be completed as provided for in the work schedule attached hereto as Exhibit B; provided however, that additional time shall be granted by the City for excusable delays or extra work as provided for in section IX (A) of this agreement.

III. Compensation: In consideration of the services provided pursuant to this Agreement, the City shall pay Consultant in an amount not to exceed \$38,500 in fees, plus agreed expenses as set forth in Exhibit C hereto. Consultant’s charges and bills shall conform to the fee schedule attached hereto as Exhibit C and incorporated herein by this reference.

The Consultant shall submit regular billing statements detailing work performed and amount charged on each task or portion thereof. The descriptions shall conform to and fall within the categories set out in the Scope of Work and/or Fee Schedule. Upon receipt of a conforming billing statement, the City shall promptly process payment. The Consultant's labor rates and billing fees shall be as delineated in Exhibit C.

Consultant shall not perform work beyond the Scope of Work, nor shall be compensated for such work, unless the Scope of Work or amount of compensation is modified pursuant to this Agreement. Consultant shall only be compensated for additional services if requested pursuant to Section I and, if not otherwise provided, such compensation shall be in accordance with Exhibit C.

If a billing statement does not conform to this Agreement, the City may withhold payment until the statement is brought into compliance. Such withholding does not relieve Consultant of its obligations under this Agreement.

IV. Relationship of Parties: Consultant represents that it is skilled in the matters addressed in the Scope of Work and is performing independent functions and responsibilities within its field of expertise. Consultant and its personnel are independent Consultants and not employees of the City. Consultant and its personnel have no authority to bind the City or to control the City’s employees and other Consultants. None of the benefits provided by the City to its employees, including, but not

limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-Consultants of the Consultant. Consultant will be solely and entirely responsible for its acts and for the acts of Consultant's agents, employees, representatives and sub-Consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent Consultants to perform the same or similar work.

As an independent Consultant, Consultant is responsible for its own management. The City's administration and enforcement of this Agreement shall not be deemed an exercise of managerial control over Consultant or its personnel.

As an independent Consultant, Consultant is responsible for payment of all taxes and licensing fees necessary to perform its obligations under this Agreement. These taxes and fees include but are not limited to State industrial insurance, Business & Occupation, State professional licensing, and City business licensing. If any taxes or fees due the City have been declared delinquent, the City may withhold the delinquent amount, plus any additional charges arising from the delinquency, from any payments due Consultant.

V. Indemnification: Each party shall defend, indemnify and hold the the other party, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with its performance of this Agreement.

The City's review or acceptance of any of the work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

The provisions of this section shall survive the expiration or termination of this Agreement.

VI. Insurance: The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, employees, sub-consultants or sub-Consultants.

Before beginning work on the project described in this Agreement, the Consultant shall provide a Certificate of Insurance evidencing:

1. **Automobile Liability** insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage; and
2. **Commercial General Liability** insurance written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and general aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations/broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability; and
3. **Excess Liability** insurance with limits not less than 1,000,000 limit per occurrence and aggregate.
4. **Professional Liability** insurance with limits no less than \$1,000,000 limit per occurrence/claim.

Any payment of deductible or self insured retention shall be the sole responsibility of the Consultant.

All required policies shall be provided on an "occurrence" basis except professional liability insurance (if required), which may be provided on a "claims-made" basis.

The City shall be named as an additional insured on the Commercial General Liability insurance policy, as respects work performed by or on behalf of the Consultant and a copy of an endorsement that is acceptable to the City, which names the City as an additional insured shall be attached to the Certificate of Insurance. The City reserves the right to receive a certified copy of all the required insurance policies and endorsements. The City further reserves the right to reject any unacceptable policies and/or endorsements.

The Consultant's Commercial General Liability insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.

The Consultant's insurance shall be primary insurance as respects the City and the City shall be given thirty (30) days prior written notice by certified mail, return receipt requested, of any cancellation, suspension or material change in coverage.

The City also reserves its unqualified right to require at any time and for any reason, proof of coverage in the form of a duplicate of the insurance policy with all endorsements as evidence of coverage.

VII. General Conditions:

A. Reports and Information: When requested by the City, but no more often than monthly, Consultant shall furnish reasonable periodic reports and documents on matters covered by this Agreement. The reports and documents shall be furnished in the time and form requested.

Consultant shall maintain accounting records in accordance with Generally Accepted Accounting Principles (GAAP) to substantiate all billed amounts.

B. Ownership and Use of Records and Documents: Original documents, drawings, designs and reports, including those in electronic format, developed under this Agreement are the property of the City. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

All data, documents and files created by Consultant under this Agreement may be stored at Consultant's office in Portland, Oregon. Consultant shall make such data, documents, and files available to the City upon its request at all reasonable times for the purpose of editing, modifying and updating as necessary until such time as the City is capable of storing such information in the City's offices. Duplicate copies of this information shall be provided to the City upon its request, and at reasonable cost.

All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by Consultant pursuant to this Agreement, are instruments of service with respect to the project and are the property of the City. Any reuse by the City for other than the specific purpose intended will be at City's sole risk.

C. Work Performed at Consultant's Risk: Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at Consultant's own risk, and Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

D. Place of Work: The Consultant shall perform the work authorized under this Agreement at its offices in Portland, Oregon. Meetings with the City staff as described in Exhibit A, Scope of Work, shall take place at the City's offices, or at locations mutually agreed upon by the parties.

E. Entire Agreement: This Agreement and its Exhibits constitutes the entire agreement between the Parties, and the Parties acknowledge that there are no other agreements, written or oral, that have not been set forth in the text of this Agreement.

F. Severability: Should any part of this Agreement be found void, the balance of the Agreement shall remain in full force and effect.

G. Modification: This Agreement may only be modified by written instrument signed by both Parties.

H. Written Notices: All communications regarding this Agreement shall be sent to the parties at the addresses listed below by registered or 1st class mail, or by personal service, and shall

be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

City Address

City of Bremerton
Attn: Director of Financial Services
345 6th Street Suite 600
Bremerton, WA 98337-1873

Consultant Address

Nyhus Communication LLC
Attn: Marc Stiles, Account Manager
1525 Fourth Ave., Suite 400
Seattle, WA 98101-1607

I. Waiver: Failure to enforce any provision of this Agreement shall not be deemed a waiver of that provision. Waiver of any right or power arising out of this Agreement shall not be deemed waiver of any other right or power.

J. Non-Waiver of Breach: The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.

K. Compliance with Laws: Consultant shall comply with all applicable Federal, State, and local laws in performing its obligations under this Agreement.

L. Choice of Law and Venue: This Agreement shall be interpreted according to the laws of the State of Washington. Any judicial action to resolve disputes arising out of this Agreement shall be brought in Kitsap County Superior Court.

M. Attorneys' Fees: In the event of litigation to enforce any of the terms or provisions herein, each party shall pay all its own costs and attorney's fees.

N. Assignment: Any assignment of this agreement by the Contractor without the written consent of the City shall be void.

VIII. Nondiscrimination: Consultant shall not discriminate in employment or services to the public on the basis of race, color, national origin, sex, religion, age, marital status, or disability, except for employment actions based on bona fide occupational qualification.

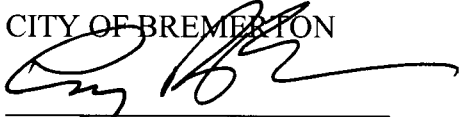
IX. Termination: This Agreement shall remain in force until completion and acceptance of the services, terminated by written instrument upon mutual consent, or by the City of Bremerton for convenience. This Agreement may be immediately terminated for cause by a Party if the other Party substantially fails to perform through no fault of the terminating Party, and the non-performing Party does not commence correction of the failure of performance within thirty (30) days of the terminating Party's sending notice to the non-performing Party. Any Notice by Consultant shall include a report showing the status of all items listed in the Scope of Work current through the termination date.

If the City receives reimbursement by any federal, state, or other source for work described in Section I herein, and that funding is withdrawn, reduced or limited in any way, or the project is cancelled or substantially reduced after the execution date of this Agreement and prior to the completion of the work, the City may summarily terminate this Agreement.

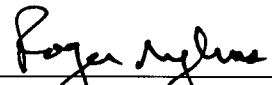
A. Excusable Delays: The right of Consultant to proceed shall not be terminated nor shall Consultant be charged with damages of any nature whatsoever for any delays in the completion of the work due to: 1) any acts of the federal government in controlling, restricting, or requisitioning materials, equipment, tools, or labor by reason of war, national defense, or other national emergency; 2) any acts of the City, its consultants, or other public agencies causing such delay; and 3) causes not reasonably foreseeable by the parties at the time of the execution of the Agreement that are beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God, fires, floods, strikes, or weather of unusual severity. PROVIDED, HOWEVER, that the Consultant must promptly notify the City within ten (10) calendar days in writing of the cause of the delay. If, on the basis of the facts and the terms of this Agreement, the delay is properly excusable, the City shall, in writing, extend the time for completing the work for a period of time commensurate with the period of excusable delay.

B. Rights Upon Termination: In the event of termination, the City shall pay for all services performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this project which may be used by the City without restriction. Any such use not related to the project which Consultant was contracted to perform shall be without liability or legal exposure to the Consultant.

CITY OF BREMERTON


By: Cary Bozeman
its: Mayor
Date: 5/9/08

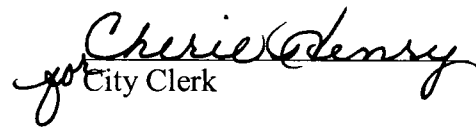
CONSULTANT


By: ROGER NYHUS
its: PRESIDENT & CEO
Date: 5/13/08

Approved as to form:


Bremerton City Attorney

Attest:


City Clerk

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Exhibit A – Scope of Work

Marketing & Promotion of Bremerton Harborside District Events

This work plan describes the tasks and work Consultant will complete to promote and attract tourism to the Harborside District, and the City of Bremerton in general, as a premier entertainment destination for people throughout the Puget Sound region.

The goal is to build public interest, excitement and attendance at summer and fall events in Bremerton through a proactive public relations program.

Specifically, Consultant will:

- Target the Seattle and Tacoma-area markets to increase attendance for the concerts and festival and regional and national media for the revitalization conference.
- Broaden public awareness of the summer and fall events in Bremerton throughout Seattle and other parts of the region.
- Tell the story of Bremerton’s renaissance to national media.
- Support partnerships with neighborhood, community and media to promote Bremerton’s series of events.

Strategies

To achieve these goals, Consultant will work with Seattle-centric local and regional media through individual pitches and timely news releases about the summer and fall events. We will make pitches on behalf of the City of Bremerton to reporters and editors who cover events, outings, cultural programs and music. We will create a media kit and news releases to support the major events as they happen throughout the summer. Additionally, we will work with regional and national media – through news releases and individual pitches – to publicize the noteworthy transformation of Bremerton’s waterfront.

We foresee ongoing and regular communication, as needed, with the City of Bremerton and other germane organizations, such as the Bremerton Area Chamber of Commerce and other civic and business groups. Our communications work will commence in May to gear up for the May 24 Marina Grand Opening and will continue through the last of the summer and beginning of fall events in October.

Proactive Media Relations

Consultant will serve as the primary day-to-day media contact for the City of Bremerton and will manage a proactive media relations campaign that will include the following:

Relationship-building with key reporters – Like most people, reporters prefer to work with sources they know and trust. Consultant has those relationships. It is essential to develop a reputation for understanding reporters’ needs, such as providing accurate and timely responses to inquiries. Consultant will further strengthen these relationships for Bremerton.

Positioning experts and media training – To have a successful PR program, you need effective spokespeople. Consultant will work with appropriate spokespeople before announcements or media interviews to ensure successful print and broadcast coverage.

Announcements/media events – Consultant will work with the City of Bremerton to develop and issue timely news releases and announcements of events. In addition, Consultant will work with individual reporters to effectively promote and position announcements.

Comprehensive media kits – Consultant will develop a comprehensive, tailored media kit about Bremerton’s summertime and fall celebrations and concerts as well as a second tailored media kit to promote the city’s ongoing renaissance and Urban Waterfront Revitalization Conference.

Key Media Targets

The preliminary media target list for the project includes the following:

- The Seattle Times
- Seattle Post-Intelligencer
- The News Tribune (Tacoma)
- The Bremerton Patriot
- The Kitsap Sun
- The Kitsap Peninsula Business Journal
- North Kitsap County Herald
- Seattle Magazine
- Seattle Metropolitan
- Seattle Homes & Lifestyles
- Seattle Weekly
- UW Daily
- Capitol Hill Times
- Beacon Hill News
- Magnolia News
- Madison Park Times
- Shoreline Journal
- University Herald
- The Herald (Everett)
- Auburn Reporter
- Bellevue Reporter
- Bothell Reporter
- Kenmore Reporter
- Covington Reporter
- Issaquah Reporter
- Sammamish Reporter
- Kent Reporter
- Kirkland Courier Reporter
- Redmond Reporter
- Renton Reporter
- Federal Way News
- Federal Way Mirror
- Highline Times
- West Seattle Herald
- KING 5 TV
- KIRO TV
- KOMO TV
- KCPQ (Fox 13 TV)
- KUOW-FM
- KPLU-FM
- All appropriate commercial radio stations in the region
- Puget Sound Business Journal
- Seattle Daily Journal of Commerce
- Other appropriate new media outlets

In addition to the local and regional media targeted for cultural events, Consultant will promote the Bremerton renaissance and Urban Waterfront Revitalization Conference to appropriate national and regional media, including, but not limited, outlets such as the following:

- Urban Land
- Time magazine
- Newsweek
- USA Today
- New York Times
- Wall Street Journal
- Chicago Tribune
- Portland Oregonian
- San Francisco Chronicle
- Los Angeles Times

Exhibit B – Work Schedule
Marketing & Promotion of Bremerton Harborside District Events

Work is to be completed in a six month time frame beginning in May 2008 and concluding at the end of October 2008.

Exhibit C – Fee Schedule
Marketing & Promotion of Bremerton Harborside District Events

Based on the City’s communications needs for a thorough, proactive media relations campaign for the series of summertime and early fall events, a monthly retainer fee of \$6,000 for six months will be paid. Consultant fees cover the professional services of Nyhus Communications only and do not include the cost of other vendors that may be brought in, with prior approval, to support City goals. Those costs are not covered by this contract and would be subject to City approval and City budget availability.

Consultant fees are based on the standard hourly rates for the employees or contractors of Nyhus Communications, which shall be as follows, unless adjusted by Nyhus Communications:

Senior Executives	\$300.00
Directors/Senior Strategists	\$225.00
Account Supervisors	\$200.00
Account Managers/Chief Writer	\$175.00
Account Executives	\$150.00-\$165.00
Account Coordinators	\$100.00-\$120.00
Administrative	\$50.00-\$75.00

Marc Stiles, account manager, will serve as senior strategist. Leslie Boelter, account coordinator, will be Bremerton’s day-to-day contact and account lead. Other members of our team at various levels will assist with elements of the program on an as-needed basis.

Consultant’s budget is shown in the table below. The budget does not include any travel costs. Consultant will complete this work on a retainer basis with incidental expenses to be reimbursed (as supported by appropriate documentation) the total of which is not to exceed \$38,500.

In addition to the foregoing fees, City shall reimburse Consultant for all business expenses incurred by Consultant in the course of performing the work, including without limitation communications expenses, supplies, travel, graphic design, video production services, Web design and content development, media monitoring services, clipping services or reprints, and photocopies, which shall be billed at a rate of 1.175 times the actual expense (“Expenses”). Any expense in excess of \$500 must be approved in advance by City. These expenses are in addition to the expenditures identified in the budget below and will be subject to the cap on compensation unless an amendment to this contract is executed increasing the contract budget amount. Consultant may require that City advance funds to cover all or a portion of any Expenses as a condition to incurring such Expenses. Alternatively, Consultant may require that City contract with vendors directly with respect to Expenses.

Budget

<u>Item</u>	<u>Costs</u>
1. Retainer – Professional Services	\$36,000
2. Other Direct Expenditures *	\$ 2,500
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Total Not to Exceed Amount	\$38,500

* Other Direct Expenditures Require Appropriate Documentation Prior to Payment