



**FIRST AMENDED
SERVICE AGREEMENT**

The following terms and conditions apply to retention of LOOK STRATEGIES, LLC, an Ohio limited liability corporation, (hereinafter “Look Strategies, we” and “our” and “us”) as marketing and communications counsel for the City of Avon, 36080 Chester Road, Avon, Ohio 44011 (hereinafter “you and “your”).

1. Scope of Services:

We will provide you with marketing communications services related to the Corporate Sponsorship Advertising Sales program for the Avon Municipal Aquatic Facility. Our work for you under this agreement will be limited to the assignments as outlined in our strategic planning documents (see Exhibit A) and approved by the City. Because we offer a comprehensive level of communications services, we would be pleased to offer you assistance in other matters as you may request over the course of this agreement. Any change in the terms and conditions of this agreement or engagement for additional services shall be mutually agreed upon in writing prior to performing those services.

2. Performance Review:

We are committed to serving you and helping you achieve your desired results. We encourage you to review regularly with us any and all comments and suggestions you may have about our performance, and we will meet with you as frequently as you deem necessary to review performance.

3. Confidentiality:

We regard with utmost seriousness our duty to preserve your confidences and proprietary matters. We shall not disclose such information without your permission other than to our employees, counsel and other professional advisers we believe necessary to fully meet our obligations under this agreement, or as required by applicable law or judicial or administrative order. We may, however, disclose our representation of you to other actual and potential Look Strategies clients.

4. Care of Property and Inspection:

We will take reasonable precautions to safeguard your property that is in our custody, but we shall not be liable for damage to your property unless the damage

results from our gross negligence in connection with its care. We shall have no liability for damage to property that is in the custody or control of any third party. All materials we produce at your expense shall be our property until we receive your payment in full for the cost of all materials and other out-of-pocket expenses and all fees relating to such materials.

You may inspect all correspondence, contracts, books, accounts, and other materials prepared or held by us that are directly related to our performance under this agreement. Inspections may be made during our normal business hours upon three days' prior written notice.

5. Approvals, Accuracy of Information and Indemnification:

You shall have the sole responsibility for authorizing and approving the dissemination of all information and materials released on your behalf. You shall be solely responsible for the accuracy, completeness and legal compliance of the information about you that you provide or approve for our use.

We shall indemnify you against any and all losses, liabilities, damages, demands, settlements, judgments, costs and expenses, including reasonable attorneys fees (collectively, "Damages"), sustained as a result of any claim of libel, slander, defamation, copyright infringement, trademark or service mark infringement, unfair competition, misappropriation of ideas, infliction of emotional distress, invasion of rights of privacy, or invasion of right of publicity arising from any materials prepared by Look Strategies on your behalf (collectively, "Materials Claims"); provided, however, the foregoing indemnification provision shall not apply to Materials Claims arising from any such materials that were approved by, or prepared based upon information provided by you or any of your employees, agents or independent contractors. You agree to indemnify us against any and all Damages sustained as a result of any Materials Claims arising from any such materials that were approved by, or prepared based upon information provided by you or any of your employees, agents or independent contractors but only to the extent the City's General Commercial Liability Policy permits.

In addition, we shall indemnify you against any and all Damages sustained as a result of our breach of this agreement or our negligence or intentional misconduct in connection with this agreement, and you shall indemnify us against any and all Damages sustained as a result of your breach of this agreement or your negligence or intentional misconduct in connection with this agreement but only to the extent the City's General Commercial Liability Policy permits. The foregoing indemnification provisions in favor of you and us are intended to extend to and cover your and our respective officers, directors, agents and employees.

6. Outside Experts and Other Third Parties:

It may be appropriate in the course of our performance under this agreement to work with outside experts and other third parties hired by you or hired by us with your authorization. You agree to reimburse fees and expenses incurred by these persons, and we shall not be liable to you in any way for the acts or omissions of such third parties.

7. Fees, Disbursements and Other Charges:

We are sensitive of the need to manage and control costs. It is our preference to work with budgets in which our fees for services are agreed upon in advance and made

part of our agreement with you. You agree under this contract to compensate us on all revenue derived through the sale of corporate sponsorships related to the Avon Aquatic Facility as follows:

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| Annual Revenue at or below \$50,000 | 12.5% |
| Annual Revenue between \$50,001 and \$80,000 | 15.0% |
| Annual Revenue between \$80,001 and \$100,000 | 17.5% |
| Annual Revenue between \$100,001 and \$125,000 | 20.0% |
| Annual Revenue at or exceeding \$125,001 | 22.5% |

(a) Annual Revenue is defined as all revenue received by the City in any calendar year beginning January 1, 2018. Look Strategies will earn a commission on the total amount of advertising revenues the City receives each month basis from advertisers generated by Look Strategies per the percentages listed above. At the end of the calendar year (December 31st), the City will adjust the percentage per the table above and apply that percentage to the total amount generated. By way of example, if the total advertising revenue paid to the City for one month is \$30,000, Look Strategies will earn a commission of 12.5%. However, if at the end of the year the total amount of payments to the City equals \$104,000, the City will make up the percentages paid over each of the twelve months so that Look Strategies will receive a commission of 20% on the total.

(b) Any contract entered into for Five (5) or more years providing a minimum of \$5,000 per year of revenue will earn an additional 1.5% over and above the applicable percentage listed above but only to the extent of that specific revenue generated by that contract. For example, if a "\$5,000 per year for 5 year" contract is procured by Look Strategies and the total revenue for the year was \$86,000, the commission earned for that year would be 17.5% on the \$81,000 and 19% (17.5% plus 1.5%) on the \$5,000 long term contract.

(c) Look Strategies will assume all out-of-pocket expenses related to marketing the Corporate Sponsorship Program, including membership dues, paid advertising, databases, email distribution services, printing, mail house services, postage, website hosting fees, travel, phone, banner supplies and installation services.

8. Billing and Payment:

We want you to be satisfied with the quality of our services and the reasonableness of our bills, and we ask that you discuss with us any questions or comments you may have about fees, charges and/or the format of bills.

(a) This agreement requires a commission on all receipts related to the corporate sponsorship sales, covering the terms of each respective sponsor's contracted sponsorship agreement. The above-referenced commissions will be based on actual receipts received by the City of Avon, whether those receipts are received over multi-years (as stipulated in each respective sponsor contract) or paid by the sponsor in one lump sum. Commission payments are payable to Look Strategies on the 5th of each month.

If, for any reason, a sponsor contract is broken or terminated at any point during the term of the contract, and the sponsor's payment is halted for that respective contract, then the commission compensation paid to Look Strategies for that respective sponsor's contract will terminate following receipt of the sponsor's final payment and subsequent final commission payment to Look Strategies. If the City is obligated to refund any or all of the sponsor's payments, Look Strategies will reimburse the City for any commissions

received pertinent to that contract. The City shall not be liable to Look Strategies for any unpaid portions of advertising/sponsorship contracts and it will be at the City's discretion as to whether or not it will pursue any action to recover damages for any breach of an advertising/promotion contract

Look Strategies will retain exclusive rights to secure sponsorship opportunities for the Avon Aquatic Facility, which will include any potential sponsors (corporate or individual) derived from or presented to the project via digital communication (email), in person, or through outside parties. Preference will be given to local (Avon-based or located) businesses in selling sponsorship packages. The Mayor shall have final decision-making authority as to which entities will advertise/sponsor the aquatic center or portions thereof. In addition the Mayor shall approve the terms of any contract entered into with said entities. All signage must be approved by the City pursuant to §1290.16(a)(1) of the Avon Codified Ordinances.

9. Non-Payment and Collection:

Failure to pay commission compensation as per the terms of this agreement may, at our discretion, result in suspension of any or all service to you until payment is received, and may result in termination of the agreement. We shall incur no liability of any kind to you for such suspension or termination. We reserve the right to charge prevailing commercial interest per annum on all amounts more than 60 days outstanding. In the event that we must retain counsel or other services to enforce the contract or recover any sum due, you shall be responsible for all said costs and expenses including reasonable attorneys' fees.

10. Termination:

We hope and trust that our relationship with you will be long and valued. Nevertheless, either of us may terminate our services for any reason with seven (7) days' prior written notice. You remain liable for all fees, disbursements and other related charges incurred up to the date of termination, as well as all amounts that we must pay to third parties pursuant to non-cancelable agreements we entered into in order to perform this contract. Provisions in the agreement related to payment, confidentiality, indemnification, dispute resolution and waiver shall survive termination of the agreement.

All advertising materials and contracts created by Look Strategies, including the website and all website content shall be the property of the City of Avon.

11. Miscellaneous:

This agreement (1) may not be assigned by either of us without prior written consent of the other; (2) shall bind and benefit each of us and our respective permitted successors or assigns; (3) supersedes any previous agreements, understandings, or discussions with respect to its subject matter; (4) ratifies any acts performed under the terms hereof; and (5) shall be governed and construed under the laws of the State of Ohio. The proper venue for any action based upon this agreement shall be the County of Lorain and/or the City of Avon, Ohio. Failure by either of us to exercise our rights under this agreement, or to fail to require strict performance of any part of the agreement, shall not constitute a waiver of those rights or provisions, which shall remain in full force and effect. Notice required under this agreement shall be given in writing either by personal delivery, telecopy/email (with confirmation of receipt) or certified mail,

addressed in case of notice to us at: Steve Corcoran, Look Strategies, 30234 Ednil Drive, Bay Village, Ohio 44140.

ACCEPTED BY (SIGNATURE)

ORGANIZATION

**BRYAN K. JENSEN, MAYOR
CITY OF AVON**

DATE _____

LOOK STRATEGIES, LLC

STEVE CORCORAN, CEO

DATE _____