

ATTACHMENT “A”

BUZZ1441, INCORPORATED CONSULTANT AGREEMENT

This CONSULTANT AGREEMENT (“Agreement”), effective as of January 1, 2015 (“Effective Date”), is made by and between the Township of West Orange, with principal offices at 60 Main Street, West Orange, NJ 07052 (hereinafter referred to as the “Township”) and Buzz1441, Incorporated, a New Jersey Corporation with its principal offices at 38 Old Indian Rd., West Orange, New Jersey 07052 (“Buzz1441” or “Consultant”).

WHEREAS, the Township wishes to engage Consultant to provide the Services described herein and Consultant agrees to provide the services for the compensation and otherwise in accordance with the terms and conditions contained in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. SERVICES.

1.1 Performance of Services. The Consultant will represent the Township during the Term (as defined below) and will advise and assist the Township as its exclusive marketing and social media consultant. During the Term, the Township shall not engage in any agreement with any third party as consultant for the Services (as defined below) outlined herein, without the prior written consent of the Consultant. The Consultant's duties and responsibilities shall be outlined in Section 1.2 below (collectively, the “Services”).

1.2 The Services. The Consultant will assist the Township with the following:

1.2.1 Social Media Services.

- 1.2.1.1 Ongoing maintenance and administration of social media profiles (Facebook, Twitter, Instagram and YouTube) which includes 24-hour monitoring of profiles, daily postings and interactions (both directed by the Township and organically based on preset parameters), ongoing graphic creation and trafficking of inquiries to proper town representatives.
- 1.2.1.2 Ongoing maintenance and administration of West Orange Jitney Facebook Group and text alert service.
- 1.2.1.3 Work with Township representatives to create digital/physical outreach campaign, memos, signage, etc. encouraging local businesses to engage with the Township’s social media properties and to connect with other businesses in the Township’s social ecosystem.

1.2.2 Marketing Services.

- 1.2.2.1 Create and launch marketing/advertising outreach campaign highlighting diversity of Township residents (i.e., “This is West Orange”).
- 1.2.2.2 Increase awareness and adoption of Shop West Orange program. Promote existing local businesses, working with committees to bring new businesses to the Township.
- 1.2.2.3 Creation of additional digital/physical West Orange infographics identifying specific locations, attractions, and more to be used in all outreach and press efforts.
- 1.2.2.4 Creation of additional video assets as needed or desired for marketing campaigns and initiatives.
- 1.2.2.5 Bridge gap between Township and Board of Education to rally community behind public school initiatives, sports, and events.
- 1.2.2.6 Continue working with local realtors to educate and entice potential residents to make West Orange their home, raise their families, start businesses, and become active in the community.
- 1.2.2.7 Expansion of “Tax Facts” program (launched in 2014) to continue providing education regarding municipal taxes to Township residents.
- 1.2.2.8 Lead group that will create, market, and distribute products that will foster pride and a sense of community within the Township.

- 1.3 The parties agree that Perry Bashkoff shall be the primary consultant with respect to the performance of the Services. The Township and the Consultant agree that the Consultant shall not be an agent of the Township and may not bind or obligate the Township in any way. The Township further agrees that the Consultant is being engaged hereunder to provide the Services described above solely to the Township, and the Consultant shall have no duty or liability to any other person in connection with this Agreement.

2. COMPENSATION.

As compensation for the Services, the Consultant will receive the following fees:

- 2.1 Cash Retainer. The Township will pay to the Consultant a sum total of \$24,000.00 to be paid in twelve (12) equal installments of \$2,000.00. The Consultant shall issue monthly invoices to the Township within 10 days of the close of each calendar month. The Township shall remit payment in accordance with the terms of the invoice, or within 30 days of receipt of the invoice from the Consultant.

3. EXPENSES

The Township agrees to reimburse the Consultant for all reasonable and documented out-of-pocket expenses incurred in carrying out the terms of this Agreement. Out-of-pocket expenses

may include but are not limited to travel, meals, lodging, postage, printing, secretarial and similar administrative or operating expenses. Out-of-pocket expenses will be payable upon invoicing by the Consultant. The aggregate of all costs and expenses for a calendar year will not exceed \$250.00 without the Township's written consent.

4. TERM

- 4.1 This Agreement will become effective as of the Effective Date and will, unless sooner terminated as set forth herein, remain effective through the end of the calendar year 2015.

5. TERMINATION

- 5.1 Notwithstanding the foregoing, the Agreement may be terminated by either party immediately upon notice to the other party if the other party: (a) has a receiver or similar party appointed for its property, becomes insolvent, acknowledges its insolvency in any manner, ceases to do business, makes an assignment for the benefit of its creditors, or files a petition in bankruptcy; (b) engages in any unlawful business practice related to that party's performance under the Agreement; (c) breaches any of its obligations under the Agreement in any material respect, which breach is not remedied within 10 days following written notice to the breaching party; (d) if Perry Bashkoff ceases to be a majority owner and/or primary consultant as set forth in Section 1.3; or (e) if the Consultant maintains and/or administers the Township's social media profiles in a manner inconsistent with that set forth in Section 1.2.1.1.
- 5.2 Upon termination, neither party shall have any further obligations under this Agreement, except for the obligations which survive this termination as noted in Section 11.8 hereof.

6. MUTUAL NON-DISCLOSURE

- 6.1 Disclosure of Confidential Information. Each party hereto and/or such party's affiliates or representatives ("Discloser") may, from time to time, disclose to the other party and/or its affiliates or representatives ("Recipient") certain Confidential Information (as defined below) for the purpose of carrying out the obligations set forth in this Agreement (the "Purpose"). As set forth more fully below, **it shall be the obligation of the Discloser to advise the Recipient when Confidential Information is being disclosed.**
- 6.2 Definition of Confidential Information. As used herein, "Confidential Information" means, collectively, any information from the Township which is subject to an exception from public disclosure under the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1, et seq., and/or information from Consultant regarding materials provided that at the time of disclosure are designated by the Discloser as confidential or proprietary. For example and without limitation, Confidential Information shall include (a) any technical and non-technical information and materials related to Discloser's business and Discloser's current, future and proposed products and services, including information concerning research, development, design details and specifications, trade secrets, financial information, software (whether in source code or object code form) engineering information, customer lists, business strategy and forecasts, sales information and marketing plans and (b) any information and materials Discloser has received from third parties which Discloser is obligated to treat as confidential or

proprietary. DISCLOSER PROVIDES ALL INFORMATION SOLELY ON AN "AS IS" BASIS WITHOUT WARRANTIES, EXPRESS OR IMPLIED.

Discloser hereby expressly disclaims all warranties, including any implied warranties of merchantability and fitness for a particular purpose and any warranties arising out of course of performance, course of dealing or usage of trade.

Confidential Information shall not in any event include information or material that: (i) was in the public domain when communicated to Recipient; (ii) enters the public domain through no fault of Recipient; (iii) was in Recipient's possession free of any obligation of confidence when communicated to Recipient; (iv) is rightfully communicated to Recipient by a third party free of any obligation of confidence to Discloser; or (v) is developed by or on behalf of Recipient independently of and without reference to any of Discloser's Confidential Information.

- 6.3 General Obligations. Recipient shall not use Discloser's Confidential Information for any purpose other than the Purpose. Recipient shall hold Discloser's Confidential Information in strict confidence and shall not disclose any Confidential Information to any third party. Recipient shall permit access to the Confidential Information only to its directors, employees/contractors and advisors, and those of its affiliates, who need to know the same in connection with the Purpose. Recipient shall be responsible and liable for acts and omissions of such persons in respect of the Confidential Information.
- 6.4 Exception to General Obligations. Recipient may disclose Discloser's Confidential Information as required by law or governmental authority, but only if Recipient: (i) gives Discloser reasonable advance notice of such disclosure to the extent possible according to the terms of the applicable law or other governmental authority; (ii) cooperates with Discloser's reasonable efforts to resist or narrow such disclosure and to obtain an order or other reliable assurance that confidential treatment will be accorded Discloser's Confidential Information; and (iii) furnishes only that portion of Discloser's Confidential Information that Recipient is legally compelled to disclose according to advice of its legal counsel.

7. OWNERSHIP.

The Township is the sole and exclusive owner of all Intellectual Property Rights therein. All Properties created as a direct result of the Services will be deemed a "work made for hire" as defined in Section 101 of the United States Copyright Act (as amended). To the extent that title to any of the Properties do not vest in the Township as the author or such works may not be considered "works made for hire," all rights, title and interest therein, including all Intellectual Property Rights, are hereby irrevocably assigned and transferred to the Township by Consultant, and Consultant hereby irrevocably and unconditionally waives all enforcement of such rights.

8. REPRESENTATIONS AND WARRANTIES.

Both parties represent and warrant to each other that they each: (i) have the power and authority to enter into and perform their respective obligations under this Agreement; and (ii) have no restrictions that would impair their ability to perform their obligations under this Agreement.

9. INDEMNIFICATION.

Each party ("Indemnitor") shall defend, indemnify, and hold harmless the other party and its officers, directors, employees, representatives, licensees, and authorized agents ("Indemnitee") from and against any and all third party claims, liability, damages, costs and expenses (including reasonable attorneys' fees), arising out of, related to, or in connection with Indemnitor's breach of any representation or warranty in the Agreement. Indemnitee will promptly notify the Indemnitor in writing of any such claim. Indemnitee shall give Indemnitor sole control over the defense and/or settlement of any such claim, except that the Indemnitor will not agree to any settlement or compromise that would require Indemnitee to make any payments, bear any obligations, or admit to any liability or wrongdoing on the part of Indemnitee unless Indemnitor obtains Indemnitee's prior written approval.

10. LIMITATION OF LIABILITY.

EXCEPT FOR WILLFUL VIOLATION OF THE AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT.

11. GENERAL PROVISIONS.

- 11.1 Notices and Consent. All notices in connection with this Agreement shall be in writing and deemed given when personally delivered, upon confirmed receipt when delivered electronically or via facsimile, or three (3) days after being sent by certified U.S. mail, postage prepaid, return receipt requested, and addressed to the address provided above or such other address last provided by written notice. Wherever in this Agreement written approval or consent is required, either party may give such approval or consent via e-mail.
- 11.2 Assignment. Neither party shall assign this Agreement in whole or in part without the prior written consent of the other party except that either party may freely assign this Agreement in its entirety to its parent company, any subsidiary in which it holds a majority voting interest, or in connection with any acquisition, merger, consolidation, reorganization, or any sale of all or substantially all of its assets or any other transaction in which more than 50% of its voting securities are transferred.
- 11.3 Independent Contractors. The parties are independent contractors. Nothing herein will be construed as creating any agency, partnership, or other form of joint enterprise between the parties, and neither party may create any obligations or responsibilities on behalf of the other party.
- 11.4 Force Majeure. Either party will be excused from a delay in performing, or failure to perform, its obligations under the Agreement to the extent such delay or failure is caused by the occurrence of any contingency beyond the reasonable control, and without any fault, of such party, which contingencies include but are not limited to acts of God, war, riot, power failures, fires, and floods.
- 11.5 Waiver. No waiver by either party of a breach of any provision hereof will be taken or held to be a waiver of any other breach of such provision or a waiver of the provision itself.
- 11.6 Severability. If any portion of this Agreement is held to be illegal or unenforceable, that portion shall be restated, eliminated or limited to the

minimum extent necessary so that this Agreement shall reflect as nearly as possible the original intention of the parties and the remainder of this Agreement shall remain in full force and effect.

- 11.7 Governing Law. The Agreement and any dispute relating thereto shall be governed by and construed in accordance with the laws of the State of New Jersey except as to matters preempted by Federal law, and in that event as to the specific matters that are preempted by Federal law, the Agreement and any dispute relating thereto shall be governed and construed in accordance with Federal law.
- 11.8 Venue. The parties agree that any claim, action or dispute, whether at law or in equity, between them and arising out of the Agreement shall be adjudicated in the Superior Court of New Jersey, Essex County, or in the United States District Court for the District of New Jersey.
- 11.9 Survival. The provisions of Sections 6, 7, 8, 11.5, 11.6, 11.7, and 11.8 of this Agreement shall survive the expiration of the Term or the termination of this Agreement.
- 11.10 Entire Agreement and Amendments. This Agreement contains the entire understanding of the parties regarding its subject matter and supersedes and cancels all other agreements, whether oral or written. Otherwise, this Agreement may only be amended by a subsequent written agreement signed by both parties hereto.
- 11.11 Contract Acceptance; Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Execution and delivery of the Agreement may be evidenced by facsimile or electronic transmission.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Township of West Orange

Buzz1441, Inc. (the "Consultant")

Robert D. Parisi, Mayor

Printed Name & Title

Signature

Signature

Date

Date

Attest:
Karen J. Carnvevale,
Municipal Clerk