

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into by and between the **CITY OF HELENA, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, 316 North Park Avenue, Helena, Montana 59623, hereinafter referred to as “City,” and, **COMMUNICATION AND MANAGEMENT SERVICES, LLC**, PO Box 1251, Helena, MT 59624 hereinafter referred to as “Service Provider,” collectively referred to as “Parties.”

RECITALS

1. This is an agreement for professional, technical, architectural, engineering, land surveying, or legal services.
2. Pursuant to § 7-5-4301(2), MCA, these types of agreements are exempt from the §§ 7-5-4302 through 7-5-4304, § 7-5-4306, and §7-5-4307, MCA, including bidding requirements.

AGREEMENT

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. **Purpose:**
To provide recruitment and consulting services to the City Commission associated with the recruitment and hiring of a City Manager.
2. **Effective Date and Term:** This Agreement is effective upon execution by both parties and will terminate on: N/A.

Any extension of the term of this Agreement must be set forth in writing and signed by both parties.

3. **Scope of Services:** Service Provider will perform the work and provide the services in accordance with the specifications and requirements as follows:

CMS will provide recruitment and consulting services to the City Commission associated with recruitment and hiring of a City Manager. As part of the recruitment and hiring process, CMS will work directly with the City Manager Relations Subcommittee established by the City Commission. CMS will: (1) assist the City Commission in developing a detailed announcement which outlines position requirements; (2) develop a recruitment plan to generate a sufficient pool of qualified candidates; (3) conduct active recruitment of the position, including the development of marketing materials for the position and identifying qualified candidates for assessment; (4) work with the Commission to screen and narrow applicants for purpose of interviews; (5) develop and

facilitate a multi-step interview process; and (6) assist with selection of the City Manager.

In addition, prior to hiring of a new City Manager, CMS will provide consulting services, in conjunction with City staff and City legal advisors, to include developing a written employment agreement for the Commission's use with the new City Manager; developing a performance appraisal form and process for the City Commission to use in evaluating the City Manager's performance; evaluating the current City Manager grievance process and make recommendations for a more effective process.

Media inquiries regarding the City Manager recruitment, hiring and employment engagement processes will be the responsibility of the City. The official point of contact for media requests will be directed by CMS to the City Manager Relations Subcommittee, unless explicitly directed by the Subcommittee. If necessary, CMS may be called upon to advise and offer supporting data pertaining to the work product produced by CMS for media requests.

Any alteration or deviation from the above described work that involves extra costs will be permitted only upon written request by the City to Service Provider and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing.

4. **Payment (check one):**

City agrees to pay Service Provider One Hundred and Fifty dollars per hour (\$150/hr). The hourly rate includes all incidentals and will not exceed this rate per hour or a total payment of Twenty Thousand Dollars (\$20,000) (133.333 hours x \$150/hr) without prior written approval of the parties. Any costs associated with marketing or outreach of the recruitment process will be the responsibility of the City. Any alteration or deviation from the described work that involves extra costs will be executed only upon written request by the City to Service Provider and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing.

5. **Receipt of Payment (check one)**

To receive payment, Service Provider must submit a record of expenditures incurred for the performance and completion of this Agreement in the form acceptable to the City. The City may request supporting documentation to verify any expenditure prior to making payment. For any services delivered under this Agreement, the City may request inspection to assure said services meet City specifications prior to tendering payment.

30 Days After Receipt of Invoice, Verification, and Inspection: The City has thirty (30) days to make payment after the later of the date of delivery of services, the City's

receipt of a properly executed invoice, or the successful passage of a City-requested inspection.

6. **Professional Services:** Service Provider agrees that the services provided will conform to the Agreement requirements, including all descriptions, specifications, and attachments made part of this Agreement. Service Provider agrees that all services will be performed in a good workman-like, professional manner, and according to all applicable industry standards. City's acceptance of any non-conforming services does not relieve the Service Provider from its obligation under this paragraph and does not waive any remedy available to the City. In addition to the remedies available to the City under this Agreement, at law or in equity, the City may require prompt correction, at Service Provider's expense, of any services failing to meet the standard of care contained in this paragraph.
7. **Independent Contractor Status:** The parties agree that Service Provider is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Service Provider is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Service Provider is not authorized to represent the City or otherwise bind the City in any dealings between Service Provider and any third parties.

Service Provider must comply with the provisions of the Montana Workers' Compensation Act. Proof of compliance must be in the form of workers' compensation insurance, an independent Service Provider's exemption, or documentation of corporate officer status. This insurance/exemption must be valid for the entire term of this Agreement and any renewal. Upon expiration, Service Provider must send a proof of renewal to the City.

8. **Hold Harmless and Indemnification:** To the fullest extent permitted by law, Service Provider agrees to indemnify and hold the City harmless against claims, demands, suits, damages, losses, and expenses, including reasonable defense attorney fees, to the extent caused by the negligence or willful misconduct of the Service Provider or Service Provider's agents or employees.
9. **Liquidated Damages:** Service Provider is not liable for any liquidated damages.
10. **Insurance:** Service Provider will provide City with proof of Service Provider's liability insurance issued by a reliable company or companies for personal injury and property damage, in an amount not less than \$1.0 million per occurrence and \$2.0 million aggregate per year for bodily injury, personal injury, and property damage. The Service Provider must also provide proof of professional liability insurance in an amount no less than \$1,000,000 per claim and \$2,000,000 annual aggregate.

The insurance must be in a form suitable to City and must name the City as an additional

insured as to commercial general liability. Service Provider must immediately notify the City of any changes to the Service Provider's insurance policy during the term of this Agreement.

The Service Provider's insurance coverage shall be primary insurance with respect to City, its elected and appointed officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the City, its elected and appointed officials, officers, agents, employees, and volunteers shall be in excess of the Service Provider's insurance and shall not contribute with it.

11. **No Assignment, Transfer, Delegation, or Subcontracting:** Service Provider may not assign, transfer, delegate, or subcontract this Agreement or any of its rights, duties, or obligations hereunder without prior express written consent of the City.
12. **Compliance with Laws:** Service Provider agrees to comply with all applicable federal, state and local laws, ordinances, rules and regulations, including the safety rules, codes, and provisions of the Montana Safety Act in Title 50, Chapter 71, Montana Code Annotated. Service Provider agrees to purchase a City business license if Service Provider does not currently have one.
13. **Nondiscrimination:** Service Provider agrees that Service Provider will not discriminate based on any protected class in any of its activities or provision of services regardless of whether or not those activities or services are provided in connection with this Agreement. Service Provider agrees that all hiring of persons in connection with this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of race, creed, religion, color, national origin, age, physical or mental disability, marital status, sex, pregnancy, childbirth or medical condition related to pregnancy or childbirth, sexual orientation or expression, political beliefs or affiliation, genetic information, veteran status, culture, social origin or condition, or ancestry.
14. **Website Privacy Policy:** Service Provider agrees to comply with and follow the City's Website Privacy Policy in order to ensure the data security and data quality of personally identifiable information that is collected during the course and scope of this project.
15. **Records Access and Retention:** Service Provider agrees to create and retain records supporting the services rendered in connection with this Agreement. Service Provider agrees, to the extent permitted by law, to provide the City, or the City's authorized agent, access to any such records at the City's request. The City may terminate this Agreement without incurring liability if the Service Provider refuses to allow access to records as provided in this section. Service Provider agrees to retain any records concerning this Agreement for eight (8) years after the Agreement termination date. The obligation to maintain records required by this section survives the termination or the expiration of this Agreement.

16. **Ownership and Publication of Materials:** If any reports, information, data, or other materials are prepared by the Service Provider pursuant to this Agreement these reports, information, data, or other materials become the property of the City. The City has the exclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating thereto. Any re-use of these materials by the City without written verification or adaptation by the Service Provider for the specific purpose intended will be at the City's sole risk and without liability or legal exposure to the Service Provider. No material produced in whole or in part under this Agreement may be copyrighted or patented in the United States or in any other country without the prior written approval of the City.
17. **Notice Protocol:** Any notice or demand required or permitted to be given under the terms of this Agreement must be in writing. Written notice shall be deemed given when hand-delivered, or when mailed by first class mail, postage prepaid, to the addresses specified in this section, or by e-mail with confirmation of delivery.

The City's liaison for purposes associated with this Agreement is:

Name: Dannai Clayborn, Clerk of the Commission
Address: 316 N. Park Ave, Helena, MT 59623
Phone: 406-447-8409
E-Mail: dmclayborn@helenamt.gov

The Service Provider's liaison for purposes associated with this Agreement is:

Name: Drew Geiger, Managing Consultant
Address: PO Box 1251, Helena, MT 59624
Phone: 406-442-4934
E-Mail: Andrew.drew.geiger@gmail.com

If either party changes address or contact person, it must notify the other party in writing at the address provided in this section.

18. **Default:** If either party to this Agreement defaults in the performance of any term or condition of this Agreement, the other party may give the defaulting party notice of the default. The notice shall specify the action required to correct the default and a period of time, not less than thirty (30) days, within which to correct the default. If the default is not corrected within the time specified in the notice, the party not in default may terminate this Agreement without further obligation under this Agreement, other than obligations incurred or accrued up to the date of termination. The non-defaulting party may also bring suit for damages, specific performance, and any other remedy available by law.

19. **Termination for City's Convenience:** City may terminate this Agreement at any time by giving Service Provider thirty (30) days' written notice if, in the sole opinion and discretion of the City, this Agreement is no longer in the best interest of the City or if funding for this Agreement becomes unavailable. Except for the prorated amount owing to the Service Provider for the services already provided as of the date of termination, City is not liable to Service Provider for any damages arising from termination of this Agreement pursuant to this section.
20. **Termination in Writing:** Notice to terminate must be in writing and made in accordance with the provision in the "Notice Protocol" section of this Agreement.
21. **Remedies Non-Exclusive:** Any remedies available under this Agreement are cumulative and non-exclusive. Use of one remedy does not preclude use of the others.
22. **Failure to Enforce Not a Waiver:** City's failure, at any time, to enforce or to seek strict compliance with any provision of this Agreement or to exercise any right or remedy arising from the breach thereof does not constitute a waiver of that provision or remedy or of any other provision of this Agreement or available remedy.
23. **Full Integration:** This Agreement, together with its exhibits, if any, embodies the entire understanding between the parties relating to the subject matter contained herein and supersedes any prior statements, understandings, promises, or representations made by either party or their agents. No agent or representative of either party has authority to make any representations, statements, warranties, or agreements not herein expressed.

The following exhibits are made part of this Agreement by reference:

City Manager Selection Process Assessment 2022

24. **Amendments in Writing:** All amendments to this Agreement must be in writing and executed by all parties to this Agreement.
25. **Governing Law and Venue:** This Agreement and any extensions hereof shall be governed and construed in accordance with the laws of the State of Montana. If a dispute arises, the proper venue for the hearing of the case is the District Court of the First Judicial District of the State of Montana, in and for the County of Lewis and Clark.
26. **Headings:** The section headings contained in this Agreement are for reference purposes only and do not affect the meaning or interpretation of the Agreement.
27. **Severability:** If any term or provision of this Agreement is held to be illegal, void or in conflict with any Montana law, the validity of the remaining terms and conditions shall not be affected. The rights and obligations of the parties shall be construed and enforced as if

this Agreement did not contain the particular term, condition, or provision held to be invalid.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates stated below.

FOR THE CITY OF HELENA MONTANA

Signed: _____ **Dated:** _____
By: **Wilmot Collins, Mayor**

FOR THE SERVICE PROVIDER

Signed: _____ **Dated:** _____
By: **Drew Geiger, Managing Consultant, CMS, LLC**

APPROVED AS TO FORM:

Signed: _____ **Dated:** _____
By: **Rebecca Dockter, City Attorney**