

PROFESSIONAL SERVICES AGREEMENT

URD II Montana Idaho Water & Sidewalk Project

Design Development, Public Process, Construction Services

THIS AGREEMENT is made, by and between **CITY OF MISSOULA**, whose address is 435 Ryman, Missoula, Montana 59802, herein referred to as "City", and **IMEG Corp.**, 1817 South Avenue W., Missoula, Montana 59801, hereinafter referred to as "Consultant."

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:** The City agrees to hire Consultant as an independent contractor to perform for City services described in the Consulting Scope of Services & Cost Estimate Schedule A and Schedule B attached hereto as Exhibit A and by this reference made a part hereof.

2. **Effective Date:** This Agreement is effective upon the date of signature.

3. **Scope of Work/Task Deadlines:** Consultant will perform the work and provide the services in accordance with the requirements of the Scope of Services & Cost Estimate (Exhibit A).

4. **Payment:** City agrees to pay Consultant, using URD II Tax Increment Funds, through a Memorandum of Understanding with the Missoula Redevelopment Agency (hereinafter referred to as MRA) as approved by the MRA Board of Commissioners on September 16, 2021, an amount not to exceed One Hundred Seventy-Two Thousand Seven Hundred Eighty Five dollars (**\$172,785**) for services performed pursuant to Exhibit A. Any alteration or deviation from the described work that involves extra costs will be performed by Consultant after written request by the MRA and City, and will become an extra charge over and above the contract amount. The three parties must agree in writing upon any extra charges prior to work being performed.

5. **Independent Contractor Status:** The parties agree that Consultant is an independent contractor for purposes of this Agreement and the parties agree that Consultant is and shall be an independent contractor when performing services pursuant to this Agreement. Consultant 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. Consultant is not authorized to represent the City or otherwise bind the City in any dealings between Consultant and any third parties.

Consultant shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Consultant shall maintain workers' compensation coverage for all members and employees of Consultant's business, except for those members who are exempted by law.

Consultant shall furnish the City with copies showing one of the following: (1) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (2) proof of exemption from workers' compensation granted by law for independent contractors.

6. Indemnity and Insurance: For other than professional services rendered, to the fullest extent permitted by law, Consultant agrees to defend, indemnify, and hold MRA and the City harmless against claims, demands, suits, damages, losses, and expenses connected therewith that may be asserted or claimed against, recovered from or suffered by MRA or the City by reason of any injury or loss, including but not limited to, personal injury, including bodily injury or death, property damage, occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Consultant or Consultant's agents or employees.

For the professional services rendered, to the fullest extent permitted by law, Consultant agrees to indemnify and hold MRA, and 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 Consultant or Consultant's agents or employees.

For this purpose, Consultant shall provide the City with proof of Consultant's liability insurance issued by a reliable company or companies for personal injury and property damage in amounts not less than as follows:

- Commercial General Liability - \$1,000,000 per occurrence; \$2,000,000 annual aggregate
- Professional Liability - \$1,000,000 per claim; \$1,000,000 annual aggregate

7. Professional Service: Consultant agrees that all services and work performed hereunder will be accomplished in a professional manner.

8. Compliance with Laws: Consultant agrees to comply with all federal, state and local laws, ordinances, rules and regulations. Consultant agrees to purchase a City business license.

9. Nondiscrimination: Consultant agrees that all hiring by Consultant of persons performing this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status or sexual orientation, gender identity or expression, except where these criteria are reasonable bona fide occupational qualifications.

10. Default and Termination: If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party, at its option, may terminate this Agreement and be released from all obligations if the default is not cured within ten (10) days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages,

specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

11. Modification and Assignability: This document contains the entire agreement between the parties and no statements, promises or inducements made by either party or agents of either party, which are not contained in this written Agreement, may be considered valid or binding. This Agreement may not be enlarged, modified or altered except by written agreement signed by all parties hereto. The Consultant may not subcontract or assign Consultant's rights, including the right to compensation or duties arising hereunder, without the prior written consent of the City. Any subcontractor or assignee will be bound by all of the terms and conditions of this Agreement.

12. Ownership and Publication of Materials: All reports, information, data, and other materials prepared by the Consultant pursuant to this Agreement are the property of the City and the MRA. MRA and the City have the exclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating thereto. Any re-use without written verification or adaptation by the Consultant for the specific purpose intended will be at MRA's or the City's sole risk and without liability or legal exposure to the Consultant. 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

13. Liaison: The City's designated liaison with Consultant and MRA is Andy Schultz, City Engineer for Utilities; MRA's designated liaison with Consultant and the City is Tod Gass, Project Manager, MRA and Consultant's designated liaison with the City and MRA is Cory Davis, P.E., Project Manager, IMEG, Corp.

14. Applicability: This Agreement and any extensions hereof shall be governed and construed in accordance with the laws of the State of Montana.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the day of signature written below.

CONSULTANT
IMEG Corp.

MAYOR
City of Missoula

Cory Davis, Operations Manager

John Engen

ATTEST:

Martha L. Rehbein, City Clerk

APPROVED AS TO FORM

Jim Nugent, City Attorney