



## MEMORANDUM

**TO:** MRA Board of Commissioners

**FROM:** Ellen Buchanan, Director *EB*

**DATE:** January 12, 2022

**SUBJECT:** Professional Services Agreement with Behan Development Services, LLC

MRA staff would like to engage the services of Chris Behan to assist with the current MRA workload. We have been short staffed since Chris retired at the end of June and the amount of production in the office continues to increase as Missoula continues to attract investment. We are working on some of the largest projects in the history of the Agency and the experience and knowledge that Chris can bring to these projects is immeasurable. We are currently managing or participating in the Scott Street Redevelopment Project, the Brooks Street BRT/TOD corridor project, final design and engineering of the Front/Main Streets conversion to two-way traffic, the prioritization of projects and expenditures in URD II as we approach the 2031 sunset with numerous large projects that will not happen without TIF funding, renewed interest in development of the Riverfront Triangle, implementation of the West Broadway Master Plan, Clark Fork River and riverbank restoration, completion of sidewalks and water mains in URD II prior to sunset of the District, and implementation of a comprehensive communications and public outreach plan, just to name a few. And, we have inquiries about new projects at least weekly.

While we have hired a new Deputy Director, she will not begin work until March 1<sup>st</sup> and will have a bit of a learning curve when she gets to Missoula. Chris has graciously agreed to come back and assist MRA on a contract basis. To that end, he has presented us with a Professional Services Agreement (PSA) which is attached to this memo. He will be available to assist with the development of the Fox site if a development proposal materializes, and it looks promising that it will. No one has as much knowledge around Riverfront Triangle and the Fox site as Chris. He will be a great help with the Scott Street project as final decisions are being made and agreements hammered out. He has also volunteered to help our new Deputy Director get up to speed as quickly as possible. If development in Missoula doesn't level off a bit, I can easily imagine that we will continue to need Chris' services into the future as long as he is willing to rejoin "the team".

The salient points of the PSA are that Chris will be working for MRA as Behan Development Services LLC as an independent contractor, he will perform work as directed by the MRA Director, he will be compensated monthly based on invoices for work performed at a rate of

\$60/hour, he will not work more than 960 hours in any calendar year without prior written approval of both parties, and MRA will own all work product. Since this position has been vacant for over six months, there is adequate funding in the MRA budget to cover this contract. The attached PSA has been reviewed by the City Attorney, who found it acceptable. The terms are simple and straight forward; however, we welcome any comments, questions or changes that Board might have.

**Recommendation: Staff recommends that the MRA Board approve the Professional Services Agreement to engage Behan Development Services, LLC to perform work for the Missoula Redevelopment Agency and authorize the Chair to sign the contract.**

## PROFESSIONAL SERVICES AGREEMENT

This Agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the **City of Missoula Redevelopment Agency**, 140 West Pine Street, Missoula, Montana, (hereinafter called MRA) and **Behan Development Services, LLC**, 1015 Pineview Drive, Missoula, Montana 59802 (hereinafter called “Behan, a single-member Limited Liability Company under the laws of the State of Montana.

### PRELIMINARY STATEMENT

MRA has found that Behan has unique experience and knowledge to provide certain professional services to MRA upon request by the MRA Director including, but not limited to: urban renewal project management, representing MRA’s interests and positions in multi-party development and redevelopment negotiations, and tax increment related meetings at local and state levels, drafting of documents such as development agreements, easements, City Council Resolutions and Ordinances, etc., MRA staff training in the above subjects, providing the MRA Director and staff with assistance and advice regarding ongoing and prospective redevelopment projects, programs, and other services within Behan’s expertise.

For and in consideration of the agreements set forth herein, MRA and Behan agree to the following provisions:

- I. Independent Contractor: It is understood by the parties hereto that Behan is an independent contractor and is not an employee of MRA or the City of Missoula for purposes of income tax, health benefits, retirement system, or social security (FICA) withholding.
- II. Employment of Behan: MRA hereby agrees to retain the professional services of Behan pursuant to the terms and provisions of this Agreement, and Behan agrees to perform the professional services identified pursuant to the terms and provisions of this Agreement in a competent, professional, and acceptable manner. Specific tasks will be assigned in writing, by the MRA Director.
- III. Payment for Services: For specific tasks related to services listed hereinabove, the MRA shall pay Behan monthly based on actual work performed at an hourly rate of Sixty Dollars (\$60) per hour and actual materials costs.
  - A. Payment shall be based on invoices acceptable to MRA submitted by Behan indicating hours worked pursuant to Behan’s hourly rate plus applicable materials costs or as negotiated and mutually agreed upon in writing prior to starting work on those items.
  - B. The total hours worked during any calendar year of all of Behan’s services associated with this Agreement shall not exceed 960 hours without prior written mutual agreement by both parties.

VI. The MRA and Behan further agree to the following conditions:

- A. Conflict of Interest: Behan covenants that it presently has no interest and will not acquire any interest, direct or indirect, in any project or assigned task which would conflict in any manner or degree with the performance of its services to MRA.

Behan agrees that in the event it is approached by a potential client desiring to engage Behan to review or complete MRA program applications or other documents associated with a request for MRA assistance to a redevelopment project, but unrelated to an assigned project or task that, prior to accepting the engagement, Behan shall notify the MRA Director of the request and accept her determination as to whether there could be an actual or perceived conflict of interest. Any potential resulting client engagement agreement shall state that Behan has no influence as to whether any program application or document will be approved by MRA.

- B. Modification: This Agreement may not be modified, altered, extended or changed except pursuant to a written agreement signed by the parties hereto.
- C. Termination of Agreement: Either party may terminate this Agreement in whole or in part for any reason at any time upon giving written notice. Such termination shall be effective in the manner specified in said notice. MRA will compensate for the reasonable value of work satisfactorily completed at the time of termination. Behan shall deliver to MRA all work completed or in progress as of the date of termination.
- D. Non-Discrimination: Behan agrees that any and all hiring related to this Agreement shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis 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.

Additionally, Behan understands that all contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Non-Discrimination Policy and Affirmative Action Plan, as well as Title 49 Montana Code Annotated, entitled "Human Rights" or forfeit the right to continue such business. A copy of the City's Non-Discrimination and Affirmative Action Policy is attached and incorporated hereto as "Exhibit A".

- E. Ownership and Publication of Materials: All reports, information, data and other materials prepared by Behan pursuant to this Agreement are the property of the MRA and the City of Missoula, which shall have the exclusive and unrestricted authority to release, publish or otherwise use, in whole or part, any information prepared by Behan related to this Agreement. Any reuse of such material by the MRA or the City of

Missoula on projects not associated with this Agreement shall be at their sole risk, without legal liability to Behan.

- F. Reports and Information: Behan will maintain accounts and records adequate to identify and account for all costs pertaining to this Agreement and payment for services and such other records as may be deemed necessary by the MRA to assure proper accounting. Behan understands that these records will be made available for audit purposes to the MRA, the City of Missoula, and their authorized representatives, and will be retained for three years (or other length of time specified by MRA or City of Missoula) after receipt of final payment for the services rendered under this Agreement, unless permission to destroy them is granted by the MRA or the City of Missoula. Behan's records relating to this Agreement will be available during traditional business hours for inspection by the MRA, City of Missoula and their authorized representatives.
- G. Legal Venue: This Agreement will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning it, venue is the Fourth Judicial District in and for the County of Missoula, State of Montana.
- H. Workers Compensation Insurance: It is understood by the parties that Behan shall abide by Section 39-71-401 Montana Code Annotated regarding Worker's Compensation. A copy of a statement of Behan's exemption regarding Workers Compensation coverage for independent contractors from the State of Montana shall be provided by Behan to the MRA and made part of this Agreement by reference.
- I. Previous Agreements: This Agreement constitutes the entire understanding of the parties and is intended as a final expression of their agreement and a complete statement of the terms thereof. There are no promises, terms, conditions, or obligations, other than contained herein. This Agreement supersedes all previous communications, representations, or agreements, either oral or written, between the parties.
- J. Binding Effect: This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the MRA and Behan respectively and its successors, assigns and legal representatives. Neither the MRA, nor Behan shall have the right to assign, transfer or sublet its interest or obligations hereunder without written consent of the other party.
- K. Indemnification: Behan shall indemnify, defend, and hold the MRA and City of Missoula and their officers and employees harmless from, and shall process and defend at its own expense, all claims, demands, or suits of law or equity arising in whole or in part from Behan's negligence or breach of any of its obligations under this Agreement. Nothing herein shall require Behan to indemnify the MRA against and hold harmless the MRA or City of Missoula from claims, demands or suits based solely upon the conduct of the MRA, City of Missoula, their agents, officers and employees.

- L. Severability: If a part of this Agreement is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Agreement is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the day and year first hereinabove written.

**Behan Development Services, LLC**

**Missoula Redevelopment Agency**

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By: Christopher C. Behan,  
Managing Member

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By: Karl J. Englund, Chair

**Attest For MRA:**

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Ellen Buchanan, Director

**Approved As To Form For MRA**

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Jim Nugent, City Attorney

## **EXHIBIT A**

### **NON-DISCRIMINATION AND AFFIRMATIVE ACTION POLICY**

**NON-DISCRIMINATION.** All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis 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.

**AFFIRMATIVE ACTION POLICY.** Contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan, and Title 49 Montana Codes Annotated, entitled "Human Rights" or forfeit the right to continue such business dealings.

#### **The City's Affirmative Action Policy Statement is:**

The Mayor of the City of Missoula or the Mayor's designee may adopt an affirmative action plan to provide all persons equal opportunity for employment without regard to race, ancestry, color, handicap, religion, creed, national origin, sex, age, marital status. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered on the basis of job necessity.

Specific responsibility for developing, implementing, monitoring and reporting are assigned to the City Personnel staff under the supervision and direction of the Chief Administrative Officer and the Mayor.

It is the policy of the City of Missoula to eliminate any practice or procedure that discriminates illegally or has an adverse impact on an "affected" class. Equal opportunity shall be provided for all City employees during their terms of employment. All applicants for City employment shall be employed on the basis of their qualifications and abilities.

The City of Missoula, where practical, shall utilize minority owned enterprises and shall ensure that subcontractors and vendors comply with this policy. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of affirmative action for the City of Missoula, its employees, program participants, trainees and applicants.