

## PROFESSIONAL SERVICES AGREEMENT

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_, 2022, by and between the **CITY OF MISSOULA, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, 435 Ryman St., Missoula, MT 59802, referred to here as “City,” and Metta Urban Design, a Colorado Limited Liability Company, whose principal place of business is located at 191 University Blvd #678, Denver, CO, 80206, hereinafter referred to as “Consultant.”

### RECITALS

WHEREAS, the City desires to utilize Consultant to furnish independent services in connection with the City’s Comprehensive Code Reform Project to develop a Unified Development Code (UDC) for the City of Missoula; and

WHEREAS, the City desires to work with Consultant because it has represented to the City that they have access to a professional urban planning team with demonstrated experience in visioning, evaluating, researching, merging, and writing land use regulations of the type the City is looking to incorporate into the proposed UDC; and

WHEREAS, Consultant has represented to the City that Consultant has the necessary expertise to furnish said services and has available to Consultant the necessary staff and resources to perform the independent services in a timely manner consistent with the nature of the project.

NOW THEREFORE, in consideration of the foregoing recitals, which are a material element of the contract, and along with the mutual covenants and agreements herein contained, the parties agree as follows:

1. **Purpose:** City desires to have Consultant create a Unified Development Code (UDC) that achieves the aspirational elements of City policy and fulfills project goals as defined and discussed in the Scope of Work below.

It is the City’s intent that the final UDC will integrate all City development regulations (including but not limited to zoning, subdivision, parks, and engineering regulations) into one code and update the regulations to be responsive to Missoula’s current and emergent land use needs with an emphasis on affordability, equity, and sustainability.

2. **Effective Date:** This Agreement is effective upon the date of its execution by both parties and will terminate upon (1) City’s written approval that the Scope of Work has been completed and it has received the deliverables outlined in the Scope of Work, which is expected to be on December 31, 2024, or (3) upon 30 days’ notice by the City to Consultant of its desire to terminate the Agreement by giving such notice to Consultant’s designated liaison identified below; whichever of the two outcomes shall occur first.

3. **Scope of Work:**

a. Consultant will perform the work and provide the services in accordance with the requirements of the following documents, which are hereby incorporated into this Agreement:

- i. The City of Missoula Comprehensive Code Reform RFP Dated, December 12, 2021,
- ii. The Metta Urban Design Response to RFP for the City of Missoula, dated January 20, 2022; and
- iii. The Missoula Comprehensive Code Reform - Scope of Work, dated April 26, 2022, attached here to as Exhibit A.

In the event of a conflict between the provisions in any of the documents identified above, the Scope of Work shall control, with the Metta Urban Design Response controlling in precedence over the City of Missoula Comprehensive Code Reform RFP.

b. If authorized in writing as provided in this subsection, Consultant shall also furnish additional services. To the extent additional services have been identified at the time of executing this Agreement, they are itemized in Exhibit A and will be paid for by City as indicated in Section 4. As further additional services are requested of Consultant that are not outlined in Exhibit A, this Agreement may be modified and subject to mutual consent by execution of an addendum by authorized representatives of both parties, setting forth the additional scope of services, their performance time schedule, and the compensation for such services.

4. **Payment:**

a. City agrees to pay Consultant for services outlined in Exhibit A in accordance with the terms and conditions laid out in Exhibit B – Compensation, and Consultant shall be compensated for additional services authorized pursuant to Section 3.b. above, which have not been identified at the time of executing this Agreement as more particularly described in a fully approved and executed addendum to this Agreement. Payment for work beyond that described in Exhibit A or as contained in a fully approved and executed addendum to this Agreement is expressly denied without prior written authorization from City. Such authorization must include signature of the Mayor.

b. Consultant shall submit monthly statements for basic and additional services rendered. City shall pay Consultant within 30 days of receipt of an itemized invoice for the services rendered or shall notify Consultant of any dispute by City concerning the performance of any services and the basis therefore and shall pay Consultant within thirty days for the services not in dispute. If any items are disputed by City, Consultant and representatives of City shall meet and confer regarding the disputed items within ten business days after City notifies Consultant of the services in dispute. City shall pay for any disputed services for which the dispute has been resolved to the satisfaction of the City within thirty days after such resolution.

**5. Independent Consultant Status:** The parties agree that Consultant, is an independent consultant for purposes of this agreement and the parties agree that Consultant is and shall be an independent consultant 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 consultants.

**6. Indemnity and Insurance:** For other than professional services rendered, to the fullest extent permitted by law, Consultant agrees to defend, indemnify, and hold 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 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 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 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:

- Workers' Compensation—statutory
- Commercial General Liability—\$1,000,000 per occurrence; \$2,000,000 annual aggregate
- Automobile Liability—For any rental cars used during trips to Missoula that are part of this project, Consultant must purchase or otherwise obtain comprehensive liability, collision, and bodily injury coverage provided by the rental car agency
- Professional Errors and Omissions Liability—\$1,000,000 per claim; \$2,000,000 annual aggregate

The City shall be included or named as an additional or named insured on the Commercial General and Automobile Liability policies. The insurance must be in a form suitable to City.

7. **Professional Service:** Consultant agrees that all services and work performed under this agreement will be accomplished in a professional manner, in accordance with the accepted standards of Consultant's profession.

8. **Compliance with Laws:** Consultant agrees to comply with all federal, state and local laws, ordinances, rules and regulations.

9. **Nondiscrimination and Affirmative Action:** Consultant agrees and shall comply with the following Non-Discrimination and Affirmative Action policies:

**NON-DISCRIMINATION.** All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment 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, sexual orientation, or gender identity/expression, except where these criteria are reasonable bona fide occupational qualifications.

**AFFIRMATIVE ACTION POLICY.** Consultants, sub-consultants, 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, sexual orientation, gender identity or expression, or 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 sub-consultants and vendors comply with this policy. Failure of sub-consultants 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.

**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 amendment signed by both parties hereto. The Consultant may not subcontract or assign Consultant's rights, including the right to compensation or duties arising under this agreement, without the prior written consent of City. Any sub-consultant 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. The City has 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 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:** designated liaison with Consultant is Samantha Suter, and Consultant's designated liaison with City is Ben Brewer.

**14. 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 shall supersede all previous communications, representations, or agreements, either oral or written, between the parties.

**15. Applicability:** This agreement and any extensions of it shall be governed and construed in accordance with the laws of the State of Montana.

**WITNESS,** the parties here have executed this instrument the day and year first above written.

**CONSULTANT:**

*Smarta Sitor*

**MAYOR**

City of Missoula, Montana

*John Engen*

John Engen (Jun 1, 2022 13:20 MDT)

John Engen

**ATTEST:**

*Marty Rehbein*

Marty Rehbein (Jun 2, 2022 07:17 MDT)

Martha L. Rehbein, CMC, City Clerk

**APPROVED AS TO FORM:**

*JIM NUGENT*

JIM NUGENT (May 31, 2022 07:58 MDT)

Jim Nugent, City Attorney

(SEAL)

