

## **PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT** is made and entered into this 12 day of October 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 Black Knight Security & Investigations whose principal place of business is located at 2200 Grant Street, Missoula, MT 59801, hereinafter referred to as “Contractor.”

### **RECITALS**

WHEREAS, the City desires to utilize Contractor to furnish independent services in connection with providing security services for Operation Shelter at locations as described within the Section Exhibit A Scope of Services; and

WHEREAS, Contractor has represented to the City that Contractor has the necessary expertise to furnish said services and has available to Contractor 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 mutual covenants and agreements herein contained, the parties agree as follows:

1. **Purpose:** City desires to have Contractor provide security services for the City of Missoula around sites supporting neighbors who are unhoused in order to provide safety and security for participants accessing resources and to neighbors in the surrounding neighborhoods.

2. **Effective Date:** This Agreement is effective upon the date of its execution by both parties. This Agreement will remain in effect through June 30, 2023, or upon 30 days’ notice by the City to Contractor of its desire to terminate the Agreement by giving such notice to Contractor’s designated liaison identified below.

3. **Scope of Work:**

a. Contractor will perform the work and provide the services in accordance with the requirements of the Scope of Services attached here to as Exhibit A; and

b. If authorized in writing as provided in this subsection, Contractor 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 Contractor, 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:**

**Commented [EA(1)]:** Do we need a statement in here to terminate services if the levy doesn’t pass and certain shelter sites close before contract end?

**Commented [MJ(2R1)]:** This is standard language we should include. We should be able to provide 30 day’s notice if the levy fails, right?

- a. The City agrees to pay Contractor for services outlined above at a rate of \$38.50 straight time and \$57.75 overtime, and special request with shorter than 2 weeks notice. Contractor shall submit [bi/monthly] invoices. The City shall pay Contractor within 30 days of receipt of an itemized invoice for the services rendered or shall notify Contractor of any dispute by the City concerning the performance of any services and the basis therefore and shall pay Contractor within thirty days for the services not in dispute. If any items are disputed by the City, Contractor and representatives of the City shall meet and confer regarding the disputed items within ten business days after the City notifies Contractor of the services in dispute. The 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 Contractor Status:** The parties agree that Contractor, is an independent contractor for purposes of this agreement and the parties agree that Contractor is and shall be an independent contractor when performing services pursuant to this agreement. Contractor 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. Contractor is not authorized to represent the City or otherwise bind the City in any dealings between Contractor and any third parties.

Contractor 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. Contractor shall maintain workers' compensation coverage for all members and employees of Contractor's business, except for those members who are exempted by law.

Contractor 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, Contractor 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 Contractor or Contractor's agents or employees.

For the professional services rendered, to the fullest extent permitted by law, Contractor 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 Contractor or Contractor's agents or employees.

For this purpose, Contractor shall provide City with proof of Contractor'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
- Employers' Liability—\$1,000,000 per occurrence; \$2,000,000 annual aggregate
- Combined Commercial General Liability/ Professional Errors and Omissions — \$1,000,000 per occurrence; \$2,000,000 annual aggregate
- Automobile Liability—\$1,000,000 property damage/bodily injury; \$2,000,000 annual aggregate

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

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

**9. Nondiscrimination and Affirmative Action:** Contractor 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.** 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, 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 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.

**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 Contractor may not subcontract or assign Contractor’s rights, including the right to compensation or duties arising under this agreement, without the prior written consent of 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 Contractor 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 Contractor for the specific purpose intended will be at the City’s sole risk and without liability or legal exposure to the Contractor. 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:**

**City Contract Liaison:** Mike Brady

**Contractor Liaison:** Wade Herbert & Nikki Hill

**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.

**CONTRACTOR:**

Black Knight Security & Investigations

**MAYOR**

City of Missoula, Montana

\_\_\_\_\_  
Wade Herbert

\_\_\_\_\_  
Jordan Hess

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Martha L. Rehbein, CMC, City Clerk

\_\_\_\_\_  
Jim Nugent, City Attorney

(SEAL)

## EXHIBIT A SCOPE OF WORK FOR SHELTER SERVICES

1. **Effective Date:** This Agreement is effective upon the date of its execution by both parties. This Agreement will remain in effect through June 30, 2023, or upon 30 days' notice by the City to Contractor of its desire to terminate the Agreement by giving such notice to Contractor's designated liaison. Contractor will commence services on November 1, 2022
2. **Contract Expectations:** Contractor will provide a roving patrol of two (2) security staff for twenty-four hours a day, every day of the year between various City sites including the Cedar St and Hawthorne St neighborhood, Emergency Winter Shelter neighborhood during designated months of operation (Johnson St and North Ave W), the Clark Fork Way neighborhood, and other sites as agreed upon and fitting with the scope which may include City parks and parking sites.

The Contractor and City Contract Liaison will evaluate existing professional services agreements currently in place with the City of Missoula Parks and Recreation and Parking Commission. That evaluation will determine enhanced services which can be provided by the contractor to support existing efforts by all city departments in addressing the overall scope of this project. Total project costs will not exceed \$500,000 for Shelter Services, or existing budget allotments approved for Fiscal Year 2023 for Parks and Recreation and Parking Commission.

3. **Contractor Staff Expectations**
  - a. All Contractor staff working at contracted sites will participate in trainings detailed below. Contractor is responsible for seeking out trainings, registering staff and ensuring completion. Training costs are Contractor's responsibility.
    - i. Mental Health First Aid, or similar approved mental health training
    - ii. Crisis Intervention Team Program Overview
    - iii. Mobile Support Team Overview
    - iv. De-escalation Techniques and Safety Considerations
    - v. Other trainings are encouraged and may include:
      1. Native Community Cultural Considerations
      2. LGBTQIA+ Information and Resources
      3. Harm reduction
      4. Adverse Childhood Experiences
    - vi. Contractor will participate in ongoing trainings on a regular basis, no less than every six (6) months, should the contract extend through that length of time.
  - b. All new Contractor staff will take a tour of all Operation Shelter program sites before commencing work hours at any site. Site tours can be coordinated with City Contract liaison or Site Leads for each location.
  - c. Contractor shall be responsive to City affiliated staff in a timely manner for any concerns related to this contract. This may include City Attorney, City Human Resources, Missoula Police Department, and others.

- d. Contractor shall provide to City Contract Liaison proof of licensure and related credentials for any staff working at contracted sites prior to staff accruing work hours at any contracted site.
- e. Contractor will wear uniforms approved by the City Contract Liaison in advance.
- f. Contractor staff shall participate in regular meetings with collaborating partners and Site Leads as deemed necessary by the City for the success of security services across contracted sites.
- g. Contractor agrees to review incidents of concern with Site Leads within a timely manner to share information (i.e. incident reports, body cam footage, etc.), review series of events, and discuss areas for improvement across all involved parties.
- h. Contractor is not entitled to confidential or specific information about participants accessing services at any Operation Shelter site.
- i. Contractor is authorized to carry a safely holstered and displayed firearm.
- j. Contractor will be professional in all interactions and use training and best practices to communicate. Contractor shall not engage in intimidation tactics with participants or residents of any shelter site, with staff or with neighbors, including but not limited to making threats, intentionally isolating without defensible reason, or donning attire that may provoke unnecessary fear.
- k. Contractor will provide the foregoing services pursuant to the following fee schedule:
  - i. Classification: Normal
    - 1. Straight time: \$38.50 per officer hour
    - 2. Overtime \$57.75 per officer hour
  - ii. Classification: Holiday
    - 1. Straight time: \$57.75 per officer hour
    - 2. Holiday 8 total (New Year's Eve, New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas Eve & Christmas Day.)
  - iii. Total amount not to exceed: \$500,000
    - 1. All funding will come from federal American Rescue Plan Act funds.
    - 2. **ARPA Funding Background:** Funding for this project comes from the City of Missoula's direct allocation of Coronavirus State and Local Fiscal Recovery Funds (SLFRF), made possible by the American Rescue Plan Act (ARPA) and received from the U.S. Treasury May 18, 2021, SLFRF Assistance Listing Number (ALN) 21.027, FAIN SLFRP0579.

#### 4. Shelter Sites Scope of Work

- a. If the shelter is full, Contractor will advise individuals attempting to camp on the site or in public right of way adjacent to the site, either in a tent, on the ground, or in a vehicle, that camping is prohibited, and provide the individual(s) with information regarding other shelter spaces that may be available to them.
- b. Contractor will not detain or hold any individual under citizen's arrest that is not committing an act of violence.

- c. Contractor will assist wherever possible in providing facility access when appropriate and coordinating with responding emergency medical services or responding law enforcement
- d. Contractor shall assist staff in the event of an emergency evacuation of the site to ensure occupied rooms are cleared and accountability of guests is maintained. Contractor shall assist with any security concerns that Poverello Center staff have.
- e. Contractor will provide a daily incident report or access to reporting log software to City Contract Liaison and Site Lead.
- f. **For Services Adjacent to Poverello Center:**
  - i. Contractor will not provide security services inside the Poverello Center shelter, unless specifically asked to enter by a Poverello Center staff member in the event of an emergency.
    - 1. Contractor may access and utilize the Poverello building for breaks and bathroom needs as long as firearm is removed and stored prior to entry.
    - 2. Contractor may enter Poverello Center buildings without first removing firearm only if asked to enter the Poverello Center building upon direct request of a Poverello Center staff member.
  - ii. Contractor will work with Poverello Center staff, if present, when engaging with shelter residents inside of or in the immediate vicinity of the shelter.
  - iii. Contractor will increase patrol visits during hours when Poverello staff capacity is decreased:
    - 1. Monday-Friday 4:30pm to 9:00am
    - 2. Saturday and Sunday 24 hours
  - iv. **Poverello Site Lead contact: Clair Bopp,**  
[cbopp@thepoverellocenter.org](mailto:cbopp@thepoverellocenter.org) / 406-532-6682