

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of March, 2021, 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 MMW Architects, P.C., 125 W. Alder St., Missoula, Montana 59802, hereinafter referred to as “Contractor.”

RECITALS

WHEREAS, the City desires to utilize Contractor to furnish independent design and architectural services in connection with the planning and design of a Community Center in McCormick Park;

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 perform architectural professional services in the planning and design of a Community Center in McCormick Park;.

2. **Effective Date and Term:** This Agreement is effective upon the date of its execution by both parties and will terminate on the 31 day of January 2022, 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. The Term of this Agreement may be extended by mutual agreement of the parties by executing an amendment to this Agreement in writing.

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:**

a. City agrees to pay Contractor an amount not to exceed **ONE HUNDRED NINETEEN THOUSAND EIGHT HUNDRED EIGHTY-EIGHT DOLLARS AND ZERO CENTS (\$119,888.00)** for services outlined in Exhibit A in accordance with the terms and conditions laid out in Exhibit B – Compensation, and Contractor 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. Contractor shall submit monthly statements for basic and additional services rendered. 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 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 City, Contractor and representatives of City shall meet and confer regarding the disputed items within ten business days after City notifies Contractor of the services in dispute. With respect to any dispute resolution that requires the city to pay any monies, the city shall pay for any disputed services for which the dispute has been resolved to the agreement that the city shall pay some monies; those monies shall be paid within thirty days after such resolution.

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 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—\$1,000,000 property damage/bodily injury; \$2,000,000 annual aggregate
- Professional Errors and Omissions Liability—\$1,000,000 per claim; \$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: 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 Contractor'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. 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 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 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. 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: the City's designated liaison with Contractor is Donna Gaukler, Director, and Contractor's designated liaison with City is Kent Means, Principal-in-charge.

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:
MMW Architects, P.C.

CITY:
City of Missoula, Montana

Kent Means
Principal-in-charge

John Engen

ATTEST BY CITY CLERK:

APPROVED AS TO FORM:

Martha L. Rehbein, CMC, City Clerk

Jim Nugent, City Attorney

(SEAL)

EXHIBT A
COMMUNITY CENTER AT MCCORMICK PARK SCOPE OF WORK

Behind this page

2/4/2021

Donna Gaukler, CPRP
Director, Missoula Parks & Recreation
3001 Bancroft
Missoula, MT 59801

Re: Missoula Community Center, Proposal

The MMW/NAC team is pleased to provide the following proposal. We have divided the proposal into four main phases as indicated below. Please see the attached spreadsheet for associated fees:

Process and Scope of Work:

1.) Inclusion / Information / Inspiration (Public Process and Information Gathering)

Inclusion - Bring people together.

Step 1A: Meet with the steering committee and working group to identify the process. Steering committee will provide overall guidance and coordination. The working group will provide decisions regarding process, stakeholder selection, SEED analysis, etc. The MMW/NAC team will provide meeting agendas and meeting notes for each meeting.

Steering Group Meeting – 3 meetings – 1 hour each

Provide meeting material preparation, coordination with consultants and meeting attendance.

Working Group Meetings - 2 meetings – 1.5 hours each

Provide meeting material preparation, coordination with consultants and meeting attendance.

Step 1B: Stakeholder meetings – meetings with diverse community groups with approximately 12 people per group.

2 days of meetings, 8 hours each day

Meeting may be divided into multiple days with a goal of consolidating meetings within ½ days.

Provide meeting material preparation, coordination with consultants and meeting attendance.

Step 1C: Climate Charrette

1 Meeting, 2 hours

Provide meeting material preparation, coordination with consultants and meeting attendance.

Step 1D: Open house meeting – meeting with the public, community groups, community leaders. The meeting will be either virtual or an in-person open house.

1 Open house, 3 hours

Provide meeting material preparation, coordination with consultants and meeting attendance.

Information

Overall Project Goals: Concurrent with the Inclusion process, we will identify project goals which will be used throughout the process as a guidepost.

Ballard/King Information: Ballard King will provide the following:

Project Overview:

- * Project review and update
- * Identify constraints and parameters
 - Market
 - Site
 - Mission and goals
- * Meet with project team (virtually)
 - Project information needs

Programming Assistance:

- * Basic market review
 - Demographics
 - Other providers
 - Parks and Recreation needs
- * Project component recommendation/prioritization
 - Validate or adjust any existing facility program
 - Determine sizing and space allocation requirements
 - Component relationships and interaction
- * Development of program options
- * Operational impact of possible component choices
 - Cost recovery capabilities
 - Program option comparisons

Site information: Will obtain information on site related infrastructure, limitations, planning, opportunities. Morrison Maierle will provide a written description on civil engineering findings and recommendations.

Connections: We will identify important site related connections including walking paths, transportation (vehicle and public), neighbors, future connections, etc.

Inspiration: We will inspire with examples and possibilities. We will present examples of other similar facilities, architecture, planning, and creative ideas that will provide inspiration to the public.

2.) Common Vision (Program and Design)

Step 2A - Program - Create the common vision / program: Develop a program based on the Inclusion/Information/Inspiration phase. The program will be a written document that includes findings from the phase, sizes of spaces, adjacencies, descriptions, general material selections, and goals. This will also include Ballard/King information and analysis including:

Conceptual Plan Review:

- * Site plan and relationship to the existing aquatic center
- * Spatial relationship of components
- * Phasing plan
- * Operational concerns

* Parking

Step 2B - Design: We will Create a three dimensional design model based on the program. We will meet with the design committee to review design iterations prior to the next phase. The design documentation will include the following:

- Site plans including parking, trail connections, exterior space adjacent to the building, pedestrian and bike connections. The site plans will be in a presentation format with color and graphics to be easily read by the committee and public
- Floor plans for each level including, each major space, layout of fitness floors, circulation/common areas, support spaces including storage, mechanical, electrical. The floor plans will be in a presentation format with color and graphics to be easily read by the committee and public
- Exterior Renderings as listed below:
 - o 2 Exterior at eye level
 - o 2 Exterior at bird's eye level
 - o 2 Interior of major spaces (possibly commons, multi-purpose, or fitness)
 - o Renderings will be intended to give the public a sense of the community aspect of the building and will include materials, people, furniture, landscape, etc.

Step 2C – Design Analysis: We will include design analysis of sustainability, operations, and costs as indicated below:

Sustainability: We will provide a Tally and Sephaira sustainability analysis of the design and provide a printout of the results. The printout will be graphic in nature and accessible for the public. We will consider alternative energy options.

Preliminary Operations Plan: (up to 3 options)

- * Use estimates
 - Daily
 - Annually
- * Fee structure
 - Drop-in
 - Multiple admissions/annual passes
 - Family, corporate, group
 - Rentals
- * Sources of income
 - Identification and verification of revenue sources
- * Operating cost projections
 - Develop a line-item budget
 - Personnel by position
 - Contractual services
 - Commodities
 - Capital replacement
- * Revenue generation projections
 - Develop a line-item accounting
 - Admissions
 - Annual/multiple admissions
 - Programs and services
 - Rentals
 - Other revenue sources

- * Revenue/expenditure comparisons
- Cost recovery level

Provide Cost Analysis: Cost estimating will be provided by Eight31 Consulting, Jim Paras. The cost analysis will consider local conditions and include consulting with local contractors.

3.) Public Presentation - Listening

Step 3A: Present the vision to the public (Open House 1): We will facilitate a public meeting and present an overview of Common Vision findings including program, design, and the design analysis. We will listen to public comments and incorporate the comments into a revised design: We anticipate a 2 hour meeting.

Redesign: We will incorporate the public comments into a revised design.

Step 3B: Open House 2: Present the final vision to the public: We will facilitate a second public meeting to present a final vision to the public.

Additional Services: The proposal does not include the following:

Support: We have eliminated the support portion of our original proposal. We will provide access to information that was created during the fundraising phase of the project, although we do not have time allocated for meetings or revisions to materials. This can be added at current rates.

HC Design: We have eliminated the kitchen consulting that was included in our original proposal. This can be added as needed at a later date at current rates.

Acoustic Consulting: If acoustic consulting is needed this would be an additional service. We do not anticipate this need at this time.

Site Survey: We are assuming that we can use surveys that were created for the Aquatics project, aerial photography and available topographic information. A new site survey would an additional \$7,700.

Flood Plain Narrative: An additional flood plain narrative is not included. We will do initial flood plain research to determine any significant flood plain implications.

Theatre Consulting: If theatre consulting is considered, this would be additional services and would be negotiated based on the scope of the work.

Reimbursable Expenses: We have estimated reimbursable expenses in our fees, although any additional reimbursable expenses have not been included. Reimbursable expenses will be billed at the current hourly rates and expenses for each firm or at a cost plus ten percent rate.

The attached spreadsheet indicates an estimated breakdown of hours and associated fees. The major categories indicated in this spreadsheet can be utilized for the contract and subsequent billing. We will bill on a percentage of the completed work, plus expenses for each phase of the work. Any additional services will be agreed upon in advance by both parties and billed at hourly rates, plus expenses.

The schedule for the work is anticipated to be as follows:

1.) Inclusion / Information / Inspiration (Public Process and Information Gathering)

March 1st through June 1st

2.) Common Vision (Program and Design)

June 1st through October 15th

4.) Public Presentation - Listening

October 15th through November 15th

This schedule is preliminary and we propose the contract period for this work through January 30th, 2022.

Please let me know if there are any questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent Means".

Kent Means, Principal Architect

EXHIBT A
COMPENSATION



Missoula Community Center

Fee Proposal
2/4/2021

MMW/NAC	Units	Keith	Brooke	Kent	Jessy	AIT	subtotals	Fee Subtotal	Fee Totals
Inclusion (Public Process)		21.5	58.5	46	23.5	36		\$ 27,670	\$ 84,288
Steering Group									
Meetings	3	1	1	1	0	0	\$ 1,830.00		
Meeting prep	3	0.5	1	0.5	0	0	\$ 1,132.50		
Coord.	3	1	1	1.5	0	0	\$ 2,130.00		
SEED Analysis, Coord.	1	0	1	0	4	0	\$ 705.00		
Working Group									
Meetings	2	1.5	1.5	1.5	1.5	0	\$ 2,250.00		
Meeting prep	2	1	1	1	0	0	\$ 1,220.00		
Coord.	2	0	1	0	0	0	\$ 290.00		
Stakeholder									
Meeting prep	3	0.5	2	1.5	0	6	\$ 3,607.50		
Coord.	3	0.5	2	1	0	6	\$ 3,307.50		
Day One meetings	1	0	8	8	0	0	\$ 2,760.00		
Day Two meetings	1	0	8	8	0	0	\$ 2,760.00		
Open House									
Meetings	1	3	3	3	3	0	\$ 2,250.00		
Meeting prep	1	0.5	2	0.5	2	0	\$ 802.50		
Coord.	1	0	2	0	2	0	\$ 570.00		
Sustainability									
Climate Charrette	1	0	2	2	2	0	\$ 970.00		
Meeting prep	1	0	1	0.5	6	0	\$ 1,085.00		
Rendering Revisions	1	1	2	1	0	12	\$ 1,715.00		
Materials for Fundraising									
Prep documents	1	1	2	1	1	8	\$ 1,535.00		
Cost Estimating - Eight31 Consulting								\$ 4,500	
Ballard/King								\$ 15,000	
Overview							\$ 1,000		
Programming/Conceptual Plan Review							\$ 5,000		
Preliminary Operations Plan							\$ 9,000		
Morrison Maeirle, Inc.								\$ 12,000	
Civil							\$ 3,250		
Structural							\$ 2,750		
Mechanical/Plumbing							\$ 3,250		
Electrical/Low Voltage							\$ 2,750		
Reimbursable Estimates								\$ 4,100	
MMW/NAC							\$ 2,500		
Ballard/King							\$ 1,000		
Morrison Maeirle, Inc							\$ 500		
SEED Application Fee							\$ 100		
Total								\$ 119,888	