



Professional Services Agreement

Missoula's Workers' Compensation Coverage

THIS AGREEMENT is made and entered into this [07/01/2024], 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 **Marsh & McLennan Agency LLC**, whose principal place of business is located at 1108 Livingston Avenue, Helena, MT 59601, hereinafter referred to as "Broker", and **Montana State Fund**, whose principal place of business is located at 855 Front Street, Helena, MT 59601, hereinafter referred to as "Carrier."

RECITALS

WHEREAS, the City desires to utilize Broker & Carrier to furnish professional services in connection with the City's Workers' Compensation Coverage; and

WHEREAS, Broker & Carrier have represented to the City that Broker & Carrier have the necessary expertise to furnish said services and have 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 Broker & Carrier procure coverage for all active City employees in all classification codes provided related to municipal governance and authorized volunteers of the City.

2. Effective Date

This Agreement is effective upon the date of its execution by both parties and will terminate on the 07/01/2029, or upon 30 days' notice by the City to Broker & Carrier of its desire to terminate the Agreement by giving such notice to Broker & Carrier's designated liaison identified below.

3. Scope of Work

a. Broker & Carrier 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, Broker & Carrier 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 Broker & Carrier, 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 Carrier for insurance premiums outlined and in accordance with the terms and conditions laid out in Exhibit B - Compensation. Carrier will be responsible for paying compensation to Broker. Broker & Carrier 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. Broker & Carrier shall submit monthly statements for additional services rendered. City shall pay Broker & Carrier within 30 days of receipt of an itemized invoice for the services rendered or shall notify Broker & Carrier of any dispute by City concerning the performance of any services and the basis therefore and shall pay Broker & Carrier within thirty days for the services not in dispute. If any items are disputed by City, Broker & Carrier and representatives of City shall meet and confer regarding the disputed items within ten business days after City notifies Broker & Carrier 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 Broker & Carrier Status

The parties agree that Broker & Carrier, are an independent insurance broker and insurance carrier, respectively, for purposes of this agreement and the parties agree that Broker & Carrier are and shall be an independent Broker & Carrier when performing services pursuant to this agreement. Broker & Carrier are 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. Broker & Carrier are not authorized to represent the City or otherwise bind the City in any dealings between Broker & Carrier and any third parties.

Broker & Carrier 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. Broker & Carrier shall maintain workers' compensation coverage for all members and employees of Broker & Carrier's businesses, except for those members who are exempted by law.

Broker & Carrier 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 insurance brokers and carriers.

6. Indemnity and Insurance

For other than professional services rendered, to the fullest extent permitted by law, Broker & Carrier agree 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 Broker or Carrier, or Broker & Carrier's agents or employees.

For the professional services rendered, to the fullest extent permitted by law, Broker & Carrier agree 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 Broker & Carrier or Broker & Carrier's agents or employees.

In no event shall either party to this Agreement be liable for any indirect, special, incidental, consequential or punitive damages or for any lost profits arising out of or relating to any services provided by Broker or its affiliates. The aggregate liability of Marsh & McLennan Agency, its affiliates and its and their employees to you or your affiliates arising out of or relating to the provision of services by Broker or its affiliates shall not exceed \$10,000,000. This provision applies to the fullest extent permitted by applicable law and to all causes of action, including, without limitation, breach of contract, breach of warranty, negligence, strict liability, misrepresentation and other torts.

For this purpose, Broker shall provide City with proof of Broker'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.

Carrier shall provide City with proof of Carrier's Workers' Compensation insurance.

7. Professional Service

Broker & Carrier agree that all services and work performed under this agreement will be accomplished in a professional manner, in accordance with the accepted standards of Broker & Carrier's professions.

8. Compliance with Laws

Broker & Carrier agree to comply with all federal, state and local laws, ordinances, rules and regulations.

9. Nondiscrimination and Affirmative Action

Broker & Carrier agree 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

Broker & Carriers, subBroker & Carriers, 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 subBroker & Carriers and vendors comply with this policy. Failure of subBroker & Carriers 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 Broker & Carrier may not subcontract or assign Broker & Carrier's rights, including the right to compensation or duties arising under this agreement, without the prior written consent of City. Any subBroker & Carrier or assignee will be bound by all of the terms and conditions of this agreement.

12. Ownership and Publication of Materials

Except as required by law, or to the extent materials include any Broker or Carrier claim-related data, proprietary information, or trade secret information, all reports, information, and data prepared by the Broker & Carrier 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 not otherwise excluded under this Section 12. Any re-use without written verification or adaptation by the Broker & Carrier for the specific purpose intended will be at the City's sole risk and without liability or legal exposure to the Broker & Carrier.

13. Liaison

Designated liaison with Broker & Carrier is [Sean McCutcheon of Marsh & McLennan Agency LLC], and Broker & Carrier's jointly-designated liaison with City is Mike Brady, City Risk Manager

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.

BROKER:

Marsh & McLennan Agency LLC

MAYOR:

Cityof Missoula, Montana

Andrea Davis, Mayor

CARRIER:

Montana State Fund

ATTEST:

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Claire Trimble Legislative Services
Director/ City Clerk

(SEAL)

EXHIBIT A – SCOPE OF SERVICES

Requested Services

Provide workers' compensation coverage for all active employees related to municipal governance and authorized volunteers of the city. Prompt and accurate processing and payments of claims. Timely communications to injured workers and City Risk Manager. Accurate and up-to-date information provided to City, regarding status and capacity of injured workers, so the City can be successful in Early Return to Work (ERW) Efforts. Hold regular claims status meetings which provide details by Department, identified trends/concerns and suggestions for next steps when necessary. Provide risk management tools for the City to help with limiting risk in workplace injuries to assist the City in meeting requirements under the Montana Safety Culture act. Such efforts should include both broad and customized assessments, training, and guidance.

Marketing and Placement Services

Broker will solicit quotes from insurers that you select; Negotiate on your behalf with insurers; assist you in evaluating the options received from insurers; use best efforts to place insurance for you, but only after you have authorized Broker to bind coverage for you.

Services Related to Broker Placements

Deliver confirmation of coverage once it is placed; follow up with insurance carrier to obtain policy and/ or endorsements. Broker may deliver your insurance policies and endorsements to you electronically; review policies and endorsements for conformity with agreed terms and coverages; provide coverage summaries; at your request, issue certificates or memoranda of insurance; review premium and exposure audits, rating adjustments, dividend calculations and loss data; provide you with invoices, except in the case of direct billing by insurers. Remit premiums to insurers and, where applicable, remit taxes and fees to the relevant authorities, following receipt thereof from you; monitor published financial information of your current insurers and alert you when one of those insurers falls below Broker's minimum financial guidelines.

Claims-Related Services

Provide the following claims-related services: Broker & Carrier will coordinate periodic stewardship meetings to review open claims with the City. Claims will also be reviewed by loss control consultants for claim trending and future training opportunities. Carrier will provide timely communications to injured employees as well as the City designated Liaison as described in Section 13. Carrier will use best efforts to settle claims when determined to be in the best interest of all parties.

Risk Control-Related Services

Provide the following risk control-related services:

Access to the Carrier & Broker risk control team, including their suite of risk management, safety and compliance resources and coordination with the carrier on loss control initiatives. Broker & Carrier will assign a risk control specialist to assist in safety related assistance to City. City will also receive online access to Broker & Carrier safety related resources.

EXHIBIT B - COMPENSATION

The Montana State Fund offers a reporting plan policy. Payroll will be reported on a quarterly basis and premium billed based on each report. A quarterly report is due 30 days after the

conclusion of the quarter. Once the report is received and the premium is invoiced from the Montana State Fund, the City will have 30 days to remit payment. The first invoice will be the expense constant of \$180.00 + \$3.13 (Assessments Fee) after the policy is issued. Each payroll report's wages will be billed the premium for the wages plus the assessments fee for just that quarter. The Factor is 1.7403%.

Terrorism and catastrophe premium will not be billed until all payroll has been reported for the entire policy term. Terrorism and catastrophe premiums should be accrued throughout the term, so it is available at the end of the term. There are no additional costs with the services previously submitted in the RFP or this agreement. The total estimated premium including assessments is \$756,741.33. Discounts are provided through scheduled rating and volume discounts. Scheduled rating is provided through underwriter discretion based on a multitude of factors, including but not limited to safety programs, loss control recommendations, historical performance, policies and procedures, risk management programs, industry experience, etc. The projected scheduled rating discount for this proposal is \$424,330.50. The Montana State Fund may establish each policy year a percentage reduction of premium for policies with effective dates between July 1 and June 30 inclusive, based on premium volume. The projected volume discount for this proposal is \$52,323.81. Future rates - To determine the aggregate premium to be charged to new and renewal policies for the policy year that begins on the next July 1, the State Fund actuary shall evaluate the adequacy of the projected overall rate level for the rate year of State Fund. The projected overall rate level must be sufficient to cover: (a) the value of claims, as determined by actuarial analysis, expected to be incurred as a direct result of covered accidents during the following policy year of State Fund; (b) operational and administrative expenses, claims adjustment expense related to covered claims, and other expenses required to operate State Fund for the 3 policy year; and (c) an amount sufficient to maintain appropriate contingency reserves and policyholder surplus. (2) In determining the projected revenue requirements for the following State Fund policy year, the State Fund actuary shall consider: (a) the present financial condition of State Fund; (b) trends in the number and cost of accidents; (c) investment yield on underwriting cash flow; (d) recent court decisions that may affect the liability of State Fund; (e) legislative changes in the statutory benefit scheme; (f) factors relating to maintenance of the policy base of State Fund; (g) the anticipated changes in covered payroll during the policy year for which the premium rates will be in effect; and (h) other factors considered relevant in recommending an accurate projection of an overall rate level adjustment. Future rates will also contemplate experience modification rating, volume discounts, and scheduled rating. Renewal rates are provided in writing no later than 45 days prior to renewal date.

Rate Appendix:

7704-01 Firefighters and Drivers –	Remit Rate \$3.52
7720-02 Police Officers and Drivers –	Remit Rate \$1.53
8743-00 Municipal: Professional or Administrative –	Remit Rate \$.32
8810-01 Clerical Office Employees NOC –	Remit Rate \$.12
9410-00 Municipal: Administrative or Non-Professional –	Remit Rate \$.72
9420-00 Municipal: All Other Employees and Drivers –	Remit Rate \$2.74

*Remit Rates were finalized after taking the base rate and subtracting scheduled rating and volume discounts. These rates do not include assessment charges.

See Appendix A – Compensation Disclosure

Quarterly Reporting Basis:

07/01/24-10/01/2024

10/01/24-01/01/2024

01/01/25-04/01/2025

04/01/25-07/01/2025

The City will have 30 days after each reporting period to submit the quarterly payroll report. Once an invoice is issued from the Montana State Fund, the City will have 30 days to make payment for premium due.

Appendix A – Compensation Disclosure

Marsh & McLennan Agency LLC (“MMA”) prides itself on being an industry leader in the area of transparency and compensation disclosure. We believe you should understand how we are paid for the services we are providing to you. We are committed to compensation transparency and to disclosing to you information that will assist you in evaluating potential conflicts of interest.

As a professional insurance producer, MMA and its subsidiaries facilitate the placement of insurance coverage on behalf of our clients. As an independent insurance agent, MMA may have authority to obligate an insurance company on behalf of our clients and as a result, we may be required to act within the scope of the authority granted to us under our contract with the insurer. In accordance with industry custom, we are compensated either through commissions that are calculated as a percentage of the insurance premiums charged by insurers, or fees agreed to with our clients.

MMA engages with clients on behalf of itself and in some cases as agent on behalf of its non-US affiliates with respect to the services we may provide. For a list of our non-US affiliates, please visit: <https://mma.marshmma.com/non-us-affiliates> . In those instances, MMA will bill and collect on behalf of the non-US Affiliates amounts payable to them for placements made by them on your behalf and remit to them any such amounts collected on their behalf.

MMA receives compensation through one or a combination of the following methods:

- **Retail Commissions** – A retail commission is paid to MMA by the insurer (or wholesale broker) as a percentage of the premium charged to the insured for the policy. The amount of commission may vary depending on several factors, including the type of insurance product sold and the insurer selected by the client. If MMA places business through an affiliated wholesale broker or managing general agent, MMA will advise the client of this at or prior to placement.
- **Client Fees** – Some clients may negotiate a fee for MMA’s services in lieu of, or in addition to, retail commissions paid by insurance companies. Fee agreements are in

writing, typically pursuant to a Client Service Agreement, which sets forth the services to be provided by MMA, the compensation to be paid to MMA, and the terms of MMA's engagement. The fee may be collected in whole, or in part, through the crediting of retail commissions collected by MMA for the client's placements.

- **Contingent Commissions** – Many insurers agree to pay contingent commissions to insurance producers who meet set goals for all or some of the policies the insurance producers place with the insurer during the current year. The set goals may include volume, profitability, retention and/or growth thresholds. Because the amount of contingent commission earned may vary depending on factors relating to an entire book of business over the course of a year, the amount of contingent commission attributable to any given policy typically will not be known at the time of placement.
- **Supplemental Commissions** – Certain insurers and wholesalers agree to pay supplemental commissions, which are based on an insurance producer's performance during the prior year. Supplemental commissions are paid as a percentage of premium that is set at the beginning of the calendar year. This percentage remains fixed for all eligible policies written by the insurer during the ensuing year. Unlike contingent commissions, the amount of supplemental commission is known at the time of insurance placement. Like contingent commissions, they may be based on volume, profitability, retention and/or growth.
- **Wholesale Broking Commissions** – Sometimes MMA acts as a wholesale insurance broker. In these placements, MMA is engaged by a retail agent that has the direct relationship with the insured. As the wholesaler, MMA may have specialized expertise, access to surplus lines markets, or access to specialized insurance facilities that the retail agent does not have. In these transactions, the insurer typically pays a commission that is divided between the retail and wholesale broker pursuant to arrangements made between them.
- **Medallion Program and Sponsorships** – Pursuant to MMA's Medallion Program, participating carriers sponsor educational programs, MMA events and other initiatives. Depending on their sponsorship levels, participating carriers are invited to attend meetings and events with MMA executives, have the opportunity to provide education and training to MMA colleagues and receive data reports from MMA. Insurers may also sponsor other national and regional programs and events.
- **Other Compensation & Sponsorships** – From time to time, MMA may be compensated by insurers for providing administrative services on behalf of those insurers. Such amounts are typically calculated as a percentage of premium or are based on the number of insureds. Additionally, insurers may sponsor MMA training programs and events. MMA may also have arrangements with vendors who compensate MMA for referring clients for vendor services.

We will be pleased to provide you additional information about our compensation and information about alternative quotes upon your request. For more detailed information about the

forms of compensation we receive please refer to our Marsh & McLennan Agency Compensation Guide at <https://www.marshmma.com/us/compensation-guide.html>.