

## **PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_, 20\_\_, 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 Jennifer Barnard and Annelise Hedahl, of ERA Lambros, whose principal place of business is located at 3011 American Way, Missoula, MT 59808, hereinafter referred to as “Contractor.”

### **RECITALS**

WHEREAS, the City owns a number of bare land properties in and around Missoula, Montana, that were originally intended for a Public Works Department purpose, but that the City has subsequently determined are no longer needed for a public purpose;

WHEREAS, the City desires to utilize Contractor to furnish independent services in connection with marketing and selling some or all of these properties; 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 market and offer for sale various bare land properties that the City’s Public Works Department has determined are no longer necessary for a public purpose (the “Properties”). These Properties are located in and around Missoula, Montana. Contractor shall have an exclusive right to market the Properties for a period of one year.
2. **Effective Date:** This Agreement is effective upon the date of its execution by both parties and will terminate one year from the date of execution.
3. **Scope of Work:** Consultant will provide the following services to the City for the marketing and sale of the Properties:
  - a. Provide market value analysis of selected Properties based on comparable sales;
  - b. Provide site assessments for development potential based on location, access, zoning, utilities, and other site conditions;
  - c. Prepare marketing and promotional materials, including photos, cut sheets, and website listing;
  - d. Negotiate buy/sell agreements on the City’s behalf;
  - e. Assist with coordinating appraisals, inspections and other due diligence activities being performed by other professionals or prospective buyers;
  - f. Assist with City Council and other agency approvals, including preparing and making presentations; and

g. Assist with coordinating closing and recording, including deed restrictions or other agreements to satisfy strategic City goals such as affordable housing. Contractor is authorized to use all available methods of marketing and advertising which Contractor believes is appropriate based on Contractor's professional judgment.

4. **Payment:**

- a. City agrees to pay Contractor a cash commission equal to 5% based upon the sales price of each of each property, which shall be payable at closing. Expiration of this Agreement while a transaction is pending shall not relieve the City of its obligation to pay pursuant to this Section.
- b. In the event there is a buyer's agent representing the purchaser of one of the Properties, Contractor shall cooperate with the buyer's agent, and offer to split the commission stated above.

5. **Protection Period:** Within 120 days of the expiration or termination of the Primary Listing Term of this Agreement or any extension thereof (hereafter the "Protection Period"), if Seller enters into an agreement to or does sell, exchange, convey, lease or rent the Property to any party to whom Broker or any cooperating broker has marketed the Property, the commission as set out herein shall be payable at the time such agreement is entered into. However, Seller is not obligated to pay a commission to Broker if, during the Protection Period, Seller has entered into a valid listing agreement covering the Property with another licensed real estate broker that obligates Seller to pay that broker a commission upon the sale, exchange, lease, or rental of the Property.

6. **City Representations:** The City represents that to the best of its knowledge that there are no adverse material facts concerning the property, such as but not limited to those related to access, lawsuits, boundary lines, easements, encroachments, flooding, hazardous materials, wastes, etc... To the extent that the City acquires knowledge of such adverse material facts, the City will notify Consultant. The City further represents that it has vested title in fee simple to the Properties, and has the authority to sell the Properties, subject to an express contingency that City Council must approve each purchase agreement.

**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.

**7. 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.

The City agrees to defend, indemnify, and hold the Contractor harmless against claims, demands, suits, damages, losses, and expenses connected therewith that may be asserted or claimed against, recovered from or suffered by the Contractor 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 the City or City's officers, agents, or employees.

**8. 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.

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

**10. Nondiscrimination, Affirmative Action, and Fair Housing:** The Parties agree to comply with all applicable federal and state civil rights and fair housing laws. Consultant agrees and shall comply with the following Non-Discrimination and Affirmative Action policies of the City:

**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.

**11. 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.

**12. 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.

**13. Liaison:** The City's designated liaison with Contractor is Dennis Bowman, Deputy Director Public Works; and Contractor's designated liaison with City is Jennifer Barnard and Annelise Hedahl.

**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:**

---

Jennifer Barnard

---

Annelise Hedahl

**MAYOR**

City of Missoula, Montana

---

John Engen

**ATTEST:**

---

Martha L. Rehbein, CMC, City Clerk

(SEAL)

**APPROVED AS TO FORM:**

---

Jim Nugent, City Attorney