

**CITY OF MISSOULA PROFESSIONAL SERVICES CONTRACT
WITH INDEPENDENT CONTRACTOR**

City of Missoula, Missoula, Montana, hereafter called the City, hereby enters into this binding agreement with

Principal Contractor: Kate Cholewa, Owner/Consultant, KMC Strategic Communications

an independent contractor, hereafter called the Contractor, within the definition of [39-51-201\(15\) MCA](#) with the

Mailing address:

**Kate Cholewa, Owner/Consultant
KMC Strategic Communications
727 Hillside
Helena, Montana 59601**

Contact information:

Phone: 406-459-4092

Email:

kmcstrategiccommunications@gmail.com

Witnesseth:

WHEREAS, an RFQ (request for qualifications) was released on the 9th day of November, 2012, seeking Helena-based lobbyist services to ensure adequate representation of Missoula's interests during the 2013 Montana State Legislature.

WHEREAS, KMC Strategic Communications scored highest of the two firms based on the firm's lobbying experience, knowledge of issues in Missoula, experience with municipal governments, and the Montana State Legislature.

The purpose of this agreement is for the City to obtain the product of expertise and effort of the Contractor in return for the compensation indicated. The parties mutually agree as follows:

1. **Independent Contractor:** The contractor is not an employee of the City and will perform or provide all services free from the supervision, direction, or control of the City, as defined by the IRS.

Accordingly, the Consultant shall be responsible for payment of all taxes including Federal, State and local taxes arising out of the Consultant's activities in accordance with this contract, including by way of illustration but not limitation, Federal and State income tax, social security tax, unemployment insurance taxes, and any other taxes or business license fees as required.

2. **Required Work or Product:** The specific services or tasks that the Contractor is responsible to perform and/or specific work product or products required of the Contractor are as follows:

Contractor will perform lobbying, monitoring and legislative reporting services that promote the City's interests during the 2013 Legislative Session.

In general, the Contractor will:

- a) Monitor legislation that has been mutually agreed to as it proceeds through the legislative process;
 - b) Identify and advise the City of legislation that might be of interest to the City;
 - c) Write and deliver testimony at legislative hearings; and
 - d) Work with city staff, individual legislators, state agency personnel and other lobbyists and organizations as necessary to adequately promote the legislative interests of the City;
 - e) Register as a lobbyist with the Commissioner of Political Practices' Office. Timely file any and all lobbyist reporting forms associated with representing the City of Missoula.
 - f) Provide the City with the necessary information and documentation required to prepare lobbyist reports for submittal to the Commissioner of Political Practices office:
 - 1) Specific subjects of legislation authorized to promote, oppose, or modify on behalf of the City;
 - 2) Provide dates, bill numbers, and whether the purpose is to promote, oppose, or to modify the introduction or enactment of legislation on behalf of the City;
 - 3) Provide the date lobbying activities ceases on behalf of the City;
 - 4) Provide other detailed lobbyist information as requested and required by the Commissioner of Political Practices office.
3. **Performance Schedule:** The Contractor shall commence performance of this contract on January 2, 2013 and shall conclude on April 30, 2013.
4. **Place where services will be rendered:** The contractor will perform most services in accordance with this contract at a location of contractor's discretion. In addition, the contractor will perform services on the telephone, and through email, and at such other places as necessary to perform these services in accordance with this agreement.
5. **Compensation for Services:** The total compensation to be paid in response to appropriate written request for payment for service under this agreement shall not exceed \$15,900, and payment thereof shall be made at the times, in the amounts and to the parties hereinafter specified:
- a) Contractor shall bill the City \$1,500 for pre-session work by the end of December 2012. Work related to lobbying services, travel, and miscellaneous expenses will be paid by the City at the rate of \$3,900 per month for the months of January, February, and March 2013. The remaining payment of \$2,700 will be paid in April 2013.

- b) Travel between Helena and Missoula will be reimbursed at the rate of \$125 per trip. Meal expenses incurred in travel will be reimbursed on actual costs. Receipts are required for reimbursement.
- c) In the event the City requests services, which would cause the Contractor to exceed the amount, stated above, the City and Contractor may agree to amend this agreement.

- 6. **Other Payments:** Contractor will not qualify for other types of reimbursements.
- 7. **Maintenance of, and Access to, Records:** The Contractor shall maintain reasonable records incident to the performance of this contract and per reporting requirements specified in the Commissioner of Political Practices “Manual of Principals and Lobbyists.” The Contractor shall provide copies of all documentation required for lobbyist reports to the City, the City Finance Director, the independent auditor employed by the City, and to any duly appointed representatives of the state or federal government if requested.
- 8. **Missoula City Assistance:** The City official with whom the Contractor should communicate regarding this contract and who shall have authority to accept completion of performance and approve payments for submission to the City Finance Director is:

Bruce Bender, Chief Administrative Officer

At the address of: 435 Ryman Street, Missoula, Montana 59802,

The telephone number of: (406-552-6001), and email at bbender@ci.missoula.mt.us

and that the City shall be responsible for assisting with the performance of this contract by specifically doing or providing the following:

Bruce Bender, Chief Administrative Officer, will act as the designated liaison to the Contractor or assign a designee as required.

- 9. **Rights to Work Product:** Any discovery, copyright, invention, workpapers, written materials, publication, information, by-product, or end product arising out of, or incident to, the performance of this agreement shall be the sole property of the City unless otherwise required by state or federal regulations.
- 10. **Release of Information:** No information relevant to any work completed or in progress shall be disclosed to the third parties, or released by the contractor without prior authorization from the City.
- 11. **Total Agreement--Change of Agreement:** This contract contains the entire agreement between the parties, and no other oral or written terms or conditions, which are not contained in this agreement, shall be binding. This agreement may not be changed except by mutual agreement of the parties reduced to writing and signed. No obligation or right hereunder may

be assigned, transferred, subcontracted, or otherwise given to, or imposed on, any other party in the absence of mutual written consent signed by the parties.

12. **Termination:** This contract may be terminated at any time by mutual written and signed consent of the parties. Either party may terminate this contract unilaterally by giving notice of termination in writing at least 10 days prior to the date of intended termination. Payments will be prorated for the month in which termination occurs.
13. **Failure to Perform:** Upon any material default or substantial failure to perform this agreement by either party, the other party shall be entitled to the following remedy:
 - a) Stop performing or accepting performance of the contract until the matter is resolved.
 - b) Within three days of discovery of the defect, mail a written description thereof to the other party, and:
 - 1) If the defect can be cured, demand specific remedial action within a reasonable time certain; or,
 - 2) If the defect cannot be cured, specify any alternative performance which would be acceptable in lieu of the required performance and a time within which the alternative performance would be required; or,
 - 3) If the defect cannot be cured and no alternative performance is acceptable, notify the other party of the termination of the contract as of a date certain and state therein whether an action for breach of contract will be brought.
 - 4) Where appropriate, obtain completion of the performance of the remaining balance of the contract with the original party.
 - c) If the defect is not corrected or alternative performance completed within the time certain specified the party alleging the breach may initiate an action in the District Court of the State of Montana. The parties understand and agree that performance of this contract is in Missoula County and that in the event of litigation concerning it, venue is the Missoula County, Fourth Judicial District for Missoula County, State of Montana. This contract will be construed under and governed by the laws of the State of Montana. If an action is brought, the prevailing party shall be entitled to attorney's fees as well as other costs resulting from the suit.
14. **Non Discrimination:** The Contractor will not discriminate against any employee or applicant for employment on the basis 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 or sexual orientation, gender identity or expression, except where these criteria are reasonable bona fide occupational qualifications and as described in [Attachment A](#) of this contract.

15. **Affirmative Action:** The Contractor, subcontractors, subgrantees, and other firms doing business with the City any agency connected with the City must be in compliance with the City of Missoula's Affirmative Action Plan and Title 49, MCA or forfeit the right to continue such business dealings. See [Attachment A](#).

16. **Income Tax Designation:** In the event that the Internal Revenue Service should determine that the contractor is, according to IRS guidelines, an employee subject to withholding and social security contributions, the Contractor shall acknowledge, as the Contractor acknowledges herein, that all payments to the Contractor are gross payments, and the Contractor is responsible for all income taxes and social security payments thereon.

17. **Indemnification:** The Contractor shall hold the City harmless from any charge, fine, penalty, or judgment arising out of or in any way resulting from, the Contractor's performance in this contract; and that should the City be required to make reimbursement or incur costs of defense for any such reason, the Contractor shall fully reimburse the City.

WHEREFORE, being the persons duly authorized to sign this agreement and thereby bind the above-named parties, we do hereby affix our signatures on this, the ____ day of _____, 2012.

CONTRACTOR:

MAYOR
City of Missoula, Montana

Kate Cholewa, Owner/Consultant
KMC Strategic Communications

John Engen

ATTEST:

APPROVED AS TO FORM AND
CONTENT:

Marty Rehbein, CMC
City Clerk

Jim Nugent, City Attorney

(SEAL)

ATTACHMENT A

NON-DISCRIMINATION. All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis 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 or sexual orientation, gender identity or 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, 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.