

## PROFESSIONAL SERVICES AGREEMENT

**Parties:** City of Fruita, Colorado and Columbia ltd

**Services:** Executive Recruitment | City Manager

This Professional Services Agreement (Agreement) is a contract between Columbia Consulting, Ltd. (Columbia ltd or Columbia), a Colorado limited liability company, and the City of Fruita, Colorado (City), a home rule municipality, for the executive recruitment services described below. Columbia ltd and the City are referred to collectively as “the Parties.”


- 1) *Scope of Services.* The City retains Columbia ltd to conduct a full executive search and recruitment of a City Manager, as described in the Scope of Services, attached as Exhibit A.
- 2) *Fee.* The all-inclusive professional fee (Fee) for the recruitment of the City Manager is **\$22,500**, billed in three, equal monthly invoices. The first invoice is due and payable upon the Effective Date of this Agreement, and the final two invoices will be billed monthly thereafter. All invoices are payable on receipt. If any invoice remains unpaid within 30 days of receipt, Columbia ltd reserves the right to suspend all services until payment in full is received. Additional services and costs, if any, will be added to the third invoice. The parties agree that the City’s payment of any monies under this Agreement is subject to annual budget appropriations as required by provisions of the Taxpayers’ Bill of Rights (“TABOR”) contained in Article X, Section 20 of the Colorado Constitution, as amended. The parties further agree that any failure to fund the obligations set forth herein as a result of TABOR-related monetary constraints shall not give rise to any legal or equitable cause of action whatsoever.
  - a. The Fee includes three on-site meetings with the City: (1) Kickoff Meeting, (2) Recommendation of Candidates, and (3) Finalist Interview Process.
  - b. The Fee includes consultant time and travel expenses; preparation, printing, and distribution of the Candidate Profile, including direct mail and digital distribution; national marketing and advertising; direct outreach and candidate management; general expenses related to administration (printing, copying, mailing, postage, internet access, telephone, social media, etc.); background and reference checking as described in Exhibit A; preparation, printing, and delivery of the Report of Recommended Candidates and the Report of Finalists; and one complete background report on the Preferred Candidate.
  - c. The Fee does not include candidate travel expenses related to participation in the Finalist Interview Process.
- 3) *Guarantee.* Columbia guarantees the placement of the City Manager for a period of one year. If within one year after the first date of employment with the City a candidate recommended by Columbia (external candidates only) leaves employment with the City for any reason (exceptions: serious illness, disability, or death; layoff, or position elimination due to reduction in force or budget shortfall; or promotion to another position within the organization), Columbia guarantees to reopen and conduct the recruitment again at no additional professional fee, beyond limited expenses.

- 4) *Good Faith; Time of the Essence.* The Parties acknowledge the collaborative nature of this executive recruitment and agree to good faith and fair dealing with each other to ensure a timely and successful search. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.
- 5) *Cancellation.* Should the City choose to cancel or postpone the recruitment at any time after execution of this Agreement, the City will be responsible for payment in the amount of the percentage of the work completed through the time of cancellation or postponement.
- 6) *Confidentiality.* The recruitment of the City Manager is subject to all of the protections of federal and state employment laws and regulations. The Parties agree to maintain as confidential all information regarding all applicants and candidates generated by the executive recruitments of the City Manager, and further agree to take all reasonable steps required to maintain this confidentiality. Confidential information gathered during this recruitment will be used solely for the purpose of selecting qualified applicants for the City Manager position, and for no other purpose. The Parties shall comply with the laws of the State of Colorado pertaining to public records, open meetings, and executive sessions, which govern this process.
- 7) *Independent Contractor Status and Insurance.* **Columbia ltd is an independent contractor and nothing in this agreement creates an employer/employee relationship between the Parties nor are the Parties engaged in a joint venture. As such, Columbia ltd is not entitled to any benefits, federal or state tax withholdings, or insurance coverage, including workers' compensation insurance, offered by the City.** Columbia ltd agrees to procure and maintain at its own cost, the policies of the insurance listed in this section. Commercial General Liability Insurance (Businessowners: \$1,000,000/each, \$2,000,000 aggregate; E&O/Professional Liability: \$1,000,000/each, \$2,000,000 aggregate) through Hiscox Insurance Company, Inc. Automobile liability insurance shall be provided by Farmers Insurance (\$250,000 / \$500,000 Bodily Injury, \$100,000 Property Damage). In addition, Columbia ltd provides additional liability coverage through an umbrella policy with Farmers Insurance (Occurrence/Aggregate \$1,000,000/each). Workers compensation insurance with minimum limits of 500,000.00/each and 500,000.00 aggregate shall be provided by Pinnacol Assurance of Denver, CO, for Columbia employees. Certificates of Insurance listing Fruita as an additional insured provided on request. Nothing herein shall constitute a waiver by the City of any protection under the Colorado Governmental Immunity Act ("CGIA"), as may be amended, C.R.S. §§ 24-10-101 *et seq.*
- 8) *Dispute Resolution.* In the event of any dispute arising out of this Agreement, the Parties first agree to mediate the dispute informally before pursuing any other legal remedies. If mediation does not resolve the dispute, venue for any action or proceeding brought by either of the Parties shall be exclusively in Mesa County. The prevailing party shall be entitled to recover all reasonable costs and fees of its attorney in such action or proceeding, including the cost of an appeal as allowed by the laws of the State of Colorado.
- 9) *Essential Terms.* The terms in Exhibit A are essential terms of this Agreement.

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The Effective Date of this Agreement is October 15, 2024, regardless of when signed.

**Columbia Ltd**

By:   
Andrew Gorgey  
Chief Executive Officer

10/10/24  
Date

**City of Fruita, Colorado**

By: \_\_\_\_\_  
Matthew Breman  
Mayor

\_\_\_\_\_  
Date