

Order 109-14/15

Passage: 9-0 on 12/15/2014

MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

Effective 12/25/2014

DAVID H. BRENERMAN (5)  
JILL C. DUSON (A/L)  
JON HINCK (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING CONTRACT WITH MUNICIPAL RESOURCES, INC.  
FOR THE CITY MANAGER SEARCH**

**ORDERED,** that the contract with Municipal Resources, Inc. for the City Manager Search is hereby approved in substantially the form attached hereto; and

**BE IT FURTHER ORDERED,** that the City Council hereby authorizes the Mayor to execute said document and any other related documents necessary or convenient to carry out the intent of said document.

**CONTRACT BETWEEN  
CITY OF PORTLAND  
AND  
MUNICIPAL RESOURCES, INC.**

This **AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the **CITY OF PORTLAND**, a body politic and corporate, located in the County of Cumberland and State of Maine (hereinafter "**CITY**") and **MUNICIPAL RESOURCES, INC.**, a New Hampshire corporation with a mailing address of 120 Daniel Webster Highway, Meredith, NH 03253 (hereinafter "**CONSULTANT**" or "**MRI**").

**W I T N E S S E T H:**

**WHEREAS**, the **CITY** is in need of a consultant to conduct a search for a new City Manager; and

**WHEREAS**, the **CITY** has determined that **CONSULTANT** has the requisite skills, knowledge and experience to provide such services and best meets **CITY**'s needs for such services;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**1. SERVICES.**

**CONSULTANT** shall provide assistance to the **CITY** in its recruitment of a new City Manager in accordance with **CONSULTANT**'s Scope of Services, a copy of which is attached hereto as Exhibit A and is fully incorporated herein. In the event of any inconsistency between this contract document and said exhibit, this document shall prevail.

**CONSULTANT** agrees to include the **CITY**'s designation as an affirmative action/equal opportunity employer in all employment advertisements placed, or other recruitment performed, by **CONSULTANT** on **CITY**'s behalf. Further, **CONSULTANT** agrees to make a good faith effort to refer qualified minority and women applicants.

2. **COMPENSATION.**

**CITY** agrees to pay **CONSULTANT** an amount not to exceed Fifteen Thousand Five Hundred Dollars (\$15,500.00) for its services and expenses in accordance with the schedule of fees and charges attached hereto as Exhibit B. **CITY** shall not pay **CONSULTANT** for any amount in excess of \$15,500.00 unless **CONSULTANT** first obtains **CITY**'s prior written approval to pay such amounts. In the event of any inconsistency between this contract document and Exhibit B, this document shall prevail.

3. **TERM; SCHEDULE.**

The recruitment and selection process described in the Scope of Services typically takes approximately 90-120 days to complete. **CONSULTANT** understands that the City wishes to have a City Manager commencing work no later than July 1, 2015 and will make best efforts to accomplish that goal. This Agreement will remain in effect until the Scope of Services is completed, unless sooner terminated as provided herein or extended by agreement of the parties.

4. **TENURE GUARANTEE.**

In the event that **CITY** hires a new City Manager as a result of **CONSULTANT**'s performance under this agreement, as documented by an executed employment agreement between **CITY** and the City Manager, and in the event that said employment relationship is terminated by either party within 18 months, **CONSULTANT** guarantees to undertake an additional recruitment and selection process at no expense to the **CITY**. However, no such guarantee shall exist if said termination occurs due to death or catastrophic illness of the selected candidate, or due to the actions of a majority of newly elected Council Members. There shall be no cost to the **CITY** for **CONSULTANT**'s recruitment services under this tenure guarantee, except that the **CITY** shall be responsible for advertising costs and interview travel and lodging expenses, provided that the **CITY** first approves such costs and expenses in writing.

5. **STATUS AS INDEPENDENT CONTRACTOR.**

**CONSULTANT** in accordance with its status as an independent contractor, covenants and agrees that its employees will conduct themselves consistent with such status, that they will neither hold themselves out as, nor claim to be, officers or employees of the **CITY**, by reason of this Agreement, and that **CONSULTANT** and its employees will not, by reason of this Agreement, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the **CITY**, including but not limited to health insurance, unemployment insurance benefits, Workers' Compensation benefits, Social Security coverage or retirement membership or credit.

6. **INDEMNIFICATION**

To the fullest extent permitted by law, **CONSULTANT** shall defend, indemnify and hold harmless the **CITY**, its officers and employees, from and against all claims, damages, losses, and expenses, just or unjust, including, but not limited to, the costs of defense, including attorneys' fees arising out of or resulting from the performance of this Agreement, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of property, including the loss of use therefrom, and (2) is caused in whole or in part by any negligent act or omission of **CONSULTANT**, anyone directly or indirectly employed by it, or anyone for whose act it may be liable.

Such obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the **CITY** which otherwise exists. The extent of the indemnification provision shall not be limited by the provision for insurance in this Agreement.

7. **INSURANCE.**

Prior to the execution of this Agreement, the **CONSULTANT** shall, at its own expense, carry Professional Liability Insurance for errors, omissions and negligence, in the amount of One Million Dollars (\$1,000,000.00) per claim. Throughout the term of this Agreement, **CONSULTANT** shall procure and maintain General Liability Insurance coverage and Automobile Insurance coverage in amounts of not less than Four Hundred Thousand Dollars (\$400,000) per occurrence for bodily injury, death, and property damage, naming the **CITY** as an additional insured thereon, and shall also procure Workers' Compensation Insurance coverage in the amount required by Maine law; fidelity insurance covering loss of funds or destruction of property; and errors and omissions insurance. The Workers' Compensation insurance shall include an endorsement waiving all rights of subrogation against the City of Portland, its officers or employees. **CONSULTANT** shall furnish and thereafter maintain certificates evidencing such coverage, which certificates shall guarantee thirty (30) days' notice to **CITY** of termination of insurance from insurance company or agent.

8. **PAYMENT.**

**CITY** agrees to pay **CONSULTANT** within thirty (30) days of submission of an itemized invoice by **CONSULTANT**.

The **CITY** shall notify **CONSULTANT** promptly of any deficiencies or disapproval of work done by **CONSULTANT** and shall give it reasonable opportunity to correct or cure the same.

**9. NO ASSIGNMENT.**

This Agreement is one for services and may not be assigned, transferred, conveyed, or otherwise disposed of, nor may **CONSULTANT** transfer or convey its right, title or interest herein or its power to execute such contract to any other person or corporation without the previous consent in writing, of the **CITY**.

**10. TERMINATION.**

The **CITY** or **CONSULTANT** may terminate this Agreement for cause immediately upon written notice to the other of such termination. In the event of such termination, **CONSULTANT** shall be paid for all services satisfactorily performed up to the date of receipt of notice of termination.

The **CITY** may terminate this Agreement for its convenience, and in its sole discretion, upon thirty (30) days' prior written notice to **CONSULTANT**. In the event of termination for convenience, **CONSULTANT** shall be paid for all services satisfactorily performed on or before the termination date.

**11. CONSULTANT'S REPRESENTATIONS**

**CONSULTANT** represents to the **CITY** that it is a duly constituted corporation under the laws of the State of New Hampshire and is authorized to do business in the State of Maine as a professional services corporation.

**CONSULTANT** has no liens or encumbrances which would adversely affect its ability to perform as stipulated under this agreement, its terms, and conditions.

**12. CITY'S REPRESENTATIONS**

The **CITY** represents to **CONSULTANT** that sufficient funds have been appropriated so it may retain and compensate **CONSULTANT** for the services provided for herein.

The **CITY**'s representative is authorized to enter into this agreement on behalf of the **CITY**.

The **CITY** is aware of no action, contemplated action, liability or other encumbrance which would limit or otherwise preclude the **CITY** from freely entering into this agreement and compensating **CONSULTANT** for the services provided.

**13. COMPLIANCE WITH LAW**

**CONSULTANT** agrees that in performance of its services hereunder, it shall comply with all applicable federal, state and local law and regulation, including without limitation, all laws and regulations prohibiting discrimination in employment.

**14. NOTICES.**

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if sent by First Class mail addressed as follows, or such other address as they may designate from time to time:

If to City:                    Sheila Hill-Christian  
                                      Acting City Manager  
                                      City of Portland  
                                      389 Congress Street  
                                      Portland, ME 04101

If to Consultant:         Donald R. Jutton, President  
                                      Municipal Resources, Inc.  
                                      120 Daniel Webster Highway  
                                      Meredith, NH, 03253

**15. GOVERNING LAW.**

This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court.

**16. MULTIPLE COUNTERPARTS.**

This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement. A signature in a pdf or electronic document shall be considered the equivalent of an original signature.

**17. EXTENT OF AGREEMENT.**

This Agreement, with its attachments, represents the entire and integrated agreement between the **CITY** and **CONSULTANT** and supersedes and replaces all terms and conditions of any prior agreements, arrangements, negotiations, or representations, written or oral with respect to this Agreement. This Agreement may only be modified by written agreement of the parties.

**IN WITNESS WHEREOF**, the **CITY** has caused this Agreement to be signed by Michael F. Brennan, its Mayor, thereunto duly authorized, and **MUNICIPAL RESOURCES, INC.** has caused this Agreement to be signed by Donald R. Jutton in his capacity as President, the day and date first written above.

**WITNESS:**

**CITY OF PORTLAND**

\_\_\_\_\_

By:

\_\_\_\_\_

Michael F. Brennan  
Its Mayor

**WITNESS:**

**MUNICIPAL RESOURCES, INC.**

\_\_\_\_\_

By:

\_\_\_\_\_

Donald R. Jutton  
Its President

Approved as to Form:

Approved as to Budget:

\_\_\_\_\_  
Corporation Counsel

\_\_\_\_\_  
Finance Director

## Exhibit A

### SCOPE OF SERVICES

**MRI will undertake the following activities in the basic executive recruitment process:**

1. Receive input toward developing an "**Ideal Candidate Profile and Challenge Statement**". The purpose of the Ideal Candidate Profile and Challenge Statement is to:
  - a. Identify critical organizational issues and challenges;
  - b. Clarify roles, responsibilities, and expectations for the position;  
and
  - c. Establish criteria that will help us assess the candidates to ensure that individual management strengths, behavioral styles, and motivating values of the finalists are aligned with the requirements of the position.

This will be accomplished in a number of different ways including both face-to-face and telephone interviews with elected/appointed officials, staff, and citizens, focus groups, on-line surveys, and general research by our staff. This information gathering process provides insight into key aspects of the position and also allows us to develop pertinent essay questions that are specific to each community for distribution to candidates as the process advances. When the Ideal Candidate Profile / Challenge Statement is generated and approved by the Client, it will be posted on MRI's recruitment website for potential candidates to review.

2. We will work with the Client to develop a timeline for the recruitment process so that the Client and all candidates can plan accordingly. This timeline will be provided to all candidates and posted on MRI's recruitment website.
3. We will develop and submit to the client a recommended updated position description, if requested.
4. We will research MRI's data base and canvas MRI's professional network to identify and reach out to promising potential candidates to invite their application.
5. We will develop ad copy, recommend advertising venues, and coordinate placement of the ads. Resumes will be received for approximately 30 days.
6. We will evaluate salary data in-state and nation-wide for comparable municipalities and provide a recommended a competitive salary range and compensation package.

7. We will receive and acknowledge receipt of all applications/resumes; candidates will be kept apprised of their status at each selection point throughout the process.
8. We will work with the Council Search Committee to develop a strategy for the total search, including defining MRI's role in the resume review process. If desired, we will establish an MRI team of management consultants, of which at least two will review and rank candidates against the Ideal Candidate Profile, screen all resumes for minimum qualifications and assist in identification of applicants to be invited to interview.
9. We will provide resumes to the Council Search Committee for review via a designated SharePoint site.
10. We will work with the Council Search Committee to develop the process for committee and other stakeholder interviews of semi-finalists, provide sample questions and work with the Council Search Committee to develop suggested interview questions.
11. If desired, MRI will develop and distribute a written essay questionnaire to the top qualified candidates (generally 15 to 20 candidates), focusing the questions on matters of special relevance to the client's needs or current situation. The questions will be prepared in consultation with the Committee and candidates will have 15 days to respond. The Committee and consultant team will review and rank essay responses as they are returned.
12. We will conduct a web search of each semi-finalist to identify and isolate potential background or past employment issues or concerns to be addressed in the next step of the process (telephone interviews).
13. After essay responses have been returned, reviewed, and ranked, two (2) members of the consulting team (and Committee members as they desire) will conduct telephone interviews with the top candidates with focus on current position and reasons for leaving; career history of successes and failures; future personal and professional goals; and their understanding of best practices and contemporary professional thinking in the field.

At this point in the process, we will implement one of the 3 alternatives as determined most desirable by the Selection Committee:

14. **ALTERNATIVE 1**: The MRI team of professional management consultants and the Selection Committee will conduct onsite interviews with the top 4 to 6 candidates (interview room and on-site lunch for panel to be provided by the client). The top candidates emerging from that interview would be presented to the Council interview.

**ALTERNATIVE 2 (recommended)**: If the Client decides to have community and/or employee input into the process, the MRI team will facilitate two rounds of interviews; the first to include up to three separate panels (panel #1 consisting of 5 to 7 municipal employees; panel #2 consisting of 7 to 9 community representatives; and panel # 3 consisting of the Selection Committee and one of MRI's professional team. The selection of the panelists is up to the appointing authority with input from MRI. Each panel will be facilitated by a member of our consultant team. The second round will consist of individual interviews with the Council and the top two to four candidates that emerge from the first round of interviews.

**ALTERNATIVE 3**: Develop some other mutually agreeable structured approach in consultation with the Selection Committee.

15. Following whichever of the preliminary interview process alternatives that is chosen and prior to final Council decision, MRI will administer a standardized management profiling instrument (Clever Synergy Profile) for the top 2 or 3 candidates to help inform the Client regarding potential strengths and weaknesses of the finalist(s). Our lead consultant will review the results of the management profile with the Council and then, in conciliation with them determine what, if any, additional steps are needed to arrive at a final selection – additional steps may include more interviews, an onsite “meet and greet” with key staff, a family visit or other mutually agreeable screening activities .
16. If desired, we will assist with development of terms and conditions of employment, preparation of a conditional offer of employment, drafting the employment agreement, and development of initial goals and objectives.
17. If requested, we will assist the appointing authority with contract negotiations.
18. If the final candidate will be relocating to the community from a significant distance, we recommend and will, if desired by the client, coordinate a family visit to the community prior to making a conditional offer of employment.
19. We will complete a detailed background check on the selected candidate, which shall include, but not be limited to, previous employment, personal and professional references, employment and education verifications, credit history, and criminal and motor vehicle records checks.
20. We will assist with developing an appropriate transition plan upon request of the client.
21. Conduct or recommend consultant to provide executive assessment of finalist(s).

### **MRI Personnel In Charge**

Donald R. Jutton, President, will serve as Principal-In-Charge of this engagement, coordinating activities, interfacing directly with the Client, and participating throughout the engagement as required. Carol Granfield and Gregory Hanscom will serve as team members on this engagement. Additional team members will be assigned and participate upon request of the Client.

Gail H. Schillinger will serve as the Communication Liaison between the Client and MRI to expedite the flow of project information, to record and properly direct Client inquiries regarding the project, and to ensure that problems or issues that may arise during the engagement are addressed and resolved expeditiously. Please feel free to contact Ms. Schillinger regarding any matter related to this project at:

Gail H. Schillinger  
Communication Liaison  
Municipal Resources, Inc.  
120 Daniel Webster Highway  
Meredith, NH 03253  
(603) 279-0352, x-303  
(866) 501-0352, x-303 TOLL FREE  
[gschillinger@municipalresources.com](mailto:gschillinger@municipalresources.com)

### **Notice of Change in Personnel**

Except as otherwise provided below, the MRI consultants assigned to any scope of work or project will remain throughout the duration of that specific scope of work or project. MRI retains the right, upon 30 days written notice, to remove from the project any of its consultants whom it believes can no longer suitably perform under its obligations to this agreement or any Supplement to it.

The Client, upon 30 days written notice, may request MRI to replace any of its consultants with another qualified representative.

### **Administration of Agreement Modifications**

In all cases where this agreement is modified or expanded a written Supplemental Scope of Work (Supplement) must be prepared which clearly defines the services to be provided and details the billing rates or amounts to be charged by MRI and paid by the Client. Supplements must be executed by the authorized representatives of the respective parties prior to any billable work being undertaken. The Supplement(s) shall identify:

- The MRI officer or principal responsible for the successful delivery of services and/or project completion and the client's contracting official(s) or officer(s);
- The specific details of the work to be performed;
- The MRI personnel to be assigned;

- The basis upon which MRI services are being retained, including the normal hourly rate(s), cost reduction considerations or the agreed upon fee(s) for the personnel assigned and/or the services provided;
- The Client's contact person responsible for administering the Supplement, activities or project and the associated reporting requirements; and
- Any special or other conditions such as time deadlines, special reporting requirements, budget limitations, or other similar constraints.

## EXHIBIT B

### SCHEDULE OF FEES AND CHARGES

**MRI's services for this Recruitment & Selection process will be provided on a lump sum fee basis that is intended to cover all professional time and expenses. The process will be completed for a lump sum fee of \$15,500.00; payment to be made as follows:**

1. **\$4,000.00** to be invoiced upon signing this agreement;
2. **\$4,000.00** to be invoiced upon completion of the review and initial ranking of candidates;
3. **\$4,000.00** to be invoiced upon completion of initial reference checks on semi-finalist candidates; and
4. **\$3,500.00** to be invoiced upon the Client receiving our recommendation(s) after the interview process is complete.

Payments will be made within thirty (30) days of receipt of the invoice unless otherwise agreed. Invoices not paid within thirty (30) days will accrue interest at the rate of 1.5% per month.

In the event that the work schedule requires overnight accommodations at the Client's location, the MRI consultant will be reimbursed actual cost of accommodations plus \$35 for meal expense.

Third parties retained by MRI who or which are not MRI employees or affiliates and as noted on any Supplement(s) will be invoiced at a cost sufficient to cover all charges and costs.

Also, there may be additional charges for a background investigation associated with an out-of-state finalist should the Client elect to have an on-site field visit conducted. The Client must budget for these costs separately.

### ADVERTISING ALLOWANCE and CANDIDATE EXPENSES

We suggest an advertising budget of \$1,200.00. This includes advertising in the following venues, and on other appropriate publications and websites, which will be selected in consultation with the Client.

We suggest a candidate expense allowance of \$1,500.00 to cover incidental costs of the interviews and travel/overnight accommodations should the Client determine that candidates coming from a long distance are to be partially or totally reimbursed for such expenses.

The fees and charges set forth in the schedule above **do not include** the cost of advertising, the cost of accommodations for on-site interviews, reimbursement of candidate travel expenses, the cost of a family visit, or the cost of medical or psychological exams. In addition, the City is responsible for providing food and lodging for the interview team (on nights prior to the interviews) and for providing food and interview rooms for the interview panels and candidates on the interview days.