

**REQUEST FOR CITY COUNCIL CONSIDERATION**

Meeting Date: February 6, 2025

Agenda Item:	Prepared By: Chris Noury, City Attorney
Agenda Section: Business: Resolution	Date: February 5, 2024
Subject: A Resolution to approve the Services Agreement for Executive Search Services	Division: Legal

**Background:**

**A RESOLUTION OF THE CITY OF NORTH MYRTLE BEACH SOUTH CAROLINA TO APPROVE THE SERVICES CONTRACT BETWEEN THE CITY OF NORTH MYRTLE BEACH AND COLIN BAENZIGER AND ASSOCIATES FOR EXECUTIVE SEARCH SERVICES**

**ATTACHED** for Council’s review is the Services Contract between the City of North Myrtle Beach and Colin Baenziger and Associates for executive search services for the City Manager position. The City reserves the right to amend any boilerplate language, with the consent of Colin Baenziger, prior to the parties signing the contract.

**Recommended Action:**

Adoption of the Resolution

Reviewed by Department Head	Reviewed by Interim City Manager	Reviewed by City Attorney
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Council Action: Motion By _____ 2 <sup>nd</sup> By _____ To _____
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**RESOLUTION**

**A RESOLUTION OF THE CITY OF NORTH MYRTLE BEACH SOUTH CAROLINA TO APPROVE THE SERVICES CONTRACT BETWEEN THE CITY OF NORTH MYRTLE BEACH AND COLIN BAENZIGER AND ASSOCIATES FOR EXECUTIVE SEARCH SERVICES**

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**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL FOR THE CITY OF NORTH MYRTLE BEACH SOUTH CAROLINA**

**Section 1:** The above-referenced Services Agreement is hereby approved.

**Section 2:** The Mayor is authorized to sign the Agreement on behalf of the City.

**Section 3:** This Resolution shall be effective upon the date of passage.

**DONE, RESOLVED AND PASSED THIS SIXTH DAY OF FEBRUARY 2025.**

\_\_\_\_\_  
**Marilyn Hatley, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Allison K. Galbreath, City Clerk**

**RESOLUTION: RES 25-04**

# SERVICES CONTRACT

THIS CONTRACT is made this \_\_\_\_ day of February 2025 by and between the City of North Myrtle Beach, South Carolina, a South Carolina, municipal corporation (hereinafter, the "CITY"), and COLIN BAENZIGER, a sole proprietor doing business as COLIN BAENZIGER & ASSOCIATES, hereinafter the "CONTRACTOR" OR "CB&A".

WITNESSETH: For and in consideration of the payments and agreements mentioned hereinafter:

1. The CONTRACTOR will provide EXECUTIVE SEARCH SERVICES FOR THE SELECTION OF THE CITY MANAGER in accordance with the Contract Documents.
2. The CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the completion of the services described in the Contract Documents. Time is of the essence in the performance of this Contract.
3. The CONTRACTOR will commence work as required by the CONTRACT DOCUMENTS within 10 calendar days after the receipt of the written Notice to Proceed and will complete the same in 120 days unless an extension is granted by City
4. **SCOPE OF SERVICES:** The services CB&A will provide are briefly summarized below.
  - a. With the City, develop a strategy and process for conducting the recruitment of a City Manager, including developing the materials necessary to conduct outreach to the City Manager community and to provide a diverse pool of applicants.
  - b. Identify and contact potential applicants. This effort will include networking, preparing appropriate advertisements, and posting these through national channels (including distributing it via CB&A's email listserv and LinkedIn). Preparing and placing advertisements for the position in appropriate publications.
  - c. Review resumes for background and qualifications followed by telephone and/or video screening interviews to clarify each applicant's experience and to prepare a written summary of candidates with the most promising qualifications for the position.
  - d. Evaluate the best candidates by verifying selected candidates' educational background, employment history, in-depth discussions with references (who are or have been in a position to evaluate the candidate's performance on the job), and criminal, financial, media, and civil litigation checks. The goal will be to ascertain the candidate's ability to perform as the City's City Manager.
  - e. In the event politically sensitive or potentially embarrassing issues arise from the candidates' background, CB&A will conduct in-depth interviews with the principal parties to clarify and to provide adequate background and explanation of the event to the City.
  - f. Finalize, coordinate, and participate in the finalist interview process with the City. CB&A will prepare an evaluation guide which provides guidance on how to

conduct interviews, sample questions, and areas that the client should not pursue during the interview process.

- g. Debrief with the City following interviews and assist in the selection process. Identify additional candidates, if necessary.
- h. Notify rejected applicants, and
- i. Assist (or if requested, lead) the negotiations of an employment agreement with the selected candidate.

The Scope of Services set forth in Contractor’s Proposal is attached as Attachment A and made a part of Contract Documents and is incorporated as if fully set forth herein.

5. The Contractor agrees to perform all of the work described in the contractor’s documents for the following prices:

Phase I: Needs Analysis / Information Gathering	\$4,000
Phase II: Recruiting	\$14,000
Phase III: Full Background Checks	\$14,000
Phase IV: Interview Process Coordination / Manager Selection	\$1,500
Phase V: Negotiation, Continuing Assistance, and Warranty	\$1,000
Total	\$34,500

The City will also pay for one or two night’s stay for the CB&A representative in the same hotel as the finalists when they interview with the City. All other expenses the Contractor will incur are included in the above cited fees.

Additional services outside Phase I - V will be charged at \$150 per hour. No such services are anticipated, and none will be performed without prior approval from the City.

6. **WARRANTY:** Provided the Contractor conducts the full search (Phases I-V – see the preceding contract section, Section 5) and the City selects from among the candidates recommended by the Contractor, the Contractor will warrant the following:
- a. The Contractor will not approach the selected candidate concerning any other position as long as the individual is employed by the City
  - b. If the selected individual leaves for any reason other than an act of God (for example, total incapacitation or death) within the first year, Contractor will repeat the search for the reimbursement of expenses only.
  - c. If the City is not satisfied with any of the candidates Contractor presents, Contractor will repeat the search until the City is satisfied.
  - d. The price is guaranteed and will not be exceeded for any reason, even if conditions change after the contract is executed.
7. This Contract may be terminated by the City for its convenience upon thirty (30) days prior written notice to the Contractor. In the event of termination, the Contractor shall be paid as compensation in full for work performed to the day of such termination, an amount prorated in accordance with the work substantially performed under this Contract as determined by the City. Such amount shall be paid by the City after inspection of the work

to determine the extent of performance under this Contract, whether completed or in progress.

8. The Term "Contract Documents" shall include this Contract, the CB&A's proposal dated December 11, 2024 (included as Attachment A), the Project Schedule dated February 4, 2025 (included as Attachment B), CB&A's Responses to North Myrtle Beach Questions dated January 23, 2025 (included as Attachment C), and CB&A's Email Answers to North Myrtle Beach Follow-up Questions dated February 4, 2025 (included as Attachment D). In the event of conflict between any provision of any other document referenced herein as part of the contract and this Contract, the terms of this Contract shall control.
9. **Assignment:** This Contract may not be assigned except with the written consent of the City, and if so assigned, shall extend and be binding upon the successors and assigns of the Contractor.
10. **Disclosure:** The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual or Contractor, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or other compensation contingent upon or resulting from the award or making of the Contract.
11. **Administration of Contract:** The North Myrtle Beach contract manager shall be Tammy O'Berry and she shall administer this Contract for the City.
12. **Governing Law, Venue and Attorney's Fees:** The validity, construction and effect of this Contract shall be governed by the laws of the State of South Carolina. Venue for any disputes arising under this Contract shall be exclusively in the State Courts in and for North Myrtle Beach, South Carolina. In the event of any litigation arising out of this Contract, each party will bear its costs for the litigation and any associated expenses.
13. **Amendments:** No Amendments or variation of the terms or conditions of this Contract shall be valid unless in writing and signed by the parties and approved by the City's governing body.
14. **Payments:** City shall make payment within twenty (20) days of the City's receipt of an invoice from the Contractor unless, within that time period the City notifies Contractor in writing of its objection to the amount of such invoice, together with City's determination of the proper amount of such invoice. The Parties shall resolve or undertake to resolve any disputed portion of such invoice within thirty (30) days after said date of notification by the City. If after thirty (30) days from the date of notification by the City there is no resolution between the parties, the City's determination shall be final.
15. **Contractor's Representations:** The Contractor represents that it has demonstrated knowledge and experience in performing executive searches for key personnel for local governments.
16. **Indemnity:** To the extent permitted by law, the Contractor shall indemnify and hold harmless the City, its officers, elected and appointed officials, employees and agents, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees (including but not limited to attorney's fees on appeal), to the extent caused by the

negligence, recklessness, or intentional wrongful misconduct of the Contractor and any persons employed or utilized by Contractor in the performance of this Contract.

17. **Invalid Provision(s)**: The invalidity or unenforceability of any particular provision of this Contract shall not affect the other provisions hereof, and the Contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
18. **Project Records**: The Contractor shall maintain auditable records concerning the procurement adequate to account for all receipts and expenditures, and to document compliance with the specifications. These records shall be kept in accordance with generally accepted accounting principles, and the City reserves the right to determine the record-keeping method in the event of non-conformity. These records shall be maintained for five (5) years after final payment has been made, and shall be readily available to City personnel with reasonable notice, and to other persons in accordance with the applicable state statutes. This provision shall survive the termination, expiration and/or cancellation of this Contract.
19. **Compliance with Applicable Laws Including But Not Limited To Public Records Laws.**

(a) The Contractor agrees to comply with all federal, state, and local laws or ordinances applicable to all of the provisions of this Contract and specifically acknowledges the applicability of the Public Records provisions of South Carolina law and as more specifically set forth in this Paragraph below. The Contractor represents and warrants unto the City that no elected official, officer, employee, or agent of the City has any interest, either directly or indirectly, in the business of the Contractor to be conducted hereunder. The Contractor further represents and warrants to the City that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Contract, and that it has not paid, or agreed to pay, or given or offered any fee, commission, percentage, gift, loan, or anything of value to any person, company, corporation, individual, or firm, other than bona fide Personnel working solely for the Contractor, in consideration for or contingent upon, or resulting from the award or making of this Contract. Further, the Contractor also acknowledges that it has not agreed, as an expressed or implied condition for obtaining this Contract, to employ or retain the services of any person, company, individual or firm in connection with conducting this Contract. It is absolutely understood and agreed by the Contractor that, for the breach or violation of this Paragraph, the City shall have the right to terminate this Contract without liability and at its sole discretion, and to deduct from any amounts owed, or to otherwise recover, the full amount of any value paid by the Contractor. The Contractor shall also require, by contract, that all subcontractors shall comply with the provisions of this Paragraph.

**(b) Public Records.** Contractor agrees to:

1. Keep and maintain public records required by the public agency to perform the service.
2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as

authorized by law for the duration of the contract term and following completion of this Contract if the Contractor does not transfer the records to the public agency.

4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

If the Contractor does not comply with a public records request, City shall enforce the contract provisions which may include immediate termination of this Contract.

19. **Insurance:** Unless otherwise specified, Contractor shall, at its own expense, carry and maintain the following minimum insurance coverage, as well as any insurance coverage required by law:

- a. These insurance requirements shall not limit the liability of the Contractor. The City does not represent these types or amounts of insurance to be sufficient or adequate to protect the Contractor's interests or liabilities, but are merely minimums.
- b. Except for professional liability, the Contractor's insurance policies shall be endorsed to name the City as an additional insured to the extent of the City's interests arising from this Contract.
- c. The Contractor waives its rights of recovery against the City, to the extent permitted by its insurance policies. The Contractor's deductibles/self-insured retention shall be disclosed and may be disapproved by the City. They shall be reduced or eliminated at the option of the City. The Contractor is responsible for the amount of any deductible or self-insured retention.
- d. The City recognizes that under South Carolina law the Contractor is not required to carry Workers' Compensation Insurance since it has less than three employees.
- e. Broad Form Commercial General Liability Insurance (on an occurrence basis), with a minimum combined single limit for Bodily Injury, including Death of at least \$2,000,000 per occurrence and for Property Damage of at least \$1,000,000 per occurrence.
- f. Business Auto Liability Insurance with minimum Bodily Injury and Death Limit per accident of \$1,000,000 and a minimum Property Damage Limit per accident of \$1,000,000.

- g. Within ten days of commencing any Work under this Contract, Contractor shall submit to City a certificate or certificates of insurance evidencing that such benefits have been provided, and that such insurance is being carried and maintained. Such certificates shall stipulate that the insurance will not be cancelled or materially changed without thirty (30) days prior written notice by certified mail to City, and shall also specify the date such benefits and insurance expire. Contractor agrees that such benefits shall be provided, and such insurance carried and maintained until the work has been completed and accepted by the City.
- h. Such benefits and such coverage as are required herein, or in any other document to be considered a part hereof, shall not be deemed to limit Contractor's liability under this Contract.

20. **Unauthorized Aliens:** The employment of unauthorized aliens by any Contractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Contract. This applies to any subcontractors used by the Contractor as well.

21. **Entire Agreement:** This Contract and Contract Documents constitute the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or verbal.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials this Contract in two counterparts which shall be deemed an original on the date last signed as below written:

**FOR THE CITY OF NORTH MYRTLE BEACH, NC**

Signature: \_\_\_\_\_ Date: February , 2025 \_\_\_\_\_

Title: \_\_\_\_\_

**CONTRACTOR: COLIN BAENZIGER & ASSOCIATES**

Signature: \_\_\_\_\_ Date: February , 2025 \_\_\_\_\_

Typed Name: \_\_\_\_\_ Title: \_\_\_\_\_