

EXECUTIVE SEARCH AGREEMENT

THIS EXECUTIVE SEARCH AGREEMENT ("Agreement") made effective as of this ____ day of December, 2022, by and between Affion Public, LLC (hereinafter "FIRM"), with offices at PO. Box 794 Hershey PA 17033 and City of Kyle (hereinafter "Client") with offices at 100 W. Center Street, Kyle, TX 78640.

WITNESSETH:

WHEREAS, FIRM is in the business of locating executive personnel candidates for clients according to the client's specifications; and

WHEREAS, Client from time to time desires the services of one or more of such candidates; and

WHEREAS, FIRM and Client wish to enter into an exclusive agreement pursuant to which FIRM will qualify and arrange such candidates for Client;

NOW, THEREFORE, in consideration of the promises and of the mutual covenants set forth herein, FIRM and Client, intending to be legally bound, agree as follows:

1. Services Provided Under Agreement. FIRM provided Client a proposal for Executive Search Services for the Position of City Manager on October 25, 2022 (hereinafter "Proposal"). The Proposal outlines the services provided by FIRM as well as the timeline for those services. The Proposal is attached and incorporated herein by reference. In the event of a conflict between the terms of this Agreement and the terms of the proposal, the terms of this Agreement shall control unless the proposal specifically identifies the conflicting terms of this Agreement and explicitly states that such terms shall not apply. Firm must notify Client in writing if it anticipates that any of the services, times, or other requirements in the Proposal will not be met.

2. Billing and Payment. FIRM will bill Client through invoices issued to Client beginning upon the execution of this Agreement. FIRM's fee shall be \$28,000.00 for any candidate placed by FIRM with Client. FIRM will invoice Client in three installments: a non-refundable one-third upon signing this Agreement; one-third upon acceptance of the candidate and the final third upon filling the position. FIRM's invoices are payable by Client upon receipt. In the event that the candidate resigns or otherwise does not meet the Client's reasonable expectations within the first two years (24) months of hire, FIRM will use its best efforts to provide a replacement at no additional cost to Client except candidate travel expenses which have been pre-approved by City. In the event Client hires its own candidate during the term of this Agreement, FIRM shall still be entitled to its full fee. Further, if Client, within one (1) year of the date of hire for any position covered by this Agreement, should hire a candidate presented by FIRM, FIRM shall be entitled to a fee equal to the contract fee, which shall be due and payable to FIRM upon hiring. Client is obligated to notify FIRM of any candidate presented to Client who is hired by Client within five (5) business days of such hire.

3. Confidentiality. Each Party agrees that it will not disclose to any third party any information learned by it which has been clearly marked "Confidential" by the other party, except as such disclosure is necessary on an individual basis to candidates whom FIRM has located for

Client. Client may request the candidate to execute a separate agreement not to disclose the Client's confidential information.

4. Excise, Sales, Etc. Taxes on Services. There shall be added to any charges payable by Client under this Agreement amounts equal to any and all applicable taxes, however designated, levied or based on any charges payable under this Agreement or the services rendered hereunder, including without limitation state and local privilege, excise, sales, and use taxes and any taxes or amounts in lieu thereof paid or payable by FIRM, but excluding taxes based upon the net income of FIRM. Client shall be billed by FIRM before or within a reasonable time following payment of such taxes by FIRM, and such amounts shall be due and payable by Client promptly following billing.

5. Exclusivity. Client agrees that, upon execution of this Agreement, it will not advertise nor use a competing organization for executive search services during the term of this Agreement.

6. Expenses. Additional expenses, which are not included in the overall fee but are expected to be reimbursed by the Client, include all candidate travel for the purpose of the interviews. All candidate travel expenses must be pre-approved by City. This will vary depending on the location of the finalist. No additional expenses are necessary for FIRM to provide the service provided in this agreement and the incorporated proposal. Any additional expenses that may arise due to changes requested by Client will be approved in writing by Client prior to being incurred.

7. Liability and Indemnification. FIRM shall indemnify, defend and hold harmless Client, its directors, officers and employees from any and all claims, liabilities, causes of actions, losses and expenses (collectively, "Claims") arising out of the negligence, gross negligence or willful misconduct of FIRM, its directors, officers, employees, agents and representatives (collectively, the "FIRM Parties"). Notwithstanding the foregoing, the FIRM shall not be liable for any Claims arising out of or related to any act or omission of a candidate, that was beyond its control. FIRM shall not be liable for any special or consequential damages or lost profits, and in no event shall FIRM's liability under this Section 7 be greater than the total amount paid to FIRM by Client pursuant to this Agreement.

8. Termination of this Agreement. This Agreement shall continue in effect until terminated by Client or FIRM at any time upon the terminating party giving no less than thirty (30) days notice to the non-terminating party. In the event Client terminates the Agreement after the resume deadline and prior to the acceptance of a candidate, FIRM shall still be entitled to its second one-third payment. Either party may terminate this agreement for cause with thirty (30) days notice and opportunity to cure. If City terminated for cause and the breach is not cured by FIRM, City will be entitled to a refund of certain money paid, up to a complete refund of all moneys paid depending on the severity and nature of the breach.

9. Assignment. Neither this Agreement nor any interest hereunder may be assigned or otherwise transferred by either party to third parties other than affiliates of either party without the prior written consent of the other party which shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, assigns, and delegates of the parties hereto.

10. Notices. Any requirement to “notify”, or for “notice” or “notification”, in connection with the subject matter of this Agreement shall be in writing and shall be effective when delivered personally (including by Federal Express, Express Mail, or similar courier service) to the party for whom intended, or five (5) days following deposit of the same into the United States mail, certified mail, return receipt requested, first class postage pre-paid, addressed to such party at the address set forth below its signature to this Agreement. Either party may designate a different address by notice to the other given in accordance with this Section. Any notices sent should also be provided electronically to the email addresses indicated herein or to any updated email address provided. Notices proscribed herein should be sent to the following addresses unless updates have been provided:

CLIENT

City of Kyle
City Manager
100 W Center Street
Kyle, Texas 78640
jhendrix@cityofkyle.com

CC: Knight Law Firm
223 W. Anderson, Suite A-105
Austin, Texas 78752
attorneys@cityattorneytexas.com

FIRM

Affion Public
PO Box 794
Hershey, PA 117033
EMAIL: reilly@affionpublic.com

11. Severability. If any term or provision of this Agreement shall be found to be illegal or otherwise unenforceable, the same shall not invalidate the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary by the adjudication to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

12. Complete Agreement and Amendment. This Agreement and the proposal presented to Client by FIRM contain the entire agreement between the parties hereto with respect to the matters covered herein. Client acknowledges that it is entering into this Agreement solely on the basis of the agreements and representations contained herein. This Agreement shall not be modified in any way except in writing signed by both parties and stating expressly that it constitutes a modification of this Agreement.

13. Governing Law and Disputes. This Agreement shall be governed by the laws of Texas. All claims against either party to this Agreement shall be brought by the other party no later than one (1) year after such claims have arisen (except for claims for non-payment for

services, which may be brought within two (2) years after the last date of services for which payment is sought). Any lawsuits pertaining to this Agreement or the services provided hereunder shall be brought in Hays County, Texas.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this day and year first above written.

FIRM:

Affion Public, LLC

By: _____

Title: _____

CLIENT:

City of Kyle, Texas

By: _____

Title: _____