



LEGAL ADVERTISING AGREEMENT

THIS AGREEMENT is made and entered into this 1st day of May, 2011, by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as “City,” and _____ of (insert address) hereinafter referred to as “Contractor.”

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. **Purpose:** City agrees to hire Contractor as an independent contractor to perform the services of publishing legal advertisements, more thoroughly described in the Scope of Work attached hereto as Exhibit “A” and by this reference made a part hereof.

2. **Effective Date:** This Agreement is effective upon the date of its execution and will terminate on April 30, 2014. The parties may extend this agreement for an additional three 1-year terms, in writing prior to its termination.

3. **Scope of Work:** The Contractor shall perform the services outlined below. In performing these services, the Contractor shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefor, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

A. **PICKUP AND DELIVERY OF ALL LEGAL ADVERTISEMENTS** – One account representative assigned to handle the City account and to work closely with the City Clerk. Account representative will pick up (at the City Clerk’s Office) ad copy from the City Clerk between 9:00 a.m. and 10:00 a.m. each Wednesday for publication in the Thursday TIMES, or City Clerk to e-mail to _____ ad copy by 10:00 a.m. each Wednesday prior to publication.

B. **AFFIDAVIT OF PUBLICATION** – Affidavit will be delivered (not mailed) to the City Clerk the same day as final ad publication, except Saturday and Sunday for which affidavits will be due to the City Clerk by 4:00 p.m., Monday. The Affidavit of Publication will be on pink computer paper or the City’s choice of color on commonly available computer paper. Affidavit of Publication will have an exact copy of the ad attached and will be notarized.



C. TEAR SHEETS (copies of legal ad) – These are to be delivered (not mailed) to the City Clerk the morning of the same day as first publication, up to 100 copies included at no cost for ad copies. The tear sheet should not be the page where the publication is printed, but a reproduced and timed copy of the actual publication.

D. BILLING FOR LEGAL ADVERTISEMENTS will be on a weekly basis. Each department or division of the City will have an account number. A statement is provided weekly for each ad specifying the department or division. The run dates and a brief description of the ad (for identification purposes) will be listed for each legal ad on the statement. The bill(s) will be mailed to the Finance Department of the City of Billings.

E. THE CITY OF BILLINGS MAKES NO GUARANTEE as to the amount of legal advertisement that will be done in the thirty-six (36) month period.

F. THE CITY POLICY FOR THE LEGAL ADVERTISEMENTS will be:

- (1) CHANGES TO AD: By 11:00 a.m. the day prior to publication
- (2) STOPPING ADS: By 11:00 a.m. the day prior to publication
- (3) COPY DEADLINE: As outlined in Item A.

4. **Payment:** City agrees to pay Contractor the fees outlined by contractor in Exhibit A for the work described in the Scope of Services. Any alteration or deviation from the described work that involves extra costs will be executed only upon written request by the City to Contractor and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing.

5. **Independent Contractor Status:** The parties agree that Contractor is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Contractor is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Contractor is not authorized to represent the City or otherwise bind the City in any dealings between Contractor and any third parties.

Contractor shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Contractor shall maintain workers' compensation insurance coverage for all members and employees of Contractor's business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.



Contractor shall furnish City with copies showing one of the following: (1) proof of registration as a registered contractor under Title 39, Chapter 9, MCA; (2) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (3) proof of exemption from workers' compensation granted by law for independent contractors.

6. **Indemnity and Insurance:** Contractor agrees to indemnify, defend and save City, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Contractor or its agents or employees. **For this purpose, Contractor shall provide City with proof of Commercial General liability insurance issued by a reliable company or companies for personal injury and property damage, in an amount not less than \$750,000 per claim, and in an amount not less than \$1.5 million per occurrence and naming the City as an additional insured. The insurance must be in a form suitable to City.**

7. **Warranty:** Contractor warrants that all services and work will be performed in a good workman-like manner. Contractor acknowledges that it will be liable for any breach of this warranty for the lesser for a period of one (1) year from the time services are completed or any warranty described in the Scope of Services.

8. **Compliance with Laws:** Contractor agrees to comply with all federal, state, and local laws, ordinances, rules and regulations. Contractor agrees to purchase a City business license.

9. **Contractors' Gross Receipts Tax:** Contractor understands that all contractors or subcontractors working on a publicly funded construction project are required to pay or have withheld from earnings one percent (1%) of the gross contract price if the gross contract price is Five Thousand Dollars (\$5,000) or more.

10. **Nondiscrimination:** Contractor agrees that all hiring by Contractor of persons performing this Agreement will be on the basis of merit and qualification and will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

11. **Default and Termination:** If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party may, at its option, terminate this Agreement and be released from all obligations if the default is not cured within ten (10) calendar days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one



remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

12. **Liaison:** City's designated liaison with Contractor is Cari Martin, City Clerk, and Contractor's designated liaison with City is [REDACTED].

13. **Governing Law and Venue:** This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

14. **Severability:** Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Contractor, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

15. **Successors and Assigns:** Neither the City nor the Contractor shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the written consent of the other.

16. **Ownership of Documents:** All documents, data, drawings, specifications, software applications and other products or materials produced by the Contractor in connection with the services rendered under this Agreement shall be the property of the City whether the project for which they are made is executed or not. All such documents, products and materials shall be forwarded to the City at its request and may be used by the City as it sees fit. The City agrees that if the documents, products and materials prepared by the Contractor are used for purposes other than those intended by the Agreement, the City does so at its sole risk and agrees to hold the Contractor harmless for such use. All or any portions of materials, products and documents produced under this Agreement may be used by the Contractor upon confirmation from the City that they are subject to disclosure under the Public Disclosure Act. All services performed under this Agreement will be conducted solely for the benefit of the City and will not be used for any other purpose without written consent of the City. Any information relating to the services will not be released without the written permission of the City. The Contractor shall preserve the confidentiality of all City documents and data accessed for use in Contractor's work product.

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



CITY OF BILLINGS, MONTANA

By _____
Thomas W. Hanel, Mayor

CONTRACTOR (Print Name Above)

By _____

Print Name _____

Print Title _____

APPROVED AS TO FORM:

By _____
BRENT BROOKS, City Attorney