

**CONSULTANT AGREEMENT**

This Agreement is made and entered into this day of

**June 11, 2012**

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

**Planning Communications**

7215 Oak Avenue, River Forest, IL 60305

hereinafter referred to as "Consultant."

**WITNESSETH:**

**WHEREAS**, the City is required to prepare a five-year Analysis of Impediments to Fair Housing Choice (AI) and desires to hire Consultant as an independent Consultant to perform the services as described in the Scope of Work herein.

**WHEREAS**, the City has authority to contract for such services, and;

**WHEREAS**, the Consultant represents that he/she is fully qualified to perform such services personally and is in compliance with the Montana Statutes relating to the provisions of such services.

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

**A. PURPOSE**

City agrees to hire Consultant as an independent contractor to perform the services as described in the Scope of Work herein and as proposed in a formal response to a Request for Proposals process received by April 13, 2012 and therefore by this reference made a part hereof.

In performing these services, the Consultant shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefore, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

**B. SCOPE OF WORK**

In 2012, the City is required to conduct a study to analyze the impediments to fair housing choice in the community. The AI is a review of impediments or barriers that affect the rights of fair

housing choice. It covers public and private policies, practices, and procedures affecting housing choice.

Impediments to fair housing choice are defined as *any actions, omissions, or decisions that restrict, or have the effect of restricting, the availability of housing choices based on race, color, religion, sex, disability, familial status, or national origin*. The State of Montana also protects the following classes: *marital status, creed and age*. The U.S. Department of Housing and Urban Development (HUD) has prohibited discrimination based on *sexual orientation and gender identity* for all HUD-funded programs, including housing projects and federally backed mortgages.

The AI serves as the basis for fair housing planning, provides essential information to policy makers, administrative staff, housing providers, lenders, and fair housing advocates, and assists in building public support for fair housing efforts. Conducting an analysis of impediments is a requirement for the City to receive federal funding through the U.S. Department of Housing and Urban Development (HUD) and involves the following:

- An extensive review of a State or Entitlement jurisdiction's laws, regulations, and administrative policies, procedures, and practices.
- An assessment of how those laws affect the location, availability, and accessibility of housing.
- An evaluation of conditions, both public and private, affecting fair housing choice for all protected classes.
- An assessment of the availability of affordable, accessible housing in a range of unit sizes.

The Consultant will collaborate with the City's Community Development Division in the development of a HUD-compliant AI, including the following:

- An examination of pertinent data including demographic, income, employment and housing data as well as completed fair housing related studies.
- A review and evaluation of prior and current activities to meet fair housing needs.
- An evaluation of private and public policies and practices which affect the provision of fair housing.
- Identification of impediments to fair housing based on the above work.
- Conclusions and recommendations for action, including recommended actions to overcome fair housing choice with measurable results.

The Consultant will review the following data sources to prepare the AI (*Top Seven Keys to Affirmatively Furthering Fair Housing*):

- Demographic data regarding the jurisdiction's population and housing, including the availability of accessible housing stock for residents with disabilities.
- Mortgage and rehabilitation lending patterns by race and ethnic group.
- Findings resulting from complaints and fair housing litigation and fair housing testing activity. Note that the lack of complaints may not mean the jurisdiction is free of problems.

The public may be unaware of its fair housing rights or recourse or members of protected classes may lack confidence in government investigative entities.

- Occupancy requirements that might unlawfully limit group homes for persons with disabilities or families with children.
- Geographic patterns related to the use of Housing Choice Vouchers and the locations of assisted housing.
- Efforts to assist and serve persons who have limited English proficiency to function more effectively in the housing market and assert their rights under civil rights laws.

### **C. TERM**

This Agreement shall expire on December 31, 2012 and may be extended month to month by mutual agreement of both parties, in writing, thirty (30) days prior to termination.

### **D. PAYMENT**

In consideration of the services provided by the Consultant under this Agreement, the City agrees to pay Consultant a price not to exceed **\$33,650**.

In the event scope of work issues arise, the Consultant shall immediately discuss them with the Liaison for the City. It is understood that the Consultant will not perform any work that the City deems outside the scope prior to receiving written approval from the City, and at a rate agreed upon by both parties. Any payment for work not agreed upon by the City shall be denied.

### **E. INDEPENDENT CONTRACTOR STATUS**

The parties agree that Consultant is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Consultant 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. Consultant is not authorized to represent the City or otherwise bind the City in any dealings between Consultant and any third parties.

### **F. INDEMNITY AND INSURANCE**

The Consultant shall not indemnify, defend, save and hold the City harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of the City occurring during the course of or as a result of the performance of the Agreement.

The Consultant agrees to indemnify, defend and save the 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 Consultant or its agents or employees.

Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both the City and the Consultant, the Consultant shall indemnify, defend, save,

and hold the City harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, which result from the Consultant's or any subcontractor's wrongful or negligent acts occurring as a result from the Consultant's performance pursuant to this Agreement.

The Consultant shall maintain in good standing the insurance described in this Section. Before rendering any services under this Agreement, the Consultant shall furnish the City with proof of insurance in accordance with this Section.

The Consultant shall provide the following insurance:

- Workers' compensation and employer's liability coverage as required by Montana law.
- Commercial general liability, including contractual and personal injury coverage in the amount of \$750,000 per claim and a minimum coverage amount of \$1,500,000 per occurrence.
- Commercial automobile liability with a minimum of \$1,000,000 per accident in coverage.
- Professional liability with a minimum coverage amount of \$1,500,000 per claim.

Each policy of insurance required by this Section shall provide for no less than 30 days advance written notice to the City prior to cancellation.

The City shall be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies.

In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against the City.

Consultant 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. Consultant shall maintain workers' compensation insurance coverage for all members and employees of Consultant's business, except for those members who are exempted as independent Consultants under the provisions of §39-71-401, MCA.

Consultant 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.

## **G. LIAISONS**

For this Agreement, the liaisons between the Consultant and the City are as follows:

- Daniel Lauber for the Consultant, President of Planning Communications
- Brenda Beckett for the City, Community Development Manager for the City of Billings

## **H. AGREEMENTS MADE BY CONSULTANT**

As an inducement to the execution of this Agreement by the City and in consideration of the agreements to be performed by the City, the Consultant agrees to the following:

- **Qualifications:** The Consultant is qualified to perform the services to be furnished under this Agreement and is permitted by law to perform such services, and all personnel engaged in the work shall be qualified and so permitted to do the work they perform.
- **Solicitation of Agreement:** The Consultant has not employed any person to solicit this Agreement and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, or other compensation in connection with the procurement of this Agreement.
- **Facilities and Personnel:** The Consultant has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed.
- **Subcontracting:** None of the work or services covered by this Agreement shall be subcontracted without the prior approval of the City.
- **Affidavits of Compliance:** The Consultant will, if requested by the City, furnish the City affidavits certifying compliance with the provisions of this Section.

## **I. AGREEMENTS MADE BY CITY**

To furnish all labor, materials, equipment, supplies, and incidentals necessary to assist in the completion of the project as per Consultant's proposal, to the greatest extent possible.

## **J. NON-DISCRIMINATION**

The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, familial status, national origin / ancestry, marital status, creed, age, sexual orientation, gender identity, or anyone who is a *qualified individual with a disability* as defined in the Americans With Disabilities Act of 1990.

The Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, familial status, national origin / ancestry, marital status, creed, age, sexual orientation, gender identity or mental or physical impairment / disability.

Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Consultant agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

The Consultant shall state, in all solicitations or advertisements for employees to work on jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, sex, familial status, national origin / ancestry, marital status, creed, age, sexual orientation, gender identity or mental or physical impairment / disability.

The Consultant shall comply with any and all reporting requirements that may apply to it that the City may establish by regulation.

The Consultant shall include the provisions of this Section in every subcontract or purchase order under this Agreement, so as to be binding upon every such sub-consultant, subcontractor or vendor of the Consultant under this Agreement.

The Consultant shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.

**K. PERMITS, LAWS, AND TAXES**

The Consultant shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this Agreement. All actions taken by the Consultant under this Agreement shall comply with all applicable statutes, ordinances, rules and regulations. The Consultant shall pay all taxes pertaining to its performance under this Agreement.

**L. NON-WAIVER**

The failure of either party at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

**M. DECLARATION OF NO FINANCIAL INTEREST**

The Consultant hereby declares that he does not have any interest (including that of real estate agent or broker), direct or indirect, present or prospective, in any property described herein, or in its sale, or any other interest, whether or not in connection with the property, which would conflict in any manner or degree with the performance of the services and the submission of impartial reports, and has not employed and will not employ, in connection with the services to be furnished under this Agreement, any person having any such interest. Until the property is acquired by the City or excluded from its project by resolution of its governing body, the Consultant and any employees of the Consultant, so long as they are employed by the Consultant, will not acquire any such interests and will not, for their own account or for other than the City, negotiate for any of the property, perform services in connection with the property, or testify voluntarily as a witness in a condemnation or other proceeding with respect to the property.

**N. SUCCESSORS AND ASSIGNS**

This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the City and the Consultant respectively and his partners, successors, assigns, and legal representatives. Neither the City nor the Consultant shall have the right to assign, transfer, or sublet his interest or obligations hereunder without written consent of the other party.

**O. CHANGES IN WORK**

Any change in the scope of Consultant’s services as stated in this Agreement for whatever reason, will be negotiated between the City and the Consultant and an amendment to this Agreement will be issued with the appropriate change of services and Agreement fee noted.

**P. LEGAL RELATIONS**

The Consultant shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done.

**Q. TERMINATION OF AGREEMENT**

The right is reserved by the City to terminate this Agreement at any time upon not less than thirty (30) days written notice to the Consultant.

In the event the City terminates this Agreement, the Consultant shall be paid for the amount of work performed or services rendered to date of termination per the Agreement fee.

**R. ENDORSEMENTS**

The Consultant shall furnish signatures, statements, or other suitable means to signify responsible endorsement of work on all reports furnished by him/her.

**S. OWNERSHIP OF DOCUMENTS**

All information relating to the project and prepared under the terms of this Agreement, including reports, data, recommendations, exhibits, analyses, and plans shall be deemed the property of the City. Reproducibles of all notes, reports, and plans shall be made available at the City’s request.

**T. PUBLIC INFORMATION**

The Consultant shall not issue any statements, releases, or information for public dissemination without prior written approval of the City.

**U. PROPRIETARY RIGHTS**

If patentable discoveries or inventions should result from work required herein, all rights accruing from such discoveries or inventions shall be the property of the City.

**V. RECORDS**

The Consultant shall maintain accounting records and other evidence pertaining to the cost incurred and to make the records available at all times during the Agreement term and for five (5) years from the date of final payment. Such accounting records and other evidence pertaining to the cost incurred will be made available for inspections authorized by the City and copies thereof shall be furnished if requested.

**W. ATTORNEY’S FEES AND COSTS**

That in the event it becomes necessary for either Party to this Agreement to retain an attorney to enforce any of the terms or conditions of the Agreement or to give any notice required herein, then the prevailing Party or the Party giving notice shall be entitled to reasonable attorney’s fees and costs.

**X. LITIGATION LOCATION**

The parties agree that this Agreement shall be governed in all respects by the laws of the state of Montana, and the parties expressly agree that venue shall be in the Montana Thirteenth Judicial District County for Yellowstone County and there shall be no other venue for resolution of disputes arising from the Agreement or the performance of its terms.

**Y. MODIFICATION AND AMENDMENTS**

That any amendment or modification of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.

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

By \_\_\_\_\_ By \_\_\_\_\_  
Thomas W. Hanel, Mayor

For the Consultant:

\_\_\_\_\_  
Daniel Lauber, President, Planning Communications

APPROVED AS TO FORM:

By \_\_\_\_\_  
BRENT BROOKS, City Attorney

## **CONSULTANT SECTION 3 COMPLIANCE**

As a participating consultant in an activity partially funded by the City of Billings, I understand that I am bound to the principles of Section 3 of the Housing and Urban Development Act of 1968, which *ensures that employment and economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible and consistent with existing federal, state and local laws and regulations, be directed to low-and very low income persons.*

If Section 3 covered assistance is awarded and the consultant has no need for additional employees or trainees, or the recipient has no need to contract for work, then the Section 3 requirements are not triggered.

- I WILL NOT be hiring any new employees for this contract.**
  
- I WILL be hiring new employees for this contract** *(please choose one of the following options):*
  - I will forward employment, job training and contract opportunities to the Community Development Division for distribution / posting to the following organizations in accordance with the City's Standardized Section 3 Compliance Plan:
    - Housing Authority of Billings
    - Mayor's Committee on Homelessness
    - Billings Area Resource Network
    - Task Force Chairs / Newsletters
  
  - I will be submitting my own Section 3 Compliance Plan to the Community Development Plan for approval prior to beginning work on the project.

Contractor Name: Daniel Lauber, President of Planning Communications

Contractor Signature: \_\_\_\_\_

**Contract Awarded: June 11, 2012**