

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is entered into this 19th day of July, 2012 (the "Effective Date"), by and among the Parmly Billings Library Foundation, a Montana public benefit corporation, as assignor ("Assignor"), the City of Billings, Montana, a municipal corporation and political subdivision of the State of Montana, as assignee ("Assignee"), and Will Bruder + Partners, Ltd. (the "Architect").

RECITALS

A. Assignor and Architect are parties to that certain Contract for Professional Design Services Parmly Billings Foundation, dated March 20, 2012 attached hereto as Exhibit A (the "Services Contract"), for the provision of architectural services by the Architect with respect to the design of the City's Parmly Billings Library located in the City at Sixth Avenue North from North 28th Street to North 29th Street (the "Library"). Capitalized terms used herein but not otherwise defined shall have the meanings given such terms in the Services Contract.

B. Subject to the terms and conditions of this Agreement, Assignor has agreed to assign all of its right, title and interest in the Services Contract to Assignee, and Assignee will assume from Assignor all of Assignor's rights and obligations under the Services Contract, in accordance with the terms and conditions set forth below. Such assignment shall be made pursuant to Montana Code Annotated, Section 7-1-4124(7), which permits Assignee to accept donations of property and services and in connection therewith comply with any condition that is not contrary to the public interest.

NOW, THEREFOR, in consideration of the premises and the mutual promises and covenants hereinafter set forth, and other good and sufficient consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor, Assignee and Architect agree as follows:

AGREEMENT

1. Assignment and Assumption. Assignor hereby assigns, transfers and conveys to Assignee all of Assignor's right, title and interest in and to the Services Contract as of the Effective Date. Assignee hereby assumes all of Assignor's liabilities under the Services Contract. Subject to the terms and conditions of this Agreement, Assignee agrees to perform all of Assignor's obligations under the Services Contract arising from and after the Effective Date. Promptly after the Effective Date, Assignor shall deliver to Assignee all documentation and materials embodying or related to the Services Contract.

Notwithstanding anything herein to the contrary, subject to Section 11, Part II (General Contract Provisions) of the Services Contract, Assignor shall pay (i) fees for Architect's Basic Services set forth in Section 2(B) of the Services Contract and (ii) fees for Additional Services described in Section 2, Paragraph V of Appendix A to the Services Contract. Architect agrees that it shall look only to the Foundation for the payment of such fees and in no event shall the Assignee be liable for such fees. As of the Effective Date, Architect has received from the

Assignor \$ 1,454,925 in respect of Architect's Basic Services and \$ 0.00 in respect of Additional Services.

This Agreement does not release Assignor, Assignee, or Architect from any claims arising from or related to the terms of the Services Contract.

2. **Consent of Architect.** Architect hereby consents to the assignment and assumption of the Services Contract as set forth in Section 1.

3. **Notices.** All notices to Assignor under the Services Contract should be sent to Assignee at the address set forth for Assignor in the Services Contract. Any notice to the City pertaining to the subject matter of the Services Contract shall be sent via facsimile or mailed by prepaid first class registered or certified mail, return receipt requested to the following address:

If to Assignee, to:

[]
City of Billings, Montana
210 North 27th Street
Billings, Montana 59101
Facsimile: (406) []

If to Assignor, to:

Leslie Modrow
Parmly Billings Library Foudnation
510 North Broadway
Billings, Montana 59101
Facsimile: (406) 657-8293

If to Architect, to:

Will Bruder + Parnters, LTD
Attn: Richard Jensen
2524 North 24th Street
Phoenix, Arizona 85008
Facsimile: (602) 324-6001

4. **Miscellaneous.** The following miscellaneous provisions shall apply to this Agreement:

(a) **Further Acts.** Each of the parties covenants and agrees that from time to time, upon request, each will take any further actions as may be proper or necessary to fully effect the assignment and assumption of the Services Contract in accordance with the terms of this Agreement.

(b) **Jurisdiction; Choice of Law.** This Agreement and the legal relations among the parties with respect to this Agreement shall be governed by and construed in

accordance with the laws of the State of Montana without regard to its choice of law rules. The courts of Yellowstone County, Montana, shall be the exclusive location and/or forum for any legal actions arising under this Agreement.

(c) **Binding Effect; Benefits.** This Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their respective heirs, successors and assigns; nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties or their respective heirs, successors or assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

(d) **Counterparts; Signatures.** This Agreement may be executed in one or more counterparts, any one of which need not contain the signatures of more than one party, but all such counterparts taken together will constitute one and the same instrument. A facsimile signature will be considered an original signature.

(e) **Effect of Headings.** The headings of the various sections and subsections in this Agreement are inserted merely as a matter of convenience and for reference and shall not be construed as in any manner defining, limiting or describing the scope or intent of the particular sections to which they refer or as affecting the meaning or construction of the language in the body of such sections.

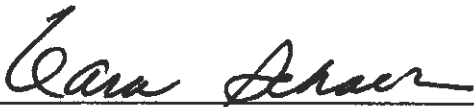
IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date first above written.

CITY OF BILLINGS, MONTANA

Name: Thomas W. Hanel
Title: Mayor

Attest: _____
City Clerk

**PARMLY BILLINGS LIBRARY
FOUNDATION**




Name: Cara Schaer
Title: President



Name: Leslie Modrow
Title: Development Director

**WILL BRUDER + PARTNERS, LTD.
(ARCHITECT)**



Name: Richard Jensen
Title: Vice President