



Parmly Billings Library and Western Heritage Center Digitization SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 25th day of March, 2013, 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 The Western Heritage Center, of Billings, Montana 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 providing metadata for 187 existing digital images, selecting and scanning 900 photos and postcards in the Montana Room and providing metadata for them, selecting and scanning rare or high interest objects in the Montana Room. A portion of the existing digital images may be determined by Contractor to be of little value to the digitization project. In that case, metadata is not required for those images. These items are 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 March 12, 2014. The parties may extend this agreement, by mutual concurrence, for 90 days, in writing prior to its termination.

3. **Scope of Work:** The Contractor shall perform the services outlined in Exhibit “A”. 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.

4. **Payment:** City agrees to pay Contractor \$25,000 for the work described in the Scope of Work in Exhibit “A”. 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.

If partial payment is requested by Contractor, it shall be made upon invoice and said estimate being proportioned to the work completed by the Contractor. City shall deduct five percent (5%) from each pay estimate to be held until the completion of the final scope of work.



The final payment shall be made only after acceptance of final invoice by the City, and determination has been made by the City that the scope of work has been satisfactorily completed.

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 period of one (1) year from the time services are completed or any warranty described in the Scope of Work in Exhibit "A".

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, including any work requiring the installation, addition, placement, replacement, or removal of any equipment, parts, structures, or materials of any kind whatsoever, 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 Kathy Robins and Contractor's designated liaison with City is Julie Dial.

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 and the Contractor if the project is executed. The City assumes the responsibility for copyright of the original documents and provenance documentation where such exists. The City and the Contractor may use all documents, data, products or materials created within the scope of the project. Patrons of the City or Contractor may use the digitized images and metadata under the fair use clause of the 1976 copyright act. The digitized images may be used for educational, scholarly purposes and private study with a credit line included for each item used. The City and Contractor will take steps to inform patrons that any publication or reproduction of the material in any physical or digital form that exceeds that permitted by fair use or use them for any commercial purpose, including display or web page use, must be accompanied by prior written permission from the City or the Contractor. All 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

CONTRACTOR (Print Name Above)

By _____
CHRISTINA F. VOLEK,
City Administrator

By _____
Print Name _____
Print Title _____

APPROVED AS TO FORM:

By _____
BRENT BROOKS,
City Attorney



EXHIBIT “A”

SCOPE OF WORK

Building on a project started in 2012, the Parmly Billings Library proposes to contract with the Western Heritage Center to complete the digitization and description of historic photos in the Montana Room for the purpose of providing them online to patrons and researchers. In 2012, the Western Heritage Center provided metadata (descriptions) of 718 items and an assessment of the historic holdings remaining in the Montana Room. The following scope of work has been derived from that assessment.

The Western Heritage Center will provide metadata to the Library for scans of pioneers, early Billings street scenes and McCormick photos, a total of 187 images. The Western Heritage Center will compare the list of already-completed items with the items currently in file cabinets in the Montana Room for the purpose of selecting 900 photos and postcards that have not been digitized. Western Heritage Center will scan the photos according to Library specifications, provide metadata and scanned images to the Library. Secondly, the Western Heritage Center will scan the postcards and provide metadata for them. The Western Heritage Center will save the metadata in an Excel spreadsheet with the same structure as the FY12 metadata spreadsheet. Metadata required by the Library includes: Photo File Name, Description, Creator, Photo Date or approximate date. The Library is looking for Who, What, When, Where, and anything else of note.

In the process of selecting the photos and postcards, Western Heritage center will identify other rare or high interest objects in the Montana Room vertical files so the Library can digitize them. The Western Heritage Center will assist the Library in selecting acid-free and archival boxes needed to protect for storage the photos, postcards and ephemera in the Montana Room.