

CONSULTANT AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2014, 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 Ed Bartlett LLC, 3717 Fairmeadow Court, Billings Montana, 59102, hereinafter referred to as “**CONSULTANT**.”

WITNESSETH:

WHEREAS, the **CITY** intends to lobby the Montana Legislature in order to ensure favorable state legislation and desires to hire **CONSULTANT** as an independent **CONSULTANT** to perform the services as described in the Scope of Work attached hereto as Exhibit “A” and by this reference made a part hereof.

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 complies 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:

1. **PURPOSE:** **CITY** agrees to hire **CONSULTANT** as an independent **CONSULTANT** to perform the services as described in the Scope of Work attached hereto as Exhibit “A” and 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 therefor, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

2. **TERM:** This **AGREEMENT** shall be for the period July 1, 2014 through June 30, 2016. This **AGREEMENT** may be extended for a two (2) year period by mutual agreement of both parties, in writing, thirty (30) days prior to termination.

3. **PAYMENT:** In consideration of the services provided by the **CONSULTANT** under this **AGREEMENT**, the **CITY** agrees to pay **CONSULTANT** in accordance with the fees and expenses outlined in Exhibit B and by this reference made a part hereof.

In the event scope of work issues arise, the **CONSULTANT** shall immediately discuss them with the City Administrator or designee. 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.

Fees shall be paid to **CONSULTANT** monthly, within ten (10) days of the City's receipt of an invoice for services provided during the preceding month.

4. 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. Other than the Scope of Work items, the **CONSULTANT** is not authorized to represent the **CITY** or otherwise bind the **CITY** in any dealings between **CONSULTANT** and any third parties.

5. INDEMNITY AND INSURANCE:

- A. The **CONSULTANT** shall not indemnify, defend, save and hold **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 **CITY** occurring during the course of or as a result of the performance of the **AGREEMENT**.
- B. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both **CITY** and the **CONSULTANT**, the **CONSULTANT** shall indemnify, defend, save, and hold Billings 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**.
- C. 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:

- 1. Workers' compensation and employer's liability coverage as required by Montana law.
- 2. Commercial general liability, including contractual and personal injury coverages -- \$1,500,000 per occurrence.
- 3. Commercial automobile liability -- \$1,500,000 per accident.

4. Professional liability in the 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 Billings.

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.

6. AGREEMENTS OF 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 that:

A. 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.

B. 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**.

C. 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.

D. Subcontracting

None of the work or services covered by this **AGREEMENT** shall be subcontracted without the prior approval of the **CITY**.

E. Affidavits of Compliance

The **CONSULTANT** will, if requested by the **CITY**, furnish the **CITY** affidavits certifying compliance with the provisions of this Section.

7. **AGREEMENTS OF CITY:** To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the City of Billings' portion of the project as designated in the scope of work.

8. **NONDISCRIMINATION:**

- A. The **CONSULTANT** will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is 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, 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.
- B. 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, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.
- C. The **CONSULTANT** shall comply with any and all reporting requirements that may apply to it that the **CITY** may establish by regulation.
- D. The **CONSULTANT** shall include the provisions of Subsections A through C of this Section in every subcontract or purchase order under this **AGREEMENT**, so

as to be binding upon every such sub-consultant or vendor of the **CONSULTANT** under this **AGREEMENT**.

- E. The **CONSULTANT** shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.
9. **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**.
10. **NONWAIVER:** 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.
11. **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 in Section 1 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.
12. **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.
13. **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.

14. **LEGAL RELATIONS:** The **CONSULTANT** shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done.
15. **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.

16. **ENDORSEMENTS:** The **CONSULTANT** shall furnish signatures, statements, or other suitable means to signify responsible endorsement of work on all reports furnished by him.
17. **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**. Reproduces of all notes, reports, and plans shall be made available at the **CITY'S** request.
18. **PUBLIC INFORMATION:** The **CONSULTANT** shall not issue any statements, releases, or information for public dissemination without prior written approval of the **CITY**.
19. **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**.
20. **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 three (3) 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.
21. **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.

22. **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.
23. **MODIFICATION AND AMENDMENTS:** 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.

CITY OF BILLINGS, MONTANA

Ed Bartlett, LLC

CONSULTANT (Print Name Above)

By _____
Thomas W. Hanel, Mayor

By: _____

Print Name: **Ed Bartlett**

Print Title: _____

APPROVED AS TO FORM:

By _____
Brent Brooks, City Attorney

Exhibit “A” Scope of Work

In order to provide legislative lobbyist/consultant services before the Montana Legislature, State of Montana administrative agencies, the Montana Governor and Cabinet, etc. for which the City may need services, the Lobbyist services shall include, but not necessarily be limited to:

- Make oneself familiar with City operations and initiatives;
- Assist the City Administrator and City Council in the coordination and development of the City’s legislative program;
- Work with the City Administration, City Council and the Yellowstone County Legislative Delegation developing special or general legislation in keeping with, or supportive of, the City’s adopted legislative program;
- Testify before and present written information to legislative committees, subcommittees, interim committees and individual legislators;
- Communicate closely and regularly and attend meetings with City Administration, City Council and others specified in order to perform the responsibilities assigned and to request assistance as needed on legislative matters of interest to the City;
- Work closely with the representatives of the Montana League of Cities and Towns, the Montana Municipal Interlocal Authority and legislative lobbyists from the Yellowstone County area on legislative matters of common interest;
- Arrange for/coordinate additional lobbying efforts on specific legislative matters, as needed;
- Act as an informational resource for and attend meetings with the Yellowstone County Legislative Delegation as required by the City or the Delegation;
- Prepare and submit to the City Administrator a written activity report describing all lobbying activity during the reporting period. During the legislative session, such written reports shall be submitted at least once every two (2) weeks;
- Monitor proposals and activities in meetings regarding state administrative and agency hearings, as well as in rule changes in the Department of Administration hearings. This includes reviewing agendas and providing notification to the City as pertinent issues arise and reporting the outcome of such meetings;
- Prepare and submit to the City Administrator electronic reports on the status of legislative bills of interest to the City. Such reports may include, but not necessarily be limited to, personal briefings and information bulletins pertinent to any legislation, rules or regulations, and other state policies or programs that affect the City and its citizens either directly or indirectly;
- Attend Legislature during all official legislative days, including scheduled, extended, or special legislative sessions and meetings; state administrative and agency hearings, meetings or rule-making proceedings; except for established legislative recesses;

- Be responsible for appropriate reports and registration with the Commissioner of Political Practices as required by MCA Title 5, Chapter 7, parts 1 through 3 (inclusive);
- Serve as a source of information and as a legislative liaison, even during off-term periods.

Responsibilities of Contractor:

The Contractor shall perform the services as contained in the Scope of Work section of this RFP. This list of services shall not be deemed all-inclusive and may be changed from time to time as authorized by the City.

All correspondence shall be directed through the City Administrator or designee.

Contractor shall provide the City with a current written listing of all its clients. This list must be kept current at all times during the contract term and any extension terms of the contract. The Contractor shall notify the City of any new clients within ten (10) days of such commitment. The written notice may be in a form of letter or email to the City Administrator or designee. Contractor is required to notify the City if he/she upon a good faith basis believes there to be a conflict between Contractor's representation of the City and another client or if the Contractor's workload increases to the point which makes serving the City unreasonably difficult.

Responsibilities of the City:

The City shall designate the City Administrator as the "lead" staff person to coordinate with the Contractor; however, other individuals may be designated by the City Administrator from time to time to communicate with and coordinate the Contractor's work.

The City shall have appropriate staff available as may be required to discuss issues with the Contractor, particularly during the legislative session

The City shall use its best efforts to cooperate with the Contractor in providing the information and documentation necessary in the performance of the **Montana Legislative Consulting Services**.

**Exhibit “B”
Fees**

Perform the Scope of Work identified in Exhibit A for the following time periods:

| | |
|--|---|
| July, 2014 through September, 2014 | \$1,500 per month plus actual travel expenses reimbursement |
| October, 2014 through December, 2014 | \$2,000 per month plus actual travel expense reimbursement |
| January, 2015 through April, 2015 | \$5,000 per month plus \$900 per month living, office and travel expenses |
| May, 2015 through June, 2016 | \$1,500 per month plus actual travel expenses reimbursement |
| Commercial general liability and professional errors and omissions insurance | Actual cost reimbursement, est. = \$3,500 per year |
| Attend Special Legislative Sessions, if called | \$500 per day |
| Legislator meeting meal and entertainment expenses | As approved by City Administrator |
| Estimated annual fee and expense reimbursement cost: | |
| FY 2015 (July 1, 2014 – June 30, 2015) | \$44,600 |
| FY 2016 (July 1, 2015 – June 30, 2016) | \$27,500 |