



CONSULTANT AGREEMENT

THIS AGREEMENT is made and entered into _____ 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 **THORN RUN PARTNERS**, of Washington, D.C., hereinafter referred to as "**CONSULTANT**."

WITNESSETH:

WHEREAS, the **CITY** proposes Federal Lobbying Services and desires to hire **CONSULTANT** as an independent contractor 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 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:

1. **PURPOSE**: **CITY** agrees to hire **CONSULTANT** as an independent contractor 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 therefore, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

2. **TERM**: This **AGREEMENT** shall be for a period of three (3) years from the execution of this **AGREEMENT**. This **AGREEMENT** may be extended for two (2) two-year options by mutual agreement of both parties, in writing, thirty (30) days prior to termination of original (or each) term.

3. **PAYMENT**: In consideration of the services provided by the **CONSULTANT** under this **AGREEMENT**, the **CITY** agrees to pay **CONSULTANT** a price not to exceed \$96,000.00 annually.



Except as otherwise specified herein, the **CONSULTANT** shall invoice the **CITY** monthly (or on such other basis as the Parties may mutually determine) for all services rendered pursuant to this **AGREEMENT**. Such invoices shall specify the services provided to the **CITY** during the preceding month and identify the applicable fees, and shall be accompanied by reasonable documentation or other reasonable explanations supporting such charges.

Except as otherwise specified herein, the **CITY** shall pay, net of applicable withholding tax, if any, the **CONSULTANT** for said invoice within thirty (30) days after receipt.

In the event scope of work issues arise, the **CONSULTANT** shall immediately discuss them with the Project Manager 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.

The prices established in this **AGREEMENT** may be extended to other political subdivisions within the State of Montana solely at the **CONSULTANT'S** discretion.

4. INCORPORATION BY REFERENCE: All exhibits and addenda attached hereto, as well as any bid or proposal referenced, are hereby incorporated into this **AGREEMENT** and made a part hereof. If there is any conflict between such exhibits or addenda and the terms of this **AGREEMENT**, the terms of this **AGREEMENT** shall control.

5. 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.

6. INDEMNITY:

The **CONSULTANT** SHALL:

- A. 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, reckless or negligent act on the part of **CONSULTANT** or its officers, agents or employees.

- B. 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, expert fees and costs arising from wrongful, reckless 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**.
- C. Where claims, lawsuits or liability, including attorneys' fees, expert fees and costs arise from wrongful, reckless or negligent act of both the **CITY** and **CONSULTANT**, **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, expert fees and costs, which result from **CONSULTANT'S** wrongful, reckless or negligent acts occurring as a result from **CONSULTANT'S** performance pursuant to this **AGREEMENT**.

The **CITY** SHALL:

- A. Indemnify, defend and save **CONSULTANT**, 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 **CITY** or its agents or employees.
- B. Not indemnify, defend, save and hold the **CONSULTANT** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or attorneys' fees and costs arising from wrongful, reckless or negligent acts, error or omission solely of **CONSULTANT** occurring during the course of or as a result of the performance of the **AGREEMENT**.
- C. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful, reckless or negligent act of both the **CONSULTANT** and the **CITY**, the **CITY** shall indemnify, defend, save, and hold the **CONSULTANT** 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 **CITY'S** or its officers, agents or employee's wrongful, reckless or negligent acts occurring as a result from the **CITY'S** performance pursuant to this **AGREEMENT**.

7. INSURANCE:

- A. 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 liability assumed under an insured agreement and personal injury coverages in the minimum amount of \$750,000 per claim and \$1,500,000 per occurrence.
3. Automobile liability in the minimum amount of \$1,500,000 per accident.
4. Professional liability in the minimum amount of \$1,500,000 per claim.

The limits required by this **AGREEMENT** can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies).

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.

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 contractors under the provisions of §39-71-401, MCA.

CONSULTANT shall furnish **CITY** with copies showing one of the following: **(1)** a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or **(2)** proof of exemption from workers' compensation granted by law for independent contractors.



8. **REGISTRATION: CONSULTANT** shall furnish **CITY** with at least one of the following:

- (1) Proof of registration as a registered contractor under Title 39, Chapter 9, MCA; or,
- (2) Proof of independent contractor certification pursuant to Title 39, Chapter 71, MCA.

9. **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.

10. **AGREEMENTS OF CITY:**

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the **CITY'S** portion of the project as designated in the scope of work.
 - B. Name a Contract Representative who shall be the liaison between the **CONSULTANT** and the **CITY**. For this contract, the Contract Representative for **CONSULTANT** designated is Greg Burns, Partner, and the Project Manager for the **CITY** designated is Jessica Fust, Building Official.
11. **NONDISCRIMINATION:**
- A. **CONSULTANT** shall, in performance of work under this **AGREEMENT**, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. **CONSULTANT** is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by **CONSULTANT** subjects subcontractors to the same provisions. In accordance with 49-3- 207, MCA, and Executive Order No. 04-2016. **CONSULTANT** agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, physical or mental disability, military service or veteran status, or marital status by the persons performing this **AGREEMENT**. **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, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- B. **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, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, physical or mental disability, military service or veteran status, or marital status.

CONSULTANT and subconsultant shall abide by the requirements of 41 CFR 60- 300.5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and/or qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

CONSULTANT and any subconsultant shall abide by the requirements of 41 CRF 60- 1.4, which states employees or applicants may not be discharged or in any other manner discriminated against because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with **CONSULTANT'S** legal duty to furnish information.

- C. **CONSULTANT** will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- D. **CONSULTANT** shall comply with any and all reporting requirements that may apply to it that the **CITY** may establish by regulation. **CONSULTANT** will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and

shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- E. **CONSULTANT** shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination. This includes complying with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. In the event of **CONSULTANT'S** noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. **CONSULTANT** shall include the provisions of Subsections A through F of this Section in every subcontract or purchase order under this **AGREEMENT**, so as to be binding upon every such subcontractor or vendor of **CONSULTANT** under this **AGREEMENT**. **CONSULTANT** will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- H. **CONSULTANT** agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non- discrimination clause.

12. 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**.

13. 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.



14. 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.

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**.

15. REDUCTION OF FUNDING: This **AGREEMENT** may be terminated if funds are not appropriated or otherwise made available to support the **CITY's** continuation of performance of this **AGREEMENT** in a subsequent fiscal period. If funds are not appropriated or otherwise made available through the **CITY's** budgeting process to support continued performance of this **AGREEMENT** (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the **CITY** shall terminate this **AGREEMENT** as required by law. The **CITY** shall provide **CONSULTANT** the date the **CITY's** termination shall take effect.

16. EFFECT OF TERMINATION: The **CITY** shall not be liable to **CONSULTANT** for any payment that would have been payable had the **AGREEMENT** not been terminated under this provision. As stated above, the **CITY** shall be liable to **CONSULTANT** only for the payment, or prorated portion of that payment, owed to **CONSULTANT** up to the date the **CITY's** termination takes effect. This is **CONSULTANT** sole remedy. The **CITY** shall not be liable to **CONSULTANT** for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

17. CONFLICT OF INTEREST: **CONSULTANT** shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with **CITY'S** interest. During the term of this **AGREEMENT**, **CONSULTANT** shall not accept any employment or engage in any consulting work which creates a conflict of interest with **CITY** or in any way compromises the services to be performed under this **AGREEMENT**. **CONSULTANT** shall immediately notify **CITY** of any and all violations of this Section upon becoming aware of such violation.

18. 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.

19. 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.

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

21. ENDORSEMENTS: The **CONSULTANT** shall furnish signatures, statements, or other suitable means to signify responsible endorsement of work on all reports furnished by him.

22. 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.

23. PUBLIC INFORMATION: The **CONSULTANT** shall not issue any statements, releases, or information for public dissemination without prior written approval of the **CITY**. All materials related to this **AGREEMENT** and services provided are considered public records under Article II, Section 9 of the Montana Constitution and §§ 2-6-102 and 7-1-4144, MCA and may be distributed by written request pursuant to Montana's Constitutional Right to Know or Public Records Acts.

24. 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**.

25. 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.

26. ATTORNEY'S FEES AND COSTS: The prevailing Party in any action to compel compliance with this **AGREEMENT** shall be entitled to reasonable attorney's fees and costs.

27. 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.

28. 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.

CITY OF BILLINGS, MONTANA

THORN RUN PARTNERS

MIKE NELSON, MAYOR

SIGNATURE

PRINT NAME

APPROVED AS TO FORM:

PRINT TITLE

CITY ATTORNEY'S OFFICE

ATTEST:

DENISE BOHLMAN, CITY CLERK

EXHIBIT A

Primarily, the **CONSULTANT** will help the **CITY** secure federal funding, advocate for the City's policy and financial needs, and be an expert navigator of the Federal government.

Specifically, the requested services shall include, but are not limited to, the following:

- 1) Identify and devise strategies to successfully secure federal funding for the **CITY**.
- 2) Pursue major funding opportunities and investigate other opportunities. Lobbying **CONSULTANT** shall research and provide information to the **CITY** on existing and emerging legislation, availability of funding, distribution of funding, techniques to be used by the **CITY** to capitalize on opportunities, and examples of successful federal government applications.
- 3) Monitor bills that may impact **CITY** interests in accordance with the legislative priorities established by the **CITY** and provide interpretation and analysis of bills to **CITY** staff.
- 4) Work closely with **CITY** staff to assess the impact of certain bills and administrative decisions and to develop a response from the **CITY** either in support, opposition, or seek amendments to bills or administrative rules.
- 5) Provide frequent legislative briefings for key **CITY** staff, including information regarding major highlights and information on priority bills that require **CITY** attention.
- 6) Represent the **CITY** and meet with legislators, their staff, and governmental agency officials to advance **CITY** legislative agenda and interests.
- 7) Testify at committee hearings and other meetings on behalf of the **CITY**.
- 8) Track and review press releases, informational bulletins, and other important information released by the federal governments and their agencies.
- 9) Review and notify **CITY** staff of relevant federal grants.
- 10) Advocate for **CITY** funding in the federal budgets, through grants and legislation, and through any other appropriate means.
- 11) Work with the **CITY** staff to secure sponsors for proposed bills and/or amendments to Federal law.
- 12) Coordinate meetings with Montana legislative delegation as needed.
- 13) Provide **CITY** staff with monthly written summary of legislative activities on behalf of the **CITY**.