

## AGREEMENT

THIS AGREEMENT ("Agreement") is made June 1, 2011, by and between the **Billings Area Chamber of Commerce/Convention & Visitors Bureau**, a Montana nonprofit corporation, with its principal place of business at 815 South 27<sup>th</sup> Street, Billings, MT 59101 ("Chamber/CVB"), and **Montana's Custer Country**, a Montana nonprofit corporation, with its principal place of business at 815 South 27<sup>th</sup> Street, Billings, MT 59101 ("MCC") (Chamber/CVB and MCC are collectively referred to as the "Parties" and individually as a "Party").

### RECITALS:

A. On September 20, 2010 the Montana Department of Commerce ("Department of Commerce") entered into Contract #11-52-0001 with the Chamber/CVB (the "State Contract"), under which the Chamber/CVB manages the Custer Country Tourism Region.

B. The mission of the Custer Country Tourism Region is to increase visitors to Southeast Montana by increasing awareness of the region, showcasing its cultural heritage, developing memorable experiences, and educating its residents about the economic benefits of tourism.

C. The mission of the Chamber/CVB is to develop a strong business climate and vibrant economy by serving the community in a leadership role thereby enhancing the quality of life.

D. The Chamber/CVB and MCC, while separate, distinct and independent entities, have common goals and interests in the promotion, marketing and selling of visitor overnights, and such goals and interests are in furtherance of the tax-exempt purposes of both Parties.

E. Given the common goals and interests of the Parties, and their mutual desire to maximize visitor recruitment opportunities available to them while minimizing administrative expense, the Parties wish to enter into this Agreement, by which the Chamber/CVB will provide MCC with certain staffing, office space, office equipment, office furniture, office supplies, office services, and other administrative support.

NOW THEREFORE, in consideration of the premises set forth above and the promises set forth below, the sufficiency and receipt of which are hereby acknowledged, the Parties hereby agree as follows:

### I. Term and Termination

A. Term. This Agreement shall be effective upon the acceptance of MCC as the "Contractor" under the State Contract by the Department of Commerce and shall remain in full force and effect until June 30, 2012, subject to extension as stated in the next sentence of this Section, unless terminated earlier pursuant to this Agreement. This Agreement shall be automatically extended upon each expiration date for an additional period of one year unless either party gives written notice to the other party, within ninety (90) days prior to the expiration date, that this Agreement will not be continued beyond the expiration date, provided, however, that the term of this Agreement shall not extend beyond the expiration date of the State Contract.

B. Termination Without Cause. Either Party may terminate this Agreement, without cause, by giving written notice to the other Party stating when, but not less than ninety (90) days thereafter, such termination shall be effective.

C. Termination for Cause. If either Party is in material breach of any provision of this Agreement which is not cured within thirty (30) days after written notice of the breach from the other Party, the non-breaching Party may terminate this Agreement by written notice to the breaching Party. The written notice of the material breach shall specify the alleged breach and the date on which termination will be effective unless such breach is cured to the satisfaction of the non-breaching party within the time allowed. If the material breach is not capable of being completely cured within thirty (30) days after the written notice of breach, this Agreement may not be terminated if the breaching Party commences to cure the breach within thirty (30) days after the written notice of breach is given, and diligently pursues curing the breach to conclusion.

D. Termination for Other Reason.

This Agreement shall terminate automatically upon either: (1) the termination of the Custer Country Tourism Region by the Montana Department of Commerce, or (2) MCC ceases to receive or be entitled to receive lodging taxes from the Department of Commerce.

## II. Services

During the term of this Agreement, MCC engages the Chamber/CVB to provide the services and functions described in this Agreement, and the Chamber/CVB agrees to provide such services and functions under the terms and conditions set forth in this Agreement. The services and functions are as follows:

### A. Office Space, Furniture, Supplies, and Services

1. Office Space. The Chamber/CVB shall provide MCC with the use of office space within the Chamber/CVB's offices currently located at 815 South 27<sup>th</sup> Street in Billings, Montana. The Chamber/CVB shall have sole discretion to determine the location and amount of such office space in its premises, and reserves the right to modify or eliminate such office space on reasonable notice to MCC.

2. Furniture, Fixtures and Equipment. The Chamber/CVB shall provide MCC with the use of such office equipment, office furniture, office supplies, office services, and other administrative support as may be required by MCC from time to time. Chamber/CVB shall have sole discretion to determine the office equipment, furniture, supplies, services and administrative support to be provided, and reserves the right to modify or eliminate such items on reasonable notice to MCC.

### B. Professional Services

The Chamber/CVB will provide services and staff required to effectively manage MCC. All staff shall be employees of the Chamber/CVB.

1. Administration. The President/CEO of the Chamber/CVB (the "President/CEO") shall have supervisory authority and responsibility for all staff of the Chamber/CVB, and shall have

sole discretion to hire, fire, evaluate, and assign duties to employees. The President/CEO shall be responsible for handling all administrative duties for the conduct of MCC's business. Specific administrative duties include: coordinate and attend MCC board meetings and activities; oversee staff direction and strategic direction for MCC; attend Tourism Advisory Council Meetings and other state tourism activities; develop the annual budget and work plan of MCC for presentation to the Tourism Advisory Council; and develop and maintain strong regional stakeholder relations while seeking input on MCC planning.

2. Marketing. The Chamber/CVB will employ a staff member responsible for all marketing activities of MCC, who shall be designated the marketing director for MCC (the "Marketing Director"). The Marketing Director will develop and implement all marketing programs utilizing funding provided to MCC through the Montana lodging tax. The Marketing Director will be responsible for reporting duties to the Department of Commerce as required in applicable Montana rules and regulations. As "the face of Custer Country", the Marketing Director will travel throughout the Custer Country Tourism Region and build relations with stakeholders of MCC. The salary and any other compensation payable to the Marketing Director shall be determined by the Chamber/CVB, subject to approval by MCC.
3. Employee Support. From time to time the Chamber/CVB may direct certain of its staff members to perform functions of value to MCC including: government affairs, event planning, and reception related activities. The Chamber/CVB shall have sole discretion to determine the staff time to be provided to MCC.
4. Financial Administration. The Chamber/CVB shall establish and administer accounting procedures, systems and controls for MCC, in accordance with generally accepted accounting principles, and in accordance with state rules and regulations in order to develop, prepare and maintain the financial records and books of account for the business and financial affairs of MCC. The Chamber/CVB shall prepare and provide regular financial statements for the review and use of the Board of Directors of MCC at its regular Board meetings.

### III. Fees

For the services to be provided by the Chamber/CVB to MCC under this Agreement, MCC shall pay the Chamber/CVB as follows:

A. Twenty percent (20%) of annual Montana lodging tax receipts received by MCC, which is the administrative fee payable to the Chamber/CVB for the administrative services provided hereunder, as authorized by the rules and regulations of the Department of Commerce, which shall be payable to the Chamber/CVB as the Montana Department of Revenue issues the quarterly payment to MCC during the term of this Agreement. If the Chamber/CVB receives any payment in advance and this Agreement is terminated before the entire payment has been earned hereunder, the Chamber/CVB shall reimburse MCC for any unearned portion of the payment received; and

B. As reimbursement to the Chamber/CVB, the salary and other compensation (excluding benefits), and taxes thereon, paid by the Chamber/CVB to the Marketing Director from the Montana

lodging tax receipts retained by MCC after payment of the 20% to the Chamber/CVB referred to in Section IIIA.

#### IV. Intellectual & Physical Property

Any intellectual or physical property acquired by MCC during the term of this Agreement shall remain the property of MCC. Any and all intellectual property of the Chamber/CVB shall remain the property of the Chamber/CVB notwithstanding the fact that it may be shared with or utilized by MCC under this Agreement.

#### V. Insurance.

During the term of this Agreement, the Chamber/CVB shall maintain in effect insurance coverage as follows: (1) general liability insurance in an amount not less than \$1,000,000.00; (2) workers' compensation insurance on all employees; and (3) automobile liability insurance with third party liability coverage not less than \$1,000,000.00 for hired and non-owned vehicles.

#### VI. Indemnification

Each Party hereby agrees to indemnify, save and hold harmless the other Party and the other Party's subsidiaries, affiliates, related entities, partners, agents, officers, directors, employees, attorneys, successors, and permitted assigns, and each of them from and against any and all claims, actions, demands, losses, damages, judgments, settlements, costs and expenses (including reasonable attorney and paralegal fees and expenses), and liabilities of every kind and character whatsoever, which may arise by reason of: (1) any act or omission constituting a breach or default under this Agreement by the Party or any of its officers, directors, employees, or agents in their capacity as officers, directors, employees, or agents of the Party; and/or (2) the inaccuracy or breach of any of the representations or warranties made by the Party under this Agreement. The indemnity under this Section shall require the payment of costs and expenses by the liable Party as they are incurred. The Party seeking reimbursement or indemnity under this Section shall promptly notify the liable (other) Party upon receipt of any claim or legal action referenced in this Section. The indemnified Party shall not at any time admit liability or otherwise attempt to settle or compromise said claim, action or demand, except upon the express prior written instructions or agreement of the indemnifying Party or upon the repudiation or denial of indemnification by the indemnifying Party. For the purposes of this Section, a repudiation or denial of indemnification shall be deemed to occur if the Party seeking indemnification does not receive written confirmation of indemnification from the party from whom indemnification is sought within thirty (30) calendar days of notice of the claim, action or demand by the Party seeking indemnification. The Party seeking indemnification shall make all reasonable efforts to provide the Party from whom reimbursement is sought with all information that may be useful in determining whether indemnification is proper. The provisions of this Section shall survive any termination or expiration of this Agreement.

#### VII. Relationship of Parties.

In the performance of the services to be provided pursuant to this Agreement, the Parties understand and agree that the Chamber/CVB and any of its employees or agents shall be, and at all

times are, acting as independent contractors as to MCC. No Party shall have the power to bind or obligate the other, except as specifically provided in this Agreement. Neither this Agreement nor any activity under this Agreement is intended, nor shall it be deemed, to create a partnership, association, joint venture, or agency relationship between the Chamber/CVB and MCC.

#### VIII. Notices.

Any notices required hereunder shall be in writing and shall be deemed to have been duly given when hand delivered or when deposited in the United States mail, if mailed by certified or registered mail, return receipt requested, postage prepaid, or sent by courier service and addressed to the person(s) at the addresses set forth at the beginning of this Agreement or to such other person and/or address of which the receiving party has given notice pursuant to this Section. All notices shall be considered given and received on the date appearing on the return receipt thereof, or on the delivery date appearing on the records of the courier service.

#### IX. Remedies.

A. If any disputes arise between the Parties with regard to this Agreement, each Party shall designate a representative, and the representatives shall meet to discuss the dispute and attempt to reach a resolution. The meeting of Party representatives shall be held within ten (10) days after a written request made by either Party to hold such a meeting, which request shall set forth the dispute requiring resolution.

B. If a dispute between the Parties cannot be resolved pursuant to the provisions of Section IX.A above, then either Party may pursue any and all remedies available at law or in equity.

#### X. General Provisions.

A. Legal Capacity. Each Party represents and warrants to the other Party that it has the legal capacity to enter into this Agreement, that the execution has been duly approved by its Board of Directors, and that its obligations under this Agreement do not violate its organizational document, bylaws, or any agreement to which it is a party.

B. Non-Assumption of Liabilities. Except as specifically set forth herein, the Chamber/CVB shall not, by entering into and performing this Agreement, become liable for any of the existing or future obligations, liabilities, or debts of MCC by virtue of providing services to MCC under this Agreement. MCC shall not, by entering into and performing this Agreement, become liable for any of the existing or future obligations, liabilities, or debts of the Chamber/CVB.

C. Amendments. No amendments or additions to this Agreement shall be binding unless executed in writing and signed by both Parties.

D. Governing Law. This Agreement shall be governed by and construed according to the laws of, and subject exclusively to the jurisdiction of the courts of, the State of Montana. Venue for any action under this Agreement shall be in Yellowstone County, Montana.

E. Waiver of Breach. No waiver of any breach of any provision or condition of this Agreement, whether by course of dealing or otherwise, shall be effective unless evidenced by an instrument in writing duly executed by the party against whom such enforcement or waiver is sought.

Waiver of breach of any term or provision of this Agreement shall not be deemed a waiver of any other breach of the same or a different provision.

F. Severability. In the event any term or provision of this Agreement is rendered invalid or unenforceable by any valid legislative or regulatory act or is declared null and void by any court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.

G. Headings. The section headings contained in this Agreement are for reference purposes only and should not affect in any way the meaning or interpretation of this Agreement

H. Prior Agreements. This Agreement constitutes the complete agreement of the Parties, and shall supersede and render null and void any and all prior and contemporaneous agreements between the Parties regarding the subject matter hereof.

I. Assignment. Neither Party may assign its rights, duties or obligations under this Agreement without the prior written consent of the other Party, which consent may be withheld in the sole discretion of a Party.

J. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their permitted assignees.

K. Attorney Fees. If any legal proceeding is commenced which is related to this Agreement, the losing party shall pay the prevailing party's actual attorney and paralegal fees and expenses incurred in the preparation for, conduct of, or appeal or enforcement of judgment from the proceeding.

L. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written.

**MCC:** Montana's Custer Country

By: \_\_\_\_\_  
John Laney, Chair of the Board

**CHAMBER/CVB:** Billings Area Chamber of Commerce/Convention & Visitors Bureau

By: \_\_\_\_\_  
Keith Cook, Chair of the Board