

## **Advertising Services Agreement**

THIS ADVERTISING SERVICES AGREEMENT ("Agreement") is made and entered into this 23rd day of May, 2011, by and between Montana's Custer Country, a Montana nonprofit corporation, of 815 South 27<sup>th</sup> Street, Billings, MT 59101 ("Custer Country"), and Mercury Advertising, Inc., a Montana corporation, d/b/a MercuryCSC, of 22 South Grand, Bozeman, MT 59715 ("Mercury").

### **THE PARTIES AGREE AS FOLLOWS:**

#### **1. TERM AND TERMINATION.**

(a) Term. This Agreement shall be effective on May 23, 2011 and shall remain in full force and effect until May 22, 2012, subject to extension, unless terminated earlier as provided herein.

(b) Extension of Term. This Agreement shall be automatically extended upon each expiration date for an additional period of one (1) 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. Notwithstanding the foregoing, the term of this Agreement shall not exceed seven (7) years.

(c) 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.

(d) 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.

(e) Termination for Other Reason. This Agreement shall terminate automatically upon either (i) the termination of the Custer Country Tourism Region by the Montana Department of Commerce, or (ii) Custer Country ceases to receive or be entitled to receive lodging taxes from the Montana Department of Commerce. Custer Country may also, within its sole discretion, reduce the scope of this Agreement if available funding is reduced for any reason. (See Section 18-4-313, Montana Code Annotated).

#### **2. SERVICES.**

During the term of this Agreement, Custer Country shall engage Mercury to provide certain professional services, including advertising and collateral services, web services, social media

planning and execution services, and publication development services. Mercury shall not provide any specific services under this Agreement without obtaining final approval of such services from Custer Country. Additionally, before initiating any project under this Agreement, Mercury must obtain from Custer Country approval of any project costs. Mercury agrees to complete any project within its prior approved budget unless Custer Country subsequently agrees in writing to increased project costs that Mercury has justified. Mercury's professional services under this Agreement are more particularly described as follows:

(a) Strategic Consumer Marketing Plan. As part of its professional services hereunder, Mercury shall assist Custer Country in developing on an annual basis a strategic consumer marketing plan that includes the identification of target markets, the formulation of specific strategies and objectives for each target market, and the determination of appropriate tactics to achieve the designated objectives. In developing a strategic consumer marketing plan for Custer Country, Mercury will need to be familiar with the Montana Tourism and Recreation Strategic Plan and be able to integrate certain components of such Strategic Plan into Custer Country's strategic consumer marketing plan. Custer Country and Mercury shall periodically review the strategic consumer marketing plan and shall update such plan at least annually.

(b) Marketing and Advertising. At the direction of Custer Country and in conjunction with the strategic consumer marketing plan described in Section 2(a) above, Mercury shall analyze and recommend specific marketing media and assist Custer Country in developing and producing print, broadcast and electronic advertising materials. Upon Custer Country's approval of such advertising materials, Mercury shall place such materials with appropriate marketing media. Notwithstanding the foregoing, Custer Country reserves the right to place the advertising materials with such other marketing media as it shall determine and enter into partnership marketing opportunities with outside companies which bypass the media efforts of Mercury. During the term of this Agreement, Custer Country may also ask Mercury to develop or assist with the following marketing and advertising techniques: (i) full color magazine advertising production; (ii) direct mail production; (iii) promotional brochure production; (iv) newspaper advertising production; (v) radio advertising production; (vi) web banner design, including other online advertising such as video ads, expanding ads, and interactive ads; (vii) e-marketing production; (viii) outdoor advertising; (ix) brand development; and (x) other marketing and advertising techniques that the Board of Directors or staff of Custer Country deems necessary.

(c) Website Development. Mercury shall assist Custer Country in maintaining a web presence. Mercury's website development services include the making of revisions or additions to the Custer Country's current website or the redesigning of the entire website.

(d) Social Media Development Services. Mercury shall assist Custer Country in building and maintaining a social media presence.

(e) Publication Development. Mercury shall assist Custer Country in producing an annual travel planner in magazine format. Mercury's publication development services shall include, without limitation, general design services, layout design services, content development services, and the acquisition of print bids for the annual travel planner.

(f) Tourism Knowledge. Mercury shall maintain a working knowledge of changing travel trends, nationally and regionally, through its use of trade publications, Tourism Advisory Council proceedings, and information that recognized travel and tourism research reports provide.

(g) Knowledge and Adherence to Rules and Regulations. Mercury shall be knowledgeable of all current Rules and Regulations as directed from the Tourism Advisory Council. Additionally, Mercury agrees to follow all such Rules and Regulations when working on projects for Custer Country.

### **3. HOURLY RATES AND OTHER CHARGES FOR SERVICES.**

(a) Hourly Rates. During the term of this Agreement, Mercury shall charge the following hourly rates for services hereunder: (i) \$105.00 per hour for account management services, copywriting services, layout design services, proofreading services, production supervision services, and website design and maintenance services; (ii) \$105.00 per hour for any additional Mercury staff who attend Board of Directors meetings for Custer Country at the request of Custer Country; and (iii) \$52.50 per hour for any travel time of any Mercury staff, excluding the first four (4) hours of travel time on any trip for up to two (2) staff of Mercury. Mercury shall not be allowed to charge for mileage in addition to the hourly rate for travel time.

(b) Charges for Subcontracted Work. For any subcontracted work that Mercury performs under this Agreement, Mercury may charge a fee that is not greater than fifteen percent (15%) of the value of such subcontracted work.

(c) Services for No Charge. Mercury shall not charge Custer Country for any services that involve estimating work, media buying and invoicing. Additionally, except as otherwise provided herein, Mercury shall not charge Custer Country for any travel time and staff time for a staff person's attendance, on an annual basis, at four (4) regular Board of Directors meetings for Custer Country, any Tourism Advisory Council meetings, the Governor's Conference on Tourism, or any other educational conference or seminar that benefits Mercury's staff and/or other tourism clients. At the four (4) regular Board of Directors meetings for Custer Country, Mercury will be represented by one (1) staff person at no charge to Custer Country. If Mercury deems it necessary to have more than one (1) staff person attend a Board of Directors meeting, Mercury will not charge Custer Country for any travel time and staff time for such additional staff person(s). If Custer Country requests the presence of additional staff person(s) of Mercury at a Board of Directors meeting, Custer Country will pay for the staff time and, if applicable, travel time of such additional staff person(s) in accordance with the rates that appear in Section 3(a) above.

### **4. FAMILIARIZATION TOUR.**

Any staff person of Mercury who will be working on the Custer Country account shall participate in a three (3) day Custer Country familiarization tour within two (2) months of the effective date of this Agreement. The staff of Custer Country will coordinate and guide this familiarization tour. The staff of Custer Country will secure the best possible rates for transportation, meals, lodging, and other activities. Mercury will be responsible for paying any such expenses for the familiarization tour.

### **5. ACCESS AND RETENTION OF RECORDS.**

(a) Access to Records. Mercury agrees to provide Custer Country, the Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance.

(b) Retention of Records. Mercury agrees to create and retain records supporting its advertising services under this Agreement for a period of three (3) years after either the completion date of this Agreement or the conclusion of any claim, litigation or exception relating to this Agreement that Custer Country or any third party has taken.

## **6. ASSIGNMENT, TRANSFER AND SUBCONTRACTING.**

Mercury shall not assign, transfer or subcontract any portion of this Agreement without the express written consent of Custer Country.

## **7. HOLD HARMLESS/INDEMNIFICATION.**

Mercury agrees to protect, defend, and save Custer Country, its elected and appointed officials, officers, directors, members, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, which are brought by Mercury's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or the omission of services or in any way resulting from the acts or omissions under this Agreement of Mercury and/or its agents, employees, representatives, assigns, and subcontractors. Mercury shall not protect, defend, and save Custer Country, its elected and appointed officials, officers, directors, members, agents, and employees harmless from and against any claims, demands, and causes of action of any kind or character arising out of or in any way resulting from the sole negligence of Custer Country and/or its agents, employees, representatives, assigns, and subcontractors.

## **8. COMPLIANCE WITH THE WORKERS' COMPENSATION ACT.**

Mercury is required to comply with the provisions of Montana's Workers' Compensation Act while performing work for Custer Country in accordance with Sections 39-71-401 and 39-71-405, Montana Code Annotated. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status. Neither Mercury nor its employees are employees of Custer Country. This insurance or exemption requirement must be valid for the entire period of this Agreement.

## **9. INTELLECTUAL AND PHYSICAL PROPERTY.**

Any intellectual or physical property acquired by Custer Country during the term of this Agreement shall remain the property of Custer Country. Additionally, all materials that are developed under this Agreement shall be the property of Custer Country. Any and all intellectual property of Mercury shall remain the property of Mercury notwithstanding the fact that such property may be shared or utilized by Custer Country under this Agreement.

## **10. COMPLIANCE WITH LAWS.**

Mercury must, in the performance of its services under this Agreement, fully comply with all applicable federal, state, and local laws, rules and regulations, including without limitation, the Montana Human Rights Act, 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. Any subletting or subcontracting by Mercury subjects the subcontractors to this same requirement. In accordance with Section 49-3-207, Montana Code Annotated, Mercury agrees that the hiring of persons to perform services under this Agreement will be made on the basis of merit and qualifications, and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing services under this Agreement.

#### **11. LIAISON AND SERVICE OF NOTICES.**

All project management and coordination on behalf of Custer Country shall be through a single point of contact designated as Custer Country's liaison. Mercury shall designate a liaison who will provide the single point of contact for management and coordination of Mercury's work under this Agreement. All work performed pursuant to this Agreement shall be coordinated between Custer Country's liaison and Mercury's liaison.

#### **12. MEETINGS.**

Mercury is required to meet with Custer Country's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of this Agreement, at no additional cost to Custer Country. Meetings will occur as the need arises and will be coordinated by Custer Country. Mercury will be given a minimum of three (3) full working days notice of any meeting date, time, and location. Face-to-face meetings are desired. However, at Mercury's option and expense, a conference call meeting may be held. Mercury's consistent failure to participate in problem resolution meetings, Mercury's failure to attend two (2) consecutive meetings or two (2) rescheduled meetings, or Mercury's failure to make a good faith effort to resolve problems may result in termination of this Agreement.

#### **13. 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 applicable party at the address 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.

#### **14. CHOICE OF LAW AND VENUE.**

This Agreement is governed by the laws of the State of Montana. The parties agree that any litigation concerning this Agreement must be brought in the Thirteenth Judicial District in and for Yellowstone County, Montana, and each party shall pay its own costs and attorney fees. (See Section 18-1-401, Montana Code Annotated)

#### **15. SCOPE, AMENDMENT AND INTERPRETATION.**

This Agreement contains the entire agreement of the parties. Any enlargement, alteration or modification of this Agreement requires a written amendment signed by both parties.

**16. EXECUTION.**

The parties, through their authorized agents, have executed this Agreement on the dates set forth below.

**MONTANA'S CUSTER COUNTRY,**  
Montana nonprofit corporation  
815 SOUTH 27<sup>th</sup> STREET  
BILLINGS, MT 59101

**MERCURY ADVERTISING, Inc.,** a  
Montana corporation, **d/b/a MercuryCSC,**  
22 SOUTH GRAND  
BOZEMAN, MT 59715  
81-0514714

BY: \_\_\_\_\_  
(Signature)

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Print Name and Title)

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_