

NORTH DAKOTA PUBLIC SERVICE COMMISSION

CONTRACT AMENDMENT

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|------------------------------|---------------------------|
| Purchase of Service Contract | CONTRACT NUMBER GS-736-15 |
| Amendment #3 | Case No. GS-17-358 |

AMENDMENT to Contract between the State of North Dakota, acting though its North Dakota Public Service Commission, "STATE", and Newman Signs, Inc., "CONTRACTOR".

The parties agree to the following terms and conditions and expressly agree that if any of the following terms and conditions conflict with any of the terms and conditions of the Contract, then, notwithstanding any term in the Contract, the following terms and conditions govern and control the rights and obligations of the parties.

Whereas, Section 2, Compensation, states that the contract is for an amount not to exceed \$10,450, and

Whereas, Section 3, Term of Contract, states that the agreement will end on June 30, 2016, and

Whereas, Section 3, Term of Contract, states that the contract may be extended up to three times for an additional period of time not to exceed 12 months per extension, and

Whereas, Section 17, Merger and Modification, the second paragraph states that in the event of an inconsistency or conflict among the documents making up this Contract, the documents must control in the order of precedence: b. CONTRACTOR'S proposal dated November 28, 2017, and

Whereas, the parties agree to extend the Contract for an additional 12 months for the period of July 1, 2018 to June 30, 2019, and the CONTRACTOR'S proposal for the period July 1, 2018 to June 30, 2019 is dated December 3, 2018, and

Therefore, Section 3, Term of Contract, is amended to change the expiration date to June 30, 2019 and

Therefore, Section 2, Compensation, is amended to state that the contract is for an amount not to exceed \$38,581 to provide an amount of \$7,231 for the contract period July 1, 2018 to June 30, 2019, and

Therefore, Section 17, Merger and Modification, the second paragraph is amended to state that:

Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Contract, the documents must control in the order of precedence:

- a. The terms of this Contract as may be amended:
- b. CONTRACTOR'S proposals dated August 27, 2015, July 11, 2016, November 28, 2017, and December 3, 2018:
- c. United States Department of Transportation Standard Title VI/Non-Discrimination Assurances, Including Appendices A and E:
- d. All terms and conditions contained in any end user agreements (e.g. automated click-through, shrink wrap, or bonus wrap) are specifically excluded and null and void, and shall not alter the terms of the Contract.

All other terms of the Contract remain in effect.

This Contract Amendment is not effective until fully executed by all parties.

| | |
|------------------------------|---------------------------|
| Purchase of Service Contract | CONTRACT NUMBER GS-736-15 |
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EXECUTION

| | |
|--------------------------------|---|
| CONTRACTOR NAME | STATE OF NORTH DAKOTA |
| Newman Signs, Inc. | Acting through its North Dakota Public Service Commission |
| By: <u><i>Dave J. Koff</i></u> | By: <u><i>Randy Christman</i></u> |
| Title: _____ | Title: Randy Christmann, Chairman |
| Date: <u>12/4/18</u> | Date: <u>12-19-2018</u> |

By: *Julie Fedorchak*
 Title: Julie Fedorchak, Commissioner
 Date: 12-19-2018

By: *Brian Kroshus*
 Title: Brian Kroshus, Commissioner
 Date: 12-19-2018



P.O. Box 1728
 Jamestown, North Dakota 58402
 1606 6th Ave SW

Jamestown, North Dakota 58401
 Phone: (701) 252-1970
 Fax: (701)252-7325

Booking Report #: PST0001516

ADVERTISER ND One Call

CUSTOMER # NDO-06-001

ADDRESS pfahn@nd.gov 600 E boulevard Ave, Dept. 408 Bismarck ND, 58505

TELEPHONE 0000000000

FAX _____

SALES REP Ross Kopp

The undersigned authorizes and directs Newman Signs, Inc., d/b/a Newman Outdoor Advertising, to execute this agreement showing listed below in accordance with the terms and conditions on the reverse of this contract, and, as necessary, to furnish posters in the quantity and at the price stated herein.

| MARKET(S) | QTY | MONTHLY RATE PER PANEL | Agency % | NO. OF MONTHS | NET TOTAL | Start/End Date |
|---|-----|---------------------------|----------|------------------|------------|-----------------------|
| BISMARCK POSTER-Bismarck poster space- | 1 | \$398.00 | 0.00 | 1 | \$398.00 | 4/1/2019 to 4/30/2019 |
| BISMARCK POSTER-Bismarck division space for Mandan(1) and Dickinson(1)- | 2 | \$0.00 | 0.00 | 1 | \$0.00 | 4/1/2019 to 4/30/2019 |
| FARGO POSTER-Fargo div space for Fargo(1) West Fargo(1)Grand Forks (2) Jamestown(1) Devils Lake(1) Wahpeton1- | 7 | \$398.00 | 0.00 | 1 | \$2,786.00 | 4/1/2019 to 4/30/2019 |
| MINOT POSTER-Minot division space for Minot(2) Williston(1)- | 3 | \$398.00 | 0.00 | 1 | \$1,194.00 | 4/1/2019 to 4/30/2019 |
| MINOT POSTER-Minot division space for Newtown(1) (FULL PRICE)- | 1 | \$725.00 | 0.00 | 1 | \$725.00 | 4/1/2019 to 4/30/2019 |
| -PRODUCTION - BISMARCK- | 14 | \$152.00 | 0.00 | 1 | \$2,128.00 | 4/1/2019 to 4/30/2019 |
| | | | | Total | \$7,231.00 | |

Approval by initial: ROC

Additional Contract Notes: The prices and locations listed, with the exception of New Town, are all at a discounted rate, meaning that they are subject to be moved if necessary.

*Note: Billing will commence on the date specified below. Artwork must be approved no later than two weeks prior to post date reserved.

GENERAL TERMS AND CONDITIONS

1. Newman Signs Inc., d/b/a Newman Outdoor Advertising (Newman) agrees to display all designs herein contracted for within five (5) days of the date reserved. Credit for failure to do so will be issued for the period from the date reserved to the date posting is executed, or the Advertiser may, at its option, receive make-good posting for an equal period.
2. Advertiser agrees to pay Newman within 30 days following the date the aforesaid advertising is displayed. Except as otherwise recorded herein said monthly sum shall be payable, whether or not the display shall be used or operated by the Advertiser. Interest shall accumulate at the maximum lawful rate provided for by applicable statutes on the accounts sixty days overdue. Inability of Newman to erect all advertising display(s) at one time, or secure all locations contracted for shall in no way constitute a breach of this contract, and any advertising display(s) which Newman is unable to erect, shall be cancelled from the contract at no charge to advertiser.
3. Political contracts shall be accepted only upon receipt of ten percent (10%) of the total amount of the contract, which is non-refundable. The balance shall be

due and payable sixty (60) days in advance of the date(s) reserved.

4. Newman reserves the right to reject any copy (either before or after posting) which is morally offensive, false, misleading, deceptive or which violates existing laws. Advertiser warrants that all approved designs do not infringe upon any trademarks or copyrights, state or federal. Advertiser agrees to defend, indemnify and hold harmless Newman from any and all loss, liability, claims and demands, including attorney's fees arising out of the character, content or subject matter of any copy displayed pursuant to this contract.
5. If this contract is signed by an advertising agency, the term "Advertiser" as used herein shall include both the actual Advertiser and the advertising agency where applicable and all obligations of the Advertiser shall be joint and several obligations of both the actual Advertiser and the advertising agency. The actual Advertiser acknowledges that payments made to its advertising agency are not considered payments under this contract until received by Newman.
6. This agreement is subject to approval by Newman. This agreement is accepted and executed in the State in which the displays are actually located and the laws of that State shall govern its interpretation, effect and rights and liabilities of the parties. The parties hereby irrevocably submit to the jurisdiction of the District Court of the county and state where the display is located over any action or proceeding to enforce or defend any matter arising from or relating to this contract. Advertiser hereby irrevocably waives the defense of an inconvenient forum as a defense to maintenance of any such action or proceeding in said court.
7. It is expressly agreed that Newman is not bound by any stipulation, representation or agreement, verbal or otherwise, which is not set forth specifically in this contract.
8. Advertiser shall not sublet, transfer, donate, or assign any advertising spots without the prior written consent of Newman.
9. It is agreed that in the event of failure of the Advertiser to pay any rental installment due hereunder within sixty (60) days of the date due, the entire rental called for under the terms of this agreement shall become immediately due and payable and Newman shall be entitled to immediate recovery of the same, or Newman may, at its option, cancel this agreement or any part thereof and remove the advertising display(s) and recover the overdue balance. It is specifically agreed that should it be necessary for Newman to employ an attorney to enforce the provisions of this agreement or to file suit against the Advertiser to recover any amounts due hereunder, the Advertiser shall be obligated to pay a reasonable attorney fee to Newman, if Newman prevails in such lawsuit. In the event of default, the parties hereto consent to the jurisdiction of the North Dakota District Court located in Stutsman County, North Dakota to hear all disputes related to this contract.
10. If Newman is prevented from posting or maintaining any of the spaces provided for herein by causes beyond its control of whatever nature, including, but not limited to, acts of God, strikes, work stoppages or picketing, or in the event of damage or destruction of any of the spaces, or in the event Newman is unable to deliver any portion of the services required in this contract, this shall not constitute a breach of contract by Newman. Credit shall be allowed to the Advertiser at the rate set forth herein for such space or service for the period that such space or service shall not be furnished.
11. This contract is assignable in its entirety only, unless prior written consent from Newman is obtained allowing a partial assignment. It is the Advertiser's responsibility prior to an effective assignment to file a written contract or assignments signed by the Advertiser and any successor with Newman and secure Newman's approval in writing. The advertiser shall remain responsible for all payments remaining on said contract until the assignment procedure set forth above have been completely satisfied. In the event the Advertiser assigns his contract to a successor who requires change in copy, the cost of such change in copy must be mutually agreed upon between Newman and the successor of the Advertiser, then reduced to writing before any assignment thereof shall be valid.
12. It is the Advertiser's responsibility to inform Newman whether it is a sole proprietorship, partnership, corporation, etc. Incorporated Advertiser's shall be bound by the signatures of the authorized agents. Unauthorized individuals who execute this document purportedly on behalf of an incorporated Advertiser shall assume personal responsibility for satisfying said contract.
13. Upon approval by Newman, this contract is binding upon and shall inure to the benefit of all the parties hereto, as well as the respective heirs, successors, executors, administrators and assigns. All contracts are non-cancellable by Advertiser.

TERMS AND CONDITIONS SPECIFIC TO BULLETINS

1. After the end of expired term, contracted bulletins shall continue on a month to month basis or until either party gives a 30 day written termination notice.
2. Newman shall issue credit to the Advertiser for the period any bulletin is not in service and the account of an Advertiser shall be credited for the periods when an illuminated bulletin lacks illumination in an amount of \$12.50 per week per sign for 48' sign or \$6.25 per week for 24' illuminated sign. Any interruption in service to one or more bulletins shall in no way relieve the Advertiser of his obligation to make payments on the remaining bulletins as due nor shall any interruption in service to one or more bulletins void this contract.

TERMS AND CONDITIONS SPECIFIC TO POSTERS

1. The Advertiser agrees to furnish Newman a sufficient quantity of posters to execute posting at least five (5) working days prior to the date reserved, and failure to do so shall not affect or alter the display period and the Advertiser shall remain obligated for payment to Newman for the contract term. If Newman is requested by Advertiser to furnish such posters, such poster content shall be submitted by Newman to the advertiser and Advertiser shall approve such content or provide Newman with substitute posters within ten (10) days after submission by Newman to the Advertiser. In the case of default in furnishing substitute posters or in approving the poster content submitted by Newman within the ten (10) day period, commencement of service under this contract shall be deemed to occur on the date reserved and Advertiser shall remain liable under this contract.
2. Posters provided by Advertiser will have sufficient weight, tensile strength, and opacity to prevent "show through" of previously posted copy and will conform to the standard sizes currently approved by the appropriate industry organization. Newman retains exclusive control and supervision over the posting, maintenance, and removal of posters and over the location on which they are displayed. Unused posters may be disposed of by Newman upon completion of the scheduled called for herein, unless written instructions to do otherwise are received from Advertiser.
3. Illuminated poster panels will be illuminated from one-half hour before dusk until midnight.

TERMS AND CONDITIONS SPECIFIC TO DIGITAL

1. Approved artwork must be supplied to Newman Digital (with creative schedule) by noon the day before the spot is scheduled to run. Artwork set to run on Monday must be supplied to Newman Digital (with creative schedule) by noon the previous Friday. The network's computer runs in pre-programmed 24-hour cycles. No Exceptions. Failure to do so shall not affect or alter the display period and the Advertiser shall remain obligated for payment to Newman for the contract term. If Newman is requested by Advertiser to furnish such sign designs, such design content shall be submitted by Newman to the Advertiser and the Advertiser shall approve such content or provide Newman with substitute designs within ten (10) day after submission by Newman to the Advertiser. In the case of default in furnishing substitute designs or in approving the design content submitted by Newman within the ten (10) day period, commencement of service under this contract shall be deemed to occur on the date reserved and Advertiser shall remain liable under this contract.
2. Submitted designs and/or artwork must meet the preferred file format for content on Newman Digital displays.
3. Digital system may be pre-empted by Amber Alerts, weather related alerts, or issues regarding public safety.

**NEWMAN SIGNS, INC. dba
NEWMAN OUTDOOR ADVERTISING**

Approved by _____

Date 12/13/18

ADVERTISER

Signed by _____

Print Name _____

Date _____

Randy Christman

Randy J Christmann

12-19-2018