sample Memorandum of Agreement illustrates the basic elements of a good contract. As

the old saying goes, “an ounce of prevention is worth a pound of cure”. A good, written

Agreement up front, will help avoid problems down the line between you and your

customer.

require some customization. There is no requirement that you use this format. The

your income and paying your own taxes, including state and federal income tax, Social

This is a *sample*

. Independent

contractors *may* find this to be a useful tool.

When you perform services under your independent contractor certification, you are

acknowledging that you are engaged in an independently established business. When

working as an independent contractor, if you are hurt on the job, you are not entitled to

workers’ compensation, and if the job ends and your are out of work, you may not use

your independent contractor earnings to qualify for unemployment insurance. Other

rights, such as wrongful discharge and wage protection statutes do not apply to you as an

independently established businessperson. Additionally you are responsible for reporting

Memorandum of Agreement

Security and Medicare.

Experience indicates that a major source of controversy between contractors and their

clients is a misunderstanding of the working relationship. Disagreements may also arise

over such things as to what work is to be done, when it is to be accomplished, how it is to

be accomplished, and the price to be paid for the service performed.

The Montana Department of Labor and Industry offers the following Memorandum of

Agreement as a sample format to use when contracting to perform work on a project.

This sample agreement is geared to construction, and use for other types of services will

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before \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

These dates should allow for reasonable delays and should include a clause that allows

for the hiring agent to withhold payment if project completion is delayed for no apparent

reason.

3. Description of the project (a detailed description of the work to be done, including

specifics on materials such as color, quantity, size, model number, brand name and

product), including services to be performed and location.

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begin the work on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and complete the below described work on or

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MEMORANDUM OF AGREEMENT

This understanding is made this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_between (The Hiring

Agent):

Company name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Full name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

hereafter referred to as the hiring agent and (The Independent Contractor):

Company name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Full name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

hereafter referred to as the contactor.

2. In consideration of payment in the amount of \_\_\_\_\_\_\_\_\_\_\_ the contractor agrees to

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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The Agreement should include a guarantee that the contractor carries general commercial

liability insurance (with installation floater and builders risk) and has either Workers’

Compensation Coverage or an Independent Contractor Exemption Certificate.

7. Clean-Up of debris, wood, nails, etc.

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A statement of what cleanup and removal of debris and materials will be done by the

contractor and other instruction regarding pets, children or areas where materials may not

be stored should be includes so both parties know who is responsible for what.

8.

A right to cancel clause.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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outlined in the contract.

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4. Payment will be made as follows:

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The contract price, which is the exact dollar amount the contractor will be owed at the

completion of all work, should be listed in the contract. A payment schedule that

parallels the amount of work completed, with“retention” (a percentage of each payment

or of the total job which the hiring agent will retain until the job is completed) should be

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

5. A statement that all required building permits and variances required by your city,

state, and county will be obtained by the contractor (or a statement that the building

permits will be handled by the homeowner) before work is started.

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6. Insurance that is required.

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and

The contractor should be explicit about whether labor and materials are guaranteed and

for how long and include the names and addresses of the parties that will honor the

warranties.

A.

It is understood by the contractor and the hiring agent that their relationship is not that

of employee to employer. Contractor acknowledges and understands that provisions

of law, including workers’ compensation, unemployment insurance, wage and hour as

well as all applicable taxes are the responsibility of the contractor and not the hiring

agent.

B.

The contractor has supplied the hiring agent with a copy of the contractor’s relevant

current

independent

contractor

certification

or

construction

contractor

certification as recognized by the State of Montana, Department of Labor and

Industry, a copy of which is incorporated as part of this Agreement.

C.

The Hiring agent acknowledges and understands that in order for the contractor to

work as an independent contractor the hiring agent may not exercise control (some

indicators of which are on the back) over the manner and detail in which the work is

Two or three references should be listed by the contractor and the hiring agent would be

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Detailing the time frame in which either the contractor or hiring agent may cancel after

the contract has been signed along with any penalties that the contractor or hiring agent

may incur when canceling after work has begun.

8.

Request references.

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wise to follow-up with the references and ask about quality, timeliness, cleanliness, etc.

9.

A statement of Warranty on the work.

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Independent Contractor

Hiring Agent

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**RESPONSIBILITIES.**

product within the timeframes agreed to by the parties.

D.

The hiring agent recognizes that when the hiring agent exercise control over the

contractor an employment relationship may exist.

E.

The Contractor works in an independently established trade, profession or occupation

only when the contractor is free from control by the hiring agent in all ways other

than as to delivery of a finished product in the timeframes agreed to by the parties

with payment to be made as agreed by the parties.

**SIGNING THIS DOCUMENT WILL COMMIT YOU TO CERTAIN LEGAL**

performed. The hiring agent shall be concerned only with the delivery of the finished

**IF**

**YOU**

**HAVE**

**ANY**

**QUESTIONS**

**YOU**

**SHOULD**

**CONSULT WITH AN ATTORNEY.**

Dated this \_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

• The hiring agent provides substantial tools and equipment necessary to perform the job

functions as opposed to the contractor or sub-contractor providing their own tools and

equipment. The hiring agent instructs what tools to use and how to use them.

• The hiring agent oversees how the work is performed as opposed to the contractor sub-

contractor working the project in the manner and means he/she sees as appropriate.

• The hiring agent explains, shows, and/or trains the contractor or sub-contractor how to

perform the work. If the contractor receives extensive instructions as how work is to be

done, this suggests an employee relationship.

submitting a bid establishing the cost for the project.

• The hiring agent can release the contractor or sub-contractor from the job without notice

or the opportunity to fix the problem. When the working relationship can be terminated

without liability the hiring agent has the control.

• When there is then no opportunity for profit or loss for the contractor or sub-contractor,

the worker does not have control.

• The hiring agent requires a log of time the contractor or sub-contractor works on the job

is an indication the hiring agent has control.

**Independent Contractor Contracting authority**

The Montana Supreme Court has stated the following four factors are indicators of

control in a working relationship:

1. Evidence of control, which includes the right to control;

2. the furnishing of equipment;

3. the method of payment; and

4. the right to fire without liability.

The consideration given to each of these factors is not a balancing process. One can be

determined to be an employee simply by the strength of one of these factors. Conversely,

all of the factors must demonstrate the contractor’s independence in order for a contractor

to be an independent contractor.

***Here are some common things to think about when determining control:***

• Payment is on a time basis rather than on a bid or project completion basis.

• The pay is determined by the hiring agent, as opposed to the contractor or subcontractor