

***SAMPLE* MEMORANDUM OF AGREEMENT**

The Montana Department of Labor & Industry (Department) offers the following Memorandum of Agreement as a *sample format* for independent contractors to use when contracting with a hiring agent to perform work on a project.

Disagreements between an independent contractor and a hiring agent may arise during a project 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. To prevent a misunderstanding, the Department recommends using the *sample* Memorandum of Agreement.

This *sample* is geared towards the construction industry, but may be customized for use of other types of services. The Department is providing this *sample* to illustrate the basic elements of a good contract, there is no requirement that you use this format.

When you perform services as an independent contractor under your independent contractor exemption certificate (ICEC) and in contract, you are acknowledging that:

- You are engaged in an independently established business.
- You are free from the control and direction of your hiring agent.
- When working as an independent contractor and are hurt on the job, you are not entitled to **workers' compensation benefits**.
- If the job ends and you are out of work, you may not use your independent contractor earnings to qualify for **unemployment insurance benefits**.
- Other rights, such as **wrongful discharge and wage protection** statutes do not apply to you as an independent contractor.
- You are responsible for reporting your income and **paying your own taxes**, including state and federal income tax, Social Security tax and Medicare.

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. A worker can be found to be an employee simply by the strength of one of the four factors. Conversely, a convincing accumulation of all four factors must demonstrate the worker's independence to be considered an independent contractor.

MEMORANDUM OF AGREEMENT

This understanding is made this _____ day of _____ between:

This section to be completed by the independent contractor performing services:

Full name: _____
Business name: _____
Address: _____
Phone number: _____

Hereafter referred to as the "Independent Contractor."

This section to be completed by the hiring agent:

Full name: _____
Business name: _____
Address: _____
Phone number: _____

Hereafter referred to as the "Hiring Agent."

1. In consideration of payment in the amount of \$ _____ the Independent Contractor agrees to begin the work on _____ and complete the below described work on or before _____.

These dates should allow for reasonable delays and should include a clause that allows the Hiring Agent to withhold payment if project completion is delayed for no apparent reason.

2. Description of the project, including services to be performed and location:

The description of the work to be performed should be detailed, including specifics on materials such as color, quantity, size, model number, brand name, and product.

3. Payment will be made as follows:

The contract price, which is the exact dollar amount the independent 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 outlined in the contract.

4. A statement that all required building permits and variances required by your city, state, and county will be obtained by the Independent Contractor (or a statement that the building permits will be handled by the Hiring Agent, general contractor, or homeowner) before work is started.

5. Insurance that is required.

The State of Montana, Department of Labor and Industry, recommends that the Independent Contractor carry a commercial general liability insurance policy (with installation floater and builders risk). Additionally, the Independent Contractor must provide to the Hiring Agent proof of complying with Montana workers' compensation insurance laws.

6. Clean-up of debris, wood, nails, etc.

A statement of what cleanup and removal of debris and materials will be provided by each party and other instructions regarding pets, children, or material storage areas by all parties.

7. A right to cancel clause and/or failure to complete the project.

Describe under what conditions the Independent Contractor and Hiring Agent can terminate the agreement, indicate the proper amount of notice needed and the penalties either party may incur if the agreement is canceled prior to a notice to terminate is provided.

8. Request references.

The Independent Contractor should list two or three references. The Department recommends Hiring Agents follow-up with the references to ask about quality, timeliness, cleanliness, etc.

9. A statement of Warranty on the work.

Please reference 28-2-2201, Montana Codes Annotated, for Residential Construction Contracts - Disclosure and Warranty Requirements to determine if applicable.

10. Equipment, supplies and materials.

Independent Contractor will provide the following:

Hiring Agent will provide the following:

Equipment needs to be identified as to who is supplying what to perform the work or project. The Independent 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 Independent Contractor and the Hiring Agent that their relationship is not that of employee to employer. Independent Contractor acknowledges and understands that the provisions of the laws, including workers' compensation insurance, unemployment insurance, wage and hour, as well as all applicable taxes are the responsibility of the Independent Contractor and not the Hiring Agent.

B. The Independent Contractor has supplied the Hiring Agent with a copy of their relevant and current Independent Contractor Exemption Certification (ICEC) and Construction Contractor Registration (CR) as recognized by the State of Montana, Department of Labor and Industry, a copy of which is incorporated as part of this Memorandum of Agreement. The Hiring Agent can verify the validity and status of the ICEC and/or CR on the Department's website: mtcontractor.mt.gov

C. The Hiring Agent acknowledges and understands that in order for the Independent Contractor to work as an independent contractor, the Hiring Agent cannot exercise control over the manner and detail in which the work is performed. The Hiring Agent shall be concerned only with the delivery of the finished product within the timeframes agreed to by the parties.

D. The Hiring Agent recognizes that when the Hiring Agent exercise control over the Independent Contractor an employment relationship may exist.

E. The Independent Contractor works in an independently established trade, occupation, profession, or business only when 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.

Notice of Violation to Independent Contractors and Hiring Agents:

Montana law prohibits employers from avoiding their responsibility to provide workers' compensation insurance for employees. An employer may not require an employee through coercion, misrepresentation, or fraudulent means to adopt independent contractor status or exert control to a degree that destroys the independent contractor relationship. In addition to any other penalty or sanction, a person or employer who violates a provision of the law is subject to a fine to be assessed by the Department of up to \$1,000 for each violation. Please reference 39-71-419, Montana Codes Annotated, regarding fines issued by the Department.

SIGNING THIS DOCUMENT WILL COMMIT YOU TO CERTAIN LEGAL RESPONSIBILITIES. IF YOU HAVE ANY QUESTIONS YOU SHOULD CONSULT WITH AN ATTORNEY.

Dated this _____ day of _____ 20____.

Hiring Agent signature: _____

Independent Contractor signature: _____