

FOR BOARD ACTION

Agenda Item # 9

Meeting Date:

12/20/11

SUBJECT:

Annual Professional Services Contract for RPU Plugged In

PREPARED BY:

Tony Benson, Communications Coordinator

ITEM DESCRIPTION:

At the July board meeting, the concept for the magazine RPU Plugged In was presented to the Utility Board. Over the course of the past four months, RPU has worked with Priority Integrated Marketing to develop the monthly magazine. The positive feedback from customers and staff supports our recommendation to continue with the publication through 2012. The professional services provided by Priority include layout, design, editing, printing, and mailing of each publication.

The services contract is at the same rate per issue as those developed in 2011.

FOR CAPITAL PURCHASES/BIDS/MAJOR PROJECTS:

The \$258,000.00 requested for 2012 is within RPU's approved 2012 budget. The term of the agreement is 48 months from January 2012 through December 2015. RPU has the ability to cancel the agreement if budget dollars are not approved for a future year.

UTILITY BOARD ACTION REQUESTED:

Management recommends that the Utility Board approve a purchase order agreement for the development each month of RPU Plugged In with Priority Integrated Marketing in the amount of \$258,000.00 for 2012 with the term of the agreement covering years 2012 through 2015, subject to approval of RPU's annual budget, and request the Mayor and City Clerk to execute the agreement.


General Manager

12-15-11
Date

PROJECT AGREEMENT #1
FOR
City of Rochester

This Project Agreement #1 is entered into this 1/1/2012 ("Project Agreement Effective Date") between Priority Publications, Inc. d/b/a Priority Integrated Marketing ("PRIORITY"), and City of Rochester, a Minnesota municipal corporation, acting by and through its Public Utility Board (RPU) ("CLIENT") pursuant to the Master Services Agreement ("Agreement") between PRIORITY and CLIENT dated 1/1/2012, all the terms of which are hereby incorporated herein.

1. **PROJECT NAME:** Print Magazine

2. **SCOPE OF SERVICES / DELIVERABLES:**

- a. PRIORITY will provide the Deliverables in accordance with the specifications set forth below and in the attached **Exhibit A** as such specifications may be mutually revised by the parties.
- b. Any effort that falls outside of the scope as outlined in **Exhibit A** will be billed on a time and materials basis.

The Parties may mutually agree to revise the Deliverables in writing. Material changes to the Deliverables will be detailed and mutually agreed to within a change order.

3. **DELINEATION OF OUT-OF-SCOPE WORK / CLIENT RESPONSIBILITIES:**

- a. **Out of Scope Work.** Services and Deliverables to be provided pursuant to the Project Agreement do not include any services not mentioned in Section 2 above. Out of scope work includes but is not limited to:
 - i. Custom writing/content development/copywriting.
- b. **CLIENT Responsibilities.** In addition to the responsibilities set forth in the Agreement, PRIORITY'S performance of the services and delivery of the Deliverables to CLIENT is dependent on CLIENT successfully completing the following:
 - i. Providing timely feedback and approvals as set forth in the production schedule or within such other timeframe agreed to between the parties.
 - ii. Checking final format and content of each Deliverable and providing appropriate sign-off.

4. **TERM:** The term of this Project Agreement is outlined in each Exhibit.

5. **FEES AND INVOICING:**

- a. **Fees.** CLIENT will pay the fees set forth in each Exhibit. Dissemination of the Exhibit pricing or schedule to any person or entity outside of CLIENT is strictly prohibited. PRIORITY reserves the right to impose reasonable price increases for all Deliverables, on the renewal date of the Project Agreement, such prices to be effective during the term of the renewal Project Agreement period. CLIENT understands and acknowledges that paper is a commodity and prices are based on current market costs.

If paper prices adjust during the term of this Agreement, PRIORITY will pass along such increases and decreases and will notify the CLIENT prior to the start of the next production cycle after the increase or decrease is announced. In the event of a paper increase, CLIENT has the option to reduce the print quantity or switch to a less expensive alternate paper stock, if one is available.

- b. **Invoicing.** The invoicing terms for each project are outlined in the Exhibit. Unless otherwise specified in an applicable Exhibit, all invoices are due within thirty (30) days of receipt. If CLIENT uses PRIORITY'S mailing services, estimated postage will be billed and must be paid in advance of mailing or mailing will be delayed until payment is received.
- c. **Invoice Address.** RPU, Attn: Accounts Payable, 4000 East River Road, Rochester, MN, 55906-2813

6. **PRIORITY CONTACT:** Shelly Elliott, 6700 France Avenue South, Suite 300, Minneapolis, MN 55435, selliot@priorityresults.com, 800-727-6397, ext. 224.

7. **CLIENT CONTACT:** Tony Benson, 4000 East River Road, Rochester, MN, 55906, tbenson@rpu.org, tbenson@rpu.org, 507-280-1534.

8. **ADDITIONAL TERMS:** N/A

By the signatures of their duly authorized representatives below, PRIORITY and CLIENT, intending to be legally bound, agree to all of the provisions of this Project Agreement as of the Project Agreement Effective Date set forth above.

City of Rochester

By: _____

Name: _____

Title: _____

Date: _____

Priority Publications, Inc.

By: Jim Lammer

Name: Jim Lammer

Title: President

Date: 12/7/11

Dated: _____

ROCHESTER PUBLIC UTILITIES

General Manager

CITY OF ROCHESTER

Mayor

Attest:

City Clerk

Reviewed By:

City Attorney

EXHIBIT A – SPECIFICATIONS FOR PRINT MAGAZINE

Deliverables for Print Publication include:

CONTENT AND DESIGN

- Publication designed by PRIORITY, based on CLIENT’S brand.
- Flexibility to submit any amount of content for placement anywhere in the layout.
- Choice of PRIORITY’S feature articles within publication, which may be edited to fit CLIENT’S needs.*
- Relevant graphics selected by PRIORITY’S designers from PRIORITY’S image library and/or graphics submitted by CLIENT.

* Custom content on products/services of CLIENT’S choosing available at \$350 per subject for standard length/formats. Extensive editing of content from PRIORITY’S content library by PRIORITY staff at \$150 per article.

PRINTING

- Printing, stitching and folding to specifications outlined below.

PDF

- PDF for use on CLIENT website.

CLIENT RESOURCE CENTER

- Online access to PRIORITY’S client resource center.

SPECIFICATIONS

Frequency	Quantity	Pages	Colors	Page/Trim/Finished Size	Paper
12x/year	45,000	8 pages	4C/4C	8.5 x 11/11 x 17/8.5 x 11	70# matte

FEES

Price per Issue: \$8,910

Note: Upon receipt of this signed Agreement, PRIORITY will issue a \$2,000 discount on the January 2012 issue. The discount is based on Authorization dated 6/23/11 for magazine mock up project.

DELIVERY

The publications will be delivered on or near the 15th of the following months: January, February, March, April, May, June, July, August, September, October, November, and December. Publications will be shipped standard land shipping – approximately 2-3 days. The cost of shipping, handling and delivery services are in addition to the Fees set forth above and will be invoiced to CLIENT.

TERM

The term of this Exhibit is for forty-eight (48) months 1/1/2012 to 12/31/2015. CLIENT’S signature of this Exhibit is approval for the first twelve (12) month term. CLIENT has the ability to cancel Exhibit A for each subsequent year’s term if budget dollars are not approved. Cancellations must be provided with a written notification sixty (60) days prior to the end of the applicable Exhibit term.

INVOICING

PRIORITY will invoice at time of approval to print. Invoice will include any adjustments, up or down, from the previous month’s printing. Invoices are payable within thirty (30) days of receipt. Estimated postage will be billed and must be paid in advance of mailing or mailing will be delayed.

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT ("Agreement") is made and entered into as of 1/1/2012, ("Effective Date") between Priority Publications, Inc. d/b/a Priority Integrated Marketing ("PRIORITY"), with its principal place of business at 6700 France Avenue, Suite 300, Minneapolis, MN 55435, and City of Rochester, a Minnesota municipal corporation, acting by and through its Public Utility Board (RPU) ("CLIENT"), with its principal place of business at 4000 East River Road, Rochester, MN, 55906.

1. DELIVERABLES. PRIORITY will provide CLIENT with products and/or services, including marketing, communications, publications, collateral materials, web development, and/or interactive projects (collectively, "Deliverables") as will be set forth in the Project Agreements to this Agreement ("Project Agreements") that may be executed from time to time during the term of this Agreement. This Agreement, together with the applicable Project Agreement, will govern the rights and obligations of the parties regarding the applicable Deliverable. Each Project Agreement will be deemed to incorporate all the terms of this Agreement.

2. PROJECT PROCESS. PRIORITY shall not be obligated to provide any Deliverables to CLIENT unless and until the parties execute an applicable Project Agreement; provided, however, that this shall not relieve CLIENT'S obligation to pay for any products or services that are provided without or outside of a Project Agreement. The nature of the Deliverables requires ongoing communication between the parties and CLIENT approvals. Such CLIENT approvals are to be provided to PRIORITY through email or otherwise in writing; provided, however, that this shall not relieve CLIENT'S obligation to pay for products or services that are provided based on verbal approvals. PRIORITY shall not be obligated to provide any Deliverables that would represent a substantial change to a Project Agreement unless and until the parties execute a change order.

3. CLIENT RESPONSIBILITIES. CLIENT agrees to perform all tasks assigned to CLIENT and to provide all assistance and cooperation to PRIORITY in order to help PRIORITY timely and efficiently complete the Deliverables. In addition to any responsibilities that may be set forth in the applicable Project Agreement, CLIENT agrees to supply PRIORITY, in a timely manner and in accordance with PRIORITY'S technical requirements, all instructions and content to enable PRIORITY to complete the Deliverables. It is CLIENT'S sole responsibility to ensure its compliance with this Agreement and that the content and its usage are relevant, useful to CLIENT, otherwise satisfactory to CLIENT, and do not violate any laws or infringe on the intellectual property or other rights of any third parties, and CLIENT will indemnify PRIORITY regarding any of the foregoing. PRIORITY shall not be obligated to include any of the following in the Deliverables (each to be determined in its sole discretion): anything that might be considered obscene or that relates to anything that might be considered illegal; links to other sites or

materials that might be considered obscene or that relate to anything that might be considered illegal; any hidden or meta text, information, graphics, or other hidden or meta matter; any destructive elements or programming; or anything else that PRIORITY may consider inappropriate; provided, however, that this shall not relieve CLIENT'S responsibility to indemnify PRIORITY regarding any third party claims concerning anything that is included in the Deliverables provided to PRIORITY by CLIENT. PRIORITY shall not be deemed to be in breach of this Agreement or any Project Agreement if PRIORITY'S failure to meet its responsibilities and/or time schedules is caused by (±) CLIENT'S or a third party's failure or delay in meeting its responsibilities. CLIENT shall be responsible for making, at its own expense, any changes or additions to CLIENT'S systems, software and hardware that may be required to support operation of the Deliverables. Unless otherwise specified in a Project Agreement, CLIENT shall be solely responsible for providing all content for the Deliverables. Although some Deliverables may contain security aspects, it will be CLIENT'S sole responsibility in all cases to determine for itself, initially and on an on-going basis, if such aspects are sufficient and to maintain or revise such aspects from time to time. CLIENT will comply with any applicable operating instructions provided by PRIORITY, as the same may be amended by PRIORITY from time to time, regarding the use of Deliverables.

4. MODIFICATIONS. PRIORITY is not responsible for modifications made by anyone other than PRIORITY. If a problem occurs due to modifications made by CLIENT or a third party, PRIORITY reserves the right to not fix the problem. If PRIORITY does agree to fix the problem caused by CLIENT or a third party, PRIORITY'S standard professional services fees will apply.

5. OWNERSHIP & LICENSE. As between the parties, PRIORITY shall own all worldwide rights, title, and interest in and to the Deliverables, including all content, source code, object code, and documentation. Upon payment in full of the fees due for a Deliverable, PRIORITY grants CLIENT a worldwide, royalty-free, non-exclusive, non-transferable right and license to use the Deliverable in the form delivered to CLIENT for the purpose originally contemplated by the Project Agreement for the period of time covered by the subject payment. If CLIENT wishes to use or modify the Deliverable for any other purpose, CLIENT must secure PRIORITY'S prior written consent and must pay

PRIORITY such additional appropriate licensing fees as the parties may at that time agree upon. PRIORITY may use products or services obtained or licensed from third parties in creating the Deliverables, including server-side applications, clip art, back-end applications, music, stock images, or any other copyrighted work. Any such content used for the Deliverables is owned by PRIORITY and/or such third parties, is not transferred to CLIENT, is provided on a non-exclusive basis, and shall remain the property of PRIORITY and/or such third parties. Notwithstanding the foregoing, in the case of custom content developed exclusively for CLIENT, the copyright will, as between CLIENT and PRIORITY, reside with CLIENT upon PRIORITY'S receipt of full payment hereunder, with the exception of any incorporated (i) third party intellectual property, (ii) pre-existing PRIORITY intellectual property, or (iii) intellectual property developed by PRIORITY outside this Agreement, or any derivative works of the foregoing, with a license to CLIENT regarding such intellectual property of the same scope as is described in the second sentence of this Section 5. Except as otherwise contemplated by a Project Agreement, CLIENT may not (i) modify any Deliverable except for the data fields or prompts designed for input of data or software that is licensed for development use by CLIENT; (ii) create any derivative works from any Deliverable; (iii) sell, lease, or sublicense any Deliverable, (iv) make any Deliverable publicly available through a web site or other means; (v) display or allow access to or use of any Deliverable by persons or at facilities other than those authorized under a Project Agreement; (vi) use any Deliverable in a way that would violate any law or that would be contrary to its described or intended use; (vii) decompile, disassemble, reverse engineer, modify or enhance any Deliverable.

6. TERM & TERMINATION. (a) The term of this Agreement shall begin on the Effective Date and shall continue until terminated as set forth herein. Project Agreements shall commence upon the Project Agreement's Effective Date and shall end upon the earlier of: i) the final delivery services; or ii) the Project Agreement's termination specified in the Project Agreement or as set forth herein.

(b) This Agreement may be terminated as follows: (i) by either party: (a) with or without cause, upon thirty (30) calendar days written notice to the other party, (b) if a party is in material breach hereunder (including any non-payment by CLIENT of any invoice when due), which breach is not cured within fifteen (15) calendar days of the party's receipt from the other party of written notice of the intent to terminate based on such breach, or (c) immediately if the other party violates Section 9 (Confidential Information), or (ii) immediately by PRIORITY if CLIENT violates or in any way exceeds the scope of the license granted herein. Any termination

of this Agreement without cause shall be effective upon the expiration or termination date of the final Project Agreement under this Agreement, unless expressly agreed in writing. Any termination of this Agreement with cause shall be effective upon the termination date and Project Agreements shall also terminate effective upon such termination date.

(c) Project Agreements may only be terminated by either party (i) if the other party is in material breach there under (including any non-payment by CLIENT of any invoice when due), which breach is not cured within fifteen (15) calendar days of the party's receipt from the other party of written notice of the intent to terminate based on such breach, or (ii) as otherwise provided in the Project Agreement. Upon termination of any Project Agreement, CLIENT is required to pay PRIORITY all remaining amounts owing up to the date of termination unless otherwise mutually agreed.

7. EFFECT OF TERMINATION. Upon termination of this Agreement or any Project Agreement, (a) with the exception of the license to the Deliverables set forth in Section 5 with respect to Deliverables fully paid for by CLIENT, all rights granted to CLIENT under this Agreement (and the applicable Project Agreement) shall immediately terminate; (b) CLIENT shall immediately cease use of the Deliverables that are not fully paid for; (c) the parties shall cease using each other's confidential information; (d) within fifteen (15) calendar days, each party shall either (i) return all copies of the other party's confidential information or (ii) with the other party's written permission, destroy the same and provide an officer's certificate of such destruction; and (e) CLIENT shall immediately pay any outstanding PRIORITY invoices and all other amounts due. Sections 3 through 12 of this Agreement shall survive termination, as well as any terms of any Project Agreement which, by their nature, should naturally continue beyond termination. In addition to the foregoing, the parties may exercise any legal or equitable remedies they may have regarding the Agreement or Project Agreements or termination thereof. Termination of a Project Agreement does not itself automatically terminate other Project Agreements or this Agreement.

8. FEES. CLIENT shall pay PRIORITY fees and expenses as set forth in the applicable Project Agreement. PRIORITY will charge CLIENT for any additional applicable third party product and service fees. PRIORITY will issue invoices to CLIENT for all fees and expenses, which shall be due and payable upon receipt of the invoice. Any amount not paid within thirty (30) calendar days will accrue a late fee at the lower of one and one-half percent (1.5%) per month or the highest rate permitted by law until fully paid. If CLIENT fails to pay any unchallenged PRIORITY invoice when due, PRIORITY will have the right, in addition to all its other rights and remedies, to require prepayment or other

payment arrangements satisfactory to PRIORITY for any or all subsequent payments. CLIENT will make all payments in United States Dollars. CLIENT will pay or reimburse PRIORITY for all sales, use, excise, value added, and other taxes, duties, and other governmental charges which PRIORITY is at any time required to pay or collect in connection with the sale of any Deliverable hereunder. CLIENT shall not assert any right of deduction or set-off against invoices.

9. CONFIDENTIAL INFORMATION.

Except as otherwise required by the Minnesota Government Data Practices Act, Each party ("Recipient") agrees to hold as confidential all non public and confidential information ("Confidential Information") it receives from the other party ("Discloser"), including (a) any documentation or other written or electronic or other materials that are marked confidential; and (b) each party's technological developments, trade secrets, intellectual property rights, product development, business strategies, business plans and analysis, financial information, personnel information, information about marketing and sales, information about products or pricing, and information about customers. With the exception of CLIENT customer information, Confidential Information does not include information that the Recipient can establish (i) is publicly known without breach of this Agreement, (ii) is known by the Recipient through another source without any obligation of confidentiality, or (iii) was developed independently by the Recipient without reference to the Discloser's Confidential Information. All Confidential Information shall remain the property of the Discloser. Recipient shall not sell, lease, license, or otherwise transfer any rights in, or disclose, or make or allow any unauthorized use of any of Discloser's Confidential Information. Recipient shall use the same care to avoid disclosure or unauthorized use of Discloser's Confidential Information as it uses for its own confidential information, but in no event less than a reasonable standard of care. In the event that Recipient becomes aware of a security breach involving the Discloser's Confidential Information, Recipient will promptly notify Disclosure. Recipient may use Discloser's Confidential Information only in accordance with the purpose of this Agreement or applicable Project Agreement, and shall return such information when Recipient no longer needs it for such purposes, but in no event shall Recipient retain it beyond the earlier of the termination of this Agreement or applicable Project Agreement or Discloser's instruction to return it. With Discloser's written permission, Recipient may destroy Confidential Information in lieu of returning it, and provide an officer's certificate of such destruction.

10. DISCLAIMER OF WARRANTIES. THE DELIVERABLES AND ALL OTHER PRODUCTS OR SERVICES PROVIDED BY PRIORITY ARE

PROVIDED BY PRIORITY AND ACCEPTED BY CLIENT "AS IS," WITHOUT ANY WARRANTIES WHATSOEVER. ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF OR AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE INFORMATION, INFRINGEMENT, ACCURACY, COMPATIBILITY, INTEGRATION, TITLE, MERCHANTABILITY, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE SPECIFICALLY EXCLUDED AND DISCLAIMED. PRIORITY DOES NOT WARRANT THAT THE DELIVERABLES OR ANY OTHER PRODUCT OR SERVICE PROVIDED BY PRIORITY WILL MEET CLIENT'S REQUIREMENTS.

11. LIMITATION OF LIABILITY AND REMEDIES. IN NO EVENT SHALL PRIORITY BE LIABLE, IN CONTRACT, TORT, OR OTHERWISE, TO CLIENT OR ANY THIRD PARTY FOR ANY LOSS OF GOODWILL, PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION, OR ANY OTHER DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES ARISING OUT OF OR IN ANY WAY RELATED TO THE DELIVERY, USE, OR PERFORMANCE OF ANY DELIVERABLES OR OTHER PRODUCTS OR SERVICES PROVIDED BY PRIORITY, EVEN IF PRIORITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. CLIENT SHALL DEFEND, INDEMNIFY AND HOLD PRIORITY HARMLESS WITH RESPECT TO ANY THIRD PARTY CLAIMS ALLEGING DAMAGES OF THE TYPES DESCRIBED ABOVE OR OTHERWISE.

12. GENERAL. (a) Except as may otherwise be provided herein or in a Project Agreement, any notice required or permitted herein shall be given by (i) registered or certified mail, return receipt requested; or (ii) nationally recognized courier service to the other party, at the addresses listed on the first page hereof or to such other address as a party may designate in writing as provided herein.

(b) CLIENT and PRIORITY are acting as independent contractors only, and not as partners or joint venturers, and under no circumstances shall any of the employees of one party be deemed the employees of the other for any purpose.

(c) With respect to each Project Agreement, each party agrees that its personnel who have direct and substantive contact with personnel of the other party shall not, without such other party's written consent, directly solicit for employment any personnel of the other party during the term of the applicable Project Agreement and for a period of one year thereafter. For the avoidance of

doubt, the foregoing does not prohibit either party from employing an individual who applies for a position in response to an internal posting, employment advertisement, or other general solicitation of employment.

(d) PRIORITY may make available to CLIENT third party software and/or services, which shall be deemed part of the Deliverables under this Agreement. Use of third party software or services, maintenance of the third party software and/or support thereof may be conditioned upon CLIENT'S execution of a third party agreement, which agreement would entitle the owner of such third party software or provider of such services, as the case may be, to enforce the terms of such agreement against CLIENT. If there is such a third party agreement, then CLIENT'S use of the third party software and/or services shall be subject to the terms of this Agreement as well as the third party agreement. Notwithstanding anything in this Agreement, CLIENT acknowledges that PRIORITY is not responsible for the use or failure of any third party software or services, nor does it provide CLIENT with any representations or warranties of any nature whatsoever, with respect to such third party software or services, express or implied, including with respect to the data or information provided, nor will PRIORITY be obligated to fix errors or defects in, or maintain or support third party software or services, and PRIORITY'S only obligation with respect to third party software or services is to inform the third party of any bug in the third party software program or deficiency in services, as the case may be, of which CLIENT makes PRIORITY aware in writing.

(e) PRIORITY may add text on a Web Site indicating that the site has been designed and/or authored by PRIORITY and/or provide a hyperlink to PRIORITY'S Web Site. CLIENT shall not remove any such text or links except as instructed by PRIORITY in writing. CLIENT will not remove any PRIORITY copyright, patent, trademark, or other notices from any Deliverables and will include any such notices in any reproductions or modifications of the Deliverables. If CLIENT consents in writing, PRIORITY may use CLIENT's name in advertising and publicity (e.g., PRIORITY Client lists) and to display the materials created under this Agreement in its portfolio or anywhere on PRIORITY'S Web Site or in other materials or places, and may also include a hyperlink to CLIENT'S Web Site.

(f) CLIENT grants PRIORITY a non-transferable, personal, royalty-free, non-exclusive, non-sublicenseable, perpetual license to CLIENT'S name, trademarks and logos for the purpose of providing products or services to CLIENT.

(g) CLIENT will permit PRIORITY to use reasonable means to audit CLIENT'S use of the Deliverables,

including the use of physical inspections, network tests, and inspections, and auditing of electronic and paper records.

(h) This Agreement will inure to the benefit of and be binding upon the parties' successors and permitted assigns. Neither party shall not assign or otherwise transfer any or all of its rights or obligations under this Agreement or under any Project Agreement without the other party's prior written consent.

(i) If any provision is held to be unenforceable, it shall be modified so as to make it enforceable in the way that best advances the spirit of the Agreement. The rule of construing ambiguities against the drafter shall not apply. The term "including" as used in this Agreement means "including but not limited to."

(j) No failure or delay by either party to enforce any right or remedy hereunder will constitute a waiver of that or any other right or remedy. No part of this Agreement or of any Project Agreement may be modified, supplemented, cancelled, or waived, nor may any breach be waived, except through a writing signed by the party against which it is to be enforced.

(k) This Agreement will be governed by the laws of the State of Minnesota, without regard to its choice of law principles. Any dispute, claim, or controversy of any nature whatsoever relating, directly or indirectly, to this Agreement or any Project Agreement, whether arising under contract, tort, property, state, or federal law or otherwise, and whether arising before or after termination or expiration of the Agreement or Project Agreement, shall be resolved before the American Arbitration Association ("AAA") in Minneapolis, Minnesota according to the AAA's expedited commercial rules and procedures. Any ancillary court action (e.g., for preliminary injunctive relief) shall be venued exclusively in a state or federal court in Minneapolis, Minnesota and each party irrevocably submits to the personal jurisdiction of such courts for such purpose. The United Nations Convention of Contracts for the International Sale of Goods shall not apply to this Agreement.

(l) Any conflict between this Agreement and any of its Project Agreements shall be governed by the Project Agreement, but solely with respect to the applicable Deliverable or other applicable issue with the Project Agreement.

(m) This Agreement, along with any applicable Project Agreements, embodies the entire agreement between the parties with respect to the subject matter and supersedes any prior or contemporaneous representations, statements, proposals, negotiations, discussions, understandings, promises, or agreements regarding the same subject

matter. Any pre-printed terms on any materials that the parties use with their other vendors (e.g., order forms, invoices) will be null and void and of no consequence whatsoever in interpreting the parties' legal rights and responsibilities as they pertain to this Agreement. The parties acknowledge that they have not been induced to enter into this Agreement or any Project Agreement by any representations or promises, oral or written, not expressly contained in this Agreement or Project Agreement.

(n) PRIORITY shall defend at its expense any third party notices, allegations, claims, suits or proceedings against the CLIENT, its departments, officers, agents or employees, alleging that the CLIENT'S use of PRIORITY-provided software, deliverables or other

services as permitted by this Agreement infringes, violates or misappropriates the Intellectual Property Rights of any third party, and to pay costs and damages finally awarded in any such suit or agreed to by PRIORITY in settlement with such third party (including reasonable attorney's fees and expenses) provided that PRIORITY is notified promptly in writing of the suit and at PRIORITY's request and at its expense is given control of said suit and all requested reasonable assistance for defense of same. PRIORITY agrees that it shall not settle any claim unless the CLIENT, its departments, officers, agents or employees are unconditionally released from any liability as part of any settlement.

By the signatures of their duly authorized representatives below, PRIORITY and CLIENT, intending to be legally bound, agree to all of the provisions of this Agreement as of the Effective Date set forth above.

City of Rochester

By: _____
Name: _____
Title: _____
Date: _____

Priority Publications, Inc.

By: Jim Lovvorn
Name: Jim Lovvorn
Title: President
Date: 12/7/11

Dated: _____

ROCHESTER PUBLIC UTILITIES

General Manager

CITY OF ROCHESTER

Mayor

Attest:

City Clerk

Reviewed By:

City Attorney



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota to approve contract agreements with Priority Integrated Marketing, and request the Mayor and the City Clerk to execute the agreements for

Project Agreement #1 – RPU Print Magazine
Exhibit A – RPU Print Magazine

The amount of the Project Agreement #1 to be TWO HUNDRED FIFTY-EIGHT THOUSAND AND 00/100 DOLLARS (\$258,000.00) for 2012, with the term of the agreement covering years 2012 through 2015, subject to approval of RPU's annual budget, and request the Mayor and City Clerk to execute the agreements.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 20th day of December, 2011.

President

Secretary