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Patrick McCarthy

API Contract No.: 2015-109502

[REDACTED]  
DMM Media, Inc.  
1911 N Ft. Myer Drive, Suite 400  
Arlington, VA 22209

This letter of agreement between the American Petroleum Institute (hereinafter "API") and DMM Media, Inc. (hereinafter "Consultant") is as follows:

API authorizes Consultant to provide \_\_\_\_\_, as specified in Consultant's statement of work dated March 24, 2015, which is attached and made a part hereof.

1. Consultant agrees Patrick McCarthy shall be the project manager. Consultant shall give API prior written notice of the replacement or reduction in the level of effort of the project manager. API shall have the right to approve a reduction in effort and, in the case of replacement of the project manager, API and Consultant shall jointly agree on a replacement.
2. Technical and administrative aspects of this agreement will be under the direction of Linda G. Rozett, Vice President, Communications, American Petroleum Institute, 1220 L Street, NW, Washington, D.C. 20005, or as otherwise designated. The API representative for work conducted hereunder is Jocelyn Kelly. Consultant shall send all correspondence and reports relating to this agreement to the designated representative's attention at the foregoing address.
3. Consultant shall provide all of the services under this agreement pursuant to a budget amount not to exceed \_\_\_\_\_ which includes all production costs and retainer as detailed in Consultant's attached proposal. The financial terms for this agreement are as follows:
  - a. API shall pay Consultant a retainer of \_\_\_\_\_ for account management and strategy development under this agreement, which Consultant shall invoice in monthly installments of \_\_\_\_\_
  - b. API shall pay Consultant an amount not to exceed \_\_\_\_\_ for production of the advertisements.
  - c. API shall pay Consultant an amount not to exceed \_\_\_\_\_ for placement of the advertisements.
  - d. Television, print, radio and online placement money, including commissions, will be due to Consultant when placement is made. Consultant will invoice API for image rights/original photography, print mechanicals, television and radio production and \_\_\_\_\_

An equal opportunity employer

travel and miscellaneous out-of-pocket expenses (e.g., overnight delivery charges) at cost, with no agency mark-up (all such invoices are due 30 days from the date of invoice). Consultant will pay all fees to media outlets for ad placement.

- e. API may withhold up to 15% of the agreement amount, pending API's acceptance of all deliverables.
  - f. Consultant agrees to follow the guidelines in Attachment A, *API Invoicing and Expense Documentation Guidelines*, including how to submit invoices for payment, what constitutes allowable out of pocket expenses, and payments that the Consultant may not pay directly on API's behalf
- 4. This agreement shall be effective as of March 24, 2015 and shall terminate on May 31, 2015.
  - 5. It is understood that Consultant has sole right to subcontract production and media placement services to vendors of its choosing. Consultant shall be responsible for the performance of and payment to its subcontractors. Consultant is obligated to ensure the performance of any duties under this agreement by any subcontractors complies with Consultant's obligations under this agreement.
  - 6. During the period of this agreement, Consultant shall not represent or engage in efforts for any other party or entity on matters or issues that conflict with positions taken by API. Consultant shall immediately notify the API designee if it becomes aware of the existence of a conflict or potential conflict. Consultant shall not release or discuss any information concerning any work performed hereunder to anyone outside API, without prior written approval of API, except as required by law.
  - 7. Consultant and any of its agents shall comply with and render all services under this Agreement in accordance with all applicable federal, state and local laws and regulations, including but not limited to the Federal Election Campaign Act of 1971, as amended; the gift and travel rules of the United States Senate and the United States House of Representatives, as amended; the Standards of Ethical Conduct of Employees of the Executive Branch; the CAN-SPAM Act; the Children's Privacy Protection Act; and any other applicable lobbying, election campaign finance, gift and travel, ethics, and privacy laws. At all times, Consultant's and its agents' relationships with public officials and candidates for public office will be maintained in such a manner as to avoid any impropriety or appearance of impropriety. Consultant shall not perform any services on API's behalf which could be deemed as lobbying under the Lobbying Disclosure Act of 1995 (Public Law 104-65), as amended. Consultant retains the right to refuse performance of work under this agreement if such work would conflict with Consultant's internal policy prohibiting registration of its employees as lobbyists under the terms of that Act. In such event, API shall adjust the scope of work and all associated fees as may be appropriate.
  - 8. API understands that Consultant's pre-existing proprietary materials used for work under this agreement shall remain the property of Consultant. Such proprietary materials include, but are not limited to Consultant databases, media lists, media training guides, materials and proposals Consultant submits to API that API does not engage Consultant to implement. Notwithstanding any provision of this agreement to the contrary, API shall obtain no ownership rights in or to: (i) materials prepared by Consultant prior to or

outside the scope of this Agreement, excluding items API has requested and paid Consultant to develop; and/or (ii) stock photography or any materials obtained from third parties pursuant to license agreements.

9. All advertisements, photography, art work, reports, drawings, drafts, data, print materials/ mechanicals and other documents or materials developed hereunder, and the right to copyright such reports, drawings, drafts, data and other documents, whether in electronic media or hard copy, shall be the sole property of API, except to the extent that any such materials are proprietary to Consultant or a third party, as set forth in paragraph 8 above, in which case, Consultant grants to API a non-exclusive, unlimited, perpetual license to use such materials as part of any materials developed under this Agreement. API may use its proprietary materials in any manner in which API, in its sole discretion, deems fit and proper, including submission to governmental agencies, use in litigation, or use in other proceedings before governmental bodies. Consultant shall receive approval from API for all advertisements before releasing them for placement.
10. Consultant will not use any materials, whether draft, final, hard copy or electronic format, developed under this agreement, or release or discuss any information concerning this agreement or the work performed hereunder to parties outside API without prior review and written approval from API, unless such information is in the public domain or has otherwise been publicly released by API.
11. It is agreed that API shall have the right Consultant agrees to preserve the confidentiality of information prepared for API, furnished hereunder by API, or received on behalf of API. To that end, Consultant shall not discuss or otherwise release any information concerning its representation of API and API's member companies or any of the work hereunder to anyone outside API, without prior written approval of API's President, except for reports required by law. This includes media contacts, articles or talks before any audiences. In addition, Consultant shall not place itself in a position where it appears or can be assumed that Consultant is speaking for API or its members, except to the extent that Consultant is acting at API's direction. However, Consultant may identify API as one of its clients in its annual report and other internal materials, but must receive written approval from API's Vice President, Communications before identifying API as one of its clients in external materials.

Consultant may not disclose any confidential or proprietary information belonging to API, except that required by law or court or governmental order or process. However, Consultant shall immediately notify and provide a copy to API upon receiving such disclosure orders, provided such notice is not prohibited by law or judicial order. In addition, where possible, Consultant shall give API an opportunity to seek maximum confidential treatment of such disclosure as may be permitted by applicable law, regulation or court order. The parties agree that the requirements of this paragraph are material terms such that failure to comply with this paragraph is grounds for API to terminate this Agreement and entitle API to a refund of all monies paid. At the termination of this Agreement, Consultant will return or destroy (at API's election) all Confidential Information in Consultant's possession or control. The terms of this paragraph survive the termination of this Agreement. This obligation shall survive the termination of this agreement.

12. Consultant and API mutually represent and warrant that none of the material contained in any advertisements or other deliverables will violate or infringe upon the propriety or

statutory rights of any person or entity, or constitute an invasion of anyone's right to privacy. In the event Consultant or API are alleged to have engaged in any conduct which, if true, would constitute a breach of such warranty, the parties mutually shall defend, indemnify and hold each other and their respective officers, directors, members, employees, and agents harmless from any and all claims or causes of actions, including court costs and reasonable attorneys' fees resulting from such conduct.

13. Notwithstanding any other provision of this agreement, API agrees to hold Consultant harmless for actions brought by third parties for API's negligent acts arising out of the performance of this agreement. Consultant agrees to hold API harmless for actions brought by third parties for negligent acts by Consultant and/or its subcontractors arising out of their performance of this agreement.
14. Either party may terminate this agreement by giving 30 days written notice to the other. Upon receipt of such notice of termination, Consultant shall cease incurring costs on this agreement except with the prior approval of API for such costs which are necessary to close out the agreement. In the event of such termination, API's sole obligation will be to reimburse Consultant for actual costs incurred as of the date of termination and subsequent costs incurred with prior approval of API, including legal, uncancellable commitments to third parties. In no event shall such payment include costs and/or anticipated fees for unperformed work or exceed the maximum amount of the agreement as set forth in paragraph 4. Should Consultant elect to terminate this agreement, Consultant agrees to complete any assignments underway, if API so requests, and to refund any unspent, monies prepaid under paragraph 3 of this Agreement.
15. API shall have the right at all reasonable times mutually agreed to by both parties once per calendar year, and for a period of 3 years following termination of the agreement, to inspect Consultant's offices, including records relating to the work conducted hereunder, for the purpose of ensuring conformance with this agreement. Such inspection shall include the right to photocopy records pertaining to work conducted hereunder, excluding individual timesheets and/or personnel records.
16. Upon termination of this agreement, Consultant shall return to API any information furnished hereunder by API, together with all documents, data or other material developed therefrom.
17. It is understood that Consultant is acting as an independent contractor in its performance of any and all work hereunder.
18. Neither party's aggregate liability arising out of, or relating to, this agreement (whether in contract, tort or other legal theory) shall exceed the amount of fees payable by API to DMM pursuant to this agreement. In no event shall either party be liable to the other party for any special, consequential, punitive or other indirect damages (including, but not limited to, lost revenues or profits), whether or not notified of such damages. This paragraph shall survive termination or expiration of this agreement.
19. Consultant will not use the trademark or name of the American Petroleum Institute or any abbreviation thereof, in any publicity, advertising, or for other promotional purposes without the prior written approval of API, except as needed to execute its responsibilities under this agreement.

20. Consultant shall be responsible for payment of all taxes solely based on Consultant's income as may be applicable under the agreement. API shall be responsible for all other taxes, including, without limitation, taxes on the sale or use of goods and services, value added taxes, and general services taxes, imposed by any government or taxation authority, as a result of Consultant's performance of the services.
21. With API's consent, Consultant may assign this agreement to an affiliate. Approval will not be unreasonably withheld.
22. The laws of the District of Columbia shall govern the terms of this agreement. The parties agree that the only venue for hearing any disputes related to this Agreement shall be the District of Columbia.
23. This agreement may be signed in multiple counterparts that together shall constitute a single agreement. This agreement, including any modifications, waivers, or notifications relating thereto, may be executed and delivered by facsimile, electronic mail, or other electronic means. Any such electronic transmission shall constitute the final agreement of the parties and conclusive proof of such agreement.
24. Any change, modification, extension, termination, or waiver of this agreement or any of its provisions must be in writing and signed by the undersigned or their successors.
25. In the event of inconsistencies between this agreement and its attachments, the express terms of this agreement shall govern.
26. The terms and conditions of this agreement may only be modified in writing and signed by the undersigned or their successors.
27. Paragraphs 7-26 shall survive the termination of this agreement.

If the above terms and conditions are acceptable, please sign below and return an executed copy of this agreement to API.

DMM Media, Inc.



Date: 4/10/2015 | 9:21 PM ET

American Petroleum Institute



Linda Rozett  
Vice President, Communications

Date: 4/15/2015 | 1:06 PM ET

**ATTACHMENT A: API INVOICING AND EXPENSE DOCUMENTATION GUIDELINES**

Consultant shall provide this Attachment A to their Account Manager and/or Billing Department

Please review these Guidelines carefully. Incomplete invoices or unsubstantiated expenses will result in payment delays. For questions, contact the API representative named in the agreement. Sections III and IV also apply to invoices submitted for subcontractor expenses.

**I. General Invoice Guidelines**

1. Invoices shall reference API Contract No.: 2015-109502.
2. Each invoice shall have a unique invoice number that will not subsequently be reused.
3. Unless otherwise specified in the agreement, invoices shall be in US dollars.
4. Invoices must provide a detailed description of the services provided. This includes, but is not limited to, tasks performed, hours worked, goods procured, itemized expenses.
5. API may request specific activity/expense itemization on the invoice.
6. Invoices are payable within 30 days of API's receipt of a complete and accurate invoice.
7. API may withhold up to 15% of the agreement amount, pending API's acceptance of all deliverables.
8. API will request a current W-9 and banking information from new vendors; payment shall be contingent upon return of the W-9. Other information may be requested from international vendors.

**II. Submitting Invoices for Payment**

1. API uses Anybill, a third party vendor, to receive and route API invoices for payment.
2. Submit invoices to Anybill using one of the following methods; do not include API staff on communications to Anybill.
3. Complete invoices shall be submitted to Anybill using one of the following methods:
  - a. **Anybill Email (preferred):**
    - i. Email submissions should be made up of ONE PDF FILE per invoice.
    - ii. Individual PDF files cannot exceed 9MB. If greater, separate invoice & documents into as few PDF files as possible, name in sequence (i.e., 1 of x), and submit in a single email.
  - b. Anybill Fax:

**III. Required Supporting Documentation**

1. Documentation is required when seeking expense reimbursement of \$75 USD or more.
2. Documentation must clearly show the amount incurred by Party; estimates are insufficient.
3. Expenses must be itemized on the invoice, or an attachment to the invoice, such that totals match amounts on supporting documentation.
4. Receipts must be legible, oriented upright, and be in the same sequential order as the itemization.

**IV. Out of Pocket Expenses**

1. Reimbursement of travel expenses is limited to coach class transportation and reasonable accommodations if travel is requested by API.
2. Air travel must include the ticketed itinerary stating the fare amount, taxes, fees, etc., as well as class designation.
3. If upgrading from coach class, include documentation identifying the coach fare at the time the ticket was purchased, and clearly identifies the amount of overage paid by Party.
4. Reimbursement for vehicle mileage shall be at the prevailing IRS rate.

-End Attachment A-