

## City of Spencer Advertising Agreement

The City of Spencer is in the business of providing advertising services for a fee.

### *Requirements*

The ads must be no larger than 450 pixels wide by 100 pixels tall and in the format of JPG, GIF or PNG. Animated GIFs are ok. File size will not exceed 100KB. Ads not in this format will be rejected, or if requested, graphics work bills at \$30/hour.

The City of Spencer agrees to publish the ad at the described size and frequency in [www.CityofSpencer.com](http://www.CityofSpencer.com), a website, with one of three frequencies of display as described below:

### *Frequency of Appearance*

Ads will appear equally and randomly on all pages; however, we can influence the randomness in a three tiered fashion:

Tier I. Normal - ads appear as frequently as any other.

Tier II. Increased - ads appear two times more frequently than Tier I.

Tier III. Maximum - ads appear three times more frequently than Tier I.

### *Cost*

The cost for advertising on this site for a period of one year is as follows (check one):

Tier I - \$100

Tier II - \$200

Tier III - \$300

### *Instructions for completing this form*

Email your artwork to [webmaster@cityofspencer.com](mailto:webmaster@cityofspencer.com). Print this form, sign & date where indicated, include a check for the appropriate amount. Limit one form per ad. Mail or bring the completed form to City of Spencer, attn: Kim Reichard, 116 Court Street, Spencer, WV 25276.

The City of Spencer, retains the right to accept or reject any ad submission for any reason; Final approval rests with City of Spencer, and payment is due in full with ad submission. The City of Spencer will not return any work. Advertiser may not resell, assign, or transfer any of its rights hereunder. Any attempt by Advertiser to resell, assign or transfer such rights shall result in immediate and automatic termination of this Agreement, without liability to the City of Spencer.

Printed Name:
Signature:
Address:
Phone Number:

City of Spencer, MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER, INCLUDING WITHOUT LIMITATION ADVERTISING AND OTHER SERVICES, AND EXPRESSLY DISCLAIMS THE WARRANTIES OR CONDITIONS OF NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR ANY PARTICULAR PURPOSE.

Limitations of Liability. In the event that City of Spencer fails to publish an advertisement in accordance with the schedule provided in the Advertising Order, or in the event that City of Spencer fails to deliver the full time period of the Advertising Order (if any), or in the event of any other failure, technical or otherwise of such advertisement to appear as provided in the Advertising Order, the sole liability of City of Spencer and exclusive remedy of Advertiser shall be limited to placement of the advertisement at a later time in a comparable position until the total advertising time is delivered. In no event shall City of Spencer be liable for any act or omission, or any event directly or indirectly resulting from any act or omission, of Third Parties (if any). IN NO EVENT SHALL City of Spencer BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, SPECIAL, LOST PROFITS, INDIRECT OR OTHER DAMAGES, WHETHER BASED IN CONTRACT, TORT OR OTHERWISE, EVEN IF City of Spencer HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. City of Spencer's AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR ANY CLAIM IS LIMITED TO THE AMOUNT RECEIVED BY City of Spencer FROM ADVERTISER FOR THE ADVERTISING ORDER GIVING RISE TO THE CLAIM. Without limiting the foregoing, City of Spencer shall have no liability for any failure or delay resulting from any governmental action, fire, flood, insurrection, earthquake, power failure, riot, explosion, embargo, strikes whether legal or illegal, labor or material shortage, transportation interruption of any kind, work slowdown, or any other condition affecting production or delivery in any manner beyond the control of City of Spencer. Advertiser acknowledges that City of Spencer has entered into this Agreement in reliance upon the limitations of liability set forth herein and that the same is an essential basis of the bargain between the parties.

1. Advertiser's Representations; Indemnification. Advertiser represents and warrants to City of Spencer, and Third Parties (if any), that Advertiser holds all necessary rights to permit the use of the advertisement by City of Spencer for the purpose of this Agreement; and that the use, reproduction, distribution, transmission or display of advertisement, any data regarding users, and any material to which users can link, or any products or services made available to users, through the advertisement will not (a) violate any criminal laws or any rights of any third parties or (b) contain any material that is unlawful or otherwise objectionable, including without limitation any material that encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable law. Advertiser agrees to indemnify, defend and hold City of Spencer and Third Parties (if any) harmless from and against any and all liability, loss, damages, claims or causes of action, including reasonable legal fees and expenses, arising out of or related to (i) breach of any of the foregoing representations and warranties, or (ii) any third-party claim arising from use of or access to the advertisement under this Agreement or any material to which users can link, or any products or services made available to users, through the advertisement under this Agreement.

2. Cancellations. Except as otherwise provided in the Advertising Order, the Advertising Order is non-cancelable by Advertiser. If Advertiser cancels the Advertising Order, in whole or in part, Advertiser agrees to pay the full amount detailed in the Advertising Order and any additional early cancellation charges.

3. Construction. No term or condition other than those set forth in the Standard Terms or in the Advertising Order relating to advertisement scheduling and pricing shall be binding on City of Spencer unless in a writing signed by duly authorized representatives of the parties. In the event of any inconsistency between the Advertising Order and the Standard Terms, the Standard Terms shall control. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior and contemporaneous agreements and communications, whether oral or written, between the parties relating to the subject matter hereof, and all past courses of dealing or industry custom. The terms and conditions hereof shall prevail exclusively over any written instrument submitted by Advertiser, including Advertiser's Advertising Order, and Advertiser hereby disclaims any terms therein, except for terms therein relating to advertisement scheduling and pricing.

4. Confidentiality. "Confidential Information" shall mean (i) advertisements, prior to publication; (ii) the Advertising Order and any City of Spencer statistics that shall be deemed City of Spencer Confidential Information; and/or (iii) any information designated in writing, or identified orally at time of disclosure, by the disclosing party as "confidential" or "proprietary." During the term of this Agreement, and for a period of two years following this term, neither party will use or disclose any Confidential Information of the other party except as specifically contemplated herein. The foregoing restriction does not apply to information that: (i) has been independently developed by the receiving party without access to the other party's Confidential Information; (ii) has become publicly known through no breach of this Section 14 by the receiving party; (iii) has been rightfully received from a third party authorized to make such disclosure; (iv) has been approved for release in writing by the disclosing party; or (v) is required to be disclosed by a competent legal or governmental authority.

5. Termination; Effect of Termination. In the event of a material breach by Advertiser, City of Spencer may terminate this Agreement immediately without notice or cure period, without liability to City of Spencer. In the event of any termination, Advertiser shall remain liable for any amount due under an Advertising Order for advertisement delivered to City of Spencer and such obligation to pay shall survive any termination of this Agreement. If the parties contemplate any provision to survive any termination or expiration of this Agreement, such provision shall survive such termination or expiration. At the request of the disclosing party, the receiving party shall return all of the disclosing party's Confidential Information to the disclosing party.

6. Miscellaneous. This Agreement: (i) shall be governed by and construed in accordance with the laws of the State of West Virginia, without giving effect to principles of conflicts of law; and (ii) will not be governed by the United Nations Convention of Contracts for the International Sale of Goods. This Agreement may be amended only by a writing executed by a duly authorized representative of each party. Advertiser shall make no public announcement regarding the existence or content of the Advertising Order without City of Spencer's prior written approval, which approval shall not be unreasonably withheld. Any dispute hereunder will be negotiated in good faith between the parties within 45 days commencing upon written notice from one party to the other. Any notices under this Agreement shall be sent to the addresses set forth in the Advertising Order (or in a separate writing) by facsimile or nationally recognized express delivery service and deemed given upon receipt. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party. If any provision contained in this Agreement is determined to be invalid, illegal, or unenforceable in any respect under any applicable law, then such provision will be severed and replaced with a new provision that most closely reflects the original intention of the parties, and the remaining provisions of this Agreement will remain in full force and effect.