



Service Agreement

<p>Customer Information (hereinafter "Customer")</p> <p>Downtown Business & Professionals Association</p>	<p>Contractor Information (hereinafter "Contractor")</p> <p>Souris Basin Planning Council PO Box 2024 Minot, ND 58702-2024</p>
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Contract Start Date	February 15, 2021	Contract Completion Date	February 14, 2022
Contract Amount	\$30,000		

This SERVICE AGREEMENT (this "Agreement") is made and entered into by and between the Customer and the Contractor.

Whereas Contractor and Customer desire to form a relationship in which Contractor will provide services as outlined in the Scope of Work.

Now, therefore, in consideration of the premises, and of the mutual promises and undertakings herein contained, the parties, intending to be legally bound, do hereby agree as follows:

1 DEFINITIONS

For purposes of this Agreement, the following terms shall have the following meanings:

- 1.1 "Services" means all services specified in the section Statement of Work.
- 1.2 "Deliverables" means any tangible property, including software media, delivered to Customer under this Service Contract, as specified in the section Statement of Work.
- 1.3 "Project" means the combination of Services and Deliverables to be provided under this Agreement.

2 STATEMENT OF WORK

Contractor shall perform and deliver the Project as set forth in in this section issued against and subject to the terms and conditions of this Agreement.

The Statement of Work shall specify: (i) description of Services and Deliverables, (ii) schedule for Deliverables, and (iii) price and payment schedule.

3 TERM

The term of this Agreement shall commence on the Contract Start Date and shall continue thereafter until the Contract Completion Date, or until terminated in writing by one of the parties, or as provided in Section 11 below.

4 TERMS OF PAYMENT

Projects will be performed on a firm fixed price basis or a time and materials basis, at an agreed upon rate, indicated below. Any additional or unscheduled Services or Deliverables to be provided by Contractor outside of the Statement of Work must be mutually agreed upon in writing signed by both parties hereto referencing this Agreement.

Hourly Monthly Quarterly Weekly One-time Fixed

5 PAYMENT SCHEDULE

Customer will receive invoices based upon the billing/payment schedule as defined in the Terms of Payment. Invoices are due and payable within 30 days of Contractor's invoice date. If any invoice is not paid when due, Contractor may suspend provision of Services and/or Deliverables without liability or penalty until final resolution of the matter.

6 SCOPE OF WORK

The work to be performed is included in Attachment 1: Scope of Work.

7 DELIVERABLES

Except for commercial off-the-shelf type products where the license for such products is contained in the applicable Statement of Work, Customer shall have exclusive unlimited ownership rights to all deliverables developed under this Agreement. All of the foregoing shall be deemed to be work made for hire, except as hereafter specified, and belong to Customer, with Customer having the sole right to obtain, hold, and renew, in its own name or for its own benefit, patents, copyrights, registrations, or other appropriate protection. Customer acknowledges that Contractor uses, or may develop hereunder, methods, concepts, format, organization, templates user interface, techniques, program organization, database structuring techniques, and the like (Contractor proprietary items) that are proprietary to Contractor. It is agreed that these Contractor proprietary items shall remain the sole and exclusive property of Contractor.

8 LIMITATION OF LIABILITY

The total liability of Contractor to Customer from any cause whatsoever, will be limited to the lesser of Customer's actual damages or the Project price paid to Contractor for those Services and Deliverables in a Project that are the subject of Customer's claim. In no event will either party be liable for SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, including but not limited to loss of profits, revenues, data or power, damage to or loss of the use of products, damage to property, claims of third parties, including personal injury or death, suffered as a result of provision of Services or use of Deliverables.

9 WARRANTIES AND REMEDIES

- 9.1 Contractor warrants that with respect to any Deliverable assigned by Contractor to Customer that Contractor has the right to transfer title to Customer.
- 9.2 Contractor further warrants that to its knowledge the Deliverables do not infringe any intellectual property right held by a third party.
- 9.3 Customer's sole and exclusive remedy and Contractor's only obligation for breach of the warranty hereunder will be, at Contractor's option, to correct any material errors in provision of Services or to replace or repair Deliverables which do not conform to the warranty. For Customer to exercise this remedy, Customer must give Contractor notice of such nonconformity within the warranty period, and Contractor must determine that any nonconformity did not arise due to any cause specified below. Contractor shall be given free and full access to deliverables to make corrections, and Customer shall promptly inform Contractor of any changes in the location of Deliverables during the warranty period. If this remedy is adjudged to have failed of its essential purpose, Contractor's total liability will be to refund the price paid to Contractor by Customer for the nonconforming Deliverables. The remedy provided by Contractor for breach of warranty does not include the following, which may be provided, at Contractor's sole option, at Contractor's then-current time and materials rates:
 - 9.3.1 Repair of damage caused by events beyond Contractor's reasonable control.
 - 9.3.2 Repair of damage caused by Customer's improper installation, relocation, or rearrangement of Deliverables.

10 INDEMNIFICATION

Customer shall defend, indemnify, and hold Contractor harmless, at Customer's own expense, against any action or suit brought for any loss, damage, expense or liability that may result by reason of an infringement of any patent, trademark, copyright, or trade secret based upon the normal and intended use of the Deliverables furnished to Contractor hereunder. Should any of the Deliverables furnished to Contractor hereunder become the subject of a claim of any infringement of a patent, trademark, copyright, or trade secret, Customer shall, at its option and expense, deliver non-infringing material, modify the material so that it becomes non-infringing, or procure for Contractor the right to continue using Customer's infringing material.

Customer agrees to indemnify and hold Contractor harmless against all claims, liabilities, demands, damages, or expenses (including attorneys' fees and expenses) arising out of or in connection with Customer's use of the Deliverables.

11 TERMINATION

Termination of Project. Customer reserves the right to terminate a Project in whole or in part, upon 30 days written notice to Contractor. In the event the Project is terminated by Customer prior to completion, Contractor shall use its best efforts to conclude or transfer the Project, as directed by Customer, as expeditiously as possible. Contractor shall not undertake further work, incur additional expenses, or enter further commitments regarding the Project after receiving such notice of termination from Customer, except as mutually agreed upon by the parties. In the event of termination of a Project as described above, Contractor shall be entitled to compensation as follows:

- 11.1 All payments due and owing under this Agreement at the time of Contractor's receipt of the written notice of termination for work completed and in progress, and
- 11.2 Reimbursement for any non-cancelable services and commitments entered by Contractor, in connection with the Project being terminated, provided Contractor provides Customer with documentation of completion of work or expenses incurred.

Termination of the Project shall not affect either party's obligations in connection with any other ongoing Projects and the rights and obligations of all non-terminating parties to the Agreement shall remain in full force and effect.

Failure by either party to comply in any material respect with any of its obligations in this Agreement shall entitle the other party to give notice to the party in default requiring it to cure such default. If such default is not cured within 30 days after receipt of such notice, the notifying party shall be entitled to terminate this Agreement by giving notice of such termination to take effect immediately. The right of either party to terminate this Service Contract, as herein provided, shall not be affected in any way by its waiver of, or failure to act with respect to, any previous default.

12 DELAY OR SUSPENSION OF WORK

If Customer's acts or failure to act causes Contractor to delay or suspend performance of Services, Contractor and Customer will mutually agree to one of the following remedies:

- 12.1 Contractor will use reasonable efforts to continue performance as practicable under the circumstances and Customer will continue to make all scheduled payments; or
- 12.2 Contractor will re-assign personnel to extend Contractor's work schedule without liability, and Customer will pay all additional costs, if any.

Notwithstanding the above, Contractor shall have the right to invoice Customer for any work performed to date of suspension.

13 CONFIDENTIALITY

Contractor and Customer acknowledge that during the performance of a Project, information of a confidential nature may be disclosed between the parties. Such information, excluding the Deliverables and any other information incident to the Deliverables that a party could reasonably be expected to be provided to the other party as contemplated hereunder, shall be considered confidential information ("Confidential Information"). Neither party has the right to disclose the Confidential Information of the other, in whole or in part, to any third party, and neither party will make use of the Confidential Information of the other for its own or a third party's benefit or in any way use such Confidential Information other than for the purposes of performance of this Agreement without the prior written consent of the disclosing party. Each party agrees to take all steps reasonable to protect the other's Confidential Information from unauthorized use and/or disclosure. The parties agree not to copy in whole or in part, any Confidential Information nor modify the same in any way without prior written consent from the other party. Neither party will be liable to the other for the disclosure of Confidential Information if, as shown by clear and convincing evidence, the Confidential Information: (a) is generally known to the public at the time of disclosure by the disclosing party; or (b) becomes generally known to the public through no fault of the receiving party; or (c) was lawfully in the possession of the receiving party prior to signing this Agreement; or (d) is subject to applicable United States laws or a valid court order requiring disclosure of such Confidential Information.

In any judicial proceeding, it will be presumed that the Confidential Information in question constitutes protectable trade secrets of the disclosing party, and the receiving party shall bear the burden of proving that the Confidential Information was publicly or rightfully known or disclosed.

14 PUBLICITY

Contractor may use Customer’s name or mark and identify Customer as a client of Contractor, on Contractor’s website and/or marketing materials. Contractor may issue a press release, containing Customer’s name, related to any award under this Agreement. Neither party will use the other party’s name or marks, refer to or identify the other party for any other reason, except as established in this section, without such other party’s written approval. Any approval required under this Section shall not be unreasonably withheld or delayed by either party.

15 SUBCONTRACTING

Contractor may, at its option, subcontract work under a Statement of Work but Contractor’s use of subcontractors shall not affect its responsibilities under the applicable Statement of Work. Moreover, Contractor shall be fully responsible for work done by its subcontractors within the scope of the applicable Statement of Work as it is for work done by its own employees. Contractor shall have written agreement(s) with its subcontractors that contain, at a minimum, clauses that are the same as or comparable to the sections of this Agreement regarding ownership rights and confidentiality of Customer’s materials.

16 GENERAL TERMS

- 16.1 This Service Contract shall be deemed to have been made, executed, and delivered in the State of North Dakota and shall be construed in accordance with the laws of the State of North Dakota.
- 16.2 NOTICES. Notices to be given by either party under this Agreement shall be sent by electronic means.
- 16.3 SEVERABILITY AND ASSIGNMENT. The invalidity or unenforceability, in whole or in part, of any provision in this Agreement shall not affect in any way the remainder of the provisions herein. This Agreement may not be assigned by Customer without Contractor’s consent.
- 16.4 ENTIRE AGREEMENT. This Agreement, together with any other materials referenced in or expressly made a part of the Agreement, constitutes the final and entire Agreement between Contractor and Customer, and supersedes all prior and contemporary agreements, oral or written.
- 16.5 COUNTERPARTS. The Parties hereto agree that facsimile and digital signatures shall be as effective as if originals.

In Witness Whereof, this Agreement is duly executed by the duly authorized representatives of the parties as set forth below:

Souris Basin Planning Council



Lyndsay Ulrickson, Executive Director

1/29/2021

Downtown Business & Professionals Association



1/29/2021