

Consultant Agreement

This Agreement is made between the University of North Dakota ("University") and

, ("Consultant").

RECITALS

- A. University desires to obtain the services of Consultant; and
- B. Consultant claims to have expertise and experience to provide such services for University.

TERMS

Consultant agrees to perform such professional services, with the standard of professional care and skill customarily provided in the performance of such services as are set forth in this Agreement, and University agrees to pay Consultant such amounts as are specified in this Agreement, all upon the following terms and conditions:

1.0 Scope of Service.

Consultant shall provide the services set forth herein and as described on such Schedules and Addenda as may be attached:

1.1 Services to be performed:

1.2 Reports and Deliverables:

2.0 Fees and Expenses.

- 2.1 University agrees to pay Consultant a fee of dollars (\$) for Consulting Services.
- 2.2 The total fee, and incidentals if any, shall be payable upon submission of an invoice:
- ☐ (1) upon completion of the project, or
 - ☐ in incremental phases upon completion of each phase of the work.
- 2.3 Consultant agrees that Consultant is solely responsible for payment of income, social security, and other employment taxes due to the proper taxing authorities, and that University will not deduct such taxes from any payments to Consultant hereunder.
- 2.4 University shall reimburse the following incidental out-of-pocket expenses that are checked and initialed up to an amount reasonable and necessary for the performance of the Consulting Services:
- ☐ (1) local travel;
 - ☐ (2) round-trip air (coach) from to the project;
 - ☐ per diem subsistence not to exceed \$ per day.
- 2.5 Consultant shall submit an invoice and adequate receipts and documentation as requested by University to support reimbursement of all reimbursable out-of-pocket expenses and shall provide University with its Federal Taxpayer's Identification number or Social Security Number receiving before receiving payment under this Agreement.

3.0 Term.

The Consulting Services to be rendered by Consultant under this Agreement shall commence not later than and be completed by . Time is of the essence in this Agreement. This term may be extended beyond such completion date if University agrees to the extension in writing.

4.0 Consultant's Capacity and Responsibilities.

- 4.1 The Consultant shall perform as an independent contractor under this Agreement. The Consultant, its employees, agents, or representatives are not employees of the University for any purpose, including, but not limited to, the application of the Social Security Act, the North Dakota Unemployment Act, and the North Dakota Workers' Compensation Act. No part of the Agreement shall be construed to represent the creation of an employer/employee relationship. The Consultant will retain sole and absolute discretion in the manner and means of carrying out Consultant's activities and responsibilities under this Agreement, except to the extent specified in this Agreement.
- 4.2 Consultant shall not have the authority to enter into any contract or agreement to bind University and shall not represent to anyone that Consultant has such authority.
- 4.3 Consultant represents and warrants to University that in performing the Consulting Services Consultant will not be in breach of any agreement with a third party.
- 4.4 The Consultant affirms that, to the best of its knowledge, there exists no actual or potential conflict between the Consultant's family, business, or financial interest and its services under this Agreement;

and, in the event of change in either its private interests or services under this Agreement, the Consultant will raise with the University any questions regarding possible conflict of interest which may arise as a result of such change.

5.0 Confidentiality of Information.

Consultant agrees not to use or disclose any information it receives from the University under this contract that the University has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by the University. The University agrees not to disclose any information it receives from Consultant that the Consultant has previously identified as confidential and which the University determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, North Dakota Century Code section 44_04_18. The duty of University and Consultant to maintain confidentiality of information under this section continues beyond the term of this contract, or any extensions or renewals of it.

6.0 Compliance with Public Records Law

Consultant understands that, except for disclosures prohibited in Section 5.0, the University must disclose to the public upon request any records it receives from Consultant. Consultant further understands that any records which are obtained or generated by the Consultant under this contract, except for records that are confidential under Section 17, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. Consultant agrees to contact the University immediately upon receiving a request for information under the open records law and to comply with the University's instructions on how to respond to the request.

7.0 Property Rights and Reports.

- 7.1 Consultant agrees that any computer programs, software, documentation, copyrightable work, discoveries, inventions, or improvements developed by Consultant solely, or with others, resulting from the performance of Consulting Services pursuant to this Agreement are the property of University, and Consultant hereby assigns all rights therein to University. Consultant further agrees to provide University with any assistance which University may require to obtain patents or copyright registrations or otherwise perfect or memorialize its ownership, including the execution of submitted by any documents University.
- 7.2 Consultant shall provide copies of a written report within days after the completion of the Consulting Services required by this Agreement. Further, the parties agree that the report was specifically ordered and commissioned by University, and is a work for hire as such term is used and defined in the Copyright Act. Accordingly, University shall be considered the author thereof, and the sole and exclusive owner throughout the world forever of all rights existing therein, including all manuscripts, reports, sketches, drafts, notes, maps, memoranda, etc., relating to the work, and all revisions, editions, and versions thereof in all languages, forms, and media now or hereafter known and developed.

8.0 Termination of Contract.

- 8.1 The University may terminate this Agreement for convenience upon thirty (30) days' prior written notice to the Consultant. In the event of termination for convenience, the Consultant shall be paid for services satisfactorily performed under the Agreement up to the effective date of termination.
- 8.2 The University may terminate this Agreement effective upon delivery of notice to Consultant or at such later date as may be stated in the notice under any of the following conditions:
- 8.2.1 If funding from federal, state, or other sources is not obtained or continued at levels sufficient to allow for the purchase of the services under this Agreement. This Agreement may be modified by agreement of the parties in writing to accommodate a reduction in funds.

- 8.2.2 If federal or state laws, rules, or regulations are modified or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement, or are no longer eligible for the funding proposed for payments authorized by this Agreement.
- 8.2.3 If any license, permit, or certificate required by law, rule, regulation, or the terms of this Agreement, is for any reason denied, revoked, suspended, or not renewed.
- 8.3 The University, by written notice of default (including breach of contract) to Consultant may terminate the whole or any part of this Agreement:
 - 8.3.1 If Consultant fails to provide services called for by this Agreement within the time specified or any extension agreed to by University.
 - 8.3.2 If Consultant fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from University, fails to correct such failures within ten days or such longer period as University may authorize.
 - 8.3.3 In the event a termination under section 8.3.1 or 8.3.2, University may complete the performance of this Agreement by such means as University reasonably selects and Consultant shall be responsible for any additional costs incurred by University in so doing. Any amounts due Consultant for services performed by Consultant in compliance with the terms of this Agreement prior to such termination for default, shall be subject to offset of any additional of costs completing this Agreement and other damages incurred by University as a result of Consultant's default.
 - 8.3.4 The rights and remedies of University provided in the above clauses related to defaults (including breach of contract) by Consultant are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
 - 8.3.5 If applicable, Consultant-owned equipment not removed from premises by the Consultant upon termination of this Agreement and/or after ten days' written notice to the Consultant may be removed and placed in storage by University. All costs of removal, storage, product, and revenue loss shall be borne by the Consultant.
- 8.4 In the event Consultant shall be judged as bankrupt, making a general assignment for the benefit of its creditors, or if a receiver shall be appointed on account of Consultant's insolvency, University may, by written notice to Consultant, without prejudice to any other rights or remedies which University may have at law or in equity, terminate further performance by Consultant of this Agreement.

9.0 Indemnification.

Consultant agrees to defend, indemnify, and hold harmless the University and its officers and employees, from and against claims based upon the vicarious liability of University or its agent(s), but not against University's comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by Consultant to University under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the University is necessary. Any attorney appointed to represent the University must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under section 54-12-08 of the North Dakota Century Code. Consultant also agrees to defend, indemnify, and hold the University harmless for all costs, expenses, and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Agreement.

10.0 Insurance.

10.1 Consultant shall secure and keep in force during the term of this Agreement (and shall require all subcontractors, prior to commencement of an agreement between Consultant and the subcontractor, to secure and keep in force) from insurance companies, government self-insurance pools, or government self-retention funds authorized to do business in North Dakota, the following insurance coverages:

- 10.1.1 Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum limits of \$250,000 per person and \$1,000,000 per occurrence:
- 10.1.2 Workers' compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this Agreement; and
- 10.1.3 Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers' compensation or commercial general liability insurance.

Further, if checked, Consultant will maintain the following coverages:

- ☐ 10.1.4 Professional errors and omissions, including a three-year "tail coverage endorsement," with minimum limits of \$1,000,000 per occurrence and in the aggregate; and/or
- ☐ 10.1.5 Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum limits of \$250,000 per person and \$1,000,000 per occurrence.

10.2 The insurance coverages listed above must meet the following additional requirements:

- 10.2.1 Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of Consultant.
- 10.2.2 This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with the insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Insurers rated less than an "A-" rating must be approved by the University.
- 10.2.3 The duty to indemnify University under this Agreement shall not be limited by the insurance required in this Agreement.
- 10.2.4 University, including its officers and employees, shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable) as additional insured. University shall have all the benefits, rights, and coverages as Consultant under said policies.
- 10.2.5 The insurance required in this Agreement, through policy or endorsement, shall include
 - 10.2.5.1 a "Waiver of Subrogation" waiving any right to recovery the insurance company may have against University.
 - 10.2.5.2 a designated entity notice of cancellation or nonrenewal endorsement giving the Owner the same notification rights as the Contractor under the policy.
- 10.2.6 Any attorney who represents University under the policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under section 54-12-08 of the North Dakota Century Code.

- 10.2.7 Consultant's insurance coverage shall be primary (i.e., pay first) in respect to any insurance, self-insurance, or self-retention maintained by University and that any insurance, self-insurance, or self-retention maintained by the University shall be excess of Consultant's insurance and shall not contribute with it.
- 10.2.8 The legal defense provided to the University under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the University is necessary.
- 10.2.9 The insolvency or bankruptcy of Consultant shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents Consultant from meeting the retention limit under the policy.
- 10.2.10 Consultant shall furnish a certificate of insurance to the undersigned University representative prior to commencement of this Agreement. All endorsements shall be provided as soon as practicable.
- 10.2.11 Failure to provide insurance as required in this Agreement is a material breach of contract entitling University to terminate this Agreement immediately.

11.0 Supervision and Inspection.

- 11.1 Consultant will give sufficient supervision of the Work using its best skill and attention. Consultant will carefully study and compare all specifications and other instructions and will at once report to University any error, inconsistency or omission which it may discover. Consultant shall also employ capable, experienced or reliable workers as may be required for the work to be performed.
- 11.2 University reserves the right to request the removal of any Consultant employee from the project if, in the judgment of University, such removal shall be necessary in order to protect the interests of University. The manner of performance of the Work and all materials used therein shall be subject to inspection, test, and approval of University, and the Consultant shall furnish all information required by University concerning the nature and source of any materials incorporated or to be incorporated into the Work.
- 11.3 Consultant and its employees or agents shall have the right to use those University facilities that are necessary to perform services under this Agreement and shall have no right of access to any other facilities of the University.

12.0 Administration of Agreement - Notification.

- 12.1 The University Contract Representative named below shall be the University's authorized representative in all matters pertaining to procedures or the administration of the terms and conditions of the Agreement.
- 12.2 For information purposes, a University Technical Representative may be indicated below. If listed, the University Technical Representative may be contacted directly by the Consultant to discuss technical issues or schedules related to performance of duties and responsibilities in this Agreement.

University Contract Representative

University Technical Representative

12.3 Notice to Consultant shall be to:

12.4 All communications hereunder shall be in writing and shall be sent by registered or certified mail, return receipt requested or by an overnight courier service to the person(s) listed below. A notice shall be deemed to have been given when received at the specified notification address. Include the Agreement Number (or Purchase Order Number, if applicable) in any notifications. The provisions of this section do not supersede any statutes or rules of court regarding notice of claims or service of process. In the event of a conflict between this section and any statutes or rules of court, the statutes or rules of court govern.

13.0 Force Majeure.

Consultant shall not be held responsible for delay or default caused by fire, riot, acts of God, or war if the event is beyond Consultant's reasonable control and Consultant gives notice to University immediately upon occurrence of the event causing the delay or default or which is reasonably expected to cause a delay or default. In the event of any such delay, Consultant shall only be allowed an extension of the date of delivery for a period equal to the duration of the delay and Consultant shall not be entitled to any extra compensation for such delay. Consultant shall take all reasonable steps to avoid or end such delay.

14.0 Entire Agreement; Modification.

This Agreement (and its attachments, if any) constitutes the entire understanding between the parties with respect to the subject matter hereof and may not be amended except by an agreement signed by Consultant and an authorized representative of University.

15.0 Severability.

The terms of this Agreement are severable such that if any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.

16.0 Governing Law; Forum.

This Agreement shall be governed by and construed under the laws of the State of North Dakota, and the Northeast Central Judicial District Court of North Dakota shall be the forum for any lawsuits arising from or incident to this Agreement.

17.0 Paragraph Headings.

The paragraph headings in this Agreement are inserted for convenience only and shall not be construed to limit or modify the scope of any provision of this Agreement.

18.0 Non-Waiver.

The delay or failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights, nor shall the same be deemed to be a waiver of any subsequent breach, either of the same provision or otherwise.

19.0 Assignment.

This Agreement may not be assigned by Consultant without the prior written consent of University. Any assignment of this Agreement by Consultant in whole or in part, by operation of law or otherwise without the prior written consent of University, shall be void.

20.0 State Audits

All records, regardless of physical form, and the accounting practices and procedures of Consultant relevant to this Agreement are subject to examination by the University or the North Dakota State Auditor or the Auditor's designee. Consultant will maintain all such records for at least three (3) years following completion of this Agreement.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement on

UNIVERSITY:
University of North Dakota

CONSULTANT:

By: _____
(Authorized Signature)

By: _____
(Authorized Signature)

Title:

Title:

Date:

Date: