

LF082708-16
AGREEMENT (CONTRACT) FOR PROFESSIONAL GIS CONSULTANT SERVICES
FOR RAPID CITY, SOUTH DAKOTA

THIS AGREEMENT is made and entered into as of the _____ day of _____, 2008, by and between Rapid City, South Dakota hereinafter called the "City", and Pro-West & Associates, Inc., 8239 STATE 371 NW, P.O. Box 812, Walker, MN 56484, hereinafter referred to as "PWA".

WITNESSETH:

WHEREAS, the City desires to retain the services of a competent and qualified firm to provide GIS Consultant Services to the City.

WHEREAS, PWA (including any employee thereof) is competent and qualified to provide the equipment, services and materials necessary to perform duties according to the specifications and other terms and conditions herein, (Please refer to the attached *Scope of Services Statement*).

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties do agree as follows:

1. DEFINITION OF TERMS USED IN CONTRACT

In this contract, "City" is to mean Rapid City, South Dakota, "data" refers to information provided to PWA by the City and interpreted into a digital format, "timely provide information" is to mean seven days after request for information from City sources, "data devices" refers to equipment or medium, either mechanical, electrical, or magnetic used in or for the permanent storage of computer processed information, "data transfer medium" is to mean CD-ROM or DVD.

2. TERM

PWA shall provide all services and deliver all finished products within the term provided (August 15th, 2008 – December 31st, 2008).

3. WARRANTY

PWA warrants and represents that all services and products called for in this agreement shall be provided as specified by the City. In the event that such services or products are not provided in a satisfactory manner or condition, the City reserves the right to cancel this agreement, and in the event of such cancellation, the City shall be responsible to pay only a pro rata share of the total amount called for under this agreement based upon the services actually delivered to the time of cancellation.

4. LICENSE AGREEMENT between Pro-West & Associates, Inc. ("PWA, Inc.") and Rapid City, South Dakota ("Licensee").

Grant of License. PWA, Inc. hereby grants to Licensee subject to the terms and conditions of this Agreement, a nonexclusive, nontransferable and nonassignable license to use the software and related documentation (collectively the "Licensed Software") listed on the attached Scope of Services Statement, solely for the Licensee's own use and the County Dispatch office use. PWA, Inc. reserves all rights not expressly granted to the Licensee under this License Agreement. PLEASE READ CAREFULLY. THE USE OF THE LICENSED SOFTWARE AND THE REMITTANCE OF THE FEE DESCRIBED IN THE SCOPE OF SERVICES STATEMENT SHALL CONSTITUTE GENERAL ACCEPTANCE OF THIS SOFTWARE LICENSE. IF THE USER CHOOSES NOT TO ACCEPT THIS LICENSE THE LICENSED SOFTWARE SHALL BE UNINSTALLED AND RETURNED TO PWA, INC. WITHIN 30 DAYS OF ITS INITIAL DELIVERY AT NO OBLIGATION TO THE USER.

Taxes. Licensee shall pay all excise, use, sales or other taxes or charges on the Licensed Software.

Term. This agreement shall remain in effect unless terminated in writing by both parties.

Title. The License is not a sale of the original or of any copy of the Licensed Software or any part thereof, and under no circumstances and for no purposes shall Licensee be deemed to be the owner of a copy of the Licensed Software. PWA, Inc. shall at all times retain ownership of the Licensed Software) including without limitation all programs, screen layouts, routines, subroutines, concepts, formulae, ideas, descriptions, specifications and parts and portions thereof), regardless of who may be deemed to be the owner of the magnetic or other physical media on which the Licensed Software is fixed, recorded or copied.

Restriction on Duplication. Licensee shall not copy the Licensed Software, in whole or in part, except for Licensee's own use or archival purposes, and any copy so made must include PWA, Inc's copyright and other proprietary notices.

Restriction on Transfer by Licensee. Licensee shall not have, without prior written consent of PWA, Inc., the right to lease, rent, sell, pledge, assign, sublicense or otherwise transfer or dispose of, in any complete, partial or modified form, the Licensed Software or any copy thereof, or any of Licensee's rights under this Agreement, and any attempt by Licensee to do so without the prior written consent of PWA, Inc. shall be void.

Derivatives, Adaptations and Modifications. Licensee shall not make any derivative, adaptation or modification of the Licensed Software without the prior written consent of PWA, Inc. "Derivative" means any computer program which may be developed containing all or part of the Licensed Software, regardless of the form of code or intended use.

Proprietary Information. The Licensed Software is the copyrighted property of PWA, Inc., and the ideas, systems, and methods of operation and information contained within the Licensed Software are proprietary, trade secret information of PWA, Inc. Licensee shall not

disassemble, decompile, or otherwise attempt to “reverse engineer” any of the Licensed Software, nor shall Licensee permit any other person to do so. In addition: (a) Licensee will prevent any unauthorized copying of the Licensed Software or unauthorized disclosure or use of any PWA, Inc. trade secret information; (b) Licensee shall not use, disclose, reproduce or otherwise make available any PWA, Inc. trade secret information to any person other than employees of Licensee who need to know such information in order to operate the Licensed Software; and (c) Licensee will advise each of its employees who is permitted access to the Licensed Software or to any PWA, Inc. trade secret information of the restrictions upon duplication, disclosure and use contained in this Agreement.

DISCLAIMER OF WARRANTIES. ALL WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, CONTRACTUAL OR STATUTORY, INCLUDING ALL WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE SPECIFICALLY EXCLUDED AND DISCLAIMED.

Termination. The License granted by this agreement shall terminate automatically and immediately in the event that the Licensee violates or fails to abide by any of the terms of this Agreement. In the event of termination under this paragraph, Licensee shall immediately cease making any use of the Licensed Software or any part thereof and shall, within five (5) days after the date of the termination, return to PWA, Inc. the original and all copies, in whatever form and including adapted, modified and partial copies and derivatives, of the licensed Software.

Transferability by PWA, Inc. PWA, Inc. may transfer or assign this agreement or its rights under this Agreement to any successor or assign, or to any person or entity which purchases substantially all of the assets of PWA, Inc.

Waiver and Modification. No provision of this Agreement shall be deemed waived, modified or amended, and no breach excused, unless such waiver, modification, amendment or excuse shall be in writing signed by the parties. The waiver of one default under this Agreement shall not constitute a waiver of any subsequent default.

Entire Agreement. This Agreement constitutes the entire agreement between PWA, Inc. and Licensee regarding the subject matter hereof and may not be amended or modified except by a further written agreement signed by both parties. This Agreement supercedes any and all prior representations, proposals, agreements, negotiations, advertisements, statements or understandings, whether written or oral, relating to the Licensed Software or to any subject covered by this Agreement.

Severability. Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any of its other provisions, which shall remain in full force and effect.

Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

5. INFORMATION

The City shall provide to PWA any and all information within its control that is necessary to prepare the data or applications called for by this agreement. See attached Scope of Services Statement for client responsibilities.

6. EQUIPMENT AND MATERIALS

Except as otherwise provided herein, PWA shall provide all equipment and materials necessary and incidental to gathering and processing the information and preparing the application(s) to fit the specifications. All equipment and materials purchased or provided by PWA shall remain the property of PWA.

7. PAYMENT

As compensation to PWA for performance under this agreement, the City agrees to reimburse PWA SEVENTEEN THOUSAND AND ZERO DOLLARS (\$17,000.00).

8. INDEPENDENT CONTRACTOR

It is agreed by the parties that at all times and for all purposes within the scope of this agreement, the relationship of PWA to the City shall be that of independent contractor and not that of employee. No statement contained in this agreement shall be construed so as to find PWA or any employee of PWA to be an employee of the City, and PWA and any employee of PWA shall be entitled to none of the rights, privileges or benefits of City employees.

9. INSURANCE

A. General Liability Insurance.

1. \$300,000 for claims for wrongful death and each Person for other claims.
\$1,000,000 Each Occurrence
No Less Than \$2,000,000 Aggregate
2. Policy shall include at leased premises, operations, completed operations, independent contractors and subcontractors, and contractual liability.
3. Rapid City must be named additional insured.

B. Business Automobile Liability Insurance.

1. \$300,000 Each Person
\$1,000,000 Each Occurrence
No Less Than \$2,000,000 Aggregate
2. Must cover owned, leased, or rented vehicles

C. Workers' Compensation.
Per statutory requirements.

D. Professional Liability Insurance
Provider shall maintain at its sole expense a valid policy of insurance covering professional liability, arising from the acts or omissions of Provider, its agent and employees in the amount of not less than \$1,000,000 per claim and \$1,000,000 annual aggregate.

10. INDEMNIFICATION

Professional agrees to defend, indemnify and hold the City, its officers, employees and agents harmless from any liability, claims and damages, costs, judgments or expenses, including reasonable attorney's fees, which the City may hereafter sustain or be required to pay as a result of any act or omission on the part of the Contractor and its employees, agents, representatives, and sub-contractors, in the performance of the services provided under this agreement.

11. SERVICES NOT PROVIDED FOR

No claim for services or materials by PWA not specifically provided for in this agreement will be honored by the City.

12. SUB-CONTRACTS

PWA shall not enter into sub-contracts for any of the services to be performed hereunder without the prior written consent of the City and such consent shall not be unreasonably withheld.

13. RIGHT TO SUSPEND OR CANCEL

The City has the right to suspend (from time to time) the performance of services by PWA under this contract should it determine, in its sole discretion, to do so. In the event of a suspension, the City will allow PWA a reasonable extension to rectify the issues that led to the request for suspension. Upon suspension or cancellation of this contract by the City, under this paragraph, PWA will be entitled to be paid a pro rata share of the total amount called for under this agreement for work satisfactorily completed prior to such suspension or cancellation.

14. ENTIRE AGREEMENT

It is understood and agreed that the entire agreement of the parties is contained herein and that this agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof.

15. REQUIREMENT OF WRITING

Any alterations, amendments, deletions or waivers of the provisions of this agreement shall be valid only when reduced to writing and duly signed by the parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands:

Rapid City, South Dakota

Dated: _____ By _____
Signee

Attest:

Dated: _____ By _____
Signee

Pro-West & Associates, Inc.

Dated: _____ By _____
Annette M. Theroux, President

Dated: _____ By _____
Lee M. Westfield, Vice-President

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE



Attorney

8-19-2008

Date