

**AGREEMENT
FOR PROFESSIONAL SERVICES FOR
DIGITAL GIS BASE MAP DEVELOPMENT SERVICES**

THIS IS AN AGREEMENT made as of December 18, 2000, between the City of Rapid City, 300 Sixth Street, Rapid City, South Dakota 57701, hereinafter referred to as (OWNER) and Horizons, Inc. hereinafter referred to as (CONSULTANT).

OWNER intends to develop a GIS base map including aerial photography and digital scanning products.

OWNER and CONSULTANT in consideration of their mutual covenants herein agree in respect of the performance of professional services by CONSULTANT and the payment for those services by OWNER as set forth below.

1. The Work

- 1.1.** CONSULTANT shall execute the entire Work (the "Work") set forth in the City of Rapid City, Request for Proposals for Digital GIS Base Map Development Services dated November 10, 2000 (Exhibit "A") and Horizon, Inc.'s Response to the Request for Proposals dated December 1, 2000 (Exhibit "B"). The Work is further described as follows:

The project will include two separate components: 1) black and white aerial photography acquisition and 2) digital scanning and rectification. The photographic coverage will be for approximately 72 square miles of land with a pixel size of approximately one foot of ground distance.

2. Contract Sum

In consideration for complete performance of this Agreement, the Owner shall pay Horizons the amount described below:

- 2.1** The lump sum price of Thirty One Thousand Dollars (\$31,000) subject to additions, deletions, or modifications in the Work.

Said payment shall be made in accordance with the provisions stated in this contract.

3. Payments

- 3.1** Horizons shall make an Application for Payment to the Owner on or after the tenth (10th) day of each calendar month and the Owner shall make Progress Payments on the Contract Sum as provided below.

- 3.2** Each monthly Application for Payment shall invoice the Owner for the portion of the Contract Sum earned by Horizons since the period covered by the previously submitted Application for Payment to the tenth (10th) day of the calendar month in which the current Application for Payment is submitted. Horizons shall provide a description of the work performed to complete the payment procedure as a part of the Application for Payment.

- 3.3 Owner shall make full payment of the amount stated in the Application for Payment no later than thirty (30) days (the "due date") after the date of the Application for Payment is mailed to the Owner.
- 3.4 Approval and/or payment of such periodic Applications for Payment (not including Final Payment described below) shall not in any way relieve Horizons of its liability to the Owner for errors, omissions, or other deficiencies in the performance of the services.
- 3.5 Final acceptance by the Owner will occur no later than ninety (90) days after delivery of the final products and services.

4. Changes in the Work

Any changes in the Work, as described in Article 1, must be authorized by a written Change Order on a form provided by Horizons and signed by the Owner and Horizons. The Change Order shall become part of the Work and any adjustment to the Contract Sum shall be according to the unit process stated in Article 2, or if no unit price is stated for work covered in the Change Order, the Contract Sum shall be adjusted as determined by mutual agreement between the Owner and Horizons. Horizons shall not be required to commence changes in the Work until a Change Order is issued. The Change Order shall describe the change in the Work and, if applicable, the amount of the adjustment in the Contract Sum.

5. Title to Work

All final photos prepared by Horizons and all digital data prepared for Owner to be used with commercially available software, shall be considered works made for hire and shall be the exclusive property of the Owner.

6. Responsibilities of Owner

- 6.1 Assist Horizons by placing at its disposal all requested available information pertinent to this Contract, including previous reports and any other data relative to the project.
- 6.2 Arrange for access to and make all provisions for Horizons to enter upon public and private lands as required for Horizons to perform its work under the Contract.
- 6.3 Examine all maps, studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented to the Owner by Horizons and render in writing decisions, when necessary, pertaining thereto within a reasonable time so as not to delay the work of Horizons.
- 6.4 Designate in writing a person to act as representative of the Owner with respect to all work to be performed under the scope of work. Such person shall have complete authority to transmit instructions, receive information, interpret and define the Owner's policies and decisions with respect to the work under this Contract. The Owner shall give Horizons written notification of any change in the Owner's designated representative.

6.5 Obtain approval and cooperation (with Horizons assistance to the extent necessary) of all governmental authorities having jurisdiction over the work under this Contract, and of such other individuals or bodies as may be necessary for the completion of the work. This shall not be construed to mean the obtaining of permits or licenses required for Horizons to legally conduct business in any jurisdiction.

7. Insurance and Indemnification

7.1 Horizons and any Horizons subcontractors shall maintain the following minimum amounts of insurance, hereinafter described, from the insurance companies authorized to do business in the State of South Dakota:

7.1.1 Comprehensive general liability insurance in an amount not less than \$1,000,000 combined single limits per occurrence for bodily injury, personal injury, and property damages.

7.1.2 Worker's Compensation insurance, including all states' endorsement.

7.1.3 Comprehensive automobile liability insurance in an amount not less than \$1,000,000 combined single limits per accident for bodily injury and property damages.

7.1.4 Valuable papers insurance in an amount of at least \$250,000, which is sufficient to assure the restoration of any photography, materials, plans, drawings, maps, field notes, computer tapes, computer programs or other data and reports relating to the work covered by this Agreement in the event of their loss or destruction, until such time as the work has been delivered to the custody of the Owner.

7.1.5 Professional Liability insurance in an amount not less than \$1,000,000.

7.1.6 Aircraft Liability insurance in an amount not less than \$1,000,000.

7.2 Such insurance shall be maintained in full force and effect during the term of this Agreement and shall protect the Owner as an additional named insured by an appropriate endorsement requested by Owner and reasonably available to Horizons without material additional cost.

7.3 Certificates showing that Horizons and subcontractors are carrying the above described insurance in the specified amounts shall be furnished to the Owner within thirty (30) calendar days of execution of this Agreement by Owner.

7.4 Horizons hereby agrees to predicate the hold harmless agreement contained in Exhibit C and by their reference hereby made a part of this agreement.

7.5 After final acceptance and completion of the work the Owner shall have six months in which to give notice to Horizons as to discovery of defects in the services requiring corrections, and as to which the Owner shall give notice to Horizons within a reasonable time, not to exceed ninety (90) calendars days from discovery.

7.6 If Horizons negligently performs services and notice is timely given, Owner shall have the right, at its option, to have Horizons reperform such negligently performed services.

7.7 The provisions of this Article shall survive the termination or cancellation of the Agreement.

8. Termination of the Contract

8.1 The Owner shall have the right to terminate this Contract for cause if it gives fifteen (15) days written notice of Horizon's material breach of this Agreement and Horizons fails to substantially remedy the breach in an additional fifteen (15) days. In the event of such termination, the Owner shall pay Horizons for all Work executed to the date of termination less the reasonable costs of completing Horizon's work.

8.2 Horizons may terminate this Contract if Owner fails to make the progress payments as provided for herein and Horizons gives Owner fifteen (15) days written notice of Horizon's intention to terminate this Agreement.

9. Arbitration

Horizons and Owner may, by mutual agreement, in writing designate any claim, dispute or other matters in question arising out of, or relating to this Contract or the breach thereof, except for claims which have been waived (only to the extent that such waiver is permitted) by the making or acceptance of final payment, to be decided by arbitration. Such written notice shall, if given, specifically identify and describe the claim, dispute or other matter to be arbitrated. Arbitration proceedings shall be initiated only as to claims, disputes and other matters so as identified and described in such agreement, and in accordance with the rules of the American Arbitration Association. This conditional agreement to arbitrate shall, upon the furnishing of such written notice, be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon such award in any court having jurisdiction thereof.

10. Ownership of Documents

Horizons agrees that all materials, reports, drawings, studies, specifications, estimates, maps, computer data tapes, computations and other materials prepared by or for Owner under the terms of this Contract shall upon proper payment by Owner to Horizons be the property of the Owner. However, any processes,

procedures, programs, software, or similar practices of Horizons, whether developed prior to or during the Project Schedule, shall remain the property of Horizons until sold or licensed to Owner for its use or use by others for separate compensation.

11. Delays

Horizons shall not be liable for delays in completion cause by additions to the Work, labor disputes, fire, unusual delay in deliveries, unanticipated weather conditions, or other causes beyond Horizon's control.

12. Confidentiality

Horizons shall keep confidential all information obtained from Owner and designated as confidential by Owner and shall not divulge any confidential information concerning the Work to any person or entity unless written approval is granted by the Owner. Subcontractors of Horizons shall provide a similar undertaking and Horizons may divulge any confidential matter of Owner to Horizons' subcontractors without written approval of Owner.

13. Retention of Records

Horizons shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred under this Contract and shall make such materials available for inspection by the Owner at all reasonable times during the period of this Contract and for the period of three (3) years after the date of final payment to Horizons. Horizons is entitled to reasonable reimbursement for this cost of furnishing such copies.

14. Applicable Law

The construction, interpretation, and performance of this Contract shall be governed by and construed in accordance with the laws of the State of South Dakota.

15. Compliance with Federal, State and Local Laws

Horizons shall comply with all federal, state and local statutes, ordinances and regulations, and shall obtain all permits that are applicable to the Contract

16. Promotional Use

Horizons shall, while maintaining confidentiality required by Article 12, have the right to include descriptions and representations of the work among its promotional and professional materials.

17. Successors and Assigns

Horizons and Owner each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Contract and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Contract. Neither the Owner nor Horizons shall assign, sublet or transfer its interests in this Contract without written consent of the other.

18. Invalid Clause

If any section, clause, or provision of this Contract shall be held invalid, such holding of invalidity shall not affect the validity of any remaining section, clause paragraph, portion, or provision of this Contract.

19. Notices

All notices made pursuant to this Contract shall be in writing and delivered personally or sent by Registered or Certified Mail, Return Receipt Requested, to the parties to the respective address set forth below:

<p>Owner:</p> <p>Marcia Elkins, Director Planning Department City of Rapid City 300 Sixth Street Rapid City, SD 57701</p>	<p>Horizons, Inc.</p> <p>Becky Morton, Technical Representative Horizons, Inc. 3600 Jet Drive P.O. Box 3134 Rapid City, SD 57701/57709</p>
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20. Entire Contract

This Contract supersedes all previous agreements, oral or written, between the Owner and Horizons, and represents the whole and entire Agreement between the parties. The Owner or Horizons have made no other agreements or representations, oral or written. This Agreement may not be altered, modified or amended, except in writing properly executed by an authorized representative of the Owner and Horizons.

IN WITNESS WHEREOF, the parties hereto execute this Agreement on the day and year set forth below.

City of Rapid City

By: _____
Jim Shaw, Mayor

ATTEST:

James F. Preston, Finance Officer

(SEAL)

Horizons, Inc.

By: _____
John T. Dozzi, Vice President