



Minnesota Pollution
Control Agency

October 20, 2008

Resource Management Programs:
Sample *Contract* for use by Public Entities

The Minnesota Pollution Control Agency makes this contract template available to help Minnesota entities begin Resource Management programs. You are encouraged to download and read both the template Request for Proposals and Contract as a starting point for developing an RFP that would work for your institution.

Do not use this template exactly as written or as a boilerplate document. It is the responsibility of each user to customize the document for their own organization, and to ensure that their own final document satisfies their institution's contract rules and review by internal counsel.

Contact me for assistance with Resource Management Programs.

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**CONTRACT BETWEEN {PUBLIC ENTITY} AND {SERVICE PROVIDER}
FOR RESOURCE MANAGEMENT, RECYCLING
AND SOLID WASTE MANAGEMENT SERVICES**

This Contract is made and entered into between {PUBLIC ENTITY}, {PUBLIC ENTITY'S MAILING ADDRESS}, hereinafter "Customer," and {SERVICE PROVIDER} {SERVICE PROVIDER'S MAILING ADDRESS}, hereinafter "Contractor."

1. CONTRACTOR'S OBLIGATIONS

1.1. Contractor shall provide the following services, described as: Resource Management, Recycling and Solid Waste Management services in accordance with Customer's Request for Proposal, attached hereto and incorporated herein as Exhibit A and the Contractor's Proposal, attached hereto and incorporated herein as Exhibit B. Contractor guarantees that the services it provides shall follow guidelines and specifications provided by the Customer and will comply with standards of performance generally accepted in the industry. In the event of a conflict between this Contract and Exhibit A or B, the controlling documents shall be as follows: 1) This Contract; 2) The Customer's Request for Proposal (Exhibit A); and 3) The Contractor's Proposal (Exhibit B).

1.2. Locations of Resource Management, Recycling and Solid Waste Services. The Contractor shall provide Resource Management, Recycling and Solid Waste Management Services at the following Customer locations:

**{LIST THE NAMES AND ADDRESSES OF THE
CUSTOMER FACILITIES AND BUILDINGS}**

1.3. Resource Management Services to be Provided. The Contractor shall provide Resource Management, Recycling and Solid Waste Management Services, as described in the Contractor's Proposal (Exhibit B), including, but not limited to:

- a. Providing collection and recycling of commodities separated from the Customer's waste stream.
- b. Providing collection and processing or disposal of solid waste generated at the Customer's facilities and buildings.
- c. Finalizing and implementing, in partnership with the Customer, a Resource Management Operations Plan.
- d. Assisting the Customer in developing educational and outreach materials and in Educating Customer's employees about the Resource Management program. Educational and outreach materials may include materials, design, design elements, illustrations, photos and text/language, in print, electronic, and video format used for purposes that promote or support the goals of the Resource Management program to Customer's employees and administration. The Customer will be responsible for all printing, production costs, and distribution of education and outreach materials.
- e. Identifying materials that may be reused, returned, sold, and/or recycled along with associated costs, cost reductions, and/or revenue.
- f. Identifying waste reduction activities.
- g. Providing quarterly and annual progress reports.
- h. Attending regular quarterly meetings.

- i. Providing detailed monthly billing, credit, and/or revenue information specific to each task the Contractor performs.
- j. Furnishing and providing maintenance, signage and labels on all external containers directly serviced by { **CONTRACTOR/SUBCONTRACTORS** } at Customer facilities
- k. Picking up spillage and keeping Customer’s solid waste and recycling container locations clean and free of loose refuse.
- l. Recording the actual volume or weight of solid waste and recyclables collected at each location. If tracking is conducted on a volume basis, the Contractor and Customer shall agree on formulas for converting volume measurements to weight measurements.
- m. Recommending solid waste and recycling service adjustments to provide mutually agreed upon Resource Management Services; taking into account long-term environmental benefits as well as short-term and long-term financial rewards for the Customer.

1.4. Resource Management, Recycling and Solid Waste Management Services shall be prioritized in this order:

- a. Prevent or reduce waste at the source;
- b. Reuse, return, or sell;
- c. Recycle or compost;
- d. Process for energy recovery; and
- e. Dispose of waste.

Contractor shall work closely with Customer to develop, implement and maintain the Resource Management Program.

1.5. Resource Management Program Development, Oversight and Reporting.

1.5.1. Resource Management Team: The Customer shall appoint an internal Resource Management Team (Team) to work with the Contractor to develop the Resource Management Program and implement the Resource Management Operations Plan. This Team will include key employees from various Customer departments and operations. This Team may also include consultants retained by the Customer to assist with the implementation of the Resource Management Program. The Team will provide general oversight of the Resource Management Program

1.5.2. Program Liaisons: To assist the parties in the day-to-day performance of this Contract, and to ensure compliance with the specifications of the Contract, each party shall designate a program Liaison. The Liaison shall also be the party’s authorized representative. The parties shall inform the other, in writing, of any change in the designated Liaison. At the time of execution of this Contract, the following persons are the designated Liaisons:

<u>Customer Liaison</u>	<u>Contractor Liaison</u>
<u>(NAME)</u>	<u>(NAME)</u>
<u>(TELEPHONE NO.)</u>	<u>(TELEPHONE NO.)</u>
<u>(EMAIL ADDRESS)</u>	<u>(EMAIL ADDRESS)</u>

- 1.5.3. Customer Liaison: To provide one point of contact, the Customer Liaison will be dedicated to providing all project management and oversight of contracted services on behalf of the Customer. The Customer Liaison may delegate some of this project management and oversight to a consultant retained by the Customer to assist with the implementation of the Resource Management Program. The Customer Liaison serves on the Resource Management Team and is the main point of contact for the Team. The Customer Liaison's responsibilities include:
- a. Working with the Contractor to finalize the Resource Management Operations Plan.
 - b. Implementing Customer's portion of the Resource Management Operations Plan.
 - c. Providing general oversight and management of the Customer's Resource Management Program.
 - d. Identifying opportunities for the Customer to prevent waste at the source and increase waste reduction, reuse and recycling.
 - e. Conducting cost analyses of identified waste prevention, reduction, reuse and recycling opportunities.
 - f. Leading and facilitating the Team including scheduling meetings with the Team and the Contractor, finalizing the Team meeting agendas, and leading and facilitating Team meetings.
- 1.5.4 Contractor Liaison: To provide one point of contact, the Contractor Liaison will be dedicated to providing all project management and oversight of contracted services on behalf of the Contractor including the services of subcontractors unless otherwise negotiated with Customer.

The Contractor Liaison shall work with the Customer Liaison and the Resource Management Team to implement the Customer's Resource Management Operations Plan. Responsibilities of the Contractor Liaison include, but are not limited to:

- a. Working with the Customer to finalize the Resource Management Operations Plan.
- b. Implementing Contractor's portion of the Resource Management Operations Plan including the coordination of subcontractors work.
- c. Identifying opportunities for the Customer to prevent waste at the source and increase waste reduction, reuse, and recycling.
- d. Assisting the Customer with conducting cost analyses of identified waste prevention, reduction, reuse and recycling opportunities.
- e. Advising the Customer on Resource Management Operations Plan implementation strategies that will improve the overall operations and effectiveness of the Resource Management Program.
- f. Preparing quarterly and annual reports on the Resource Management Program.
- g. Attending quarterly Team meetings and other meetings scheduled by the Customer Liaison as required.
- h. Being available to the Customer during day-to-day operations of the Resource Management Program to answer and address any questions, issues, or concerns that may arise.

1.5.5 Transition Plan and Baseline Report.

- a. Contractor shall immediately provide recycling and solid waste services upon the effective date of the contract.
- b. Contractor shall immediately begin tracking volumes or weight of recyclables and solid waste by location upon the effective date of the contract.
- c. The transition period shall not exceed three (3) months from the effective date of the contract.
- d. Contractor shall complete a solid waste and recycling composition analysis of the Customer's existing waste streams using a methodology that is acceptable to Customer.
- e. Working with the Customer or the Customer's consultant, Contractor shall evaluate the operations and costs of the current recycling and solid waste management system through interviews, site visits, invoice and service reviews, and other methods as may be identified by the Contractor.
- f. Contractor shall develop and submit to the Customer a Baseline Report detailing the:
 - i. Solid waste and recycling composition analysis results.
 - ii. Customer's current solid waste and recycling system.
- g. The Baseline Report shall be submitted to the Customer within four (4) months of the effective date of the contract. It is anticipated that the evaluation of the Customer's current solid waste and recycling system shall be for a **NUMBER SPELLED OUT (NUMERAL)** month period.

1.5.6 Resource Management Operations Plan. The Customer Liaison and Contractor Liaison will, in partnership, finalize the Resource Management Operations Plan. The Resource Management Operations Plan items may be amended, following mutual agreement by all parties, including amendments to focus on new priorities identified in the quarterly reports.

- a. Contractor and Customer shall review the Baseline Report and mutually agree on items to be addressed in the finalized Resource Management Operations Plan.
- b. Implementation of the Resource Management Operations Plan shall commence no later than **NUMBER SPELLED OUT (NUMERAL)** months after the effective date of the contract.
- c. The Resource Management Operations Plan shall include:
 - i. Objectives and activities.
 - ii. Roles and responsibilities of each party.
 - iii. Activities and actions for waste diversion.
 - iv. Timeframes for action and activity implementation.
 - v. Methodologies and benchmarks for measuring improvements in waste reduction and recycling initiatives.
 - vi. Timeframes and procedures for re-evaluating the waste stream and making adjustments to the Resource Management Program as necessary.

1.5.7 Quarterly Reports. The Contractor shall submit quarterly reports for use in measuring the success of the Resource Management Program. Reports shall include:

- a. Tons of solid waste collected and disposed of, by location.
- b. Tons of recyclables collected by type and by location.

- c. Tons of solid waste and recyclables collected by employee and/or building square footage by locations.
- d. Quarterly recycling rate by location.
- e. Total tons-of recycling processed and marketed.
- f. Solid waste and recycling collection, processing and disposal cost by location broken out by:
 - i. Cost for each pick up of materials (cost “per pull”) as well as the number of pulls/container.
 - ii. Container/equipment rental fees.
 - iii. Government taxes/fees.
 - iv. Per ton cost for processing of collected recyclables.
 - v. Per ton cost for processing and/or disposal of collected solid waste.
- g. Revenue by material type from recycling commodities, and supporting market information.
- h. Revenue share or credit structure.
- i. Cost savings from implementing the Resource Management Operations Plan.
- j. Summary of Resource Management educational and training efforts.
- k. Recommended program changes including:
 - i. Changes in infrastructure such as an increase in recycling stations, relocation of recycling stations, a reduction in the number or capacity of waste dumpsters, etc.
 - ii. Addition of material types to be collected for recycling.
 - iii. New waste reduction techniques.
 - iv. New or increased internal educational/promotional efforts.
- l. Areas of focus and goals for the subsequent quarter.

1.5.8 Annual Report. Twelve (12) months following the effective date of the contract, the Contractor shall submit an annual report that summarizes current data and information, including data in the quarterly reports, and projected recycling commodity market strength.

1.5.9 Optional Resource Management Services for Additional Costs. The Customer reserves the right to use the Contractor for additional Resource Management services at an extra cost. The services and costs are to be mutually agreed upon, in writing, prior to implementation, that is signed by the parties’ authorized representatives and attached to this Contract as an Addendum. Optional Resource Management services include, but are not limited to:

- a. Public space recycling.
- b. Recycled products cooperative purchasing.
- c. Zero waste event recycling.
- d. Internal reuse program/materials exchange

2. COMPENSATION AND PAYMENT

2.1 Rate of Compensation: The Customer shall pay the Contractor for the services provided in accordance with the rates or fixed fees contained in Contractor’s Proposal (Exhibit B) to this Contract.

2.2 Recyclable Commodities Revenue/Credits: The Contractor will pay the Customer a

portion of revenues received from the recycling of commodities based on the revenue sharing formula in Contractor's Proposal (Exhibit B). [Instead of payments there could be credits applied against the amount due Contractor as shown on Contractor's monthly invoice.]

2.3 New Recycling Commodity Revenue: For any recyclable commodity not identified in the Contractor's Proposal (EXHIBIT B) where a market is identified for that commodity by either party after the contract services are started, the Contractor will pay Customer a percentage of the revenues from recycling of that commodity based on a written negotiated formula that is signed by the Customer and Contractor and attached to this Contract as an Addendum. [Instead of payments there could be credits applied against the amount due Contractor as shown on Contractor's monthly invoice.]

2.4 Cost Savings Credit: The Contractor will determine baseline solid waste and recycling services and a baseline of total combined waste materials generated. On a quarterly basis and based on quarterly reports, the Contractor shall credit Customer for cost savings from overall waste reduction following the baseline determination. The credit for cost savings shall be a percentage of the cost savings, as follows:

{CUSTOMER}	XX%
{CONTRACTOR}	XX%

2.5 Total Contract Price: The total amount of compensation under this Contract shall not exceed **#{MAXIMUM AMOUNT OF COMPENSATION}** prior to any payments (or credits) under paragraphs 2.2 and 2.3 and any credits under paragraph 2.4. [Annual or one-time end-of-contract performance bonuses for meeting specified performance targets may be included.]

2.6 Terms of Payment and Revenue.

2.6.1 General: Payments to Customer should be submitted to: **{CUSTOMER, DIVISION OR OFFICE THAT RECEIVES PAYMENTS, MAILING ADDRESS}**.

2.6.2 Payment: The Contractor shall submit monthly invoices to the Customer summarizing the services provided during the month and the compensation due for those services. The invoice shall deduct from the amount due any credit due Customer. The Customer shall make payment within 30 days of receiving each invoice. Payments to Contractor should be submitted to: **{CONTRACTOR, MAILING ADDRESS}**.

2.6.3 Revenue: The Contractor shall submit monthly payments to the Customer for revenue from recycling commodities. [Instead of payments, there could be additional credits against what Customer owes the Contractor.]

3. TERM

3.1 The term of this Contract shall be for three (3) years beginning on **{MONTH DAY, YEAR}** and terminating on **{SAME MONTH AND ONE DAY BEFORE THE CONTRACT STARTING DAY, BUT THREE YEARS LATER}**.

3.2 Renewal.

- 3.2.1 At the end of the above Contract term, this Contract may be renewed, upon agreement of the Customer and Contractor for up to two (2) additional twelve (12) month periods, provided that Contractor has satisfactorily performed the services herein described. With respect to satisfactory performance by Contractor, the Customer recognizes there will be a transition period to determine baseline activities, followed by a Resource Management Program development period that may consume a significant portion of the initial Contract term. The Customer recognizes that the efforts to improve the Resource Management Program may require a longer-term relationship with the Contractor in order to effectively evaluate the existing program, develop recommendations for change, and track and document the results.
- 3.2.2 Before the commencement of any renewal period, Contractor shall submit verification of an insurance certificate as required under this Contract. Said certificate shall cover the renewal term.
- 3.2.3 Notice of intent to renew shall be given by Customer at least sixty (60) days prior to the contract termination date, but no more than ninety (90) days before the expiration of the contract term.
- 3.2.4 To exercise said option to renew, the parties shall execute an appropriate Addendum to this Contract. The Addendum must be approved according to standard Customer contracting policy.

The following sections can be found in many standard service contracts and are not necessarily specific to resource management contracts. Each public entity will include some combination of these and other contractual requirements based on specific laws and policies governing contractual content. The language herein is for example purposes only. Each public entity using this template must choose for itself which items it needs or wants to cover in its contract, and what approach and contractual language will work best in its situation.

4 GENERAL TERMS AND CONDITIONS

4.1 Compliance With Laws/Standards

- 4.1.1 General: Contractor shall abide by all Federal, State or local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Contract or to the facilities, programs and staff for which Contractor is responsible. This includes, but is not limited to all Standard Assurances, which are attached as Attachment __ to Exhibit A and incorporated herein.
- 4.1.2 Violations. Any violation of such laws, statutes, ordinances, rules or regulations, as well as loss of any applicable license or certification by Contractor shall constitute a material breach of this Contract, and shall entitle the Customer to terminate this Contract upon delivery of written notice of termination to Contractor. Notwithstanding any other provision of this Contract, such termination shall be effective as of the date of such failure or loss.

- 4.1.3 Minnesota Law to Govern. This Contract shall be governed by and construed in accordance with the substantive and procedural laws of the State of Minnesota, without giving effect to the principals of conflict of laws. All proceedings related to this Contract shall be venued in the State of Minnesota.
- 4.2 Independent Contractor Status. Contractor is and shall remain an independent contractor with respect to any and all work performed under this Contract. Nothing herein contained is intended or should be construed as creating or establishing the relationship of partners between the parties hereto or as constituting Contractor as the employee of the Customer for any purpose or in any manner. The conduct and control of the work will lie solely with the Contractor. However, Contractor acknowledges and agrees that Contractor is not entitled to receive any of the benefits received by Customer's employees and is not eligible for workers' or unemployment compensation benefits through the Customer. Contractor also acknowledges and agrees that no withholding or deduction for state or federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due Contractor and that it is Contractor's sole obligation to comply with the applicable provisions of all federal and state tax laws.
- 4.3 Subcontracting. If Contractor utilizes subcontractors to perform any of its duties under this Contract, the Contractor must require the subcontractors to provide proof of insurance to the Customer prior to beginning work under this Contract in the coverage and amounts equal to or greater than what is required for the Contractor. Contractor must also require the subcontractors to agree in writing to defend, hold harmless and indemnify the Customer from any and all liability arising out of the subcontractor's performance of its duties. When subcontractors are utilized, the Contractor remains responsible for complying with all of the terms of this Contract. Contractor shall require each subcontractor, to the extent of the work to be performed by the subcontractor, to be bound by the terms of this Contract.
- Contractor agrees to pay any subcontractor within 15 days of the Contractor's receipt of payment from the Customer for undisputed services provided by the subcontractor. Contractor agrees to pay interest of 1% percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor.
- 4.4 Indemnification. Any and all claims that arise or may arise against Contractor, its agents, or employees as a consequence of any act or omission on the part of Contractor, its agents or employees while engaged in the performance of the Contract shall in no way be the obligation or responsibility of the Customer. Contractor shall indemnify, hold harmless and defend the Customer, its officers, and employees against any and all liability, loss, costs, damages, expenses, claims, or actions, including attorney's fees which the Customer, its officers, or employees may hereafter sustain, incur, or be required to pay, arising out of, or by reason of, any act or omission of Contractor, its agents, or employees in the execution, performance, or failure to adequately perform Contractor's obligations pursuant to this Contract.
- 4.5 Insurance. The Contractor shall obtain and maintain insurance coverage of the types and in the minimum amounts as set forth below during the term of this Contract. Prior to the commencement of the services, Contractor shall furnish to the Customer certificates of insurance evidencing that all insurance required hereunder is in full force and effect.

Contractor agrees to maintain completed operations coverage as required hereunder, whether on an annual liability policy basis or otherwise, for a minimum of three (3) years after Contract termination.

- 4.5.1 Commercial General Liability insurance with minimum limits of not less than (\$ **AMOUNT**) per occurrence/aggregate combined single limit for bodily injury and property damage liability. Such insurance shall include coverage for contractual liability, personal injury and property damage, and shall provide coverage on an “occurrence” rather than on a “claims-made” basis.
- 4.5.2 Standard Worker’s Compensation and Employer’s Liability insurance covering all employees of the Contractor performing services under the Contract, in an amount not less than the statutory amounts.
- 4.5.3 Automobile Liability insurance, written on the comprehensive automobile form, insuring all owned, non-owned and hired vehicles with minimum limits of liability of (\$ **AMOUNT**) combined single limit bodily injury and property damage.
- 4.6 Force Majeure. Neither party shall be liable to the other party for any loss or damage resulting from a delay or failure to perform due to unforeseeable acts or events outside the defaulting party’s reasonable control, providing the defaulting party gives notice to the other party as soon as possible. Acts and events may include acts of God, acts of terrorism, war, fire, flood, epidemic, acts of civil or military authority, and natural disasters.
- 4.7 Liquidated Damages. The Customer shall be entitled to assess liquidated damages against Contractor for failure to perform the following specified obligations under this Contract. The Contractor acknowledges and agrees that the liquidated damages provided herein are not penalties, but represent a fair measure of damages which would be sustained by Customer in the event Contractor defaults on any of the following specified obligations. Customer shall have the right to withhold the amount of liquidated damages assessed by it from any payment owed to Contractor as a credit against, or offset of, such payment amount or, if applicable, draw upon the surety bond required under paragraph ____ to fulfill obligations not met by the Contractor. [Comment: There is no surety bond provision in this Contract. This is not the typical kind of contract for which the Contractor would need to provide a surety bond.]

INSERT LIST OF SPECIFIC DUTIES, DATES AND DOLLAR AMOUNTS

- 4.7.1 **Failure by {CONTRACTOR} to _____ by {Date} \$ _____ per day until complete.**
- 4.7.2 **Failure by {CONTRACTOR} to _____ by {Date} \$ _____ per day until complete.**
- 4.7.3 **Failure by {CONTRACTOR} to _____ by {Date} \$ _____ per day until complete.**
- 4.8 Termination
 - 4.8.1 Termination for Cause: In addition to other specifically stated terms of this Contract or as otherwise provided by law, the following conditions, unless excused, shall warrant termination of this Contract for cause:

- a. Making material misrepresentations either in the attached exhibits and documents or in any other material provision or condition relied upon in the making of this Contract.
 - b. Failure to provide services or payment called for by this Contract within the time specified herein or any extension thereof.
 - c. Failure to perform any other material provision of this Contract.
 - d. Failure to diligently administer the work so as to endanger performance of the terms of this Contract.
- 4.8.2 Notice: Either party may terminate this Contract for cause by giving seven (30) days written notice of its intent to terminate to the other party unless a different procedure and/or effective date is provided within the specific article or paragraph of this Contract under which the default, failure or termination occurs. Said notice shall specify the circumstances warranting termination of the Contract. The terminating party has the option, but is not required, to provide the other party an opportunity to cure the specified default. If an opportunity to cure is provided, it shall be specifically described in the notice of termination.
- 4.8.3 Delivery of Notice/Effective Date: Notice of termination for cause shall be made by certified mail or personal delivery to the authorized representative of the other party. Notice is deemed effective upon delivery of the Notice of Termination to the address of the party as stated in paragraph 4.11 below.
- 4.8.4 Duties of Contractor upon Termination: Upon delivery of the Notice of Termination, and except as otherwise provided, Contractor shall:
- a. Discontinue provision of services under this Contract on the date and to the extent specified in the Notice of Termination.
 - b. Cancel all orders and subcontracts to the extent that they relate to the performance of services cancelled by the Notice of Termination.
 - c. Complete performance of such services as shall not have been cancelled by the Notice of Termination.
 - d. Return all Customer property in its possession within seven (7) days to the extent that it relates to the performance of services cancelled by the Notice of Termination.
 - e. Submit, within thirty (30) days of the effective date of termination:
 - 1. An invoice for the performance of services prior to the effective date of termination, and
 - 2. Make any payment to Customer due under this Contract.
 - f. Maintain all records relating to the performance of the Contract as may be required by the Customer or State law.
- 4.8.5 Duties of Customer upon Termination of the Contract: Upon delivery of the Notice of Termination, and except as otherwise provided, the Customer:
- a. Shall make within thirty (30) days of its receipt of Contractor's invoice referenced in paragraph 2.6.2 above, final payment for any services satisfactorily provided up through the date of termination in accordance with the terms of this Contract.
 - b. Shall not be liable for any services provided after notice of termination, except as stated above or as authorized by the Customer in writing.

- 4.8.6 Effect of Termination Cause: Termination of this Contract shall not discharge any liability, responsibility, or right of any party which arises from the performance of or failure to adequately perform the terms of this Contract prior to the effective date of termination.
- 4.9 Contract Rights/Remedies
- 4.9.1 Rights Cumulative: All remedies available to either party under the terms of this Contract or by law are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 4.9.2 Waiver: Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Contract shall not be construed to be modification of the terms of this Contract unless stated to be such in writing, signed by authorized representatives of the Customer and Contractor, and attached to this Contract as an Addendum.
- 4.9.3 Damages for Breach/Set-Off: Notwithstanding any other provision of this Contract to the contrary, upon breach of this Contract by Contractor, the Customer may withhold final payment due Contractor for purposes of set-off until such time as the exact amount of damages due is determined. [Comment: This paragraph protects the Customer. Contractor would likely demand a reciprocal right of set-off if the Customer breaches the Contract.]
- 4.10 Arbitration/Mediation: In the event a dispute shall arise between the parties to this Contract, the matter may be submitted to binding arbitration or mediation, upon the request of either party, providing both parties agree to the binding arbitration or mediation. Binding arbitration shall be conducted pursuant to the provisions set forth in Minnesota Statutes Section 572.08 to 572.30, as may be amended from time to time. The parties shall use the arbitration services of the Bureau of Mediation Services or the American Arbitration Association, at the discretion of the party that did not request the arbitration.
- 4.11 Notification: Notification required to be provided pursuant to this Contract shall be provided to the following named persons and addresses unless otherwise stated in this Contract, or in a modification of this Contract.

To Contractor:
{NAME, TITLE}
{ADDRESS}

To Customer:
{NAME, TITLE}
(ADDRESS)

Alterations, variations, modifications, or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing, signed by authorized representatives of the Customer and Contractor, and attached to this Contract as an Addendum.

- 4.12 Severability: The provisions of this Contract shall be deemed severable. If any part of

this Contract is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Contract unless the part or parts which are void, invalid or otherwise unenforceable, shall substantially impair the value of the entire Contract with respect to either party.

4.13 Final Agreement

4.13.1 This Contract is the final expression of the agreement of the parties and the complete and exclusive statement of the terms agreed upon, and shall supersede all prior negotiations, understandings or agreements. There are no representations, warranties, or stipulations, either oral or written, not herein contained. This Agreement may be signed in counterparts, each as effective as the original.

4.14 **Minnesota Government Data Practices Act:** Contractor and Customer must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by Customer under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by Contractor under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either Contractor or Customer.

If Contractor receives a request to release the data referred to in this paragraph, Contractor must immediately notify Customer. Customer will give Contractor instructions concerning the release of the data to the requesting party before the data is released.

4.14.1 Confidentiality. Contractor acknowledges that certain not public data, as defined by the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. ch. 13, including private or Confidential Information may be transmitted to Contractor by the Customer in connection with Contractor's performance of this Contract. For all the purposes hereof, and subject to the provisions of the MGDPA, the term "Confidential Information" means all information or material proprietary to the Customer or designated as private or confidential by the Customer to which Contractor may obtain knowledge or access through or as a result of Contractor's relationship with the Customer (including information conceived, originated, discovered or developed in whole or in part by Contractor). Confidential Information includes, but is not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): computer programs, compilations, data including financial data, documentation, and all other information of the Customer which is not deemed public by the MGDPA and which could compromise the Customer's competitiveness in the marketplace. Contractor shall not, at any time, directly or indirectly reveal, report, publish, duplicate, or otherwise disclose to any third party in any way whatsoever any Confidential Information. Contractor shall receive, maintain, and use the Confidential Information with the strictest confidence; shall use its best efforts to keep the Confidential information strictly confidential and to prevent inadvertent disclosure thereof; and shall treat the Confidential Information in at least as confidential a manner as Contractor treats its own confidential information. Contractor agrees to implement such procedures as are necessary to assure protection of Confidential Information. In implementing this paragraph the parties intend to be in full compliance with the MGDPA.

4.15 Ownership of Work Product.

4.15.1 Program Plans Reports, and Data: Except as provided in 4.15.2 below, Contractor agrees that all right, title, and interest in all program plans, reports, data, including, but not limited to, baseline information, billing and monetary data, and all other work products that are produced in performance of this Contract, including those in electronic form, which Contractor and or Customer shall conceive or originate, either individually or jointly with others, are the property of Customer, and are by this Contract assigned to Customer, along with ownership of any and all copyrights in the copyrightable material, and shall be transmitted to the Customer in accordance with this Contract or upon completion or termination of the Contract and final payment to the Contractor.

For purposes of this paragraph Contractor shall include its subcontractor(s), if appropriate, for ownership of materials and providing approval as described herein.

4.15.2 Education and Outreach Materials Produced by Contractor: Educational and outreach materials that are solely produced or procured by the Contractor shall remain the property of the Contractor and cannot be used by Customer outside the scope of this Contract or reproduced or altered by Customer without the written approval of the Contractor, which approval will not be unreasonably withheld. The Contractor will provide a written response to the Customer within {NUMBER SPELLED OUT} (NUMERAL) {BUSINESS OR CALENDAR} days of Customer's written request (fax/email acceptable). Contractor shall also retain ownership of any and all rights to other proprietary materials developed outside this Contract, even though they are used as components in the performance of this Contract.

4.15.3 Education and Outreach Materials Produced by Customer: Education and outreach materials produced by the Customer, either solely or jointly with Contractor, are the property of the Customer and cannot be used by Contractor outside the scope of this Contract or reproduced or altered by Contractor without the written approval of Customer, which approval will not be unreasonably withheld. The Customer will provide a written response to the Contractor within {NUMBER SPELLED OUT} (NUMERAL) {BUSINESS OR CALENDAR} days of Contractor's written request (fax/email acceptable).

IN WITNESS WHEREOF, the parties have executed this Contract on the dates indicated below.

Approved as to form:

{CUSTOMER}

Attorney

Date

By _____

{NAME}

Approved by {CUSTOMER}

Date of Signature: _____

{TITLE}

Resolution No. _____

{NAME OF CONTRACTOR}

Contract No. _____

(I represent and **warrant** that I am authorized by law to **execute** this contract)

and legally bind the Contractor)

By _____

Title _____

Date of Signature _____

AG: #2321429-v1