

**PROFESSIONAL SERVICE AGREEMENT
BETWEEN
REMARK CONSULTING
AND
CITY OF HILLSBORO**

This is an Agreement effective January 1, 2024 (“Effective Date”) between City of Hillsboro (“Customer”), and Remark Consulting (“Remark”) for the provision of Professional Consulting Services (“Services”).

1. **SCOPE.** Under this Agreement, Customer shall purchase and Remark shall supply Services as described in the attached Exhibit(s).
2. **TERM.** This Agreement will commence on the Effective Date. Specific Service and Expiration Dates associated with each service are described in the attached Exhibit(s).

This agreement will auto renew for identical periods upon the expiration.

3. **CHARGES.** Customer agrees to pay the charges shown on the attached Exhibit(s). Applicable taxes shall be added to the charges shown on that Exhibit.
4. **HOURLY RATES:** Should the Customer fail to renew before Service Expiration Date, or if the Customer fails to submit a written request to cancel service at Service Expiration Date, service will automatically renew and be charged at an hourly rate.
5. **BILLING FOR SERVICE.** Remark bills as described in the attached Exhibit(s). Customer shall pay all applicable charges by the 10th day of the current month as described in the attached Exhibit(s). Late payment charges may be assessed and billed at 1 ½ percent per month on the unpaid balance.
6. **TERMINATION.** Either party may terminate this Agreement for cause provided written notice specifying the cause for termination and requesting correction within thirty (30) days is given the other party and such cause is not corrected within such thirty (30) day period. Cause is any material breach of the terms of this Agreement. If Customer terminates this Agreement WITHOUT cause, Customer shall pay for the full term as specified in the attached Exhibit(s).
7. **SERVICE SUSPENSION/MAINTENANCE.** Remark may, from time to time, suspend Service for routine maintenance or rearrangement of facilities or equipment. Remark will give Customer advance notification of the Service suspension.
8. **PERSONAL INJURY; PROPERTY DAMAGE.** Each party shall be responsible for any actual physical damages it directly causes in the course of its performance under this Agreement, limited to damages resulting from personal injuries, death, or property damage arising from negligent acts or omissions; PROVIDED HOWEVER, THAT NEITHER PARTY SHALL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL

DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT.

9. **LIMITATION OF LIABILITY.** REMARK SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT. REMEDIES UNDER THIS AGREEMENT ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY DESCRIBED IN THE AGREEMENT.

10. **NO WARRANTIES.** THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

11. **UNCONTROLLABLE CONDITIONS.** Neither party shall be deemed in violation of this Agreement if it is prevented from performing any of the obligation under this Agreement by reason of severe weather and storms; earthquakes or other natural occurrences; strikes or other labor unrest; power failures; nuclear or other civil or military emergencies; acts of legislative, judicial, executive or administrative authorities; or any other circumstances which are not within its reasonable control.

12. **DISPUTE RESOLUTION.**

A. Other than those claims over which a regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, related directly or indirectly to this Agreement, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association (“AAA”).

B. All Expedited procedures prescribed by the AAA shall apply. There shall be no discovery other than the exchange of information, which is provided to the arbitrator by the parties. The arbitrator’s decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.

13. **LAWFULNESS.** This Agreement shall be governed by the laws of the state of North Dakota.

14. **CONFIDENTIALITY.** Remark agrees that it will not print, download, disseminate, access, use or disclose any information, files or data of Customer except (1) for purposes of providing technical support services in accordance with this Agreement, (2) with Client’s written consent, (3) as authorized or required by law, or (4) to the extent such information, files or data are published or generally known. Customer agrees not to disclose the contents of this contract or the existence of this contract to any person, agency, or governing authority without the written consent of Remark.

15. **GENERAL PROVISIONS.**

- a.) This Agreement will not be assignable by Customer without the express written consent of Remark.
- b.) This Agreement constitutes the entire understanding between Customer and Remark with respect to Service provided herein and supersedes any prior agreements or understandings.

The parties hereby execute and authorize this Agreement as of the latest date shown below:

City of Hillsboro

Remark Consulting

Signature

Signature

Name/Title Printed or Typed

Joe Kramer, Managing Partner

Date

Date

19 South Main
Hillsboro, ND 58045

P.O. Box 9784
Fargo, ND 58106-9784

Address for Notice

Address for Notice

EXHIBIT A
TECHNOLOGY MANAGED SERVICES

City of Hillsboro
January 1, 2024

Remark Consulting will provide the following services to client effective January 1, 2024 through December 31, 2028:

“Desktop or Laptop Computer Support” shall consist of all labor related to maintaining the computer operating system, any programs included in the operating system, Microsoft Office products, and security threat prevention software.

“Server Support” shall consist of all labor related to maintaining Client’s server operating system, any programs included in the operating system, backup software, security threat prevention software, and hard disk defrag software.

“Network Equipment Support” shall consist of all labor related to maintaining configuration, logging (if possible and appropriate), and monitoring of network equipment, including routers, firewalls, switches, spam filters, and other equipment used to move, monitor, or intentionally affect Ethernet traffic on Client’s local area network.

Network Equipment Support shall also consist of working with Client’s Internet Service Provider to maintain proper configuration of Internet equipment at Client’s office, whether owned by Client or Client’s ISP. Consultant will provide all service related to these products.

“Business Assessment and Planning” shall consist of conducting assessments and update inventories of Client equipment on a yearly basis. These findings will be documented in a Client “Technology Plan”. Remark will provide detailed purchasing advice on hardware and software specific to the Technology Managed Services Agreement Scope.

“Annual Budget Meeting” shall consist of meeting with the Client to review the upcoming technology expenditures for the next budget year. This Annual Budget Meeting will document the investments for the next fiscal year including hardware, software, and support services.

“Backups and Power” shall consist of assisting client in monitoring daily backup jobs for successful completion and assisting Client in determining appropriate backup plans. UPS units will be monitored and tested for functionality. Periodic restoration of data will be tested at least once per year.

Exceptions to Technology Managed Services:

Client may have a need to implement other technology projects and services in the future. While they are NOT included in Remark’s “Technology Managed Services” agreement, Remark will be happy to negotiate hourly or project rates for any of the following:

- Website Setup and Maintenance
- Wiring Projects
- Equipment and Software Purchases
- Printer Maintenance and Purchase of Disposable Supplies
- Physical Office Moves
- Setup or Maintenance of Home (Personal) Computers
- “GIS” Programming and Maintenance

Rate:

2024 - \$9,775.00. Subsequent years will have an annual increase of 4%.
Tablet Support – RMM Security Package \$1,260.00.
Offsite Backups - \$1,200.00.

Travel Expenses:

None.

Customer Signature

Date

Confidential to City of Hillsboro and Remark Consulting