



AUGUST 2, 2022

FLATHEAD RESERVATION WATER MANAGEMENT BOARD (FRWMB)  
ROBERT MCDONALD

SIX PONY HITCH, LLC  
[spider@sixponyhitch.com](mailto:spider@sixponyhitch.com)

## PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement") is made this day of \_\_\_\_\_ ("Effective Date"), by and between Six Pony Hitch, LLC ("Design Company") and Flathead Reservation Water Management Board (FRWMB) ("Client"). Design Company and Client (collectively, "Parties"), for good and valid consideration, the sufficiency of which is mutually acknowledged, hereby agree as follows:

### SERVICES

1. Design Company shall perform design services as set forth in Exhibit A to this Agreement, as well as any amendments or changes that are agreed to in writing pursuant to this section (the "Services").
2. Design Company shall charge Client \$200 per hour for the Services. Client agrees that the fees and expenses set forth in Exhibit A are estimates. The final fees and expenses shall be reflected on Design Company's invoices. If Design Company reasonably anticipates the aggregate of fees and expenses will exceed its estimates, Design Company will seek Client's approval before proceeding. In any such event, the Design Company shall have the right to suspend work without liability and with a day-for-day extension of any subsequent deadlines until the Client provides its approval or agrees to a reduction in scope of the Services.
3. Client agrees that Design Company may proceed upon oral authorization of changes that are promptly followed up with written confirmation.

### PAYMENT

1. Client consents to receiving invoices electronically.
2. Payment for the estimated part of this project is due at the beginning of this project. An invoice will be sent to your requested point of contact and will be due upon receipt. If there are any changes to the scope of the project, we will stop work until we have agreed on revised pricing.
3. Payments must be made via ACH or check made out to Six Pony Hitch, 129 Dearborn Avenue, Missoula, MT 59801. Invoices that are not paid within 30 days will incur a late fee of 1.5%, compounded monthly.
4. Design Company reserves the right to stop work immediately and withhold delivery of all deliverables generated by the Services ("Work Product") not yet provided to Client until all overdue invoices and late fees have been paid.

## **REVISIONS**

Each task spells out the number of revisions allowed for that work. A revision is defined as follows:

Any time we make a revision to a product once it has been presented, whether it is a simple alteration or a completely new idea, it constitutes a revision. Please be advised that a change to any work that has already been approved also constitutes a revision. For example, if a wireframe has been approved by you and then you request a change on the homepage contrary to the wireframe, that constitutes a revision.

Additional Revisions: All revisions beyond the scope of the contract will be charged on an hourly basis at our task rate.

## **WORK PRODUCT**

Work product is defined as the final files for the work chosen and approved by the client. For example, in the case of logo work, "work product" is defined as the final logo chosen and does not include all logos presented, nor does it include the design files, or any materials contained therein.

Irrespective of any other provision in this Agreement, in no case shall Client take ownership of any Work Product or be assigned any right to such Work Product including any Intellectual Property until such Work Product has been delivered, accepted and paid for.

## **DISCLAIMERS**

Design Company is not responsible for proofreading copy or other materials supplied by Client.

## **INTELLECTUAL PROPERTY**

Client represents and warrants that it owns and/or has the right to use any Intellectual Property furnished or made accessible to Design Company by Client. Further, Client represents and warrants that it owns and/or has the rights to any domains or web pages to which Design Company transmits Work Product or otherwise has Work Product posted or to which it gives Design Company access to.

As used herein, "Intellectual Property" includes any material subject to patent, trademark, copyright or trade secret protection, including any text, graphic, photo, design or other work of authorship and any right arising or derived from the same including any entitlement to secure or enforce patent, trademark, copyright or trade secret protection.

## TECHNICAL SPECIFICATIONS

This contract is based on cost estimates derived from technical specifications provided by you. Should these technical specifications prove to be incomplete or incorrect, this project may be subject to additional costs.

## TRAVEL

All travel expenses related to your business will be pre-approved by you and will be invoiced separately from this proposal. These could include the following:

- Mileage: the applicable IRS Business Mileage Rate
- Airfare
- Meals overnight (per person per day if overnight stay is required)
- Accommodation within Montana (per person per night)
- Accommodation outside of Montana
- Trains/taxis/flights

## TERMINATION

Either party may terminate the agreement (i.e. the work to be performed under this proposal) at any time after we sign this proposal by providing written notice to the other party at least three (3) days before the termination. We will send you a final bill with a description of the services rendered and the corresponding charges for the final bill. If this agreement is terminated by either party, we will deliver to you all work product developed in connection with the project after payment is made to us as set forth above.

## CONFIDENTIALITY

The parties may, from time to time during the project, provide to one another confidential information, including any information identified as confidential or proprietary, or which ought reasonably under the circumstances to be treated as confidential and/or proprietary, such as this proposal, the work product or information relating to a party's business, operations, products, services or methodologies (collectively the "Confidential Information").

Confidential Information will not include information that (1) is or becomes part of the public domain through no act or omission of the receiving party; (2) was in the receiving party's lawful possession prior to initial disclosure by the disclosing party; (3) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or (4) is independently developed by the receiving party. During the term of this proposal and following the termination of the work for any reason, each party will hold all Confidential Information relating to the other in confidence and will treat such Confidential Information

with the same degree of care that it uses to protect its own confidential information, which will be no less than a reasonable degree of care. The parties will protect the Confidential Information of the other from any unauthorized use by, or disclosure to, any third party.

## **RIGHTS**

We hereby assign to you all right, title and interest, including but not limited to copyrights, trade secrets and any other proprietary rights, in and to all tangible executed work product after payment for the work product according to this proposal. Accordingly, all work product will be your property after payment for such work product according to this proposal and will be deemed to be "works made for hire" under the United States Copyright laws or any equivalent laws of foreign jurisdictions. This proposal does not give either party any ownership rights to, or interest in, the other party's Confidential Information, trade name or trademarks. You hereby consent to us using the work product on our website and to market our business to third parties in connection with requests for proposals and similar requests, and said use shall not constitute prohibited dissemination of Confidential Information. You are solely responsible for ensuring that, prior to signing this proposal, all work product complies with all federal and state infringement laws pertaining to trademarks, copyright matters and any related matters. We are performing the work described in this proposal at your sole direction with respect to such matters. And we have no responsibility for any of the matters described in the proceeding sentence. You will indemnify and hold us harmless from any liability, obligation or cause of action resulting from the matters set forth above and from any liability, obligation or cause of action resulting from any misappropriation of the work product by any third party by virtue of any computer hacking, theft of intellectual property or any related activity.

## **INDEPENDENT CONTRACTOR**

We have been engaged by you as an independent contractor to perform the services described above on an independent contractor basis. As a result, we have the right to determine and control the method and manner of performing the services under this proposal. As an independent contractor, we will be responsible for reporting and paying any federal, state and local taxes arising from this project, and the payment of all other amounts required by law of independent contractors.

## **LAWFUL PURPOSE**

Client may only use Design Company's Services and Work Product as permitted by law and may not use the Services or Work Product to infringe on the rights of any other person or entity. If Client breaches this section, it shall indemnify Design Company to the fullest extent permitted by applicable law.

## INDEMNIFICATION

Client agrees to indemnify, defend and hold Design Company harmless against any Claims brought against Design Company to the extent those Claims arise out of Client's breach of this Agreement.

Client further agrees to indemnify, defend and hold Design Company harmless against any Claims brought against Design Company by any third party alleging (a) a violation of intellectual property rights related to material Client provided, made available to, or directed Design Company to use, or (b) Client gave, transferred or otherwise allowed to use the Work Product, or (c) a violation of the ADA.

The foregoing indemnification obligations are conditioned upon: (a) complete control of the defense and settlement thereof by the Client, provided that Client shall not settle Claims without the consent of the Design Company, such consent not to be unreasonably withheld or delayed; and (b) reasonable cooperation by the Design Company in the defense as the Client may request. The Design Company shall have the right to participate in the defense of Claims with counsel of its choice at its own expense.

Likewise, Design Company agrees to indemnify, defend and hold Client harmless against any Claims brought against Client to the extent those claims arise out of Design Company's breach of this agreement, alleged intellectual property rights violations, unauthorized transmission of Work Product, or ADA violation. The same terms as listed in the paragraph above apply. For purposes of this section, "Claims" means losses, actions, liabilities, damages, expenses, as well as reasonable attorneys' fees and costs.

## LIMITATION OF LIABILITY

Any claim or action by Client against Design Company shall, to the fullest extent permitted by applicable law, be limited to the amount of payments made by Client to Design Company under this Agreement and, in the event that this Agreement governs multiple projects, then to payments made for performance of Services out of which the claim or action arises.

**NOTICES**

Notices shall be delivered in writing by either party to the other by electronic transmission (email) in the following fashion:

*If to Design Company:*

Attn: Spider McKnight  
spider@sixponyhitch.com

*If to Client:*

Attn: \_\_\_\_\_  
\_\_\_\_\_

**GOVERNING LAW**

This Agreement and all actions arising from it shall be governed by the laws of the State of Montana without regard to the conflict of law provisions thereof. Any such actions shall be brought in the state or federal courts located in Missoula County, Montana and the Parties consent to personal jurisdiction in and venue before such courts.

**NO WAIVER**

Any failure by Design Company to enforce any provision of this Agreement shall not constitute a waiver of the enforceability of any such provision and any waiver of any provision of this Agreement shall not constitute a waiver of any other.

**SEVERABILITY**

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**SURVIVAL**

All terms of this Agreement that would naturally extend beyond any termination of this Agreement shall so survive any termination and/or the completion of performance under this Agreement.

EXECUTION

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one copy of the Agreement and may be executed via facsimile or electronic transmission including electronic signature.

ENTIRE AGREEMENT. MODIFICATION

This Agreement constitutes the entire understanding of the Parties regarding the subject matter herein and supersedes any prior agreements or understandings. Except as provided herein, no modification of this Agreement shall be effective unless in writing and consented to by the Parties hereto.

MISCELLANEOUS

Each of the Parties has the opportunity to be represented by its own counsel and acknowledges that it has participated in the drafting of this Agreement, and any applicable rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement. Whenever required by the context hereof: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; and the neuter gender shall include the masculine and feminine genders. The section and paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

*This Agreement becomes effective only when signed by both parties.*

Flathead Reservation Water Management Board (FRWMB)

\_\_\_\_\_  
By

\_\_\_\_\_  
Print Name / Date



8/2/22

\_\_\_\_\_  
Christina "Spider" McKnight, Member-Manager / Date



## EXHIBIT A: SCOPE OF WORK

Six Pony Hitch, LLC (6PH) will work with the Flathead Reservation Water Management Board (FRWMB) to complete the following scope of work:

### Logo Option One

*6PH will update the logo design provided by FRWMB by:*

- Rebuilding the provided artwork into vector files
- Cleaning up the “mark”
- Replacing the name with the correct FRWMB full name
- Repositioning the name as a “lockup” with the logo “mark”
- Creating a full logo package with print and digital vector files (*EPS, TIF, PDF, PNG, JPG*)

### Logo Option Two

*6PH will update the logo design provided by FRWMB by:*

- Rebuilding the provided artwork into vector files
- Revising the graphic to include one teepee and one barn with mountain and river images
- Adding the FRWMB complete name
- Repositioning the name as a “lockup” with the logo “mark”
- Creating a full logo package with print and digital vector files (*EPS, TIF, PDF, PNG, JPG*)

## PROJECT COST ESTIMATE

This project is estimated to take 6PH 18-22 billable hours to complete. At the agreed upon \$200 per hour rate, this projects to an estimate of \$3,600 — \$4,400 for the completed projects. This is subject to change based upon changes in scope as detailed above. 6PH will check in with FRWMB as to the status of the estimate after each phase of the work.