



**RESOLUTION OF THE GOVERNING BODY
OF THE THREE AFFILIATED TRIBES
OF THE FORT BERTHOLD INDIAN RESERVATION**

A Resolution Entitled: *“Recognition of Award of Contract for the Display Design & Research Process for Exhibit Area of the MHA Nation Interpretive Center to Splitrock; Authorization for the Chairman to Execute Contract Agreement in the Amount of \$1,800,000.00.”*

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act and having adopted a Constitution and By-Laws pursuant to said Act; and

WHEREAS, The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of an in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

WHEREAS, Article III of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council is the governing body of the Tribes; and

WHEREAS, Article VI, Section 5(l) of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council has the power to adopt resolutions regulating the procedure of the Tribal Business Council and other Tribal agencies; and

WHEREAS, Article VI, Section 5(c) of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council has the power to administer any funds or property within the exclusive control of the Tribes and to make expenditures from available Tribal funds for public purposes of the Tribes; and

WHEREAS, The Tribal Business Council has determined that it is in the best interests of the Tribe to undertake construction of a new MHA Interpretive Center (the “Project”); and

WHEREAS, The Tribe wishes for Split Rock to complete the display design and research for the exhibit area of the MHA Nation Interpretive Center.

THEREFORE BE IT RESOLVED, The Tribal Council hereby officially awards the contract to Split Rock, who will complete the display design and research for the exhibit area of the MHA Nation Interpretive Center; and

BE IT FURTHER RESOLVED, The Tribal Council hereby delegates authority to the Chairman to execute an appropriate, \$1,800,000.00 agreement with Split Rock for



the Project.

CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 7 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the ^{11th} day of May, 2017; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 6 members, 0 members opposed, 0 members abstained, 1 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman [] voting. [X] not voting.

Dated this ^{June} 23 day of ~~May~~, 2017.

ATTEST:

Handwritten signature of Fred W. Fox in blue ink.

Tribal Secretary, Fred W. Fox
Tribal Business Council
Three Affiliated Tribes

Handwritten signature of Mark N. Fox in blue ink.

Tribal Chairman, Mark N. Fox
Tribal Business Council
Three Affiliated Tribes

AGREEMENT

THIS AGREEMENT is entered into this 3rd day of May, 2018 between MHA Interpretive Center, hereinafter referred to as "Owner," and Sommerville-Wilson, Inc. d/b/a Split Rock Studios, St. Paul, Minnesota, hereinafter referred to as "SRS."

Owner agrees to engage SRS, and SRS hereby accepts such engagement from Owner, to design, fabricate, and install MHA Interpretive Center Exhibits at 9386 Highway 23, New Town, ND 58763 as described in the "Scope of Work", Attachment "A", upon the following terms and conditions.

1. Schematic Design & Design Development

Schematic Design and Design Development shall be coordinated with the Owner as appropriate, and shall be completed pursuant to the "Project Schedule", Attachment "B". See Attachment "A" for scope of work.

Owner shall give prompt and thorough consideration to all designs, sketches, drawings, proposals, and specifications submitted to the Owner by SRS and shall inform SRS of its decisions within a reasonable time so as not to delay or interrupt the work and schedule of SRS.

2. Pre-Production, Production Shipping and Installation.

Upon approval by the Owner, SRS shall commence pre-production, then production of the Exhibit. The Exhibit shall include all components identified within approved line-item estimate at end of Design Development. Pre-production, production, installation will be supervised by SRS project managers and the lead builder, who may engage subcontractors as deemed necessary and appropriate. All Exhibit production work will be performed by SRS employees except as appropriate. Installation of the Exhibit as described in Attachment A shall be undertaken by SRS under the supervision of its own personnel.

Upon performance of the production and installation, SRS shall provide the Owner with a complete set of construction drawings, maintenance and cleaning instructions, and product information. Production and installation shall be completed in accordance with the "Project Schedule", Attachment "B", as modified during the project. See Attachment "A" for scope of work.

3. Title.

Title to all work and any materials incorporated therein shall pass to the Owner upon delivery to the Owner or upon payment, whichever occurs first. Title to partially completed work shall pass at the time of any payment by the Owner for the percentage of work completed as of the date of such payment. SRS shall, at the request of the Owner, execute such instruments as may be reasonably necessary to effectuate these terms.

4. Warranties.

SRS hereby provides warranties as follows:

- a. SRS warrants a one (1) year guaranty of workmanship from the date of substantial completion of installation for all exhibits and mechanical devices supplied as a part of this Agreement.
- b. SRS warrants that the materials and equipment furnished pursuant to this Agreement will be of high quality, free from defects, and new unless otherwise required or permitted, that the work will conform to the requirements of all contract documents, and will be of such quality so as to pass without objection by the museum community as fit for use as museum exhibits.
- c. SRS warrants that its services will be in compliance with the requirements of all regulatory authorities with jurisdiction to prescribe and enforce standards or regulations with respect to the project and with all applicable local, state, and federal laws, statutes, ordinances, codes, orders, rules, and regulations.
- d. SRS warrants that it will deliver any and all Exhibit work designed and fabricated pursuant to this Agreement in safe condition, and free of liens or encumbrances.

SRS warranties do not cover normal maintenance, cleaning, lubrication or normal wear and tear of the Exhibit, nor damage resulting from abuse, improper maintenance, or operation of the Exhibit by the Owner nor by casualty, vandalism, or conduct of unrelated third parties.

5. Price and Payment.

In consideration of services undertaken by SRS and described in this Agreement, Owner shall remit payment in the sum of \$1,700,000 exclusive of sales tax, allocable pursuant to the "Cost Breakdown" as set forth in Attachment "C" incorporated herein by reference.

Terms of Payment shall be as described in the "Payment Schedule" as set forth in Attachment "D." Payments shall be remitted by the Owner to SRS within 30 days of receipt of billing by the Owner. Further detail regarding pricing for this contract can be found in the "Cost Breakdown", Attachment "C". SRS certification for payment shall constitute a representation that the work has progressed to the point indicated, that to the best of knowledge, information, and belief, the quality of work is in accordance with contract documents, and that all lien waivers and certificates required have been furnished in proper form.

6. Late Payment.

The Parties agree that if the Owner fails to make any payments set forth in the contract, a late payment penalty will be charged at the rate of 1.5% per month, imposed immediately after payment is due.

7. Change Orders.

The Owner may request changes in the work after the production phase has begun, including deletions, additions, or revisions, which fall within the general scope of the Agreement. Upon consultation and mutual agreement by the parties, the contract price and completion schedule shall be adjusted accordingly and equitably. Change orders shall be memorialized by written form signed by authorized representatives of both parties. SRS shall have no authority to unilaterally initiate changes in the work after the production phase of the project has begun without prior approval of the Owner.

8. Termination.

The Owner shall allow commencement of design development, production, and installation phases contingent upon the Owner's approval of work submitted by SRS at the conclusion of each precedent phase. The Owner shall be authorized to terminate this Agreement at the end of any phase if the Owner determines for cause that approval should not be granted. In each instance, SRS shall be promptly compensated for all work performed and undertaken in performance of this Agreement and for its costs and expenses occasioned by such termination.

9. Project Coordination.

SRS shall incorporate and coordinate its work with that of any Architect and/or Builder, as appropriate, as designated by the Owner, and agrees to use its best efforts to cooperate and reasonably coordinate their activities with those of the Architect and/or Builder as necessary to effectuate completion of the project work.

10. Subcontractors.

SRS, at its option, may use one or more subcontractors to complete any of its production obligations under the Agreement. SRS shall submit the identity of any subcontractor to the Owner as requested by the Owner. SRS shall prepare all subcontracts or documents for subcontractor's use as necessary.

11. Relationship of Parties.

SRS shall be considered an independent contractor in connection with this Agreement and shall not be deemed an employee. SRS shall have the authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written consent.

12. Access to Site.

SRS shall be provided access to the site at intervals appropriate to the stage of installation and the status of the project work. The total number of visits to the site shall not be limited in number; it is the intention of the parties that SRS shall make as many such visits as are required to fulfill the responsibilities of SRS hereunder. The Owner shall take all reasonable precautions to provide work premises of a safe and sound condition with a minimization of hazards to life and property, and the Owner shall provide appropriate premises insurance and other indemnity for the protection of SRS, its personnel, and its contract work. During installations SRS anticipates working 12 hours a day and 7 days a week. Exhibit furniture installation including casework, graphics, AV, and artifacts will commence when the client has Certificate of Occupancy.

13. Project Delay.

The Owner shall discharge all responsibilities including progress review, access to site, delivery of approvals, timeliness of payment and related obligations, so as not to occasion delay to SRS. Any such delays shall extend the deadline for completion by a like period of time and potentially increase the contract sum commensurate with costs, expenses, and compensatory, consequential, and

economic damages, including, but not limited to, storage and transportation costs and fees, occasioned by such delay.

14. Exclusivity of Obligations.

SRS shall not obligate the Owner for the payment of any money or for the performance of any obligation without the Owner's prior written consent. The Owner shall have no contractual or employment relationship with any consultants, subcontractors, employees, or others who may be hired or used by SRS in performance of the work pursuant to this Agreement.

15. Arbitration.

The Owner and SRS agree that, in the event of any disputes concerning the performance of this Agreement and/or interpretation of its terms, and upon demand by either party hereto, any such dispute shall be submitted to arbitration in accordance with the American Arbitration Association at its offices in Minneapolis, Minnesota or elsewhere upon the mutual consent of the parties.

16. Insurance.

SRS shall procure and maintain appropriate insurance coverage in the form of commercial general liability, worker's compensation, employer's liability, and automobile public liability as appropriate. The Owner shall provide and maintain All Risk Builder's Risk Property Insurance for coverage upon the project site in structure in which SRS work is to be installed in an amount equal to 100% of the insurable value thereof. Any proceeds of such insurance shall be payable jointly to the Owner and SRS as their interests may appear. The Owner and SRS waive all rights against each other with respect to damage or casualty covered by such insurance, except for such rights as they may have to proceeds of the insurance.

17. Representations of SRS.

SRS represents to the Owner that it is not in default under any law or ordinance, or under any Order of any Court or federal, state, municipal, or other governmental department, commission, board, bureau, agency or instrumentality wherever located; its operations are in compliance with all applicable laws, permits, and ordinances, and there are no claims, actions, suits, or proceedings pending, or threatened, against or affecting SRS or any shareholder thereof, at law or in equity, or before any governmental agency, which might result in any material adverse change in the financial condition or business of SRS or which would question the validity of propriety of this Agreement or any of the actions to be taken in accordance with this Agreement.

18. Miscellaneous.

The Owner and SRS, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party to this Agreement with respect to all covenants of this Agreement. Neither party to this Agreement shall assign, sublet, or transfer (by operation of law or otherwise) any interest in this Agreement without the prior written consent of the other, nor shall SRS assign any monies due or to become due under this Agreement without the prior written consent of the Owner. Any assignments without such prior written consent shall be void.

19. Communication.

Day-to-day communications between SRS and Owner will be between Carrie Paulsen, SRS's Project Manager and Delphine Baker of MHA Interpretive Center.

20. Formal Approvals.

Contracts and/or written approvals shall be returned and signed in a timely manner by the Owner's representative, Delphine Baker.

21. Approvals.

Written approval, by the Owner, of design submittals, details, images, text, construction drawings and all other elements related to the services and deliverables being provided by SRS within the terms of this contract are required within ten (10) business days following each formal design phase (i.e. SD1, SD2, DD1, DD2, Pre-Production) submittal, unless otherwise negotiated between Owner and SRS. Failure to notify SRS in writing of any issues or complaints within the time periods provided herein shall be deemed an approval by the Client and SRS. Each graphic and construction drawing submittal will have an allowance of two reviews; subsequent reviews/submittals may be subject to additional costs.

22. Accounts Payable / Invoicing Information.

Company Name: MHA Nation Interpretive Center

Address: 404 Frontage Rd, New Town, ND 58763

Phone number: 701-421-1077

AP contact: Delphine Baker, Administrator

Email AP Contact: dbaker@mhanation.com

Can we email invoices: X YES NO

23. Complete Agreement.

This Agreement represents the entire and integrated agreement between the Owner and SRS and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both the Owner and SRS.

WHEREFORE, the parties have executed this Agreement on the date above written.

**SOMMERVILLE-WILSON, INC.
D/B/A SPLIT ROCK STUDIOS**

By: Craig Sommerville

Date: _____

Its: President

MHA Interpretive Center OWNER

By: 

Date: _____

Mark Fox
MHA Nation Tribal Business Council

Chairman

Its: _____

Attachment "A" **Scope of Work**

Split Rock Studios will provide Schematic Design, Design Development, Pre-Production and Production/Installation services for MHA Interpretive Center at 9386 Highway 23, New Town, ND 58763. We will warranty the finished exhibits for one year from the date of completion.

Design Kick-off Meeting

Travel to Site/Conduct Exhibit Planning Workshop

1. Review work to date and review architectural space/existing drawings
2. Discuss goals, objectives, and existing themes; Review potential exhibit materials
3. Prioritize exhibit topics
4. Conduct content research/review content reference materials
5. Brainstorm exhibit approaches and ideas
6. Discuss interactives & AV; Address any staff concerns
7. Review overall project budget and budget concerns Identify team to review submittals (Design, Text, Image, Artifacts, Construction Drawings, Artistic Fabrication components)

Develop Project Brief: Current overview of project, including updated information and understandings; Analysis of all project goals in terms of their effect on the development and successful completion of the exhibit.

Schematic Design I

Create SD I Report to include:

1. Preliminary gallery floor plans, traffic flow analysis;
2. Concept sketches of all major exhibit elements; Design approach;
3. Narrative Walk-through; Draft overview and content outline;
4. Preliminary matrix of key images and artifacts;
5. Propose AV and interactive descriptions;
6. Develop graphic approach;
7. Budget analysis for each gallery;
8. Detailed schedule for DD submittals (text, graphics, etc.), Production and Installation
9. Present/submit SD I Report

Client provides written consolidated comments

Schematic Design II

Create SD II Report to include:

1. Scaled floor plans (exhibits, preliminary review of exhibit hall lighting, interior finishes, etc.) including individual exhibit areas & major elements identified
2. Sample elevations of key components
3. Introduce graphic approach to include color palette, fonts, hierarchy
4. Updated design approach
5. Updated overview and content outline
6. Updated narrative walk-through
7. Updated list of list of key images and artifacts
8. Updated AV and interactive descriptions
9. Text approach
10. Developed AV and interactive descriptions
11. Budget analysis
12. Updated schedule
13. Present/submit SD II Report

Client provides written consolidated comments

Design Development I

Create DDI Report to include:

1. Detailed floor plans and elevations
2. Detailed exhibit elevations/scale drawings of all exhibit components
3. Exhibit materials, color choices, and finishes
4. Revised graphic approach (graphic templates for each type of graphic)
5. Written materials:
 - i. Detailed exhibit and content outline, including descriptions of all components and text intent with headlines and draft images identified
 - ii. Sample text
 - iii. Updated working artifact matrix
 - iv. Updated working image matrix
6. Preliminary treatments for all audiovisual and interactive elements
7. Updated cost proposal
8. Updated schedule
9. Architectural modifications: Coordination with client regarding exhibits and building infrastructure
10. Present/submit DD I Report

Client provides written consolidated comments

Design Development II

Create DDI Report to include:

1. Final detailed floor plan
2. Final exhibit elevations/scale drawings of all exhibit components clearly indicating design, construction techniques, finishes, etc.
3. Final exhibit materials, color choices and finishes board
4. Final graphic approach (graphic templates)
5. Final written materials:
 - i. Detailed exhibit and content outline, including descriptions of all components
 - ii. Draft final text
 - iii. Updated artifact matrix
 - iv. Finalized image matrix
6. Complete art reference package to show artistic style/intent
7. Final treatments for all audiovisual and interactive elements
8. Final cost proposal for production and installation of designed exhibits
9. Updated schedule for the completion of Pre-Production, Production and Installation
10. Architectural modifications: Coordination with client regarding exhibits and building infrastructure
11. Present/submit DDII Report

Client provides written consolidated comments

Pre-Production

1. Complete all design and content revisions required for production.
2. Detailed production and installation schedule
3. Inspect exhibit space and document any problems affecting exhibit installation
4. Graphic production files and generate printed proofs; inspect for content errors and technical quality
5. Production color and material samples
6. Shop drawings with production details for all exhibit structures including technical specifications
7. Audiovisual technical drawings
8. Create any required prototypes or mock-ups
9. Updated schedule for Production and Installation
10. Development of specialty items

Production

1. Output and mount final production graphics
2. Fabricate all elements based on approved design and/or construction drawings, including artifact cases, panels, walls, platforms, information desks, benches, audiovisual kiosks, etc.
3. Fabricate custom elements such as natural history models, topographic maps, cast human figures, taxidermy, and mechanical interactive exhibits with exhibit structures.
4. Fabricate custom artifact mounting hardware, if necessary
5. Provide exhibits for shipment to site
6. As needed, make ongoing submittals during production to keep client apprised of progress and to gain approval for elements that are developed during this phase.
7. AV and interactive programs move into production (filming) and post-production in this phase
8. Acquire audiovisual hardware; install AV software; test system operation
9. Progress photos of exhibits during production
10. Perform ongoing supervision of subcontractors
11. Host site visits at SRS for on-site review meetings by client
12. Perform ongoing coordination for building modifications with client, architect and GC through drawings, meetings, discussions, templates, etc.

Installation

1. Finish any remaining, minor building prep work
2. Deliver exhibits. Set up staging area for unloaded exhibit elements
3. Project Manager and Designer provide on-site art direction as required
4. Install all large structures, such as platforms, walls, cases, large graphic panels, and murals
5. Install smaller graphics, AV equipment, models, interactive exhibits
6. Clean work site of debris and dust, clean artifact cases, install artifacts, perform all other conservation requirements, and seal cases
7. Aim and adjust lighting fixtures
8. Walk-through inspection of completed exhibits
9. Develop punch-list
10. Supply maintenance manual and train staff in exhibit operation and maintenance
11. Correct punch-list items

Close-out Warranty

1. Contractor submits closeout package including:
 - i. Warranty information from SRS
 - ii. Graphic production digital files
 - iii. "As-built" production drawings
 - iv. Final written materials]
 - v. Final copy of maintenance manuals

Attachment "B"
Project Schedule
 Subject to change

Schedule based on a signed contract by June 1, 2017

Kick-off Meeting	Week of June 5, 2017
SRS provides meeting notes (Project Brief)	1 Week After Meeting
SCHEMATIC DESIGN PHASE	June 12, 2017 – October 23, 2017
Schematic Design I Presentation *	Week of August 7, 2017
Client provides consolidated written comments	2 Weeks After Meeting
Schematic Design II Presentation *	Week of October 23, 2017
Client provides written comments, approval to proceed	2 Weeks After Meeting
DESIGN DEVELOPMENT PHASE	October 23, 2017 – February 12, 2018
Design Development I Presentation *	Week of December 18, 2017
Client provides consolidated written comments	2 Weeks After Meeting
Design Development II Presentation *	Week of February 12, 2018
Client provides written comments, approval to proceed	2 Weeks After Meeting
PRODUCTION AND INSTALLTION PHASE	March 5, 2018 – October 19, 2018
Pre-Production	March 5 – June 1, 2018
Client approves all graphic files for production	June 1, 2018
Production	June 4 – September 28, 2018
Installation	October 1 – 19, 2018

* Owner receives package Monday of submittal week, presentation date to be determined

Attachment "C"
Cost Breakdown

MHA Interpretive Center

1. Schematic Design	\$108,250
2. Design Development	\$207,250
3. Pre-Production & Production	\$1,344,500
4. Shipping and Installation	\$140,000
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5. Project Total	\$1,800,000

Clarifications and Exclusions

¹ Final schedule of values will be provided at the end of the Design Development phase

Attachment "D"
Payment Schedule

SCHEMATIC DESIGN PHASE

- \$10,000 Down payment and completion of kick-off meeting
- \$49,125 Upon completion of Schematic Design I
- \$49,125 Upon presentation of Schematic Design II
- \$108,250 Total payment for Schematic Design

DESIGN DEVELOPMENT PHASE

- \$103,625 Upon completion of Design Development I
- \$103,625 Upon presentation of Design Development II
- \$207,250 Total payment for Design Development

- \$201,675 15% down payment upon start of pre-production

PRE-PRODUCTION, PRODUCTION, & INSTALLATION PHASE

Schedule of Values will be provided upon completion of Design Development.
Pre-Production and production will be billed monthly upon percent complete.