

Recorder's Office Cover Sheet

Recording Requested By:

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Department: Community Development



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SHAWNYNE GARREN, RECORDER

Type of Document: (please select one)

- Agreement
- Contract
- Grant
- Change Order
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- Other

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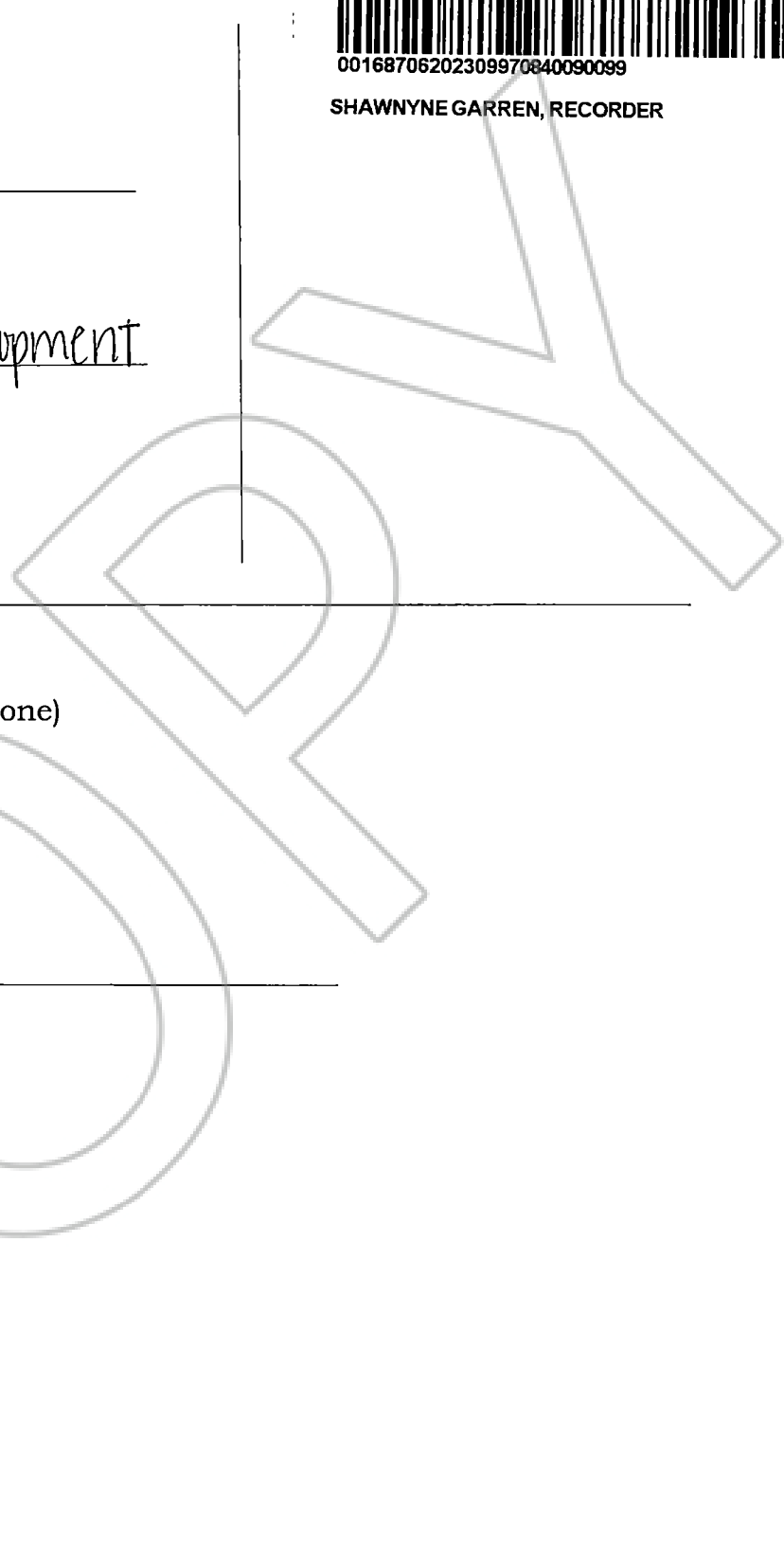


EXHIBIT #2

CONTRACT FOR PROFESSIONAL SERVICES

A CONTRACT BETWEEN

DOUGLAS COUNTY, NEVADA

AND

TRUEPOINT SOLUTIONS (DIGEPLAN ENTERPRISE SUBSCRIPTION)

FILED
 NO. 2023-094

 01/2/23
 DATE
 DOUGLAS COUNTY CLERK
 MINDEN, NV
 AL DEPUTY

THIS CONTRACT FOR PROFESSIONAL SERVICES (THE "CONTRACT") IS ENTERED INTO BY AND BETWEEN DOUGLAS COUNTY, NEVADA, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA ("COUNTY"), AND TRUEPOINT SOLUTIONS ("CONTRACTOR"). THE COUNTY AND CONTRACTOR ARE AT TIMES COLLECTIVELY REFERRED TO HEREINAFTER AS THE "PARTIES" OR INDIVIDUALLY AS THE "PARTY."

WHEREAS, the County, from time to time, requires the services of independent contractors;

WHEREAS, the County believes that the services of Contractor are necessary, desirable, and in the best interests of Douglas County; and

WHEREAS, Contractor represents that Contractor is duly qualified, equipped, competent, ready, willing and able to perform the services required by County as hereinafter described.

WHEREAS, Contractor represents that Contractor possess all required licenses and permits to perform the services required by County;

NOW, THEREFORE, in consideration of the agreements herein made, the parties mutually agree as follows:

1. **EFFECTIVE DATE OF CONTRACT.** Upon execution by all parties, this Contract shall be effective July 1, 2023 and will terminate on June 30, 2024, unless the Contract is terminated earlier in accordance with Paragraph 7.

2. **SERVICES TO BE PERFORMED.** The Parties agree that the services to be performed by Contractor are as follows:

a. [Services as described in the attached Exhibit A.]

3. **PAYMENT FOR SERVICES.** Contractor agrees to provide the services described set out in Section 2 above for \$165.00 per hour with an amount not to exceed Twelve Thousand Seven Hundred Thirty Dollars and eighty cents \$12,730.80. County will pay invoices it receives within a reasonable time.

Contractor shall be responsible for all costs and expenses incurred while performing any services under this Contract, including without limitation licenses fees, memberships and dues; automobile and other travel expenses; and all salary, expenses and other compensation paid to Contractor's employees or contract personnel Contractor hires to perform the services described by this Agreement.

4. **INDEPENDENT CONTRACTOR STATUS.** The Parties agree that Contractor, his associates and employees shall have the status of an independent contractors and that this contract, by explicit agreement of the parties, incorporates and applies the provisions of

NRS 333.700, as necessarily adapted to the parties, including that Contractor is not a Douglas County employee and that there shall be no:

- a. Withholding of income taxes by the County;
- b. Industrial insurance coverage provided by the County;
- c. Participation in group insurance plans which may be available to employees of the County;
- d. Participation or contributions by either the independent contractor or the County to the public employees' retirement system;
- e. Accumulation of vacation leave or sick leave;
- f. Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met.

Contractor and County agree to the following rights and obligations consistent with an independent contractor relationship between the Parties:

- a. Contractor has the right to perform services for others during the term of this Agreement.
- b. Contractor has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed.
- c. Contractor shall not be assigned a work location on County premises.
- d. Contractor, at Contractor's sole expense, will furnish all equipment and materials used to provide the services required by this Agreement.
- e. Contractor, at Contractor's sole expense, has the right to hire assistants as subcontractors, or to use Contractor's employees to provide the services required by this Agreement.
- f. Contractor or Contractor's employees or contract personnel shall perform the services required by this Agreement, and Contractor agrees to the faithful performance and delivery of described services in accordance with the time frames contained herein; County shall not hire, supervise or pay any assistants to help Contractor.
- g. Neither Contractor nor contractor's employees or contract personnel shall receive any training from County in the skills necessary to perform the services required by this Agreement.
- h. County shall not require Contractor or Contractor's employees or contract personnel to devote full time to performing the services required by this Agreement.
- i. Contractor understands that Contractor is solely responsible to pay any federal and state taxes and/or any social security or related payments applicable to money received for services provided under the terms of this contract. Contractor understands that an IRS Form 1099 will be filed by County for all payments County makes to Contractor.

5. INSURANCE REQUIREMENTS.

- a. **INDUSTRIAL INSURANCE.** Contractor shall, as a precondition to the performance of any work under this Contract and as a precondition to any obligation of the County to make any payment under this Contract, provide the County with a work certificate and/or a certificate issued by a qualified insurer in accordance with NRS 616B.627. Contractor also shall, prior to commencing any work under the contract, complete and provide the following written request to a qualified insurer:

Truepoint Solutions has entered into a contract with Douglas County to perform work from July 1, 2023 to June 30, 2024], and requests that the insurer provide to Douglas County:

- 1) A certificate of coverage issued pursuant to NRS

- 616B.627; and
- 2) Notice of any lapse in coverage or nonpayment of coverage that the contractor is required to maintain. The certificate and notice should be mailed to:

Douglas County Manager
Post Office Box 218
Minden, Nevada 89423

Contractor agrees to maintain required workers compensation coverage throughout the entire term of the Contract. If Contractor does not maintain coverage throughout the entire term of the Contract, Contractor agrees that County may, at any time the coverage is not maintained by Contractor, order the Contractor to stop work, suspend the Contract, or terminate the Contract. For each six-month period this Contract is in effect, Contractor agrees, prior to the expiration of the six-month period, to provide another written request to a qualified insurer for the provision of a certificate and notice of lapse in or nonpayment of coverage. If Contractor does not make the request or does not provide the certificate before the expiration of the six-month period, Contractor agrees that County may order the Contractor to stop work, suspend the Contract, or terminate the Contract.

Contractor may, in lieu of furnishing a certificate of an insurer, provide an affidavit indicating that he is a sole proprietor and that:

1. In accordance with the provisions of NRS 616B.659, has not elected to be included within the terms, conditions and provisions of chapters 616A to 616D, inclusive, of NRS; and
 2. Is otherwise in compliance with those terms, conditions and provisions
- b. **GENERAL LIABILITY INSURANCE.** Douglas County's liability coverage will not extend to the Contractor and Contractor is required to acquire and maintain general liability insurance in the minimum amount of \$1,000,000 during the term of this Contract at Contractor's sole expense. Proof of insurance must be sent to the Douglas County Manager. Such proof of insurance must be provided at least annually throughout the term of this Contract and Douglas County must be notified at least 30 days in advance of any cancellation or nonrenewal of such insurance.
- c. **AUTOMOBILE INSURANCE.** Contractor shall provide proof of commercial Automobile Liability. Insurance shall be written on a per accident/occurrence basis with a single limit of liability of at least \$1,000,000 for bodily injury and property damage. Said policy shall include coverage for any auto, owned, non-owned, leased and hired cars.
- d. **PROFESSIONAL LIABILITY / ERRORS AND OMISSION INSURANCE.** Contractor shall provide proof of Professional Liability insurance in the amount of at least one million dollars (\$1,000,000) that covers errors and omissions by the Contractor for the professional services offered.
6. **LICENSING.** Contractor agrees to maintain any required licenses to perform any services for County. The failure to maintain any required license will result in immediate termination of this Contract.
7. **TERMINATION OF CONTRACT.** This Contract may be revoked without cause by either Party prior to the date set forth in Paragraph 1, provided that a revocation shall not be effective until 30 days after a party has served written notice upon the other party.

The Contractor shall submit billings for work performed up to the effective date of termination.

8. CONSTRUCTION OF CONTRACT. This Contract shall be construed and interpreted according to the laws of the State of Nevada. Any dispute regarding this Contract shall be resolved by binding arbitration, with an arbiter jointly selected from a list maintained by the Nevada Supreme Court of senior/retired judges, with both parties to pay their own attorney fees. There shall be no presumption for or against the drafter in interpreting or enforcing this Contract.

9. COMPLIANCE WITH APPLICABLE LAWS. Contractor shall fully and completely comply with all applicable local, state and federal laws, regulations, orders, or requirements of any sort in carrying out the obligations of this contract, including, but not limited to, all federal, state, and local accounting procedures and requirements and all immigration and naturalization laws.

10. ASSIGNMENT. Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this contract without the prior written consent of the County.

11. COUNTY INSPECTION. The books, records, documents and accounting procedures and practices of Contractor related to this contract shall be subject to inspection, examination and audit by the County.

12. DISPOSITION OF CONTRACT MATERIALS. Any books, reports, studies, photographs, negatives or other documents, data, or other materials prepared by or supplied to Contractor in the performance of its obligations under this Contract shall be the exclusive property of the County and all such materials shall be remitted and delivered, at Contractor's expense, by Contractor to the County upon completion of the project, or termination or cancellation of this Contract.

13. PUBLIC RECORDS LAW. Contractor expressly agrees that all documents submitted, filed, or deposited with the County by Contractor, unless designated as confidential by a specific statute of the State of Nevada or a court of competent jurisdiction, shall be treated as public records pursuant to NRS Chapter 239 and shall be available for inspection and copying by any person, as defined in NRS 0.039, or any governmental entity.

14. INDEMNIFICATION. Contractor agrees to indemnify and save and hold the County, its agents and employees harmless from any and all claims, causes of action or liability arising from the performance of this contract by Contractor or Contractor's agents or employees.

15. MODIFICATION OF CONTRACT. This Contract constitutes the entire agreement between the Parties and may only be modified by a written amendment signed by the Parties.

16. AUTHORITY. The Parties represent and warrant that they have the authority to enter into this Contract.

17. INCORPORATED DOCUMENTS. The Parties agree that this Contract references or incorporates no other documents or exhibits.

18. SEVERABILITY. The illegality or invalidity of any provision or portion of this Agreement shall not affect the validity of the remainder of the Agreement and this Agreement shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of the Agreement unenforceable.

19. NO APPROPRIATION OF FUNDS. All payments and services provided under this agreement are contingent upon the availability of the necessary public funding. In the

event that Douglas County does not receive the funding necessary to perform in accordance with the terms of this Agreement, this Agreement shall automatically terminate and all fees due and owing shall be paid.

20. NOTICES. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given three business days after mailing by United States, postage prepaid, first class mail addressed to the other party at the addresses set forth below:

FOR DOUGLAS COUNTY:


Community Development
Attn: Tom Dallaire
P.O. Box 218
Minden, Nevada 89423
Ph: (775) 782-6001

FOR CONTRACTOR:

TruePoint Solutions
Attn: Kent Johnson
774 Mays Blvd 10-377
Incline Village, CA 89451
Ph: 916-256-1975]

21. Suspension or Debarment Certification. As federal funding may be used for the project; the Contractor certifies that the firm, business or person signing the Contract has not been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity with any federal, state or local government. Failure to disclose all pertinent information about a debarment or suspension shall result in the Contract being cancelled.


IN WITNESS WHEREOF, the parties hereto have caused this contract for professional services to be signed and intend to be legally bound thereby.



Patrick Cates
Douglas County Manager

5/31/23

Date



Kent Johnson
TruePoint Solutions, CEO

05/15/2023

Date

Exhibit – A

Standard Support Policy

This LCT Software LLC's SaaS Support Policy ("Support Policy") is a policy governing the use of DigEplan's software-as-a-service products (the "Service(s)") under the terms of the services agreement (the "Agreement") between LCT Software, LLC and its affiliates ("LCT Software", "us" or "we") and the purchaser of DigEplan's Service ("Customer"). This Support Policy may be updated from time to time by LCT Software at its sole discretion.

General Requirements and Hours of Operation

Ticketing Support: LCT Software will provide access to a ticketing system, which will be available twenty-four (24) hours per day, seven (7) days per week. A qualified support specialist shall use commercially reasonable efforts to answer questions and resolve problems regarding the Subscription Service during normal business hours of Monday-Friday, 8:00 A.M. until 5:00 P.M. PST.

Telephone and E-mail Support: DigEplan's Customer Support Department, a live technical support facility, will be available to Customer from 8:00 A.M. until 5:00 P.M. Pacific Standard Time Monday through Friday, excluding LCT Software LLC's observed holidays.

Online Support Material: Available twenty-four (24) hours, seven (7) days a week, LCT Software will make available to Customer certain technical information in DigEplan's online support database.

Updates

Updates may address security fixes, critical patches, general maintenance functionality, and documentation and shall be made available at LCT Software's discretion. LCT Software is under no obligation to develop any future functionality or enhancements unless otherwise specified in the Agreement. If an update for the Service is made available to Customer pursuant to this Support Policy, it will automatically replace the previous version of the applicable Service.

Where practical, LCT Software will schedule Updates during non-business hours and will provide Customers with advance notice of all Updates.

Upgrade/Downgrade of Severity Level

If, during the Support Request process, the issue either warrants assignment of a higher severity level than currently assigned or no longer warrants the severity level currently assigned based on its current impact on the production operation of the SaaS offering, then the severity level will be upgraded or downgraded accordingly to the severity level that most appropriately reflects its current impact.

Third Party Product Support

If any third-party software is not supplied by LCT Software, LCT Software disclaims all support obligations for such third-party software, unless expressly specified by LCT Software in Customer's Agreement.

Exclusions

The following Support Exclusions are not covered by this Support Policy: (a) Support required due to Customer's or any End User's or third party's misuse of the Services; (b) Support during times outside of LCT Software's regular business hours stated above; (c) Support necessitated by external factors outside of LCT Software's reasonable control, including any force majeure event or Internet access or related problems beyond the Service demarcation point; (d) Support of or caused by customizations (if outside of LCT Software's best practice recommendations), configuration changes, scripting, or data loss caused by or on behalf of Customer or any End User; (e) Support of or caused by Customer's or any End User's or third party's equipment, software or other technology (other than third party equipment within LCT Software's direct control); (f) Support to resolve or work-around conditions which cannot be reproduced in LCT Software's support environment and (g) Support of any software add-ons supplied together with the Service (except where specified in the Agreement). Any support services falling within these Support Exclusions may be provided by LCT Software at its discretion and, if so provided, may be subject to additional pricing and support terms as specified by LCT Software

Support Classifications

Error Classification	Criteria
	The Service is down or there is a major malfunction (deeming Service non-functional or severely affected), resulting in a business revenue loss and impacting the Service functionality for a majority of users. No reasonable workaround exists.
High Severity Issue (Priority 2)	High loss of Service functionality or performance, impacting the Service functionality for a high number of users (e.g. Service response is very slow, day to day operations continue, but are impacted by the issue). No reasonable workaround available or the workaround is impractical.
Medium Severity Issue (Priority 3)	Moderate loss of Service functionality or performance, impacting multiple users. A convenient workaround exists (e.g. non-critical feature is unavailable or requires additional user intervention).
Low Severity Issue (Priority 4)	Minor loss of Service functionality or feature in question.

Functional Definitions: For the purposes of error classification, essential or major functions include: data capture features, SLA and alarming features, performance management features and application performance problem resolution features.

Response Time: LCT Software shall use commercially reasonable efforts to respond to error reports in accordance with the table set forth below. LCT Software will use reasonable means to repair the error and keep Customer informed of progress. LCT Software makes no representations as to when a full resolution of the error may be made.

Error Classification	Initial Response and Acknowledgement	Updates	Resolution Goal
Very High	1 Business Hour	Daily	LCT Software will put forth our best effort to provide a workaround, fix, or estimated completion date within seventy-two (72) hours after the problem has been diagnosed and/or replicated.
High	4 Business Hours	Weekly	LCT Software will put forth our best effort to provide a workaround or fix or estimated completion date within four (4) business days after the problem has been diagnosed and/or replicated.
Medium	8 Business Hours	As available	LCT Software will put forth our best effort to provide a workaround or fix or estimated completion date within seven (7) business days after the problem has been diagnosed and/or replicated.
Low	24 Business Hours	None	Resolution for the Issue may be released as a patch set or be incorporated into a future schedule release of the product.

Douglas County

State of Nevada

CERTIFIED COPY

I certify that the document to which this certificate is attached is a full and correct copy of the original record on file in the Clerk-Treasurer's Office on this

2 day of June, 2023

By [Signature] Deputy