

## **EXAMPLE**

### CONTRACT FOR AUDIT SERVICES

The State of North Dakota, acting through the Office of the State Auditor (STATE), has determined that the services described below in the paragraph entitled "Scope of Service" should be purchased, and **Name of CPA firm** (CONTRACTOR) proposes to provide those services;

THEREFORE, in consideration of the following mutual agreements, this contract is made by CONTRACTOR and the STATE.

#### **1. SCOPE OF SERVICE**

CONTRACTOR, in exchange for the compensation paid by the STATE under this contract, hereby agrees to provide the following services:

CONTRACTOR agrees to provide an annual financial and compliance audit of the North Dakota **Name of Agency**, herein referred to as the CLIENT, for the fiscal years ending **June 30, 2009, June 30, 2010 and June 30, 2011.**

The required audit function is to express an opinion on the fairness of the CLIENT's financial statements, and to determine the CLIENT's compliance with applicable state and federal laws and regulations. The request for proposal (RFP) issued **December 30, 200X** and the actual proposal from CONTRACTOR, with appropriate addenda and terms, are by reference incorporated herein and made a part of this agreement. In the event of conflict between this contract and the actual proposal from CONTRACTOR, this contract governs the matter. The CLIENT retains primary responsibility for properly recording transactions in the records, and for preparing reliable financial statements.

#### **2. ORDER OF INTERPRETATION**

Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this agreement, the documents must control in this order of precedence: First . the terms of this agreement, as may be amended; Second . the STATE's RFP; and Third . the CONTRACTOR's proposal.

#### **3. TERM OF CONTRACT**

The period of performance of this contract begins **DATE** and continues until the performance promised by CONTRACTOR is completed.

#### **4. COMPENSATION**

In full consideration of CONTRACTOR's service under this contract, the CLIENT shall, pursuant to N.D.C.C. § 54-10-01(5), make payment to CONTRACTOR in accordance with the RFP and proposal submitted by CONTRACTOR. The maximum audit fee for fiscal years **2009, 2010, and 2011** must not exceed **\$XXX, \$XXX and \$XXX**, respectively.

#### **5. TERMINATION OF CONTRACT**

- a. **Termination without cause.** This contract may be terminated by mutual consent of both parties, or by either party upon 30-days written notice.
- b. **Termination for lack of funding or authority.** The STATE may terminate this contract effective upon delivery of written notice to the CONTRACTOR, or on any later date stated in the notice, under any of the following conditions:
  - 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. The contract may be modified by agreement of the parties in writing to accommodate a reduction in funds.
  - 2) If federal or state laws or rules are modified or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
  - 3) If any license, permit or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended or not renewed.

Termination of this contract under this subsection will be without prejudice to any obligations or liabilities of either party already accrued prior to termination.

- c. **Termination for cause.** The STATE by written notice of default to CONTRACTOR may terminate the whole or any part of this contract:
  - 1) If the CONTRACTOR fails to provide services called for by this contract within the time specified or any extension agreed to by the STATE; or
  - 2) If CONTRACTOR fails to perform any of the other provisions of this contract, or so fail to pursue the work as to endanger performance of this contract in accordance with its terms.
  - 3) The rights and remedies of the STATE provided in the above clause related to defaults by the CONTRACTOR are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

## **6. FORCE MAJEURE**

CONTRACTOR shall not be held responsible for delay or default caused by fire, riot, acts of God or war if the event is beyond the CONTRACTOR's reasonable control and the CONTRACTOR gives notice to the STATE immediately upon occurrence of the event causing the delay or default or which is reasonably expected to cause a delay or default.

## **7. RENEWAL**

This contract will not automatically renew. STATE will provide written notice to CONTRACTOR of its intent to renew this contract at least 60 days before the scheduled termination date.

**8. MERGER AND MODIFICATION**

This contract constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this contract. This contract may not be waived, altered, modified, supplemented, or amended, in any manner, except by written agreement signed by both parties.

**9. SEVERABILITY**

If any term of this contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms will not be affected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

**10. ASSIGNMENT AND SUBCONTRACTS**

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without the express written consent of the STATE. However, the CONTRACTOR may enter into subcontracts provided that any such subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. CONTRACTOR agrees to be solely responsible for the performance of any subcontractor. CONTRACTOR has no authority to contract for or incur obligations on behalf of the STATE.

**11. NOTICE**

All notices or other communications which are required under this contract must be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

CPA Person, CPA	Ron Tolstad Jr., CPA
Title	Technical Specialist
CPA Firm	Office of the State Auditor
Address	600 E. Blvd. Ave.
City, ND Zip	Bismarck, ND 58503-0060

Notice provided under this provision does not meet the notice requirements for monetary claims against the State found at N.D.C.C. § 32-12.2-04.

**12. APPLICABLE LAW AND VENUE**

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action commenced to enforce this contract must be brought and solely litigate in the District Court of Burleigh County, North Dakota.

**13. SPOILIATION – NOTICE OF POTENTIAL CLAIMS**

CONTRACTOR shall promptly notify STATE of all potential claims which arise from or result from this contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the STATE the opportunity to review and inspect the evidence, including the scene of an accident.

#### **14. INDEMNITY**

The State and Contractor each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

#### **15. INSURANCE**

Contractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Professional errors and omissions, including a three year tail coverage endorsement, with minimum liability limits of \$1,000,000 per occurrence and in the aggregate.
- 3) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$500,000 per occurrence.
- 4) Workers compensation coverage meeting all statutory requirements.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. The amount of any deductible or self retention is subject to approval by the State.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated ~~A-~~ or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an ~~A-~~ rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The insurance required in this agreement, through a policy or endorsement, shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days prior written notice to the undersigned State representative.
- 4) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement.
- 5) Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately.

#### **16. ATTORNEY FEES**

In the event a lawsuit is instituted by the STATE to obtain performance due of any kind under this contract, and the STATE is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay the STATE a reasonable attorney fees and costs in connection with the lawsuit.

#### **17. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

## **18. CONFIDENTIALITY**

CONTRACTOR agrees not to use or disclose any information it receives from the STATE under this contract which the STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by the STATE. The STATE agrees not to disclose any information it receives from CONTRACTOR which the CONTRACTOR has previously identified as confidential and which the STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, North Dakota Century Code § 44-04-18. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract, including any extensions or renewals.

## **19. HIPAA**

**Eliminate this paragraph if client is not part of HIPAA agreement.**

CONTRACTOR agrees to perform all work on this audit in accordance with the responsibilities imposed on the State Auditor under the Business Associate agreement between the State Auditor and \_\_\_\_\_, signed by the State Auditor, the terms of which are made part of this Agreement, including all of the limitations on the use and disclosure of protected health information set forth in that Agreement, and any other duties imposed on the State Auditor with respect to protected health information, to the extent those duties are within the scope of work of the contractor.

CONTRACTOR agrees that any protected health information disclosed to it under this contract will remain confidential and be used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the Auditee, and the CONTRACTOR agrees to notify the State Auditor of any instances of which it becomes aware in which the confidentiality of any information to which it has been given access has been breached.

## **20. COMPLIANCE WITH PUBLIC RECORDS LAW**

CONTRACTOR understands that, except for disclosures prohibited in Section 15, the STATE must disclose to the public upon request any records it receives from CONTRACTOR under this contract. CONTRACTOR further understands that any records which are obtained or generated by the CONTRACTOR under this contract, except for records that are confidential under that section herein addressing confidentiality, may be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact the STATE immediately upon receiving a request for information under the open records law and to comply with the STATE's instructions on how to respond to the request.

## **21. INDEPENDENT ENTITY**

CONTRACTOR shall perform as an independent entity under this contract and not as an employee of the STATE for any purpose, including but not limited to the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workers' Compensation Act. CONTRACTOR will retain sole and absolute discretion in the manner and means of carrying out

the CONTRACTOR's activities and responsibilities under this contract, except to the extent specified in this contract.

**22. NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

CONTRACTOR agrees to comply with all applicable laws, rules, regulations and policies, including but not limited to those relating to nondiscrimination, accessibility and civil rights. CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including but not limited to sales and use taxes and unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the term of this contract all licenses and permits required by law.

**23. STATE AUDIT**

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this contract are subject to examination by the North Dakota State Auditor or the Auditor's designee. CONTRACTOR will maintain all such records for at least three years following completion of this contract.

**24. PREPAYMENT**

The STATE will not make any advance payments before performance by the CONTRACTOR under this contract.

**25. TAXPAYER ID**

CONTRACTOR's federal ID number is: \_\_\_\_\_.

**25. PAYMENT OF TAXES BY STATE**

State is not responsible for and will not pay local, state, or federal taxes. State sales tax exemption number is E-2001, and certificates will be furnished upon request by the purchasing agency.

**26. EFFECTIVENESS OF CONTRACT**

This contract is not effective until fully executed by all parties.

CONTRACTOR

\_\_\_\_\_  
BY: Contractor Contact's Name

ITS: Contact's Title

DATE: \_\_\_\_\_

STATE OF NORTH DAKOTA

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BY: Robert R. Peterson

ITS: State Auditor

DATE: \_\_\_\_\_

STATE OF NORTH DAKOTA

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BY: Client Head

ITS: Client Head's Title

DATE: \_\_\_\_\_