

The following is a sample contract for a non-profit tax exempt entity. Each contract is negotiated based on the project but this will give you the basic provisions that need to be included in every Industrial Commission contract.

Contract No. \_\_\_\_\_

NON-PROFIT TAX EXEMPT ENTITY

This contract is between the State of North Dakota acting by and through its Industrial Commission, hereafter called "Commission", and \_\_\_\_\_, hereafter called "Contractor".

1. Statement of Work

- a. The Contractor agrees to perform the work described in Exhibit A (*Exhibit A is the application submitted to and approved for funding by the Industrial Commission*), entitled \_\_\_\_\_, which is attached to this Agreement is made a part of it.
- b. Contractor agrees to provide Reports for the work described in Exhibit A as follows:

Status Report: \_\_\_\_\_  
 Status Report: \_\_\_\_\_  
 Final Report: \_\_\_\_\_

Reports shall be in compliance with the Industrial Commission/Outdoor Heritage Fund Program Guidelines, a copy of which is marked as Exhibit B and made part of this Agreement. If requested, the Contractor will provide a tour of \_\_\_\_\_, where the work is being conducted, to the Outdoor Heritage Fund Advisory Board members, Commission, and its staff. Each report must provide documentation verifying the expenditure of funds on the project and if any matching funds are being provided for this project documentation on the receipt and expenditure of the matching funds.

The project data and reports shall be provided to the Commission in both electronic and hard-copy formats with permission for unrestricted distribution. The electronic versions shall be in a suitable format for posting on the Commission website.

In addition, the following must be provided:

(work as outlined in the application will be specifically listed in the contract)

The Final Report must include a single page project summary describing the purpose of the project, the work accomplished, the project's results, and the value of the project to the citizens of North Dakota.

2. Consideration

- a. For performing the work described in Exhibit A, the Commission agrees to grant to Contractor an amount not to exceed \$\_\_\_\_\_ according to the following schedule:

Upon execution of the contract \$ \_\_\_\_\_  
 Upon receipt and consideration of status reports \$ \_\_\_\_\_  
 Upon receipt and consideration of final report \$ \_\_\_\_\_

- b. If after reviewing a report, the Commission believes that the report is inadequate, that the Contractor is not complying with the scope of work, or that the Contractor is not satisfactorily carrying out the work, the Commission may withhold all or part of a scheduled payment until the Contractor, in the opinion of the Commission, has remedied the deficiencies.

3. Authority to Contract and Subcontract

The Contractor may not assign or otherwise transfer or delegate any right or duty without the Commission's express written consent. However, the Contractor may enter into subcontracts provided that any subcontractor acknowledges the binding nature of this Agreement and incorporates this Agreement, including any attachments. The Contractor is solely responsible for the performance of any subcontractor. The Contractor does not have authority to contract for or incur obligations on behalf of the Commission.

4. Funds Available and Authorized

The Commission certifies sufficient funds are available and authorized for expenditure to finance costs of this Agreement within the Commission's current appropriation or limitation to July \_\_\_\_\_. It is agreed that in the event the appropriation or funding to the Commission is not obtained and continued at a level sufficient to allow for payments to the Contractor for the work described in Exhibit A, the obligations of each party terminate upon delivery of written notice to the Contractor. Termination of this Agreement for lack of funding is without prejudice to any obligation already accrued prior to termination.

5. Termination

This Agreement may be terminated by mutual consent of both parties, in writing and delivered by certified mail or in person.

Upon delivery of written notice to the Contractor, the Commission may immediately terminate the whole or any part of this Agreement if:

- a. The Contractor fails to perform the work described in Exhibit A within the time specified or any extension thereof, as determined solely by the Commission; or
- b. The Contractor fails to perform any of the other obligations under this Agreement, and after receipt of written notice from the Commission, fails to correct such failures within ten days or such longer period as the Commission may authorize.

The rights and remedies of the Commission provided in the above clause related to defaults (including breach of contract) by the Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. Any such termination of this Agreement, other than from breach of contract, shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

If the Commission terminates this contract for default by the Contractor, it is understood that no further funding will be provided to the Contractor.

6. Independent Contractor

Contractor is an independent contractor, and neither it or its employees, agents and representatives are employees of the Industrial Commission. Contractor will be responsible for any federal or state taxes applicable to this grant made under this contract. Contractor will not be eligible for any benefits from these contract payments of federal Social Security, unemployment insurance, worker's compensation or the Public Employees' Retirement System.

7. Contract Management

Notwithstanding the Contractor's responsibility for total management responsibility of the work, the

administration of the Agreement will require maximum coordination between the Outdoor Heritage Fund Advisory Board, the Commission and the Contractor.

***Outdoor Heritage Fund Director***

The Outdoor Heritage Fund Director (Director) is authorized by the Commission to monitor all technical aspects and assist in administration of the Agreement. The types of actions within the purview of the Director's authority are to assure that the Contractor performs the technical requirements of the Agreement; to perform inspections necessary in connection with the performance of the Agreement; to maintain both written and oral communications with the Contractor concerning the aspects of the written interpretations of the technical requirements of the statement of work; to monitor the Contractor's performance under the Agreement and notify the Commission of any deficiencies observed.

***Commission's Authorized Officer***

The Commission's Authorized Officer will carry out all contractual administration of this Agreement. Communications pertaining to contract administration matters will be addressed to:

The Industrial Commission of North Dakota  
Attention: Karlene Fine  
State Capitol 14<sup>th</sup> Floor  
600 E Boulevard Ave Dept 405  
Bismarck, North Dakota 58505-0840

The Commission's Authorized Officer is the only person, other than the Commission, authorized to approve changes in any of the requirements under the Agreement.

8. Access to Records

The Commission, the State Auditor, and the Office of the Attorney General of the State of North Dakota, and their duly authorized representatives shall have access to the books, documents, papers and records of the Contractor relating to the work performed by the Contractor hereunder for the purpose of auditing, examining and copying the same.

9. Compliance with Law

The Contractor shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

10. Indemnity and Insurance

The Contractor shall save and hold harmless the State of North Dakota and the Commission, its officers, agents, employees, and members, from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of the Contractor or its subcontractors, agents, or employees under this Agreement. The Contractor shall maintain liability insurance coverage with limits of liability equal to or greater than those damage limits prescribed in N.D.C.C. §32-12.2-02.

11. Ownership of Work Product, Equipment and Materials

All work product, equipment or materials created or purchased under this contract belong to the Commission and must be delivered to the Commission at the Commission's request upon termination of this Agreement. The Contractor agrees that all materials prepared under this Agreement are "works for hire" within the meaning of the copyright laws of the United States and assign to the Commission all

rights and interests the Contractor may have in the materials it prepares under this Agreement, including any right to derivative use of the material. The Contractor shall execute all necessary documents to enable the Commission to protect its rights under this section. (This section could be changed depending on the type of project.)

12. Nondiscrimination

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

13. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Agreement must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota.

14. Captions

The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Agreement.

15. Amendments

The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by the parties.

16. Successors in Interest

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

17. Severability

If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and, if possible, the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

18. Waiver

The failure of the Commission to enforce any provisions of this Agreement shall not constitute a waiver by the state of that or any other provision.

19. Merger Clause

This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Contractor, by the signature of its authorized representative below, hereby acknowledges that the Contractor has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

20. Compliance with Public Records Law

Contractor understands that, except for disclosures prohibited in this Agreement, the Commission must disclose to the public upon request any records it receives from the Contractor. Contractor further understands that any records that are obtained or generated by the Contractor under this Agreement, except for records that are confidential under this Agreement, may, under certain circumstances, be

open to the public upon request under the North Dakota open records law. The Commission retains ownership of all work product created or purchased under this Agreement. Contractor agrees to contact the Commission immediately upon receiving a request for information under the open records law and to comply with the Commission's instructions on how to respond to the request.

21. Legal Notice/Disclaimer

The following notice shall be contained in all reports intended to be released to the public:

This report was prepared by ---- pursuant to an agreement with the Industrial Commission of North Dakota which partially funded the project through the Outdoor Heritage Fund.

--- or any of its subcontractors, the Industrial Commission of North Dakota nor any person acting on behalf of any of them:

- (A) Make no warranty or representation, express or implied, with respect to the accuracy, completeness, or usefulness of the information contained in this report, or that the use of any information, apparatus, method, or process disclosed in this report may not infringe privately-owned rights; or
- (B) Assume no liability with respect to the use of, or for damages resulting from the use of, any information, apparatus, method or process disclosed in this report.

Reference to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise, does not necessarily constitute or imply its endorsement, recommendation, or favoring by the Industrial Commission of North Dakota. The views and opinions of authors expressed herein do not necessarily state or reflect those of the Industrial Commission of North Dakota.

22. Notices

All notices, or other communications shall be given by registered or certified mail to the parties at their respective places of business as set forth below or at a place designated hereafter in writing by the parties. Notice is complete on the date mailed.

|                                       |       |
|---------------------------------------|-------|
| Industrial Commission of North Dakota | _____ |
| State Capitol, 14th Floor             | _____ |
| 600 E Boulevard Ave Dept 405          | _____ |
| Bismarck, ND 58505-0840               | _____ |

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.

23. Execution and Counterparts

This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

|                     |                                    |
|---------------------|------------------------------------|
| (Contractor's Name) | NORTH DAKOTA INDUSTRIAL COMMISSION |
| By: _____           | By: _____                          |
| Name                | Karlene Fine                       |
| _____               | Executive Director                 |
| Title               |                                    |
| Date: _____         | Date: _____                        |