

DRAFT CONTRACT FOR PRIVATE ENTITIES

Contract No. _____

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

1. Independent Contractor

The Contractor, its employees, agents and representatives are not employees of the Commission. Nothing in this Agreement shall be deemed to create an employer/employee relationship between the Commission and the Contractor.

2. Scope of Work

a. The Contractor agrees to perform the work described in Exhibit A, entitled _____, which is attached to this Agreement and is made a part of it.

b. Contractor agrees to provide reports for the work mentioned in Paragraph 2a as follows:

Status Report: _____
Status Report: _____
Final Report: _____

The reports shall be in compliance with 5.11 of the Industrial Commission/Renewable Energy Development Program Policies. Each Report must provide documentation verifying the receipt of the private matching funds. The project data and reports shall be provided to the Department of Commerce & Renewable Energy Council in both electronic and hard-copy formats with permission for unrestricted distribution. The electronic versions shall be in a suitable format for hosting on the Department of Commerce and Renewable Energy Council websites. Specifically, 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 potential applications of the project. The Contractor further agrees to provide tours of the facility where the work is being conducted to the Council and/or staff at their request.

3. Consideration

a. For performing the work 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 report \$_____
Upon receipt and consideration of final report \$_____

b. If after reviewing a report the Commission believes that the report is inadequate or that the Contractor is not complying with the scope of work or 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 deficiency(ies).

4. Authority to Contract and Subcontract

The Contractor shall not have the authority to contract for or on behalf of or incur obligations on behalf of the Commission.

Contractor shall not enter into any subcontracts for any of the work described herein and in Exhibit A without obtaining prior written approval from the Commission.

If the Contractor obtains prior written approval to enter into a subcontract with a qualified provider of

services, the Subcontractor shall acknowledge the binding nature of this Agreement and incorporate this Agreement together with its attachments as appropriate. The Contractor must agree to be solely responsible for the performance of any Subcontractor.

5. Funds Available and Authorized

Commission certifies at the time of the execution of this Agreement sufficient funds are available and authorized for expenditure to finance costs of this Agreement within the Commission's current appropriation or limitation to July 1, 2011. 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 services identified in Paragraph 2, the obligations of each party hereunder terminate upon delivery of written notice to the Contractor.

6. Termination

This contract 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 provide services described herein and in Exhibit A within the time specified herein or any extension thereof; 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 Agreement for default by the Contractor, the Contractor shall immediately reimburse the Commission the amount of all money paid by the Commission to the Contractor hereunder.

7. Contract Management

Notwithstanding the Contractor's responsibility for total management responsibility of the work described herein and in Exhibit A, the administration of the Agreement will require maximum coordination between the Renewable Energy Council, the Commission and the Contractor.

Commission's Authorized Officer

The Commission's Authorized Officer will monitor all technical aspects and carry out all contractual administration of this Agreement. Communications pertaining to this Agreement will be addressed to:

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

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

8. Access to Records

The Commission, the State Auditor of the State of North Dakota, 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 obtain 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, Patent Rights and Fees

All work product, patent rights and fees of the Contractor resulting from this contract shall be governed by Section 6 of the Renewable Energy Development Program Policies.

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.

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. 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.

16. 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.

17. Notices

All notices, certificates or other communications shall be sufficiently given when delivered or mailed, postage prepaid, to the parties at their respective places of business as set forth below or at a place designated hereafter in writing by the parties.

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

18. Successors in Interest

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties

hereto, and their respective successors and assigns.

19. Attorney Fees

If a lawsuit of any kind is instituted on behalf of the state to collect any payment due under this Agreement, Contractor agrees to pay such additional sums as the court may adjudge for reasonable attorney fees and to pay all costs and disbursements incurred therein.

20. Severability

The parties agree that 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 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.

21. Waiver

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

22. 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 below of its authorized representative, hereby acknowledges that the Contractor has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

23. 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 Renewable Energy Program.

None of ____ or any of its subcontractors, the Industrial Commission of North Dakota or any person acting on behalf of any of them:

(A) Makes any 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) Assumes any liabilities 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 herein 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.

(Contractor's Name)

NORTH DAKOTA INDUSTRIAL COMMISSION

By: _____

By: _____

Contract _____
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Name

Karlene Fine
Executive Director

Title

Date: _____

Date: _____