

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.

This Agreement is between the State of North Dakota acting by and through its Industrial Commission, (Commission), and XXXXX non-profit (Contractor).

1. Statement of Work

- a. The Contractor agrees to perform the work described in Exhibit A, entitled "XXXXXXXXXX", which is attached to this Agreement and is made a part of it.
- b. The Contractor agrees to provide reports for the work described in Exhibit A as follows:

Status Report: XX/XX/XX
 Status Report: XX/XX/XX
 Status Report: XX/XX/XX
 Final Report: XX/XX/XX

The reports/claims shall comply with the Industrial Commission/Outdoor Heritage Fund Program Guidelines, which are available through the online system at <https://grants.nd.gov/index.do> and made part of this Agreement. If requested, the Contractor will provide a tour of the area where the work is being conducted to the Outdoor Heritage Fund Advisory Board members, Commission, and its staff. Each report/claim must provide documentation verifying the expenditure of funds on the project and documentation on the receipt and expenditure of the matching funds.

The project data and reports shall be provided to the Commission through the online system as noted above with permission for unrestricted distribution. The Final Report must provide a 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.

In addition, information on the following deliverables must be provided:

- (work as outlined in the application will be specifically listed in the contract)
- Information on how the Contractor has publicly acknowledged the Outdoor Heritage Fund's funding of the projects.

2. Consideration

- a. The Commission agrees to grant to Contractor an amount not to exceed the sum of \$XXXXXX for accomplishment of the work described in Exhibit A and will transfer the \$XXXXXX to the Contractor by interim payments according to the following schedule:

Upon receipt of documentation showing expenditure of funds, including verification of match funding provided for work completed, and consideration of status reports	\$XX,XXX
Upon receipt and consideration of final report	\$XX,XXX

A minimum X% match must be documented. Participating private landowners must provide 40% of project costs. Costs for seeding, fencing, pipelines, wells, and cover crops cannot exceed NRCS Field Office Tech Guidelines without justification. Projects involving perimeter fencing must follow NRCS eligibility standards. If utilizing in-kind donations for match, the value must be reported using the Outdoor Heritage Fund In-Kind Match (SFN 61437) which is available at <http://www.nd.gov/ndic/out/Donor%20form.pdf>. If utilizing volunteer labor for match, the value must be reported using the Outdoor Heritage Fund Volunteer Match (SFN 61438) which is available at <http://www.nd.gov/ndic/out/Volunteer%20form.pdf>.

- b. If after reviewing a report the Commission believes the Report is inadequate or that the Contractor is not complying with the statement 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 any deficiency.

3. Authority to Contract and Subcontract

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

The Contractor may not assign or otherwise transfer or delegate any right or duty without the Commission's express written consent.

The Contractor may, however, enter into subcontracts provided that any subcontractor acknowledges the binding nature of this Agreement and incorporates this Agreement, including any attachments, into the subcontract. The Contractor is solely responsible for the performance of any subcontractor with whom the Contractor contracts.

4. Funds Available and Authorized

The Commission certifies at the time of the execution of the Agreement sufficient funds are available and authorized for expenditure to finance costs of this Agreement within the Commission's current appropriation or limitation to June 30, 2021. The Commission by written notice to the Contractor, may terminate the whole or any part of this Agreement under any of the following conditions:

- a. 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.
- b. If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
- c. If any license, permit, or certificate required by law or rule, or by the terms of this Agreement, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Agreement under this subsection is without prejudice to any obligations or liabilities of either party 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.

The Commission may terminate this Agreement effective upon delivery of written notice to the Contractor, or any later date stated in this notice, if:

- a. The Contractor fails to provide services required by the Agreement within the time specified or any extension agreed to by the Commission; or
- b. The Contractor fails to perform any of the other obligations under this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms.

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, it is understood that no further funding will be provided to the Contractor.

6. Independent Contractor

The Contractor is an independent entity under this Agreement and is not a Commission employee for any purpose, including 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 Workforce Safety and Insurance Act. The Contractor retains sole, and absolute discretion in the manner and means of carrying out Contractor's activities and responsibilities under this Agreement except to the extent specified in this Agreement.

7. Contract Management

Notwithstanding the Contractor's responsibility for total management of the work described herein and in Exhibit A, 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

Either the Commission's Authorized Officer or the Outdoor Heritage Fund Director (Director) is authorized by the Commission to monitor all technical aspects and assist in administration of the Agreement. The actions within the purview of the Director's authority are to assure that the Contractor performs the technical requirements of the Agreement; to perform, or cause to be performed, 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 to notify the Commission of any deficiencies.

Commission's Authorized Officer

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

The Industrial Commission of North Dakota
Attention: Executive Director & Secretary
State Capitol 14th 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 to any of the requirements under this Agreement.

8. Access to Records

The Commission, Office of the Attorney General of the State of North Dakota, the North Dakota State Auditor and their duly authorized representatives shall have access to the books, documents, papers and records of the Contractor which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts and transcripts.

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.

The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy on a primary and noncontributory basis, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor.

11. Nondiscrimination – Compliance with Laws

The Contractor agrees to comply with all laws, rules and policies, including those relating to nondiscrimination accessibility and civil rights. The Contractor agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers compensation premiums. The Contractor shall have and keep current at all times during the term of this Agreement all licenses and permits required by law.

12. Applicable Law and Venue

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. Each party consents to the exclusive jurisdiction of such court and waives any claim for lack of jurisdiction *or forum non conveniens*.

13. 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.

14. 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.

15. 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.

16. 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 unenforceable, the validity of the remaining terms and provisions is unaffected, 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.

17. Waiver

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

18. Merger Clause

This Agreement, including any incorporated attachments, 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. The 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.

19. 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. 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.

20. Legal Notice/Disclaimer

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

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

XXXXXXXX, or any of its subcontractors, and the Industrial Commission of North Dakota, or any person acting on its behalf, do not:

- (A) Make 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) Assume 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.

21. Notices

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

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

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.

22. Recognition

The Contractor agrees to post signage where feasible recognizing the Outdoor Heritage Fund's contribution to this project.

23. State Historical Preservation Office

It is the responsibility of the Contractor to coordinate with the State Historical Preservation Office to ensure compliance with all state historical preservation laws.

24. 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.

XXXXXXXXXX

NORTH DAKOTA INDUSTRIAL COMMISSION

By: _____

Name

Title

Date: _____

By: _____

Karlene Fine

Executive Director and Secretary

Date: _____