

**BOARD OF ECONOMIC DEVELOPMENT  
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD  
TUESDAY, NOVEMBER 22, 2016, 10:30 A.M. CT**

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**BOARD OF ECONOMIC DEVELOPMENT  
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD  
TUESDAY, NOVEMBER 22, 2016, 10:30 A.M. CT**

*Board  
Members:*

*Jeff Erickson*

*Dale Clement*

*Tony Klein*

*Sharon  
Casey*

*John Calvin*

*Michael  
Luken*

*Greg  
Heineman*

*Ted Husted*

*Don  
Kettering*

*Pat  
Prostrallo*

*Tom Jones*

*Norbert  
Sebade*

*Reed Kessler*

*Non-Voting*

*Bruce  
Rampelberg*

*Scott Parsley*

*Brian Gosch*

*Spencer  
Hawley*

**Motion Sheet  
(STAFF RECOMMENDATIONS)**

**Agenda**

Motion to approve the agenda as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_

**Minutes**

Motion to approve the minutes of the meetings held October 24, 2016 and November 14, 2016, as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_

**Conflicts of Interest Disclosures**

**BPro Inc. Contract**

Motion to approve the BPro Inc. contract as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_

**Commissioners Comments**

**Executive Session**

Motion to enter into executive session to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_

**Chairman: Declare board out of executive session. [      a.m.]. Chairman: The BED entered into executive session to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. No action taken.**

**Motion to approve the chairman's report from executive session.**

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_

**Loan Reviews**

**Loan Review Summary**

**Sioux Falls Development Foundation**

Motion to approve the loan review and recommendation as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_

**Kerry K Engle Separate Property Trust**

Motion to approve the loan review and recommendation as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_

Please note times:
Call To Order: _____
Executive Session _____
Regular Session _____
Adjournment _____

**Old Business**

**Sioux Falls Development Foundation**

Motion to approve the waiver to provide unaudited financial statements by December 31 and audited financial statements by January 31 each year.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**New Business**

**Weisser Properties, LLC**

Motion to approve the loan request from Weisser Properties, LLC in the amount of \$180,000. Secured by a shared second position on the entire building and real estate, personal guarantees of principals with 10% or more ownership and a corporate guaranty.

The loan is approved according to the terms and conditions of the commitment letter; all documents may be executed on behalf of the Board by the Commissioner of the Governor's Office of Economic Development or the Commissioner's designee.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Bills**

Motion to approve the bill payable to Department of Legislative Audit in the amount of \$9,887.45.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Adjourn**

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.



**BOARD OF ECONOMIC DEVELOPMENT  
GOED CONFERENCE ROOM, 711 E WELLS AVE, SD  
TUESDAY, NOVEMBER 22, 2016, 10:30 A.M. CT**

**REGULAR SESSION AGENDA**

- 10:30 A.M. Call To Order, Chairman Jeff Erickson
- 10:35 A.M. **Agenda**  
RECOMMENDED ACTION: Motion to approve the agenda as provided or amended.
- Minutes**  
RECOMMENDED ACTION: Motion to approve the minutes of October 24, 2016 and November 14, 2016, as presented.
- Conflicts of Interest Disclosures**
- BPro Inc.**  
RECOMMENDED ACTION: Motion to approve the BPro Inc. contract as presented.
- 10:45 A.M. Commissioner's Comments
- 10:55 A.M. **Executive Session**  
RECOMMENDED ACTION: Motion to enter into executive session to discuss contract matters and commercial and financial information relating to loan and other assistance applicants.
- 11:15 A.M. **Report from Executive Session**  
RECOMMENDED ACTION: Approve Chairman's report from Executive Session.
- Other Motions  
Loan Review Summary  
Kerry K Engle Separate Property Trust  
Sioux Falls Development Foundation  
Weisser Properties, LLC
- Bills  
Department of Legislative Audit - \$9,887.45

Notice is further given to persons with disabilities that this meeting is being held in a physically accessible place. Please notify the above mentioned office within 48 hours of the public hearing if you have special needs for which this agency will make the necessary arrangements.

Participation in the meeting can be at GOED at 711 E Wells Ave, Pierre, South Dakota, or the GOED office at the Zeal Center for Entrepreneurship at 2329 N. Career Avenue, Sioux Falls, South Dakota.



**BOARD OF ECONOMIC DEVELOPMENT  
RAMKOTA HOTEL, 1901 9<sup>TH</sup> AVE. SW, WATERTOWN, SD  
MONDAY, OCTOBER 24, 2016, 1:00 P.M. CT**

Members Present

Sharon Casey, John Calvin, Mike Luken, Greg Heineman, Ted Husted, Don Kettering, Tom Jones, Bruce Rempelberg, Scott Parsley and Spencer Hawley

Via telephone- Chairman Jeff Erickson, Dale Clément and Brian Gosch

Staff Present

Commissioner Scott Stern, Deputy Commissioner Aaron Scheibe, Cassie Stoesser, Ashley Moore, Cassidy Kulesa, Katelyn Hump, Dale Knapp, Joe Fiala, Steve Watson, Natalie Likness, Eric Fosheim, Alex Smith, Kristen Honey and Mike Turnwall

Other Staff Present

Sam Helma - BankWest, Inc.  
Tim Engel – May, Adam, Gerdes and Thompson

Call to Order

Chairman Erickson called the meeting to order at 1:04 p.m.

Agenda

A motion was made by Dale Clement and seconded by Don Kettering to approve the agenda as presented.

Motion passed by a roll call vote.

Minutes

A motion was made by Greg Heineman and seconded by John Calvin to approve the minutes of the meetings held September 13, 2016 and October 14, 2016, as presented.

Motion passed by a roll call vote.

Conflicts Disclosure – Chairman Erickson opened the floor for committee members to identify potential conflicts under SDCL Chapter 3-23. The Chairman opened up the floor for questions and discussion concerning the potential conflicts; there were none from board members and no objection to proceeding with the agenda.

Annual Report/Audit Report

A motion was made by Tom Jones and seconded by Mike Luken to approve the 2016 Annual Report/Audit Report as presented.

Motion passed by a roll call vote.

Executive Session

A motion was made by Don Kettering and seconded by Ted Husted to enter into executive session at 1:34 p.m. to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants and consult with legal counsel.

Motion passed by a roll call vote.

Executive Session Report

The Chairman declared the board out of executive session at 1:49 p.m. The Chairman reported that the Board of Economic Development entered into Executive Session to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. No action taken.

A motion was made by Mike Luken and seconded by Greg Heineman to approve the chairman's report from executive session.  
Motion passed by a roll call vote.

Loan Review Summary

Bel Brands USA, Inc., MW Properties, LLC and Moffat Products, Inc.

A motion was made by Dale Clement and seconded by Don Kettering to approve the loan reviews and recommendation as presented.  
Motion passed by a roll call vote.

Adjourn

A motion was made by Greg Heineman and seconded by Don Kettering to adjourn the meeting at 1:53 p.m.  
Motion passed by a roll call vote.

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Dale Clement, Secretary or  
Tony Klein, Treasurer

**CREDIT COMMITTEE  
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD  
MONDAY, NOVEMBER 14, 2016, 1:00 P.M. CT**

Members Present

Chairman Jeff Erickson, Dale Clement, Don Kettering and Norbert Sebade

Staff Present

Commissioner Scott Stern, Deputy Commissioner Aaron Scheibe, Cassie Stoesser, Cassidy Kulesa and Ashley Moore

Other Staff Present

Mike Bietz and Sam Helma - BankWest, Inc.

Call to Order

Chairman Erickson called the meeting to order at 1:34 p.m.

Agenda

A motion was made by Don Kettering and seconded by Dale Clement to approve the agenda as presented.

Motion passed by a roll call vote.

Conflicts Disclosure – Chairman Erickson opened the floor for committee members to identify potential conflicts under SDCL Chapter 3-23. Don Kettering declared a potential conflict on Kerry K Engle Separate Property Trust loan review due to his service at First Dakota National Bank. The Chairman opened up the floor for questions and discussion concerning the potential conflicts; there were none from committee members and no objection to proceeding with the agenda.

Executive Session

A motion was made by Dale Clement and seconded by Norbert Sebade to enter into executive session at 1:38 p.m. to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants.

Motion passed by a roll call vote.

Executive Session Report

The Chairman declared the Credit Committee out of executive session at 2:25 p.m. The Chairman reported that the Board of Economic Development Credit Committee entered into Executive Session to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. No action was taken.

A motion was made by Don Kettering and seconded by Dale Clement to approve the chairman's report from executive session.

Motion passed by a roll call vote.

Loan Reviews

Kerry K Engle Separate Property Trust

No action taken.

Sioux Falls Development Foundation

Credit Committee recommends to the Board approving the loan review and recommendation as presented.

Motion was made by Dale Clement and seconded by Norbert Sebade  
Motion passed by a roll call vote.

Old Business

Sioux Falls Development Foundation

Credit Committee recommends to the Board approving the waiver to provide unaudited financial statements by December 31 and audited financial statements by January 31 each year.

Motion was made by Dale Clement and seconded by Norbert Sebade.  
Motion passed by a roll call vote.

New Business

Weisser Properties, LLC

Credit Committee recommends to the Board approving the application as presented.

Motion was made by Don Kettering and seconded by Dale Clement.  
Motion passed by a roll call vote.

Adjourn

A motion was made by Dale Clement and seconded by Don Kettering to adjourn the meeting at 2:30 p.m.

Motion passed by a roll call vote

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Dale Clement, Secretary or  
Tony Klein, Treasurer



STATE OF SOUTH DAKOTA  
CONSULTING CONTRACT

Agreement made and entered into this 1st day of December, 2016, by and between SD Governor's Office of Economic Development, a state agency, of 711 E Wells Ave, Pierre, SD, 57501, (the "State") and Brandon Campea, of BPro Inc, 124 W. Dakota Ave, Pierre, SD 57501, (605)224-8114 (the "Consultant").

The State hereby enters into this Agreement for services with Consultant in consideration of and pursuant to the terms and conditions set forth herein.

1. The Consultant will perform those services described in the Work Plan, attached hereto as Exhibit A and by this reference incorporated herein.
2. The Consultant's services under this Agreement shall commence on December 1<sup>st</sup>, 2016 and end on November 30th, 2017, unless sooner terminated pursuant to the terms hereof.
3. Exhibit B – Additional Technology Provisions.
4. The Consultant will not use State equipment, supplies or facilities. The Consultant will provide the State with its Employer Identification Number, Federal Tax Identification Number or Social Security Number upon execution of this Agreement.
5. The State will make payment for services upon satisfactory completion of the services. The TOTAL CONTRACT AMOUNT is an amount not to exceed \$1,500.00. The State will not pay Consultant's expenses as a separate item. Payment will be made pursuant to itemized invoices submitted with a signed state voucher. Payment will be made consistent with SDCL ch. 5-26.
6. The Consultant agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the Consultant to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

7. The Consultant, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

A. Commercial General Liability Insurance:

The Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

The Consultant agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than \$1,000,000.00.

C. Business Automobile Liability Insurance:

The Consultant shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

D. Worker's Compensation Insurance:

The Consultant shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

Before beginning work under this Agreement, Consultant shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Consultant agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Consultant shall furnish copies of insurance policies if requested by the State.

8. While performing services hereunder, the Consultant is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

9. Consultant agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Consultant or the State to liability. Consultant shall report any such event to the State immediately upon discovery.

Consultant's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Consultant's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Consultant to report any event to law enforcement or other entities under the requirements of any applicable law.

10. This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Consultant breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to Consultant at the time of termination may be adjusted to cover any additional costs to the State because of Consultant's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Consultant it is determined that Consultant was not at fault, then the Consultant shall be paid for eligible services rendered and expenses incurred up to the date of termination.

11. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

12. This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

13. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

14. The Consultant will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

15. The Consultant certifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment or suspension, or declared ineligible from participating in transactions by the federal government or any state or local government department or agency. Consultant further agrees that it will immediately notify the State if during the term of this Agreement Consultant or its principals become subject to debarment, suspension or ineligibility from participating in

transactions by the federal government, or by any state or local government department or agency.

16. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to Cassie Stoesser on behalf of the State, and by Brandon Campea, on behalf of the Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

17. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

18. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

19. DISCLAIMER

It is understood and agreed to by all parties that the Bureau of Information and Telecommunications (BIT) is representing that, as the state's technology governing organization, it has reviewed only the technical provisions of this contract.

In Witness Whereof, the parties signify their agreement effective the date above first written by the signatures affixed below.

STATE

CONSULTANT

BY: \_\_\_\_\_  
Scott Stern, Commissioner

BY: \_\_\_\_\_  
(NAME)

Governor's Office of Economic Development

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(DATE)

BY: \_\_\_\_\_  
(BIT Commissioner David Zolnowsky) BIT Commissioner David Zolnowsky/ BIT Deputy  
Commissioner Jim Edman))

\_\_\_\_\_  
(DATE)

- State Agency Coding (MSA Center) \_\_\_\_\_.
- State Agency MSA Company for which contract will be paid \_\_\_\_\_.
- Object/subobject MSA account to which voucher will be coded \_\_\_\_\_.
- Name and phone number of contact person in State Agency who can provide additional information regarding this contract \_\_\_\_\_.

EXHIBIT A

STATE OF SOUTH DAKOTA  
CONSULTING CONTRACT

BPRO INC.  
124 W. Dakota Ave  
Pierre, SD 57501  
Consultant Phone #605-224-8114

SD Governor's Office of Economic Development  
711 E Wells Avenue  
Pierre, SD 57501

WORK PLAN

*The Consultant will provide resources for maintaining systems owned by South Dakota Governor's Office of Economic Development.*

*The functions of maintaining systems are defined as follows:*

- *Fix System errors.*
- *Client Facilitation (Example: Answer general client questions, phone calls, e-mails).*
- *System Facilitation (Example: Working with clients on questions, training clients on the use of a system)*
- *Adhoc reporting.*
- *Analysis, Design or Coding with intent to add value to an existing system. (Example: add a new permanent report, modify an existing report or screen, or add a new field).*

*Before work is done on systems included within this contract, approval must be obtained from the system authorization contact. If the vendor receives a request for work from anyone other than the system authorization contact, the vendor shall verify the request and obtain approval from the system authorization contact before the work is started.*

EXHIBIT B

State of South Dakota

CONSULTANT CONTRACT

ADDITIONAL PROVISIONS

1. CONFIDENTIALITY OF INFORMATION:

For purposes of this paragraph, "State Proprietary Information" shall include all information disclosed to the Consultant by the State. The Consultant, and Consultant's Subcontractors, Agents, Assigns and/or Affiliated Entities shall not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. The Consultant, and Consultant's Subcontractors, Agents, Assigns and/or Affiliated Entities shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this agreement; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this agreement; (iii) make State Proprietary Information available to any of its employees, officers, agents or third party Consultants except those who have a need to access such information and who have agreed to obligations of confidentiality at least as strict as those set out in this agreement. The Consultant, and Consultant's Subcontractors, Agents, Assigns and/or Affiliated Entities is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. The Consultant, and Consultant's Subcontractors, Agents, Assigns and/or Affiliated Entities shall protect the confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. The Consultant, and Consultant's Subcontractors, Agents, Assigns and/or Affiliated Entities agree to return all information received from the State to State's custody upon the end of the term of this agreement, unless otherwise agreed in a writing signed by both parties. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to the Consultant, and Consultant's Subcontractors, Agents, Assigns and/or Affiliated Entities ; (ii) was known to the Consultant, and Consultant's Subcontractors, Agents, Assigns and/or Affiliated Entities without restriction at the time of disclosure from the State; (iii) that was disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by the Consultant, and Consultant's Subcontractors, Agents, Assigns and/or Affiliated Entities without the benefit or influence of the State's information; (v) becomes known to the Consultant, and Consultant's Subcontractors, Agents, Assigns and/or Affiliated Entities without restriction from a source not connected to the

State of South Dakota. State's Proprietary Information can include names, social security numbers, employer numbers, addresses and other data about applicants, employers or other clients to whom the State provides services of any kind. Consultant understands that this information is confidential and protected under State law. The parties mutually agree that neither of them nor any Consultant, and Consultant's Subcontractors, Agents, Assigns and/or Affiliated Entities shall disclose the contents of this agreement except as required by applicable law or as necessary to carry out the terms of the agreement or to enforce that party's rights under this agreement. Consultant acknowledges that the State and its agencies are public entities and thus may be bound by South Dakota open meetings and open records laws. It is therefore not a breach of this agreement for the State to take any action that the State reasonably believes is necessary to comply with South Dakota open records or open meetings laws.

2. CHANGE MANAGEMENT PROCESS:

From time to time it may be necessary or desirable for either the State or the Contractor to propose changes in the Services provided. Such changes shall be effective only if they are in writing and contain the dated signatures of authorized representatives of both parties. Unless otherwise indicated, a change or amendment shall be effective on the date it is signed by both parties. Automatic upgrades to any software used by the Contractor to provide any services that simply improve the speed, efficiency, reliability, or availability of existing services and do not alter or add functionality, are not considered "changes to the Services" and such upgrades will be implemented by the Contractor on a schedule no less favorable than that provided by the Contractor to any other customer receiving comparable levels of services.

3. WORK PRODUCTS:

The Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all Services furnished by the Consultant and any subcontractors, if applicable, under this Agreement. It shall be the duty of the Consultant to assure that the services and the system are technically sound and in conformance with all pertinent Federal, State and local statutes, codes, ordinances, resolutions and other regulations. The Consultant shall, without additional compensation, correct or revise any errors or omissions in its work products.

Consultant hereby acknowledges and agrees that all reports, plans, specifications, technical data, miscellaneous drawings, agreements, State Proprietary Information, State Data, End User Data, Personal Health Information, and all information contained therein provided to the State by the Consultant in connection with its performance under this Agreement shall belong to and is the property of the State and will not be used in any way by the Consultant without the written consent of the State.

Papers, reports, forms or other material which are a part of the work under this Agreement will not be copyrighted without written approval of the State. In the unlikely event that any copyright does not fully belong to the State, the State none the less reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and otherwise use, and to authorize others to use, any such work for government purposes.

Consultant hereby agrees to provide to BIT, for safekeeping, a copy of source code for each executive branch state agency computer system that is developed or maintained by the Consultant. The source code provided will be the latest version that currently runs in a production environment. The Consultant will also provide to BIT any computer system source code for non-executive branch state agencies if requested by the agency owning the system.

#### 4. CURING OF BREACH OF AGREEMENT

In the event of a breach of these representations and warranties, Consultant shall immediately, after telephonic notice from the State, begin work on curing such breaches. If such problem remains unresolved after three days, at State's discretion, Consultant may send, at Consultant's sole expense, at least one qualified and knowledgeable representative to the State's site where the system is located. This representative will continue to address and work to remedy the deficiency, failure, malfunction, defect, or problem at the site. The rights and remedies provided in this paragraph are in addition to any other rights or remedies provided in this Agreement or by law.

#### 5. DEFECTIVE SOFTWARE MEDIA

Consultant warrants that each copy of the software provided by Consultant is and will be free from physical defects in the media that tangibly embodies the copy. Consultant shall replace, at Consultant's expense (including shipping and handling costs), any software provided by Consultant that does not comply with this warranty.

#### 6. USE OF SUBCONTRACTORS:

The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of the State. The State reserves the right to reject any person from the contract presenting insufficient skills or inappropriate behavior.

The Consultant will include provisions in its subcontracts requiring any subcontractors to comply with the applicable provisions of this Agreement; any code developed by a subcontractor must be as secure as code developed by the contractor, to indemnify the State, and to provide insurance coverage for the

benefit of the State in a manner consistent with this Agreement. The Consultant will cause its subcontractors, agents, and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. The State, at its option, may require the vetting of any subcontractors. The Consultant is required to assist in this process as needed.

The Consultant also agrees to take reasonable steps including, but not limited to, all steps explicitly required elsewhere in this agreement and all other steps as are reasonable under the circumstances to ensure that its employees or agents actions or omissions do not cause a breach of the terms of this agreement.

7. HOST STAFF:

The Contractor will ensure that employees or agents who perform work under this Agreement have read, understood, and received appropriate instruction as to how to comply with the security provisions of this Agreement and have undergone all background screenings, and possess all qualifications required by the State prior to being granted access to source code, State data, or facilities which house State systems. Any contractor employee, agent, or subcontractor who performs work under this Agreement and has access to source code, State data, or facilities which house State systems will be required to sign the BIT Security Acknowledgement Form.

8. IT STANDARDS:

Any software or hardware provided under this agreement will comply with state standards which can be found at <http://bit.sd.gov/standards/>.

9. SECURITY:

The Consultant shall take all actions necessary to protect State information from exploits, inappropriate alterations, access or release, and malicious attacks.

By signing this agreement, the Consultant warrants that:

- A. All known security issues are resolved.
- B. Assistance will be provided to the State by the Consultant in performing an investigation to determine the nature of any security issues that are discovered or are reasonably suspected after acceptance. This investigation can include security scans made at the State's discretion.
- C. State technology standards, policies, and best practices will be followed. State technology standards can be found at <http://bit.sd.gov/standards/>.

10. MALICIOUS CODE

The Vendor covenants that it:

- A. The Licensed Software does not contain any code that does not support a software requirement.
- B. Will not insert into the Licensed Software or any media on which the Licensed Software is delivered any virus, rogue program, time bomb, worm, Trojan Horse, back doors, Easter eggs or other malicious or intentionally destructive code and
- C. Will use commercially reasonable efforts consistent with industry standards to scan for and remove any Malicious Code from the Licensed Software before installation. In the event any Malicious Code is discovered in the Licensed Software as delivered by the Vendor to the State under this contract, the Vendor shall provide the State at no charge with a clean copy of the applicable Licensed Software that does not contain such Malicious Code or otherwise correct the affected portion of the services provided to the State under this contract. The remedies in this paragraph are in addition to such other and additional remedies as the State may have at law equity or otherwise
- D. Will resolve all known security issues.

11. DENIAL OF ACCESS OR REMOVAL OF AN APPLICATION FROM PRODUCTION

During the life of this contract the application can be denied access to or removed from the production system at BIT's discretion. The reasons for the denial of access or removal of the application from the production system can include, but are not limited to, security, functionality, unsupported third party technologies, or excessive resource consumption. At the discretion of the State contractual payments may be suspended while the application is denied access to or removed from the production system if the problem is caused by the Vendor's actions or inactions. Access to the production system and any updates to the production system will be made only with BIT's prior approval. It is expected that any fixes will be tested on the test system and not on the production system. It is expected that the Vendor shall provide BIT with proof of the fix proposed before BIT provides access to the production system. The certification by BIT of the fix on the test system does not guarantee the Vendor access to the production system. BIT shall sign a non-disclosure agreement with the Vendor if revealing its fix will put the Vendor's intellectual property at risk. If the Vendor is unable to produce the project deliverables due to the Vendor actions or inactions within thirty (30) days of the application's denial of access or removal from the production system and the Vendor does not employ the change management process to alter the

project schedule or deliverables within the same thirty (30) days then at the State's discretion the contract may be terminated and Vendor is required to refund to the State all contractual payments made to that point.

12. BACKUP COPIES:

The State may make and keep backup copies on the condition that:

- a) The State keeps possession of the backup copies;
- b) The backup copies are only used as bona fide backups.

13. USE OF ABSTRACTION TECHNOLOGIES:

The Vendor's application must use appropriate abstraction technologies, such as relative pathing. By way of example, hardcoded server names and hardcoded IP addresses are not permitted.

Use of hard-coded resources will result in a failure to pass pre-production testing and may cause the application to fail or be shut down at any time without warning. In all such cases, correcting the hardcoding violations shall be the responsibility of the Vendor and will not be a project change chargeable to the State.

Exceptions to this policy may be requested by the Vendor in writing provided they include a mitigation plan that documents the need for the exception, the process by which the application will be maintained, and evidence of on-going maintenance sufficient to assure resources to fix the application are in place should it fail due to the hard-coded resources. Two (2) weeks must be allowed for the State to review such an exception request and approval shall be granted or denied based on the State's determination of what is in the best interest of the overall state technology needs for security, consistency, availability, reliability, and supportability.

14. PERFORMANCE OF ADDITIONAL WORK:

The Vendor will perform additional work on their application at the hourly rate of \$70.00. This work can be authorized by any of the State signatories to this contract. This additional work will not be considered a project change chargeable to the State if it is for reasons of correcting security deficiencies, meeting the functional requirements established for the application, unsupported third party technologies or excessive resource consumption. Completion of this additional work can be a requirement for an application to go into or stay in production.

15. SECURITY ACKNOWLEDGEMENT FORM

The Consultant will be required to sign the Security Acknowledgement form which is attached to this Agreement as Attachment 1. The signed Security

Acknowledgement form must be submitted to the State and approved by the South Dakota Bureau of Information and Telecommunications and communicated to the Consultant by the State contact before work on the contract may begin. This form constitutes the agreement of Consultant to be responsible and liable for ensuring that the Consultant, Consultant's employee(s), and Subcontractor's, Agents, Assigns and or Affiliated Entities and all of their employee(s), participating in the work will abide by the terms of the Information Technology Security Policy- Contractor (ITSP) attached to this Agreement as ~~XXXXXX~~. Failure to abide by the requirements of the ITSP or the Security Acknowledgement form can be considered a breach of this Agreement at the discretion of the State. It is also a breach of this Agreement, at the discretion of the State, if the Consultant does not sign another Security Acknowledgement form covering any employee(s) and any Subcontractor's, Agents, Assigns and or Affiliated Entities employee(s), any of whom are participating in the work covered by this Agreement, and who begin working under this Agreement after the project has begun. Any disciplining of the Consultant's, Consultant's employee(s) or Subcontractor's, Agents, Assigns and or Affiliated Entities employee(s) due to a failure to abide by the terms of the Security Acknowledgement Form will be done at the discretion of the Consultant or Subcontractor's, Agents, Assigns and or Affiliated Entities and in accordance with the Consultant's or Subcontractor's, Agents, Assigns and or Affiliated Entities personnel policies. Regardless of the actions taken by the Consultant and Subcontractor's, Agents, Assigns and or Affiliated Entities, the State shall retain the right to require at its discretion the removal of the employee(s) from the project covered by this agreement.

## 16. BACKGROUND CHECKS

- A. The State of South Dakota requires all employee(s) of the Vendor, subcontractor(s) and or agent(s) who write or modify State of South Dakota-owned software, alter hardware, configure software of state-owned technology resources, have access to source code and/or protected personally identifiable information or other confidential information or have access to secure areas to have fingerprint-based background checks. These background checks must be performed by the State with support from the State's law enforcement resources. The State will supply the finger print cards and the procedure that is to be used to process the finger print cards. Project plans should allow two to four weeks to complete this process. If work assignments change after the initiation of the project covered by this agreement so that employee(s) of the Vendor, subcontractor(s) and or agent(s) will be writing or modifying State of South Dakota owned software, altering hardware, configuring software of state owned technology resources, have access to source code and/or protected personally identifiable information or other confidential information or have access to secure areas then, background checks must be performed on any employees who will complete any of the referenced

tasks. The State reserves the right to require the Vendor to prohibit any employee, subcontractor or agent from performing work under this Agreement that the State, in its sole discretion, believes is detrimental to the project or is considered by the State to be a security risk, based on the results of the background check. The State will provide the Vendor with notice of its determination.

20. REJECTION OR EJECTION OF CONSULTANT, AND CONSULTANT'S SUBCONTRACTORS, AGENTS, ASSIGNS AND/OR AFFILIATED ENTITIES EMPLOYEE(S)

The State, at its option, may require the vetting of any of the Consultant, and Consultant's Subcontractors, Agents, Assigns and/or Affiliated Entities. The Consultant is required to assist in this process as needed. The State reserves the right to reject any person from the project who the State believes would be detrimental to the project or is considered by the State to be a security risk.

The State reserves the right to require the Consultant to remove from the project any person the State believes is detrimental to the project or is considered by the State to be a security risk. The State will provide the Consultant with notice of its determination, and the reasons removal is deemed necessary. If the State signifies that a potential security violation exists with respect to the request, the Consultant shall immediately remove the individual from the project.



**SOUTH DAKOTA REVOLVING  
ECONOMIC DEVELOPMENT AND INITIATIVE FUND  
FINANCIAL REPORT  
(Compiled)  
October 31, 2016**

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# Clausen & Rice, LLP

Certified Public Accountants and Business Consultants

John E. Clausen, CPA  
johnclausen.cpa@midconetwork.com

Daniel L. Rice, CPA  
danrice.cpa@midconetwork.com

## Accountant's Compilation Report

To the Board of Directors  
South Dakota Revolving Economic Development and Initiative Fund  
Pierre, South Dakota

Management is responsible for the accompanying financial statements of South Dakota Revolving Economic Development and Initiative Fund (an Enterprise Fund of the State of South Dakota) as of October 31, 2016, and the related statements of revenues, expenses and changes in net assets and cash flows for the four months then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the financial statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, a conclusion, nor provide any form of assurance on these financial statements.

Management has elected to omit substantially all of the disclosures required by accounting principles generally accepted in the United States of America. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the Entity's financial position, results of operations, and cash flows. Accordingly, the financial statements are not designed for those who are not informed about such matters.

The supplementary information contained on pages 5 through 7 is presented for purposes of additional analysis and is not a required part of the basic financial statements. This information is the representation of management. The information was subject to our compilation engagement, however, we have not audited or reviewed the supplementary information and, accordingly, do not express an opinion, a conclusion, nor provide any form of assurance on such supplementary information.

We are not independent with respect to South Dakota Revolving Economic Development and Initiative Fund.

*Clausen & Rice, LLP*

Pierre, South Dakota  
November 14, 2016

**SOUTH DAKOTA REVOLVING  
ECONOMIC DEVELOPMENT AND INITIATIVE FUND  
STATEMENT OF NET ASSETS**

**October 31, 2016**

**See Accountant's Compilation Report**

**ASSETS**

Cash and Investments-Unrestricted	\$67,246,750
Cash and Investments-Designated for Approved REDI Loans	5,087,428
Cash-SD Jobs	<u>1,904,348</u>
Total Cash and Investments	\$74,238,526
Accounts Receivable-Bankwest	67,934
Loans Receivable - REDI, net of allowance of \$591,295	39,275,600
Loan Interest Receivable	35,269
Net Pension Asset	78,246
Equipment	0
Due From Other Funds	0
Investment Income Receivable	<u>590,135</u>

**TOTAL ASSETS** \$114,285,710

**DEFERRED OUTFLOWS OF RESOURCES**

Deferred Outflows of Resources Related to Pensions	<u>143,558</u>
<b>TOTAL DEFERRED OUTFLOWS OF RESOURCES</b>	<u>143,558</u>

**LIABILITIES**

Accounts Payable	\$11,802
Wages and Benefits Payable	\$28,033
Accrued Leave Payable	\$22,224
Due To Other Funds	<u>\$7,926</u>

**TOTAL LIABILITIES** \$69,985

**DEFERRED INFLOWS OF RESOURCES**

Deferred Inflows of Resources Related to Pensions	<u>143,558</u>
<b>TOTAL DEFERRED INFLOWS OF RESOURCES</b>	<u>143,558</u>

**NET POSITION**

Investment in Capital Assets	0
Unrestricted	<u>114,215,725</u>

**TOTAL NET POSITION** \$114,215,725

**TOTAL LIABILITIES AND NET POSITION** \$114,429,268

**SOUTH DAKOTA REVOLVING**  
**ECONOMIC DEVELOPMENT AND INITIATIVE FUND**  
**STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET ASSETS**  
**For the Four Month Period Ending October 31, 2016**

**See Accountant's Compilation Report**

	Current Period	Year to Date
<b>OPERATING REVENUE</b>		
Interest Income on Loans - REDI	\$184,988	\$184,988
Ethanol Income - REDI	0	0
Other Income - REDI	8,740	8,740
Building South Dakota Income	8,079	8,079
<b>LESS OPERATING EXPENSES</b>		
Administrative Expenses	212,017	212,017
Bad Debt Expense	(178,633)	(178,635)
Other Expenses	6,128	6,128
Building South Dakota Grants	0	0
<b>NET INCOME (LOSS) FROM OPERATIONS</b>	\$162,295	\$162,295
<b>NONOPERATING REVENUE</b>		
Investment Income	590,135	590,135
<b>CHANGE IN NET POSITION</b>	\$752,430	\$752,430
<b>NET POSITION, BEGINNING</b>	113,463,295	113,463,295
Prior period Adjustment	0	0
<b>NET POSITION, ENDING</b>	<b>\$114,215,725</b>	<b>\$114,215,725</b>

**SOUTH DAKOTA REVOLVING**  
**ECONOMIC DEVELOPMENT AND INITIATIVE FUND**  
**STATEMENT OF CASH FLOWS**

For the Four Month Period Ending October 31, 2016

See Accountant's Compilation Report

	Current Period	Year to Date
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Change in Net Position	\$752,430	\$752,430
Adjustments to Reconcile Net Income to		
Net Cash provided from (used in) Operating Activities:		
(Increase) Decrease in Accounts Receivable - Bankwest	0	0
(Increase) Decrease in Loans Receivable - RED1	381,474	381,474
(Increase) Decrease in Loan		
Interest Receivable	(4,831)	(4,831)
(Increase) Decrease in Loans Receivable - VASF	0	0
(Increase) Decrease in Equipment	0	0
(Increase) Decrease in VASF Fuel Tax		
Revenues Receivable	0	0
(Increase) Decrease in Investment		
Income Receivable	414,284	414,284
(Increase) Decrease in Due From Other Funds	500,000	500,000
(Increase) Decrease in Other Assets	0	0
Increase (Decrease) in Accounts Payable	0	0
Increase (Decrease) in Wages Payable	0	0
Increase (Decrease) in Accrued Leave Payable	0	0
Increase (Decrease) in Grants Payable	0	0
Increase (Decrease) in Due To Other Funds	0	0
	\$2,043,357	\$2,043,357
<b>CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES:</b>		
Prior Period Adjustment	0	0
	\$2,043,357	\$2,043,357
<b>NET INCREASE IN CASH AND INVESTMENTS</b>	<b>72,195,169</b>	<b>72,195,169</b>
<b>CASH AND INVESTMENTS - BEGINNING</b>	<b>72,195,169</b>	<b>72,195,169</b>
<b>CASH AND INVESTMENTS - ENDING</b>	<b>\$74,238,526</b>	<b>\$74,238,526</b>

SOUTH DAKOTA REVOLVING  
 ECONOMIC DEVELOPMENT AND INITIATIVE FUND  
 ADDITIONAL LOAN INFORMATION - REDI  
 For the Four Month Period Ending October 31, 2016

See Accountant's Compilation Report

REDI LOANS APPROVED, NOT ADVANCED

<u>Company Name</u>	<u>Approval Date</u>	<u>Loan Amount</u>
CMW Industrial Properties, LLC	11/12/2014	\$ 350,000
PEDCO/South Dakota Pulse Processors	12/9/2014	\$ 360,000
Vermillion Area Chamber of Commerce & Devp. Co.	2/10/2016	\$ 2,764,428
Harbor Group Investments, LLC	5/10/2016	\$ 1,613,000
Total		<u>\$ 5,087,428</u>

**See Accountant's Compilation Report**

REDI LOANS ADVANCED, DURING	October	Advanced Date	Loan Amount
<u>Company Name</u>			
RTI Holdings		10/20/2016	\$874,000
			<u>\$874,000</u>

REDI LOANS PAID OFF, DURING	October	Pay-off Date	Original Loan Amount
<u>Company Name</u>			
None			

REDI LOANS WROTE OFF, DURING	October	Wrote-off Date	Amount Wrote-off
<u>Company Name</u>			
None			

REDI LOANS WITHDRAWN, DURING	October	Withdrawal Date	Withdrawn Amount
<u>Company Name</u>			
None			

**SOUTH DAKOTA REVOLVING  
ECONOMIC DEVELOPMENT AND INITIATIVE FUND  
ADDITIONAL LOAN INFORMATION - SDJP  
For the Four Month Period Ending October 31, 2016  
See Accountant's Compilation Report**

**SOUTH DAKOTA JOBS PROGRAM CASH & INVESTMENTS BALANCE**

Dedicated SDJP Fund Cash and Investments Balance	6/30/2016	\$1,378,972
Plus: Investment Council Interest		17,297
South Dakota Jobs		508,079
		0
Less:		
TruXedok Inc.		0
		0
		0
Dedicated SDJP Fund Cash and Investments Balance	10/31/2016	<u>\$1,904,348</u>

**SOUTH DAKOTA JOBS PROGRAM CASH & INVESTMENTS BALANCE APPROVED, NOT ADVANCED**

RESTRICTED

<u>Company Name</u>	<u>Approval Date</u>	<u>Amount Remaining</u>	
Sapa Extrusions, Inc.	9/9/2014	24,280	\$24,280 Authorized \$0 Disbursed
		<u>\$24,280</u>	

UNRESTRICTED

Total South Dakota Jobs Program Cash and Investments	\$1,904,348
Less Cash and Investments-Restricted for Approved Loans/Grants	\$24,280
Total Unrestricted South Dakota Jobs Program Cash and Investments	<u>\$1,880,068</u>



**Board of Economic Development  
November 22, 2016**

**BILLS REQUIRING APPROVAL FOR PAYMENT**

Department of Legislative Audit	\$9,887.45	2016 REDI Audit
---------------------------------	------------	-----------------

**N287100002**  
October 26, 2016

For the audit of the fiscal affairs of the REDi Fund  
for the period ended June 30, 2016.

Audit Services:

Total Hours: 152.5 hours

Non-billable General Fund: 0.0 hours

and 152.5 hours billable at the following rates:

16.7 hours at the Fiscal 2016 rate of	\$63.50 per hour	\$1,060.45
<u>135.8 hours at the Fiscal 2017 rate of</u>	<u>\$65.00 per hour</u>	<u>\$8,827.00</u>
152.5		<u>\$9,887.45</u>

Cost Center Breakdown:

Other Programs	<u>152.5 hours</u>	<u>\$9,887.45</u>
	152.5 hours	\$9,887.45

**State of South Dakota  
Department of Legislative Audit**

Non-Cash Voucher

**Application**  
90

**Vendor Number**

**Invoice ID**

**Date**  
October 26, 2016

**Purchase Order**

**Document ID**  
N287100002

**TO:** GOED - REDI FUND  
DOLLY-REED PLAZA  
PIERRE SD 57501

**FROM:** LEGISLATIVE AUDIT  
427 SOUTH CHAPELLE  
PIERRE, SD 57501

	COMPANY	REQUIRED	CENTER	PROJ CO	PROJECT NUMBER	AMOUNT	CODE	
1	1000	4533100		2880		9,887.45	CR	1
2							DR	2
3							DR	3
4							DR	4
5							DR	5
6							DR	6
7							DR	7
8							DR	8
9							DR	9
TOTAL						\$ 19,774.90		

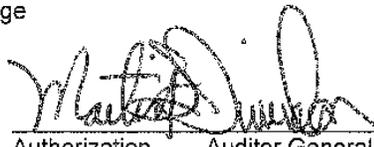
**Description**

For the Fiscal Affairs of the Governor's Office of Economic Development - REDI Fund  
FY2016 Audit Billing

**Amount Due:** \$ 9,887.45

I declare and affirm under the penalties of perjury that this claim has been examined by me, and to the best of my knowledge and belief, is in all things true and correct.

Laurel Sharp \_\_\_\_\_ 773-6453  
Claimant

 \_\_\_\_\_ 10/26/16  
Authorization Auditor General Date

\_\_\_\_\_  
Authorization Date