

**BOARD OF ECONOMIC DEVELOPMENT
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
TUESDAY, JANUARY 14, 2014 9:30 AM CT**

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**BOARD OF ECONOMIC DEVELOPMENT
GOED CONFERENCE ROOM, 711 E WELLS AVE, SD
TUESDAY, JANUARY 14, 2014 – 9:30 AM CT**

REGULAR SESSION AGENDA

- 9:30 AM Call To Order, Chairman Jeff Erickson
- 9:35 AM **Agenda**
RECOMMENDED ACTION: Motion to approve Agenda as provided or amended.
- Minutes**
RECOMMENDED ACTION: Motion to approve Minutes of December 10, 2013 and January 2, 2014 as presented.
- Clausen & Rice, LLP Accounting Contract Amendment**
RECOMMENDED ACTION: Motion to approve the Clausen & Rice, LLP Accounting Contract Amendment as presented.
- BPro Inc. Contract**
RECOMMENDED ACTION: Motion to approve the BPro Inc contract as presented.
- 9:40 AM Commissioner's Comments
- 9:50 AM **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.
- 10:30 AM **Report from Executive Session**
RECOMMENDED ACTION: Approve Chairman's report from Executive Session
- Other Motions
Adams Holding, LLC
Northern Beef Packers
PEDCO/Eagle Creek
Pure Pulp Products, Inc.
WM3D SD Properties, LLC
IEDC Basic Economic Development Course
- Bills
BankWest, Inc.-\$11,000.00
M A G & T LLP- \$1,421.00
M A G & T LLP- \$3,358.22
PIDC- \$8,325.00
Department of Legislative Audit- \$16,466.60
Fidelity Abstract & Title Co.- \$1,391.48

City of Howard- \$1,537.10

Notice is further given to persons with disabilities that this meeting is being held in a physical 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 Business & Technology Center at 2329 N. Career Avenue, Sioux Falls, SD.

BOARD OF ECONOMIC DEVELOPMENT
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
TUESDAY, DECEMBER 10, 2013 – 9:30 AM CT

Members Present

Chairman Jeff Erickson, Tony Klein, Sharon Casey, John Calvin, Mike Luken, Ted Hustead, Pat Prostrollo, Tom Jones, David Lust, Bruce Rampelberg, Scott Parsley

Staff Present

Kim Easland, Travis Dovre, Ashley Moore, Cherissa Nielson, Dale Knapp

Other Staff Present

Mandy Kuipers- BankWest, Inc.
JJ Linn- Clausen & Rice, LLP

Others Present

Bob Mercer

Call to Order

Chairman Erickson called the meeting to order at 9:34 AM.

Agenda

A motion was made by Tony Klein and seconded by Pat Prostrollo to approve the agenda as presented.

Motion passed by a roll call vote.

Minutes

A motion was made by John Calvin and seconded by Mike Luken to approve the minutes of the meeting held November 15, 2013, November 19, 2013 and December 2, 2013 as presented.

Motion passed by a roll call vote.

Annual Report/Audit Report

A motion was made by Ted Hustead and seconded by Pat Prostrollo to approve the 2013 Annual Report/Audit Report as presented.

Motion passed by a roll call vote

Executive Session

A motion was made by Tony Klein seconded by Sharon Casey to enter into executive session at 9:43 am 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 board out of executive session at 10:08 a.m. The Chairman reported that the Board of Economic Development entered into Executive Session to discuss commercial and financial information relating to loan and other assistance to applicants.

A motion was made by Mike Luken and seconded by Pat Prostrollo approve the chairman's report from executive session.

Motion passed by a roll call vote.

Reports

South Dakota Division of Banking-Report from Examination

A motion was made by Tony Klein and seconded by Ted Husted to accept the exam as presented.

Motion passed by a roll call vote

Loan Reviews

Lumber Exchange, LLC

A motion was made by Pat Prostrullo and seconded by Mike Luken to approve the loan review and recommendation as presented.

Motion passed by roll call vote.

Old Business

Deadwood Biofuels, LLC

A motion was made by Ted Husted and seconded by Pat Prostrullo to deny the request as presented.

Motion passed by a roll call vote

Belle Fourche Development Corporation

A motion was made by Mike Luken and seconded by Pat Prostrullo to approve the Economic Development Partnership Program application of Belle Fourche Development Corporation as recommended by staff and Grant Committee in board packet.

Belle Fourche Development Corporation

Approve an amendment to the Economic Development Partnership Program grant award to Belle Fourche Development Corporation in the amount of \$103,000, to now include training costs.

Motion passed by a roll call vote

New Business

Faulkton Area Economic Development, Gettysburg/Whitlock Bay Development Corporation, Lake Francis Case Development Corporation and Wounded Knee Development Corporation

A motion was made by Sharon Casey and seconded by Ted Husted to approve the Economic Development Partnership Grant applications of the Faulkton Area Economic Development, Gettysburg/Whitlock Bay Development Corporation, Lake Francis Case Development Corporation and Wounded Knee Development Corporation as recommended by staff and Grant Committee in the board packet.

Faulkton Area Economic Development

Approve an Economic Development Partnership grant award to the Faulkton Economic Development in the amount of \$52,220, to be granted in accordance with the board's Economic Development Partnership Award Policy for Staff Funding.

Gettysburg/Whitlock Bay Development Corporation

Approve an Economic Development Partnership grant award to the Gettysburg/Whitlock Bay Development Corporation in the amount of \$21,700, to be granted in accordance with the board's Economic Development Partnership Award Policy for Staff Funding.

Lake Francis Case Development Corporation

Approve an Economic Development Partnership grant award to the Lake Francis Case Development Corporation in the amount of \$62,275, to be

granted in accordance with the board's Economic Development Partnership Award Policy for Staff Funding.

Wounded Knee Development Corporation

Approve an Economic Development Partnership grant award to Wounded Knee Development Corporation in the amount of \$54,000, to be granted in accordance with the board's Economic Development Partnership Award Policy for Staff Funding.

Motion passed by roll call vote.

City of Wagner, Gettysburg/Whitlock Bay Development Corporation (RLF) and Wessington Springs Area Development Corporation

A motion made by Pat Prostrollo and seconded by Tony Klein to deny the Economic Development Partnership grant applications of the City of Wagner, Gettysburg/Whitlock Bay Development Corporation (RLF) and Wessington Springs Area Development Corporation as recommend by staff and Grant Committee in the board packet.

Motion passed by roll call vote.

City of Castlewood and City of Milbank

A motion was made by Sharon Casey and seconded by Ted Husted to approve the Local Infrastructure Improvement Grant applications of the City of Castlewood and City of Milbank as recommended by staff and Grant Committee in the board packet.

City of Castlewood

Approve a Local Infrastructure Improvement grant award to the City of Castlewood in the amount of \$100,000, to be granted in accordance with the board's Local Infrastructure Improvement Award Policy.

City of Milbank

Approve a Local Infrastructure Improvement grant award to the City of Milbank in the amount of \$200,000, to be granted in accordance with the board's Local Infrastructure Improvement Award Policy.

Motion passed by roll call vote.

City of Pierre

A motion was made by Pat Prostrollo and seconded by Ted Husted to deny the Local Infrastructure Improvement Grant application to the City of Pierre as recommended by staff and Grant Committee in the board packet.

Motion passed by roll call vote with Tony Klein abstaining.

Bills

A motion was made by Tony Klein and seconded by Sharon Casey to approve the bill payable to BankWest, Inc. in the amount of \$11,000 for the November Servicing, May, Adam, Gerdes & Thompson LLP in the amount of \$1,885.00 and Clausen & Rice, LLP in the amount of \$14,500.

Motion passed by a roll call vote.

Adjourn

A motion was made by Tony Klein and seconded by Pat Prostrullo to adjourn the meeting at 10:20 a.m.

Motion passed by a roll call vote.

Dale Clement, Secretary or
Tony Klein, Treasurer

CREDIT COMMITTEE
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
JANUARY 2, 2014 – 11:00 AM CT

Members Present

Chairman Jeff Erickson, Tom Burchill, Don Kettering, Pat Prostrollo

Staff Present

Kim Easland, Travis Dovre, Ashley Moore

Other Staff Present

Mandy Kuipers- BankWest, Inc.

Call to Order

Chairman Erickson called the meeting to order at 11:05 am.

Agenda

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

Motion passed by a roll call vote.

Executive Session

A motion was made by Pat Prostrollo and seconded by Don Kettering to enter into executive session at 11:06 am 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 board out of executive session at 11:44 am. The Chairman reported that the Board of Economic Development entered into Executive Session to discuss commercial and financial information relating to loan and other assistance to applicants.

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

Motion passed by a roll call vote.

Old Business

Adams Holding, LLC

Credit Committee recommends to the Board extending the maturity date on loans 04-14-A, 06-07-A and 08-06-A for 6 months.

A motion was made by Pat Prostrollo and seconded by Tom Burchill

Motion passed by a roll call vote.

Northern Beef Packers

Credit Committee recommends to the Board withdrawing the \$5,000,000 REDI loan commitment.

A motion was made by Don Kettering and seconded by Pat Prostrollo.

Motion passed by a roll call vote.

PEDCO/Eagle Creek

Credit Committee recommends to the Board approving a 6 month extension.

A motion was made by Tom Burchill and seconded by Pat Prostrollo.

Motion passed by a roll call vote.

Pure Pulp Products, Inc.

Credit Committee recommends to the Board approving a 6 month extension of the MOU and remain as currently classified.

A motion was made by Don Kettering and seconded by Pat Prostrollo.

Motion passed by a roll call vote.

WM3D Properties, LLC

Credit Committee recommends to the Board approving WM3D SD Properties, LLC as the actual buyer, approving the additional corporate guarantors and classifying according to staff recommendation.

A motion was made by Tom Burchill and seconded by Pat Prostrollo.

Motion passed by a roll call vote.

Adjourn

A motion was made by Don Kettering and seconded by Pat Prostrollo to adjourn the meeting at 11:47 am.

Motion passed by a roll call vote

Dale Clement, Secretary or
Tony Klein, Treasurer

**GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT
STATE OF SOUTH DAKOTA
CONSULTING CONTRACT**

THIS AMENDMENT is entered into as of the 30th day of December, 2013, by and between the State of South Dakota, Governor's Office of Economic Development, a state agency, 711 E. Wells Ave., Pierre, SD 57501 (the "State") and Clausen and Rice, LLP, 430 West Sioux Ave., PO Box 1117, Pierre, SD 57501 (the "Consultant"). The parties hereto entered into an agreement commencing July 1, 2013 and ending on June 30, 2014, for Consultant to provide certain accounting services pertaining to the SD Board of Economic Development ("Agreement"). The parties hereby agree to amend the Agreement.

This Amendment shall amend Section 1 of the Agreement to read as follows:

1. The Consultant will prepare monthly financial statements, assist in the fiscal year-end accounting, and provide financials to Legislative Audit for the SD Board of Economic Development's annual audit (BED). Consultant will also prepare monthly financial statements for the grant programs administered under BED.

This Amendment is part of the Agreement and the Agreement shall remain in full force and effect, subject only to the above-stated amendments.

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

STATE

CONSULTANT

BY: _____
J. Pat Costello, Commissioner

BY: _____

DATE: _____

DATE: _____

GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT
STATE OF SOUTH DAKOTA
CONSULTING CONTRACT

AGREEMENT made and entered into this 4 day of June, 2013, by and between The State of South Dakota, Governor's Office of Economic Development, a state agency, 711 E. Wells Ave., Pierre, SD 57501, (the "State") and Clausen and Rice, LLP, 430 West Sioux Ave, PO Box 1117, Pierre, SD 57501 (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 prepare quarterly financial statements, assist in the fiscal year-end accounting, and audit for the SD Board of Economic Development (BED)

2. The Consultant's services under this Agreement shall commence on July 1, 2013 and end on June 30, 2014, unless sooner terminated pursuant to the terms hereof.

3. The Consultant will not use State equipment, supplies or facilities.

4. The TOTAL CONTRACT AMOUNT is an amount not to exceed \$19,000.00 per year. The State will not pay Consultant's expenses as a separate item.

5. 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.

6. 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 adequate commercial general liability insurance or equivalent form with a limit of not less than \$500,000 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 with a limit not less than \$500,000.

C. Business Automobile Liability Insurance: The Consultant shall maintain adequate business automobile liability insurance.

D. Worker's Compensation Insurance: The Consultant shall procure and maintain workers' compensation and employers' insurance as required by South Dakota law.

Before beginning work under this Agreement, the Consultant shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and which provide that such insurance may not be canceled, except on 30 days' prior written notice to the State. The Consultant shall furnish copies of insurance policies if requested by the State.

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

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of the State. The Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, 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.

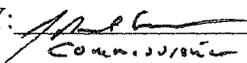
15. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to Pat Costello on behalf of the State, and by John Clausen, on behalf of the Consultant, or such authorized designees as either party may from 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.

16. 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.

17. 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.

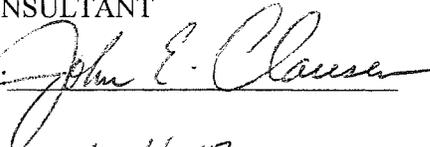
In Witness Whereof, the parties signify their agreement effective the date above first written by the signatures affixed below.

STATE

BY: 
Commissioner GOED

DATE: 5/28/13

CONSULTANT

BY: 

DATE: 6-4-13

STATE OF SOUTH DAKOTA
CONSULTING CONTRACT

Agreement made and entered into this 1st day of December, 2013, 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 1st, 2013 and end on December 1st, 2014 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 \$1500.00. 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 Kim Easland 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: _____
(NAME)

BY: _____
(NAME)

(TITLE AND AGENCY)

(TITLE)

(DATE)

(DATE)

BY: _____
(BIT Commissioner David Zolnowsky)

(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.
318 S PIERRE STREET
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 the sub-paragraph, "State Proprietary Information" shall include all information disclosed to Consultant by the State. Consultant acknowledges that it shall have a duty to 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. Consultant shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this contract; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this contract; (iii) make State Proprietary Information available to any of its employees, officers, agents or consultants except those who have agreed to obligations of confidentiality at least as strict as those set out in this contract and who have a need to know such information. Consultant 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. Consultant shall protect 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. Consultant agrees to return all information received from the State to State's custody upon the end of the term of this contract, 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 Consultant; (ii) was known to Consultant without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Consultant without the benefit or influence of the State's information; (v) becomes known to Consultant without restriction from a source not connected to the State of South Dakota. State's Proprietary Information shall include names, social security numbers, employer numbers, addresses and all 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 at SDCL 1-27-1.5 as modified by 1-27-1.6 as well as 12-4-9, 22-40-9 and agrees to immediately notify the State if the information is disclosed, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the contract except as required by applicable law or as necessary to carry out the terms of the contract or to enforce that party's

rights under this contract. Consultant acknowledges that the State and its agencies are public entities and thus are 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. If work assignments performed in the course of this Agreement require additional security requirements or clearance, the Consultant will be required to undergo investigation.

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:

Consultant warrants that the software and hardware developed or purchased for the state will be in compliance with the BIT Standards including but not limited to the standards for security, file naming conventions, executable module names, Job Control Language, systems software, and systems software release levels, temporary work areas, executable program size, forms management, network access, tape management, hosting requirements, administrative controls, and job stream procedures prior to the installation and acceptance of the final project. BIT standards can be found at <http://bit.sd.gov/standards/>.

9. SECURITY:

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

By signing this contract, the Vendor warrants that:

- A. All known security issues are resolved.
- B. Assistance will be provided to the State of South Dakota by the Vendor 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. Failure by the Vendor to remedy any security issues

discovered can be considered a breach of this contract by the State.

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 \$65.00. 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.

**Board of Economic Development
January 14, 2014**

BILLS REQUIRING APPROVAL FOR PAYMENT

Company	Amount	Regarding
BankWest, Inc.	\$11,000.00	REDI Fund Servicing – December
M A G & T LLP	\$1,421.00	Legal Work- 9.80 hours
M A G & T LLP	\$3,358.22	Legal Work- 17.70 hours
PIDC	\$ 8,325.00	Portfol Annual Maintenance
Department of Legislative Audit	\$16,466.60	Audit Work
Fidelity Abstract & Title Co	\$1,391.48	Howard Building
City of Howard	\$1,537.10	City of Howard

Grand Total: \$43,499.40



STATEMENT

December 27, 2013

Board of Economic Development
Governor's Office of Economic Development
711 East Wells Avenue
Pierre, South Dakota 57501-3369

RE: REDI Fund Loan Servicing

Ending December 2013 (Based on average balance of \$41,943,355.50)	\$ 9437.26
Contract monthly minimum	\$11,000.00
Total Due	<u>\$ 11,000.00</u>

Please remit to: BankWest, Inc.
PO Box 998
Pierre, SD 57501

Attn: Mandy Kuipers



Invoice Number 073185
 Invoice Date December 12, 2013
 Contract Number
 Contract
 Project PORT-S-00008799-
 Customer # SDG001
 Page 1 of 1

Kim Easland
 SD GOED
 210 East 4th Street
 Pierre, SD 57501

Manager DeBellis, Jean

Payment Due Upon Receipt. A 5% late fee charge will be assessed after 45 days of invoice date.

Portfolio		
	SQL Annual Support 1/1/2014 through 12/31/2014	8,325.00
Invoice Total		8,325.00

Contract Value 0.00

Make check payable to:
 PIDC
 2600 Centre Square West
 1500 Market Street
 Philadelphia, PA 19102
 EIN 23-6050858

11/12/2013
 11/12/2013
 11/12/2013
 11/12/2013
 11/12/2013
 11/12/2013

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

Non-Cash Voucher

Application
90

Vendor Number

Invoice ID

Date
December 17, 2013

Purchase Order

Document ID
N284090004

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			8,233.30	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						\$ 16,466.60		

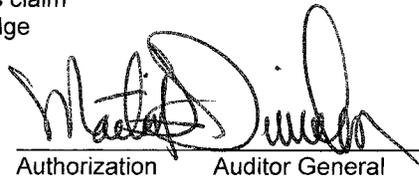
Description

For the Fiscal Affairs of the Governor's Office of Economic Development - REDI Fund
FY2013 Audit Billing

Amount Due: \$ 8,233.30

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.

Andrea Meyers _____ 773-6453
Claimant

 12/17/13

Authorization Auditor General Date

Authorization Date

N284090004

December 17, 2013

For the audit of the fiscal affairs of the REDI Fund
for the period ended June 30, 2013.

Audit Services:

Total Hours: 140.8 hours

Non-billable General Fund: 0.0 hours

and 140.8 hours billable at the following rates:

1.0 hours at the Fiscal 2013 rate of	\$55.00 per hour	\$55.00
<u>139.8 hours at the Fiscal 2014 rate of</u>	<u>\$58.50 per hour</u>	<u>\$8,178.30</u>
140.8		<u>\$8,233.30</u>

Cost Center Breakdown:

Other Programs	<u>140.8 hours</u>	<u>\$8,233.30</u>
	140.8 hours	\$8,233.30

Invoice

Invoice

FIDELITY ABSTRACT & TITLE CO
PO BOX 247
115 N MAIN
HOWARD, SD 57349
PHONE 605-772-5632 FAX 605-772-5648

DATE 11/27/2013	INVOICE # FT13160
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BILL TO
Bankwest

ITEM	DESCRIPTION	AMOUNT
TITLE INSURANCE	Lots Two (2) and Three (3) of Block Two of the Howard Industrial Park Addition to the City of Howard, Miner County, South Dakota; WM3D	1,088.00
name search	UJS name search	8.00
Title search	search fee	250.00
FEES	REIMBURSABLE EXPENSES RECORDING FEES ETC. recording fee advanced	30.00
If Commitment shall be cancelled one half of premium shall be due		Subtotal 1,376.00
		6% Tax 15.48
		Total 1,391.48

CITY OF HOWARD
 100 SOUTH MAIN STREET / P.O. BOX 705
 HOWARD, SD 57349
 (605) 772-4391

SERVE AT 606 W. INDUSTRIAL ROAD DATE 12/26/2013
 522
 For Service From 11/15/2013 to 12/15/2013

CHARGES/CREDITS	DATE	METER READING		USAGE	AMOUNT
		PREVIOUS	PRESENT		
PREV BAL					\$236.86
RECEIPT	12/12				-\$177.65
RECEIPT	12/09				-\$59.21
DEMAND EL				0	\$0.00
COM WATER		47E	47	0	\$0.00
COM SEWER				0	\$0.00
COM. ELEC.		40585	40900	25200	\$1,933.45
ELEC TAX					\$116.01
CUR CHRGS					\$2,049.46
TOTAL DUE					\$2,049.46

UNITED STATES POSTAGE
 RETURN THIS PORTION WITH YOUR PAYMENT
 0001703861 DEC 30, 2013
 01-50094000-00-9
 AMTSD BOARD OF ECONOMIC
 DEVELOPMENT
 711 E WELLS AVE
 PIERRE SD 57501

\$2,049.46

After 01/15/14 Pay \$2,151.93

AFTER	PAY	AMOUNT DUE NOW
1/15/2014	\$2,151.93	\$2,049.46

DUE UPON RECEIPT

01-50094000-00-9
 ACCOUNT NUMBER

2049.46
 * 75%

 BED Share = 1,537.10
 12-31-13
 KAE

1

Heartland share 512.36