

**BOARD OF ECONOMIC DEVELOPMENT
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
TUESDAY, DECEMBER 8, 2015, 9:30 A.M. CT**

TABLE OF CONTENTS

- A. Regular Session Agenda
- B. Minutes
- C. Monthly Financials
- D. BPro,Inc. Contract
- E. Executive Session Agenda
- F. Monthly Status Report
- G. Watch List
- H. PEDCO/Pulse Processors
- I. RTI, LLC/NEVCO, LLC
- J. South Dakota Technology Business Center
- K. Wounded Knee Economic Development Corporation
- L. Economic Development Partnership Program IEDC Basic Training
 - 1. Sisseton Wahpeton Oyate Tribe
- M. Economic Development Partnership Program
 - 1. Viborg Economic Development
 - 2. Rosebud Economic Development Corporation
- N. Local Infrastructure Improvement Program
 - 1. City of Dell Rapids
 - 2. Sully County
- O. Dakota Resources

**BOARD OF ECONOMIC DEVELOPMENT
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
TUESDAY, NOVEMBER 10, 2015, 9:30 A.M. CT**

*Board
Members:*

Jeff Erickson

Dale Clement

Tony Klein

*Sharon
Casey*

John Calvin

*Michael
Luken*

*Greg
Heineman*

Tim Kessler

Ted Hustead

*Don
Kettering*

*Pat
Prostrallo*

Tom Jones

*Norbert
Sebade*

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 November 10, 2015, November 19, 2015 and November 30, 2015, as presented.

Motion made by _____ and seconded by _____.

BPro Inc. Contract

Motion to approve the BPro Inc. contract as presented.

Motion made by _____ and seconded by _____.

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 _____.

Old Business

PEDCO/Pulse Processors

Motion to approve a commitment extension to June 30, 2016.

Motion made by _____ and seconded by _____.

RTI, LLC/NEVCO, LLC

Motion to approve a commitment extension to March 31, 2016.

Motion made by _____ and seconded by _____.

South Dakota Technology Business Center

Motion to amend the grant award as presented.

Motion made by _____ and seconded by _____.

New Business

Economic Development Partnership Program IEDC Basic Training

Please note times:

Call To Order: _____

Executive Session _____

Regular Session _____

Adjournment _____

Sisseton Wahpeton Oyate Tribe

Motion to approve an Economic Development Partnership grant award to the Sisseton Wahpeton Oyate Tribe the amount of \$1,000.00, to be granted in accordance with the board's Economic Development Partnership Award Policy for IEDC Basic Training as recommend by staff and Grant Committee.

Motion made by _____ and seconded by _____.

Economic Development Partnership Program

Viborg Economic Development Corporation

Motion to approve an Economic Development Partnership grant award to the Viborg Economic Development in the amount of \$41,525.50, to be granted in accordance with the board's Economic Development Partnership Award Policy for Staff Funding as recommended by staff and Grant Committee

Motion made by _____ and seconded by _____.

Rosebud Economic Development Corporation

Motion to deny an Economic Development Partnership grant award to Rosebud Economic Development Corporation as recommended by staff and Grant Committee.

Motion made by _____ and seconded by _____.

Local Infrastructure Improvement Program

City of Dell Rapids and Sully County

Motion to approve the Local Infrastructure Improvement Program grants for the following borrowers as recommended by staff and Grant Committee:

City of Dell Rapids

- Approve a Local Infrastructure Improvement grant award to the City of Dell Rapids in the amount of \$300,000.00 to be granted in accordance with the board's Local Infrastructure Improvement Award Policy.

Sully County

- Approve a Local Infrastructure Improvement grant award to Sully County in the amount of \$400,000.00 to be granted in accordance with the board's Local Infrastructure Improvement Award Policy.

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, DECEMBER 8, 2015, 9:30 A.M. CT**

REGULAR SESSION AGENDA

- 9:30 A.M. Call To Order, Chairman Jeff Erickson
- 9:35 A.M. **Agenda**
RECOMMENDED ACTION: Motion to approve the agenda as provided or amended.
- Minutes**
RECOMMENDED ACTION: Motion to approve the minutes of November 10, 2015, November 19, 2015 and November 30, 2015, as presented.
- Monthly Financials**
RECOMMENDED ACTION: No action taken.
- BPro Inc.**
RECOMMENDED ACTION: Motion to approve the BPro Inc. contract as presented.
- 9:45 A.M. Commissioner's Comments
- 9:50 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.
- 10:30 A.M. **Report from Executive Session**
RECOMMENDED ACTION: Approve Chairman's report from Executive Session.
- Other Motions
PEDCO/Pulse Processors
RTI, LLC/NEVCO, LLC
Economic Development Partnership Program IEDC Basic Training
Sisseton Wahpeton Oyate Tribe
Economic Development Partnership Program
South Dakota Technology Business Center
Rosebud Economic Development Corporation
Viborg Economic Development
Local Infrastructure Improvement Program
City of Dell Rapids

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 Business & Technology Center at 2329 N. Career Avenue, Sioux Falls, South Dakota.

**BOARD OF ECONOMIC DEVELOPMENT
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
TUESDAY, NOVEMBER 10, 2015, 9:30 A.M. CT**

Members Present

Chairman Jeff Erickson, Dale Clement, Tony Klein, Sharon Casey, John Calvin, Mike Luken, Greg Heineman, Tim Kessler, Ted Husted, Don Kettering, Pat Prostrullo, Tom Jones, Norbert Sebade, Scott Parsley, Brian Gosch and Spencer Hawley

Staff Present

Commissioner Pat Costello, Deputy Commissioner Aaron Scheibe, Cassie Stoesser, Ashley Moore and Dale Knapp

Other Staff Present

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

Call to Order

Chairman Erickson called the meeting to order at 9:33 a.m.

Agenda

A motion was made by John Calvin and seconded by Tim Kessler to approve the agenda as presented.

Motion passed by a roll call vote.

Minutes

A motion was made by Greg Heineman and seconded by Sharon Casey to approve the minutes of the meeting held October 13, 2015 and October 29, 2015, as presented.

Motion passed by a roll call vote.

Executive Session

A motion was made by Don Kettering and seconded by Pat Prostrullo to enter into executive session at 9:37 a.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 10:37 a.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 and consult with legal counsel. No action taken.

A motion was made by John Calvin and seconded by Tim Kessler to approve the chairman's report from executive session.

Motion passed by a roll call vote.

Old Business

Guaranty Agreement

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

Motion passed by a roll call vote.

Black Hills Fiberglass, LLC

A motion was made by Norbert Sebade and seconded by Ted Husted to approve the request for a lien release requiring the company to apply all proceeds, including the one-time leasing fee to principal reduction and update personal guarantees.

Motion passed by a roll call vote.

Bills

A motion was made by Pat Prostrullo and seconded by Sharon Casey to approve the bills payable to Department of Legislative Audit in the amount of \$10,912.80 and PIDC in the amount of \$8,325.00

Motion passed by a roll call vote with Tom Jones not voting.

Adjourn

A motion was made by Tony Klein and seconded by Dale Clement to adjourn the meeting at 10:14 a.m.

Motion passed by a roll call vote.

Dale Clement, Secretary or
Tony Klein, Treasurer

**GRANT COMMITTEE
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
THURSDAY, NOVEMBER 19, 2015 – 2:00 P.M. CT**

Members Present

Chairman Tim Kessler, Mike Luken, Greg Heineman and Ted Husted

Staff Present

Deputy Commissioner Aaron Scheibe, Cassie Stoesser, Ashley Moore, Dave Anderson, LaJena Gruis and Ann Gesick-Johnson

Call to Order

Chairman Kessler called the meeting to order at 2:04 p.m.

Agenda

A motion was made by Greg Heineman and seconded by Mike Luken to approve the agenda as presented.

Motion passed by a roll call vote.

Executive Session

A motion was made by Ted Husted and seconded by Mike Luken to enter into executive session at 2:05 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 Grant Committee out of executive session at 2:19 p.m. The Chairman reported that the Board of Economic Development Grant Committee entered into Executive Session to discuss commercial and financial information relating to loan and other assistance to applicants. No action taken.

A motion was made by Greg Heineman and seconded by Ted Husted to approve the chairman's report from executive session.

Motion passed by a roll call vote.

New Business

Economic Development Partnership Program IEDC Basic Training
Sisseton Wahpeton Oyate Tribe

Grant Committee recommends to the Board approving an Economic Development Partnership grant award to the Sisseton Wahpeton Oyate Tribe the amount of \$1,000.00, to be granted in accordance with the board's Economic Development Partnership Award Policy for IEDC Basic Training as recommended by staff.

A motion was made by Ted Husted and seconded by Greg Heineman.

Motion passed by a roll call vote

Economic Development Partnership Program

Viborg Economic Development Corporation

Grant Committee recommends to the Board approving an Economic Development Partnership grant award to the Viborg Economic Development in the amount of \$41,525.50, to be granted in accordance with the board's Economic Development Partnership Award Policy for Staff Funding as recommend by staff.

A motion was made by Ted Husted and seconded by Greg Heineman.

Motion passed by a roll call vote

Rosebud Economic Development Corporation

Grant Committee recommends to the Board denying as recommended by staff.

A motion was made by Mike Luken and seconded by Ted Husted.

Motion passed by a roll call vote.

Local Infrastructure Improvement Program Grant Applications

City of Dell Rapids and Sully County

Grant Committee recommends to the Board approving as recommended by staff.

City of Dell Rapids

Approve a Local Infrastructure Improvement grant award to the City of Dell Rapids in the amount of \$300,000.00 to be granted in accordance with the board's Local Infrastructure Improvement Award Policy.

Sully County

Approve a Local Infrastructure Improvement grant award to Sully County in the amount of \$400,000.00 to be granted in accordance with the board's Local Infrastructure Improvement Award Policy.

A motion was made by Greg Heineman and seconded by Ted Husted.

Motion passed by a roll call vote.

Adjourn

A motion was made by Mike Luken and seconded by Greg Heineman to adjourn the meeting at 2:23 p.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
MONDAY, NOVEMBER 30, 2015, 2:00 P.M. CT**

Members Present

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

Staff Present

Deputy Commissioner Aaron Scheibe, Cassie Stoesser and Ashley Moore

Other Staff Present

Sam Helma - BankWest, Inc.

Call to Order

Chairman Erickson called the meeting to order at 2:10 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.

Executive Session

A motion was made by Pat Prostrollo and seconded by Norbert Sebade to enter into executive session at 2:13 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 2:19 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 taken.

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

Motion passed by a roll call vote.

Old Business

PEDCO/Pulse Processors

Credit Committee recommends to the Board approving a commitment extension to June 30, 2016.

A motion was made by Dale Clement and seconded by Norbert Sebade.

Motion passed by a roll call vote.

RTI, LLC/NEVCO, LLC and RTI, LLC/RTI Holdings, LLC

Credit Committee recommends to the Board approving a commitment extension to March 31, 2016.

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

Motion passed by a roll call vote.

Adjourn

A motion was made by Dale Clement and seconded by Pat Prostrollo to adjourn the meeting at 2:21 p.m.

Motion passed by a roll call vote

Dale Clement, Secretary or
Tony Klein, Treasurer

**SOUTH DAKOTA REVOLVING
ECONOMIC DEVELOPMENT AND INITIATIVE FUND
FINANCIAL REPORT
(Compiled)
October 31, 2015**

CONTENTS

	<u>Page</u>
ACCOUNTANT'S COMPILATION REPORT ON THE FINANCIAL STATEMENTS	1
FINANCIAL STATEMENTS	
Statement of Net Assets	2
Statement of Revenues, Expenses and Changes <i>in</i> Net Assets	3
Statement of Cash Flows	4
ADDITIONAL LOAN INFORMATION - REDI	5-6
ADDITIONAL LOAN INFORMATION - SOUTH DAKOTA JOBS	7

Clausen & Rice, LLP

Certified Public Accountants and Business Consultants

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Daniel T. Rice, CPA
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Accountant's Compilation Report

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

We have compiled 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, 2015 and for the four months then ended, which collectively comprise the Entity's basic financial statements as listed in the table of contents. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or provide any assurance about whether the financial statements are in accordance with accounting principles generally accepted in the United States of America.

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the financial statements.

Our responsibility is to conduct the compilation in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. The objective of a compilation is to assist management in presenting financial information in the form of financial statements without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the 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 additional loan information on pages 5 through 7 is not a required part of the basic financial statements but are supplementary information. We have compiled the supplementary information from information that is the representation of management, without audit or review. Accordingly, we do not express an opinion or any other form of assurance on the supplementary information.

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

Clausen & Rice, LLP

Pierre, South Dakota
November 25, 2015

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

October 31, 2015

See Accountant's Compilation Report

ASSETS

Cash and Investments-Unrestricted	\$57,753,457
Cash and Investments-Designated for Approved REDI Loans	20,281,712
Cash-SD Jobs	<u>1,391,172</u>
Total Cash and Investments	\$79,426,341
Accounts Receivable-Bankwest	116,360
Loans Receivable - REDI, net of allowance of \$624,843	30,479,940
Loan Interest Receivable	18,817
Net Pension Asset	136,978
Equipment	1,750
Due From Other Funds	500,000
Investment Income Receivable	<u>564,351</u>

TOTAL ASSETS \$111,244,537

DEFERRED OUTFLOWS OF RESOURCES

Deferred Outflows of Resources Related to Pensions	<u>121,211</u>
TOTAL DEFERRED OUTFLOWS OF RESOURCES	<u>121,211</u>

LIABILITIES

Accounts Payable	\$14,262
Wages and Benefits Payable	\$25,507
Accrued Leave Payable	\$12,876
Due To Other Funds	<u>\$19,124</u>

TOTAL LIABILITIES \$71,769

DEFERRED INFLOWS OF RESOURCES

Deferred inflows of Resources Related to Pensions	<u>158,643</u>
TOTAL DEFERRED INFLOWS OF RESOURCES	<u>158,643</u>

NET POSITION

Investment in Capital Assets	1,750
Unrestricted	<u>111,133,586</u>

TOTAL NET POSITION \$111,135,336

TOTAL LIABILITIES AND NET POSITION \$111,365,748

SOUTH DAKOTA REVOLVING

ECONOMIC DEVELOPMENT AND INITIATIVE FUND

STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET ASSETS

For the Period Ending October 31, 2015

See Accountant's Compilation Report

	<u>Current Period</u>	<u>Year to Date</u>
OPERATING REVENUE		
Interest Income on Loans - REDI	\$51,788	\$206,259
Ethanol Income - REDI	0	0
Other Income - REDI	0	31,136
Building South Dakota Income	0	52,851
LESS OPERATING EXPENSES		
Administrative Expenses	57,619	218,018
Bad Debt Expense	(2,560)	(252,382)
Other Expenses	1,131	7,273
Transfer to Ag.	0	0
Building South Dakota Grants	0	0
NET INCOME (LOSS) FROM OPERATIONS	(\$4,402)	\$317,337
NONOPERATING REVENUE		
Investment Income	291,894	564,351
CHANGE IN NET POSITION	\$287,492	\$881,688
NET POSITION, BEGINNING	110,847,844	110,253,648
Prior period Adjustment	0	0
NET POSITION, ENDING	<u>\$111,135,336</u>	<u>\$111,135,336</u>

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

For the Period Ending October 31, 2015

See Accountant's Compilation Report

	Current Period	Year to Date
CASH FLOWS FROM OPERATING ACTIVITIES:		
Change in Net Position	\$287,492	\$881,688
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 - REDI	199,456	4,219,582
(Increase) Decrease in Loan		
Interest Receivable	1,822	17,639
(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	(291,894)	322,915
(Increase) Decrease in Due From Other Funds	0	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
	\$196,876	\$5,941,824
CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES:		
Prior Period Adjustment	0	0
	\$196,876	\$5,941,824
NET INCREASE IN CASH AND INVESTMENTS		
CASH AND INVESTMENTS - BEGINNING	79,229,465	73,484,517
CASH AND INVESTMENTS - ENDING	\$79,426,341	\$79,426,341

**SOUTH DAKOTA REVOLVING
ECONOMIC DEVELOPMENT AND INITIATIVE FUND
ADDITIONAL LOAN INFORMATION - REDI
For the Period Ending October 31, 2015
See Accountant's Compilation Report**

REDI LOANS APPROVED, NOT ADVANCED

<u>Company Name</u>	<u>Approval Date</u>	<u>Loan Amount</u>
Moffatt Productions, Inc.	7/8/2014	579,900
CMW Industrial Properties, LLC	11/12/2014	350,000
RTI, LLC/NEVCO, LLC	11/12/2014	250,000
PEDCO/South Dakota Pulse Processors	12/9/2014	360,000
RTI, LLC/RTI Holdings, LLC	1/12/2015	825,000
Kerry K Engle Separate Property Trust	3/9/2015	607,500
Sioux Falls Development Foundation	6/2/2015	8,500,000
Shoemaker Properties, LLC	7/16/2015	343,312
Wentz Commercial Properties, LLC	7/16/2015	397,000
Bellmark Properties, Inc.	8/11/2015	778,000
Gage Brothers Concrete Products, Inc.	8/11/2015	2,500,000
Showplace Wood Products	9/15/2015	4,185,000
R&R Holdings, LLC	10/13/2015	606,000
Total		<u>\$ 20,281,712</u>

See Accountant's Compilation Report

REDI LOANS ADVANCED, DURING	Oct		
<u>Company Name</u>		<u>Advanced Date</u>	<u>Loan Amount</u>

None

REDI LOANS PAID OFF, DURING	Oct		
<u>Company Name</u>		<u>Pay-off Date</u>	<u>Original Loan Amount</u>

None

REDI LOANS WROTE OFF, DURING	Oct		
<u>Company Name</u>		<u>Wrote-off Date</u>	<u>Amount Wrote-off</u>

None

REDI LOANS WITHDRAWN, DURING	Oct		
<u>Company Name</u>		<u>Withdrawal Date</u>	<u>Withdrawn Amount</u>

None

**SOUTH DAKOTA REVOLVING
ECONOMIC DEVELOPMENT AND INITIATIVE FUND
ADDITIONAL LOAN INFORMATION - SDJP
For the Period Ending October 31, 2015
See Accountant's Compilation Report**

SOUTH DAKOTA JOBS PROGRAM CASH & INVESTMENTS BALANCE

Dedicated SDJP Fund Cash and Investments Balance	9/30/2015	\$1,391,172
Plus: Investment Council Interest		0
South Dakota Jobs		0
		0
Less:		0
		0
		0
Dedicated SDJP Fund Cash and Investments Balance	10/31/2015	<u>\$1,391,172</u>

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

RESTRICTED

<u>Company Name</u>	<u>Approval Date</u>	<u>Amount Remaining</u>	
Specialized Machine, LLC.	4/8/2014	0	\$4,000 Authorized
			\$4,000 Disbursed
Sapa Extrusions, Inc.	9/9/2014	24,280	\$24,280 Authorized
			\$0 Disbursed
TruXedo, Inc.	4/14/2015	12,200	\$12,200 Authorized
			\$0 Disbursed
		<u>\$36,480</u>	

UNRESTRICTED

Total South Dakota Jobs Program Cash and Investments	\$1,391,172
Less Cash and Investments-Restricted for Approved Loans/Grants	\$36,480
Total Unrestricted South Dakota Jobs Program Cash and Investments	<u>\$1,354,692</u>

STATE OF SOUTH DAKOTA
CONSULTING CONTRACT

Agreement made and entered into this 1st day of December, 2015, 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, 2015 and end on December 1st, 2016, 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 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) 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.
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.

The state applies security patches and security updates as needed to maintain compliance with industry best practices as well as state and federal audit requirements. Vendors who do business with the state must also keep up with industry security practices and requirements. Vendors must include costs and time needs in their proposals and project plans to assure they can keep up with all security needs throughout the life-cycle of a project. The state will work in good faith with vendors to help them understand and support state security requirements during all phases of a project's life-cycle but will not assume the costs to mitigate applications or processes that fail to meet then-current security requirements.

At the state's discretion, security scanning will be performed and or security settings put in place or altered during the software development phase and during pre-production review. These scans and tests, initially applied to development and test environments, can be time consuming and should be allowed for in project planning documents and schedules. Products not meeting BIT's security and performance requirements will not be allowed into production and will be barred from User Acceptance Testing (UAT) until all issues are addressed to the state's satisfaction. The discovery of security issues during UAT are automatically grounds for non-acceptance of a product even if a product meets all other acceptance criteria. Any security issues discovered during UAT that require product changes will not be considered a project change chargeable to the state. The state urges the use of industry scanning/testing tools and secure development methods be employed to avoid unexpected costs and project delays. Costs to produce and deliver secure and reliable applications are the responsibility of the software entity producing or delivering an application to the state. Unless expressly indicated in writing, the state assumes all price estimates and bids are for the delivery and support of applications and systems that will pass security and performance testing.

Consistent with the provisions of this Contract, the Vendor shall use the highest applicable industry standards for sound secure software development practices to resolve critical security issues as quickly as possible. These standards include but are not limited to the South Dakota Application Security Vulnerabilities document which can be found at <http://cybersecurity.sd.gov/docs/development/DevelopmentSecurityItems.pdf>. Items listed under Section A of the South Dakota Security Vulnerabilities document may not be present. You may also reference the Top 25 Software Errors. You should also use the Top 25 Software Errors from the SANS Institute which can be found at <http://www.sans.org/top25-software-errors/>. Continued compliance of these standards is required as the standards will change over time. The "highest applicable industry standards" shall also be defined as the degree of care, skill, efficiency, and diligence that a prudent person possessing technical expertise in the subject area and acting in a like capacity would exercise in similar circumstances.

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 Vendor employees and any subcontractor(s) as well as the subcontractor(s) employees, participating in the work covered by this Agreement will be required

to sign the Security Acknowledgement form which is attached to this Agreement in Exhibit C. The signed Security Acknowledgement form(s) must be given to the State and approved by BIT before work on the contract may begin. This form commits the Vendor to abide by the terms of the Information Technology User's Security Guide (ITUSG). Failure to abide by the requirements of the ITUSG or the Security Acknowledgement form is a breach of this Agreement. It is also a breach of this Agreement if the Vendor does not obtain the signature on the Security Acknowledgement from any employees and any subcontractor(s') as well as the subcontractor(s') employees, 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 Vendor's or subcontractor's employees due to a failure of an employee to abide by the terms of the Security Acknowledgement Form will be done at the discretion of the Vendor or Subcontractor and in accordance with the Vendor's or Subcontractor's personnel policies. Regardless of the actions taken by the Vendor or Subcontractor, the State shall retain the right to require at its discretion the removal of the employee from the project covered by this agreement.

16. BACKGROUND CHECKS

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.

