

**ECONOMIC DEVELOPMENT FINANCE AUTHORITY  
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD  
WEDNESDAY, JUNE 12, 2024, 9:30 A.M., CT**

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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.

**ECONOMIC DEVELOPMENT FINANCE AUTHORITY  
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD  
WEDNESDAY, JUNE 12, 2024, 9:30 A.M., CT**

**Motion Sheet**

EDFA Meeting: Please note times:

Call To Order: \_\_\_\_\_

Executive Session: \_\_\_\_\_

Regular Session: \_\_\_\_\_

Adjournment: \_\_\_\_\_

Board  
Members

Jeff Erickson

Don  
Kettering

Sharon  
Casey

Tom Jones

Mike Luken

Jim Schmidt

Matt Judson

**Agenda**

Motion to approve the agenda as presented.

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

**Minutes**

Motion to approve the minutes of April 9, 2024 as presented.

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

**Public Comments**

**Casey Peterson, LTD Accounting Contract**

Motion to approve the Casey Peterson, LTD accounting contract as presented.

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

**Commissioners Comments**

**Executive Session**

Motion to enter into executive session to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. SDCL 1-16B-14.1

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

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

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

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

**New Business**

**Plainview Dairy, LLC**

Motion to accept the Livestock Nutrient Management Bond application from Plainview Dairy, LLC, passing Resolution A to recognize qualified project costs of up to \$25,000,000 and acknowledge the Frazier Lanier disclosure letter.

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

**Wildrose Dairy, LLC**

Motion to accept the Livestock Nutrient Management Bond application from Wildrose Dairy, LLC and passing Resolution A to recognize qualified project costs of up to \$4,800,000.

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

**Adjourn**

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

A

**ECONOMIC DEVELOPMENT FINANCE AUTHORITY  
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD  
WEDNESDAY, JUNE 12, 2024, 9:30 A.M., CT**

**The public may participate by the following:**

*Call In Number: (669) 900-9128 Meeting ID: 96677988449 Participant Id: # Passcode: 421401*  
[www.zoom.com](http://www.zoom.com) Meeting ID: 96677988449 Passcode: 421401

**REGULAR SESSION AGENDA**

- 9:30 A.M. Call To Order, Chairman, Jeff Erickson
- 9:35 A.M. **Approve Agenda**  
RECOMMENDED ACTION: Motion to approve Agenda as provided or amended.
- Approve Minutes**  
RECOMMENDED ACTION: Motion to approve Minutes as provided or amended.
- Public Comments**
- Approve Casey Peterson, LTD Accounting Contract**  
RECOMMENDED ACTION: Motion to approve the Casey Peterson, LTD accounting contract as presented.
- 9:40 A.M. **Commissioner's Comments**
- 9:45 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 to applicants. SDCL 1-16B-14.1
- 9:55 A.M. **Report from Executive Session**  
RECOMMENDED ACTION: Approve Chairman's report from Executive Session.
- Other Motions**  
Plainview Dairy, LLC  
Wildrose Dairy, LLC
- Adjournment**

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.

B

**Economic Development Finance Authority  
GOED Conference Room, 711 E Wells Ave, Pierre, SD  
Tuesday, April 9, 2024, 9:30 a.m. CT**

Members Present

Chairman Jeff Erickson, Don Kettering, Sharon Casey, Tom Jones, Mike Luken and Matt Judson

Staff Present

Deputy Commissioner Jesse Fonkert, Travis Dovre, Ashley Moore, Jack Valentine, Stephanie Deyo, Lexxy Phillips, Nick Rabern, Joe Fiala, Adam Molseed, Katherine Kirby and Curtis Egan

Others Present

Bob Mercer

Call to Order

Chairman Erickson called the meeting to order at 9:30 a.m.

Agenda

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

Motion passed by a voice vote.

Minutes

A motion was made by Sharon Casey and seconded by Tom Jones to approve the minutes of March 13, 2024, as presented.

Motion passed by a voice vote.

Public Comment Period – none

Executive Session

A motion was made by Matt Judson and seconded by Mike Luken to enter into Executive Session at 9:32 a.m. to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. SDCL 1-16B-14.

Motion passed by a voice vote.

Executive Session

The Chairman declared the board out of Executive Session at 9:43 a.m. The Economic Development Finance Authority entered into Executive Session to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. No action was taken.

A motion was made by Don Kettering and seconded by Matt Judson to approve the chairman's report from Executive Session.

Motion passed by a voice vote.

New Business  
Riverview, LLP

A motion was made by Mike Luken and seconded by Tom Jones to accept the Livestock Nutrient Management Bond application from Riverview, LLP and passing Resolution A for a bond issue up \$55,000,000 and acknowledge the Frazier Lanier disclosure letter.  
Motion passed by a voice vote.

Adjourn

A motion was made by Sharon Casey and seconded by Matt Judson to adjourn the meeting at 9:45 a.m.  
Motion passed by a voice vote.

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Matt Judson, Secretary/Treasurer

C



**CONTRACT FOR SERVICES**  
Between

Casey Peterson, LTD  
909 St. Joseph Street, Ste 101  
Rapid City, SD 57701  
(605)

South Dakota Economic Development Finance  
Authority  
c/o Governor's Office of Economic Development  
711 E Wells Avenue  
Pierre, SD 57501  
(605)773-4633

---

Referred to as Consultant

---

Referred to as EDFA

EDFA hereby enters into this agreement (Agreement) for services with Consultant in consideration of and pursuant to the terms and conditions set forth herein.

**1. SCOPE OF SERVICES:**

The Consultant will perform services for the EDFA as follows:

Prepare quarterly financial statements and assist in the fiscal year-end accounting and audit for EDFA. Further detail of the scope of work and engagement is attached hereto as Exhibit A.

**2. PERIOD OF PERFORMANCE:**

This Agreement shall be effective on July 1, 2024, and will end on June 30, 2025, unless sooner terminated pursuant to the terms of this Agreement.

**3. USE OF EQUIPMENT, SUPPLIES AND FACILITIES:**

Consultant will not use State of South Dakota (State) or EDFA equipment, supplies or facilities.

**4. CONSULTANT IDENTIFICATION:**

Upon execution of this Agreement, Consultant will provide the EDFA with Consultant's Employer Identification Number, Federal Tax Identification Number or Social Security Number.

**5. CONTRACT AMOUNT AND PAYMENT:**

EDFA will make payment for services upon satisfactory completion of the services. The TOTAL CONTRACT AMOUNT is an amount not to exceed \$26,875.00. EDFA will not pay Consultant's travel expenses as a separate item. Progress payments are allowed. Payment will be made pursuant to itemized invoices submitted with a signed EDFA voucher. Payment will be made consistent with SDCL ch. 5-26. Any

overpayment of this Agreement shall be returned to the EDFFA within thirty (30) days after written notification to Consultant.

6. INDEMNIFICATION:

Consultant agrees to indemnify the State and EDFFA, and their officers, agents, and employees, from and against all claims or proceedings for actions, suits, damages, liabilities, other losses or equitable relief that may arise at least in part as a result of an act or omission in performing services under this Agreement. Consultant shall defend the State and EDFFA, and their officers, agents, and employees against any claim, including any claim, action, suit, or other proceeding related to the claim. Consultant's obligation to indemnify includes the payment of attorney fees and other costs of defense. In defending the State and EDFFA, and their officers, agents, and employees, Consultant may engage other professionals, subject to the written approval of the State and EDFFA, which shall not be unreasonably withheld. Notwithstanding the foregoing, the State and EDFFA may, in their sole discretion and at the expense of Consultant, engage attorneys and other professionals to defend the State and EDFFA, and their officers, agents, and employees, or to assist Consultant in the defense. This section does not require Consultant to be responsible for or defend against claims or proceedings for damages, liabilities, losses or equitable relief arising solely from errors or omissions of the State or EDFFA, or their officers, agents or employees.

7. INSURANCE:

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

A. Commercial General Liability Insurance:

Consultant shall maintain occurrence-based commercial general liability insurance or equivalent form of coverage with a limit of not less than one million dollars (\$1,000,000) 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. The insurance policy shall name the State and EDFFA, and their officers and employees, as additional insureds, but liability coverage is limited to claims not barred by sovereign immunity. The State and EDFFA, and their officers and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law.

B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

Consultant agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than one million dollars (\$1,000,000). The State and EDFFA, and their officers and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law.

C. Business Automobile Liability Insurance:

Consultant shall maintain business automobile liability insurance or equivalent form with a limit of not less than one million dollars (\$1,000,000) for each accident. This insurance shall include coverage for owned, hired and non-owned vehicles. The insurance policy shall name the State and EDFA, and their officers and employees, as additional insureds but liability coverage is limited to claims not barred by sovereign immunity. The State and EDFA, and their officers and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law.

D. Worker's Compensation Insurance:

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

Before beginning work under this Agreement, Consultant shall furnish EDFA with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement, including naming the State, EDFA, and their officers and employees, as additional insureds, as set forth above. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, Consultant agrees to provide immediate notice to EDFA 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 or EDFA.

8. TERMINATION:

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

9. FUNDING:

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 EDFA upon five (5) business days written notice. Consultant agrees that termination for any of these reasons is not a default by EDFA, nor does it give rise to

a claim against EDFA or any officer, agent or employee of EDFA, and Consultant waives any claim against the same.

10. NOTICE:

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 Jesse Fonkert, GOED Deputy Commissioner, on behalf of EDFA, and by and to Deidre Budahl, on behalf of 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.

11. CONTROLLING LAW AND VENUE:

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

12. INDEPENDENT CONSULTANT:

While performing services hereunder, Consultant is an independent consultant and not an officer, agent, or employee of the State or EDFA.

13. THIRD PARTY BENEFICIARIES:

This Agreement is intended to govern only the rights and interests of the parties named herein. It is not intended to create, does not and may not be relied upon to create, any rights, substantive or procedural, enforceable at law by any third party in any matters, civil or criminal.

14. ASSIGNMENT AND AMENDMENT:

This Agreement may not be assigned without the express prior written consent of EDFA. 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.

15. COMPLIANCE:

Consultant will comply in full with all federal, tribal, state and local laws, regulations,

ordinances, guidelines, permits, requirements and other standards applicable to the services provided under this Agreement and will be solely responsible for obtaining current information regarding the foregoing. Nothing herein shall constitute a waiver by the EDFFA to any defense to jurisdiction nor shall anything herein constitute an acknowledgement by EDFFA that any tribe has or exercises any jurisdiction over this Agreement or the parties.

#### 16. REPORTING:

Consultant agrees to report to EDFFA any event encountered in the course of performance of this Agreement which results in an injury to any person or property, or which may otherwise subject Consultant, or the State or EDFFA, or their officers, agents or employees to liability. Consultant shall report any such event to EDFFA immediately upon discovery.

Consultant's obligation under this section shall only be to report the occurrence of any event to EDFFA 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 EDFFA 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.

#### 17. SUBCONTRACTING:

Consultant may not use subconsultants to perform the services described herein without the express prior written consent of EDFFA. Consultant will include provisions in its subcontracts requiring its subconsultants to comply with the applicable provisions of this Agreement, to indemnify the State and EDFFA, and to provide insurance coverage in a manner consistent with this Agreement. Consultant will cause its subconsultants, agents, and employees to comply with applicable federal, tribal, state, and local laws, regulations, ordinances, guidelines, permits and other standards and will adopt such review and inspection procedures as are necessary to assure such compliance. EDFFA, at its option, may require the vetting of any subconsultants. Consultant shall assist in the vetting process.

#### 18. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

By signing this Agreement, 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 EDFFA 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.

19. STATE'S RIGHT TO REJECT:

EDFA reserves the right to reject any person from performing services under this Agreement who EDFA believes would be detrimental to the services, presents insufficient skills, presents inappropriate behavior or is considered by EDFA to be a security risk.

20. SEVERABILITY:

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.

21. SUPERCESSION:

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.

22. FORCE MAJEURE:

Notwithstanding anything in this Agreement to the contrary, neither party shall be liable for any delay or failure to perform under the terms and conditions of this Agreement, if the delay or failure is caused by war, terrorist attacks, riots, civil commotion, fire, flood, quarantine, epidemic, pandemic, earthquake or any act of God, or other causes beyond the party's reasonable control provided, however, that in order to be excused from delay or failure to perform, the party must act diligently to remedy the cause of such delay or failure and must give notice to the other party as provided in this Agreement as soon as reasonably possible of the length and cause of the delay in performance.

23. WAIVER OF BREACH:

The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision in this Agreement.

24. SOVEREIGN IMMUNITY:

Nothing in this Agreement is intended to constitute a waiver of sovereign immunity by or on behalf of the State or its agencies, EDFA, or the officers or employees of the State or EDFA.

25. HEADINGS:

The headings in this Agreement are for convenience and reference only and shall not govern, limit, modify or in any manner affect the scope, meaning, or intent of the provisions of this Agreement.

26. AUTHORITY TO EXECUTE: Consultant represents and warrants that:

A. Consultant is a corporation duly constituted and validly existing and has all requisite power and authority to execute, deliver and perform its obligations under this Agreement;

B. The execution, delivery and performance of this Agreement has been duly authorized by Consultant and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for Consultant to enter into this Agreement and perform its obligations under this Agreement;

C. Consultant is duly authorized to conduct business in and is in good standing in each jurisdiction in which Consultant will conduct business in connection with this Agreement; and

D. Consultant has obtained all licenses, certifications, permits, and authorizations necessary to perform the services under this Agreement and currently is in good standing with all regulatory agencies that regulate any or all aspects of Consultant's performance of the services. Consultant will maintain all required certifications, licenses, permits, and authorizations during the term of this Agreement at its own expense.

27. DISCLOSURE OF THE CONTRACT:

Neither party shall disclose the contents of the Agreement except as required by applicable law or as necessary to carry out the terms of the Agreement or to enforce that party's rights under this Agreement. The 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 EDFFA to take any action that the EDFFA reasonably believes is necessary to comply with the South Dakota open records or open meetings laws, including, without limitation, posting this Agreement on the website pursuant to SDCL 1-27-46. The Consultant agrees that the Agreement and any prices, fees and rates agreed to be paid by EDFFA under the Agreement are not confidential.

## 28. SURVIVAL FOLLOWING TERMINATION:

Any terms of this Agreement that would, by their nature or through the express terms of this Agreement, survive the expiration or termination of this Agreement shall so survive including but not limited to the terms of sections 6, 10, 29, 30, and 34.

## 29. CONFIDENTIALITY:

For the purpose of this Agreement, “Confidential Information” shall include all information, regardless of its format, disclosed to Consultant by the State or EDFA and all information, regardless of its format, obtained by Consultant through the provisions of services as contemplated by this Agreement. Consultant, and any person or entity affiliated with Consultant, shall not disclose any Confidential Information to any third person for any reason without the express written permission of an EDFA officer or employee with authority to authorize the disclosure. Consultant, and any person or entity affiliated with Consultant, shall not: (i) disclose any Confidential Information to any third person unless otherwise specifically allowed under this Agreement; (ii) make any use of Confidential Information except to exercise rights and perform obligations under this Agreement; (iii) make Confidential Information available to any of its employees, officers, agents or consultants except those who have agreed, by contract, to obligations of confidentiality at least as strict as those set out in this Agreement and who have a need to know such information and who have been instructed that such information is or may be confidential under EDFA or federal law. Consultant, and any person or entity affiliated with Consultant, is held to the same standard of care in guarding Confidential Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding Confidential Information in the strictest confidence. Consultant, and any person or entity affiliated with Consultant, shall protect the confidentiality of the State’s and EDFA’s information from the time of receipt to the time that such information is either returned or destroyed to the extent that it cannot be recalled or reproduced.

Confidential Information shall not include information that: (i) was in the public domain at the time it was disclosed to Consultant or to any person or entity affiliated with Consultant; (ii) was known to Consultant, or to any person or entity affiliated with Consultant, without restriction at the time of disclosure from the State or EDFA; (iii) was disclosed with the prior written approval of the State’s or EDFA’s officers or employees having authority to disclose such information; (iv) was independently developed by Consultant, or by any person or entity affiliated with Consultant, without the benefit or influence of the State’s or EDFA’s information; or (v) becomes known to Consultant, or to any person or entity affiliated with Consultant, without restriction, from a source not connected to the State or EDFA.

Confidential Information can include, but is not limited to, names, social security numbers, employer numbers, addresses and all other data about applicants, participants, employers or other clients to whom the State or EDFA provides services of any kind. Consultant understands this information may be confidential and protected under state



or federal law. Consultant agrees to immediately notify EDFA if the information is disclosed, either intentionally or inadvertently.

If work assignments performed in the course of this Agreement require additional security requirements or clearance, Consultant agrees its officers, agents and employees may be required to undergo investigation or may be required to sign separate confidentiality agreements, and it will limit access to the confidential information and related work activities to employees that have executed such agreements.

Consultant will enforce the terms of this Confidentiality Provision to its fullest extent.

Consultant agrees to remove any employee or agent from performing work under this Agreement that has or is suspected to have violated the terms of this Confidentiality Provision and to immediately notify EDFA of such matter.

Consultant will comply with any other confidentiality measures and terms included in the Agreement.

Upon termination of this Agreement, if not already done so as part of the services performed under the Agreement, Consultant agrees to return to the State or EDFA, at Consultant's cost, any Confidential Information or documentation maintained by Consultant regarding the services provided hereunder in a format readily useable by the State or EDFA as mutually agreed.

### 30. WORK PRODUCTS:

Consultant hereby acknowledges and agrees that all reports, plans, specifications, technical data, miscellaneous drawings, software system programs and documentation, procedures, or files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, and all information contained therein provided to the State or EDFA by Consultant in connection with the performance of services under this Agreement shall belong to and is the property of the State or EDFA, as applicable, and will not be used in any way by Consultant without the written consent of the State or EDFA, as applicable. Papers, reports, forms, software programs, source code(s) and other material which are a part of the work under this Agreement will not be copyrighted without written approval of the State or EDFA, as applicable.

### 31. TRANSFER OF INFORMATION:

Upon termination of this Agreement (whether initiated by EDFA or Consultant) and following a written request by EDFA, Consultant agrees to provide to EDFA, at Consultant's expense, any data and other pertinent records related to services performed under this Agreement ("Information") to EDFA or a designee chosen by EDFA ("Recipient") within thirty (30) days, unless otherwise agreed by the parties. The transfer of Information shall be conducted based upon the State's and EDFA's standards and in accordance with all applicable laws and regulations in a format readily

usable by the State, EDFFA or Recipient as mutually agreed.

### 32. OTHER METHODS OF NOTICE:

The parties consent to the use of electronic means and facsimile transmissions for communications as a signed writing provided that delivery is confirmed.

### 33. DILIGENCE AND SKILL:

In the performance of these services and providing the deliverables under the Agreement, Consultant and its employees shall exercise the degree of skill and care consistent with customarily accepted practices and procedures for the performance of the type of services required. Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services and deliverables furnished by Consultant and any subconsultants, if applicable, under this Agreement. It shall be the duty of Consultant to assure its services and deliverables are technically sound and in conformance with all pertinent technical codes and standards. Consultant represents and warrants that: (i) it shall give high priority to the performance of the services; and (ii) the services shall be performed in a timely manner.

Consultant shall be responsible to EDFFA for material deficiencies in the contracted deliverables and services which result from the failure to meet the standard given herein. Consultant shall promptly correct or revise any material errors or omissions in deliverables and re-perform any services which are not in compliance with such representations and warranties at no cost to EDFFA, provided that Consultant's failure to comply is not due solely to the actions, errors, or omissions of EDFFA.

Permitted or required approval by EDFFA of any services or deliverables furnished by Consultant shall not in any way relieve Consultant of its responsibility for the professional quality and technical accuracy and adequacy of its work. EDFFA's review, approval, acceptance, or payment for any of Consultant's services or deliverables herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and except as provided herein, Consultant shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to EDFFA caused by Consultant's performance or failure to perform under this Agreement.

In the event of a breach of these representations and warranties, EDFFA shall provide telephonic or electronic notice to Consultant. The EDFFA may, in its sole discretion, require Consultant to cure such breaches. If it is necessary for Consultant to send at least one qualified and knowledgeable representative to EDFFA's site, this will be done at Consultant's expense. 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.

**34. INTELLECTUAL PROPERTY:**

In connection with the performance of this Agreement and the provision of services and deliverables under this Agreement, Consultant will not infringe any patent, copyright, trademark, trade secret or other proprietary right of any person. Consultant will not improperly use any trade secrets or confidential or proprietary information owned by any third party in performing this Agreement or the services related to this Agreement. Consultant shall indemnify the State, EDFFA, and their officers, agents and employees (hereinafter collectively the Indemnitees) from and against all claims or proceedings for actions, suits, damages, liabilities, other losses or equitable relief (collectively, a "Claim") to the extent such Claim alleges improper use of, or infringement or misappropriation by, the Indemnitees or Consultant of any patent, copyright or federally registered trademark or trade secret in connection with the performance of this Agreement and the provision of services and deliverables under this Agreement.

**35. THIRD PARTY RIGHTS:**

Consultant represents and warrants it has the full power and authority to grant the rights described in this Agreement without violating any rights of any third party, and that there is currently no actual or, to Consultant's knowledge, threatened suit by any such third party based on an alleged violation of such rights by Consultant.

**36. PUBLICITY:**

The award of this Agreement to Consultant is not in any way an endorsement of Consultant or Consultant's services by EDFFA and may not be so represented by Consultant in any advertising or publicity materials. Consultant agrees to submit to EDFFA all advertising, sales promotion, and other publicity relating to this Agreement wherein EDFFA's name is mentioned, or language is used from which the connection of the EDFFA's name therewith may, in EDFFA's judgment, be inferred or implied. Consultant further agrees not to publish or use such advertising, sales promotion, or publicity without the prior written consent of EDFFA. Consultant may not in any way contract on behalf of or in the name of the State or EDFFA, nor may release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this Agreement without obtaining the prior written approval of the State and EDFFA.

**AUTHORIZED SIGNATURES:**

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

STATE

CONSULTANT

BY: \_\_\_\_\_  
(Signature)

Jesse Fonkert  
(Printed name)

GOED Deputy Commissioner  
(Printed title)

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

BY: \_\_\_\_\_  
(Signature)

Deidre Budhal  
(Printed name)

Shareholder  
(Printed title)

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

Name and phone number of contact person at EDFA who can provide additional information regarding this contract: Jack Valentine (605)773-4633.