

**BOARD OF ECONOMIC DEVELOPMENT
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
WEDNESDAY, JUNE 12, 2024, 10:00 A.M., CT**

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**BOARD OF ECONOMIC DEVELOPMENT
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
WEDNESDAY, JUNE 12, 2024, 10:00 A.M., CT**

**Board
Members:**

Jeff Erickson

Matt Judson

**Sharon
Casey**

Mike Luken

**Don
Kettering**

Tom Jones

Reed Kessler

Joy Nelson

Eric Yunag

**Kevin
Tetzlaff**

David Emery

**Craig
Christianson**

Brad Moore

Non-Voting

**Senator
Reynold
Nesiba**

**Senator
Casey
Crabtree**

**Representative
Kameron
Nelson**

**Representative
Neal Pinnow**

Motion Sheet

(STAFF RECOMMENDATIONS)

Agenda

Motion to approve the agenda as presented.

Minutes

Motion to approve the minutes of the meetings held May 15, 2024, May 28, 2024 and June 3, 2024, as presented

Conflicts of Interest Disclosures

Public Comments

Casey Peterson, LTD Accounting Contract

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

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 1-16G-11

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 was taken.

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

Motion made by _____ and seconded by _____.

Reviews

Local Infrastructure Improvement Program (Clark County) and Reinvestment Payment Program (Wild Springs Solar, LLC, Red's All Natural, LLC, Royal Canin, US, Valley Queen Cheese Factory, Norway Pork OP, LLC and Redstone Dairy, LLP)

Motion to approve the grant reviews and recommendations as recommended by staff and Grant Committee.

Please note times:

Call To Order: _____

Executive Session _____

Regular Session _____

Adjournment _____

Motion made by _____ and seconded by _____.

Old Business

City of Viborg

Motion to approve amending the project scope to \$448,198 or 47% of the total project costs.

Motion made by _____ and seconded by _____.

Driftwood Dairy

Motion to approve extending the construction start date to June 12, 2025.

Motion made by _____ and seconded by _____.

Grant County Development Corporation

Motion to approve an extension of the grant agreement expiration date to May 30, 2025.

Motion made by _____ and seconded by _____.

Norway Pork OP, LLC

Motion to approve extending the construction start date to April 30, 2025.

Motion made by _____ and seconded by _____.

Watertown Development Company/Sentry, LLC

Motion to approve matching the lender as presented.

Motion made by _____ and seconded by _____.

New Business

BibiSol, LLC

Motion to approve a SD Works loan request from BibiSol, LLC in the amount of \$57,300. Secured by a second position UCC filing on all business assets and the personal guarantees from principals with 10% or more ownership.

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

Motion made by _____ and seconded by _____.

Donlin Marine, LLC

Motion to approve a SD Works loan request from Donlin Marine, LLC in the amount of \$1,000,000. Secured by a sole second lien position on the company's equipment, FF&E, and chattel assets, the secondary assignment of concession agreement, and the personal guarantees from principals with 10% or more ownership.

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

Motion made by _____ and seconded by _____.

RF Holdings, LLC

Motion to approve a SD Works loan request from RF Holdings, LLC in the amount of \$364,000. Secured by a sole second lien position on the CRE, a second UCC on the equipment, FF&E and chattel assets, the personal guarantees from principals with 10% or more ownership and a corporate guaranty.

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

Motion made by _____ and seconded by _____.

Grant County Development Corporation

Motion to approve a REDI loan request from Grant County Development Corporation in the amount of \$426,025. Secured by a shared first lien position on the land, lots and improvements to the industrial park.

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

Motion made by _____ and seconded by _____.

JMP Design and Catering, LLC

Motion to approve a SD Works loan request from JMP Design and Catering, LLC in the amount of \$549,696. Secured by a sole second lien position mortgage on the CRE assets, blanket UCC on equipment and FF&E assets, the personal guarantees from principals with 10% or more ownership and a corporate guaranty.

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

Motion made by _____ and seconded by _____.

Midstates, Inc.

Motion to approve a SD Works loan request from Midstates, Inc. in the amount of \$800,000. Secured by a sole second position on financed equipment, a 1:1 draw and the personal guarantees from principals with 10% or more ownership.

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

Motion made by _____ and seconded by _____.

Never Too Busy Construction

Motion to approve a SD Works loan request from Never Too Busy Construction in the amount of \$46,500. Secured by a second UCC filing on all business assets and the personal guarantees from principals with 10% or more ownership.

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

Motion made by _____ and seconded by _____.

Economic Development Partnership Program

City of Dell Rapids

Motion to approve an Economic Development Partnership grant award to the City of Dell Rapids in the amount of \$1,000 not to exceed 50% of costs in accordance with the board's Economic Development Award Policy for Training Only as recommended by staff and Grant Committee.

Motion made by _____ and seconded by _____.

Local Infrastructure Improvement Program

City of Canton

Motion to approve a Local Infrastructure Improvement grant award to the City of Canton in the amount of \$423,000 but not to exceed 50% of eligible project costs, to be granted in accordance with the board's Local Infrastructure Improvement Award Policy as recommended by staff and Grant Committee.

Motion made by _____ and seconded by _____.

Adjourn

Motion made by _____ and seconded by _____.

A

**BOARD OF ECONOMIC DEVELOPMENT
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
WEDNESDAY, JUNE 12, 2024, 10:00 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 Meeting ID: 96677988449 Passcode: 421401

REGULAR SESSION AGENDA

10:00 A.M. Call to Order, Chairman Jeff Erickson

10:05 A.M. **Agenda**
RECOMMENDED ACTION: Motion to approve the agenda as provided or amended.

Minutes
RECOMMENDED ACTION: Motion to approve the minutes of May 15, 2024, May 28, 2024 and June 3, 2024, as presented.

Conflicts of Interest Disclosures

Public Comments

Approve Casey Peterson, LTD Accounting Contract
RECOMMENDED ACTION: Motion to approve the Casey Peterson, LTD accounting contract as presented.

10:15 A.M. **Commissioner's Comments**

10:20 A.M. **Executive Session**
RECOMMENDED ACTION: Motion to enter into executive session to discuss contractual matters, and to discuss commercial and financial information relating to loan and other assistance applicants. SDCL 1-16G-11

11:20 A.M. **Report from Executive Session**
RECOMMENDED ACTION: Approve Chairman's report from Executive Session.

Other Motions

- Grant Reviews
- City of Viborg
- Driftwood Dairy
- Grant County Development Corporation
- Norway Pork OP, LLC
- Watertown Development Company/Sentry, LLC
- BibiSol, LLC
- Donlin Marine, LLC
- RF Holdings, LLC
- Grant County Development Corporation
- JMP Design and Catering, LLC
- Midstates, Inc.
- Never Too Busy Construction

City of Dell Rapids
City of Canton

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

**BOARD OF ECONOMIC DEVELOPMENT
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
WEDNESDAY, MAY 15, 2024, 10:00 A.M., CT**

Members Present

Chairman Jeff Erickson, Don Kettering, Matt Judson, Sharon Casey, Mike Luken, Tom Jones, Reed Kessler, Joy Nelson, Eric Yunag, Kevin Tetzlaff, David Emery, Craig Christianson, Brad Moore and Kameron Nelson

Staff Present

Deputy Commissioner Jesse Fonkert, Travis Dovre, Ashley Moore, Jack Valentine, Stephanie Deyo, Lexxy Phillips, Nick Rabern, Nadine Agneau, Joe Fiala and Adam Molseed

Other Staff Present

Mike Bietz and Shawn Hofer – BankWest, Inc.

Others Present

Bob Mercer - Keloland

Call to Order

Chairman Erickson called the meeting to order at 10:00 a.m.

Agenda

A motion was made by Joy Nelson and seconded by Sharon Casey to approve the agenda as presented.

Motion passed by a voice vote.

Minutes

A motion was made by Mike Luken and seconded by Kevin Tetzlaff to approve the minutes of the meetings held April 9, 2024 and April 29, 2024, as presented.

Motion passed by a voice vote.

Conflicts Disclosure

Chairman Erickson opened the floor for board members to identify potential conflicts under SDCL Chapter 3-23. Jeff Erickson declared a potential conflict with Borns Group, Inc. as he is on the Board of Directors for American Bank and Trust and would not partake in the discussion or vote on the project. Joy Nelson declared a potential conflict with Borns Group, Inc. as she is on the Board of Directors for American Bank and Trust and would not partake in the discussion or vote on the project. Mike Luken declared a potential conflict with Borns Group, Inc. as he is related to the borrower and would not partake in the discussion or vote on the project. The Chairman opened up the floor for questions and discussion concerning the potential conflicts; there were none from the board members and no objection to proceeding with the agenda.

Public Comments – none

Executive Session

A motion was made by Joy Nelson and seconded by Don Kettering to enter into Executive Session at 10:10 a.m. to discuss contractual matters, and to discuss commercial and financial information relating to loan and other assistance applicants. SDCL 1-16G-11

Motion passed by a voice vote.

Executive Session Report

The Chairman declared the board out of Executive Session at 10:23 a.m. The Chairman reported that the Board of Economic Development entered into Executive Session to discuss contract matters, commercial and financial information relating to loan and other assistance to applicants. No action was taken.

A motion was made by Matt Judson and seconded by Brad Moore to approve the Chairman's report from Executive Session.

Motion passed by a voice vote.

Old Business

Engineered Concrete Products, LLC

A motion was made by Sharon Casey and seconded by Joy Nelson to approve a commitment extension to November 10, 2024, as presented.

Motion passed by a voice vote.

TTL Holdings, LLC

A motion was made by Don Kettering and seconded by Mike Luken to approve a commitment extension to November 10, 2024, as presented.

Motion passed by a voice vote.

Gus Stop 8

A motion was made by Tom Jones and seconded by Sharon Casey to approve changing the SD Works borrower from Gus Stop 8 to GF Buche Co., as presented.

Motion passed by a voice vote.

New Business

Borns Group, Inc.

A motion was made by Matt Judson and seconded by Craig Christianson to approve a SD Works loan request from Borns Group, Inc. in the amount of \$530,000. Secured by a sole second position on inventory, the personal guarantees from principals with 10% or more ownership and a corporate guaranty.

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

Motion passed by a voice vote with Jeff Erickson, Joy Nelson and Mike Luken abstaining.

DAP, LLC

A motion was made by Kevin Tetzlaff and seconded by David Emery to approve a SD Works loan request from DAP, LLC in the amount of \$982,519. Secured by a sole 2nd lien position on assets, the personal guarantees from principals with 10% or more ownership and a corporate guaranty.

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

Motion passed by a voice vote.

DAP, LLC

A motion was made by Don Kettering and seconded by Craig Christianson to approve a waiver of a loan over \$1,000,000 and approve a REDI loan request from DAP, LLC in the amount of \$1,965,038. Secured by a 1st lien position on assets, the personal guarantees from principals with 10% or more ownership and a corporate guaranty.

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

Motion passed by a voice vote.

Adjourn

A motion was made by Joy Nelson and seconded by Mike Luken to adjourn the meeting at 10:32 a.m.

Motion passed by a voice vote.

Matt Judson, Treasurer

GRANT COMMITTEE
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
TUESDAY, MAY 28, 2024, 1:00 P.M. CT

Members Present

Chairman Don Kettering, Sharon Casey, Mike Luken and Tom Jones

Staff Present

Travis Dovre, Ashley Moore, Stephanie Deyo, Jack Valentine, Adam Molseed and Joe Fiala

Call to Order

Chairman Kettering called the meeting to order at 1:00 p.m.

Agenda

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

Motion passed by a voice vote.

Conflicts Disclosure – Chairman Kettering opened the floor for committee members to identify potential conflicts under SDCL Chapter 3-23. There were none from committee members and no objection to proceeding with the agenda.

Public Comments – none

Executive Session

A motion was made by Mike Luken and seconded by Sharon Casey to enter into executive session at 1:02 p.m. to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. SDCL 1-16G-11

Motion passed by a voice vote.

Executive Session Report

The Chairman declared the Grant Committee out of executive session at 1:15 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 was taken.

A motion was made by Sharon Casey and seconded by Tom Jones to approve the chairman's report from executive session.

Motion passed by a voice vote.

Grant Reviews

Local Infrastructure Improvement Program (Clark County) and Reinvestment Payment Program (Wild Springs Solar, LLC, Red's All Natural, LLC, Royal Canin, US, Valley Queen Cheese Factory, Norway Pork OP, LLC and Redstone Dairy, LLP)

Grant Committee recommends to the Board approving the grant reviews and recommendations as presented.

A motion was made by Mike Luken and seconded by Tom Jones.

Motion passed by a voice vote.

New Business

Economic Development Partnership Program

City of Dell Rapids

Grant Committee recommends to the Board approving an Economic Development Partnership grant award to the City of Dell Rapids in the amount of \$1,000 to be granted in accordance with the board's Economic Development Award Policy for Training Only. A motion was made by Mike Luken and seconded by Tom Jones. Motion passed by a voice vote.

Local Infrastructure Improvement Program

City of Canton

Grant Committee recommends to the Board approving a Local Infrastructure Improvement grant award to the City of Canton in the amount of \$423,000 but not to exceed 50% of project costs, to be granted in accordance with the board's Local Infrastructure Improvement Award Policy. A motion was made by Tom Jones and seconded by Sharon Casey. Motion passed by a voice vote.

Adjourn

A motion was made by Mike Luken and seconded by Sharon Casey to adjourn the meeting at 1:18 p.m. Motion passed by a voice vote.

Matt Judson, Treasurer

CREDIT COMMITTEE
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
MONDAY, JUNE 3, 2024, 11:00 A.M. CT

Members Present

Chairman Jeff Erickson, Don Kettering, Reed Kessler, Matt Judson and Craig Christianson

Staff Present

Deputy Commissioner Jesse Fonkert, Ashley Moore, Jack Valentine, Nick Rabern, Lexxy Phillips and Nadine Agneau

Others Present

Shawn Hofer – BankWest, Inc.

Call to Order

Chairman Erickson called the meeting to order at 11:00 a.m.

Agenda

A motion was made by Matt Judson and seconded by Craig Christianson to approve the agenda as presented.

Motion passed by a voice vote.

Conflicts Disclosure – Chairman Erickson opened the floor for committee members to identify potential conflicts under SDCL Chapter 3-23. There were none from committee members and no objection to proceeding with the agenda.

Public Comments- none

Executive Session

A motion was made by Don Kettering and seconded by Matt Judson to enter into Executive Session at 11:02 a.m. to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. SDCL 1-16G-11.

Motion passed by a voice vote.

Executive Session Report

The Chairman declared the Credit Committee out of Executive Session at 11:43 a.m. The Chairman reported that the Board of Economic Development Credit Committee entered into Executive Session to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. No action was taken.

A motion was made by Don Kettering and seconded by Matt Judson to approve the Chairman's report from executive session.

Motion passed by a voice vote.

Old Business

Watertown Development Company/Sentry, LLC

Credit Committee recommends to the board approving the changes as presented.

A motion was made by Matt Judson and seconded by Reed Kessler.

Motion passed by a voice vote.

New Business

Active Heating, Inc.

Credit Committee recommends to the board approving the SD Works application as presented.
A motion was made by Reed Kessler and seconded by Don Kettering.
Motion passed by a voice vote.

Donlin Marine, LLC

Credit Committee recommends to the board approving the SD Works application as presented.
A motion was made by Craig Christianson and seconded by Matt Judson.
Motion passed by a voice vote.

BibiSol, LLC

Credit Committee recommends to the board approving the SD Works application as presented.
A motion was made by Reed Kessler and seconded by Matt Judson.
Motion passed by a voice vote.

Grant County Development Corporation

Credit Committee recommends to the board approving the REDI application as presented.
A motion was made by Don Kettering and seconded by Matt Judson.
Motion passed by a voice vote.

JMP Design and Catering, LLC

Credit Committee recommends to the board approving the SD Works application as presented.
A motion was made by Matt Judson and seconded by Craig Christianson.
Motion passed by a voice vote.

Midstates, Inc.

Credit Committee recommends to the board approving the SD Works application as presented.
A motion was made by Reed Kessler and seconded by Matt Judson.
Motion passed by a voice vote.

Never Too Busy Construction

Credit Committee recommends to the board approving the SD Works application as presented.
A motion was made by Matt Judson and seconded by Don Kettering.
Motion passed by a voice vote.

Adjourn

A motion was made by Reed Kessler and seconded by Matt Judson to adjourn the meeting at 11:49 a.m.
Motion passed by a voice vote.

Matt Judson, Treasurer

C

STATE OF SOUTH DAKOTA
CONTRACT FOR SERVICES

Between

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

South Dakota Board of Economic Development
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 State

The State 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 State as follows:

Prepare monthly financial statements, assist in the fiscal year-end accounting, and provide financials to the Department of Legislative Audit for the SD Board of Economic Development's (BED) annual audit.

Prepare monthly financial statements, assist in the fiscal year-end accounting, and provide year-end financials to the State for the SD Works loan program.

Further detail of the scope of services 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 equipment, supplies or facilities.

4. CONSULTANT IDENTIFICATION:

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

5. CONTRACT AMOUNT AND PAYMENT:

The State will make payment for services upon satisfactory completion of the services. The TOTAL CONTRACT AMOUNT is an amount not to exceed \$49,500.00. The State 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 state voucher. Payment will be made consistent with SDCL ch. 5-26. Any overpayment of this Agreement shall be returned to the State within thirty (30) days after written notification to Consultant.

6. INDEMNIFICATION:

Consultant agrees to indemnify the State of South Dakota, its 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 of South Dakota, its 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 of South Dakota, its officers, agents, and employees, Consultant shall engage other professionals, subject to the written approval of the State which shall not be unreasonably withheld. Notwithstanding the foregoing, the State may, in its sole discretion and at the expense of Consultant, engage attorneys and other professionals to defend the State of South Dakota, its 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, its 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 of South Dakota, its officers and employees, as additional insureds, but liability coverage is limited to claims not barred by sovereign immunity. The State of South Dakota, its 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 of South Dakota, its 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 of South Dakota, its officers and employees, as additional insureds but liability coverage is limited to claims not barred by sovereign immunity. The State of South Dakota, its 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 the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement including naming the State, its 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 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. 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 State 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 State because of Consultant's breach. Upon termination the State may take over the work and may award another party a contract to complete the work contemplated by this Agreement. If after the State terminates for a breach by Consultant it is determined that 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 the State upon five (5) business days written notice. Consultant agrees that termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State or any officer, agent or employee of the State, and Consultant waives any claim against the same.

10. COMPLIANCE WITH EXECUTIVE ORDER 2020-01:

Executive Order 2020-01 provides that for consultants, vendors, suppliers or subconsultants with five (5) or more employees who enter into a contract with the State that involves the expenditure of one hundred thousand dollars (\$100,000) or more, by signing this Agreement Consultant certifies and agrees that it has not refused to transact business activities, has not terminated business activities, and has not taken other similar actions intended to limit its commercial relations, related to the subject matter of this Agreement, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Consultant further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.

11. COMPLIANCE WITH EXECUTIVE ORDER 2023-02:

Consultant certifies and agrees that the following information is correct:

In preparing its response or offer or in considering proposals submitted from qualified, potential vendors, suppliers, and subconsultants, or in the solicitation, selection, or commercial treatment of any vendor, supplier, or subconsultant, Consultant is not an entity, regardless of its principal place of business, that is ultimately owned or controlled, directly or indirectly, by a foreign national, a foreign parent entity, or foreign government from China, Iran, North Korea, Russia, Cuba, or Venezuela, as defined by South Dakota Executive Order 2023-02.

Consultant further agrees that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Consultant further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.

12. COMPLIANCE WITH EXECUTIVE ORDER 2023-04:

Consultant certifies and agrees that the following information is correct:

In preparing its response or offer or in considering proposals submitted from qualified, potential vendors, suppliers, and subconsultants, or in the solicitation, selection, or commercial treatment of any vendor, supplier, or subconsultant, Consultant has not discriminated against a firearm-related entity, regardless of whether the subject matter of this Agreement is related to the discriminatory activity of Consultant, as defined by South Dakota Executive Order 2023-04.

Consultant further agrees that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Consultant further agrees to provide timely written notice to the State if during the term of this Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.

13. 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 the State, 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.

14. 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.

15. INDEPENDENT CONSULTANT:

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

16. 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.

17. ASSIGNMENT AND AMENDMENT:

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.

18. 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 State to any defense to jurisdiction nor shall anything herein constitute an acknowledgement by the State that any tribe has or exercises any jurisdiction over this Agreement or the parties.

19. REPORTING:

Consultant agrees to report to the State 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 of South Dakota or its officers, agents or employees 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.

20. SUBCONTRACTING:

Consultant may not use subconsultants to perform the services described herein without the express prior written consent of the State. Consultant will include provisions in its subcontracts requiring its subconsultants to comply with the applicable provisions of this Agreement, to indemnify the State, 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. The State, at its option, may require the vetting of any subconsultants. Consultant shall assist in the vetting process.

21. 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 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.

22. STATE'S RIGHT TO REJECT:

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

23. 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.

24. 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.

25. 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.

26. 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.

27. SOVEREIGN IMMUNITY:

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

28. 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.

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

A. Consultant is a limited liability partnership 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.

30. 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 of South Dakota 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 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 the State under the Agreement are not confidential.

31. 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, 12, 31, 32, and 39.

32. CONFIDENTIALITY:

For the purpose of this Agreement, "Confidential Information" shall include all information, regardless of its format, disclosed to Consultant by the State 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 a State 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 state 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 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.

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; (iii) was disclosed with the prior written approval of State'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 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 of South Dakota.

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 provides services of any kind. Consultant understands that this information may be confidential and protected under state or federal law. Consultant agrees to immediately notify the State 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 that 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 the State 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, 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 as mutually agreed by Consultant and State.

33. 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 by Consultant in connection with the performance of services under this Agreement shall belong to and is the property of the State and will not be used in any way by Consultant without the written consent of the State. 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.

34. TRANSFER OF INFORMATION:

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

35. 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.

36. 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 that 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 the State 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 the State, provided that Consultant's failure to comply is not due solely to the actions, errors, or omissions of the State.

Permitted or required approval by the State 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. The State'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 the State caused by Consultant's performance or failure to perform under this Agreement.

In the event of a breach of these representations and warranties, the State shall provide telephonic or electronic notice to Consultant. The State 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 the State's site where the system is located, 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.

37. 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, the State of South Dakota, its officers, agents and employees (hereinafter collectively "the State") 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 State 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.

38. THIRD PARTY RIGHTS:

Consultant represents and warrants that 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.

39. PUBLICITY:

The award of this Agreement to Consultant is not in any way an endorsement of Consultant or Consultant's services by the State and may not be so represented by Consultant in any advertising or publicity materials. Consultant agrees to submit to the State all advertising, sales promotion, and other publicity relating to this Agreement wherein the State's name is mentioned, or language is used from which the connection of the State's name therewith may, in the State'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 the State. Consultant may not in any way contract on behalf of or in the name of the State, 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.

40. STATE LEGISLATOR INTEREST IN CONTRACT:

Consultant acknowledges it understands Article 3, Section 12 of the South Dakota Constitution, has had the opportunity to seek independent legal advice if desired, and certifies this Agreement is not made in contravention of the prohibition set forth in Article 3, Section 12 of the South Dakota Constitution.

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)

BY: _____
(Signature)

Jesse Fonkert
(Printed name)

Deidre Budhal
(Printed name)

GOED Deputy Commissioner
(Printed title)

Shareholder
(Printed title)

(DATE)

(DATE)

- State Agency Coding (MSA Center)
- State Agency MSA Company for which contract will be paid:
- Object/sub-object 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: Jack Valentine (605)773-4633.